THE ORIGINS OF THE COUNTY PALATINE OF LANCASTER

BY R. SOMERVILLE, M.A.

Read 16 June 1951

The origins of the county palatine of Lancaster are not so obscure as those of the adjacent palatinate of Chester. There was a definite act of creation, for on 6 March 1351 Edward III erected Lancashire into a county palatine in favour of Henry fourth earl of Lancaster. The county had been given to the earl's grandfather, Edmund, by Henry III in 1267, and was thus part of the vast estates of the Lancaster family.

A county palatine was one in which the king transferred most of his royal powers to the subject who possessed the county. This measure of devolution was of particular advantage in the border counties, which might at any time be involved in raids, if nothing more, from the warlike and predatory peoples on the other side of the line. Thus Chester faced the Welsh, and in the north Durham and, for a time, Hexhamshire, the Scots. There was some logic in placing Lancashire on the same footing, for the county was often enough invaded by the Scots, with warlike intent, even to the eighteenth century. But perhaps it was an anachronism to make a new palatinate in the middle of the fourteenth century. There was, however, another and a good reason for granting palatine powers to the earl of Lancaster. He was a strong and loyal supporter of the king; one of his daughters was later married to the king's son John of Gaunt, and he had a high reputation as a soldier. In this he was second only to Edward the Black Prince, who was earl of Chester and had been created duke of Cornwall in 1337. This was the first dukedom in this country, and it was entirely fitting that Henry of Lancaster should have the second. He was in fact created duke of Lancaster on 6 March 1351, and the erection of his county into a palatinate at the same time was expressly designed to add some substance to his new dignity.

The title and palatinate were granted only for Henry's lifetime, and so they both lapsed on his death in March 1361. His son-in-law, John of Gaunt, was created duke of Lancaster in November 1362, but the duke had to wait until 28 February 1377 before he obtained palatinate rights in Lancashire. This he did in the last parliament of Edward III's reign. It was the parliament that followed the so-called "Good Parliament" of 1376, and which was nothing if not favourable to the duke of Lancaster. Even so, the grant was for the duke's lifetime only, and thirteen years elapsed before it was converted, 16 February 1390, to a grant to include the
heirs male. In this way the palatinate came to John of Gaunt’s son Henry of Bolingbroke who ascended the throne in October 1399 as Henry IV.

Formally, Henry’s accession had very little effect on the palatinate. Being part of his inheritance of Lancaster the county palatine continued in its former state, because Henry kept this whole inheritance separate from the other crown possessions. Otherwise it would all have been swallowed up in the crown. He retained the distinct administration of the inheritance, and this distinct administration has survived to our own day. There were a few changes of form after 1399, such as the substitution of the style of king for that of duke, but they did not amount to much.

Fundamentally, however, it was an event of wide significance that the Duchy of Lancaster, and with it the county palatine, was vested in the king. Not only did this bring additional prestige and prerogative rights from the royal possessor, but also, from the point of view of the central government, it meant that these great resources and franchises were not a potential danger in the hands of a mighty subject, but a potential and actual source of power for the king’s government. The administration of the county palatine could be brought, through the Duchy, into closer harmony with government policy.

It was this vesting in the king, separate from other royal possessions, that ensured for so long the palatinate’s continuance. Thus the fundamental changes effected under Henry VIII on the existing palatinates left that of Lancaster untouched.\(^{(1)}\) Compared with the county palatine of Durham, or even that of Chester, the Lancaster palatinate has been a more effective instrument and has preserved its vigour longer: it is by no means moribund today. It even survived the iconoclasm of the Commonwealth. Barebones’ Parliament which abolished the Court of Chancery of England continued the privileges and jurisdiction of the county palatine of Lancaster.\(^{(2)}\) But what Henry VIII and Oliver Cromwell could not or would not do was under Gladstone partly achieved in 1873.

