

REMARKS ON A SINGULAR BEQUEST IN THE
WILL OF GEORGE WHATLOKE, OF CLARE.—1539.

[READ DEC. 11TH, 1851.]

IN the last number of the Proceedings of this Society was published the will of George Whatloke, clothmaker, of Clare, which, among several other interesting particulars, contains a bequest so peculiar that I am tempted to recall attention to it. I refer to the direction that his executors should purchase as much land as should be of the yearly value of 10s., and that it should be let by the churchwardens of Clare, and that the said yearly farm (*i. e.* rent) of 10s. should thenceforth pay and discharge the whole common fine as well for the deceners, as for the headboroughs, then dwelling within the town of Clare. To the purchase of which land the testator willed that his executors should bestow or pay 12*l.* or 20 marks rather than the said act and deed should be undone; and he requested the said deceners there and then so being that they should, yearly at such day as the leet should be there held, and the common fine there and then yearly paid, ring a solemn peal with all the bells in the steeple for his soul, and all his friends' souls, and all Christian souls; and so in that fashion to be used for ever: and for (*i. e.* in order) that the two churchwardens, with the sexton, should be the more earnest and diligent to see this done, he willed that every of them should have for their labour 4*d.* in the name of a reward, and the ringers of the bells to have 8*d.* for their labour; which whole sum of money concerning the leet and these rewards, he says, should extend to the sum of 11*s.* 8*d.* by the year. He then proceeded to provide for the land being vested in 24 feoffees, and for the appointment of others on their deaths so as to continue the trust.

This bequest, of which I have given an abstract in

modern spelling, rather than set out the whole, which might be less intelligible, is of a very unusual kind; and whilst it refers to a social institution now almost lost sight of, it touches a few subjects sufficiently, I think, out of the track of general readers, to warrant a little explanation, in addition to the note on the word "deceners," by the gentleman to whom we are indebted for its publication.

The lords of Clare had the franchise of a leet there, and those residents who owed suit or attendance at the court of the leet, or court leet as it is more commonly called, were termed deceners; a word which occurs in a variety of forms in old law books and early documents, its spelling varying perhaps in a great measure according to the opinions entertained by the different writers of its etymology; for while some have supposed it derived from *douzaine* (twelve), others refer it to *decenna*, and that to *decem* (ten); which certainly seems to have been the original number of a decenna, though some suppose it was afterwards increased to twelve. However, before the date of this will in 1539, it is probable that neither number was strictly observed. A few observations on the subject of leets and decennæ seem necessary to render the bequest intelligible.

Suretiship in some form was in Anglo-Saxon times an important element of polity for the preservation of the peace. Probably other German races had a similar usage; for the Anglo-Saxon word for surety is *borga* or *borhoe*, and thence we have *borough*; the corresponding German word for surety is *bürge*, and thence *bürger* a citizen, and *bürgermeister* a mayor or magistrate of a town, and the like. However this may be, for some years before the conquest there existed a law, requiring every freeman, who was head of a family or household, to be associated with nine others in a mutual pledge of suretiship. Thus every one had nine sureties, and they were in the nature of bail for his appearance to answer any charge against him, and therefore indirectly responsible for his good behaviour. This law has been generally attributed to Alfred, and understood to have extended over all England; but Sir F. Palgrave* has shown

* English Commonwealth, part i., p. 202.

good reason for doubting whether it ever existed in that part which was the kingdom of Northumberland, notwithstanding what appears in the laws of Edward the Confessor to the contrary, which he suspects to be an interpolation. He is of opinion the system was developed to this extent between the accession of Canute and the death of William the Conqueror*. The groups or associations of ten heads of households were called in Anglo-Saxon *freo-borgas*, i. e. free pledges; and one of the ten had some authority over the rest, and was called the head-borough (in Anglo-Saxon *heafod-borga*, i. e. chief pledge), and sometimes the borsholder, probably from *borges-aldor*, i. e. the elder of the *borh* or borough†; or, as Lye has it, *borhes-ealdor, vas vel fidejussor primarius*. This suretiship is commonly known by the name of frank-pledge, and the sureties frank-pledges. The system underwent a gradation of changes, and some time after the Conquest we find these associations known as *decennæ*, and the chief members of them as *decennarii* or *decenniers*. In later times, when the French language prevailed in this country, we find them called *dozeins*, and the members *dozeiners*. In an age when there was no such thing as orthography, slight variations in spelling are little to be regarded; and these last designations may be no more than other forms of the French words *dixaine* and *dixainiers*: but some have thence inferred the number of each decenna had been increased to twelve‡. The word *dozein* may however have had another origin, as twelve was the age at which persons were liable to be called on to be sworn to allegiance and to find pledges; for in one early copy of the statute of Edw. II., known as *Statutum de Visu Franciplegii* (though it is not in reality an act of parliament), the words "*toutes les douzans*" occur where other copies have *toutz de douze annz*, i. e. all persons of twelve years of age. Since the disuse of the French language in such matters the most common spelling of the word has been *decener* or *deciner*;

* English Commonwealth, part ii., p. 123 & seq.

