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William Craddock Bolland

Excerpt

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THE GENERAL EYRE

Lecture I

I AM to speak to you in these lectures of the mediaeval General Eyre. It is always well to begin at the beginning, but it is not always easy to say where the beginning is. Such a great engine of law, finance and justice, as the General Eyre in its later developments undoubtedly became, penetrating into all the remotest crannies of the country and sweeping its searchlight over the life and actions of every section of society, official and private, did not spring into existence in its full stature and perfected form at any particular moment. Let us spend a few preliminary minutes in reminding ourselves how and where law and justice were administered in England in the days of our early kings, in the days of William I and his immediate successors, long before the General Eyre had been heard of, that General Eyre which, when it came along, swept into its net every court and every jurisdiction within the county in which it was in session; and at the same time peremptorily extinguished the jurisdiction of the King's Justices of the Bench sitting at Westminster to deal with any action or matter affecting interests in the same county. The courts known to the English law in those early days, leaving out for the moment the King's Court, the *Curia Regis*, and the Courts Christian, about which I will say something later, may be loosely divided into three classes, which we may call

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communal, municipal and seignorial courts. This must be taken as a rough classification only. The legal theory of the time had not attained to a really scientific and definite one. The communal courts included county courts and such of the courts of the hundreds as had not passed by royal grants into private hands. What we have called municipal courts were courts held in chartered cities and boroughs, exercising such powers as the Sovereign by his charter had conferred upon them. The seignorial courts were what we are accustomed to call now Courts Baron. I have given you a bare and arid list of names, unnecessary to those who have already some knowledge of these matters, quite unilluminating and useless to those who have not. And so I must not leave the matter there. I will try as best I can to give you some sort of an account of some of these courts that will help you to realize what they were like, to remember who the people were who went to them, and what was done at them; a story of them that will, perhaps, enable you to carry away with you some recollections that may be real and helpful to you.

The county court was, I think we may say, the most important in a popular sense of all our early English courts, as it is certainly one of our most ancient institutions. But the mediaeval county court was not in the least like the county court of to-day. It was the court where the ordinary man ordinarily sought justice. Unfortunately for our present purpose it kept no official record of its proceedings, except in respect of a few minor matters, and so any reconstruction of these proceedings is more difficult than it would be in the case of a court which had kept a full record. Still we can gather much about it from old authorities; quite enough to put together an intelligible account of it. It met once a month, usually,

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I suppose, in the county town, in the shire-hall where there was one; but it did not always meet in the county town or in any town at all. In that thirteenth century law tract which we know as *Hengham Magna* the writer tells us that the court frequently met in the open air and in out-of-the-way places in the country¹. The court was summoned by the Sheriff, who, you will remember, was a distinctly royal officer, appointed by the King and dismissible by him at a moment's notice; and he was strictly accountable to the royal exchequer for all moneys that came into his hands by reason of his office, and these were many. Besides summoning the court, the Sheriff was the presiding officer. It was he who held the court. Up to William I's time the Bishop had been joined with him, but William separated the ecclesiastical jurisdiction of the county court from its civil jurisdiction, and relegated the Bishop to a court of his own, known as Court Christian, there to deal exclusively with such matters as were assigned to the ecclesiastical jurisdiction. The Sheriff "held the pleas." That is the technical expression. He regulated the whole proceedings, though in some matters he was assisted and checked by elective officers, the coroners of the county. He issued all mandates that were necessary; but he did not make the judgments. We shall see in a moment or two who did. In theory all the freeholders of the county were bound to attend their county court, and incurred penalties if they did not attend it. They were called the suitors of the court [*sectatores*] and their service or attendance there was called suit. This theory that all the freeholders of the county must attend the court, must give their suit there, was a workable one in very early

¹ "Frequenter euenit quod comitatus tenentur in siluis et campestribus foris uillis et alibi." Cap. iv.

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days, but as the land became more and more divided into smaller parcels, and these again subdivided into still smaller ones, and each parcel of land carried an estate of freehold, the number of freeholders became too large for it to continue practically possible to insist upon the attendance of all of them at the court. Responsibility to do suit, to attend the county court, seems in process of time to have become attached to particular parcels of land. The final definite amount of suit to which the court had been entitled from some larger extent of land was apportioned out amongst those into whose hands smaller parcels, carved thereout, had come by purchase; and the men who were actually bound to attend the court were only those freeholders who were so bound by some sort of bargain, which was doubtless considered in the price paid for the land, which they or their predecessors in title had made when purchasing the land. It is these suitors of the court, those freeholders actually attending the court, who give the judgments when the time for a judgment comes.

