

**ON COUNTY COURTS, LOCAL COURTS
OF RECORD, AND ON THE CHANGES
PROPOSED TO BE MADE IN SUCH
COURTS IN THE SECOND REPORT OF
THE JUDICATURE COMMISSIONERS**

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THOMAS FALCONER

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SECOND REPORT
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THE JUDICATURE COMMISSIONERS.

By THOMAS FALCONER, Esq.,

One of the Judges of County Courts.

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1873.



ON COUNTY COURTS.*

IN 1867 a Royal Commission was issued, appointing Lord Chancellor Cairns, several of the Judges of the Superior Courts, the Attorney and Solicitor-General, and others, to be Commissioners to inquire into the operation and effect of the present constitution of the superior and certain inferior Courts of Law. In October, 1869, there was a new Commission, when one County Court Judge was added, and the Commissioners were directed to include in their inquiries the operation and effect of the present constitution of the County Courts and of Quarter Sessions, and of all other inferior and Local Courts, both civil and criminal, in England and Wales. In November, 1872, a third Commission was issued, when the two Chief Justices, the Chief Baron of the Exchequer, and the present Solicitor-General were made Commissioners. The interests of the public in the County Courts were weakly cared for and the interests opposed to such Courts were strongly represented on each Commission.

The first Commission was dated September 18, 1867, or six years since, when Lord Cairns was Chancellor. The Commissioners were:—

- The Right Hon. Lord Cairns, Lord Chancellor.
- *The Right Hon. Lord Hatherley (then Sir W. P. Wood).
- The Right Hon. Lord Penzance (then Sir J. P. Wilde).
- *The Right Hon. Lord Selborne (then Sir R. Palmer).
- The Right Hon. Sir W. Erie.
- *The Right Hon. Sir W. M. James (then Q.C.)
- *The Right Hon. Sir M. E. Smith.
- *The Right Hon. G. W. Hunt.
- *The Right Hon. H. E. C. Childers.
- *The Right Hon. A. S. Ayrton.
- The Hon. Sir Colin Blackburn.
- *The Hon. Sir J. R. Quain (then Q.C.)
- *Sir J. B. Karslake, M.P.
- *A. C. Rothery, Esq. (Registrar of the Admiralty Court).
- *John Hollams, Esq. (Solicitor).
- *F. D. Lowndes, Esq. (Solicitor at Liverpool).
- Thomas J. Bradshaw, Esq. (Secretary).

* Some pages of this pamphlet formed part of a Lecture "On County Courts," delivered at the Royal Institution of Swansea.

There were added by Royal Warrant dated October 22, 1867 :

- *The Right Hon Sir J. R. Phillimore.
- *The Right Hon. Sir G. W. Bramwell.
- *W. Gandy Bateson, Esq. (Solicitor at Liverpool).

There were added by Royal Warrant dated January 25, 1869 :

- The Right Hon. Sir R. P. Collier.
- Sir J. D. Coleridge, M.P.

A supplemental Commission was issued October 9, 1869, when there were added :

- *The Right Hon. Sir J. S. Willes (deceased).
- *Charles S. Whitmore, J.C.C., and Honorary Q.C.*
- *George Moffatt, Esq., M.P.

On November 27, 1872, a new Commission was issued, and there were appointed in addition to the former Commissioners :

- The Lord Chief Justice of England.
- The Lord Chief Justice of the Common Pleas.
- The Lord Chief Baron of the Exchequer.
- The Right Hon. Sir George Jessell, now Master of the Rolls.

And subsequently by Royal Warrant :

- The Right Hon. Sir Sydney H. Waterlow (Lord Mayor).
- R. A. Fisher, Esq., (Barrister, was appointed Secretary in 1872).

The first Report was dated March 25, 1869, and the second, relating especially to County Courts, is dated July 3, 1872. Those whose names are marked (*) alone signed the Second Report.

The evidence given to the Commissioners was that of :

1. The Judges of the County Courts. Of the sixty Judges who made replies in 1869, thirteen have since died and six have resigned.^b

* Described, not as Judge of County Courts, but as "one of our Counsel learned in the Law," though forbidden to practise as such on becoming a Judge of County Courts.

^b Judges who have died since 1869:—Bagshaw, Q.C.; Bevan; Blair; Blanshard; Collyer; Dinsdale; Ellis McTaggart; A. J. Johns; Saunders; Stansfeld; Teed, Q.C.; Temple, Q.C.; and Welford:—13.

Resigned since 1869:—Gurdon; Skinner; Stapylton; Greene; Sir J. E. Eardley-Wilmot, Bart., and Macnamara. Seventy-four C.C. Judges have died since 1847, and thirteen are on the Bench of the first sixty-seven who were appointed in 1847 to 1851; i.e., out of these sixty-seven Judges there have died or resigned fifty-four. Twenty-five Judges have died of those appointed since 1847. The total number of appointments have been 133.

