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VILLENAGE IN KENT.

The conclusion arrived at by Mr. Furley, in his History of the Weald of Kent, will commend itself generally as the most probable solution of the obscure question of villenage in Kent.

"I cannot imagine," he says, "any other reason than that the claim [of exemption from villenage] originated with *the free tenure of the land in Kent*, and not the emancipation of the person from hereditary bondage." (vol. i., p. 263.)

This opinion is corroborated by general and local history. That there were villeins, and *servi*, in Kent at the time of the Domesday and afterwards, no one who takes the trouble to acquaint himself with the subject can entertain a doubt. Still, the boast or claim that there were never slaves in Kent has evidence in its favour, and moreover the support of at least one eminent modern writer. It will therefore perhaps be deemed worth while to consider the grounds on which it is based.

Hallam, whose adoption of the traditionary opinion obtained for it, probably, much of its present authority, writes as follows:—

"By the demands of these rioters (the insurgents of 1381) we perceive that territorial servitude was far from extinct; but it should not be hastily concluded that all were *personal villeins*, for a large proportion were Kentishmen, *to whom that condition could not have applied;* it being a good bar to a writ, *de nativitate probandâ*, that the party's* father was born in the County of Kent."

For this statement he refers to three authorities:—30 Edw. I in Fitz-herbert; Villenage apud Lambarde's *Perambulation of Kent;* Somner *On Gavelkind*, p. 72.

* *Middle Ages*, vol. iii., p. 108.

We will proceed in the inverse order, and take the last of these authorities first.

The reference to Somner confirms to a great extent Hallam's opinion. For it seems from an old Lieger that, among the articles by which the auditor made enquiry of the bailiffs of the Cathedral manors in general, were some concerning the payments made by '*nativi*' for licence to work beyond the limits of the manor, to marry their daughters, and to enjoy other liberties. But these enquiries were *not* addressed to the bailiffs of Kentish manors, a circumstance which leads to the presumption that there were not at that time any *nativi* or *servi* on the Cathedral estates in Kent.

Somner, however, goes on to shew that at that period—*temp.* Edw. II, *Villenage* existed on other estates in the County. In his *Appendix*, Scriptura 15, he gives a copy of a Writ of 7th Edw. II to the assessors of a tenth and fifteenth in Kent, for the relief of the villeins of the Abbot of S. Augustine's. Their goods and chattels had been taxed without deduction of the rents, services, and customary payments rendered to the Abbot, which were already taxed among his spirituals. In the reign of Henry III, also, villenage existed on the estates of the same Abbey. A tenant of S. Augustine's did homage to the Abbot for land held by the custom or tenure of Gavelkind, covenanting to perform as much service to his lord as to the same villenage appertained. A copy of this deed is given in Somner's *Appendix*, Scriptura 16.

Again, Somner quotes the Laws of Henry I, cap. 76, which make mention of *Villani* in Kent: "Differentia tamen Weregildi multa est in Cantiâ Villanorum et Baronum." In Domesday, also, *villani* are mentioned.

But these references are probably not altogether to the point; for, apparently, it was not of exemption from villenage in general, but of '*personal villeins*' (by which term *servi* or *nativi* must be intended) that Hallam writes in the before-named passage. Of the existence, however, of this class in Kent, Somner furnishes some plain evidence. He quotes *Domesday-book*, in which '*servi*' of many manors are spoken of. They were, he says, specially to be found in

Southfleet, Stone, Falkham, Wouldham, Trottescliffe, Snodland, Halling, Frindsbury, and in other manors belonging to the Bishop and Cathedral Church of Rochester.

From *Domesday*, after making one or two references to the servitude of the '*Cotarii*,' he descends to the beginning of the fifteenth century. In the year 1407, Sir W. Septvans of Milton, near Canterbury, by will enfranchised his slaves.

"Item lego Adam Standerd, Thomæ Hammonde, Roberto Standerd, Roberto Chirche, & Johanni Richesforde, *servis et nativis meis*, pro bono servitio mihi ab eisdem facto, plenam libertatem, et volo quod quilibet eorundem habeat cartam manumissionis, sigillo meo signatam, in testimonium hujusmodi meæ ultimæ voluntatis."

This will is unimpeachable testimony; while of the existence of servitude at the time of Wat Tyler's insurrection, twenty-five years before, we have the documentary evidence published by Mr. Flaherty.* The testimony of the Approver Cote, *that the accused persons Harding, Munde, Bright*, etc., proposed to make John of Gaunt King of England, if it were true, as stated by strangers who came from the north, that he had freed his *natives* in every county of England;† and further, the poverty of the men who had "no goods nor chatells of land nor tenements," lead to the supposition that they themselves were *nativi*—the lowest class of agricultural labourers.

The adverse opinion of Mr. Thorold Rogers must not however be passed over. His researches begin with A.D. 1259, and they negatively confirm Hallam's statement that there were no personal villeins in Kent in 1381, for he has found no trace of personal servitude, nor of any other peculiar incidents of customary holding in the accounts of Kentish estates examined by him.

We will now proceed to enquire what corroboration Lambarde, who is the second of Hallam's authorities, gives to his text.

