THE BANSTEAD COURT ROLL IN THE REIGNS OF RICHARD II AND HENRY IV.

BY

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THE Roll begins in May, 1378, and breaks off in 1380, but parts of 1383 and 1384, and of 1393 and 1394 are preserved, making eighteen Courts in the reign of Richard II. In the reign of Henry IV the roll begins in 1401 and is fairly continuous to 1409, after which there is a gap until 1411. It then runs to the end of the reign, making thirty Courts in this reign, or forty-eight in all.[1]

The manor at this time belonged to the King, having been obtained by Edward I as part of an exchange of lands with Sir John de Burgh, son of the great Justiciar. It embraced besides Banstead itself a considerable part of the parishes of Horley and Leigh. These parts in the Weald sent a separate homage to the Banstead Manor Court. Chaldon, a knight's fee, and some land in Wallington were also held of Banstead.

The Manor Court, which possessed both criminal and civil jurisdiction of a limited kind, and, as we shall see, was valuable to the lord both as a source of revenue and for protecting his interests, is described on the roll simply as "Curia," with "Banstede" in the margin, except when the View of Frankpledge was held once a year (usually in the autumn), when the description "Curia cum visu" is used.

[1] The rolls have been lodged at the Public Record Office by the courtesy of the Steward of the Manor, which has made it easy to examine them. The Court with view of 4th November 1378 is printed in full in my *History of Banstead*, p. 357, with translation, p. 139. Note 2 on p. 156 is not correct.

The only case of a more elaborate heading is a Court in December, 1401, which is headed "Visus franci plegii cum prima curia domini Ricardi de Arundell Chivaler." The King's knight, Richard Darrundell, brother of William Darrundell, chivaler, who was just dead, had received on September 27th, 1401, a grant from the King of the manor, with the Knight's fees, park and warren for life, to the value of 80 marks yearly, provided that he answered for any surplus. William had similarly held Banstead, and before him another King's Knight, Reginald Braibrok, had held it, and at the beginning of the reign of Richard II it was held for life by Nicholas de Carren, so that it would seem that at no time during the years covered by the rolls was the manor in the King's own hands.

The names of both William and Richard Arundel appear frequently on the Patent Rolls of the time as engaged on the King's service; *e.g.* in March, 1405, Richard had to garrison Hay with sixteen men-at-arms and eighty archers when the King was going to chastise the rebels in Wales.

The View of Frankpledge is also called on the rolls a leet, *e.g.* at the View of 1404 the tithing-man for Chaldon is fined 6d. because he did not come to present the "articulos letis." It was in theory a Court of criminal jurisdiction,[1] and as such is always distinguished on the rolls from the ordinary court. The main distinction in practice is that the various tithing-men appear for their tithings and pay the common fine or borghsilver[2] at the rate of 1d. a head for the other members[3] of their tithings, each of whom was supposed to be security for the others, and directions are given for enrolling defaulters in their proper tithings. No transfers of land or ordinary litigation were conducted at the View, but the presentations made by the tithing-men, *e.g.* for breach of the assize of ale (which at Banstead itself

[1] See Holdsworth, *History of English Law*, I, 135.

[2] From the Anglo-Saxon "Bohr," or security. See Holdsworth, I, 14.

[3] The tithing-man seems to have been exempt, for in 1406 the tithing-man of Leangre simply presents that all is well and pays nothing In the *Tooting Beck Court Roll* (published by the London County Council, 1909) at this time when the tithing-man pays his borghsilver "capitaneo deducto" is added, but this is not so stated in the Banstead roll.

were made by a special officer, the Aletaster, and in the outlying parts by the tithing men) or for nuisances such as the flooding of roads owing to the failure of a tenant to clean his ditches, differ little from similar presentations made at the ordinary Courts.

The manor was divided into fourteen or fifteen tithings. Banstead itself had five (in 1378 it had six) tithings, and Tadworth and Copthill, both of which are in the present civil parish, each had one. So had Chaldon and Wallington, and the parts of the manor below the hill (the Weald), viz. Sidlow mill, Horley, Leigh, Hyde and Hulle (the latter after 1400 is called Leangre). The amount of borgh-silver paid in 1378 was 7s. 10d. (the Chaldon entry is, however, illegible). If we add 3d. for Chaldon (which is what it paid in 1393) and 1s. 3d. for the fifteen tithing-men, we get 9s. 4d., which at 1d. a head gives 112 members of the tithings. There were also four defaults. The total is larger than in subsequent Views, where the figures tend to drop.

