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978-1-107-53694-4 - The General Eyre: Lectures Delivered in the University
of London at the Request of the Faculty of Laws

William Craddock Bolland

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THE GENERAL EYRE

LECTURES DELIVERED IN THE UNIVERSITY
OF LONDON AT THE REQUEST OF
THE FACULTY OF LAWS

BY

WILLIAM CRADDOCK BOLLAND, M.A.

*Of Lincoln's Inn, Barrister-at-Law; late Scholar
of Magdalene College, Cambridge*

WITH AN INTRODUCTION

BY

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Laws of England in the University of Cambridge*

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PREFACE

THIS course of lectures on the General Eyre follows on very naturally after the previous course on the Year Books, for the Year Books form the chief source of what we know about the eyres. It is in them alone that we can see the eyres actually alive and at work. The old legal writers, Bracton and the rest, have, indeed, coldly pictured for us something of their form and told us something of their functions, but it was left to the writers of the Year Books to breathe the living spirit into this lifeless form. And here, not only for myself but also for those from whom I have learned almost all I know about the eyres, the writers of these manuscripts of long ago, I would thank the University of London for the opportunity it gave me in these lectures of recovering from the oblivion of centuries and bringing back to light all the lore of the eyres which these ancients wrote down for the instruction of the lawyers and law-students of their own day, and which is of great value now to students of many other branches of learning.

If I should seem in these lectures to have over-stressed somewhat the financial side of the eyres and under-stated their judicial side, it must be remembered that I had only a narrowly limited time wherein to deal with a very wide subject. It was necessary, therefore, to insist more upon those matters which were especially characteristic of the eyres than upon those which were not. On their purely judicial side in the trial of pleas of one sort and another, they differed not at all, as I have stated in the lectures, from a session of the Court of Common Bench

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at Westminster. Hence arises what may, perhaps, appear an over-weighting of the financial scale of the balance as against the judicial one. In the circumstances I am afraid that this was scarcely avoidable.

My thanks are due and very sincerely given to Professor Hazeltine for his kindly and illuminating Introduction to this volume. It contains more than one valuable suggestion which I hope that I or another may have an opportunity of carrying out. In the meantime I am very glad to have them.

W. C. B.

December, 1921.

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THE importance of the administrative work of the king's justices in eyre during more than two centuries of the middle age has long been recognised. Until they decayed and perished in the fourteenth century, superseded by the justices of assize and other rival commissions, the eyre courts were powerful instruments of royal authority in the shires; and yet our standard legal histories contain but brief and incomplete accounts of their activities. The chief reason for this neglect lies in the fact that the greater part of our information is still embodied in a mass of unprinted manuscript materials, principally plea rolls and year books. Printed editions of the medieval law writers—Glanvill, Bracton, Britton, and Fleta—tell us indeed something about the powers and work of the eyres; something also we learn from Hoveden's *Chronicle* and from the *Liber Custumorum* and *Liber Albus* of the City of London. Plea rolls of two or three of the eyres of Edward I are included in the series of year books edited by Horwood; extracts from eyre rolls of Henry III's justices are to be found in Maitland's edition of Bracton's *Note Book*; and in his *Pleas of the Crown for the County of Gloucester* Maitland has transcribed portions of the record of the eyre of 1221 in that shire. But what of the year books of the eyres, the reports of cases which supplement and illumine in so many fruitful ways the bare record of the plea rolls? Has any scholar made accessible in printed form even a small part of that vast treasure of manuscripts?

The answer to this question—an answer already familiar to medievalists—introduces at once the name of my learned friend Mr Bolland, who has invited me to write

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a few paragraphs by way of introduction to this volume of lectures. Mr Bolland is the one scholar who by his extended researches among the manuscript year books of the eyres has made himself the master of their contents; and certain of the results of his studies he has embodied in three volumes on *The Eyre of Kent: 6 and 7 Edward II* (1313–14), and in a volume of *Select Bills in Eyre* (1292–1333), all recently published by the Selden Society. In these volumes we possess not only an accurate transcript of the texts, but also the editor's notes and his valuable introductory essays on the history of the eyres.

Mr Bolland, therefore, came to his task as a lecturer on the general eyre with a knowledge unequalled by any other scholar of our time; and by publishing his lectures in their present form he has communicated his learning to a still wider audience. We have here presented to us in *The General Eyre* a living picture of the actual working of the institution during the period of its ascendancy; while the historical background for this picture—the background of communal, municipal, seignorial, royal, and ecclesiastical courts—is also sketched in clear outline. We behold the king's justices of the general eyre journeying to every shire of the realm under the most comprehensive of all judicial commissions, the commission to entertain all manner of pleas, the commission *ad omnia placita*, civil and criminal; and we behold also the sheriffs, the coroners, the many dozens of jurymen, the prisoners, the parties to civil proceedings, as they appear before the representatives of kingly power. The whole life of the shire centres for the time being in the court of the king's itinerant justices: and it is this life of which we may read in Mr Bolland's entertaining lectures.

