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**Gloucestershire Peace Rolls: The Offences on the Peace  
Rolls**

by E. G. Kimball (ed.)  
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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.

by the peace rolls printed in this volume are of the two kinds known to criminal law as felonies and trespasses. The figures given in connexion with each type of offence refer to presentments, not to individuals or to offences. When several offences were committed at the same time or presented together they have been classified under what seemed to be the major crime. The figures can represent but a small proportion of the offences committed in the county in the latter years of the fourteenth century. Numerous records, whether or not they were compiled as formal rolls, must have been lost, since only those which went before the king's bench, and not all of them, have been preserved. The felonies are of the usual sort; the trespasses show more variety.<sup>123</sup>

#### FELONIES

*Homicide* (33 presentments). The presentments for this offence, which was described by the phrase *felonice interfecit*, offer little that is out of the ordinary. One man was killed in bed; another was maliciously murdered while sitting by his fire; a third committed homicide in self-defence.<sup>124</sup> The murder of a man with the consent of his wife is the one instance of petty treason.<sup>125</sup>

*Larceny*, grand (81 presentments); petty (1 presentment). Cases of larceny constitute nearly half the felonies on the rolls and over one-fourth of all the offences. If other offences—both felonies and trespasses which involved the taking of goods belonging to another—are added, the number is nearly one-half the total number of offences. Larceny was described by the phrase *felonice furatus fuit* or *felonice cepit et asportavit*. Many offenders were reported to be common thieves. The goods stolen included household and personal possessions, animals, money and fairly sizeable amounts of cloth.<sup>126</sup> There is one instance of self-help.<sup>127</sup> In another, bearers of writs stole from a

<sup>123</sup> On offences see Putnam, *Proceedings*, pp. cxii ff, cxxxiii ff.

<sup>124</sup> Roll III, nos. 76, 90, 143.

<sup>125</sup> Roll II, no. 16.

<sup>126</sup> For example, see *infra* p. 52.

<sup>127</sup> Roll II, no. 46.

religious house bulls and letters by means of which they collected alms under false pretences.<sup>128</sup>

*Burglary* (31 presentments) differed from larceny in that it involved breaking in as well as stealing. It did not at this time as later have to be committed at night.<sup>129</sup> It was described in various ways, feloniously breaking in or entering and taking goods, or feloniously breaking and stealing, but never by the verb *burgare*. It was twice accompanied by rape, and was committed in weirs, mills and boats as well as in churches, houses and closes.<sup>130</sup> Was breaking into a chest and stealing its contents burglary or larceny?<sup>131</sup>

*Robbery* (2 presentments), was theft accompanied by violence done to the person robbed. It was described by the verb *depredare*.

*Arson* (1 presentment). In the single instance of arson the burning of a house at night was followed by theft.<sup>132</sup>

*Rape* (7 presentments). In all but one of the examples of rape found on these rolls, including the instances when it accompanied burglary or was presented as a trespass, the so-called rape was followed by the theft of goods, either from the woman raped or from her husband. Although women were in each case involved the possibility suggests itself that the verb *rapere* was perhaps used, as it sometimes was by Bracton, not of a sexual crime, but with the wider meaning of seizing.<sup>133</sup> Whatever the real nature of these offences the frequency with which a theft of goods followed an attack on a woman is interesting. Only the attack on an eight-year old girl was unaccompanied by stealing.<sup>134</sup>

*Accessory* (15 presentments). While any form of aid given to a felon constituted a felony, the punishment of an accessory depended on the nature of the aid he gave. An

<sup>128</sup> Roll II, no. 26.

<sup>129</sup> Holdsworth, *A History of English Law* (3rd edition, rewritten, London, 1922-1926), III, 369. See also Putnam, *Proceedings*, pp. cxv-cxvi.

<sup>130</sup> Roll III, no. 97; Roll IV, no. 18; Roll III, nos. 10, 126, 138.

<sup>131</sup> Roll II, no. 25.

<sup>132</sup> Roll III, no. 135.

<sup>133</sup> Bracton, *De Legibus Angliae*, fol. 150b; for example, Roll III, no. 136.

