

## THE CUSTUMAL OF PEVENSEY,

AS DELIVERED TO THE LORD WARDEN AT DOVER CASTLE, IN 1356.

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It was of the first importance that the Lord Warden, as judge of the paramount court of Shepway, should at all times have available evidence, as to the customs and peculiar franchises of the different towns constituting the Five Ports. Appeals from the mayors' courts of these towns to him in his court of Shepway were of constant recurrence, and it is palpable, that, without some such evidence (as of record), conflicting and frequently unjust decisions must have been the result.

Roger de Mortimer, earl of March, after the reversal of the judgment on his grandfather, became Warden and constable of Dover. The barons of the Cinque Ports made heavy complaints against their Warden, for encroaching on their rights and privileges. The king, in his precept to Mortimer recited the privileges which had been granted to them, with a command that he should henceforth desist from such oppressions and vexations.<sup>1</sup>

Roger de Mortimer, therefore, ordered the mayors of all the towns constituting the Five Ports, to deliver in at Dover Castle copies of all their ancient Custumals, in order that they might be there preserved, as of record, and be available evidence to the lords warden in determining appeals from the courts below.

The present Custumal is undoubtedly the original one, half in Latin and half in French, as here given, which was returned, in 1356, to the Lord Warden, in obedience to these orders. It is from the extensive and valuable collection of ancient muniments at Surrenden, where, some years since, I had the good fortune to discover it, and by the kind liberality of Sir Edward Dering am now enabled to furnish a transcript. The seal is

<sup>1</sup> Rot. Fin. 29<sup>o</sup> Edw. III.

unfortunately gone, but the marks where it was placed still remain; it has been cut off by one of those unprincipled, ruthless collectors, who, as long as they can enlarge their own stores, scruple at nothing, destroying the value of charters, or appropriating them with equal heedlessness.

The roll is in good preservation, though in parts somewhat illegible; there are many points in it of great interest, and specially so to the topographer of Sussex. The genuine Saxon spirit which pervades the whole is quite refreshing; I do not remember ever before to have seen any Saxon form of sentencing a criminal to death. How courteous and considerate to the feelings is the gentle "Sir, withdraw, and ax for the priest;" and how coarse and rude, by contrast with it, is, "you shall be taken hence to the place from whence you came, and thence to a place of execution, there to be hanged by the neck till you are dead,"—a sentence fit only for a dog. The scene must have lost half its terrors by this gentle courtesy in announcing the doom of the law; but, deny it who will, our Saxon ancestors were highly civilised, and gentlemen in all they did: why, what a gentlemanly death was that reserved for the privileged burgess, to be slid off the port into the sea. Clarence, and his malmsy butt, is vulgarity itself compared with a "header" down to the "rocks where corals grow:"—

"Nothing of him that doth fade,  
But doth suffer a sea change  
Into something rich and strange;  
Sea nymphs hourly ring his knell;"

something more captivating, methinks, than the ribaldry of the dissecting-room. Highly privileged were ye, ye men of Pevensey. "O fortunati sua si bona norint!"

THE CUSTUMAL OF PEVENSEY, 30<sup>o</sup> EDW. III.

" . . . . <sup>2</sup>sunt les usages de la Ville et la Lewee de Peuensee, del temps dont memorie ne court."

1. *Appointment of Bailiff, and his Oath.*—[Imprimis] "quolibet anno, die Lune proxima post festum sancti Michaelis, solet sumoniri tota communitas ville et leucate de Peuensee, tam abbates, . . . . milites et alios [*sic*] magnates terras et tenementa infra libertatem habentes, quam omnes illos [*sic*] infra predictam libertatem commorantes, et in ecclesia beati Nicholai,

<sup>2</sup> About three letters torn from the edge of the membrane throughout the first entry.

de [vi]su tocius comunitatis solent eligere unum ballivum qui vocatur Ressevoir, qui quidem ballivus faciet sacramentum super librum, quod fidelitatem portabit comunitati [vill]e, et eam manutenebit secundum suam potestatem, et fideliter denarios quos recipiet expendet, et fidelem compotum inde reddet, si<sup>3</sup> Deus ei adjuvat &c. Et ipse Receptor recipiet mandata domini Regis, et Constabularii Castri Dovorr. ac literas Baronum quinque portuum, et omnia alia faciet que ad navigia et servicia quinque portuum pertinent, et non alia.”

