

## THE CUSTUMAL OF KENT

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### (i) GENERAL SURVEY

Tradition has it that at the Eyre of Kent held before John de Berwicke in 1293 formal acceptance was given to a body of local custom, primarily concerned with gavelkind, which collectively is known as "the Custumal of Kent". Undoubtedly much of the contents of this codification is older than the thirteenth century, indeed it embodies traditions of pre-Conquest date, but it has for centuries been formally associated with the year 1293, even to the extent that it appears in one edition of the Statutes of the Realm under that year.

As one might expect, there are a number of different texts of this document and a complete analysis of these resulting from careful collating is still awaited. It is the purpose of this article to discuss in particular two such texts, still in Kent, and to relate them to three others which have been printed. Of the five versions under consideration four probably date from the fifteenth century or later and it is because of the greater antiquity of the fifth text that this paper has been prepared. Some discussion of the general background may, however, be of interest.

Whether or not the year 1293 is of any special significance, it is clear that the Kentish custom had the authority of law during the later Middle Ages, and it is known that at least two copies of the Custumal were preserved at Canterbury, one at Christchurch and the other at St. Augustine's.<sup>1</sup> Another copy existed among the MSS. at Lincoln's Inn. In 1536 Tottel published a version of the text and this was followed in 1576 by Lambarde's version incorporated in the *Perambulation*. Lambarde records that his version came from "an ancient and faire written Roll, that was given me by Maister George Multon my Father in lawe, and which sometime belonged Baron Hales . . ."<sup>2</sup> He also regarded his copy as of the time of Edward I, but without further evidence this cannot be substantiated. The issue of these two texts brought the customs to the attention of the able school of seventeenth century antiquaries and also led to no little puzzlement in view of the marked differences between Tottel and Lambarde. Sir Henry Spelman would have none of them, questioning the

<sup>1</sup> The former is Register B, fol. 419 at Canterbury Cathedral Library; the other was quoted by Somner in his work on gavelkind.

<sup>2</sup> *Perambulation* (1826 edn.), p. 513.

authenticity of both versions.<sup>1</sup> Somner also investigated this question and had access to the St. Augustine text of the Custumal,<sup>2</sup> which varied in some respects from either of the others:

The next significant work was carried out by Thomas Robinson who produced his book *The Common Law of Kent or the Customs of Gavelkind* in 1741. Robinson brought his legal training and also very considerable historical understanding to bear on the topic and published not merely a fresh edition of Lambarde's text but also the variants in Tottel and in the Lincoln's Inn MS. He clearly accepted Lambarde as the authority and was partly directing his attention to the rehabilitation of the Custumal in the light of Spelman's attack. This, however, was not the limit of his interest for he tells us how he went to the lengths of examining the public records, discovering the records of the Eyre of 1293, and searching the parliament rolls, all without success. He therefore concluded that Lord Coke in referring to the *Statutum de Consuetudinibus Kancie* had overstated the case but that "whether Authentick in its Original, or not," the Custumal "has received such a Sanction from its Antiquity; as to have been admitted in Evidence to a Jury, even from Mr. Lambard's copy."<sup>3</sup>

Little further interest seems to have been aroused after Robinson until this century with the preparation of volume 3 of *Victoria County History*. Dr. Gilbert Slater in dealing with Social and Economic History felt that a copy which he met in the Cathedral Library, Canterbury, was so important as to warrant a full translation. He wrote of it in these terms: "The best and oldest copy is in the library of Canterbury Cathedral" (Register B, fol. 419), but W. Page, the general editor, added a footnote "Unfortunately all the copies of the Custumals of Kent are corrupt."<sup>4</sup> In point of fact, while Register B contains some earlier material, the hand of the Custumal is early fifteenth century and if indeed this is our earliest and most accurate text it is still well over a century in time from the reputed acceptance of 1293. In fact the Canterbury MS. may embody older tradition or be a copy of an older text, but it is still a considerable distance in time from the Eyre of Kent and John de Berwicke.

