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## **Gloucestershire Peace Rolls: The Sessions of the Peace**

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WILLIAM YONGE (d. by 1362), was named justice of the peace in Gloucestershire in 1361 but was removed shortly after his appointment; he may, however, have sat at a session held in May 1361. He was also appointed to other local commissions and represented Bristol in parliament in 1360-1361.<sup>84</sup>

WILLIAM HEYBERERE (d. by 1391), burgess, of Barton street, Gloucester, represented the town in parliament during the years 1360 to 1390 and the county in 1380 to 1388. In 1377 he was appointed to supervise repairs at Gloucester castle and also tax collector for the town. In 1381 he was tax surveyor and in 1384 tax collector for the county. He was named justice of the peace for the shire from 1380 to 1384 and sat during the years 1384 to 1386.<sup>85</sup>

#### IV THE SESSIONS OF THE PEACE

On many matters relating to the sessions of the peace held in Gloucestershire in the second half of the fourteenth century information is scanty; on others it is entirely lacking. Since all the rolls now extant were sent before the king's bench, some if not all of them being hastily prepared for its use, they contain not the full business of the sessions but, as has been said, only the undetermined indictments that were called for by the king's bench. Such facts as are available are given below under the appropriate headings.

#### DATES AND PLACES

Definite information on the dates and places of all the sessions of the peace whose records are enrolled below cannot be obtained. Consequently it is impossible to determine to what extent the justices sat the four times a year prescribed by law. Sessions before the passage of the statute of 1362 should have been held on 25 March, 20 July, 29 September and 6 December.<sup>86</sup> As the records

<sup>84</sup> *CPR* 1359-1364; *CCR* 1360-1364, 285; *Members of Parliament*; KB 27/404, Rex, m. 12. For his removal from the peace commission of 1361 see *CCR* 1360-1364, 285; *infra* p. 58.

<sup>85</sup> *CPR* 1374-1392; *CCR* 1389-1392; *CFR* VIII, 390; IX, 249; x, 69; *Members of Parliament*; Roll II, no. 15; *infra* App. I.

<sup>86</sup> 25 Edward III, st. 2, c. 7.

of the years 1361-1363 are not enrolled under the separate sessions, neither the dates or the number of them are known. The first one was presumably held sometime after 20 March 1361, the date of the commission under which the justices were acting, the last one shortly after 23 December 1362, the date of the latest offence presented.<sup>87</sup> One of the sessions may have been held on 27 May 1361.<sup>88</sup> Although a new commission had been issued for Gloucestershire on 21 November 1362 it evidently did not reach the justices until sometime early in 1363, if the heading on the roll is to be trusted. Lord Gilbert Talbot, the presiding justice at the 1361-1363 sessions, was not reappointed on the new commission.<sup>89</sup> The place of the sessions is not given. Probably some, if not all of them, like the session of 27 May 1361, were held at Gloucester.

By a statute passed in the autumn of 1362 the justices of the peace were still required to sit four times a year though they were given more leeway as to dates. Sessions were to fall in the utas of Epiphany (6-13 January), in the second week of Lent, between Whitsunday and 24 June, and in the octave of Michaelmas (29 September-6 October).<sup>90</sup> The extant records would seem to indicate that during the remainder of the fourteenth century the Gloucestershire justices did not usually sit four times a year. Since, however, these records are probably incomplete, and there is evidence of more sessions in 1397 than appear on the formal enrollment, the frequency of the sessions cannot be determined with any accuracy from the material at hand. Those whose dates are known were more often than not held within the legal periods. The number of times a session was held late in the year near the old statutory date, 6 December, may be noted.<sup>91</sup>

According to the heading on the 1378 roll it contains

<sup>87</sup> *supra* p. 16; Roll I, no. 23. For dates of the sessions and the names of the justices sitting see App. I.

<sup>88</sup> KB 27/404, Rex, m. 12.

<sup>89</sup> CPR 1361-1364, 293.

<sup>90</sup> 36 Edward III, st. 1, c. 12.

