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An Overview of Glanville's "The Treatise on the Laws and Customs of the Realm of England"

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Abstract

Trace back to Medieval history of England, one of the most remarkable and monumental progress is the existence of the first prototype of common law we obey today. The paper introduces the author of the work, Glanville, along with some significant events happened in his life motivated him to write the work. The paper focuses on the recognition of novel disseisin and criminal pleas, evaluating the strengths and limitations of these law codes as well as explaining some of the cultural environmental factors that lead to incompetent and biased way of these regulations.

Keywords

Ranulf de Glanville; Common law; Novel disseisin; Criminal pleas; Medieval law.

1. Introduction

Ranulf de Glanville is most commonly known as the author of the Tractatus de legibus et consuetudinibus Regni Anglie, namely the Treatise on the Laws and Customs of the Kingdom of England which lays a solid foundation for today's common law. However, despite his successes in the law as Chief Justiciar of England from 1180 to 1089 [1], Ranulf De Glanville was a remarkable sheriff of Yorkshire during 1175-1189 [2], meanwhile as custodian of the lands belonged to the widows and infant heirs who were usually his relatives. In 1187, he also has in custody several Knight's fees [2.1]. These personal experiences, I believe, have made his intension of writing about the tenement law of the book reasonable and convincing. Glanville's wife was the daughter of the Theobald de Valoines the elder, Berta. [2.2] As her maritagium, she brought certain properties in Suffolk, where her father (lord of Parham) held five and a half knights' fees. [3] Under this situation, it again provides persuasive evidence for the fact why Glanville was so familiar with these relative laws that he was able to write them down. Unfortunately, this masterpiece of law remained unfinished, notably the criminal plea part. [1.1] And with Glanville' death in the Third Crusade as the Crusader in 1190, there is no chance for this book to be finished. [1.2]

2. Background Information

Treatise on the Laws and Customs of the Kingdom of England composed in the reign of the Henry II which is simply proved by several officials' names under his govern period appeared in the book. [1.3] It is believed that the book is written during the last few years of his reign and at the same time the last few years of Glanville's life [1.4] ----from 1188 to 1190. [4] The hostility in Henry's family between himself and his three sons, Henry the Younger, Richard, and Geoffrey started in 1182 when Henry the Younger was threatened by his mother, Eleanor, to revolt against King Henry, his father, ended with King Henry's death as well as the accession of Richard I who was supported by King Henry during the last war between him and his brothers. [5] Because of the assistance, therefore, Richard I seemed to be a lot respectful that Glanville who often seen as King Henry's right hand man was not replaced by Richard I but kept assisting Richard I as Justiciar of England while still finishing the book.

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No doubt that despite the influence of the family, the complete of the great book should grant credit to Henry II himself as his legal reforms are often considered as the origin of the nowadays' common law. [4.1] Between the Glanville and the reforms, unsurprisingly, there are lots of mutual details. For instance, the assize of novel disseisin is believed to be widely developed during Henry's reign that he had put efforts to enable its success. [4.2] Especially, Henry clarified the distinct standard of who is justified enough to obtain the writ. [4.3] As a result of this, royal justices followed his lead by setting a legitimate standard for using forces which I believe have decreased the possibility of the misuse of the military for private reasons. [4.4] There are more details overlap and prove the effect of Henry II's reforms to Glanville, which is reflected in the book, but one is enough for a simple deduction.

3. Vocabulary

Gage, a valued object deposited as a guarantee of good faith. [6]

Tenement, any kind of permanent property, e.g. lands or rents, held from a superior [6.1]

Seisin, possession of land by freehold [6.2]

Chattel, an item of property other than freehold land, including tangible goods (chattels personal) and leasehold interests (chattels real) [6.3]

Essoin, an excuse for not appearing in an English law court at the appointed time [7]

Warrantor, the primary obligation of the warrantor in old times was not that of making compensation. His obligation to give his tenant a tenement equal in value to that whence he had been ejected was but a secondary obligation arising upon the breach of the primary obligation, namely, the duty of defending the tenant in his possession "against all men who can live and die." [8]

Amercement, a fine [6.4]

Ordeal, a test of guilt or innocence by subjection of the accused to severe pain, survival of which was taken as divine proof of innocence [6.5]

Solemn Oath, "I A.B. do declare in the Presence of Almighty God the Witnesse of the Truth of what I say" [9]

Confiscate, take or seize (someone's property) with authority [6.6]

Villein, a feudal tenant entirely subject to a lord or manor to whom he paid dues and services in return for land [6.7]

Reeve, a local official, in particular the chief magistrate of a town or district in Anglo-Saxon England [6.8]

Crime of lese-majeste, lese-majeste is an offense committed directly against God, such as apostasy, heresy, witchcraft, simony, sacrilege, and "blasphemy" --crimes ultimately to be punished by the ecclesiastical subjects of a sovereign secular power [10]

4. Summary of the Chosen Topic

The content on page 165 introduces a situation "where a man claims a recognition in reliance on the gage of his ancestor", followed by the legal form of writ under the condition in which the true heir concedes and recognizes the seisin of the demandant.