Now, it so happens that in 1897 the Rev. C. E. Woodruff examined the records of the borough of Queenborough and that he wrote a not

<sup>1</sup> *Treatise of Feuds*, c. 14, quoted by Robinson, *Gavelkind*, p. 278.

<sup>2</sup> Robinson, *Op. cit.*, p. 285.

<sup>3</sup> Robinson, pp. 279-80. Its position as a statute, as with many other early codifications, has been uncertain, but while Ruffhead rejected it for his edition of the Public Statutes the edition of 1810 prints it among "statutes of uncertain date."

<sup>4</sup> *Victoria County History*, Vol. III, p. 325. Unfortunately Slater did not enumerate the copies known to him or give any indication of their approximate date.

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wholly accurate account of these for *Archæologia Cantiana*.<sup>1</sup> Among them he noted especially what he termed a "Statute Book." Among its contents he listed *consuetudines Kancie*. The most public spirited action by the corporation of Queenborough in depositing their records in the County Archives Office at Maidstone has enabled this volume to be examined more fully as indeed it warrants.<sup>2</sup>

The volume is quarto with late fifteenth century vellum covered oak-board binding and contains 233 folios.<sup>3</sup> Its contents include an early calendar, copies of many early statutes and documents of like character, such as the *consuetudines*, the two legal treatises of Ralph de Hengham, one of which is interpolated in a much later hand, a register of writs partly in the hand of the statutes and partly later and finally a number of entries of admission to freedom at Queenborough during the latter part of the fifteenth and early sixteenth centuries. The importance of this document to the present article is that the handwriting for the statutes and similar items cannot be of later date than c. 1325. No statute is included of later date than 1324 and since that one is the *modus tenendi visum franciplegii* which is included among "statutes of uncertain date" we cannot be certain that it was not in fact earlier than the date sometimes accorded to it. We may say therefore that this Queenborough version of the custumal is nearly a century earlier than the Canterbury text and a mere thirty years later than the Eyre of Kent. On this basis alone, therefore, it must be regarded as of significance and variations in its text from those of a later date may point more nearly to the authentic tradition.<sup>4</sup>

### (ii) COMPARISON OF TEXTS

On comparison of the Queenborough, Canterbury, Tottel's, Lincoln's Inn and Lambarde texts, all of which are in Anglo-French, we may say that there are in all thirty-seven clauses, thirty-five of which in some form or other are common to all versions. This is not to say that they are in any way identical but that some form of clause is found in all five texts. On a more detailed basis, and for this purpose mere variations of spelling or order of words are ignored as common enough with scribal copying, we may say that only nine clauses are substantially the same in each text, a hint that we are faced with very definite variation from source to source. Fortunately this situation is not quite as serious as at first appears because there is a strong indication of two independent traditions.

<sup>1</sup> *Arch. Cant.*, XXII, 169-188.

<sup>2</sup> K.A.O., Qb/AZ.

<sup>3</sup> Woodruff gives "115 velum leaves", by no reckoning can this be accurate.

<sup>4</sup> Nothing is known of the early history of this book, part of which antedates the town of Queenborough by many years.

On examination of the two early texts, Queenborough and Canterbury, we find identity of clause in fourteen cases only, for the other twenty-three there is substantial variation of wording although the meaning is not necessarily affected. On the other hand in only two clauses does the Tottel version vary significantly from the Queenborough text while the Lincoln's Inn version follows Queenborough in all but seven clauses. This strongly suggests that the Queenborough text or something very like it was the base for both Tottel's version and the Lincoln's Inn MS. As against these there is substantial agreement between the Canterbury text and Lambarde the last named only coinciding with Queenborough for thirteen out of thirty-seven clauses.