<sup>91</sup> A similar practice was common in Warwickshire; Kimball, WS, App. II.

record of a session of the peace held at Gloucester on 25 January 1378. Internal evidence, however, indicates that the justices sat at least once more, probably sometime during the summer, at any rate before the coming of the king's bench to Gloucester in Michaelmas term 1378. There are enrolled several offences which were committed in the first six months of 1378. Also in the order to the sheriff to summon the juries for the session of 25 January 1378 the hundreds to be represented were listed.<sup>92</sup> The presentments that follow were made not only by jurors from these hundreds but also by others. Thus it would seem that the roll contains record of at least one other session held in the late summer or early autumn.

For the sessions of 1384-1386 and 1395-1398 the information as far as it goes is more definite. During these years, with a single exception, there is proof of but one, or at the most two, sessions a year. Only for 1397 is there evidence of the full quota of four sessions. The dates of two of these, 18 June and 24 September, are known from a reference to them in an account of a trial. The fact that several of the offences enrolled as presented at the session of 22 March 1384 were committed shortly after that date would indicate that another session may have been held later in that year. Since only those records have been preserved which contain unfinished business called for by the king's bench it is possible that additional sessions of which there is no record were held during all these years. In other words, the lack of positive evidence does not prove that the justices of the peace in Gloucestershire did not regularly sit four times a year. Except for two sessions at Sodbury in 1385 and 1386 the justices sat at Gloucester.

#### JUSTICES PRESENT

Information regarding the justices who were present at the various sessions is also indefinite. In some cases the name of but one of the justices was recorded; in others, three, four or five men sat; in still others, three were named but more were said to have sat with them. The

<sup>92</sup> *infra* p. 82.

personnel was scattered, at least 15, possibly 18, different justices having served. At all but one of the seven recorded sessions held between 1361 and 1386 a peer was present. The only justice known to have served frequently, and the only lawyer sitting was John Cassy, of Deerhurst, Gloucestershire, who was chief baron of the exchequer from 1389 until his death in 1400.<sup>93</sup> He was present at most, if not all, of the recorded sessions of the peace held in Gloucestershire after 1384. It is interesting to note that Sir John de Berkeley, sheriff of Gloucestershire, sat as a justice at the session of 3 June 1398.<sup>94</sup> He did not, however, join with the other justices in attesting the transfer of their records to the king's bench, no doubt because he was responsible for giving them the order for the transfer.<sup>95</sup>

#### THE JUSTICES' OATH

The oath taken by the justices of the peace before 1380 was similar to that taken by the judges of the upper courts. In 1380 an elaborate oath was adopted which was considerably shortened in 1390. Of the taking of these oaths by the Gloucestershire justices of the peace there is no positive information. Miss Putnam has, however, found a copy of the oath of 1390, which would have been taken by the Gloucestershire justices appointed in 1394 and 1397, with a writ commissioning John Cassy to administer it to the justices of the peace in the counties of the eastern circuit. Cassy was justice of assize and justice of the peace for these counties.<sup>96</sup> Since he was also a member of the Gloucestershire peace commissions of 1394 and 1397 and sat at all the recorded sessions held under them it is highly probable that he was appointed to administer the oath to the other justices sitting with him.<sup>97</sup>

<sup>93</sup> *supra* p. 25; *infra* App. I.

<sup>94</sup> On the sheriff as a justice of the peace see Putnam, *Proceedings*, pp. lxxx-lxxxi.

<sup>95</sup> *infra* pp. 153, 159.

<sup>96</sup> Putnam, *Proceedings*, pp. 8-9. See also *ibid.* pp. lxxxvii-lxxxviii. For the counties in the various circuits of assize see *supra* p. 24.

<sup>97</sup> *infra* App. I.

## CUSTOS ROTULORUM AND QUORUM

With regard to the part taken in the work of the sessions of the peace by the *custos rotulorum* and the quorum there is little evidence.<sup>98</sup> Only the *custos rotulorum* of the 1377 commission, the earl of Stafford, is known; the office had not yet been created in 1361 and the *custodes rotulorum* for the four later commissions cannot be identified because the commissions were not enrolled on either the patent or the peace rolls.<sup>99</sup> The earl of Stafford did not sit at the single session of the 1377 commission of which there is record.