On page 166 is the recognition of novel disseisin, defined as "when anyone has unjustly and without a judgment disseised another of his free tenement within the assize of the lord king". And it also offers a formal form of writ for this. Notably, among all the writs under the novel disseisin, the writs are varied in several ways "corresponding to the different kinds of tenement" the illegal behavior takes place. At the end of the topic, Glanville specifically mentioned that "No essoin is allowed in this recognition". The absence of appellee and the delay of prosecution of

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appellor will have to be liable to amercement by the lord king. Meanwhile, there are writ for the circumstance which the sheriff unsuccessfully returns appellor's chattel and fruits.

For criminal pleas on page 171, it starts with the definition of criminal pleas distinguish from civil pleas as "anyone is charged with the king's death, or with betrayal of the realm or the army, either a specific accuser appears or not". Then, it discusses different circumstances of whether an accusation has an accuser or not which determines who is going to be the person investigate the case. Only when accused denies everything in court shall the plea be settled by battle which derives into other two results----which party is vanquished. The general concept of criminal plea ends with specific conditions for who is legal to accuse someone and who is allowed to refuse trial by battle.

Followed by particular pleas including, Fraudulent concealment of treasure trove, Homicide, Arson, Robbery, Rape, Falsifying and Theft. Differ from Theft, arson and Robbery which were not discussed much, the other four were detailed written down solvency for particular situations.

For the crime of Fraudulent concealment of treasure trove, despite the similar position in which there is an accuser, when the charge is rose according to public notoriety, the ordeal should not be implemented if the crime has not been proved or admitted. But as soon as the accuser has committed, the ordeal will proceed to ensure whether he has hidden more.

While for the Homicide, condition will be much harsher. Anyone that is accused will have restriction on freedom except for royal favor. Aware of the two types of homicide which are murder and simple, and the difference between them, the difference of dealing with the two will be more understandable. For murder, the accuser has to be "a blood relation of the deceased". However, for simple homicide, people who are "bound to him by homage or lordship" are also able to accuse. Most importantly, women are allowed to accuse in this case when her husband was killed as well. Then, the accused must choose between "disproving the accusation of the women or will purge himself by ordeal". Under circumstance which the accused "has been taken in flight by the hue and cry", the ordeal will be forced to proceed.

The crime of rape has strict process for proving, there is uncontrollable time limitation that the women have to keep all the trace including, any effusion of blood or any clothes that had been teared. She will need to publicly claim the details. Again, the accused must choose between "disproving the accusation of the women or will purge himself by ordeal". Notably, the conflict can be solved by marriage between the accused and accuser, however, in order to eliminate the possibility of disgrace anyone of good birth, there has to be "license from the king or his justices and the consent of their families".

Falsifying is simply divided into two situations in which whether it is a royal or a private thing. If it is royal, then the accused has to face condemnation "as for the crime of lese-majeste". If it is a private charter, the punishment will only involve loss of limbs.

5. Interpretation

Glanville overall has brought quite many surprises, both positive and negative, that I found that as a law code during Medieval Age, it emphasized with protection to individual rights, meticulous logic, and most reasonable requests. However, based on its cultural background, it inevitably possessed a few inequalities with the lenses as a 21st individual.

In the very first writ Glanville offers, it has mentioned: "if N. gives you security for prosecuting his claim." As the writ is for novel disseisin, the investigation has to include an examination of the chattels. The request clarifies its standpoint that even the institution of Law, which represented King's order is not allowed to violate the right of the citizens, no matter they are criminals or not. Another interesting detail is that before the accuser proves his ownership, the writ has already believed that he is the owner of the tenement. It may sound a little

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irresponsible as first, but if connected this to the other demand mentioned after, the feeling will disappear——"if he has no sureties, then he is put on a solemn oath, as in all pleas of felony." and "if he has none, he shall be put in prison." The word "he" represents the accuser, then it becomes clear that a false accusation or an unsure accusation will bring undesirable results to the person himself. Therefore, Glanville has the confidence to assume all the accusers are honest and believe their ownership in the very first place.

