

## LIONEL GREEN, responding to a request from the Mayor, explains THE STATUTE OF MERTON.

On January 20th 1235/6 Henry III married Eleanor, daughter of the Count of Provence, at Canterbury Cathedral. The wedding had brought together the greater part of the nobility and high clerics of the land, and all left Canterbury for Surrey where a great council [was] called at Merton after the festivities were over .<sup>1</sup>

Normally such a meeting would have taken place in London, probably using Westminster Hall, but the winter of 1235/6 was severe and the Thames at Westminster had overflowed the banks and in the great Palace of Westminster men did row with wherries in the midst of the Hall, being forced to ride to their chambers .<sup>2</sup> The complex of buildings within the large precinct of Merton Priory was probably the nearest available.

There must have been great confusion in the outer court of the priory with men-at-arms, pages, scribes, clerks. Each of the great men attending would have brought horses and carts. Stabling would have been intimidating with additional work for the farriers. Fires were probably lit in the open to supplement the kitchen. Over these fires would have hung the cauldrons for boiling meats and other food. Emergency storage areas would contain piles of faggots and wood for the fires.

At this Great Council was the Archbishop of Canterbury, Edmund Rich, no stranger to Merton, having lived here as a canon 1213/4 (see Bulletin No. 137 p.13). He had officiated at the royal wedding and would later crown the queen. Also present was Ralph Neville, Chancellor of Henry III.

The political event at Merton was the culmination of fears by the barons that the king was relying on foreign advisors and disregarding the traditional right of counsel of the barons. The result was incompetent rule. They were also fearful of the influence of the Poitevins, Bretons and Provençals who had been invited to occupy royal castles and fill administrative posts forming an extravagant Court. They could see the influence of canon law as practised on the continent and were alarmed that the king might abolish the common council of the realm and introduce a French-type court of 12 lords only - a distinct possibility now that the king had married Eleanor of Provence.

In the crowded chapter house of Merton Priory there would have been no direct representation of the people, for it was to be another 18 years before elected knights of the shires would be summoned, or burgesses from the towns were eligible to attend. Consequently this Parliament was limited to what we now call the House of Lords. It is noteworthy that in spite of the fact that the common people had no say in the passing of this Statute, it remained in part on the Statute Book of Parliament for over 700 years. The enactments passed by the Lords were naturally for the gain of themselves and to the detriment of the people.

The Statute consists of eleven chapters but the term Statute of Merton is usually reserved for chapter 4 because of its importance throughout British history.

### Chapter Summary of measures.

- 1 Safeguarding widow's share of her late husband's estate.
- 2 Giving the right of widows to bequeath the crops of their own dower lands.
- 3 Redisseisin - i.e. the second attempt to repossess.

Where a plaintiff had legally secured repossession of land but the disseisor (dispossessed) had taken it back again, the sheriff was authorised to arrange a site meeting with twelve knights or free men of the shire and hold an inquest with the coroner. If they found that the second repossession had taken place, the disseisor was to be imprisoned and the plaintiff given lawful possession.

- 4 Giving the right of lords of the manor to enclose commons and waste lands, provided that sufficient land is available to satisfy customary tenants' rights. (See Appendix).
- 5 Safeguarding minors against proceedings for interest on father's debts.
- 6 Giving the right of a guardian for recompense if a ward marries without his consent. The guardian may retain the estate until he pays himself double the value of the marriage, as one would *bona fide* have given for such an alliance. The law was already in existence for female wards but this statute extended the rights over male wards.



Henry III, from *Cassell's Illustrated History of England I* (c.1860)

- 7 The guardian's right to dispose of his infant ward in marriage was clarified. He might tender any match that was not disparaging or unequal, which if he or she unreasonably refused, they forfeited the value of the marriage - *viz.* so much as a jury would assess or anyone would *bona fide* have given for such an alliance .
- 8 The time of prescription in several official Writs was reduced.
- 9 This was a failed attempt to legitimise children born before their parents' marriage. (See Appendix)
- 10 Giving the right for all free men to be represented by an attorney at the county court. Hitherto, personal attendance was essential and the passing of this Chapter proved beneficial to heads of monasteries,
- 11 The nobles wished to assert their rights on convicted offenders of disturbing the peace on their private estates. They wished to imprison those held for poaching in parks and fishponds but the king claimed jurisdiction and withheld assent.

