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Studies and Notes supplementary to Stubbs' Constitutional History

II

BY

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PREFACE.

As was foreshadowed in M. Petit-Dutaillis' preface to the French translation of the first volume of the "Constitutional History" of bishop Stubbs, the second volume, of which the French version appeared last year, has been found to need much less revision of the kind for which footnotes are inadequate. Instead of the twelve additional Studies and Notes of volume I, which were translated by Mr. W. E. Rhodes and published under my editorship by the Manchester University Press in 1908, M. Petit-Dutaillis has thought it unnecessary to append to volume II more than two such studies. The subjects with which they deal, "The Forest" and "The Causes and General Characteristics of the Rising of 1381" are, however, treated with such thoroughness as to provide sufficient matter for another volume of "Supplementary Studies." In his preface M. Petit-Dutaillis holds out the hope that his additions to the third volume of Stubbs' work will be concerned with questions more directly constitutional; but the Forest played a part in the contest between the English crown and people which makes the inclusion of the first essay in these studies quite appropriate, while the many additions that have been made to our knowledge of the Peasants' Revolt since Stubbs wrote constitute a sufficient justification for the second. The translation of the two studies has been made by my friend and colleague Mr. W. T. Waugh, and my duties as editor have been exceedingly light. As in the first volume, a few footnotes have been added in square brackets, in most cases by Mr. Waugh, who has also adapted the index from the one made by M. Lefebvre for the French edition.

JAMES TAIT.

THE UNIVERSITY,
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THE FOREST.

THE institution of the Forest, established by the Norman kings and maintained by the Plantagenets, has strong claims on the attention of the historian. Not only, as an institution very characteristic of the times, does it throw valuable light on certain features of mediæval society, law, and administration; but the fact of its existence led to important results in the constitutional crises of the thirteenth and fourteenth centuries. One may regard the Forest as a melancholy and decisive witness to the brutality of the Norman Conquest, as an illustration of the despotic authority of the Norman and Angevin kings, as a cause of the hostility of the barons and higher clergy towards the crown, or as a ground for the hatred felt by the people towards the king's officers. But from every point of view the Forest is equally worthy of study.

Interest of the subject

Stubbs did no more than touch upon the subject, and, as far as we know, the history of the Forest in mediæval England has never been treated in its entirety on the general lines which we wish to follow. Our intention is to set forth the most important of the results that have been achieved. We have used such printed records—whether published in full or calendared—as we have been able to consult, and several valuable works of modern scholarship, among which special mention should be made of Dr. F. Liebermann's critical essay on the *Constitutiones de Foresta* ascribed to Cnut, and

Mr. G. J. Turner's study on the Forest in its legal aspect during the thirteenth century. In addition, the interest of the task has led us to make cautious expeditions into the realm of comparative history. In seeking the origins of the English Forest we have turned to the Continent, where they are certainly to be found, and occasionally we have drawn a parallel between the evolution of the Forest in England and the corresponding process in France.

Use of the comparative method

(I)

THE FOREST AND THE RIGHT OF THE CHASE IN MEDIÆVAL ENGLAND.—ORGANISATION OF THE FOREST.

We have first to ask what meaning was attached in England to the word "Forest," in its legal sense,[1] as used, for example, in the phrase "Forestas retinui" in the charter of Henry I, or in such expressions as "bosci afforestati," "manere extra forestam," which appear in the charter of 1217.

Meaning of the word "forest"

As early as the time of Henry II, Richard Fitz-Neal, in his *Dialogus de Scaccario,* gave a very clear definition of the Forest. It consists, he says, in preserves which the king has kept for himself in certain well-wooded counties where there is good pasture for the venison. There the king goes to forget his cares in the chase; there he enjoys quiet and freedom: consequently those who commit an offence against the Forest lay themselves open to the personal vengeance of the king. Their punishment is no concern of the ordinary courts, but depends entirely on the king, or his specially appointed delegate. The laws of the Forest spring "not from the common law of the realm, but from the will of princes; so that what is done in accordance with them is said not to be just absolutely, but just according to the forest law."[2] The nature of the Forest could not be more clearly stated, and the definitions given by Manwood in the sixteenth century and Sir Edward Coke in

Definition in the "Dialogus de Scaccario"

1. The word is also used, even by lawyers, in its modern sense of a tract covered with trees; the author of the *Dialogus de Scaccario* writes, "Reddit compotum. . . . de censu *illius nemoris vel foreste. . . .*" (*Dialogus de Scaccario,* II. xi; ed. Hughes, Crump, and Johnson, 1902, p. 141).
2. *Dial. de Scacc.* I. xi, xii; ed. cit. 105 sqq.

the seventeenth, are based on those formulated by Richard Fitz-Neal.[1]

The word *Forest,* adds the author of the *Dialogus,* comes from *fera,* wild beast, *e* being changed to *o.* Fanciful though it be, this derivation is deduced from a perfectly correct notion: in law and in fact, if not in etymology, the Forest owed its origin to sport. The Forest or the Forests—the word was used, in the middle ages, in both the plural and the singular—consisted of a number of game-preserves protected by a special law. They were mostly covered with woods, but also included moorland, pasture, and even agricultural land and villages.[2]

The Forest is a hunting-preserve

The Forest, as such, belonged to the king. It must not, indeed, be confused with the royal demesne: for there were royal woods which were not Forest, and on the other hand, a forest often comprised estates which were the property of subjects, even of great lords. But it belonged to the king in the sense that it was created for his benefit, that within its limits none save himself and those authorised by him might hunt the red deer, the fallow deer, the roe, and the wild boar,[3] and

In what sense does the Forest belong to the crown?

1. "A forrest doth chiefly consist of these foure things, that is to say, of vert, venison, particuler lawes and priviledges, and of certen meet officers appointed for that purpose, to thend that the same may the better be preserved and kept for a place of recreation and pastime, meet for the royall dignitie of a prince" (Manwood, *Treatise of the Lawes of the Forrest,* 1598, f. 1); "A Forest doth consist of eight things, videlicet of soil, covert, laws, courts, judges, officers, game, and certain bounds" (Coke, *Fourth part of the Institutes of the Laws of England,* ed. 1644, p. 289).

2. The word *forestis, foresta,* which is found in Merovingian documents of the seventh century, comes, according to Diez, from the Latin *foris,* and already meant a district placed *outside,* or preserved, by royal command. This etymology is quite in accordance with the sense of the word Forest in England, but after a careful study of Merovingian records, I am doubtful whether to accept it.

3. These four were generally considered to be the "beasts of the Forest" to which the forest law applied. The list varied somewhat in different times and places. See the very learned and sound paper of F. Liebermann, *Ueber Pseudo-Cnuts Constitutiones de Foresta,* 1894, p. 20; G. J. Turner, *Select Pleas of the Forest* (Selden Society, 1901), x sqq. From the time of the first Norman kings neither the wolf nor the fox was regarded as a beast of the forest. John of Salisbury says that they were not hunted according to the rules of venery (Liebermann, p. 23).

that it was subjected, throughout its extent, to very severe laws, enacted arbitrarily by the kings for the protection of the "vert and venison," that is to say for the preservation of the beasts of the Forest and the vegetation which gave them cover and food.[1]

In mediæval documents mention is also made of the king's *parks* and *warrens,* and sometimes of his *chase.* There was, in our opinion, no real difference between the king's chase and the Forest.[2] Parks were distinguished by the fact that they were enclosed by a wall[3] or fence.[4] But the records published by Mr. Turner show that the royal parks formed part of the Forest,[5] that they were under the oversight of foresters,[6] and that offences committed in them were punished in the same way as forest offences:[7] and in these respects isolated royal parks must have been in the same case as those surrounded by Forest. As the king's object in making a park was the better preservation of his game, it would be absurd if the forest law were not applicable to it. It is well to insist on this point, for English historians have vied with one another

Chases and royal parks

1. If the king alienated a part of his Forest the forest law might still be applied to it for the benefit of the new owner. This was the case in the forests held by the earls of Lancaster in the fourteenth century (Turner, pp. ix, cxi sqq.). But as a rule the forest, in such an event, became a chase (see below, p. 154).

2. According to W. H. P. Greswell, *Forests and Deer Parks of the County of Somerset* (1905), p. 244, the chase was not subject to the forest law. He gives no proof of this, and admits that in certain documents the Forest of Exmoor is called the Chase of Exmoor. Kingswood Forest in Essex is another case in point. In 1328 J. le Warre complained that some years before the "gardeins de la chace" had put his manor "en la chace de Kingeswode et de Fulwode"; so that he no longer had the right to cut his wood (*Rotuli Parliamentorum,* ii, 29). Kingswood was part of the forest of Essex (Turner, p. 69). Mr. Turner's remarks on chases (*ibid.*, pp. cix sqq.) apply only to the chases of feudal lords.

3. "Fregit murum parci et intravit eum cum canibus" (Turner, p. 40).

4. "*Operarii in parco predicto ad reparandum palicium*" (*ibid.*, p. 55).

5. "Venacio data per dominum regem: . . . comes Cornubye venit in foresta de Rokingham . . . et cepit in parco et extra parcum bestias ad placitum. . . . ." (*ibid.*, p. 91).

6. "Willelmus, forestarius pedes in parco de Bricstoke" (*ibid.*, p. 83). These foresters were sometimes styled parkers (*ibid.*, p. 55).

7. *Ibid.*, pp. 4, 54 sqq., etc.

in repeating that parks were not subject to the forest law.[1] In this general form, the statement is false: a distinction should be made between the royal parks and those of the lords.[2]

Royal warrens

The position of the royal warrens has never, as it seems to me, been accurately stated. It is clear that the word bore another meaning than the one it had in France,[3] and was applied especially to land reserved for hare-hunting. It would, however, be too much to say that royal warrens were entirely exempt from the forest law,[4] for in the *Placita foreste* we find thefts of hares from a warren judged by the same process as poaching in the Forest.[5] Even in Middlesex there was

1. See, e.g., W. S. Holdsworth, *History of English Law* (1903), i, 346; MacKechnie, *Magna Carta* (1905), p. 493.

2. The treatise of Mr. Turner, who possesses well-deserved authority on the subject of the forest law, does not tend to prevent this confusion. Although royal parks often appear in the documents he has edited, he deals in his introduction only with the parks of subjects. It is of these that he is speaking when he says (p. cxxii): " The park was not subject to the forest law."

3. In France itself the meaning of the word changed—a fact which has caused many blunders. It was only in the sixteenth century that " garenne " acquired the almost exclusive sense of rabbit-preserve. See the remarks of Olivier de Serres, *Théâtre d'Agriculture,* ed. 1805, II., 62 sqq. There were certainly "garennes à connins" in the Middle Ages, but the word " garenne " had the quite general meaning of " game preserve." See, among others, a document published in De Maulde, *Condition forestière de l'Orléanais*, p. 491: " . . . ius habendi garennam ad *grossum animal* "; and an *arrêt* of the Parlement of Paris, dated 1270, in *Olim*, I., 835, no. xlix: " . . . in loco ubi rex habet garennam suam ad grossam bestiam et minutam."

4. As Mr. MacKechnie asserts (*Magna Carta,* p. 493).

5. From the examples in the documents published by Mr. Turner, we have selected three of different periods: i. In 1209, in the pleas of the Forest held at Shrewsbury, Hamon Fitz-Marescat was tried for stealing hares in the warren of Bulridge (Turner, p. 10).—ii. In 1255: the offence was the theft of four hares in the warren of Somerton; the presentment was made by the verderers; the chief offender being a clerk of the king's court, the case was adjourned. The inquisition had been held in the ordinary way (pp. 41 sqq.). The title of the document from which this illustration is drawn runs: *Placita foreste in comitatu Sumerset,* and the sub-title: *Placita de warrena de Sumerton.* The document also summarises an inquisition held concerning a hare found dead, and conducted like inquisitions on beasts of the Forest found dead.—iii. In 1286: *Placita Foreste apud Huntyndone. . . . Placita warrenne de Cantebrigge* (pp. 129—131). This record is the most elaborate of the three, and also the most striking, for it certainly looks as if this Cambridge warren lay quite apart from any forest. Evidently a large number of arrears had to be cleared off and delicate points decided. The justices of the Forest, sitting at Huntingdon, tried a large number of cases of hare-poaching and gave decisions on claims put forward by the inhabitants. See below, n. 4.

a warren which was entirely subject to the forest law.[1] Such cases were, however, exceptional. Offences against rights of warren had, as a rule, to be tried in the ordinary courts of law.

