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Studies and Notes supplementary to Stubbs' Constitutional History

II

BY

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PREFACE.

As was foreshadowed in M. Petit-Dutaillis' preface to the French translation of the first volume of the "Constitutional History" of bishop Stubbs, the second volume, of which the French version appeared last year, has been found to need much less revision of the kind for which footnotes are inadequate. Instead of the twelve additional Studies and Notes of volume I, which were translated by Mr. W. E. Rhodes and published under my editorship by the Manchester University Press in 1908, M. Petit-Dutaillis has thought it unnecessary to append to volume II more than two such studies. The subjects with which they deal, "The Forest" and "The Causes and General Characteristics of the Rising of 1381" are, however, treated with such thoroughness as to provide sufficient matter for another volume of "Supplementary Studies." In his preface M. Petit-Dutaillis holds out the hope that his additions to the third volume of Stubbs' work will be concerned with questions more directly constitutional; but the Forest played a part in the contest between the English crown and people which makes the inclusion of the first essay in these studies quite appropriate, while the many additions that have been made to our knowledge of the Peasants' Revolt since Stubbs wrote constitute a sufficient justification for the second. The translation of the two studies has been made by my friend and colleague Mr. W. T. Waugh, and my duties as editor have been exceedingly light. As in the first volume, a few footnotes have been added in square brackets, in most cases by Mr. Waugh, who has also adapted the index from the one made by M. Lefebvre for the French edition.

JAMES TAIT.

The University,
Manchester,
July 10th, 1914.

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THE FOREST.

THE institution of the Forest, established by the Norman kings and maintained by the Plantagenets, has strong claims on the attention of the historian. Not only, as an institution very characteristic of the times, does it throw valuable light on certain features of mediæval society, law, and administration; but the fact of its existence led to important results in the constitutional crises of the thirteenth and fourteenth centuries. One may regard the Forest as a melancholy and decisive witness to the brutality of the Norman Conquest, as an illustration of the despotic authority of the Norman and Angevin kings, as a cause of the hostility of the barons and higher clergy towards the crown, or as a ground for the hatred felt by the people towards the king's officers. But from every point of view the Forest is equally worthy of study.

Interest of the subject

Stubbs did no more than touch upon the subject, and, as far as we know, the history of the Forest in mediæval England has never been treated in its entirety on the general lines which we wish to follow. Our intention is to set forth the most important of the results that have been achieved. We have used such printed records—whether published in full or calendared—as we have been able to consult, and several valuable works of modern scholarship, among which special mention should be made of Dr. F. Liebermann's critical essay on the *Constitutiones de Foresta* ascribed to Cnut, and

Mr. G. J. Turner's study on the Forest in its legal aspect during the thirteenth century. In addition, the interest of the task has led us to make cautious expeditions into the realm of comparative history. In seeking the origins of the English Forest we have turned to the Continent, where they are certainly to be found, and occasionally we have drawn a parallel between the evolution of the Forest in England and the corresponding process in France.

Use of the comparative method

(1)

THE FOREST AND THE RIGHT OF THE CHASE IN MEDIÆVAL ENGLAND.—ORGANISATION OF THE FOREST.

We have first to ask what meaning was attached in England to the word "Forest," in its legal sense,[1] as used, for example, in the phrase "Forestas retinui" in the charter of Henry I, or in such expressions as "bosci afforestati," "manere extra forestam," which appear in the charter of 1217.

Meaning of the word "forest"

As early as the time of Henry II, Richard Fitz-Neal, in his *Dialogus de Scaccario,* gave a very clear definition of the Forest. It consists, he says, in preserves which the king has kept for himself in certain well-wooded counties where there is good pasture for the venison. There the king goes to forget his cares in the chase; there he enjoys quiet and freedom: consequently those who commit an offence against the Forest lay themselves open to the personal vengeance of the king. Their punishment is no concern of the ordinary courts, but depends entirely on the king, or his specially appointed delegate. The laws of the Forest spring "not from the common law of the realm, but from the will of princes; so that what is done in accordance with them is said not to be just absolutely, but just according to the forest law."[2] The nature of the Forest could not be more clearly stated, and the definitions given by Manwood in the sixteenth century and Sir Edward Coke in

Definition in the "Dialogus de Scaccario"

1. The word is also used, even by lawyers, in its modern sense of a tract covered with trees; the author of the *Dialogus de Scaccario* writes, "Reddit compotum. . . . de censu *illius nemoris vel foreste.* . . ." (*Dialogus de Scaccario,* II. xi; ed. Hughes, Crump, and Johnson, 1902, p. 141).

2. *Dial. de Scacc.* I. xi, xii; ed. cit. 105 sqq.

the seventeenth, are based on those formulated by Richard Fitz-Neal.[1]

The word *Forest,* adds the author of the *Dialogus,* comes from *fera,* wild beast, *e* being changed to *o.*

The Forest is a hunting-preserve

Fanciful though it be, this derivation is deduced from a perfectly correct notion: in law and in fact, if not in etymology, the Forest owed its origin to sport. The Forest or the Forests—the word was used, in the middle ages, in both the plural and the singular—consisted of a number of game-preserves protected by a special law. They were mostly covered with woods, but also included moorland, pasture, and even agricultural land and villages.[2]

The Forest, as such, belonged to the king. It must not, indeed, be confused with the royal demesne: for there were royal woods which were not Forest, and on the other hand, a forest often comprised estates which were the property of subjects, even of great lords. But it belonged to the king in the sense that it was created for his benefit, that within its limits none save himself and those authorised by him might hunt the red deer, the fallow deer, the roe, and the wild boar,[3] and

In what sense does the Forest belong to the crown?