"It appeereth," he says, "by claime made in our auncient treatise, that the bodies of all Kentish persons be of free condition, which also is confessed to be true, 30 Edw. I, in the title of Villen-

* Vols. III. and IV. of *Archæologia Cantiana*.
† *Archæologia Cantiana*, IV, p. 76.

age 46 in Fitzherbert: where it is holden sufficient for a man to avoid the objection of bondage to say, that his Father was born in the Shyre of Kent: but whether it will serve in that case to say that himself was borne in Kent I have knowne it (for good reason) doubted."*

In the "ancient Roll," alluded to by Lambarde, and appended to the Perambulation, it is stated that it was allowed by the justices in Eyre in the 21st of Edw. I, that all the bodies of Kentishmen be free, as well as the other free bodies of England.

Lambarde's second reference confirmatory of the ancient treatise is to Fitzherbert, the author referred to by Hallam in the first place. Fitzherbert was an eminent judge in the reign of Henry VIII. He composed, among other works, the *New Natura Brevium*, and *La Grande Abridgement*. In the latter work, under the head of Villenage, is to be found the passage referred to by Lambarde and by Hallam. It is as follows:—

Fitzherbert's *La Grande Abridgement*, fol: London, Ric. Pynson 1516, f. 204 verso.

Art. "*Villenage*," paragraph 46; An: 30 Ed. I Iter Cornub.

§ *Mutt.* si vn nyeffe espouse vn fraunsre home apres la mort son baron el retournet a son primer estat.

§ *Brumpt.* quod dictum fluum *(sic)* est.

§ *Hervy.* pocius virum extra fluum *(sic)*.

§ *King.* si le seignor marie son nieffe el est fraunsre toutz jours apres la mort son baron que fuit le seignor auter est si estraunge marie mon nyeffe el ne serra fraunsre mes dur' le espousage. *Brumpt* ieo veie en brefe de Nyeste nyeffe dit que el fuit fraunsre &c. et l'enquest trouve que le pere cesty que fuit claim' come nyeffe fuit nasquit en Kent et savois pluis enquer' fuit ag. q' el fuit fraunsre &c. pour ceo que il nad villen en Kent &c.

The judges were on their '*iter*' in Cornwall, when a case of villenage came before them. The lady of the manor claimed the widow of a freeman as her nief. This person, Ismeyn, was born in the manor, but had been absent thirty years, and on returning to her native place, in her widowhood, was subjected to the lady's claim. The case,

* Vide *Perambulation of Kent.*

which is fully given by Mr. Horwood in his edition of the Yearbook, under 30 Edw. I, was not decided. The judges appear to have been averse from admitting the lady's right which, however, seems to have been agreeable to Cornish custom, though doubtless oppressive in itself. Judge Brumpton's remark, which is not verbally the same in the Yearbook as in Fitzherbert, is thus given by Mr. Horwood :—

"Ie vy en un bref de neyfte, ou cely qe fut demaunde com neyfe se dist estre fraunke etrove fut par enquest qe son pere nasquit en Kent; sanz plus enquerir si fut il agarde pur fraunke, par ce qil ad nul vylenage en Kent."

He translates the *dictum* thus :—

"I recollect a case of a writ of neyfe, where he who was claimed as a vilein said he was free, and it was found by the inquest that his father was born in Kent; and without further enquiry he was declared free because there is no vilenage in Kent."

Possibly the Judge may have recalled to mind something that occurred nine years before, in the 21st of Edw. I, when, as we have seen, it was allowed by the Justices in Eyre (according to Lambarde's ancient Treatise) that all Kentishmen were free.

Hallam speaks of a writ '*de nativitate probandâ*,' which was, he says, effectually barred if the party claimed pleaded that his father was born in Kent. No such writ is mentioned in Fitzherbert's *Natura Brevium*. The writ *de libertate probandâ* was purchased by the villein as a bar to the lord's proceedings under the writ *de nativo habendo*. It stopped the lord from seizing him, or from proceeding on the writ of *nativo habendo* till the *eyre* of the Justices. It may be mentioned in passing that this writ *de libertate probandâ* was rendered useless to the villein by the Statute 25 Edw. III, c. 18, whereby it was ordained that the lord might seize his villein, and allege villenage, in an action brought against him by the villein, although the latter had a writ *de libertate probandâ* depending, which is determinable before the justices *in banco*, or the justices *in eyre*. This Statute may have been one cause among many of the rebellion in 1381.

The *Writ of Nief* is mentioned in the *Natura Brevium*, but there is not a full account of it. The *Nief* was a female slave, a bondwoman; and the writ was issued to obtain possession of her. Thus there seems to be some obscurity in the use of the words by Brumpton, who speaks of a *man* being claimed by a writ of *nief*. Probably he employs the term as synonymous with '*de nativo habendo*.' But the two writs do not seem to have been identical.

Hallam's authorities in support of this statement are, then, Somner, Lambarde, and the '*dictum*' of Brumpton at Launceston. Though he was only speaking from memory, Brumpton's remark is of great weight. For it not merely shews what was the general opinion on the subject *at that time*, but it states the decision of a court of law.

It was, one must suppose, an accepted legal maxim, in the reign of Edward I, that no person of Kentish descent could be in *personal villenage*. That this legal maxim or decision was always respected is very unlikely. But even if it were, the existence of *servi* in Kent, in 1381 and later, may possibly be accounted for, if in no other way, by importation. Barons and lords of manors who had estates in other counties might bring superfluous "hands"—*servi* for whom they had no employment—as easily as any other chattels into Kent; and these immigrants, not being of Kentish extraction, would not be entitled to their freedom.

As Mr. Furley says, the claim of exemption from servitude originated most likely in the free tenure of land. This claim was doubtless countenanced and allowed by the judges, who usually were disposed, like Judge Brumpton in Cornwall, to strain a point in favour of liberty.

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