

SECOND EDITION

English Legal History

L.B. Curzon



M&E HANDBOOKS

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ENGLISH LEGAL HISTORY

L. B. CURZON

Barrister

SECOND EDITION



MACDONALD AND EVANS

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PREFACE TO THE FIRST EDITION

THE object of this HANDBOOK is the provision of a series of extended study notes and Progress Tests for those who are commencing a study of English Legal History, and for those who are revising for their first examination in that subject. In accordance with the requirements of the general syllabus for this subject, the study ranges from the Anglo-Saxon era to the end of the nineteenth century. Events after that period are covered in any text on the English legal system.

It was considered appropriate to include, as the first part of the text, a sketch of general and constitutional history. Legal history cannot be understood without some reference to its political background. Legal doctrines and institutions reflect the society of which they are a part. An understanding of the growth of land law requires some knowledge of the importance of land in a non-industrial society and of the political complexities of feudalism; the workings of the Court of Star Chamber become clearer in the context of Tudor absolutism; the climax of the struggle between equity and the common lawyers had political overtones which emerge from an awareness of Stuart pretensions. The deeper one's knowledge of general history, the surer will be one's understanding of the changing patterns of development in the law.

The HANDBOOK can be used as the basis of a planned course of study in the following manner:

(a) *The book should first be read swiftly.* Progress Tests may be omitted at this stage. The object of this initial reading is to obtain a general picture of legal history.

(b) *The detailed study of the text should follow.* The chapters must be read slowly, and with care. Facts and important dates must be memorised at this stage. A methodical reading of each chapter should be followed by working through the Progress Test.

(c) *The third reading* should be for purposes of a general revision.

(d) *The final reading* should concentrate on a revision of details. It is at this stage that memorisation of dates and other facts should be checked carefully. This should be followed by working through the three examination papers in Appendix IV, under examination conditions.

The student who wishes to read widely in this rich and fascinating subject is recommended to obtain a selection of the texts mentioned in the Bibliography at Appendix II.

I should like to thank the Senate of the University of London

for their kind permission to reprint questions from recent examination papers.

March, 1968

L. B. C.

PREFACE TO THE SECOND EDITION

I AM grateful to those readers of the first edition who wrote to the publishers, making suggestions for material to be included in future editions. A number of those suggestions have been taken into account in the preparation of this second edition. The pattern of the text remains unchanged although additional material has been included at a number of points. The section on John and Magna Carta has been rewritten and the section on legal reforms during the Cromwellian era appears in extended form. The chapters on the development of contract have been revised in their entirety. A part of the appendix on examination technique has been altered and the select bibliography has been revised and extended.

November, 1978

L. B. C.

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PART ONE

A GENERAL AND CONSTITUTIONAL
SURVEY

CHAPTER I

THE ANGLO-SAXON PERIOD

EARLY INVASIONS AND CONQUESTS

1. Pre-Roman Britain. Celtic culture was brought to Britain as a result of two Celtic invasions: the first, by the Goidels in the Bronze Age, the second by the Belgae and Brythons in the Iron Age. By the time of the Roman Conquests (*see 2 below*) Celtic customs and Celtic speech had spread throughout the country, with the exception of a few tribes in the north. The Celts left no identifiable legacy of either legal or political institutions.

2. Roman Conquest and Occupation. Britain was invaded in 55 B.C. and 54 B.C. by Julius Caesar and became a province of the Roman Empire, ruled by a governor. The Conquest was completed in 78 A.D. by Julius Agricola, and, for over three centuries, Roman rule was maintained. In 430, the withdrawal of Roman officials and soldiers began. A last, and vain, appeal to Rome for help was made by the *civitates* (organised communities) in Britain, following which Britain's connection with the Roman world gradually ended.

3. Roman Law. With the ending of the occupation Roman Law vanished from Britain. At a very much later date its influence was felt once more, in, for example, Canon Law, and in the studies undertaken by lawyers in the twelfth century. But the few principles of Roman Law later embodied in the English Law were in no sense derived from the period of Roman occupation.

4. Angles, Saxons and Jutes.

(a) The three great Teutonic tribes who conquered and settled in Britain in the late fifth and early sixth centuries were closely related.

- (i) The Angles came from Angeln, in S. Denmark.
- (ii) The Saxons inhabited the area between the Weser and the Elbe.
- (iii) The Jutes inhabited Jutland.

(b) The conquest by the Teutonic tribes led to the immigration and settlement in this country of a new race of conquerors.

(c) The three tribes, who came to be known as the "English," conquered and held the central, south-east and east parts of Britain. Many of the Ancient Britons withdrew into Cumbria and Wales, and there followed a long period of struggle between the English and the Britons.

(d) The conquerors founded seven principal kingdoms—the *Heptarchy*: Kent (Jutes), Sussex, Wessex, Essex (the Saxons), Northumbria, E. Anglia, Mercia (the Angles). The struggle for supremacy was a prominent feature of the 7th–9th centuries.

