

A Brief Overview of the Legal System During Elizabeth's Reign

by Fred Louaillier

The first thing one needs to be aware of is that I am concentrating on Elizabeth's reign *only*, not before and after -- this is a legal system very much in transition. Also, there are as many different courts in the Tudor kingdom, mostly minor, as we have special election districts, school districts, air quality districts and the like. I'm only touching on the major points and there are many, many exceptions to what I'm about to say. Still, this is enough to bedazzle and confuse your audience.

The first major judicial system I will deal with are the so-called "Councilor Courts." The Councilor Courts derive their authority from the fact they are the sovereign's council. There are three significant Councilor Courts:

- **Star Chamber.** Star Chamber is the Privy Council's alter ego. The judges are the Privy Councilors, the Attorney Generals for the Ancient Courts and one or two others. Their remit is very limited in that they can only deal with breaches of the sovereign's peace, i.e., riot. Of course, what is defined as riot is sometimes flexible. It could not execute a man nor take his property. It could only fine, imprison, or other like punishments (pillory, etc.). It *can* deal with the cause of the riot as well, thus broadening its authority out again. It's often confused with the council because it issued its orders in the same form as orders from the Privy Council, simply substituting the words "Star Chamber" for "Privy Council."
- **Court of Requests.** It was always a special court for poor men's causes -- people who were too poor to get into Common Pleas. The chief judge during the early part of the reign is Dr. Thomas Wilson, Doctor at Law, also a Privy Councilor.
- **Court of the Duchy Chamber of Lancaster.** This is one of the three Palatine Courts, the other two being Durham and Chester. Like the other two courts, it reviewed all cases that occurred in its jurisdiction, rather than sending them on to the courts at Westminster or the Assizes. Unlike the other two, its jurisdiction was not just the county for which it was named. Crown property all over England was administered by the Chancellor of the Duchy of Lancaster. As a result, any offense occurring on any of the property anywhere in England went into the Duchy court. Since the Duchy court was better staffed and more efficient -- with a smaller case load -- there was an effort on the part of plaintiffs and the other central courts in London to push as much as possible onto the Duchy court. The law administered is the same law -- Common Law -- but it was faster and bettered carried out. The Chancellor of the Duchy of Lancaster, who was the supreme legal officer for the Duchy is Sir Ralph Sadler.

There are two extensions of the **Privy Council** that are very significant in a study of the legal system. First is the **Council of the North**. By Elizabeth's time, it was essentially a mini-privy council dealing with the northern counties. It has the Star Chamber type of authority for dealing with riot in its jurisdiction, and Chancery created a sub-office in York under its authority, sending cases there.

The other important one is the **Council of Wales**. It has the same authority in relationship to Wales as the Council of the North does to the Northern Counties. The activities of both are carefully monitored by the Privy Council in London.

The other important courts are the Ancient Courts. They are comprised of the three courts in Westminster and Chancery court. The three in Westminster are:

- **Court of King's Bench.** It oversees all cases which touch the king, especially criminal cases of all kinds. It also, if you can prove a technical error in your case, you can try to appeal it to King's Bench, they *might* hear it.
- **Court of Common Pleas.** It covers all suits between party and party, i.e., civil law. It is by far the busiest and the slowest. No one wants to go there.
- **Court of Exchequer Pleas.** Originally a financial court, by Elizabeth's time it handled a large number of civil suits and in 1579, Parliament passed statutes to convert it into a parallel Court of Common Pleas. It handled the same types of cases as Common Pleas and claimed it was co-equal. This created so much trouble that as of 1589, the two chief justices met on a regular basis to keep them from coming into conflict. They were partially successful.

Chancery Court liked to call itself a court of common sense. You went there if the law was so ancient it obviously produced an injustice, or if the civil law hadn't caught up with whatever your problem was.

Other significant courts are the **Admiralty Court** -- if it's a crime and occurson the sea, it is under the authority of the Lord Admiral. It may be considered a "councilor court."

There is also the **Stannery Court**, which deals with mines and mineral rights and some other things.

The other very important court system is the Ecclesiastical Courts. These are divided into two types -- Courts Ordinary and the High Commission.

Courts Ordinary covered the following types of offenses: misbehavior of the clergy. Certain types of misbehavior by the laity, marriages, problems between the laity and clergy, failure to pay tithes, and what is arguably the single most important function that touches everyone -- probate is under the ecclesiastical courts. For example, the will of Sir Ralph Sadler was probated in the Archbishop of Canterbury's court.

The High Commission is just what it sounds like. It is a commission that also sits as a court monitoring and controlling all church activities. Big Brother is watching you. It's a court of Ecclesiastics and laymen. In the first part of the reign, the laymen slightly outnumbered the clergy. From 1580 on, the balance went slightly the other way. For our purposes, it is nine members -- Matthew Parker, Archbishop of Canterbury, the Bishop of York, the Bishop of London, and the Bishop of Winchester and the following laymen: Sir Francis Walsingham, Sir Ralph Sadler, Sir Francis Knollys, Dr. Thomas Wilson, Sir Francis Bacon.

It is interesting to note that Elizabeth never seems to have put any peers on the High Commission and all the laymen were Privy Councilors.

One final note: there are dozens of minor courts. Manorial courts, whose authority is rapidly vanishing, Pied Powder Court, who administered justice affairs relating to commercial matters, and a ton of others much too numerous to mention.

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