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Crown Side of the Eyre in the Early Part of the Thirteenth Century

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THE CROWN SIDE OF THE "EYRE" IN THE EARLY PART OF THE THIRTEENTH CENTURY.

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In this "Journal" for July, 1914 (vol. V., pp. 193, sqq.) will be found an account of a trial of an action on the civil side before the Justices in Eyre at Hereford in 1220. This gives a vivid representation of the customs in those days. I have thought it might be equally interesting to examine some of the proceedings in the criminal law at the same period.

More than thirty years ago the late Professor Maitland edited an account of the proceedings on the Crown Side before the "Justices in Eyre" for the County of Gloucester in 1221[2] from which I take the material for the following article:[3]

The "Justices in Eyre" were Simon, Abbot of Reading, Randolf, Abbot of Evesham (neither of whom is known to have had any legal training), Martin Pateshull, a ecclesiastic but a judge and lawyer held in great reverence by "Bracton" who wrote some thirty years afterwards, Robert Lexington (also an ecclesiastic) and Ralph Harvey (these two Judges of the King's Court also); and John of Monmouth, a powerful baron and favorite of King John.

Two Rolls were kept of the proceedings which are substantially identical, but in different hands and varying in minutiae.[4]

The very first case recorded introduces us at once into the mediæval atmosphere.

"Hundredum de Kyftesiate."

"Willelmus le Cornur de Swelle occidit Willelmum Molendinarium sicut venerunt de cervisia et fugit; et fuit in franco plegio villate de

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[2]Pleas of the Crown / for the / County of Gloucester / before the Abbott of Reading and His / Fellows Justices Itinerant / in the Fifth year of the Reign of King Henry the Third / and the year of Grace / 1221 / Edited by / F. W. Maitland / London / Macmillan and Co. / 1884." Cl., 8vo, pp. lii + 155.

[3]The translations are my own, they aim at substantial accuracy and claim no other merit.

[4]Maitland is puzzled at the necessity for the two rolls. I venture to suggest that one was to be kept permanently in the Exchequer, the other to be for the use of subsequent Eyres. That one was kept in the Exchequer is certain, as many a sheriff found to his cost when "passing his accounts"; that the justices in Eyre had with them the roll of the preceding Eyre is (at least in some cases) equally certain. See case No. 183, page 47 of the book.

Suelle eo quod non est ibi nisi una decenna, et ideo villata in misericordia. Postea cognovit villata quod non fecerunt sectam post eum et ideo in misericordia. Willelmus utlagatus est per sectam Matillidis uxoris ejus, et mortua est. Catalla ejus 3½ m. unde Engelardus de Cigonni tunc vicecomes respondeat. Englescheria falso presentata est, scilicet per alios quam fuit in comitatu et ideo murdrum.

"Et sciendum quod in hoc comitatu debet Englescheria presentari per duos ex parte patris et per unum ex parte matris."[5]

In those days a great part of England[6] had the institution, the peace-pledge. This was of very old standing, often attributed to King Alfred, but at least in principle much older. In theory the heads of ten households were united in a tithing, decenna, each being responsible (in money) for the misconduct of his fellows. They were bound

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[5]"Hundred of Kiftsgate . . ." "William the Coroner of Swell killed William Miller as he was coming from a feast, and fled; he was in the frank pledge of the Township of Swell, as there is but one tithing there; and consequently the Township is in mercy. Afterwards the Township admitted that they had not pursued him and consequently in mercy. William (the coroner) was outlawed at the suit of Matilda, his (i. e., William Miller's) wife, and she is dead. His (i. e., William the Coroner's) chattels are three and a half marks (i. e., £2.6.8), for which let Engelard of Cigogné, at that time sheriff, account.

Englishery was falsely presented, that is by others than were in the county, consequently murdrum.

Be it noted that in this county Englishery should be presented by two on the father's side and one on the mother's side."

"Cornur," ("Coruner," "Corouner" are more common forms in Anglo-French), Coronator, Coroner, originally "custos placitorum coronæ."

There are two parishes in Gloucester called Swell, i. e., Upper Swell and Lower Swell.

"Molendarius," "Miller;" family names were struggling into existence.

"Cervisia," "ale," not only the drink but also the feast.

