VII.—LAW AND SOCIETY IN NORTHUMBERLAND AND DURHAM, 1290 TO 1350

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The law of England was recognised as much within the franchise of Durham as in Northumberland where the king's officers administered justice. Law enabled men to gain redress, whether their grievance was ejectment from property, loss of goods and chattels, or violence against the person. A picture of everyday life in the North East of England can be built up from incidents preserved in law suits from this area. It may be somewhat overcolourful, for plaintiffs stress their wrongs. A picture of the present day derived from the same sources would emphasise unduly the prevalence of broken contracts, violence, drunkenness and the like. Court proceedings do, however, shed light on local customs long since forgotten and preserve a record of precedents on which, together with statute law, English common law is based.

Whatever their relations, one with another, Northumberland and Durham shared more in common with each other than with the rest of England. Here in the north east in addition to death from unnatural causes the coroner enquired into burglaries, thefts, kidnapping, treasure-trove and wreck. Such duties had been associated by Bracton, the 13th century legal writer, with the ordinary English coroner; but after his day the coroners elsewhere confined themselves to cases of sudden death, while the emergent justices of the peace were to be given responsibility in the 14th century for dealing with those other offences.[1] Similarly, the local administrative

[1] R. F. Hunnisett, *The Medieval Coroner* (1961), pp. 5-7, 95: "Pleas of the Crown and the Coroner" in *Bulletin of Institute of Historical Research* XXXII, 1959, pp. 117-18, 124 n. 5.

courts of the hundred or wapentake by a statute of 1234 were to meet every three weeks instead of the previous fortnightly intervals.[2] In Durham and its Northumberland enclave of Norhamshire at least, the local courts continued to be held at fortnightly intervals.[3] The business of these courts was to ensure maintenance of the peace, including the hearing of suits concerning small debts, a frequent cause of disharmony. Twice a year the sheriff of the county presided over the local court on his *tourn*, when presentment of offences was made by a jury of twelve free men of the ward, supplemented by the reeve and four men from each township. Malpractices included selling underweight loaves or bad ale, failure to maintain certain roads and bridges, common nuisances, brawls and wrongful levy of the hue and cry. Characteristically, the sheriff's *tourn* was not introduced into northern England before the middle of the 13th century.[4] The main judicial duty of the sheriff was to preside over the county court, which normally met every four weeks. In Lancashire, Yorkshire, Lincolnshire, and Northumberland it met only once in six weeks. Business included the recording of presentments made at the tourn, appeals of felony, summonses of parties to appear in the king's courts, the holding of enquiries, issuing of proclamations, and the election both of county coroners and knights of the shire to attend Parliament.[5] Here, too, at least until 1246, the coroners of Northumberland were different, being hereditary, the duties attached to tenure of certain lands in Bamburgh and Nafferton. As for the coroners of the franchise of

[2] F. Pollock & F. W. Maitland, *The History of English Law*, 2nd ed. revised 1968, I, 557. It should be noted that there is no evidence of a "ward" court in the north-east, the ward being the equivalent of a southern "hundred". The probable explanation is that the barons of Northumberland claimed to exercise this local power in their own courts (J. E. A. Jolliffe, "Northumbrian Institutions" in *English Historical Review* XLI, 1926, pp. 35, 37.

[3] Muniments of the Dean and Chapter of Durham, Locellus 4 passim: 5 nos 33, 36; Miscellaneous Charters 52, 2640, 7023.

[4] W. A. Morris, "The Sheriff" in *The English Government at Work, 1327-1336* ii (Medieval Academy of America, 1947), pp. 55-56, *cf.* R. F. Hunnisett, *op. cit.*, p. 14.

[5] W. A. Morris, *art. cit.*, pp. 54-55.

Durham, the one for Sadberge was hereditary and the remaining six were appointed by the bishop of Durham.[6]

Where weighty matters were concerned, such as the rightful ownership or possession of land, or a possible miscarriage of justice, the plaintiff might prefer to proceed directly in the king's courts. The highest court of all was parliament itself, where petitions would be brought in cases where the king was personally involved as the cause of grievance. Where royal interest could be invoked the court *coram rege* was available, which followed the king in his progress across England (and sat at Newcastle upon Tyne in 1291 and 1311 at least).[7] Ordinary suits where the king had no interest were heard at Westminster in the court of Common Pleas. For general convenience, however, there were travelling courts of general eyre with full powers to hold all kinds of actions as well as enquire into the conduct of all local officials, which came at irregular intervals into the provinces. (Such eyres were held for Northumberland in 1218, 1227, 1235, 1241, 1246, 1256, 1269, 1279 and 1293.)[8] Cases concerning land and its appurtenant rights might be heard locally by special royal commissions of assize; and commissions of gaol delivery cleared the local prisons of suspected thieves and murderers.[9]

Against the king Northumberland could present no impregnable barricade of local peculiarities, although Newcastle and County Durham offered sturdy resistance. The bishop of Durham enjoyed special powers of regalian jurisdiction. Bishop Kellawe in 1313 justified his action to the king in refusing to release a prisoner from Northumberland on the grounds that the man was indicted for murder within his franchise, arrested therein and imprisoned at Durham

[6] R. F. Hunnisett, *op. cit.*, p. 150; *Northumberland County History* XII, 257; XIII, 265; *cf. Northumberland Petitions*, (Surtees Society 176, 1966), p. 40.

[7] Public Record Office, London, Coram Rege Rolls, 128, 203.

[8] *Northumberland Assize Rolls*, (Surtees Soc. 88, 1890), p. x; PRO, Assize Roll 650.

