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THE MAGAZINE,  
VOL. XXVI, 1916**

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# y Cymmrodor.

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# Y Cymmrodor.

VOL. XXVI. "CARED DOETH YE ENCLION."

1916.

## The King's Court of Great Sessions in Wales.<sup>1</sup>

By W. LLEWELYN WILLIAMS, K.C., M.P.,

*Recorder of the City of Cardiff.*

CONTENTS.—*Introduction* (p. 1); i. *Jurisdiction of the Court of Great Sessions* (p. 6); ii. *Officers of the Court* (p. 34); iii. *Statutory Changes* (p. 47); iv. *Relations with other Courts* (p. 62); v. *Abolition of the Court of Great Sessions* (p. 74); vi. *The Records* (p. 83); vii. *Authorities on Welsh Practice* (p. 85).

### INTRODUCTION.

WHEN Parliament decided in the reign of Henry VIII to extend the laws and constitution of England to the Principality of Wales, the prospect that awaited the experiment was gloomy and uncertain. It was easy to ordain that the Lord Chancellor should appoint Justices of the Peace for the eight ancient counties of the Principality and for the Palatine County of Chester "to the intent that one Order of ministering of his Laws should be had observed and used in the same as in the other places of this Realm of England is had and used";<sup>2</sup> but it required no little daring to introduce the system into Wales. In a document among the State Papers the King was warned as late as 1538 not to appoint Justices for the three ancient counties of North Wales (*viz.*, Anglesea, Carnarvon, and Merioneth), for they would be dangerous.

<sup>1</sup> The substance of this paper was delivered before the Honourable Society of Cymmrodorion at 20, Hanover Square, in July 1911. Chairman: The Right Hon. D. Lloyd George, M.P.

<sup>2</sup> 27 Hen. VIII, c. 5.



partiality would increase, the inhabitants were poor and quarrelsome, and most of the gentlemen were "bearers of thieves and misruled people".<sup>1</sup> If in the Welsh "shire-ground" where the law had been administered by the King's Justices for two centuries and a half, the appointment of Justices of the Peace was viewed with dismay, what could be expected to happen in the rest of the unhappy country where, according to Bishop Rowland Lee, President of the Council of the Marches, there were "very few Welsh in Wales above Brecknock who have £10 in land, and their discretion is less than their land".<sup>2</sup> Yet the Act of Union (27 Hen. VIII, c. 26) contemplated a still further extension of the experiment, for many of the Lordships Marcher, where hitherto the King's writ did not run, were added to "the eight ancient counties", so as to constitute the geographical area known as Wales and Monmouthshire, and in all of the added area Justices of the Peace would have to be appointed. Hallam has quoted, with pardonable indignation, the description given by Sir Thomas Smith<sup>3</sup> of the attempts made by the Tudors to curtail the independence of Trial by Jury,— "the standard record of primeval liberty".<sup>4</sup> In Wales and the Marches the partiality of juries in cases of felony and murder had become so notorious that in 1534 an Act of Parliament was passed which roundly stated that juries had been "suborned to acquit divers murderers, felons, and accessories", and enacted that if such a jury acquitted a felon or murderer, contrary to good and pregnant evidence, the Judge might bind them to appear before the President and Council of the Marches, who were

<sup>1</sup> Gairdner, *S. P.*, Hen. VIII, xi, 453.

<sup>2</sup> *S. P.*, Hen. VIII.

<sup>3</sup> *Commonwealth of England*, book iii, c. i.

<sup>4</sup> Hallam's *History of England*, p. 49 (1871 ed.).

authorised to commit them to prison.<sup>1</sup> In at least two instances Bishop Rowland Lee, as President of the Council, put the Act into operation. In 1538, he informed Cromwell that a Cheshire grand jury "had found murders to be manslaughterers and riots to be misbehaviours", and had been sent to prison "for their lightness".<sup>2</sup> On another occasion a Gloucestershire jury were "cessed good fines" for misbehaviour in a Welsh abduction case.<sup>3</sup> Yet it was at this period, when the sanctity of Trial by Jury was being invaded by the high-handed interference of the Star Chamber and the brow-beating of the Judges,—and in the case of Wales and the Marches by Statute—that the system was extended to the most disturbed and lawless portions of what is now known as the Principality of Wales. It was little wonder that Bishop Lee was distracted at the prospect. He was convinced that the time was not opportune for the great experiment which had been sanctioned by Parliament. "By the Common Law things so far out of order can never be redressed" he said, in a sentence which summarised the absolutist doctrine of Tudor and Stuart statesmen.<sup>4</sup> "If one thief shall try another" he protested, "all we have begun is foredone."<sup>5</sup> Even as late as April 11, 1540, in the very last of his extant letters to Cromwell, he protested against Denbigh-land being transformed into "shire-ground".<sup>6</sup>

As if to render the issue still more precarious, the Government associated the experiment with revolutionary innovations. Wales was probably the most Catholic part of the King's dominions; the numerous monastic houses

<sup>1</sup> 26 Hen. VIII, c. 4.

<sup>2</sup> *Letters and Papers*, Hen. VIII, July 17, 1538.

<sup>3</sup> *Ibid.*, Feb. 28, 1538.

<sup>4</sup> *S. P.*, Hen. VIII, vol. xiii, pt. i, 1411.

<sup>5</sup> *Ibid.*, x, 454.

<sup>6</sup> Gairdner, *S. P.*, xv, 494.

were the homes of Welsh poetry and letters, the nursing-ground of Welsh culture;<sup>1</sup> but the old faith was banished and the religious houses dissolved. The Act of Union, while according to Wales Parliamentary representation and equal laws with England, made English the official language, though Welsh was almost universally spoken throughout Wales and the Marches, and it entirely abolished Welsh laws and usages. Chapuys, the Imperial Ambassador, spoke of the distress among the Welsh, "from whom, by Act of Parliament, the King has just taken away their native laws, customs, and privileges, which is the very thing they can endure least patiently". The substitution of the English law of primogeniture for gavelkind, and of the English for the Welsh system of land tenure, brought home the meaning and effect of these changes to every household. In addition to these difficulties, which in themselves might well have seemed to Henry's Ministers to be insurmountable, there was the serious drawback of a lack of uniformity in legal administration. "The Palatinates (of Glamorgau and Pembroke) were governed by the laws and customs of England; the Marches by the *lex et consuetudo Marchiæ*";<sup>2</sup> the old "shire-ground", consisting of Anglesea, Carnarvon, and Merioneth in North Wales, and Cardigan and Carmarthen in South Wales, were administered, as far as might be, as

<sup>1</sup> See, e.g., "Hen Gwddidau", by Hopeyn and Cadrawd, which teem with allusions to the loss sustained by the bards through the dissolution of the monasteries. Lleision Cradoc bewails the destruction of Margam Abbey in the following striking stanzas (pp. xx, xxi):

"Margam, gwae ni am ergyd— gavas	I 'ble 'dda Bardd hardd ei hirddysg—bellach.
Mae gofal y nothlyd,	E ballodd nawdd i'n mysg.
Doe bu myned a'i bywyd,	Trwm ar ein iaith yw'r trymysg.
—Diffodd gaedd y ffydd i gyd!	Trais rhyfedd a diwodd dysg."

<sup>2</sup> Henry Owen's *English Law in Wales*, p. 17.