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**Gloucestershire Peace Rolls: The Justices of the Peace and
the King's Bench**

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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.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

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

¹⁵⁵ Roll III, no. 99.

¹⁵⁶ Holdsworth, III, 308. See also Kimball, *WS*, p. lxiii.

¹⁵⁷ *supra* p. 40.

¹⁵⁸ Roll II, nos. 12, 44, 47; Roll IV, no. 9.

evidence of the punishment of the offenders indicted on the peace rolls. Consequently a consideration of the effectiveness of the administration of justice in fourteenth-century Gloucestershire becomes in large measure a consideration of the effectiveness of the king's bench as it followed up the work of the justices of the peace.¹⁵⁹

Of the 32 felons presented before the justices of the peace in Gloucestershire in 1361-1363, 30 came before the king's bench or were ordered to appear; of 38 in 1378, 36 came or were summoned; while in 1384-1386 only one of 149 was not summoned or did not appear. For the years 1395-1398 the situation was very different; only one of 19 was summoned and he did not come. Although the justices of the peace sent their records before the king's bench when it sat at Gloucester in 1398 no action was taken on them until after the accession of Henry IV. As has been said, it is probable that this situation reflects the unsettled political conditions of the last years of Richard II's reign.

While the record of the king's bench in its attempt to bring felons before it was, with this one exception, good, its record in respect to their trial and conviction is quite the opposite. Of the 215 felons who appeared or were summoned to appear, one had been sentenced to be hanged by the justices of gaol delivery; 38 were acquitted, either before the king's bench or the justices of gaol delivery; six were pardoned; and 166 were put in exigend, that is, summoned to appear and presumably outlawed for failure to come. The outcome of the trials of four others is not known.

For trespassers the results are somewhat different. Of the 53 indicted at the sessions of 1361-1363 only two or possibly three were summoned before the king's bench. On the other hand, all but two of 47 were summoned or tried in 1378, all but one of 73 in 1384-1386, and all but four of 26 in 1395-1398. Of these 142, 29 made fines, one perhaps before the justices of the peace if not before the king's bench, 21 were acquitted, four pardoned and 74 put in exigend and outlawed for failure to appear. For 14 others the outcome of a trial is not known.

In evaluating these figures it seems clear that the king's

¹⁵⁹ On the relation between the justices of the peace and the king's bench see Putnam, *Proceedings*, pp. lvii ff.

bench, when it came into a county, normally made an effort to bring felons to trial. With the guilty it was on the whole less successful than with the innocent. For presumably most of the 166 who avoided appearance were guilty. The process of outlawry and particularly its consequences have never been studied in detail, but one is loath to believe that it can by this date have had the serious results pertaining to it by law. Rather it would seem that after the king's bench left a county it was comparatively easy for an indicted felon to avoid appearing before it. Unless he were put in gaol to await the coming of the justices of gaol-delivery his chances of trial or punishment were slight. For the guilty trespasser indicted when a visit of the king's bench was imminent the situation was somewhat different. If he could avoid appearance he might escape a fine. If he did appear, or if he were tried by the justices of the peace, he was more likely to be punished.

Whether dealing with felons or trespassers, the king's bench when it came to Gloucestershire does not seem to have brought any large number of offenders to justice. Even if account is taken of those punished for trespassing, and allowance made for the demoralization of the government at the end of the fourteenth century, still the showing of the king's bench is poor. Figures for other counties show a similar situation elsewhere.¹⁶⁰

If the effectiveness of the work of the Gloucestershire justices of the peace had depended on the effectiveness of the king's bench it would be necessary to conclude that in spite of the number of indictments they heard they did not contribute greatly to the maintenance of the peace. It is known, however, from other sources that the Gloucestershire justices of the peace tried and punished trespassers, and that the justices of gaol delivery between the visits of the king's bench tried felons indicated before the justices of the peace.¹⁶¹ How many they punished is another question. Whatever the figures, if they were available, it must be remembered that neither the

¹⁶⁰ Sillem, *LS*, pp. xlvii ff; Putnam, *YS*, pp. xxxiv ff; Kimball, *WS*, pp. lxxii-lxxiii.

¹⁶¹ *supra* p. 39; GDR 166, 172, 180, 189.

punishment of crime or the effectiveness of the work of the justices of the peace in Gloucestershire, or in the rest of England for that matter, depended solely on the king's bench.¹⁶²

VII ECONOMIC AND SOCIAL MATERIAL ON THE PEACE ROLLS

For two quite different reasons the Gloucestershire peace rolls throw little light on economic and social conditions in the county in the second half of the fourteenth century. One reason, the fact that on all the rolls there are only four indictments for economic offences, has already been stressed.¹⁶³ The other lies in the failure of the clerks who drew up the rolls, whether through haste or carelessness, to record designations of status or occupation either for jurors or for most of the people involved in the cases. While such designations were not required in indictments until the reign of Henry v still they were commonly used in the fourteenth century.¹⁶⁴ It is difficult to account for this omission, because since a number of years elapsed between the different rolls the same clerk can hardly have compiled them all. One plausible explanation is that in each case the roll was hurriedly prepared for the king's bench and the designations were left out to save time.¹⁶⁵ Aside from titles and such descriptive phrases as chaplain, servant, or those identifying a man with a particular position like woodward of Bishop's Wood, or hayward of Aust, the only occupations which appear on the rolls are baker, barber, blanket maker, butcher, touker or fuller, mason, miner, porter, smith, tailor, weaver and wire-drawer.¹⁶⁶ Interestingly enough practically none of these designations are agricultural.

Although numerous occupational surnames occur, at

¹⁶² See also Putnam, *Proceedings*, pp. cxxvii-cxxviii.

¹⁶³ *supra* p. 47.

¹⁶⁴ 1 Henry V, c. 5; Marowe, in Putnam, *Early Treatises on the Practice of the Justices of the Peace*, pp. 384 ff.

¹⁶⁵ *supra* pp. 13-14.

¹⁶⁶ Roll I, no. 4; Roll II, no. 19; Roll I, no. 32; Roll II, no. 52; Roll III, no. 124; Roll II, no. 48; Roll IV, nos. 25, 27; Roll I, no. 49; Roll I, no. 67; Roll III, no. 28; no. 123; Roll IV, no. 11;