At its creation in 1351 the Lancaster palatinate was expressly copied from the Chester model, but it did not enjoy the fuller powers of Chester. Thus the duty of finding knights of the shire and burgesses for parliament was continued in Lancashire, and the king reserved the right to correct errors in the duke’s courts and to pardon life and limb. He also reserved the right of direct taxation. The technical result of the grant of palatine powers was the exclusion of the king’s writ in the territory. There was a lesser franchise, the return of writs, which the duke of Lancaster already possessed before 1351 throughout most of his estates; under it he had had the right to execute the king’s process by his own officers. But it had still been the king’s writ. In his new and greater franchise,

\(^{(1)}\) 27 Hen. VIII, c. 24.
the writs ran in his own name. Expressed in another way, the palatine powers meant that the administration of justice in Lancashire was in the duke's hands. Therefore there was created or adapted a whole system which was a replica in miniature of the royal courts at Westminster. The letters patent of 1351 which gave Henry the title duke of Lancaster and created Lancashire a county palatine provided for a chancery, for the issue of writs under a special seal for the office of chancellor, for justices to hold both pleas of the crown and common pleas, and for execution by the duke's writs and his own officers. These are the essential parts of the machinery.

The chancery, placed first in the letters patent, was fundamental, as the administration of justice became effective through the instruments that issued from it under the duke's seal. The seal itself was a great seal; white or uncoloured wax was used for it, unlike the red of the duke's privy seal which had authority in the rest of the duke's domains. The basic design of the seal has survived to this day, but the colour has long been red.

Duke Henry's palatine seal was in the custody of a chancellor. The office was held throughout Henry's period as duke by Henry Haydock, a clerk of the royal chancery. It is not surprising, therefore, that the Lancashire chancery was closely modelled on the king's. The instruments were in Latin, whereas those under the duke's privy seal were mostly in French. The diplomatic of the chancery also followed that used in the royal chancery, but the Lancashire chancery rolls of the time were not differentiated like those of the king's chancery, and letters patent, letters close and enrolments of recognizances all appear on face and dorse of the rolls indiscriminately. The palatinate had its own dating year. The establishment was doubtless on a small scale, and apparently it was normally centred at Preston. At any rate the instruments of Duke Henry's time were usually tested there. When the palatinate was recreated for John of Gaunt, he, like his father-in-law, borrowed a clerk from the royal chancery to be his chancellor in the county palatine; and with due ceremony and solemnity in the Savoy chapel, he charged Thomas Thelwall with the office and placed the great seal in his keeping. Thelwall introduced a double series of rolls distinguishing letters patent and letters close.

Although the custody of the county palatine seal has always remained in the county, an important change affected the enrolments as the fifteenth century proceeded. Instruments under the seal of the palatinate ceased to be enrolled in the county; instead, they were entered in the Duchy books in London, a practice that still subsists. Some of the work in the Lancaster chancery consisted in receiving inquisitions and extents which were returned there. Livery of lands in Lancashire was sued out of the chancery by tenants, and dower was assigned. On occasion, recognizances were taken in the chancery for appearance before the Duchy council in London.
Thelwall, John of Gaunt’s first chancellor in the county palatine, was succeeded by another chancery clerk, John Scarle, who eventually became Chancellor of England. The next three chancellors were also clerics, but in 1413 a layman was appointed to the office, and with only one exception all subsequent chancellors have been laymen.

Under the Duchy the office of chancellor of the county palatine was held by the chancellor of the Duchy. This practice was not quite invariable in the first half of the fifteenth century; but the exceptions are of no importance, except at the beginning of the century in that they have caused some confusion, and no published list of the early chancellors of the county palatine is accurate. There was, however, an important development from this combination of offices. The chancellor of the Duchy, who became increasingly a person of consequence in the nation’s affairs, could not function in person at Lancaster and he was therefore obliged to delegate his powers to a deputy. The first reference to a deputy chancellor by that name occurs in 1440, but most likely there were deputies before that date, and like the first named deputy, they were probably clerks in the chancery. The chancellor’s deputies had custody of the seal, and they were responsible for the issue of instruments under it. One or two of the deputies in the second half of the fifteenth century were clerics, but about the middle of the century there was a lawyer, William Garnet, acting as the chancellor’s deputy, and by the end of the century this had become normal.

