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THE COUNTRY JUSTICE IN ENGLISH  
LOCAL GOVERNMENT DURING  
THE FIRST HALF OF THE  
SEVENTEENTH CENTURY

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Dorothy Jean Ross, M.A.

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McGill University.

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## PREFACE.

The research of the past thirty or forty years has revealed the true importance of the justices of the peace in the growth of the government of England. Historians have therefore devoted a good deal of attention to the development of the office of these county magistrates; Miss Putnam and Dr. Kimball have dealt with the early part of their history, Mr. Beard has traced their evolution up to the reign of James I., and the Webbs have described the ascendancy of the squires in the 18th and 19th centuries. This study is an attempt to fill in a part, though only a part, of the gap that is thus left between 1603 and 1660. Exigencies of space and time have made it necessary for me to omit the Civil War and Commonwealth periods, as well as all reference to the odd and interesting position of the borough justices.

Even when these restrictions have been imposed, and the subject has thus been limited to a discussion of the office of the rural justices in the reigns of the first two Stuarts, the research student is faced with a formidable task. In spite of the confusion during the Civil War, and the subsequent lack of interest in the proper preservation of county records, a surprisingly large number of documents relating to the work of



the Quarter Sessions survive. Many of these have not been printed, and their bulk is such that only a student able to spend a very considerable time in England would be in a position to go through them with adequate thoroughness. As a consequence, the manuscript county records used for this thesis have had to be selected, and the choice has been made so as to bring into the picture, as far as possible, the areas of England for which printed Quarter Sessions documents are not available - Durham for the extreme North, Cheshire (to which I have referred throughout by its 17th century name of Chester) for the Northwest bordering upon Wales, and Norfolk and Lincoln for the Fen district. In the Midlands, the South, and the neighbourhood of London, representative shires have published their records. On the Southeast, Kent perhaps deserves special consideration, but owing to the fact that a rearrangement of the manuscripts of that county was in progress during 1934 and 1935, the Sessions documents at Maidstone were not open to me for consultation.

Yet while many counties have retained an astonishing amount of the original contents of their ancient archives, the extant Quarter Sessions records of the early 17th century are by no means complete. In not a few places, routine documents alone, such as recognizances, sureties of the peace, and the like, have been preserved. In others, the Sessions Order Books are the only records left, while in still others, no more than the bundles of indictments have survived. Thus the research student may find examples of the justices' civil work here, and evidence of their criminal work there; but the drawing of gener-



alizations about either type of activity from such fragments is dangerous in the extreme. Furthermore, certain parts of the Sessions records consist of detached documents - petitions, presentments, depositions, warrants, indictments, recognizances, certificates, and even some of the court orders - and it is quite impossible to tell how many of these have been destroyed or have strayed from their proper repository. This lays open to vigorous criticism any attempt to trace authoritatively the development of the justices' office in connection with the lapse or exercise of certain of their powers. Absence from the records of all mention of a given kind of activity may indeed indicate that the magistrates were ignoring this branch of their duties, but it may equally well mean that damp, rats or the indifference of the keepers of the archives have destroyed the written evidence of the justices' work.

Even where the records are apparently fairly complete, research may be hampered by the casual habits of the Stuart clerks of the peace. Often an indictment was filed away with no note on it as to what action was taken; or a list of penalties was compiled, without any indication of what crimes were thus punished. And in the case of the printed records, yet another hazard enters the game - the editor, pressed for space, usually selects for publication the documents that seem to him to be of general interest, or which he thinks will appeal to the particular section of the public for whom he intends his volume. The selection is in most cases skilfully done, but the very fact that a choice has been made obviates the possibility of a quan-



titative analysis.

The Reports and Appendixes of the Historical Manuscripts Commission afford a valuable hunting-ground for material concerning the country squires. There, undoubtedly, many letters dealing with the life and interests of typical justices of the peace can be found, but lack of time, coupled with the manifold difficulties involved in a systematic consultation of these records, has made it impossible for more than the obvious collections of family papers, like the Gawdy Manuscripts, to be used here.

I would like to acknowledge a very real debt of gratitude to Professor Adair of McGill University, both for lending the aid of his own profound knowledge of Stuart times, and for providing the equally valuable assistance of mental stimulation; to Mr. Hilary Jenkinson of King's, and Professor J.E. Neale of University College, for their help in directing my work at London; and to the keepers of the local archives all over England, who not only permitted free access to the documents in their care, but also went out of their way to render research among their records a pleasure as well as a privilege.

LIST OF ABBREVIATIONS.

ACTS OF P.C. -- Acts of the Privy Council.

ADD. MSS. -- Additional Manuscripts.

App. -- Appendix.

B.M. -- British Museum.

CAL. S.P. DOM. -- Calendar of State Papers Domestic.

CAMDEN SOC. -- Camden Society.

CHESTER Q.S. RECS. -- Chester Quarter Sessions Records.

COX, Derbyshire Annals -- Three Centuries of Derbyshire Annals,  
by J. C. Cox.

Dep. Lieut's -- Deputy Lieutenants.

DUR. SESS. ORDER BOOK -- Durham Sessions Order Book.

Ed. -- Edition.

E. H. R. -- English Historical Review.

HAMILTON, Devon Quarter Sessions -- Quarter Sessions from Queen  
Elizabeth to Queen Anne, by A.H.A. Hamilton.

HARL. MSS. -- Harleian Manuscripts.

H. C. J. -- Journals of the House of Commons.

HERTS. CO. RECS. -- Hertford County Records, edited by W.J. Hardy

H. MSS. COMM. -- Historical Manuscripts Commission.

J's of Assize -- Justices or Judges of Assize.

J.P.'s -- Justices of the Peace.

LANCS. Q.S. RECS. -- Lancashire Quarter Sessions Records, edited  
by J. Tait.



- LINCS. (LINDSEY) Q.S. ROLLS -- Quarter Sessions Rolls for the  
Part of Lindsey, Lincolnshire.
- MANCH. SESS. -- Manchester Sessions, edited by Ernest Axon.
- MIDD. CO. RECS. -- Middlesex County Records, edited by J. C.  
Jeaffreson.
- MIDD. SESS. RECS. -- Middlesex Sessions Records, New Series,  
edited by William Le Hardy.
- NORF. LIEUTENANCY PAPERS -- State Papers relating to Musters,  
Beacons, etc., in Norfolk, edited by Walter Rye.
- NORF. Q.S. ROLLS -- Norfolk Quarter Sessions Rolls.
- NORTHANTS. CO. RECS. -- Quarter Sessions Records of the County  
of Northampton, edited by Joan Wake.
- NORTHANTS. MUSTERS -- Papers relating to Musters, etc., in the  
County of Northampton, edited by Joan Wake.
- NOTESTEIN, Commons Debates, 1621 -- Commons Debates, 1621, edi-  
ted by W. Notestein, H. Relf and H. Simpson.
- NOTTS. CO. RECS. -- Nottinghamshire County Records, edited by  
H. H. Copnall.
- N.R.Q.S. RECS. -- North Riding Quarter Sessions Records, edited  
by J. C. Atkinson.
- P.C. -- Privy Council.
- Pet. -- Petition.
- Pres. -- President.
- P.R.O. -- Public Record Office.
- Proc. -- Proclamation.
- Q. Sess. -- Quarter Sessions.
- Sess. -- Sessions.
- SOMER. Q.S. RECS. -- Somerset Quarter Sessions Records, edited  
by E. H. Bates-Harbin.
- S.P. DOM. -- State Papers Domestic.
- STEELE, Proclamations -- A Bibliography of Royal Proclamations  
of the Tudor and Stuart Sovereigns, by R. Steele.

Stiffkey Papers -- Official Papers of Sir Nathaniel Bacon of Stiffkey, Norfolk, edited by H.W. Saunders, Camden Society.

Trans. of Royal Hist. Soc. -- Transactions of the Royal Historical Society.

WAR. CO. RECS. -- Warwick County Records, edited by S.C. Ratcliff and H.C. Johnson.

WILTS. CO. RECS. -- Records of the County of Wilts., by B.H. Cunningham.

WORCS. Q.S. ROLLS -- Worcestershire Quarter Sessions Rolls, edited by J.W. Willis-Bund.

W.R.Q.S. RECS. -- West Riding Quarter Sessions Records, edited by John Lister.

Y.A.J. -- Yorkshire Archaeological Journal.



## INTRODUCTION.

### THE PROBLEMS OF GOVERNMENT IN THE EARLY SEVENTEENTH CENTURY.

A period of development is always intensely interesting to the historian who looks back upon it in comfortable retrospect, but the man who has to live through the change often finds life bewildering and insecure. Old institutions cease to be useful, yet linger on in a state of senile decay; old theories no longer meet the new and pressing problems. Any straining of the economic or social organization of a country bears hardly upon those least able to withstand the pressure, and if prosperity follows, the benefits are reaped by the few rather than by the many. Under such conditions there is bound to be discontent, and if the discontent is not in some way allayed, rioting, bloodshed, and even civil war may result.

The government faced with a situation of this kind is in no enviable position. A policy of standing still eventually brings chaos; retrogression only makes the crash, when it comes, more overwhelming; and movement forward is necessarily experimental. If the experiments succeed, the achievement is taken as a matter of course, but if they fail, an avalanche of abuse falls upon the unfortunate heads of the blundering officials.

The reigns of the first two Stuarts came in the midst of just such a difficult period of development. The spotlight of history has, by emphasizing the importance of the constitutional struggle, tended to draw attention away from the fact that at this same time the whole structure of society was changing. The blood-thirsty barons of the Middle Ages, with their private armies and their narrow self-interestedness, had gone by the board with other discarded parts of the feudal system. In their place there had appeared a nobility of cultured gentlemen who maintained the privileges accorded to them by their aristocratic blood, but who were no longer a menace to law and order. On the contrary, they were looking far enough beyond the limits of their own personal profit to be willing to serve the country in such official positions as that of Lord Lieutenant or Privy Councillor. Nor were they ~~now~~ contemptuously hostile to the merchants, for the younger sons of the aristocracy were finding occupation in certain types of gentlemanly trade, and so were creating a bond of sympathy between the upper and the upper middle class.

At the other end of the social scale, the changing conditions were just as apparent but much more disquieting. By 1600, the peasants had reached a position half-way between that of the medieval villein and that of the modern wage-earner, for the serfs had, through many generations, been rising to the rank of the yeoman farmers who occupied their land by copyhold or leasehold and worked it independently. So admirable were the sturdy qualities of these small farmers that in the reign of Queen Elizabeth they were by popular accord conceded to be the



backbone of England. Yet even then their decline had begun, and when James I came to the throne they were being gradually driven by economic pressure into the position of mere labourers, or even of unemployed vagrants. They resented their wrongs, they even tore down the hedges which bounded the enclosures that were destroying them, but their deterioration as a class continued.

A rather similar movement was taking place in industry, where the small craftsmen were also losing their independence. Some, it is true, still worked with their own tools in cottages surrounded by bits of land that could, at a pinch, supply the family with food. By the opening of the seventeenth century, however, many were using an employer's implements upon an employer's materials, and were receiving for their labour a microscopic wage. These artisans often lived in the forerunners of the modern tenements; several families would be packed into a single building which had no kitchen garden to provide food in the event of a shortage of employment. The evolution of the modern wage-slave was under way.

While the nobility and the peasantry were changing in character, the middle class was growing both in size and in importance. It was composed of merchants who were the heirs of the self-reliant burghers of the Middle Ages, and the country gentlemen, the descendants of the feudal knights. This mixed group possessed many of the best features of both its component parts. The country squires in Stuart times were still the dominant figures in their localities, but education had taken some of the brutality from their methods of exercising authority,

and there was growing up a tradition of mildly autocratic benevolence which for years was to characterize the government carried on by the English ruling classes. The merchants, too, were prepared to take a leading part in public affairs. They had kept the shrewdness and determination of their burgher forbears, and were gaining a broader vision as well. For generations past they had served their boroughs as mayors and aldermen; now some of the London citizens like Cranfield and Hicks, were joining the nobility as officials high in the service of the State. And along with the country squires and well-to-do merchants, the middle class included a number of hybrids - the nobles' sons who had taken to trade, and the successful traders who had spent <sup>part</sup> of their fortunes in buying estates, and so had entered the ranks of the landed aristocracy. These trader-gentlemen provided the link between the rural squires and the town merchants.

While, during the first half of the seventeenth century, the structure of society was quietly changing, the political system was violently convulsed when royal autocracy was forcibly replaced by oligarchic rule. This momentous shifting of the governmental centre of gravity was brought about by a group of idealists from the active and intelligent middle class, for it was from this division of society that the members of the House of Commons were drawn.

The dissatisfaction with the condition of the government was no new thing, for a barely-concealed antagonism between the Crown and the Commons had been growing during the later years of Elizabeth's reign, and when the Tudors gave way to the Scottish



line which seemed to be unable to sit with either ease or grace on the English throne, the hostility became open. Eliot, Hampden and Pym voiced the claims of Parliamentary government in opposition to the Stuart theory of Divine Right; Coke and Selden maintained the position of the Common Law against the encroachments of the royal prerogative. The issue was at last clearly stated at Hampden's trial in 1638, when Chief Justice Finch declared, "They are void Acts of Parliament to bind the King not to command the subjects, their persons and goods ... for no Acts of Parliament make any difference."<sup>1</sup> The challenge was clear, and when the Long Parliament met, both sides were prepared to fight to the finish. Nor was the struggle one in which only a few enthusiasts took sides, for the progress of the conflict was eagerly followed by many who had never set foot within Westminster. Correspondents in London kept their friends in the country well informed concerning the march of events, and as a result, the gathering of the political storm was anxiously watched in innumerable manor-houses from Durham to Dorset.

The ecclesiastical system of England was also suffering severe shocks, for the King's insistence upon having his own way in religious matters roused just as bitter opposition as his attempts at establishing political autocracy. The English Church, inherited by the Stuarts from Queen Elizabeth, was, like all compromises, a hotch-potch, for it had managed to gather within its elastic bounds a large number of easy-going people of both Pro-

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(1) GARDINER, History of England, 1603-1642, vol. VIII, p. 280.

testant and Catholic leanings. As time went on, new ingredients were added to this curious mixture, for by the end of the sixteenth century a number of the less fanatical Puritans, along with some of the moderate "Church-Papists",<sup>1</sup> had been induced by continued pressure to take refuge from persecution within the Established Church. It was only natural that such reluctant Conformists would not be entirely satisfied with their anomalous position, and their mutterings were added to the louder complaints of the unyielding Left and Right wing parties - Protestant Independents and High Catholics - which remained immovably outside the official religious system.

That the Stuarts were not prepared to be conciliatory to the Puritans was made clear at the very beginning of James I's reign. The deputation which presented the mildly-worded Millenary Petition was summarily dismissed with the King's curt reply, "If this be all your party hath to say, I will make them conform themselves, or else will harry them out of the land."<sup>2</sup> The subsequent ejection of three hundred clergymen who would not take the prescribed tests for orthodoxy proved that this was no idle threat, but James' own lack of roots in the Anglican faith kept him from any excesses of persecution. His son Charles, more zealous and less wise than his father, tried to stem the rising tide of Puritan enthusiasm by violent repression, only to find his victims hailed as martyrs, and the religious opposition united

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(1) i.e. those who retained in full their Roman Catholic beliefs, but who attended the English Church for the sake of peace.

(2) TREVELYAN, England Under the Stuarts, (1938), p. 79.

even more firmly with the political opposition in order to make common cause against royal tyranny. It was the fatal error of the High Church party to underestimate the importance of the fact that a moderate Puritanism was the religion of a substantial part of the middle class for whom the House of Commons spoke. Charles and Laud desired orderly uniformity; they produced a religious earthquake.

The presence in England of a considerable body of Catholic recusants caused a good deal of apprehension, for neither their numbers nor their loyalties were known with any certainty. Rumours, of course, were rife, and tales of the sinister underground gropings of the Popish octopus lost nothing in the telling. As a result of these fears, Parliament enacted against the Catholics severe penal laws, which were never fully enforced, it is true, but were never entirely forgotten. Generally speaking, the persecution of the Papists varied according to time and place. In districts where powerful landlords adhered to the old faith, recusants openly proclaimed their hope that the days of the heretics' glory were numbered, while in strongly Protestant areas, fines and social ostracism were the penalty for loyalty to the Roman Church. Moreover, while Parliament maintained a consistently anti-Catholic attitude, the Crown vacillated between active repression and a faintly uneasy tolerance. The Gunpowder Plot swung the King for a time towards persecution; Charles I's marriage with the Catholic Henrietta Maria produced the reverse of this policy. But whether King and Parliament loved or hated the Catholics, the final word as to the fate of these unfortunate

people rested with the local authorities who actually administered the statutes, and their friendliness or hostility was more anxiously watched than the smiles of the King or the frowns of the Commons.

A rapid development in the economic system of England added another moving piece to the kaleidoscope of seventeenth century life. Here again, conditions in the Stuart period represent an intermediate stage between the Middle Ages and the modern era. Local control of manufacture by the guilds was dying, although the medieval passion for incorporation continued through the seventeenth century, as can be seen in the formation of innumerable new "companies" of craftsmen. The Ordinances of the Tailors of Lincoln, for example, might well have been those of a fourteenth century guild, although actually they were drawn up in the reign of Charles II. But while guild organization still played its part in manufacture, the expanding of the foreign markets and the growth of colonial trade called for a less parochial economic system than that of the Middle Ages. Even before the Tudor period, the central government had been making valiant efforts to reduce to some sort of logical pattern the welter of local regulations which made English industry an economist's nightmare. General rules were laid down to control the size, the quality, and the method of finishing cloth,<sup>1</sup> the ingredients used in the manufacture of dye,<sup>2</sup> of pewter,<sup>3</sup> and the

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(1) 5 - 6 Edward VI, c. 6.

(2) 39 Elizabeth, c. 11.

(3) 19 Henry VII, c. 6.



process employed in the dressing of leather,<sup>1</sup> and the malting of grain.<sup>2</sup> Prices were fixed for certain commodities, such as wine<sup>3</sup> and fuel;<sup>4</sup> and while no attempt was made to set a standard value on labour, a uniform method for the local assessment of wages was established.<sup>5</sup>

At the same time that gild control was giving way to government control over manufacture, a form of capitalism was growing up, especially in the woollen industry of the West of England. Here, by 1600, the domestic system was well established, and this system represents the transitional stage between the medieval and the modern types of industrial organization. While the spinner or weaver still used his own tools and plied his trade in his own home, the materials belonged to the employer, and the worker received a money payment for his labour. These payments, as we have seen, were usually extremely small, and although the government tried to have wages equated with prices, its efforts were not crowned with any great measure of success. The cost of living rose steadily, but the workers' earnings remained almost entirely static.

Like the modern employee, the 17th century cloth-worker of the West was almost entirely dependent for his existence upon

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(1) 1 James I, c. 22.

(2) 2 - 3 Edward VI, c. 10.

(3) 28 Henry VIII, c. 14.

(4) 7 Edw. VI, c. 7.

(5) 5 Elizabeth, c. 4.

the money he received from his master. The attempts of the government to see that each cottage was provided with a small garden in which the worker could raise enough food in times of depression to keep his family from starvation do not seem to have produced the desired results. This failure was, in many cases, due to the fact that the artisan had become too completely divorced from the soil to be able to make a success of spasmodic farming. Wages were therefore the cloth-workers' only means of support, and when an industrial crisis brought about unemployment, the plight of the workless artisan was pitiable indeed.

Nor were such depressions rare occurrences, for the expansion of the foreign market for English cloth caused troubled conditions abroad to have disastrous repercussions upon English manufactures. An industrial collapse darkened the last years of Elizabeth's reign; another seriously weakened the woollen industry just before the death of James I; and a third, complicated by famine, caused wide-spread distress in Essex and Suffolk some ten years later. Between 1637 and 1639, cloth manufacture in the West of England collapsed again, and it was reported that "Trading both at home and abroad declineth very fast." The newly-established poor-relief system bent under the strain of these depressions, and hunger-riots gave the authorities a good many anxious moments.

Agriculture, which was still England's chief occupation, was also moving into a more capitalistic type of organization. The enclosure of open fields into compact farms increased the number of good-sized holdings where much of the work was done by

hired labour, and decreased the number of small independent proprietors. The movement towards the larger kind of consolidated farm was accelerated by the growth of interest in a scientific type of agriculture which was not practicable in scattered holdings. Further, when the draining of the Fens increased the area of arable in England, the reclaimed land was developed under the new system rather than the old.

What was the fate of the small farmers, now landless? Most became, like the spinners and weavers, mere wage-earners. These labourers, though not so helpless as the underpaid cloth-workers, were nevertheless hard put to it to live on their scanty wages, and the local famines which struck the country with distressing frequency added to the precariousness of their existence.

The consolidation of the farms was not the only menace to the independence of the yeomen. The older type of enclosure, for the conversion of ploughed fields to sheep-pasture, was continuing, although it had lost much of its original impetus. Prices of wheat and wool were finding their natural level, and since the profits from sheep-raising were no longer large, depopulation arising from this kind of enclosure was on the wane. Yet the old evil left its relic in a vagrancy problem which, though decreasing in seriousness, was still disquieting. In the reign of Queen Elizabeth, the government placed the onus of the care of the unemployed upon the parish authorities. This astute move had a double advantage - it provided support for the industrious but unfortunate poor, and it enlisted the enthusiastic co-operation of the local officials in a concerted

attack upon professional vagrancy.

When we turn to foreign trade, we again see an intermediate state of affairs, neither medieval nor modern. Commerce was for the most part in the hands of chartered companies, and in some of these, such as the Merchant Adventurers, the gild principle lingered on - each member traded independently, yet always under the general regulations of the whole group. At the same time there was growing up the modern conception of a mercantile organization in which shareholders invest capital, but do not necessarily engage actively in any of the trading enterprises. In this latter class were the joint-stock companies, like the East India and the Hudson's Bay. Entirely distinct again from these authorized merchants there were a number of ambitious gentlemen who carried on a brisk smuggling business in contravention of the charters of monopoly granted to the official companies. The smugglers, called the Interlopers, were a thorn in the side of Authority, but they performed a useful function in widening trade to an extent which would not have been possible had the monopolies been strictly respected.

In all this movement and development in Stuart times, one important part of the framework of English life continued almost unchanged, for until the Civil War, the military system did not undergo any drastic alteration. There was no regular army; for aggressive warfare, the King had to rely on quasi-volunteers, coaxed, lured or bullied into service. For defence, there was the militia, in which service was compulsory. The men were trained at musters held each summer, and the armour and



horses had to be provided by the more substantial citizens. During the troubled years of the 16th century, the Crown had fallen into the habit of entrusting the organization of the musters to Lords Lieutenants. These officials served voluntarily, but there were also the paid muster masters, employed by the King to inspect the men, their weapons and their horses. During the reigns of the early Stuarts this Elizabethan **system** was continued without much change, except that the Lords Lieutenants slipped gradually into the position of virtual figure-heads, and left the real work to be done by Deputies.

Thus the people of the 17th century found themselves in the midst of a profound transformation, extending from top to bottom of society and from end to end of the range of human occupations and interests. Many suffered in the course of the inevitable readjustments, and the outbreaks of very natural resentment, taken with the responsibilities arising from the increase of government control in industry, made the position of the ruling powers a very difficult one. Consequently there was a pressing need for active local officials, who could not only maintain order, but could also deal with a mass of administrative detail. Such men would have to possess very special qualifications - they must be intelligent, public-spirited, hard-working, and born for leadership. In whom could such an assembly of talents be found?

The Tudors had discovered the answer to this question with no great difficulty, for the justices of the peace, created in the reign of Edward III as conservators of law and order, seemed to fill the requirements admirably. They were fitted,

through long experience, to cope with riots and disturbances, and they had also, since the passing of the Statute of Labourers in 1351, taken a hand in the enforcement of social and economic legislation. The penalty of efficiency is usually an increase of responsibility, and certainly the 16th century saw the phenomenal expansion of the authority of these local magistrates. There seemed to be no limit to the faith placed by King and Parliament alike in their ability; duties ranging from the suppression of crime to the removal of refuse were thrust upon them.

It is the purpose of this study, then, to examine the activities of the justices, to estimate their success or failure in dealing with difficult situations in a critical period, and to determine whether or not they deserved the high esteem in which they were held by many of their contemporaries.

## CHAPTER I.

### THE POSITION, TRAINING, AND CHARACTER OF THE JUSTICES OF THE PEACE.

The Tudors' judgment was not at fault when they selected the country gentlemen of the middle class as those best equipped to be the local agents of a paternal government. The social standing of these squires, together with their position as landlords, gave them an inherent authority which was instinctively accepted by the humbler folk of the countryside. Fuller, a 17th century writer, says in his description of the ideal gentleman, "He compounds many petty differences betwixt his neighbours, which are easier ended in his own porch than in Westminster Hall. For many people think, if once they have fetched a warrant from a Justice, they have given earnest to follow the suit; though, otherwise, the matter be so mean, that the next night's sleep would have bound both parties to the peace, and made them as good friends as ever before."<sup>1</sup> This natural ability to act as arbitrators was supplemented by education, for it was the proper thing for a youth of good birth to spend some time

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(1) FULLER, Holy and Profane State, (Ed. 1841), p. 138.

in London acquiring at least a smattering of legal knowledge - "At the Inns of Court, he applies himself to learn the laws of the kingdom .... Law will help him to keep his own and bestead his neighbours."<sup>1</sup> Thus in every **locality** there would be found men competent to deal with legal matters of a simple kind. Moreover, when a gentleman became a justice of the peace, he was expected to improve his acquaintance with the law "by a continuall studie and painfull meditation of the statutes at large".<sup>2</sup> There were also many handbooks especially designed to provide the bewildered tyro with a knowledge of his multifarious duties,<sup>3</sup> and occasional references to the production and use of these guides in court,<sup>4</sup> together with the well-worn appearance of the extant volumes, show that they provided a useful supplement to the gentleman's education.

The justices were appointed by the Lord Chancellor,<sup>5</sup> but such a high official, living in London, could not have personal knowledge of the qualifications of the thousands of squires in England. He could, however, call upon the Judges of Assize

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(1) FULLER, Holy and Profane State, (Ed. 1841), p. 138.

(2) LAMBARD, Eirenarcha, (Ed. 1619), p. 374.

(3) FITZHERBERT, The Newe Boke of Iustices of Peace. LAMBARD, Eirenarcha. DALTON, The Country Justice. SHEPHARD, A Sure Guide to his Majesty's Justices of Peace. WINGATE, Justice Revived, etc.

(4) As in CHESTER Q.S. RECS., 1636, File 2, No. 47, note at the foot of a petition concerning a bastard, "Nee child vnder the age of vij yeres shall be adiudged a rouge. Dalton's Iustice of peace. fo. 110."

(5) DALTON, The Country Justice, (Ed. 1705), pp. 10-11. LAMBARD, Eirenarcha, (Ed. 1619), p. 25.



for information,<sup>1</sup> for the latter came into contact with many of the country gentlemen in the course of their Circuits, and so were able to form some opinion as to which were best suited to perform the varied duties of a justice of the peace. Sometimes, too, a magistrate already on the Commission would recommend a likely candidate,<sup>2</sup> and on one occasion the Chancellor actually delayed the appointment of a man suggested by the King himself "till he should be certified of the convenience thereof by some Justices of reace of that county." <sup>3</sup>

With the authority to appoint went its corollary, the authority to discharge from office. Bacon said, "There are ordained justices of peace, assigned by the King's commission in every county, which are removeable at the King's pleasure; and the power of placing and displacing justices of the peace is by use delegated from the King to the Chancellor." <sup>4</sup> Frequent revision of the lists of magistrates could therefore be used by the King and Privy Council as a weapon with which to awe magistrates into submission to the central authority,<sup>5</sup> since dismissal

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(1) WILSON, The Administrative Work of the Lord Chancellor in the Early Seventeenth Century, (unpublished thesis), pp. 48-49.

(2) CAL. S.P. DOM., Car. I., CCXCVIII., 60, H. Dolman to Sir E. Sawyer, 28 Sept. 1635, Shaw. H. MSS. COMM., Hastings MSS. Vol. II. p. 62, Earl of Huntingdon to Lord Keeper Williams, 20 May, 1623.

(3) CAL. S.P. DOM., Car. I. CCLXXXI, 68, Petition of Edward Warren to the King, [1634?]

(4) BACON, Works, (Ed. by Spedding, Ellis and Heath, 1870), Vol. VII. p. 469, "The Uses of the Law", 1629.

(5) HOLDSWORTH, History of English Law, Vol. VI. p. 57.

from the local Bench was considered a deep disgrace.<sup>1</sup> The use of a threat of this kind was perfectly legitimate when the intention was to awaken unprincipled justices to a proper sense of their shortcomings; for instance, no one could sympathize with Sir Edward Ludlow, who in 1606 lost his place on the Commission of the Peace for failing to suppress certain rioters because they happened to be friends of his.<sup>2</sup> Another justice was similarly punished for seizing tithes which did not belong to him,<sup>3</sup> and two more were later expelled from the magistracy for setting up an alehouse.<sup>4</sup> Lazy magistrates, too, could be stirred to action by the suggestion that a like fate might overtake them<sup>5</sup> - as King James said, "Contemplative Justice is no justice, and contemplative Justices are fit to be put out."<sup>6</sup>

Unfortunately, the reasons for dismissal were not always

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- (1) CAL. S.P. DOM., Jac. I., LVI., 26, Paul de la Hay to Salisbury, 14 July, 1610, Alterinnes. NOTESTEIN, Commons Debates, 1621, Vol. VI., p. 172, Speech by Solicitor-General, 28 May, 1621. ACTS OF P.C., 1621-1623, p. 24, Minute of letter to Commissioners for Subsidies for the several counties of England, 24 July, 1621.
  - (2) HAWARDE, Reports del Cases in Camera Stellata, pp. 264-268, 9 May, 1606.
  - (3) IBID, p. 146,- 1602.
  - (4) RUSHWORTH, Historical Collections, Vol. II., p. 296, Address of Lord Keeper Coventry to the Judges of Assize, 17 June, 1635.
  - (5) HERTS. CO. RECS. Vol. I., pp. 57-58, Williams to Earl of Salisbury and other J.P.'s, 21 Sept. 1622, "Westminster Colledge". H. MSS. COMM., Hastings MSS., Vol. II. p. 62, Lord Keeper Williams to the Earl of Huntington and others, 21 Sept. 1622. RUSHWORTH, Historical Collections, Vol. II., p. 359, Lord Keeper Coventry's speech to the Judges, 1636. CAL. S.P. DOM., Car. I., CCCLV, 130, P.C. to J.P.'s of Surrey, 7 May ? , 1637.
  - (6) JAMES I., Speech in the Star Chamber, 1619, (Pub. 1645), F 4.

concerned purely with the improvement of the public service. The Chancellor was under no obligation to state why justices were removed from their places,<sup>1</sup> and consequently he could use his power to dismiss as a sword held over the heads of any magistrates who might oppose the King on religious or political grounds. It was whispered in the reign of James I. that Puritan members of the House of Commons were to be dropped from the Commission of the Peace,<sup>2</sup> and whether or not this rumour was correct, it is certain that men who resisted the political policy of the central government found themselves expelled from the magistracy. During the heated quarrel over Impositions in 1614, four outspoken members of the House of Commons were removed from the Commission,<sup>3</sup> and Sir Herbert Croft, who protested against the undue interference of the Council of the Marches in the affairs of his county - Hereford - was similarly treated.<sup>4</sup> Eliot's and Phelips' opposition to the Crown in 1626 was punished by degradation from office,<sup>5</sup> and shortly afterwards, Thomas Posthumus Hoby, Hugh Pyne and John Symes followed the others into this honourable disgrace.<sup>6</sup> Some-

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- (1) CAL. S.P. DOM., Car. I., CCCCXLII, 137, Dr. Edw. Burton to Dr. Bray, Chaplain to the Archbishop of Canterbury, 27 Jan, 1639/40, Westham.
  - (2) IBID, Jac. I., XXVIII, 37, Dudley Carleton to John Chamberlain, 29 August, 1607, London. CAMDEN SOC., Old Series, Vol. 41, (1848), Diary of Walter Yonge, p. 50.
  - (3) CAMDEN SOC., Old Series, Vol. 70, (1858), Liber Famelicus of Sir James Whitelock, p. 43.
  - (4) SKEEL, The Council in the Marches of Wales, (1904), p. 137.
  - (5) H. MSS. COMM., 3rd Report, App. p. 282, Order signed by Thos. Coventry, 8 July, 1626.
  - (6) P.R.O. CROWN OFFICE DOCQUET BOOKS, 13 James I - 5 Charles I, (Ind. 4211) regnal year 2 Car. I.

times the dismissal arose from a magistrate's reluctance to fall in with the King's financial manoeuvrings - three gentlemen of Cornwall were relieved of their justiceship in 1627 because of their refusal to contribute to the forced loan,<sup>1</sup> and later on, opposition to the collection of ship-money was also punished by expulsion from the local Benches.<sup>2</sup>

When a magistrate's crime had no political significance, but was purely a matter of misconduct in office, he was called before the Star Chamber to explain himself. A Leicestershire justice who refused to permit the execution of a warrant of arrest upon his servant was, by this Court, fined £300,<sup>3</sup> and Sir Edward ffox, a magistrate in Shropshire, was made to pay the same sum for ordering the arrest of certain persons out of sheer spite.<sup>4</sup> Yet it behooved a man to be sure of his case before he accused a justice in the presence of this august body - in 1614 an unsuccessful plaintiff was fined £20 "pro falso clamore", and was also "enjoynd to aske the def[endan]t forgivenes".<sup>5</sup>

Such were the punishments meted out to incompetent, unprincipled, or politically obnoxious justices; what rewards fell

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- (1) CAL. S.P. DOM., Car. I. LXVIII. 16, Buckingham to Nicholas, 27 June, 1627, Portsmouth; Bagg to Nicholas, 28 June, 1627, Hampton.
  - (2) IBID, CCCXLIII. 17, Nicholas' notes of the proceedings of the P.C.- dismissal of Rich. Seymour ordered, 6 Jan. 1636/7; CCCXLVIII., 79, John Allibond to Dr. Peter Heylyn, 24 Mar. 1639/40, Bishop's Palace in Gloucester.
  - (3) STOWE MSS., 397, Star Chamber Cases, fol. 11b - 13b.
  - (4) IBID, fol. 20 - 20d, Hillary 8 Jac. I.
  - (5) IBID, fol. 36 - 37, Pasch. 12 Jac. I.



to those who were efficient and conscientious? For certain routine duties of their office, such as the taking of a recognizance, the bailing of a prisoner, or the issuing of a warrant, the magistrates were permitted to charge a fee,<sup>1</sup> but the sums thus earned were so small that they would do little more than cover the cost of the writing materials used. The justices could also claim from the sheriff 4 s. for each day they sat in Quarter Sessions, and the sheriff was supposed to deduct the necessary amounts from his returns of fines and amerciaments.<sup>2</sup> During the reigns of the first two Stuarts these payments for service of the Bench seem often - though not always - to have been made,<sup>3</sup> and in some instances the justices' wages ate up nearly all the fines. Such was the case in 1640 in Wiltshire, where the magistrates appear to have been singularly zealous - out of the £26 8s. 6d. estreated in penalties, £25 4s. was paid over to the justices.<sup>4</sup> In the same year, the sheriff of Lincoln actually showed a deficit.<sup>5</sup> Yet even in a county like Devon, where the Sessions often met for five days at a time, the magistrate who was present at all the sittings would receive a mere £4 for his year's work - hardly a sum likely to inspire with

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(1) WINGATE, Justice Revived, (Ed. 1661), pp. 60-61.

