Two claims to Fleta's Honors

Boris M. Komar

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Legal History Commons

Recommended Citation
Boris M. Komar, Two claims to Fleta's Honors, 30 W. Va. L. Rev. (1924).
Available at: https://researchrepository.wvu.edu/wvlr/vol30/iss3/5

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
Selden in his "Dissertatio ad Fletam" published a copy of an interesting document the original of which is now lost. It is a memorandum in Exchequer, which tells us that on February 2, 1277, Thomas Bek loaned Henry de Bratton's "Summa de Legibus et Consuetudinibus Angliae" to Robert de Scardeburgh. Assuming, then, that all the other conditions required by the science of modern historical research are satisfied, we have here what might be termed a presumption that one of the above mentioned persons may have been the author of Fleta, since Fleta is an abridgement of Bratton's work written around the time mentioned in said Exchequer memorandum.

Mr. F. W. Nichols in the introduction to his translation of Britton has shown conclusively that Fleta was finished shortly after 1290, or probably towards the end of that year, for in the summer of 1290 it was still in the course of preparation. One of the precedents from the roll of Peter de Chauvant cited there is dated 18 Edward I, e. g. 1290. There is also an allusion to the statute of Westminster the Third passed in the summer of 1290. The author of Fleta says that the statute shall apply not to the past transactions but to the future. Mr. Nichols also thinks that this opinion of the author on the statute was added by the author after this part of Fleta was completed by him. In other words, it was interpolated by the author after the passage of the said statute. This point will be of importance to us afterwards, and should be remembered in the subsequent discussion.

A more difficult question is that of the date when Fleta was begun. Some evidence towards the solution of this question may be gathered from the remarkable passage in another part of this treatise, a passage which caused such a surprise to Selden, and the veracity of which he so much doubted that he ascribed it to

---

* Editor, Canotational Law, New York City.
1 Chapter 2, Section 2.
3 Fleta, Book II, Ch. 3, pars. 10 & 12.
an imposition on the author.\(^5\) This passage announces the doctrine that:

"Res quidem coronae sunt antiqua maneria, regis homagia, libertates et huiusmodi, quae cum alienentur tenetur Rex ea revocare. (The possessions of the crown consists of the ancients royal desmesnes, homages, liberties and such like, which, were they alienated, the king would be obligated to revoke them.) which as the author of Fleta tells us owes its origin to:

"...provisionem omnium Regum Christianorum apud Montem Pessoloniam anno regni Regis Edwardi filii Regis Henrici quart\(^6\) habitam." (a resolution of all the christian kings made at Montpellier in the fourth year of the reign of King Edward, son of King Henry.)\(^7\)

Between 16th of November, 1275 and that of 1276 the only assembly capable of answering the above description, if at all, was the Council of Lyons, but so far as we can ascertain no such provision was ever made there. On the contrary, as Selden had shown,\(^8\) there is every proof that the opposite rule was actually in practice—hence Selden’s opinion of the author. What is more remarkable is that the above passage in Fleta is undoubtedly not an interpolation for in two other places the author of Fleta expresses the same view.\(^9\)

Well then, was Selden’s opinion of Fleta’s author true. We submit that it was not. In an old chronicle of the kingdom of Aragon we are told that King Jayme (Jacque or James I) of Aragon, called the Conqueror, offered to the Pope Gregory X at the Council of Lyons to lead an expedition against the infidels. At the same time the occasion appeared to King Jayme a suitable one to obtain the sanction of the Pope to his kingdom as heretofore the kings of Aragon were crowned by the archbishop of Saragossa only.\(^10\) And the chronicler proceeds:

"Ma no quiso el papa darle la corona sin que ratificase primero el tributo que el Rey don Pedro su padre auia otorgado de

---

\(^5\) "Hallucinationes id genus apud nimis credulos haud ita rare." (Impositions of such kind being frequent with over credulous.) Dissertation ad Fletam, Ch. 10, Sec. 4.

\(^6\) If we substitute for "quarto" "decimo quarto" (fourteen), then we find that in the year 1286 Edward I held a congress in Bordeaux composed of the two papal legates and the representatives of France, Aragon, Castile and Majorca. However, unless this suggestion be supported by any existing ms. of Fleta, we have no reason to doubt that any other date was meant by the author of Fleta than that mentioned in the text.

\(^7\) Fleta, Book III, Ch. 6, par. 2.

\(^8\) Dissertation ad Fletam, Ch. 10, Sec. 4.

\(^9\) Fleta, Book I, Par. 8 and 17.

\(^10\) "Pareció buena ocasion al Rey, que en aquel ayun tamiento tan grande, donde se hallavan muchos y muy señalados Principes de la Christiandad, el Papa le caronasse..." (It seemed to the King a good occasion for the Pope to crown him in that great council where were found many and very noted Princes of Christiendom.)