The Court was presided over by the Steward, who represented the lord. He is not mentioned in these rolls, except that there is an entry in 1411 of the cost of his dinner, viz. 2d. in bread, 1½d. in beer and 3d. in meat. But the formula used for judgments, "ideo consideratum est quod . . ." (it was adjudged that . . .), represents the steward's pronouncement, and in the contemporary Tooting Court Roll the formula used is "ideo consideratum est per senescallum." [1]

The officer of the Court whose business it was to see to summonses, distraints, etc. was the bedel, and service in the appointment, which was obligatory or villeins, was not popular.

In 1404 the tenants in the Weald claimed to be exempt from serving as bedel, and in the reign of Henry V all the tenants claimed to be exempt. The bedel was liable to fine for failure to distrain properly when ordered by the Court; *e.g.* in 1408 he is fined 2d. for failing to distrain the Prior of St. Mary Overey, who was required to prove

[1] *E.g.* p. 134, *Tooting Beck Court Rolls.*

his title to Collinsland in Banstead. The work was at best troublesome, and perhaps sometimes dangerous. In 1407 the wife of a poaching tenant is fined 4d. for making a rescue from the bedel, and it must in any case have interfered seriously with the bedel's own business. He probably had a small salary, besides which he received occasional pickings. In 1393 orders were given to distrain in a case of debt, and the bedel seized a dish and pot worth 3s., of which for his zeal he was granted 3d. But this seems to have been exceptional. The bedel was known later in Banstead as Constable, and the tithing-men as Headboroughs (but in Tadworth as Constable). A bailiff is also referred to as arresting strays, but he does not otherwise appear. The bailiff was originally responsible for farming operations,[1] and the bedel had also been an agricultural servant.[2] It is possible that the offices were now combined. In any case, both officials appear to have become merely officers of the Court.

The Court also appointed Affeerers, who reduced to a precise sum the fines resulting from decisions of the Court. Affeerers vary from court to court, being evidently appointed for the particular sitting, and are generally two, but sometimes three, and occasionally four, in number.

One other manorial officer is referred to on the roll, viz. the reeve (prepositus), an officer who in 1277 had rendered account of all receipts and expenditure in the manor,[3] but is now (1408) only called a collector of rent. He does not play any part on the roll.

Let us now consider what purposes the Court actually served. In the first place, it enabled the lord to collect his dues, and served to protect his interests. At every View the borghsilver is paid; miscellaneous payments, such as enese (payment of ½d. for each pig) or deodands, are collected at the ordinary Court, and there is hardly a court at which

[1] See Wortyng's account, 1363–4, p. 90, of *History of Banstead.*

[2] *History of Banstead,* p. 41. The *Carshalton Court Rolls* printed by the Surrey Record Society show the bailiff making distraints, etc, which are made at Banstead by the bedel in these two reigns

[3] *History of Banstead,* p. 45.

some of the tenants were not fined the customary 2d. for breaking the assize of beer—a payment so regular that it seems to be rather a licence than a penalty. The bondman who resided outside the manor paid his chevage, the tenant who did not wish to attend Court paid for being let off, heriots are collected on death and fines on admission to tenements. In addition to payments like these of the nature of dues, there were fines in our sense for defaulting in attendance at Court or failing to carry out the directions of the Court. The Court was, in fact, a profitable possession and more than paid its expenses. The tenants attended compulsorily and without payment, offenders who were guilty, *e.g.* of assault were fined, not imprisoned, and unsuccessful litigants always paid a fine to the Court. The Courts with View produced, of course, most money—that of 1404 produced £2 1s. 3d., of which borghsilver was 5s. 9d.

But the Court was also useful to the lord in protecting his interests in many ways. Thus it is presented in 1406 that Cecily Hened has occupied a piece of land without the lord's leave and for the past thirty years has withdrawn the rent—this she disputed—and that John Hereward has withdrawn his harvest labour for four years—he was fined 6d. at the next Court.

