



## XI.—THE OLDEST VERSION OF THE CUSTOMS OF NEWCASTLE UPON TYNE.

BY CHARLES JOHNSON, M.A., F.S.A.

[Read on 25th March, 1925.]

The version of the Customs of Newcastle upon Tyne which is printed by Cosmo Innes in his preface to Vol. I. of the *Acts of the Parliaments of Scotland* (p. 33), published in 1844, was taken from a document then in the Tower of London which does not seem to have been examined since that date. Mr. Ballard searched for it at the Public Record Office when he was collecting material for his *British Borough Charters*, published in 1913, but failed to find it. It had been included in a bundle of *Miscellanea*, not separately described, and was not accessible. It has since been identified, and is now numbered *Chancery Miscellanea*, Bundle 34, File 1, No. 15, and a photographic fac-simile of it is now for the first time published (Plate XXV.). It measures approximately 11 inches by 3½ inches, and is written in a hand which might be attributed to the reign of Henry I, but must, presumably, be of the early years of Henry II, since the title with its *tempore Henrici Regis Anglorum* seems to imply an appeal to a bygone Golden Age.

There can be no doubt that this version of the Customs is older than the corresponding clauses of the *Leges Quatuor Burgorum*, although the wording of the latter is often exactly the same. If the *Leges* are rightly attributed to David I (A.D. 1124-1153), this close correspondence is another argument for putting the date of this version of the Customs as early as possible. The earliest MS. (the Berne MS.) appears not to be earlier than the 14th century and may therefore have incorporated glosses. In any case the frequent verbal agreement is most striking.

Hee sunt leges et consuetudines quas burgenses Novi Castellii super Tinam habuerunt tempore Henrici Regis Anglie, et habere debent. Burgenses possunt naniare foris habitantes infra suum forum et extra et infra suam domum et extra et infra suum burgum et extra sine licentia prepositi nisi comitia teneantur in burgo et nisi [sit] in exercitum et (cus)todia castelli. Super burgensem non potest burgensis namium capere sine licentia prepositi. Si burgensis foris habitantibus de suo (accomod)averit in burgo ipse debitor si concedat reddat, si negaverit in burgo faciat rectum. Placita que in burgo surgunt ibidem teneantur et finiuntur preter illa que sunt corone regis Si aliquis burgensis de aliqua loquela appelletur non placitabit extra burgum nisi ex defectu curie. Nec debet respondere sine die et termino nisi prius in stultam responsionem inciderit, nisi de rebus que ad coronam pertinent. Si navis apud Tinemue aplicuerit que velit discedere licet burgensibus emere quod voluerint. Inter burgensem et mercatorem si placitum oriatur finiatur ante tertiam reflexionem maris. Quicquid mercature navis per mare advexerit ad terram debet ferri preter sal. et allec debet vendi in navim. Si quis terram in burgagio uno anno et una die juste et sine calumnia tenuerit non respondeat calumnianti nisi calumnians extra regnum Anglie fuerit vel nisi sit puer non habens (et)atem loquendi. Si burgensis filium habuerit in libertate patriste fuerit cum patre. Si rusticus in burgo veniat manere et ibi per annum unum et diem sicut burgensis maneat in burgo ex toto remaneat nisi prius ab ipso vel domino suo prolocutum sit ad terminum remanere. Si quis burgensem de re aliqua apellaverit non potest super burgensem pugnare sed per legem se defendat burgensis nisi sit de prodicione unde debeat se defendere bello. Nec burgensis contra forinsecum poterit pugnare nisi prius de burgagio exierit. Mercator aliquis nisi burgensis non potest [extra] villam emere nec lanam nec coria nec mercatoria alia nec infra burgum nisi burgensibus. Si forisfactum contigerit burgensi dabit .vj. oras preposito. In burgo non est merchet nec hereiet nec blodwit nec stengesdint. Unusquisque burgensis potest habere suum furnum et molam manuaalem si velit salvo jure forni regis. Si femina sit in suo forifac-to de pane vel de cervisia nullus debet intromittere nisi prepositus. Si bis forifecerit castigetur per suum forifac-tum. Si tertio forifecerit justitiam de ea fiat. Nullus nisi burgensis poterit emere telas ad tingendas nec facere nec secare. Burgensis potest dare terram suam, et vendere et ire quo voluerit libere et quiete nisi sit in calumnia.