### **The Importance of the Statute.**

The purpose of the Council of Merton was not to obtain concessions from the king but to set down points of law suggested by experiences.<sup>3</sup> Some were accepted and others (Ch. 9 & 11) not agreed.

Magna Carta had formulated some fundamental freedoms for all subjects but written parliamentary law had to wait for the Statute of Merton (1235/6), the Provisions of Oxford (1258) and the Provisions of Westminster (1259). The laws made at Merton remain the first item in the printed Statutes of the Realm. Magna Carta was not entered in the Statute Book until the *Confirmatio cartarum* of 1297.

The proceedings at Merton were carefully reported to the Irish government and the Statute was extended to Ireland by Letters Patent.<sup>4</sup> There was a need to keep Irish feudal practice in line with English common law. The Statute was abolished in the U.K. under the Statute Law Revision Act of 1948.

## **APPENDIX**

### **FURTHER INFORMATION ON CHAPTERS 4 AND 9.**

#### **Chapter 4 - Commons**

At a time when most of England was common land, that is land held in common by local freeholders, its availability was an important factor in supporting the local economy. All who possessed arable land enjoyed rights of common on the manor waste. But these common rights made it difficult for the acreage of plough land to be increased, since any individual commoner could bring an action against any man who did this. Early in the 13th century there was land hunger and the landlords found it profitable to lease land for a money rent, often to men already occupying customary holdings. These were small assarts carved from the waste and additional to the peasant's main holding. There was also the need to increase acreage under corn to feed a growing population.

Under this Chapter, lords of the manor were allowed to enclose (anciently *approve*) parts of the waste lands providing that on complaint of the free tenants that there was left, a sufficiency of the common to satisfy their rights with free access thereto .

This enactment was of benefit to all lords of the manor and this included monasteries and other ecclesiastical bodies. By the terms, simple proof that sufficient pasture for tenants was available would be defence to actions of unlawful dispossession of common land. But this referred to pasture for his own tenants and failed to protect others with pasture rights. The anomaly was corrected in the Statute of Westminster in 1285.

The Statute of Merton was operative throughout the medieval period and hotly debated. At the Reformation there was a tendency to return arable land to pasture and on 1st May 1551 a proclamation expressed anxiety at the decay of tillage. When the Duke of Northumberland took over from Protector Somerset in 1552, a Tillage Act made reference to the Statute of Merton. Any land that had been tilled for four or more years since 1509 could not be converted to pasture.

Due to the rapid expansion of London around 1845 advantage was taken of the Statute, and common enclosures took place for development by lords of the manor. In 1864 Earl Spencer, lord of the manor of Wimbledon wished to set apart a portion of Wimbledon Common for his own use. In the following year George Shaw-Lefeyre (later Lord Eversley) formulated plans to resist the enclosures, and the Common was handed over to the public living close by, in perpetuity. This led to the passing of the Commons Acts of 1876 and 1899 which reduced the danger of encroachment. In the early 1890s attempts were made to repeal the Statute but a compromise was made whereby common land could only be enclosed under the Statute if agreed by the government department.

## Chapter 9 - Bastardy.

The Church had always provided for children born before the marriage of their parents to be made legitimate. They were brought to church and at a ceremony were covered by the nuptial cloth like a woman's mantle to become mantlechildren and henceforth legitimate. In the Anglo-Saxon laws no distinction was made between the duties to God and obligations to society. The law of the Church was the law of the land. The Plantagenets followed feudal practice and held that such children were bastards. To them the right of succession to land often depended upon legitimacy (seemingly forgetting that the Conqueror was illegitimate). In the early 1230s many cases of legitimacy were being referred to the bishops rather than the manorial courts. Henry III desired to remove the ambiguity of canon law and the English common law. He held a parliament at Tewkesbury on 12th October 1234 where it was decided to ask all bishops to rule on the matter. Unfortunately the question on the form of inquisition was not whether such a person was legitimate but whether the person was born in wedlock. The bishops refused to answer the question as being contrary to the common form of the Church.