The commission of 1361 had no quorum. The quorum of 1377, as was customary at this period, was composed of the two lawyers on the commission, Roger de Kirketon and David Hanmere.<sup>100</sup> There is no record that they sat. The large quorum of 1384 included three peers, three lawyers and three gentry.<sup>101</sup> Because under this commission the presence of a member of the quorum was required for the hearing of presentments one of the peers, and probably John Cassy, one of the lawyers, attended the five recorded sessions. The other members of the quorum did not sit. The quorums of 1394 and 1397 each contained four men, of whom three were lawyers<sup>102</sup> and one a member of the gentry. Cassy sat at every recorded session representing the lawyers; the member who belonged to the gentry at all of those for which the name of anyone but the presiding justice was recorded.

These quorums varied in both membership and function. An analysis of them will show a close relationship between the composition of the quorum and the powers the justices of the peace were expected to exercise under a given commission. When, as in 1377, a quorum, consisting of two lawyers who were both justices of the central courts, was required for the trial of felons, it is obvious that this

<sup>98</sup> On the *custos rotulorum* and the quorum see Putnam, *Proceedings*, pp. xxv-xxvii, lxxxvi-lxxxvii.

<sup>99</sup> *infra* p. 82.

<sup>100</sup> *infra* p. 80-81.

<sup>101</sup> Patent Roll, 7 Richard II, part I, m. 43d.

<sup>102</sup> Patent Roll, 17 Richard II, part II, m. 21d; 21 Richard II, part I, mm. 25d, 27d.

power would not be used frequently, if at all. If, on the other hand, a quorum was required for hearing indictments, as in 1384, it had to be a large one containing local men in order that any business might be done. When a quorum was required for the trial of all offenders as in the commissions of 1397 it was smaller, but contained some local men in order that trials, certainly of trespassers, might be held.<sup>103</sup>

#### THE CLERK OF THE SESSIONS

The presence of a clerk is indicated by the fact that records were kept. The only clerk known by name is Henry Lecche, who functioned at the session held on 17 December 1397. His name has been preserved because on the next day he attested a writ sent by the justices of the peace to the sheriff of Gloucestershire; as was not uncommonly the practice Lecche also acted as king's attorney at the sessions of 1397.<sup>104</sup>

#### JURIES

The presentments before the justices of the peace were usually made by jurors from hundreds of the county or from the town of Gloucester. In most cases the jury was composed of 12 men, though occasionally 13 or 14 were listed even when the presentment opened with the words *xij iuratores*.<sup>105</sup> In an order to the sheriff to summon juries for the session of 25 January 1378 he was instructed to call 18 men from each of the hundreds named.<sup>106</sup> Presumably 12 would be chosen from this panel. At the sessions in 1395-1397 presentments of those who had illegally built weirs in rivers were made by a jury *pro rege* and by the sub-conservators of the rivers, as well as by the regular hundred juries.<sup>107</sup> As is not always the case

<sup>103</sup> cf. Putnam, *Proceedings*, p. lii.

<sup>104</sup> *infra* p. 161. For a similar combination of offices in Lincolnshire, Worcestershire and Yorkshire, see Putnam, *Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries* (*Oxford Studies in Social and Legal History*, VII, Oxford, 1924), p. 102 and n. 9; YS, p. xxiv.

<sup>105</sup> For example, *infra* p. 155.

<sup>106</sup> *infra* p. 82.

<sup>107</sup> *infra* pp. 143-149.

most of the jury lists are given in full on the Gloucestershire rolls so that there is made available a large number of local names.

Because, as has been said, the records printed below probably represent but a portion of those for any one session, it is difficult to tell whether or not the hundreds were summoned before the justices of the peace in any systematic fashion. For the session of 25 January 1378 the sheriff was to summon jurors from hundreds lying west of the Severn and around the town of Gloucester.<sup>108</sup> Jurors from other hundreds came but, as has been suggested, some of the records enrolled under this session may belong to a later one. At the session held at Sodbury in 1385 all the presentments were made by local jurors.<sup>109</sup> Those at the session held there in 1386 were made by hundreds in the Forest of Dean, and by Deerhurst hundred which lies north of Gloucester.<sup>110</sup> If there was a system of summoning different hundreds for different sessions it is not apparent from the records now extant. On the other hand, the jurors of a given hundred did not confine their presentments to offences committed within it.<sup>111</sup> It is interesting to note that presentments were frequently made by the hundreds in the Forest of Dean and that the hundred of Lancaster, the portion of Gloucestershire which was part of the duchy of Lancaster, was summoned in 1378 and on another occasion sent jurors.<sup>112</sup> Thus it appears that special franchises were within the authority of the justices of the peace as was specified in their commissions.