[Translation]

These are the laws and customs which the burgesses of Newcastle upon Tyne had in the time of Henry king of England and ought to have.

Burgesses can distrain upon foreigners within or without their own market, within or without their own houses, and within or without their own borough without the leave of the provost, unless

the county court is being held in the borough, and unless [the foreigners are] on military service or guarding the castle.

A burgess cannot distrain upon a burgess without the leave of the provost.

If a burgess have lent anything of his to a foreigner, let the debtor restore it in the borough if he admits the debt, if he denies it, let him justify himself in the borough.

Pleas which arise in the borough shall be held and concluded there, except pleas of the Crown.

If any burgess be appealed of any plaint, he shall not plead without the borough, unless for default of [the borough] court.

Nor ought he to answer without day and term, unless he have fallen into "miskenning," except in matters which pertain to the Crown.

If a ship have put in at Tynemouth and wishes to depart, the burgesses may buy what they will.

If a plea arise between a burgess and a merchant, it shall be concluded before the third ebb of the tide.

Whatever merchandise a ship has brought by sea must be landed, except salt; and herring ought to be sold in the ship.

If any man have held land in burgage for a year and a day, lawfully and without claim, he shall not answer a claimant, unless the claimant have been without the realm of England, or a child not of age to plead.

If a burgess have a son, he shall be included in his father's freedom if he be with his father.

If a villein come to dwell in the borough, and dwell there a year and a day as a burgess, he shall abide altogether, unless notice has been given by him or by his master that he is dwelling for a term.

If any man appeal a burgess of any thing, he cannot do battle with the burgess, but the burgess shall defend himself by his law, unless it be of treason, whereof he is bound to defend himself by battle.

Neither can a burgess do battle against a foreigner, unless he first go out of the borough.

No merchant, unless he be a burgess, may buy [outside] the town either wool or leather or other merchandise, nor within the borough except [of] burgesses.

If a burgess incur forfeit, he shall give six ounces [*i.e.*, 10s.] to the provost.

In the borough there is no merchet [*i.e.*, fine for marrying a daughter] nor heriot nor blodwit [*i.e.*, fine for drawing blood] nor stengesdint [*i.e.*, fine for striking with a stick].

Every burgess may have his own oven and hand-mill if he will, saving the right of the king's oven.

If a woman be in forfeit for bread or beer, no one ought to interfere but the provost. If she forfeit twice, she shall be chastised by her forfeit. If three times, let justice be done on her.

No one but a burgess may buy webs to dye, nor make nor cut them.

A burgess may give and sell his land and go whither he will freely and quietly unless there be a claim against him.

I am indebted to Mr. A. M. Oliver, Town Clerk of Newcastle upon Tyne, for the following comparative statement of the contents of two other versions of the Customs. One (marked B.) is from the *Percy Cartulary*, printed by Brand in his *History and Antiquities of Newcastle-upon-Tyne* (II, p. 130) and in the *Percy Chartulary* (117 Surtees Soc., pp. 334 sqq.). The other, and probably the earlier version (marked C.), contained in a charter granted by Hugh Puiset, bishop of Durham, to Wearmouth, printed in *Boldon Buke* (25 Surtees Soc. App. pp. xli sqq.), is dated by Mr. Lapsley, A.D. 1180-1183. It will be observed that there is a closer correspondence between versions B. and C. than between either of them and A. which is generally followed by D. the *Leges Quator Burgorum*. This appears more clearly from the text printed here, which has been recollated with the original, than from Cosmo Innes's text, since it has been possible to read some passages which he had to restore from the B. text. The text in Stubbs's *Charters* is conflated from Innes's transcript of A and the B. text.