There are continual presentments about poaching, *e.g.* in 1403 that Roger Cokeman of Blecchyngelegh and Richard Tyler of the same came into the lord's park and warren with bows and arrows, dogs and other devices, to hunt his deer and rabbits. In 1404 John Dyg, clerk, apparently an ex-vicar of Banstead, was fined no less than 6s. 8d. for trespassing in the lord's warren. In the same year seven tenants are fined in a lump for trespassing with their cattle, pigs or horses on the lord's pasture, and Thomas atte Mere, who has cut down oaks and other trees in le Swynefeldysgrene to the grave loss of the lord, must answer for it. The Court supplied the machinery through which tenants were compelled to keep the lord's buildings and their own tenements in repair. The homage of Banstead and of the Weald have a day to repair the lord's grange (1402), and it is presented that John Woghere unroofed

a barn in his bond tenement which was roofed with Horsham slates, and carried the aforesaid stones to the demesne of the Prior of Merton, and he is to be distrained to answer the lord for the waste (1401). In 1378 there is an entry fixing the date by which John Hend had to do his repairs, with a note that he had in his possession and was answerable to the lord for two stones, one oak, two boards, one frame, three racks for sheep, a bushel and a seed-basket —apparently a case where the lord had made an advance. This, however, is unusual, it usually being presented merely that a tenement is ruinous and that the tenant must repair it.

All this was legitimate, but the lord, who in 1393 makes a claim on the roll to appoint the bedel, either as against a claim that the appointment was elective or because he knew of the objection of some of the tenants to serve, at times strained the machinery of the Court. There seems to be a clear case of this in 1406, when it is recorded that orders were given to all tenants of Banstede who held according to the custom of the manor that in future their dogs should be expeditated under a penalty of 100s.

Now the expeditation of dogs, or cutting out the ball of the forefeet for the preservation of the King's game, is a term used in the laws of the forest, and there cannot have been any justification for such an order at Banstead in 1406. Before Richard Arundell's time there are entries indicating that the homage are responsible for fugitive bondmen, and this was no doubt common form.[1] But Arundell evidently tightened the machinery. In 1402 thirty-two names appear in one entry as doing fealty, which they would hardly have done in this way without some special cause.

In 1408 there are some remarkable entries on the roll. The Banstead homage then presented that Joan atte Mere, daughter of John atte Mere, had married John Tabard, and Emma, another daughter, had married John Tayllour, without the lord's leave; and at the next Court Juliana atte Mere, daughter of William atte Mere, asks leave to marry Roger Thurston and pays £5 for permission (merchet),

[1] Cf. the case of Carter (1402) in the Tooting roll.

and at the same time the roll records an acknowledgment of villenage by William Kyng with a description of his children. In 1412, after a similar record about the Bode family, Robert atte Mere, the lord's bondman, and all the bond homage are fined 10s. for failing to produce William Bode and other fugitive bondmen and threatened with a further penalty of 20s. if they fail again. We know that the tenants disputed the lord's view of their status, for the roll shows that in 1404 four of them refused to do fealty to the lord because they said that they were of free, not bond, status (libere condicionis non native), and all the tenants subsequently petitioned Henry V against Arundell's proceedings.[1] Whatever the legal rights of the parties to the dispute may have been, it is impossible to believe that the homage would have made such presentments as those of 1408 except under strong pressure.

The Court, however, served a number of useful purposes, both for the manor as a whole and for the individual tenant. Nuisances are constantly presented—the highway between Horsehulle and Leggersland is under water and foundrous by Richard Logger's default; John Huwet has not cleaned his ditches at Caldecroft (in Horley) and the road there is consequently foundrous (the roads in the Weald were always bad); the bridge below the church at Leigh is ruinous and should be repaired; Thomas Yhurst has ploughed up the road to Burgh; John Saunder has closed a lawful path (legalem semitam) at Tadworth; the highway at Sherwode Strete is foundrous owing to the digging of Thomas at Wode,[2] and so forth.