Murray New English Dictionary, vol. 1, p. 213, "Ale 3 a festival or merry-making at which much ale was drunk; an ale-drinking" Skeat. Etym. Dict. Sub voc. "Bridal"—"There were leet-ales, scot-ales, church-ales, clerk-ales, bed-ales and bride-ales."

("Cervisia" is found in Pliny and Ulpian; and is from a Gallic word, the precise form of which seems to be uncertain.)

"Villate"—the terminal "e" is often for "ae" the genitive (as here) or dative singular or nominative plural of the first declension (here="villatae").

"Englescheria" or Englescherie" (not Engles-cherie as it is absurdly enough printed in the Index to Pitt-Lewis' edition of Blackstone's Commentaries, Vol. IV, p. 527), Englishery, see the text.

I translate "villata" "Township" with Pollock & Maitland rather than "vill" with Sir James Stephen—the former name represents the people, the latter the territory.

[6]At the end of the century the jurors of Westmoreland claimed that the frank pledge was not in force north of the Trent; probably it was not in force north of the Humber and "it is to say the least, extremely doubtful whether the system of frankpledge extended to any part of the ancient Kingdom of Northumbria." Pollock & Maitland's History of English Law. Vol. 1, p. 556, and see esp. note 3 on that page.

to have the offender present when called upon to answer for his offence.

No one was allowed to be in England more than forty days without being enrolled in some tithing or decenna.[7]

Two or three times a year the Sheriff of the County held his Court, the Sheriff's Tourn for the view of Frank pledge, i. e., to see that every resident of the County was in some decenna; sometimes some lord or great man had the right (and oftener claimed it) to have the view of Frank pledge at his Leet, but one way or another it was provided that every male above twelve years of age must be in some decenna. Each decenna had a headman by whose name the decenna was often known and who had some kind of authority over the other members probably different in different parts of the country.

An exception was made of those who were the members of the household of another and therefore his manupastus or mainpast, fed (pastus) by his hand (manu)—for these he must be responsible.

The Kingdom was divided into Counties, these in most of England into hundreds, the hundreds into tithings, each tithing having its decenna. The township or villata had generally several decennae. It was the duty of the township to see that every man was in a decenna. Sometimes, indeed, as in Swell here mentioned, the whole township was one decenna. If the township failed to have any man in a decenna, the township itself was responsible for him.

In the present case the slayer was in the Villata of Swell which in its totality formed one decenna, and consequently the Villata was responsible for producing him before the Justices in Eyre. He was not produced, "fugit," and consequently "in misericordia"—it was "in mercy," i. e., liable to a fine to the King for not producing him.

But this was not an end to its troubles. When anyone was found slain, it was the duty of the finder to raise the hue and cry, hutesium (or uthesium) et clamor.[8] He was also required to attend the Eyre when the matter was enquired into. All the neighbors were required to turn out armed in order to arrest the wrongdoer, often much shouting and hornblowing ensued, and the "hue" was "horned" from Vill to Vill.[9] If the Villata failed thus to pursue, *facere sectam,* it was fined, and that is what happened here.

[7] 4 Blackstone's Comm., p. 114.

[8] Much learning has been displayed in the enquiry into what this "uthesium" was. Pollock & Maitland think it was simply "out, out," Hist. Eng. Law, Vol. 1. pp. 576, 577. cf. Murray's New English Dictionary, sub voc: "Haro" has been given by others.

[9] See Pollock & Maitland, Vol. 1, p. 577.

The wrongdoer was proceeded against in the County Court by Matillis, (Maud or Matilda) the widow of the slain Miller and was outlawed, so that her skirts were clear, and anyway "mortua est."

As soon as the crime came to the ears of the Sheriff, Engelard of Cigogné, he took possession for the King of the wrongdoer's goods and chattels to the value of three and a half marks (the mark was 13/4), a very considerable sum in those days.[10] Engelard was no longer Sheriff, indeed he was one of those whom King John promised to put out of their bailiwicks in England. [11] He was now at Windsor and died some twenty years later. [12]

Now comes that which looks to us moderns perhaps the most curious of all the proceedings—"Englescheria falso presentata est."