#### BUSINESS DONE AT THE SESSIONS

Since, as has been explained, the king's bench asked the justices of the peace to send before it only their undetermined indictments these rolls, which all came before the king's bench, do not give a complete picture of the work done by the Gloucestershire justices of the peace at their

<sup>108</sup> *infra* p. 82. For the hundreds of Gloucestershire see H. M. Cam, *The Hundred and the Hundred Rolls* (London, 1930), App. iv.

<sup>109</sup> *infra* p. 105 ff.

<sup>110</sup> *infra* pp. 135-141.

<sup>111</sup> *supra* p. 18, n. 36.

<sup>112</sup> *infra* pp. 82, 155.

sessions. The main business—that of hearing indictments—is fully illustrated, though the scarcity of indictments for economic offences, which the justices of the peace generally determined themselves, is in itself evidence that the records which remain are probably only partial. With regard to the exercise of the determining power the positive evidence is scanty. There is on the earliest roll one interlineation of *finem fecit* over an indictment for a trespass which cannot be traced to a fine paid before the king's bench.<sup>113</sup> Also during the years 1378 to 1397 the justices turned into the exchequer money collected as fines from trespassers.<sup>114</sup> In 1396 and 1397 the trials of two different groups of trespassers were begun but not finished because the records were summoned before the king's bench.<sup>115</sup> Since the justices of the peace commonly tried the trespassers indicted before them, unless the king's bench was in the county, it is probable that the Gloucestershire justices usually exercised the determining power over trespassers. In the case of felons the situation was different. No trials of felons by the Gloucestershire justices of the peace are recorded or referred to in these or other records. During the period covered by the sessions of 1384-1386 the justices were not empowered to try them. At the session of 1378 no member of the quorum is known to have been present. Thus only at the sessions of 1361-1363 and 1395-1398 could felons have been tried legally. Since the justices of the peace in other counties did not exercise the determining power over felons as commonly as over trespassers, it is likely that the Gloucestershire justices of the peace did not use it frequently, if at all.<sup>116</sup>

<sup>113</sup> *infra* p. 69.

<sup>114</sup> Pipe Rolls 228, 235, 244, Gloucestershire, Noua Oblata. For distraint made on the 1361-1363 and 1378 justices of the peace for fines see Exchequer Memoranda Roll, Lord Treasurer's Remembrancer 135, Breuia Retornabilia, m. 29; 136, Breuia Retornabilia, m. 24; 152, Breuia Retornabilia, m. 6d; 153, Breuia Retornabilia, m. 20d; 154, Breuia Retornabilia, m. 6.

<sup>115</sup> *infra* pp. 149-51, 163-165.

<sup>116</sup> On the exercise of the determining power by the justices of the peace see Putnam, *Proceedings*, pp. cxxvii-cxxviii; Kimball, *WS*, pp. xlvi-1.

Some slight evidence of other business done at the sessions whose records are printed below is found elsewhere. The taking of sureties of the peace by the justices at the session of 24 May 1396 is reported in an enrollment on the patent roll.<sup>117</sup> At a session held on 27 May 1361 four justices of the peace acting under a special commission investigated an attempt to defraud the executors of a will of a large sum of money. Whether the session at which this business was done was a session of the peace or a special session is uncertain, because the dates of the sessions of this year were not recorded on the peace roll.<sup>118</sup>

#### PROCEDURE AT THE SESSIONS AND ITS RELATION TO THE KING'S BENCH

Incorporated in the latest Gloucestershire roll are two sets of documents which illustrate procedure before the justices of the peace in unusual detail. Since the material—particularly the first set of records—is interesting in itself it seems worth while to outline these cases.

