

INQUISITIONES POST MORTEM.

FOR a complete elucidation of the following Records, a strong temptation presents itself to reprint the fourth and fifth chapters of book ii. of Blackstone's Commentaries, wherein the entire history of ancient English tenures is most lucidly treated; but we must not occupy our pages with information that is readily accessible to all who choose to interest themselves in our early constitutional history. A few quotations with reference to the different kinds of tenure, and specially that by knight-service, will suffice for our present purpose, an explanation, namely, of the origin and nature of the Inquisitions which form the subject of this paper.

“Almost all the real property of this kingdom is by the policy of our laws supposed to be granted by, dependent upon, and *holden* of some superior lord, by and in consideration of certain services to be rendered to the lord by the tenant or possessor of this property. The thing holden is therefore styled a *tenement*, the possessors thereof *tenants*, and the manner of their possession a *tenure*. Thus all the land in the kingdom is supposed to be holden, mediately or immediately, of the king; who is styled the lord *paramount*, or above all. Such tenants as held under the king immediately, when they granted out portions of their lands to inferior persons, became also lords with respect to those inferior persons, just as they themselves were still tenants with respect to the king; and, thus partaking of a middle nature, were called *mesne*, or middle,

lords. So that if the king granted a manor to A, and he granted a portion of the land to B, now B was said to hold of A, and A of the king; or in other words, B held his lands immediately of A, but mediately of the king. The king therefore was styled lord paramount; A was both tenant and lord, or was a mesne lord; and B was called tenant *paravail*, or the lowest tenant; being he who was supposed to make avail, or profit, of the land."

"All tenures being thus derived, or supposed to be derived, from the king, those that held immediately under him, in right of his crown and dignity, were called his tenants *in capite*, or in chief; which was the most honourable species of tenure, but at the same subjected the tenants to greater and more burdensome services than inferior tenures did. This distinction ran through all the different sorts of tenure; of which I now proceed to give an account.

"I. There seem to have subsisted among our ancestors four principal species of lay tenures, to which all others may be reduced: the grand criteria of which were the natures of the several services or renders, that were due to the lords from their tenants. The services, in respect of their *quality*, were either *free* or *base* services; in respect of their *quantity* and the time of exacting them, were either *certain* or *uncertain*. *Free* services were such as were not unbecoming the character of a soldier or a freeman to perform; as, to serve under his lord in the wars, to pay a sum of money, and the like. *Base* services were such as were fit only for peasants, or persons of a servile rank; as to plough the lord's land, to make his hedges, or other mean employments. The *certain* services, whether free or base, were such as were stinted in quantity, and could not be exceeded on any pretence; as, to pay a stated annual rent, or to plough such a field for three days. The *uncertain* depended upon unknown contingencies: as, to do military service in person, or pay an assessment in lieu of it, when called upon; or to wind a horn whenever the Scots invaded the realm; which are *free* services: or to do whatever the lord should command; which is a *base* or villein service.

"Where the service was *free*, but *uncertain*, as military service with homage, that tenure was called the tenure in chivalry, *per servitium militare*, or by knight-service. Secondly, where

the service was not only *free*, but also *certain*, as by fealty only, by rent and fealty, etc., that tenure was called *liberum socagium*, or free socage.

"The first, most universal, and esteemed the most honourable species of tenure, was that by knight-service, called in Latin *servitium militare*. . . . To make a tenure by knight-service, a determinate quantity of land was necessary, which was called a knight's-fee (*feodum militare*), the measure of which in 3 Edw. I. was estimated at twelve ploughlands, and its value (though it varied with the times) in the reigns of Edw. I. and Edw. II. was stated at £20 per annum. And he who held this proportion of land (or a whole fee) by knight-service, was bound to attend his lord to the wars for forty days in every year, if called upon; which attendance was his *redditus* or return, his rent or service, for the land he claimed to hold. If he held only half a knight's-fee, he was only bound to attend twenty days, and so in proportion."¹*

There were also—

"Seven fruits and consequences, as inseparably incident to the tenure by knight-service, viz. 1, AIDS; 2, RELIEFS; 3, PRIMER SEISIN; 4, WARDSHIP; 5, MARITAGIUM; 6, FINES FOR ALIENATION; and 7, ESCHEAT."