Wherever there was a secret homicide, that is, in the sense of a killing of a human being without someone being brought to justice as its perpetrator, it might be a *murdrum* for which a fine must be paid by the hundred, etc.[13] This provision of the law is said to have originated with the Danes, who imposed the fine no matter what the nationality of the slain; but the Normans were not so impartial or perhaps were more lenient and charitable to the bloodthirsty Saxon, for in Norman times, the fine was not exacted if the deceased was an Englishman. But he must be proved to have been an Englishman, and this proof differed in its method in different parts of the country; enquiry was always made at the Eyre into the method of proving Englishery in the County for which the Eyre sat.[14] When the homicide was reported, enquiry was

[10]I find at this very Eyre horses valued at 2s, 4s, 4s, 5s, 5s, 5s, etc., a cart at 2s, a cart and a horse 3s, 5s, 6/8, a horse and bag of grain 3/9, a boat at 2s, etc., etc.

[11]Magna Carta (1st Edit.) sec. 50; Articles of the Barons, sec. 40. See McKechnie's Magna Carta, p. 154—Engelard is called Engelardus de Cygony in the original, (Magna Carta, Blackstone's Text, p. XIX).

[12]He was required by this Eyre to pay a large sum to the King, but succeeded in setting up a set-off for the whole debt. He seems to have been a typical man-of-arms of the time. Introduction to this work, pp. XV, XVI.

[13]At this time the fine was 46 marks (£30, 13, 4)—40 marks (£26, 13, 4) to the King and 6 marks (£4 0, 0) to the kinfolk of the slain. Pollock & Maitland, Hist. Eng. Law, Vol. II, 485.

In this Eyre, however, the fines were by no means so large, and no part of them seems to have gone to the kin.

[14]Bracton, f. 135b—"In some countries Englishery is presented by two males on the part of the father and by two females on the part of the mother of the nearest relatives of the person slain. But in some counties it is presented by one male on the side of the father and by one female on the part of the mother * * * in some counties (according to some) if a male is found to have been slain Englishery is presented by one male on the father's side and by one female on the mother's side * * * and if a female * * * by two females either on the father's side only or on the mother's side only whose names ought to be enrolled in the rolls of the coroners to be presented before the Justices on their circuit, and where the persons cannot be changed nor the

made as to the birth of the deceased "Francigena vel Anglicus," Frank-born or English, and if the latter could be proved, it was proved and the names of the witnesses were entered by the coroner on his roll, Then "Englescheria presentata est" at the Eyre; otherwise "Englescheria falso presentata est" or "Englescheria non racionabiliter presentata est" when the proper persons do not attest or "Englescheria non presentata est" when no attempt is made to prove Englishery at all. In either of the latter cases, *murdrum* is adjudged and the hundred *in misericordia,* and liable to a fine.

Here is another case:

"Thomas Moraunt occidit Henricum filium Baldewyn, et fugit in ecclesiam, et cognovit factum et abjuravit regnum; et Philippus de Mukeletone rettatus fuit de forcia illa; et venit et custodiatur. Et Willelmus Longus, Rogerus Turnol, Radulfus Prion, Johannes filius Osgod, Wilekinus frater ejus, Gaufridus Molendinarius, Wilekin Bonpas, Bertram filius Walteri rettati fuerunt quod fuerunt cum eis quando Henricus occisus fuit; et ideo vicecomes capiat plegios de eis quia non malecreduntur. Postea Philippus non malecreditur et ideo quietus."[15]

There could be no *murdrum* in this case; the chief offender admitted his guilt and abjured the realm.[16] Philip who was suspected of being an accomplice and taken into custody was not charged; and accordingly was set free and all others who were present were required to find security for their appearance in case any charge might thereafter be made against them, *"standi recto si quis versus eum loqui voluerit"*

The following is a different case:

"Quidam latro venit ad domum Elvine vidue et fregit domum suam et asportavit lanam et catalla ejusdem Elvine; et Willelmus filius ejusdem Elvine et Mauricius de Herdewice ipsum occiderunt fugiendo cum latrocinio; et saccus cum latrocinio commissus fuit Willelmo filio Baldewini de Herdewice et the thinge sue et ipsi illum non habuerunt coram

names varied, but if it be done otherwise there will be no Englishery since it has not been duly done and therefore *murdrum* will be assigned."

Bracton (edit. Twiss) Vol. II, page 391. Notwithstanding the excellence of the edition of Bracton by Sir Travers Twiss, it is a pleasure to know that a new and critical edition is being issued by Yale University.