All start in much the same way though Canterbury and Lambarde add the words *e les custumes*, but then there is a startling discrepancy between Lambarde and all the other texts. The sentence *allowes en Eire John de Berewicke, e ses compagnions, Justices on Eire, en Kent le 21 an le Roy Ed. fitz le Roy Henrie* appears only on Lambarde. Is this, in fact, part of the original text or a later gloss? That some authority stands behind the custumal is clear, but there is no evidence beyond this clause in a late and almost certainly corrupt text linking it with John de Berewicke; one can only say at this stage that the tradition is uncertain.

The next clause contains one of the most interesting and important variant readings. Queenborough reads: *Ces est asaver qe totes les cours gavelikenders seient frauns ausibien com les autres frauns courz de Engleterre*. This is followed by Tottel though Lincoln's Inn omits the first phrase and begins *soient frankz . . .* Both Canterbury and Lambarde read *Ce est a saver qe totes les cors de Kenteyz seyent fraunes*. This clause has caused much discussion. The claim to personal freedom was a matter for litigation in the middle ages and cases are cited by Robinson in support of the Canterbury reading. On the other hand, as he fairly states, Somner proved the existence of villeinage in Kent.<sup>1</sup> A Will which has more than once been cited is that of Sir William Septvans, dated 1407, in which he manumits his bondmen.<sup>2</sup> Moreover anyone who examines the Kent Domesday will be faced by additional evidence of personal servitude, although admittedly the classes of society vary somewhat from certain other counties. On the other hand there is undoubted evidence that tenure by gavelkind in Kent was essentially freehold tenure, even if of a somewhat debased character and the thesis developed by J. E. A. Jolliffe presents a reasonable distinction between the bondmen of the "inland" and the free gavelkinders of the "outland."<sup>3</sup> To suggest that Kentish birth made a

<sup>1</sup> Robinson, pp. 276-7.

<sup>2</sup> K.A.O., PRC 32/1, f.16.

<sup>3</sup> See J. E. A. Jolliffe, *The Jutes*.

man free *ipso facto*, although allowed on occasion, is difficult to sustain against accumulated evidence, but to state that gavelkinders were free is a clear statement of a fact. The custumal, moreover, is essentially concerned with gavelkind tenure and the "Kentey's" reading seems both out of place as well as difficult; all the Kentings were not gavelkinders nor were they free; all gavelkinders in Kent were free, though presumably not necessarily Kentings. It is felt therefore that the form followed by Queenborough and Tottel is probably older and more authentic, the alternative being a natural enough development which has led to considerable confusion and indeed to litigation.

Differences continue in the next clause which is only given by Canterbury and Lambarde and which relates to escheators and denies the obligation by Kentishmen to choose such a royal officer. William Page, as editor of the Kent *V.C.H.* saw the difficulty of this clause and wrote: "In 1293, when these customs are said to have been allowed, the King had two escheators, one north and one south of the Trent. Neither of them could have been chosen by the men of Kent, but the paragraph may relate to some subordinate officer in Kent. It is possible, however, that *escheturs* should be read *ascheteurs* and the passage may refer to purveyance."<sup>1</sup> The fact that Queenborough ignores this clause emphasizes its suspect nature and makes the alternative suggestion less acceptable. By 1301 the position of the escheator was defined<sup>2</sup> and in 1340 the number was regulated according to the customs prevailing in 1327,<sup>3</sup> which is generally regarded as one per county. It is surely understandable that an additional clause was added to the custumal once the position in regard to this royal officer was determined and equally that a text based on a decision of 1293 should omit all reference to the appointment of escheator.

After this the texts follow each other more closely and one might say that the additions found, especially in Lambarde, tend to be explanatory in character and to aid in the exact definition of the point at issue. An example of this appears in clause 8, the famous one which relates to the gavelkinder attainted of felony. Queenborough and Canterbury as the oldest texts follow each other and finish with these words, "and his heir immediately after his death shall have by inheritance all the lands and tenements which he holds by gavelkind in fee and inheritance." Tottel, Lincoln's Inn and Lambarde all add the rather unnecessary phrase: "And he shall hold them by the same services and customs as his ancestors held them." The next clause also has additions of much the same kind in Lambarde, the phrase "of one half of all the lands and tenements which her husband held

<sup>1</sup> *V.C.H.*, Vol. III, p. 325.