5. Teutonic Institutions. The forms and institutions of Teutonic society were of particular importance in the early moulding of Anglo-Saxon society

(a) From the Roman historian, Tacitus (c. 55–120), in his *Germania*, we have some information concerning these institutions.

(i) Teutonic society was tribal

(ii) Groups of communities of particular tribes formed a *pagus* (= a district) and the *pagi* formed the collective *civitas* (= state).

(iii) Freemen, to whom the tribal lands were allocated, formed an important group, differentiated by their ranks. "Cultivators of the soil" formed a group below the freemen; they held their land under the freemen and possessed no political rights. Slaves formed the bottom layer of this social hierarchy.

(iv) Some of the tribes had "kings."

(v) Primitive tribal justice was administered by an elected *princeps* and his assessors. Each *princeps* had his own body of *comites* (attendants) who had the duty of protecting his person.

(b) Within these tribal forms may be discerned the seeds of some of the political and legal institutions which were to grow and flourish in Anglo-Saxon and Norman Britain.

THE DANISH INVASION

6. Chronology of the Invasion and Conquest.

(a) In 835 the first recorded attack by Vikings, led by their sea-kings, took place. For thirty years these raids continued, and by 865 there was a large army of Danes in England. Northumbria, E. Anglia and Mercia were conquered by 866. Wessex alone remained unconquered, until 878, when Alfred, King of Wessex, had to flee to Athelney. In the same year Alfred defeated the Danes at Ethandun, and in 879, by the Treaty of Wedmore, Alfred ceded all England north of Watling Street (*i.e.* the Dover—Chester Roman road), and the Danish leader Guthrum abandoned Wessex.

(b) By the end of the ninth century the power of the Danish conquerors was concentrated in the kingdom of E. Anglia, York, and the area of the *Denalagu* (or Danelaw—see 7 below).

(c) The Midlands, E. Anglia and York were reconquered by the English between 911–954.

(d) A resumption of Danish attacks was recorded during the reign of the weak ruler Ethelred II (978–1016). *Danegeld* (a national tax) had to be raised and paid as the price of the cessation of these raids. (*Danegeld* was levied as an occasional war tax until 1162.) In 1013, Ethelred fled before the Danish leader, Swein. In 1017, Cnut, son of Swein, became king.

(e) The royal house of Alfred was restored after the death of Hardicanute in 1042.

7. Danelaw. Danelaw (*Danelagh*, *Denalagu*) was the name given to those parts of north and north-east England in which the customary law of the Danes prevailed. Its three chief divisions were: the kingdom of E. Anglia, the kingdom of Northumbria, and the five great Danish boroughs around Derby, Stamford, Lincoln, Nottingham and Leicester. Danish customary law differed significantly from that which was to be found elsewhere in England, *e.g.* land could be bought and sold freely, there were very severe fines for breaches of the peace, and juries of presentment were used to commence the prosecution of criminal suspects.

THE PATTERN OF ANGLO-SAXON SOCIETY

8. General. The phrase "Anglo-Saxon" is usually applied to the general period of English history prior to the Norman Conquest. King Alfred used the title *Rex Anglorum Saxonum*, possibly following the union of the kingdoms in 886. In general, the period may be placed from c. 597 (the reputed date of the mission of St. Augustine, who converted Ethelbert to Christianity) to c. 1100.

9. Social Divisions. There were four clear class divisions within Anglo-Saxon society: the slaves; the partially freemen; the common freemen; the nobility. No special rules placed a man in any particular class and movement from one class to another was frequent.

(a) *The slaves (theowas).* Trade in slaves was common. The slave population, which possessed no rights, comprised:

(i) Those who had been reduced to slavery as a punishment, or by voluntary sale—children over 13 had the right to sell themselves into slavery.

(ii) Those who were the descendants of conquered Britons or of former freemen reduced to slavery.

(b) *The partially freemen, or serfs.* The serf possessed some of the rights of a freeman. Thus, he had a right of marriage and a small *wergild* (see XVII, 12(a)). In general, the serf can be considered as a slave who had acquired some rights which he was able to protect.

(c) *The common freemen (ceorls).* The *ceorl* had complete personal freedom. His *wergild* was reckoned at about 200s (£10). He was considered "foldworthy," i.e. entitled to fold his cattle on the common pasture—an important right. He was liable to attend the local court, to pay taxes and to perform military service. In early times his holding was a minimum of one hide (see 14 below), but this was later reduced. *Ceorls* who required protection placed themselves under a powerful lord. This process of *commendation* eventually became compulsory, and by post-Conquest times most of the *ceorls* had lost their personal freedom. The word "churl" survived in M.E. with pejorative overtones of "brutal" and "low."

(d) *The nobility (eorls).* The *eorl* was a person of noble