To each and all of these the King had a claim from tenants *in capite*, i.e. from those who held immediately from the Crown by knight-service.²

1. By the first, "AIDS," the tenant was bound to ransom the King's person, if taken prisoner; to provide the costs of making his eldest son a knight; and to find a portion for marrying his eldest daughter.

2. By the second, "RELIEF," the tenant had to pay a fine, or "Relief," to the King, on the death of his ancestor, as a composition for taking up his estate; but this was only demandable if the heir was of full age at the time of his succeeding to the estate, when he did his fealty and homage to his lord; that is, he took an oath to be faithful to his lord, and did homage by kneel-

* The notes will be found at p. 313, etc.

ing before him, ungirt, uncovered, and holding up his hands both together between those of his lord, who sate before him, and professing that he did become his "man, from that day forth, of life and limb and earthly honour," and he then received a kiss from his lord. At first the "Relief" was an arbitrary payment, and at the will of the lord, so that if he pleased to demand an exorbitant Relief, it was, in effect, to disinherit the heir, and thus it became one of the greatest grievances of military tenure. After various struggles between the Crown and its tenants, the composition was finally fixed at 100s. for every knight's-fee.

3. By the third, "PRIMER SEISIN," the King had a right, when any of his tenants by knight-service *in capite* died, to receive of the heir (if of full age) one year's profits of the lands, if they were in possession; and half a year's profits if they were in reversion, expectant on an estate for life.

4. By the fourth, viz. "WARDSHIP," if the heir were under age of twenty-one, being a male, or fourteen, being a female, the King was entitled to the guardianship, which consisted in having the custody of the body and lands of such heir (without rendering any account of the profits) till the age of twenty-one in males, and sixteen in females.³ And when the heir thus came of full age, provided he held a knight's-fee *in capite* under the Crown, he was to receive the order of knighthood, and was compellable to take it upon him, or else pay a fine to the King. On arriving at full age, the heir had his writ "de ætate probandâ." A jury was summoned to inquire into his age, returning their verdict on oath; on which, if proved of full age, he obtained livery and seisin of his lands. Occasionally, frauds were attempted on the Crown, by false representations of age, and reinvestigation became necessary. Among the Inquisitions are frequently found the evidences used on these proofs

of age,—an exceedingly interesting class of documents, which we shall print in order as they occur.

5. And during the same period of nonage, the fifth incident, viz. the right of MARRIAGE, "maritagium,"³ accrued to the King over his tenants. By this, while the infant was in ward, he had the power of tendering him or her a suitable match, without disparagement or inequality, which, if the infants refused, they forfeited to him the value of the marriage, that is, so much as a jury would assess, or any one would *bonâ fide* give for such an alliance; and, if the infants married without his consent, they forfeited double the value.

6. The sixth incident was the "FINE," which the tenant was obliged to pay to the King upon every alienation of his land, which he could not effect without a license from the Crown. If he did, it was in ancient strictness an absolute forfeiture of the land. But this severity was mitigated by the statute 1 Edw. III. cap. 12, which ordained, that in such case the lands should not be forfeited, but a reasonable fine be paid to the King. It was also settled by the same statute that the Crown should not demand more than one-third of the yearly value for a license of alienation.

7. The last incident was "ESCHEAT," whereby, if the tenant died without an heir, or convicted of treason or felony, the estate reverted or "escheated" to the Crown.

The description here given is that of knight-service proper, which was to attend the king in his wars. There was also another species of knight-service of a more honourable nature, but attended with the same fruits and consequences. Such was the tenure by 'grand serjeanty,' *per magnum servitium*, whereby the tenant was bound, instead of serving the King *generally* in his wars, to do him some special honorary service in person, such as to carry his banner, his sword, or the like, or to be

his butler, champion, or other officer at his coronation ; only a tenant of this kind was not bound to pay aid or escuage ; and while the tenant by ordinary knight-service paid five pounds for a "Relief" on each knight's-fee, the tenant by grand serjeanty paid one year's value of the land whether it was much or little.

"These services, both of chivalry and grand serjeanty, were all personal, and uncertain as to their quantity and duration. But the personal attendance in knight's-service growing troublesome and inconvenient in many respects, the tenants found means of compounding for it ; by first sending others in their stead, and in process of time making a pecuniary satisfaction to the lord in lieu of it. This pecuniary satisfaction at last came to be levied by assessments, at so much for every knight's-fee, and therefore this kind of tenure was called *scutagium*, *scutum* being then a well known denomination for money.