As has been said, in 1394 the justices of the peace were made conservators of rivers to enforce the statute prohibiting the catching of young fish by means of weirs placed in rivers.<sup>119</sup> At a session held on 10 March 1395, the first of which there is record after the passage of this statute, the Gloucestershire justices began to exercise this new power. From a jury of the town of Gloucester they received presentments against the abbots of Tewkesbury, Bristol (St. Augustine's) and Gloucester (St. Peter's), the prior of Lanthony, near Gloucester, and a layman, Ancelm Gyse, all of whom had placed various machines in the Severn by which they were catching young fish. At a session held in December of the same year further presentments were made against the abbot of St. Peter's and his cook, the abbot of St. Augustine's, the prior of Lanthony, and Gyse. Also the sub-conservators of the

<sup>117</sup> *CPR* 1405-1408, 118.

<sup>118</sup> *KB* 27/404, Rex, m. 12.

<sup>119</sup> *supra* p. 20.

rivers, presumably those appointed by the justices, presented that various persons had during the last year been buying from the cooks of the abbot of Gloucester, and the prior of Lanthony, and from three laymen, fish that were legally too small to be sold or eaten. As proof of this statement they went into the market and seized six buckets of such fish, which the justices confiscated and distributed to the poor. Other presentments were made by one of the sub-conservators against the abbots of St. Peter's and St. Augustine's and six laymen. At the session of May 1396 the three abbots, the prior, and Gyse were brought to trial. On their protest that the indictments were faulty because the exact location of the weirs was not given, 12 jurors from Gloucester were summoned to locate them. On 28 August 1396 the trial, which now included the cooks of the abbots of Gloucester and St. Augustine's, was postponed until 6 March 1397 in order that a further inquiry might be held. On that day it was again postponed to 18 June, at which session the abbot of Gloucester produced a writ of *cerciorari* removing the indictments against him and members of his house to chancery. The trial of the others was then postponed until 3 June 1398, when the prior of Lanthony produced a similar writ in his favour. At this point the sheriff intervened and ordered the justices to send all their undetermined indictments before the king's bench, wherever it was, before 9 June. Since nothing had been done in reply to the writ for the abbot of Gloucester, records of his case as well as the others were sent to the king's bench and the writs were not returned.<sup>120</sup>

The second set of documents concerns the case of John Wotton and three other men already indicted for way-laying and assaulting James Clyfford and his servant with intent to kill them. The case was brought to trial at the session of the peace held on 6 March 1397. The defendant's explanation of the assault not being accepted by the king's attorney, both sides put themselves on the country and a jury was called for 18 June. After various delays it was finally summoned for 3 June 1398 under a writ of

<sup>120</sup> *infra* pp. 150-151.

18 December 1397 directed to the sheriff by John Cassy, one of the justices of the peace. On this date further action was stopped by the order from the sheriff to send all records before the king's bench. In the meantime, however, on 24 August 1397, Wotton and the others had secured a writ of *cerciorari* removing their case to chancery. Like the writs procured by the abbots it was ignored.<sup>121</sup>

Although the king's bench came to Gloucester almost at once, on 12 June 1398, it did not at this session handle these cases or, for that matter, any of those that had been before the Gloucestershire justices of the peace. After the accession of Henry IV the court ordered the records of Richard II's reign to be searched and these cases, among others, were revived. In the meantime the defendants had secured pardons under the general act of 1398.<sup>122</sup> Evidently the disorganization of the government during Richard II's last years prevented the proper functioning of the bench even when records were before it.

Aside from the light they throw on the king's bench these cases are interesting because there is outlined in them the procedure before the justices of the peace. In both cases indictment was followed almost immediately by trial. Due to the influence of the parties concerned in the first case, postponements were easily obtained. Similarly the abbot of Gloucester, the prior of Lanthony and Wotton were able to secure writs removing their cases to the higher court. If the sheriff had not intervened because a visit of the king's bench was imminent it is likely that the justices of the peace would have proceeded with the trials of the other offenders, unless they too had secured the removal of their cases. Although these trials were not completed the procedure, including the summoning of juries, is clearly one to which the justices of the peace were accustomed. In other words, the trial of trespassers was a common practice with them.

## V THE OFFENCES ON THE PEACE ROLLS

The offences presented before the Gloucestershire justices of the peace at various times over the forty years covered

<sup>121</sup> *infra* p. 165.

<sup>122</sup> *infra* pp. 143, 163.