[9] M. M. Taylor, "The Justices of Assize" in *The English Government at Work, 1327-1336* III (1950), pp. 219, 237-38, 241.

until such time as he was brought to trial *according to the law and custom of the kingdom of England and our royal liberty*.[10] Newcastle on more than one occasion flouted the authority of the king's sheriff to act within its bounds. When in 1278 the sheriff of Northumberland tried to seize two Durham men fishing illegally in the Tyne and lead them through the town to the county gaol in the castle his arresting party was set upon and put to flight by a mob led by Alexander le Furber, who was to be a town bailiff in 1292. On another occasion an attempt by the sheriff to levy distraints within Newcastle was met by a force estimated at 500 foot and horse, which routed the sheriff's officers, leaving some for dead.[11]

According to a charter of King John, Newcastle upon Tyne was one of the many English towns privileged to enjoy the "laws of Winchester"—but with its own variants. For example, the assize of *mort d'ancestor* could not be brought when the possession of land was in question because it conflicted with the right of a burgess to sell his property. When a propertied woman married, her land would pass to an only daughter of her first marriage in preference to a son by her second marriage.[12] During her widowhood she might have custody of the heir and the title-deeds relating to her property until he came of age, but should she re-marry she must find security before friends and the town bailiffs to maintain any lands and goods in safe-keeping for the heir. A wife was also required to appear in Guildhall *between the four benches* when her husband desired to dispose of her property, so that she could be questioned publicly as to whether she were agreeable to the transaction. In face of these local customs the justices of King's Bench, having on one occasion in 1291 postponed their decision until the king could be consulted, were doubtless thankful when the plain-

[10] *Registrum Palatinum Dunelmense*, ed. T. D. Hardy (1873-8) II, 921-922; G. T. Lapsley, *The County Palatine of Durham* (1901) pp. 31-76.
[11] *North'd Pet.*, pp. 16-19.
[12] PRO, Coram Rege Roll 128 m. 21d.

tiff sought leave to withdraw his suit. His request was granted.[13]

The exact status of land was a fruitful field for litigation. An interesting case on this theme was heard in the court of the prior of Durham in 1346. It appears to reveal a deliberate attempt by a tenant to augment and "free" his holding. The story began early in the 13th century, when John *le Provost* bartered a foal with the prior against 9 acres of assarted land. He already held 16 acres as a *bondage* in connection with a house (or messuage) in Shincliffe. John then used his official position to obtain a life-interest in a further 16 acres, for which he paid a penny an acre over and above the value of villein service which would have been demanded. Four generations later the land was inherited by Gilbert, surnamed Warde, presumably from the fact he was a minor at his father's death and his wardship had been given to Alan of the Hall, steward of the hostiller of Durham. Alan married Gilbert to his daughter. With this backing Gilbert Warde on attaining his majority spread abroad the story that he was a freeholder, the leasehold land being as much free as his undoubted nine acres. Repeated enquiries at Shincliffe enshrining the testimonies of village ancients failed to discourage Warde's pretensions or those of his son, Robert, who argued that a fixed rent, wardship of the heir, possession of a seal, and assignment of dower must prove that the lands were freehold. On his death-bed, therefore, Gilbert designated Robert as heir to his lands, although he was only his third son. The hostiller of Durham as landlord challenged the bequest on the grounds that the 16 acres *penimal-land* and 16 acres bondland could pass only to the nearest heir, and turned Robert out of his late father's house. Robert then brought an action of disseisin against the hostiller. Final judgment is unknown, but the defence for the prior and hostiller has survived, a model of forensic irony, making such points as undue influence exerted by Robert over his

[13] PRO, Assize Roll 650 m. 62; Coram Rege Roll 128 m. 21d.

dying father and the curious behaviour of an unnamed ancestor who, retrieving his deed-box from his burning house and finding the seal scorched on his grant, *from melancholy cast it into the fire and burnt it completely*. If the deed had been genuine any man would have saved the remains to be read in evidence.[14]

A large proportion of the business before the king's justices concerned not only ownership or possession of property but also the rights associated with it. Perhaps the most important of these rights was common pasture. At an enquiry in 1293 following complaints against the abbot of Alnwick it was found that each tenant of a bovate at Edlingham was entitled to graze two horses, two oxen, two cows, forty sheep and two pigs on the common. The abbot, who held four such bovates, had overstocked to the total amount of forty horses, forty oxen, forty cows, 1,000 sheep and 200 pigs.[15] At the assizes of the bishop of Durham in April 1336 Alice of the Slade claimed that she was entitled to graze her beasts on the 400 acres of Bearpark moor by virtue of her burgage in the Old Borough of Durham. The matter was settled out of court, but at a ceremony on Bearpark moor Alice was given seisin of her rights of common by the terrar of the priory of Durham in the presence of the bishop's temporal chancellor and three of his judges. Later claimants were less fortunate, as the prior and his successors were able to defeat them on technicalities. During the course of a suit in September 1359, where John Potter sued the prior of Durham for ejectment from his pasture in Bearpark moor, the prior's representative in court challenged 19 names on the panel of jurors on the grounds that as free tenants in the Old Borough they had a vested interest in returning a verdict favourable to Potter. They then could demand similar grazing rights for themselves. This objection was upheld, and a new panel returned from the more distant ward of Darlington, which testified that Potter had never been in

[14] Durham, Loc. 5 nos. 20-22.
[15] PRO, Assize Roll 650 m. 27.