G. Corita, Ann. de la Cor. de Aragon, Lib. III, capt. 87.
dar a la Iglesia al tiepo de su coronacion quando hizo censatario su regno: y pidio que se pagasse lo q se deuia a la sede Apostolica desde aquel tiepo. El Rey embio a dezir al papa que anivudo el tanto servuido a nuestro senor y a la Iglesia Romana en enfalsamien
to de la Santa Fe Catholica mas raro fuera que el papa le heziera otras gracias y mercedes que pedirle cosa que era en ta
notorio perjuyzio de la libertad de sus reynos: de los grales en lo
temporal no deuia dehazer reconocimiento a ningun Principe de
la tierra: pues el y los Reyes sus antecessores los ganaron de los
Paganos derramado su sangre: y los pusieron debaxo de la
obediecia de la Iglesia y que no auia y do a la corte Romana, para
hazese tributario, sino para mas eximirse; y qnas queria bolner
sin recibir la corona, que con ella, con tanto perjuyzio y
dimunicion de su preeminencia Real." (But the Pope was not
willing to give him the crown until he should first ratify the
tribute which King Peter, his father, had promised to give to the
church at the time of his coronation when his realm was made a
tributary; and he asked that that which was due to the Apostolic
See since that time be paid. The King sent word to the Pope that
he [the king] had so served our Lord and the Roman Church
in defense of the Holy Catholic Faith that it would be more
appropriate for the Pope to grant him additional concessions
and favors than to ask of him a thing which was manifestly so
detrimental to the liberty of his kingdom; a thing which he [the
Pope] ought not to do, knowingly, to any Prince in the world;
for, he and the kings, his ancestors, had won the territories from
the Pagans by the shedding of blood; and had placed them under
the obedience of the Church, and that he had not gone to the
Roman court in order to make himself a tributary, but to gain
more freedom, and that he would rather return without receiving
the crown, than with it with such an abridgement and diminu-
tion of his Royal Prerogative.)

Before the end of the Council of Lyons the king of Aragon much
agrieved by this harsh papal treatment left for Montpellier, then
a part of the possessions of the crown of Aragon. He died soon
thereafter, e. g. on July 26, 1276. Now, in 1275 a meeting
took place between Pope Gregory X and King Alfonso of Castile in
the town of Beaucaire, Languedoc. We are told by Catalan, an
ancient chronieler, that the king of Aragon accompanied Alfonso,
when the latter crossed the frontier of France on April 21, 1275,
and that both kings stayed for fifteen days at Montpellier, where,
the inhabitants held various festivities in their honor. We
may now recall that queen Eleanor of England, the first wife,
of Edward I, was a sister of Alfonso X of Castille and that Alienor.

---

11 Ibidem.
daughter of Alfonso IX was married to Jayme of Aragon, but the marriage was annulled by the Holy See on account of the prohibited degree of consanguinity, though there was an issue of this marriage, a son called Alfonso, who was declared legitimate. Further, King Jayme’s first daughter of his marriage with Iolesa, daughter of Andrew, king of Hungary, also called Iolesa, was married to Alfonso X of Castille. What would be there remarkable, if after the meeting at Montpellier, where Jayme of Aragon told his son-in-law how Gregory X treated him, Alfonso of Castille wrote a letter thencefrom describing the whole incident to his sister, Queen Eleanor of England. The royal houses of England and Castille were very friendly at the time—the usual manner in which letters from Edward I to Alfonso X were addressed was “serenissimi principi, et amico suo karissimo, soroiro” of the like. At about the time this incident had happened there was an extensive correspondence carried on between the two monarchs. There is a record of a letter sent by Edward I to Pope Gregory X asking him to support the candidature of Alfonso and of another letter to the latter promising to the latter military help against Rudolf of Hapsburg.

The author of Fleta was undoubtedly well connected with the royal household of England. Nearly one third of the second book is taken with the description of offices and clerks of the royal court, their duties and privileges. The author is particularly solicitous about the office of the king’s treasurer. Two chapters are devoted to the description of his status—“De Feodo Camerarii” and “De Privilegiis Camerarii.” The author of Fleta might have heard the story of the incident between Alfonso X and Gregory X, and the statement in the book might be his generalization of the facts as related to him or in his presence. In 1275 a letter was sent to Edward by Alfonso with a messenger, Gilbert de Cundilijis, concerning the double marriage, namely that of Ysabella, Alfonso X’s daughter, to Edward’s eldest son and Alfonso’s son, also Alfonso, to Edward’s eldest daughter. Finally, the king’s proctors, as well as other representatives of English clergy, were present at the Council of Lyons, and some of them, especially the first ones, also could have been instrumental in bringing to London the tale of papal proposal to Alfonso.

What impression the Alfonso-Gregory incident made on the
contemporaries other than the author of Fleta we do not know, but amongst the civilians there was much discord of opinion at the time on the question of royal domains, and various provisions were made by different kings in accordance with the variety of answers given by contending schools of glossators. The conciliatory opinion adopted by civilians seemed to be that which held that "res coronae" or regalia could be ceded for the life of the king only, because a monarch had no power to impair the rights of his successors. Be that as it may, so far as Aragon is concerned, the constitution passed in the year 1300 in that kingdom carried out to a large extent the doctrine announced by the author of Fleta. It provided that:

"Ommia loca et villae domini Regis et omnes homines sui qui sunt in, commanda alieiuus Nobilis, vel Mesnadarii, Militis vel Infantionis statim exeant de illa commanda cum omnibus bonis suis: et non sit ausi de caetero ponere se in commanda alieiuus personae: nisi tantum in commanda domini Regis. Et si aliqui contra hoc feecerint, sint incursi cum eoripibus atque bonis." All the towns and villages of our Lord the King and all his men which are under the control of someone of the nobility either knights, chevaliers or princes shall at once pass out from such control with all their goods, and it should not be dared by anyone to place himself under the control of any person except under the control of our master the king; and if anyone act contrary to this let him be proceeded against both as to his person and to his property.

