

THE ENGLISH BOROUGH  
IN THE  
TWELFTH CENTURY

BEING TWO LECTURES DELIVERED IN  
THE EXAMINATION SCHOOLS OXFORD  
ON 22 AND 29 OCTOBER 1913

CAMBRIDGE UNIVERSITY PRESS

C. F. CLAY, MANAGER

London: FETTER LANE, E.C.

Edinburgh: 100 PRINCES STREET



Berlin: A. ASHER AND CO.

Leipzig: F. A. BROCKHAUS

New York: G. P. PUTNAM'S SONS

Bombay and Calcutta: MACMILLAN AND CO., LTD.

Toronto: J. M. DENT AND SONS, LTD.

Tokyo: THE MARUZEN-KABUSHIKI-KAISHA

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Cambridge:  
at the University Press

1914

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PRINTED BY JOHN CLAY, M.A.  
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## CONTENTS

	PAGE
1. BURGESS AND LORD . . . . .	I
2. BOROUGH AND HUNDRED . . . . .	31
APPENDICES	
1. The Garrison Theory . . . . .	66
2. The Roman Boroughs . . . . .	70
3. The "Liber Burgus" . . . . .	76
4. London . . . . .	80
5. Table showing the characteristics of certain Domesday Boroughs . . . . .	83
INDEX . . . . .	85

## THE ENGLISH BOROUGH IN THE TWELFTH CENTURY

### I. BURGESS AND LORD

THERE is no need for me to begin this lecture with a definition : the lawyers of the twelfth century applied the name of borough to certain places and gave the name of burgesses to their inhabitants ; this they did to distinguish these places from their neighbours which were called manors ; and in order to ascertain what were the characteristics of an English borough of the twelfth century, I propose to select the salient features of the 300 odd charters of a date prior to the death of King John which relate to the privileges and duties of the burgesses of the various boroughs. M. Petit Dutailis objects to the use of the term borough, and thinks that "its misleading technical appearance has perhaps greatly contributed to plunge certain English scholars into blind alleys"<sup>1</sup> : but our examination will show that there were certain features in the boroughs which distinguish them

<sup>1</sup> *Studies Supplemental to Stubbs* 71.

### ABBREVIATIONS

*B. B. C.* *British Borough Charters 1042—1216.*

*E. H. R.* *English Historical Review.*

*D. B.* *Domesday Book.*

from the unprivileged villages ; and I may be permitted to say that I have found myself hampered in dealing with French municipal charters by the lack of a technical term which would distinguish the privileged from the unprivileged towns : for it was not every privileged town that was a commune. In the first of these two lectures I propose to deal with the borough from the point of view of the burgess and of the lord : and in the second to consider the place of the borough in the national organisation.

In the first place, the borough was a home of freedom : but freedom is a matter of comparison, and the position of the burgess must be compared with that of the villager. Of the two classes of villagers, the villeins were more or less servile in status ; their rents were mainly labour rents and a distinguishing mark of villenage was the liability to work on the lord's demesne for a certain number of days every week, and also at specially busy times such as ploughtime, haytime and harvest ; the villeins could not give their womenfolk in marriage without the payment of a fine for the license of the lord ; they could not send their son to school without a similar payment ; a fine was due from them if they sold their cattle : if they sold their land such sale could be effected only by surrender of the land to the lord and the subsequent admission of the purchaser who often had to pay another fine on his

admission : he was liable in many cases to be tallaged at the will of his lord ; when he died his lord took his best beast by way of heriot, and his heir paid a heavy relief on succeeding to his father's land : if his heiress were unmarried, the lord had the right of giving her in marriage to whomsoever he chose, and he usually chose the highest bidder : all these restrictions reduced the villein to a state of economic slavery. The tenant in socage was better off : his rent was a money rent though he often had to work on his lord's demesne at specially busy seasons : he could sell his cattle and even his land without the payment of a fine to his lord : usually no heriot was payable on the death of a socager, and the relief, if any, was but nominal : his kinsmen were the guardians of his infant children and the lord had no control over the marriage of his heiress.

