COMMUNICATIONS

LANCASHIRE JUSTICES OF THE PEACE IN THE FIFTEENTH AND SIXTEENTH CENTURIES

In the administration of justice in the county palatine of Lancaster a considerable part has been played (and is still played, though to a lesser extent) by the Duchy of Lancaster, of which indeed the Palatinate is a component part. The appointment of the judges and the justices of the peace, regulations for their sessions, their remuneration and many such administrative matters, were controlled by the chancellor and the council of the Duchy. It was with good reason that in the latter part of the sixteenth century, when religious matters in the county occupied so much attention, it was emphasised that the Chancellor of the Duchy must be a man very well affected in religion, if only because he "nominateth the sheriffes and justices of the peace in that county palatine".[1] The present notes touch on some of these matters in the fifteenth and sixteenth centuries: not exhaustively it is true, but rather as a pointer to further research.

One could wish that more were known of the actual procedure for appointment of justices of the peace in Lancashire during these two centuries. In the country elsewhere appointments were controlled by the King's council, and in Lancashire it was the Duchy council and the chancellor who were responsible.[2] John of Gaunt, a year or so after the palatinate had been recreated for himself, left the nomination of justices to William de Nesfield, then chief steward in the county, and to Sir Robert de Plesington who was soon afterwards to succeed him in that office; the chancellor of the county palatine was then to appoint their nominees.[3] But later, in 1432, a name was sent down from the Duchy to the chancellor in the county for appointment as a justice of the peace, and three years later the earl of Salisbury was similarly nominated for appointment.[4] These are by no means isolated cases.

The administration of justice in Lancashire was often on the agenda of the Duchy council, and it must be said that the county had a reputation for lawlessness. In 1482 the Duchy council spent much time considering ways and means for reformation of "the unrestfull rieulle and governaunce" of the county, but in the end had to admit the solution beyond it, agreeing, with a hint of

[1] P.R.O. State Papers Domestic, Elizabeth, Vol. XLVI, p. 63.
[2] G. H. Tupling, in *South Lancashire in the reign of Edw. II* (Chetham Third Ser., Vol. I) p. lxi, suggests that under the Tudors the judicial system of the Palatinate was assimilated to that of the country as a whole, and the local commission of the peace brought under the supervision of the privy council. It was not so. No doubt he had partly in mind the act 27 Hen. VIII, *c.* 24, but that statute expressly saved the Duchy's position.
[3] P.R.O. Palatinate of Lancaster Chancery Warrants, 1/122.
[4] P.R.O. Duchy of Lancaster Miscellaneous Books, 18, fos. 19v and 41.

despair, that "thies materes can nat bee remedied by noo personne but oonly by the King him self, if it wold like his grace to come into thoos parties".[1]

Nevertheless, the Duchy council did occasionally issue regulations for the holding of sessions of the peace. Among some ordinances drawn up for the Duchy as a whole, probably between 1470 and 1480 or perhaps a little later, there are a few "appointments necessary for the good and politic rule of the county palatine of Lancaster". The only one of these appointments that deals with justices of the peace lays down that they shall be sworn in the chancery of the county palatine and that they shall keep sessions of the peace four times a year in due place, and more often, if necessary, according to the statute. The times for these statutory sessions, common to the whole country, were the week after Epiphany, the second week of Lent, between Pentecost and the feast of St. John the Baptist, and the week after Michaelmas. In the fifteenth century at any rate these dates do not seem to have been very closely observed in Lancashire. The justices were paid their statutory wage of 4/–d. a day by the Duchy receiver in the county, and he entered the justices' names and the dates of sessions in his accounts—an important source of information which is paralleled by the record of similar payments in the Pipe Rolls of the Exchequer.[2] But the receiver has not helped us by saying which were quarter sessions, for extra sessions could be held at any other time to deal with breaches of the peace, and the number of sessions varied considerably. In 1438–9 there were fifteen, in 1446–7 there were twenty-six, but in 1455–6 only five; in 1471–2 the number was eighteen. In the next century a few samples show eight in 1506–7, four in 1516, ten in 1540–1, sixteen in 1551–2, 1580–1 and 1586–7.[3] By this time we are approaching the surviving sessions records, and when they start in a regular series in 1590 the number of sessions is of the same order as in these last few years.[4]