1. "A forrest doth chiefly consist of these foure things, that is to say, of vert, venison, particuler lawes and priviledges, and of certen meet officers appointed for that purpose, to thend that the same may the better be preserved and kept for a place of recreation and pastime, meet for the royall dignitie of a prince" (Manwood, *Treatise of the Lawes of the Forrest,* 1598, f. 1); "A Forest doth consist of eight things, videlicet of soil, covert, laws, courts, judges, officers, game, and certain bounds" (Coke, *Fourth part of the Institutes of the Laws of England,* ed. 1644, p. 289).

2. The word *forestis, foresta,* which is found in Merovingian documents of the seventh century, comes, according to Diez, from the Latin *foris,* and already meant a district placed *outside,* or preserved, by royal command. This etymology is quite in accordance with the sense of the word Forest in England, but after a careful study of Merovingian records, I am doubtful whether to accept it.

3. These four were generally considered to be the "beasts of the Forest" to which the forest law applied. The list varied somewhat in different times and places. See the very learned and sound paper of F. Liebermann, *Ueber Pseudo-Cnuts Constitutiones de Foresta,* 1894, p. 20; G. J. Turner, *Select Pleas of the Forest* (Selden Society, 1901), x sqq. From the time of the first Norman kings neither the wolf nor the fox was regarded as a beast of the forest. John of Salisbury says that they were not hunted according to the rules of venery (Liebermann, p. 23).

that it was subjected, throughout its extent, to very severe laws, enacted arbitrarily by the kings for the protection of the "vert and venison," that is to say for the preservation of the beasts of the Forest and the vegetation which gave them cover and food.[1]

In mediæval documents mention is also made of the king's *parks* and *warrens,* and sometimes of his *chase.*

Chases and royal parks

There was, in our opinion, no real difference between the king's chase and the Forest.[2] Parks were distinguished by the fact that they were enclosed by a wall[3] or fence.[4] But the records published by Mr. Turner show that the royal parks formed part of the Forest,[5] that they were under the oversight of foresters,[6] and that offences committed in them were punished in the same way as forest offences:[7] and in these respects isolated royal parks must have been in the same case as those surrounded by Forest. As the king's object in making a park was the better preservation of his game, it would be absurd if the forest law were not applicable to it. It is well to insist on this point, for English historians have vied with one another

1. If the king alienated a part of his Forest the forest law might still be applied to it for the benefit of the new owner. This was the case in the forests held by the earls of Lancaster in the fourteenth century (Turner, pp. ix, cxi sqq.). But as a rule the forest, in such an event, became a chase (see below, p. 154).

2. According to W. H. P. Greswell, *Forests and Deer Parks of the County of Somerset* (1905), p. 244, the chase was not subject to the forest law. He gives no proof of this, and admits that in certain documents the Forest of Exmoor is called the Chase of Exmoor. Kingswood Forest in Essex is another case in point. In 1328 J. le Warre complained that some years before the "gardeins de la chace" had put his manor "en la chace de Kingeswode et de Fulwode"; so that he no longer had the right to cut his wood (*Rotuli Parliamentorum,* ii, 29). Kingswood was part of the forest of Essex (Turner, p. 69). Mr. Turner's remarks on chases (*ibid.*, pp. cix sqq.) apply only to the chases of feudal lords.

3. "Fregit murum parci et intravit eum cum canibus" (Turner, p. 40).

4. "Operarii *in parco predicto ad reparandum palicium*" (*ibid.*, p. 55).

5. "Venacio data per dominum regem: . . . comes Cornubye venit in foresta de Rokingham . . . et cepit in parco et extra parcum bestias ad placitum. . . . . " (*ibid.*, p. 91).

6. "Willelmus, forestarius pedes in parco de Bricstoke" (*ibid.*, p. 83). These foresters were sometimes styled parkers (*ibid.*, p. 55).

7. *Ibid.*, pp. 4, 54 sqq., etc.

in repeating that parks were not subject to the forest law.[1] In this general form, the statement is false: a distinction should be made between the royal parks and those of the lords.[2]

Royal warrens

The position of the royal warrens has never, as it seems to me, been accurately stated. It is clear that the word bore another meaning than the one it had in France,[3] and was applied especially to land reserved for hare-hunting. It would, however, be too much to say that royal warrens were entirely exempt from the forest law,[4] for in the *Placita foreste* we find thefts of hares from a warren judged by the same process as poaching in the Forest.[5] Even in Middlesex there was

1. See, e.g., W. S. Holdsworth, *History of English Law* (1903), i, 346; MacKechnie, *Magna Carta* (1905), p. 493.

2. The treatise of Mr. Turner, who possesses well-deserved authority on the subject of the forest law, does not tend to prevent this confusion. Although royal parks often appear in the documents he has edited, he deals in his introduction only with the parks of subjects. It is of these that he is speaking when he says (p. cxxii): "The park was not subject to the forest law."

3. In France itself the meaning of the word changed—a fact which has caused many blunders. It was only in the sixteenth century that "garenne" acquired the almost exclusive sense of rabbit-preserve. See the remarks of Olivier de Serres, *Théâtre d'Agriculture*, ed. 1805, II., 62 sqq. There were certainly "garennes à connins" in the Middle Ages, but the word "garenne" had the quite general meaning of "game preserve." See, among others, a document published in De Maulde, *Condition forestière de l'Orléanais*, p. 491: " . . . ius habendi garennam ad *grossum animal*"; and an *arrêt* of the Parlement of Paris, dated 1270, in *Olim*, I., 835, no. xlix: " . . . in loco ubi rex habet garennam suam ad grossam bestiam et minutam."

