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AMERICAN LAWYER AND ENGLISH LAW

BURTON S. HILL*

In 1606, during the third year of his reign, James I of England admonished the Virginia Council to dispose of its new world legal causes "as near the common law as the equity thereof may be." And so it was until the British defeat at Yorktown in 1781. For almost two hundred years colonial lawyers were educated at the London Inns of Court, and the colonial courts were carefully supervised by the Crown. Although the colonists were not satisfied with many conditions in the colonies, no attempt was ever made to defeat the Anglican System, and there was no dissatisfaction with the common law. Even in 1774, one year prior to colonial independence, the Continental Congress vehemently declared the colonies were entitled to the common law of England, and the long war for independence did not change this attitude.

While our colonial ancestors stoutly claimed the principles of the common law as their birth right, their eventual independence left little background for carrying it on. The new world possessed no Inns of Court, and other means had not been provided for teaching these principles. Still clinging to English influence, colonial courts for a considerable time recognized a lawyer as an "attorney", a "counselor", a "solicitor", or as a "proctor". A lawyer signing a pleading did so as an attorney, but a bill in equity was signed as a solicitor. One practicing in admiralty or in probate matters was known as a proctor, and only a counselor was permitted to appear in court as an advocate in law or equity.¹ In 1790 the United States Supreme Court ruled before that tribunal counselors could not practice as attorneys, and attorneys could not practice as counselors; but in 1801 all differences were abolished.² However, even after that date some of the state courts attempted to cling to the old system for years.³

While England apparently not only discouraged a colonial legal system, it even appears that lectures in law were not encouraged in the new world colleges. Actually, the first real American law lectures were instituted a year after Yorktown through the efforts of Thomas Jefferson at the College of William and Mary. Eight years later such lectures were provided at the College of Philadelphia, afterwards merged in the University of Pennsylvania, and in 1793 Columbia University established a chair in law. It was here that James Kent, subsequently to be celebrated throughout the world for his

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1. Burdick, Bench and Bar of Other Lands, 74 (1939); *Stinson v. Hildrup*, 23 Fed. Cas. 107, No. 13,459 (N. D. Ill. 1878).
2. Rules of the Supreme Court, 1 Cranch, Rules XV, XVII (U. S. 1801).
3. *In re Paschal*, 10 Wall. 483, 493, 19 L. Ed. 992 (U. S. 1870).

Commentaries, lectured in law until 1797 when he resigned to become a judge. No real law school was established in the new nation until 1784. During that year Tapping Reeve, a graduate of Princeton and a highly respected jurist and legal writer, launched out such an institution at Litchfield, Connecticut. This school proved to be a success for some fifty years. During that period it enrolled more than a thousand students, many of whom afterwards attained great prominence.

However, it was not until 1817 that Harvard University established the first modern law school. Seven years later Yale University founded the second successful law school, but prior to 1850 few others met with success. Up to that time little previous legal education was required for admission to the bar in many of the states, and consequently law school attendance was small and irregular. Even for the following quarter of a century a legal education for most aspirants was afforded by "reading law" in the office of some older lawyer. It was not until about 1870 that the American law school definitely commenced to be recognized. In that year, 1653 students were attending twenty-eight law schools and ten years later there were forty-eight law schools with 3134 in attendance. At the turn of the century the number had increased to one hundred with an enrollment of 13,000, and at present there appears to be one hundred eighty with an enrollment of over 25,000.

Today the legal thinking of the many thousand lawyers in the United States, graduates of American law schools in most cases, is interpreted, clarified and written into definite rules by fifty state and territorial supreme courts. In last resort cases these rules are further tested and clarified by the Supreme Court of the United States, but always with the common law as a background. While our American legal system has departed vastly from the original Anglican concept, the United States has never renounced its common law foundation, and our actual classification is still definitely under the Anglican system.

Regardless of many changes in the United States, England has tenaciously clung to the ancient customs and traditions. These developments of the Anglican legal system, and have been a vital factor in preserving it. In matters of procedure and legal efficiency England has admirably progressed, but its basic concept is identical with that from which the colonies departed after Yorktown in 1781. We still possess approximately the same rules of law as the same procedure as applied in the English courts, but the ancient practices and modes under the English system we have abandoned.

While serving in England during World War II as an American Judge Advocate, the writer was brought into direct contact with the original and unchanged Anglican system. As a result of his official

and social duties he became acquainted with many solicitors and barristers, and was a frequent visitor to the Inns of Court, as well as to the Civil and Criminal Courts of England. As an American lawyer, educated and trained in the United States where the ancient system had been discarded but the common law retained, his experiences were at least somewhat unique, and perhaps may be of interest to some. With that in view, the following is an account of his observation and study of the Anglican System on the mother soil.

WESTMINSTER HALL

When King John was forced to sign the Magna Carta at Runnymede on June 15, 1215, one period in the history of English law was closed and another began.⁴ Prior to the Magna Carta court was held by the Crown at Westminster when not enroute, but only when the king was present in person. This course placed great delay, expense and hardship upon the suitors, but even more so when the king was enroute and not accessible to the great majority of the people. Since the king could not be possessed of legal ubiquity, a provision of the Carta declared that a Court of Common Pleas "was not to follow the king but must be held in some certain place."⁵ Westminster Hall, a portion of the Royal Palace, became the definite location of this court. Among the early historians there was much dispute as to the oldest common law court to hold its sessions in Westminster Hall. The writing of Sir Edward Coke insists that the Court of Common Pleas existed before the Conquest and was the first, while in the opinion of other writers Common Pleas actually came into being at the time of the Magna Carta. These historians hold that the Court of King's Bench and the Exchequer both existed before that time and that they were the first. However, modern research holds that King's Bench, the name given to the original Curia Regis, was actually the first; but it is well settled that courts held their sessions in Westminster Hall long before 1215. At all events, this great edifice served as the Court House for the English people for a period of over seven hundred years, and was one of the major elements in the sound development and preservation of the common law.

Westminster Hall was built in 1087 by William Rufus, sometimes called "William the Red", but more royally known as William II. He was the son of William the Conqueror, and to his building achievements may also be attributed the Tower of London and London Bridge. Westminster Hall was originally intended as a place to hold royal banquets. When it became the law courts building of the Empire, it was joined to the palace by a great arch which is still noted

4. 1 Holdsworth, *History of English Law* 54 (1922).