The king's right of warren

The question whether all the royal demesne was regarded as warren has been investigated by Mr. Turner, who concludes that the king would probably not consider his own lands to be warren unless they were sufficiently well stocked with game to make hunting worth while.[2] Nevertheless we find Edward I taking care to specify in 1305 that he had right of warren on all his demesne lands.[3] From the beginning of the Norman period, moreover, private warrens had existed only by royal grant. It may safely be inferred from this that the king could claim right of warren over the whole realm. And as a matter of fact, he did establish warrens for himself in all parts: as late as the end of the thirteenth century he is found defending his right of warren in lands which did not belong to his demesne.[4]

In short, the king apparently claimed the right of the

1. In 1227 Henry III disafforested the warren of Staines, in Middlesex. His charter shows that the warren had been subject to the forest law (Turner, p. cviii; cf. *Rot. Lit. Claus.* II., 197).

2. Turner, p. cxxxiii.

3. *Statutes of the Realm,* i, 144.

4. We have a very characteristic document of 1286 concerning the royal warren at Cambridge: " Johannes Extraneus, dominus de Middilton, Warinus de Insula, dominus de Ramton, et templarii de Daneye clamant habere libertatem warrenne in terris suis infra warrenam predictam domini regis; et sepius cum leporariis suis ceperunt plures lepores in eisdem terris suis pro voluntate sua. . . . Ideo preceptum est vicecomiti quod faciat venire predictos Johannem et Warinum et eciam preceptorem ad ostendendum warantum si quod inde habeant, vel ad satisfaciendum domino regi de transgressione predicta . . . " (Turner, pp. 130—131.) See also (p. 131) the claim of the Abbot of Ramsey.

chase in every part of his realm.[1] In his view, this right entitled him to hunt small game, not only on the whole of his demesne, but also in the warrens which he had on the estates of his barons. But he preferred a nobler quarry, and so set apart for himself vast preserves for larger game. These were called Forests or Chases, and Parks when they were enclosed; and he established a code of forest law to protect them.

We now come to the hunting-rights possessed by the king's subjects. Apart from royal grants of the right to hunt in the Forest,[2] the barons and prelates had "chases," "parks," and "warrens" of their own. The chases of the lords were generally parts of the Forest which had been alienated by the king: in a sense the grant did not involve complete disafforestment, for the burdens imposed on the inhabitants were maintained, at least in part, for the benefit of the recipient.[3] The parks of the lords, on

Hunting rights of the king's subjects

1. The matter is obscure, and in our opinion was a question of fact rather than of law. English writers on feudal law have tried to formulate theories about it. Blackstone asserts that all the game in the realm belongs to the king, and that nobody therefore may hunt without his permission. Christian, however, in his notes on Blackstone, cites documents which contradict this view, notably the following ancient pronouncements of English law: "Quant beastes savages le roye aler hors del forrest, le property est hors del roy . . . s'ilz sount hors del parke, capienti conceditur" (Blackstone, *Commentaries*, 17th ed., bk. II., cap. xxvii, n. 10).
The following passages leave the impression that contemporaries had rather vague notions as to the rights of the king over game which had strayed from forests and parks: "Quedam dama evasit de parco domini regis . . . et venit quidam homo domine Hugeline de Neville cum duobus leporariis, et prosequebatur dictam damam et cepit eam in campo de Pizeford, et duxit dictam venacionem secum in domo domine Hugeline. Set non possunt attachiari quia manent extra forestam." As an inquisition was held, it was evidently thought that an offence had been committed (Turner, p. 90, under the year 1250). "Dicunt per sacramentum suum quod homines comitis de Ferrariis fugaverunt unum brokettum dami infra libertatem usque ad aquam subtus Wodeford. Et brokettus ibi transivit aquam et resistit in quodam butimine extra Wodeford, et ibi custoditus fuit per villatam quousque Ricardus de Audewincle, viridarius, venit et per ipsum et per villatam ductus fuit ad forestam salvus et sanus" (*ibid.*, p. 105, under the year 1252).
2. Numerous examples of these grants are to be found in the close rolls.
3. Turner, pp. cix sqq

the other hand, though they were sometimes situated in districts which had formerly been forest, were not under the forest law. Provided that the king's hunting was not injured, a landowner was at liberty to make a park and hunt there at his pleasure.[1] Sometimes the king made a gracious present of bucks and does to stock a park.[2] As for the warrens in private hands, they were unenclosed tracts on a lord's demesne,[3] where he hunted other game than the beasts of the Forest—hares in particular, but also rabbits, foxes, wild cats, partridges, pheasants, and so forth. If noble game, like a buck, took refuge in a warren, the hunters might follow it there from outside without restriction, for it was not a beast of the warren. Warrens, as we have already said, were established by royal charter. Thus the abbot and monks of Battle had right of warren on all their lands by charter of William the Conqueror: they alone, that is to say, might hunt the beasts of the warren. It was laid down in these charters, that every breach of the right of warren was punishable by a fine of ten pounds to the king.[4]

Outside these various preserves, royal and other, it appears that the chase was free in England during the middle ages. On this point the evidence, though naturally meagre, is sufficiently convincing.[5] It was

1. Turner, pp. cxv sqq.
2. "Per breve, magister Simon de Wauton fecit capere in foresta de Rokingham octo damas et quatuor damos vivos, de dono domini regis, ad parcum suum instaurandum" (Anno 1253, *ibid.*, p. 106).
3. The king was in general opposed to the "elargacio" of a seignorial warren over the lands of the lord's free tenants or the lands of his neighbours (Turner, p. cxxv).
4. *Ibid.*, pp. cxxiii sqq.; cf. *Rot. Parl.* ii, 75 *b*.
5. As to lands where the chase was free, besides the documents cited by Turner (pp. cxxiii, n. 1, cxxviii, cxxx, cxxxiii) see *Rot. Parl.* i, 330a, no. 207, and in particular certain charters of disafforestment granted by John, notably the one in which he concedes the disafforestment of a district in Essex: "ita quod tota foresta infra predictas metas contenta et homines ibi manentes et heredes eorum sint deaforestati et liberi et soluti et quieti in perpetuum de nobis et heredibus nostris de omnibus que ad forestam et forestarios pertinent, *et quod capiant et habeant omnimodam venationem quam capere poterint infra predictas metas*" (*Rot. Chartarum*, ed. Hardy, p. 123. Cf. *ibid.*, pp. 122, 128, 132, 206).

only at the end of the fourteenth century that the idea—long entertained by the nobility[1]—of depriving the common people of the right to hunt game, made its appearance in English law.

Importance of the question of the right of the chase

In order to form an accurate estimate of the extent and validity of the grievances of the nation against the crown, future writers on the Forest will have to dispel the obscurity which surrounds this question of the right of the chase in England. And with their treatment of the Forest they must combine that of the warrens, just as the two are connected in article 48 of the Great Charter.[2]

The forest organisation

We come now to a subject which is better known—the organisation of the Forest at the time of its highest development, that is, during the rule of the first Plantagenets. Stubbs dealt with the subject;[3] but Mr. Turner's excellent study has given us more exact knowledge and corrected certain mistakes. From it we have drawn most of the short sketch which follows, and the reader may be referred to it for all that concerns the details of forest procedure.

The protection of the Forest

Nobody had the right, without royal permission,[4] to take any of the game, wood, or pasture of the Forest—not even the baron or freeholder on his own land, if that land lay within the bounds of a forest. "Those who dwell within the Forest," writes the author of the *Dialogus de Scaccario*, "do not take of their own wood, even for the necessities of their house, except under the view of those who are appointed to keep the Forest."[5] The right of cutting

1. Cf. Liebermann, *Pseudo-Cnut*, pp. 45, 47.

2. "Omnes male consuetudines de forestis et warennis, et de forestariis et warennariis . . ."

3. *Const. Hist.*, vol. i (ed. 1903), pp. 434 sqq.

4. For authorisations to make clearings or enclosures, and the preliminary inquiries, see W. R. Fisher, *Forest of Essex*, pp. 321–2. On permission to take game see below, pp. 187-188.

5. *Dialogus*, I. xi, pp. 102-3.

Trespasses to the vert: waste, assart, and purpresture

wood, whether for fuel or making repairs, was narrowly restricted: anyone who exceeded his customary rights committed the crime of "waste" (*vastum*); he had to pay a composition in order to keep the wood he had cut, and was amerced whenever the itinerant justices came round, until the damaged trees had grown to their former state. If trees were uprooted to turn woodland into arable or merely to gain a few square feet of soil, a fine was inflicted; and though the offender was not required to plant other trees, he had to pay a composition on every crop raised on this "assart." This system of converting a punishment into an annual rent and an offence into a permanent source of revenue is extremely characteristic. The chase was certainly the parent of the Forest, but it is nevertheless true that this institution quickly acquired a financial significance:[1] the king was even more concerned to secure an income at the expense of the inhabitants of the Forest than to prevent the destruction of wood. Furthermore, there was the crime of "purpresture," committed whenever, by enlarging a field, making a mill or a fishpond, a hedge or a ditch, anyone encroached on the domain of the king's deer or restricted their movements.[2] The offender was fined, and might only keep the land he had gained, or the works he had constructed, by payment of a further sum.

Trespasses to the venison

As for the destruction of game, it was punished more or less severely, according to the period, and it was guarded against by vexatious rules to which we shall return later.

1. [Much welcome light is thrown on forest finance by Miss Margaret L. Bazeley in her recently-published monograph, *The Forest of Dean in its Relations with the Crown during the Twelfth and Thirteenth Centuries* (Transactions of the Bristol and Gloucestershire Archæological Society, vol. xxxiii, pp. 153 sqq.). It appears that the financial resources of this forest were not properly exploited until the 13th century.]

2. *Porprestura* has the general meaning of "encroachment," "usurpation." See the passage from Glanvill cited by Du Cange, s.v. *porprendere*. A clear distinction was not always made between the offence of "assart" and that of "purpresture."

The supervision of the Forest and the punishment of offences were provided for by a complicated system of officials and institutions—functionaries appointed by the king, commissioners and jurors chosen by election, officers who held their posts by hereditary right, investigations by commissions of enquiry, local courts, and eyres of itinerant justices.

The forest officials

At the head of the forest administration we find the *capitalis forestarius* mentioned in the charter of 1217, or else two high dignitaries, who in the thirteenth century had the title of justices. From 1238 onward, it was usual for the Forest to be administered in this way by two justices, one for the district north, the other for that south, of the Trent.[1]

The head of the administration

Each of the forests, or each group of forests, was administered by an official who was called warden, bailiff, seneschal, or chief forester.[2] His post was sometimes hereditary,[3] but even in this case he might be removed. When the warden was appointed by letters patent, the same document often conferred on him the custody of the castle of the district.[4]

The wardens

Besides the warden, there were in most of the large forests one or more *forestarii de feodo, foresters de fé,* who likewise saw to the preservation of the vert and the venison, and executed the decisions of the itinerant justices. They

The foresters-in-fee

1. Turner, pp. xiv sqq. [Mr. Turner has printed a list of the justices of the forests south of the Trent (1217-1821) in *Eng. Hist. Rev.* 1903, pp. 112-116.]

2. Turner, pp. xvi sqq. On the rights possessed by the wardens see *ibid.*, pp. 66-7, and the passage quoted in the Introduction, p. xxi, n. 1. Cf. an interesting document of the fourteenth century (*Rot. Parl.* ii, 79). [In the French the official under discussion is termed the *chef-forestier*. Following Mr. Turner (Introd., p. xvi) I shall refer to him as the "warden."]

3. As in the case of John Fitz-Nigel, whose duties and rights were determined by an inquisition of 1266. In return for the profits which were guaranteed to him, he paid the king forty shillings a year and kept the forest of Bernwood (Turner, pp. 121-2).