On the other hand the burgess held his lands by burgage tenure which was a peculiar form of socage tenure : his rent was a money rent, and except in a very few cases he was exempt from all liability to work on the lord's demesne. The burgesses of Leicester and Lancaster had redeemed their agricultural services before the end of the twelfth century but the burgess of Egremont was still liable to provide a man to plough and another to reap on his lord's demesne<sup>1</sup>. The distinguishing

<sup>1</sup> *B. B. C.* 94—5.

feature of burgage tenure was that the burgess was at liberty to sell his land and to go where he would<sup>1</sup>, without in general the intervention of the lord or his steward; but this freedom was limited in three directions: there were some towns where a burgess might not sell his house which he had inherited, without first giving his kinsmen an opportunity to buy it at the same price as that which had been offered<sup>2</sup>: and this custom is also found in France and Germany<sup>3</sup>. At Whitby, the Abbot, who was lord of the town, had a similar right of pre-emption, and at Walsall the lord could purchase for 12*d.* less than any other person had offered<sup>4</sup>: but I cannot find any similar provision in any French or German charter. And the charters of many towns forbade the burgess to sell his burgage to men of religion or religious houses<sup>5</sup>, and thus anticipated the statute of Mortmain. Coupled with this liberty to sell, was the privilege that the burgess could devise his burgage by will<sup>6</sup> and give his daughter in marriage without the consent of his lord<sup>7</sup>, and occasionally he was allowed to appoint guardians of his infant children by his will<sup>8</sup>.

Normally no heriot was payable on the death of

<sup>1</sup> *B. B. C.* 64—8.

<sup>3</sup> *B. B. C.* cx, cxxiii.

<sup>5</sup> *B. B. C.* 69.

<sup>7</sup> *B. B. C.* 76.

<sup>2</sup> *B. B. C.* 69—70.

<sup>4</sup> *B. B. C.* 69.

<sup>6</sup> *B. B. C.* 73.

<sup>8</sup> *Pembroke B. B. C.* 78.

a burgess and at Pembroke, Lostwithiel, Bideford, and Bradninch, the heir's relief was fixed at 12*d.*<sup>1</sup> Common to Great Britain and the greater part of North-western Europe was a clause which gave undisputed title to a burgess who had been in possession of his tenement for a year and a day<sup>2</sup>. There were, however, some towns where the burgess was bound to grind his corn at the lord's mill and bake his bread in the lord's oven<sup>3</sup>, and no inconsiderable part of the lord's income was derived from these sources. The burgesses of the boroughs which were situate on the King's demesne, were, like the villeins, liable to be tallaged at will, and during the reign of Henry II such tallages or aids were levied every three or four years<sup>4</sup>; but at Egremont, the burgesses were liable for the three feudal aids, those for knight-riding the lord's eldest son, for marrying his eldest daughter and for ransoming his person; they were also liable to pay aids when his military tenants paid aids but all aids were to be assessed by the burgesses<sup>5</sup>. But what especially marked out the borough as the home of freedom was the privilege that a serf who resided there for a year and a day became a free man<sup>6</sup>: Dunwich, and the boroughs that had charters founded on that of Dunwich,

<sup>1</sup> *B. B. C.* 76.

<sup>3</sup> *B. B. C.* 96.

<sup>5</sup> *B. B. C.* 91.

<sup>2</sup> *B. B. C.* 71, cx, cxxiii.

<sup>4</sup> *B. B. C.* lxxx.

<sup>6</sup> *B. B. C.* 103—5.

required his admission to the guild as well as his residence in the town, and the Egremont charter, which had been granted by Richard de Lacy, refused this privilege to villeins from the King's demesne: at Chesterfield, the lord had a veto on the admission of a new burgess<sup>1</sup>, but we never find in Great Britain a clause which is very frequent in French charters, forbidding the admission to the franchise of the men of certain lords<sup>2</sup>.

In the second place, the borough was a jurisdictional unit, that is to say, it had a court of its own with jurisdiction over all its inhabitants, except that in some of the larger towns, there were sokens belonging to certain magnates or churches where the burgesses were, in the first instance, justiciable in the courts of the sokens. Domesday book shows that many boroughs were hundreds of themselves and the borough court was frequently called the hundred. Of course in the thirteenth century, the manor was a jurisdictional unit, for the manor court had jurisdiction over all the inhabitants of the manor, but the position of the burgess in this respect was superior to that of the inhabitant of a manor in that, while the villagers could be summoned to the hundred and shire courts, most borough charters contained clauses exempting the burgesses from suits of hundreds and shires<sup>3</sup>, or from pleading or being

<sup>1</sup> *B. B. C.* 110.      <sup>2</sup> *B. B. C.* cxii.      <sup>3</sup> *B. B. C.* 123.

impleaded elsewhere than at the courts of the borough<sup>1</sup>; but to this general exemption there were occasional exceptions, and eventually the rule came to be that pleas relating to lands situated or to debts contracted within the borough could be tried only in the borough court, while pleas relating to lands situate elsewhere and to those burgesses who were servants of the King could be tried elsewhere<sup>2</sup>.