(2) 14 Rich. II, c. 11.

(3) Some lists of justices, with their attendance at the Quarter Sessions, are to be found among the sheriffs' accounts in the papers of the King's Remembrancer (P.R.O., Exchequer). The Pipe Rolls (P.R.O.) also show the amounts paid out of fines, with the year's attendance for each J.P.

(4) P.R.O. PIPE ROLL, 16 Charles I.

(5) IBID.

covetousness a gentleman of even very moderate means. These "wages" must therefore have been intended merely to cover expenses incurred in attending the Sessions. Some of the magistrates, indeed, evidently regarded the payments in this light, for Lambard says, "I think it wisely done, (as it is somewhere vused) to bestow the whole allowance upon the defraying of the common diet." <sup>1</sup>

Thus a place in the Commission was no financial plum to be eagerly sought in the political pie. On the contrary, the Crown expected its local agents to carry out their very onerous duties in a spirit of the purest altruism, for James I. wrote, "The good Iustices are carefull to attend the service of the King and countrey, for thanks onely of the King, and love to their countrey, and for no other respect." <sup>2</sup> Yet their service was rewarded with something more tangible than this very nebulous royal gratitude, for both power and prestige went with the office of magistrate - a power extending in some cases even to that of life and death, and a prestige which lifted the justices of the peace into the position of the undisputed leaders of their counties.

This very considerable authority was exercised by virtue of Commissions of the Peace, issued by the Chancellor under the Great Seal. Usually there was one such Commission for every shire, although each Riding of Yorkshire and each part of Lincoln had its separate Bench, as did also a few scattered Liber-

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(1) LAMBARD, Eirenarcha, (Ed. 1619), p. 629.

(2) JAMES I., Speech in the Star Chamber, 1619, (Pub. 1645), F 4.

ties.<sup>1</sup> A number of boroughs, too, had been granted the right to hold their own Quarter Sessions, separate from those of the shire,<sup>2</sup> but in the case of boroughs the justiceship almost always went with certain specified municipal offices, and so the town magistrates, acting as they did ex officio, needed no further Commission.

The number of justices appointed in each county varied, of course, according to its size and importance - in 1628 Rutland had as few as seventeen, and Middlesex as many as one hundred and sixteen.<sup>3</sup> Constant additions and subtractions prevented the total number from remaining the same for more than a few days at a time, and contemporary opinion seems to have been that the body of magistrates was rapidly becoming unmanageably large. Indeed, the comments of various authorities, especially about 1621, paint gloomy pictures of overgrown Commissions, in each of which only a few active justices could be found.<sup>4</sup> Yet an exam-

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- (1) e.g. St. Albans<sup>1</sup>, Cawood, Slaughter, etc. These Commissions are entered in the Entry Books in the P.R.O. Chancery Crown Office (c. 181/1 - c. 181/5), which cover the period 1601-1645 without a break.
  - (2) H.MSS.COMM., Var. Coll., Vol. IV, p. 257 - Orford (1579); 11th Report, App. III, p. 207 - King's Lynn (1537); 9th Report, App. I, p. 231, No. 11 - Ipswich (1446); 14th Report, App. Part VIII, p. 10 - Lincoln (1409); 18th Report, p. 5, No. XXXII - Exeter (1535); 12th Report, App. IX, p. 403, No. 11 - Gloucester (1398); CAL. S.P. DOM., Jac. I, III, 39(8) - Guildford (1603); CAL. PAT. ROLLS, Henry VII, 1494-1509, p. 429 - Southwold (1505). Etc.
  - (3) P.R.O. PATENT ROLL, 3 Charles I, part 43, (dorse).
  - (4) ACTS OF P.C., 1597-1598, p. 389, Minute of letters directed to the sheriffs and J.P.'s of all counties, 25 March, 1598. CAMDEN SOC., 3rd Series, Vol. XXVI, Stiffkey Papers, p. 24, P.C. to J.P.'s of Norfolk, 6 Dec. 1609, Whitehall. ADD. MSS., 34,324, fol. 145d., Notes of Lord Treasurer's declaration of the King's pleasure to the Judges and J.P.'s, 21 June, 1621. LAMBARD, Eirenarcha, (Ed. 1619), p. 34.

ination of the lists through the whole forty years preceding the Civil War shows a gradual decrease rather than increase.<sup>1</sup> In 1608, there were 2200 justices on the Commissions for the shires;<sup>2</sup> in 1628, there were only 2131;<sup>3</sup> and ten years later, the number had fallen to 2011.<sup>4</sup> An even greater reduction might have been advantageous, it is true, as there still was undoubtedly a good deal of dead wood among the justices. A Derbyshire gentleman wrote concerning the magistrates in his immediate neighbourhood that "Sir John Ferrers pleads age, Sir George Gresley is in suits of law, Sir William Kniveton is old and infirm",<sup>5</sup> and the Earl of Huntingdon reported in 1623 that among the men officially on the Commission in Leicestershire, three had died and another had moved away.<sup>6</sup>

It was customary to place the name of the Chancellor at the head of the list of names for each county, and other great officials were also included as a matter of course. The Lord Treasurer and the Keeper of the Privy Seal were on all the Com-

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- (1) The figures given here do not represent the number of justices in the English counties, but the sum total of the numbers on each Commission. There was, of course, a good deal of duplication of names, so that the actual number of magistrates was even smaller than these figures suggest.
  - (2) P.R.O. PATENT ROLL, 6 James I, part 36, (dorse).
  - (3) IBID, 3 Charles I, part 43, (dorse).
  - (4) S.P. DOM., Vol. 405, Liber Pacis, 14 Charles I.
  - (5) CAL. S.P. DOM., Car. I, CXCI, 96, Sir George Burdett to Fras. Bradshaw, sheriff of the county of Derby, [May?], 1631.
  - (6) H. MSS. COMM., Hastings MSS., Vol. II, p. 62, Earl of Huntingdon to Lord Keeper Williams, 20 May, 1623.

missions for 1608,<sup>1</sup> and twenty years later, in addition to these, the President of the Privy Council was made a justice in every shire.<sup>2</sup> The Earl Marshal and the Lord High Admiral figured in many, though not all, of the lists, and each Commission contained in addition ~~to~~ the names of several of the lesser nobles and minor officials who were connected in one way or another with that particular county.

The extent to which these distinguished personages took an active part in the local government is difficult to determine. It would be manifestly impossible for the Lord Treasurer or the President of the Privy Council to attend all the Quarter Sessions in all the shires, but apparently some of the titled magistrates did, on occasion, exercise their powers as justices. In 1625, the Earl of Lincoln went out to deal with a riot,<sup>3</sup> and during the same year, Lord Keeper Williams acted with other magistrates in taking measures to cope with an outbreak of plague.<sup>4</sup> Robert, Lord Brooke, joined in the making of an order for the provision of a house for a pauper,<sup>5</sup> and Lord Kilmurray and Lord Cholmley were named as part of a committee to estimate the cost of repairs

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(1) P.R.O. PATENT ROLL, 6 James I, Part 36, (dorse).

(2) S.P. DOM., Vol. 405, Liber Pacis, 14 Charles I.

(3) LINCOLN (LINDSEY) Q.S. ROLLS, 1625, Index A 1, No. 18, Certificate signed by Theo. Earl of Lincoln and Sir Chris. Wray, 16 Sept. 1625.

(4) H. MSS. COMM., 12th Report, App. IV, p. 473, Regulations drawn up by the Bishop of Lincoln and the J.P.'s at the Lincoln Assizes, 4 Aug. 1625.

(5) WARWICK Q.S. RECS. , Vol. I. pp. 190-191, Epiphany Sess., 1634.

to a bridge.<sup>1</sup> The Earl of Huntingdon, too, wrote of himself and Viscount Beaumont as the only active justices of the peace within a radius of ten miles around his residence.<sup>2</sup> Altogether, it seems likely that some of the noblemen took part in the administering of local affairs at such times as they happened to be living on their country estates, or when some local matter chanced to catch their personal interest.

In order to supplement the haphazard legal knowledge of the ordinary country gentlemen, it was considered necessary to put at least two professional lawyers on each Commission.<sup>3</sup> Consequently, several of the Justices of the King's Bench or Common Pleas, or Barons of the Exchequer, always figured in the lists. Indeed, the Middlesex Commission in 1626 included eight judges, the Attorney-General, the Solicitor-General, and a Serjeant at Law.<sup>4</sup>

A high standard of personal integrity was as necessary in the men who sat on the local Benches as was legal learning, for the justices' position provided them with a great many opportunities for dishonesty and petty tyranny. Parliament in the reign of Henry VI had tried to reduce the danger of corruption by enacting that only persons possessing a certain definite

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(1) CHESTER Q.S. RECS., 1642, File II, No. 22, Sess. of 12 July, 1642.

(2) H. MSS. COMM., Hastings MSS., Vol. II, p. 62, Earl of Huntingdon to Lord Keeper Williams, 20 May, 1623.

(3) WINGATE, Justice Revived, (Ed. 1661), p. 43.

(4) P.R.O. EXCHEQUER KING'S REMEMBRANCER MISCELLANEA, (E.. 163/18/12), Liber Pacis, 2 Charles I.



standard of wealth - £20 a year in lands - would be eligible for inclusion in the Commission of the Peace.<sup>1</sup> Nevertheless, a good many "men of mean estate" crept into the ranks of the justices. Sometimes this happened because, in parts of the country which were not very prosperous, like the borders of Wales, there were not enough gentlemen with the necessary annual income of £20.<sup>2</sup> In 1621 the Lord Treasurer stated in great disgust that the number of these "insufficient" magistrates had grown to a thousand,<sup>3</sup> and although he undoubtedly was exaggerating, the House of Commons at this time considered that the situation was serious enough to need immediate remedy.<sup>4</sup>

With such men on the Commission, the possibility of corruption was considerable. The Privy Council complained in 1609 that too many magistrates were mere self-seekers,<sup>5</sup> and other critics went much further, accusing the magistrates of bribery,<sup>6</sup> fraud,<sup>7</sup>

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(1) 18 Henry VI, c. 11.

(2) CAL. S.P. DOM., Jac. I, CXIII, 4, Commissioners of Subsidy for Hereford to P.C., 3 Oct. 1621.

(3) ADD. MSS., 34, 324, Sir Julius Caesar's notes of the Lord Treasurer's speech to the Judges, 21 June, 1621.

(4) NOTESTEIN, Commons Debates, 1621, Vol. IV, p. 383, 28 May 1621.

(5) CAMDEN SOC, 3rd Series, Vol. XXVI, (1915), Stiffkey Papers, p. 25, P.C. to J.P.'s of Norfolk, 6 Dec. 1609.

(6) CAL. S.P. DOM., Jac. I, CXIX, 106, Locke to Carketon, 24 Feb. 1620/1. NOTESTEIN, Commons Debates, 1621, Vol. V, p. 17, Speech of Mr Alford, 1 Mar. 1621.

(7) CAL. S.P. DOM., Addenda, 1580-1625, XLI, 63, Petition of John Wrenham to the King.

and intimidation.<sup>1</sup> In 1601, Mr. Glascock told the House of Commons that "A Justice of Peace is a Living Creature, that for half a Dozen of Chickens will Dispencc with a whole Dozen of Penal Statutes."<sup>2</sup> Though this statement may be discounted as an example of the rhetorical exuberance which so often overtakes political speakers, there are indications that the charge was not unfounded, for five years later a Yorkshireman declared that the best way to obtain a hearing from the magistrates in his neighbourhood was to give them a "honeepottes."<sup>3</sup> But apart from these isolated complaints, there were, on the whole, comparatively few charges of dishonesty among the justices - though it must always be remembered that an ordinary cottager would think twice before raising his voice against his own landlord, who would be in a position to take an ample revenge at his leisure after the trouble had blown over.

Less heinous than corruption, and probably much more common, was the fault of laziness. The country gentlemen of the 17th century were very human, and many of them were only too glad to accept the honour of inclusion in the Commission, while leaving the hard work to the conscientious few. In 1602, the Lord Keeper told the Privy Council that some justices "are in [office] by countenance, and are idle and will not do any-

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(1) HAWARDE, Les Reports del Cases in Camera Stellata, pp. 159-160.

(2) TOWNSHEND, Historical Collections, (Ed. 1680), p. 268.

(3) N.R. Q.S. RECS., Vol. I. p. 41, Sess. of 10 July, 1606.

thing, and as they do no ill, so they do no good."<sup>1</sup> By 1636, conditions were apparently no better, for Coventry exclaimed to the Justices of Assize, "Fit it will be that you let them know, that to prefer a Riding or Bowling, or Hunting-Match before their attendance at Quarter Sessions, is little better than Perjury.... And why the greatest number should exempt themselves, and leave the Publick-service upon a few, I know not."<sup>2</sup>

At the other end of the scale of activity there were the officious magistrates, insistent upon exercising their authority on all possible occasions - "Another sort of Iustices are busie-bodies, and will have all men dance after their pipe, and follow their greatnesse, or else will not be content,"<sup>3</sup> as James I put it. The King regarded this pushfulness with deep disfavour, since it lured his subjects into forgetting that God had ordained the monarch, not the justices, to rule England.<sup>4</sup>

Other unfortunate characteristics were also to be found in the magistrates. Some were oily and unpleasant, like Justice Shallow; some were ciphers, like Justice Silence; many undoubtedly were of the calibre of Master Bruton, "a right country justice, a simple man, guided by the others."<sup>5</sup> Such well-meaning fools

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(1) HAWARDE, Les Reports del Cases in Camera Stellata, pp. 159-160.

(2) RUSHWORTH, Historical Collections, Vol. II, pp. 358-359, Lord Keeper's speech to the Judges, 1636.

(3) JAMES I, Speech in the Star Chamber, 1619, (Pub. 1645), F 4.

(4) IBID.

(5) CAL. S.P. DOM., Car. I, CXCV, 12, Lord Poulett to Sec'y Dorchester, 27 June, 1631.

as Bruton were harmless enough in private life, but when they were on the Bench, their stupidity made them exceedingly dangerous.

While these weaknesses existed in a certain number of the rural squires, they by no means destroyed the usefulness of the whole class. After all, as a contemporary said, "The ... offence of one Justice of the Peace ys no disgrace to all the reste that are vertuous, honeste, painefull."<sup>1</sup> It is always the defects of a system that receive the most attention, and in all probability the majority of active magistrates were of the type described by Massinger:

"My quondam master was a man of worship,  
Old Sir John Wellborn, Justice of Peace and quorum,  
And stood fair to be custos rotulorum;  
Bore the whole sway of the shire, kept a great house,  
Relieved the poor, and so forth."<sup>2</sup>

If <sup>very</sup> many of the squires had been selfish blackguards, their position would not long have remained - as it did remain - one of honour and esteem in the eyes of the 17th century public.<sup>3</sup>

Among those who understood the needs of the government, there was a keen appreciation of the good qualities of the country gentlemen. In 1589, Sir Thomas Smith had written, "The Jus-

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(1) HAWARDE, Les Reports del Cases in Camera Stellata, p. 335, 1607.

(2) MASSINGER, A New Way to Pay Old Debts, Act I, Scene I.

(3) HAWARDE, Les Reports del Cases in Camera Stellata, p. 335, 1607.

tices of the Peace be those in whom at this time for the representing of robbers, thieves and vagabonds, of privy complots and conspiracies, of riots and violences and all other misdemeanours in the commonwealth, the prince putteth his special trust."<sup>1</sup>

This high opinion was later endorsed in the House of Commons by no less distinguished a person than Sir Edward Coke,<sup>2</sup> and even James I, who liked to think that the essential part of the government system was the monarch, admitted that the justices of the peace were his eyes and ears in the country.<sup>3</sup>

Unfortunately, just at the period when a loyal response to the King's trust was imperative, there was growing up a feeling that an uninterrupted sojourn in the country might easily lead to mental stagnation, and the rural gentlemen were beginning to cast longing eyes at the gay life of London. A Gloucestershire squire wrote to a friend, "I am so pestered with country business, that I cannot come to London. If I stay here long, you will find me so dull that I shall be taken for Justice Silence or Justice Shallow; therefore take pity of me, and send me news from time to time, the knowledge of which, though perhaps it will not exempt me from the opinion of a Justice Shallow at London, yet will make me pass for a very sufficient gentleman in Gloucestershire."<sup>4</sup> As a consequence of this dissatisfaction

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(1) SMITH, The Commonwealth of England, (Ed. 1635), p. 160.

(2) NOTESTEIN, Commons Debates, 1621, Vol. II, p. 96, 17 Feb. 1621.

(3) JAMES I, Speech in the Star Chamber, 1619, (Pub. 1645), F 3.

(4) CAL. S.P. DOM., Eliz., CCLXXV, 146, Sir (?) Charles Percy to Mr. Carlington [Carlton ?], 27 Dec. [1600 ?], Dumbleton, co. Glos.

with country life, the prince was much dismayed to find his trusted magistrates drifting up to the metropolis for protracted visits, with the result that - as the Lord Keeper pointed out - while there were plenty of justices on the Commission, there always seemed to be too few to do the work.<sup>1</sup> The government tried to meet the difficulty by commanding all the gentry to remain at home,<sup>2</sup> but apparently without much success. One of the main reasons for the persistence of the migration was seen by King James, who remarked shrewdly, "One of the great causes of all Gentlemens desire, that have no calling or errand, to dwell in London, is apparently the pride of the women: For if they be wives, then their husbands; and if they be maydes, then their fathers must bring them vp to London; because the new fashion is to be had nowhere but in London."<sup>3</sup> The next order of the government therefore expressly stipulated that such of the country gentlemen as had to come up on business should leave their wives behind.<sup>4</sup> This injunction must have had as little effect as the preceding ones, however, for proclamation followed proclamation, ordering the gentry to stay in the country and perform their duties of carrying on the administration of local

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- (1) CAMDEN SOCIETY, Old Series, No. 39, (1886), Reports of Cases in the Star Chamber and High Commission, 1631-1632, p. 178, Lord Keeper's speech to the Justices in Eyre in the Star Chamber, 21 June, 1632.
  - (2) CAL. S.P. DOM., Jac. I, II, 850), Proclamation of 29 July, 1603; LXXXIV, 22 (1), Proclamation of 9 Dec. 1615.
  - (3) JAMES I, Speech in the Star Chamber, 1619, (Pub. 1645), H.
  - (4) CAL. S.P. DOM., Jac. I, CXXXIV, 910), Proclamation of 22 Dec. 1622.



affairs and providing hospitality.<sup>1</sup>

The central government was not alone in recognizing that the services of the justices were valuable - the magistrates themselves were quite aware of their own importance, and insisted that a proper respect should be paid them. William Farrall was required to find security for his future good behaviour "For spitting twist in the face of William Sandlands being both together in the house of a Justice of the Peace about matters of Justice,"<sup>2</sup> and Nathaniel Sampson was ordered by the Norfolk Bench both to provide sureties for his better conduct and also to apologize to a magistrate against whom he had spoken scandalous words.<sup>3</sup> Similar contempt in the North Riding earned the offenders several hours in the stocks,<sup>4</sup> and sometimes abusive language was punished by imprisonment in gaol<sup>5</sup> or in the house of correction.<sup>6</sup> A Nottinghamshire man, who averred that one of the local magistrates "was sometimes a Justice of Peace and sometimes a just asse," was promptly arrested, but there is no further information as to his fate.<sup>7</sup> In the West Riding, a pedlar

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(1) CAL. S.P. DOM., Car. I, XL, 15 (1), Proclamation of 23 Nov. 1626. RUSHWORTH, Historical Collections, Vol. II, p. 144, Proclamation of 20 June, 1632. STEELE, Proclamations, No. 1791, 29 Jan. 1638/9; No. 1816, 14 May, 1640.

(2) WORCS. Q.S. ROLLS, Part II, p. 619, 17 May, 1637.

(3) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Norwich Castle Sess., 28 July, 1640.

(4) N.R.Q.S. RECS., Vol. I, p. 12, Sess. of 9 July, 1605; p. 36, Sess. of 29 April, 1606.

(5) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 116, Sess. of 2 Oct. 1620.

(6) N.R.Q.S. RECS., Vol. IV, p. 58, Sess. of 20 July, 1636.

(7) NOTTS. CO. RECS., p. 25, 14 April, 1634.

who defied two magistrates was fined 5s.,<sup>1</sup> and another Yorkshireman who actually attacked a justice was not only forced to pay £20, but was also imprisoned for a year.<sup>2</sup> Contempt of court was not tolerated either, for anyone daring to use insulting language about the Bench was fined,<sup>3</sup> or committed to gaol.<sup>4</sup> Thomas Tasker was dealt with especially firmly for abusive words in court. He was sentenced by the Lancashire justices to be imprisoned until the next Friday, on a bread and water diet, and then to be flogged through the streets of Manchester.<sup>5</sup>

On the other hand, the aggrieved justices were not always so severe. In Durham, one Marmaduke Wilson cast reflections upon the parentage of Master Blakiston, J.P., but the latter, who "perceaued by his breath that he did smell of drink," merely bound him to the good behaviour.<sup>6</sup> And when Brian Hutchenson told the North Riding magistrates "that they did in court what they could not stand to justifie," the Bench at first sentenced him to a fine of £3. 6s. 8d., but later relented and eventually accepted 6s. in full satisfaction.<sup>7</sup>

Disobedience was regarded by the justices with as strong

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(1) W.R.Q.S. RECS., Vol. II, p.159, Sess. of 9 Oct. 1639.

(2) N.R.Q.S. RECS., Vol. II, p. 235, Sess. 26 April, 1620.

(3) NOTTS. CO. RECS., p. 163, Appendix E.

(4) CAL. S.P. DOM., Car. I, CXLVI, 4, 1 July, 1629. SOMER. Q.S. RECS., Vol. I, p. 38, No. 7, Sess. Rolls for 1609-1610; p. 133, No. I, Sess. of 18-20 April, 1615.

(5) LANCS. Q.S. RECS., p. 152, Sess. of 14 July, 1602.

(6) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 327, Sess. of 9 July, 1628.

(7) N.R.Q.S. RECS., Vol. II, p. 47, Sess. of 14 July, 1606.

aversion as actual abuse. The Lancashire Sessions ordered that "William Kenytye shall upon Sunday next stand and remain in the church of Ouldham near unto the quire door there during the time of divine service as well before<sup>noon</sup> as after, having his body from the middle upwards naked and papers upon his head with these words written thereupon, viz. 'This person is punished for disobeying the justice of peace and constable.'" Kenytye, consistent to the last, refused to perform the humiliating penance, and was consigned instead to gaol.<sup>1</sup>

The magistrates' insistence upon the recognition of their position was not confined to their dealings with their inferiors only - dictation in local affairs, even by the great ministers of the King, was at times openly resented. When Anthony Wither was sent from London to examine the state of the clothing industry in the southwest, he refused to submit his commission to the arbitration of the justices of the peace there. One of the leading figures on the Wiltshire Bench, Sir Francis Seymour, criticized Wither's attitude bitterly - "as if", said Sir Francis indignantly, "the Justices of Peace did not best know what were fittest for the good of their country."<sup>2</sup> A group of Yorkshire magistrates some years earlier had been even more outspoken, for they had told the Council of the North bluntly that its interference in their affairs was most unwelcome, saying

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(1) LANCS. Q.S. RECS., p. 97, Sess. of 29 April, 1601.

(2) CAL. S.P. DOM., Car. I, CCLXVII, 15, Matters wherewith Anthony Wither, His Majesty's commissioner for reformation of clothing, charged Sir Francis Seymour at the Council Board, 2 May, 1634.

"they would eyther be Justices or noe Justices and that they would suffer noe such Crossinge, which if they did they needed kepe noe Sessions."<sup>1</sup>

Such, then, were the educated, active, and independent country gentlemen in whose hands lay the making or marring of the Stuart machinery of local administration. The best of them were, as Trevelyan says, "the ripe products of the English Renaissance";<sup>2</sup> the worst were no lower than the political self-seekers so prevalent in our own time. And as the years passed, and the country drew nearer to the great disruption which came in the middle of the century, the country gentlemen became, if anything, more and more interested in the conduct of public affairs, and more and more willing to assume public responsibility. Oafs and shirkers were to be found among the justices, of course, but as a class the country gentlemen of the reigns of James I and Charles I had not yet begun to degenerate into the narrow, ignorant local autocrats whose activities during the following century have left a faintly unpleasant association with the word "squirearchy".

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(1) W.R.Q.S. RECS., Vol. I, p. 16, Articles exhibited to the Lord President and Council in the North, Nov. 1595.

(2) TREVELYAN, History of England, (Ed. 1938), p. 381.

## CHAPTER II.

### THE JUSTICES OF THE PEACE AND OTHER LOCAL OFFICERS.

The machinery of English local government in the 17th century was highly complicated, largely because of the haphazard origin of many of its parts. The oldest officers, such as the borsholders and tythingmen, had been, as it were, spontaneously generated in order to provide for such simple necessities as the protection of person and property. Then, as government became more and more a conscious function, new offices were created, and the duties of the older officials were gradually altered by a process of addition and subtraction. Since, however, the spheres of activity of neither old nor new servants of the public were authoritatively defined, there was a good deal of overlapping of jurisdiction. Consequently, the organization of local government during the reigns of the first two Stuarts seems, to the twentieth century mind, to have been both untidy and inefficient - although the inconsistencies and confusion left the officials of the time quite untroubled.

The major and oldest duty of all was the keeping of the King's Peace, and for this function there had grown up a number of

officials, all of whom revolved to a greater or less degree about the central figure of the justice of the peace. At the bottom of the group was the petty constable, who held the unenviable position of being the point of physical contact between the Law and the law-breaker. It was his duty to arrest rioters, night-walkers, adulterers, deserters, vagrants, and felons either known or merely suspected; to pacify fighters, to provide for the keeping of watches, to pursue fleeing miscreants, and to take dangerous characters before the nearest magistrate for binding to their good behaviour.<sup>1</sup> He had to present the petty offenders of his parish at the Quarter Sessions, to carry out such minor sentences as flogging and branding there imposed, and in general to perform the precepts and execute the warrants of his superior officers.<sup>2</sup> Moreover, although the constable was originally merely a guardian of the peace,<sup>3</sup> he had, by the beginning of the 17th century, acquired many other duties as well. He had to be "attendant, aiding and assisting" to the justices of the peace for the execution of laws concerning, inter alia, such widely varying subjects as archery, unlawful games, and the cornering of foodstuffs.<sup>4</sup> He had to collect the rates for the poor,<sup>5</sup> for destitute prisoners, and for disabled soldiers.<sup>6</sup>

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(1) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Constables, pp.12-26.

(2) MERITON, Guide for Constables, (Ed. 1679), pp. 10-12, Oath of a Constable.

(3) IBID, pp. 2-3.

(4) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Constables, p. 23.

(5) 43 Eliz. c. 2.

(6) 43 Eliz. c. 3.



Together with the churchwardens, he chose the surveyors of highways, and collected fines for the neglect of roads.<sup>1</sup> He inspected the weights and measures used in the public markets,<sup>2</sup> isolated those stricken with plague,<sup>3</sup> and did numberless other types of routine work about his parish or town.

In addition to his normal duties, the constable seems to have been given any responsibility which no one else would assume. In Lancashire, one Katherine Sanderson, "having become a lunatic within Appleton and Widdries", was consigned to the care of the constable;<sup>4</sup> John Brown, constable of Littleton, was the unwilling recipient of a foundling picked up on a heath near his town;<sup>5</sup> and a Nottinghamshire constable was presented at the Quarter Sessions "for not reminding Churchwardens and Overseers of the Poor of the monthly meeting!"<sup>6</sup>

The choice of men to fill this unpopular post lay with the Courts Leet,<sup>7</sup> but the justices kept a watchful eye upon the proceedings in order to prevent any negligence, and fined parishes or towns which ~~was~~ failed to provide themselves with constables.<sup>8</sup> Sometimes the magistrates had to create new constables.

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(1) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Constables, pp.36-37.

(2) IBID, p. 54.

(3) IBID, p. 59.

(4) LANCS. Q.S. RECS., p. 271, Sess. of 15 July, 1605.

(5) CHESTER Q.S. RECS., File 2, fol. 104, Undated petition.

(6) NOTTS. CO. RECS., p. 12, 10 Jan, 1637/8.

(7) DALTON, The Country Justice, (Ed. 1705), p. 57. SHEPHARD, Guide to J.P.'s, (Ed. 1663), p. 320.

(8) N.R.Q.S. RECS., Vol. I, p. 91, 98, Sess. of 8 Oct. 1607; Vol. IV, p. 18, Sess. of 18 July, 1634.

ships where hitherto there had been none. Clack, an unruly market town in Wiltshire, was given a petty officer in the hope that quiet might thus be restored,<sup>1</sup> and the Sessions of Nottinghamshire ordered the annual appointment of a constable in "an obscure place by the Castle of Nottingham where many abuses and evil deeds are permitted."<sup>2</sup>

Once chosen, the officer-elect was called to the Quarter Sessions to be sworn in,<sup>3</sup> but often before this end was achieved some small pressure had to be brought to bear upon him to induce him to take the position. This might involve a fine,<sup>4</sup> or perhaps a fine and also a period in the stocks for reconsideration.<sup>5</sup> Other candidates, equally reluctant but more diplomatic, petitioned the Quarter Sessions to be exempted from the irksome duty; one claimed that he was a verderer,<sup>6</sup> another that he was a clerk in the Court of Wards,<sup>7</sup> and so on. The justices had to examine all such cases, and accept or reject the excuse.