peaceful possession.[16] (In another case, concerning the prior's rights in Hett, the testimony of the jury revealed that the close wherein the prior claimed loss of pasture was really a coal-mine.[17]) In 1338 the disputed common was at Heworth, where the prior and bishop of Durham had long been at variance over the bounds of their estates. Interesting light on the art of influencing jurors is shed by the roll of the priory's bursar, which records payment of £2 13s. 4d. in gifts to the twelve empanelled for this enquiry, and expenses of £1 17s. incurred by the three senior officers of the priory and various members of the prior's council staying for three days at Wardley and entertaining Sir Thomas Surtees and many others of the neighbourhood to lunch with the jurors.[18]

Sometimes, even with free land, the point at issue was failure to fulfil traditional services. Robert of Throckley failed for two years to provide the ten ploughings and harrowings a year for which he held *Bradeshawe* and *Grymeslawecrok*, as well as the twenty men working three harvest boons and ten men harvesting without food for half a day and carting hay and grain in ten wains for three days. The indignant overlord, Robert son of Roger of Newburn, ordered his officers to seize Throckley's livestock, with the result that three young steers and a mare were taken at *Bradeshawe* in Throckley village, and 80 oxen, 6 cows, 3 young steers and 2 mares at *Ulinfrydyng*, and driven to Newburn. Throckley sued his overlord and officers, including Robert *le Provost* of Walbottle and Guy *le Pindere*, for wrongful distraint, but the jury in 1293 upheld the rights of Robert son of Roger, and Throckley was amerced for his

[16] Durham, Register III ff. 77v., 78v.

[17] Durham, Loc. 5 no. 25.

[18] Durham, Bursar's Account for 1337/8A, m. 4. Such hidden influences would be hard to substantiate, although in a case concerning common pasture at Quarrington brought in 1442 by the prior of Durham in the bishop's court the jury was challenged successfully on the grounds, firstly, that it had been *packed* by the sheriff of Durham in favour of Prior Wessington, and, secondly, that the wife of the coroner for the Easington ward, responsible in a measure for selecting the panel, was a kinswoman of the prior. One juror was challenged unsuccessfully on the grounds that his niece and her husband were tenants of Prior Wessington (Durham, Loc. 5 no. 24).

false claim.[19] Earlier in the same proceedings before the royal justices in eyre at Newcastle John of the Green had similarly sued Christiana, daughter of Martin le Clerk, and Master John the locksmith for distraining him by his wainage, namely by his plough and team of eight oxen, in the field of Alnwick near Bondgate. (Magna Carta had laid down that the essential tools by which a man gained his livelihood should be free from distress.) According to the jurors this action was the culmination of a trial of strength. Philip son of Martin le Clerk had leased a plot of 6½ acres in Bondgate field to his sister Christiana for a term of four years, but before this term had expired he made a further lease of it to John of the Green, the plaintiff, and gave him formal seisin. To establish his right of possession John immediately began to plough and sow the plot, but by afternoon Christiana having heard of this came with her plough and re-ploughed and re-sowed the ground. Moreover, at harvest time Christiana carried the crop. Philip then came to an arrangement with his sister to allow her peaceable possession, but John returned with his plough and oxen, when they were seized by Christiana. The royal justices, unwilling to come to a decision, adjourned the case to a later session at York.[20]

The reason for this judicial hesitation was the current anomalous status of leasehold land, which, unlike freehold, was not protected by the remedies against ejectment offered by the common law.[21] As for unfree land, the tenant where his possession was disputed could obtain justice only in the manorial court. Unless he provided a money equivalent, the tenant of unfree land owed to his lord agricultural labour services and annual dues in wheat, oats, hens, eggs and malt, with often a money rent in addition. For instance, according to the Tynemouth cartulary attributed to 1295, a typical *bond* there held a toft and 36 acres of land, for which he paid 5½ quarters of malt, a quarter of oats, a cock and

[19] PRO, Assize Roll 650 m. 15d. Later Robert agreed to pay his lord £20 in instalments (*NCH* XIII, 160).

[20] PRO, Assize Roll 650 m. 10d.

[21] F. Pollock and F. W. Maitland, *op. cit.* II, 106-17.

hen, 60 eggs at Easter, 3s. 8¾d. in money, and the services of carting, threshing, and harvesting over and above two days of work each week as the reeve might direct.[22] To escape such obligations, many bonds in Northumberland and Durham were ready to abandon their holdings; and to preserve such lucrative rights the lords sought to prove that apparently free men were in reality skulking serfs. In 1346 Richard of Shadforth succeeded in his plea in the court of the bishop of Durham which was based on the contention that as his grandfather, Walter Pigott, was an incomer to the county after the time of Richard I no prescriptive claim could be laid to his services by the bishop's officers.[23] Richard of Glanton was less fortunate in the outcome of his suit before the royal justices itinerant at Newcastle in 1293. He sued William Douglas, lord of Fawdon in Coquetdale, for seizure of his grain (wheat, barley and oats) worth 10 marks, but the jury testified that he was a *bond* who, wishing to escape from his holding, had collusively sold his crop. Before he had received payment, however, Douglas as lord had seized it as the chattels of his serf.[24]

The profit to a lord from a supply of unpaid agricultural labour can be demonstrated from manorial accounts. At Westoe by South Shields in 1326-7 the expenses of ploughing were 12s. 0½d. in cooked food, bread and ale, while harvesting cost a quarter of wheat, 300 herring and 6 stone of cheese. Receipts this year from tenants here included £3. 8s. 10½d. derived from commuted *works*, 2s. 4½d. from *malt-silver*, and 1s. 4d. from William the brother of Thomas Proctor to enable him to avoid liability for manorial duties.[25] In a time of rising wages the attraction of such a pool of customary labour was obvious. Nevertheless money was circulating fairly freely in the North East. There was a mint for coins both at Newcastle and Durham. An enquiry in 1283 elicited the sworn statement by a jury that the lands of

[22] *NCH* VIII, 223.
[23] Durham, Loc. 5 no. 67.
[24] PRO, Assize Roll 650 m. 27d.
[25] Durham, Manorial Account for Westoe 1326/7.