<sup>134</sup> Roll IV, no. 15.

accessory either before or after the fact was not treated as a principal, and his conviction depended on the conviction of the principal in the crime. In other words, though guilty, he would escape punishment if the principal were pardoned or outlawed. The accessory at the fact, that is any one aiding or abetting in the commission of the crime itself, was during this period, according to Professor Holdsworth, coming to be considered as a principal.<sup>135</sup> In the three instances of aid of this kind found on these rolls the accomplice was presented as an accessory rather than as a principal, and treated as such by the king's bench.<sup>136</sup> Most accessories were accessories after the fact inasmuch as they had received the felon, knowing him to be guilty of the felony. One man, also presented for offences that involved obtaining money under false pretences, was said to make a practice of taking money for aiding felons in escaping the gallows.<sup>137</sup>

#### TRESPASSES

Trespases prove more difficult to classify than felonies, partly because they were not so sharply defined at law and partly because it is not always easy to decide which of several committed at the same time was the major offence. The trespases on these rolls may be classified as semi-criminal trespases, trespases against officials, miscellaneous and economic trespases.

*Assault* (77 presentments), the most common trespass, was usually accompanied by beating, wounding and maltreating, sometimes by entering and taking of goods, and once by mayhem.<sup>138</sup> It was always done *vi et armis*.

*Waylaying with the intent to kill* (2 presentments).

*Threatening to kill* (1 presentment).

*Breaking in* (18 presentments) was often followed by the taking of goods, occasionally by assault, and once by rape, abduction and the taking of goods.<sup>139</sup>

*Taking of goods* (11 presentments) was described by the phrase *cepit et asportavit*, frequently followed by *iniuste*.

<sup>135</sup> Holdsworth, III, 307 ff. See also Putnam, *Proceedings*, pp. cliii-cliv.

<sup>136</sup> Roll III, nos. 45, 77, 157.

<sup>138</sup> Roll III, no. 155.

<sup>137</sup> Roll II, no. 39.

<sup>139</sup> Roll III, no. 61.

*Rape* (1 presentment). Although rape, when prosecuted by indictment, had been made a felony by the statute of Westminster II in 1285 it was in the fourteenth century occasionally still presented as a trespass.<sup>140</sup> As in the cases of rape presented as felonies in this instance, and in that in which rape followed breaking in, the offence was accompanied by the theft of goods.

*Abduction* (1 presentment). Two villeins of the abbot of Gloucester were abducted by order of Lord Gilbert Talbot.<sup>141</sup>

*Resistance to officials* (5 presentments). In four of these five instances resistance to officials took the form of resistance to arrest. In the fifth, beer tasters and other officials of Winchcombe were assaulted while performing their duties.<sup>142</sup> Resistance to arrest was sometimes presented as part of the offence for which the arrest was made.<sup>143</sup>

*Disturbing the peace* (1 presentment). Although there is but one separate presentment for this offence, men guilty of assault and other semi-criminal trespasses were often said to be common disturbers of the peace.

*False imprisonment* (3 presentments), usually until payment of ransom. This offence was committed twice by a man who was also indicted for aiding felons.<sup>144</sup>

*Extortion* (2 presentments) was the unlawful taking of money by officials for the performance of some official act. In both the instances on these rolls a churchman had taken extortionate fines from persons guilty of sexual offences.<sup>145</sup>

*Conspiracy* (2 presentments), which included combinations in restraint of trade, in abuse of legal procedure and in disturbance of the peace, was made a statutory offence in the reign of Edward I.<sup>146</sup> Examples of the last two types of conspiracy are found on these rolls. In one instance two men were guilty of maintenance, having sworn

<sup>140</sup> 13 Edward I, st. 1, c. 34; Roll III, no. 67.

<sup>141</sup> Roll III, no. 119.

<sup>142</sup> Roll IV, no. 26.

<sup>143</sup> For example, Roll III, no. 52.

<sup>144</sup> Roll II, nos. 9, 37, 39.

<sup>145</sup> Roll III, nos. 109, 110.