In a number of localities, the constable was selected

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- (1) WILTS. CO. RECS., p. 102, Sess. of 4 Oct. 1631.
  - (2) NOTTS. CO. RECS., p. 17, Sess. order of 8 Jan. 1620/1.
  - (3) W.R. Q.S. RECS., Vol. I, p. 58, Sess. of 14 Jan. 1597/8. DUR. SESS. ORDER BOOK, No II, (1629-1639), p. 48, Sess. of 5 Oct. 1631.
  - (4) NOTTS. CO. RECS., p. 19, 1620. N.R.Q.S. RECS., Vol. IV, p. 18, Sess. of 18 July, 1634.
  - (5) N.R.Q.S. RECS., Vol. I, p. 208, Sess. of 8 Jan. 1610/1.
  - (6) NOTTS. CO. RECS., p. 18.
  - (7) HERTS. CO. RECS., Vol. V, p. 237, Sess. of 17 April, 1637.

by "house-row", each man down the village street serving in turn.<sup>1</sup> Dalton, a contemporary authority on the conduct of local affairs, disapproved deeply of this practice, however, since it put into office people of the "meaner sort", who had little time and less intelligence to devote to their duties.<sup>2</sup>

If an officer proved to be hopelessly inefficient, the magistrates had the power to discharge him and appoint another in his stead.<sup>3</sup> The frequency with which this occurred reflects little credit upon the acumen of the Leets;<sup>4</sup> in Lancashire and Norfolk, constables had to be removed from office for the very adequate reason that they were themselves in gaol.<sup>5</sup> Many were drawn from the poorest class - Bacon said of them, "They be men, as it is now used, of inferior, yea of base condition."<sup>6</sup> Lawless alehouse-keepers<sup>7</sup> and extortioners<sup>8</sup> found their way into office, and a Norfolk Leet admitted that "wee ... at

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- (1) LANCS. Q.S. RECS., Introduction, p. xxx; MANCHESTER SESS. p. 108, Sess. order of 1620. CHESTER Q.S. RECS., 1631, File 4, fol. 19, Sess. of 14 Jan. 1631/2. WAR. Q.S. RECS., Vol. I, p. 167, Easter Sess., 1633. NOTTS. CO. RECS., p. 19.
  - (2) DALTON, The Country Justice, (Ed. 1705), p. 85.
  - (3) IBID, p. 85.
  - (4) LANCS. Q.S. RECS., p. 227, Sess. of 18 July, 1604. HERTS. CO. RECS., Vol. V, p. 237, Sess. of 17 April, 1637. SOMER. Q.S. RECS., Vol. II, p. 133, No. 25, Sess of 29 June - 1 July, 1630.
  - (5) LANCS. Q.S. RECS., p. 200, Sess of 16 Jan. 1603/4. NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 14 Jan. 1639/40--Thos. Corbold.
  - (6) BACON, Works, (Ed. by Spedding, Ellis & Heath), Vol. VII, p. 751.
  - (7) N.R.Q.S. RECS., Vol. III, p. 290, Sess. of 4 April, 1627. LANCS. Q.S. RECS., pp. 127 and 242 - James Helme; p. 224, Sess. of 16 July, 1604.
  - (8) HAMILTON, Devon Quarter Sess., p. 83.

o<sup>r</sup> last Courte did chuse Robert Jarye for one of o<sup>r</sup> Cunstables thinking thereby to have somewhat restrained him from his former unrulynes in gaming and using the alehouses."<sup>1</sup> The experiment, it might be remarked, was a flat failure. An illiterate bumpkin was discharged in disgust by the Hampshire justices,<sup>2</sup> and the Wiltshire records contain the petition of a constable who prays that someone else may be chosen, "'forasmuch as I am unlearned, and by reason thereof am constrayned to goe two miles from my howse to have the helpe of a scrivener to reade such warrants as are sent to mee, and am a poore man.'"<sup>3</sup> Other officers lacked intellect rather than education - John Taylor, the Water-Poet, who had been arrested for piracy, said with some bitterness that the four constables responsible "were all born when wit was out of town."<sup>4</sup> Still other guardians of law and order were decrepit, like the constable of Little Smeaton in the West Riding, who was "aged almost fowerscore yeares, and infirme."<sup>5</sup> It is hardly surprising that the Nottinghamshire Sessions felt impelled to order that "none are to be elected or assigned to the office of Constable but able and sufficient men,"<sup>6</sup> and the Privy Council itself urged upon the justices the choice of fit and

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(1) STIFFKEY PAPERS, Camden 3rd Series, Vol. XXVI, pp. 41-42, 1623.

(2) FURLEY, Quarter Sess. in Hants, p. 21.

(3) H. MSS. COMM., Various Collections, Vol. I, p. 89, 1616.

(4) TAYLOR, Works, (Ed. by C. Hendley), p. 14.

(5) W.R.Q.S. RECS., Vol. II, p. 67, Undated order.

(6) NOTTS CO. RECS., p. 18, 1628.

serviceable persons.<sup>1</sup>

The difficulty of finding able and honest men to fill the post is more easily understood when we read of the misfortunes which overtook the unhappy constables in the execution of their duties. One officer, who tried to stop two youths from playing handball against the wall of a church, whereby the windows were being badly damaged, found himself stretched upon his back in a thoroughly undignified attitude.<sup>2</sup> A Worcestershire constable who attempted to interfere with a dance fared even worse - "One of the dancing company strake up your petitioner's heels and said he would break your petitioner's neck down the stairs there if he departed not from them and let them alone."<sup>3</sup> Indeed, assaults upon constables were frequently presented at the Quarter Sessions,<sup>4</sup> and such attacks were no mere matter of fisticuffs, for swords and pikes were used; in Worcestershire, a certain Sandys "cut off his neighbour's arm for doing the office of Constable upon him a little before."<sup>5</sup>

Even when no violence was actually offered at the moment, there was always the danger that reprisals would be made

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(1) HAMILTON, Devon Quarter Sessions, p. 80, 1609.

(2) SOMER. Q.S. RECS., Vol. II, Introduction, p. xxvii.

(3) WORCS. Q.S. ROLLS, Part I, pp. 254-255, Petition of William Jefferies to the J.P.'s of Worcs., 1617.

(4) W.R.Q.S. RECS., Vol. I, p. 146, Sess. of 17 April, 1599. LANCS. Q.S. RECS., p. 85, Sess. of 21 Jan. 1600/1; p. 89, Sess. of 20 April, 1601. WORCS. Q.S. ROLLS, Part II, p. 636, No. 149, 1637, etc.

(5) WORCS. Q.S. ROLLS, Part I, p. 254, Petition of William Jefferies to the J.P.'s of Worcs, 1617.

when the officer was no longer shielded by his position. One worried constable asked the Chester magistrates for protection against the retaliation threatened by a neighbour, inasmuch as "the said Bradborne did give youre petitioner bad language, And afermed.. he would be even with mee and that I would not be alwaies in my office."<sup>1</sup>

It is not at all strange that these reluctant policemen, unpaid and unthanked, were constantly in trouble for exhibiting a marked lack of zeal in the performance of their unpleasant duty, especially in cases where their friends or relatives were concerned. In Wiltshire, a boy who stabbed a fellow-apprentice was sentenced to be flogged, but the constable, "being of kynne to the said boye," let him escape unpunished,<sup>2</sup> and a West Riding officer was brought before the Quarter Sessions for refusing to arrest his own brother.<sup>3</sup> In the West Riding, too, the magistrates learned that one Dicconson, an innholder, was a harbourer of rogues and other undesirable characters, but was immune because the constable did "forbeare to execute his office in respecte of some favour which he specially carryeth towards the same Dicconson."<sup>4</sup>

Often the negligence arose, not from favouritism, but

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- (1) CHESTER Q.S. RECS., 1640, File 2, No. 36, Sess. of 14 July, 1640.
  - (2) WILTS. CO. RECS., pp. 8-9, Petition presented at Sess. of 19 July, 1603.
  - (3) W.R.Q.S. RECS., Vol. I, p. 121, Sess. of 4 Oct. 1598.
  - (4) IBID, p. 118, same Sess.



from sheer slackness. Constables were fined for omitting to make their presentments at the Quarter Sessions,<sup>1</sup> for failure to prosecute hue and cry properly,<sup>2</sup> and for leaving unsealed a house that was infected with plague, whereby the sickness spread and five neighbours died.<sup>3</sup> A Nottinghamshire constable was sentenced to pay 5s. "because he feigned himself to be sick at the last Sessions and did not appeare."<sup>4</sup> Several were fined 10s. apiece for allowing rogues to go unchastised,<sup>5</sup> and a negligent officer in the North Riding had to pay £1 for the same offence.<sup>6</sup>

The desire of most of the petty officials to live at peace with their neighbours resulted in a good deal of negligence in the execution of warrants - a form of slackness which annoyed the justices particularly. Constables guilty of dereliction of duty in this respect were haled before the Quarter Sessions,<sup>7</sup> and were punished with fines ranging from a few shil-

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- (1) LANCS. Q.S. RECS. p. 278, Sess. of 2 Oct. 1605. NOTTS. CO. RECS. p. 19, 2 cases.
  - (2) NOTTS. CO. RECS., p. 21. HERTS. CO. RECS., Vol. I, p. 59, No. 7, 1626. SOMER. Q.S. RECS., Vol. II, p. 274, No. 20, Sess. of 18-21 April, 1637.
  - (3) MIDD. CO. RECS., Vol. II, p. 41, Michaelmas Sess., 1608.
  - (4) NOTTS. CO. RECS., p. 19.
  - (5) N.R.Q.S. RECS., Vol. I, p. 92, Sess. of 8 Oct. 1607. ADD. MSS. 34,400, No. 219, Sess. of 4 Oct. 1636 - 3 cases. GAL. S.P. DOM., Car. I, CCLXIII, 47, J.P.'s of Salop. to the Sheriff, 26 Mar. 1634.
  - (6) N.R.Q.S. RECS., Vol. I, p. 144, Sess. of 10 Jan. 1608/9.
  - (7) WORCS. Q.S. ROLLS, Part I, p. 38, No. 54, 1601.

lings<sup>1</sup> up to the considerable sum of £2.<sup>2</sup>

The same wish for a quiet life was undoubtedly the cause of a good many of the "negligent escapes"<sup>3</sup> of criminals on their way to gaol. The plight of a small constable forced to shepherd a large malefactor must have been pitiable, and we can understand the attitude of the prudent officer who "negligently sent his wife with the prisoner, who escaped and fled away."<sup>4</sup> The justices, however, had no sympathy with bungling, and dealt out penalties varying between 2s. 6d.<sup>5</sup> and £5.<sup>6</sup> Sometimes the punishment was made to fit the crime very aptly; several constables who allowed the fathers of bastards to slip through their fingers found themselves required to support the children themselves<sup>7</sup>—thus, incidentally, saving the parish poor fund from additional strain. Even more fitting was the retribution meted out by the Middlesex Sessions, who sent a delinquent officer to gaol in place of his vanished prisoner.<sup>8</sup>

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- (1) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 301, Sess. of 11 July, 1627. N.R.Q.S. RECS., Vol. I, p. 216, Sess. of 3-5 April, 1611. W.R.Q.S. RECS., Vol. I, p. 76, 25 April, 1598.
  - (2) LANCS. Q.S. RECS., p. 191, Sess. of 10 Oct. 1603.
  - (3) N.R.Q.S. RECS., Vol. II, p. 5, Sess. of 6 Oct. 1612; Vol. III, p. 288, Sess. of 21 Feb. 1626/7. W.R.Q.S. RECS., Vol. II, p. 134, Sess. 11 July, 1639. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 108, Sess. of 12 July, 1620.
  - (4) NOTTS. CO. RECS., p. 19, 4 Oct. 1615.
  - (5) NORF. Q.S. ROLLS, 11 Jas. I, - Thomas Yemes.
  - (6) LANCS. Q.S. RECS., p. 228, Sess. of 18 July, 1604.
  - (7) CHESTER Q.S. RECS., 1641, File 2, No. 53, Sess. of 13 July, 1641. SOMER. Q.S. RECS., Vol. I, pp. 21-22, No. 19, 1608.
  - (8) MIDD. CO. RECS., Vol. II, p. 36, Sess. of 7 April, 1608.

While negligent constables had good reason to fear the Quarter Sessions, zealous and conscientious officers could count on the active support of the justices in moments of difficulty. Men were fined<sup>1</sup> or put in the stocks<sup>2</sup> by the magistrates if they refused to help a constable when he called upon them to do so, and Cuthbert Cornforth had to pay £1 for doing his best to hinder a petty officer in the execution of his duty.<sup>3</sup> More serious, of course, was the crime of assault upon a constable, and those found guilty were firmly dealt with at the Quarter Sessions.<sup>4</sup> An offender in Durham was fined the huge sum of £15 for beating a constable and smashing the windows of his house,<sup>5</sup> while the Middlesex Bench sentenced one Dominic Lopus, who had attacked two officers, to pay £6 13s. 4d., to sit in the stocks with a paper on his head, to be imprisoned for six months, and to find four sureties for his future good behaviour.<sup>6</sup>

Next in rank above the petty constable was the high constable. The office of the latter was slightly older than that of his fellow guardian of the peace, and his sphere of

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- (1) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 164, Sess. of 14 Jan. 1634/5. N.R.Q.S. RECS., Vol. I, p. 91, Sess. of 8 Oct. 1607; p. 141, Sess. of 10 Jan, 1608/9. W.R.Q.S. RECS. Vol. II, p. 113, Sess. of 16 Jan. 1638/9.
  - (2) MIDD. CO RECS., Vol. II, p. 52, 30 May, 1609.
  - (3) DUR. SESS. PLEA ROLL, Jas. I, <sup>Membrane</sup> 11-14, No. 4, Sess. of 5 July, 1615.
  - (4) N.R.Q.S. RECS., Vol. I, p. 91, Sess. of 8 Oct. 1607. W.R.Q.S. RECS., Vol. II, p. 188, Sess. of 14 April, 1640. MIDD. CO. RECS., Vol. II, p. 7, 1604.
  - (5) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 162, Sess. of 14 Jan. 1634/5.
  - (6) MIDD. SESS. RECS., (New Series), Vol. II, p. 20, 1614.

action was the hundred, instead of the smaller parish, but the duties of the two officials were very similar. The high constables were to execute warrants, arrest felons, pacify rioters, punish vagrants, set watches, collect money for the relief of maimed soldiers, present offenders at the Quarter Sessions, and so on.<sup>1</sup> Indeed, the justices of the West Riding were very scornful both of the office and of its holders - "There place consists upon nothinge but wryteing there warrantes for all collections to the petty constables, receipt of moneys, punishment of rogues, and orderinge of servantes and masters, and other such like matters, which require more labour than skill, and more honesty than cuninge or policie."<sup>2</sup> Nevertheless, it was recognized that the high constables - who were usually appointed at the Quarter Sessions<sup>3</sup> - ought to be men of some substance,<sup>4</sup> and in the records concerning the election of these officers, those chosen are usually described as "gentlemen".<sup>5</sup>

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- (1) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Constables, p.65.
  - (2) W.R.Q.S.RECS., Vol. II, Appendix A, p. 396, 1610.
  - (3) DALTON, The Country Justice, (Ed. 1705), p. 84. WINGATE, Justice Revived, (Ed. 1661), p. 46. LANCS. Q.S. RECS., p.91 Sess. 22 April, 1601; p. 95, Sess. of 27 April, 1601. SOMER. Q.S. RECS., Vol. I, p. 281, No. 12, Sess. of [Sept.] 1620.
  - (4) DALTON, The Country Justice, (Ed. 1705), p. 85.
  - (5) LANCS. Q.S. RECS., p. 109, Sess. of 13 July, 1601; p. 138, Sess. 14 April, 1602. DUR. SESS. ORDER BOOK, No. I (1616-1629), p. 33, Sess. of 1 Oct. 1617; p. 55, Sess. of 8 July, 1617, etc. ADD. MSS., 34,399, fol. 148, Sess. of 24 May, 1608. WAR. Q.S. RECS., Vol. I, pp. 204-205, Trinity Sess., 1634. LINCOLN (LINDSEY) SESS. ROLLS, passim. HERTS. CO. RECS. Vol. I, p. 64, No. 65, Vol. for 1639-1641. MIDD. SESS. RECS. (New Series), Vol. I, p. 248, 1613.

While technically the service was unpaid, there were a variety of fees and payments<sup>1</sup> which made the position of high constable, in the West Riding at least, one of "gaine and profitt"-to such an extent, indeed, that some of the high constables tried to retain office longer than the prescribed year.<sup>2</sup> Elsewhere, however, the post appears to have been less sought after. Ralph Welfoote in Durham was called before the justices to answer "for refuseing to take vpon him the office of high Constable saying to the Iustices att Stockton that doe what they could he would not be high Constable,"<sup>3</sup> and two other men of the same county were fined £10 apiece for similar rebelliousness.<sup>4</sup>

The high constables were expected to be present at the Quarter Sessions, and might be fined if they failed to put in an appearance.<sup>5</sup> At the Sessions they received orders to be transmitted to the petty constables,<sup>6</sup> and there, too, they were fined for negligence,<sup>7</sup> or extortion.<sup>8</sup> To the justices they presented

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(1) W.R.Q.S. RECS., Vol. II, Appendix A, p. 396, 1610.

(2) IBID, p. 394.

(3) DUR. SESS. ORDER BOOK, No. III, (1640-1643), p. 32, Sess. of 13 July, 1642.

(4) IBID, No. II. (1629-1639), pp. 82, 83, Sess. of 3 Oct. 1632.

(5) IBID, No. I, (1616-1629), p. 357, Sess. of 15 April, 1629.

(6) WAR. Q.S. RECS., Vol. I. p. 35, Trinity Sess., 1626. NOTTS. CO. RECS., p. 115, 1623. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 155, Sess. of 2 May, 1622.

(7) N.R.Q.S. RECS., Vol. I, p. 117, Sess. of 5 April, 1608. DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 226, Sess. of 19 April, 1637. LANCS. Q.S. RECS., p. 257, Sess. of 15 April, 1605.

(8) W.R.Q.S. RECS., Vol. II, p. 25, Sess. of 10 Jan. 1632/3.

their accounts of the moneys they had collected for various purposes,<sup>1</sup> and from the justices they received their discharge when their term of service came to an end.<sup>2</sup>

More complicated was the relationship of the magistrates to the sheriff. The latter, in the 12th century, was the King's financial agent and one of the chief guardians of law and order; indeed, he was the virtual ruler of the county.<sup>3</sup> By the 17th century, however, the more recently created Quarter Sessions had taken over nearly all the judicial business originally done in the sheriff's court.<sup>4</sup> While the Tourn still met, and still dealt with offences, they were all of a very minor nature, such as the taking of inmates,<sup>5</sup> the neglect of highways,<sup>6</sup> or assault and battery.<sup>7</sup> Indictments for more serious crimes could be taken by the sheriff, but he had to leave the actual trial to the Quarter Sessions.<sup>8</sup> Moreover, the justices had a good deal of power

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- (1) N.R.Q.S. RECS., Vol. IV, p. 45, Sess. of 30 Sept. 1635. STIFF-KEY PAPERS, p. 14, J.P.'s order of 16 Mar. 1596/7.
  - (2) W.R.Q.S. RECS., Vol. I, p. 80, Sess. of 25 April, 1598; p. 98, Sess. of 11 July, 1598; p. 130, Sess. of 8 Jan. 1598/9. WAR. Q.S. RECS., Vol. I, p. 64, Michaelmas Sess, 1628. SOMER. Q.S. RECS., Vol. I, p. 127, No. 28, Sess. of 10-13 Jan. 1614/5.
  - (3) HOLDSWORTH, History of English Law, Vol. I, p. 286.
  - (4) DALTON, The Office and Authority of Sheriff, (Ed. 1700), p. 12.
  - (5) YORKS. ARCH. JOUR., Vol. V, p. 384, (W.Riding Records), Jan. 1638/9.
  - (6) IBID, p. 396, Oct. 1639.
  - (7) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 172, Sess. of 8 April, 1635.
  - (8) DALTON, Office and Authority of Sheriff, (Ed. 1700), p. 398.

over the activities of the sheriff's court in the performance of even these restricted functions;<sup>1</sup> a decision made in the Tourn was reversed by the Sessions,<sup>2</sup> and the magistrates on another occasion issued orders which were to be executed at the next county court.<sup>3</sup>

The justices of the peace by their commission had authority to examine the sheriff's accounts,<sup>4</sup> and to punish faults committed in the execution of his office.<sup>5</sup> In Chester and Somerset at least, the magistrates did audit the books,<sup>6</sup> and in other counties, sheriffs were actually fined for neglecting to execute the justices' warrants of arrest.<sup>7</sup> The sheriff of Durham, on the other hand, escaped with a mere rebuke when he failed to produce a group of "destroyers of his Ma<sup>tes</sup> Woodes"; a new warrant was issued, and "he to see to y<sup>e</sup> execucon of this better then hath bene to y<sup>e</sup> former".<sup>8</sup>

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(1) 11 Henry VII, c. 15.

(2) CHESTER Q.S.RECS., 1634, File I, fol.45, Sess.of 8 July,1634.

(3) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.257, Sess. of 9 April, 1626.

(4) SHEPHARD, Guide to J.P.'s, (Ed. 1663), p.399.

(5) DALTON, Office and Authority of Sheriffs, (Ed.1700), p.374.

(6) CHESTER Q.S.RECS, 1635, File I, fol.47, Sess. of 14 April, 1635. SOMER.Q.S.RECS., Vol.I, p.162, No.22, Sess. of 9-12 Jan. 1615/6.

(7) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. of 28 July, 1640; 12 Jan. 1640/1; 5 Oct. 1641. DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.39, Sess.of 1 Oct. 1617; No.II, (1629-1639), p.103, Sess.of 2 May, 1633. FURLEY, Quarter Sess. Gov't in Hants in the 17th Century, p. 19.

(8) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.214, Sess. of 30 Sept. 1624.



The exercise of the magistrates' power to supervise and punish the sheriffs was rendered a matter of some delicacy by the fact that they all came from the same class. Any friction would thus create very uncomfortable situations, since, in the restricted circles of the county aristocracy, the critics and the criticized must have had to continue to meet at almost all social functions. So close, indeed, was the interlocking of the personnel of shrievalty and local magistracy that a special statute had to be passed to prevent men from ~~exercising~~<sup>holding</sup> both offices at the same time.<sup>1</sup>

Much less involved were the relations of the justices and those servants of the sheriff, the bailiffs. The latter were companions in misery to the petty constables, for although they were appointed by the sheriff, and were responsible to him,<sup>2</sup> the magistrates could call upon them for the execution of their warrants,<sup>3</sup> and could punish them for negligence or misconduct in office.<sup>4</sup> Consequently, the bailiffs were often summoned to appear before the justices of the peace in order to answer to a variety of charges. Some were fined for failure to attend the Quarter Sessions,<sup>5</sup> others for neglecting to execute warrants,<sup>6</sup>

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(1) 1 Mary, statute 2, c. 8.

(2) WEBB, Eng. Local Gov't, Parish and County, (1924), p. 289.

(3) DALTON, The Country Justice, (Ed. 1705), p. 577.

(4) 11 Henry VII, c. 15.

(5) LANCS. Q.S. RECS., p. 156, Sess. of 6 Oct. 1602. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 35, Sess. of 12 Jan. 1630/1. NORF. Q.S. ROLLS, 12 Jas. I, - list made by Sir John Calthorpe.

(6) LANCS. Q.S. RECS. p. 224, Sess. of 16 July, 1604. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 352, Sess. 15 April, 1629.

or for general carelessness in performing their duties.<sup>1</sup> An underbailiff was attached for summoning freeholders to the Assizes and Sessions and then taking money for exempting them,<sup>2</sup> and the Norfolk justices forced a bailiff to pay 6s. 8d. for calling a man for jury duty when his name was not on the list.<sup>3</sup>

While the Quarter Sessions dealt thus firmly with slackness or misdemeanours, the justices were also ready to chastise any who made things difficult for the bailiffs. George Walpoole was commanded by the sheriff to seize a cow in order to distrain for "certain moneys" owed. The irritated owner, however, assisted by his family, fell upon and beat the unfortunate bailiff; the justices fined all the attackers for their offence.<sup>4</sup>

The coroners also were considered to be conservators of the peace, although they could only require security for future good conduct.<sup>5</sup> Their connection with the local justices seems to have been slight, for while they had to attend the Quarter Sessions,<sup>6</sup> and could be punished by the magistrates for extortion,<sup>7</sup> they do not figure to any great extent in the Sessions

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(1) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 217, Sess. of 12 Jan. 1624/5; No. II, (1629-1639), p. 319, Sess. of 15 Jan. 1639/40. N.R.Q.S. RECS., Vol. I, p. 263, Sess. 8 July, 1612.

(2) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 217, Sess. of 12 Jan. 1624/5; No. II, (1629-1639), p. 319, Sess. 15 Jan. 1639/40. N.R.Q.S. RECS., Vol. I, p. 263, Sess. 8 July, 1612.

(3) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. 5 Oct. 1641.

(4) NORF. Q.S. ROLLS, Jas. I, "various dates".

(5) DALTON, The Country Justice, (Ed. 1705), p. 3.

(6) IBID, p. 652.

(7) IBID, pp. 104-105.

records. A West Riding coroner, it is true, was presented before the Bench for taking a suit of clothes from a corpse as payment for inquiring into the cause of its death,<sup>1</sup> and in Durham a warrant for the good behaviour was granted against a man for abusing the coroner,<sup>2</sup> but apart from such isolated cases there is little to show that coroners and justices had much to do with each other.

Although jurors can hardly be classed as part of the hierarchy of county officials, they had their place in the system of government. They, like the sheriffs, constables and coroners, were obliged to appear at the Quarter Sessions, and could be roundly fined if they failed to present themselves.<sup>3</sup> In some counties, default of this kind was punished by a penalty of 20s.,<sup>4</sup> although Middlesex jurors who absented themselves had to pay only half as much,<sup>5</sup> and in Chester they escaped with 3s. 4d.<sup>6</sup>

Also on the fringe of the county officers of the peace were the provost marshals, who seem to have been appointed by the local justices in times of emergency only, when the problem

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(1) W.R.Q.S. RECS., Vol. I, pp. 64-65, Sess. of 25 April, 1598.

(2) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 246, Sess. of 11 Jan. 1625/6.

(3) DALTON, The Country Justice, (Ed. 1705), p. 652.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 186, Sess. of 9 July, 1623. CHESTER Q.S. RECS., 1625, File 4, fol. 14. NORF. Q.S. ROLLS, 5 Jas. I.

(5) MIDD. SESS. RECS., (New Series), Vol. I, p. 253, 1613.

(6) CHESTER Q.S. RECS., 1642, File I, fol. 11, Sess. 26 April, 1642.

of coping with vagrants had clearly become too great for the ordinary officers to solve.<sup>1</sup> They appear to have been paid by the magistrates,<sup>2</sup> but there is no evidence to indicate that the latter interfered at all in the performance of the provosts' duties.

The growth of social legislation in the reign of Queen Elizabeth necessitated both the widening of the powers of old officials, and the creation of new officers. The churchwardens, whose duties in connection with the upkeep of the churches went back a very long way indeed, were now called upon to take up new tasks in connection with the repairing of the highways,<sup>3</sup> the limitation of the eating of flesh,<sup>4</sup> the destruction of vermin,<sup>5</sup> and the raising of a tax to cover the cost of conveying destitute prisoners to gaol.<sup>6</sup> In addition - and this duty was more important than any of the others - they had to assist in the care of the poor, for they were to act as relief officers, collect the poor rate, buy material for providing work for the unemployed, and bind out as apprentices children whose parents could not afford to support them. For the better performance of these manifold tasks, they were to hold

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(1) ACTS OF P.C., 1615-1616, p.696, P.C. to J.P.'s of Middlesex, Kent, Surrey, Essex, Herts, and Bucks, 28 July, 1616; 1621-1623, p.43, P.C. to J.P.'s of the same counties, 15 Sept, 1621.

(2) IBID, 1616-1617, pp.250-251, P.C. to J.P.'s of Essex, 21 May, 1617. DERBY ANNALS, Vol.I, p.157, Report of Dep. Lieutenants, 1635.

(3) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Churchwardens, pp. 74-75.

(4) 5 Eliz., c. 5.

(5) 8 Eliz., c. 15; 14 Eliz., c. 11.

(6) 3 Jas. I, c. 10.

meetings at least once a month to discuss ways and means.<sup>1</sup> The justices were empowered to examine their disbursements of the poor-relief money,<sup>2</sup> and the Sessions could also deal with any neglect of duty.<sup>3</sup>

Although the churchwardens were semi-ecclesiastical officials, they appear to have wandered at times from the path of strict honesty. Several were presented before the justices for not paying over the money they had collected for charitable purposes.<sup>4</sup> Henry Merrill, in the West Riding, was called to answer a charge that he had disbursed "divers several summes of the townes moneys about unnecessarie uses, and prodigally and by favour disposed of it."<sup>5</sup> Three other churchwardens in the same Riding were fined 3s. 4d. each for contemptuously refusing to execute an order made by the justices.<sup>6</sup>

Along with the churchwardens, new parish officials, the overseers of the poor, were put in charge of the relief of the destitute. These officers were appointed yearly by two justices of the peace resident in the neighbourhood, and like the churchwardens, they could be punished by the Sessions for slackness.<sup>7</sup>

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(1) LAMBARD, Eirenarcha, (Ed. 1619), Duties of Churchwardens, p. 77.

(2) WINGATE, Justice Revived, (Ed. 1661), pp. 36-37.

(3) 43 Eliz., c. 2.

(4) N.R.Q.S. RECS., Vol. I, p. 94, Sess. 8 Oct. 1607. CHESTER Q.S. RECS., 1635, File I, fol. 28, Sess. of 14 April, 1635.

(5) YORKS. ARCH. JOUR., Vol. V, p. 380, Sess. of 3 Oct, 1638.

(6) W.R.Q.S. RECS., Vol. II, p. 179, Sess. of 22 Jan. 1639/40.

(7) 43 Eliz., c. 2.

The justices exercised their power of supervision in no merely casual manner, for they issued definite orders as to how relief was to be carried on,<sup>1</sup> and from time to time prodded the overseers by vehement exhortations into greater activity.<sup>2</sup> Indeed, they spoke with the utmost frankness when they felt that the poor were being neglected; the Huntingdonshire Bench, after commanding the overseers to pay 12d. weekly to Cecilie Smith, "whoe appeared to the saide Iustices to be allmost starved", added sharply "that the said overseers doe hereafter take better care for their poore then to suffer them to starue before they provide for them."<sup>3</sup> Nor did the magistrates use words only. A 20s. fine was laid down by statute as the penalty for negligence, and not a few lazy overseers found themselves required to pay this sum at the Quarter Sessions.<sup>4</sup>

The control of the poor-relief funds involved a good deal of work, and in 1597 special officers were created by sta-

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- (1) LANCS. Q.S. RECS., p. 153, Sess. of 14 July, 1602. H. MSS. COMM., Report 10, Appendix 4, p. 62, Orders of Lancs. Q. Sess. Dec. 1617. SOMER. Q.S. RECS., Vol. I, p. 162, No. 23, Sess. of 9-12 Jan. 1615/6.
  - (2) W.R.Q.S. RECS., Vol. I, p. 118, Sess. of 4 Oct. 1598. NOTTS. CO. RECS., p. 120, 1623. ADD. MSS., 34,400, No. 235d, Huntingdon Sess, 9 Jan. 1637/8. CHESTER Q.S. RECS., 1634, File I, fol. 31, Sess. of 24 April, 1634. HERTS. CO. RECS., Vol. I, p. 55, No. 19, 1622; Vol. V, p. 40, Sess. of 5-6 April, 1624; p. 43, Sess. of 12-13 July, 1624.
  - (3) ADD. MSS. 34,400, No. 254d, Huntingdon Sess, 22 May, 1639.
  - (4) N.R.Q.S. RECS., Vol. I, p. 94, Sess. 8 Oct. 1607; Vol. II, p. 35, Sess. 5 Oct. 1613. CHESTER Q.S. RECS., 1630, File I, fol. 34, Sess. 3 April, 1638. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 247, Sess. 11 Jan. 1625/6 - 40s; No. II, (1629-1639), p. 289, Sess. of 3 Oct. 1638.

tute to do it. Two men were to be appointed yearly in every county at the Easter Quarter Sessions to handle the money collected "for the Releife of the poore Prisoners, of the Kinges Bench and Marshalsey, and also of suche Hospitals and Almeshouses as shalbe in the said Countie."<sup>1</sup> Another law provided for the choice each year at the Easter Sessions of two treasurers to deal with the fund for the support of disabled soldiers.<sup>2</sup> These statutes could be interpreted to mean that every county was to have four treasurers, and accordingly some Benches called upon four men to serve;<sup>3</sup> others appointed two only, to perform the duties of both offices.<sup>4</sup> In the Huntingdonshire records there is a reference to yet another official, for Sir Robert Pain is there called the "Generall Treasurer for the surplusage of moneys arisinge vpon Treasurers accompts";<sup>5</sup> but this odd office had no statutory basis.

The treasurers chosen seem to have been men of good standing - some were even justices of the peace<sup>6</sup> - and this un-

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(1) 39 Eliz., c. 3.

(2) 43 Eliz., c. 3.

(3) N.R.Q.S. RECS., Vol. I, p. 156, Sess. of 11-12 July, 1609.  
MIDD. SESS. RECS., (New Series), Vol. I, p. 76, Sess. 1612/13.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 3, Sess. 10 April, 1616; p. 25, Sess. 30 April, 1617; p. 53, Sess. 8 April, 1618; etc. WAR. Q.S. RECS., p. 221, Easter Sess. 1635 - reference to a pension paid to a maimed soldier by the Treasurer for the King's Bench. NOTTS. CO. RECS., pp. 12-13.

(5) ADD. MSS., 34,400, No. 70d, order of Huntingdonshire Sess. of 25 May, 1630.