Elwick by Holy Island owed an annual rent to that priory of 30s., payable at Martinmas and Whitsun, and that the sums must be paid in *whole pennies without any half pennies or farthings* under pain of paying double.[26] Quite apart from the tangible evidence of the Whittonstall hoard, which has been dated to about 1311-12, several cases concerning thefts of money came before the justices of gaol delivery of the bishop of Durham. In January 1329 William of Newbiggin and Walter of Henknoll with others were charged with burglary of the house of Robert of Kilham at Windlestone, from which they carried off 55 marks in silver (8,800 pennies), a dozen brooches, four silver cups with feet, 18 silver spoons and 17 gold rings. In February 1330 Richard Wythier was charged with burglary of the house of Emma Quenyld at Stockley, whence he removed a robe and 20 shillings in silver (240 pennies). The same month a presenting jury at Chester-le-Street recorded the theft at South Shields of 10 marks (1,600 pennies) by Lionel son of John Patrick from his father; and in June 1332 a presenting jury at Coatham reported a highway robbery where woollen and linen cloth worth 20s. and 24s. in silver (288 pennies) were taken.[27]

Despite this circulation of coin, trade sometimes partook of the nature of barter. One case which was heard before the king's justices at Newcastle in January 1293 concerned a merchant, Simon of Tynedale, who had bargained at Carlisle on Palm Sunday 1292 to buy from Gilbert son of William of Carlisle 36 dickers of hides for £18 paid in cash a fortnight after Easter, and a further payment a month after Easter of 36 quarters of woad worth £18. He had delivered on Palm Sunday six quarters of woad worth 60s., but subsequently failed to complete the transaction and Gilbert claimed that Simon owed £33. In defence Simon admitted bargaining with Gilbert outside his house at Carlisle, and agreeing to buy the hides on condition that they pleased him when seen. He

[26] Durham, Cartulary II, f. 22.

[27] Durham, Loc. 5 no. 65: Misc. Charters 434, 2640 mm. 1d., 2; R. H. M. Dolley and G. L. V. Tatler, "The 1958 Whittonstall treasure trove" in *Archaeologia Aeliana* 4th Series XLI (1963), pp. 68-70, 74-76, 80.

paid a deposit, but when he returned to view and touch the hides he renounced the bargain, forfeited the deposit and never accepted delivery. Gilbert denied that any conditions had been attached to the agreement to purchase. The case was adjourned, and its outcome is not recorded on this roll.[28] In a case concerning breach of agreement which was brought in the free court of the prior of Durham Hugh Bakester of Wolviston sued John de Belasis of Wolviston for failure to deliver two quarters of wheat and seven shillings in silver against the price of a horse sold to him by Hugh. In another action John of Merrington complained that he had bought from Thomas Freman of Midridge for 2 marks a horse described as *good, useful and without fault*. The horse proved unfit, and John recovered 20s. in damages.[29] A more complicated case arose in Newcastle, where two merchants of King's Lynn despatched to Richard Gategang two tuns of wine under the custody of William Bullock. Gategang was to act as their selling agent. On arrival, however, Bullock sold the wine to Gilbert Peytevyn. Gategang successfully obtained judgment to recover either the tuns or their value against Peytevyn as well as 20s. in damages.[30]

Unsatisfactory agents or servants were a constant problem, from Robert of Embleton who overturned a candle while in a drunken stupor, set light to his lodgings which were wholly destroyed, and thereby caused his master's wool to be seized as compensation, to Reginald Forster, the negligent door-keeper of the Durham priory bakehouse.[31] When eventually dismissed Forster sued the prior before the bishop's justices of assize in January 1343. He claimed his office to be a *free tenement* for life, entitling him to full board for himself and his assistant, or more specifically a pie of the better quality on every baking day, all parings and *chippinges* from the white loaves, all the leavings (*basuras*) of the

[28] PRO, Assize Roll 650, m. 64.
[29] Durham, Loc. 4 nos. 28 m. 2., 52 m. 3.
[30] PRO, Assize Roll 650 m. 63d.
[31] *Calendar of Close Rolls 1307-13*, p. 138; Durham, Register I ii, ff. 87v.-88v.

trencherbread (except from the monastic refectory), and an annual garment at Christmas. He showed in court his sealed indenture of service, and swore that he had taken the oath of fealty to the prior. Prior Fossur through his attorney, Adam Bett, denied these terms of appointment. Forster was to conduct himself satisfactorily in his post under pain of dismissal. A domestic tribunal consisting of the prior, terrar, bursar and others unnamed had heard testimony that Forster had helped himself to the bread leavings of the monks when they dined away from the refectory. He had cut more slices than were necessary, and measured overweight loaves so that it was estimated that 26 quarters of wheat (flour) were wasted in a year. Furthermore, Forster often left his post for a week or a fortnight at a time on his own affairs and without permission, and did not keep in order his knives for scraping troughs and boards in the bakehouse.

Forster hotly denied that he had conducted himself otherwise than had his predecessors, or had ever been away for more than two or three days at a time, and then always had found a substitute. His demand for an enquiry was accepted by the justices, and the sheriff of Durham produced the necessary jurors on 8 April. These confirmed that Forster had cut unnecessary slices, assessing the prior's damage at 2s., that he had weighed loaves which were too heavy, wasting 3 quarters 3 bushels of wheat, and that he had absented himself without leave for three or four days or even a week at a time, although he always provided a deputy, wherein they assessed the prior's damages at 3s. 4d. After closer questioning the jurors gave as their opinion that it was a matter of negligence and stupidity rather than knavishness. There had been a feud between Forster and a new baker, and the overweighing was intended to embroil the baker with the prior. Such evidence was taken to prove Forster's incompetence, and judgment was given that his dismissal was justified, as he had broken his contract (*convencio*) of service.