<sup>2</sup> 29 Ed. I.

<sup>3</sup> 14 Edw. III, c. 8.

of gavelkind nature in fee" being omitted from Queenborough and Canterbury since it is in anticipation of a later clause.

Clauses 10 and 11 also present difficulties for while the form given by Queenborough is followed by Tottel and Lincoln's Inn, Lambarde makes additions and Canterbury omits several lines. This last is almost certainly a scribal error of a common enough kind. The first phrase ends with the word *chateus* and this is also the last word of the omitted portion, so that one may surmise that the scribe broke off his transcription and then inadvertently continued some lines further on.<sup>1</sup>

For some clauses following the various texts are sufficiently close to be accepted for present purposes, but at clause 17 a discrepancy of some note occurs. Queenborough and Tottel when describing the division of a gavelkinder's goods following his decease read thus: *qe le mort eit la une partye e les fiz mulieres lautre partye e la femme la terce partye*. Lincoln's Inn defines the third part more closely with the words: *la femme en vie le tierce parte* and Canterbury and Lambarde modify still further by altering the second part to read: *e les fiz e les files un partie*. It may again be questioned whether this is more than a careful definition, but it could be taken that the form in Queenborough omits the daughters. If so, the variation is most significant, though it seems probable that in this case the wording in Queenborough is loose and needed the more careful limitation of Canterbury. The following clause giving the widow a moiety for life in default of heirs is omitted by Lincoln's Inn, possibly in error since the life interest had been inserted in the former clause.

A further group of clauses follow where variations are again slight and tend in the published texts towards closer definition, although there is an omission in the Lincoln's Inn version of clause 23 almost certainly a scribal error of the kind noted before. Clause 26 which describes escheat of a gavelkinder's property to a lord holding "by Hawberke or by Sergeantry" has the phrase "by death or by Gavelate as is hereafter saide" in Canterbury and Lambarde, another instance of variant texts adding useful but repetitive information. A somewhat similar case occurs in the next clause. Canterbury and Lambarde read: "And it is to be made known that whereas the tenant so surrendering retains no service to himself, he nevertheless serves to other lords the fees, services and rents with which the aforesaid tenements thus surrendered were before charged by those or by him who could charge them." All the other three texts finish at "himself," so that the more careful definition of the clause is omitted in the earliest version under discussion.

Until the final clauses the texts again are reasonably similar except

<sup>1</sup> Robinson quotes Somner and gives the St. Augustine version which inserted an extra clause regarding felony at this point. *Op. cit.*, p. 285.

for the omission in clause 35 in Lincoln's Inn of the words *issi que iiii tenauns de gavelkinde elisent xij tenauns de gavelkinde jorors*. This would appear to be a scribal error since all the other texts retain this phrase which is of an explanatory character and which is based on the charter of 1232.<sup>1</sup>

At the end a curious and important discrepancy arises. All but Canterbury have the clause: "And the charter of the King of this especiahtie is in the custody of Sir John de Norwood the day of St. Alphege in Canterbury the year of King Edward the Sonne of King Henrie the xxi."<sup>2</sup> Norwood was sheriff of Kent, 1291-2, though why he should have been custodian of this vital charter in April, 1293, must remain a mystery. The inclusion of this clause in Queenborough suggests its authenticity, and it emphasizes the year 1293 as a time of special significance. But why does Canterbury omit all reference to this matter? The answer to this question seems to lie in the final clause only recorded in Canterbury and Lambarde; this reads: "The above are the usages of Gavelkind, which were before the Conquest, at the Conquest, and ever since, till now." As Robinson pointed out this clause "is repugnant to the last privilege which is claimed under the charter of Henry III."<sup>3</sup> It is, however, not found in Queenborough, Tottel or Lincoln's Inn and is suggestive of a second tradition, to which matter we will return.