† Borough, a town, is from *burh*; and borough, a pledge, from *borh*.

‡ See Hallam's *Mid. Ages*, ii. p. 408n. 2nd edit., and *English Commonwealth* part ii., p. 125.

and it has signified any member of such an association, or a suitor or resident within a leet. The supervision of these associations was originally under the jurisdiction of the sheriff in a court called the sheriff's tourn, which was a court of record, and held at several places in the county, and at various times, but by Magna Carta the holding of it for this purpose was restricted to once a-year. It was distinct from the county and hundred courts: in them the suitors were the judges, but in the tourn the steward was the judge, though there was a jury of deceners to present offences. In the course of the 12th and 13th centuries we find many lords of manors and some towns had acquired the right of inspecting these associations, or the view of frank-pledge as it was usually termed, within their respective jurisdictions, to the exclusion of the sheriffs; and this franchise was called a leet, or at least it is found in connection with a jurisdiction so designated. At that time considerable modifications of the system had taken place, and noblemen, knights, and ecclesiastics, as well as women, were exempt from it, the king having other securities for their allegiance and good conduct. Somewhat later the term decenna or dozein, though used generally for a particular association of this kind, is occasionally employed to denote the aggregate of them within a manor or town; and hence decenna and leet are sometimes equivalent. The word leet is probably from the Anglo-Saxon *gelæte*, a meeting, and referred originally, it is presumed, to the court at which the view of frankpledge was taken.

During the same period the functions of the headboroughs, no doubt, underwent a material change. As to the particular duties of which they originally consisted we have little trustworthy information. After the practice of appointing constables had become general, which, if it did not originate in, was greatly increased by the statute of Winchester, 13 Edw. I, c. 6 (whereby, in consequence of the frequent murders and robberies, every man was required to keep arms in his house for the preservation of the peace, and two constables were directed to be chosen in every hundred and franchise to see that the statute was observed), and especially when soon after, for the assistance of such

constables, petty constables came to be appointed, the headboroughs were so generally appointed petty constables, that the two offices became very much united*, and the peculiar duties of the headborough almost disappeared, and the term has become in many places synonymous with constable.

For many years before the date of this will the leet had been a very important instrument of police, and was then on the decline. The court, like the sheriff's tourn, was a court of record wherein the steward was the judge, and it was held commonly once a year; when all the deceners, including the headboroughs, owed suit or attendance at it; and out of them a jury of twelve or more was sworn. It had cognizance of a great diversity of matters, most of which are now under the jurisdiction of the justices of the peace. One of its principal duties was to summon all persons (with the exception of such as are above mentioned to have been exempt), who were twelve years of age and had been resident for upwards of a year and a day within its jurisdiction, and not been sworn as deceners, to come and take an oath of allegiance and for the preservation of the king's peace, and to find sureties or pledges for their good behaviour; but whether twelve or ten, or even a less number in the latter part of the period, is not clear, though the probability is, that the number was no longer certain; for Sir Edward Coke, who was born only a few years after the date of this will, speaking of decenna and decennarii, says "which names are continued as shadows of antiquity to this day" (2 Inst. 73). It was the duty of the jury to present all such persons, and also to inquire into and present all petty treasons, felonies, larcenies, and public nuisances, and all frauds by artificers of every kind, and by dealers in bread, meat, ale, &c., and divers offences of other sorts committed within the jurisdiction of the leet; and even such social annoyances as brawlers, scolds, and eave-droppers were under their surveillance. The greater offences were referred to a higher tribunal, but the minor ones were punishable by the court, some by fine, and for others the lord of the leet was bound to keep a pillory,

* Blackst. Comm. i. p. 356.

tumbrel, and stocks; to which a cucking-stool or ducking-stool, and a branks for scolds were often added.*

Seeing the variety of matters of which the court leet had cognizance, and that most of them were within its jurisdiction as early as the reign of Edw. II., and few of those can be referred to any act of parliament, it seems highly probable that it represents some court of Anglo-Saxon times, to the other duties of which the inspection of the free-pledges was added, and that in fact the view of frank-pledge was an appendancy to the leet, and not of the essence of it. Magna Carta, c. 35, speaks of the court of the tourn being sometimes held without view of frank-pledge, which somewhat sanctions this inference; and if, as the late Mr. Serjeant Scriven states, the proper style of the court be "the court leet with the view of frank-pledge", that would afford a strong argument for its correctness; but he cites no authority for this, and Sir Edward Coke says the style of the leet and also of the sheriff's tourn was "the court of the view of frank-pledge". This, however, is a question beside the present purpose.