"By the degenerating of knight-service, or personal military duty, into escuage, or pecuniary assessments, all the advantages (either promised or real) of the feudal constitution were destroyed, and nothing but the hardships remained. Instead of forming a national militia composed of barons, knights, and gentlemen, bound by their interest, their honour, and their oaths, to defend their king and country, the whole of this system of tenures now tended to nothing else but a wretched means of raising money to pay an army of occasional mercenaries. In the meantime the families of all our nobility groaned under the intolerable burdens, which (in consequence of the fiction adopted after the Conquest) were introduced and laid upon them by the subtlety and finesse of the Norman lawyers. For, besides the scutages to which they were liable in defect of personal attendance, which however were assessed by themselves in parliament, they might be called upon by the king or lord paramount for *aids*, whenever his eldest son was to be knighted or his eldest daughter married ; not to forget the ransom of his own person. The heir, on the death of his ancestor, if of full age, was plundered of the first emoluments arising from his inheritance, by way of *relief* and *primer seisin* ; and, if under age, of the whole of his estate during infancy. And then, as Sir Thomas Smith very feelingly complains,

'when he came to his own, after he was out of *wardship*, his woods decayed, houses fallen down, stock wasted and gone, lands let forth and ploughed to be barren,' to reduce him still further, he was yet to pay half a year's profits as a fine for suing out his *livery* ; and also the price or value of his *marriage*, if he refused such wife as his lord and guardian had bartered for, and imposed upon him ; or twice that value if he married another woman. Add to this, the untimely and expensive honour of *knighthood*, to make his poverty more completely splendid. And when by these deductions his fortune was so shattered and ruined, that perhaps he was obliged to sell his patrimony, he had not even that poor privilege allowed him, without paying an exorbitant fine for a *license of alienation*.

"A slavery so complicated, and so extensive as this, called aloud for a remedy in a nation that boasted of its freedom. Palliatives were from time to time applied by successive acts of parliament, which assuaged some temporary grievances. Till at length the humanity of King James I. consented, in consideration of a proper equivalent, to abolish them all ; though the plan proceeded not to effect.

"At length the military tenures, with all their heavy appendages (having during the usurpation been discontinued) were destroyed at one blow by the statute 12 Car. II. c. 24, which enacts, 'that the court of wards and liveries, and all wardships, liveries, primer seisins, and ousterlemains, values and forfeitures of marriages, by reason of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knight-service, and escuage, and also aids for marrying the daughter or knighting the son, and all tenures of the king *in capite*, be likewise taken away. And that all sorts of tenures, held of the king or others, be turned into free and common socage ; save only tenures in frankalmoign, copyholds, and the honorary services (without the slavish part) of grand serjeanty.' A statute, which was a greater acquisition to the civil property of this kingdom than even *Magna Carta* itself : since that only pruned the luxuriances that had grown out of the military tenures, and thereby preserved them in vigour ; but the statute of King Charles extirpated the whole, and demolished both root and branches."

Thus far we have cited from Blackstone, somewhat

copiously perhaps, but we have done so in order that we may be spared hereafter the necessity of endless notes and discussions during the progress of our transcripts. Our readers too are thus furnished, at the onset, with a running commentary, elucidating nearly every question that may arise during the examination of these Inquisitions, as necessary to explain the Records before us; for the rest, we would urge our readers, learned or unlearned, to study carefully the fourth and fifth chapters of the second book of Blackstone's Commentaries, and can promise them much enjoyment in the perusal of that luminous writer's history of the origin and nature of the feudal system and its requirements, as specially exemplified in early English Tenures. The study too of these chapters will enable them to appreciate correctly the Records now presented to them.

In order to ensure to the Crown the rights which we have enumerated, when a supposed tenant by knight-service *in capite* died, "Inquisitiones post Mortem" were taken, by virtue of the King's writ, directed to the sheriff or escheator of the county or district in which the party died, requiring the said officer to summon a jury to inquire—if the deceased held *in capite*—of what lands he had died seized,—and by what services the same were held,—who was the next heir,—and of what age he was,—and to make their return upon oath and under seal, in order that the King might ascertain his rights of wardship, marriage, etc., and take the lands into his own hands during the minority of the heir, or permanently if the estate had actually escheated.

These writs and the returns to them,⁴ made by the escheator and his jury, are preserved among the public records of the kingdom, from the early part of the reign of Henry III. There are, as might be expected, many deficiencies, especially in the more early periods; but, with these exceptions, a series of them is preserved from

that period till the abolition of the Courts of Wards and Liveries by Charles II., when all tenures by knight-service, and of the King *in capite*, were abolished.