In conclusion, we may add that it is not at all improbable that there was at this time in England a branch of a school of law advocating the opinion that the king had no power to alienate regalia. For aught we know the author of Fleta might have belonged to this school. The peculiarity of the passage in Fleta relating to the right of alienation of crown property lies in that its author must have known something about the subject matter from some source other than Bratton's treatise. A mere clerk uninstructed in civil law could not have hardly made the generalization attempted there by the author. The author of Fleta must have been a civilian, as he does not hesitate to make his additions

20 Las Partidas (Ed. Lopez, 1611), Part 6, Tit. 9, L. 13, Gl. 2.
21 "... et quod non posset Rex illas alieuius in perpetuum donare; sed ad vitam conceditis: non enim potest Rex per contractu neque ali modo in praefidium sucessoris concedere regalia nam sicat non posset Iura successorum subvertere: ut neque menuerc" (...and therefore the king could not grant them to anyone for ever, but only by a grant for life; for a king can not by contract nor in any other way, grant crown possessions to the prejudice of his successors, for so he will not be able to destroy the rights of his successors, so they are not lessened.)
22 Las Partidas (Ed. Lopez, 1611), Part 3, Tit. 18, L. 10, Gl. 2.
23 Fueros y observancias de Reyno de Aragon (1667), p. 130.
to the Bratton's text. For example, to Bratton's "hujusmodi liber-
tates de jure gentium"\(^{23}\) he adds "naturali."\(^{24}\)

The importance of the reference to the events at Montpellier for
the purpose of this article lies in the fact that it gives us a clue
to the time when the writing of Fleta was commenced. The doc-
trine of the king's right to alienate regalia is asserted as early as
the eighth chapter of the first book. Fleta was certainly started
shortly after the fourth year of the reign of Edward I. It must
have been commenced before the English prelates who attended
the Council of Lyons returned to London, for otherwise an inquiry
amongst them by the author of Fleta should have elucidated the
fallacy of his statement. That the author of Fleta did not think
fit to correct his statement subsequently causes no surprise to us.
Fleta is an unfinished work, which was very little used in practice,
and we are convinced that its author in leaving it in its present
state indicated that it was merely a draft not intended for general
use as a treatise on law.

In our opinion Fleta was commenced either at the end of 1275
or the early part of 1276. The reference to the fourth year of
Edward I occurs in the third book of Fleta, so that it is clear that
its author was at work on it prior to that year. How long prior
thereto it is impossible to assert with certainty—maybe months,
maybe years—we are inclined in favor of the first probability as
against the second.

Fleta (barring Book II) is nothing more than an abridgement
of Sir Henry Bratton's Summa de Legibus et Consuetudinibus
Angilae—and a very skilful abridgment at that. In epitomising
Bratton's work, the method used by the author is clearly discerned.
Fleta's author states all the legal doctrines positively. Unlike
Bratton he indulges in no legal speculations and cites no cases.
Yet his choice of the essential matter is very accurate and exact,
and his style is short and clear. He seldom fails to distinguish
the material part in Bratton's treatise from a mere embellishment
of learning or an argument. In his style of writing the author
of Fleta appears to be the forerunner and teacher, if such he were,
both of Britton and Thornton.

In other words, the writer of Fleta must have had a copy of
Bratton's work before him and have had it as early as 1275. Were
any copies of Bratton's work in circulation at that time? We are
not prepared to admit the existence of these copies without a deci-
sive proof. In 1273, only two years earlier, an obit for Bratton's

\(^{23}\) Bracton (R. S.), vol. I, p. 112
\(^{24}\) Fleta, Book III, Ch. 6, par. 3.
soul was endowed in the cathedral of Wells in that year Bratton’s property was not as yet distributed amongst his relatives and legatees. Where, in 1275 or thereabouts, was the original treatise of Bratton?

Selden tells us that he discovered a memorandum in Exchequer, since lost, to the effect that on February 2, 1277, Bratton’s treatise was lent to R. de Scardeburgh. The memorandum is as follows:

“Universis praesentibus literas inspecturas R. de Scardeburgh, Archidiaconus salutem in Domino Sempiternam. Noveritis me recipisse et habuisse ex causa commodati librum quem dominus Henricus de Breton composuit a venerabili patre domino Roberto dei gratia Bathoniensi Episcopo per manum Magistri Thomae Beke, Archidiaconi Dorsetiae, quem eidem restituere teneor in festo sancti Johannis Baptistae, anno Domino MCCLXXVIII. In cujus rei testimonium praessentibus sigillum meum appensum, Datae Doveriae die Veneris post purificationem Virginis Gloriosae anno MCCLXXVII.” (Robert de Scardeburgh, archdeacon, wisheth to all to whom these presents shall come, eternal salvation in the Lord. Know ye, that I borrowed and received the book composed by Sir Henry de Bratton from the Reverend Father Lord Robert, by the Grace of God, bishop of Bath, by the hands of Master Thomas Bek, archdeacon of Dorset, to whom I undertake to return the same on the Feast of St. John Baptist, in the year of our Lord 1278. In witness whereof, my seal is affixed to these presents. Dated at Dover, the Friday after the Purification of the Glorious Virgin, in the year 1277.)

It is clear therefore that Bratton’s book was, prior to its loan to Robert of Scardeburgh, held by Thomas Bek, to whom it is to be returned by Scardeburgh. Apparently the name of Robert Burnel is mentioned merely as an acknowledgment of ultimate ownership. This latter point is further clarified by the title of the entry as given in the archives wherefrom Selden extracted the memorandum:

“‘Litera R. de Scardeburgh per quam recepit ex mutuo de Magistro Thoma Bek quendam librum, qui vocatur Bretone.’ (Letter of R. de Scardeburgh acknowledging a receipt from Master Thomas Bek as a loan of a certain book, called Bratton.)

The result of our investigation appears to be that at the time the author of Fleta was composing his work, Bratton’s original treatise (of which Fleta is an epitome) was in the possession of Thomas

25 Calendar of Ms. Dean & Chapter of Wells (H. C.), vol. I, p. 110.
26 Dissertatio ad Fletam, Ch. 2, Sec. 2.
27 Selden, Dissertatio ad Fletam, Ch. 2, Sec. 2.
Bek and Robert de Scardeburgh. Bek had Bratton's work both prior to 1277 and subsequent to 1278.

