

Chapter 1

A Sketch

JA Watson

There is no single point of entry into the history of the common law save beginning, as Maitland says, in “a very remote age”.¹ Before 1066 there was King Cnut (sometimes, Canute) (c 985-1035), who ruled in Denmark, Norway and Sweden, and from about 1016, in England. He was succeeded by his sons Harefoot, then Harthacnute, and in turn by Edward the Confessor (1042-1066). The Confessor was the last of the Anglo-Saxon Kings, but this was perhaps more apparent than real: he was half Norman (French) by birth, and “wholly Norman” by education.² In any case and for the purposes of a sketch, he ruled over Anglo-Saxon lords (called *theigns*); an England divided into Shires; and a system of courts generally effected within them, including the administrative and judicial bodies known as Hundreds.³

In 1066 William the Bastard,⁴ later Duke of Normandy, and after the Conqueror, defeated Harold Godwinson at Hastings. Crowned on Christmas Day at London, and as a conqueror would, he claimed all of England for himself, rewarding those loyal to the conquest with grants of land and offices. Retaining that which was useful from the old regime, in particular for the humble, he set about reorganising the nation along Norman lines for the noble.⁵ For the Anglo-Saxon theigns this was at first an accommodation, but later, and probably on a

- 1 Maitland, *Equity and the Forms of Action at Common Law* (CUP, Cambridge, 1929), 301.
- 2 Adams, Lodge, Young & Laughlin, *Essays in Anglo-Saxon Law* (Little, Brown and Company, Boston, 1876) (reprinted Lawbook Exchange Ltd, New Jersey, 2004), 46, 117; Butt, *Land Law* (4th ed, Lawbook Co, Sydney, 2001), 58.
- 3 The Hundred “was an administrative subdivision of the Shire with fiscal, judicial and military functions. The men of the hundred are the members of the hundred-court. The number and size of the hundreds varies greatly from shire to shire, but notionally, and sometimes actually, comprises 100 (or a ‘long’ hundred of 120) hides”: Erskine & Williams (eds), *The Story of the Domesday Book* (Phillimore, Chichester, 2003), 261.
- 4 Buck, “The Reform of the Exchequer 1316-1326” (1983) 98 *English Historical Review* 142, 256.
- 5 In particular, the Shire and its subdivision into Hundreds. Very generally, there were courts of the Shire (presided over by the sheriff), courts of the Manor or Baron’s Courts (for those under him), and the Hundreds. See van Caenegem, *The Birth of the English Common Law* (2nd ed, CUP, Cambridge, 1988), 12. See also Hazard, “The Early Evolution of the Common Law Writs: A Sketch” (1962) 6 *American Journal of Legal History* 114. For the Anglo-Saxon tradition, see Adams et al, *Anglo-Saxon Law*.

This is a preview. Not all pages are shown.