This change has much significance. Today the words “Lancashire chancery” imply a court of equity—that bright and constant reminder of the palatinate jurisdiction. But when Henry duke of Lancaster first received the palatine powers the chancery was a secretariat, and not a court of law. About that time, however, an equity jurisdiction was developing in the king’s chancery at Westminster, and doubtless the analogy and the influence of the chancery clerks who served at Lancaster combined to introduce a similar jurisdiction into the Lancashire chancery. The fundamental document in this procedure was the bill, as distinct from the writ employed in the common law courts. The bill, or petition, had a good deal of administrative flavour about it, and it was a common method of addressing a grievance or a request to the king or a great lord like the duke of Lancaster. In the administration of his estates outside the county palatine John of Gaunt was often approached by bill or petition. Very often the bill was sent down to a local officer for a report or for some action to redress a grievance. In the wider sphere of national government such petitions were delegated to the lord chancellor by the king or the council. It can readily be understood how natural it was that the duke of Lancaster should transmit bills relating to Lancashire to his chancellor in the county. In those cases in his time of which we have knowledge the chancellor was asked to examine the matter and take
specific action. This is not a purely judicial process, and it was probably not until some time later that matters were remitted to the chancellor in the county palatine “to do right and justice according to the law”, as the phrase ran. The earliest extant bill comes from 1473 or 1474. It is addressed to the chancellor of the Duchy in connexion with a marriage agreement, and asks for a writ of sub poena under the county palatine seal for appearance before the king in his chancery at Lancaster. The writ was duly issued. Founded upon the bill came a whole series of pleadings, the answer, the replication, and so on, and finally an order or decree of the court. The earliest entry book of orders in the Lancashire chancery court begins in 1523. It is clear, however, that as a court of equity the chancery was in full swing in the reign of Henry VII, that is to say, before the end of the fifteenth century.

Bills and petitions on administrative matters like those which reached John of Gaunt while duke of Lancaster were handled after 1399 by the chancellor of the Duchy. That the whole procedure was in an early stage can be shown from the fact that the bills are not in a stereotyped form, and there is a great variety in their address. They might be addressed to the king or his council, or to the chancellor of the Duchy or the Duchy council, but they were all directed eventually to the proper channel. The Duchy itself developed an equity jurisdiction which was exercised by the chancellor and council, better known as the Court of Duchy chamber at Westminster. Thus there was a close affinity between the central administration of the Duchy and the palatinate.

It will now be clear why the deputy chancellors of the county palatine by the end of the fifteenth century had to be lawyers. One of them was vice-chamberlain of Chester and dean of the Arches. He was followed by Robert Henryson whom Sir Reginald Bray deputed as vice-chancellor and deputy in 1491; the chancellor expressly mentioned that he could not himself occupy the office in question owing to his attendance on the king. It is a matter for sober reflection that Henryson and his two successors were all Yorkshire men.(1)

In 1828 and the following years extensive changes were made in the high court of chancery. No corresponding changes were made in the Lancaster court, and business there, which previously had been quite considerable, began to fall off. By 1850 there had been such a decline that the court had practically ceased to be of any use to the public. But an act passed in that year, the Chancery of Lancaster Act, introduced the much-needed improvements and the court prospered again. At that time the offices of the court were at Preston, but the growth of large and thriving communities in the south of the county required consideration, and in 1853 two districts were formed for the court’s business, with centres at Preston and Liverpool. Four years later the Liverpool district

(1) The title vice-chancellor seems to occur first in Lancashire in 1482. It is still borne by the judge of the Lancashire Chancery Court, who is also, like his predecessors some five centuries ago, styled deputy to the Chancellor in Lancashire.
was divided, and thus we have the three present districts and registries.\(^{(1)}\)

At the start the chancery court presumably had a small establishment of clerks, and they may originally have been employed generally in the more administrative work of the chancery. However, by the beginning of the seventeenth century, at least, there was a chief clerk or registrar, who was solely concerned with the judicial side.