The county court was for the most part a civil, non-criminal court, but it could entertain some of the initial proceedings in criminal cases. It had a full original jurisdiction in personal actions. Real actions, actions about interests in land, came to it when the feudal courts of the lords of manors made default in justice; and we hear of cases being sent down for trial from the King's Court at Westminster. It was always possible to remove a case that came before the county court to Westminster for trial by the Justices there. One act of jurisdiction the county courts had beyond even the powers of the courts at Westminster. There was one supreme and solemn act which could be performed only in the county courts and

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in the folk-moot of the city of London, the act of outlawry, with all its very serious consequences. The King's Courts at Westminster could indeed order that a man should be outlawed, but the formal ceremony must be done in the county court.

I should like to try to make a session of this mediaeval county court in some way real to you; to do something more than just tell you, as I have done, who was there and, in a very general kind of way, what they did; to tell you something that you are more likely to remember than a string of bare facts. Let us imagine, if you will, that you and I are freeholders of, say, Edward I's time, somewhere towards the close of the thirteenth century, and that we are going to attend our county court. What shall we do? What shall we see? What shall we say? To begin with, even supposing that we are very well-to-do people, we shall set out from homes that seem far below our modern standard of comfort and convenience even for people who are not particularly well-to-do. The home where we freeholders of the thirteenth century have breakfasted off bread and any sort of meat that might be available, or off dried fish (if it were a Friday or other fast day and we were good church folk or did not want to run any risk of a visit from the Archdeacon's summoner) with a draught of beer or possibly some sort of wine, for we are centuries away from the days of tea and coffee, is built entirely of timber. Even if we are very well off, county gentlefolk of standing and importance in our neighbourhood, it will not seem, as we look back upon it now with our twentieth century eyes, with the recollection fresh in our minds of the homes we left this morning, as very comfortable, very commodious, either in its construction or in its decoration and furnishing. This thirteenth

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century home of ours from which we are setting out to attend our county court consisted, if, as I have conditioned, we were amongst the well-to-do classes, of an entrance passage running through the house, with a hall on one side, a parlour behind, and one or two chambers above; and on the opposite side a kitchen, pantry and other offices. A gentleman's house containing three or four beds was extraordinarily well provided; few probably had more than two. The walls were commonly bare, without wainscot or even plaster. The few inventories of furniture that have come down to us show a miserable deficiency in even the houses of the best country gentlemen. There were no adornments of any sort. From such a home as that we shall set out on our ride to our county town; for, I suppose that, if we live, as most of us certainly will do, at some distance from it, we shall be on horseback. And what sort of a countryside shall we ride through? One very unlike that which would meet our eyes if we were making the same journey to-day. For though hill and valley, plain and winding river remain unchangeable and unchanged as they were in Edward I's time, the general prospect that would have lain before us as we made our journey between six and seven hundred years ago is very different from the one we should have seen had we gone that way this morning. There is one especial feature of the country landscape of to-day that we should miss at once. There were no green hedges six hundred years ago dividing field from field. Fences of a sort indeed there were, rough temporary palisades of stakes set up while the crops were growing to protect them from the horses and other cattle, and removed when the crops were harvested. The characteristic green hedges of our modern English country landscape come to us mainly

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as a consequence of the Enclosure Acts of Queen Anne's reign. We shall notice as we pass along what would seem to twentieth century eyes an excessive amount of arable land, a deficiency of pasture land. But that does not surprise us, because we know that there is a great stretch somewhere of common pasture land available for the use of all the freeholders, whereon each of these may turn a number of heads of cattle proportionate to the amount of his holding. We shall probably see much forest land, for in a country where the use of bricks had been long forgotten and houses and barns and cattle-sheds were built mostly of wood, timber in plenty was very necessary; and the oak and the ash, the elm and the fir are growing abundantly. Many an orchard, too, we shall see, thickly planted with apple and pear trees, but mainly apple trees. We shall not pass any of the trim little cottages we see to-day, with neatly kept gardens gay with flowers. And as we get nearer to our journey's end we shall probably fall in with others who are on the same errand as ourselves; at any rate, when we reach our county town we shall certainly meet many of them there. Perhaps we are parties, ourselves, to some action that is to come before the court. We are, at least, pretty sure, if we are ourselves neither actual plaintiff nor defendant, to be interested in someone who is, a neighbour, a relation. And I suppose that as we have opportunity we shall foregather with such of our fellow freeholders as we have any acquaintance with and try to win their interest and support for the side which is our side—for you will remember that it is with the freeholders that judgment lies, and not with the Sheriff. We shall doubtless explain how entirely right our side is, how wholly in the wrong the man on the other side is. And when we have done all the lobbying which we have been able to do as we rode along and in the high