A=P.R.O. Chancery Misc., Ble. 34, No. 1 (15).

B=Duke of Northumberland's MSS., *Percy Chartulary*, f 125d. (Surtees Soc., 117, pp. 334-6).

C=Wearmouth Borough Charter (Surtees, *Durham I*, 297 from Hunter MSS.; as from Dean and Chapter's, Reg. II, p. 353 but not found there. Surtees Soc., 25. App. xli).

D=Edinburgh Gen. Reg. Ho. Berne MS. H. 62 sqq. (Acts Parl. Scotl. I. Pref., pp. 33-4).

A. Hee sunt leges et consuetudines quas burgenses Novi Castelli super Tinam habuerunt tempore Henrici Regis Anglie, et habere debent.

B. Hec sunt leges et consuetudines quas Henricus Rex concessit burgensibus suis de Novo Castro.<sup>1</sup>

D. Iste sunt leges et consuetudines quatuor burgorum Edinburg, Rokisburg, Berewic, Striuelin, constitute per dominum David Regem Scotie.

- A. 1. Burgenses possunt namiare foris habitantes infra suum forum et extra et infra suam domum et extra et infra suum burgum et extra sine licentia prepositi nisi comitia teneantur in burgo et nisi in exercitum et (cus)todia castelli.
- B. 1. Licet namiare rusticos et rure habitantes infra suum forum et extra infra suas domos et extra sine licentia prepositi nisi ad comitatum venerint et nisi sint in exercitu vel in custodia castelli.
- C. 1. Liceat eis namiare rusticos et ceteros in rure habitantes infra burgum suum si eis debita debuerint sine licentia prepositi sui nisi forte ibi ab Episcopo vel vicecomite vel senescallo missi fuerint ad negocia ipsius Episcopi facienda.
- D. 3. Quilibet burgensis potest namare foris habitantes infra forum suum et extra infra domum suam et extra sine licentia prepositi sui nisi commercia vel nundine teneantur in burgo et nisi fuerit in exercitu regis vel in custodia castelli.
- A. 2. Super burgensem non potest burgensis namium capere sine licentia prepositi.
- B. 2. Sed non licet alicui burgensi namiare alium sine licentia data a preposito.
- C. 2. Burgensi cum burgense namiare non liceat sine licentia prepositi.
- D. 4. Super burgensem burgensis non potest capere namum sine licencis prepositi.
- A. 3. Si burgensis foris habitantibus de suo (accommod)averit in burgo ipse debitor si concedat reddat, si negaverit in burgo faciat rectum.
- B. 3. Si burgensis villano vel alio aliquid adcredaverit<sup>2</sup> infra burgum . . . . .
- C. 3. Si burgensis aliquid accrediderit villano infra burgum et debitor debitum negaverit rectum faciat infra burgum ita tamen ne burgensis villanum per occasionem injuste vexet.
- D. 5. Si burgensis foris habitantibus de suo accommodaverit in burgo si ipse debitor concedat reddat ei debitum si negaverit in burgo faciat rectum.

<sup>1</sup> Novo Castro. The use of this form implies a date later than about 1200, but the scribe who made the enrolment in the Percy Chartulary may be responsible for a change from Novo Castello.

<sup>2</sup> *Aderedaverit* Brand: *adcreditaverit* Percy Chartul.: *adcredaverit* Arch. Ael., 2 series, iii, p. 110.