2. *Appointment of the 12 Jurats, and their Oath.*—“Item, eodem die, ille Receptor eliget sibi xij Juratos de quatuor quarteriis ille leucate, videlicet, de burgagio ville, iij homines, et sic, de singulis quarteriis, iij homines, qui omnes jurabunt quod bene et fideliter predictam comunitatem manutenebunt, et rationabiliter ac juste taxabunt et assedent taxas collecta et schott [*i. e.* “scots”] a quolibet, juxta possessiones et quantitatem suam, nulli parcendo, diviti nec pauperi, ut eis Deus adjuvat, &c.”

3. *Appointment of Common Clerk, and Oath.*—“Item eodem die Receptor eliget sibi clericum communem qui similiter jurabit, ut bene et fideliter penes comunitatem se portabit, et consilium eorum custodiet, et fidelem compotum faciet, &c.”

4. *St. John's Hospital.*—“Item habent homines de burgagio ville de Pevenes quendam [*sic*] hospitem beati Johannis Baptiste, in qua sunt fratres et sorores habentes terras et possessiones infra leucatum predictam. Et ipse Receptor et homines burgagii predicti habent dispositionem hospitalis predictae, ad concedendum corrodia tam viris quam mulieribus prout poterint concentire, et eos habent visitare et castigare secundum quantitatem. Et unus hominum de dicto burgagio semper erit supervisor illius hospitalis ad supervidendum eorum expensas, et compotum magistri illius hospitalis.

Possunt similiter ipse Receptor et homines, si habeatur homo vel femina in dicto burgagio qui ad inopiam devenerint, et unde vivere non habuerint, et bene per totam vitam se portaverint, illum hominem vel feminam in predictam hospitem, sustentationem suam in eadem capiendum, vel solvendo pro eadem.”<sup>4</sup>

<sup>3</sup> Probably for ‘sicut’ though not so marked.

<sup>4</sup> *Sic*, “in p'dcām hospit' sustent' suā ī eadem cap<sup>d</sup> ūl soluēdo p' ead.”

5. *The Court of the Queen's Steward; Pleas, &c. therein.*—“Item, domina Regina Anglie in dicta villa et leucata habet regalitatem et dominium suum, et senescallus suus tenet Curias, diebus Lune, de tribus septimanis in tres septimanas, et coram eo debent omnia placita teneri, tam placita corone, vite, et membri, quam omnia alia, et fines et recognitiones terrarum et tenementorum, sicut in banco domini Regis. Et sectatores Curie sedebunt juxta Senescallum, et dabunt iudicium cujuscunque placeti, set dicetur per os . . . .<sup>5</sup> Et ipsi sectatores taxabunt amerciamenta, videlicet, quemlibet secundum quantitatem debiti; assisæ autem panis et cerevisie, ac mensurarum et ponderum ad dictum senescallum pertinent, et suum officium.”

6. *The Queen's Portereve.*—“Item domina Regina in eadem villa et leucata habet ballivum qui vocatur Portereve, qui annuatim electus est in proxima Curia tenta post festum sancti Michaelis, et hoc per tenentes predictæ Regine dicte leucate qui tenent terram taillable, et est tallagium illud quod solvere tenentur certum per annum viij marce. Et ille Porterevus, per se, vel per servientem suum, qui vocatur Bedel, levare debet et colligere redditus, firmas, tallagia, amerciamenta, et omnes exitus tocius dominice [*sic*] prefate Regine, et inde compotum reddere coram auditoribus, ubi melius ad hoc vacare possunt; et si in arreragio inventus fuerit, et de proprio suo v . . . . [“victu” ?] reddere non habuerit, omnes illi tenentes qui eum in officium eligerunt pro eo satisfaciunt. Item ille Porterevus, per se, vel per servientem suum, recipiet omnes querelas, tam liberorum quam extraneorum, qui infra libertatem fieri contigerint, et secundum naturam querele, debet attachiare, vel summonire, et dimittere ad plegium, et de illis ad proximam curiam respondere, &c.”