5. *Magna Carta*, sec. 17.

5a. For Magna Carta generally and its place in our legal history, see 2 Holdsworth *op. cit. supra* note 4, Book 3.

for its architectural grace and symmetry. It may also be of interest that in those times Parliament continued to hold its sessions at the Royal Palace, even when the royal residence was moved by Henry VIII to the confiscated palace of Cardinal Wolsey at Hampden Court. Factually, the Old Palace housed parliament until 1834 when it was destroyed by fire, but since the present House of Parliament stands on the identical site of the Palace, Parliament has never moved.⁶

Fortunately, Westminster Hall was saved from the fire. It still stands in august antiquity at the southern end of Whitehall, a wide street extending northward to Trafalgar Square where the tall Lord Nelson monument marks its end. In former days Trafalgar Square was part of Charring Cross where many of the king's subjects were executed who had fallen into royal disrepute.⁷ Just across the street from Westminster Hall stands London's Westminster Abbey, austere and aged.⁸ Slightly beyond the House of Parliament in the direction of the Square sprawls England's renowned Scotland Yards, and Downing Street is almost opposite Scotland Yards. At No. 10 of this narrow, sombre street resides the Empire's Prime Minister, and practically adjoining his residence is the British Foreign Office. Along Whitehall are various other Government buildings, but none far distant from the graceful tower of the House of Parliament overlooking the placid Thames. During the intense bombing of London in World War II, Westminster Hall, as well as certain minor portions of the Abbey, suffered considerable damage, but early in 1946 repairs were under way.

In the course of English history nearly all the memorable *state trials* have been held at Westminster Hall. It was there in 1305 that William Wallace, the national hero of the Scots, was unwantonly declared a traitor and condemned to die. In 1499 the Earl of Warwick, the last of the Plantagenet line, was tried and condemned by the cruel Henry VII. In 1535 Sir Thomas More, ex-Lord Chancellor of England, was tried and condemned at Westminster Hall only because he would not acknowledge Henry VIII to be supreme in religious matters. In the years following, some of Henry's other victims were two of his wives—Anne Boleyn, on charges of adultery, and Catherine Howard, for alleged treason, although Catherine was not tried at Westminster Hall. In 1601 the Earl of Essex, the particular favorite of Queen Elizabeth, was found guilty of treason he never committed, and likewise, Sir Walter Raleigh two years later. Raleigh

6. Burdick, *op. cit.* supra note 1, at 5.

7. Pepys's Diary, Oct. 13, 1660, recounts the execution of Major General Thomas Harrison at Charring Cross. He was one of the signers of the warrant for the execution of Charles I. Two days later Pepys mentions the execution of John Carew at Charring Cross. He was one of the King's Judges. 1 Wheatley, *Diary of Samuel Pepys*, 241-2 (1924).

8. The original Westminster Abbey was built by Edward the Confessor from 1049 to 1065. Philips, London and its Outer Districts.

was eventually beheaded in the Old Palace Yard. Another famous execution which took place at the Palace, just in from the House of Parliament, was that of Guy Falkes and his co-conspirators, in retribution for a plot to blow up Parliament with gun powder. Their trial occurred in the Hall in 1601 and their execution in 1602. No doubt the most famous trial to take place at Westminster was that of the hapless King Charles I who was convicted in 1649.⁹ Today a bronze plate marks the spot where he sat when his sentence was read.

Some of the other Westminster trials which attracted wide attention was the impeachment of Warren Hastings. This occurred in 1788 for the alleged giving of bribes while holding a high office in India. Another was the trial of Queen Caroline, wife of George IV, on divorce charges; and still another the case of Earl Cardigan in 1841, who afterwards commanded the famous Light Brigade. He was acquitted of attempted murder of a fellow officer in a duel.

However, Parliament passed an act in 1852 drastically reforming both the common law and chancery procedure of the English courts. This greatly reduced the number of state trials which had startled the world in times gone by.

THE ROYAL COURTS OF JUSTICE

In 1882 the Royal Courts were removed from Westminster Hall to the present Law Courts building on the Strand, which had been under construction since 1879.¹⁰ This vast and very stately building is situated eastward from Trafalgar Square only a few blocks, and faces the very handsome, but now much bombed Church of St. Clemens Dane, designed by Christopher Wren, and erected in 1681. This old church, standing in the middle of the thoroughfare, and before World War II so renowned for its bells, marks the place where the Strand leaves off and Fleet Street begins. The Middle Temple and the Inner Temple, two of London's Inns of Court, are just opposite St. Clemens Dane. Close by stands St. Dustan in the West, another old church of interest to Americans, since the body of Lord Baltimore lies buried there. Chancery Lane, a narrow, crooked avenue at right angles with the junction of the Strand and Fleet Street, meanders northerly in the direction of Lincoln's Inn and Gray's Inn, the other two Inns of Court. In Chancery Lane stands the Recorder's Office, containing such priceless historical treasures as the Domesday

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9. Charles I was publicly beheaded on a scaffold in front of Whitehall. The old Palace of Whitehall stood midway between the Palace at Westminster and what is now Trafalgar Square. It was chiefly associated with Cardinal Wolsey, Henry VIII, and Charles I. The Thoroughfare known as Whitehall gets its name from the palace. Philips, *Gazetteer of London*, 23.
 10. The Law Courts Building (Royal Courts of Justice) was designed by Mr. G. E. Street and constructed at a cost of £2,000,000. There are 23 court rooms and over 1,000 apartments. Philips, *London and Its Outer Districts*.

Book,¹¹ the scrap of paper which exposed the Guy Fawkes plot to destroy the House of Parliament with gun powder, and some of the correspondence between Queen Elizabeth and the Earl of Essex. Incidentally, Essex lived hardly more than a block away from where the Recorder's Office now exists.¹²

The Law Courts building, facing south with its east side abutting Chancery Lane, brings together two huge quadrangles with the court rooms on an upper landing from what is known as Central Hall.¹³ From this hall there are several sets of stairways leading to the floors above, where there are corridors outside the court rooms and the judges' chambers. In Central Hall itself, there is usually little activity, but in the corridors above many men of law congregate and appear very busy and preoccupied. The din and confusion there is wholly unlike the quiet orderliness of the court rooms. This continues on incessantly except for intervals when a case is called for somewhere in the building. This goes on in the Royal Law Courts every day during term time.