(6) CHESTER Q.S. RECS., 1635, File II, fol. 42, Sess. 7 July, 1635.  
NOTTS. CO. RECS., pp. 12-13 - compare lists of magistrates, pp. 8-9. SOMER. Q.S. RECS., Vol. I, p. 191, No. 14, Sess. of 17-19 Sept, 1616.



doubtedly helped to eliminate speculation. None the less, the magistrates sometimes found a suspicious reluctance in the treasurers to present their accounts for inspection. On occasion, the Sessions were even forced to direct the constables to distrain in order to recover "the Country's money",<sup>1</sup> while a Yorkshire treasurer who had held office for seven years was discovered at the end to have embezzled the comfortable sum of £150 during that period.<sup>2</sup>

The regulations for the repair of the roads added another official to the county administration and another worry to the justices of the peace. This was the surveyor of highways. He was, like the constable, untrained and unpaid, serving, more or less reluctantly, for a year. There were supposed to be two of them for each parish, appointed by the constables, churchwardens, and vestry, and charged with the supervision of the statutory corvée.<sup>3</sup> The Nottinghamshire parishes, however, seem to have had a rooted objection to such highway officers, as they were frequently presented for neglect in choosing theirs.<sup>4</sup> Nor was opposition confined to those responsible for the selection of the surveyors, for vigorous persuasion sometimes had to be applied in order to induce the men chosen to accept the position.<sup>5</sup>

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(1) ADD. MSS., 34,400, No. 70d, order of Huntingdon Sess., 25 May, 1630. DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 29, Sess. of 6 Oct. 1630.

(2) W.R.Q.S. RECS., Vol. II, p. 5, Sess. of 2 April, 1611.

(3) 2 and 3 Phil. and Mary, c. 8.

(4) NOTTS. CO. RECS., p. 57 - statement made by the editor.

(5) WORCS. Q.S. ROLLS., Part II, p. 556, No. 214, 1634.

Negligent surveyors were presented at the Sessions, where they received a chilly welcome - three of them were fined £4, and two others had to pay the large sum of £10 each.<sup>1</sup> But although the unfortunate officers were punished, little improvement in the roads was effected, for the surveyors dreaded the anger of their neighbours even more than the possibility of trouble with justices - "poor men are chosen surveyors who are ignorant of that service and also stand in fear of their neighbours displeasure, so that they dare not present them according to statute", as the Surveyor-General said.<sup>2</sup> And so the highways remained almost impassable quagmires.

A number of officials connected with the economic regulations of Tudor and Stuart times, such as the Lord of the Fair,<sup>3</sup> the Clerk of the Market,<sup>4</sup> the toll-taker,<sup>5</sup> and the cloth-sear-cher,<sup>6</sup> came into the sphere of activity of the justices of the peace, inasmuch as the latter could punish their defaults or dishonesty. The Sessions records, however, give only occasional indications of the exercise of this power. Two clerks of the market were indicted in Worcestershire for allowing the use of a

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(1) WORCS. Q.S. ROLLS, Part II, p. 525, No. 243, 13 Sept. 1633.

(2) CAL. S.P. DOM., Car. I, CCCLVI, 149, Petition of Henry Dewell, Surveyor-General of Highways, to the P.C., 19 May, 1637.

(3) 1 Jas. I, c. 22.

(4) LAMBARD, Eirenarcha, (Ed. 1619), p. 437.

(5) 31 Eliz., c. 12.

(6) 39 Eliz., c. 20.

measure which was not of standard size,<sup>1</sup> and a West Riding cloth-searcher, who was also a cloth-maker, was found guilty before the justices of putting a false seal on his own wares. The punishment of the latter was light, for he merely forfeited the cloth and was discharged from his position.<sup>2</sup>

In all the county hierarchy, only one figure outshone the justices of the peace in pride of place - the Lord Lieutenant. His office had been created in the reign of Queen Elizabeth to increase the efficiency of the local militia, and in the early days of his office he had been an extremely important person. Moreover, he was usually a noble. By the beginning of the 17th century, however, the fear of foreign invasion had lessened greatly, and with its going a good deal of the vitality of the Lieutenancy went also. The Lords Lieutenants still acted as channels of communication between Council and shire,<sup>3</sup> but most of their military duties were performed by deputies, appointed from the ranks of the local gentry.<sup>4</sup>

The Deputy Lieutenants had to see that the militia turned out, properly armed, at the summer musters. At the mus-

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(1) H. MSS. COMM., Various Collections, Vol. I, pp. 289-290, Worcestershire Quar. Sess. Records, 1611.

(2) W.R.Q.S. RECS., Vol. II, p. 274, Sess. of 4 May, 1641.

(3) CAL. S.P. DOM., Jac. I, LXVI, 46, J.P.'s of Cambs. to Lord Lieutenant of Cambs. and Suff., 3 Oct. 1611; Car. I, CCCCXLI, 42, P.C. to Lord Lieut. of Cumberland, 5 Jan. 1639/40. H. MSS. 60MM., Report 10, Appendix 4, p. 367, Lord Lieut. to Sheriff, Dep. Lieuts. and J.P.'s of Salop, 3 July, 1620.

(4) SCOTT THOMSON, Lords Lieutenants in the 16th Century, pp. 69-70.

ters they had to drill awkward yokels in the handling of their weapons, and remonstrate with the wealthy men who were bound to provide horses, but who very naturally chose the most worn-out nags in their stables for the purpose. When troops were required for service abroad, it was they who had to see that the necessary levies were raised. In all these duties, the justices of the peace, as will be seen later, rendered valuable assistance. Indeed, Bacon suggests that the latter did the chief part of the work - "Through these [justices], in effect, run all the county services to the crown; as taxation of subsidies, mustering men, arming them, and levying forces by commission or precept from the King"<sup>1</sup> but this statement is hardly fair to the Deputies. One might expect to find friction between the two kinds of officials performing the same duties, but in practice there seems to have been very little trouble. The two offices were ~~very~~ closely connected, for Deputy Lieutenants were often (though not always) justices of the peace at the same time,<sup>2</sup> and a record of good service as a magistrate might be used as a recommendation for the position of Deputy.

The justices, then, were the driving force within the system of local government. They seem, on the whole, to have made a real effort to keep the other officials up to the mark,

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(1) BACON, Works, (Ed. by Spedding, 1870), Vol. VII, p. 469, "The Use of the Law", 1629.

(2) NORTHANTS MUSTERS, Editor's note, p. xx. DERBY ANNALS, Vol. I, p. 158 - report signed by six Deputy Lieutenants, of whom four were J.P.'s - 1635.

although in this connection it must be admitted that the Quarter Sessions dealt more frequently and more drastically with the faults of the small fry, like the constables and bailiffs, than with the negligence of those who were the magistrates' social equals, like the sheriffs. Nor can it be denied that the administration of local affairs had many flaws; but the blame for the semi-starvation of the poor and the neglect of the roads cannot be put wholly upon the shoulders of the magistrates. Rather the fault lay in a system which set untrained men to supervise the activities of equally untrained, and very unwilling subordinates. The wheels of the local government machine creaked, it is true - but it was the achievement of the justices of the peace that they turned at all.

### CHAPTER III.

#### POWERS OF THE JUSTICES OF THE PEACE.

The activities of the justices of the peace were by no means limited to supervision over other local officials, for the magistrates' office gave them a wide range of duties of their own. When we are considering the authority of any of the 17th century officers, however, we must draw a distinction between the powers they possessed in theory, and the powers they exercised in fact. The English have the reputation of being deeply suspicious of change, and the Law is probably the most conservative of all the conservative English institutions. Enactments which are in practice a dead letter may therefore remain on the Statute Books for years after their demise. A pertinent example is the condemnation, in the 15th century, of the coins known as Gally halfpence, suskins and dotkins.<sup>1</sup> No one in the reign of Charles I. can have been passionately interested in the extermination of this outlaw money, which in any case had probably disappeared long before, but according to the Statute

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(1) 3 Henry V. c.1.

Books, the justices of the peace were still supposed to be hot upon its trail.

Through the same spirit of laissez faire among the authorities, the Commission of the Peace had by the 16th century become hopelessly out of date - to such an extent, indeed, that in 1590 it had to be completely revised.<sup>1</sup> This helped, at least temporarily, to define the position of the justices; but soon further changes in the Commission became advisable, and some forty years after the original revision Sir Edward Coke was writing, "And there needeth yet another reformation of that also; for since that time divers statutes then in force have been repealed, and divers have expired."<sup>2</sup> But the suggested amendment was not carried out, and England's attention was soon occupied with matters more important than the question of the minor peculiarities of the Commission of the Peace.

There were also other reasons why the justices' powers and activities were unlikely to coincide in every respect. Some of the regulations they were called upon to carry out dealt with a particular area, and were of little interest to the magistrates in other parts of the country. Into this class fall the laws for the repairing of sea-banks in Norfolk,<sup>3</sup> or for buying and selling wool in Halifax.<sup>4</sup> Again, certain laws were not en-

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(1) LAMBARD, Eirenarcha, (Ed. 1619), p. 43.

(2) COKE, Institutes of the Laws of England, (Ed. 1797), Part IV, p. 170.

(3) 27 Eliz., c. 24.

(4) 2 and 3 Phil. and Mary, c. 13.



forced because they clashed with the class interests of the justices themselves. For example, the government in the 16th century was making vigorous efforts to stop the turning of arable land into sheep-pasture, and an Elizabethan act gave the justices authority to hear and determine all cases of depopulation.<sup>1</sup> The magistrates, however, were of the class to which many of the offenders belonged, and while one of them cheerfully signed a list of enclosers in which his own name figured,<sup>2</sup> such honesty was probably rare. Consequently, although the Quarter Sessions should have been punishing offences against the enclosure acts, it was those who riotously destroyed the hated hedges, rather than those who erected them, that were called before the local Benches.

The authority of the justices arose from two main sources, the Commission of the Peace and the Statutes. The former,<sup>3</sup> by virtue of which they received their fundamental powers as Conservators of the Peace,<sup>4</sup> gave into their charge in a general way the suppression of disorderliness in their shires: "We have assigned you, jointly and severally ... our Justices to keep our Peace...." In order to forestall crimes, the Conservators were next exhorted to call before them all dangerous persons, and take security of them for their future

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(1) 39 Eliz., c. 2.

(2) CAL. S.P. DOM., Car. I., CLXXXIX, 94, list signed by Sir Capel Bedell, [April], 1631.

(3) For the whole Commission, see Appendix A.

(4) LAMBARD, Eirenarcha, (Ed. 1619), p. 45.

good behaviour. Those unruly persons who continued upon their way undeterred had to be chastised, and so the Commission went on more particularly to grant the justices wide judicial powers, placing in their hands the punishment of those who should commit "all or singular the felonies, poisonings, incantations, sorceries, magic arts, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies...." Apparently the government was quite alive to the terrific responsibility laid upon the Conservators of the Peace by this command to suppress all felonies and trespasses, and had its doubts as to the ability of mere country gentlemen to deal with such a formidable array of misdeeds, for the Commission proceeded tactfully, "provided always, That if a case of difficulty upon the determination of any of the premisses, shall happen to appear before you ... then neither you, nor any two or more of you, are to proceed to render judgement therein, (except in the presence of one of our Justices assigned to hold the Assizes in the County aforesaid.)"

Thus according to a literal reading of the Commission, these amateur judges were able to try almost any criminal case which did not present legal complications - even those (and there were many of them) involving the death-sentence. In practice, however, most of the justices were wise enough not to attempt to exercise their judicial powers to the full, and Shephard gives a list of twenty-two crimes with which the local magistrates ought to deal only as far as examination of offenders and their commitment to gaol. This list includes treason, rape, witchcraft,

forgery, certain kinds of usury, and other serious offences.<sup>1</sup>

In addition to the more important malefactors over whom the justices were to have power, the Commission named an assortment of small offenders into whose activities the local Benches, through the presentments of a jury of worthy citizens, should inquire. People who rode about armed to the teeth, innkeepers and others who used fraudulent measures, negligent sheriffs, bailiffs, or constables - all were to be dealt with by the justices according to law.

The exercise of such very extensive powers was not to be lightly entrusted to every squire, even although he were considered worthy of a seat on the local Bench. In order to avoid costly blundering, each Commission therefore named certain particularly capable magistrates, of whom one or more had to be present at all times when the magistrates of that shire were performing their more important functions.<sup>2</sup> These specially chosen men constituted the "Quorum", and very naturally the honour of being a member of such a select group was, at first, eagerly sought after. As years went by, however, the number of people on the Quorum grew steadily, and by the 17th century it had become so overgrown that it included in some shires practically the whole body of magistrates. Monmouth and the Isle of Ely in 1625 each possessed only one justice who was not of the Quorum; Kesteven and Nottingham had two apiece.<sup>3</sup> In all

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(1) SHEPHARD, Guide to J.P.'s, (Ed. 1663), pp. 22-23.

(2) IBID, p. 4.

(3) HARL. MSS. 1622 - Liber Pacis for 1 Chas. I.

counties, more than sixty percent of the magistrates were thus designated especially trustworthy, and Holland in 1604 actually boasted twenty-nine justices, all of whom were of the Quorum.<sup>1</sup> During the Stuart period, then, it had almost become a mark of distinction to be omitted from this once-honoured group.

The Commission for a county gave the justices authority in that shire only<sup>2</sup> - unless, as sometimes happened, their names were enrolled on the Commission for another county as well. Moreover, certain places were exempt from the jurisdiction of the county magistrates, such as cities which were counties of themselves,<sup>3</sup> corporate towns that had been given a separate Bench by charter,<sup>4</sup> and certain liberties.<sup>5</sup> The position of the liberties in relation to the county justices, however, was the subject of a good deal of acrimonious discussion. Their Commission gave the shire magistrates police powers "as well within Liberties as without",<sup>6</sup> but any attempt to extend this authority to cover other matters brought forth loud protests. The inhabitants of Muchwenlock in Shropshire denied the right of the county Bench to tax them for maimed soldiers, and while the Justices of Assize upheld their claim, they rejected the further contention that they should support only their own veterans.<sup>7</sup> Sometimes

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(1) ADD.MSS., 38,139 - Liber Pacis for 1604.

(2) DALTON, The Country Justice, (Ed. 1705), p.25.

(3) IBID, p. 24.

(4) IBID.

(5) See supra, pp. 22 23

(6) See Appendix A.

(7) ACTS OF P.C., 1618-1619, p.143, Decision of P.C. after hearing report of Justices of Assize, 17 May, 1618.

the liberties refused to recognize even the police powers of the justices, and the Privy Council had to order "the sherife's and justices' warrantes to runne in these places and not to be interrupted",<sup>1</sup> for the establishment of some sort of police protection.

Nor were the powers of the local magistrates limited geographically only; the Commission might be terminated at any moment by the King's death or by the issuing of a new Commission.<sup>2</sup> Moreover, the election of a justice to the position of sheriff automatically cancelled his power as a magistrate until his term of shrievalty was over.<sup>3</sup>

Even when these limits to the authority of the justices of the peace have been taken into account, their duties under the Commission appear to be overwhelming. Yet these tasks represent only a fraction of their office, for where the King left off in the distribution of work, Parliament began. Statute after statute added not only to their police powers, but to their administrative duties as well, until by the end of the reign of Elizabeth there were nearly three hundred laws on the books affecting the justices of the peace<sup>4</sup> - laws which touched every aspect of English life. As early as 1361, the country gentlemen

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(1) ACTS OF P.C., 1616-1617, p. 380, Resolutions in Counsell touching the Government of the Middle Shires, 21 Nov, 1617.

(2) DALTON, The Country Justice, (Ed. 1705), pp. 11-12.

(3) 1 Mary, Statute 2, c.8.

(4) LAMBARD, Eirenarcha, (Ed. 1619), Table of Statutes at the end of the Fourth Book.

had been drawn into the field of economic regulation, for in that year they were given the task of enforcing the use of standard weights and measures.<sup>1</sup> From then on they had been put in charge of any kind of work in which local knowledge was useful. Indeed, so numerous were the laws with whose enforcement the justices were, by the beginning of the 17th century, concerned, that a full description of the powers enumerated in them would be unutterably tedious. A few examples, however, will serve to outline their scope.

The crime of poaching naturally received a good deal of attention from an aristocratic Parliament, and the justices seemed to be admirably fitted to punish any unauthorized persons who hunted "gentlemen's game"<sup>2</sup> with dogs,<sup>3</sup> or with "nets, snares, or any other engynes".<sup>4</sup> They were also given power to chastise those who broke into deer-parks or destroyed heads of ponds.<sup>5</sup> Particular attention was to be paid to those who hunted with masked or painted faces - the justices were to deal with them as felons.<sup>6</sup> In addition to this war on illegal hunting, the systematic pursuit and discouragement of rioters was en-

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(1) 34 Edward III. c. 5.

(2) i.e. deer, hares, partridges or pheasants.

(3) 13 Richard II. c. 13.

(4) 11 Henry VII. c. 17.

(5) 5 Eliz., c. 21.

(6) 1 Henry VII. c. 7.

trusted to the local magistrates;<sup>1</sup> so also was the execution of moral perverts,<sup>2</sup> the pillorying of forgers,<sup>3</sup> the fining and imprisoning of perjurers and those who corrupted witnesses,<sup>4</sup> the vigorous chastisement of usurers,<sup>5</sup> kidnappers, and the gentry we now call "protection racketeers".<sup>6</sup> Thus by the end of the reign of Elizabeth, the judicial functions of the justices of the peace had spread over a large field of criminal activity.

Moreover, the central government had been quick to realize that the local magistrates could be exceedingly useful in the enforcement of that regulation of industry which was occupying an increasing amount of the attention of Parliament. The selling of food<sup>7</sup> and drink<sup>8</sup> was regulated, and the justices had to deal with those who broke the rules. Cloth-workers,<sup>9</sup> arrow-smiths,<sup>10</sup> wax-chandlers,<sup>11</sup> and tile-makers,<sup>12</sup> were told exactly

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(1) 13 Henry IV. c. 7.

(2) 25 Henry VIII. c. 6.

(3) 33 Henry VIII. c. 1.

(4) 5 Eliz. c. 9

(5) 13 Eliz. c. 8.

(6) 43 Eliz. c. 13.

(7) 5 and 6 Edward VI. c. 14; 5 Eliz. c. 12.

(8) 28 Henry VIII. c. 14; 8 Eliz. c. 9.

(9) 13 Rich. II. Statute I. c. 11.

(10) 7 Henry IV. c. 7.

(11) 11 Henry VI. c. 12.

(12) 17 Edw. IV. c. 4.



how to conduct their business - and the justices were empowered to punish any who failed to take the paternal advice. Fishing,<sup>1</sup> together with the breeding of sheep,<sup>2</sup> cattle,<sup>3</sup> and horses,<sup>4</sup> was to be carried on according to Parliamentary dictates; measures,<sup>5</sup> wages,<sup>6</sup> and hours of work<sup>7</sup> came under the control of the Law; and all offences were given to the justices of the peace to "hear and determine".

Statutes concerning military matters as well were entrusted, for enforcement, to the local magistrates. Soldiers who deserted or who sold their equipment were to be dealt with by the Quarter Sessions,<sup>8</sup> and muster masters who accepted bribes for the releasing of unwilling recruits were liable to be heavily fined by the justices.<sup>9</sup>

Even matters concerning the Church were given into the charge of the local magistrates. The Protestant legislation of Edward VI for the establishment of the new Book of Common Prayer,<sup>10</sup>

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(1) 2 and 3 Edw. VI. c. 19; 1 Eliz. c. 17; 5 Eliz. c. 5.

(2) 25 Henry VIII. c. 13; 8 Eliz. c. 3.

(3) 2 and 3 Phil. and Mary, c. 3.

(4) 32 Henry VIII. c. 13.

(5) 2 Henry VI. c. 11; 11 Henry VI. c. 8; 7 Henry VII. c. 3;  
4 Henry VIII. c. 7.

(6) 5 Eliz. c. 4.

(7) 2 and 3 Edw. VI. c. 15.

(8) 2 and 3 Edw. VI. c. 2.

(9) 4 and 5 Phil. and Mary, c. 3.

(10) 3 and 4 Edw. VI. c. 10.

and the anti-Catholic statutes of Elizabeth<sup>1</sup> were turned over to the justices to be put into operation.

The enforcement of other miscellaneous laws also fell to the Quarter Sessions. The justices were to consider the cases of householders who permitted frivolous servants to fritter away their time at such reprehensible games as tennis or bowls.<sup>2</sup> People of mean estate who employed cross-bows, handguns, or "hagbutts" were to be haled before the Quarter Sessions,<sup>3</sup> along with lazy farmers who failed to scour the ditches beside the King's highway, and those who scoured only too well, throwing the muck onto the road.<sup>4</sup> The erection of a cottage without four acres of land around it would earn a £10 fine from the magistrates,<sup>5</sup> and any soldier returning home had to get a testimonial of his bona fides from a justice of the peace, or else run the risk of being brought before one of the local Benches as a vagrant.<sup>6</sup> It was the justices also who were to punish idlers who preferred to live on the dole rather than do honest work.<sup>7</sup>

Besides the judicial powers conferred by statute upon

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- (1) 27 Eliz. c. 2; 35 Eliz. c. 1, sect. 1, 2; 35 Eliz. c. 2, sect. 5.
  - (2) 19 Henry VII. c. 12.
  - (3) 33 Henry VIII. c. 6.
  - (4) 18 Eliz. c. 10.
  - (5) 31 Eliz. c. 7.
  - (6) 39 Eliz. c. 17.
  - (7) 43 Eliz. c. 2.

the justices, Parliament from time to time gave them administrative duties. At their Michaelmas meeting, they were to appoint searchers for impure pewter,<sup>1</sup> while overseers of the poor,<sup>2</sup> collectors of money for the building of gaols,<sup>3</sup> and supervisors of the manufacture of cloth<sup>4</sup> were also to be chosen by the Quarter Sessions. The justices in addition assessed the rate levied for the relief of paupers,<sup>5</sup> and allotted pensions to disabled soldiers and sailors.<sup>6</sup>

The powers which have been enumerated were those of the whole body of magistrates in each shire, but there were also a large number of duties which could be performed by justices acting in small groups, or even singly. One justice, for example, could award damages to anyone whose crops or orchards had been wilfully injured;<sup>7</sup> he could also put a breaker of the Assize of Fuel in the pillory,<sup>8</sup> fine or gaol those who exported grain without permission,<sup>9</sup> punish any Thames watermen who did not abide by the statutory rules laid down for their trade,<sup>10</sup>

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(1) 19 Henry VII. c. 6.

(2) 14 Eliz. c. 5.

(3) 23 Henry VIII. c. 2.

(4) 39 Eliz. c. 20.

(5) 43 Eliz. c. 2.

(6) 43 Eliz. c. 3.

(7) 43 Eliz. c. 7.

(8) 7 Edw. VI. c. 7.

(9) 1 and 2 Phil. and Mary, c. 5.

(10) 2 and 3 Phil. and Mary, c. 16.

or fine and imprison factious persons who by "fantastical prophecies" incited the population to riot.<sup>1</sup> More commonly, however, minor business was entrusted to two justices of the peace, usually with the stipulation that one should be of the Quorum. Thus two magistrates could bail persons "lightly suspected" of felony,<sup>2</sup> and they could judge cases of poaching,<sup>3</sup> and of disrespectful or riotous behaviour in a church.<sup>4</sup> They were also given a variety of administrative functions, such as suppressing "the superfluous and unnecessary Number of Maultsters",<sup>5</sup> licensing recusants to travel,<sup>6</sup> and administering the Oaths of Supremacy and of Office to undersheriffs.<sup>7</sup> They might take order for the support of bastard children,<sup>8</sup> examine the accounts of the collectors of money for the mending of highways,<sup>9</sup> certify to the Lord Steward of the Household the lists of goods taken by the Royal Purveyors,<sup>10</sup> and perform an assortment of other routine duties which <sup>were</sup> doubtless very useful, but must have been

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(1) 5 Eliz. c. 15.

(2) 3 Henry VIII. c. 3; 1 and 2 Phil. and Mary, c. 13.

(3) 19 Henry VII. c. 11.

(4) 1 Mary, Statute 2, c. 3.

(5) 39 Eliz. c. 16.

(6) 35 Eliz. c. 2.

(7) 27 Eliz. c. 12.

(8) 18 Eliz. c. 3.

(9) 2 and 3 Phil. and Mary, c. 8.

(10) 2 and 3 Phil. and Mary, c. 6.

excessively dull.

A few unimportant tasks were given to three justices of the peace - the enrolling of deeds when land changed hands,<sup>1</sup> the taking of information in cases of contemptuous treatment of the Sacrament,<sup>2</sup> and the punishment of unscrupulous cloth-workers who weakened their goods by overstretching them.<sup>3</sup> Four justices could tax each parish in their county for highway repairs,<sup>4</sup> and examine a Sanctuary man accused of having left his sanctuary;<sup>5</sup> while six justices (two to be of the Quorum) were to assist in the work of the Commissioners of Sewers.<sup>6</sup>

Such were the very wide powers of the local magistrates at the opening of the 17th century - but even then their jurisdiction had not reached its greatest extent. The most rapid increase in their authority had come during during the Tudor period, and the Stuarts followed the same path by adding their quota to an already almost unbearable load. In the reign of James I., "prophane Swearing and Cursing" was made a punishable offence which could be summarily tried by any justice of the peace;<sup>7</sup> and "the loathsome and odyous Synne of Drunkennes" was

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(1) 27 Henry VIII. c. 16.

(2) 1 Edw. VI. c. 1.

(3) 1 Eliz. c. 12.

(4) 22 Henry VIII. c. 5.

(5) 22 Henry VIII. c. 14.

(6) 15 Eliz. c. 9.

(7) 21 James I. c. 20.

to be eliminated from English life by the local magistrates.<sup>1</sup> Vagrants were to be branded at the Quarter Sessions,<sup>2</sup> and poachers could be imprisoned and fined by any two justices.<sup>3</sup> As an aid to the suppression of such petty offenders, the Quarter Sessions were to take order for the building of Houses of Correction, and the appointing of their governors.<sup>4</sup> Smaller groups of justices were to administer the Oath of Allegiance to subjects of doubtful loyalty,<sup>5</sup> and inspect the accounts of the expenditure of parish money on the binding out of pauper apprentices.<sup>6</sup> New regulations were made for ale-sellers,<sup>7</sup> leather-workers,<sup>8</sup> cloth-makers,<sup>9</sup> and bakers<sup>10</sup> - all to be enforced by the justices of the peace, who were also presented with an enlarged list of wages to be rated.<sup>11</sup>

Fortunately for the sanity of the magistrates, the Parliaments of Charles I. were too few and too preoccupied with

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(1) 4 Jas. I. c. 5; 21 Jas. I. c. 7.

(2) 1 Jas. I. c. 7.

(3) 7 Jas. I. c. 11.

(4) 7 Jas. I. c. 4.

(5) 7 Jas. I. c. 6.

(6) 7 Jas. I. c. 3.

(7) 4 Jas. I. c. 4.

(8) 1 Jas. I. c. 22.

(9) 7 Jas. I. c. 7; 21 Jas. I. c. 18.

(10) 21 Jas. I. c. 21.

(11) 1 Jas. I. c. 6.

affairs of greater moment to give much of their attention to laws which would have to be enforced by the local officers. Even in these circumstances, however, a few new duties were added to the existing mountain. Playing unlawful games upon the Sabbath,<sup>1</sup> and selling meat or carrying goods on a Sunday,<sup>2</sup> (both anathema to a markedly Puritan Parliament) were to be suppressed, as one might expect, by the justices of the peace, and the latter were also to put down unlicensed alehouses,<sup>3</sup> supervise more carefully the binding of poor children as apprentices,<sup>4</sup> and keep an eye upon the profitable but fraudulent activities of the Clerks of the Market who used weights and measures differing from the standard.<sup>5</sup>

These, then, were the overwhelming duties with which a conscientious magistrate of Stuart times found himself faced. But while the responsibility was great, its weight was to some extent lessened by a very definite curtailment of power in the choice of the punishment which convicted criminals were to suffer. A few laws left the penalty to the "discreSSION" of the magistrates,<sup>6</sup> but in the Tudor and Stuart statutes there can be seen a growing tendency to specify the exact form of unpleasantness

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(1) 1 Charles I. c. 1.

(2) 3 Charles I. c. 2.

(3) 3 Charles I. c. 4.

(4) 3 Charles I. c. 5.

(5) 16 Charles I. c. 19.

(6) e.g. 13 Rich. II. Statute I, c. 11; 19 Henry VII. c. 5;  
28 Henry VIII. c. 14.

to be inflicted upon the culprits. This helped to avoid the ill-effects of overconfidence in officious justices, and must have lifted at least some of the burden of responsibility from the shoulders of the conscientious magistrates.

From the foregoing, it can be seen that the justices' jurisdiction - which was social, economic, religious, and even military - reached its peak of rapid growth at the end of Elizabeth's reign, and continued to expand, though more slowly, under the first two Stuarts. When James I. ascended the throne, the pressure upon the magistrates was already crushing, yet as statute followed statute, each adding to their duties, there was no great outcry from the country gentlemen. Nor were the 17th century squires endowed with a temperament that would lead them to accept without protest anything which they felt to be an unreasonable imposition. Undoubtedly the extra power that accompanied the extra duties appealed to the desire to dominate which was inherent in the average squire, and so he attacked his alarming task with an astonishing equanimity, and with an equally astonishing amount of success.



## CHAPTER IV.

### THE QUARTER SESSIONS.

A large number of the duties so lavishly bestowed upon the justices by King and Parliament were performed at their regular meetings, the Quarter Sessions. These meetings were, of course, intended to be general, but according to a strict interpretation of the wording of the Commission they could be held by any two justices of the peace, of whom one was of the Quorum. This made possible the entertaining situation of an indefinite number of official Sessions, all being held on the same day in different parts of the county - although, as Dalton points out, "Certainly the Justices, by whose Frowardness such Division happens ... are punishable for the same by Information and Fine, or putting out of the Commission, as the Cause shall require."<sup>1</sup>

A full Quarter Sessions was indeed an impressive affair. There were the justices themselves, including the Custos Rotulorum, who was responsible for the safe keeping of the records. The sheriff or his deputy also had to attend, as

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(1) DALTON, The Country Justice, (Ed. 1705), p. 650.

did the jurors he had summoned, the constables and bailiffs, the coroner, the gaoler and the keeper of the house of correction with their prisoners, and also all persons bound by recognizance to answer an accusation, to prosecute a criminal, or to give evidence in a case.<sup>1</sup> More important than any of these - except, of course, the justices - was the Clerk of the Peace, who was the magistrates' official secretary. "His duty is in the Sessions to read Indictments, to enroll the Acts and draw the Process; to record the Proclamation of Rates for Servants' Wages, to enroll the Discharge of Apprentices, to keep the counterpart of the Indenture of Armour, to keep the Register Book of Licenses given to Badgers and Laders of Corn, and of those that are licensed to shoot in Guns, to certifie into the Kings Bench Transcripts of Indictments, Outlawries, Attainders, and Convictions had before the Justices of the Peace within the time limited by Statute."<sup>2</sup> To these duties of the Clerk, a law in the reign of James I. added the recording of presentments for not coming to church, and of certificates of the Oath of Allegiance.<sup>3</sup> Since many of the Sessions documents were written in Latin, he had to be a man of some education - although even then the classical writers might have been a little astonished at the masterpiece produced by the Norfolk Clerk when he recorded the indictment of John Hunt of Langly - "erexit anglice

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(1) DALTON, The Country Justice, (Ed. 1705), pp. 651-652.

(2) COWEL, The Interpreter, quoted in Derby Annals, Vol. I. p. 26.

(3) 3 James I. c. 4.

did erect unum cottagium pro habitacione et dicto cottagio sic erecto non assignavit et adiecit anglie did not assigne and lay to quatuor acras tere."<sup>1</sup> In spite of such original efforts at Latin composition, however, it is evident that in several cases at least the Clerk was a man of some social standing. In Warwick he was referred to as a "gentleman",<sup>2</sup> and a squire of Chester in writing to the Clerk addressed him as "Cozin Moolande".<sup>3</sup> Mr. Moland, indeed, seems to have possessed a certain amount of influence, for his correspondent, who was urging the claims of a poor widow against the relief officers, added, "I hoope you wyll move the Benche for a Order for her."

Apart from his regular duties, the Clerk was sometimes given other work which required secretarial training. In Derbyshire, for example, he commonly acted as Treasurer of the county.<sup>4</sup> The North Riding Treasurers paid the Clerk £6. 13s. 4d. a year for keeping their records,<sup>5</sup> and the same system was adopted in Warwickshire for the administering of the fund for the raw materials used in the house of correction.<sup>6</sup> Indeed, the Clerk of the Peace in the West Riding had so many clerical duties

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(1) NORF. SESS. ROLLS, 2 Charles I.

(2) WAR. Q.S. RECS., Vol. I. p. 99, Trinity Sess., 1630.

(3) CHESTER Q.S. RECS., 1634, File I. fol. 55, Thos. Maynwaring to John Moland, 22 April, 1634, Nantwich.

(4) COX, Derbyshire Annals, Vol. I. p. 119.

(5) N.R.Q.S. RECS., Vol. I. p. 53, Sess. of 8 Oct. 1606.