4. As Mr. MacKechnie asserts (*Magna Carta*, p. 493).

5. From the examples in the documents published by Mr. Turner, we have selected three of different periods: i. In 1209, in the pleas of the Forest held at Shrewsbury, Hamon Fitz-Marescat was tried for stealing hares in the warren of Bulridge (Turner, p. 10).—ii. In 1255: the offence was the theft of four hares in the warren of Somerton; the presentment was made by the verderers; the chief offender being a clerk of the king's court, the case was adjourned. The inquisition had been held in the ordinary way (pp. 41 sqq.). The title of the document from which this illustration is drawn runs: *Placita foreste in comitatu Sumerset*, and the sub-title: *Placita de warrena de Sumerton*. The document also summarises an inquisition held concerning a hare found dead, and conducted like inquisitions on beasts of the Forest found dead.—iii. In 1286: *Placita Foreste apud Huntyndone. . . . Placita warrenne de Cantebrigge* (pp. 129—131). This record is the most elaborate of the three,

a warren which was entirely subject to the forest law.[1] Such cases were, however, exceptional. Offences against rights of warren had, as a rule, to be tried in the ordinary courts of law.

The king's right of warren

The question whether all the royal demesne was regarded as warren has been investigated by Mr. Turner, who concludes that the king would probably not consider his own lands to be warren unless they were sufficiently well stocked with game to make hunting worth while.[2] Nevertheless we find Edward I taking care to specify in 1305 that he had right of warren on all his demesne lands.[3] From the beginning of the Norman period, moreover, private warrens had existed only by royal grant. It may safely be inferred from this that the king could claim right of warren over the whole realm. And as a matter of fact, he did establish warrens for himself in all parts: as late as the end of the thirteenth century he is found defending his right of warren in lands which did not belong to his demesne.[4]

In short, the king apparently claimed the right of the

and also the most striking, for it certainly looks as if this Cambridge warren lay quite apart from any forest. Evidently a large number of arrears had to be cleared off and delicate points decided. The justices of the Forest, sitting at Huntingdon, tried a large number of cases of hare-poaching and gave decisions on claims put forward by the inhabitants. See below, n. 4.

1. In 1227 Henry III disafforested the warren of Staines, in Middlesex. His charter shows that the warren had been subject to the forest law (Turner, p. cviii; cf. *Rot. Lit. Claus.* II., 197).

2. Turner, p. cxxxiii.

3. *Statutes of the Realm*, i, 144.

4. We have a very characteristic document of 1286 concerning the royal warren at Cambridge: "Johannes Extraneus, dominus de Middilton, Warinus de Insula, dominus de Ramton, et templarii de Daneye clamant habere libertatem warrenne in terris suis infra warrenam predictam domini regis; et sepius cum leporariis suis ceperunt plures lepores in eisdem terris suis pro voluntate sua. . . . Ideo preceptum est vicecomiti quod faciat venire predictos Johannem et Warinum et eciam preceptorem ad ostendendum warantum si quod inde habeant, vel ad satisfaciendum domino regi de transgressione predicta . . . " (Turner, pp. 130—131.) See also (p. 131) the claim of the Abbot of Ramsey.

chase in every part of his realm.[1] In his view, this right entitled him to hunt small game, not only on the whole of his demesne, but also in the warrens which he had on the estates of his barons. But he preferred a nobler quarry, and so set apart for himself vast preserves for larger game. These were called Forests or Chases, and Parks when they were enclosed; and he established a code of forest law to protect them.

We now come to the hunting-rights possessed by the king's subjects. Apart from royal grants of the right to hunt in the Forest,[2] the barons and prelates had "chases," "parks," and "warrens" of their own. The chases of the lords were generally parts of the Forest which had been alienated by the king: in a sense the grant did not involve complete disafforestment, for the burdens imposed on the inhabitants were maintained, at least in part, for the benefit of the recipient.[3] The parks of the lords, on

Hunting rights of the king's subjects

1. The matter is obscure, and in our opinion was a question of fact rather than of law. English writers on feudal law have tried to formulate theories about it. Blackstone asserts that all the game in the realm belongs to the king, and that nobody therefore may hunt without his permission. Christian, however, in his notes on Blackstone, cites documents which contradict this view, notably the following ancient pronouncements of English law: "Quant beastes savages le roye aler hors del forrest, le property est hors del roy . . . s'ilz sount hors del parke, capienti conceditur" (Blackstone, *Commentaries*, 17th ed., bk. II., cap. xxvii, n. 10).

The following passages leave the impression that contemporaries had rather vague notions as to the rights of the king over game which had strayed from forests and parks: "Quedam dama evasit de parco domini regis . . . et venit quidam homo domine Hugeline de Neville cum duobus leporariis, et prosequebatur dictam damam et cepit eam in campo de Pizeford, et duxit dictam venacionem secum in domo domine Hugeline. Set non possunt attachiari quia manent extra forestam." As an inquisition was held, it was evidently thought that an offence had been committed (Turner, p. 90, under the year 1250). "Dicunt per sacramentum suum quod homines comitis de Ferrariis fugaverunt unum brokettum dami infra libertatem usque ad aquam subtus Wodeford. Et brokettus ibi transivit aquam et resistit in quodam butimine extra Wodeford, et ibi custoditus fuit per villatam quousque Ricardus de Audewincle, viridarius, venit et per ipsum et per villatam ductus fuit ad forestam salvus et sanus" (*ibid.*, p. 105, under the year 1252).