4. Turner, *Introd.*, p. xvii. [See also Miss Bazeley's excellent account of the rights and duties of the warden in the Forest of Dean (*op. cit.* pp. 175—191).]

possessed certain rights over the Forest. Some, but not all, paid a ferm to the king.[1] They were not always bound to obey the warden.[2] Some, without doubt, had been enfeoffed by the king, and owed submission to him only; others had been enfeoffed by the warden.[3] Occasionally a whole forest would be put under the custody of a forester-in-fee; his office would then be merged in that of warden. An instance was the office of forester-in-fee of the forests of Somerset, which was held in the fourteenth century by the family of Mortimer.[4]

The ordinary foresters were game-keepers who pursued and arrested offenders. A distinction is often made between mounted foresters and under-foresters who went on foot.[5] They were chosen by the wardens, or, in some districts, by the foresters-in-fee, but they took an oath of fidelity to the king. There were also private foresters, called woodwards, who guarded the woods held by subjects within the limits of the Forest: they were bound by oath to preserve the vert and venison for the king's hunting; and if they failed to do so, the wood was confiscated. Each forest, moreover, had as a rule four *agistatores,* charged with the oversight of the *agistment* of the cattle and swine in the

Under-foresters

Woodwards

Agisters

1. Turner, pp. xxiii-iv, only touches upon the question of foresters-in-fee. Interesting details will be found in Greswell, *Forests of Somerset,* pp. 136 sqq. In *Fleta,* a legal treatise written about 1290, there are curious rules for the conduct of inquisitions concerning foresters-in-fee (*Fleta,* lib. ii. c. 41, § 30). [Miss Bazeley gives some particularly interesting information about the nine foresters-in-fee of the Forest of Dean (pp. 191 sqq.). See especially p. 194, where their possessions and obligations are tabulated. All paid an annual ferm to the king; but in the thirteenth century they could assert no warrant for their jurisdiction "nisi antiqua tenura."]

2. A warden, Henry Sturmy, declared in 1334 that all the *forestarii de feodo* in his forest owed him obedience (*Rot. Parl.* ii. 79). This was therefore not the invariable rule.

3 "Hugo de Stratford, quondam forestarius de feodo de balliva de Wakefeud, reddidit per annum domino Johanni de Nevyle, tunc senescallo foreste, pro predicta balliva, ad firmam, duas marcas et dimidiam," etc. (Turner, p. 123).

4. Greswell, pp. 150 sqq.

5. Fisher, *Forest of Essex,* p. 137; Greswell, p. 144.

woods and fields, and with the collection of the rents exacted for pasturage.[1]

The verderers belong to another class. They were knights or substantial landowners who had property in the Forest. They were elected in the county court, generally to the number of four in each forest, to attend the forest courts of justice. Once elected, they as a rule retained office for life.[2] Finally, the regarders were sworn knights,[3] charged with a temporary commission of enquiry. The functions of the verderers and regarders can best be understood by an examination of the working of the forest courts.[4]

Verderers

Regarders

Stubbs' sketch of the administration of justice in the Forest[5] is rather meagre and even wanting in accuracy. The swanimote, which he represents as a court of justice corresponding to the county court, was only an assembly of the foresters, held to make arrangements about the pasture, to receive the rents which it brought in, and to take precautions against injury to the deer during the fawning season.[6] There were really only two kinds of tribunals—the court of attachment, *attachiamentum,* held as a rule in each forest every six weeks, and the court of the itinerant justices of the forests, *justiciarii itinerantes ad placita foreste,* who held an eyre in each forest every few years. The functions of the court of attachment were rather

Forest justice. The swanimote

The court of attachment

1. Turner, pp. xx sqq., xxiv sqq., xxvi. Du Cange, s.v. *agistare.*
2. Turner, pp. xix-xx, xxvi.
3. [Turner, pp. lxxv sqq.]
4. In regard to the following section, see the details given by Coke, *Fourth Institute,* ed. 1644, ch. lxxiii, pp. 289—320; Turner, pp. xxvii sqq. A very clear summary is given by W. S. Holdsworth, *History of English Law,* i, 342 sqq.
5. Stubbs, *Const. Hist.,* i. 437 sqq.
6. This appears clearly from § 8 of Henry III's Charter of the Forest. The misapprehension as to the nature of the swanimote originated with Manwood; cf. Turner, pp. xxvii sqq. The term "swanimote" is, however, sometimes applied to the courts of attachment and to the forest inquisitions.

administrative than judicial.[1] Only minor trespasses against the vert were punished there: people who had cut boughs, for instance, might be sentenced to a fine of a few pence. Important cases concerning the vert, and all concerning the venison, went before the justices in eyre.

We must now glance at the preliminary proceedings in the cases which were brought before the itinerant justices. When the offender was not caught in the act by the foresters, there were several types of inquisition by which he might be discovered. As early as the twelfth century and perhaps before, there took place every three years the *visitatio nemorum* or "regard."[2] The regarders were twelve knights, appointed by the sheriff at the instance of the king. This commission of enquiry had to visit the Forest and investigate any offences that had been committed, basing their procedure on a list of questions which were called "chapters of the regard."[3] The chief chapters were those on assart, waste, and purpresture: others concerned the pasture on the demesne, the eyries of falcons and hawks, honey, forges and mines,[4] harbours,[5] the weapons and dogs of the inhabitants of the Forest.

The court of the itinerant justices: preliminary proceedings

The regard

1. *Attachiamentum* was the obligation to appear. The court of attachment was so called because its chief function was to "view the attachments" made by the foresters. "Et praeterea singulis annis quadraginta diebus per totum annum conveniant viridarii et forestarii ad videndum attachiamenta de foresta, tam de viridi quam de venacione, per presentacionem ipsorum forestariorum et coram ipsis attachiatis" (*Charter of the Forest,* § 8). At this court the attachments were enrolled, and the offenders found sureties for their appearance before the itinerant justices. Notwithstanding § 8 of the charter, Mr. Turner (pp. xxxv-vi) holds that as a rule the nomination of sureties was performed in the court of attachment only for trespasses against the vert, and not for those against the venison. See also p. xl.
2. "Imminente visitatione nemorum, quam reguardam vulgo dicunt, que tertio anno fit . . " (*Dial. de Scacc.* I. xi).
3. Turner, pp. lxxv-vi, mentions several versions of the chapters of the regard.
4. Because wood was needed to work forges and mines.
5. The records furnish instances of wood being stolen in a forest near the sea, and put on shipboard.

The special inquisition

As for poaching, at least from the beginning of the thirteenth century, and probably before, it was the occasion of special inquisitions which involved the whole countryside in trouble. If a beast of the Forest was found dead, an inquisition to discover the offender must be held by the four townships nearest the spot.

Imprisonment and pledges

Poachers detected by the inquisition of the four townships, or surprised in the fact, were generally kept under arrest until they had found sureties for their appearance before the justices in eyre. In this way they sometimes spent a year or more in gaol. Persons accused of trespasses to the vert might also, in certain cases, be kept in detention.[1]

Frequency of the eyre

The visitations of the justices were arranged by royal writ, nominating *justiciarii itinerantes* to hear and determine the pleas of the Forest in a particular county or group of counties. In the twelfth century the eyres occurred once in three years, since the regards took place at that interval and were held in view of the coming of the justices. In the time of Henry III they occurred about every seven years, like the eyres of crown pleas and common pleas; and the intervals between them became longer and longer.[2] The justices were persons of some eminence. One of the two Justices of the Forest was always of their number.

1. On this last point, see the details given by Turner, pp. xxiii sqq. According to the Assize attributed to Edward I, offenders against the vert were not liable to arrest and imprisonment until after their third "attachiamentum." (For the meaning of this word, see above.) "Post tercium attachiamentum corpus debet attachiari et retineri" (*Statutes*, i. 243). As a matter of fact, the itinerant justices of Edward I gave instructions in conformity with this rule: see the Provisions of the justices, at Nottingham, in 1287 (Turner, p. 63). Cf. the Assizes of Henry II and Richard I, cited below.
2. [See Miss Bazeley's list of eyres in Gloucestershire during the twelfth and thirteenth centuries (*op. cit.* p. 214). They were more frequent under Henry II than afterwards, though even at this early time, the intervals between them varied greatly. With respect to the thirteenth century, the list confirms the generalisations in the text.]

Procedure at the forest eyre

The itinerant justices dealt separately with the pleas of the vert and the pleas of the venison. The *presentment* was made by the foresters and verderers, not by a regular jury. The report of the inquisition was generally taken as sufficient proof of the facts; and it was seldom that the townships which had made the inquisition were required to come and confirm the evidence orally.

Punishments inflicted

In the thirteenth century convicted delinquents were fined, and if they did not pay, were sent back to prison till they found the money. If anyone cited failed to appear, he was summoned in the county court, and if he remained contumacious, was outlawed.

Extent of the Forest

To give a clear impression of the effects of this system of administration, it would be necessary to draw a map of the Forest at the beginning of the thirteenth century. In the present state of our knowledge this is impossible. But there is no doubt that the Forest comprised a good part of the realm. Foreigners and travellers noted with astonishment its enormous extent. The Italian Polydore Vergil, who crossed the Channel at the beginning of the sixteenth century, asserted that a third of England consisted of parks and forest, and a century later Moryson could still write that there were more deer in England than in all the rest of Europe.[1] The statement of Polydore Vergil is evidently a serious exaggeration, for it refers to a period subsequent to extensive disafforestments. But it might not be far from the truth if applied to the beginning of the thirteenth century. At that time indeed, before the disafforestments carried out by John, Henry III, and the three Edwards, there were only six counties out of thirty-nine which contained no Forest.[2] These consisted of a compact group of counties corresponding to the

1. Authorities cited by Greswell, p. 242.
2. Cf. the lists of counties in *Parl. Writs*, ed. Palgrave, i. 90-1, 396-7; and Turner, pp. xcvi n. 1, xcvii n. 3, xcix sqq., ciii n. 5, cvi sqq.

ancient East Anglia and its marches—Norfolk, Suffolk, Cambridgeshire, Bedfordshire, and Hertfordshire.[1] In another quarter there was Kent, to which one might, strictly speaking, add Middlesex.[2] In Kent, Norfolk and Suffolk, more than anywhere else, the rural population maintained its freedom after the Conquest,[3] and these were precisely the districts free from the forest law. On the other hand, thirty-three counties, representing six-sevenths of the area of the realm, contained forests, often of great extent. Essex, which was indeed an exceptional case, was entirely forest in the days of Henry I and Henry II.[4]

Effects of the forest system: i. economic

We can imagine the result of the state of things just described. The forests swarmed with game, and even in time of famine it was unlawful to touch it. It had freedom and protection, and might ravage the crops without fear of arrows. The very owners of the soil were forbidden to make clearings, on pain of fines and yearly compositions. A tenant was not allowed to follow his own wishes in the development of his land, even to the extent of making a hedge or ditch. The ancient customary rights which had formerly ensured to the Saxon peasant many advantages and some prosperity, were now pretexts for the infliction of fines; at a time when the cultivation of forage-crops was seldom practised, the law forbade the use of the grass-land and woods for the feeding of cattle; and one might not cut down a tree or a bough on one's own property, except under the surveillance of the all-powerful forester, with his vexatious restrictions and demands. It was within his power to make a family's

1. It is, however, not quite certain that the three last contained no forest. See on this Turner, p. cviii.

2. As we have seen, Middlesex contained a warren, which was under the forest law. It was suppressed in 1227 (Turner, p. cviii). There was no forest properly so called in the county.

3. Vinogradoff, *Villainage in England*, pp. 205 sqq., 218 sqq., 316.

4. J. H. Round, *Forest of Essex*, in the *Journal of the British Archæological Association*, new series, iii, 39.

lot intolerable, and in the event of opposition, to summon its members time after time before the court of attachment and ruin them by countless fines.

ii. political

It was not only in the economic sphere that the forest law made its effects felt. From a legal and political standpoint, the forests were a dangerous anomaly. They were withdrawn from the operation of the common law and of the custom of the realm, and governed by rules laid down in special assizes and ordinances. In them, too, there lived troops of royal officers, who alone were allowed to bear arms and who were pledged by oath to serve the interests of the king. The Forest was the stronghold of arbitrary power.

Such was the character of the Forest at the time of its greatest extent and influence. We thought it best to begin by describing it: we have now to account for its existence, and to trace its history from its rise to its decline. We shall be concerned in particular to show how the Forest, a natural outcome of the Conquest, became perhaps the most oppressive and the most hated of the institutions which the Norman and Angevin kings sought to impose on their subjects, and how it consequently strengthened the hostility of the barons, and furthered the union of the English against the despotic power of the crown.

(2)

ORIGIN OF THE FOREST. DEVELOPMENT OF THE SYSTEM UNDER THE FIRST THREE NORMAN KINGS.