(6) WAR. Q.S. RECS., Vol. I. p. 267, Trinity Sess. 1637.

that he kept a staff of men working under him.<sup>1</sup>

The Quarter Sessions, as the name implies, were held four times a year, although the justices were allowed to meet more frequently if they felt it was necessary.<sup>2</sup> Several counties took advantage of this permission, for Lambard says, "The maner is (in some Shires) to summon yeerely six standing Sessions of the Peace: in others viij. in others xij. or xvj. and in others otherwise."<sup>3</sup> This practice of meeting more than the minimum number of times was adopted in Lancashire, which was divided into four districts, each district having its four Quarter Sessions a year.<sup>4</sup> The statutory dates for holding the meetings were at Michaelmas, Epiphany, Easter, and the Translation of St. Thomas.<sup>5</sup>

The place at which the Sessions were held was determined by the justices themselves,<sup>6</sup> although in Northamptonshire, when the magistrates were divided in a violent disagreement over the relative merits of two rival towns, the Privy Council stepped in and settled the matter by tactful compromise.<sup>7</sup>

- (1) W.R.Q.S. RECS., Vol. II., Appendix D., Part II. p. 404 - "To ye clarke of peace his men for writing the lycences, ij d."
- (2) WINGATE, Justice Revived, (Ed. 1661), p. 207.
- (3) LAMBARD, Eirenarcha, (Ed. 1619), p. 593.
- (4) LANCS. Q.S. RECS., Introduction, pp. x-xi.
- (5) 2 Hen. V. Statute I. c. 4. - (1) January, (2) late March or early April, (3) July, (4) late September and early October.
- (6) LAMBARD, Eirenarcha, (Ed. 1619), p. 383.
- (7) ACTS OF P.C., 1623-1625, pp. 365-366, Order of P.C., 17 Nov. 1624.

In some counties, such as Middlesex and Hampshire, the justices found it convenient to meet habitually at the same place,<sup>1</sup> but the Derbyshire Bench each year sat twice at Derby, once at Chesterfield, and once at Bakewell.<sup>2</sup> In Somerset, one of the larger counties, the magistrates spread their four meetings over four different towns,<sup>3</sup> in order to bring the Sessions near all parts of the county, and other shires, like Nottingham, achieved the same result by adjourning the meetings from one place to another.<sup>4</sup> This latter procedure was adopted in the North and West Ridings also, but the justices there interpreted the word adjournment in a very liberal manner - when the "adjourned" Court reassembled in each new town, it was composed of an entirely different group of magistrates.<sup>5</sup> Occasionally a variation from the ordinary practice was introduced by the appearance of the plague in the customary place of meeting, for in such a case the justices usually removed themselves as fast and as far as possible from the infected spot.<sup>6</sup>

When the Sessions had come together, they were supposed to continue for three days, "if need be",<sup>7</sup> and we might expect

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- (1) MIDD. SESS. RECS., (New Series), Vol. I. p. 11 Hicks Hall built, 1613. FURLEY, Q. Sessions Gov't in Hampshire in the 17th Century, pp. 16 and 35, Winchester Castle.
  - (2) COX, Derbyshire Annals, Vol. I. p. 7.
  - (3) SOMER. Q.S. RECS., passim.
  - (4) NOTTS. CO. RECS., p. 3.
  - (5) W.R.Q.S. RECS., Vol. I. pp. 28, 43, 44 etc.; Vol. II. pp. 387-388, etc. N.R.Q.S. RECS., Vol. I. p. 242; Vol. II. pp. 81, 84, etc..
  - (6) NOTTS. CO. RECS., p. 102. SOMER. Q.S. RECS., Vol. II. p. 8.
  - (7) 12 Rich. II. c. 10.

from the amount of work to be accomplished, that the need would be for much more time than this. Yet the records show that the Sessions usually met for two or at most three days consecutively.<sup>1</sup> Lambard says caustically that "many doe scantly afford them three whole hours, besides the time which is spent in calling of the Country and giuing of the charge."<sup>2</sup> This slur upon the magistrates was not altogether deserved, for although near the end of Elizabeth's reign the Cambridge Bench considered four days a year a sufficient amount of time for Sessions business,<sup>3</sup> in 1621 the Devon magistrates met for a total of twenty days,<sup>4</sup> and the Somerset Sessions at Wells often lasted four days,<sup>5</sup> or even, under unusually heavy pressure of business, five.<sup>6</sup>

The common offence of the magistrates was not so much a premature departure as a total absence from the Sessions. Every justice, with the exception of the great men included in the Commission as a matter of form, was supposed to attend

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(1) The yearly number of Sessions days can be found by examining the payments for attendance made to the Clerks of the Peace (who had to be present at all Sessions) in the Sheriffs Accounts on the Pipe Rolls. These show that the annual number of days was usually between 6 and 14.

(2) LAMBARD, Eirenarcha, (Ed. 1619), p. 606.

(3) P.R.O., EXCHEQUER KING'S REMEMBRANCER, Sheriffs Accounts, Cambridgeshire (E. 101/553/16), Sept. 1601 - Sept. 1602.

(4) P.R.O., PIPE ROLL, 18 Jas. I, (E. 372/466), Jan. - Oct. 1621.

(5) SOMER. Q.S. RECS., Vol. I. Introduction, p. xxviii.

(6) IBID, p. 264, 11-15 Jan. 1619/20; Vol. II. p. 245, 12-16 Jan. 1635/6.

regularly, and could be punished if he failed to do so.<sup>1</sup> When in the 16th century the assessing of wages was put into the hands of the justices, a provision was inserted to the effect that those who did not appear at the rating Sessions at Easter would be liable to the very considerable fine of £10.<sup>2</sup> Yet this breathing of threats was of little avail, and the Lord Keeper in 1632 blamed the slackness in attendance at Quarter Sessions upon the magistrates' frequent visits to London - "Though there be manie justices of peace, yet there are but few to doe the service."<sup>3</sup> Early in the reign of James I., the Privy Council made a special effort to put an end to this negligence. A general set of instructions was sent to all the counties of England, "for the better preservation of his Majesty's subjects, in peace, order and obedience," and the first section was a command that all local magistrates should attend all the Quarter Sessions. Furthermore, the next paragraph ordered the Clerks of the Peace to report defaulters to the Justices of Assize, who were to "examine the truth of the cause of such justices' absence or not-attendance at any of the said sessions" - and there was added ~~the~~ veiled threat "that such

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(1) DALTON, The Country Justice, (Ed. 1705), p. 514. LAMBARD, Eirenarcha, (Ed. 1619), p. 385.

(2) 5 Eliz. c. 4.

(3) CAMDEN SOC., New Series, No. 39, (1886), Cases in the Courts of Star Chamber and High Commission, p. 178, Lord Keeper's speech to the Judges of Assize, 21 June, 1632.

course may be taken therein as shall stand with justice."<sup>1</sup>

This exhortation seems to have had little effect, however, for the attendance remained very low. In Lancashire<sup>2</sup> and Devon,<sup>3</sup> a scant half of the justices seem to have taken part in Sessions business. The Somerset magistrates were even worse, for usually only about a third of them appeared at the meetings of the Bench,<sup>4</sup> and Norfolk in 1640 had an attendance of 23% at the important Easter Sessions.<sup>5</sup> Most remarkable of all, however, was the feat of the Lindsey justices, for at one Sessions only four out of a possible fifty-three were present.<sup>6</sup>

This meagre attendance sometimes had the serious effect of delaying important business. The Worcestershire Sessions Rolls record that the Grand Jury asked for the appointment of a Provost Marshal to deal with the urgent matter of the swarms of vagrants who were disturbing the county seriously. The request is endorsed, "This is allowed and approved by us whose names are subscribed, but we think fit that the ordering of it be respited till the next Sessions, when

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(1) HAMILTON, Devon Quarter Sessions, pp. 67-68, general orders of P.C. to J.P.'s of all counties, 23 June, 1605.

(2) LANCS. Q.S. RECS., Introduction, p. xii.

(3) HAMILTON, Devon Quarter Sessions, p. 55.

(4) SOMER. Q.S. RECS., Vol I. Introduction, pp. xxiv-xxv.

(5) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, - Sess. of 14 April, 1640.

(6) LINC. (LINDSEY) Q.S. ROLLS, Index A. 2, Sess. of 6 Oct. 1629.



the Court shall be full."<sup>1</sup> In the meantime, doubtless, the vagabonds made full use of their opportunities for banditry. An equally unfortunate incident occurred in Yorkshire - an assessment was to be made for the relief of the poor, but for the same reason it was put off until the next meeting of the Bench.<sup>2</sup> How the unhappy paupers were expected to live during the intervening three months is a matter of conjecture.

However small might be the attendance at a Quarter Sessions, it was still a Court of Record, and one would expect therefore that all the documents connected with its functions would be carefully preserved. This, in fact, was the reason for the appointment of one of the magistrates in each county as Custos Rotulorum, but as the Custos was usually a great man - frequently the Lord Lieutenant as well<sup>3</sup> - he took little interest in the valuable papers which were ostensibly in his charge. Lambard, indeed, dismisses him as a mere figurehead - "As this man is (by name and Office) keeper of the Records of the Peace: So it would not a little amend the seruice, if hee were (in deed also) carefull for the due preservation of them, and would not loosely leaue them (as commonly it is found) to the onely custodie of the Clarke of the Peace, without hauing any register of their number and sorts, and without appointing any conuenient place certaine, for the more readie search and

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(1) WORCS. Q.S. ROLLS, Part II. p. 485, No. 99, 1613.

(2) W.R.Q.S. RECS., Vol. I. p. 26, Orders, Jan. 1597/8.

(3) SCOTT THOMSON, Lords Lieutenants in the 16th Century, p. 142.

safe bestowing of them: whereby it falleth out verie often, that after the death of such a Clarke, these Records are hardly recouered, and that peecemeale from his widow, seruants, or ex-ecutors, who at their pleasure may embesell, misuse, or conceale what they will."<sup>1</sup> It was in truth a serious state of affairs, but the obvious remedy of building a Sessions House with a proper Muniment Room does not seem to have occurred to the authorities. In 1607, the entire records of the Chesterfield Sessions in Derbyshire were lost, a highwayman having relieved the Clerk of his luggage as he was riding home. This incident did cause some action to be taken, and it was ordered that the Clerk on future occasions should be accompanied by the Deputy Clerk, the latter being armed with a pistol thoughtfully provided by the county.<sup>2</sup> In 1614, the question was brought up in the House of Commons, in a bill "for the safe keeping of the Records, Books of the Sessions of the Peace, and the Enrolments, taken before Justices, and Clerk of the Peace."<sup>3</sup> Unfortunately, the premature dissolution of Parliament some two weeks later put an end to the suggestion, and when next the House met, the matter was not revived. In some cases, however, the county magistrates took action on their own initiative. The Wiltshire Bench in 1605 allotted space in the Bridewell at

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(1) LAMBARD, Eirenarcha, (Ed. 1619), p. 390. The records of Nottingham were also kept by the Clerk of the Peace - NOTTS. CO. RECS., Introduction.

(2) COX. Derbyshire Annals, Vol. I. p. 10, 1607.

(3) H.C.J., Vol. I. p. 495, 24 May, 1614.

Devizes for the storing of the records,<sup>1</sup> and later, in 1642, "upon consideration how the sessions records may be preserved and kept safely in this time of danger", the justices ordered the provision of a double-locked chest, which was to stand in the vestry of Warminster Church.<sup>2</sup> Somerset also established an official repository for its records - "Be it known that through the great care and charge of his Majesty's Justices of the Peace in this County, a strong and convenient room adjoining to the Cathedral Church of Wells, by the consent of the Dean and Chapter there, is provided for the safe keeping of the Indictments, Inrollment of deeds, and other Records of the Sessions of this County, there to remain forever hereafter, whosoever shall happen to be Clerk of the Peace, to the intent that such records shall be extant hereafter, upon all occasions at all times...."<sup>3</sup> Further, every year two justices were to inspect the house and see that the papers were properly looked after.<sup>4</sup> The conscious pride with which the Bench refers to its "great care and charge" indicates how small was the attention generally paid to the matter.

The Sessions were usually summoned by a precept in writing, signed by one justice of the Quorum and any number of

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(1) WILTS. CO. RECS., Introduction, p. 13.

(2) H. MSS. COMM., Various Collections, Vol. I. p. 109, Wilts. Sess. Records for 1642.

(3) SOMER. Q.S. RECS., Vol. I. p. 247, No's. 18-19, Sess. of 11-15 Jan. 1618/9.

(4) IBID.

his colleagues, and directed to the sheriff.<sup>1</sup> The meetings had come to be social events - so much so, indeed, that the Privy Council protested that the real business was being neglected for the merry-making. In 1600 they wrote to the Judges of Assize, "Yt falleth out often that ... there is such time spent by the Justices of the Peace and Grand Jury, by meanes of thei<sup>r</sup> banquettings and excesses, as the service is thereby in those tymes much hindered and some Justices at theis tymes are drawn to followe their pleasures as well in gaminge as otherwyse without respect of the presente service...."<sup>2</sup>

In contrast to this casual attitude was the grim conscientiousness of the active members of the Norfolk and Lindsey Benches, who began their Sessions at eight o'clock in the morning.<sup>3</sup> Yet even the Norfolk magistrates were not models of deportment, for one justice declared plaintively that he had given his vote in a bastardy case on the wrong side, "being meerly mistaken the Courte being Lowde and disagreeing muche amonge themselves."<sup>4</sup>

When at last the justices settled down to business,

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- (1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 380-384. CHESTER Q.S. RECS., 1626, File IV, fol. 87, 9 Jan. 1625/6. NORF. Q.S. ROLLS, 44 Eliz. 1601-1602 - in this case the precept (dated 2 March) is marked "per curiam".
  - (2) ACTS OF P.C., 1599-1600, p. 784 - P.C. to Justices of Assize, Nov. 1600.
  - (3) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644 - Oct. 1641, order for adjournment, and 19 April, 1642, similar order. LINC. (LINDSEY) Q.S. ROLLS, 1634, Index A.6., sheriff's return annexed to record of Special Sessions held 26 Sept. 1629.
  - (4) NORF. Q.S. ROLLS, 14 Jas. I. Memorandum, dated 1 Oct. 1616, of vote taken in a case of disputed fatherhood.

the Sessions became a court of law. It is not clear who was chairman - possibly it was the man of the highest rank present;<sup>1</sup> equally possibly it was the justice of the greatest seniority. In some counties there seems to have been no one at all responsible for presiding.<sup>2</sup>

These general meetings of the magistrates - when they were properly conducted - proceeded with some dignity. First the Sessions was proclaimed, with the correct number of oyez, and the Commission was read. Then the Grand Jury was called and sworn, and the evidence on which the accusations against the prisoners was based was put before them. While the jurors retired to consider whether they would give a verdict of "Billa vera" or "ignoramus" on the indictments, the justices disposed of a variety of administrative duties, such as dealing with problems concerning the settlement of paupers and the like. When the Grand Jury returned, the prisoners against whom "true bill" had been found were called to the bar and asked whether they pleaded guilty or not guilty. For those who demanded trial, a petty jury was empanelled, and the evidence against the prisoners was given by witnesses sworn in time-honoured fashion to tell the truth, the whole truth, and nothing but the truth. Witnesses for the defence, it might be remarked, were not sworn; they were merely "seriously admonished to speak the Truth as if they were upon Oath." When the evidence had

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(1) HAMILTON, Devon Quarter Sessions, p. 29.

(2) WEBB, English Local Government, the Parish and the County, (Ed. 1924), p. 433.

been heard for and against all the prisoners, the jury prepared to retire to consider their verdicts, but first a bailiff had to be chosen to hold them in strict seclusion during their deliberations. This officer was sworn to keep them "without Meat, Drink, Fire or Candle", to allow no one to speak to them, nor to speak to them himself except to ask them whether they were agreed. Finally, when the jurors had made up their minds, they returned and delivered their verdicts, the prisoners were called to the bar and sentenced, and the Sessions was ended.<sup>1</sup>

The accusations against the prisoners tried in this manner at the Quarter Sessions might be brought in a variety of ways. Some charges were preferred by "informers"- men who apparently made a profession of bringing cases against people. Here strict rules had to be observed. No anonymous or oral accusations were valid; the informer had to appear in person, bringing his charge written out and dated.<sup>2</sup> Besides the informers, any private person might also make these accusations, or "presentments", and the justices could thereupon recommend them to the attention of the Grand Jury.<sup>3</sup> Most of the presentments, however, were made by the latter body itself. The jurors were commanded by the justices at the beginning of the proceedings to charge those whom they knew personally to be guilty of any

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(1) DALTON, The Country Justice, (Ed. 1705). The procedure, especially in criminal cases, is set down in some detail, pp. 653-655.

(2) IBID, p. 665.

(3) LAMBARD, Eirenarcha, (Ed. 1619), p. 509.

of a list of some one hundred and thirty misdemeanours.<sup>1</sup> It was not wise, even for the sake of avoiding local quarrels, to withhold information as to the sins of one's neighbours, for the members of a jury of Nottinghamshire were themselves called to answer for indiscreetly swearing that no one at all had transgressed in their district during the past three months.<sup>2</sup> Occasionally the justices must have brought physical pressure to bear upon the Grand Jury at the time of presentment, for Lambard says, "The Justices ought not to commit these Jurors of enquirie to any keeper: nor to keepe them without meat or drink: nor to cary them out of the Towne."<sup>3</sup> There was no escape from these unpleasant possibilities for the juror once he had been summoned; if he tried to avoid trouble by failing to attend the Sessions, he was fined, sometimes as much as 40s.<sup>4</sup>

The duty of prosecution had not yet become the business of a public officer. When a crime had been committed, the injured person was expected to prosecute - in the case of theft, for instance, it was the man robbed who had to gather and present the evidence against the thief.<sup>5</sup> This often went against the grain with the kindly country folk, "who, having received again the goods which were stolen from them, partly out of

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(1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 410-483.

(2) NOTTS. CO. RECS., p. 23, 21 April, 1615.

(3) LAMBARD, Eirenarcha, (Ed. 1619), p. 400.

(4) SOMER. Q.S. RECS., Vol. I. p. 171, No. 49, Sess. 9-12 Jan. 1615/6 - list of defaulters fined 40s. each.

(5) WINGATE, Justice Revived, (Ed. 1661), p. 82.

foolish pity, and partly out of covetousness to save charges in prosecuting the law, let the thief escape unpunished."<sup>1</sup> Occasional references, however, indicate the beginnings of the rise of a more modern procedure. In a small case, the Clerk of the Peace for the North Riding acted as prosecutor for the Crown,<sup>2</sup> and in Durham, the trial of certain counterfeiters was "putt of att y<sup>e</sup> request and mocion of y<sup>e</sup> Attorney for y<sup>e</sup> King."<sup>3</sup>

In cases arising out of the breach of the regulations governing manufacture, it is probable that the prosecution was carried out by the professional informers, for the statutes often allotted a part of the fine to anyone who would bring an accusation against the culprit.<sup>4</sup> Such a system was obviously open to abuse, and it had to be made a punishable offence for an informer to compound with an alleged offender without special permission of the court in which the case would have been tried.<sup>5</sup>

By the middle of the 17th century, then, the Quarter Sessions had assumed a definite form and procedure - a form and procedure under which, with a few minor exceptions, it was

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(1) FULLER, Holy and Profane State, (Ed. 1841), p. 139. See also letter of Edw. Hext, J.P. in Somerset, to the Lord Treasurer, 25 Sept. 1596, quoted in AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p. 169.

(2) N.R.Q.S. RECS., Vol. I. p. 22, Sess. of 4 Oct. 1605.

(3) DUR. SESS. ORDER BOOK, No. II. (1629-1639), p. 147, Sess. of 9 July, 1634.

(4) 1 Eliz. c. 12; 8 Eliz. c. 9, etc.; 1 James I. c. 22, etc.

(5) 18 Eliz. c. 5.



to continue to function during the ensuing century and a half. Its powers were to change, and the spirit behind the exercising of its powers was to change, but in its fundamental structure it was to remain practically unaltered until the reconstruction of the whole system of local government in the 19th century.

## CHAPTER V.

## THE JUSTICES OUT OF QUARTER SESSIONS.

As a system of government by local magistrates developed, it became increasingly evident that there was need for some instrument of justice less ponderous in movement than a court which met only once in three months. The detention of suspects for long periods was thoroughly undesirable, for the gaols were singularly unpleasant places from the hygienic standpoint, and besides, as Lambard says, "It is daily too welproued, that many (being sent thither for correction) do sucke nothing but corruption there: so as they be worse when they come forth, then when they were first committed: which euill happeneth by long abode there in wicked companie: whereas, if they had more speedie trial, both they should be amended, and the Countrie lesse charged by it."<sup>1</sup>

Parliament eventually seems to have become alive to this difficulty, for in the 16th and early 17th centuries a new factor can be seen growing in the powers of the justices. With increasing frequency, authority to deal summarily with minor

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(1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 624-625.

cases was given by statute to magistrates meeting in small groups which could be called together easily, at any time, and could deal with petty offenders upon the spot. This development is particularly noticeable in the time of the early Stuarts. During the long reign of Henry VI, only half a dozen Parliamentary enactments gave judicial powers to the justices of the peace, and in every case but one, the authority was granted to the magistrates as a whole. Between 1603 and 1640, on the other hand, some nineteen statutes assigned offences to the local officials for trial, and of these, thirteen gave specific permission to one or two magistrates, or to "the Justices of the Peace in their divisions," to hear and determine.

The justices themselves were quite aware of the need for clearing away minor judicial work between the meetings of the Quarter Sessions, and so there began to appear rather amorphous assemblies of magistrates called Special or Private Sessions. The legal basis for such meetings was sound enough, since a statute of Henry V. laid down that while the justices had to come together at least four times a year, they could hold assemblies more often if they saw fit.<sup>1</sup> According to Lambard, any two of them, one of whom was of the Quorum, could call such a Special Sessions,<sup>2</sup> and a number of lawyers were of the opinion that this small group of magistrates might hear and determine all offences given in charge to the justices

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(1) 2 Henry V. Statute I. c. 4.

(2) LAMBARD, Eirenarcha, (Ed. 1619), p. 623.

of the peace in the Commission.<sup>1</sup> Usually, however, these Sessions seem to have assembled "for some speciall enquirie, and not to the generall service of the commission."<sup>2</sup> Some dealt with riotous affrays,<sup>3</sup> some met to consider the limitation of the brewing of ale,<sup>4</sup> or the punishment of those who kept disorderly public-houses.<sup>5</sup> In Lancashire, three magistrates assembled in Warrington on the same day that the Quarter Sessions were sitting at Preston, to hear evidence concerning the throwing down of a hedge planted for enclosure.<sup>6</sup> All the magistrates of Durham were called to "mete here att Durham vpon the Iudges letter for and concerning Yairam bridge" at an extra gathering in February,<sup>7</sup> and the North Riding Sessions ordered that such justices as would "be pleased to be present" at eight o'clock on a morning of the next month should decide upon measures for the building of a new house of correction.<sup>8</sup> It was in the North Riding,

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(1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 618-619.

(2) ANONYMOUS, The Complete Justice, (Ed. 1636), p. 233. LAMBARD, Eirenarcha, (Ed. 1619), p. 623.

(3) NOTTS. CO. RECS., p. 54, 19 Aug. 1606. WORCS. Q.S. ROLLS, Part II, p. 430, No. 231, 1627. ADD. MSS., 34,399, No. 259, 2 Sept. 1625 (Huntingdonshire). LINCS. (LINDSEY) Q.S. ROLLS, 1629, Index A.2. 26 Sept. 1629.

(4) W.R.Q.S. RECS., Vol. I. p. 60, 1598.

(5) N.R.Q.S. RECS., Vol. II. p. 44, 9 May, 1614.

(6) LANCS. Q.S. RECS., p. 166, 4 May, 1603.

(7) DURHAM SESS. ORDER BOOK, No. I. (1616-1629), p. 175, Sess. of 8 Jan. 1622/3.

(8) N.R.Q.S. RECS., Vol. I. p. 255, Order made in Sess. of 21 April, 1612.

indeed, that the Special Sessions seem to have dealt with the widest variety of offenders. Those who received inmates in their houses,<sup>1</sup> or who refused to take the official wages laid down for thatching or threshing,<sup>2</sup> loiterers,<sup>3</sup> lumber-stealers,<sup>4</sup> and even a woman who kept her son out of service,<sup>5</sup> were all dealt with by groups of three or four magistrates.

Although these special meetings of the magistrates had not the full impressiveness of a Quarter Sessions, they were by no means intended to be taken lightly. Two or more of the justices who proposed to hold a Special Sessions would send a command to the sheriff to summon a jury of enquiry,<sup>6</sup> and so the sheriff or his deputy had to be present to return the precept. In the North Riding, men who were warned to attend but who failed to put in an appearance were fined 13s. 4d. each.<sup>7</sup> Moreover, there does not seem to have been much limitation to the punishments which could be inflicted by the justices upon culprits found guilty of the offences of which they were accused--

(1) N.R.Q.S. RECS., Vol. I. pp. 224-225, 26 April, 1611.

(2) IBID, p. 220, 29 Oct. 1610.

(3) IBID.

(4) IBID.

(5) IBID

(6) LAMBARD, Eirenarcha, (Ed. 1619), pp. 626-627. LINC.S. (LINDSEY) Q.S. ROLLS, 1629, Index A.2., Precept sent by two J.P.'s to sheriff of Lincoln, 19 Sept. 1629.

(7) N.R.Q.S. RECS., Vol. II. p. 213, 20 July, 1619.

some were set in the stocks,<sup>1</sup> some were whipped,<sup>2</sup> and some were fined amounts as small as 6d.<sup>3</sup> or as large as £2.<sup>4</sup>

The value of such small meetings in dealing with administrative as well as minor criminal matters was very evident, and in 1605 the Privy Council sent out a general set of instructions in which the Justices of Assize were ordered, in consultation with the local magistrates, to see that "convenient and apt divisions be made through every county and riding, and that fit Justices of the Peace be assigned to have the special charge and care of every such division." These justices were to hold meetings in their respective districts midway between the sittings of the Quarter Sessions, and were to deal with vagrants and offenders against the Statutes of Labourers and Artificers. They were also to bind poor children as apprentices, take information concerning all kinds of crimes, punish idlers and drunkards, and inquire into the negligence of petty officers.<sup>5</sup> These district assemblies were given a final official recognition when definite duties were allotted to them by the vagrancy statute of 1609-1610,<sup>6</sup> and a few years later, the Judges of Assize exhorted the justices of Hampshire and Devon-

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(1) N.R.Q.S. RECS., Vol. I. pp. 221-223, 12 April, 1611.

(2) IBID.

(3) LINCS. (LINDSEY) Q.S. ROLLS, 1629, Index A.2. 26 Sept. 1629.

(4) HERTS. CO. RECS., Vol. I. pp. 38-39, 18 Feb. 1609.

(5) HAMILTON, Devon Quarter Sessions, pp. 67-71.

(6) 7 James I. c. 4.

shire to use their meetings in their divisions to tighten up the enforcement of the laws against Roman Catholics.<sup>1</sup> Other references to the activities of the local meetings<sup>2</sup> indicate that in many places the justices were finding them a convenient instrument for saving the Quarter Sessions from becoming overloaded with minor offenders. Indeed, some of the magistrates appear to have adopted the system with too much enthusiasm, for a Member of Parliament told the Commons in 1621 that "Justices will not meddle out of their Divisions."<sup>3</sup>

The Book of Orders of January, 1631, still further extended the sphere of the little local sessions, for the justices were commanded to meet once a month in their divisions to inquire into the zeal or negligence of the petty officers who were in charge of the relief of the poor.<sup>4</sup> Thereafter, references to the "monethly meetings" show that they were established in a good many places,<sup>5</sup> although it is impossible to tell how general

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- (1) FURLEY, Quarter Sessions Government in Hampshire in the 17th Century, p. 14. HAMILTON, Devon Quarter Sessions, p. 81.
  - (2) CHESTER Q.S. RECS., 1640, File II. No. 25, July, 1640. LINGS. (LINDSEY) Q.S. ROLLS, 1637, Index A.9, meeting held 6 Dec. 1637. CAL. S.P. DOM., Car. I. CLXXXI, 21, list of J.P.'s for Middlesex, with their several divisions, [1630?]. HARL. MSS., 6838, alehouse sessions at Godstone, Surrey, fol. 42, 2 Mar. 1606/7; fol. 48, 1 June, 1607; fol. 50, 17 Sept. 1606; fol. 53, 10 Dec. 1607; etc..
  - (3) H.C.J., Vol. I. p. 533, 1 Mar. 1620/1.
  - (4) EDEN, The State of the Poor, (Ed. 1797), Vol. I. p. 156, Orders of Jan. 1630/1.
  - (5) DUR? SESS. ORDER BOOK, No. II. (1629-1639), p. 72, July, 1632. WAR. Q.S. RECS., Vol. I. p. 184, Michaelmas, 1633; p. 214, Epiphany, 1635. WORCS. Q.S. ROLLS, Part II. p. 596, No. 143, Jan. 1634/5. CHESTER Q.S. RECS., 1642, File II. No. 58, July, 1642. NOTTS. CO. RECS., p. 12, Jan. 1637/8.

the practice was. Yet even before 1631, regular monthly meetings were being held by a few magistrates. The justices of the peace of Northampton wrote to the Privy Council in October, 1630, "It hath byn an ancient practice in this County of Northampton approved as well by the Judges of Assise, as by diuerse actes of the Generall Quarter Sessions, that the justices of Peace within their seuerall deuisions should meete togeather once in three weekes for the better execucion of certayne particuler and speciall lawes which are found to be most behooffull."<sup>1</sup>

Probably monthly and divisional meetings soon merged, and eventually produced the Petty Sessions - indeed, in the early 17th century the adjective "petty" was already being used occasionally to describe these small assemblies of magistrates. In Huntingdonshire it was attached to meetings of justices held within their own hundreds,<sup>2</sup> and in Somerset a gentleman wrote in 1609, "Upon presentment before S<sup>r</sup> John Rodney, Doctor James and myself at a Pettie Sessions, one Walter Withers of Pilton was presented for a tipler without licence."<sup>3</sup> These are only isolated cases, however, and the use of the term Petty Sessions does not seem to have become at all common until a good deal later.<sup>4</sup>

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(1) NORTHANTS. Q.S. RECS., p. 91, Letter to P.C., signed by 12 J.P.'s, 8 Oct. 1630, Northants. General Sessions.

(2) ADD. MSS., 34,400, No. 263, Note of reference to the "next petty sessions for the Hundred of Hurstonstin", 22 May, 1638; No. 264, Note on petition presented at Hunts. Quarter Sess., 22 May, 1638.

(3) SOMER. Q.S. RECS., Vol. I. pp. 36-37, No. 3, Thos. Hughes to John Pyne, 24 April, 1609, Wells.

(4) Burns makes no mention of such meetings in the 1776 edition of his Justice of the Peace.



The magistrates themselves realized the valuable work that could be done by small groups of justices in gathering information about difficulties which were brought before Quarter Sessions, and so the Bench often turned over unimportant matters to committees of two or three for examination and report.<sup>1</sup> Such a practice, however, had one unfortunate feature - it delayed action very considerably. John Hedges, in January, 1617, petitioned the Sessions for relief on account of his loss of £40 by fire, and the case was referred to two justices. Their report could not be received before the next Sessions in April, and in the meantime the wretched Hedges family had to get along as best it might.<sup>2</sup> Sometimes a more speedy settlement was effected by giving the committee full power to deal with the matter,<sup>3</sup> although the legality of such delegation of authority was questionable.<sup>4</sup> Nevertheless, the use of these references to committees or to the divisional meetings cleared away a good deal of the underbrush of minor business, and so left the ground clear for the Quarter Sessions to deal with the more important

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- (1) Examples of this practice appear on almost all Sessions Rolls, but they are especially numerous among the Somerset Records.
  - (2) SOMER. Q.S. RECS., Vol. I. p. 196, No. 3, Sess. of 14-16 Jan. 1616/7.
  - (3) W.R.Q.S. RECS., Vol. I. p. 57, Sess. of 14 Jan. 1597/8; pp. 73-74, Sess. of 25 April, 1598. LANCS. Q.S. RECS., p. 286, Sess. of 9 Oct. 1605. N.R.Q.S. RECS., Vol. I. p. 6, Sess. orders of 11 April, 1605. ADD. MSS., 34,400, No. 263, Sess. order dated 22 May, 1638. LINCS. (LINDSEY) Q.S. ROLLS, 1642, Index A.10., 10 Jan. 1641. CHESTER Q.S. RECS., 1636, File II. No. 64, Sess. of 7 July, 1636.
  - (4) Dalton cites a case where the decision rendered by the committee was ~~quashed~~ as ultra vires - Country Justice, (Ed. 1705) p. 247.

affairs of the county.