<sup>146</sup> P. H. Winfield, *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge Studies in English Legal History, Cambridge, 1921), pp. 1 ff, 96-99, 111-112; Holdsworth, III, 394 ff.

to support each other in all suits and forgeries.<sup>147</sup> In the other the conspirators had agreed to threaten a man until he compounded with them.<sup>148</sup>

*Offences against the statute protecting salmon* (10 presentments). As a result of powers given them in 1394 the justices of the peace in Gloucestershire, at sessions held in 1395-1398, heard presentments against heads of religious houses and others who had been catching small salmon and other fish by means of weirs placed in the Severn and the Wye. Some of the offenders had also been selling these fish in Gloucester market.<sup>149</sup>

*Economic offences* (4 presentments). There are on these rolls but four examples of trespasses that may be classed as economic. In one instance rotten meat had been sold.<sup>150</sup> In three others servants had been detained from their rightful masters contrary to the statute of labourers.<sup>151</sup> There is no reason to think that offences of this type were not common in Gloucestershire. When the king's bench came into the county in 1363 it heard indictments against a large number of persons accused of forestalling, regrating, and other violations of the laws regulating the sale of commodities. Under the commission of 1361 the justices of the peace did not have authority over forestallers and regraters.<sup>152</sup> It is possible that these indictments before the king's bench may have been in part responsible for the inclusion of power to deal with forestalling and regrating in the peace commission of 1364.<sup>153</sup> Undoubtedly, as has been said, the dearth of economic offences on the three later rolls is due to the fact that the justices punished offenders of this type themselves.<sup>154</sup> Since it was only unfinished business which came before the king's bench no records of these cases have been preserved.

<sup>147</sup> Roll III, no. 37.

<sup>148</sup> Roll III, no. 102. See also Roll III, no. 100.

<sup>149</sup> Roll IV, nos. 1-8, 29-32. For a discussion of the cases see *supra* pp. 40-41.

<sup>150</sup> Roll III, no. 33.

<sup>151</sup> Roll III, nos. 53, 60, 66.

<sup>152</sup> KB 27/411, Rex, mm. 23d, 25d, 30, 30d; Fines, *passim*; *supra* p. 16. Miss Putnam has asked me to call attention to her erroneous mention in her recent book, *Proceedings*, p. cxxii, of economic offences on the Gloucestershire peace rolls of 1363 and 1378. <sup>153</sup> Putnam, *Proceedings*, pp. xxiv, cxxii. <sup>154</sup> *supra* p. 39.

*Accessory to trespass.* Before leaving the subject of trespasses attention should be called to a presentment for assistance in the commission of a trespass. A man had received a woman, knowing that she had broken into a close and taken three geese.<sup>155</sup> This presentment was not made separately but as part of the presentment of the theft. Since, however, it contravenes a statement made by Professor Holdsworth, based on cases in the Year Books, that there could be no accessory to a trespass because all involved were liable for damages, it seems worth while to mention it.<sup>156</sup> As in the case of accessories to felonies the Gloucestershire justices of the peace do not seem to have followed the most advanced legal opinion.

## VI THE JUSTICES OF THE PEACE AND THE KING'S BENCH

Because the work of the justices of the peace as illustrated on these rolls consisted chiefly of the indictment of offenders, not of their trial, any attempt to discover whether these offenders were punished, and therefore the degree to which the work of the Gloucestershire justices of the peace was effective, necessitates a consideration of the work done by the courts that tried these offenders. Both felons and trespassers indicted at sessions of the peace were tried by the justices of gaol delivery sent out at periodic intervals to deliver the gaols of a county, and by the king's bench, either at its sessions or at *nisi prius*. The justices of the peace, when they had the power, sometimes tried felons and they commonly tried trespassers. As has been said there is nothing to show that the Gloucestershire justices tried felons though there is some evidence of the punishment of trespassers by them.<sup>157</sup> Only four of the felons indicted on these rolls were tried by the justices of gaol delivery, presumably because they were in most cases reserved for trial by the king's bench.<sup>158</sup>

Since information about the activity of other courts is lacking we must turn to the records of the king's bench for

<sup>155</sup> Roll III, no. 99.

<sup>156</sup> Holdsworth, III, 308. See also Kimball, *WS*, p. lxiii.

<sup>157</sup> *supra* p. 40.

<sup>158</sup> Roll II, nos. 12, 44, 47; Roll IV, no. 9.