Like all the rulers of their time, the Anglo-Saxon kings loved the chase and possessed game-preserves. They did not, however, establish a forest jurisdiction, with an administrative organisation, courts, and special laws.[1] It was from the continent that the forest system came, and it was the Norman conquerors who brought it over. It is in Frankish and Norman records that its origin should have been sought by English historians.[2]

In origin the Forest was not an English institution

No one can study the Carolingian capitularies which relate to the *Forestis* without being struck by the analogy or rather the clear connection which exists between them and the English Assizes of the Forest. Under Charles the Great and his immediate successors, the Forest was essentially a royal institution. The wood and the game were protected by "forestarii," and "if the king has given to any man one or more beasts in the Forest, he ought not to take more than has been given."[3] This Frankish institution of the *Forestis* did not disappear with the Carolingians. In the tenth and eleventh centuries the dukes and counts among whom Gaul was divided evidently revived it to their own advantage in all districts where there was plenty of wood

but Frankish

1. Liebermann, *Ueber Pseudo-Cnuts Constitutiones de Foresta*, pp. 14 sqq. Details in regard to Anglo-Saxon hunting will be found in Greswell, *op. cit.*, pp. 24 sqq.
2. See (in the recently-published *Mélanges* dedicated to M. Charles Bémont) an essay in which we devote special attention to the Franco-Norman Origins of the English Forest. A German scholar, Herr Hermann Thimme, has argued that the Frankish Forest consisted of arable and pastoral lands from which the inhabitants of the "mark" were excluded. (*Forestis, Konigsgut, und Konigsrecht*, in the *Archiv fur Urkundenforschung*, vol. ii, 1909, pp. 101–154). This paradox, we think, has been completely refuted in an essay which we have just written, and which we hope to publish in the *Bibliothèque de l'Ecole des Chartes*.
3. Boretius, *Capitul*, i, 172; see also pp. 86 sqq., 98, 291; vol. ii, 355.

and game. At all events, the dukes of Normandy had a Forest before the conquest of England.

Norman records of the eleventh century are meagre and scarce. They suffice to prove, however, that in certain woods, and even in woods granted by the duke to his subjects, larger game, such as the red-deer, roe, and wild-boar, was reserved for the duke's hunting, and the trees might be neither felled nor cut.[1] There were pleas of the Forest[2] and a forest law, and in the reign of duke Richard II the peasants rebelled in the hope of securing the free use of the woods and waters, in spite of the *jus ante statutum*.[3]

and Norman

When sources become more plentiful, at the beginning of the twelfth century, we find the administration of the Norman Forests very similar to the administration of those in England.[4] It is true that, by the time from which our authorities date, Normandy might have taken in her turn certain institutions which had sprung up in England. But in any case the beginnings of the Forest are prior to the union of Normandy and England; the Forest was a Frankish, not an Anglo-Saxon institution; and it was carried across the Channel by William I.

The forest system, introduced into England by a victorious dynasty which from the first was very powerful, soon made remarkable advances in this country. As we said in our study on the origins of the manor, the Norman Conquest was no passing storm for the

Brutal character of the Norman conquest

1. Charter of William the Conqueror for St. Etienne of Caen; Delisle, *Cartulaire normand*, no. 326.
2. Duke Robert's charter to Cerisy: Dugdale, *Monasticon*, ed. 1846, vii. 1073.
3. Guill. de Jumièges, V. ii. in Duchesne, *Hist. Normann. Scriptores*, p. 249. See also the *Cartulaire de St. Michel du Tréport*, ed. Laffleur de Karmaingant, no. 10.
4. See the studies by Leopold Delisle, *Des revenus publics en Normandie au xııe siècle*, Bibl. Ec. Chartes, vol. xi (1849); *Etude sur la condition de la classe agricole en Normandie*, (1851); M. Michel Prevost's monograph, *Etude sur la forêt de Roumare, Bull. de la Soc. d'émulation du Commerce et de l'Industrie de la Seine-Infér.*, 1903 (published separately, 1904); and also my study referred to above, p. 166, n. 2.

vanquished. Confiscations were numerous, and the small Saxon freeholder received a mortal blow.[1] This general estimate, which we adopt on the authority of the most learned students of the eleventh century, justifies us in regarding as probable and natural the accounts of chroniclers concerning the establishment of the Forest in England. The event which most impressed contemporaries was the making of the New Forest in Hampshire.[2] As everyone knows, William Rufus was killed by an arrow while hunting. Florence of Worcester, who died in 1118, declares that his fate was a stroke of divine vengeance, punishing the son for a sin committed by the father. For William the Conqueror, he says, to make the New Forest, had ruined a hitherto prosperous country, driven out the inhabitants, and destroyed houses and churches.[3] Later writers have enlarged on the same theme. Quite recently, however, the late Mr. F. H. M. Parker has called this story into question. According to him, William Rufus was the victim of a conspiracy: Henry I's complicity was not beyond doubt: and the story about divine vengeance was invented to remove suspicion.[4] Long ago the worthy David Hoüard, in his commentary on Littleton, affirmed in his academic style that William the Conqueror "did not resort to the excesses which some English historians cast in his teeth," and that it was "the monks" who gave him his bad reputation.[5] No purpose would be served here by a detailed discussion of Parker's article, sound as many of his comments are. It is enough to point out that Florence

The creation of the New Forest

Discussion of Florence of Worcester's account

1. See above, pp. 21 sqq.
2. See the details given by Freeman, *History of the Norman Conquest*, iv. 611 sqq.
3. Florence of Worcester (ed. Thorpe, Eng. Hist. Soc.), ii. 44-5.
4. *The Forest Laws and the Death of William Rufus* (*Engl. Hist. Rev.*, 1912, pp. 26 sqq.).
5. *Anciennes loix des François conservées dans les coutumes angloises recueillies par Littleton* (ed. 1766), i. 448.

of Worcester wrote too soon after the creation of the New Forest to risk so flagrant a falsehood, and that, even on the theory of a conspiracy, such a lie would have been very clumsy. William Rufus was universally hated, regarded as an enemy to God and man; if, as Parker supposes, there was a political motive for the circulation of a story of divine vengeance, it would have sufficed to recall the crimes and extortions of Rufus himself, and it was as clumsy as dangerous to assert facts which the enemies of the new king could have disproved. Finally, Henry I was himself a great hunter, and if Florence had been trying to please him, he would certainly have taken care not to represent the creation of the New Forest as a crime. His denunciations can therefore only be explained on grounds altogether opposed to those suggested by Mr. Parker. If, while on the subject of the death of Rufus, he brought in the ravages perpetrated by William the Conqueror, it was because contemporaries really remembered them, and connected the misdeeds of the father with the violent death of the son.

There is reason, however, for regarding the statement of Florence as an exaggeration. It has been shown that the district afforested in Hampshire was by no means entirely an inhabited and cultivated country. I am not speaking of the negative argument put forward by archæologists, who have found no traces of pre-Norman villages in this region: archæological arguments are only convincing when positive. But there is the evidence of Domesday Book, which has been examined by Mr. Baring. It shows that William I found in a corner of Hampshire 75,000 acres of almost deserted country, and of this he made a forest. He added, however, fifteen or twenty thousand acres of inhabited land, on which there were a score of villages and a dozen hamlets; and doubtless through fear of poaching, he evicted five hundred families, numbering about two thousand

Evidence of Domesday Book regarding the New Forest

persons. Later, the New Forest was further increased by between ten and twenty thousand acres, which were mainly covered with wood and thinly populated.[1]

William the Conqueror and his sons, therefore, made forests at their pleasure, without troubling much about the distress they caused. Of the utterly arbitrary nature of their policy, we may give another illustration, reported at an inquisition in a most naïve and certainly most sincere style. While travelling through Leicestershire, Henry I saw five hinds in Riseborough wood: he decided to afforest the wood, and left one of his servants to guard the game, the office afterwards passing to a Leicestershire man who held land in the neighbourhood. The wood in question was in a populous and cultivated district.[2] The famous articles concerning the forests in the charters of Henry I and Stephen prove clearly that the Forest continued to grow during the reigns of the first three Norman kings.[3] Under Henry I, the whole of Essex was subject to the forest law, including the hundred of

Arbitrary policy of the Norman kings

Continual growth of the Forest

1. Baring, *The Making of the New Forest* (*Engl. Hist. Rev.*, 1901, pp. 427 sqq.; 1912, pp. 513 sqq.) [The first article also separately in his *Domesday Tables* (1909), pp. 194—203.]
2. The inquisition was made in the reign of Henry III; the document is curious in more than one respect: "Cum rex Henricus primus . . . iturus fuisset versus partes aquilonares, transivit per quendam boscum, qui vocatur Riseberwe, qui boscus est in comitatu Leycestrie; et ibi vidit quinque bissas; qui statim precepit cuidam servienti suo nomine Pichardus quod in partibus illis moraretur usque ad reditum suum a partibus predictis et dictas bissas interim ad opus suum custodiret. Contigit autem quod infra annum illum dictus rex ibi non rediit; infra quem annum dictus Pichardus associavit se cuidam servienti euisdem patrie, qui vocabatur Hascullus de Athelakeston, ad cuius domum sepius conversabatur. Finito vero anno illo, postquam predictus rex rediit a partibus aquilonaribus, adiit dictus Pichardus regem predictum, dicens se nolle amplius ballivam predictam custodire. Et tunc requisitus ab ipso rege quis esset idoneus ad dictam ballivam custodiendam, respondit dicens quod dictus Hascullus, qui terras ibidem habuit vicinas et manens erat in eadem balliva. Et tunc dictus rex commisit Hascullo predicto dictam ballivam custodiendam scilicet forestariam de comitatu Leycestrie et similiter Rotelandie, qui eam custodivit toto tempore suo" (Turner, p. 45).
3. See the passages quoted in Stubbs, *Const. Hist.*, i. 435, notes 1 and 2.

Tendring, which was afterwards disafforested.[1] Henry I's contemporary, Ordericus Vitalis, asserts that he "claimed for himself the hunting of the beasts of the Forest in all England and hardly granted to a small number of nobles and friends the privilege of coursing in their own woods."[2] This is unquestionably a gross exaggeration.[3] What is proved by this passage is that, as other documents show, Henry extended the bounds of the Forest, and thus restricted the exercise of the right of hunting by reserving it to himself in lands which did not belong to the royal demesne. His object was to secure for himself the possession of huge game-preserves, and at the same time, no doubt, a substantial income of fines for forest offences.[4]

It is impossible, in the present state of our knowledge, to estimate the territorial extent of the Forest reign by reign. Nor is it much more possible to trace accurately the growth of the forest law and organisation. The records are so scanty, so vague, sometimes so difficult to date, that no indisputable conclusions can be reached. I am inclined to think that, in its essential features, the forest law was already formulated in Normandy before the Conquest and that William I established "the peace of his beasts"[5] on lines which were in general followed

The forest law under William I and William II

1. On the extent of the Forest in Essex, see Round, *The Forest of Essex*, in the *Journal of the British Archæological Association*, new series, iii. 37 sqq.
2. Ordericus Vitalis, ed. Aug. le Prevost, iv. 238.
3. Cf. the charter granted by Henry I to the citizens of London, *in fine*: "Et cives habeant fugationes ad fugandum, sicut melius et plenius habuerunt antecessores eorum, scilicet Ciltre et Middlesex et Sureie" (*Sel. Charters*, ed. H. W. C. Davis, pp. 129 sqq.).
4. Mr. Round, who emphasises strongly the fiscal character of the enlargement of the Forest, thinks that in the vast preserve constituted by the county of Essex, the kings seldom hunted outside the district of Waltham (*Forest of Essex*, p. 39).
5. This is stated by the Anglo-Saxon Chronicle (ed. Thorpe, i. 355). From William I's letter to the Londoners, forbidding them, unless individually authorised by the archbishop to chase the red-deer, roe, or any other game in Lanfranc's manor of Harrow, it is clear that besides the king, there were already subjects with special hunting rights. See J. H. Round's edition of this charter (*Londoners and the Chase*, in the *Athenæum*, 30 June, 1894, p. 838).

to the death of Henry I. The "baronies of the Forest" which he established for instance in Somerset, were no doubt instituted for purposes of political supervision, but they were also the origin of foresterships-in-fee which are found in existence in the next century.[1]

William Rufus unquestionably had officers who protected the game, made enquiry into encroachments, and imposed fines for trespasses against the venison, even in lands which were not part of the demesne.[2] In this reign the forest administration seemed so intolerable to small landowners and to the Saxon peasants, that William, to win their help against the rebellious Normans, promised, among other delusive concessions, to give up his forests; and with this hope before them, they supported him faithfully.[3]

Documents of the reign of Henry I. The "Leges Henrici primi"

We have rather more information as to the organisation of the Forest under Henry I. We must not indeed accept without hesitation the authority of the so-called *Leges Henrici Primi*. Dr. Liebermann, who has studied the collections of twelfth-century laws with great learning and insight, sees in them no more than traces of the legislation of Henry I.[4] He admits,[5] however, that, as the compiler states,[6] the Forest was reckoned as an appurtenance of the crown in the time of Henry I, and the seventeenth chapter of the *Leges*, composed of heads of chapters which summarise the powers of the forest courts, he considers to be a fragment of the instructions given by Henry to his justices of the Forest.[7] It appears

1. A *baronia Foreste*, held of William I *per servicium Foreste*, was the origin of the office of forester-in-fee in Somerset (Greswell, pp. 42 sqq., 85).
2. See the passages cited by Liebermann, *Ueber Pseudo-Cnuts Constitutiones de foresta*, p. 21.
3. See the passages cited in Stubbs, *Const. Hist.*, i. 321-2.
4. Liebermann, *op. cit.* p. 23.
5. *Ibid.*
6. "De iure regis. Hec sunt iura que rex Anglie solus et super omnes homines habet in terra sua . . . Foreste" (*Leges Hen. primi*, cap. x, § 1; in Liebermann, *Gesetze der Angelsachsen*, i. 556).
7. *Pseudo-Cnut*, p. 23.

from this chapter[1] that the holders of lands under the forest law were exposed to countless annoyances: the right of making clearings, of putting up buildings, of cutting wood, of carrying weapons, of keeping dogs, was already denied them or was subject to most irksome restrictions: they had to attend the forest courts when summoned, and to act as beaters when the king went hunting.