[15]"Thomas Moraunt slew Henry Baldwinson and fled into the church and confessed the deed and abjured the realm; and Philip of Mukeletone (perhaps Mucklestone) was suspected of being an accomplice and he came and was taken into custody, and William Long, Roger Turnol, Randolph Prior, John Osgoodson, Wilkin, his brother, Godfrey Miller, Wilkin Bompas, and Bertram Walterson (Watson) were suspected because they were present with them when Henry was killed; and consequently the Sheriff is to take pledges of them as they are not accused. Afterwards Philip was not accused and accordingly he went free."

[16]For a vivid account of "abjuring the realm" see "The Law's Lumber-room" by Francis Watt, 1st series, pp. 84, sqq.

justicariis, et ideo in misericordia; Elvina non venit et languida est, ut dicitur, et Willelmus et Mauricius venerunt et cognoverunt quod ita eum occiderunt in fugiendo et hoc idem testatum est per juratores.

"Post venit Elvina et tulit latrocinium unde seisitus fuit quando fuit occisus et nichil aliud testatum nisi quod latro fuit et occisus fugiendo et ideo inde quieti, et Alvina ipsa habeat fardellum suum."[17]

A thief taken in the act or in flight with his booty "latrocinium" in his possession "hand habend," "hand-having" "pris ov' mainoure," "captus cum manuopere," "taken with the mainour" could be killed on the spot[18] and therefore William and Maurice "quieti."

The stolen goods were handed in a bag to the chief of the decenna; he should have produced them at the Eyre and failing to do so, he and his decenna were fined. Afterwards Elvina produced the stolen goods and the facts being clear was allowed her bundle; but that did not excuse the tithing from paying its fine.

"Matheus filius Walteri cecidit de equa sua in aquam et submersus est; nullus malcreditur; Judicium,—infortunium; precium eque 5s. unde vicecomes respondeat."[19]

Any chattel which caused death was in those times and for long after devoted to God, "deodandus"; at this time the chattel was delivered to or rather taken possession of by the villata who must account for its value to the King; here the Sheriff is called on to account for it, probably the mare had got into his possession.

"Robertus Capellanus de Salpertone occidit Rogerum de North-

[17]"A thief came to the house of Elvina, a widow, and broke (into) her house and carried off wool and chattels of Elvina, and William, the son of said Elvina, and Maurice of Hardwicke slew him fleeing with the stolen property, and a bag with the stolen property was given in charge to William Baldwinson of Hardwicke and his decenna, and they did not have it before the Justices and so they were in mercy; Elvina did not come, she was said to be sick; William and Maurice came and admitted that they did kill him in manner aforesaid in fleeing and the same was testified by the jurors. Afterwards came Elvina and brought the stolen property in his possession when he was slain and there was nothing in evidence but that he was a thief and was slain fleeing, and so they were quit and Elvina had her bundle again."

Hardwicke ("Herdewice") a parish in Gloucestershire, Tewkesbury Division; "thethinge" "tethinga," "thuthinga" and other forms are found for "decenna," tithing; "fardellum" old French "fardel" later "fardeau" dim. of farde, a burden.

[18]See Pikes Hist. Crime; Vol. 1, page 2, and for the practice on the continent, Esmein's History of Continental Criminal Procedure, Boston: Little, Brown & Co., 1913, pp. XLII., sq., 64, 65: this work (translated) has been published under the auspices of the Association of American Law Schools and contains a most admirable account of the evolution, not only of the French, but also of the English theory and practice of criminal law.

[19]"Mathew Watson fell from his mare into the water and was drowned; no one was charged; judgment "Misfortune"; value of the mare 5s., for which let the Sheriff account."

leche, et ipse captus fuit, et malecreditur de morte illa per 12 juratores, et nullus alius; et Episcopus per Officialem suum petiit eum et habet, et preceptum est ei quod faciat justiciam de eo per censuram ecclesiasticam; nulla catalla habuit."[20]

This is an instance of the mediaeval claim of the Church to judge its own people, a claim which caused no little trouble and scandal.

Its last relic, "benefit of clergy," was abolished in England in 1827 and in Upper Canada in 1833.[21]

"Walkelinus filius Rannulfi occidit Matillidem la Daie quodam cnipulo et captus fuit super factum cum cnipulo sanguinolento, et hoc testatum est per villatam et per juratores, et ideo non potest dedicere; suspendatur; nulla catalla habuit."[22]

The murderer taken in the act or with the bloody knife or the fatal club in his hand could like the thief taken with the mainour, be slain on the spot; like him, too, if he was not killed at once, he was not allowed any defence at the Eyre.