2. Numerous examples of these grants are to be found in the close rolls.

3. Turner, pp. cix sqq

the other hand, though they were sometimes situated in districts which had formerly been forest, were not under the forest law. Provided that the king's hunting was not injured, a landowner was at liberty to make a park and hunt there at his pleasure.[1] Sometimes the king made a gracious present of bucks and does to stock a park.[2] As for the warrens in private hands, they were unenclosed tracts on a lord's demesne,[3] where he hunted other game than the beasts of the Forest—hares in particular, but also rabbits, foxes, wild cats, partridges, pheasants, and so forth. If noble game, like a buck, took refuge in a warren, the hunters might follow it there from outside without restriction, for it was not a beast of the warren. Warrens, as we have already said, were established by royal charter. Thus the abbot and monks of Battle had right of warren on all their lands by charter of William the Conqueror: they alone, that is to say, might hunt the beasts of the warren. It was laid down in these charters, that every breach of the right of warren was punishable by a fine of ten pounds to the king.[4]

Outside these various preserves, royal and other, it appears that the chase was free in England during the middle ages. On this point the evidence, though naturally meagre, is sufficiently convincing.[5] It was

1. Turner, pp. cxv sqq.

2. "Per breve, magister Simon de Wauton fecit capere in foresta de Rokingham octo damas et quatuor damos vivos, de dono domini regis, ad parcum suum instaurandum" (Anno 1253, *ibid.*, p. 106).

3. The king was in general opposed to the "elargacio" of a seignorial warren over the lands of the lord's free tenants or the lands of his neighbours (Turner, p. cxxv).

4. *Ibid.*, pp. cxxiii sqq.; cf. *Rot. Parl.* ii, 75 *b*.

5. As to lands where the chase was free, besides the documents cited by Turner (pp. cxxiii, n. 1, cxxviii, cxxx, cxxxiii) see *Rot. Parl.* i, 330a, no. 207, and in particular certain charters of disafforestment granted by John, notably the one in which he concedes the disafforestment of a district in Essex: "ita quod tota foresta infra predictas metas contenta et homines ibi manentes et heredes eorum sint deaforestati et liberi et soluti et quieti in perpetuum de nobis et heredibus nostris de omnibus que ad forestam et forestarios pertinent, *et quod capiant et habeant omnimodam venationem quam capere poterint infra predictas metas*" (*Rot. Chartarum*, ed. Hardy, p. 123. Cf. *ibid.*, pp. 122, 128, 132, 206).

only at the end of the fourteenth century that the idea—long entertained by the nobility[1]—of depriving the common people of the right to hunt game, made its appearance in English law.

Importance of the question of the right of the chase

In order to form an accurate estimate of the extent and validity of the grievances of the nation against the crown, future writers on the Forest will have to dispel the obscurity which surrounds this question of the right of the chase in England. And with their treatment of the Forest they must combine that of the warrens, just as the two are connected in article 48 of the Great Charter.[2]

The forest organisation

We come now to a subject which is better known—the organisation of the Forest at the time of its highest development, that is, during the rule of the first Plantagenets. Stubbs dealt with the subject;[3] but Mr. Turner's excellent study has given us more exact knowledge and corrected certain mistakes. From it we have drawn most of the short sketch which follows, and the reader may be referred to it for all that concerns the details of forest procedure.

The protection of the Forest

Nobody had the right, without royal permission,[4] to take any of the game, wood, or pasture of the Forest—not even the baron or freeholder on his own land, if that land lay within the bounds of a forest. "Those who dwell within the Forest," writes the author of the *Dialogus de Scaccario*, "do not take of their own wood, even for the necessities of their house, except under the view of those who are appointed to keep the Forest."[5] The right of cutting

1. Cf. Liebermann, *Pseudo-Cnut*, pp. 45, 47.

2. "Omnes male consuetudines de forestis et warennis, et de forestariis et warennariis . . . "

3. *Const. Hist.*, vol. i (ed. 1903), pp. 434 sqq.

4. For authorisations to make clearings or enclosures, and the preliminary inquiries, see W. R. Fisher, *Forest of Essex*, pp. 321–2. On permission to take game see below, pp. 187-188.

5. *Dialogus*, I. xi, pp. 102-3.

Trespasses to the vert: waste, assart, and purprestur

wood, whether for fuel or making repairs, was narrowly restricted: anyone who exceeded his customary rights committed the crime of "waste" (*vastum*); he had to pay a composition in order to keep the wood he had cut, and was amerced whenever the itinerant justices came round, until the damaged trees had grown to their former state. If trees were uprooted to turn woodland into arable or merely to gain a few square feet of soil, a fine was inflicted; and though the offender was not required to plant other trees, he had to pay a composition on every crop raised on this "assart." This system of converting a punishment into an annual rent and an offence into a permanent source of revenue is extremely characteristic. The chase was certainly the parent of the Forest, but it is nevertheless true that this institution quickly acquired a financial significance:[1] the king was even more concerned to secure an income at the expense of the inhabitants of the Forest than to prevent the destruction of wood. Furthermore, there was the crime of "purprestur," committed whenever, by enlarging a field, making a mill or a fishpond, a hedge or a ditch, anyone encroached on the domain of the king's deer or restricted their movements.[2] The offender was fined, and might only keep the land he had gained, or the works he had constructed, by payment of a further sum. As for the destruction of game, it was punished more or less severely, according to the period, and it was guarded against by vexatious rules to which we shall return later.

Trespasses to the venison

1. [Much welcome light is thrown on forest finance by Miss Margaret L. Bazeley in her recently-published monograph, *The Forest of Dean in its Relations with the Crown during the Twelfth and Thirteenth Centuries* (Transactions of the Bristol and Gloucestershire Archæological Society, vol. xxxiii, pp. 153 sqq.). It appears that the financial resources of this forest were not properly exploited until the 13th century.]