The great importance of these records to ordinary county history has long been acknowledged. In the descents of family and property, they are the best evidence that can be produced, and nearly the only one on which we can thoroughly rely. Moreover, if the tenant was convicted of treason or felony, it appears on these Records, which often furnish an actual "extent" or survey of the manors and lands held by the tenant, with their quality and measurement and value, recorded in full detail. Many obsolete customs too are here recorded. But, to *this* county, it is impossible to overrate their value. To us they are not merely interesting items in archæological research, but they are the indispensable evidences, in many instances the only title, which some of us have to our property. Herein are specified what particular estates are held by the custom of Gavelkind, and which are exempt therefrom.

Many an estate has been partitioned among coheirs, on an intestacy, to which the younger brothers had no more right than an utter alien in blood, and the elder son has thus been unconsciously robbed of his inheritance, merely from ignorance of the fact which these Records would have developed, that his estate was originally held by knight-service, and therefore exempt from the operation of Gavelkind. Within the last four years the writer of these lines has himself rescued two important estates from being lost to the elder son, by the evidence supplied from these very documents which we here purpose to print, in regular series, for the use of our county. In the instance of "Pedes Finium," we have printed the Record entire in the original Latin, because a short heading in English suffices, in those Records, to give the whole substance of the document; but in these

Inquisitions, which contain minute details of every particular attaching to the estate in question, no abstract would suffice. In these therefore, for the convenience of the general reader, we have rendered into English all the items of the Record. It will enable him to trace the descent of families and property from a very early period; and ever and anon, in cases of intestacy, the heir, in this county, will here find a clue to save himself from the distribution of his estate among younger brothers, securing thereby, in almost every instance, a result for which the father, had he made a will, would most probably have provided.

The English translation will suffice for general purposes; in every instance we have given the reference to the original Record, so that, in those cases where legal evidence is required, the party needing it can always obtain by this reference a verbatim copy of the original, which will be undeniable evidence in all the Courts of Law in the kingdom.

Literary friends in whose counsel we have great confidence, have, we are free to confess, advised the non-admission of these Records, and the "Pedes Finium," into our Volume; but we have so strong a conviction of their conferring something of much higher benefit to our Members than mere archæological information (which, by the way, is of itself, in these instances, exceedingly interesting), that we have resisted their counsel, and printed them. It rests with our Members to decide whether they approve the step or no. If any strong intimation be given (which we can hardly anticipate) that they are not acceptable, they shall be discontinued. As we descend to the fifteenth and sixteenth centuries, we have in these Inquisitions the most minute particulars, (very often even descending to actual fields,) of the manors and estates of deceased tenants *in capite*; and, after a study of these Records, through their course as it proceeds, the reader

will find himself as conversant with the early history of the lands in his parish, as he is of the farms around him in the present day. Connected with the "Pedes Finium," he will trace them through all their alienations, and map them out as readily as though he had lived in the times whose changes they record.

We have given, at page 298, a facsimile of one of the earliest writs, and the return of the Inquisition to it, viz. that of William le Taillur, relating to his estate in Milton, etc.; it is a fair sample of the earliest of these Inquisitions. We have selected it, as an instance where the Jury, in their return, carefully distinguish between the lands held in Gavelkind, divisible among all the brothers, and those held by knight's-service, not so divisible. Having now made our readers acquainted with the nature and history of these Records, we proceed to print them in regular series.

But we must first render our cordial acknowledgments to our old and valued friend, Thomas Duffus Hardy, Esq., and the officers presiding over the different departments of the General Record Office, for their unremittingly kind attentions. To that gentleman, and to the Rev. J. Hunter, H. J. Sharpe, Esq., the Rev. Professor Brewer, W. Nelson, Esq., J. J. Bond, Esq., C. Cole, Esq., J. Burtt, Esq., and W. B. Sanders, Esq., we cannot be sufficiently grateful for the valuable assistance rendered to us in preparing for publication the Records which we have used in this and our former volume; and we cannot refrain from adding our testimony to the great efficiency of the office, and to the uniform courtesy and attention rendered to those literary students who have occasion to consult the Public Records.

The earliest Inquisition for the county of Kent is that relating to the rents of the Prior of MODINDEN, as follows:—