Little is known of the origin of Robert de Scardeburgh. Roger de Scardeburgh, abbot of Whitby, was in 1226 justice itinerant for the county of Northumberland. Before his election to this abbacy in 1222 he was the object of great veneration during his long residence in the cell of the Middleburgh Church. He died in 1244.28 Another Robert de Scardeburgh was in 1331 judge of assize and chief justice of Common Pleas in Ireland. In 1334 he was appointed a judge of the King's Bench in England, but in the year 1344 returned to his old post in Ireland, where he held the custody of the two seals for the two benches.29

Whether any of these two Scardeburghs were related to Robert mentioned in the Exchequer memorandum above referred to is not known. Our Robert de Scardeburgh was mostly in the king's service enjoying at the same time many ecclesiastic benefices. The earliest reference to him as a clerk of the crown is under the year 1270.30 Next year by royal grant he was appointed with Thomas York (de Eboraco) to act before the king as attorney for Robert de Radleg, yeoman.31 In 1272 he again appeared in the same capacity for his kinsman, William Lauresdale, whose bondsman, Roger de Lung, fled into Scotland.32 In 1273 he signed his name to a deed as "Sir Robert," and this appellation is repeated in the same year.33

Throughout the year 1275 he was engaged in various royal business—proctor for the king in the latter's suit against Gaston Byerha in France, but it is doubtful if he went to France, for nearly immediately thereafter he was appointed by John de Scartheburgh as his attorney.34 In the same year he acted as the superior appraisor for the county of York of the fifteenth granted to the king.35 In his capacity as royal clerk he was appointed in 4 Edward I together with Thomas Bek to hear the dispute as to the right of presentation, between the king and the prior and chapter of St. Trinity in Dublin.36 On July 24, 1276 he acted before the king as attorney.

28 Poss, Judges etc., vol. II, p. 466.
33 Close Roll (R. S.), pp. 111, 332.
34 Patent Roll (R. S.), pp. 70 and 80.
36 "Dictus Itaque paribus coram nobis sufficienier apparentibus Nos directos clericos Magistram Thomam Bek et Robertum de Scardeburg edimus paribus auditores." (It having been pleaded sufficiently by the parties appearing before us, we appoint our beloved clerks, Master Thomas Bek and Robert de Scardeburg to be commissioners to the parties.) Prynne, Antiquae Const. Reg. Ang., p. 184.
for one, Botcheville, in a case of replevin. In a mandate to provide him with a benefice in a diocese of Salisbury he was referred to as one of the household. Next year he was appointed attorney for Iterus Bochardi.

Both Bek and Scardeburgh were present when the king of Scotland did homage to Edward I in 1278. The record refers to him as "magister" (master). In the same year he and Nicholas Stapleton were assigned to receive and answer petitions to the king. He is termed in the records a clerk of the King's Chancery. In this year he also appeared as attorney for the dean and chapter of York. Next year he was busy as a member of various judicial commissions—on commissio with Thomas de Norman to hear complaints against the burgesses of Newcastle-on-Tyne, with several companions on another commission in York of oyer and terminer issued in the suit between Robert Balliol and Geoffrey de Nevill.

The last royal business he was employed specifically upon happened in 1282, when he went to Rome to present petition of Aymer, son of William of Valencia, the king's uncle, asking for a papal dispensation for him allowing him to hold plural ecclesiastical benefices, as this was the only method of providing the younger sons of nobility.

At this period of his career, Robert de Scardeburgh was undoubtedly in royal favor. In 1279 he was given two bucks in the park of Brunswick. In 1284 Geoffrey de Nevill, justice of the Forest beyond Trent, was ordered to cause him to have ten live does from the forest of Galtres to stock his park of Brotherton. Next year Roger Lestrange, justice of the Forest this side of Trent, had a mandate to let Scardeburgh have two good oaks fit for timber from the forest of Wauberge.

His ecclesiastical offices were both numerous and lucrative. Under the name of Robert de Scadere or Scarborough he held in 1278 the prebend of Ealdland in the diocese of London, but his main

---

31 "Ceste perticion fut autre fet balle a nostre Robert de Scardeburgh, e a misere Nichole de Stapleton xe dunks furent assignes a recibir peticion; e respondr fut por meme eus cem alast al Eschequere et kem mutrast likes les avautdites chartres le Roy, e ke eles ferroleynt aloeses." (This petition was submitted (to the king) through our Robert Scardeburgh and Mr. Nicholas Stapleton, who at that time were assigned to receive petitions; and the king replied through these same that I should go to the Eschequer and that they should show me there the afore-said charters and that same should be granted.)
33 Close Roll (R. S.), p. 827.
36 Close Roll (R. S.), p. 188.
38 Close Roll (R. S.), p. 252.
career so far as the church dignities were concerned lay in the diocese of York. A prebendary of Grendale prior to 1279,\(^61\) he became chancellor of York in 1262\(^62\) apparently exchanging this office the same year for that of archdeaconry of East Riding. In the same year he is mentioned as one of the executors of archbishop Ludham.\(^63\) In 1269 the rectory of the church of Athelingflet was conferred on him.\(^64\) In 1276 a mandate was sent to Robert Burnel and Thomas Bek to provide him with a benefice in a diocese of Salisbury according to the bull of Pope Gregory. Soon afterwards he was made the parson of the church of Rigewick (in Sussex?).\(^65\)

