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ENGLISH COURTS OF THE PRESENT DAY.

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The English Judicature Act of 1873 and the supplementary act of 1875 provided for a thorough reorganization of the courts of England and of English judicial procedure. We are all familiar with the fact that cases in the common law courts decided before the former date are found either in the King's or Queen's Bench reports, in the Exchequer reports or in the Common Plea's reports; but that common law cases decided after that date are found in the reports of the Queen's Bench Division. Few of us, however, ever stop to think that sweeping changes lay behind this departure from the old way of reporting English law cases.

Today the superior courts of England consist of the House of Lords, the Judicial Committee of the Privy Council, the Supreme Court of Judicature, and the Central Criminal Court. Below these are numerous inferior courts of which the county courts are given an important place. There are also the courts of quarter sessions held in counties, and in boroughs which were given franchises under the Municipal Corporations Act of 1882; and a large number of borough and local courts established by royal charter and personal acts of Parliament. Besides these there are numerous special courts such as the Cinque Port Courts, Courts of Escheat, the Court of Claims, the Palatine Courts, and the Courts of Pie Poudre.

THE HOUSE OF LORDS

The court of last resort is the House of Lords. It has original jurisdiction in the trial of peers or peeresses for treason, felony, or misprision. In the case of the impeachment of any subject, either peer or commoner, by the House of Commons, the House of Lords sits as a court of original jurisdiction. This is the most exalted form of criminal procedure and one where a pardon cannot be pleaded in bar. The Crown may, however, pardon after the offender has been convicted. It was before this court that Warren Hastings was arraigned by Edmund Burke, an event which called forth one of Macaulay's most florid descriptions.
If the accused is a peer, a Lord High Steward is appointed by the members from among their number, to preside. If a commoner is on trial either the Lord Chancellor or the Speaker of the House of Commons presides.

The House of Lords may also proceed against accused persons by bills of attainder or bills of pains and penalties. This method of procedure, however, is more legislative in form than judicial. The accused is, nevertheless, entitled to be defended by counsel and to call witnesses before the Houses.

As the courts of Ireland have power to grant divorces only *a mensa et thoro*, the House of Lords may occasionally have original jurisdiction in divorce suits. An act of Parliament is necessary to dissolve a marriage of persons domiciled in Ireland.

The House of Lords also has original jurisdiction in claims of peerage and offices of honor; controverted elections of representative peers of Scotland and Ireland, and in cases of contempt or breach of privileges of the House of Lords itself.

The appellate jurisdiction of the House of Lords extends to appeals from any judgment or order of the Court of Appeal in England, or from any court in Scotland or Ireland from which error or appeal formerly lay to the House of Lords by common law or statute. Its appellate jurisdiction also includes appeals from a decision of the Court of Criminal Appeal, where the attorney general certifies the decision involves a point of exceptional public interest and it is desirable further appeal should be brought.

The House of Lords may hold hearings not only while Parliament is sitting but after parliament is prorogued.

The whole House sits in trials of peers and in impeachments, and the members are judges both of law and of fact. In appellate hearings there must be present three of the following: the Lord Chancellor, the Lords of Appeal in Ordinary, and such peers of Parliament as have held high judicial office. The Lord Chancellor, if present, presides over the judicial deliberations of the House in appeals. The Lords of Appeal in Ordinary are appointed on account of their experience as judges or barristers, and at the present time are four in number. No lay peer has voted on judicial matters since 1883, altho he has that right.
The House of Lords may call upon judges to attend and require opinions on points of law from them. This is often done in peerage claims.

If a peer is to be tried for felony or treason when Parliament is not sitting, a commission may be issued to some peer appointing him Lord High Steward and requiring such peers as he shall summon to attend upon him. A limited number of peers only is summoned. Such a court is called the Court of the Lord High Steward.

The Judicial Committee of the Privy Council

In 1833 the Judicial Committee of the Privy Council was created. It consists of the President of the Council, the Lord Keeper or first Lord Commissioner of the Great Seal of England, and all privy councillors who have held these offices, or hold or have held high judicial office, judges of the Supreme Courts of England, or of Ireland, or of the Court of Sessions in Scotland.