Bakehouses, or rather the right to bake, could be a cause

of dispute in their own right. In Newcastle the ancient laws of the town allowed the burgesses to own a hand-mill for grinding flour and an oven for baking. (This is exemplified incidentally in a suit brought in 1293 by Richard de Chilton of Newcastle and Agnes his wife, who accused Roger de Hecham and Denise his wife of erection of a bakehouse and brewhouse on land adjoining their *parlour* so that the drainage from the gutter overflowed onto Chilton's plot and undermined the foundations of their house.[32]) Elsewhere the bakehouses seem to have been under the control of the local lord, who often was responsible for the punishment of bakers whose bread was underweight or otherwise infringed the *assize of bread*. At Tynemouth, according to an judicial enquiry of 1292, the prior had built four bakehouses which were leased at 8 marks a year, partly to serve local needs and partly to provide ships' stores. The lord's bakehouse at Alnwick was leased in 1315 and 1316 together with the borough, its tolls and court profits for £15, rising to £16 the following two years.[33] In August 1348 John of Framlington was prosecuted in the free court of the prior of Durham for having a common oven in the borough of Elvet on the prior's land, and taking a toll (*furnagium*) which rightfully should have gone to the prior. The prior claimed 10 marks in damages, but although the jurors testified as to Framlington's guilt they awarded damages of only 6d.[34]

When so many houses were built of wood communal ovens at a distance from dwellings were a sensible fire-precaution, and if erected at the lord's expense his taking of profit was justifiable. The mill was similarly a perquisite of lordship, justified possibly by the expense of erection and maintenance. (Rebuilding the mill at Shoresworth in North Northumberland in 1330 cost the bursar of Durham priory

[32] PRO, Assize Roll 650 m. 3d. It would appear, however, that even in Newcastle bread for sale could be vended only by the King's common bakehouse. When the customer provided his own flour a *furnage* of 4d. a quarter of flour was exacted (PRO, Coram Rege Roll 130 m. 63).

[33] PRO, Coram Rege Roll 130 mm. 63-64: Ministers' Accounts 950/1.

[34] Durham, Loc. 4 no. 78 m. 3.

£14. 6s. 6½d., as compared with the 66s. spent on building there a new house and garden wall.[35]) Tenants usually were obliged to perform *suit of mill*, bringing their grain to be ground at the lord's mill and paying a fixed percentage of it for the service. Like the bakehouses, mills were often leased, and in 1307 the bishop of Durham was receiving over £137 a quarter from such *farm of mills*. Free tenants sometimes commuted this suit to a money payment, as did Gilbert of Grindon, who undertook to pay 4 marks a year to the lord of Haltwhistle to exempt himself and his own tenants. When Gilbert's heir sold the manor of Grindon to King Alexander III of Scotland, from whom it passed to King John de Balliol and Bishop Antony Bek of Durham, the payment was overlooked and William de Ros, lord of Haltwhistle, sued in parliament in 1307 for its restitution.[36] The prior's free court at Durham in June 1338 witnessed an amicable agreement whereby William of Hett admitted liability in accordance with a grant of his ancestors to the prior and convent of Durham to take all grain growing on his estate (apart from 46 acres 3 roods in demesne) to be ground at the prior's mill at Hett at the 13th measure, as well as repair the mill-pond, carry millstones and timber for the repair of the mill, and provide straw from his lands for thatching the mill, *just as the other bovates in Hett owe from ancient time.*[37]

Mills could provide other grounds for litigation. Apart from withdrawal of suit of mill, there was diversion of water-courses. In 1292 Alexander of Broxfield sued the prior of Durham before the royal justices in eyre at Newcastle in a plea of nuisance. He claimed that the prior had built a mill

[35] Durham, Bursar's Accts for 1329/30B m. 4: 1330/1A m. 2d.

[36] *Boldon Buke* (Surtees Soc. 25, 1852), pp. xxv-viii; *North'd Pet.* pp. 60-61, *cf.* 65-66.

[37] Durham, Loc. 4 no. 2 m. 5. Hett and its mill had been granted by the prior and convent of Durham to William's ancestor about 1168. Financial pressure over the next century resulted in the piecemeal return of the property to the original donors (*Feodarium Prioratus Dunelmensis* [Surtees Soc. 58, 1872], pp. 172n.-177n.).

at Ellingham and subsequently diverted the water from Alexander's mill, so that the tenants of the latter had to take their corn to the prior's mill. Again the parties came to a settlement out of court. Alternatively, a lord could be forceably prevented from erecting a new mill by his overlord seizing the timber and iron work, as was alleged to have happened in 1291 to the prior of Durham at Jarrow and Holy Island.[38] Hugh the parson of Ovingham was more fortunate in his new venture. He built a windmill on common pasture at Ovingham some time before 1279 and was challenged by a neighbour on the grounds of disseisin of common pasture. As the neighbour was unable to prove personal hardship the case was dismissed by the royal justices itinerant in 1279.[39]