2. *Porprestura* has the general meaning of "encroachment," "usurpation." See the passage from Glanvill cited by Du Cange, s.v. *porprendere*. A clear distinction was not always made between the offence of "assart" and that of "purprestur."

The supervision of the Forest and the punishment of offences were provided for by a complicated system of officials and institutions—functionaries appointed by the king, commissioners and jurors chosen by election, officers who held their posts by hereditary right, investigations by commissions of enquiry, local courts, and eyres of itinerant justices.

The forest officials

At the head of the forest administration we find the *capitalis forestarius* mentioned in the charter of 1217, or else two high dignitaries, who in the thirteenth century had the title of justices. From 1238 onward, it was usual for the Forest to be administered in this way by two justices, one for the district north, the other for that south, of the Trent.[1]

The head of the administration

Each of the forests, or each group of forests, was administered by an official who was called warden, bailiff, seneschal, or chief forester.[2] His post was sometimes hereditary,[3] but even in this case he might be removed. When the warden was appointed by letters patent, the same document often conferred on him the custody of the castle of the district.[4]

The wardens

Besides the warden, there were in most of the large forests one or more *forestarii de feodo, foresters de fé,* who likewise saw to the preservation of the vert and the venison, and executed the decisions of the itinerant justices. They

The foresters-in-fee

1. Turner, pp. xiv sqq. [Mr. Turner has printed a list of the justices of the forests south of the Trent (1217-1821) in *Eng. Hist. Rev.* 1903, pp. 112-116.]

2. Turner, pp. xvi sqq. On the rights possessed by the wardens see *ibid.*, pp. 66-7, and the passage quoted in the Introduction, p. xxi, n. 1. Cf. an interesting document of the fourteenth century (*Rot. Parl.* ii, 79).

[In the French the official under discussion is termed the *chef-forestier*. Following Mr. Turner (Introd., p. xvi) I shall refer to him as the "warden."]

3. As in the case of John Fitz-Nigel, whose duties and rights were determined by an inquisition of 1266. In return for the profits which were guaranteed to him, he paid the king forty shillings a year and kept the forest of Bernwood (Turner, pp. 121-2).

4. Turner, *Introd.*, p. xvii. [See also Miss Bazeley's excellent account of the rights and duties of the warden in the Forest of Dean (*op. cit.* pp. 175—191).]

possessed certain rights over the Forest. Some, but not all, paid a ferm to the king.[1] They were not always bound to obey the warden.[2] Some, without doubt, had been enfeoffed by the king, and owed submission to him only; others had been enfeoffed by the warden.[3] Occasionally a whole forest would be put under the custody of a forester-in-fee; his office would then be merged in that of warden. An instance was the office of forester-in-fee of the forests of Somerset, which was held in the fourteenth century by the family of Mortimer.[4]

The ordinary foresters were game-keepers who pursued and arrested offenders. A distinction is often made between mounted foresters and under-foresters who went on foot.[5] They were chosen by the wardens, or, in some districts, by the foresters-in-fee, but they took an oath of fidelity to the king. There were also private foresters, called woodwards, who guarded the woods held by subjects within the limits of the Forest: they were bound by oath to preserve the vert and venison for the king's hunting; and if they failed to do so, the wood was confiscated. Each forest, moreover, had as a rule four *agistatores,* charged with the oversight of the *agistment* of the cattle and swine in the

Under-foresters

Woodwards

Agisters

1. Turner, pp. xxiii-iv, only touches upon the question of foresters-in-fee. Interesting details will be found in Greswell, *Forests of Somerset,* pp. 136 sqq. In *Fleta,* a legal treatise written about 1290, there are curious rules for the conduct of inquisitions concerning foresters-in-fee (*Fleta,* lib. ii. c. 41, § 30). [Miss Bazeley gives some particularly interesting information about the nine foresters-in-fee of the Forest of Dean (pp. 191 sqq.). See especially p. 194, where their possessions and obligations are tabulated. All paid an annual ferm to the king; but in the thirteenth century they could assert no warrant for their jurisdiction "nisi antiqua tenura."]

2. A warden, Henry Sturmy, declared in 1334 that all the *forestarii de feodo* in his forest owed him obedience (*Rot. Parl.* ii. 79). This was therefore not the invariable rule.

3 "Hugo de Stratford, quondam forestarius de feodo de balliva de Wakefeud, reddidit per annum domino Johanni de Nevyle, tunc senescallo foreste, pro predicta balliva, ad firmam, duas marcas et dimidiam," etc. (Turner, p. 123).

4. Greswell, pp. 150 sqq.

5. Fisher, *Forest of Essex*, p. 137; Greswell, p. 144.

woods and fields, and with the collection of the rents exacted for pasturage.[1]

Verderers

The verderers belong to another class. They were knights or substantial landowners who had property in the Forest. They were elected in the county court, generally to the number of four in each forest, to attend the forest courts of justice. Once elected, they as a rule retained office for life.[2]

Regarders

Finally, the regarders were sworn knights,[3] charged with a temporary commission of enquiry. The functions of the verderers and regarders can best be understood by an examination of the working of the forest courts.[4]

Stubbs' sketch of the administration of justice in the Forest[5] is rather meagre and even wanting in accuracy.