Three years later Robert de Scardeburgh was elected to the deanery of York, which office was confirmed to him on November 1st by the archbishop.\(^66\) On becoming the dean of York he was ordained a priest.\(^67\) The next year, e. g. 1280, he was granted prebendaries of Hustwayt and Knaresburgh, and the fruits of the church of Hottone were given to him.\(^68\) Certainly from 1285 on and probably prior thereto he held the prebend of Beverley.\(^69\) He seems to have had the rectory of the church of Foston-on-the-Woods.\(^70\) We are inclined to think that he further obtained in 1285 the advowson of the church of Rusheden and that of Conington in 1290 both in the diocese of Lincoln,\(^61\) for there is a record of a protest by the archbishop of York against the exhibition before Oliver Sutton, bishop of Lincoln, of any privilege on the part of Master Robert.\(^62\) Although it seems that he exercised the duties of the keeper of the Domus Conversorum in London prior to October 16, 1288,\(^63\) he was actually appointed to this office on that date, but relinquished it to Richard de Climpiges on December 16, 1289.\(^64\)

His possessions must have been many and his income large. As mentioned above, he owned the park of Brotherton.\(^65\) He gave a messuage with appurtenances situated at Wyke on Hull to the monks of the order of Beate Marie de Monte Carmeli.\(^66\) A messuage and 67 acres of land were bequeathed by him to his nephew,

---

\(^{61}\) Register W. Wickwane (S. S.), vol. 114, p. 2.
\(^{62}\) Le Neve, Fasti, vol. III, p. 163.
\(^{63}\) Register W. Giffard (S. S.), vol. 109, p. 172.
\(^{64}\) Idem, p. 30.
\(^{65}\) Patent Roll (R. S.), pp. 129, 152.
\(^{67}\) Register W. Wickwane (S. S.), vol. 114, p. 90.
\(^{68}\) Idem, pp. 5, 86, 255.
\(^{69}\) Register J. le Romeyn (S. S.), vol. 123, p. 370.
\(^{70}\) Idem, p. 197.
\(^{61}\) Patent Roll (R. S.), pp. 391, 335.
\(^{62}\) Register J. le Romeyn (S. S.), vol. 123, p. 381.
\(^{63}\) Idem, p. 366, note 3.
\(^{64}\) Close Roll (R. S.), pp. 127, 153, 373.
\(^{65}\) Close Roll (R. S.), (1234), p. 529.
\(^{66}\) Rotuli Pat. (R. S.), p. 69a.
John Ughtred.\(^67\) As nearly all the high and low officials of the
church at the time, he seemed to be a great usurer and money lender.
The records of his money lending operations fill the close rolls from
1273 to 1290\(^68\) and include an urgent loan on June 2, 1290 to
King Edward I of 1000£.\(^9\)

However, the good fortunes of Robert de Scardeburgh declined
with the elevation of John le Romeyn to the archbishopric of York.
On October 12, 1286 a mandate was sent to the dean of Pontefract
to cite Master Robert to answer in the cause about the church
Athelingflet and to sequestrate its fruits.\(^70\) On December 10 a
mandate to the dean of Harthhill ordered him to cite Master
Robert to appear before the archbishop to show the dispensation
under which he held the deanery of York and the churches of
Foston-on-the-Woods and Athelingflet.\(^71\) Next day by mandate
to the dean of Pontefract the fruits of the church of Athelingflet
were sequestrated, as Master Robert refused to indemnify the arch-
bishop against costs in a case concerning that church brought
against him in the Roman Curia by Bogo de Clare.\(^27\)

These mandates of the archbishop were, however, merely a pre-
lude to a more serious quarrel between him and Scardeburgh. On
December 4, a mandate was sent by the archbishop to Master Hugh
Sampson, a doctor of civil law and clerk sitting at his table, to
summon Master Robert de Scardeburgh, canon of Beverley, to
answer for his contumacy in not appearing after a due notice at
the visitation of the chapter of Beverley lately held by the arch-
bishop and for certain articles touching him found at the visitation.
Unable to serve the summons, Sampson was instructed to read it in
his chapter house or before the door of his Inn or in some other
public place.\(^73\) On December 27, the archdeacon of York was
ordered to levy for non residence the fourth part of the income
of the prebend in the church of Beverley for two years, which
prebend belonged to Scardeburgh.\(^74\) The latter evidently did
not appear, for on September 10, 1287, he was excommunicated
by the archbishop who used the strongest form of the punishment,
e. g. excommunicatio majoris.\(^75\) Ten days later the churches of

---

\(^67\) Close Roll (R. S.) (1288), p. 296.
348; (1286), pp. 373, 374; (1286), p. 425; (1287), p. 477, 481; (1290), pp.
127, 153; Register W. Wickwane (S. S.), vol. 114, p. 319.
\(^71\) Ibidem, p. 197.
\(^72\) Ibidem, p. 62.
\(^73\) Ibidem, p. 360.
\(^74\) Ibidem, p. 370.
\(^75\) Beverley Minster (S. S.), vol. 108, p. 153.
Foston-on-the-Woods and Athelingflet were declared vacant, and on September 26 new incumbents were collated to the prebends of Hustwayt and Beverley both of which became vacant by the deprivation of Scardeburgh. Simultaneously, a mandate to elect a new dean in the place of Scardeburgh was sent to the chapter of York for “cum ex pluribus causis legitimis decanto predicto auctoritate nostra sententialiter et diffinitive sit privatus et amotus judicialiter ab eodem.” (Since from many lawful reasons, by our authority the aforesaid dean, as a sentence, has been finally deprived and removed from that place.)