The exchequer was not so prominent as the chancery in the county. In neither of the two grants which set up the county palatine of Lancaster was an exchequer mentioned; but John of Gaunt closely followed the royal machinery and established his own exchequer in Lancashire, subsequently obtaining a confirmation. Although the Lancaster Exchequer began its existence with a flourish and a considerable hierarchy of officials—chief baron, second baron, chancellor of the exchequer and auditor of accounts in the exchequer—it had rather a shadowy existence. A powerful reason for this was the existence of a longstanding system of dealing with the duke’s revenue in Lancashire through a receiver, the same system in fact which obtained throughout the duke’s estates. This system was not disturbed, and the exchequer at Lancaster seems mainly to have been concerned with the issue of process for the recovery of debts, fines and amercements arising in the palatinate courts. The proceeds found their way ultimately to the Duchy receiver in the county. The records of the exchequer have not survived, but it is evident that the exchequer did function as a judicial tribunal and heard pleas of debt between subjects. Barons of the exchequer were appointed up to the early years of the seventeenth century. On the model of the Exchequer at Westminster, the Lancaster exchequer had its own seal. It was a double seal, but no specimen, so far as I am aware, has survived.

The Lancaster exchequer had a new lease of life at the very end of Edward IV’s reign. In order to ensure a more rapid levy of debts to the king the deputy receiver of the county was appointed a baron of the exchequer and a new seal was made. Orders were given to the justices to enforce on the sheriff and the escheator the execution of process under that seal.

The original grant of 1351 expressly provided for justices to hold pleas of the crown and common pleas: and from this there developed in effect two courts corresponding to the two at Westminster: that is to say, Lancashire had its own Crown Court and Court of Common Pleas. Duke Henry appointed several justices together and John of Gaunt during his regality had at first three, one of whom was his chief steward in the county; but at the same time one of these was named chief justice and before the end of the fourteenth century there were only two justices, a chief justice and a secondary justice. This arrangement persisted for five hundred years. These justices were appointed to hear all manner of pleas;

\(^{(1)}\) The Act of 1850 was not all gain, for the court lost its jurisdiction in lunacy.
they were therefore not only justices of common pleas but of oyer and terminer and gaol delivery as well. Until the seventeenth century these judges continued in office for considerable periods, the secondary justice often being promoted to chief justice.

Quite early in the seventeenth century the judges were appointed annually, and presumably they were judges on the northern circuit. Certainly by the third quarter of the century the practice was established of appointing two of the circuit judges twice yearly; this practice continued till the operation of the Judicature Act of 1873. That act contains the momentous words that Lancashire shall cease to be a county palatine, but happily confines this to the appointment of judges of assize. At the same time that act, which came into force in 1876, absorbed the Lancashire Court of Common Pleas into the new Supreme Court. It is said that the intention was also to abolish the Chancery Court, but opposition in the county was sufficient to overcome this fell purpose. Another change effected at the same time was to direct appeals from the palatinate courts into the newly created Court of Appeal. The Court of Duchy Chamber had acted previously as a court of appeal. The forces of uniformity had won a considerable victory.

As one looks back at the long line of justices who served the county palatine it is gratifying to see names of great renown in the history of our law: William Gascoigne, Thomas Littleton, Anthony Fitzherbert, Sir James Dyer, Matthew Hale and many others. Not many of these judges were Lancashire men. One of the better known of these was Thomas Walmsley, at the end of the sixteenth century. All, or nearly all, of the judges in the fifteenth and sixteenth centuries were also judges of the king’s courts: sometimes before, sometimes after, they were appointed in Lancashire. This circumstance in itself would suggest a close assimilation of Lancashire practice to that of the Westminster courts, and this is borne out by the records. Unfortunately most of the earlier rolls have been lost. On the crown side there are the indictments and the writs both original and judicial, as well as the plea rolls. Apart from the plea rolls on the common pleas side there is an important class in the feet of fines, which are of course a form of conveyance.