Some assistance in deciding which are the general or quarter sessions may be derived from consideration of the "due place" for holding the sessions, as prescribed in the regulations quoted above. Now the "due place" was a matter not entirely free from doubt. It is true that in 1362 John of Gaunt had ensured a pre-eminence for Lancaster by procuring a grant under the great seal of England that all pleas and sessions in Lancashire should be kept at Lancaster. But in 1546 the judges of assize at Lancaster called together the greater part of the justices of the peace at the April assizes and framed articles for holding quarter sessions. These were subsequently agreed and expanded by the chancellor and council of the Duchy and published in June of the same year. The general quarter sessions of the peace were to be held four days in the year

[1] Duchy of Lancaster Orders and Decrees, 1, fo. 62.
[2] Miss B. H. Putnam, *Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth centuries* (1938), p. xviii.
[3] See Table, p. 189.
[4] J. Tait, *Lancashire Quarter Sessions Records*, Chetham N.S., Vol. 77.

for each of four divisions of the county: for the hundred of Lonsdale at Lancaster, for the hundreds of Amounderness and Blackburn at Preston, for the hundreds of West Derby and Leyland at Ormskirk in summer and at Wigan in winter, and for the hundred of Salford at Manchester. The days for the Lancaster sessions are laid down as the Mondays following the 2nd of February, the feasts of Michaelmas and Epiphany, and Low Sunday; and the sessions for the other hundreds were respectively the following Wednesday, Monday and the succeeding Wednesday. These agree pretty closely with the statutory dates, and the sessions continued for a short time in this way.[1]

In Trinity term 1556, however, the Duchy council made an alteration in the articles by allotting only two days at Lancaster for Lonsdale hundred and giving Blackburn hundred two days at Preston and two at Clitheroe.[2] Although this may fairly have represented the amount of business to be done, the arrangement, not unnaturally, did not commend itself to Lancaster, and the corporation put in a bill to the Duchy. It alleged that not only the change in 1556 but also the order of Easter term 1546 had been engineered by William Kenyon the deputy clerk of the peace. The matter came up in Michaelmas term 1556, and 20 October the town's case was opened by its learned counsel Thomas Carus, at that time also vice-chancellor of the county palatine and subsequently a judge of the Queen's Bench. He produced the letters patent of 13 November 1362, and stressed the loss of revenue to Lancaster as a result of the recent orders. The council had to admit that it made the orders without having notice of the letters patent, and accordingly the court made a new order that all general sessions of assize and gaol delivery were in future to be held at Lancaster; the four quarter sessions were to be held as before the order of Trinity term 1556, and the arrangement for Clitheroe was rescinded.[3] The table on page 189 shows that in 1557-8 the new scheme was followed, the dates agreeing with the council order of 1546, although there were only two sessions at Manchester, and the solitary session at Bolton, held 4 August 1558, was clearly an extra one. Between 1587 and 1590, however, a change occurred in the series in which the sessions began, for in the latter year they began at Manchester and proceeded in the order, Wigan (or Ormskirk), Preston and Lancaster: but by 1601 the earlier rota had been restored.[4]

The Duchy order of Easter 1556 did not give Lancaster all the sessions of justices of the peace, and the corporation was guilty of wishful thinking if it believed that the sessions had formerly

[1] Duchy of Lancaster, Misc. 12/22: the articles also deal with the procedure for appearance. They were annexed to an order made in Easter term 1546 and published 6 June 1546, Duchy of Lancaster, Misc. Books, 95, fo. 168.

[2] Duchy of Lancaster, Misc. Books 96, fo. 157 has the articles as promulgated 20 June 1556.

[3] Lancaster's Bill, Duchy of Lancaster Pleadings 39/225: the proceedings in Orders and Decrees 10, fos. 263–5. W. O. Roper, *Materials for the History of Lancaster*, Chetham N.S., Vol. 61, pp. 151–6, prints the exemplification of the decree under the Duchy Seal of 12 February 1557. *V.C.H. Lancs.*, Vol. VIII, p. 11 and 49, gives a somewhat inaccurate *résumé* of these changes.

[4] J. Tait, *op. cit.*, p. xi.

been held solely at Lancaster. The table shows how many in fact Lancaster had at various times.