There remain three items of moment in the three clauses which embody rhymed couplets in Middle Kentish. Each deserves close examination and comment.

The first of these is the well known and well attested couplet:

The father to the bough  
The son to the plough.

So frequently has this been quoted that to suggest any inaccuracy in the record is no light task, yet it is necessary to submit that this is a misreading of the text. In the five sources examined Tottel and Lambarde record the couplet as above. Lincoln's Inn, on the other hand gives a version which in some respects seems more near to the original, it reads:

Son the Fader to the Bonde, son the son to the Londe."

One great difficulty here is the necessity for rhyme and it arises in the Lincoln's Inn text with the word "bond," "bough" being certainly more authentic. In Tottel and Lambarde the word "plough" which rhymes with bough presents a similar difficulty for it does not occur in either of our early texts despite an inaccurate transcription in *V.C.H.*! Queenborough records the last word as "lough" and

<sup>1</sup> *Cal. Charter Rolls, 1226-57, p. 150.*

<sup>2</sup> Lambarde is followed here although he varies slightly from the others.

<sup>3</sup> See Robinson, p. 297, *Cal. Charter Rolls, 1226-57, p. 150.*

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Canterbury as "loghe" and there is no trace of a "p." This word is obscure and the need for rhyme may very easily have been father to the thought.<sup>1</sup> Another possibility is that of scribal error: the word before "loghe" in each case is "the" spelt with the Saxon Thorn and a following "e." For a careless scribe this could easily deteriorate into a "p." Basically, however, the question remains: what is the meaning of "lough" or "loghe"? That it is not an early variant of plough is made clear by the *Oxford English Dictionary*, but no such word as "loghe" appears in Wright's or Halliwell's *Dialect Dictionary*. Fortunately a document exists which may give a clue to this problem. In 1446 a very detailed survey was prepared for the manor of Gillingham. Known as the "Black Book of Gillingham" a later copy was used extensively by H. L. Gray for his study *English Field Systems* in 1915.<sup>2</sup> An almost contemporary copy found subsequently at Gillingham was deposited in the Kent Archives Office in 1953.<sup>3</sup> This refers to three kinds of holding within the manor: "jugum, ferthing and logus". The first two need no explanation in Kent, ferthing being merely a quarter of a jugum, but what is "logus" and can it be the same word as appears in Queenborough and Canterbury? There was an Anglo-Saxon word "loh" meaning a place or stead and this had a genitive form "loges." Is it not possible that "logus" is a Latinization of "loh" and that the same word appears again in the couplet under discussion? To translate "Logus Cobbe" which appears on p. 38 of the survey as "Cobbe's homestead" seems reasonable enough and in the custumal the suggestion that on the execution of the father the son took over the family property, while implicit in the word "plough" is certainly much better expressed by a word meaning homestead or something like that. Thus the use of "londe" in Lincoln's Inn is far nearer the original than the common form which has clearly been chosen for its rhyming qualities.

The second couplet is still more fascinating and more difficult. There are essentially two forms, so different as to appear incompatible. Once again, as so frequently recorded already, Canterbury and Lambard are in agreement while Queenborough provides the basic form for the other two texts. The version given by Canterbury is much the easier of the two and reads:

"Se the heswende, se heslende."

This is translated in *V.C.H.*:

"He that doth wend to her  
Let him lend to her."

<sup>1</sup> The only early text having "plough" is *Liber Horn* in the City of London Archives, see below.

<sup>2</sup> Published by Harvard U.P.

<sup>3</sup> K.A.O. U398.



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This reading presents no real difficulty. The clause to which it is attached relates to the position of the widow and in particular to the unchaste widow. The couplet is acceptable on all grounds. Queenborough and related texts, however, have a very different form, viz.:

“Si þat is wedewe, se is leudei,”

which is translated:

“She that is a widow, she is a lady.”