Also waifs and strays are dealt with, the latter being usually animals which gave little trouble. In 1378 it is solemnly recorded that a pair of boots came as waif (*i.e.* abandoned by a felon). In 1404 a black horse caused trouble. The horse was presented by one of the Banstead

[1] See *History of Banstead*, p. 146. The extent of 1325 gives the name of one tenant in the Weald (p. 67) of whom the obligation not to marry a daughter without licence is specially recorded, which certainly seems to imply that the case was exceptional.

[2] Not long before iron had been mined in the highway at Horley. See *S.A.C.*, XXXIV, p. 105.

tithing-men as waif, but subsequently twelve tenants on their oath declared that the horse "non fuit weyfyatum," or in the hands of a felon, and the tithing-man and his tithing were fined 6d. for a false presentation. In 1402 a sow gave rise to a conflict of jurisdictions. The Court testified that John Heed, late the lord's bailiff, arrested a sow of red and white colour within the lordship as stray in the 21st year of Richard II, but Stephen Ingram, the bailiff of the Hundred of Copthorne, took and removed the sow, to the lord's damage, etc., and let there be a writ, etc. But the result does not appear. In 1405 a black ox, aged two years, worth more than 10s., came as a stray and was seized by John the bailiff of the Hundred of Reygate "vi et armis." [1] And the same John broke the fence of John Tanner at Horley and took away two cows worth 20s. But though 10s. is written over the bailiff's name as if that was the fine which he was to pay, it is unlikely that he paid much attention to the Manor Court.

The Court interfered vigorously at times to protect the public. In 1406 one of the Banstead tithing-men presented that John Doveton, clerk, keeps a dog which bites various animals, and the comparatively heavy fine of half a mark (3s. 4d.) is imposed. The public opinion of a community of farmers regarding a dog which worried sheep was probably expressed by the Court. In 1412 the tithing-man of Sidlow mill presents that John Grenyng (who had been within the lordship for over a year without being placed in his tithing) was a common butcher taking excessive gain, and Grenyng is fined 2d., no doubt as a warning. The numerous presentments with regard to obstruction of roads have already been referred to.

But probably the greatest advantage which the Court gave to the tenant was that it supplied him with a convenient system of conveyance and land registration. Most of the

[1] We need not, of course, suppose that the words were literally true. As early as 1310 they were coming to be regarded as common form (Holdsworth, II, 364). At one time they were, it would seem, employed to found jurisdiction in the King's Court by making what was a mere tort appear to be a breach of the King's peace. They became so firmly established that an Act of Parliament was passed in 1705 to make it safe to omit them in certain cases.

business of the ordinary courts (as opposed to the View), which is not concerned with litigation is concerned with the conveyance of land held in villenage, or, as it was now in process of becoming, copyhold land. The free tenant was independent of his lord's Court and could resort to the Royal Courts to protect his interests,[1] but the title to land held in villenage was to be found on the Court Roll, and such land had to be conveyed subject to the custom of the manor. When Cecily Hened's title to a virgate of land called Crouchelond was challenged, she produced in Court in 1407 a copy of an entry by which John Hened surrendered the virgate, and the lord re-granted it to John and Cecily and their heirs to be held by the ancient rents and services. The system of taking such copies was evidently thoroughly established. When, for instance, Robert Ihurst surrendered a messuage and half a virgate called Bechelond and Thomas Popelot was admitted in 1402, there is a note in the margin "fiat copia," and the roll has the word "copia" in the margin against a transfer of land in 1378. On every conveyance or admission to a tenement held in villenage the lord took his fees. There seems to have been a scale for admission of 3s. 4d., or 6s. 8d., or 13s. 4d., but it is difficult to see on what principle the scale was applied, unless on that of the ability of the tenant to pay, and especially later the fines vary greatly. When, for instance, in 1393 John Lamput takes a virgate formerly belonging to John Long (a bondman who had left the manor without leave) for ten years for the ancient rents, services and customs, and undertakes to do the repairs, he only pays a fine of 7d. for entry, and it seems clear that the lord was glad to admit for a purely nominal fine. On the other hand, in 1383, when Peter in the lane, who held a half-virgate and a farthingland, died, the lord not only took as heriot an ox worth 13s. 4d., but made his son John pay a fine of 6s. 8d. for admission. And he took his fees for every transaction. Thus, in 1412, when Margaret atte Mere died, who held for life a half-virgate formerly belonging to Thomas atte Mere, with reversion to Thomas's son Peter, the lord took a sheep worth 14d. as heriot and

