

**SOME OBSERVATIONS
UPON THE LAW OF
ANCIENT DEMESNE**

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Some observations upon the law of ancient demesne by Pym Yeatman

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ANCIENT DEMESNE,

With suggestions as to the Origin of the families of Brewer, Brito, Haráwick, and Cavendish, the Ancient Lords of the Manor of Chesterfield, in the County of Derby, arising upon an examination of the Archives of that Borough.

BY

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THE Author, at the request of Mr. Alderman GEE, the present Mayor of Chesterfield, undertook to examine the Records of that Borough, with a view to ascertain whether there still remained amongst them any which were of value to the Borough in its Municipal character or of general historical interest; and finding a great number of charters of real value and importance, at Mr. Gee's desire they were embodied in a volume, recently published under his authority, entitled "The Records of Chesterfield."

In the course of his labours, and in order fully to understand the nature and bearing of the documents, the author was compelled to examine with some care the few legal decisions extant touching this branch of the law—a branch which (though still existing) has fallen into disuse for many centuries, so that no two writers upon the subject are fully agreed upon its purport and effect, and the judges are confessedly at sea upon it.

The author found in the course of his researches many remarkable facts relating to the history of the early lords of the borough, which supplement, and in some cases correct, the suggestions and statements of his recent work—the history of the house of Arundel—he determined, therefore, to publish the present pamphlet.

And first, with regard to the law affecting the borough, the more important subject since the consideration and development of it must exercise a direct influence upon other cities of a similar tenure.

To Mr. John Cutts, the learned Town Clerk of Chesterfield, the author is indebted for having received every possible facility, within the limits of safety, to inspect and examine the Records still remaining in his charge. As Town Clerk, Mr. Cutts himself in the year 1857, shortly after his appointment, took the wise precaution of causing to be printed a list of "all charters, deeds, books, books of account, and all documents and effects belonging to the Corporation of Chesterfield" at that date, an abstract of which will be found printed in the Records of Chesterfield. Every one of these charters and documents are now in his custody and possession, and were produced to

the author. All those—the great majority of them—which appeared to be of value either to the Corporation and Burgesses, or of interest to historical students, have been printed in that work.

That this list is far, very far, short of what the Corporation possessed about a hundred years ago is painfully evident from the list also printed, entitled "A Schedule of Papers in the Corporation chest, 1789," which the author, through the kindness of Mr. G. S. Cockayne, Lancaster Herald, found amongst the late Dr. Pegge's papers, now deposited in the Heralds' College. This list is printed, not only to supply all the evidence at present available of the contents of the lost charters, but in the hope that by this publicity others may be enabled to follow the excellent example of Mr. Alderman Gee, in restoring its lost charters to the Borough. Considering the high reputation of Dr. Pegge as a careful and skilful genealogist, the town of Chesterfield is fortunate in possessing such good secondary evidence of the contents of the lost charters, and although the notices are but too frequently only scant and fragmentary, still, they incidentally convey information of the highest value and interest, which is not now to be obtained from any other source. This list also furnishes evidence of a great loss of especial significance. From a note of Dr. Pegge's to No. 45, "The old transcript of King John's Charter to Wm. Brewer, Ao. 17," it appears that at that period the Black Book of Chesterfield was in existence, for a comparison of the transcript with the copy entered in the Black Book is made, and it is declared to be "fuller." Few Corporations are so fortunate as to have possession of these Black or Red Books, as they were sometimes called, and it is remarkable to find that the Chesterfield book was existing within so short a period, and, indeed, it affords a hope that it yet may be discovered and restored.

The great Red Book of the town of Nottingham existed till the year 1724, when a calamitous fire occurred in the Town Clerk's office and consumed it with many other precious Records. Fortunately, however, valuable abstracts had been made by several of the Town Clerks, and it is from these sources that the town of Nottingham depends for much of the evidence of the earlier Charters and customs affecting it; in this respect Chesterfield has a great advantage, since, thanks to Mr. Gee, it now possesses a perfect and remarkable series of Original Royal Charters. The author was unable to find any abstract or account of the Chesterfield Black Book amongst Dr.

Pegge's papers, or the very valuable collection of the late Mr. Swift, which, through the courtesy of his sons, he had an opportunity of inspecting, but from the note before mentioned by Dr. Pegge it is evident that it contained information of the highest value; possibly an abstract by him or by some other antiquary may be existing elsewhere, and if it should be discovered it is hoped that a copy may be communicated to the Borough. This book would, no doubt, contain many Charters, the originals of which are now lost, including, perhaps, the Charter of William Brewer, the elder, which is referred to in subsequent documents, and possibly it would contain the only existing evidence of their contents; we might also hope to learn many facts of interest relating to the laws and customs of the Borough, which, owing to the fact that it had no Court of Record, are now lost.

