

## THE LIVERPOOL COURT OF PASSAGE

*By Walter Peel, M.B.E.*

Read 14th February 1918

THE Court of Passage is the borough court of Liverpool. In Moseley's *Law of Inferior Courts*, published in 1845, it is stated that "By grant or prescription or act of Parliament, every city or borough may have a court and most have." The extension of the county court system and the reluctance of Parliament and judges to encourage local courts or to modernise their procedure have in practice put almost all borough courts out of business, though many of them still exist in name and are occasionally brought into action by some adventurous litigant. The Mayor's Court in the city of London and the Liverpool Court of Passage are, however, the only borough courts in which a substantial amount of work is done. The Salford Hundred Court, of course, is not a borough court.

Borough courts are "Inferior Courts of Record." The Superior Courts of England are the House of Lords, the Supreme Court of Judicature, and the County Palatine courts. All other courts are Inferior. In 1867 litigation took place as to the powers of the Mayor's Court, London. The case was taken to the House of Lords and considered of such importance that all the judges of the King's Bench were summoned to sit and give their opinion. In this opinion the difference of jurisdiction between Inferior and Superior Courts was stated as follows:

The rule for jurisdiction is that nothing shall be intended to be out of the jurisdiction of a Superior Court but that which specially appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an Inferior Court but that which is so expressly alleged. . . . Another distinction is that whereas the judgement of a Superior Court unreversed is conclusive as to all relevant matters thereby decided, the judgement of an Inferior Court involving a question of jurisdiction is not final. . . . There is yet another difference worth noticing between courts of general and courts of limited jurisdiction, namely, that the plaintiff is liable to an action for executing the process of an Inferior Court in a matter beyond its jurisdiction, and cannot justify under such process, whether he know of the defect or not; and that the judge and officer are liable to a civil action if they know of the defect of jurisdiction.

A Court of Record is one in which the judicial entries of the proceedings of the court are conclusive evidence of everything contained in them, and are proof themselves on the mere production thereof.

So much for borough courts in general; and now to turn to our own local court in particular.

## I. HISTORY

In the matter of history, the Court of Passage is akin to the needy knife-grinder. Almost all the court records have disappeared. It has been stated that many of them were destroyed in the fire at the Town Hall in 1795, but this seems to be doubtful, and it is more probable that, as in the case of others of the Town Records, their loss has been due to carelessness and lack of interest. So far as I am aware there are few entries of any interest relating to the court in the Town Books.

It does, however, appear probable that a borough court has existed in Liverpool since the thirteenth century. The charter of Henry III. in 1229 con-

tains a grant of "soc and sac." In a petition to Parliament in the fifteenth century by the burgesses of Liverpool it was alleged that these words had "always been interpreted to mean the right to hold a free court," and that a court had accordingly been held since the grant of the charter. As the town was compelled, in spite of its protest, to account for the profits of the court to the king, I am not prepared to do more than suggest the charter as the likely reason for the establishment of the court. The earliest reference to the existing court that I know of is in the Town Book for 1597.

There are two eighteenth-century record books in existence. The first, which is headed "Curia de Liverpoole," is numbered sixteen, and contains the record of the weekly courts from 1707 to 1713. The number of cases entered varies from three to thirty for each sitting. In October 1708 there is an entry of some interest to lawyers. It is a garnishee proceeding against John White, master of *The Reformation*, in respect of money due by him to Richard Roe, "who had waged himself to go with the said ship to Harwich." At first I thought this was a mysterious intrusion into common law litigation of one of those fictitious friends John Doe and Richard Roe. But it appears that after satisfying Richard Roe's creditor John White still had 1s. in hand, which was handed over in court to Ann Roe, "who had a power from her husband."