- A. 4. Placita que in burgo surgunt ibidem teneantur et finiantur preter illa que sunt corone regis.
- B. 4. Loquele que in burgo moventur ibidem tractentur preter illas que corone regis sunt.
- C. 4. Loquele que in burgo moventur ibi tractentur preter illas que pertinent ad coronam.
- D. 6. Placita que in burgo surgunt ibidem teneantur et determinantur preter ea que sunt corone domini Regis.
- A. 5. Si aliquis burgensis de aliqua loquela appelletur non placitabit extra burgum nisi ex defectu curie. Nec debet respondere sine die et termino nisi prius in stultam responsionem inciderit, nisi de rebus que ad coronam pertinent.
- B. 5. Si burgensis calumpniatus fuerit non extra burgum placitabitur nisi pro defectu curie nec debet respondere de appellatione sine die et termino nisi prius incidat in stultam responsionem et nisi de illis que corone regis sunt et nisi coram justiciariis<sup>a</sup> itinerantibus.
- C. 5. Si quis burgensis calumpniatus fuerit infra burgum placitet, nisi excessum in alio burgo fecerit ubi retentus vel per plegium positus fuerit et nisi curia ejusdem burgi de recto defecerit et nisi placitum ad coronam pertinuerit neque respondere cogatur sine die et termino nisi in stultam responsionem inciderit.
- D. 7. Si burgensis appelletur de aliqua querela non placitabit extra burgum nisi ex defectu curie nec debet respondere sine die et termino nisi prius inciderit in stultam responsionem exceptis illis que ad coronam domini regis pertinent.
- A. 6. Si navis apud Tinemue aplicuerit que velit discedere licet burgensibus emere quod voluerint.
- B. 6. Si navis applicuerit apud Tynemouth que non abire voluerit consilio burgens' potest quilibet emere mercem de illa nave.
- C. 6. Si navis apud Weremue applicuerit que abire voluerit quilibet burgensis quamlibet mercem de illa nave emet si quis ei vendere voluerit.
- A. 7. Inter burgensem et mercatorem si placitum oriatur finiatur ante tertiam refluxionem maris.
- B. 7. Si placitum motum fuerit inter burgenses et mercatorem itinerantem infra tertiam maris refluxionem rectum inter se faciant.
- C. 7. Si placitum fuerit inter burgensem et mercatorem errantem infra tertiam maris influxionem rectum inter se faciant.
- D. 8. Si placitum oriatur inter burgensem et mercatorem terminari debet infra tertiam refluxionem maris.

<sup>a</sup> *Justicis Percy Chartul. (Surtees Society).*

A. 8. Quicquid mercature navis per mare advexerit ad terram debet ferri preter sal. et allec debet vendi in navim.

B. 8. Mercandise que per mare burgo adportantur ad terram portari debent preter salem et allec<sup>7</sup> que in nave debent vendi.

C. 8. Mercationes que per mare burgo adportantur ad terram portari debent preter sal et allec que debent vendi in navi vel in burgo ad libitum venditoris.

D. 9. Quecunque navis mercaturas per mare adduxerit ad terram debent ferri preter sal et alleces que possunt vendi in navi.

A. 9. Si quis terram in burgagio uno anno et una die juste et sine calumpnia tenuerit non respondeat calumpnianti nisi calumpnians extra regnum Anglie fuerit vel nisi sit puer non habens (et)atem<sup>4</sup> loquendi.

B. 9. Quicunque in burgo terram tenuerit uno anno et uno die juste et sine calumpnia et calumpniator infra regnum fuerit non debet calumpnianti respondere. Si vero calumpniator puer sit non habens etatem placitandi ei respondeat.

C. 9. Quicunque terram in burgo tenuerint uno anno et uno die juste et sine calumpnia et calumpniator fuerit infra regionem non debet calumpniatus respondere sed si calumpniator puer fuerit qui etatem placitandi non habuerit tunc ei respondebit.