From 1377 there was a clerk of pleas of the crown who had custody of the indictments and made out process thereon. He was, in effect, the clerk of assize, and, indeed, when the palatinate crown court disappeared in 1876 the clerk of the crown became clerk of assize. Already in the fifteenth century the clerk of the crown had to be a lawyer. This applied also to the clerk of common pleas, or protonotary. In these offices we find quite long successions of holders from the same family, the Rigbys as clerk of the crown, the Andertons as protonotary. The Rigbys also appear in the office of clerk of the peace in the late sixteenth century, but it was the Kenyon family that was most prominent here. As early

---

(1) These have been published by the Record Society of Lancashire and Cheshire, Vols. 46, 50, 60. Some plea rolls (crown side) are to be found in Chetham Society Publications, New Series, Vol. 87.
as 1546 a Kenyon was acting as deputy clerk of the peace. The Duchy had appointed one or two clerks of the peace in the fifteenth century, but it was not until 1540 that the Duchy began regularly to make appointments to this office. Previously the office had been exercised by one of the clerks of the *custos rotulorum*. Appointment by the Duchy went on until the institution of the county council; even then the Duchy retained some powers in regard to the clerk's salary, powers that have only quite recently been relinquished.

Mention of the clerk of the peace leads on to the justices of the peace. There was no reference to them in the original creation of the county palatine, but from the very start of the palatinate they have been appointed under the palatinate seal. Their appointment by the Chancellor of the Duchy at the present day is one of the most distinctive of the surviving palatinate powers.

Another of these surviving powers is the appointment of sheriff of the county. When the county was given to Edmund of Lancaster in 1267 Edmund thus assumed the office of sheriff, and those men who are named in the lists as sheriff were deputies of the earls of Lancaster, and answerable to the king's Exchequer. With the creation of the palatinate, however, the duke's sheriff was answerable only to the duke, and in fact the sheriff's accounts will be found among the Duchy ministers' accounts.

There were certain other officers in the palatinate to whom only the briefest reference can be made. The escheator carried out duties in regard to feudal tenures in the county. The last appointment to the office was made in 1640, and the abolition in 1660 of tenure *in capite* and by knight's service made the office redundant. Another office to fall by the wayside was that of butler. It appears early in the sixteenth century. This official was concerned with the prisage on wines coming into the county, and with the collection of dues which went to the Duchy. The office of attorney and king's serjeant in the county palatine still exists. This officer represented the duke, subsequently the king, in the palatinate courts, and conducted cases on the king's behalf. Nowadays the office is combined with that of attorney general of the Duchy.

The palatinate was and is a part of the Duchy. Had it not been so the palatinate jurisdiction would by now have disappeared. At the back of all the organization which has been briefly described there is the Duchy of Lancaster. The Duchy in the form of the Chancellor and Council of the Duchy was responsible for the appointment of all the officers who have been mentioned: it was the Duchy that made regulations for their conduct, that paid them and dismissed them. The continuance, adjournment or prolongation of sessions was a matter for the Duchy Council. The Council remitted matters to the palatinate courts, or conversely by *certiorari* had them transferred to itself. It sent down writs of *supersedas* to stay proceedings, and generally controlled the administration of justice in the county.
There have been, and may still be, critics who argue that the palatinate jurisdiction, so far from helping the administration of justice, has in fact tended to lawlessness. It is true that in the fifteenth century there were some technicalities in regard to outlawry which led to abuses and breaches of the peace, but it has still to be proved that the jurisdiction in general made for less effective control than in other counties. The fifteenth century saw plenty of disturbance in Lancashire, but it is only fair to remember that scarcely a county was free from all kinds of abuse and violence. It may be, of course, that Lancashire was particularly addicted to lawlessness. Admittedly it had a reputation that way, but this can be attributed not so much to its special position as a county palatine, as to the native vigour and sturdy independence of its inhabitants. After all, it is not always the unruly children that have the least brains or the weakest character.