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## SETTLEMENT OF AN "APPEAL" AS A BAR TO AN INDICTMENT AT THE COMMON LAW

WILLIAM RENWICK RIDDELL<sup>1</sup>

In his valuable as well as interesting Introduction to the Selden Society's *The Liber Pauperum* of Vacarius, published last year, Dr. de Zulueta says at pp. lxxxix, xc, "that it is difficult to see how an effective compromise of an Appeal could be made."

It may not be without interest to see what happened in the case of an Appeal, when an attempt was made to compromise with the offender and it was apparently successful for some time.

The late F. W. Maitland some years ago gave to the legal and historical world a most interesting work entitled: *Pleas of the Crown for the County of Gloucester . . . in . . . 1221*, in which he transcribes and annotates the official Records of the Eyre in the County of Gloucester, containing the proceedings before the Justices in Eyre, *Justiciarii Itinerantes*, for that year.

In the last troubled years in the reign of King John, the administration of justice had been almost at a standstill, where it was not perverted: no Eyres had been held in many Counties and crime was alarmingly common. But John was dead, his son, Henry III had come to the throne, to begin a reign without parallel in length until Queen Victoria's time: the country had, in a measure, settled down, and the Courts had resumed their legitimate functions. Justices in Eyre were dispatched to the various Counties, amongst them Gloucester, to examine into crimes as well as to find how the King might be advantaged financially. There was a long story of offences to be told by the different Vills, in respect of the years since the last Eyre: and it is one of these offences which I select to illustrate the statement with which we began.

The story is not told connectedly; but there is no difficulty in determining the main features and many of the details.

Geoffrey de Sutton was with several others at an "ale," i. e., a feast at which the main inducement was "nut-brown English ale," the potency of which was, as it is, proverbial. We are told by Bracton, himself, that on an English Counsel, arguing before the Pope, and saying: "Pater sancte, nos didicimus in scholis, et haec opinio est magistro-

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rum nostrorum, quod non currit praescriptio contra jura episcopalia," i. e., "Holy Father, we have taught in our Schools, and it is the opinion of our Judges, that Prescription does not run against *jura episcopalia*," the Pope, Innocent, broke out: "Certe et tu et magistri tui multum bibistis de cerevisia Anglicana. quando haec didicistis," i. e., "Certainly both you and your Judges had drunk a good deal of English beer when you taught that."

At this "ale" were a number of the members of the Basset family, of whom Maitland says that they were "bearers of an honorable name": and it would ill become one of my name and descent to gainsay this, for the Bassets and the Riddells, Ridels, Ryedales, Ryevallises, my collateral ancestors, were constantly intermingling, intermarrying and fighting with each other. The head of the House was Robert Basset, and he had with him of those in his "mainpast," Geoffrey, John, Walter, Ralph, and Henry Basset: there were also present and apparently forming part of his faction, Walter Hunder and Henry, his son. A "mesleta," "discordia," arose and the Bassets amongst them seriously wounded Geoffrey de Sutton. Not so badly, however, as that he could not make his way home. He "appealed" the Bassets of the wounding at the next Comitatus, County Court; but they did not appear and he died on the third day thereafter. The widow then took up the Appeal, and prosecuted it for two County Courts—the Bassets did not appear.

Walter Hunder was arrested and confessed the crime, but was allowed to abjure the realm, leaving England with the certainty that if he returned and was caught, he would be hanged out of hand. His son, Henry, was not so fortunate: he ran away, was caught and beheaded—flight was equivalent to confession.

Before the third Comitatus came around, the widow, Appellor, and Robert Basset, the main Appellee, came to an agreement; the Appellor dropped her Appeal, Robert Basset married his son, Walter, to her daughter, and gave the two, a virgate of land.

But the time had gone by when the killing of a man was simply a civil injury to be paid for by money or land to the relatives of the deceased: and when the Jury of the Vill of Adhurst brought these facts before the Justices in Eyre, an investigation was made at once. It was found that one of the Bassets, Ralph, was dead; and only Robert was at the Eyre. No less than six Villatae found Robert, Guilty—the Record proceeds: "Et ideo convictus est; suspendatur. Loquendum de terra et catallis," i. e., "And so he is convicted; let him be hanged. An Inquest as to land and chattels" (of course, for escheat).

The widow, Cristina de Sutton, did not escape scot-free for her offense, although she paid the Sheriff half-a-mark, 6s. 8d., for permission to settle—as the Record puts it: "*Pro dim. m. quam dedit vicecomiti,*" i. e., "for a half-mark she gave to the Sheriff." Brought before the Justices in Eyre, she was "in misericordia," and had to pay a fine of 40s. to the King to get pardon.

Her son, John, was on the Jury, and did not tell the whole story, so he was "in mercy" also; and had to pay a fine similar to that of his mother.

What a picture of the condition of society in England, seven centuries ago, is here brought before our eyes, in a dry official Record.