2. Registrars of County Courts, but only thirty-seven sent in replies.

3. Judges and Officers of old Local Courts of Record.

4. Representatives of Law Societies, some of whom gave evidence showing wonderful ignorance, unchecked by any of the Commissioners, respecting the subjects on which they spoke.

5. Unofficial Barristers and Solicitors, and

6. Representatives of Trade Protection Societies, whose papers are honestly and well prepared.

The County Courts are not to be regarded as a new institution. There is no necessity to dwell on their history. It is sufficient to notice what the County Courts were when the Act of the year 1846 was passed which instituted the present system. That Act recites "that the County Court is a Court of ancient jurisdiction, having cognisance of all pleas of personal actions to any amount, by virtue of a writ of *justicies* issued in that behalf." The ancient County Court assisted the Sheriff in the government of his county and had cognisance of the pleas of the Crown. That such Courts existed before the Norman conquest, more especially regulated by the Saxon King Edgar, shows at how early a period of time regular government, with the security and blessings which it brings, had been acknowledged in England. The condition of the County Courts of the old system in the year 1846 may be ascertained from a Parliamentary paper printed by the order of the House of Commons in the year 1839, and which was obtained on the motion of Mr Leader, formerly M.P. for Westminster. It is one of those Blue Books which ignorant people frequently speak of in terms of contempt, but which in fact contain more valuable and detailed information on historical, social and political questions, through a long period of time, than are to be found in the publications of any other kingdom of the world. Take the second county named in it on the list of counties. It is that of a Welsh county and is signed by the County Clerk; but unlike the County Clerks of English counties who signed other returns, it is signed without a Christian name—"Watkins—County Clerk." If he had a baptismal name an idle affectation extinguished it. The county is Brecknockshire. The ordinary jurisdiction of these Courts was for forty shillings only; but the return gives a scale of costs above, and another in cases under, forty shillings. The list of charges was a long one:

	s. d.		s. d.
Affidavit of service of notice of action and oath	2 0	The like for defendant.....	1 6
Attending entering action	1 0	Fiat for subpoena	0 6
Appearance	2 6	Fee on transcript	1 0
Accommodation fee after declaration filed, or rule to plead or declare in all cases	1 8	Ditto on renewal	1 0
Advocate's fee on trial	10 6	Hall-keeper, on a trial	0 6
Attorney's fee on inquiry	5 3	Jurors, each	0 8
Attorney's fee on interlocutory judgment	1 8	Instructions and warrant to sue Jurors, &c., Welshmen ..	1 0
Ditto on final judgment	1 8	Interpreter (and the Judge and Jurors, &c., Welshmen) ...	2 0
Attending taxation	1 8	Motion for time to declare.....	1 0
Attending paying debt and costs ..	1 8	Notice of action, copy and service	1 8
Bailiff summoning a jury	1 0	Notice of trial, copy and service ..	2 0
Bill of costs and copies	1 6	Notice of inquiry, ditto	2 0
Bailiff executing <i>R. fa.</i>	2 6	Notice of common rule and all other rules.....	2 0
Copies and service of rule, each ..	1 0	Plea of general issue	1 3
Copies of subpoena, each.....	0 6	Pleadings according to length... [Pleadings were much recommended before the Judicature Commission's during the examination of Sir Jos. Heron, Mr Mountain, Mr Rayner, and Mr Fleet [Evidence, p. 219], and by Mr West, Q.C., and Mr Kay, Q.C., of the Salford Hundred Court, where, out of 8,252 writs issued in 1871, only 116 causes were tried.]	0 0
Conduct money.....	0 6	Rule to plead	1 0
Court fee when any step taken ..	1 8	Rule to reply.....	1 0
Copy and service of notice to tax	1 0	Rule for particulars of set off ..	1 0
Copy and service of summons to stay proceedings or payment of debts and costs ...	1 0	Replication according to length ..	0 0
Copy and service of supersedeas ..	1 0	Service	0 8
Declaration	2 6	Special motions, each	2 6
Drawing particulars of demand to be delivered with declaration	1 0	Special pleas according to length ..	0 0
Drawing particulars of set off, copy and service	2 0	Special replication ditto	0 0
Drawing cognovit and attendance	2 6	Similiter.....	0 6
[This is explained in another return—"Debts recovered on a cognovit included previous costs." The opportunity to plunder was great.]		Special attendance	3 4
Drawing verification	0 6	Common cost of judgment by default	10 6
Drawing security for costs.....	1 3		
Fee on "issued joined" for plaintiff	1 6		

The scale of fees in actions for £2 and upwards were double the above.

The practice in Glamorganshire was, that attorneys themselves issued what was called "a Sheriff's ticket," demanding the payment of any sum under forty shillings. Afterwards the Under-sheriff required that the ticket should be brought to him and *sempence* was paid on its issue. If any appearance were entered, the case was heard before a jury of twelve jurors. If the money were recovered, in the first instance, the attorney charged five shillings; and if he

were honest he handed over the money paid to him without any other deductions; and if he made other deductions it was considered there was no available remedy to check the charges made.