This loss, however, can in some measure be supplied by the aid of Nottingham, which having had a Court of Record at least as early as 1303, and probably much earlier, has preserved in a durable form a great corpus of Municipal law of great value and interest, and from which a few passages illustrating points of particular value are here cited. They directly concern the town of Chesterfield, because by a singular circumstance we are without any information in the Royal Charters of what nature were the Chesterfield customs, each and all of them referring to the Nottingham customs and declaring them to be similar. This omission is, however, in a great measure supplied by the curious series of Charters, commencing with Wake's Charter and followed by Gryssop's composition, and that of the date of Queen Elizabeth, terminating with the award of the Earl of Shrewsbury, which specify many of the customs. It is, however, very curious that so little is expressed in the Royal Charters since the County in which Chesterfield is situated is not Nottingham, although at the time of the Conquest, and for long after, both Nottingham and Derby were under the control of the same Earl (Tofti), and the same Sheriff (Hugh fil Baldric, a member of the great family of Toesni, or Todini, whose connections, the Albinis, held feudal sway over the neighbouring counties of Lincoln, Leicester, and Rutland). Wake's Charter, however, whilst it recites several special customs, but only some of those affecting the Borough, like the Royal Charters expressly includes the Nottingham customs.

It is said by Glover that the Manor of Chesterfield had a Court of Record for actions under £20, but the author has not been able to

find any trace of its records, and certainly no Courts are now held, nor has he been able to discover at the Record Office any Court Rolls of the Manor whilst it was in the hands of the Crown, with one exception, of the 2nd and 3rd Philip and Mary, when a great Court of the King and Queen was held there (Portfolio No. 6., No. 63); it is, however, very meagre in detail, and does not disclose the form of the business—it only contains 6 entries—Sir James Foljambe was fined four shillings for default of doing the service that he owed, that is for absenting himself from the Court. Ralf Leake and John Rhodes were fined the same amount, and John Bullock was fined twopence, whilst Thomas Gyles and Edward Bannall were each fined sixpence with respect to a dealing with a moiety of a messuage, toft, &c., in Bagthorpe.

With this exception the author has been unable to see any of the early Court Rolls, and he is informed that in all probability they have been destroyed. Still copies must be in existence somewhere, and it would be very interesting to learn the nature of the process and course of procedure.

In considering the history of the Borough of Chesterfield there are two leading considerations which ought to be kept separate, since they are not, under ordinary circumstances, identical nor necessarily dependent one upon the other (although, probably, in this case they are of generally the same character), that is, the History of the Manor of Chesterfield and of the Borough; and, as the charters shew, the rights of the one were frequently in conflict with those of the other. It is quite possible that the Borough and Manor are not coterminous, indeed, the fact that at Domesday Chesterfield was only reckoned amongst the six Berewics of the Manor of Newbold seems to indicate that the Borough could not have been nearly so extensive as the Manor, and yet, if we regard the ecclesiastical parish of Chesterfield we find that it includes not only the whole of the Manor of Newbold but other hamlets, as Walton, which at Domesday were reckoned separately; this point, however, seems to be common to both Borough and Manor, that both were of an ancient demesne of the Crown. It will be well to give the exact words of Domesday, that this may clearly appear.

The first entry is under "Terra Regis" Scarnedale Wapentake—Manor—"In Newbold with six berewics Wittington, Brumington, Tapton, Chesterfield, Buttorp (Boythorpe), and Eckington, there are six carucates and one bovat, at geldable land six carucates, there

the King has 16 villani, 2 Bordarii, and one serviens having 4 carucates. To this Manor belongs 8 acres of meadow, wood, and pasture, 3 leuc long, and 3 leuc broad. In the time of King Edward it was worth £6, now it is worth £10."

"In Walton Hundalf a free man has 2 carucates of land at geld, three carucates waste and wood pasture, 1 leuc long and 1 broad. In the time of King Edward xx shillings."

It is some proof of the extreme antiquity of these places as tenures of Royal demesne that £1—the ancient British tunc pound—was paid for each of them. They were probably ancient demesnes of the Crown before the advent of the Romans, and we have to resort to Welsh Records, which are similar to those of England in pre-Roman times, fully to comprehend the meaning of this payment.

It is a characteristic of the tenure of ancient demesne that there is almost a superstitious adherence to old forms; the Book of Domesday is now the only proof of what is ancient demesne. As is seen at pages 47 and 71 of the Records of Chesterfield, although the borough has for centuries become the caput of this Manor, yet the order in which the Crown mentions these places in the Letters Patent acknowledging them to be of ancient demesne, is the very order of Domesday which is preserved in the Charters of Ed. IV. and Queen Elizabeth; no doubt the reason is that these Letters Patent were granted through the Exchequer, and until recently the Book of Domesday was there preserved and resorted to whenever a writ of this kind was required. The probability is that the Book of Domesday was partly taken from earlier Domesdays than itself, and that probably they were copied one from another, dating back to a period antecedent to the occupation of the Romans. No doubt whatever exists that in the time of the Romans, if not previously, Chesterfield was the mart for the sale of the minerals of the district, and that at the time of the Conquest it was a Borough of great importance, but up to that time it had escaped the heavy amount of taxation which shortly after was inflicted upon it, and which we find was noticed by the Royal Commissioners in their report to William the Conqueror.

The whole of these Records leave out of estimation the fact that Chesterfield was a Borough, and refer to it only as a hamlet, paying the tunc pound of the British kings, proofs that the Borough and Manor were both of the same tenure, and at that time probably distinct. It is, however, clear that the component parts of the present Parish of Chesterfield cannot claim to be of the tenure of