THE JUDICIAL SYSTEM

The courts of highest rank in England are the House of Lords, the Judicial Committee of the Privy, the Supreme Court of Judicature, and Court of Criminal Appeals. However, when sitting as a court of appeals, the House of Lords holds its sessions in what is known as the "Gilded Chamber" in the House of Parliament, and the Privy Council in special quarters on Downing Street. All the other high courts are located in the Royal Law Courts building.

The consolidation of the old English Courts into the Supreme Court of the Judicature dates back to the Judicature Act of 1873. By an act in 1925, however, a further consolidation brought all courts into two main divisions, called the High Court of Justice, and the Court of Appeals. Within the High Court of Justice were incorporated the former High Court of Chancery, the ancient Court of King'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. At the present time the High Court has only three divisions, namely: The Chancery Division, which is the most important; the King's Bench Division, ranking next, and the Probate, Divorce and

11. The Domesday Book was the work of William I. It is called by Maitland (History of English Law) "the most magnificent of William's feats." It surveyed and listed, in A. D. 1085, all of William's new island possessions, for the purpose of taxation. The theory back of it was that all the land was held, immediately or mediately, by him, the one overlord. See 3 Wigmore, *Panorama of the World's Legal Systems*, 1056 (1936).
12. Essex Street, off the Strand at St. Clemens Dane, marks the site of the Essex House. At the end of the street, where steps lead to the Thames Embankment, may be seen what remains of the water gate to the old mansion. Essex was beheaded, privately, inside the Tower of London.
13. Burdick, *op. cit. supra* note 1, at 52.

Admiralty Division, the third in rank. There are also other tribunals of apparently slightly lower rank known as "Divisional Courts", whose function seems primarily to absorb the overflow of the High Court Divisions. These are all housed in the Royal Law Courts building.

Over the three main divisions above mentioned presides respectively, the Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate, Divorce and Admiralty Division, otherwise known as the Master of the Rolls. Twenty-seven associate justices preside in these different branches. In the Chancery Division there are six; in the King's Bench Division, where most of the cases are tried, nineteen, but only two in the third division, which has by far the least litigation. Still, there appears to be no reason why a King's Bench judge, for example, can not hear a Chancery case, or one involving a matter of probate, divorce or admiralty. In fact, such exchanges frequently occur.

In general, the High Court of Justice has both original and appellate jurisdiction in matters both civil and criminal. However, civil cases appealed from the Divisional Courts and the County Courts usually come first to the Court of Appeals, and as a rule are settled there. The Criminal Court of Appeals, now a branch of the King's Bench Division by the Consolidation Act of 1925, takes appeals from the Central Criminal Court of London, commonly known as "Old Bailey", and from the County criminal courts. Further appeals in all matters, both civil and criminal, may be carried on through the High Court of Justice to the House of Lords if necessary, but this is rare.

By way of more specific explanation of the jurisdiction of the High Court of Justice, its Chancery Division has jurisdiction in equity matters, both original and appellate, including foreclosures, partnership actions, trusts, specific performance of contracts, deed cancellations, partitions and patent matters. Any action in equity involving more than £500, (\$2,000.00)¹⁴ must originally come to this Division.

The King's Bench Division has original and appellate jurisdiction in all cases, civil and criminal, which were formerly in the exclusive jurisdiction of King's Bench, Common Pleas at Westminster, and the Exchequer. All suits involving £100 (\$400.00) or more, must originally be brought here.

The jurisdiction of the Probate, Divorce and Admiralty Division includes original and appellate litigation relating to wills, administration of estates, divorce, and all maritime matters. Prior to 1857 there was no absolute divorce court in England, but like the United

14. At present rate of exchange, 1 pound equals \$4.035.

States, divorce in England has become a common cause filed in the courts, and this Division is kept busy hearing them, except those heard by the King's Bench judges when on circuit. Admiralty cases are relatively few these days, and usually only one judge sits at such times.

As for the judges who preside over these courts, the Lord Chancellor, recommended by the Prime Minister and appointed by the Crown, holds the highest judicial position in the Realm. He receives for his services £10,000 per year. He is also a member of the cabinet, Speaker of the House of Lords, keeper of the King's Conscience, and custodian of the Great Seal. His powers and prerogatives are almost equal to those of the Prime Minister himself, except that the power of public justice is centered in the Home Secretary, whose duty it is to maintain order throughout the Realm. No death sentence is executed in England without the sanction of his office. Along with his other duties, the Lord Chancellor is a member of the Judicial Committee of the Privy Council. This body has the duty of hearing appeals brought from the Dominion. In the meantime, the Chancellor presides over the Chancery Division of the High Court. Time was when the Empire had a Vice-Chancellor, but this office has been done away with, and instead the Lord Chancellor is assisted by his seven Law Lords, and five Lord Justices of Appeal. The seven Law Lords are all members of the appellate court of the House of Lords, and the five Lord Justices are judges of the Court of Appeals. Most of the English judges are appointed for life by the Crown, but the Lord Chancellor holds his office only at the will of the Prime Minister. However, upon retirement he receives a pension amounting to half of his salary, or in dollars, something in excess of \$20,000.00 per year.

The salary of the Lord Chief Justice of the King's Bench is £8,000 per year; the Master of the Rolls receives £6,000 per year; the Law Lords £6,000 each, and the justices of the High Court £5,000 each. An appointment to the High Court or the Court of Appeals carries the honored rank of knighthood, and generous pensions are provided upon retirement.

There is no doubt that the British judiciary is the highest paid in the world. Yet, by the same token, judicial appointments go only to the most excellently qualified, as demonstrated by long, honorable, and outstanding service at the bar. To become the Chief Justice, the Master of the Rolls, or one of the judges of the Court of Appeals, fifteen years honorable standing as a barrister is necessary, and the qualification for the ordinary justice of the High Court requires ten years high standing as a barrister.