D. 10. Quicunque tenuerit terram suam per unum annum et unum diem quam fideliter emerit per testimonium vicinorum suorum xii in pace et sine calumpnia, qui eam calumpniaverit post unum annum et diem et si fuerit in eadem regione et de etate et ipse infra dictum terminum clamium non moverit super hoc nunquam audietur. Sed si fuerit infra etatem vel extra regnum non debet amittere suum jus cum venerit ad etatem vel repatriaverit.

A. 10. Si burgensis filium habuerit in libertate patris si ei fuerit<sup>5</sup> cum patre.

B. 10. Si burgensis habeat filium in dono sua ad mensam suam filius ejus habeat libertatem quam et pater suus

C. 10. Si burgensis habeat filium suum in domo sua ad mensam suam filius eandem libertatem habeat quam pater suus.

D. 14. Filius burgensis quam diu fuerit ad mensam patris sui habebit eandem libertatem ad vendendum et emendum quam et pater suus habet. Sed cum ab eo discesserit illa libertate non gaudebit nisi burgensis fuerit.

<sup>4</sup> The other versions suggest *etatem* but the reading is uncertain.

<sup>5</sup> Read *sic ei fuerit?* or perhaps *sit, cum fuerit*. The reading of the MS. is clearly as here printed.



- A. 11. Si rusticus in burgo veniat manere et ibi per annum unum et diem sicut burgensis maneat in burgo ex toto remaneat nisi prius ab ipso vel domino suo prolocutum sit ad terminum remanere.
- B. 11. Si villanus veniat ad burgum manere et uno anno et una die terram in burgo tenuerit sine prelocutione domini sui vel propria ad aliquem terminum remaneat in burgo sicut burgensis.
- C. 11. Si villanus ad burgum veniat manere et uno anno et una die terram et domum in burgo tenuerit sine calumpnia et prolocutione domini sui vel propria sua prolocutione usque ad aliquem terminum remaneat in burgo sicut burgensis.
- D. 15. Si homo alicujus baronis vel militis vel cujuscunque servus venerit in burgo et emerit ibi burgagium et manserit in burgagio suo per unum annum et diem unum sine calumpnia domini sui vel ejus ballivi semper erit liber sicut burgensis et libertate burgi gaudebit.
- A. 12. Si quis burgensem de re aliqua appellaverit non potest super burgensem pugnare sed per legem se defendat burgensis nisi sit de prodicione unde debeat se defendere bello. Nec burgensis contra forinsecum poterit pugnare nisi prius de burgagio exierit.
- B. 14. Si quis burgensis de loquela unde bellum debet surgere appelletur ab aliquo villano vel rure habitante per legem quam habet in sua consuetudine se defendat nisi de scelere tali appelletur pro quo recte debeat pugnare nec burgensis debet contra villanum pugnare nisi ante calumpnia de burgagio exierit.
- C. 13. Si quis burgensis appellatur de loquela unde bellum debet surgere ab aliquo villano vel in rure habitante defendat se per legem civilem scilicet per xxxvj homines nisi de tali scelere appellatur pro quo recte se debeat per duellum defendere. Nec burgensis contra villanum si eum appellaverit debet pugnare nisi ante calumpniam de burgagio exierit.
- D. 12. Si quis forinsecus burgensem de aliqua re appellaverit non potest super burgensem pugnare sed per legem burgi se defendat nisi sit de prodicione vel de them unde se debet defendere bello. Nec burgensis contra forinsecum poterit pugnare nisi prius exierit de burgo.
- A. 13. Mercator aliquis nisi burgensis non potest [extra] villam<sup>7</sup> emere nec lanam nec coria nec mercatoria alia nec infra burgum nisi burgensibus.
- B. 15. Item mercatori forinseco non licet emere nec in foro nec apud rus nec lanam nec coria nec cetera.

<sup>7</sup> The original seems to read *villani*. The word *villa* does not occur elsewhere.

D. 16. Nullus mercator alienus potest extra burgum emere lanam aut coria aut alia mercatoria nec infra burgum nisi de burgensibus.