Forest justice. The swanimote

The swanimote, which he represents as a court of justice corresponding to the county court, was only an assembly of the foresters, held to make arrangements about the pasture, to receive the rents which it brought in, and to take precautions against injury to the deer during the fawning season.[6] There were really only two kinds of tribunals—the court of attachment, *attachiamentum,* held as a rule in each forest every six weeks, and the court of the itinerant justices of the forests, *justiciarii itinerantes ad placita foreste,* who held an eyre in each forest every few years. The functions of the court of attachment were rather

The court of attachment

1. Turner, pp. xx sqq., xxiv sqq., xxvi. Du Cange, s.v. *agistare.*
2. Turner, pp. xix-xx, xxvi.
3. [Turner, pp. lxxv sqq.]
4. In regard to the following section, see the details given by Coke, *Fourth Institute,* ed. 1644, ch. lxxiii, pp. 289—320; Turner, pp. xxvii sqq. A very clear summary is given by W. S. Holdsworth, *History of English Law,* i, 342 sqq.
5. Stubbs, *Const. Hist.,* i. 437 sqq.
6. This appears clearly from § 8 of Henry III's Charter of the Forest. The misapprehension as to the nature of the swanimote originated with Manwood; cf. Turner, pp. xxvii sqq. The term "swanimote" is, however, sometimes applied to the courts of attachment and to the forest inquisitions.

administrative than judicial.[1] Only minor trespasses against the vert were punished there: people who had cut boughs, for instance, might be sentenced to a fine of a few pence. Important cases concerning the vert, and all concerning the venison, went before the justices in eyre.

We must now glance at the preliminary proceedings in the cases which were brought before the itinerant justices. When the offender was not caught in the act by the foresters, there were several types of inquisition by which he might be discovered. As early as the twelfth century and perhaps before, there took place every three years the *visitatio nemorum* or "regard."[2] The regarders were twelve knights, appointed by the sheriff at the instance of the king. This commission of enquiry had to visit the Forest and investigate any offences that had been committed, basing their procedure on a list of questions which were called "chapters of the regard."[3] The chief chapters were those on assart, waste, and purpresture: others concerned the pasture on the demesne, the eyries of falcons and hawks, honey, forges and mines,[4] harbours,[5] the weapons and dogs of the inhabitants of the Forest.

The court of the itinerant justices: preliminary proceedings

The regard

1. *Attachiamentum* was the obligation to appear. The court of attachment was so called because its chief function was to "view the attachments" made by the foresters. "Et praeterea singulis annis quadraginta diebus per totum annum conveniant viridarii et forestarii ad videndum attachiamenta de foresta, tam de viridi quam de venacione, per presentacionem ipsorum forestariorum et coram ipsis attachiatis" (*Charter of the Forest,* § 8). At this court the attachments were enrolled, and the offenders found sureties for their appearance before the itinerant justices. Notwithstanding § 8 of the charter, Mr. Turner (pp. xxxv-vi) holds that as a rule the nomination of sureties was performed in the court of attachment only for trespasses against the vert, and not for those against the venison. See also p. xl.
2. "Imminente visitatione nemorum, quam reguardam vulgo dicunt, que tertio anno fit . . " (*Dial. de Scacc.* I. xi).
3. Turner, pp. lxxv-vi, mentions several versions of the chapters of the regard.
4. Because wood was needed to work forges and mines.
5. The records furnish instances of wood being stolen in a forest near the sea, and put on shipboard.

The special inquisition

As for poaching, at least from the beginning of the thirteenth century, and probably before, it was the occasion of special inquisitions which involved the whole countryside in trouble. If a beast of the Forest was found dead, an inquisition to discover the offender must be held by the four townships nearest the spot.

Poachers detected by the inquisition of the four townships, or surprised in the fact, were generally kept under arrest until they had found sureties for their appearance before the justices in eyre. In this way they sometimes spent a year or more in gaol. Persons accused of trespasses to the vert might also, in certain cases, be kept in detention.[1]

Imprisonment and pledges

The visitations of the justices were arranged by royal writ, nominating *justiciarii itinerantes* to hear and determine the pleas of the Forest in a particular county or group of counties. In the twelfth century the eyres occurred once in three years, since the regards took place at that interval and were held in view of the coming of the justices. In the time of Henry III they occurred about every seven years, like the eyres of crown pleas and common pleas; and the intervals between them became longer and longer.[2] The justices were persons of some eminence. One of the two Justices of the Forest was always of their number.

Frequency of the eyre

1. On this last point, see the details given by Turner, pp. xxiii sqq. According to the Assize attributed to Edward I, offenders against the vert were not liable to arrest and imprisonment until after their third "attachiamentum." (For the meaning of this word, see above.) "Post tercium attachiamentum corpus debet attachiari et retineri" (*Statutes*, i. 243). As a matter of fact, the itinerant justices of Edward I gave instructions in conformity with this rule: see the Provisions of the justices, at Nottingham, in 1287 (Turner, p. 63). Cf. the Assizes of Henry II and Richard I, cited below.

2. [See Miss Bazeley's list of eyres in Gloucestershire during the twelfth and thirteenth centuries (*op. cit.* p. 214). They were more frequent under Henry II than afterwards, though even at this early time, the intervals between them varied greatly. With respect to the thirteenth century, the list confirms the generalisations in the text.]

The itinerant justices dealt separately with the pleas of the vert and the pleas of the venison. The *presentment* was made by the foresters and verderers, not by a regular jury. The report of the inquisition was generally taken as sufficient proof of the facts; and it was seldom that the townships which had made the inquisition were required to come and confirm the evidence orally. In the thirteenth century convicted delinquents were fined, and if they did not pay, were sent back to prison till they found the money. If anyone cited failed to appear, he was summoned in the county court, and if he remained contumacious, was outlawed.