[1] See Holdsworth, II, 260.

admitted Peter for a fine of 3s. 4d.; and when Peter thereupon surrendered the land and it was re-granted to him and his wife, a further fine of 2s. was taken. These fines, however, although it is difficult to say on what exact principle they were levied, do not seem to be oppressive, being similar to the fines recorded at the time on the Tooting roll.

We have seen that Arundell insisted on the conditions of villenage, and most of the admissions and conveyances are for the ancient rents, services and customs. But he could not always let in this way. For instance, in 1406 Thomas Popelot took from the lord a tenement called Stretislond which was a half-virgate of twelve acres, also a garden of a quarter of an acre, and another half-acre, paying a rent of 5s. for all services and a fine of only 12d. for admission.

Although, however, the Court Roll afforded a decisive and convenient record of title, it was in one way unsatisfactory. No plans or maps of course existed, and in most cases no attempt was made to define boundaries. If any attempt is made to define position it is extremely rough. When Margery Popellot in 1378 surrenders three and a half acres not lying together, they are perforce described for identification, but only in the vaguest way, one at Leggeswaye and two and a half by the high road and called Marchalesland. In 1404 a single acre is let, and it is described as lying in Holdene (Holding Shot, no doubt, in Banstead Commonfield) between the land of the tenement le Frenoke on the south and the land of the tenement le Grete on the north. And this is unusually detailed. It was no doubt only because everybody knew every acre in the parish that disputes did not more often arise. But they did arise, and presently we shall come across an indirect method of deciding a title to land.

The Court Roll no doubt prevented much litigation as to title, but there are a few pleas of land recorded, mostly abandoned, with the result that the plaintiff was fined 2d. —perhaps a fairly inexpensive way of being disagreeable for a time to an unpleasant neighbour. There is, however, in 1404 a record of an elaborate plea of land in which

Roger atte Hulle recovers land from William Kyng. They put themselves on the homage, who give an elaborate history of the land, showing that Kyng had lawfully held the land which he acquired from William atte Hulle and conveyed to John atte Hulle, who conveyed to Roger, the plaintiff, whom Kyng disseised unjustly and without judgment after King Henry's first voyage to Gascony [1] to the damage of Roger atte Hulle of 20s. So atte Hulle has entry on paying a fine of 6s. 8d. and gets the damages, and Kyng is fined 6d. The case may be real litigation, but it rather looks like a fictitious suit. In 1404 there is a quarrel about a right of way which Isabella atte Mere claimed against Henry Blake. In this case the Court, with the consent of the parties, made a compromise, giving the old lady the easement for her life on condition that she paid Blake a rent of a chicken every year.

The Manor Court probably modelled itself as far as possible on the Royal Courts—it clearly knows of the Statute of Edward I, and in another case in 1409 when the defendants, who were duly summoned according to the custom of the manor, failed to appear, directions were given to take the land into the lord's hand, and in the margin is "Cape Magnum," which was the writ used in the King's Courts for the King to take land into his hands, and if the tenant came not at the day given him thereby he lost his land. Did lawyers then practise in the Manor Court? When in 1378 William Kyng, in a plea of debt, is present by his attorney Roger Kantebery and denies the debt, it is tempting to assume that Kantebery, a name which does not appear among the tenants, was a professional lawyer. In 1407 there is a plea of debt in which Richard Langhurst claims from John Frank 3s. for a writ (pro brevi) and other things bought from him with damages 12d. But in any case all representatives in Court certainly were not lawyers, for in some cases, *e.g.* when Constance Lovelane in a plea of land in 1404 puts John Bradewell in her place to win or lose, or Alice Tygge puts John Clerk similarly in 1408, the names

[1] This is a reference to the statute of Edward I dealing with writs of novel disseisin. See the Recoveries printed in Vol. XXXII of our *Collections*.

of the representatives appear to be those of tenants. In the great majority of cases litigants evidently had to conduct their cases in person, or perhaps for that reason failed to appear.