Now as to the common fine mentioned in this will, this also has reference to the leet. We have seen that in the absence of a leet the deceners had to attend the sheriff's tourn, which in many cases must have been held at a distance from their homes. A leet therefore was a considerable benefit to deceners, as it exempted them from that attendance, by substituting attendance at a court within the

* As these instruments for punishing inveterate scolds have been long disused, a few words upon them may not be unacceptable. A cucking or ducking stool was a contrivance whereby a chair was suspended from a lever over a pond or river. The offender was made fast in the chair, and by means of the lever was immersed in the water. An instance of this rude punishment occurred at Bristol as late as 1718; for which the woman's husband is said to have recovered damages against the mayor who ordered its infliction (Evans's Bristol, p. 259). It was not confined to scolds. Brewers and bakers offending by selling bad beer and bread were occasionally subjected to such correction. A branks was commonly made of

iron hoop, and consisted of two pieces passing over the head at right angles to each other, and rivetted at their ends to a circle of the same material that went round the neck, and from one of them a short piece of iron projected inwards, which was put into the mouth so as to keep down the tongue. This instrument, when used, was fastened behind, so that it could not be easily displaced; and the offender, thus gagged, was led about the town to shame her into more peaceable behaviour. A branks remains in the possession of the corporation of Stafford, and another at Lichfield; and Sir John Walsham exhibited one at the second annual meeting of this society at Bury. (See p. 154.)

manor or town in which they resided, with a summary redress there against the various public offences of which it had cognizance. The common fine was a small payment by the deceners to the lord of the leet, sometimes one penny per head, and sometimes a small sum, as for example 6s. 8d. or the like, for all the deceners collectively; and the general opinion has been that it was originally paid as a recompense to the lord for the privilege afforded by the leet, and as some compensation for the expense which he was at in procuring the franchise from the crown. This was sometimes called cert-money, from the expression *pro certo letæ* that was applied to it; sometimes head-money, head-silver, head-penny, chief-silver, or king's-silver. It was, however, the opinion of one distinguished writer on the subject, Mr. Ritson, that the common fine was originally a payment in excuse of the non-attendance of all but the chief pledges or head-boroughs, but such view of it hardly consists with what appears in this will. The common fine in the present instance we may conclude to have been a sum certain for all the deceners, and not so much per head; since, beside that the 10s. would at a penny a head, give us only 120 deceners for the whole extent of the leet, and their number was ever liable to vary, it is not likely an uncertain payment would have been thus provided for.

It is evident the testator thought the payment of this fine a boon to the inhabitants of Clare, not only from the ringing of the bells, which he directed to take place on the leet day by way of perpetual commemoration of him, but also from the price that he authorized to be given for the land requisite to furnish the necessary yearly sum, rather than his purpose should fail. Land in the vicinity of Clare must surely have borne comparatively a high price, for he reckoned 12*l.*, or even 20 marks (i. e. 13*l.* 6s. 8d.), might be required to purchase 10s. a-year, being rather more in the latter case than 26 years purchase; which is as high in proportion to the rent as land now sells for; an extraordinary fact considering that the rate of interest then was hardly less than 10 per cent. One part of the scheme is not intelligible: the land purchased was to yield a rent of 10s., which was to go in payment of the common fine, yet

the churchwardens and sexton were to have 4*d.* each, and the ringers 8*d.*; and the whole amount is correctly given as 1*l.* 8*d.*; but where the additional 1*s.* 8*d.* were to come from does not appear.

With regard to the ringing of the bells which was to take place yearly for his soul, and his friends' souls, and all Christian souls, this is remarkable as appearing to indicate a superstition in respect to church bells that I do not remember to have met with elsewhere. Among all the uses and beneficial effects attributed to them, I do not find any efficacy in relieving souls from purgatorial torments mentioned.* I presume the testator's notion must have been that the grateful deceners, on hearing the solemn peal, would not fail to remember the occasion of it, and say an *ave* or two, or perhaps a *pater noster*, for their benefactor, that his soul might rest in peace.†

W. S. W.

* I am aware that among the various legends on bells, prayers of some kind are very common, most of them being "*Ora pro nobis*," addressed to the Virgin or some saint; and it is by no means improbable that the ringing of the bell may have been regarded as the repeated utterance of the prayer inscribed on it; but this does not appear to me to afford a satisfactory explanation of the ringing directed.

† I am indebted to Mr. Tymms for a

reference to a direction conceived in a spirit similar to that above supposed. John Baret, of Bury, by his will dated A.D. 1463, directed the bellman to go about the town on his year-day for his soul; and his object seems explained in another place, where he says "that they that hear it may say 'God have mercy on his soul', which greatly may relieve me with their devout prayers."—See *Tymms's Bury Wills*; pp. 21, 28, & 240.