7. *Office of Coroner.*—“Item. En cas de Corone, si home soit trouve mort par aventer, ou ocys par fet dacunuy deyns la franchise en terre ou en ewe, le dit Portreve avera la vewe com Coroner, et il memes par son Bedel fera . . . . pays, et prendra l'enqueste; et si ascom soit endite par sele enquest, le portreve demandera as amys del mort sil seuent ascyn vers

<sup>5</sup> In this and other places, where points are inserted, holes occur in the original.

qil...beyllent (*veyllent?*) pour sur.<sup>6</sup> et si cely q' est rette del fet soit illeques ou deyns la franchise trouve, le dit portreve le fera attacher et ameneer a la prison de la franchise qest appele le Berdes, et illeques sera garde en ceppes par geiller de la dite franchise tanqala proscheigne court, a la qele il estera a la ley, se il se voille mettre, ou a la usages des cynk ports, ceo est assavoir a xxxvj, queux il memes choisera, et fera son panel a son peril, et le delivera as mayns du senescal; et com ils du panel soient demandes, chescun par son nom, si ascun defaille ou ne respeigne mye, le prison soit ajuge a la mort. Et si ils soient tous presents, soleit le senescal de les xxxvi par donner les douze, et les Recevour et Jurs de la comunite autr douze, et le Seneschall elirra xij pour la enquest, et si ascun retree mayn del livrer en fre condicion, soi le prison juge a mort, et a de primes le prison jura qil est sans coupe de sele feloniy ou homecyde sil soit, et puis chescom de la enqueste jurra par sei. Et si ils facent lor serment come deyvent faire duement, voyse le dit prison quite, &c."

8. *Form of Sentence of Death.*—"Item, en cas [de jugement] de corone, si home soit ateynt et forfait la vye, le portreve come coroner dirra le jugement, et sera assys juxte le senescal e dirra cestez paroles—S<sup>r</sup>. Wyþþraʒþe and axe þane Prest.<sup>7</sup> Et si cely qest dampne soit de la franchise, il sera amene au pount de la ville a la pleigne meer, et outr le pount botu en le havene: Et sil soit del Geldable, sera suspenduz deyns la Lewe en certain lui appelle le Wahstrew."<sup>8</sup>

9. *Pleas of Lands, &c.*—"Item, en ple de terres et de totes maners brefs, forpris novele disseisine et Dowarie, le pleintif al portreve au a son bedel, et dirra ceste fourme. Jeo trouve surete vers un tiel en plee de terres, &c., et apres la secte trouve, le deforssor avera iij essoignez, iij somonces, et iij destresses. Et il [*sic*] ne vene apres le tierce destre pour respondre al demandant, la terre sera pris en la mayn le Roy par sa defalte, et si ele ne soit replevyde deyns les xv jours il pert seisin de

<sup>6</sup> Beyllent, or veyllent?—"P' sur'," probably for "poursuer," to prosecute. V. note 10.

<sup>7</sup> S<sup>r</sup>. for 'scilicet' or 'Sir.' It is precisely the same letter as in 'S<sup>r</sup> le Roy,' infra. I would read it, on consideration, 'Sir, withdraw, and ask for the priest.'

<sup>8</sup> Of the non-franchise men, then, it may be literally said, that, "Being born to be hung, they will never be drowned."

terre ; et si il ne fait null defaute, il porra demander vewe de terre sil veut, et apres la vewe grante, puit le defforsour estre iij fois essonye en dysant un visus et puis ne pourra le defforsour per noill accion abatre le plee qil ne irra parmy le verdyt de xij jurs."

10. *Manner of conferring Freedom.*—"Item, pount le dit Ressevour et Jures faire hommes frank de noun fraunk, en tile manere, qe si asceyn homme viene en la Lewe, et demoeurye deyns la franchise, hauutant leal artefice, et soit de bone conversacion j an et j jour, et desyre la franchyse, il vendra devant le Recessevour & Jures en lor assemble, en priant la franchise, et agarde sera illeques comebien il paiera pour la franchise aver. Et puis sera accepte et jure a la franchise, en tiele manere. Jeo porteray foy et leute a Seigneur Roy Dengleterre, et a la comunite de Pevenese, de jour en avant, et lestat de la franchise mayntendrai, et seray lottant et escottant de mes biens et chatels a la comunite, a la quantite qe serai assis, sulon mon poer, &c. Et paiera al lumier de sen Nicholas j<sup>d</sup>."

11. *Chase.*—"Item, pount et soleient les.....de la dite franchise de Pevenese, deyns lor dite ffranchise, chasser al levere et conyns partout en champ over, et pescher et oyseler par terre et par ewe forpris deyns autr en cloos, kar la nath<sup>9</sup> nullhome affaire sens conge de cely a qi appertient lenclos."

