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A GLIMPSE OF LAW IN THE EARLY THIRTEENTH CENTURY

WILLIAM RENWICK RIDDELL

The Royal Historical Society has more than once placed the students of the Common Law of England under deep obligations by the publication of works bearing upon early England, which were either unknown to or ignored by the standard writers, such as Coke, Selden and Camden.

One of the most interesting, if not the most valuable of the publications of that Society has just appeared in Reginald R. Darlington's edition of *The Vita Wulfstani of William of Malmesbury* (London, 1928).

Wulfstan born about 1008, became Bishop of Worcester in 1062 and died in 1095, the last survivor on the Episcopal Bench of English birth—the Norman “possessed the land.” His canonization followed in 1203: his Life written in the second quarter of the 13th Century by the celebrated William of Malmesbury has now been for the first time printed in full from the MS. in the British Museum with occasional comparison with other MSS. No translation is added; but the Latin is good and clear, requiring only care to understand the mediaeval orthography and terminology—an occasional solecism is pardonable, and is probably in most cases due to error in transcription.

The story gives a curious picture of the state of society at the time; but I pass over such pictures as that of the poor potter, who was “seized by a malignant spirit,” in other words, became insane; “taken in bonds to Worcester. . . . And rods placed beside him so that whoever passed that way, might beat his torn body.” Nor do I dwell on the “Blood Feud” so common and practically legal calling upon the relatives of the slain man, to avenge his death—I pass on to the subject of this Paper, namely, the methods of arrest of an accused, the “Hue and Cry,” the exhibition of wound, the Appeal by the injured, the proceedings thereon, and the consequences of defeat and the abhorred word “Craven.” If there appear the “Ewige Weibliche,” the protection by a Noble or an Official of one of his retinue (the “mayntennances” which growing notorious brought about the establishment by Henry VII, in 1486, of the Star Chamber), the eternal irreverence and

irrepressible lightness of heart and conduct of youth, the skittishness of boy and girl—these are incidental, however interesting.

In F. W. Maitland's *Pleas of the Crown in the County of Gloucester*, on pp. 21, 22, Case 87, is an Assize Roll relating to an Eyre; and in the *Coram Rege* Roll, Henry III, No. 13, are to be found Entries relating to the same Eyre; Maitland was in doubt whether the action was brought before the Justices in Eyre, *Justiciarii Itinerantes*, in Worcester or in Hereford, and where the Duel on the Appeal of Felony was fought. This publication clears up the doubt; and we are enabled to say with certainty that the locus was Gloucester.

The story throws a vivid light on the state of the country at the time; but it is too long to merit a full translation, and I shall give only an outline, using, as far as possible, the wording of the original, translated as literally as the idioms of the two languages permit.

There was a young man called Thomas, the son of one Estmere of Trinleia (Tirley) in Gloucester, a man of free condition but small means: the son, sent out to fare for himself was so fortunate as to become one of the household of Galfridus Filium Petri (Geoffrey Fitz Peter), King John's Chief Justiciar; and became wealthy. Returning home, he bought himself an estate at Elderesfeld (the present Eldersfield in Worcestershire); he was drawn into a liaison with a married woman; but extricated himself: when on the death of her husband, he refused to marry her, then "in truth, the daughter of old Eve, finding herself contemned and repulsed, conceived a deadly enmity against him, but woman-like concealed it for the time, keeping her revenge for a future opportunity . . . tiring of widowhood, she married one George, a very astute and clever man." He came to know—no doubt through her means—of the former relations of his wife with Thomas, now repentant, and "he, too, pursued Thomas with an implacable hatred." And so, "one day, as they were at a beer-shop, and over-indulged, they were returning home, George . . . lay in wait, and struck Thomas, wholly unsuspecting, over the head with a big club (*cum baculo magno*) . . . and again on the left arm. . . . Thomas, after the second blow got warm . . . and raised an axe which he was carrying over his arm, to strike George . . . the axe miscarried . . . and . . . George was hit by the handle without damage done . . . drawing back the axe, Thomas wounded George slightly with the heel of the axe, blood being drawn." Then Thomas ran off home; and "George complained to everyone who passed on the road of the bloodshed and defamed him who had caused the wound, he kept telling the story differently from the facts, saying