At first sight this is totally out of keeping with the clause and provides no basis of comparison with the alternative. There is little hope of any scribal error, the traditions seem to be wholly distinct, everything hangs on the definition of a “lady” in early Kent. The simplest interpretation seems that a widow is a person with rights in property, i.e. the Kentish widow received a moiety of her husband’s lands until she was proven unchaste or remarried—she was a lady in her own right. It is possible in view of the corrupt state of these couplets that some other word than “lady” was intended, but in view of the special place of the widow in Kentish gavelkind this seems the best reading. Its obscurity is bound up with the lack of definition of the word “lady” and the alternative couplet is much more readily understood. As regards authenticity there is no reason to doubt either form, but while the latter is dependent upon a legal conception of rights in property the former is the sort of jingle which emphasizes a point in local tradition.

Fortunately the third couplet need not detain us long. Queenborough reads: “Nengthe sithe yelde, nengthe sithe gilde and yif pund for þe were, yan is he heldere,” and all the other texts though varying in spelling follow the same form. So corrupt indeed has this couplet become that its interpretation is a matter of doubt. It relates to a tenant who has lost his land through default claiming the property again from his lord. Robinson translates in curious jargon thus: “hathe he not since any thing given and hath he not since any thing paid, then let him pay five pounds for his were, or amercement, before he become tenant or holder again.” Unfortunately some texts, but not one that the present author has seen and certainly not Canterbury use a form which has been translated:

“Nine times let him give, nine times pay,  
And five pounds for the penalty,  
Ere he becomes holder.”<sup>1</sup>

Why Dr. Slater chose to translate “Naye sith yelde, Naye sithe gelde” in this form is uncertain, but he seems to have taken this clause from MS. Colt and placed it in the centre of his translation of the Register B. MS.—a most curious practice. The generally corrupt wording of this couplet together with the fact that both Queenborough and Canterbury

<sup>1</sup> *V.C.H.*, p. 326.

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are in agreement, plus the fact that a ninefold payment would be excessive and would not form an "agreement" with the lord, but rather a hard and vicious rule, makes one favour the form adopted by Lambarde and Robinson.

### (iii) CONCLUSION

What conclusion or theories can one sustain as a result of this very cursory examination? Is there a real association with 1293 or is the Custumal much older? Are the discrepancies such that its very nature is suspect?

First, the existing texts are all late, even Queenborough is a generation after 1293. There is therefore ample room for alteration and glossing, yet the close approximation of Queenborough, Tottel and Lincoln's Inn makes the authenticity of Queenborough the more certain. On the other hand there is a similar approximation between Canterbury and Lambarde and while Canterbury is a century later than Queenborough it is almost certainly based on an earlier record. There is thus a case for suggesting two distinct though not irreconcilable traditions. Queenborough appears in a statute book along with copies of *Magna Carta*, the Provisions of Merton, *De Donis* and *Quia Emptores*. It is therefore a lawyer's work for use as part of the common law and statute law of the land. For that reason its validity depends to a degree upon its established position: hence the vague clause about the usages being those of pre-conquest days is omitted and emphasis is placed on 19th April, 1293. Just where and when the tradition of John de Berewicke comes in is unknown, for without the original "auncient and faire written Roll," Lambarde's version must remain the most suspect of those examined, if only because it tends to accept material from both Queenborough and Canterbury sources. As a statute, however, association with 1293 is significant and important in proving the validity of the document and it is therefore suggested that Queenborough represents the common lawyers' tradition.

Canterbury on the other hand is found in a Monastic Register and has little relation to statute law or need to be associated with a body of legal evidence. The best test of validity here is antiquity and the ecclesiastical tradition omits all reference to 1293 but does refer to the very ancient character of the customs. May not this therefore account in part for the many variant readings between Queenborough and Canterbury?