12. *Withernam.*—"Item, si ascoygn homme de la franchise de Pevenese veyne ala cite de Londrs, ou en qele ville, ffaire, ou marche, ou nostre Seigneur le Roy ath p . . . ou seignorie, pour marchandize vendre ou acatre, soit destreynt pour custume, tohel, pichage, panage, stallage, morage, ou asceyn autre manere poynt en contre lor ffranchise. Deyvent les dits Ressevour et Jures, et soleient mander les lettres a cely qi tiel extorcion lor ath fait, en priaunt qils facent deliverance a lor combaron ses destre ensi pris ; et si ils ne voillent, soit Wythername pris du segneur don . . . il estoit distre, et de son tenant, de jour en autre, tanqil ath fait deliverance de la destre ensy pris, ove les amendes."

13. *Pevensey a Limb of Hastings.*—"Item, cleyment le dit Ressevour et Jures, et les gens de la dite Comunite de

<sup>9</sup> i. e. "autrui enclos, car là n'a."

Pevenese, qe sunt membre del port de Hastyngs, daver, enjoer, et user les usages qeles lors conbarons de la comunite de Hastynges ount et usent, outre cestes qe si sount esscript; les ceux ils ount retourne en le chastel de Dovorr, south lor comun seal, landemayn del sen Michel, lan du regne le Roy Edward tierce puis le conqueste Dengleterre xxx<sup>me.</sup>”

14. *Freemen not to be sworn in Civil Causes.*—“Item, cleyment qe nul Baillif ne peut home de la ffranchise a serment mettre pour plee de terre devant court assis, ne pour autre chose, si ceo ne soit pour plee de Roy, ou pour profite de la comunite, sauns comandement le Roy especyal.”

[In dorso, on a label stitched to the place of the seals, is the address; it is contemporary with the Roll]—“Ss. De Pevenese al Conestable de Chastel de Douvre, gardeyn du v Ports.”

[And, in dorso of the Roll, in a hand t. Eliz.]—“les vj leges de Pevensey.”

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SUMMARY.

Every year, on the Monday after Michaelmas day, the community of the ville and lowy of Pevensey, in the church of St. Nicholas, elect the bedle or receiver, who is forthwith sworn. His office is to receive the mandates of the king and the constable of Dovor Castle, and the letters of the barons of the five ports, and to attend to the business of the ships, and services of the five ports, and no other.

On the same day this receiver shall choose twelve jurats, viz. three from the burgesses, and three from each of the other three quarters of the lowy, who shall be sworn to make their assessments, &c., justly, and without favour.

On the same day he shall also choose a common clerk, who shall be duly sworn.

The burgesses have a hospital of St. John Baptist, endowed with lands, &c., in the lowy, for poor brothers and sisters. The receiver and burgesses have the management of it, assigning the corrodies, &c., and one of the burgesses shall always be superintendent thereof, to control the expenses, &c. If a burgess fall into poverty, they may admit him or her, if they

have been of good life and conduct, into the hospital, either boarding them there, or leaving them to pay for their board.

The queen of England has royalty and demesne in this ville and lowy. Her stewards hold her courts on a Monday, from three weeks to three weeks, and all pleas of the crown, of life and limb, &c., must be held before him; and all fines and recognisances of lands, &c., as in the Court of King's Bench. The sectators of the court shall sit near the steward, and give judgment orally, and they shall fix the amerciaments. The assise of bread and ale, weights and measures, &c., belong to the steward's office alone.

The queen also has her bailiff or portreve in the ville and lowy, annually elected at the first court after Michaelmas, by such of her tenants as pay taillage of eight marks per annum. The said portreve collects rents, talliages, amerciaments, &c., and renders account to the auditors. If he be in arrear, the tenants who elected him must make good the deficiency. He also hears all complaints within the liberty, and attaches, summons, or bails to the next court, according to the nature of the case.