The legal system is an attempt to provide a more civilised manner of resolving differences than the use of force. (A statute of 1429 offered the incentive of triple damages to those who applied to the courts instead of resorting to self-help.[40]) Wanton violence, however, was rife, as may be seen in surviving coroners' rolls. Apart from the gruesome account of the murder in his bed of Robert de Redware at Black Heddon in Northumberland, surviving records relate mainly to County Durham. Presentments made here before the sheriff in 1328/9 include seven cases of deliberate knifing and two of shooting with bow and arrow.[41] In one case John Heslarton, riding from Durham to Kimblesworth with two sacks of flour under him and a sack of salt in front, was accosted from behind by John Alcock who started a quarrel, lifting his stick to the rider. Heslarton slipped from his horse and was pursued by Alcock as far as a wall called *Wodmansdyke*, where he fell. As he arose Alcock struck from Heslarton's hand the stick he was carrying, and then struck Heslarton on the head. The latter regained possession of his

[38] *NCH* II, 232-33; *Reg. Pal. Dun.* IV, 39-41.
[39] *Northumberland Assize Rolls* (Surtees Soc. 88, 1891), p. 281.
[40] 8 Henry VI, c. 9, s. 6.
[41] Durham, Loc. 5 no. 33 passim. *Cf. North'd Pet.*, pp. 55-59; "Coroner's Roll for Northumberland (Tynedale Ward), 1357" (*AA*[1] III, 1844), pp. 15-17.

stick and struck Alcock such a blow that he died the next day. The hue and cry was raised by the township of Kimblesworth but Heslarton had fled, although he would appear to have acted in self defence.[42]

A most extraordinary tale was presented in October 1328. Margaret, lady of Offerton, had gone with her household on a sporting excursion to Penshaw hill. One of her company, Thomas of Woodburn, summoned Thomas de Miridon from Penshaw to join them, and when he delayed sent William le Baker and three others to seek the original messenger. As the party reached the village they met Marmaduke Basset, who said to Baker, *Are you not the man who is speaking ill of me?* Despite Baker's quick denial Basset raised the axe in his hand and attempted to strike Baker, who warded off the blow with his shield. Miridon then joined Basset and struck Baker in the back with his halberd. Baker's companions scattered, and believing himself mortally wounded Baker turned for help to his lady, who hurried to Penshaw to restore the peace. There Lady Margaret found Basset at the top of the village before his mother's door. Seeing Lady Margaret, Basset moved towards her, raising his axe. She cried, *Peace, peace, peace! Any evil done shall be made good to you.* He replied, *There can be no peace as long as that perverse man, Thomas of Seaton, is near you and in your company.* Basset forthwith struck with his axe at Seaton's head, but the blow was deflected by his buckler. At a second clash Seaton wounded Basset in the left arm with his sword, but Miridon again sprang to Basset's defence and drove his halberd into Seaton's back. The sword stroke, however, had disarmed Basset and Lady Margaret's entourage fell on him to kill him. Lady Margaret intervened, trying to cover Basset's body with her own, while Baker, Seaton and the rest thrust at Basset's legs, wounding him in seven places. Meanwhile John of Burton Agnes, Basset's henchman, standing within the garden of Basset's mother, shot with his bow and arrow

[42] Durham Loc. 5 no. 33 m. 2.

one of the assailants, while Miridon thrust him through the middle with his halberd. Then the henchman shot Seaton close to his windpipe and above the left breast, and Miridon dealt him two blows in the back with his halberd. The battle ended with the flight of the henchman and Miridon, pursued by the hue and cry from Penshaw township. The fate of Basset is not recorded.[43]

Machinery for the maintenance of law and order in Northumberland and Durham at this date is not as well-documented as elsewhere in England. J. E. A. Jolliffe believed that the sheriff's tourn, where breaches of the peace were punished, was not introduced here before the late 13th century;[44] and G. T. Lapsley thought that in the liberty of Durham the sheriff acted through the three-weekly ward courts.[45] Surviving records show that in Durham in the second quarter of the 14th century the sheriff presided over a court described once as the county court but more usually as *the delivery of Durham gaol,* which met every second Monday. Here the coroners' presentments were enrolled and cases short of murder tried. Because elsewhere in England the sheriff was specifically forbidden to act as judge, the bishop of Durham regularised his officer's position by a commission in the following terms: *Know that according to the approved custom in our royal liberty, sheriffs for the time being were wont to deliver the gaols within their bailiwick of prisoners detained therein; we accepting this custom constitute you, that your authority may have greater force, our justice of gaol delivery from county court to county court, except where the arrest is for causing death . . .*[46] In addition, the sheriff and coroner of the appropriate ward

[43] Durham. Loc. 5 no. 33 m. 3. Some feud obviously lies behind this affray. William Basset, Marmaduke's father, had sold Offerton in 1310 to John de Denum and Margaret may well have been Denum's widow. Marmaduke earlier had been involved in the uprising of Sir Gilbert de Middleton in 1317-18 (J. Hodgson, *History of Northumberland* II ii, 15; *NCH* IX, 319).

[44] J. E. A. Jolliffe, *art. cit.* p. 37.

[45] G. T. Lapsley, *op. cit.*, pp. 194-5; *cf.* note 2 above.