No particular qualification is fixed by law for the office of Lord Chancellor, but as a rule some exceptionally able barrister is

selected who has served in other high offices, such as foreign minister, or the office of attorney general, or solicitor general. Quite naturally, he is usually a member of the Prime Minister's party, besides being close to him in other respects.

The English Law Courts have a summer vacation the same as in this country. Following an ancient tradition the courts officially open immediately following the festival of St. Michael, which occurs on September 29th of each year. Consequently, on the 1st day of October, or the day set for the official opening, the judges, arrayed in their official robes, are conducted by the High Sheriff to Westminster Abbey to attend divine services.¹⁵ At the conclusion of these services they are then conducted to the Law Courts, where their approach is announced by two trumpeters dressed in ancient custom, and with the sounding of a march they proceed down the corridor as they did in former times at Westminster Hall. The Lord Chancellor, whose robes are of black silk with heavy bands of gold lace, is preceded by the macebearer, and the bearer of the purse, who are attired in white ruffed shirts, black velvet knee trousers and smart cutaway coats. Each wears a thin rapier at his side, and around his shoulders hangs the chain of his office. The mace is a highly ornate, gilded rod about five feet long, surmounted by a huge crown, and is a symbol of authority. As for the purse, it is a richly decorated bag with no present day use except to satisfy an ancient tradition. In early days it bore the Great Seal, which the Lord Chancellor was required to have with him at all times. Following the Lord Chancellor comes the Lord Chief Justice and the other justices according to rank, attired in scarlet robes with ermine capes. On these state occasions all wear their full-bottomed wigs which hang down over the shoulders in front below the arm pits, but on working days their wigs are much smaller and less formal. Every day robes are also less formal and ornate, and all are of a dark color. The opening ceremony ends by each justice stopping at his particular chamber in the corridor above Central Hall.

While there have always been assizes in England, the Act of 1925 improved the situation. At present there are seven Assize Circuits throughout greater England and Wales, and court is held in each circuit at least twice a year, known as "the winter" and "the spring" assizes. The old ecclesiastical terms have been done away with, which were Hilary, Easter, Trinity and St. Michaelmas. No doubt all American law students will remember the mention of these terms while studying the old English cases. All assize sittings are of the High Court, and have the same jurisdiction as the London courts

15. Pepy's Diary, October 23, 1660: "I met the Lord Chancellor and all the judges riding on horseback and going to Westminster Hall, it being the first day of the Term." 1 Wheatley, *op. cit. supra* note 7, at 247.

of similar rank. Ordinarily, two of the judges of King's Bench are commissioned for this duty, and receive £7 per day for expenses. However, if the assize load is heavy, County Court judges and barristers with the rank of King's Council may be appointed to sit, and are called "commissioners", but the same dignity, decorum and pomp is maintained at assize time as characterized by the London Courts. When a justice of the High Court arrives to hold court in one of the assize towns he is usually met by the High Sheriff of the district and the local official in full regalia. He is escorted to his place of lodging with the blare of trumpets, and later at the court house he is met and welcomed by "His Grace the Mayor", and the Aldermen. However, the local people are usually little impressed when a mere Commissioner arrives, and he is often greeted with little ceremony.

OLD BAILEY

Old Bailey, or the presently known Central Criminal Court, is a study by itself, with a colorful and absorbing history of 600 years. Tradition, which the British people hold with great reverence, is deeply grounded in the everyday existence of this ancient court. Since the Central Criminal Court is a branch of the King's Bench Division of the High Court, its jurisdiction is superior and its power of redress unlimited. At the same time, as has been said, appeals may be taken as high as the House of Lords, which has been done in many instances.

If one should proceed eastward from the Law Courts down Fleet Street a few blocks, he will come to Old Bailey Street, which leads off to the right just at the foot of Ludgate Hill where stands the lofty church of St. Pauls. At the junction of Old Bailey Street and Newgate Street he will find Old Bailey, with Newgate Prison adjoining. Newgate is a prison famous in history for its one-time cruelty, its barbarous torture chambers, and its numerous hangings. And hangings were numerous when it is realized that little more than a century and a half ago over two hundred crimes, great and small, called for the death sentence. Even before the existence of Old Bailey, Newgate Prison spelled agonizing terror to wrongdoers who were so unfortunate to be placed behind its dingy walls. But to the credit of the British people, reforms have completely done away with all its horror, and today Newgate is a modern, well regulated and humane prison without torture or cruelty. At the turn of the century a new Old Bailey and Newgate Prison were constructed, and formally opened in 1907 in the presence of King Edward VII. Both buildings are clean and imposing, which can not be said of the former structures.

Time was when the hapless victims of Old Bailey were almost daily carried to their doom. At St. Sepulcher's Church¹⁶ close by, they

16. Of interest to Americans, St. Sepulcher's Church contains the remains of Captain John Smith, once Governor of Virginia.

received their last rites; at the Crown Inn of St. Giles they drank their last bowl of ale,¹⁷ and finally were carted to a wilderness known as Tryburn Hill. Near this spot now stands the Marble Arch at the intersection of busy Oxford Street and swank Park Lane in fresh and airy West London. Here, from Tryburn Tree, they were hanged in the sight of a morbid, yelling and heckling mob. About 1783, as London spread westward, Tryburn was abandoned as a place of execution, and afterwards hangings took place just outside "the Debtor's Door" at Newgate Prison. This door opened on Old Bailey Street in plain sight of Ludgate Hill, which furnished room for the attending rabble to hoot and shout as the gruesome proceedings took place. On some occasions the victims were quartered and drawn, which produced the revolting and hideous spectacle the mob sought, when the heart was torn from the breast and, dripping with blood, exhibited to the eager onlookers. Public hangings were done away with in 1868, and nowadays the only indication of an execution going on in the prison is the existence of a black flag at half mast from the prison roof.