During the next summer the controversy seemed to advance a little towards the settlement, for an agreement for arbitration was concluded on May 20, 1288 between the archbishop and Scardeburgh. William de la Corner, late precentor of York and then bishop of Salisbury, was apparently chosen to represent Scardeburgh, while the archbishop appointed William of Middleton, bishop of Norwich, later substituted by Gilbert de S. Leofard, bishop of Chichester, because of Middleton’s illness. John of Pontoise, bishop of Winchester, was selected as the umpire. This agreement had to be carried out within six months and the penalty for its breach by either party was fixed at 1000£. What was the result of this agreement we do not know, but in 1290 archbishop John of York was ordered to appear before the Parliament and answer for the trespass and damages caused to Scardeburgh. Finally on May 8, 1290, an agreement “ad beneplacitum magnifici principis Domini Edrawdi Dei gratia Regis Anglias illustris.” (.. at the pleasure of the magnificent prince Lord Edward, by the Grace of God the illustrious King of England.) was arrived at between the contending parties. The settlement provided that Scardeburgh should resign all his benefices in the see of York, in return for which the archbishop “nolens talenae tantum virum absque sustentatione congrua et competenti aliquatdens desolatum relinquui ad caritativam dicti Domini Regis instantiam et voluntatem” (.. unwilling that such and so great a man without means of support in some measure suitable and competent should be left desolate to the present and voluntary charity of our said Lord the King.) granted to Scardeburgh with the consent of his chapter 400 marks per year to be paid in his palace at York in two installments. Robert also retained the fruits of the deaconate and all the other benefices, which the king released in his favor.

---

74 Register J. le Romeyn (S. S.), vol. 123, pp. 204, 205.
75 Ibidem, p. 360.
76 Register J. le Romeyn (S. S.), vol. 123, p. 372.
Such was the end of this inglorious quarrel. Scardeburgh's life contains very little worthy of notice after summer of 1290. He apparently continued to be a clerk of Chancery. He died early in the Fall—probably in the first half of September. On September 15th. Thomas de Normanvill was ordered to take Scardeburgh's goods in the county of York in king's hand, and William le Lytymer was commanded to do the same with his goods in the county of Kent. Seven days later the keeper of the city of London was ordered to permit Scardeburgh's executors to administer his goods there and William de Lytymer was mainprised to answer his debts at the Exchequer.

With the above information at hand as to the life and career of Robert de Scardeburgh, may it be suggested that he was the author of Fleta? In our opinion, this question must be answered in the negative. The most important objection to Scardeburgh's authorship is based on the presence in the Fleta of the above-mentioned opinion concerning the right of the king to alienate the domain lands. We cannot believe that a royal clerk in the king's service since 1270; at one time a clerk for the parliamentary petitions, many of which he had to answer; a person who was on various commissions, one of which was of oyer and terminer; an attorney who was employed in actions both civil and criminal; replevin in 1275, escape of a bondman in 1272—would not know enough of the common law to state it correctly on such a fundamental point. Scardeburgh must have been more of a common lawyer than a civilian, for during the disputes with archbishop Romeyn he did not appeal to Rome, but summoned his adversary to the Parliament to answer for trespass and injury done to him. As we stated previously, Fleta was not written by an instructed and an experienced common law lawyer—its author was rather an ecclesiastic well trained in the civil and canon law. For example, the author of Fleta tells us that "Bigami vero et saerilegi ab omni privilegio clericali sunt interdicti" (In truth bigamists and sacri-legious persons were forbidden all benefit of clergy... ) but adds, apparently as an expression of either a regret or a reproach (for otherwise there is no need of saying it at all) "non obstante in consilio Lugdun' ejusdem constitutionis revocatione." (notwithstanding the repeal of this regulation at the Council of Lyons.) Con-

---

sequently, it becomes incumbent on us to consider the claim of Thomas Bek to the authorship of Fleta.

Bek's ancestor, Walter, called in the Domesday "Flandrensis" came to England with William the Conqueror, and received from him the lordship of Eresby in Lincolnshire and many other manors. From Henry Bek, lord of Eresby, descended Walter, who married Eva, niece of Walter de Grey, archbishop of York. Their second son was our Thomas Bek.

The first mention of Thomas Bek in the records is that in 1247, when he as a "clerk" is appointed by archbishop Grey to the moiety of the church of Gedelinghes "salva pensione" (with full compensation) at the presentation of the prior and the convent of Shelford. In 1266 Jacob, son of Mosey, and Hanna, his wife, sold several houses at Oxford to Domus et Scholarium de Merton. The deed provided that Anthony and Thomas Beke, then residing in the houses, should continue to occupy the same for three years at an annual rent of 100 shillings. There is not the slightest doubt, that Thomas Bek, as well as his brother Anthony, were students at Oxford from about 1240 onward. There Thomas must have acquired his knowledge of the civil and canon law, for he had the advantage of attending the lectures of his famous contemporary — Thomas de Cantelupe. Cantelupe studied civil law at Orleans and was said to have attained in it such proficiency that he often lectured instead of his master, Guido. Then Cantelupe studied canon law in Paris, and on his return to Oxford taught both branches of law there with such success that in 1262 he was elected chancellor of the university. But Cantelupe apparently cared little for Bek, for despite the armed opposition of Cantelupe's nephew, baron Tregoiz, he insisted on consecrating the new church of the Cistercian abbey of Dare, jurisdiction over which was claimed by Bek.

Bek's younger brother, Anthony, was mentioned in 1245, as a bachelor in sacred theology, who acted with Master Edmund de Mephum as proctors for the chancellor and masters of the university of Oxford in a dispute between them and the prior and the convent of Friars Preachers at Oxford concerning the rules governing the proceedings from bachelor's to master's degree. We may well conjecture that by that time Thomas Bek was also a bachelor.