Variation appears to arise from the following factors:

- (a) scribal error, as where Canterbury omits several lines of text;
- (b) the attempt to elucidate the point at issue, as in several examples cited;
- (c) additions made to fit the law, the clause dealing with escheators

is a good example and so also is the last clause regarding the number of jurors which was based on a charter of Henry III given on 11th February, 1232:

(d) a distinct variation of tradition or deliberate alteration of the text to emphasize or prove a point, the use of the word "gavelkinders" or "Kenteyns" in the freedom clause may be of this kind and so may the two forms of the couplet: "Se the heswende, se heslende" or "Si pat is wedewe, se is leuedi." One's conclusion must be therefore that this custumal embodies local law far older than 1293, indeed that the Canterbury tradition regarding age is much sounder, but that the text has been amended to meet new circumstances and perhaps newly developed moral codes to say nothing of scribal error and gloss, so that in terms of authenticity the Queenborough text is probably the best as well as the oldest, but should be read if possible in conjunction with the version in Register B at Canterbury.

This article was prepared on discovery of the Queenborough text and comparison with that given by *V.C.H.* The result of this search coupled with the examination of Lambarde and the two variant forms given by Robinson have led to such interesting and important propositions that some further probing seems desirable. It is known that many texts exist though some of these are late in date. The Statutes of the Realm, 1810 edition which prints a version, used *Harley MS. 667* as a basis, but also refers to Cotton *Claudius D ii* and a copy in *Liber Horn* in the City of London Record Office. This incidentally is wrongly said to be in Latin, all three in fact being in French as are Queenborough and Canterbury and also the original used by Lambarde. It seemed therefore that an examination of these three additional texts was desirable before presenting final conclusions. All three are early. *Liber Horn* is placed at 1311, *Claudius D ii* is very similar in appearance to Queenborough and may well be dated c. 1325, while *Harley MS. 667* is also of the early fourteenth century.<sup>1</sup> This is clearly significant for in place of one early text we now have four a complete refutation of the statement in *V.C.H.* that the version at Canterbury is the earliest. Can these three throw light on obscure points or do they merely confuse the issue?

Apart from minor verbal variations, *Claudius D ii* and *Liber Horn* both follow Queenborough while *Harley 667* is almost identical with Canterbury and Lambarde. The theory of two traditions is thus maintained and carried back to the years immediately after 1293. Moreover *Harley 667* holds the John de Berewyk tradition ignored by the other texts but the clause regarding the eyre instead of being

<sup>1</sup> For information regarding *Liber Horn* I am indebted to Mr. M. J. Chandler, of the City of London Record Office, and regarding *Claudius D ii* and *Harley 667* to Mr. P. D. A. Harvey, of the British Museum.

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placed at the start of the custumal as in Lambarde is linked with the last clause, a more reasonable place for it to appear. The same text also retains the clause regarding escheators which makes its accurate dating a point of significance and suggests that it cannot be earlier than 1301. In other respects also *Harley* 667 follows Canterbury referring to "Kentey's" and retaining the phrase: "Se þat his wende se his lende." It would therefore be of some significance to know the provenance of both volumes from which these texts are taken.

In this respect *Claudius D ii* is the simpler to assess. It formed part of the "*Liber Custumarum*" of the City of London, which book was a collection of laws, charters of liberties and statutes, prepared in the fourteenth century. It is therefore closely related to *Liber Horn* and its similarity with Queenborough is also immediately obvious. Here again is the Common Lawyer at work.

The *Harley* 667 text is more difficult. It again is found in a collection of statutes, charters, etc., and its certain provenance is unknown, though since the Customs of Kent are immediately followed by the customs of Rochester Bridge a Kentish origin may be suggested. Again many items in the same part of the compilation, which now contains more than one original volume, are of ecclesiastical interest so that the proposition that this again may be of Monastic origin, possibly even the Rochester form of the customs, is not wholly out of place. In any event it strengthens the general conclusion that there were at least two traditions, one civil and one ecclesiastical with distinct divergencies in some points. Thanks largely to the authority of Lambarde the strange situation arises that the version published as a statute of the realm and thus carrying a measure of authority was not the text so used in the fourteenth century but the form in favour with the Church of that day.

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