Professor Tait has shown how in the fifteenth century the number of justices in Lancashire was normally from eight to thirteen. The total number of individual justices who sat at sessions, or at any rate who were paid for attendance, was not large: in 1438–9 six, in 1455–6 only four; and even in the year of twenty-six sessions no more than nine distinct justices were paid, whereas in 1471–2 the number was fourteen. The number of justices paid for attending each session was likewise small; generally two or three, less frequently four or five. On one occasion, at Ormskirk 18 November 1479, there were as many as seven; the same number were paid at Preston for 1 October 1516, and next year there were six at Preston and at Ormskirk. These larger numbers were exceptional, and the Duchy rarely paid out more than from £5 to £7 in wages for the justices; by the middle of the sixteenth century two or three was normal. The total attendances were therefore much smaller than at the end of the century, possibly an indication of the growth of the justices' work. In 1586–7 thirty-two "justice-days" were paid for over sixteen sessions: the number of those sitting in 1590–1 was thirty-three and in 1591–2 it was thirty-five. Unfortunately there are no accounts extant between 1587 and 1602: when they begin again we are met with the statement that the justices paid their "diets" to themselves; the receiver accordingly has not accounted for them and we cannot check these payments with the numbers recorded as sitting. For the two centuries under review, therefore, we cannot say with certainty that the number of justices paid for attendance corresponds with the number actually sitting. Nor must it be forgotten that the statutes regulating the payment to justices of the peace specified a maximum of twelve days in the year for each of eight justices.[1]

The justices' prudence in 1601 in making sure that they received their due payment recalls a different position under Henry VII. In 1493 the Duchy council considered that the Lancashire justices were very negligent in looking after the King's profits and accordingly ordered that no payment was to be made to them unless it could be met from the profits of the sessions.[2] What the profits amounted to cannot be seen from the accounts, as the receipts were included in a general heading of the administration of justice. On an earlier occasion the payment for four sessions at Manchester had been stopped by the Duchy auditor because he did not know if the rolls of the sessions had been delivered to the judges at Lancaster.[3] This valuable clue might have brought to light some early rolls of the justices of the peace if the records of the courts at Lancaster had not themselves suffered so much loss. Careful scrutiny, however, may yet reveal something. At least it shows

[1] But this presupposed that each session would last three days, which they certainly did not in Lancashire at this period.
[2] Orders and Decrees 3, fo. 72, and Chancery Rolls, 62 m. 16d.
[3] In 1438–9—Duchy of Lancaster Ministers' Accounts, No. 1930.

the existence of rolls, and about the same time there is good evidence for the compilation of the rolls by a clerk.[1]

Let us return to the dark figure who incurred the displeasure of Lancaster corporation—William Kenyon—and consider the office of clerk of the peace. Regular appointment to this office by the Duchy does not begin till Ralph Cudworth's appointment 5 February 1540. Less than four years later he was displaced by Bernard Randolph, and it was therefore Randolph for whom Kenyon deputised at the material dates.[2] Clerks of the peace are known in other counties in the fifteenth century and Miss Putnam, using the payments to justices as a guide, has listed the clerks of the peace for over thirty counties for a sample period of approximately ten years from 1427–37.[3] And indeed the statutes at the end of the fourteenth century which authorised the payments for justices of the peace also authorised a payment of 2/–d for the Clerk. It is curious that in the Lancaster accounts for the fifteenth and sixteenth centuries there is very little mention of the clerk or his wages. For attending at the sessions and compiling the rolls an unnamed clerk received the statutory sum for fifteen days in 1438–9 and for fourteen days in 1441–2.[4] Similarly in 1455–6 there was a clerk who had 10/–d (for five days).[5] In 1446–7 the clerk is named as William Clifton;[6] but he is not the first known clerk of the peace for Lancashire as he succeeded John Gardiner, who had been appointed by letters patent under the Duchy seal 15 July 1440.[7] Gardiner's patent significantly says that he is to receive such wages and fees as are anciently due and accustomed. A year later, in June 1441, a letter under the Duchy seal was addressed to the keepers of the peace in the county commanding them to allow Gardiner to occupy the office and not molest him and in May 1447 another instructed Sir Thomas Harrington as *custos pacis* to put Gardiner in possession of the office of clerk of the peace.[8]

We may surmise that difficulties arose over Gardiner's appointment: and it may be that the William Clifton who was displacing Gardiner in 1447 was a nominee of the justices or the *custos rotulorum*. Some such difficulties did in fact occur in the following century and led to a lawsuit in the Duchy court.[9] The clerk of the crown at Lancaster alleged that for time out of mind holders of his office had had the keeping of indictments, and that the clerk of the crown made out process on them and received certain fees. Until Randolph's appointment as clerk of the peace, so it was said,

[1] See next paragraph. A record of proceedings before the justices of the peace in Easter 1526 will be found in Duchy of Lancaster Miscellaneous, 7/14.