"Rogerus de Foxton cognoscens se esse latronem appellat Adam Man quod est seductor domini Regis et latro et quod furatus fuit 1 equam et 1 camisiam et quasdam braccas et 1 wimplam et hoc offert probare per corpus suum sicut curia consideraverit. Et Adam defendit totum sicut curia consideraverit.

"Idem Rogerus appellat Thomam le Messer quod in tempore gwerre furatus fuit 9 garbas frumenti et 16 de avena et 4 vitulos.

"Et Thomas venit et defendit totum sicut curia consideraverit quia non loquitur de societate quod cum eo furatus fuit nec in societate fuit. Consideratum est quod nullum est appellum et ideo suspendatur. Et Thomas committatur sub plegiis Willelmo filio Hugonis et Thoma de Ilmeden de Com. Warrwice et decennis suis. Et Adam nullum habet plegium et petit quod abjurare regnum; et abjuravit regnum."[23]

[20]"Robert the Chaplain (capellane) of Salperton killed Roger of Northleach, and he was taken and accused of this death by 12 jurors and no one else was; the Bishop by his official claimed him and obtained him. He was directed to do justice in the matter by ecclesiastical censure; he (Robert) had no chattels."

Salperton and Northleach are parishes in Gloucester: "Capellanus" is the ecclesiastic who officiates in a chapel.

[21]See "Some Early Legislatures and Legislation," 33 Can. Law Times for March, 1913, pp. 190, 191.

[22]"Walkelin, son of Ranulf, killed Matilda la Daie with a certain knife and was taken immediately with the bloody knife; and this was proved by the township and by 12 jurors and so he was not allowed to say anything; let him be hanged, he had no chattels."

"Cnipulum" is our "knife," French "canif," but diminutive in termination.

[23]"Roger of Foxton admitting himself to be a thief appealed Adam Man that he was at fault toward our Lord the King and a thief and had stolen one horse and a shirt and certain breeches and one wimple and this he offered to prove by his body as the Court should consider. And Adam denied the whole charge

The "approver" of whom there is but the atrophied survival "King's evidence" or "State's Witness" was a well-known character under old law. Being charged with treason or felony, he did not plead but confessed the fact and appealed (i. e., accused) another as an accomplice in the crime so that he might himself receive a pardon. The Appellee might take exception to the appeal. Thomas did so in the present case. He set up that the approver did not say that the appellee and he were "in societate" or that he had been with the Appellee when he stole, in other words the appeal did not show that the Appellee was an accomplice (it only charged a stealing by the appellee) and a "demurrer" lay. There was no such thing as "amending pleadings"[24] in those days. Roger had admitted his guilt and had not *quoad* the "9 garbas frumenti etc." brought in an accomplice, and quite logically and properly "ideo suspendatur." But Thomas must give bail that he will answer to the charge if it should be brought against him regularly.

Adam had been ready to fight Roger but he could not now. He, too, must find bail like Thomas, but he has none, so he must abjure the realm which he does.

Let us see now a regular approver's appeal.

"Philippus de Egham cognoscens se esse latronem appellat Willelmum filium Roberti de Dimescherche quod latro est et socius suus de latrocinio ita quod simul furati fuerunt duos equos et duas vaccas et unam jumentam in campis juxta Lilletone et illos vendiderunt pro 15s. 2d. unde idem Willelmus habuit quartam partem ad partem suam et hoc offert probare versus eum per corpus suum sicut curia consideraverit. Et Willelmus venit et defendit latrocinium et societatem et totum de verbo in verbum per corpus suum sicut curia consideraverit. * * * et ideo consideratum est quod duellum sit inter eos et Willelmus det vadium defendendi se et Philippus probandi; plegius eorum gaola.

as the Court should consider. The said Roger appealed Thomas Messer that in the time of the (recent) war he had stolen 9 sheaves of wheat and 16 of oats and 4 calves and Thomas came and denied the whole as the Court should consider. Because he (Roger) did not say that he had stolen with him nor that he was in company with him, it was considered that the appeal was null, and so let him (Roger) be hanged. And Thomas was committed under pledges to William Hughson, Thomas of Ilmington in the County of Warwick and their decennae. Adam had no bondsmen and asked that he might abjure the realm; and he did abjure the realm."