Procedure at the forest eyre

Punishments inflicted

To give a clear impression of the effects of this system of administration, it would be necessary to draw a map of the Forest at the beginning of the thirteenth century. In the present state of our knowledge this is impossible. But there is no doubt that the Forest comprised a good part of the realm. Foreigners and travellers noted with astonishment its enormous extent. The Italian Polydore Vergil, who crossed the Channel at the beginning of the sixteenth century, asserted that a third of England consisted of parks and forest, and a century later Moryson could still write that there were more deer in England than in all the rest of Europe.[1] The statement of Polydore Vergil is evidently a serious exaggeration, for it refers to a period subsequent to extensive disafforestments. But it might not be far from the truth if applied to the beginning of the thirteenth century. At that time indeed, before the disafforestments carried out by John, Henry III, and the three Edwards, there were only six counties out of thirty-nine which contained no Forest.[2] These consisted of a compact group of counties corresponding to the

Extent of the Forest

1. Authorities cited by Greswell, p. 242.

2. Cf. the lists of counties in *Parl. Writs*, ed. Palgrave, i. 90-1, 396-7; and Turner, pp. xcvi n. 1, xcvii n. 3, xcix sqq., ciii n. 5, cvi sqq.

ancient East Anglia and its marches—Norfolk, Suffolk, Cambridgeshire, Bedfordshire, and Hertfordshire.[1] In another quarter there was Kent, to which one might, strictly speaking, add Middlesex.[2] In Kent, Norfolk and Suffolk, more than anywhere else, the rural population maintained its freedom after the Conquest,[3] and these were precisely the districts free from the forest law. On the other hand, thirty-three counties, representing six-sevenths of the area of the realm, contained forests, often of great extent. Essex, which was indeed an exceptional case, was entirely forest in the days of Henry I and Henry II.[4]

We can imagine the result of the state of things just described. The forests swarmed with game, and even in time of famine it was unlawful to touch it. It had freedom and protection, and might ravage the crops without fear of arrows. The very owners of the soil were forbidden to make clearings, on pain of fines and yearly compositions. A tenant was not allowed to follow his own wishes in the development of his land, even to the extent of making a hedge or ditch. The ancient customary rights which had formerly ensured to the Saxon peasant many advantages and some prosperity, were now pretexts for the infliction of fines; at a time when the cultivation of forage-crops was seldom practised, the law forbade the use of the grass-land and woods for the feeding of cattle; and one might not cut down a tree or a bough on one's own property, except under the surveillance of the all-powerful forester, with his vexatious restrictions and demands. It was within his power to make a family's

Effects of the forest system: i. economic

1. It is, however, not quite certain that the three last contained no forest. See on this Turner, p. cviii.
2. As we have seen, Middlesex contained a warren, which was under the forest law. It was suppressed in 1227 (Turner, p. cviii). There was no forest properly so called in the county.
3. Vinogradoff, *Villainage in England*, pp. 205 sqq., 218 sqq., 316.
4. J. H. Round, *Forest of Essex*, in the *Journal of the British Archæological Association*, new series, iii, 39.

lot intolerable, and in the event of opposition, to summon its members time after time before the court of attachment and ruin them by countless fines.

It was not only in the economic sphere that the forest law made its effects felt. From a legal and political standpoint, the forests were a dangerous anomaly. They were withdrawn from the operation of the common law and of the custom of the realm, and governed by rules laid down in special assizes and ordinances. In them, too, there lived troops of royal officers, who alone were allowed to bear arms and who were pledged by oath to serve the interests of the king. The Forest was the stronghold of arbitrary power.

ii. political

Such was the character of the Forest at the time of its greatest extent and influence. We thought it best to begin by describing it: we have now to account for its existence, and to trace its history from its rise to its decline. We shall be concerned in particular to show how the Forest, a natural outcome of the Conquest, became perhaps the most oppressive and the most hated of the institutions which the Norman and Angevin kings sought to impose on their subjects, and how it consequently strengthened the hostility of the barons, and furthered the union of the English against the despotic power of the crown.

(2)

ORIGIN OF THE FOREST. DEVELOPMENT OF THE SYSTEM UNDER THE FIRST THREE NORMAN KINGS.

Like all the rulers of their time, the Anglo-Saxon kings loved the chase and possessed game-preserves. They did not, however, establish a forest jurisdiction, with an administrative organisation, courts, and special laws.[1] It was from the continent that the forest system came, and it was the Norman conquerors who brought it over. It is in Frankish and Norman records that its origin should have been sought by English historians.[2]

In origin the Forest was not an English institution

No one can study the Carolingian capitularies which relate to the *Forestis* without being struck by the analogy or rather the clear connection which exists between them and the English Assizes of the Forest. Under Charles the Great and his immediate successors, the Forest was essentially a royal institution. The wood and the game were protected by "forestarii," and "if the king has given to any man one or more beasts in the Forest, he ought not to take more than has been given."[3] This Frankish institution of the *Forestis* did not disappear with the Carolingians. In the tenth and eleventh centuries the dukes and counts among whom Gaul was divided evidently revived it to their own advantage in all districts where there was plenty of wood

but Frankish

1. Liebermann, *Ueber Pseudo-Cnuts Constitutiones de Foresta*, pp. 14 sqq. Details in regard to Anglo-Saxon hunting will be found in Greswell, *op. cit.*, pp. 24 sqq.

2. See (in the recently-published *Mélanges* dedicated to M. Charles Bémont) an essay in which we devote special attention to the Franco-Norman Origins of the English Forest. A German scholar, Herr Hermann Thimme, has argued that the Frankish Forest consisted of arable and pastoral lands from which the inhabitants of the "mark" were excluded. (*Forestis, Konigsgut, und Konigsrecht*, in the *Archiv fur Urkundenforschung*, vol. ii, 1909, pp. 101–154). This paradox, we think, has been completely refuted in an essay which we have just written, and which we hope to publish in the *Bibliothèque de l'Ecole des Chartes*.