Charters of Henry I

Authentic documents of the time of Henry I, such as charters and the pipe roll, confirm the impression made by this chapter of the *Leges* and point to its trustworthiness. The charters show that the king had a staff of foresters, called *venatores, servientes, ministri*,[2] who not only had oversight of the royal Forest, but also strove to enlarge it, made themselves troublesome to the neighbouring landowners, and prevented them from hunting on their own estates and clearing their land.[3] The Charter of the Forest of 1217 proves that the "regard" was known in the days of Henry I, since, according to the fifth article, the "regarders" went "through the forests to make the regard at the time of the first coronation of Henry II"; and they had certainly not been instituted during the period of anarchy which followed Henry I's death.[4]

1. It runs as follows: "De Placito Forestarum. Placitum quoque forestarum multiplici satis est incommoditate vallatum: de essartis; de cesione; de combustione; de venacione; de gestacione arcus et iaculorum in foresta; de misera canum expeditacione; si quis ad stabilitam non venit; si quis pecuniam suam reclusam dimisit; de edificiis in foresta; de summonicionibus supersessis; de obviacione alicuius in foresta cum canibus; de corio vel carne inventa" (Liebermann, *Gesetze*, i. 559).
2. See the address of a charter of Henry I granting to the monastery of Abingdon the tithe of the venison taken in Windsor Forest: "Willelmo filio Walteri, et Croco venatori, et Ricardo servienti, et omnibus ministris de foresta Windesores" (*Historia monasterii de Abingdon*, ed. J. Stevenson, ii. 94).
3. "Henricus, rex Anglie, Croco venatori, salutem. Permitte lucrari terram monachorum Abbendone de Civelea et de Ualingeforda, illam scilicet que non noceat foreste mee et quod non sit de foresta mea" (*ibid.*, ii. 83). "Silvas de Bacchleia et Cumenora iste abbas Faritius a regis forestariorum causationibus funditus quietas et in eis capreorum venationem, regio obtinuit decreto" (*ibid.*, ii. 113).
4. See also the passage from the *Chronicon abbatiae Rameseiensis*, quoted below, p. 176, n. 4.

Finally the still extant pipe roll of the thirty-first year of Henry I's reign, claims particular attention.[1]

The pipe roll

This valuable document makes occasional mention of fines inflicted at the pleas of the Forest,[2] and for the counties of Essex and Hertford these form the matter of a special chapter entitled *De placitis foreste*.[3] The grounds for the sentence having no interest for the Exchequer, the accounts very seldom offer any valuable details. We find, however, evidence of collective fines paid by townships at the pleas of the Forest.[4] If these are compared with similar fines paid in the thirteenth century, they prove beyond question that, as early as the time of Henry I, when a beast of the Forest was found dead, the nearest township must discover the offender or else pay a fine. Such was evidently the content of the instructions concerning discoveries of the remains of game—under the heading: "De corio vel carne inventa"—in chapter xvii of the *Leges Henrici primi*.[5]

The forest Assize of Henry I

Finally these accounts prove beyond dispute that, under Henry I and perhaps before him, the justices of the Forest administered a written law, a forest assize, which contained a special prohibition against keeping greyhounds in the royal Forest.[6]

1. *Magnum rotulum Scaccarii vel magnum rotulum Pipae de anno 31° Henrici primi*, ed. Hunter, 1833.

2. For example, p. 49, under Surrey: "Albericus clericus compotum de xxxvi*s*. viii*d*. de placitis Rad. Bass. de foresta."

3. Pp. 157-159. The counties of Essex and Hertford had a single sheriff. It is doubtful, as was said above, whether Hertfordshire contained any forest.

4. "Et de xx*s* de villata de Benflet . . . Et de dimidia marca de villata de Dunton. Et de dimidia marca de villata de Mucking. Et de xx*s* de villata de Neuport," etc. (*ibid.*, p. 158).

5. See above, p. 173, n. 1.

6. "Gilbertus de Mustiers reddidit compotum de viii *li*. xl *d*. pro leporariis habitis *contra assisam*" (p. 158). On the meaning of the word "Assize," see Stubbs, *Const. Hist.*, i. 614 and note. We do not think that this word can simply mean "custom."

It would not, we think, be impossible to reconstruct this assize with some approach to accuracy. We can form no theory as to its date, and there are no grounds for ascribing it to Henry I rather than to William the Conqueror. But some notion of its contents may be gained by a study of the so-called Assize of Woodstock, which certainly does not belong entirely to the reign of Henry II.

The Assize of Woodstock contains material of earlier date

The Assize of Woodstock was several times edited by Stubbs. It is to be found in the *Gesta Henrici Secundi* ascribed to Benedict of Peterborough, and in the chronicle of Roger of Hoveden, while there are also separate copies of it.[1] Stubbs asserts that he failed to find a single satisfactory text, and indeed the wording of it is obscure, badly arranged, and sometimes inconsistent. It looks as if the text had never been officially fixed, and as if different copyists had strung together articles of various periods. The author of the *Gesta Henrici Secundi* gives only the earlier articles (1, 2, 3, 5 and 6). Roger of Hoveden does not quote the four last (13, 14, 15 and 16). In the first article the king announces his resolve to subject poachers to the cruel penalties of mutilation which had been inflicted in the time of his grandfather Henry I, whereas in the last he threatens them with imprisonment and fine only.

The twelfth article moreover begins with the words: *Apud Wodestoke rex precepit* . . . as if the preceding sections belonged to a period before the assembly at Woodstock. Stubbs believed that the version which appears in the *Gesta Henrici Secundi* was an ancient assize: additions would afterwards be made to it, and article 12 would be inserted last, at the time of the council

1. See the texts edited by Stubbs in *Gesta regis Henrici Secundi Benedicti abbatis* (R. S.), i. 323; *ibid.*, ii, Appendix iv, a text collated with two copies of the time of Elizabeth; Roger of Hoveden, *Chronicle* (R. S.), ii. 245 sqq.; *Sel. Charters*, pp. 186 sqq.

Clauses which date from the reign of Henry I

at Henry's hunting-lodge of Woodstock. This view appears to me unconvincing. In my opinion, it would be more plausible to regard as ancient clauses, dating at least from the days of Henry I, those to which parallels can be found in the sources referred to above—charters and accounts, survivals of Henry I's legislation, and chronicles of the first Norman reigns. On this hypothesis, the assize mentioned in the pipe roll of Henry I will have contained the prohibition to carry arms and to keep greyhounds in the Forest,[1] the order to mutilate the paws of dogs in all places where the peace of the king's beasts was established,[2] the prohibition against destroying the woods in the Forest,[3] the order for the triennial inspection of assarts, purprestures, and waste,[4] and the command that all the inhabitants of the district shall attend the pleas of the Forest.[5] These early rules are preserved, we think, in articles 2, 14, 3, 5, 10 and 11, of the Assize of Woodstock. Finally article 1 of that assize evidently alludes to the fact that under Henry I poachers were punished by blinding and castration,[6] and the old assize

1. Assize of Woodstock, § 2; cf. the passages from the *Leges Hen. primi* cited above, p. 173, n. 1 (de gestacione arcus et iaculorum in foresta . . . de obviacione alicuius in foresta cum canibus), and the passage from the Pipe Roll, *supra*, p. 174, n. 6.

2. Assize of Woodstock, § 14; cf. *Leges Hen. primi* (de misera canum expeditacione) and Ordericus Vitalis, ed. cit., iv. 238, (in reference to Henry I): " Pedes etiam canum, qui in vicino silvarum morabantur, ex parte precidi fecit." See also art. 6 of the Charter of the Forest of 1217, which mentions the practice as established at the accession of Henry II.

3. Assize of Woodstock, §§ 3 and 5; cf. *Leges Hen. primi* (de cesione, de combustione), and Henry I's writ to the huntsman Croc, *supra*, p. 173, n. 3.

4. Assize of Woodstock, § 10; cf. *Leges Hen. primi* (de essartis; . . . . de edificiis in foresta), and art. 5 of the Charter of the Forest of 1217, which takes us back to the accession of Henry II. William Rufus asserted his right to have the forests of the abbeys inspected by his foresters " de bestiis et de essartis " (*Chron. abbatiae Rameseiensis*, ed. Macray, p. 210). Henry I exempted an estate of the abbey of Ramsey, " de visionibus forestarum et essartis " (*ibid.*, p. 214).

5. Assize of Woodstock, § 11; cf. *Leges Hen. primi* . . . " de summonicionibus supersessis."

6. The text of the Assize of Woodstock in the *Gesta Henrici Secundi* (i. 323) is the only one which specifies " ut amittat oculos et testiculos." In his *Select Charters*, Stubbs gives the milder version of other copyists.

perhaps enjoined this penalty. In any case it must have resembled the assizes of Henry II and Richard I in entirely forbidding any interference with the king's beasts.[1]

It is clear that Henry I was faithful to the declaration of his coronation Charter: he " retained the Forest in his hand." He moreover enlarged it and probably increased rather than lightened the severity of the forest law.

The exercise of the right of the chase, at the time when Henry I ruled in England and Louis VI was king of France, may be cited as a typical example of the power of the Norman kings and the weakness of the Capetians. In France the right belonged in theory to all the *hauts justiciers* and to those on whom they had conferred it; but in practice it had often been acquired by force and in that case had no other foundation than immemorial possession, or " seisin." It was distributed in an extremely complicated and perplexing way, and was the object of numerous claims and negotiations. The king had forests and warrens, with an administrative system and foresters; but with respect to the chase, his prerogative cannot be clearly differentiated from the rights of particular nobles, bishops, or even, in some cases, urban or rural communities. He might possess hunting rights on land outside his demesne, but within the demesne there were chases which did not belong to him. He had the privilege of hunting in many forests which belonged to the Church, but there were others of these where the hunting was in the hands of a lay lord. It was only after the beginning

Comparison with France

1. I do not venture to suggest a date for the remarkable thirteenth article, which lays down that every man dwelling "infra pacem venationis" shall at the age of twelve swear to the peace of the venison. The end of the clause (et clerici laicum feodum tenentes) is apparently a later addition, which may be attributed to Henry II. There is here an evident echo of Anglo-Saxon custom: according to the laws of Cnut, every man of the age of twelve must swear not to be a thief (Liebermann, *Gesetze*, i. 324-5).

of the reign of St. Louis that the king claimed superior rights in respect of warren.[1]

With the death of Henry I and the accession of Stephen, a chapter in the history of the Forest comes to an end. Up to this time, its bounds were continually advancing, and its law was becoming, as it seems, more and more oppressive. From now to the end of the Middle Ages, periods of decline and progress succeed one another, according as the power of the crown wanes or waxes. The "disafforestments" soon begin, interrupted by new afforestations. The forest law, systematised by the lawyers, but feebly defended by them—doubtless because it was scarcely defensible—soon undergoes violent attacks at the hands of the nobles, and from the reign of John gradually decays. Its history is now bound up with the history of the Constitution, until, having become harmless, it ceases to be the theme of complaints and falls into obscurity.

1. It is impossible to cite here the very numerous documents on which the last paragraph is based. They are drawn from royal records and those of the *Parlement* of Paris, from the *Enquêtes* of St. Louis, from Cartularies, and so forth. They will be cited in an essay on *The Forest and the Right of the Chase in France,* which we hope to publish in 1915.

(3)

THE FOREST UNDER THE ANGEVINS.