We have seen in an earlier chapter how a number of statutes gave authority to one, two or three justices to dispatch a considerable amount of routine business, and there are signs that this work was being quietly done by some, at least, of the magistrates. In several places, indeed, even more conscientiousness was displayed than was required by the letter of the law. Licences to alehousekeepers could be granted by two justices,<sup>1</sup> but in Lindsey not a few recognizances for the maintenance of orderly conduct in taverns were approved by three.<sup>2</sup> Occasional orders for the support of an illegitimate child were made by the same number of justices in Somerset.<sup>3</sup> Sir Richard Wilbraham, Sir Thomas Delves and Mr. George Cotton - all important men of Cheshire - signed the presentment of a well-to-do farmer who refused to send his horses and cart, as he was bound by law to do, for the mending of the roads, "but onely sent a woman to worke two dayes w<sup>th</sup> a shovell in the highwayes."<sup>4</sup>

A much wider range of duties was covered by the magistrates acting in pairs. In Chester, two justices cancelled the indenture of an apprentice whose master beat him and threatened

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(1) 5 Edw. VI. c. 25.

(2) LINGS. (LINDSEY) Q.S. ROLLS, 1634, Index A.6. -25 recognizances signed by Sir John Bolles, Sir John Mounson and Wm. Amcottes, and 7 signed by Sir John Mounson, Dr. John Farmerie, and Wm. Amcottes.

(3) SOMER. Q.S. RECS., Vol. I. p. 253, No. 16, order presented at Sess. of 6-8 April, 1619.

(4) CHESTER Q.S. RECS., 1630, File II. fol. 44, presentment dated 1 July, 1630.

to kill him,<sup>1</sup> and two others committed to the house of correction a "marinour" named Danby, "for stubborne and willfull departing from several services, against y<sup>e</sup> will of his Maisters."<sup>2</sup> In other counties, pairs of magistrates certified defaults of work on the highways,<sup>3</sup> appointed overseers of the poor,<sup>4</sup> and recommended the building of a cottage, at public expense, for a destitute widow with three sick children.<sup>5</sup> Two clerical justices in Chester ordered the suppression of a rowdy alehouse, and their commands were evidently carried out, since their precept to the constable is briefly annotated, "Smith put downe from witteling."<sup>6</sup> Other pairs gave instructions for the maintenance of illegitimate children<sup>7</sup> and for the corporal punishment of the parents<sup>8</sup> - one of these floggings was "to be done at the comon meetinge place under the Elme at Wylve neere the

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- (1) CHESTER Q.S. RECS., 1641, File III. No. 24, order dated 28 Sept. 1641.
  - (2) IBID, 1633, File I. fol. 53, report made to Sess. of 9 May, 1633.
  - (3) NORF. Q.S. ROLLS, 3 Chas. I. - signed by Thos. Derham and John Hare.
  - (4) IBID, 7 Charles I.- signed by Wm. Yelverton, Hamon Le Strange.
  - (5) CHESTER Q.S. RECS., 1631, File III. fol. 27, recommendation dated 2 Aug. 1631.
  - (6) IBID, fol. 50, order dated 31 May, 1631.
  - (7) NORF. Q.S. ROLLS, 10 Jas. I.; 5 Chas. I.; etc..
  - (8) SOMER. Q.S. RECS., Vol. I. p. 112, No. 17, order made 12 April, 1614; p. 211, No. 8, order made 20 July, 1617. MIDD. CO. RECS., Vol. II. p. 157, warrant dated 16 Dec. 1620.

Church."<sup>1</sup> Sir Oliver Cromwell and Mr. Henry Cromwell in Huntingdonshire fined some over-enthusiastic revellers 3s. 4d. each, and the alehousekeeper who allowed them to do their "unlawfull tippling" on his premises 10s.;<sup>2</sup> while two magistrates in Chester, to whom a woman complained that she had been robbed of "gould and diuerse other goods", ordered the constables to search all houses in the neighbourhood and arrest anyone found in possession of the stolen articles.<sup>3</sup>

While the justices acting alone were not entrusted with very great powers, they too did an enormous amount of routine work. They prepared the way for the Quarter Sessions by hearing and recording information concerning all sorts of misdemeanours, ranging from a practical joke played by some boys upon a drunk man,<sup>4</sup> up to the alleged theft of a sheep.<sup>5</sup> They issued warrants for the collection of the poor rates,<sup>6</sup> for the committal to gaol of an obstinate man who would not find sureties for his appearance at the next Sessions,<sup>7</sup> or for the arrest of a

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(1) WILTS. CO. RECS., p. 58, order made 7 Jan. 1617.

(2) ADD. MSS., 34,400, No. 88, warrant dated 17 June, 1630.

(3) CHESTER Q.S. RECS., 1625, File IV. fol. 115, warrant dated 17 Nov. 1625.

(4) NORF. Q.S. ROLLS, 3 Chas. I. - information taken by Sir Augustine Palgrave, 26 Feb. 1626/7.

(5) COX, Derbyshire Annals, Vol. II. p. 76, 8 Nov. 1633.

(6) WORCS. Q.S. ROLLS, Vol. I. p. 185, No. 107, 23 June, 1613.

(7) NORF. Q.S. ROLLS, 18 Chas. I. - warrant signed by Sir Hamon Lestrangle for the committal of John Thacker, 12 Dec. 1642.

suspected malefactor.<sup>1</sup> They granted Surety of the Peace,<sup>2</sup> certified presentments made by inferior officers,<sup>3</sup> made presentments on their own view,<sup>4</sup> and took innumerable recognizances for appearance at the next Sessions, for future eschewing of unlawful games, and so forth.<sup>5</sup>

In a few cases, justices working individually indulged in activities a little more ambitious than the mere signing of routine documents. In 1625, Mr. Anthony Langston ordered the father of an illegitimate child to contribute to its maintenance,<sup>6</sup> and a single Lincoln magistrate gave instructions to the overseers of the poor in Spridlington to take charge of an unofficial baby whose parents had prudently effaced themselves.<sup>7</sup> Most out of the ordinary, however, was the effort of John Fleete, a justice of the peace for Worcestershire, who induced a reluctant husband to promise to pay 12d. weekly to his wife

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- (1) NORF. Q.S. ROLLS, 6 Chas. I.- warrant signed by Sir Hamon Lestrangle for the arrest of Chris. Neave, Robt. Herringe, Edmond Rusten, and Reinold fuller, 30 Aug. 1630.
  - (2) IBID, 4 Jas. I.- Thos. Harply bound by Sir Edw. Moundford; 6 Chas. I.- Geo. and Katherine Fytt bound by John Hare. LINCS. (LINDSEY) Q.S. ROLLS, 1637, Index A.8.- John and Geo. Moore to be bound by Rutland Snowden, 21 Feb. 1636.
  - (3) LINCS. (LINDSEY) Q.S. ROLLS, 1625, Index A.1., No's. 153, 154, 155. CHESTER Q.S. RECS., 1640, File II. No. 18, 14 July, 1640.
  - (4) CHESTER Q.S. RECS., 1633, File II. fol. 20, 22 July, 1633; File III. fol. 18, 1 Oct. 1633.
  - (5) Such recognizances are plentifully scattered through the Quarter Sessions records of nearly all the counties.
  - (6) WORCS. Q.S. ROLLS, Part II. p. 397, No. 242, 7 Oct. 1625.
  - (7) LINCS. (LINDSEY) Q.S. ROLLS, 1637, Index A.9.- precept signed by Sir John Monson, 12 Oct. 1637.

"until they shall agree to live together." <sup>1</sup>

The relationship of the entire Bench to these justices or groups of justices was rather vague. While the authority of all the magistrates in Quarter Sessions was equal,<sup>2</sup> it was not at all easy to determine to what extent the whole body of magistrates could control the actions of an individual justice out of Sessions. In order to avoid the possibility of friction, one of the statutes concerning the poor rate gave definite powers to the Bench as a whole to deal with appeals from the decisions of small groups of justices acting by themselves,<sup>3</sup> and by another law people might also protest to the Quarter Sessions against orders made by the justices in their divisions concerning the assigning of responsibility for the support of a bastard.<sup>4</sup> A number of appeals of the latter kind did come before the Quarter Sessions - sometimes the original order was quashed because of a technical error,<sup>5</sup> and sometimes it was reversed as unfair.<sup>6</sup> Alehouse licensing caused more friction. The justices in their divisions in Middlesex complained that the Quarter Sessions licensed men in a very casual manner, instead of leaving

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(1) WORCS. Q.S. ROLLS, Part I. p. 192, No. 13, 15 Nov. 1614.

(2) LAMBARD, Eirenarcha, (Ed. 1619), p. 385.

(3) 43 Eliz. c. 2.

(4) DALTON, The Country Justice, (Ed. 1705), pp. 600, 601.

(5) IBID, p. 48.

(6) NORF. Q.S. ROLLS, 14 Jas. I.- memorandum of case of Mr. John Pye, dated 1 Oct. 1616; 20 Jas. I.- case of Eliz. Piper and Wm. Session, 25 Jan. 1621/2.

this duty to the petty sessions, where local conditions and needs could be more accurately ascertained.<sup>1</sup> In the North Riding there was so much trouble that the Bench made a general order "that no person within the North Riding shalbe lycenced to keepe an alehowse but by the Justices assigned to performe the services concerninge alehowses within the division wherein the said person shall dwell, and that all other lycences granted by any other Justices otherwise than as aforesaid shalbe voyde."<sup>2</sup>

Sometimes the Quarter Sessions intervened in the activities of the individual justices in order to support, rather than to hinder them. The Chester Bench upheld a bastardy decision made by two justices sitting out of Quarter Sessions,<sup>3</sup> and in Warwick, the general meeting of magistrates threatened with gaol those who obstinately refused to obey an order made by two of their number concerning the maintenance of a pauper.<sup>4</sup>

From this brief survey, a rough picture can be drawn of the activities of the justices out of Quarter Sessions. Yet the picture is necessarily only an approximation to the truth, since the information with which it is put together is by no means complete. Sometimes the proceedings of the Special Sessions are to be found among the Quarter Sessions papers; on other

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(1) CAL. S.P. DOM., Car. I. CCCCXX, 4 J.P.'s of Middlesex to P.C., 1 May, 1639.

(2) N.R.Q.S. RECS., Vol. IV. Sess. of 8 April, 1635.

(3) CHESTER Q.S. RECS., 1634, File I. fol. 32, Sess. of 24 April, 1634.

(4) WAR. Q.S. RECS., Vol. I. pp. 183-184, Michaelmas Sess., 1633.

occasions, while such Sessions were undoubtedly held, there is no **direct record of their activities**. Of the work done by the justices in their divisional meetings we have only a little knowledge, and much of what we have comes from incidental references. The monthly assemblies established by the Book of Orders, it is true, were commanded to give accounts of **their proceedings regularly** to the Privy Council, but there is little doubt that there was some negligence in the drawing up and dispatching of these reports, and moreover, the ones which have found a safe asylum among the State Papers Domestic can represent only a fraction of those which were actually made.

There is evidence in large quantities concerning the routine work done by the magistrates singly or in pairs, since most of the documents concerned were supposed to be sent to the Quarter Sessions. From what we have seen of the laxity displayed in preserving the Sessions records, however, we can hardly believe that these bundles of recognizances and warrants, bulky as they are, represent the whole of the original mass.

Even greater difficulties arise in estimating the extent to which the justices exercised their powers of summary jurisdiction. Alehousekeepers who allowed unrestricted tippling in their establishments,<sup>1</sup> drunkards,<sup>2</sup> embezzlers of wool,<sup>3</sup> poachers<sup>4</sup>

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(1) 1 Jas. I. c. 9.

(2) 4 Jas. I. c. 5; 21 Jas. I. c. 7.

(3) 7 Jas. I. c. 7.

(4) 7 Jas. I. c. 11.



blasphemers,<sup>1</sup> and the like, could be dealt with by one or two magistrates without reference to the Quarter Sessions, but the records (if there ever were any) of the summary trials of these petty offenders have been hopelessly dispersed. Even in the private papers of such an active justice as Sir Nathaniel Bacon of Stiffkey, there is no mention of the exercise of those judicial powers. Yet such summary trials must have been held - otherwise the Quarter Sessions would have been overwhelmed by an avalanche of minor miscreants.

Thus the position in which the student of local history is left in regard to the activities of the justices out of Quarter Sessions is a rather unsatisfactory one. We know that Petty Sessions existed, but we cannot tell their exact form; we can enumerate the powers of individual justices, but we have little definite evidence to show to what extent the powers were exercised or neglected. Possibly future research into the papers of families from which magistrates have been appointed may cast further light upon the problem.

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(1) 21 Jas. I. c. 20.

## CHAPTER VI.

### THE JUSTICES AT WORK — KEEPING THE PEACE ACCORDING TO THE COMMISSION.

Although the authority of the justices of the peace ranged over an enormously wide field, their chief responsibilities, as their very title implies, were the administration of justice and the keeping of the peace. For their judicial work, the local magistrates had ready to hand the established machinery of the Law - rusty in spots, it is true, and unwieldy in some respects, but still providing a procedure complete with precedents to meet almost every case. The keeping of the peace, however, was a very different matter. Riots, assaults, and murders do not fit themselves into any uniform pattern, and so must be met as individual emergencies when they arise. Suppression of such crimes of violence therefore called for both adaptability and initiative. The responsibility of coping with these sudden crises put a heavy strain upon the amateur keepers of the peace, and it must be remembered that their efforts to maintain order were seriously hampered by the lack of a permanent professional police force to patrol turbulent districts and keep an admonitory eye upon potential evil-doers. Nor was

there a Criminal Investigation Department to hunt down such malefactors as took the elementary precaution of committing their misdeeds without witnesses. In such circumstances, with a critical Privy Council above and an uninhibited populace below, the position of the Conservators of the Peace was not at all likely to be a bed of roses.

The duties of the guardians of law and order are summed up by Lambard under three heads - "first, in foreseeing that nothing be done that tendeth either directly, or by meanes, to the breach of the peace: secondly, in quieting or pacifying those that are occupyed in the breach of the Peace, and thirdly, in punishing such as haue already broken the peace."<sup>1</sup>

The 17th century method of preventing violence was the naïve procedure known as "taking Surety of the Peace" - that is, forcing hot-tempered persons to put up security for their future good behaviour. This Surety could be exacted by any justice of the peace, at the request of someone who had reason to believe that he might be attacked, or on the magistrate's own initiative.<sup>2</sup> In either case, the proper procedure was for the justice to send his precept to the sheriff or constable or other executive officer, to bring the unruly man or woman before him with one or two "sufficient" friends to put up the necessary bond.<sup>3</sup> It was hoped that the potential disturber of the peace would thereafter

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(1) LAMBARD, The Duties of Constables, etc., p. 11.

(2) LAMBARD, Eirenarcha, (Ed. 1619), pp. 75-77.

(3) IBID, pp. 85-86.

take thought before risking the forfeiture of his security.

These recognizances for the peace had to be sent in to the next Quarter Sessions,<sup>1</sup> and consequently the Sessions records are full of this kind of document.<sup>2</sup> The results, however, seem hardly to have justified the optimism on which such a system was necessarily based. Often the securities which should have been forfeit were never collected, either through careless faults in the drawing up of the papers, or through sheer laziness on the part of the officials concerned.<sup>3</sup> Moreover, even at best the taking of Surety of the Peace could have effect in restraining only old offenders, or men and women who were known to be lacking in self-control; it was useless against anyone who did not give advance notice of his intention of doing violence.

The second of the duties of a Conservator of the Peace enumerated by Lambard, the quieting of riots and affrays, involved more physical activity on the part of the magistrates. When a justice heard of a turbulent mob, it was his duty to secure the help of a colleague and then set forth in person to read the ancestor of the Riot Act: "The King our Souereign Lord chargeth

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(1) ANONYMOUS, The Complete Justice, (1636), p. 196.

(2) e.g., W.R.Q.S. RECS., Vol. I. p. 143, Sess. of the 12 Jan. 1598/9. CHESTER Q.S. RECS., 1625, 1630, 1642 passim. LANCS. Q.S. RECS., p. 74, Sess. of 14 Jan. 1600/1; p. 131, Sess. of 20 Jan. 1601/2. WORCS. Q.S. ROLLS, Part I, passim. LINCS (LINDSEY) Q.S. RECS., 1637, Index A.8, 21 Feb. 1636/7. ADD. MSS., 34,400, No. 218, Huntingdon Sess., 14 June, 1636. SOMER. Q.S. RECS., Vol. I. p. 43, No. 18, Sess. Rolls of 1609-1610.

(3) NOTESTEIN, Commons Debates, Vol. VII, Appendix B., p. 427, Grant to John Bennet to sue for and recover recognizances, 30 June, 1618.

and commaundeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawfull business, vpon the paines conteyned in the act lately made against vnlawfull and rebellious assemblies: And God saue the King."<sup>1</sup> Faced with this uncomfortable task, the puny or nervous magistrate could, however, console himself with the thought that it lay within his power to call upon the sheriff and, if necessary, a posse of law-abiding citizens to help him by arresting any rebellious persons who obstinately continued to riot.<sup>2</sup>

The necessity of suppressing these disorderly mobs arose much more frequently in some districts than in others, for in certain parts of the country might was still right, and it was difficult for the Law to gain a foothold among the independent and energetic inhabitants. At the time of the accession of James I., the Welsh Marches were in a disturbed condition,<sup>3</sup> and in 1617 there was a great deal of disorder and lawlessness in the Middle Shires - where, indeed, the justices of the peace themselves on occasions gave their protection to malefactors.<sup>4</sup> But the district of really chronic lawlessness was the Border country. In 1602, conditions in Northumberland were extremely

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(1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 183-184.

(2) IBID, p. 310.

(3) CAL. S.P. DOM., Jac. I, I, 28 (1), 28 (2), 28 (3), Description of conditions on the "West Marches", April, 1603.

(4) ACTS OF P.C., 1616-1717, p. 380, Resolutions touching the government of the Middle Shires, 21 Nov. 1617.

bad - murderers openly bought immunity from retribution, people were afraid to speak, and even the magistrates were terrorized.<sup>1</sup> Three years later matters had not improved; the clan spirit of the Scots made the gathering of evidence against criminals impossible, and the justices of the peace could not afford adequate protection to such as were willing to give information.<sup>2</sup> In 1618, the Privy Council complained bitterly of the unsatisfactory conduct of the magistrates of Cumberland, Westmorland, and Durham - "malefactors and thieves are both countenanced and maintained by the justices of the peace and others in authority" - and threatened to take drastic measures against the offending officials.<sup>3</sup> Yet twenty years after these fulminations there were still complaints about the sluggishness and indifference of the justices,<sup>4</sup> and in 1640 a Durham clergyman wrote, "Nor had I ever in my life before so much experience that the express laws of the realm, practised generally elsewhere, might be here baffled, or that men in place who pretend most forwardness should underhand stop what outwardly they seem to further."<sup>5</sup>

It would be entirely unfair to conclude from this gloomy

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- (1) CAL. S.P. DOM., Elizabeth, CCLXXXIV., 56, Information of the state of Northumberland, June ?, 1602.
  - (2) IBID, Jac. 1, XXI, 10 (1), John Smaithwaite, Minister of Elsdon in Riddlesdale, to Sir Wm. Selby, 16 Dec. [1605].
  - (3) ACTS OF P.C., 1618-1619, pp. 110-111, P.C. to J.P.'s of Cumberland, Westmorland and Durham, [April 21 ?] 1618.
  - (4) CAL. S.P. DOM., Car. I. CCCC., 128, Petition of tenants of Dacre to P.C., [Oct.?] 1638.
  - (5) IBID, CCCCXLVII., 76, Nathaniel Ward to Sir Henry Vane, 10 March, 1639/40, Staindrop.

picture of the troubled state of some parts of the country that none of the justices was able to put down riots. On the whole, there are surprisingly few indications of incompetence or laziness on the part of the magistrates. Nevertheless, disturbances occurred at times even in the Quarter Sessions themselves,<sup>1</sup> and in comparatively peaceful Nottinghamshire, a justice was nearly spitted on the sword of an irate gentleman as he was leaving the court.<sup>2</sup>

Quelling an angry mob was never a pleasant duty, but it was particularly hazardous when the people had assembled as a demonstration against something that was generally felt to be a source of real grievance. Popular resentment was particularly aroused by the turning of arable land into pasture, since it led to wide-spread unemployment and misery. Enclosure riots therefore broke out sporadically, especially in the Midlands, where the enclosure movement had advanced farthest.<sup>3</sup> The attitude of the justices of the peace toward these outbreaks is difficult to understand. Occasionally they appear to have taken vigorous action against the rioters,<sup>4</sup> but the Council at times found it necessary to write letters of exhortation in numbers which suggest

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(1) MIDD. SESS. RECS., (New Series), Vol. I. p. 208, 1613.

(2) NOTTS. CO. RECS., p. 54, 1638.

(3) LEONARD, "The Enclosure of the Common Fields in the 17th Century", Trans. of the Royal Historical Soc., New Series, Vol. XIX, (1905), p. 103. DAVIES, Early Stuarts, 1603-1660, p. 276.

(4) CAL. S.P. DOM., Jac. I. CLIII, 5, [Conway] to Lord Keeper Lincoln, 2 Oct. 1623; Car. I. CCXIV, 46, J.P.'s of Worcester-shire to P.C., 17 March, 1631/2, Droitwich.

that some of the magistrates were displaying indifference to, if<sup>1</sup> not actual sympathy with, the activities of the enclosure-breakers; while in one case a justice of the peace definitely led in the attack upon certain hedges.<sup>2</sup> Such an attitude toward the destroyers of enclosures is all the more remarkable inasmuch as the magistrates were themselves of the class which was doing most of the enclosing.

The third of Lambard's duties of the keepers of the peace - that is, the punishment of evil-doers - brought into action the whole of the machinery, such as it was, of the country police. First of all, the criminal had to be caught, and this, in an age when there could be no all-stations call after a fleeing villain, was no simple matter. It was, of course, the duty of the constables or bailiffs to lay criminals by the heels, but we have already seen how unsatisfactory the petty officials were in this respect. The justices could, it is true, call upon the whole countryside to come out in "hue and cry" after a fugitive,<sup>3</sup> but neither the constable who led the hunt nor the posse which went with him was obliged to go beyond the boundaries of their own parish or town. Consequently, as Trevelyan puts it, "When the chase reached these limits, Master Constable was as

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- (1) ACTS OF P.C., 1615-1616, p. 92, P.C. to J.P.'s of Kent, March? 1615; pp. 149-150, P.C. to J.P.'s of W.Riding, May ? 1615. CAL. S.P. DOM., Car. I. CCCXCI, 82, Council Order, 30 May, 1638; CCCCXII, 100, P.C. to J.P.'s of Essex, 31 May, 1639; CCCCXVI, 16, Council Order, 20 Dec. 1640.
  - (2) ACTS OF P.C., 1616-1617, p. 318, P.C. to Lord Lieut. and sheriff of Berks. and Oxon., [25?] July, 1617. The J.P. was Lord Saye.
  - (3) ANONYMOUS, The Complete Justice, (Ed. 1636), p. 120.



like as not to sit down and thank God they were well rid of a thief, while the criminal pursued his way, feebly followed by officers of other parishes, ever less interested in his arrest as he drew farther from the scene of his crime."<sup>1</sup>

Nor was it merely the petty local officials who were not to be depended upon. In 1602, the sheriff of Lancashire was ordered by the Quarter Sessions to bring before them one Hugh Barton, together with several of his friends. However, the miscreants were not forthcoming, and the sheriff was commanded to try again. At the next Sessions, he reported another failure. The Bench patiently renewed its order, but at the following meeting of the court, the sheriff once more appeared empty-handed. It was then one year since the original warrant had been issued, and the justices were thoroughly bored with Barton and all his works. Abandoning the sheriff as a broken reed, they formally summoned Barton to come before the Sessions or be outlawed; but there is, unfortunately, no evidence as to whether he actually turned up, and, if so, what happened to him.<sup>2</sup>

Even when all went smoothly and a criminal was successfully arrested, it was by no means easy to bring his crime home to him. Many worthy people, injured though they had been, refused to prosecute the malefactor responsible. This was especially true in the case of serious crimes, where conviction would mean the execution of the offender. As one disgruntled magistrate

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(1) TREVELYAN, England Under the Stuarts, p. 25.

(2) LANCS. Q.S. RECS., p. 128, Jan. 1601/2 to Jan. 1602/3.

said, "Most comonly the simple Cuntryman and woman, lokynge no farther then ynto the losse of ther owne goods, are of opynyon that they wold not procure a mans death for all the goods yn the world, others vppon promyse to have ther goods agayne wyll give<sup>1</sup> faynt evidens yf they be not stryctly lokyd vnto by the Iustyce." Nor was this the only hindrance to the prosecution of criminals. The individual justices were supposed to make a preliminary examination of accused persons while the matter was still fresh in men's minds, but this was often done in a bungling or slipshod way. Edward Hext wrote that some felons "are brawght before some Iustice that eyther wanteth experyence to examyn a Cunnyng thief, or wyll not take the paynes that owght to be taken yn siftynge him vppon every circumstance and presumpsyon and that donne see that the partye Robbed give full evidence." <sup>2</sup>

When a case was completed, and a conviction secured, the justices could proceed to render judgement. But while, as we have seen, they had very extensive powers of terminer as well as of oyer, they were expected by the authorities to leave serious crimes to be tried at the Assizes. Bacon says, "To them [the justices of the peace] are brought all traitors, felons, and other malefactors of any sort upon their first apprehension in the county; and that justice to whom they are brought examineth them and heareth their accusation, but judgeth not upon it; only if he find the suspicion but light, then he taketh bond with

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(1) AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p. 169, Edw. Hext, J.P., to the Lord Treasurer, 25 Sept. 1596.

(2) IBID, p. 168.

sureties ... of the accused to appear either at the next Assizes, or else at the quarter sessions, if it be concerning riot, misbehaviour, or some other small offence."<sup>1</sup> Murderers were usually—though not always - sent to the travelling judges.<sup>2</sup> Cases of grand larceny, when the object stolen was valued at more than 12d. and the offence was therefore capital, were also generally held over for the Circuit Court.<sup>3</sup> Horse and cattle stealing came into this class, and a number of such crimes were referred to the Assizes.<sup>4</sup>

Other types of felony were also left to the Justices in Eyre. The Nottinghamshire Sessions sent them a deserter from the army.<sup>5</sup> In the same county, some instances of witchcraft were turned over to the Assizes, while others were tried at the Quarter Sessions.<sup>6</sup> Probably alleged cases of murder by sorcery went to the higher court, while the justices of the peace disposed of the less heinous offences of white magic, incantations, and the like. In the matter of seditious speech, the more violent

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(1) BACON, "The Use of the Law", 1629, in Works, (ed. by Spedding, 1870), Vol. VII., p. 470.

(2) LANCS. Q.S. RECS., p. 302, Sess. of 22 Jan. 1605/6. NOTTS. CO. RECS., pp. 35-36, several cases cited. SOMER. Q.S. RECS., Vol. II. p. 32, No. 84, Sess. of 3-5 April, 1627.

(3) NOTTS. CO. RECS., p. 37. LANCS. Q.S. RECS., p. 259 (1605), p. 274 (1605).

(4) NOTTS. CO. RECS., p. 37. N.R.Q.S. RECS., Vol. III. p. 267, Sess. of 14 July, 1626.

(5) NOTTS.CO. RECS., p. 97, 25 April, 1628.

(6) IBID, p. 45.

offenders were left to the consideration of the Assize Justices.<sup>1</sup> Furthermore, while the Quarter Sessions ordinarily handled matters of recusancy, some few cases of this, and of "schismatic opinions", were turned over to the travelling Judges.<sup>2</sup> The latter were also called upon to unravel knotty points concerning constables,<sup>3</sup> or to give a decision on some question about which the justices of the peace could not agree.<sup>4</sup>

While in a general way it can be said that the serious offences were referred to the Assizes, it is impossible to lay down this practice as a hard and fast rule. Some of the local magistrates were more daring - or more officious - than others, and proceeded to deal with matters which their less self-confident brethren left severely alone. Consequently, at the Quarter Sessions in one or other of the counties, almost every kind of crime at some time appeared and was settled without reference to the higher authorities, and isolated cases of grand larceny,<sup>5</sup>

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(1) NOTTS. CO. RECS., p. 107, 18 July, 1623; 9 April, 1619; 3 Oct. 1625. LANCS. Q.S. RECS., p. 167, Sess. of 9 May, 1603.

(2) LANCS. Q.S. RECS., Introduction, p. xvii. NOTTS. CO. RECS. p. 140, 7 July, 1619.

(3) LANCS. Q.S. RECS., p. 108, Sess. of 13 July, 1601; p. 225, Sess. of 16 July, 1604. HERTS. CO. RECS., Vol. V, p. 38, Sess. of Jan, 1623/4; p. 170, Sess. of 29 April, 1633. SOMER. Q.S. RECS., Vol. II. p. 192, No. 2, Sess. of 30 April, 1633.

(4) ADD. MSS., 34,399, fol. 163, J.P.'s of Hunts. to J.'s of Assize, 17 March, 1611/2. N.R.Q.S. RECS., Vol. IV, p. 58, Sess. of 20 July, 1636.

(5) WILTS. CO. RECS., p. 89, 1628. NORF. Q.S. ROLLS, 1604, 1623, 1642, etc..

bigamy,<sup>1</sup> arson,<sup>2</sup> witchcraft,<sup>3</sup> rape,<sup>4</sup> and even murder,<sup>5</sup> were thus, on occasions, boldly disposed of by justices of the peace.

Ordinarily, however, the magistrates had to deal with large numbers of less highly-spiced breaches of the peace. People who were arrested during mob disorders were charged with riot, or "riot and affray", and were usually fined, the amounts varying from a modest 12d. levied upon Margery Watson of the North Riding,<sup>6</sup> up to the impressive sum of £20, exacted from Nathaniel Prior, a headborough in Hertford.<sup>7</sup> Nottinghamshire seems to have suffered from an epidemic of hot-tempered clergymen, for between 1608 and 1629 four "clerks" appeared before the Quarter Sessions for riot, riot and affray, or drunken affray. The sums paid by the unbridled clerics ran from 6d. up to 15s.<sup>8</sup>

More difficult was the problem of how to deal with those turbulent people suspected of breaking walls and hedges around the hated enclosures, for the ordinary farmer sympathized with the rioters, and was unwilling to give information against them. In 1609, the inhabitants of four parishes were presented at the

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(1) WILTS. CO. RECS. , p. 60, 1617. NORF. Q.S. ROLLS, 1641.

(2) W.R.Q.S. RECS., Vol. I. p. 149, 1599.

(3) N.R.Q.S. RECS., Vol. I. p. 58, 1606; Vol. III. pp. 177-178, 1623.

(4) IBID, Vol. III. p. 206, 1624. LANCS. Q.S. RECS., p. 205, 1604.

(5) NORF. Q.S. ROLLS, 1607.

(6) N.R.Q.S. RECS., Vol. I. p. 239, Sess. of 3 Oct. 1611.

(7) HERTS. CO. RECS., Vol. I. p. 39, Sess. ~~xxx~~ for 1609-1610.

(8) NOTTS. CO. RECS., Appendix E., pp. 164-166.

Quarter Sessions for "refusing to criminate" the people concerned in the throwing down of two hundred rods of stone wall newly erected around a certain piece of moorland in the North Riding,<sup>1</sup> and a similar presentment of the inhabitants of another parish in the same county was made some years later.<sup>2</sup> Elsewhere men were occasionally indicted at the Quarter Sessions for overthrowing fences,<sup>3</sup> or for destroying hedges and ditches,<sup>4</sup> while in Worcestershire, William Best was accused not only of pulling down hedges, but also of setting his dogs to worry the sheep within the enclosure.<sup>5</sup> In the light of the indifference of some of the magistrates to attacks on enclosures, it would be interesting to know how severely the justices before whom these presentments came dealt with the offenders, but unfortunately there are no records of the punishment, if any, which was meted out.

This same violence and lack of self control played a regretably large part in men's relations with their neighbours also, for cases of assault and battery are plentifully sprink-

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(1) N. R. Q. S. RECS., Vol. I, p. 170, Sess. of Oct. 6, 1609.

(2) IBID, Vol. III, p. 234, Sess. of 12 July, 1625.

(3) W. R. Q. S. RECS., Vol. I, pp. 88-89, 26 June, 1598.

(4) NOTTS. Q. S. RECS., p. 55. LANCS. Q. S. RECS., p. 84, Sess. of 21 Jan. 1600/1; p. 154, Sess. of 14 July, 1602; pp. 170-171, Sess. of 11 May, 1603.