---

89 Memorials of Ripon (S. S.), vol. 78, p. 245 and see generally Dictionary of National Biography, vol. 4, p. 137.
90 Register Gray (S. S.), vol. 56, p. 104.
91 Brodrick's Memor. of Merton Coll., p. 182.
At all events, in all the later records he is never referred to otherwise than "magister" or "maistre." His academic learning must have been great, for in 1269, when the lease of Merton houses ran out, he was elected chancellor of Oxford.\textsuperscript{96}

In 1274 Bek was keeper of the wardrobe to Edward I.\textsuperscript{97} In 1276 he as a royal clerk was appointed together with Seardeburgh to hear the dispute between the king and the prior and chapter of St. Trinity in Dublin.\textsuperscript{98} In 1280 he and his brother, Anthony, gave the award in the suit between prior and the convent of Lenton and the dean and the chapter of Lichfield.\textsuperscript{99}

In 1279 Thomas Bek became the Lord Treasurer. In the same year he was entrusted with the keeping of the great seal during absence of Robert Burnell in France with the King.\textsuperscript{100} On the elevation to the see of St. Davids in 1280, Bek relinquished his office of Lord Treasurer, but there are abundant proofs that he was still employed by the king on important state business most of which related to the business of the rolay treasury.

In 1280 Thomas de Bek, Reginald de Grey and Walter de Hopton were commissioned to enquire in Wales by Welshmen and Englishmen, by what laws and customs the king’s ancestors were wont to rule and judge a prince of Wales and a Welsh baron and their peers and their inferiors and the circumstances concerning such laws and customs.\textsuperscript{101} Next year Bek and Robert Tibotot, the justice of Wells, held an inquisition of all the trespasses and wrongs committed in Lampadervaur and were deputed to do justice to the parties. At the same time they were to do enfeoffments and let the lands at certain arriettations.\textsuperscript{102} In the same year the king willed that either Bek or Tybotot should be present at the trial of the suit between the prior of Llenthony Prima in Wales and Theobald of Verdun, which Walter de Hopton and Howel, son of Meuric, were to hear as commissioners.\textsuperscript{103} In 1282 Bek and Tybotot were appointed to supervise all the works and the payments of king’s wages in the West and South Wales, and no money was to be paid out without Bek’s order for “the king has fully enjoined upon him and as he shall see most expedient.”\textsuperscript{104} Later, Bex was ordered to clear with the advice of William de Valencia, king’s uncle, the


\textsuperscript{97} Le Neve, Pastl, vol. III, p. 462.

\textsuperscript{98} Rymer, Foedera (R.), vol. I, p. 519.


\textsuperscript{100} Ibidem, p. 248.

\textsuperscript{101} Dugdale, Chronica Series, p. 26.

\textsuperscript{102} Welsh Roll (R. S.), p. 188.

\textsuperscript{103} Welsh Roll (R. S.), p. 188.

\textsuperscript{104} Ibidem, p. 190.
passes in his bishopric of the trees and widen them. Finally, in 1290, Thomas was appointed with the abbot of Blanchland and Peter Lof to inspect the works done by master Walter de Nottingham in the castle of Lampadervaeur and to certify to the king, if they were worth more or less than 100£ given to Nottingham to build the same.

Bek’s ecclesiastical offices were rich and many. As already mentioned, he was appointed to the church of Gedelinghes. In 1267 he became vicar of All Saints, Pontefract. In 1270 he obtained the church of Castleford, and five years later by the presentation of the prior and the convent of Durham, the custody of Welton church was committed to him until the bishop should otherwise order. He also held the rectory of Silkstone in Yorkshire. Archdeacon of Dorset in 1275, Bek became that of Berkshire, as well as canon of Lichfield, in 1280. In the same year he was presented by the king with the prebend of Castor in the cathedral of Lincoln and was also elected canon of St. Davids. On Sunday, October 6, 1280, in the presence of the king, the queen, their children, king’s brother, Edmund of Lancaster, the queen of Navarre and many nobles, Bek was consecrated bishop of St. Davids by archbishop Peckham and six bishops. On the same day the body of St. Hugh of Avalon was translated to a new shrine. The whole cost of this ceremony and the festivities that followed it were borne by the new bishop of St. Davids. When archbishop Peckham made a metropolitan visitation of the Welsh diocese in 1284, bishop Bek, as a protest on behalf of the ancient independence of the Welsh church, made an ineffectual remonstrance against the jurisdictional invasion of his rights by Canterbury. In the same year, he entertained Edward I and the queen, who visited St. Davids “Peregrinationis causa” (for the sake of a pilgrimage). We are told by chronicler that Bek induced by the impassioned preaching of archbishop Peckham, took up the cross. We do not know, whether Bek ever left England for the Crusades, for he certainly died at home on May 12, 1293.

106 Ibidem, p. 324.
107 Supra at p.
109 Ibidem, p. 31.
110 Ibidem, p. 289.
111 Close Roll (R. S.), p. 42.
112 Ibidem, p. 382.
Bek contributed largely to the welfare of his diocese. In which he founded the collegiate church of Llangadoe in the honor of St. Maurice and St. Thomas, the martyr soon thereafter transferred to Abergwili. In 1287 he laid the foundation of another college—this time at Llandewi-Brefi in honor of St. Davids—and built a hospital at Whitewell.118 He completed the caputlary body of St. Davids by adding to the then existing office of precentor, those of chancellor treasurer, subdean and subehanter. He also obtained for his cathedral city two weekly markets from the king.117 In 1291 the bishop, precentor and the canons of St. Davids and the masters of the Hospital of St. Edward procured a perpetual right of common in all the demesne woods of the king in the county of Kardigan.119 Finally, Bek was apparently instrumental in bringing about the grant from the king of the advowsons of thirty-six churches in Goeria, as prebends, to the churches of St. Davids and Abrewily.110