Disafforestment under Stephen

In the charter which he granted in March or April 1136, Stephen pledged himself to restore "to the churches and to the realm" the forests which Henry I had added to those of William I and William II.[1] It has been proved that he partially redeemed his promise, though he exacted payment for the disafforestments.[2] Soon, however, there was no need to buy his consent: the civil war reduced him to impotence; and everyone was free to chase the king's deer and make encroachments on his Forest.[3]

Henry II restores the forest jurisdiction

After these years of anarchy came a reign marked by the increase of royal power and the making of new laws. A great hunter, Henry II was at the same time an administrator, a jurist, and a vigorous and strong-willed ruler. In the charter which he issued after his coronation, he confirmed the liberties and grants bestowed by his grandfather, Henry I, but said nothing about those conceded by Stephen. His silence has been explained on the ground that he regarded as excessive the advantages conferred on the Church.[4] But without doubt he had equally strong objections to the disafforestments promised in Stephen's charter. Indeed he resumed the lands which, whether by virtue of the charter of 1136 or in the confusion of the civil war, had been disafforested in the reign of his feeble

1. Stubbs, *Const. Hist.*, i. 348; [*Sel. Charters*, pp. 143 sqq.]
2. Round, *Forest of Essex*, pp. 37–8. Stubbs' statement (*Const. Hist.*, i. 348) that Stephen "kept none of these promises," is therefore too strong. See also *op. cit.*, p. 349
3. See the instances mentioned by Round, *Geoffrey de Mandeville*, p. 376, *Forest of Essex*, p. 39.
4. Bémont, *Chartes des libertés anglaises*, Introd. xv. n. 1.

predecessor; and he also made some entirely new additions to the Forest, which under his rule became larger than ever.[1] The pipe rolls prove that he derived large sums from it through judicial fines and rents exacted as compensation for encroachments.[2]

Theories of the lawyers

The royal officials set themselves to formulate a legal theory of the Forest. In the *Dialogus de Scaccario*, as we have seen, Richard Fitz-Neal, the treasurer, examined the forest organisation, though without trying to justify it on other grounds than the good pleasure of the king. The *Constitutiones de Foresta* attributed to Cnut are an apocryphal work of slightly different tendency, written probably at the end of Henry II's reign by one of his foresters.[3] The Forest, it seems, roused interest enough in the jurists for one of them to devote himself to forging a document in its honour.

Henry II's Assize

In these conditions it was natural that a law-giving king should publish an Assize of the Forest. This he did at Woodstock in the latter part of his reign. In a sixteenth-century copy the document is entitled: "Assize of the lord King Henry touching his Forest and his venison, by the counsel and consent of the archbishops, bishops and barons, earls, and nobles, at Woodstock." [4] We have

1. Charter of the Forest of 1217, § 1: "Omnes foreste quas Henricus rex avus noster afforestavit." See below (p. 215, n. 4) the passage from the royal letters of 1227: ". . . tam bosci quos ipse ad forestam revocavit quam illi quos de novo afforestavit." It is scarcely necessary to say that in the reign of Henry II, as evidently at other times, the foresters played a great part in determining the territorial extent of the Forest, and that its continued growth was due in great measure to their initiative. Cf. the letters of Henry III published by Turner, p. xcvi: ". . . et que foreste afforestate fuerunt per Henricum regem avum nostrum tempore Alani de Neville vel tempore aliorum forestariorum suorum, de voluntate ipsius regis vel de voluntate aliorum forestariorum suorum."

2. Under the head of assarts, Essex in one year brought in 215 *l.* 18 *s.* (Round, *Forest of Essex*, p. 39).

3. Liebermann, *Pseudo-Cnut*, pp. 32, 35, 37.

4. The title is given (of course in Latin) in *MS. Cotton Vespasian*, F. iv (Roger of Hoveden, ed. Stubbs, ii. 245, n. 2).

tried to prove that part of this assize must have been derived from a more ancient assize mentioned in the pipe roll of the thirty-first year of Henry I. But most of the articles certainly bear the mark of the administration of Henry II. Such are articles 4, 6, 7, 8, on the oversight of the Forests and the pledges demanded from the foresters, those included who were appointed by individuals to guard private woods within the forest boundaries.

Check on the foresters

Henry II's foresters were zealous and greatly feared. Even villeins were at times appointed to the position.[1] Henry took care to protect his forest officials, and in 1175 four knights were hanged for killing one of them.[2] At the same time he would tolerate no corrupt dealings, as is shown by the famous instructions which have been published under the title of the Inquest of Sheriffs.[3] The first and the last articles of the Assize of Woodstock probably belong also to the reign of Henry II, despite the fact that they contradict each other as to the punishment to be inflicted on poachers—a point to which we shall return later. Article 12, which inflicts imprisonment on a delinquent after his third offence, begins with words—"at Woodstock the king ordained"—which leave no doubt as to its origin. Finally, it was certainly Henry II who drew up article 9, one of the most characteristic and important of the assize—the article concerning clerical offenders.

Penalties

1. "Ex servis forestarios super provincias constituit" (Ralph Niger, quoted by Liebermann, *Pseudo-Cnut*, p. 28).

2. *Gesta Henrici II*, i. 93-4.

3. *Inquest of Sheriffs*, art. 8, in *Sel. Charters*, p. 177: "Et inquiratur quid vel quantum acceperint forestarii vel baillivi vel ministri eorum, post terminum praedictum, in baillivis suis, quocunque modo illud ceperint vel quacunque occasione; et si quid perdonaverint de rectis regis pro praemio vel promissione vel pro amicitia aliqua . . . et si forestarii vel baillivi eorum aliquem ceperint vel attachiaverint per vadium et plegium, vel retaverint, et postea sine judicio per se relaxaverint . . ." On this Inquest, ordered by Henry II in 1170, after an absence of four years from England, see Stubbs, *Const. Hist.*, i. 510 sqq., and *Sel. Charters*, pp. 174 sqq.

The king, this article states, "forbids any clerk to trespass against his venison or his forests; he has strictly ordered his foresters, if they find clerks trespassing, to seize them without hesitation, keep them in custody and attach them; and he himself will be their warranty." Thus the clergy, though withdrawn from the jurisdiction of the common law, came under that of the Forest. Some years before, in 1175, Henry II had commanded that all persons should be sought out who, taking advantage of the rising of his sons, had chased the king's venison. Many clerks were accused and brought before the temporal courts; the papal legate, Hugo Pierleoni, raised no protest: it was understood between him and the king that the clergy, though in general exempt from secular justice, should lose their privilege in the case of forest offences.[1] Such was the origin of the ninth article of the Assize of Woodstock. From the point of view of Henry's interests, this clause was certainly unwise. The Church was the mistress of public opinion, and it was a mistake to arouse her enmity. The clergy never forgave the legate for his compliance,[2] and the forest system became a theme for clerical invective. So at least we may infer from a story told by Walter Map, one of Henry's itinerant justices. The bishop of Lincoln, St. Hugh, who had so great a moral influence at this time, said one day to Henry II that poor men oppressed by the foresters would enter paradise, but that the king and the

Clerical offenders

Hostility of the Church towards the foresters

1. Ralph de Diceto, *Ymagines historiarum,* ed. Stubbs (R. S.), i. 402-3. See the passage from Henry II's letter to the pope quoted in Stubbs, *Const. Hist.*, i. 436, n. 4. On the severity with which the offences of 1175 were punished, cf. *ibid.*, p. 521.

2. *Gesta Hen. II,* i. 105: "Praedictus cardinalis, qui in Angliam per mandatum regis venerat, concessit et dedit domino regi licentiam implacitandi clericos regni sui de forestis suis et de captione venationum. Ecce membrum Sathane! Ecce ipsius Sathanae conductus satelles! qui tam subito factus de pastore raptor, videns lupum venientem, fugit et dimisit oves sibi a summo pontifice commissas."

forestarii would remain *foris,* outside.[1] No doubt the pun had a great vogue, and reappeared in many sermons where the foresters were abused. The author of the *Magna vita sancti Hugonis* declares that in his zeal against the foresters, enemies of the liberties of the Church, St. Hugh went so far as to excommunicate Geoffrey, the *summus forestarius* [2] If Henry II had winked at some of the deer-stealing and encroachments of the monks, he would perhaps have secured a little more peace for his successors.[3]

Richard I—or rather those who governed England for

1. "[The beginning is wanting] . . . verumtamen venatores hominum, quibus judicium est datum de vita vel de morte ferarum, mortiferi, comparatione quorum Minos est misericors, Rhadamanthus rationem amans, Aeacus aequanimis, nihil in his laetum nec letiferum. Hos Hugo, prior Selewude, iam electus Lincolniae, reperit repulsos ab ostio thalami regis quos ut obiurgare vidit insolenter et indigne ferre, miratus ait: 'Qui vos?' Responderunt: 'Forestarii sumus.' Ait illis 'Forestarii foris stent.' Quod rex interius audiens risit, et exivit obviam ei. Cui prior: 'Vos tangit haec parabola, quia, pauperibus quos hii torquent paradisum ingressis, cum forestariis foris stabitis.' Rex autem hoc verbum serium habuit pro ridiculo, et ut Salomon excelsa non abstulit, forestarios non delevit, sed adhuc nunc post mortem suam sitant coram leviatan carnes hominum et sanguinem bibunt; excelsa struunt, quae nisi Dominus in manu forti non destruxerit, non auferuntur hii. Dominum sibi praesentem timent et placant, dominum quem non vident offendere non metuentes. Non dico quin multi viri timorati, boni et iusti, nobiscum involvantur in curia, nec quia aliqui sint in hac valle miseriae iudices misericordiae, sed secundum maiorem et insaniorem loquor aciem." (Map, *De nugis curialium,* ed. Wright, pp. 7-8.) The author of the *Magna Vita Sancti Hugonis* reports the saint's pun, but without mentioning the king: "Recte homines isti et satis proprie nuncupantur forestarii, foris namque stabunt a regno Dei" (ed. Dimock, p. 176).

2. "Est . . . inter alias abusionum pestes, prima in regno Anglorum tyrannidis forestariorum pestis videlicet provinciales depopulans. Huic violentia pro lege est, rapina in laude, aequitas execrabilis, innocentia reatus. Huius immanitatem mali nulla conditio, gradus nullus, nec quisquam, ut totum breviter exprimamus, rege inferior, evasit indemnis, quem illius iniuriosa iurisdictio non saepe tentasset elidere. Hac cum pernicie primus Hugoni congressus fuit . . . Cum enim, more solito, ut in caeteros, ita et in suos homines, contra ecclesiae suae libertatem, forestarii debacchari coepissent, eo usque res tandem processit, ut summum regis forestarium, nomine Galfridum, excommunicationis vinculo innodaret. Quo rex comperto vehementem exarsit in iram" (*Magna vita S. Hugonis,* ed. cit., pp. 125-6).

3. On the procedure followed in the case of clerical offenders during the thirteenth century, and the complaints put forward by the clergy in 1257, see Turner, pp. lxxxvii sqq.

him during his long absences[1]—and his successor John maintained the severities of the forest law, and by extending the bounds of the forests made it yet more burdensome.[2] When the barons rose against John and had him at their mercy, they contemplated demanding the immediate reform of the Forest. We have already reprinted and discussed certain notes of an agent of Philip Augustus, which, under the title of "concessions of King John," throw much light on the negotiations between the king and the barons, and on the first demands presented by the latter. Out of a dozen articles, three are concerned with the Forest: and the impression of Philip's agent was that the barons demanded the surrender of all the forests created by John, Richard I, and Henry II; liberty for individuals to take wood for their own use in the parts of the Forest which they held; a rule as to the powers of the foresters in these same private woods; and the abolition of punishment by death or mutilation for trespasses to the venison.[3] The barons, however, let slip this opportunity of ending the tyranny of the forest system.

The Forest under Richard I and John

Original demands of the barons

As a matter of fact, they inserted in their petition and in the Great Charter only two clauses specifically affect-

1. On the Forest under Richard I, see Hoveden, iv. 63. At the pleas of the Forest in 1198, the justices read certain "praecepta regis" which repeated (see the text in Hoveden, pp. 63 sqq.) Henry II's Assize, and added several articles to it (arts. xiii, xiv, xvi). Trespasses to the venison, according to the Assize of 1198, were punished by blinding and castration (art. xiv.) A charter of Richard in favour of Ramsey abbey (*Cartularium monasterii de Rameseia,* ii. 296, no. 422) shows that the Church obtained some relaxation of the forest law only as an exceptional privilege.

2. The Great Charter alludes to afforestations made by John and Richard (arts. 47 and 53). In the "perambulationes" published by Mr. Turner (pp. 116 sqq.) and by Mr. Greswell (*Forests of Somerset,* pp. 272 sqq.) there are instances of afforestations made by John. On the other hand, as we shall see later (pp. 212 sqq.), there were disafforestments carried out by Richard and John, or at least promised by them, in return for money.