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street of our county town, we shall, after stabling our horses and getting some refreshment for ourselves in one of the local taverns, go into the shire hall or wherever the court is summoned to sit. It must, I am afraid, be mainly a matter of inference and surmise what we shall see there. We have ancient illuminations picturing for us the mediaeval courts at Westminster, but I know of no contemporary picture of a mediaeval county court. Still we may form some sort of a serviceable guess of what it was like. There is not room for us to get very widely astray. There is pretty sure to be some sort of a dais or slightly raised platform at one end of the room, on which the Sheriff, with any clerical staff he may bring with him, will sit. The coroners for the county will probably sit there too; and if the Bishop or the Earl or any other of the principal magnates of the county be present, he will probably have his seat there as well. In the body of the hall the freeholders, including the parish priest, will be gathered; and I do not think that there will be any provision of seats for them. Seats in public places were not generally considered necessary in mediaeval days.

I have said that the county court was the great popular court for the ordinary man; the court to which the ordinary man went when he had any grievance which the court had jurisdiction to remedy. I have told you in a general way what kind of cases were triable at the county court. Most of these cases were commenced by what was called a *plaint*, but some of them had to be tried under a *writ*. Those writs were to be got only from the Chancery in London; at least all authority seems to make that certain. I have never been able to find out, to understand, how a would-be plaintiff, living, perhaps, a week's journey from London, actually got his writ. To-day, wherever a

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man lives, there is some local solicitor living within a few miles of him at the most, and that local solicitor has an agent in London to whom he can send instructions to take out a writ; and the business can be completed through the post in a few hours. But how did a man living far away in the country get his writ in Edward I's time? That he could get it and did get it in some reasonably simple way is obvious, but I cannot certainly tell you how. When the General Eyre visited a county there is some good reason for believing that a local chancery was set up where writs were obtainable; but that was an exceptional thing, and we have no reason for supposing that outside the Eyres there was ever anything in the nature of county chanceries. The writ, apparently, could be got in London only.

If we thirteenth century freeholders are going to take any intelligent interest in the proceedings of our county court, if we are going in any real way to understand what is going on, we must be something of linguists. We must at any rate be able to understand the French of the courts, and it will help us if we know a little Latin too. The writ was in Latin, most records and other official documents were in Latin. Some of you may remember how even when the angel came down from heaven, in *Piers the Plowman*, to bear a message to William Langland, that angel delivered his message in Latin; and William's reflection is that so these things were because illiterate people ought not to be told how to justify themselves. All who could not understand Latin or French had best suffer and serve seems to be his pessimistic reflection. But you will probably ask me if I really suppose that all the lesser people, or, indeed, many of the bigger ones, who were suing or being sued or were present as judges in the county court, understood even French, to say

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nothing about Latin; and I tell you at once that I do not. Considering the method of procedure it was not necessary that they should. The local freeholders who came to determine on which side right lay and to give their judgment accordingly came into court with their judgments already settled in their own minds. They had them in their pockets, as we say to-day. Now do not think that this was a shocking state of affairs. It was a perfectly right state of affairs in the circumstances of the time; and it was almost the only possible state of affairs. These were men on the spot, the men who, if any, knew of their own knowledge or could easily find out by enquiry on the spot all about the litigants, their family history and personal affairs; and if they did their duty, did what public opinion and the legal theory of the time expected them to do, they did find out all that they needed to know in supplement of the knowledge they already had to enable them to come into court ready to register a judgment which they had already made. And I do not suppose that the freeholders who came from the other side of the county troubled themselves at all about the matter at issue. They had no means of knowing anything about it and they left it to those who did know. There was practically the same system and certainly the same theory in the courts at Westminster. There, until both sides had said everything they wanted to say in support of their respective cases, until they had exhausted their quiver of pleas, no jury was present. If in the end the decision had to be left to a jury, twenty-four¹ men were sent up to London from the litigants' county, and they, without their ever having heard a word of the pleading, were

¹ Twelve only were needed, but twenty-four were summoned, to provide for casualties during the journey and for challenges at Westminster.