If a man be found dead, the portreve has the view, as coroner. He shall summon the country, and hold the inquest. If any one be indicted by the inquest, the portreve shall ask the friends of the deceased if they know any one whom they wish to prosecute,<sup>10</sup> and if the man charged with the crime be found within the franchise, the portreve shall take him to the prison of the franchise, called Le Berdes, and there shall he be kept in the stocks by the gaoler till the next court, where he shall surrender to the law if he will, or to the customs of the five ports, viz. thirty-six chosen by himself. He shall make his panel at his own peril, and deliver it to the steward; and, as they are each called by name, if any fail, or answer not, let the prisoner be adjudged to die; and if all be present, the steward is accustomed to release twelve of the thirty-six, and the receiver and jurats other twelve, and the steward shall

<sup>10</sup> The writing is too much defaced to decide whether it be 'beyllent' or 'veyllent.' The meaning seems to be either as above in the text, or "the portreve shall ask the friends of the deceased if they know any one who will pledge himself to prosecute," or "with whom they are willing to prosecute."



elect twelve for the inquest. If any one refuses to set him free, let the prisoner be adjudged to death; and at the first the prisoner shall swear that he is innocent of the homicide, and then each of the inquest shall swear for himself, and if they all duly take the oath, the prisoner is acquitted.

In judgments of the crown, if a man be condemned to death, the portreve, as coroner, shall pronounce judgment, and, being seated next the steward, shall say, "Sir, retire, and ask for a priest;" and, if the condemned be of the franchise, he shall be taken to the town bridge<sup>11</sup> at high water, and drowned in the harbour; but, if he be of the geldable,<sup>12</sup> he shall be hung in the Lowy, at a place called the Wahztrew.<sup>13</sup>

In pleas of lands and writs, except those of nouvelle disseisine and dower, the plaintiff shall go to the portreve, and say, I find suit against such an one in a plea of lands, &c. The deforceor shall have three essoigns, three summonses, and three distresses, and if he come not after the third distress to answer the demandant, the land shall be in the king's hands by his default; and if he do not replevyn in fifteen days, he loses seisin; and, if he make no default, he may demand a view of the land, and, after the view, he may be three times essoigned in asking a view; and after that, the deforceor shall not by any action be able to abate the plea that he will not go according to the verdict of twelve jurors.

If any man come into the Lowy, and live within franchise, following a legal craft, and be of good conversation, for a year and a day, and is desirous of the franchise, he shall attend a meeting of the receiver and jurats, and shall be prepared for what he will have to pay for the franchise; and then he shall be admitted on taking this oath: "I will bear faith and loyalty to our lord the king of England, and to the commonalty of Pevensey, from this day forth; I will maintain the state of the franchise, and will pay scot and lot of my goods and chattels to the commonalty, according to the quantity at which I shall be assessed, according to my power," &c.; and he shall pay to the light of St. Nicholas 1*d*.

<sup>11</sup> Query, the pier.

<sup>12</sup> Those not of the franchise, and therefore liable to taxes.

<sup>13</sup> This is called Vash-Treive in the Burrell MSS., quoted in Parry's Coast of Sussex, p. 262, where an imperfect abstract of this Custumal is given.

The burgesses may hunt hares and rabbits in their franchise in unenclosed ground, and fish and fowl by land or water, but not in enclosures, without leave of the owner.

If any freeman of Pevensey come to London, or any town, fair, or market, where the king has seignory, in order to traffic, and be distrained for toll, pickname, &c., or in any other manner against their franchise, the receiver and jurats demand letters to him who has been guilty of the extortion, requesting release of the distress to their combaron; if they refuse, let wythernam be taken against the lord by whom he was distrained, or his tenant, from day to day, till the distress be returned, with costs.

They claim to be a limb of Hastings.

They claim that no freeman can be put to his oath by any bailiff for plea of land, &c., other than the king's plea, or for the good of the commonalty, without the special command of the king.

As a specimen of how the Custumal was observed, an extract may be given from "an Inquisition taken at Wynchelsea on the sea-shore," on May 9th, 1443, when the jury report that

"A porpoise had been found on the sea, and that the admiral's share was 2s. 9d.; that John Broker and Richard Colyer, of Pevensey, had found a boat (with a piece of kersey, and a short coat with black lamb-skins, value altogether 40s., and three men, the king's enemies), three years before, but had in no way accounted for them to the admiral, they are fined 6s. 8d. each; the jury also report that these men had been lately indicted for these offences, without the jurisdiction of the Cinque Ports; they also say that William Alman, bailiff of Pevensey, had annulled and set at nought very many diverse mandates of the lord admiral of the Cinque Ports, directed, sent, and delivered to him, and had wholly refused to put them into execution, to the contempt of the lord admiral, and to the serious prejudice of the court of the admiral of the said ports." (From the original Inquis. among the Surrender MSS.)

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