The striking thing about a trial at Old Bailey is the simplicity of the procedure, and yet the thoroughness with which the case is handled. Juries are called every day, and the selection of a panel is done in somewhat the same manner as in this country, but with greater facility and much less harangue. Both the accused and the Crown have thirty-five peremptory challenges in treason cases, and twelve for felonies, but it is seldom that either side exercises the privilege. The first twelve men called to the jury dock usually constitute the jury, with both sides readily signifying their satisfaction. When the jury is sworn the case quickly gets under way, and even the most important cases seldom last more than a few hours. Both the direct and cross examinations are short and to the point, with few objections made on either side, and never any haggling over points of law. To the American lawyer some of the questions on direct examination may appear a bit on the leading side, but never unfair or obnoxious. Another point of interest is the fact that Old Bailey has no public prosecutor. Upon inquiry it may be learned that a criminal prosecution may be instituted by any private person, or the police, who usually engaged the services of a barrister. In serious criminal proceedings, however, it can become the duty of the Director of Public Relations, or the Attorney General, to see that the case had proper attention. At the conclusion of a trial the jury is briefly but thoroughly instructed, and as a rule does not tarry long in coming to a decision. If the accused is found "not guilty" he is released at once from

17. The residents of St. Giles relate that the old Crown Inn was just off High Street close to what is now known as "Bowl Alley." This alley got its name by reason of the doomed men drinking their last ale there. See also, Burdick, *op. cit.* supra note 1, at 122.

the prisoner's dock, but if found "guilty", the presiding judge immediately announces the penalty from the bench.

If the indulgence of one of the traditions at old Bailey may be permitted, it is interesting to relate that an early morning visitor to the court will likely observe a presiding judge taking with him to the bench a small bouquet of flowers. This strange custom comes from early times when the stench from Newgate Prison was so vile that fragrant flowers were brought to the court rooms to counteract the odor. While there is no bad smell in the rooms now, it is still part of the routine, and symbolic of ancient days, for the judge to carry a bouquet.¹⁸

INFERIOR COURTS

The inferior courts of England are divided into the two ordinary classes, which are the civil and the criminal. The civil tribunals are called County Courts, and the Criminal, the Petty Sessions and the Quarter Sessions. In very early times the County Courts were known as Sheriff's Courts, but by an act passed in 1846 the present courts were created.¹⁹ These do not necessarily exist in every county, but in such districts as may be designed by law. These bodies have monthly sessions in the County Court House, and are presided over by the County Judge, appointed by the Lord Chancellor. A county judge must be a barrister of at least seven years standing, and draws a salary of £1,500 per year. Each court has a register or clerk who must be a solicitor of at least seven years standing, and if needed, an assistant register. While the office of County Judge is an important one, he is not addressed as "my Lord", as in the high courts, but as, "your honor".

The jurisdiction of these courts is in actions not involving over £100, or \$500.00, in law cases, and £500, or \$2,000.00 in equity cases. In many respects the County Courts of England are not unlike our state district courts, and as a general rule try about the same class of cases. These cases may be appealed to the High Court, or any judge thereof may remove them by certiorari to the High Court. Juries are frequently called for County Court sessions, and in them solicitors have the right of audience. Solicitors are never permitted the right of audience in the higher courts.

The county criminal courts are of the justice-of-the-peace category, and called the "Petty Sessions" and the "Quarter Sessions". In England the term "magistrate" is synonymous with the term, "justice of the peace", and is the title given to the judges of these courts. Since these magistrates are usually laymen appointed to their positions, the

18. Ibid at 117, 118.

19. For a full discussion of the decline of the old local courts of England and the rise of the new county courts, see 1 Holdsworth, op. cit. supra note 4, c. 2.

title of "magistrate" has a very restricted meaning in England. The term does not carry the same dignity as in France, for example, where a magistrate is a person holding a very high office. However, appointment comes from the Lord Chancellor himself, upon recommendation of the County Committee. This is a board very similar to our Board of County Commissioners. Under these circumstances the British magistrate is always a man of high standing in the community. He ordinarily considers his office with such regard that his work is usually very thoroughly done.

The Petty Sessions has a summary jurisdiction somewhat the same as our justice courts, but a defendant has a right to trial by jury if the possible punishment exceeds a prison sentence of three months. The procedure is by way of ordinary complaint which the prosecuting witness may file in person. It may also be filed by his solicitor, but all of this is much more informal than in our country. If the accused pleads guilty, or waives trial before the Quarter Sessions, the magistrate may fine him up to £100, or about \$400.00.

Quarter Sessions, the next higher criminal court, meet quarterly at the county court house, or town hall, and has both original and appellate jurisdiction. At these sessions all the commissioned county magistrates of the district meet to hear cases, or appeals from Petty Sessions. Two magistrates may constitute a quorum, with the County Chairman acting as presiding officer, although he has no vote. All Quarter Sessions have a recorder who is appointed by the Crown, upon recommendation of the Home Secretary. He receives a salary from the district, or in the larger communities, from the borough, and must be a barrister of at least five years standing. He holds his office during good behavior. In the larger centers the office of recorder is well paid and much sought, but the requirements are that the barrister must have at least ten years standing. In large centers the magistrates also receive salaries, but they are still laymen for the most part.

A defeated party may move for a new trial in any Quarter Sessions, or appeal to a Divisional Court, but unless the amount involved is over £20 (\$80.00), there can be no appeal except by leave of the High Court.

In metropolitan London police magistrates take the place of the county magistrate courts. During World War II there were thirty or more of these magistrates sitting in twelve police courts throughout the several counties of greater London. The Bow Street Police Court is the best known of these, as well as the oldest, and by far the busiest. Bow Street is situated in London's teeming East Side, and daily before the Bow Street court is brought the floaters, the vagrants, and the human derelicts of the world for drunkenness, disorderly conduct, petty thievery, and all the other offenses common to a police court.

THE HOUSE OF LORDS AND PRIVY COUNCIL

In the previous pages of this paper some mention has been made of the House of Lords as the highest court in the kingdom, and the Judicial Committee of the Privy Council as the court of last resort for appeals from the Dominion.

The House of Lords is the supreme court of appeals for Great Britain and Northern Ireland. The strange thing concerning the House of Lords as a court of appeals is the fact that the Judicature Act of 1873 expressly declared that no judgment or order of the courts designed by this act should be appealed to the House of Lords or the Privy Council. However, before the act went into effect two years later, a change in Government and a new Parliament amended the act and defeated the plan to take from those ancient courts their judicial prerogatives.²⁰ Accordingly, there was left both the High Court of Justice and the House of Lords as courts of appeal with tremendous prerogatives, when perhaps the High Court should be sufficient—at least, that is the view taken by many well informed barristers.