(5) WORCS. Q. S. ROLLS, Part I, p. 183, No. 81, 1613.

led through the pages of the Quarter Sessions records.<sup>1</sup> The weapons used were of every conceivable kind. An infuriated farmer in Durham manipulated a pitchfork with some success,<sup>2</sup> and during a dispute between two women of the same county, one struck the other upon the "occiput" and then upon the "sinciput" with a rake.<sup>3</sup> Joan Woodshawe appeared at the Middlesex Sessions for attacking "ii seafaring men ... with a spitt",<sup>4</sup> and two years later a labourer was haled before the same magistrates for wounding the head of one Margaret Leech with a "duble blacke pott very daingerously."<sup>5</sup> Richard Agland in the West Riding was felled with an iron rod,<sup>6</sup> while John Bacon, a Norfolk husbandman, seems to have managed somehow to wield two weapons at once, when he laid low a petty constable with a hanger and a "brushbille".<sup>7</sup>

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- (1) DUR. SESS. PLEA ROLLS, 1 Chas. I., Membrane 1, Sess. of 27 April, 1625. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 23, Sess. of 30 April, 1617; p. 67, Sess. of 30 Sept. 1618. N.R.Q.S. RECS., Vol. I, pp. 94-95, Sess. of 8 Oct. 1607; Vol. III, p. 148, Sess. of 1 Oct. 1622. W.R.Q.S. RECS. Vol. 1, pp. 149-150, Sess. of 17 April, 1599. LANCS. Q.S. RECS., p. 75, Sess. of 14 Jan. 1600/1; p. 87, Sess. of 11 Mar. 1600/1. ADD. MSS., 34,400, No. 218, Sess. of 14 June, 1636. NOTTS. CO. RECS., p. 54. LINCS. (LINDSEY) SESS. ROLLS, 1629, Index A.2, Sess. of 6 Oct, 1629. NORF. Q.S. ROLLS, 5 Jas. I, 3 Chas. I.
- (2) DUR. SESS. PLEA ROLLS, 1 Chas. I, Membrane 1, Sess. of 27 April, 1625.
- (3) IBID, 14-17 Jas. I, Membrane 31, 20 Aug. 1616.
- (4) MIDD. CO. RECS., Vol. II, p. 72, 15 March, 1610/11.
- (5) MIDD. SESS. RECS., (New Series), Vol. II, p. 30, Sess. of 17-18 Feb. 1612/3.
- (6) W.R.Q.S. RECS., Vol. I, pp. 67-68, Sess. of 25 April, 1598.
- (7) NORF. Q.S. ROLLS, 4 Jas. I.

Some of the indictments draw lurid pictures of the amount of damage done to the injured. The charge against Richard Clyston of Norfolk states that he assaulted Ruben Cunyngham, beat and wounded him, and extracted his blood ("sanguinem extraxit"), to his great inconvenience.<sup>1</sup> Other indictments take a pessimistic view of the victim's eventual chance of recovery, for they conclude darkly, "By this blow he became much enfeebled, so that his life was despaired of".<sup>2</sup> The actual mortality, however, cannot have been as high as these gloomy statements would suggest, since the usual punishment for an assault was merely a fine which might be as small as 12d.,<sup>3</sup> or as large as £5.<sup>4</sup> In only one county is a really heavy penalty recorded - a luckless wretch in Durham was fined £10, imprisoned for two weeks, and forced to find security for his future good conduct.<sup>5</sup>

One of these indictments for assault throws an interesting sidelight upon the relations between the English and the Scots on the Border. An order of the Durham Session reads, "A warrant against those that cutt of the Scottes mans hand at Stockton, for the good behaviour".<sup>6</sup> Evidently a Scottish limb was not

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(1) NORF. Q.S. ROLLS, 9 Jas. I.

(2) NORF. Q.S. ROLLS. 5 Jas. I, John Cooke; 10 Jas. I, Abraham Clarke. NOTTS. CO. RECS., p. 54. DUR. SESS. PLEA ROLLS, 14-17 Jas. I, Membrane 31, 20 Aug. 1616. W.R.Q.S. RECS., Vol.1, pp. 67-68, Sess. of 25 April, 1598.

(3) NORF. Q.S. ROLLS, 4 Jas. I.- Thomas Bacon.

(4) LINCS. (LINDSEY) SESS. ROLLS, Index A.2, Sess. of 6 Oct, 1629.

(5) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 247, Sess. of 11 Jan. 1625/6.

(6) IBID, p. 124, Sess. of 10 Jan. 1620/1.



highly valued on the English side of the boundary.

Men who created a disturbance in church were also haled before the Quarter Sessions. In Wiltshire, two were presented "for that they both one the feaste daye of Easter last in the Church of Boxe before the morneinge prayer on that daye in a tumultor sorte denydd the booke of Comon prayer & the book of the Omiles sayeing that there could be no edificacon for the people by them."<sup>1</sup> The Norfolk Sessions sent Robert Gouldsmith to the house of correction for three days, for "abusing M<sup>r</sup> Tompson a minister sayeng M<sup>r</sup> Tompson his sonn John was a theefe & that hes ffather was worse".<sup>2</sup> In Middlesex, the justices ordered that Owen Griffen "shalbe sett in the Stockes the next Sondaye at Kentishtowne ... for disturbing the Preacher of Kentishtowne when hee was in the pulpitt".<sup>3</sup>

When disturbances of the peace could be traced to a trouble-maker, the magistrates dealt with him very firmly indeed. Such a "barrator" was forced by the Durham Sessions to pay £3. 6s. 8d., and was committed to gaol until the money should be forthcoming.<sup>4</sup> A Middlesex man who stirred up mischief was sentenced to be set in the stocks for six hours on each of two successive days, and then be returned to prison until he paid £5.<sup>5</sup>

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(1) WILTS. CO. RECS., pp. 5-6, Sess. of 3 May, 1603.

(2) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 21 April, 1640.

(3) MIDD. CO. RECS., Vol. II, p. 58.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 375, Sess. of 7 Oct. 1629.

(5) MIDD. SESS. RECS., (New Series), Vol. II, p. 305, 1615.

It was in the West Riding, however, that barrators fared worst, for there one was fined £6. 6s. 8d.,<sup>1</sup> and another £10.<sup>2</sup>

The use of insulting words might also be a cause of disorder, and so it came within the jurisdiction of the Conservators of the Peace. Dalton says, "Libellers ... may be bound to their Godd-behaviour, as Disturbers of the Peace ... for such libelling and defamation tendeth to the raising of Quarrels and effusion of Blood." The libels may be, he adds, by scandalous writings, or scandalous words, or by pictures and signs.<sup>3</sup>

When the magistrates were dealing with libellers, however, they did not always confine themselves to such mild measures as merely taking security against further offences. A shoemaker in the West Riding was made to pay 10s. by the Quarter Sessions for speaking "divers opprobrious words" about a neighbour,<sup>4</sup> while the Durham justices fined a libeller the astonishing sum of £20, and committed him to gaol until he should find security for his future satisfactory conduct.<sup>5</sup> In Wiltshire, John Miles was sent to prison for "lybelling", and then was "to be conveyed to Keevil there to sitt in the Stocks for the space of an hour and to be bound over to appear at the next Sessions there to confess his falts."<sup>6</sup> The Norfolk Bench was conversely,

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(1) W.R.Q.S. RECS., Vol. I, pp. 95-96, Sess. of 25 April, 1598.

(2) IBID, Vol. II, p. 217, Sess. of 14 July, 1640.

(3) DALTON, The Country Justice, (Ed. 1705), p. 294.

(4) W.R.Q.S. RECS., Vol. II, p. 273, Sess. of 4 May, 1641.

(5) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 105, Sess. of 2 May, 1633.

(6) WILTS. CO. RECS., p. 33, 1611.

very merciful to John Cage, who was merely bound to the good behaviour after he had "attempted the chastity of a wyfe and then mad lybeles against her."<sup>1</sup>

Speaking disrespectfully or rebelliously about the King was, of course, a particularly heinous offence. Some of the justices of the peace, when men charged with "seditious words" were brought before them, preferred to turn the matter over to the Privy Council without delay.<sup>2</sup> In Nottinghamshire, however, the magistrates were evidently ready to take more responsibility upon themselves, for a labourer was sent to prison "for saying that he cared not for the King", and Thomas Goode, also of Nottingham, was committed for "saying certain perilous words against our Lord the King."<sup>3</sup>

A good deal of bickering between neighbours was started by the mischievous tongues of quarrelsome women. A number of these shrews were brought before the local justices, whose favourite method of deterring them from further trouble-making was to have them thoroughly ducked in the village pond with a cuck-stool<sup>4</sup> - or, as the Northamptonshire records call it, a "cookkinge

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(1) NORF. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 14 April, 1640.

(2) CAL. S.P. DOM., Jac. I. CXXII, 111, J.P.'s of Tiverton to the P.C., Exeter, 5 Sept. 1621; CCXXIII, 64, J.P.'s of Cheshire to the P.C., 27 Oct. 1621; Car. I, CCXLVIII, 60, J.P.'s of Gloucester to the P.C., 26 Oct. 1633; CCLVIII, 50, same to the same, 11 Jan. 1633/4; CCCLVI, 58, P.C. to Sir Capell Bedell, J.P. for Hunts., 14 May, 1637.

(3) NOTTS. CO. RECS., p. 107.

(4) W.R.Q.S. RECS., Vol. II, p. 140, Sess. of 16 July, 1639. YORKS. ARCH. JOUR., Vol. V, p. 380, (W. Riding Recs.), Sess. of 3 Oct. 1638. LANCS. Q.S. RECS., p. 260, Sess. of 17 April, 1605. NOTTS. CO. RECS., p. 33, 9 April, 1624. MIDD. CO. RECS., Vol. II, pp. 120-121, 11 Jan. 1615/6. MIDD. SESS. RECS., (New Series), Vol. II, p. 243, 1615.

stoole".<sup>1</sup> One acidulated vixen doused in this way was, most inappropriately, a Mistress Sugar,<sup>2</sup> and another, described as "a notorious scold, a common drunkard and a woman of very lewd and evell behaviour emongst her neighbours", rejoiced in the name of Anne Sweetinge.<sup>3</sup> In the West Riding, the magistrates sometimes sentenced scolds to a punishment more picturesque than ducking - "Whereas Ann Walker ... did in the time of y<sup>e</sup> sessions heare holden, in y<sup>e</sup> open streetes, call one Andrew Shaw 'cuckoe', for prosecuting a bill of indictment ... against her father, ORDERED that the constables of Wakefeild shall cause y<sup>e</sup> said Ann Walker, for her impudent and bold behaviour, to be runge through y<sup>e</sup> towne of Wakefeild with basins before her, as is accustomed for common scowldes".<sup>4</sup>

Domestic strife also occupied the attention of the Quarter Sessions at times. A Huntingdonshire man was condemned "to sett 3 hours in stocks for abusing his wife",<sup>5</sup> and the Warwick justices sent another husband to the house of correction until he would agree to give his wife proper support.<sup>6</sup> The latter Bench dealt also with the case of Thomas Wilson, who "divers times by inhuman correcting his children endangered the death

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(1) NORTHANTS. Q.S. RECS., p. 99, Sess. of [Oct.] 1630.

(2) NOTTS. CO. RECS., p. 33.

(3) N.R.Q.S. RECS., Vol. I, p. 180.

(4) W.R.Q.S. RECS., Vol. II, p. 18, Sess. of 4 Oct. 1614.

(5) ADD. MSS., 34,400, No.219, Huntingdon Sess., 4 Oct. 1636.

(6) WAR. Q.S. RECS., Vol. I, p. 56, Easter Sess., 1628.

or the laming of them"; the children were taken away from him, but he was still made responsible for their maintenance.<sup>1</sup> Even the age-old problem of the mother-in-law made its appearance at the Quarter Sessions, for a waterman in Middlesex was called before the justices to answer "for abusing his wife's mother".<sup>2</sup>

Other miscellaneous cases of minor breaches of the peace were settled by the local magistrates. Peter Mobberley complained to the Chester justices that Thomas Turner "did take and pull your petitioner by the beard without any offence given him by your petitioner -" and Turner was forced forthwith to put up security against further attacks upon Mobberley's person.<sup>3</sup> An irate woman, also of Chester, who had "twice fallen on her knees and Cursed the Cunstable" was sentenced to pay 2s.,<sup>4</sup> while two Durham men were haled before the Sessions for assaulting a third and biting him on the first joint of the middle finger of his right hand. For this deed of violence, one ruffian was fined £6. 13s. 4d., the other 20s.<sup>5</sup>

The most serious breach of the peace, murder, was not usually tried by the local justices, although a few cases of homicide do appear among the Quarter Sessions records of two counties. In Norfolk, Robert Murton was found guilty of killing

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(1) WAR. Q.S. RECS., p. 55, Easter Session, 1628.

(2) MIDD. CO. RECS., Vol. II, pp. 44-45, 19 Nov. 1608.

(3) CHESTER Q.S. RECS., 1641, File I, No. 32, Sess. of 11 May, 1641.

(4) IBID, 1632, File I, fol. 43, Northwich Sess., 19 April, 1632.

(5) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 347, Sess. of 14 Jan. 1628/9.

John Hatton, but was pardoned;<sup>1</sup> in the same county, a mother who strangled her illegitimate baby was sentenced to be hanged.<sup>2</sup> The Middlesex Bench, also, condemned a woman to death for destroying her bastard child,<sup>3</sup> and a little earlier, these same magistrates had tried William Hollis for the murder of William Parvin,<sup>4</sup> and a husband and wife for beating their servant to death.<sup>5</sup> All three had been convicted and sentenced to be hanged. In Middlesex, too, William Wiggett, found guilty of manslaughter, claimed Benefit of Clergy, but he failed to read and was executed.<sup>6</sup> A London gentleman fared better at the hands of the Middlesex Sessions, for although he mortally wounded another gentleman and was convicted of homicide, he asked for the book, read, and was branded.<sup>7</sup> Phyllis Roache, sentenced to death for murder, escaped temporarily; she was found to be pregnant, and so was respited to prison after judgment.<sup>8</sup>

Closely allied to murder was the crime of witchcraft, for in the 17th century even educated people believed that it was possible for one man to kill another by magic. There were,

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(1) NORF. SESS. ROLLS, 3 Chas. I.

(2) IBID, 5 Jas. I.- Anna Carter.

(3) MIDD. SESS. RECS. , (New Series), Vol. I, p. 378, 1614.

(4) IBID, p. 12, Sess. of 13-14 Jan. 1612/3.

(5) IBID, p. 182, 1613.

(6) IBID, p. 12, Sess. of 13-14 Jan. 1612/3.

(7) MIDD. SESS. RECS. , (New Series), Vol. I, p. 45, 1612.

(8) IBID, p. 2, Sess. held 1-2 Dec. 1612.

from the point of view of the law, two kinds of witchcraft. Intercourse with evil spirits, or killing or maiming anyone by sorcery, were by statute capital offences;<sup>1</sup> but the use of charms, potions, incantations, or the like, was held to be less dangerous, and so was punished merely by one year's imprisonment, punctuated by quarterly appearances of six hours each in the pillory.<sup>2</sup>

A number of instances of the second kind of offence came before the Quarter Sessions. In Devon, Baldwin Whitfield was punished by imprisonment and pillory "for provoking the unlawful love of Mary Herder by witchcraft, charme and sorcery."<sup>3</sup> An enterprising magician of the West Riding, who undertook to find lost or stolen goods by divination, was bound to the good behaviour,<sup>4</sup> but a woman convicted of bewitching a cow so that its calf died was given by the North Riding magistrates the full sentence of pillory and prison.<sup>5</sup> More fortunate was Ralph Milner of the same Riding, accused of sorcery, witchcraft, and telling of fortunes. He was ordered merely to "make his submission at Mewkarr [Muker] Church upon Sondag next in the tyme of Divine Service, and confesse that he hath heighlie offended God and deluded men, and is heartily sorie, and will offend

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(1) WINGATE, Justice Revived, (Ed. 1661), p. 248.

(2) IBID.

(3) HAMILTON, Quarter Sess. from Eliz. to Anne, (Devon), p. 113.

(4) W.R.Q.S. RECS., Vol. I. p. 79, 1598.

(5) N.R.Q.S. RECS., Vol. III, pp. 177-178, Sess. of 1 Oct. 1623.

no more".<sup>1</sup>

In Norfolk and Middlesex, where the justices of the peace were bold enough to deal with murder, cases of the more serious kind of witchcraft were also dispatched at the Quarter Sessions. Two charges of killing by sorcery appear on the Norfolk Sessions Rolls, but while the indictments both have "guilty" written at the bottom, there is no note of the sentence.<sup>2</sup> The Middlesex records are more explicit. Dorothy Magicke was convicted of trying to kill Thomas Poole and Thomasina Heath by witchcraft, but was let off with imprisonment and an appearance in the pillory.<sup>3</sup> Perhaps this leniency was caused by the failure of the sorcery to do its deadly work. On the other hand, Elizabeth Rutter and Joan Hunt, whose victims languished and died in orthodox fashion, were both sentenced to be hanged.<sup>4</sup>

And so with varying degrees of efficiency, the local magistrates endeavoured to carry out the first part of the King's charge in the Commission - "We have assigned you, and every one of you, our Justices to keep our Peace." That they were not entirely successful in frightening or persuading people into orderly conduct is shown by the very large number of presentments

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(1) N. R. Q. S. RECS., Vol. I. p. 58, Session of 13 Oct. 1606.

(2) NORFOLK Q. S. ROLLS, 15 Jas. I. - Margaret Mego; 18 Jas. I. - Anna Forde.

(3) MIDD. SESS. RECS., (New Series), Vol. II, p. 20, 1614.

(4) IBID, p. 242, 1614; pp. 279-280, 1615.



for assault which appear on the Quarter Sessions Rolls. On the other hand, they dealt faithfully with offenders who were brought before them and convicted. Their frequent failures to keep the peace were due rather to the weakness of the police machinery as a whole, than to incompetence or negligence in the justices themselves.

## CHAPTER VII.

### THE JUSTICES AT WORK — KEEPING THE PEACE ACCORDING TO THE STATUTES.

With the growth of the body of Parliamentary enactments there came, pari passu, an increase in the complications of keeping the peace. People whose activities one day rendered them merely obnoxious became, overnight, offenders against the Law, and the local magistrates received their full share of responsibility in suppressing the swelling ranks of delinquents.

While most of the statutes contented themselves with setting forth what was to be done with malefactors who had already committed a crime, a few tried to arrange for some sort of prevention of evil-doing. There was, for example, the establishment of "watch and ward". In the Middle Ages, the mobility of criminals was a serious stumbling-block in the maintenance of order, and it was ~~hoped~~ that the setting of watchmen on the boundaries of towns or parishes, with instructions to turn back all travellers of suspicious appearance, would at least localize the activities of malefactors. Consequently, the Statute of Winchester in the 13th century instituted night-watches, which were to be kept between Ascension and Michaelmas.<sup>1</sup> A later law

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(1) 13 Edw. I, Statute Winton, c. 4.

provided for the guarding of the sea-coasts,<sup>1</sup> and in 1633 the Judges of Assize ruled that "warding in day time is of great use, and must be left to the discretion of the constables, or the direction of the Justices to vary according to the occasion."<sup>2</sup>

The local magistrates in the 17th century must often have felt that this setting of a watch was a greater liability than asset, since upon them fell the duty of seeing that the constables made the necessary arrangements. Sometimes the Quarter Sessions merely issued general orders;<sup>3</sup> sometimes the constables were haled before the Bench for neglect.<sup>4</sup> Constant supervision of the petty officials was undoubtedly necessary, for the constable of Gilling on one notable occasion appointed "a poore old blinde man, not able to see the light of a candle, to watch the whole towne."<sup>5</sup> Moreover, even the zealous constables sometimes needed help, for the task of arresting villainous-looking wayfarers was not a popular one, and the Quarter Sessions had to deal from time to time with citizens who were extremely unwilling to serve their turn as watchmen.<sup>6</sup> In Middle-

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(1) 5 Henry.IV, c. 3.

(2) DALTON, The Country Justice, (Ed. 1705), p. 167.

(3) LANCS. Q.S. RECS., p. 186, Sess. of 5 Oct. 1603. SOMER. Q.S. RECS., Vol. I. p. 316, No. 5, Sess. of 23-25 July, 1622. CAL. S.P. DOM., Car. I. CCCCLXXXIII., 115, J.P.'s, Surrey to P.C., [Aug.?] 1641.

(4) N.R.Q.S. RECS., Vol. I. p. 2, Sess. of 11 April, 1605.

(5) IBID, Vol. IV. p. 69, Sess. of 13 Jan. 1636/7.

(6) ADD. MSS., 34,400, No. 77, Huntingdon Sess., 25 May, 1630. LANCS. Q.S. RECS., p. 183, Sess. of 13 July, 1603; p. 195, Sess. of 12 Oct. 1603.

sex, the unhappy constables had to contend with a combination of reluctance and arrogance, and eventually were forced to appeal to the justices for support in coping with "diverse knightes and gentlemen beinge Inhabitantes" who "doe refuse to watche and warde accordinge to the Lawe."<sup>1</sup> Yet the magistrates do not seem to have been roused to take harsh measures against such offenders.<sup>2</sup> The fines imposed on them ranged for the most part between 3s. 4d. and 6s. 8d.,<sup>3</sup> although one Yorkshireman had to pay as much as 10s.<sup>4</sup>

One group of justices took steps to turn the keeping of the watch into something of practical value. In 1598, the West Riding Sessions commanded that twelve halberds be bought for the arming of the watch at Wakefield,<sup>5</sup> and later set an even more unprecedented standard of efficiency by ordering "a continuall watch man to be hyred at the common charge of the towne for the staying, turneing back and keepe[sic] from them of such wander-inge idle strange beggers, as doe trouble the country."<sup>6</sup> Years afterward, during an attack of the plague, the West Riding justices again gave instructions for the employment in every town and hamlet of "a sufficient able beadle, or watchman, being no old man, woman, or impotent person, but such as will duly and

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(1) MIDD. CO. RECS., Vol. II, p. 93, Sess. of 1613.

(2) N.R.Q.S. RECS., Vol. I, p. 92, Sess. of 8 Oct. 1607 - two cases. NORF. Q.S. ROLLS, 1605.

(3) N.R.Q.S. RECS., Vol. I. p. 92, Sess. of 8 Oct. 1607.

(4) IBID, p. 94, same Sessions.

(5) W.R.Q.S. RECS., Vol. I. p. 106, Sess. of 13 July, 1598.

(6) IBID, Vol. II, p. 8, Sess. of 20 April, 1612.

carefully keepe day watch in their daid towne." <sup>1</sup>

More officials of this enterprising kind were badly needed, for activity, initiative and conscientiousness on the part of the magistrates were growing increasingly necessary as the list of statutory crimes became longer and longer. In particular, the hostile attention of the central government was turned towards the amusements of the lower class. Certain games did, indeed, end all too often in violent quarrels, and in 1542 Parliament felt impelled to take action. A law was passed flatly forbidding householders to allow their premises to be used for bowling, quoits, "cloyse", tennis, dicing, card-playing, or any "new games"; even the apparently harmless backgammon was included in the black list. <sup>2</sup> There is a depressing accuracy about Dalton's comment, "The said Statute makes all Games almost unlawful", <sup>3</sup> and it is not surprising that a steady stream of offenders appeared before the magistrates. Gambling being especially productive of brawls, men who amused themselves with cards or dice were frequently called to answer at the Quarter Sessions, <sup>4</sup> along with the owners of alehouses where such illegal

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(1) W. R. Q. S. RECS., Vol.II, p. 24, Sess. of 7 Jan. 1630/1.

(2) 33 Henry VIII, c. 9.

(3) DALTON, The Country Justice, (Ed. 1705), p. 135.

(4) W. R. Q. S. RECS., Vol. I. p. 47, Sess. of 14 Jan. 1597/8. LANCS. Q. S. RECS., p. 89, Sess. of 20 April, 1601; p. 92, Sess. of 19 April, 1602. HERTS. CO. RECS., Vol. I. p. 37, 1606-1607. NOTTS. CO. RECS., p. 52. LINCS. (LINDSEY) Q. S. ROLLS, 1631, Index A.4.

games were permitted.<sup>1</sup> If these innkeepers were lucky, they were let off with fines ranging from 3s. 4d.<sup>2</sup> up to 40s.,<sup>3</sup> but in the case of a particularly flagrant offence, the Court might disable the culprit from keeping an alehouse in future.<sup>4</sup> In Nottinghamshire, sportsmen were caught now and again surreptitiously diverting themselves with bowling<sup>5</sup> - a form of entertainment which cost three unlucky players in the North Riding fines of 6s. 8d. apiece.<sup>6</sup> Football was as sternly discouraged. The Middlesex justices in 1615 complained that "greate disorders and tumults doe often arise and happen within the streetes and lanes neere adjoyninge to y<sup>e</sup> Cittye of London by playinge at the foote-ball", and thereupon gave strict instructions to the constables to put an end to the offensive sport.<sup>7</sup> Nottinghamshire, too, was troubled with this deplorable game, and the justices there fined a constable 4s. for failing to present an "illegal assembly of Football players".<sup>8</sup> In the latter county, also, the Quarter Sessions received a complaint about a musical enthusiast who played a pipe at night,<sup>9</sup> and various other lively

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(1) LANCS. Q.S. RECS., p.88, Sess. of 11 Mar. 1600/1, two cases.

(2) N.R.Q.S. RECS., Vol. I. p.189, Sess. of 17-18 April, 1610.

(3) DUR. SESS. ORDER BOOK, No.II, (1629-1639), p.134, Sess. of 16 April, 1634.

(4) N.R.Q.S. RECS., Vol. I. p.102, Sess. of 12 Jan. 1607/8.

(5) NOTTS. CO. RECS., p. 52.

(6) N.R.Q.S. RECS., Vol. I, p.94, Sess. of 8 Oct. 1607.

(7) MIDD. CO. RECS., Vol. II, p.107, 13 Jan. 1614/5.

(8) NOTTS. CO. RECS., p. 52.

(9) IBID, p. 53.

men were presented for "playing at 9 holes", and for "playing at 10 bones".<sup>1</sup> We even find the ancestor of shove-halfpenny represented among the forbidden sports, for a Hertfordshire ale-housekeeper was called before the Quarter Sessions because he allowed "playing at 'slidgroat' in his house until the players did fall together by the eares".<sup>2</sup> Most unusual, however, was the offence of two Somerset stalwarts, who persisted in playing handball against a church wall "in a narrow place there betwixt two glasse windowes whereby the same windowes were often much torren and defaced to the greate dislike of the inhabitants, especeally of those whose seats were next adjoyninge",<sup>3</sup> and who evidently felt the draught.

The Lancashire Sessions seem to have been particularly interested in Sabbath-breakers. Men who bowled<sup>4</sup> and piped<sup>5</sup> on Sunday were presented at the Quarter Sessions, and the justices of the peace, in conjunction with the Assize Judges, issued special orders against bowling, bear-baiting and bull-baiting on the Lord's Day.<sup>6</sup> A year later the Worcestershire justices found it necessary to put down morris dancing on Sunday, as certain of the young people used to interrupt the vicar's sermon,

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(1) NOTTS. CO. RECS., p. 53.

(2) HERTS. CO. RECS., Vol. I, p.48, date uncertain.

(3) SOMER. Q.S. RECS., Vol. II, Introduction, p. xxvi, 1633.

(4) LANCS. Q.S. RECS., p. 189, Sess. of 5 Oct. 1603.

(5) IBID, p. 114, Sess. of 15 July, 1601.

(6) MANCH. Q. SESS., p. 17, 8 Aug. 1616.

hoping that he would bring the service to an early close and so let them get to their dance.<sup>1</sup> When such things happened, it is easy to understand the earnestness of the Puritan opposition to the King's Book of Sports, published about this same time, which not only permitted but definitely encouraged piping, dancing, archery, leaping and vaulting on Sunday, after Divine Service.<sup>2</sup>

The gathering together of crowds to watch certain kinds of entertainments was always regarded with disfavour by the authorities as a potential source of disorder. Dalton writes, "If stage-players, by their shows, occasion an extraordinary and unusual concourse of people to see them act their tricks; this is an unlawful Assembly and Riot",<sup>3</sup> and in order to avoid such "extraordinary concourses", all minstrels, jugglers and players of interludes were declared by law to be punishable as vagrants.<sup>4</sup> William Claiton was called before the Middlesex Bench to answer for "sufferinge playes to bee played in his house in the night season".<sup>5</sup> Eight "players of enterludes" were fined 10s. each in the North Riding,<sup>6</sup> and a constable was presented for allowing two others to escape unpunished.<sup>7</sup> A more unusual

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(1) WORCS. Q.S. ROLLS, Part I. pp. 254-255, No. 198, (1617).

(2) MANCH. Q. SESS., Introduction, pp. xxv-xxvi, Mr. Moseley's version of the King's Book of Sports, dated the 27 Aug. 1617.

(3) DALTON, The Country Justice, (Ed. 1705), p. 322.

(4) 39 Eliz. c. 4.

(5) MIDD. CO. RECS., Vol. II. p. 47, 20 Dec. 1608.

(6) N.R.Q.S. RECS., Vol. II. p. 114, Sess. of 9 Jan. 1615/6.

(7) IBID, Vol. I. p. 260, Sess. of 8 July, 1612.



offence was that of a tailor of Nottinghamshire, indicted for drumming up an audience for a stage-player among the servants and children of the village,<sup>1</sup> and in Chester, a man rather vaguely designated as "one Richard A Stranger or Iugelor" was committed to the house of correction for having no "lawfull Cawling", but living "by Iudgelinge & other Indirecte Courses".<sup>2</sup>

The baiting of bulls and bears was also among the prohibited amusements,<sup>3</sup> not because of any humane scruples, but because the crowds of spectators were inclined to get out of hand, and riots often ensued. The local guardians of the peace were consequently only too glad to suppress these entertainments. Thomas Nethellyng was whipped by order of the Somerset justices for travelling about baiting bulls,<sup>4</sup> and the Northamptonshire Sessions threw a man who was "baytinge ... bares" into the house of correction until they should decide what further to do with him.<sup>5</sup>

Attractions other than these various kinds of spectacle also drew together the gregarious people of the 17th century, but in an age when ale could be had for a penny a quart, gatherings for harmless and even praiseworthy purposes might easily become

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(1) NOTTS. CO. RECS., p. 113, 13 April, 1618.

(2) CHESTER Q.S. RECS., 1635, File I, fol. 32, Sess. of 14 April, 1635.

(3) 39 Eliz., c. 4. James I's "Book of Sports", 1618, of which Mr. Moseley's version is printed in MANCH. Q.SESS. Introduction, pp. xxiv-xxvi.

(4) SOMER. Q.S. RECS., Vol. 1. p. 6, No. 64, Sess. Roll for 1607-1608.

(5) NORTHANTS. Q.S. RECS., p. 95, Sess. of [Oct.] 1630.

over-hilarious. The authorities, naturally, did not look with favour upon assemblies where drinking figured too prominently, and the Somerset Quarter Sessions at length totally prohibited "Churchales, Clerkeales, Woodwardales, Bedales, and all kindes of such like ales whatsoever".<sup>1</sup> The justices of Devon added meetings for maypole dancing to the undesirable festivities.<sup>2</sup> In the West Riding, the magistrates ordered the suppression of wakes, feasts, garries, and helpales, on the ground that they led not only to gambling and unlawful games, but also to "unreasonable wast and expence of victuall and much excessive drinking, minstrelsie and danceing".<sup>3</sup> At the Lancashire Quarter Sessions, one poor fellow was even presented for holding a marriage feast.<sup>4</sup>

Casual drinking, also, in alehouses or elsewhere, gave the justices a good many cases of breaches of the peace to settle. A statute early in the reign of James I. made drunkenness an offence punishable by a fine of 5s., and the Quarter Sessions were given authority to hear and determine.<sup>5</sup> A few years later, the unsupported accusation of a single magistrate became sufficient evidence to secure a conviction for this offence,<sup>6</sup> and so Dalton's

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(1) SOMER. Q.S. RECS., Vol. I. p. 7, Sess. of 13 Jan. 1607/8.

(2) HAMILTON, Devon Quarter Sessions, pp. 115-116.

(3) W.R.Q.S. RECS., Vol. II, p. 8, Sess. of 20 April, 1612.

(4) LANCS. Q.S. RECS., p. 101, Sess. of 29 April, 1601.

(5) 4 James I. c. 5.

(6) 21 James I. c. 7.

invaluable handbook suggests a sure method of detecting insobriety - "Now, for to know a Drunken Man the better, the Scripture describeth them to stagger and reel to and fro ... And so where the same legs which carry a Man into the house cannot bring him out again, it is a sufficient sign of Drunkenness".<sup>1</sup>

Quite possibly the power to convict on the mere view of a justice of the peace was necessary in order to get any evidence against tipplers. Some years before the passing of the law, the constables of Calne in Wiltshire had complained that "All men for the most <sup>part</sup> love these Cupp companions so well that no man will take upon him to be a sworne witness against any drunkard".<sup>2</sup> Be that as it may, the Quarter Sessions of the North Riding fined a man 5s. for drunkenness in 1607,<sup>3</sup> and another in 1609,<sup>4</sup> while George Cooke of the same county must have indulged in a peculiarly extensive celebration, as he had to pay 20s. to the Sessions.<sup>5</sup> In Durham, too, we find the statutory penalty being levied.<sup>6</sup>

Sitting and drinking in an alehouse for more than an hour was forbidden by law,<sup>7</sup> and the Sessions usually fined cul-

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(1) DALTON, The Country Justice. (Ed. 1705), p. 29.

(2) WILTS. CO.RECS., p. 35, 21 April, 1612.

(3) N.R.Q.S. RECS., Vol. I. p. 92, Sess. of 8 Oct, 1607.

(4) IBID, p. 179, Sess. of 12 Jan, 1609/10.

(5) IBID , p. 97, Sess. of 8 Oct, 1607.

(6) DUR. SESS. ORDER BOOK, No. I. (1616-1629), p. 196, Sess. of 7 Jan. 1623/4; No. II, (1629-1639), p. 198, Sess. of 27 April. 1636.