[2] Cudworth, Duchy of Lancaster Misc., Books 22, fo. 197; Randolph, 10 November 1543, *ibid.*, fo. 197. Kenyon appears again as clerk of the peace or deputy in 1547 (Pleadings 29/225) and 1552 (Misc. 29/7 fo. 77v). He purchased Cudworth's interest. See note 23.

[3] *Op. cit.*, pp. 26–7.

[4] Duchy of Lancaster Ministers' Accounts, Nos. 1930 and 1932.

[5] *Ibid.*, No. 1945. [6] *Ibid.*, No. 1936. [7] *Ibid.* No. 1936.

[8] Duchy of Lancaster Chancery Rolls, 8 m. 6 and 15 m. 6. Oddly enough, Harrington is not among the justices paid for attendance this year.

[9] Pleadings 30/387. Kenyon purchased Cudworth's interest in the clerkship and tried to take away the profits from the clerk of the crown. To this end he secured himself by an order in the Duchy court.

this had never been reputed as an office nor granted to anyone, but was exercised by one of the clerks of the *custos rotulorum*. Now it is known that the *custos rotulorum* had the duty of bringing the records to the sessions, and the statement made by the clerk of the crown may be accepted as substantially correct. Indeed the act 37 Hen. VIII *c.* 2 suggests that the *custos* usually appointed the clerk for the justices. But from the middle of the sixteenth century, as we see, the clerk of the peace in Lancashire was appointed by the Duchy, and this continued to be the practice until 1888.

It remains to say a word about the *custos rotulorum* whose identity, as Miss Putnam says, is peculiarly elusive. She has found a named *custos rotulorum* as early as 1422.[1] I have not found it used in Lancashire until 1557, when Sir John Holcroft is given the title.[2] In the lists of justices paid for attendance he stands first, and he was present at every one of the fifteen sessions save one at Bolton. Holcroft died in 1560 and John Fleetwood succeeded him as *custos rotulorum*.[3] In this we have the answer to a question which Professor Tait propounded but could not answer. He could not understand why, in the rolls in 1590, Fleetwood has precedence even over the knights; but we can now see that the reason for his precedence was his position as *custos rotulorum*.

R. SOMERVILLE

[1] *Early treatises on the practice of Justices of the Peace in the Fifteenth and Sixteenth Centuries* (1924), p. 76. Miss Putnam observes that the early relation of the *custos* to the clerk of the peace and the clerk of the crown has still to be worked out, p. 102.
[2] Duchy of Lancaster, Min. Accounts, No. 2030.
[3] *Ibid.*, No. 2031.

SESSIONS OF LANCASHIRE JUSTICES OF THE PEACE IN THE FIFTEENTH AND SIXTEENTH CENTURIES.

Reference D.L. Min. Accounts	Year	Lancaster	Preston	Wigan	Ormskirk	Manchester	Clitheroe	Garstang	Rochdale	Broughton in Furness	Dalton in Furness	Hornby	Bolton	Chorley	Blackburn	Warrington	Prescot	Leigh	Ashton u. Lyne	Total
No. 1930	1438–9	3	1			4		4		1	1	1								15
1936	1446–7	4	5	2		1	3	1			3		2	1			2	1	1	26
1945	1455–6	1	2				1							1						5
1956	1471–2	6	1	2	3	1	2	2							1					18
1983	1506–7	1				2	1		1							3				8
1992	1516–7		2		1	1														4
2013	1540–41	1	2	1	3	2	1													10
2024	1551–2	4	4	2	2	4														16
2030	1557–8	4	4	2	2	2							1							15
2034	1580–81	4	4	2	2	4														16
2035	1586–7	4	4	2	2	4														16
*	1590–91		1		2	4														7
*	1591–2	4	4	2	2	4												1		17

* J. Tait, *Lancashire Quarter Sessions Records*, pp. 15–56.