3. See above, pp. 124 sqq.

ing the Forest: the king promised to abandon the forests made by himself,[1] without formally pledging himself to abandon those made by Richard and Henry II;[2] and, secondly, the arbitrary summons to the pleas of the Forest of those who dwelt outside its limits, was to be forbidden.[3] In addition the barons adopted a plan which threatened the whole system. They wanted to do away with the abuses which made the Forest intolerable, and which varied to a small extent in different parts; and fearing lest some might be overlooked and spared, they demanded the appointment of elected juries to hold inquisitions in every county regarding "all the evil customs touching forests, warrens, foresters, and warreners";[4] the twelve sworn knights were even charged with the complete and irrevocable suppression of these evil customs within the fifteen days following the inquisition. The king had to accept this Draconian clause, and only obtained, at the last moment, the concession that he should receive notice before the abolition of any evil custom was announced.[5] As early as 19 June, the real date of the conclusion of peace between John and the barons,[6] he called upon the sheriffs to cause these juries to be elected in every county;[7] and another writ of 27 June shows that the knights were at once chosen, and that they were considered as local representatives of the committee of twenty-five barons.[8]

Clauses in the Great Charter

Enquiry into the forests and warrens

1. Articles of the Barons, § 47; Magna Carta, § 47: "Omnes foreste que afforestate sunt tempore nostro statim deafforestentur."
2. He promised that complaints on this point should be impartially considered after his return from crusade (Magna Carta, § 53).
3. Articles of the Barons, § 39; Magna Carta, § 44.
4. They added "and rivers." See also § 47 of the Articles and of Magna Carta as to the disafforestment of rivers preserved by John. But the question of fishing played only a minor part, and was put on one side in the Charter of the Forest.
5. Articles of the Barons, § 39; Magna Carta, § 48.
6. MacKechnie, *Magna Carta,* p. 47.
7. *Sel. Charters,* p. 303; MacKechnie, *op. cit.,* pp. 576-7.
8. MacKechnie, p. 577; the French text is in Bémont, *Chartes,* p. xxiv n.

There can be no doubt that the barons were aiming at little or nothing less than the suppression of the Forest jurisdiction. The king and his advisers were themselves so sure of it that they asked the clergy to step in to give article 48 the interpretation least injurious to the crown. Though assuredly the defence of the forest law was little to their interest, eight bishops agreed to sign a declaration which is preserved in the close rolls: they testify that this article was understood by the two parties in such a sense that all customs essential to the existence of the Forest ought to be maintained.[1]

Attempted abolition of the Forest

This conciliatory interpretation would certainly not have convinced the barons and the knights on the juries. It was the civil war and John's death that saved the Forest. In the confirmation of the Great Charter issued after the accession of Henry III (on 12 Nov. 1216), the immediate disafforestment of the forests made by John was promised: but the articles of Magna Carta concerning "forests and foresters, warrens and warreners" were placed among the "difficult and doubtful" clauses which demanded consideration.[2] Nothing more was heard of committing the reform of abuses to those who suffered from them and who would doubtless have left in existence next to nothing of an institution they detested.

The Forest saved by the civil war

1. ". . . Articulus iste ita intellectus fuit ex utraque parte, quum de eo tractabitur, et expressus, quod omnes consuetudines ille remanere debent, sine quibus foreste servari non possint: et hoc presentibus litteris protestamur." The signatures include the names of the bishops of Winchester, Worcester, and Bath, who to the end remained faithful to John, and of the archbishops of Canterbury and Dublin, and the bishops of London, Lincoln, and Coventry. (Rymer, ed. 1816, vol. i, pt. i, 134).
2. Charter of 1216, § 42, in *Sel. Charters*, p. 339.

(4)

THE CHARTER OF THE FOREST OF 1217.

The wise men who governed in behalf of the infant Henry III made what concessions were inevitable, and as early as 6 November, 1217, published the Charter of the Forest.[1] An examination of this document is particularly instructive.

The Charter of the Forest: 6 Nov., 1217

The personal privileges of the king were curtailed by articles 11 and 13. In the twelfth century, hunting was a pleasure which certain kings were loth to allow their barons to enjoy. Henry I was accused of wishing to restrict it almost entirely to himself. On the other hand, John, notwithstanding certain vagaries[2] which can be sufficiently explained by his capricious and despotic character, made considerable use of the Forest to reward services or gain partisans.[3] He went so far as to permit his barons to hunt in the forest country administered by Brian de l'Isle, when they were passing through it, adding: "We possess our forests and our venison not for ourself only, but also for our subjects." He merely ordered Brian de l'Isle to ascertain who made use of the privilege and what was taken.[4] It may be said that

Royal rights curtailed. i. Licence to hunt in the Forest

1. Bémont, *Chartes*, pp. 64 sqq.; Stubbs, *Sel. Charters*, pp. 344 sqq. For a refutation of Roger of Wendover's statement that the first Charter of the Forest was published by John, see Richard Thomson's *Historical Essay on the Magna Charta* (1829), pp. 237-8.
2. As when in 1209, for example, he forbade "the taking of birds throughout all England." Cf. on this passage from Roger of Wendover, Turner, p. ciii, and Greswell, p. 70.
3. For examples of these grants to individuals, see Fisher, *Forest of Essex*, pp. 199 sqq.
4. *Rotuli Lit Claus.* (ed. Hardy), i. 85.

the principle laid down in this letter was confirmed in the eleventh article of the Charter of the Forest: every archbishop, bishop, earl, or baron passing through the Forest, might take one or two head of venison under the oversight of the forester.

ii. Eyries and honey

Another privilege of the king was that of reserving for himself, throughout the realm, the eyries of the fowl of the Forest—hawks, falcons, eagles, and herons—and the wild honey found in the woods. The Norman kings had in this case apparently brought over and converted into a royal prerogative a right which in France every lord seems to have enjoyed on his estates.[1] By article 13 of the Charter of the Forest, Henry III renounced these claims: every free man might have the eyries and the honey found in his woods. The high prices which were paid for the birds used in hawking, and the extensive use made of honey and wax, gave much importance to this concession.

Measures against poachers maintained

In the letter to Brian de l'Isle, mentioned above, John stated that the beasts of the Forest had more to fear from thieves than from the barons. All manner of precautions were taken against poaching by the inhabitants of the Forest or by dogs. In the pleas of 1209 which have been printed by Mr. Turner, we read of poachers chased by the foresters, of inhabitants of the Forest prosecuted for possessing arms without permission or for having eaten of the venison, and also of dogs which have been caught hunting on their own account and which are to be produced before the justices.[2] As on the continent, the

1. *Capitul. de Villis*, § 36 (Boretius, i. 86); *Summa de legibus Normanniae* (13th century) in J. Tardif, *Coutumiers de Normandie*, ii. 12 sqq.; and an ordinance of Charles VI: ". . . Retinemus nobis . . . omnes nidos avium nobilium" (*Ordonnances*, viii. 162). If a swarm of bees was found, it became the property of the lord who had the exercise of *haut justice* (see De Maulde, *Condition Forestière de l'Orléanais*, p. 227; also a document of 1259 in *Layettes du Trésor des Chartes*, iii. no. 4474.

2. Turner, pp. 2 sqq.

forest law compelled the inhabitants of the Forest to mutilate the fore-paws of their dogs.[1] The foresters profited by this rule to levy arbitrary fines, and would confiscate a peasant's ox if his dog could still trot, however haltingly. In the Charter of the Forest, the only alleviation granted was that the "lawing" of dogs should be confined to the districts where it was customary at the accession of Henry II; that it should be performed according to a fixed rule, and inspected by a jury at the time of the regards; and finally that no more than a three-shilling fine should be imposed on offenders. The law against carrying or possessing weapons remained in force for the inhabitants of the Forest.

Regulation of the lawing of dogs

Change in the law on purpresture

Mention has been made of the annoyances inflicted on the pretext of protecting the trees and pastures. Articles 9 and 12 of the Charter, which were certainly regarded as among the most valuable, restored to dwellers in the Forest some of the rights of which they had been deprived. They might make mills, fish-ponds, pools, marl-pits, or ditches, clear their lands outside the covert (art. 12), and use at pleasure their own woods for feeding pigs (art. 9). Finally they were relieved of their annual payments to the Treasury for such purprestures, wastes, or assarts as had been made from the accession of Henry II to the second year of Henry III. But the law against touching the trees

Amnesty for trespassers to the vert

1. On the "expeditatio canum," see Fisher, *Forest of Essex*, pp. 226 sqq. Du Cange, s.v. *expeditare*, cites only English authorities for this practice. But the custom of mutilating dogs, or at all events of hobbling them, on land preserved for hunting, was known on the continent. Cf. a charter of Aymeri, vicomte de Thouars, of the year 1229: "Canes vero rusticorum manencium infra metas garene nostre, de duabus magistris unciis unius pedis anterioris mutilabuntur" (*Cartulaires du Bas-Poitou*, published by Marchegay, p. 39). See also the custom of Hesdin in Richebourg, *Nouveau Coutumier Général*, vol. i, pt. i, 337; Sander Pierron, *Hist. de la Forêt de Soigne*, p. 253, etc. For Belgium, see on this subject, a work of A. Faider, which, however, is not on the whole to be recommended: *Hist. du droit de chasse et de la législation sur la chasse en Belgique, France, Angleterre, Allemagne, Italie, et Hollande*, pp. 32, 39, 71, 161.

was maintained, and new offences of waste or assart were to be punished by the usual amercements.[1]

Safeguards against abuses

There had been bitter complaints of the irregularity, the arbitrariness, and the abuses of forest justice. By article 16, custodians of castles and other local officers, who had their friends and enemies, were forbidden to hold the pleas of the Forest. The pleas of the vert and the venison, enrolled and attested by the seals of the verderers, were to be presented to the *capitalis forestarius* on eyre, and tried before him alone. The assizes of the twelfth century,[2] moreover, had insisted on the presence at the forest pleas of all the inhabitants of the county. Although this demand was liable to interpretations which diminished its rigour,[3] it clearly gave occasion for the levy of lucrative fines from various defaulters; and this was one of the abuses of which the suppression was demanded by the barons in their petition of 1215. They asked that the summons of the justices should not include inhabitants of the county dwelling outside the Forest, except those who were under accusation or had stood surety for offenders. This thirty-ninth article of the Petition was copied almost word for word in the Charter of the Forest (art. 2). In the same way, the meetings of the swanimote for the regulation of the pasture served as a pretext for fining the absent: but the presence of the

Attendance at the forest courts

1. "Qui de cetero vastum, purpresturam vel assartum sine licentia nostra in illis fecerint, de vastis et assartis respondeant" (art. 4). The words "de purpresturis" are omitted; but there is no doubt that this is merely due to careless drafting. Article 12 did away in great measure with the crime of purpresture, but it did not authorise the making of new enclosures without permission; in the thirteenth century the justices had the fences of such pulled down and amerced the offender; see the examples in Turner, p. lxxxii.

2. Assize of Woodstock, § 11 (*Sel. Charters*, p. 188). Assize of Richard I, § 12 (Hoveden, iv. 64).

3. This is proved by the following verdict returned in 1209 at the pleas of Rutland and Leicestershire: "Veredictum militum comitatus Rotelandie quod ad summonicionem iusticiariorum de foresta venire debent ad placita foreste omnes de comitatu Leicestrie comuniter qui manent extra forestam ad distanciam duarum leucarum" (Turner, p. 6).

general public was not necessary, and the Charter lays down that they shall not be forced to attend (art. 8).

Abandonment of the penalties of death and mutilation

Among the most famous articles are 10 and 15, dealing with punishments and outlaws: "No one shall henceforth lose life or members for the sake of our venison; but if anyone has been arrested and convicted of the taking of venison, he shall pay a heavy ransom if he has wherewith to redeem himself; and if he has not wherewith to redeem himself, he shall lie in our prison for a year and a day; and if after a year and a day he can find pledges, he shall go out of prison; but if not, he shall abjure the realm of England." "All who have been outlawed for the sake of the Forest only, from the time of king Henry our grandfather to our first coronation, shall come into our peace without hindrance, and shall find safe pledges that they will not henceforth offend against us touching our Forest." In future, then, banishment was the worst that could befall the poacher who had killed the king's deer; and an amnesty threw the realm open to those who had previously been exiled for this offence.