In Monmouthshire in 1837 there were 324 summonses issued under forty shillings, and 11 for sums between £3 and £20. Under the Act 37 Hen. VIII., ch. 26., sec. 3, this County Court was held alternately at Newport and Monmouth.

But the most remarkable of these Courts was that of Middlesex, held for the Hundred of Ossulston [23 Geo. III., ch. 33.] In 1837 there were 22,968 suits under forty shillings; 16,730 were heard; the costs incurred were £4,869; the debts sued for, £22,051; the total amount paid into Court, £6,844; 907 persons were committed to gaol in the year; the Judge (Serjeant HEATH) sat 113 days, and he received £3,452. [*Parl. Paper*, No. 338, II., 1839, p. 22.] The compensation allowed to Mr D. D. Heath, the last Judge, is £2,414 a year. [*Parl. Paper*, No. 100, 1862, p. 201.]

These Courts were extinguished by the Act of 1846. This was one of the first great advantages gained under the new system.

The second class of Local Courts were :

HUNDRED AND MANOR COURTS AND COURTS BARON.—There were returns made in 1839 of 46 of these Courts. The business transacted in them was very light. Only one is deserving of notice—namely, that of Knaresborough. In 1837 there were 15 debtors imprisoned, by the order of this Court, and under the law in force at that time, they would have been imprisoned until their debts were paid, or until they were discharged under the Bankruptcy or Insolvent Debtors Act. The two gaols of Knaresborough—namely, the Castle Gaol and the Borough Gaol, where debtors were confined,—were two out of the seven franchise gaols, which were extinguished in the year 1858 [14th June, 21 and 22 Vict. ch. 22] under the same Act of Parliament which extinguished the Castle Gaol of Swansea. But the return of 1839 mentions this interesting or amusing fact—namely, that the attorneys had given notice that they would not practise in the Court under its scale of fees and that a new scale had been submitted to the approval of the Steward. The Court and Gaol are now at an end and the district is included in the 15th County Court Circuit.

By the 12 and 13 Vic. [1849], ch. 101, sec. 14, the Court of Record of the Honour of Peveril was abolished, and compensation was granted to the Judge (£100 a year) and to the Prothonotary (£113 a year), &c. By the 15 and 16 Vic. [1852], ch. 54, sec. 11, the Courts of the Hundred of Offlow, Staffordshire, and of Hemlingford, Warwickshire, were closed, and compensations granted. [*Finance Accounts*, 1862, p. 56.] In the *Law Times*, June 14, 1845, the Hundred Courts of Clun and Purslow, Shrop-

shire, were complained of as dilatory and expensive in their procedure, and the officers as being of a low grade of life.

Other similar Courts may be considered to be extinguished. It was not the County Court Act of 1846, but the County Court Act of 1867, section 28, which practically closed all Hundred and Manor Courts, so far as related to the recovery of debts. It declared that no action should thenceforth be brought in any hundred or other inferior Court not being a Court of Record. Thus it was that another set of petty and mischievous Courts were abolished.

There were 92 BOROUGH COURTS OF RECORD which made returns in the year 1839. Of these 92 Borough Courts only 17 appear by the annual volume of Judicial Statistics to have any vitality at this time in civil actions. There are 19 Courts of Record, exclusive of the County Courts, to which provisions of the Common Law Procedure Act have been extended by orders of Council. The chief of these Courts are the Bristol Tolzey Court, the Derby Borough Court, the Liverpool Court of Passage, the Newcastle-on-Tyne Court, the Preston Court of Pleas, the Salford Court of Record, and the Lord Mayor's Court. All besides these seven are insignificant. The Court of the Lord Mayor is distinct from the City of London Court. The Judicature Commissioners propose the abolition of the local and inferior Courts of Civil Jurisdiction. [*Second Report*, p. 18.] If they are to exist, either County Courts should act on the procedure of these Courts, or these Courts should be assimilated in their procedure to that of the County Courts; but neither plaintiffs nor defendants complain of the procedure or practice of County Courts, though they wish for a reduction of fees. The public complaint against all Courts of Law and against Parliamentary Committees on Local Bills is the *amount of fees and costs*. The reform everywhere demanded is the reduction of unnecessary costs in the Administration of the Law.

Mr John Hollams, a Solicitor and a leader of the Commissioners, made certain suggestions, many of which are embodied in the Report, and he wrote thus [page 132]:—"The evidence shows that the Local Courts are as a rule *popular*, and they do not in any instance appear to be encumbered with this system [of banking]. Another cause of their *popularity* appears to be that the plaintiff is allowed to take judgment by default."

In what manner is their popularity to be ascertained? In the County Courts plaintiffs themselves generally initiate the proceedings. In other Courts attorneys generally do so. Will the comparative number of defended cases be a test of popularity? Will a comparison of costs be a test? Will the amounts sued for in the respective Courts be a test? Will Bills of Costs and the opinions of a majority of suitors be the test? What is the test of "popu-