Edgar's law provided that the borough court should be held thrice a year, and the Whitby charter shows that there were three general pleas at which every burgess had to present himself under penalty of a fine<sup>3</sup>, and that, when required, minor pleas were held to which any particular burgess could be summoned.

Naturally the law administered in the courts of the various boroughs cannot be reduced to a code, but it may be laid down as a general rule that borough law was usually archaic both in its procedure and its rules; the old pre-conquest rules of compurgation were preserved in the boroughs long after they had given way to inquests by witnesses and jury in other courts: and our charters show that the number of compurgators varied from borough to borough, and that sometimes a borough required more or fewer compurgators according to the nature

<sup>1</sup> *B. B. C.* 115—121.      <sup>2</sup> London 1155. *B. B. C.* 116.

<sup>3</sup> *B. B. C.* 142.

of the offence<sup>1</sup>. The formal pleading of pre-conquest times was still required in the boroughs, except where there were provisions against miskennen, that is, against the rule which caused a party to lose his cause if he failed in the correct repetition of his formulae<sup>2</sup>. Two of the legal innovations of the Norman conquest were absent from the jurisprudence of the boroughs: they were quit of the murder fine, the fine imposed on a hundred or district in which a murder had been committed<sup>3</sup>, and except at Pontefract and Leeds, they were exempt from trial by battle<sup>4</sup>; in this latter particular, the English burgesses differed from those in France, Germany, Spain and Palestine, where trial by battle was the general rule, and most elaborate provisions were laid down for the conduct of duels<sup>5</sup>: I have found only one French and three German charters exempting the burgesses from trial by battle, and at Beauvais the commune retained a hired champion at a fee of 20 sous a year<sup>6</sup>.

One of the most highly valued privileges of the burgesses was their exemption from arbitrary fines<sup>7</sup>;

<sup>1</sup> *B. B. C.* 137—9. For compurgation in the County Court see Maitland, *Const. Hist.* 205.

<sup>2</sup> *B. B. C.* 146.

<sup>3</sup> *B. B. C.* 150.

<sup>4</sup> *B. B. C.* 132—4.

<sup>5</sup> *B. B. C.* cxiii, cxxiv, cxxx, cxxxiii.

<sup>6</sup> *B. B. C.* cxiii.

<sup>7</sup> *B. B. C.* 151—7.

the charter of Henry I to London directs that no one shall be amerced at more than his wergild, 100s.: and there were many boroughs in which the limit was fixed at 12*d.*, the same as in the Norman bourg of Breteuil; in the Devonshire boroughs the limit was usually 6*d.*, while in his new borough at Eynsham the Abbot fixed the maximum at 10s. In some of the Irish boroughs we find a distinction between greater and lesser pleas; in the greater the fine could not exceed 5*s.* and in the lesser the limit was 1*s.*; the Egremont charter alone provided a nicely regulated scale of fines, in which the lord tried to make the punishment fit the crime, and in so doing punished a burgess who insulted his male neighbour by a fine of 3*s.*, but reduced the fine to 4*d.* if one woman insulted another, and in the latter case the complainant, was also fined 4*d.* if she failed in her cause. In a few cases the amount of the fine was fixed by the culprit's fellow burgesses. It is in this connection that we see one of the greatest differences between English and French municipal charters, for in France most charters contain a nicely regulated scale of fines, far more elaborate than that of Egremont: it is very rare to find a French charter fixing a maximum limit for all offences with but one or two exceptions, as is found so frequently on this side of the channel<sup>1</sup>.

<sup>1</sup> *B. B. C.* cxiii.

Three charters allowed private compositions for offences; the Norham charter says that free burgesses were wont to settle their offences privately, and implied that this rule prevailed in other towns also; at Whitby the prejudice in favour of these private compositions was such that it was not till after a man had made three attempts at a private settlement that he could summon the offender in the borough court<sup>1</sup>. It should be noticed that whereas that offenders convicted of any offence had to make payments both to the offended party and to the lord of the court, the Wells charter exempted the burgesses from any payment to the Bishop, the lord of the town, when they made these private settlements. Similarly, the men of Hythe and Dover were declared to be witefree, that is free from the wites payable to the lord of the borough court on conviction for offences<sup>2</sup>.