- A. 14. Si forisfactum contigerit burgensi dabit .vj. oras preposito.  
 B. 16. Item forisfactum burgens' debet esse commune.<sup>a</sup>  
 C. 14. Forisfactura burgensis erga prepositum est de .vj. oris.  
 D. 39. Sciendum est quod forisfactum burgi non excedit ultra octo solidos de convictis in querela et in placitis sed raro plene capitur.
- A. 15. In burgo non est merchet nec hereiet nec blodwit nec stengesdint.  
 B. 17. Item in burgo non debet dari nec merchet nec heriet nec blodwit nec stengesdint.  
 C. 15. In burgo non debet blodwite nec merchete nec heriot nec stengesduit exigi.  
 C. 17. Et sciendum est quod infra burgum non debet exaudiri blodewit nec styngisdint nec merchet nec herieth nec aliquid de consimilibus.
- A. 16. Unusquisque burgensis potest habere suum furnum et molam manualetn si velit salvo jure furni regis.  
 B. 18. Item quisque burgensis potest habere furnum<sup>o</sup> et molendinum.  
 C. 16. Quilibet burgensi liceat habere furnum suum et molam manualetn salvo jure Domini Episcopi.  
 D. 18. Quilibet burgensis domini regis potest habere furnum super terram suam sed nullus alius preterquam burgensis domini regis.
- A. 17. Si femina sit in suo forifaclo de pane vel de cervisia nullus debet intromittere nisi prepositus. Si bis forifecerit castigetur per suum forisfactum. Si tercio forifecerit justitiam de ea fiat.  
 B. 19. Item si quis de pane vel cervis' vendit in forisfactum, cecederit erga prepositum : prepositus sic se intromittat si bis forisfecerit det forisfactum si ter forisfecerit communi consilio burgensium puniatur.  
 C. 17. Si quis de pane vel cervisia vendicia in forisfacturam cecederit erga prepositum solus prepositus se intromittat si bis forisfecerit det forisfacturam suam si autem tercio forisfecerit communi consideracione burgensium fiat de illo vel de illa justicia.  
 D. 19. Si aliquis vel aliqua sit in forisfacto de pane vel cervisia nullus debet intromittere se nisi prepositus si bis forisfecerit bis castigetur per forisfactum suum. Si tercio forisfecerit justicia de eo vel de ea fiat.

<sup>a</sup> Ore Percy Chartul. (Surtees Soc.). Brand, as printed.

<sup>o</sup> furnum suum Percy Chartul. ; furnum, Brand.

- A. 18. Nullus nisi burgensis poterit emere telas ad tingendas nec facere nec secare.
- B. 12. Nullus forinsecus debet emere pannum ad tingendum nisi sit de consuetudine burgi.
- D. 20. Nullus nisi burgensis potest emere lanam ad tingendum nec pannum facere nec secare.
- A. 19. Burgensis potest dare terram suam et vendere et ire quo voluerit libere et quiete nisi sit in calumpnia.
- B. 13. Quilibet burgensis terram suam vendat et ire quo voluerit nisi terra illa fuerit in calumpnia.
- C. 12. Cuilibet burgensi liceat vendere terram suam et ire quo voluerit nisi terra sua in calumpnia fuerit.
- C. 19. Burgensi licet dare vel vendere cui voluerit terram suam sine licentia et sine consessu heredis sui quam ipse de proprio catallo suo emerit.
- D. 21. Quilibet burgensis potest terram suam de conquestu dare aut vendere et ire quocunque voluerit libere et quiete nisi sit in calumpnia.
- B. 21. Item burgensis potest bladum suum ducere ex patria sine licentia quo voluerit.
- C. 18. Burgensi licet bladum suum ducere de patria quo voluerit sine licentia nisi commune interdictum Domini Episcopi totam terram de non educendo factum fuerit.
- B. 20. Nullus forinsecus potest sindere piscem ad vendendum.