All appeals to His Majesty in Council are referred to the Judicial Committee. Appeals are also taken to the Judicial Committee from the Admiralty courts, the Ecclesiastical courts, and in both civil and criminal matters from courts outside the United Kingdom. Copyright matters and questions of licensing the republication of books are taken up, too, by the Judicial Committee. Furthermore, any person aggrieved by a decision of a court may present a petition, supported by affidavit, praying for leave to appeal to the Judicial Committee on special grounds. Cases affecting treaties, grants, usages and so forth under the Foreign Jurisdiction Act of 1890 are taken to this court, as also are questions under the Endowed Schools Act of 1869. In fact the Judicial Committee of the Privy Council is the only court in England which has jurisdiction in every kind of action. Its appellate jurisdiction is not only co-extensive as regards classes of actions with that of the House of Lords and that of the Supreme Court of Judicature, but it also includes jurisdiction in criminal matters, and furthermore it is the last court of appeal from all civil courts from which appeal does not lie to the Supreme Court of Judicature or to the House of Lords.
The Supreme Court of Judicature

The Supreme Court of Judicature was formed under the Judicature Acts of 1873 and 1875 by consolidating the High Court of Chancery, the court of the Queen's Bench, the court of Common Pleas, the court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court of Divorce and Matrimonial Causes, and the London Court of Bankruptcy.

This Supreme Court of Judicature is divided into two principal branches, the High Court of Justice and the Court of Appeal. The High Court of Justice is in turn divided into three divisions, the Chancery Division, the King's Bench Division and the Probate, Divorce and Admiralty Division. The Lord High Chancellor of Great Britain presides over the first of these divisions, to which six other justices are assigned. To them are given all causes and matters that formerly belonged to the old court of Chancery.

The Lord Chief Justice of England is the presiding officer over the King's Bench Division, which consists of himself and fifteen other justices. This division deals with all criminal and civil matters formerly within the exclusive jurisdiction of the Court of the Queen's Bench, the court of Common Pleas at Westminster and the court of Exchequer. The Lord Chancellor may from time to time assign bankruptcy business to it or to a special judge and he may also assign to it or to a special judge the business of winding up the affairs of corporations. It also has jurisdiction over municipal election petitions and its criminal jurisdiction extends to all indictable offences against the laws of England. This division is given jurisdiction, too, over offences by public officers abroad. It is in addition an appellate court for the county courts.

The Probate, Divorce and Admiralty Division consists of a president of the division and one other judge. To this division are assigned all causes and matters over which the court of Probate and the court for Divorce and Matrimonial Causes formerly had jurisdiction, and also the business of the High Court of Admiralty, including suits of possession, questions of co-ownership, towage, wages, salvage and similar questions pertaining to shipping.

The High Court of Justice has appellate jurisdiction in appeals from county courts and other inferior courts.
The Court of Appeal usually sits in two divisions, one of which hears appeals from the King's Bench and Probate, Divorce, and Admiralty divisions and the other from the Chancery Division. Its original jurisdiction is very limited and has to do with granting injunctions and making orders for the protection of property. The court consists of the Lord Chancellor, who is the presiding officer, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and five ordinary members of the court, called Lords Justices of Appeal. Ex-Lord Chancellors are also ex-officio members.

The Supreme Court of Judicature has several permanent officials, referees and masters, who sit as arbitrators and make examinations under the direction of the court.

Under what is known as the circuit system, judges go into every county except Middlesex, under commissions of the peace, of oyer and terminer, of general gaol delivery and of assize. These commissions enable them to try both criminal and civil cases in the various counties. Through the seven circuits the High Court of Judicature is able to reach out to all parts of England just as the old common law courts did.

Assizes are held four times a year. If four days before time for court, it appears to the clerk of the county that there is not sufficient business, he may not require the attendance of jurors. In that case, unless there is something which does not require jurors, no court is held.