Then, the writ provides a specific number of "twelve free and lawful men of the neighborhood" to be the jury of the crime. The religious explanation for the number is that twelve jurors correspond to the twelve apostles, twelve stones, twelve tribes in the Holy Writ. [11] But a more realistic explanation for the number is that the number twelve is large enough to deliver justice, especially under the conditions that all of them are free and lawful. "Free" guarantees the autonomy of the twelve people who can decide justly without anyone's manipulation. "Lawful" guarantees the honesty and reliability of the jurors. Those two combines together form a trust-worthy jury.

What is also interesting in Glanville in the novel disseisin is "no essoin is allowed". Even the accused does not show up, the assize still shall proceed. The reason for that I believe is because in cases of novel disseisin, the accused does not affect the result of the assize. As tenement cannot be moved, therefore, as long as the court decides the ownership of the tenement and proceed with the result, the appearance of the accused does not matter. And it will increase the efficiency of the jury to solve more cases. The writ includes the "minors" as well which proves its meticulous logic that it even considered the possibility of a minor heir of the tenement. And the court provides justice for them just like it does to everyone else.

Notably, at the very end of the crime of novel disseisin, Glanville wrote "And if the sheriff has not seen to it that he gets the fruits and chattels, the complainant shall have the following writ". With the writ being provided after, Glanville gives out a way for citizens to question the sheriff. It constrains the power of the sheriff, making citizens realize that being a sheriff does not mean he is allowed to use the power the King granted him to do everything he wants. The writ ideally will decrease the possibility of corrupted local courts.

Then comes to the Criminal Pleas, it starts with a clarification of the concept of criminal pleas. The king's and the betrayal of the realm or the army is being discussed and equalized. And this brings the concept of how army and law are necessary for a king to rule well. The two not only support each other but also, they offer military defense to the outsiders and deliver just judgment to the insiders. With them, the realm shall be stable. Therefore, the importance of the army is nothing less than the king as the power of the king shall be gained from it. [12]

During the discussion of criminal pleas based on public notoriety, "interrogations" are allowed for the investigation. According to the background of the time written, the deficiency of evidence because of non-advanced technology is the reason for that. Without those technologies means the lack of ways to get true information, therefore, the court has been left no choice but to get as much information from witnesses as possible in order to be able to deliver the most possible just they can. The invention of ordeal despite religious reasons, I believe, is also caused by the same reason. When the courts tried hard to prove either side of the assize but failed. Then under the situation in which they have to offer a result for the accusation, they have to find other way which is the ordeal.

One intriguing fact in the crime of homicide is how the law does not allow people other than "a blood relative of the deceased" to accuse of murder. I believe the cause for that regulation is due to part of the definition of murder, which is "done secretly, out of sight." This trait indicates that the accusation has to be based on assumptions because no one had seen the crime taking place. Otherwise, there shall be hue and cry. As the accusation is based on assumptions, people other than blood relative does not seem to have justified reasons for making an accusation and

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may even seem suspicious when they accuse someone else which probably directed by an impure intention. Glanville designed the regulation to avoid that.

The crime of homicide is special in many ways, its uniqueness also shows how it allows women to accuse of her husband. This represents the law, as the most important document with common consent, recognizes the combination of marriage as a sacred and inviolable union. According to the general rule, "a woman is allowed to accuse another of injury done to her body" which foreshadows the following crime of rape.

The crime of rape is the only law I feel understandable under the time written but still feel somehow uncomfortable with. Rape has always been a tough crime to prove even for those days, however, the requests Glanville's demands for women who wanted to prove the rape had been too strict and merciless. "Show to trust-worthy men the injury done to her", "do the same to the reeve of the hundred" and "proclaim it publicly", all of these demands will have inevitably done second harm to the women, mostly mentally by humiliation to tell the details to men she doesn't know at all. And even after all these sacrifices, the women made there is still a possibility of her not winning the assize if the accused passed the ordeal. It will not be a surprise if women in medieval time did not accuse someone for the crime of rape at all because of the high price it is going to take. But it is understandable for the existence of the law as in Medieval times women were treated as objects and allowing them to accuse had been a great advancement.

6. Conclusion

Overall, Glanville worth to be the foundation of nowadays Common Law, it has considered thoroughly to deliver justice and rights to every single person despite classes and financial conditions. While still preserving the highest power of God and the King, the code had done its best to be merciful, tolerant, thorough, and just enough for that time.

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