I do not find a Foxton in Gloucestershire—there is one in Cambridge and one in Leicestershire—but thieves were ever a wandering folk: Ilmington is in Warwickshire and Gloucestershire: "seductor" is one who does not give another his dues; "in tempore gwerre," the wars between the nobles and King John continued into Henry's reign.

[24]This is not strictly accurate—a miskenning or stultiloquium, i. e., a mistake in pleading, might sometimes be made right on paying a fine—Pollock and Maitland, Vol. II, 518—but an appeal of felony was *stricti juris*.

"Veniunt die Lune armati. Philippus convictus est et suspensus et Willelmus inveniat plegium et interim custodiatur."[25]

Here the appeal is regular "socius suus de latrocinia" and Philip has a fight for his life.[26] He is defeated and hanged. The fate sometimes met by the unsuccessful combatant is shown in another case where one George appeals Thomas of an assault and wounding; in battle "Thomas devictus est et obcecatus et ementulatus."[27]

The terrible state of society in England in those days is proved by the many cases in which "malefactores" break into houses and slay all or many of the inmates—generally "nescitur qui fuerunt"; also by the constantly recurring finding of dead bodies in the wood or on the highway[28] sometimes we are told "quidam latro occisit alterum," while the number of robberies with violence, of assaults and woundings, and of simple theft is appalling.

I do not say anything of the practice of accusation, of the juries which are the original of our juries grand and petit, of the curious and complicated question of what was to be done if an accused declined to put himself upon the country. All these and many other points of historical interest are suggested by this record.

I close this article by citing one more case:

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[25]"Philip of Egham confessing that he was a thief appeals William Robertson of Dimescherche that he was a thief and his accomplice in theft so that they had together stolen two horses and two heifers and one mare in the fields near Lillington and sold them for 15/2 of which William had a quarter for his share, and this he offers to prove against him by his body as the Court may adjudge. And William comes and denies theft and association, the whole charge, and offers to defend by his body as the Court may adjudge * * * accordingly it is decided that there shall be a duel between them, and William must give pledges to defend, Philip to prove—the gaol their bail.

They come armed on Monday; Philip is defeated and hanged, William is to find security, and in the meantime to be in gaol."

There is an "Egham" in Surrey, a "Dymchurch" in Kent; Lillington is in Warwick. Where any party could not find bail, he must go to gaol and the terse formula, "plegius ejus gaola," was not at all uncommon. For an instance, see the case referred to in the article, "A half-told tale of Seven Hundred Years Ago." 5 Journ. Am. Inst. Crim. Law, etc., (July, 1914) page 197.

[26]The late Goldwin Smith used to say "as well expect the tiger to abolish the jungle as the lawyer to reform the practice of law." A more absurd and misleading statement never was made even by a professor of History. All changes for the better in the practice of law have been made at the instance of lawyers.

[27]"Thomas was defeated, blinded and ementulated."

[28]See, page 99, for an example "Quidam ignotus inventus fuit occisus nescitur quis fuit nec quis eum occidit ideo murdrum" "a certain unknown man was found slain, it is not known who he was nor who slew him, therefore *murdrum*."

"Nescitur qui fuerunt." "It is not known who they were." "Quidam latro occisit alterum." "A certain robber killed another."

"Hugo filius Velatoris occidit amicam suam, nullus alius malecreditur captus fuit et obiit in prisona."[29]

This tragedy of never ending recurrence gives a human touch to the old record; the gaol from the very beginning has been a place of torture,[30] thanks to John Howard and those like him now a little alleviated; countless unfortunates like Hugo filius Velatoris, *obierunt in prisona.*

[29]"Hugh, the son of Velator, kills his leman, no other is accused; he was taken and died in prison.'

Then as now the leman was the "lady-friend."

[30]Pike Hist. Crime, Vol. 1, page 130 "These cages were * * * probably designed with a view not less to the prisoner's discomfort than to his safe-keeping." "So far as we can see, the Justices of Henry III's reign used their power of imprisonment chiefly as a means of inflicting pecuniary penalties." Pollock & Maitland, Hist. Eng. Law, Vol. II, page 156.