[46] *Cf.* Durham, Misc. Charter 2640: Loc. 4 no. 36; *Reg. Pal. Dun.* IV, 346-47.

received sworn presentments outside the city of Durham at places such as Auckland, Brancepeth, Chester-le-Street, Darlington, Rickenhall, Coatham, Staindrop, Lanchester and Whickham.[47]

At the tourn or the court of the sheriff of Durham the initiative against the felon was taken by representatives of the neighbourhood acting as a presenting jury. Sometimes, however, legal action took the form of an appeal of felony, brought by an interested party who was often one of the accused felons, turned approver or Queen's evidence.[48] This procedure may be exemplified from the rolls of gaol delivery at Durham. In June 1328 John Turnebull, John de Pykering and Simon of Hollingside were all charged with horse-stealing. Simon turned *approver*, and as Turnebull denied his guilt and declared his readiness to abide the outcome of a judicial duel, a battle was fought between the two men wherein the approver was defeated and led off to execution. Turnebull, having *proved* his innocence, was released. When Pykering came up for trial Simon had now been hanged, so responsibility for pressing the charge fell on the bishop of Durham. Pykering claimed a jury, which exonerated him, and he also was released. After the acquittal of two of the accused in the burglary of the house of Robert de Killum at Windlestone and a subsequent impasse when on two separate occasions the accused challenged so many on the panel of jurors that no verdict could be taken, the prosecution found one of the band ready to turn approver. Godfrey Dautre *appealed* five men as his accomplices and named another, Thomas de Wyndlesdon, as the instigator. Two of the accomplices claimed trial by jury, of which the first was found guilty and hanged and the second himself turned approver and accused five others of horse-stealing. Thomas de Wyndlesdon accepted trial by battle and defeated Dautre, who was hanged forthwith. The presumption of Wyndles-

[47] *Cf.* Durham, Misc. Charters 7, 9, 354-5, 433-4, 494, 1611, 2245, 5314, 6383: Loc. 5 no. 65.

[48] F. C. Hamil, "The King's Approvers" (*Speculum* XI, 1936), pp. 238-58; *cf. North'd Assize Rolls*, pp. 320-21, 324, 329-30, 346, 350-51, 365-66.

don's guilt, however, was sufficiently great that although he had been successful in battle the prosecution continued its case and he claimed a jury. Since he had already twice challenged jurors the bishop's coroners were enjoined to take particular care on this occasion in their selection. Wyndlesdon, therefore, changed his mind and refused to accept a verdict by jury. This was regarded by the court as a flagrant breach of the rules of procedure, and Wyndlesdon was committed to prison for an indefinite period.[49]

There were other ways for the ingenious to cheat the gallows. One method was to claim *benefit of clergy*. Robert de Stokes, brought to trial before the bishop of Durham's commission of gaol delivery in September 1328 and charged with horse-stealing, claimed that he was in clerical orders and was accepted as such by the *bishop's ordinary*. Before handing him over, the court obtained a verdict from the jury to the effect that Stokes was guilty, and this was notified in order that he might receive some punishment at the hands of the Church. Richard Wythire, who was charged with burglary in February 1330, similarly claimed benefit of clergy, had his guilt confirmed by verdict of a jury, and was delivered to the church authorities to receive due punishment. (This case has an interesting postscript, in that the same roll has a memorandum that William (sic) Wythire, clerk, convicted of this burglary, escaped from the bishop's prison on 30 June 1330 and took sanctuary in Durham monastery.) John le Punder of Egglescliffe, having been appealed by Alan Taylour of Haltwhistle of the theft of a bay horse, first claimed trial by jury, then doubted the credentials of the jurors and agreed to fight the approver. Taylour won the duel and John was sentenced to be hanged, but as he was being led by the coroner and his men to the gallows at Durham he was abducted by a party of clergy including chaplains from St. Margaret's and St. Nicholas' and given into the custody of Richard de Wytparys, the

[49] Durham, Misc. Charter 2640; *cf.* F. Pollock and F. W. Maitland, *op. cit.* II, 651-52.

bishop's gaoler. John then broke gaol, along with Wythire and Taylour, and fled to the sanctuary of St. Cuthbert.[50]

Sanctuary was the solution for many felons seeking to escape punishment. It was not always reliable, as is shown by the sliding scale of penalties exacted from those who violated the sanctuary of Hexham priory, which culminated in the *bote*-less offence of dragging the suspect from the *frithstol*.[51] All churches enjoyed this privilege of sanctuary to a greater or lesser degree. For forty days the suspected malefactor could take refuge, whilst a watch was provided by the four neighbouring townships lest he attempt an escape. During this time the refugee was seen by the local coroner, who gave him the choice of submitting to trial or abjuring the realm. If he chose the latter course his lands and chattels were confiscated and he undertook to proceed, unarmed, to a select port never to return under pain of outlawry.[52] In June 1328 the sheriff of Durham heard two presentments from the borough of Darlington. In the former, Henry de Widrynton undertook to lead an indicted felon from Streatlam to Sadberge gaol. Henry broke his journey at Darlington at the house of a substantial local merchant, and this enabled his prisoner to escape to Darlington church where he was guarded until the next day, when he abjured the realm before the coroner of the Darlington ward. In the latter case a thief caught with the goods was handed over to the Darlington authorities, who put him overnight in the tolbooth. Early the next morning the thief escaped to the parish church, where he remained guarded for six days. He then abjured the realm before the coroner of the Darlington ward. In a case occurring in 1330 a burglar fled for safety to Darlington church and on abjuration was assigned the port of Whitehaven to enable him to spend his banishment in Ireland.[53] Major sanctuaries, however, such as Hexham,

[50] Durham, Misc. Charters 2640 mm. 1, 2, 3: 5145.
[51] *NCH* III, 134.
[52] F. Pollock and F. W. Maitland, *op. cit.* II, 590-91; R. F. Hunnisett, *op. cit.*, pp. 45-48.
[53] Durham, Loc. 5 no. 33 m. 2: Misc. Charter 52.