Leave to appeal to the House of Lords from the courts of appeal is usually done by permission, and applications for permission are passed upon by a committee designed for that sole purpose. More often than not the leave is granted, and upon an appointed day the printed record of the case appealed comes before this highest court in the *Gilded Chamber* of the House of Lords. Two barristers on each side are allowed, and they make their arguments in proper turn.

When the House of Lords is sitting as an appellate court only the Law Lords are permitted to preside. Sometimes the Lord Chancellor is present, but if he is not for any reason, his place is taken by his deputy as Chief justice, or even by a ranking Law Lord in attendance. At least three Law Lords must be present to hear an appeal. At these sessions no robes or wigs are worn except by the barristers, and the entire proceeding is very informal, although highly dignified. When the arguments have been made and the record has been read and discussed by the Lords, the speaker puts the motion, "shall the judgment be reversed?" If the vote is "aye", the judgment is reversed; if "nay" it is dismissed. There is never any particular hurry in this high court, and sometimes a case can go on for several days, but regardless of the time, the appeal receives a thorough consideration. Visitors may attend these sessions, but they rarely do.

The Judicial Committee of the Privy Council is made up of citizens of Great Britain who have attained high rank, and whose judicial ability and character has been proved by long and honorable service in public life. The members of the committee receive no salary, but an appointment is highly prized, and carries the title of "Right Honor-

20. Burdick, *op. cit.* supra note 1, at 176.

able". Appeals from Canada, Australia, South Africa, and from all the overseas colonies of Great Britain are considered and passed upon by this body. The presiding officer, in the absence of the King, is the Lord President of the Council appointed by the King, and as a rule five or six of the committee members sit with him when appeals come in. All appeal are by leave of the council. They are by right of statute, called "appeals as of right", and all others, "appeals by special leave". When the right is granted, committee sessions, similar to those of the House of Lords, are very informal with only the barristers robed and wigged. Here again, the record is printed and lodged with the recorder a certain length of time prior to the hearing. Upon final decision the report of the committee goes to the King as an humble entreaty that the judgment be approved or disapproved. Committee sessions are held in the Foreign Office Building on Downing Street, which extends to No. 10, the famous quarters of the Prime Minister. Visitors are allowed and often attend.

The Privy Council is almost as old as England itself, but in early times it was known as the Great Council or the "Magnum Concilium". For centuries it existed with no statutory status, but in 1833, it was finally recognized by Parliament.

SOLICITORS AND BARRISTERS

To a considerable extent in this paper the English courts and judges have been discussed, but who is the English lawyer? To start with, as perhaps is known in a general way in this country, lawyers are of two separate and distinct classes in England, namely; solicitors and barristers. As for the main difference, it might be said that in England the solicitor is the "office lawyer", and the barrister the "trial lawyer". This is not intended to be an exact comparison. At the same time it will serve to give some idea as to the general functions and activities of each branch; although, the training, duties, ethics and daily lives of those in each branch are entirely different.

Solicitors, as before intimated, have no standing in the higher courts of England and cannot be appointed to any of the judgeships. They wear no wigs nor robes, have no membership in the Inns of Court, and strictly in line with legal ethics, are not even supposed to be intimate with barristers in a social way. Reasonable social contact is not frowned upon, but it would be considered very unethical for a barrister, for example, to entertain a solicitor in a lavish manner more than once at least. Clients of solicitors are the ordinary citizens and corporations of Great Britain, for whom they handle all legal affairs except the trial of cases; but, when litigation is required in the conduct of a client's affairs, the solicitor must retain a barrister. The solicitor will draw the pleadings, look up the law, contact the witnesses and line up the evidence, but he is denied the privilege of trying the

case. However, three-fourths of the legal work in Great Britain is done by the solicitor. While he may be denied the right to appear as an advocate in the courts, his work is very important, and he is usually looked upon with great respect in the community. He must be relied upon for the proper drafting of deeds, mortgages, contracts, articles of corporation, wills, and all other legal papers, which, of course, requires skill and experience; and besides he must be a leader in local and civic affairs.

To become a solicitor, a young man must possess what would be an ordinary high school education in this country and pass an examination covering ordinary high school subjects. He must then act as a clerk in a solicitor's office for five years; but this period may be reduced to three years if the aspirant has a degree from some recognized or accredited university. During the period of his clerkship he must read certain books required by an act of Parliament, and spend a year of legal study in a school prescribed by the Law Society of Solicitors. Then, upon passing the examinations prescribed by the Society, provided he has attained the age of twenty-one years, he may be admitted to practice as a solicitor by the Master of the Rolls. His name is placed upon the rolls of the Law Society, the present one of which was founded in 1825. There is no act or custom in Great Britain to prevent a woman from becoming a solicitor, and some of them do. The writer has had the privilege of knowing some very highly rated woman solicitors.

To become a barrister the education is perhaps no more difficult, but certainly more colorful and more interesting. With the same preliminary education required of those who would become solicitors, the aspirant must enter one of the four Inns of Court, which are, namely: Lincoln's Inn, Gray's Inn, the Middle Temple, and the Inner Temple.²¹ At his Inn he must pursue legal studies for twelve terms, of three months each, or four terms annually, which are Hilary, Easter, Trinity and Michaelmas. Presence at his Inn is marked by the dinners he is required to attend while a student, which ordinarily amount to four during a term, or thirty-six during his entire course of study. According to the regulations he must be present for Grace before dinner and also during and concluding Grace. However, some students of the Inns of Court are also students taking law subjects at Oxford or Cambridge during the same period, and the number of dinners required to these is only three during a term. This particular class of students is not required any regular course of study at his Inn, but at examination time they are supposed to be prepared, as some of them are. However, by far the greatest number of students at the Inns are college grad-

21. See 1 Wigmore, *op. cit. supra* note 11, at 1085. Here he gives Thackeray's description of the Temple where Arthur Pendennis was a student, and depicts the daily life of the embryo barrister a century ago. There has been little change since that time.

uates before they enter, and live at the Inns during their entire course of legal study. While some of the large universities in England may afford lectures in the legal branches, there are no law schools in Great Britain other than the Inns of Court.²²

