Bracton: De Legibus Et Consuetudinibus Angliæ (Bracton on the Laws and Customs of England

attributed to Henry of Bratton, c. 1210-1268)

Henry of Bratton (Henricus de Brattona or Bractona) was an English judge of the court known as coram rege (later King's Bench) from 1247-50 and again from 1253-57. After his retirement in 1257, he continued to serve on judicial commissions. He was also a clergyman, having various benefices, the last of which being the chancellorship of Exeter cathedral, where he was buried in 1268.

Bracton's chief claim to fame is his association with the long treatise *De legibus et consuetudinibus Angliae* (*On the Laws and Customs of England*), which the noted legal historian F.W. Maitland described as "the crown and flower of English jurisprudence." The work (commonly known now simply as *Bracton*) attempts to describe rationally the whole of English law, a task that was not again undertaken until Blackstone's *Commentaries on the Laws of England* in the eighteenth century. The work is remarkable both for its wealth of detail and for its attempts to make sense out of English law largely in terms of the *ius commune*, the combination of Roman and canon law that was taught in the universities in Bracton's time.

While the attribution of the work to Bracton is of considerable antiquity, it now seems that the bulk of the work was written in the 1220's and 1230's by persons other than Bracton himself. It seems then to have been edited and partially updated in the late 1230's, with various additions being made to it between that time and the 1250's. The last owner of the original manuscript and the author of the later additions was probably Bracton.

Bracton: Thorne Edition: English. Volume 4, Page 178

And so of one naturally deaf and
[002] dumb, if he cannot hear or speak at all, but if he can, though only with difficulty,
[003] the same may be said, that he may[1] acquire and retain and transfer to others, because
[004] such persons may consent, at least by signs and a nod.[2] [3]<But those who are
[005] naturally deaf and dumb cannot acquire seisin, neither by themselves nor by procurators,
[006] nor may they give, nor stipulate anything for themselves, because one who
[007] is dumb cannot say the words of the stipulation nor can a deaf mute hear them,>[4]
[008] <but they may do so by others, as tutors or curators, because by the *animus et*
[009] *corpus* of another etc.

Bracton: Thorne Edition: English. Volume 2, Page 286

Finally we must consider those who can neither stipulate nor promise, that we
[025] may know those who may enter into a stipulation. [47]It is clear that one who is
[026] dumb can neither stipulate nor promise, since he cannot speak or utter the words
[027] appropriate to a stipulation. The same is true of a deaf mute, for it is essential that
[028] the stipulator hear the words of the promisor and the promisor those of the

[029] stipulator,[48] unless one says that they may enter into a stipulation by a nod or a
[030] writing.[49] [50]What we have said applies not to one who is hard of hearing but to
[031] him who is stone-deaf.[51]

Bracton: Thorne Edition: English. Volume 4, Page 309

There is also an exception arising from the person of the demandant if he is naturally deaf and dumb.

[004] A peremptory exception arising from the person of the demandant also lies for the
[005] tenant because of a natural defect, as where one is born deaf and dumb, so that he
[006] cannot speak or hear at all, not if he is hard of hearing or his speech has a minor
[007] impediment.[1] One naturally deaf and dumb cannot acquire because he cannot consent,
[008] because he is completely unable to hear the words of the stipulator, and since
[009] he cannot hear or speak at all, he cannot express his will and consent either by words
[010] or signs.[2] 'Naturally,' I say, that is, from birth, as one speaks of a blind man who was
[011] blind from birth, for if this comes about accidentally, there must be an enquiry as
[012] to what he was like before the accident, because if at first he could speak and hear
[013] and consent [and] acquires, by himself or by a procurator, he retains what he had
[014] acquired, though he does not easily transfer it to another. But since one who is
[015] naturally deaf and dumb cannot acquire, his necessaries are to be found him as long
[016] as he lives by the judge acting *ex officio*, in accordance with his personal rank and the
[017] amount of his inheritance, if he ought to be the heir. If he has once acquired, by the
[018] authority of a curator, and is ejected, he will recover by the assise, like a minor.

Bracton: Thorne Edition: English. Volume 4, Page 339

If a parcener is deaf or dumb.

[014] But what shall we say or a parcener who has been born deaf and dumb?[5] It is evident
[015] that he must always be regarded as one who is neither an heir nor a parcener. Therefore
[016] whether he is named or not, neither the action nor the writ falls; it is good, both
[017] as to the demandant and the tenant, as against all the others. But if the deafness
[018] arises from an accident or if he is dumb and deafness does not ensue, a period of time
[019] must be awaited if there is hope of recovery.

Bracton: Thorne Edition: English. Volume 3, Page 300

The assise sometimes falls because of uncertainty,[3] as where the
[005] tenant says that he does not hold all the land and the jurors, questioned under oath
[006] or without it, say that they do not know, as [in the roll] of the eyre of William of
[007] Ralegh in the county of Northampton, [an assise of mortdancestor beginning] ‘if
[008] William of Camera.’[4] It also falls because of the tenant's defect of nature or sense, as
[009] where he cannot hear or speak at all, as where he is deaf or dumb from birth so that
[010] he can neither hear nor speak, though that is not true of one who is hard of hearing or
[011] speaks with difficulty,[5] as [in the roll] of the eyre of William of Ralegh in the county
[012] of Northampton, an assise of mortdancestor between Ralph Basset and Thomas of
[013] Pictesleghe.[6] But if the deafness is accidental, the assise does not fall but must be
[014] postponed until the tenant's condition is improved. And what is said of the deaf and
[015] dumb may be said of the insane, according as he enjoys lucid intervals

Bracton: Thorne Edition: English. Volume 4, Page 356

Excuses for not putting in a claim.

[011] He who has not put forward his claim may be excused in many ways, as where, at
[012] the time the fine and chirograph are made, the demandant, or his ancestor who ought
[013] to have put in the claim, was under age, /And the same ought to be [observed] with
[014] respect to the right of a church by analogy./[1] [or] was then a madman or *non compos*
[015] *mentis* and of unsound mind, because in many ways a minor and a madman are considered
[016] equals or not very different,[2] because they lack reason, which could be said
[017] of others, as idiots and those born deaf and dumb and the like.

Bracton: Thorne Edition: English. Volume 2, Page 135

By what persons possession may be acquired [for us].

Just as
[020] possession is acquired for [an heir] within age, so is it acquired for one born deaf
[021] and dumb, though they can neither hear nor speak, for to such the mere right and
[022] the property descends as it does to others.>

They
[002] cannot give because they cannot consent to the making of a gift, with the authority
[003] of their tutor or without it.[2] Nor can one who is stone deaf, though it is otherwise
[004] if he is only hard of hearing; nor a true mute who cannot speak,[3] though, according
[005] to some, such persons may consent by signs and a nod.[4]

3. Inst. 2.12.3; Inst. 3.19.7, 8; *infra* 286

4. D. 39.5.33.2; 44.7.48; *infra* 286, iv, 178