Previous practice

The barons

It is possible to determine with more or less exactness the nature of the penalties actually inflicted in the twelfth century, and consequently the value of article 10 of the Charter. As for the barons, they had the privilege, in the twelfth as in the thirteenth century, of being tried only in the king's court: a heavy fine at the king's mercy was their worst possible fate if they hunted his deer.[1] It remains to enquire whether death, mutilation, or banishment awaited offenders who were not barons.

The chroniclers under the first Norman kings accuse William the Conqueror and Henry I of having punished

1. See the case of Robert Corbet in 1209 (*Select Pleas*, p. 8). See also *Gesta Hen. II*, i. 94. The author of the *Constitutiones Cnuti de foresta* states the principle which was applied in the twelfth and thirteenth centuries: "Episcopi, abbates, et barones mei . . . si regales [feras occiderint], restabunt rei regi pro libito suo, sine certa emendatione" (ed. Liebermann, § 26). Cf. *Capitul.* 802, § 39 (Boretius, i. 98).

Cruel punishments under the Norman kings

poachers by mutilation, and William Rufus of having put them to death.[1] Henry II and Richard I assert in their assizes that Henry I punished trespasses to the venison with blinding and castration.[2] These were the penalties used in the Carolingian Empire to punish crimes against the sovereign,[3] and the ferocity of penal law in the Middle Ages compels us to accept the statement of the assizes as most probably true. But on the accession of the Plantagenets, these severities were modified, and the object of the authorities was apparently to extract the largest possible fines from the delinquents. William of Newburgh says in fact that Henry II showed himself less cruel than his ancestors.[4]

Greater leniency under Henry II

In the Assize of Woodstock, the king asserts that he has hitherto been content with punishing the guilty through their goods.[5] It is true that he declares his resolve to apply henceforth the penalties in vogue under Henry I, but this was unquestionably a mere threat, intended to frighten the king's faithful subjects, to whom his officers had publicly to read the assize.[6] There is in any case a discrepancy between this declaration and articles 12 and 16. Article 12 lays down that for forest offences—

1. See the passages collected by Liebermann, *Pseudo-Cnut*, pp. 20-1; Freeman, *Norman Conquest*, iv. 610, v. 124-5.
2. Assize of Woodstock (text in the *Gesta Hen. II*), § 1; Assize of Richard I, § 1 (Hoveden, iv. 63).
3. Brunner, *Deutsche Rechtsgeschichte*, ii. 64, 78; cf. art. 10 of the so-called Statutes of William the Conqueror, compiled under Henry I, (Textus Roffensis): "Interdico etiam ne quis occidatur aut suspendatur pro aliqua culpa, sed eruantur oculi et testiculi abscidantur" (*Sel. Charters*, p. 99). The Anglo-Saxon Chronicle, in speaking of the laws of William I for the preservation of game, mentions only blinding (i. 355).
4. " Venationis delicias, aeque ut avus, plus justo diligens, in puniendis tamen positarum pro feris legum transgressoribus avo mitior fuit: ille enim . . . homicidarum et fericidarum in publicis animadversionibus nullam vel parvam esse distantiam voluit; hic autem huiusmodi transgressores carcerali custodia sive exsilio ad tempus coercuit" (*Historia rerum anglicarum*, lib. iii. cap. 26, in Howlett, *Chronicles of the reigns of Stephen*, etc. [R. S.], i. 280).
5. " Propter eorum catalla " (§ 1).
6. On this reading of the assize, see Hoveden, iv. 63.

trespasses to the venison included—sureties shall in the first instance be demanded, and that the delinquent shall not be imprisoned until the third offence. The sixteenth article concerns the crime, always regarded as particularly serious, of poaching by night: " no one shall hunt to take beasts by night, within the Forest or without,[1] in any place which the king's beasts frequent or where they have their peace, on pain of imprisonment for a year and of making fine at the king's pleasure." In the

Richard I's Assize

Assize of Richard I, which was drafted in more precise language, this last clause disappears, and offenders are simply threatened with the loss of eyes and castration.[2] But it is unlikely that this penalty was often inflicted: Roger of Wendover affirms that Richard I contented himself with the imprisonment or banishment of those who stole his deer.[3]

Abandonment of corporal penalties in practice

The jurists and judges of this period seem on the whole to have been mercifully inclined. To the author of the *Constitutiones* the death penalty is limited to serfs and inflicted on them only if the beast has been killed.[4] The pleas of 1209, which are particularly interesting, contain no mention of the penalties of death and mutilation.

Severity of prison-life

On the other hand these records show that people were imprisoned, not only on clear proof of an offence, but on suspicions that were sometimes extremely vague. Now prison discipline was commonly very severe during the Middle Ages.[5] A cer-

1. We shall try later to explain the words "extra forestam" (pp. 233 sqq.).
2. Assize of 1198, § 14, in Hoveden, iv. 65. Nevertheless, art. 17 of this assize quotes, without revoking it, art. 12 of the Assize of Woodstock: ". . . Idem rex Henricus statuit apud Wudestoke, quod quicunque forisfecerit ei de foresta sua semel de venatione sua, de seipso salvi plegii capiantur," etc.
3. Wendover, in Matthew Paris (ed. Luard, R. S.), iii. 213.
4. *Constitutiones de foresta*, ed. Liebermann, arts. 24-5.
5. Particularly in England; cf. Jusserand, *English Wayfaring Life in the Middle Ages* (trans. by Miss Toulmin Smith), p. 266; Ch. Gross, *Coroners' Rolls* (*Selden Society*), p. xxiv. n. 1.

tain Ralph Red of Siberton, imprisoned for having feasted on a doe, died in his cell. Roger Tocke, his friend, had been put in gaol also, although he was probably innocent: "he lay," we read, "a long time in prison, so that he is nearly dead." Such a prospect frightened the guilty, and numbers fled and were outlawed. One of these was Hugh the Scot: venison was found in his house; he took sanctuary, kept to the church for a month, and escaped in women's clothes; he was pronounced *utlagatus*[1] As early as 1166 the Assize of Clarendon prescribed what measures should be adopted against those accused of forest offences who fled from one county to another.[2]

Imprisonment therefore awaited both those accused and those merely suspected.[3] It awaited also the penniless and friendless who failed to find sureties, and in some cases threatened even those who did. It would be unsound to urge that imprisonment was not, technically, a penalty; for, as we have seen, article 16 of the Assize of Woodstock punished nocturnal poaching with the *poena imprisonamenti unius anni.*

Cases in which imprisonment was imposed

To sum up, during the reigns of the first three Plantagenets, poachers had to fear sometimes exile, but more often ruinous fines or very severe imprisonment; and the gaol was an object of such horror that often it seemed a greater evil than flight and the wretched lot of an outlaw. On the other hand, forest justice, organised with the main object of making money, was so regulated that it was impossible for the death penalty to be inflicted. This is sufficiently proved by the length of the procedure in capital cases and the long intervals between the eyres

Conclusion as to punishments before 1217

1. Turner, pp. 1—3, 6, 9.
2. Art. 17 (*Sel. Charters*, p. 172).
3. According to article 12 of the Assize of Woodstock, delinquents could not be imprisoned till their third offence. It is probable that this article fell into disuse as far as trespasses to the venison were concerned. It is significant that it was confirmed by Edward I only so far as it touched trespasses to the vert (*Statutes*, i. 243).

of the justices. During this period, the execution or mutilation of an offender must have been an exceptional occurrence: these penalties, it is true, are mentioned in the negotiations which preceded the issue of Magna Carta; but neither in the Petition or Articles of the Barons, nor in the Charter itself, was it considered necessary to require their abolition.

It would therefore be a mistake to regard article 10 of the Charter of 1217 as a notable gain for the inhabitants of the Forest. It made very little difference to their actual position, and did nothing more than pronounce the royal blessing, so to speak, on previous practice. The taking of game was punished by a "heavy ransom"; the impecunious, it is true, were no longer liable to a year's imprisonment; but if they failed to find sureties, they were reduced at the end of this time to the miserable necessity of "abjuring the realm."[1] Still, the threats of dreadful punishments disappeared.

Article 10 confirms previous practice

In this last respect, English law was henceforward in advance of the customary law of France. Beaumanoir expressly states that those who poach by night in warrens are liable to be hanged,[2] though he adds that "some people" are not of this opinion. Enguerrand de Coucy having hanged "three young nobles for that they were found in his woods with bows and arrows, [but] without dogs and without other engines whereby they could have taken wild beasts," St. Louis forfeited the wood, which he gave to an abbey, and deprived Enguerrand of "all high justice of woods and fish-ponds, so that he can since that time neither imprison nor put to death for any offence committed there."[3] These passages prove that

Comparison with the law in France

1. That is, binding themselves by oath to leave England for ever. See A Réville, *L'Abjuratio regni*, *Rev. historique*, Sept.-Oct. 1892, pp. 1 sqq. [See also Benham, *Red Paper Book of Colchester*, p. 33]
2. Ed Salmon, i. 474, art. 935. See also the texts of the Customs—for example, the 'Coutumier de Beaumont,' in E. Bonvalot, *Le Tiers Etat d'après la Charte de Beaumont*, Appendix, p. 10.
3. Guillaume de Saint-Pathus, *Vie de Saint-Louis*, ed. H. F. Delaborde, p. 136.

the penalty of death for poaching existed in thirteenth-century France, but that jurists did not unanimously countenance it and that the king controlled its application.

Collective responsibility remains

In England the consequences of poaching affected not only the poachers but also all their neighbours. In the pleas of 1209 we read of the amercement of numerous townships and tithings after the discovery of a dead beast or its remains: thus one township is amerced for not having "raised the hue and cry on evil-doers to the king" who have killed a hind; another, because it has not found the offender or because it has gone back on its first evidence.[1] The Charter of the Forest made no change in this very remunerative system of collective responsibility, which must have been most unpopular.

Checks on extortion

As a rule the exactions of the foresters were for their own personal profit. The Charter of the Forest, therefore, provided safeguards against them. Many foresters made undue demands for sheaves of oats or wheat, for lambs, sucking-pigs, or money, and they also levied "scotale."[2] These extortions were forbidden, and it was agreed that the number of the foresters should be limited. The foresters-in-fee had the right of receiving "chiminage" in the woods of the demesne from the sellers of wood and charcoal: but, as they paid a ferm to the king and kept the revenues for themselves, they would extort very heavy sums, and even claim chiminage from poor folks carrying bundles of faggots or charcoal on their backs, demanding it too in woods outside the demesne. These abuses, which brought nothing to the Treasury, were to cease.[3]

1. Turner, pp. 1—9.
2. Regarding *scotale,* see Stubbs, *Const. Hist.,* i. 672 and notes, and below, p. 204.
3. Arts. 7, 14. Article 5 does not specify the abuses committed by the regarders. In the pleas of 1209 the references to them are equally obscure (Turner, pp. 6-7).

Protection of rights of common

Frequently also the foresters strove to curtail the customary rights of the people.[1] They received a hint to respect the *communia de herbagio et aliis* in the demesne woods which were not to be disafforested.[2] They often prevented the inhabitants of the Forest from throwing open their pastures until the king's woods had been provided with swine:[3] henceforward every free man might "agist" his own woods at his pleasure, drive his pigs to pasture across the royal demesne, and receive the pannage due to him.[4]

These guarantees against the abuse of power by royal officials must have been warmly welcomed. The foresters were renowned for brutality, insolence, and greed. Those whom they had maltreated sometimes took a cruel revenge.[5] But a mere legal enactment was not enough to reform them, and they long remained deservedly unpopular.

Disafforestment

The corruption and excessive zeal of the foresters were not peculiar to England. But what, in England, rendered intolerable these and all other abuses of the forest system, constituting them a national grievance against the king, was the fact that the Forest, though royal property and not divided among a number of magnates, was nevertheless larger in England than anywhere else, and that the kings kept on increasing it by arbitrary acts of afforestment. The question of disafforestment consequently seemed of the

1. On the somewhat obscure question of customary rights in the Forest, see Fisher, *Forest of Essex,* ch. v and vi. [Cf. Miss Bazeley, *op. cit.* p. 269.]
2. Art. 1.
3. This may at least be inferred from art. 7 of the Assize of Woodstock (*Sel. Charters,* p. 187).
4. Art. 9.
5. The author of the *Magna Vita S. Hugonis* (p. 178) tells how, at the end of the preceding century, a forester was killed by men whom he had treated with extraordinary insolence. His body was cut into pieces which were carried to three different places. The huntsmen had the same evil reputation; they were, says John of Salisbury, coarse, drunken, and licentious (*Policraticus,* lib. i. cap. iv, cited by Fisher, *Forest of Essex,* p. 199).