After the required examinations have been passed, which are by no means simple, the aspirant is "called to the bar", not by a court, but by his Inn. He signs no roll and takes no oath, but is always amenable to his Inn, and must live up to a very strict code. When a student is "called" he becomes an "utter barrister" as distinguished from a "bencher", who attains that title after long and noteworthy service to his Inn. The term "utter barrister" comes down from ancient times when certain students at the moots²³ had attained such proficiency as to allow them seats on the outer or "utter" benches, leaving the inner ones for the beginners. However, in still earlier times at Westminster Hall, when students were apprenticed to the courts, the inner benches closest to the judge, were reserved for the more advanced, and the less advanced students in the rear, were actually the outer ones. In those times a call to the bar came from the judges, and as early as the thirteenth century those fortunate enough to be called were known as "serjeants-at-law". According to ancient records early apprentices could not be heard at the bar, but in the fourteenth century this right was afforded the more advanced, and in the sixteenth century this right was afforded the more advanced, and in the sixteenth century the term "utter barrister", as used in the Inns of Court, superseded that of apprentice.²⁴

The serjeants-at-law alone were eligible to become judges, and they were looked upon as men of very high distinction. At one time they had an Inn of their own in Chancery Lane, but this went out of existence with the order of serjeants in 1877. A distinctive part of the serjeant's costume was the "coif", which was a round, disc-like white silk head piece held in place by a black velvet skull cap. Before it went out of existence, the society of serjeants was sometimes known as "the order of the coif". Long after 1877, the year the order held its last meeting, old members clung to its traditions, and judges, who had been serjeants, wore a small circular piece of black silk on their wigs in commemoration of the coif.²⁵

Upon becoming an utter barrister, the holder of that title may

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22. While a visitor at Oxford University, the writer was informed that the lectures in law given both at Oxford and Cambridge are alone sufficient to prepare the ordinary student for the law examination given at the Inns of Court. This he also learned from barristers of Lincoln's Inn.
 23. Mooting at the Inns of Court is described by Wigmore as "a rigorous form of educational method, which by the genius of a modern American, Langdell, has been restored into universal practice in law schools—occupied a formal and impressive status in the life of the Inns." 3 Wigmore, *op. cit. supra* note 11, at 1069. The moots at the Inns, long in disuse, have been restored.
 24. Burdick, *op. cit. supra* note 1, at 76-78.
 25. Lord Lindley who died in 1921, was the last survivor of the Order of the Coif. *Ibid* at 78.

then appear in the English courts wearing his wig and robe, but must never appear without them. The robe is of black wool stuff material and comes down to the ankles, with flowing sleeves and an ample white cravat. Wigs were first worn by barristers more than two hundred fifty years ago, during the reign of King Charles II, when they were very much in vogue every place, but especially on the continent.²⁶ In those days the Inns of Court were the fashion leaders and thereby readily accepted the continental fad, but have never laid it aside. The wig is white, and usually made of horsehair. In shape, the hair is brushed back from the forehead in a high roll, with two short queues in the back tied together with a white ribbon. Above the ears on each side are three rolls, and five in the back coming down to the queues. From the looks of some of these wigs on the older barristers it is apparent they have been worn a very long time, since some of them have a very ancient aspect. Likewise, some of the robes are not new in appearance, but look as though they had experienced many a legal battle. However, to the credit of most barristers, their court appearance is exceedingly neat and entirely unrumpled. Upon inquiry, the writer learned that the cost of a wig and a good robe is quite expensive which probably accounts for the fact that some barristers do not often replace them.²⁷

After the young barrister is called to the bar, for a time he often becomes a clerk for an older barrister, and during that period is called a "devil". Later on, when he strikes out for himself, he becomes a "junior". He will remain a junior unless he attains enough prominence to be made a "King's Counsel" by the Lord Chancellor, which of course is a very coveted rank. He is then presented a silk robe as the badge of high honor, and becomes known as a "leader". In the trial of an important case a leader always retains a junior as his assistant, and may also have his "devil" to carry the books he needs and to run other errands.

THE INNS OF COURT

The Inns of Court were established in the latter part of the fourteenth century and the early part of the fifteenth century. Lincoln's Inn claims to be the oldest, but the available records show Gray's Inn to be established in 1391, with the Middle Temple appearing in 1404. It is accepted that the oldest records of the Inns were destroyed at the time of the Wat Tyler rebellion in 1381.²⁸ Lincoln's Inn is claimed to have been founded before then, but modern research gives the date as 1422, with the founding of the Inner Temple in 1440.

26. Jeaffreson, *A Book About Lawyers*, c. 21.

27. The cost of a wig is \$40.00. Burdick, *op. cit.* supra note 1, at 84.

28. Wat Tyler was the leader of rural laborers and poorer class craftsmen in a revolt caused by the economic distress following the Black Death. Great damage was done by the rioters in London from June 10th to 15th, 1381. The best account of the rebellion of Wat Tyler is the "A Nominalle Chronicle of St. Mary's York," printed by Trevelyan, in *English History Rev.*, (1898).

The Inns were so named because they were actually hostels in early times, and because the occupants were associated with the courts, the term Inns of Court became established.²⁹ Even at the present time some of the barristers live at their Inns and have their chambers there. Each Inn has a very large and current library for the use of its members, and numerous social and educational advantages are afforded as well. During early times the Inns of Court were first in everything—culture, influence, fashion, the arts, and advanced thinking. Then, as now, all members were not barristers. Any man or woman of culture and high standing could then, as now, be accepted; and, strangely enough, acceptance does not depend upon British citizenship. Apparently, a citizen of any nation, man or woman, may be a member of one of the Inns so long as he or she has the qualifications of character and education. No student, however, can be called to the bar until he or she has reached the age of twenty-one.

From the writer's experience, Lincoln's Inn was the most hospitable; Gray's the most picturesque and the two Temples the most interesting historically. They were all operating during the war, but the two Temples and Gray's Inn had suffered a terrific bombing, and a number of the ancient buildings of both were not open to visitors. The greatest historical interest connected with the Temples is the fact that they were founded as the home of the Knight Templars. Chaucer was once a student of the Middle Temple. It was also here that Shakespeare's own company, of which he was a member, in 1602 presented the premier performance of the "Twelfth Night" before Queen Elizabeth herself. Both Coke and Littleton were students at the Inner Temple, as was Lord Nottingham, "the father of Equity". However, all the Inns have had their great men. Sir Thomas More, Lord Mansfield and Erskine were students and members of Lincoln's Inn, and Gray's Inn can boast of Lord Bacon, Henry Cromwell, Oliver Cromwell's youngest son, and John Bradshaw, who was president of the court which tried the ill-fated Charles I at Westminster Hall.