The powers possessed by the justices of the general

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eyre under their commission were royal powers, and royal powers so extensive that the justices invested with them represented the king in a way which made them, in Mr Bolland's words, almost "kings themselves within the county wherein they were in session." It was the possession of powers so vast that enabled the justices to hold pleas of the crown, to hear and determine assizes and actions of all kinds, to hold gaol deliveries, to try writs of *quo warranto*, to exercise not only a jurisdiction at law by writ process, but also a jurisdiction in equity under the informal procedure by bills in eyre. In dealing with the several aspects of this extensive jurisdiction Mr Bolland has drawn largely upon unpublished manuscript materials, especially the manuscript year books of eyres held during the reigns of the first three Edwards; and it is this reliance upon manuscript sources which gives the lectures a special place and value in our historical literature. To the history of several topics of the law, such as sanctuary, the deodand, the proof of Englishry and the fine, known as *murdrum*, inflicted in absence of this proof, Mr Bolland makes an original contribution; and he likewise throws fresh light on features of institutional history, such as the jury and the relation of itinerant justices to the local and central courts of the realm.

Of special interest is Mr Bolland's view that the justices of the general eyre were concerned but little with the administration of justice, their primary and all-absorbing task being the getting of money into the king's exchequer through the infliction of fines and amercements and in other ways. The justices were "out on a great money-making expedition for the king's benefit; the crown pleas division of the eyre was in fact, whatever it might be in theory, a travelling branch of the exchequer." No

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doubt Mr Bolland is right in his general conclusion; but it is possible that he has somewhat over-stressed the fiscal side of the eyre's business. In the age of which he writes revenue and justice were inextricably commingled. In certain of its aspects royal criminal justice was a harsh and terrible justice; and it was particularly this side of the eyre's work which made the coming of the justices a matter of dread to the whole county. Harsh and terrible though it was in many ways, it was nevertheless the justice of the time; and its traditions lingered long in the law of the land. Justice, we can hardly doubt, was in fact one of the main functions of the eyre; but fortunately for the king, and of this he was fully conscious, it was a justice which netted the exchequer a handsome return. When we turn from the criminal to the civil side of the eyre's jurisdiction, and particularly to the equitable procedure by bill in eyre, royal justice displayed a milder temper: here at least, so it would seem, justice predominated, over-riding the claims of revenue.

Mr Bolland has touched but lightly on the institutional relationship between the general eyre and the exchequer; and it may be hoped that at a future time he will explore this feature of constitutional growth more fully. From an early time justices in eyre seem to have been closely connected with the exchequer. In 1168, as Mr Bolland reminds us, a deputation of four barons of the exchequer journeyed through the country as itinerant justices and collectors of revenue. We know, in other ways, that many of the justices in eyre were men who sat at the exchequer board. Richard the Treasurer in his *Dialogus de Scaccario* tells us of the duties of the itinerant justices to the exchequer in the matter of their rolls. These are

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but a few of many scattered points which suggest a fruitful line of research.

Mr Bolland has very properly restricted his discourse to the history of the English eyres: he has not told us of their forerunners in Continental legal history, nor has he sketched the process by which the English eyre-system spread to regions outside England. These aspects of the full story of the eyre are worthy of careful study. One of the results of such study would be the placing of the English eyre in its true perspective of European legal development; and this is a subject to which Mr Bolland himself ought to turn his attention. His studies would no doubt convince him that Henry I did not invent the system of itinerant justices. Traces of this system in Anglo-Saxon times may have been due, as Stubbs suggests, to Frankish influence; but of this one cannot be quite sure. The true path of Frankish influence would seem to lie through Normandy. The Frankish system of royal *missi*, a system of itinerant judicial commissioners, did not perish with the fall of the Carolingian empire; for in that corner of the empire which became Normandy Frankish legal traditions persisted and became the basis of government and law. In Normandy the *missi* survived as the duke's itinerant justices; and from the duchy the institution was transplanted to England in the time of the Norman kings. As early as the reign of William the Conqueror the king's *missi* presided in some of the local courts of England. In spirit and in direct line of historical growth, the itinerant judicial commissioners of the English kings, including their justices of the general eyre, are the descendants of the *missi* of the Frankish rulers. It is this feature of English institutional and legal history, a feature as striking in its way as the derivation of the English

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jury from the Frankish *inquisitio*, which teaches us afresh how much of our legal system has its origin in Frankish and Frankish-Norman institutions. As part of that gradual and vast process of the spread of English legal institutions, the *missi*, the justices in eyre, have a further history in regions outside England. King John began the practice of commissioning justices in eyre in Ireland. In Scottish legal history the “justice-ayres,” courts which closely resemble the English eyres, long held a conspicuous place in royal administration. We meet with traces of them as early as the time of David I (1124–53), a period when Norman influence in Scotland was strong; and it may well be that they were a conscious adaptation of the Anglo-Norman eyres to Scottish needs and conditions. Some day the history of the extension of English institutions and law beyond English borders will be written in detail. We may be sure that part of it will deal with the eyres.

The visitations of the justices of the general eyre meant much to the people of the middle age. From the point of view of social and legal evolution, they also mean much to us of the present day. Looking back on the work of an institution which ceased to function nearly six hundred years ago we can now see that the general eyre played its own special rôle in the training of the English people for self-government and in the growth of their common law. An institution which thus serves as one of the historical bases of present-day life and law must have much more than a mere antiquarian interest to men of our own time; and in Mr Bolland’s learned and lively lectures, happily now published in this volume, they will find matter for their enlightenment.

H. D. HAZELTINE.