The other book contains the records of the quarterly sittings before the mayor and bailiffs from 1732 to 1764. The proceedings are set out with some detail and the names of the jurors are generally given. On the 31st October 1734, James, earl of Derby, mayor, sat in person, but the other courts during his year of office appear to have been presided over by the deputy mayor. Several familiar names occur. In July 1737 there was a claim for

£420, the defendant being John Earle, merchant, "in custody," the result of the case being that the jury found for plaintiff 2d. damages. In August 1741 Nicholas Blundell was a defendant in custody. He had £5:6:3 damages given against him. In those days a plaintiff could have the defendant detained in custody unless he gave security for the claim against him.

These courts were, as stated, held before the mayor and bailiffs, the town clerk being registrar. The recorder appears to have sat with them generally but not invariably. If when he was not present any important or difficult point of law arose it was referred to him. For instance, in February 1739 there was an application to set aside a judgement; the note is, "Court will advise with Mr. Recorder," and in the following August there is an entry, "It is ordered by Mr. Recorder's special directions that the said judgement shall stand." In 1834 an act of Parliament was passed for the appointment of a barrister to be assistant to the mayor and bailiffs, and prohibiting them from sitting without the assistance of the barrister so appointed.

In 1836, by another act, the assessor was to sit alone for the trial of actions, and by the Court of Passage Act, 1893, he was given the title of "presiding judge." The following is a

#### LIST OF THE ASSESSORS AND PRESIDING JUDGES

Hy. Roscoe . . . . .	1834-1836 ob. 1836.
Charles Crompton . . . . .	1836-1852. <sup>1</sup>
Edward James . . . . .	1852-1867 ob. 1867.
P. A. Pickering . . . . .	1867-1876 ob. 1876.
T. H. Baylis . . . . .	1876-1903 resigned. <sup>2</sup>
W. F. K. Taylor . . . . .	1903-

The chief points of interest about the Court of Passage are its jurisdiction and its name.

<sup>1</sup> Appointed Judge of the Court of Queen's Bench.

<sup>2</sup> Presiding Judge from 1893.

## II. JURISDICTION

The jurisdiction of a borough court extends over the borough and its liberties, and the Court of Passage has from time immemorial claimed to exercise its jurisdiction over the waters of the port as being within the liberties of the town of Liverpool. The charter of king John (1207) grants "all liberties and free customs in the town of Liverpool, which any free borough on the sea hath in our lands." Whether this of itself constituted Liverpool a port town or not I have not sufficient knowledge to say.<sup>1</sup> But that Liverpool was a port town is amply proved by numerous royal orders, etc., entered in the Town Books. Thus in 1529 we have "our port of Liverpoole," and in 1565 "Borough corporate & Port town of Liverpoole." In 1639 there is a royal order addressed to the mayor, bailiffs, and burgesses of the borough or haven of Liverpool commanding them to arrest all Scottish ships that shall come "into your port, haven or creek, and liberties thereof." In 1658, in consequence of disputes between Chester and Liverpool, the Surveyor-General for Customs and Excise held an inquiry and awarded that "the liberties of Liverpoole do reach unto the accustomed place on the further side of the redd stones" at Hoylake. The preamble of the act of Parliament passed in 1751 to establish a Court of Requests for Liverpool states that the town of Liverpool "is a Port Town of very great antiquity."

<sup>1</sup> The subject of the rights and privileges of port or haven towns does not seem to have been much studied, or at all events it has been scantily dealt with in published volumes. Blackstone states: "It would appear that from very early times the towns by the sea which became ports had a jurisdiction wider than that of inland towns." Camden (1637), in writing of Poole, says it had grown "to be a mercate towne exceeding rich and wealthy . . . and King Henry VI. by consent of the Parliament granted unto it the privileges of a port or haven towne which he had taken from Melcomb."

It would not be difficult to multiply evidence as to the exercise of jurisdiction over the waters of the port by the corporation, and there is little doubt that the Court of Passage executed its process by serving writs and arresting debtors on board vessels lying in the port. In 1826 an inquiry *ad Quod Damnum* was held at Neston concerning an encroachment upon the river Mersey at Tranmere Bay. The Sergeant at Mace of the Court of Passage, Mr. W. M. Frodsham, who had held his office for nineteen years and had succeeded his father, gave evidence as to executing process. He stated that his jurisdiction extended over any part of the river Mersey within the liberties of the port, and that he arrested persons on board ship or in a boat so long as it was afloat, but not if it was aground on the Cheshire shore.