The cases other than land cases fall into a few clearly defined classes. The most numerous are pleas of Trespass, of which some fifty are recorded, many, however, ending in the plaintiff being fined for failing to appear. Animals were, of course, a fertile source of quarrel. Thus, Thomas Brygger in 1378 proceeds against John atte Pende because his dogs have torn and bitten plaintiff's pigs in the highway and elsewhere, to the damage of the said Thomas of 12d., and John Frank claims 20d. damages against Richard Brugger in 1408 because his dog killed an ewe worth 12d. John Bradewell's dog must have had a peculiarly bad reputation, for in 1409 John Cotes alleged that the animal broke into his house and ate up meat to the loss of the said John Cotes which he put at 10s. Bradewell, it is hardly necessary to say, contended that he had no dog which behaved in this way, and this he offered to verify by making his law.[1]

William Joye *v.* William Kyng, in 1410, is a case of a different kind. Here the plaintiff contended that Kyng had ploughed half an acre at Longlandes belonging to plaintiff and trampled and used his grass, and the damage he put at 3s. 4d. Kyng denies and alleges that the half-acre was his own. The homage enquire and find that the land is Joye's, and that he should recover his damages, which, however, they assess at only 4d. And Kyng has to pay his 2d. Now this case is interesting because it seems

[1] Bradewell appears to have been a troublesome fellow. In 1409 he was park-keeper and swore that John Cotes and others had hunted rabbits in the lord's warren, and they admitted this and were fined, so Cote's action was probably inspired by revenge. But the next entry shows that Bradewell had to find pledges for carrying out the injunctions of the lord and tenants, his mainpernors being put under penalty of losing their tenements, and the bedel was to arrest his goods. What the meaning of this was does not appear, but it is certain that Bradewell was convicted before the Justices of the King's Bench of a trespass done with force and arms on Arundell and was outlawed, for after Arundell's death he obtained a pardon (*Calendar of Patent Rolls*, 20 November 1423).

to show that whatever the law you cou d in fact establish a title to land by means of a plea of trespass. For the Court Roll never in those days defined the boundaries of tenements, and when Kyng alienated or died his successor would presumably have only been admitted to whatever Kyng in fact held—the title would be to "the tenement late William Kyng's."

In 1406 a batch of fourteen cases of trespass was compromised. The trespasses were all against John Clerk, excepting the last, which was against John Fyssher. Unfortunately the exact subject of dispute does not appear.

The next most numerous class is pleas of Debt, which do not number quite half those of Trespass. They are for barley worth 3s. or two bushels of malt, or for 8d. for the hire of a house, or 2s. for the rent of a croft of land and damages 12d., or for sums of money lent, as 10s. 7½d. and 12d. damages, or 3s. 4d. and 12d. damages. It must be remembered that a direct claim for interest on money wes not permissible, and such claims had to be made in the shape of claims for damage.

There are a very few pleas of Contract; *e.g.* in 1378 Richard atte Hyde claims to have sold 100 cartloads of marl to Richard Bromman for 16s. 8d., of which 8s. 4d. had been paid.

In 1411 there is a plea of waste, in which John Wythemere sues Richard Munday for waste in respect of 100 plum trees and 20 ashes in a half virgate called Godards, which Munday held for life with reversion to Wythemere.

In 1409 John Tygge was fined 2d. for failing to answer Alice Tygge about the execution of the will of John Tygge, senior.

The foregoing summary will give an idea of the civil business of the Court. The outstanding feature is the litigiousness of the tenants. When Wythemere was suing Munday for waste in the case just referred to, Munday was trying to get even with him by starting two pleas of debt, a plea of contract, and a plea of trespass. One of the pleas of debt broke down at once as Munday failed to pursue it and was fined 2d. When Brygger was recovering from atte Pende for damage done to his pigs in 1378, atte Pende

was bringing two pleas of trespass against him, one of which he won and the other he lost.