Tynemouth or Durham, had more generous time-limits. The prior of Tynemouth in 1322 would appear to have relied on *wanted* men for the garrison of his castle.[54]

For felony the usual penalty was death. Where, however, the value of goods stolen was less than a shilling corporal punishment was substituted. In May 1330 two men and two women were brought before the commissioners of gaol delivery at Durham charged with pilfering cloth and other articles from market to market and from fair to fair. The jurors found the first couple guilty of stealing goods worth 11d. and the second couple goods worth 8d. *And because these sums do not exceed the amount for which by right* (jure) *they should be hanged*, it was agreed that they should be returned to prison and there chastised and their goods forfeit.[55] Another man, charged with stealing woollen cloth at Elwick, was returned to gaol for castigation as the cloth was worth but 11½d. Others at the same court (February 1331) were less fortunate. Indicted as false coiners and common market thieves, all three were found guilty by the jury. The men were drawn and hanged. The woman, who had stolen cloth worth 16d., was hanged. Another woman was appealed of the theft, by finding, of 8 ells of linen at Ravensworth. Found guilty, judgment was that she restore the cloth to the claimant, but because at the time of finding it was decayed and rotten (*debilis et putrefactus*) Agnes was simply to be well chastised in gaol for her felony.[56] In one case a pardon was recommended as the value of the bushel of peas stolen was only two pence.[57]

With such ample scope for its use, it is not surprising that at the Quo Warranto proceedings for Northumberland and Durham held at Newcastle in January 1293 no fewer than twenty-three lords north of the Tyne and five to the south were found to exercise the right of gallows and ordeal pit, with the implicit powers to try thieves caught on their lands.

[54] *NCH* VIII, 88-89, 211-12.
[55] Durham, Misc. Charter 2640 m. 2d.
[56] Durham, Loc. 5 no. 36.
[57] Durham, Loc. 4 no. 60.

Several claimed also to have their own prison to hold men pending trial.[58] Over the years the Crown enforced increasing restrictions on this power of landlords, until business other than purely manorial came to be regarded as an exercise of delegated power in the *court leet*, held twice a year. By an agreement reached between the prior and bishop of Durham in 1229 the prior was to use the bishop's prison and gallows for felons convicted in his court rather than have his own, and he had to share equally with the bishop any profits arising from deodands (objects causing a death) or amercements paid by his tenants. Although specifically excluded from hearing pleas of the Crown in his court the prior of Durham by the 14th century had certainly taken upon himself leet jurisdiction.[59]

In the preceding pages an attempt has been made to illustrate conditions in Northumberland and Durham from surviving legal records. Further vignettes could be drawn from cases in the coroners' rolls. There was the pathetic case of Isolda, a toddler of 18 months, whose mother went out, leaving her in the house with her elder brother, John, aged three. John ran out to scare animals straying in the corn and Isolda, playing by the hearth, was burnt about the feet so badly that she died. Thomas, aged five, was playing with an apple by the fire and accidentally fell into a vat of malt. William, aged eighteen months, was fatally hit on the head by a burning brand aimed at the cat. Robert, aged $4\frac{1}{2}$, was playing with other boys at Easington when he was kicked on the head by a mare, tethered outside a house.[60] Other accidents arose from working conditions. William Scot of Whickham was killed in a coal pit when, as he was cutting, a stone the weight of a plough fell on top of him. Gilbert *Carbonarius* was fatally injured when he shifted his grip on the rope drawing him from the pit at Thrislington and fell down the shaft. His three mates recovered him but he died the next

[58] *Placita de Quo Warranto* (1818), pp. 586-605.
[59] *Feodarium PD*, p. 215; *cf.* Durham, Loc. 4 nos. 4, 52, 79, 80.
[60] Durham, Loc. 5 no. 33: Misc. Charters 355, 7023 m. 1d.

day after making his will. Matilda of Hett accidentally fell into a disused coal pit, breaking her neck: while Thomas of Ouston was drowned in a disused working at Whickham. William son of Uchtred of Auckland was crushed to death under a tree which he was felling. John of Blackwell, a carter, was killed when his horse bolted with a load of stones, overturning the cart and crushing John between the wheels. Two men were killed when the side of a marl pit at West Herrington caved in on them while they were working.[61] While the above cases are drawn from Durham presentments, accidents in Northumberland presented at the eyre of 1279 include the death of a woman beggar, who, while soliciting alms, came too close to a man gutting cod at Seaton Delaval and was struck on the head with his knife. Nicholas Burel, while trying to weigh anchor, fell from his boat into the Tyne and was drowned. Hugh of Durham and Matilda his wife, while washing fulled cloth in the Tyne, similarly slipped and were drowned.[62] A final case concerns a suspected witch who came one evening into the home of John of Kearsley. At the time of benediction at vespers John crossed himself at the lamp and she abused him, so he thrust her through with a spit as one belonging to the devil. Instead of her body being buried it was decided by the clergy that it should be burnt, and shortly afterwards John became delirious. On recovering his sanity John realised what he had done and took refuge within the liberty of Durham, thereby incurring the forfeiture of his belongings, valued at £4 5s. (It was agreed by the justices that as he was guilty of no other felony, he should be allowed to return home if he so desired.)[63]

Medieval man was surrounded by what seem today to be strange customs and regulations. Killing a witch was justifiable. A judicial duel could decide whether a man was guilty or not of felony. An error of pleading could cost a man his

[61] Durham, Loc. 5. no. 33: Misc. Charters 52, 7023.
[62] *North'd Assize Rolls*, pp. 348, 359, 363.
[63] *Ibid.*, pp. 343-44.

inheritance. The liberty of Durham (or of Hexham, Tynedale, Redesdale, or Tynemouth) was a refuge for criminals because *the king's writ did not run* there. Landlords, under surveillance of the Crown, held the powers of life and death both literally and economically. Through the eyes of the law we can glimpse momentarily society in Northumberland and Durham in a bygone age.