Bek’s personal wealth must have been great, but we are able to get only glimpses of what it really was. He built the castle of Lawhaden.120 He owned one messuage and some land in North Brun Oxfordshire, held by him of Richard de Frutewell.121 The king gave him in 1285 the manor of Plesley in the wapentake of Scarvsedale, Derbyshire with a free warren there.122 He appears to have held some lands in the manors of Forde and Midhurst, Sussex, which he granted afterwards to his brother Anthony.123

We may recognize him as the holder of half of a feod of land in Clapeville given to queen Eleanor with other lands in the honor of Peverell, Derbyshire in recompense for her possessions in the honor of Richmond.124 Bek owned a hermitage at Eastwait on the Mansfield Moor, Nottinghamshire, wheroeto he was in the habit of retiring for meditation. Finally, he was the possessor of the park of Plesele in the county of Worchester.125

To Bek’s very death king Edward I did not cease to show him his pleasure and his desire to honor him. In 1281 Geoffrey de Nevill, justice of the Forest beyond Trent, was ordered to stock

---

117 Jones and Freeman, History of St. Davids, pp. 300-302.
118 Welsh Roll (R. S.), p. 333.
119 Patent Roll (R. S.) (1239), p. 405
120 The Black Book of St. Davids (C. S.), p. XIX.
121 “Magr Thom’ Bek tenz. in eadem i mesuagium et di’ virgas terre de deo R. de Frutewell et reddit per annum eld vi d.” (Master Thomas Bek held one messuage and two virgates of land of the said R. de Frutewell and pays him six pence a year.)
122 Rotuli Hundredorum (R. S.), vol II, p. 693.
123 Placita Quo Warranto (R. S.), p. 162.
124 Sussex Arch. Society, vol. 20, p. 3.
Bek's park Plesele with four live bucks and eight does. Three years later the king gave him ten more bucks. In 1285 the king presented him with ten good oaks in the wood of Bilehaghe, two in Mammefeld and twelve in the Hay of Bilehaghe. In 1290 William de Vesey, justice of the Forest beyond Trent, was ordered to let Bek have ten oaks with strippings (escaetis) from the park of Clipston and later on another six. In 1292 John de Vesey was commanded to give sixteen oaks from the royal forests of Clipston, Mammesfeld and Wodehus and presently another thirty oak-trees from Shirewood. The last gift is repeated in 1293, when naturally enough these favors come to an end.

There were at least two ways whereby Thomas Bek could obtain access to Bratton's treatise. Bek undoubtedly knew Robert Burnel, afterwards king's chancellor and bishop of Bath and Wells before the latter started on his official career. In the diocese where Bek received his first ecclesiastical office from archbishop Grey of York, Burnel was prebendary. Bek also held the rectory of Silkstone in Yorkshire—another fact that might have brought them together in the course of their official duties. Of course, we must not forget that Bek was a relative of archbishop Grey and while on visits to him at York, might have gained the friendship of Burnel, for there is every indication that they were friends. When in 1274 Burnel became king's chancellor, Bek was made the keeper of king's wardrobe. In the absence of Burnel in France, he was entrusted with the custody of the great seal.

The other way lay through Bek's brother, Anthony. In 1274 Anthony Bek was collated to the prebend of Boseham held in 1268 by Henry of Bratton. Boseham was a collegiate church, and I have already conjectured that some parts of Bratton's treatise were written there. Through Anthony the story of Bratton's treatise could have reached Thomas Bek, who in turn related it to Burnel, and the latter took apparently good care to get Bratton's work after the death of its author. Again, in 1279 Anthony Bek was succeeded in the prebend of Boseham by Edward de la Cnoille, dean of Wells. So that, this way or the other we know for certain

126 Ibidem, p. 144.
127 Ibidem, p. 263.
128 Ibidem, pp. 323, 324.
129 Ibidem, pp. 65, 90.
130 Ibidem, pp. 218, 232.
131 Ibidem, p. 278.
133 Supra.
134 Bishop Bronescombe's Register, p. 116.
136 Bishop Bronescombe's Register, pp. 26, 51. Bishop Bronescombe died in 1260, and as the entry called Anthony erroneously "king's chancellor," the entry must have been made at about the time his brother, Thomas, was the keeper of the great seal.
that in 1277 Bratton’s original manuscript was in the hands of Thomas Bek, to whom Robert de Seardeburgh had to return it in 1278.

Bek’s career undoubtedly fits to a point of wonder the internal evidence supplied by the text of Fleta. He was king’s treasurer and as such would be naturally interested to give a full account of his office. Bek’s knowledge of the court life and the functions of the officials must have been thorough. He was unquestionably a civilian and an ecclesiastic with deep knowledge of Roman and canon law. In 1276 he was at the king’s court and might have heard the story of the Montpellier incident. In 1290 Bek was to join the Crusades—a fact that could have prevented him from completing the book.

On the other hand, there is a number of facts in Bek’s life militating against his authorship of Fleta. Bek was not a lawyer—only a few isolated missions of his were connected with the administration of law. As a rule, Bek was employed by the king largely for administrative work. Why should he, then, suddenly aspire to write a short epitome of Bratton’s work? True, that at the time Fleta was written Bek had Bratton’s manuscript in his hands, but he might have had it merely to compare with his civil law books. Bek died only in 1293—why should he leave Fleta unfinished or make no references to any legislation later than 1290. And how Bek obtained his precedents from the roll of Peter de Chanvent, king’s steward, when ten years earlier he became bishop of St. David’s and spent most of his time in Wales.

While the possibility of Thomas Bek’s authorship of Fleta is not excluded, there is no certainty that he wrote the second classic of our common law, if a certainty may be expected in the case of a treatise which for over six hundred years was known as anonymous. Probably, Bek had a hand in its composition. May be some yet unknown manuscript of Fleta will solve the mystery of its authorship by supplying the additional evidence of its origin, and thus giving us the data we are lacking at the present time.