Nor was litigation in the Tygge family confined to the case just referred to. Alice brought two pleas of debt against John, in one of which she claimed to have lent him 3s. 4d. with 12d. damages—this case she won. The other she failed to pursue and had to pay the customary 2d. The year before she had brought a plea of trespass against him for entering and carrying off her corn and put her loss at 10s.; John admitted, but asked to be assessed by the homage, who put the loss at three bushels of corn. And in another case he had been fined 2d. for unjustly detaining part of her dower.

In conclusion, a few words should be said as to the procedure followed in the Court. In the leet cases we are merely informed that a presentment is made, *e.g.* that the highway at Pokenyllyslonde is under water through the failure of John atte Wode to clear his ditches, therefore he is in mercy, and a fine of 2d. is recorded; or that Peter atte Mere insulted Juliana Kyng and unjustly drew blood from her, therefore he is in mercy and a fine of 2d. is recorded. But in the civil litigation the cases are recorded at much greater length. Let us take the exact record of the case about Bradewell's voracious dog (1409): "John Cotes complains against John Bradewell in a plea of trespass. And he complains that on the 8th day of July in the ninth year of the present King the dog of the aforesaid John Bradewell broke into the house of the aforesaid John Cotes and ate his bread and meat there to the loss of the aforesaid John Cotes 10s., et cætera. And the aforesaid John Bradewell says that he had no dog who made such trespass on the aforesaid John as he in his count alleges. And this he offers to verify by law et cætera. And he has a day to make his law by the next Court."

This is clearly a record in a fixed form, since it is so familiar that it is abbreviated by et cætera. The et cætera covered *e.g.* the plaintiff's production of suit (*i.e.* witness to show a prima facie case), which, though indispensable, was now a mere formality. The form is modelled on the practice of the King's Courts, though in allowing wager of

law in trespass it seems to have been behind them.[1] The wager of law consisted merely in bringing a varying number of persons—there are cases in these rolls of three or four, or even twelve, including the defendant—to swear to the defendent's case. They were not witnesses in the modern sense, *i.e.* persons who had personal knowledge of the facts in issue, who would say what they knew and be examined on their evidence. They were a survival of an earlier age, when the parties appeared with their supporters, and the Court did little more than keep the peace between them, or settle how (*e.g.* by battle) they should fight it out. The system seems to us absurd, but in the Manor Court, where everyone knew everybody, it must have been easier to assess the value of the oaths of the compurgators than it could be in a modern court. The Court in fixing the number of compurgators no doubt considered the credibility of the defendant. When Thomas Whyte in 1406 claimed 1s. 6d. for fencing 18 perches and 3s. 4d. damages from John Sutton, we may suppose that Sutton's character for truthfulness stood low, for he was told to bring eleven compurgators. Nor, it seems, was the wager invariably accepted, for in 1405 John Frank proceeded against John Wyker and his wife in a plea of trespass. The latter waged their law that they were in no respect guilty. They were summoned and appeared, but the decision was that Frank should recover damages, though he only got 4s. out of the 20s. which he claimed. Wager of law was not used in all pleas of trespass, but it was the ordinary procedure in pleas of debt.

An alternative method is that followed, *e.g.* in a case of trespass in 1408, in which John Frank complained Richard Brugger's dog had killed one of his ewes. In this case the defendant, who denied the fact, puts himself on the homage, and Frank likewise. And thereupon the homage have a day to advise by the next Court and the parties to hear. Similarly in Joye *v.* Kyng, already referred to (1410), where Kyng was said to have ploughed Joye's land, defendant asks that enquiry may be made by the homage. And the same is sometimes done even in cases

[1] See Holdsworth, I, 307.

of debt, *e.g.* when Thomas Cook claims 2s. rent and 12d. damages from Gilbert Whyte (1405). This is the earliest case on the roll of a plea of debt in which law was not waged.

To leave the matter to the homage to decide out of court would not seem to us a satisfactory method, but it at least has the merit of allowing enquiry. The homage were acquainted with the facts, or in the position to make themselves acquainted, and as compared with wager of law it is a step towards deciding the case on the merits. If we may judge from the readiness of the Banstead tenants to resort to the Court to settle their quarrels, we may conclude that whatever the defects of the system they did not regard the Court as unwilling or unable to do justice among themselves.