The Central Criminal Court, which is held at the Old Bailey, is a branch of the High Court of Justice. The court sits under a general commission of gaol delivery and oyer and terminer for the city of London and the county of Middlesex. It has jurisdiction over all treasons, murders, felonies, and misdemeanors committed in the city of London and county of Middlesex and parts of certain other counties. It also has jurisdiction over offences committed on the high seas. The persons named in the commission are the Mayor of the city of London, the Lord Chancellor or Lord Keeper of the Great Seal, all the judges of the King's Bench Division, the Dean of the Arches, the aldermen of the city of London, the Recorder, the Common Serjeant, the judges of the city of London court, and any
person who has been Lord Chancellor, Lord Keeper, or a judge of
the King's Bench Division, together with any others His Majesty
may name. The court is directed to sit at least twelve times a year
and oftener if need be.

Another superior court is the Court of Criminal Appeal, organ-
ized in 1907 to hear appeals from courts of assize or from the Central
Criminal Court. The Lord Chief Justice of England and all the
puisne judges of the King's Bench Division are judges.

INFERIOR COURTS

Among the numerous inferior courts the County Courts have
been growing in importance. They were first established in 1848.
Their jurisdiction was increased by the County Courts Act of 1888
and further enlarged by an act of 1903. The counties are made
into districts for court purposes, which districts may be enlarged
or consolidated by the Executive by Order in Council. They have
absorbed much of the jurisdiction of the local courts except in the
cases of the Universities of Oxford and Cambridge. The Lord Chan-
celloir appoints the judges, who are not to exceed sixty in number.
Their jurisdiction includes personal actions which do not exceed one
hundred pounds, claims that may be subject to action in the King's
Bench Division. They may hear actions in ejectment where the
value of the land or the rent does not exceed one hundred pounds.
They have no jurisdiction in toll cases, libel, slander, seduction, and
breach of promise to marry. They have power to order specific
performance where not more than one hundred pounds is involved
and they may grant injunctions in matters within their jurisdic-
tion. Parties may by memorandum consent to the judge of a county
court hearing a case which really belongs in the King's Bench Di-
vision or the High Court of Judicature may remit contract, tort, or
equitable actions admitted not to exceed one hundred pounds, to the
county court. In equity matters the county courts may take jurisdic-
tion if not more than five hundred pounds are involved. The jur-
isdiction of these courts has been greatly enlarged by special statutes
such as the Bills of Sales Act, 1876; the Railway Act, 1871; and the
Employers' Liability Act, 1880. The judge decides questions of both
law and fact unless a jury is demanded.
The inferior courts that deal with criminal questions are the Courts of Quarter Sessions, courts of justices of the peace sitting in petty sessions, and petty sessions held by metropolitan police magistrates and stipendiary magistrates.

Courts of Quarter Sessions are held in the counties by two or more justices under commissions of peace. Sessions are held in each quarter of the year and may be held at any convenient place in the county. Jurors are drawn from a list compiled by the clerk. Jurisdiction extends throughout the county except over boroughs having courts of quarter sessions of their own. Indictable offences are tried except the more serious crimes, such as murder, forgery, and bigamy. Appeals lie to the Court of Criminal Appeal on the same conditions and grounds as appeals from the Central Criminal Court. The High Court of Justice may issue writs of certiorari to remove cases from Courts of Quarter Sessions.

Under the Municipal Corporation Acts of 1882 certain boroughs are given franchise to have courts of Quarter Sessions of their own, which are presided over by recorders.

Courts of petty sessions are also held by justices under commissions of peace. The counties are divided into petty sessional districts which may be altered by the quarter sessions. The jurisdiction of petty sessional courts extends to hearing and determining charges which are triable summarily. These relate to notice of accidents to workmen, adulteration of seeds, aliens, bribery and corruption, fish and game laws, and crimes in cases of young people. There is quasi-civil jurisdiction covering bastardy cases, matters pertaining to landlord and tenant, master and servant, lunacy, the poor and to licensing. Appeals lie to the quarter sessions.