Finally, from the point of view of the student of jurisprudence, the most remarkable of the jurisdictional privileges of the burgesses was the privilege that they had of distraining on the goods of their debtors from other towns, or on the goods of the neighbours of those debtors, in order to secure their appearance in the court of the borough<sup>3</sup>; but this privilege could not be exercised at certain times,

<sup>1</sup> *B. B. C.* 112—3.

<sup>2</sup> *B. B. C.* 182—3.

<sup>3</sup> *B. B. C.* 161—4.

especially on market days, and by the end of the twelfth century many charters forbade distraint on any person who was not the principal debtor or his surety, a prohibition which was made general by the Statute of Westminster in 1275. It is to be borne in mind that this privilege of distraint to secure appearance in the court of the borough is confined to the British Isles, and is unknown in contemporary French charters except at Rouen, which was part of the English dominions till 1204<sup>1</sup>.

So far we have been discussing characteristics which are common both to the boroughs of the British Isles and to the privileged towns of the north-west of Europe: especially do the French charters appear to be directed towards securing the freedom of the burgesses—their exemption from feudal or seignorial exactions—and the privileges of their own law courts; but when we come to the next characteristic of the British Borough, we come to a characteristic which is more emphasised here than on the Continent. For thirdly, the English borough was a place of trade; our pre-conquest kings had again and again forbidden traffic outside of boroughs; Maitland suggests that there were two reasons for this prohibition, the prevention of trade in stolen cattle and the facilitation of the collection of tolls<sup>2</sup>; after the Conquest these rules were not

<sup>1</sup> *B. B. C.* cxiv.

<sup>2</sup> *B. B. C.* lxvi.

repeated, but Henry I forbad all trading in Cambridgeshire except at the borough of Cambridge<sup>1</sup>, and his grandson issued an order to the sheriff of Lincolnshire requiring him to compel all foreign merchants to take their wares to the city of Lincoln, so that the reeves of the city should not lose the royal customs<sup>2</sup>. In Scotland the old rules prevailed much later than south of the Tweed: for William the Lion, who did not die till 1214, forbad all trading in the counties of Aberdeen, Perth and Inverness except in the three burghs of the same names<sup>3</sup>; but there is no similar prohibition of trade in any Irish charter nor in any Continental charter of which I have any knowledge. Although the charters are sadly deficient in evidence on the subject of markets, yet it may be presumed that most of our boroughs had weekly markets and periodical fairs; there were, however, markets and fairs in villages which were not styled boroughs. In some of the boroughs the burgesses had the right of forming a merchant guild<sup>4</sup>, that is, of uniting all the traders of the town into a society which passed bye-laws and made regulations for the good behaviour of the traders and the improvement of the trade of the

<sup>1</sup> *B. B. C.* 168.

<sup>2</sup> *Ib.*

<sup>3</sup> *B. B. C.* 169—170. Eventually these rules would tend to the protection of the burgess against the foreign trader.

<sup>4</sup> *B. B. C.* 202—7.

town: only members of these merchant guilds were at liberty to open shops in the town, and where there was no merchant guild the charters often forbad others than burgesses to carry on certain specified trades in the town<sup>1</sup>. One of the rules of these merchant guilds insisted that every guildsman must submit any dispute of his with a guild brother to the judgment of the guild, a rule that caused no loss to the lord in those boroughs where private compositions were allowed; hence we often find two tribunals within a town, the court of the merchant guild dealing with disputes between the members of the guild and presided over by the head of the guild, and the borough court dealing with other disputes and presided over by the bailiffs of the King or the lord: Mr Salter has clearly shown the two courts sitting side by side at Oxford<sup>2</sup>. In a few towns we find rules forbidding the keeping of taverns by others than burgesses<sup>3</sup>; and in Scotland a modification of this rule was pushed to extremities, for no tavern was allowed in the counties of Perth and Aberdeen, except in the towns of Perth and Aberdeen, and except in those villages where the lord was a knight and was actually resident.

But the most common of the mercantile privileges of the burgesses was their exemption from toll

<sup>1</sup> *B. B. C.* 211—4.

<sup>2</sup> *Oxford Millenary Lectures*, p. 24.

<sup>3</sup> *B. B. C.* 216—7.









































