3. Boretius, *Capitul*, i, 172; see also pp. 86 sqq., 98, 291; vol. ii, 355.

and game. At all events, the dukes of Normandy had a Forest before the conquest of England.

Norman records of the eleventh century are meagre and scarce. They suffice to prove, however, that in certain woods, and even in woods granted by the duke to his subjects, larger game, such as the red-deer, roe, and wild-boar, was reserved for the duke's hunting, and the trees might be neither felled nor cut.[1] There were pleas of the Forest[2] and a forest law, and in the reign of duke Richard II the peasants rebelled in the hope of securing the free use of the woods and waters, in spite of the *jus ante statutum*.[3]

and Norman

When sources become more plentiful, at the beginning of the twelfth century, we find the administration of the Norman Forests very similar to the administration of those in England.[4] It is true that, by the time from which our authorities date, Normandy might have taken in her turn certain institutions which had sprung up in England. But in any case the beginnings of the Forest are prior to the union of Normandy and England; the Forest was a Frankish, not an Anglo-Saxon institution; and it was carried across the Channel by William I.

The forest system, introduced into England by a victorious dynasty which from the first was very powerful, soon made remarkable advances in this country. As we said in our study on the origins of the manor, the Norman Conquest was no passing storm for the

Brutal character of the Norman conquest

1. Charter of William the Conqueror for St. Etienne of Caen; Delisle, *Cartulaire normand*, no. 326.

2. Duke Robert's charter to Cerisy: Dugdale, *Monasticon*, ed. 1846, vii. 1073.

3. Guill. de Jumièges, V. ii. in Duchesne, *Hist. Normann. Scriptores*, p. 249. See also the *Cartulaire de St. Michel du Tréport*, ed. Laffleur de Karmaingant, no. 10.

4. See the studies by Leopold Delisle, *Des revenus publics en Normandie au xue siècle*, Bibl. Ec. Chartes, vol. xi (1849); *Etude sur la condition de la classe agricole en Normandie*, (1851); M. Michel Prevost's monograph, *Etude sur la forêt de Roumare*, *Bull. de la Soc. d'émulation du Commerce et de l'Industrie de la Seine-Infér.*, 1903 (published separately, 1904); and also my study referred to above, p. 166, n. 2.

vanquished. Confiscations were numerous, and the small Saxon freeholder received a mortal blow.[1] This general estimate, which we adopt on the authority of the most learned students of the eleventh century, justifies us in regarding as probable and natural the accounts of chroniclers concerning the establishment of the Forest in England. The event which most impressed contemporaries was the making of the New Forest in Hampshire.[2] As everyone knows, William Rufus was killed by an arrow while hunting. Florence of Worcester, who died in 1118, declares that his fate was a stroke of divine vengeance, punishing the son for a sin committed by the father. For William the Conqueror, he says, to make the New Forest, had ruined a hitherto prosperous country, driven out the inhabitants, and destroyed houses and churches.[3] Later writers have enlarged on the same theme. Quite recently, however, the late Mr. F. H. M. Parker has called this story into question. According to him, William Rufus was the victim of a conspiracy: Henry I's complicity was not beyond doubt: and the story about divine vengeance was invented to remove suspicion.[4] Long ago the worthy David Hoüard, in his commentary on Littleton, affirmed in his academic style that William the Conqueror "did not resort to the excesses which some English historians cast in his teeth," and that it was "the monks" who gave him his bad reputation.[5] No purpose would be served here by a detailed discussion of Parker's article, sound as many of his comments are. It is enough to point out that Florence

The creation of the New Forest

Discussion of Florence of Worcester's account

1. See above, pp. 21 sqq.
2. See the details given by Freeman, *History of the Norman Conquest*, iv. 611 sqq.
3. Florence of Worcester (ed. Thorpe, Eng. Hist. Soc.), ii. 44-5.
4. *The Forest Laws and the Death of William Rufus* (*Engl. Hist. Rev.*, 1912, pp. 26 sqq.).
5. *Anciennes loix des François conservées dans les coutumes angloises recueillies par Littleton* (ed. 1766), i. 448.

of Worcester wrote too soon after the creation of the New Forest to risk so flagrant a falsehood, and that, even on the theory of a conspiracy, such a lie would have been very clumsy. William Rufus was universally hated, regarded as an enemy to God and man; if, as Parker supposes, there was a political motive for the circulation of a story of divine vengeance, it would have sufficed to recall the crimes and extortions of Rufus himself, and it was as clumsy as dangerous to assert facts which the enemies of the new king could have disproved. Finally, Henry I was himself a great hunter, and if Florence had been trying to please him, he would certainly have taken care not to represent the creation of the New Forest as a crime. His denunciations can therefore only be explained on grounds altogether opposed to those suggested by Mr. Parker. If, while on the subject of the death of Rufus, he brought in the ravages perpetrated by William the Conqueror, it was because contemporaries really remembered them, and connected the misdeeds of the father with the violent death of the son.

There is reason, however, for regarding the statement of Florence as an exaggeration. It has been shown that the district afforested in Hampshire was by no means entirely an inhabited and cultivated country. I am not speaking of the negative argument put forward by archæologists, who have found no traces of pre-Norman villages in this region: archæological arguments are only convincing when positive. But there is the evidence of Domesday Book, which has been examined by Mr. Baring. It shows that William I found in a corner of Hampshire 75,000 acres of almost deserted country, and of this he made a forest. He added, however, fifteen or twenty thousand acres of inhabited land, on which there were a score of villages and a dozen hamlets; and doubtless through fear of poaching, he evicted five hundred families, numbering about two thousand

Evidence of Domesday Book regarding the New Forest