Courts of petty session are also held by metropolitan police magistrates in the Metropolitan Police District. They have power to issue warrants and to deal with petty criminal matters. Stipendiary magistrates are appointed to act as justices of the peace in urban districts of over 25,000 population and to preside over courts of petty session.
Besides the county courts and the courts of quarter and petty sessions, a large number of local courts of record have been established either by royal charter or by local or personal acts of Parliament. In 1883 forty-two of these courts were abolished and their jurisdiction conferred on the county courts. The remainder still exist, although the greater part have been in abeyance for many years. Mere non-user does not take away their jurisdiction, however. This extends to actions of assumpsit, covenant, debt, trespass and trover; provided, however, the damage does not exceed twenty pounds. There is power by Order in Council to confer equity and admiralty jurisdiction. Appeals lie from these courts to the King’s Bench Division on motion.

Very few of the charters of these courts provide for judges who are professional lawyers. Where there is a recorder of the borough now, he is to act as judge except where otherwise provided. In many instances mayors are the presiding officers. This is true in the case of the Court of Quarter Sessions for the City of London, which is held before the Lord Mayor, the Aldermen and the recorder. As the Central Criminal Court has concurrent jurisdiction in criminal matters, the Court of Quarter Sessions for the City of London has in fact lost a good share of its business.

Of these local courts the chancellors’ courts of the Universities of Oxford and Cambridge have retained their original importance and jurisdiction. These courts meet once a week before the vice-chancellors or their deputies. In addition to civil matters they have criminal jurisdiction where a resident member of a university is prosecutor or defendant.

Among the local courts those of Pie Poudre are of passing interest. These were granted in many cases to boroughs in their charters. They were courts of record, dealing with matters of contract, trespass, covenant, debt and criminal matters arising during the time fairs and markets were held. Their jurisdiction extends only to matters arising at the particular fair or market in question. They administered the law merchant. They were authorized to sit on the day the fair was to be held by the charter and not on the actual day the fair might be held. Actions were begun without
writs and answers were to be filed within a day, in many cases within
an hour. Today courts of Pie Poudre are almost obsolete except in
the case of the one at Bristol.

SPECIAL COURTS

A survey of the English courts would hardly be complete with-
out mention of certain special courts. These are courts of Escheat,
Forest Courts, Court of Chivalry, Palatine Courts, and Courts of the
Cinque Ports. The courts of Escheat, as the name suggests, are for
the purpose of making inquiries touching any real estate supposed
to have escheated to the Crown. Commissioners are appointed under
the Great Seal to make investigations.

The Forest Courts, four in number, the Court of Attachments,
the Court of Regard, or Survey of Dogs, the Court of Swainmate,
the Court of Eyre—or Justice Seat, were created to enforce the
forestry laws and to protect the sovereign's forest possessions.

The Court of Chivalry takes cognisance of questions concerning
the right to use armorial ensigns and bearings.

The Palatine Courts consist of the Court of the Duchy of Lan-
caster, which relates to lands held by the King in the Duchy of Lan-
caster; the Chancery Court of the County Palatine of Lancaster; and
the Chancery Court of the County Palatine of Durham. The first
of these has not sat for a long time. The Chancery Court of the
County Palatine of Lancaster has powers and jurisdiction like those
of the High Court of Justice in its Chancery Division. It is unlimited
in amount and area. It has jurisdiction as to the property of in-
fants, as well as jurisdiction under the Conveyancing Act, 1881, the
Trustees Act, 1893, the Judicial Trustee Act, 1896, and several other
acts of Parliament. It is presided over by the vice-chancellor. Ap-
peals lie to the Court of Appeal and the House of Lords. The juris-
diction of the Chancery Court of the County Palatine of Durham is
similar to that of the Chancery Court of the County Palatine of
Lancaster. It is presided over by the Chancellor of the County Pala-
tine of Durham. Appeals lie from it to the Court of Appeals and
thence to the House of Lords.
The last courts to be considered are the Courts of the Cinque Ports. These courts are held by justices appointed in the five ports of Dover, Sandwich, Romney, Winchelsea, and Rye. Their civil jurisdiction has been abolished except as to questions of salvage. They have power to punish offences under direction of the Lord Warden jointly with the admiral or admirals.

References:
Vol. 4—Journal of the American Judicature Society, 133.
Judicature Act, 1873.
Judicature Act, 1875.