The right of the court to exercise its jurisdiction over this wide area does not appear to have been challenged until quite recently, viz. in 1911. In an action brought in the court in that year against a firm of shipowners in respect of an accident on board a steamer, they contended that their vessel having been outside the boundaries of the city of Liverpool at the time of the accident the court had no jurisdiction. The contention was, however, disallowed, and an appeal which was entered was withdrawn.

### III. NAME

Although the court was called the Court of Passage that was not its actual name until comparatively recent times. Just as actions in the High Court of Justice are tried at the Liverpool Assizes, so the court was the borough court of Liverpool and the Courts of Passage were the special quarterly courts held for the trial of disputed cases. Here for

instance is a notice of trial taken from the court records. It reads as follows :

*In the Borough Court of Liverpool*

*Field v. Brackenridge*

Take notice that this cause will be tried at the next Court of Passage for the trial of Issues depending in the Borough Court of Liverpool to be holden, &c.

In 1853 an act of Parliament was passed amending the procedure of the court, and the then assessor, Mr. Edward James, appears to have taken advantage of new forms being required to alter the name of the court. There are many of the printed forms in use that year with the title altered with pen and ink. At all events with 1853 the name "Borough Court of Liverpool" disappeared, and the court was the "Court of Passage" for *all* purposes. What does the name signify? It has apparently puzzled every one. Many suggestions have been put forward, none of which have been either convincing or satisfactory ; and in the light of recent investigation they are of little or no value.

In 1911, Mr. R. Gladstone, jr., told me that there used to be Courts of Passage in Chester, and that the court rolls were in existence. The close connection between Chester and Liverpool suggested that these rolls might supply valuable information, especially as it was known that Chester exercised jurisdiction on the Dee as far as Hilbre Island. Accordingly Mr. Gladstone and I inspected the rolls and the court books which covered the period 1555 to 1626. The title of the Chester local court was the Pentice Court, and the cases entered in the court books were those tried at sittings of the Pentice Court held in each year "Ad Passagium Primum," "Ad Passagium Secundum," and so on. In one year a ninth Passage was noticed, in others

not so many. It is a known fact that in early days trading vessels sailed together in fleets at regular intervals, and there appears to be evidence that their arrival at their destination was called the *Passagium*. Mr. Gladstone's theory, which appears to give a reasonable explanation of the name of the court, is that the sittings of the court were fixed for the time when these trading vessels were in port in order that disputes between the town merchants and the captains or members of the crews of these vessels might be tried, and that in this way the term "Courts of Passage" arose. The fact that for a long period Chester contended that she had a superior jurisdiction over the port town of Liverpool would explain a similar name being given to the sittings of the Liverpool court.

#### IV. PRESENT DAY

Towards the end of the nineteenth century the Court of Passage fell upon evil days. Its procedure was antiquated, and high authorities in London hesitated to grant power to reform the practice. At last, in 1903, the efforts of the Corporation and the Law Society were rewarded, and the practice of the court was assimilated to that of the High Court of Justice. Since then it has played an important part in the local administration of justice. It has no criminal jurisdiction and its powers are very limited in matters that pertain to the Courts of Chancery, but in common law cases there are no restrictions except that in claims for under £20 the whole cause of action, and in other cases part of the cause of action, must have arisen within the jurisdiction of the court. In Admiralty matters it has the same powers as the county court.

The presiding judge sits five times a year at St.

George's Hall for the trial of actions, and the registrar sits daily to deal with the ordinary work of the court.

On the whole it may safely be said that the Court of Passage is a useful and satisfactory survival from the days when local courts were a more general part of our system of jurisprudence.