that he had ben assaulted without provocation, and charged Thomas as a violator of the Kings' peace." "He hastened home, which was not far distant, and there he called together the neighborhood, by horn-blowing, to pursue the fugitive, lyngly saying that Thomas had forcibly entered his home, without regard to the King's peace and wickedly taken away his chattels as prey, and that he had wounded him, defending his home. Amongst those who came to the call of the horns (of course, the 'Hue and Cry') was Estmere, Thomas' father . . . the whole gathering of men . . . took Thomas, and carried him in bonds to Gloucester, and handed him over to the Sheriff to be imprisoned in a dark dungeon. But he was released on giving bail—and emptying his purse. As often as Thomas was arrested, so often was he released by the intervention of those of the Court, whom he has served" (A delicate way of saying "the Chief Justiciar!") But King John died in 1216, Henry III, his son, became King, the Chief Justiciar's Patent lapsed: the kingdom had been rent by civil wars, the Eyres had been in great measure intermitted, but now "peace was restored to England, and the Justices (in Eyre) were sent throughout the several Provinces of the Realm for the punishment of wrongdoers, the true glory of the good. George, not forgetting his enmity, appealed. . . . Thomas before the Justices (in Eyre) of the wound wickedly inflicted upon him against the peace of God and of the King. Thomas, now, verily had no refuge, but he denied wounds and all that was alleged. The matter plainly called for determination by Battel; and" August 5th, 1221, "was fixed, and at Gloucester. On the day fixed, came to the field the Justices and an innumerable array of both sexes as well as the combatants in their battle array. George stood confiding in the greatness of his courage, agile and skilled in the practice of single combat (monomachia); Thomas on the other hand stood, confiding in the Lord and invoking Mary, the glorious Mother of God, and the blessed Wulstan, calling them to his aid, while he wept over his past sins and promised a better life in the future, pouring out tears copiously. After address completed (as to which, see Blackstone's *Commentaries*, Bk. IV, pp. 347, 348), the combatants came together; and gave and received wounds. But ever Thomas fared the worse; by how much the worse the battle went against him, by so much the more fervently he prayed. After many encounters, Thomas, worn down by many wounds, was seized by George and cast to the ground." God, as in Napoleon's time, was on the side of the stronger battaliõns, and the innocent was at the mercy of the wrongdoer; nor was he merciful: "compelled by his right eye nearly dug out, he uttered, irrevocably,

the odious word of the worsted in a Battel (of course, the horrible word 'Craven,' see *Blackstone, op. cit.*, p. 348) stripped of his battle array by the victor, he was left naked enough (*satis nudus*) on the field. Though by the custom of the Realm he was subject to be hanged, yet the Justices mingling mercy with justice, adjudged him deserving of ementulation excision of the virilia and of blinding; they gave the duty of executing the adjudication to the neighbors and relatives of the victor. These acting rather with vindictive glee than love of justice, in the presence of the officers of the Court left for that purpose and of the multitude of curious people, who gladly ran to such a spectacle, at once and flippantly dug out one of the eyes. The other, already injured by George, they had great trouble with, but with much anxious patience, they dug that out also. The exoculatory instrument, they sharpened two or three times and maliciously drove it in as far as the brain, so that they destroyed life (consciousness) along with the sight. The unhappy Thomas thinking nothing left for him, except to raise the eyes of the mind to God, kept ever continuing to call upon the Blessed Mary and the Blessed Wulstan. The apparitors pursuing their task brutally, cut away the dug-out eyes hanging over the face by the eye-strings, and threw them into the field. The testicles, torn away from their containing sac, they cut off and threw still farther; so that the unbridled youth kicked them this way and that with their feet among the girls (*inter mulierculas.*)"

The story of Thomas' revival, being taken to a Monastery Hospital by direction of a pitying woman, of his rejection by the Monks, of the servant maids who had carried him there in a basket, emptying the basket and throwing him against the wall of the Hospital, "so that, him whom they refused to admit, they were forced to keep against their will," of the sympathy and pious care of "certain woman called Ysabel in the Hospital, wholly devoted to the care of the poor," and her undertaking the nursing and care of him "against the orders of the magistracy of the place and her brothers but secretly for fear of them"; of the fervent prayers of Thomas and his miraculous cure, I must leave to be read by anyone interested.

But, what a picture of the times! And I should like to hear George's side of the story, *Audi alteram partem.*