All barristers are exceedingly proud of their membership in the Inns of Court, and most of them are well up on the history of at least the one they belong to. The Inns of Court are always a source of great interest to any lawyer, and especially an American lawyer.

WORK IN THE LAW COURTS

With some background knowledge of the law courts and English lawyers, how do they handle cases which go to court? To begin with,

29. In addition to the Inns of Court, in a very early day there were also Inns of Chancery. Sir John Fortescue, (1531-1607) says in his treatise, *De Laudibus Angliæ*, that the Inns of Court were for the more advanced students, and Inns of Chancery taught the elements. There are no longer any Inns of Chancery. Clifford's was the last to go. See Burdick, *op. cit. supra* note 1, at 194, 195.

of course, the client has talked the situation all over with his solicitor. If litigation appears necessary the solicitor will then get out what now is known as the "originating summons", but still often known as the "writ of summons". This instrument is something like our summons, except much more simple and direct. Many times the plaintiff's "claim", the instrument we call "petition" or "complaint", is written on the summons, and both are served at the same time; but if the claim is involved it is written separately and served with the writ. These instruments are then filed with the recorder of the appropriate court, and may be served anytime within one year. Ordinarily they are not served at once, but the defendant is notified of the situation and given an opportunity, through his solicitor, to make a settlement of some kind. If the settlement is made, the writ is dismissed.

However, if it becomes necessary to serve a writ, the recorder is notified, and service is made by some person appointed by the recorder who files his return. The defendant then has fourteen days to answer, and the plaintiff fourteen days to reply. The English procedure has abolished demurrers and many of the old motions which might delay the case, so with the reply the opposing solicitors usually call upon their barristers, and the matters first go to a master in the particular branch the case falls in.³⁰ Here points of law may be raised, which the master attempts to straighten out. This includes making a claim more definite and certain, and striking out any matter not appurtenant to the issue. In fact, the entire case goes through a sort of pre-trial, where the issues are narrowed down to the specific matter in dispute. By the time the case comes before the court the testimony of many witnesses has been agreed upon, who do not have to appear, and many points of law are also put out of the way in the same manner. Consequently, the actual trial of the case is usually very short and direct, although very important cases may take considerably longer.³¹

On the day of trial the opposing solicitors appear with their witnesses, but the barristers take charge. Very often the trial barrister has never seen the witnesses since all of that has been done by his junior, if done at all. The solicitors indicate to their barristers who should be called first, and frequently suggest points to be brought out in the testimony. However, any points of law are first discussed with the judge. If books are needed they are secured from the well lined shelves along the high walls of the court room. Ordinarily, the brief of a well recognized solicitor is all that is necessary. Of course, if a jury is required, that matter is first taken up, but it appears that

30. The rules of procedure now used in the English practice were introduced in 1883. At that time the English practice became somewhat different than our own. The English rules of practice were again amended in 1938.

31. Many of these matters were explained to the writer by solicitors residing in Watford, England, near where he was stationed.

juries are not common in the Law courts when considering the many cases tried.

In any event, the trial moves along very quietly, and usually without interruption. Objections are seldom if ever made, but if made the objecting barrister may simply say in an ordinary voice, "I don't think the question is proper." At that juncture the judge will look up from his busy note taking and say in the same conversational tone, "I think the question is quite proper," or "Yes, I believe the question should not be asked."³² With this he returns to his note taking and the case proceeds. There is a calm dignity about a trial in the British Law Courts which, to say the least, is somewhat out of the ordinary to the American visitor. Lacking rivalry and showmanship, which is sometimes exhibited in our American courts, one might gain the impression that neither barrister is trying very hard. Yet, as a rule, the case does receive a very thorough treatment. Even on cross examination the situation appears almost friendly, and surely always very respectable and calm. If the barrister has reason to doubt the statement of a witness he will likely say, "I suggest, Mr. so and so, that the real situation was this or that." If the witness desires to stick by his story, no further issue is made of it at the time; although, reference may be made of any false testimony in the argument to the court. If arguments are made, there is no oratory, and no gestures. In a cordial but dignified manner the barristers sum of their respective sides and take their seats. However, the plaintiff's barrister may answer his opponent's arguments, and sometimes does. The same decorum is used before a jury.

Until very recently the British Law courts had no court reporters, and even yet the judge's notes, which he is busy taking during the trial, are mainly relied upon in making up a record. If a case should be reported, and a question should arise as to the correctness of the shorthand report, the judge's notes would take precedence. At the conclusion of a trial the judge usually declares a recess while he has time to study his notes. Following the recess his decision is usually announced in open court. In the event of an appeal the case is carried up to the next highest court on a record somewhat the same as in our courts, although the procedure is much simpler.

To evaluate the difference in British procedure with ours, a long discussion would become necessary. First of all it must be considered that the English have been trying cases in their courts for over seven hundred years, while we have had the experience of less than two hundred. Secondly, there are vast differences in the temperament, customs, education, and everyday being of the British people as compared to ours. And thirdly, which is most important, reform in our

32. Burdick, *op. cit. supra* note 1, at 91.

country must come through the legislatures of forty-eight separate states, while in Great Britain Parliament alone speaks for everybody at the same time.

In comparing our procedure with theirs, the solicitors and barristers the writer had the pleasure and privilege to converse with, found many improvements in our procedure over theirs. In particular, many like the situation in our country where the American lawyer is both solicitor and barrister. It was pointed out that nowadays their solicitor-barrister system causes confusion, and no doubt expense beyond what is often reasonable. Most of them were proud of the dignity and decorum of their courts, but believed the American District or Circuit Court was really closer to the people. In brief, some members of the English bar were positive in their statements that the American system may some day be adopted in England. This, however, will likely not come soon, even with the present trend in England to modernize many of their institutions in the American way.