At Merton, the bishops asked the barons to consent to such children being regarded as legitimate because the Church held them so. Led by a royal judge, William de Raleigh,<sup>5</sup> they replied with one voice *Nolumus leges Angliae mutare* - we are unwilling to change the laws of England. In a report of the discussion sent to Ireland, the king added that the bishops had washed their hands of the affair and had left the matter to the secular law.<sup>6</sup> For the next 689 years no change was made on this issue.

### Post script.

The bishops and barons stayed at Merton from 20<sup>th</sup> to 27<sup>th</sup> January and the Statute was dated Wednesday 23<sup>rd</sup> January 1235/6. Seven other charters were issued, attested by 30 witnesses. The Statute involved the drafting of new writs and some were worded by William de Raleigh.<sup>7</sup> The chancellor, Ralph Neville, followed the king on his journeys accompanied by the clerks who made out the writs. Frequently a strong horse was requisitioned from the nearest monastery to carry the rolls.<sup>8</sup> Acts of Parliament were sent to important monastic houses to be recorded as there were no national archives. The Statute of Merton was entered fully into the annals of Burton and mentioned in those of Waverley and Dunstable.<sup>9</sup>

On Sunday 27<sup>th</sup> January, all departed for London where Queen Eleanor was crowned in Westminster Abbey.<sup>10</sup> The Prior returned to his duties with thoughts of a memorable occasion ... assisted in his reveries by the gift, made at Merton, of a tun of Gascony wine from the king.<sup>11</sup>

### Footnotes.

1 W.Stubbs *Constitutional History* 1875 Vol. 2 p.53.

2 J.Stow *A Survey of London* 1598 (C.L.Kingsford 1908 II p.1 1415)

3 F M Powicke *The Thirteenth Century 1216-1307* 1962 p.69.

4 Pat.Roll 20 Hen III m. 13 d.

5 A.Harding *England in the Thirteenth Century* 1993 p.177.

6 F M Powicke 1962 p.71.

7 F M Powicke 1962 p.70.

8 F.Palgrave *Original authority of the Kings Council* p. 1 1 5.

9 *Annales Monast.* (Rec. Pub.No.36) I pp.249-51 (Burton), II p.xxxi (Waverley) and 111 p. 144 (Dunstable).

10 The *Red Book of the Exchequer* (p.755) quotes on the Sunday before Purification . Matthew Paris's chronicle gives the date as 20<sup>th</sup> January. The *Red Book* contains the oldest surviving official record of a coronation.

11 Close Roll 20 Hen III m.18.

## MUSIC IN THE LIFE OF ST THOMAS BECKET

Regrettably, few members of Merton Historical Society were among the 70-strong audience at the Chapter House of Merton Priory on 7th May for a unique and fascinating experience, when Mary Remnant, a world-renowned expert on medieval music, gave her lecture-recital. Supported by the Choir of the Confraternity of St James, Mary performed a selection of medieval music from England and the Continent, playing a range of instruments - harp, psaltery, rebec, fiddle, organistrum, pipe, shawm, horn, chimebells and percussion instruments. Although, of necessity, modern reproductions, these were all based on surviving instruments or on evidence from illustrated manuscripts or sculptures of the period, many of which were shown as part of the slide presentation which accompanied the performance. The 25 musical items were linked by a commentary on the life of Becket, from childhood in London, schooldays at Merton, service in the household of Archbishop Theobald of Canterbury, promotion as Henry II's Chancellor, appointment as Archbishop of Canterbury, and eventual martyrdom. At key points in the narrative, Mary introduced us to music that Becket would have experienced at that time. Congratulations to Sheila Fairbanks and the Friends of Merton Priory for arranging a memorable evening.

**Peter Hopkins**