(7) 4 James I. c.5.

pays the specified sum of 3s. 4d.<sup>1</sup> On occasions, however, the magistrates used their own discretion in the setting of the fine, for the Nottinghamshire justices made Robert ffotherby pay 13s. 4d. for two sojourns in a tavern, while they let off Thomas Ridge with a penalty of 33s. 4d. for ten similar offences.<sup>2</sup>

An obvious way to control drunkenness was to institute a strict supervision over taverns, for these, besides being nuclei of disorder, were all too often thieves' dens as well. Said one of the Somerset magistrates in despair, "The tenth felony cometh not to light for he hath his receaver at hand in every alehowse in every Bushe",<sup>3</sup> and the justices of Devon evidently agreed with him, for they called their public houses "the nursery of lawless persons".<sup>4</sup> Moreover, the alehouses were exceedingly numerous - in one Worcestershire village there were twenty dwellings, of which no less than eight were taverns.<sup>5</sup>

In order to control these centres of depravity, Parliament in the reign of Edward VI. had enacted that no man might keep an alehouse unless he had been licensed by the Quarter Sessions, or by two justices of the peace, one of whom had to

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(1) NOTTS. CO. RECS. p. 44, 14 July, 1624. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 126, Sess. of 10 Jan. 1620/1. NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 28 July, 1640. HAMILTON, Devon Quarter Sessions, p. 86.

(2) NOTTS. CO. RECS., p. 43, 26 April, 1609.

(3) AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p. 170, Edw. Hext, J.P., to the Lord Treasurer, 25 Sept. 1596.

(4) HAMILTON, Devon Quarter Sessions, p. 72, Easter Sess. 1604.

(5) WORCS. Q.S. ROLLS, Part I. p. 83, No. 40, 1606.

be of the Quorum; and any publican who omitted the formality of procuring a licence was made liable to a fine of 20s. Furthermore, two justices of the peace might rescind a licence if they thought that the alehousekeeper did not keep sufficiently good order on his premises.<sup>1</sup> Commonly this withdrawing of licences seems to have been done at the Quarter Sessions, whose records are full of references to the suppression of establishments of doubtful respectability.<sup>2</sup> The Lancashire magistrates put down at a stroke thirteen taverns in a single division of the county,<sup>3</sup> and the Middlesex Bench took even more sweeping action, suppressing no less than one hundred and eighty-eight alehouses in the division of Finsbury alone during 1630.<sup>4</sup> These taverns must have been thoroughly disreputable, but if any breaches of the law perpetrated in an alehouse were of a not very serious kind, the keeper was sometimes let off with a fine of 10s.<sup>5</sup>

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(1) 5 and 6 Edw. VI. c. 25.

(2) W.R.Q.S. RECS., Vol. I. p.27, Jan. 1597/8; p.59, Sess. of 14 Jan. 1597/8; p.144, Sess. of 12 Jan. 1598/9. CHESTER Q.S. RECS. 1632, File II, fol. 26, Sess. of 3 July, 1632. NORTHANTS. Q.S. RECS., p.96, Sess. of [Oct.] 1630; p.99, same Sess. WORCS. Q.S. ROLLS, Part I, p.299, No. 244, 1619. WAR. Q.S. RECS., Vol. I, p.181, Michaelmas Sess. 1633. NOTTS. CO. RECS., p.50. NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 14 April, 1640. MIDD. CO. RECS., Vol. II. p.33, 18 Jan, 1608. SOMER. Q.S. RECS. Vol. I, pp.7-8, No. 81, Sess. Roll for 1607-1608; p.206, No.11, Sess. of 29-30 April and 1 May, 1617. HERTS. CO. RECS., Vol. V. p.160, 9 July, 1632; p.296, 12 July, 1641.

(3) LANCS. Q.S. RECS. , p. 71, Sess. of 12 Jan. 1600/1.

(4) CAL. S.P. DOM., Car. I. CCXXVI, 77, Certificate of J.P.'s of Middlesex, 31 Dec. 1632.

(5) N.R.Q.S. RECS., Vol. I. p.92, Sess. of 8 Oct. 1607. DUR. SESS. PLEA ROLLS, 12 Jas. I, Membrane 17, Sess. of 19 April, 1615.

It was more or less inevitable that outside the system of licensed houses a number of illegal taverns should spring up, and presentments of unlicensed alehousekeepers appear, indeed, in most of the Sessions records. The numbers of the indicted offenders range from a mere thirty-four at a Nottingham Sessions,<sup>1</sup> up to two hundred and fifty-nine at a meeting of the North Riding Bench<sup>2</sup> - one of the Yorkshire culprits being most inappropriately named Temperance; and on one occasion no less than a hundred and twenty people were presented at the same time from a single Hundred in Lancashire.<sup>3</sup> In Hertfordshire, some of the unlicensed keepers evidently thought that they could disregard the Quarter Sessions, since several of them were presented twice,<sup>4</sup> while Thomas Brayne's name appears three times.<sup>5</sup> On the other hand, Elizabeth Dunne was also indicted three times, but on the last occasion she was sent to the house of correction, was forced to produce sureties for her future good behaviour, and was fined 4s. 4d. as well.<sup>6</sup> Her name does not figure again in the records.

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- (1) NOTTS. CO. RECS., p. 49, 16 April, 1604.
  - (2) N.R.Q.S. RECS., Vol. IV, p.79, Sess. of 3 Oct. 1637.
  - (3) LANCS. Q.S. RECS , p. 75, Sess. of 14 Jan. 1600/1.
  - (4) HERTS. CO. RECS., Vol. V. p.175, No. 343, Wm. Catlyn presented 28 April, 1633; p.197, No. 81, Wm. Catlyn presented again, 5 Oct. 1634; p.273, No. 286, Agnes Eames presented, 10 Oct.1638; p.275, No. 302, Agnes Eames presented again, 1 May, 1639. etc.
  - (5) IBID, p. 211, 11-12 Jan. 1635/6; p.242, No. 184, 1 Feb. 1636/7; p.244, No. 192, 1 May, 1637.
  - (6) IBID, pp. 160-161, 9 July, 1632; p.167, No. 311, 1 July, 1632; p. 230, 9-10 Jan. 1636/7.

The statutory penalty for keeping an alehouse without a licence was three days' gaol with a 20s. fine,<sup>1</sup> and a number of convicted offenders received this punishment in full.<sup>2</sup> Others were merely imprisoned without the fine,<sup>3</sup> or fined without the imprisonment.<sup>4</sup> Sometimes a group of kind-hearted magistrates would reduce the payment to 10s.,<sup>5</sup> or even 3s. 4d.,<sup>6</sup> but such an alteration of the statutory penalty was really ultra vires.<sup>7</sup> The problem of what to do with a penniless offender therefore had to be settled by statute, and in 1627 it was laid down that a man who could not pay his fine was to be flogged.<sup>8</sup> This seems to have met the difficulty, as five years later we find that a Nottingham labourer who confessed that he had kept an alehouse without licence, "being very poor, was ordered to be whipped".<sup>9</sup>

The central government naturally was deeply interested in the success of the justices of the peace in keeping down the

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(1) 5 and 6 Edw. VI. c. 25.

(2) N.R.Q.S. RECS., Vol. I, p.29, Sess. of 9 Jan. 1605/6. LANCS. Q.S. RECS., p.260, Sess. of 17 April, 1605. DUR. SESS. ORDER BOOK, No. I. (1616-1629), p.353, Sess. of 15 April, 1629. LINCS.(LINDSEY)SESS. ROLLS, 1629, Index A.2., 14 Sept. 1629.

(3) LANCS. Q.S. RECS., pp.111-112, Sess. of 15 July, 1601 -two cases.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.24, Sess. of 30 April, 1617.

(5) IBID, p. 73, Sess. of 13 Jan. 1618/9.

(6) N.R.Q.S. RECS., Vol. II. p.51, Sess. of 1 July, 1614.

(7) LAMBARD, Eirenarcha, (Ed. 1619), p. 578.

(8) 3 Chas. I. c. 4.

(9) NOTTS.CO. RECS., p. 50, 9 April, 1632.

number of alehouses, not only because taverns were potentially centres of disturbance, but also because the turning of barley into malt for brewing wasted grain which could be used as food for the poor in times of famine. By royal proclamation, the justices of the peace of every county were commanded to meet each spring and examine the character and qualifications of all alehousekeepers, allowing only such as were fit to continue to keep taverns.<sup>1</sup> This was followed, during the wheat shortage of 1622, by the further general order to the justices of the peace to suppress all alehouses "not needful for convenience of the people".<sup>2</sup> Thirteen years later, some of the justices evidently were again becoming slack, for the Lord Keeper instructed the Judges of Assize to report such magistrates as were negligent, saying that "these [alehouses] swarme by the default of Iustices of peace that sett vp too many".<sup>3</sup>

Closely connected with the question of disreputable alehouses was the question of the disreputable people who frequented them. In particular, the problem of the wandering beggars and sturdy rogues who infested the roads was a peculiarly difficult one. These homeless vagrants ranged up and down the country, spreading terror and upsetting peace and order "intol-

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(1) CAL. S.P. DOM., Jac. I, CV, 19 Jan. 1618/9, Newmarket.

(2) IBID, CXXXIII, 52, [19] Oct. 1622.

(3) ADD. MSS. 31,007, fol. 85d., Lord Keeper's charge to the Judges in the Star Chamber, 17 June, 1635.



lerable contrarie to the lawes".<sup>1</sup> In some places there even seems to have been a loose sort of organization among them - "Now a great Cause of the still continuing of Rogues, is for that in many Out-houses and Barns they be received and lodged by Companions and have their set Places of Meeting".<sup>2</sup>

The problem of these vagrants was not merely one of unemployment, for they would not take such labour as was offered them. Edward Hext, who seems to have been an authority on the rogues of Somerset, says, "And yn treuth worke they will not, nether canne they withowt most extreame paynes by reason their zinowes are so benumbed and styff throwghe Idlenesse as theyr lyms beyng putt to any hard labor will greve them above measure, So as they will rather hazard ther lyves then work." Some, continues the justice, confess felonies in order to escape the house of correction by going to the gaol,<sup>3</sup> and such gentry, who preferred hanging to honest exercise, were a very long and sharp thorn in the flesh of those responsible for the maintenance of peace and order.

The trouble, moreover, was aggravated during the first few years of the reign of Charles I. by bands of lawless soldiers, either just returned from a Continental war, or just setting out for one.<sup>4</sup> Denzill Holles in 1627 wrote with great bitterness

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(1) HERTS. CO. RECS., Vol. V. p.293, Sess. of 3 May, 1641.

(2) DALTON, The Country Justice, (Ed. 1705), p. 307.

(3) AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p. 168, 1596.

(4) NORF. LIEUTENANCY PAPERS, p. 104, P.C. to J.P.'s and Deputy Lieutenants of Norfolk, 30 Nov. 1627.

about the state of unemployment and distress in his county, adding, "Not to speake of other petty Inconveniencies we have found by the Soldiers ravishing Mens Wives and Daughters ... killing and carrying away Beefs and Sheep off the Ground, (stealing of Poultry was not worth speaking of) killing and robbing Men upon the Highway, **nay**, in the Fairs and Towns (for to meet a poor Man coming from the Market with a Pair of new Shoes, or a Basket of Eggs or Apples, and take them from him, was but Sport and Merriment) and a thousand other such pretty Pranks." <sup>1</sup>

It is small wonder that the government felt that vigorous, even violent action was imperative. Harsh laws were passed, ordering vagabonds to be flogged and sent home, or, on the second offence, branded. <sup>2</sup> Nor does it appear that the **vagrant** could expect much sympathy from the local authorities. Michael Dalton, himself a justice of the peace, says, "The way to rid the Country of those Rogues, is to give them ... due Punishment ... and keep them from Lodging, and other Relief, as much as may be; or else to send them to the Gaol as Incorrigible Rogues. For punishment is all the Charity that the Law affordeth them". <sup>3</sup> Crippled vagabonds were loaded on to carts and smuggled by constables to any convenient spot outside their own parish, <sup>4</sup> and one sick boy who was treated in this inhuman

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(1) STRAFFORD'S LETTERS, (Edited by Knowler), Vol. I. p. 40, Denzil Holles to Sir Thomas Wentworth, 9 Aug. 1627.

(2) 39 Eliz. c. 4; 1 James I. c. 7.

(3) DALTON, The Country Justice, (Ed. 1705), p. 307.

(4) HERTS. CO. RECS., Vol. V. p.47, Sessions order, Jan. 1624/5.

way died of exposure.<sup>1</sup>

In some localities the magistrates were more merciful - or lazier - than in others, and as a result there was a good deal of variation in the severity with which the vagrancy laws were enforced. The unfortunate consequences of this were soon apparent. "Whereas ... execution is made in one countie and not in another; now, unlesse execution be done in all, it will but drive them from one countie to another", said the Lord Keeper in 1632.<sup>2</sup> This inactivity seems to have arisen, in the case of one group of magistrates, from sheer terror. A particularly sturdy rogue, who was ordered by the Somerset Sessions to be whipped, declared that if the sentence were carried out, a number of people would later be made to feel exceedingly sorry for their part in it. The justice who had committed the man was so disturbed by this threat that he begged that the case should be deferred to the next Assizes; the request was granted, and at the Assizes the vagrant was allowed to depart scot-free. "And they lawghe in ther sleeves att the lenyty of the lawe and the tymorousnesse of the executyoners of yt," concludes the teller of the story disgustedly.<sup>3</sup>

Somerset was by no means the only county where periodic

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(1) CAMDEN SOC., 3rd. Series, Vol. XXVI, (1915), Stiffkey Papers, p. 63, "The Cause of Richard Riplingham's binding to the Sessions", no date.

(2) CAMDEN SOC., New Series, No. 39, (1886), Cases in Star Chamber and High Commission, p. 180, Lord Keeper's speech to the Circuit Judges, 21 June, 1632.

(3) AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p. 173, Edward Hext to the Lord Treasurer, 25 Sept. 1596.

slackness existed. In 1603, a proclamation was issued, commanding a more strict enforcement of the laws against vagrants.<sup>1</sup> The neglect, however, continued, for Lord Keeper Williams wrote in 1622 to the justices of Berkshire and Hertfordshire that "his Majestie is justly offended at you, who being entrusted with the care and execucon of the statutes do suffer your countrey notwithstanding to swarme with whole troupes of rogues, beggars, Aegiptians, and idle persons." The good Bishop adds, with rather obscure logic, that the numbers of these vagabonds are "sumptomes of Popery and blynde superstition."<sup>2</sup> A year later the justices of Wiltshire were ordered by the Lord Lieutenant to build a convenient house of correction for the punishment of beggars,<sup>3</sup> and the Council itself in 1626 urged the justices of Surrey to be more active.<sup>4</sup> Such exhortations accomplished little, for in 1627 the Council wrote that there were throughout the kingdom more "dissolute and vagrant persons" than ever before - "which His Majesty conceives to proceed chiefly from the remissness of you the Justices of the Peace in executing the lawes provided on that behalf".<sup>5</sup> The remonstrance had as

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- (1) CAL. S.P. DOM., Jac. I, III, 73 (3), Proclamation of 17 Sept. 1603, Woodstock.
  - (2) HERTS. CO. RECS., Vol. I, p.57, No. 57, Williams to the Earl of Salisbury and other J.P.'s, 21 Sept. 1622. H.MSS.COMM., 11th Report, Appendix 7, p.213, copy of letter dated 22 Sept. 1622 from Williams to the J.P.'s of Berkshire.
  - (3) CAL. S.P. DOM., Jac. I, CXLV, 3, Earl of Pembroke to the J.P.'s of Wilts., 15 May, 1623, Paynard's Castle.
  - (4) H. MSS. COMM., Report 7, Appendix, Part II, p.676, Losely Papers, P.C. to J.P.'s of Surrey, 26 Sept. 1626.
  - (5) NORF. LIEUTENANCY PAPERS, p. 63, P.C. to J.P.'s of Norfolk, 31 March, 1627.

little effect as the previous ones, for some three years later another proclamation was issued for the suppressing of rogues and vagabonds.<sup>1</sup> This was immediately followed by the Book of Orders, and the justices at last seem to have been stirred to action, as their reports for a time make frequent reference to the punishment of rogues.<sup>2</sup>

In some cases, where the situation was clearly getting beyond the control of the ordinary local officers, the Council did more than remonstrate - it ordered the appointment of provost marshals, who were to spend all their time in clearing the country of vagrants. This was done for the most part in the shires around London, where the beggars were especially numerous. Middlesex, Kent, Essex, Surrey, Sussex, Hertford, Buckingham, and even Norfolk, all received such commands.<sup>3</sup> The justices of Essex, who asked plaintively where the money to pay the marshals was to come from, were ordered sharply to do as they were told and find the funds wherever the other counties found them.<sup>4</sup>

In a few places, these special vagrancy officers were appointed by the local authorities of their own accord. In Wor-

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(1) CAL.S.P.DOM., Car. I, CLXXIII, 34 (1), 17 Sept. 1630, Theobald's.

(2) IBID, 1631, et seq., passim.

(3) ACTS OF P.C., 1615-1616, p.696, P.C. to J.P.'s of Middlesex, 28 July, 1616 - like letters sent to Kent, Surrey, Essex, Herts, Bucks. CAL.S.P.DOM., Jac. I, XCI, 32, Thos. Watson to Lake, 15 April, 1617, Westminster; Car. I, XXXVI, 36, Pet. of provost marshal of Middlesex, 22 Sept. 1626. NORF. LIEUTENANCY PAPERS, p.126, P.C. to Lord Lieutenant of Norfolk, 31 May, 1628.

(4) ACTS OF P.C., 1616-1617, pp.250-251, P.C. to J.P.'s of Essex, 21 May, 1617.

cestershire, a Grand Jury petitioned the Quarter Sessions to employ a marshal, a request which apparently was granted,<sup>1</sup> while the Derby records of 1635 speak of the "Provoste Marshall his Allowance - £13. 6s. 8d."<sup>2</sup>

Against the picture we have just seen, a picture of combined negligence and cowardice on the part of the county officers, we must in fairness place the vigorous efforts of some of the justices to enforce the laws. The Somerset Bench in 1613 gave the constables strict orders to round up all the vagabonds they could find,<sup>3</sup> and later allowed a pension of £4. per annum to John Fry, because he "hath donne good service in discoveringe and apprehendinge many vagrants and felons, and brought them unto Justice".<sup>4</sup> In Nottinghamshire, men who could give no explanation of how they lived were either bound by recognizance to reform their idle ways,<sup>5</sup> or else were sent straight to the house of correction.<sup>6</sup> The North Riding magistrates exhorted their constables to keep watch for suspicious travellers,<sup>7</sup> and furthermore ordered the inhabitants of Goversett to "make a paire

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(1) WORCS. Q.S. ROLLS, Part II, p. 485, No. 99, 1631.

(2) COX, Derbyshire Annals, Vol. I, p.157, Report of Deputy Lieutenants, 1635.

(3) SOMER. Q.S. RECS., Vol. I. p.100, No. 10 (4), Sess. of July, 1613.

(4) IBID, Vol. II, p.304, No. 16, Sess. of 11-13 July, 1638.

(5) NOTTS. CO. RECS., p. 42, 14 July, 1617.

(6) IBID, 14 Jan. 1613/4.

(7) N.R.Q.S. RECS., Vol. I. p. 119, Sess. of 5 April, 1608; Vol. III. pp.314-315, Sess. of 20 April, 1631.

of Stockes for the punishing of rogues".<sup>1</sup> In the West Riding, the Bench commanded that the Elizabethan Vagrancy Act of 1597 be publicly read in all market towns, to the end that it might be put into force.<sup>2</sup> Later, the magistrates of this same county stated with simple frankness their reason for putting down the "wanderinge idle strange beggers, as doe trouble the country", inasmuch as they "make the people lesse able, and more unwilling, to provide for, and give releife to the poore of their owne parrishes"-<sup>3</sup> an unwillingness which would throw the burden of the rates to a greater degree than ordinarily upon the equally reluctant gentry. The Warwick justices evidently believed in frequent attacks, for they ordered the constables to make raids at least once a week upon a barn which was notoriously a meeting-place of rogues.<sup>4</sup> In Norfolk, the Sessions had their officers report to them from time to time on the progress of their hunt for vagabonds,<sup>5</sup> and the Devon magistrates not only saw to it that monthly searches were kept up, but even paid amateur rogue-catchers 3d. for each beggar arrested.<sup>6</sup>

The means available to the justices for deterring men from vagrancy were varied. The most convenient for everyone,

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(1) N.R.Q.S. RECS., Vol. II, p. 196, Sess. of 12 Jan. 1618/9.

(2) W.R.Q.S. RECS., Vol. I. p. 74, Sess. of 25 April, 1597.

(3) IBID, Vol. II. p. 8, Sess. of 20 April, 1612.

(4) WAR. Q.S. RECS., Vol. I. pp. 8-9. Easter Sess. 1625.

(5) NORF. LIEUTENANCY PAPERS, p. 64, J.P.'s to the Chief Constables, 16 April, 1627.

(6) HAMILTON, Devon Quarter Sessions, p. 86.

with the possible exception of the rogues themselves, was to press them for foreign service, and ship them out of the country. This economical procedure was recommended by the Council to the attention of the justices of Surrey, Middlesex, Essex, and Kent in 1603.<sup>1</sup> There was also the ever-useful gaol. An exhibitor of bears, who had unfortunately mislaid his licence, was charged with vagrancy and promptly committed to gaol, where he remained until his case came before the Quarter Sessions. The licence still being missing, the Bench dispatched him to the house of correction, whence he petitioned the justices pitiously for release.<sup>2</sup> In one isolated case in 1602, all incorrigible rogues were ordered to be sent to Her Majesty's "gallies", there to be supported at the expense of the county.<sup>3</sup> More commonly the justices were merely anxious to chastise the vagrants and pass them on to someone else, as in the case of the Guppies, man and wife, who were punished as incorrigible rogues by order of the Somerset Bench, and sent to the place of their last abode.<sup>4</sup> The punishment was usually whipping,<sup>5</sup> or whipping plus imprisonment,<sup>6</sup> but in cases where the vagrants were old offenders, they

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(1) ACTS OF P.C., 1601-1604, pp.491-492, 14 March 1602/3.

(2) NORTHANTS. Q.S. RECS., p. 88, 1630.

(3) H.MSS. COMM., Various Collections, Vol. I. (1901), p. 70, Quarter Sess. Records of Wilts., Michaelmas Sess., 1602.

(4) SOMER. Q.S. RECS., Vol. I, p.9, No. 85, Sess. Roll for 1607-1608.

(5) HERTS.CO.RECS., Vol. V. p.108, Sess. of 11 Jan. 1628/9; p.271, Sess. of 8 July, 1639. N.R.Q.S. RECS., Vol. I, p.248, Sess. of 14 Jan. 1611/2. NOTTS. CO. RECS., p.114, 9 Jan. 1608/9. LANCS. Q.S. RECS., p.241, Sess. of 7 Jan. 1604/5.

(6) LANCS. Q.S. RECS., p. 292. Sess. of 15 Jan. 1605/6.



were judged specially incorrigible and were branded in the presence of the Court.<sup>1</sup>

Not only were the beggars themselves punished, but any who encouraged them by giving them aid came under the displeasure of the Law. Helen Casse in the North Riding was fined 6s. 8d. for sheltering vagrants and having "roasted hennies eaten in her house at unlawfull tymes of the night".<sup>2</sup> Another woman had to pay the same amount for "lodging roagues and vagabonds".<sup>3</sup> There seems to have been some discrimination here, as a little later a man in the same Riding was fined only half as much for the same offence.<sup>4</sup> The magistrates must have repented this leniency, however, for shortly afterwards they made Thomas Chilton pay 10s.<sup>5</sup> The Chester<sup>6</sup> and Durham Sessions<sup>7</sup> also had a preference for the 10s. penalty. In Lancashire, two men were fined 6s. and 10s. respectively,<sup>8</sup> but the Nottinghamshire and

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(1) DUR. SESS. ORDER BOOK, No. I. (1616-1629), p.21, Sess. of 8 Jan. 1616/7. NOTTS. CO. RECS., p.115, 10 July, 1615 and 10 Oct. 1617. ADD. MSS., 34,400, No.201d, Hunts. Q. Sess. Recs., 30 April, 1633. NORF. Q.S. ROLLS, 2 Chas. I. 23 Feb. 1626/7; 5 Chas. I, 27 Mar. 1629. SOMER. Q.S. RECS., Vol. II, p.45, Sess. of 1627. WILTS. CO. RECS., p.30, 1610. CHESTER Q.S. RECS., 1625, File 4, folio 41.

(2) N.R.Q.S. RECS., Vol. I, p.91, Sess. of 8 Oct. 1607.

(3) IBID, p. 92, same session.

(4) IBID, p. 189, Sess. of 17-18 April, 1610.

(5) IBID, p. 268, Sess. of 10 July, 1612.

(6) CHESTER Q.S. RECS., 1630, File 4, fol. 35d, Sess. of 18 Jan. 1630/1.

(7) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.317, Sess. of 9 Jan. 1627/8.

(8) LANCS. Q.S. RECS., p. 242, Sess. of 9 Jan. 1604/5.

Hertfordshire records, while they show frequent presentments, do not tell whether or not the justices took any action on them.<sup>1</sup>

It may be seen from the foregoing that the exhortations of the Council were addressed to the counties in the South and near London, while in the part of the North represented by Durham, Yorkshire, Lancashire and Chester, the justices seemed to be dealing with the vagrants in a fairly satisfactory manner. Possibly the justices in the North, who were of necessity men of their hands, were more capable of handling a serious problem of order of this kind. More probably, the Council knew about the conditions near London, and took a special interest in the situation so near home. All that can be said with certainty, however, is that we find complaints of neglect about only a small part of the country - although this fact by no means proves that the administration of the laws elsewhere was wholly admirable.

As part of their duties in enforcing statutes concerning law and order, the magistrates had to deal with various moral offences. Of these, the least serious and probably the most common was indulgence in strong language. In 1624, "prophane Swearing and Cursing" became an indictable offence, with a penalty of 12d. an oath, or three hours in the stocks if the fine was not forthcoming.<sup>2</sup> Since a single justice could convict

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(1) NOTTS. CO. RECS., p. 116, two presentments dated 20 April, 1612, and 16 April, 1613. HERTS. CO. RECS., Vol. I, p. 54, No's 11 and 12, 30 Sept. 1622 and 30 Dec. 1622.

(2) 21 James I, c. 20.

a man upon the evidence of only two witnesses, most of the cases of profanity probably were settled summarily, and merely reported upon afterwards to the Bench. In Wiltshire, for instance, the constables several times gave an account to the justices of their activities between Sessions in connection with the punishment of men for swearing.<sup>1</sup> Nevertheless a few cases did come before the full Bench, for a determined curser named Thomas Younge was presented before the Hertford magistrates "for swearing 20 several oaths whereby he profaned the name of God".<sup>2</sup> This feat of blasphemy paled to nothing, however, beside the magnificent profanity of Edward Cuttes of Cheshunt, who, we are told, swore seventy times.<sup>3</sup> Unfortunately the records do not tell us who sat through the performance, counting the oaths, or what punishment was meted out to the culprit by the Sessions.

Rape was another moral offence which came under the jurisdiction of the justices of the peace, since it was by statute a felony.<sup>4</sup> But while officially it was thus held to be a very serious crime, the local officials seem to have regarded it with the utmost calm. In Chester, a man charged with rape was merely bound over to his future good behaviour,<sup>5</sup> and another in Lanca-

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(1) WILTS. CO. RECS., p.103, Sess. of 4 Oct. 1631 - one man fined; p.108, Sess. of 15 April, 1634 - one man fined, another put in the stocks.

(2) HERTS. CO. RECS., Vol.I, p.66, No. 106, no date.

(3) IBID, Vol. V. p. 140, No. 224, 1 Aug. 1630.

(4) Statute of Westminster II. c. 34.

(5) CHESTER Q.S. RECS., 1635, File 4, fol. 44, Sess. of 26 Jan. 1635/6.

shire was dealt with in the same way,<sup>1</sup> while in the North Riding, the magistrates were roused so far as to fine a ravisher 20s.<sup>2</sup> The Middlesex justices alone kept to the letter of the law, for they hanged a man for raping an eight-year-old girl.<sup>3</sup> In Nottinghamshire, the magistrates took the most prudent course; when an indictment for ravishment came before them, they discreetly turned the case over to the Assizes.<sup>4</sup>

At the beginning of the reign of James I, bigamy also was made a felony,<sup>5</sup> and while doubtless most cases of this sort were held over to the Assizes, a few bigamists came before the Quarter Sessions and were tried and sentenced by the justices of the peace. In Middlesex, two men convicted of having more than one living wife claimed Benefit of Clergy, read, and were branded;<sup>6</sup> and a bigamist was similarly punished by the Norfolk magistrates.<sup>7</sup> James Tucken in Wiltshire did not escape so lightly, however. He was "Indicted and convicted for the felonious taking to wife one Sarah Stubbfield als Hunt his former wife Susan being liveing, and adjudged to be hanged by the neck

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- (1) LANCS. Q.S. RECS., pp. 203 and 205, (John Heywood), Sess. of 18 Jan. 1603/4.
  - (2) N.R.Q.S. RECS., Vol. III, p. 206, Sess. of 30 Sept. 1624
  - (3) MIDD. SESS. RECS., (New Series), Vol. I, p.395, 1614.
  - (4) NOTTS. CO. RECS., p.41, 1613.,
  - (5) 1 James I. c. 16.
  - (6) MIDD. SESS. RECS., (New Series), Vol. I. pp. 37-38, 1612 - Richard Browne; p. 335, 1614 - Bennett Broome.
  - (7) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 8 Aug. 1641 - Thomas Cooper.

untill he be dead".<sup>1</sup>

The defects of a form of local government concentrated in the hands of one class came out strongly in the enforcement of the statute law described above. It is a striking fact that the "criminals" punished were usually working people, and the gentry seem to have been left untroubled by the guardians of order. Thus while the gentleman might make merry with his friends without hindrance, the ordinary labourer was punished for tippling; and in an age when strong language was common to all ranks, we find only the people of the lower class haled before the Quarter Sessions for profanity. The war upon vagrancy, too, was sharpened by the social division between the offenders and the judges. "Such squirearchy," says Trevelyan, "must have seemed rich man's law to many a 'rogue forlorn', as he lay hungry and bleeding by the roadside, cursing the Quarter Sessions in the spirit of Lear."<sup>2</sup>

Quite possibly the magistrates themselves were not conscious of the effect of their prejudices upon their official actions. Yet the bias was there, and it made the proceedings of the Courts of Quarter Sessions something less than just.

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(1) WILTS. CO. RECS., p. 60, Sess. of 30 Sept, 1617.

(2) TREVELYAN, England Under the Stuarts, (Ed. 1938), p. 24.

## CHAPTER VIII.

### THE JUSTICES AT WORK — THE PROTECTION OF PRIVATE PROPERTY.

The keeping of the peace involved more than the protection of men's bodies - it meant the defence of their property as well. "The Breach of this Peace seemeth to be any injurious Force or Violence moved against the Person of another, his Goods, Lands, or other Possessions," says Dalton,<sup>1</sup> and so all sorts of attacks upon property came within the jurisdiction of the local justices.

In the countryside, unemployment and poverty were widespread evils, and where there are numbers of poor, as Sir Warwick Heale pointed out to the Commons in 1621, there are many small thefts.<sup>2</sup> Consequently at each meeting of the Quarter Sessions, the magistrates were faced with a dreary list of pilferings of every description, from the taking of pins,<sup>3</sup> hens,<sup>4</sup>

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(1) DALTON, The Country Justice, (Ed. 1705), p. 9.

(2) NOTESTEIN, Commons Debates, 1621, Vol. II, p. 117, 22 Feb. 1620/1.

(3) LINGS. (LINDSEY) SESS. ROLLS, 1625, Index A.1. No. 145.

(4) W.R.Q.S. RECS., Vol. I, pp. 128-129, Sess. of 8 Jan. 1598/9.

and trousers,<sup>1</sup> up through the stealing of silverware<sup>2</sup> and valuable horses,<sup>3</sup> to the theft of a complete set of Quarter Sessions records.<sup>4</sup>

The unhelpful attitude of the country folk, moreover, was intensely irritating to the conscientious justice. "He [the magistrate] hates that practice," says a contemporary, "as common as dangerous among countrypeople, who, having received again the goods which were stolen from them, partly out of foolish pity and partly out of covetousness to save charges in prosecuting the law, let the thief escape unpunished ... Thus petty-larceners are encouraged into felons, and afterwards hanged for pounds, because never whipped for pence." <sup>5</sup>

Yet while parsimony sometimes caused indifference to public duty, the inhabitants of a district where a robbery occurred might have a very definite material interest in the capture of the thief. By law, the hundred in which the crime was committed was responsible for the reimbursement of the sum taken, unless the hue and cry produced the thief,<sup>6</sup> and from time to time, claims for such compensation came before the Quarter Sessions. Thomas Jessopp, robbed of his horse, saddle and bridle,

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(1) CHESTER Q.S. RECS., 1625, File IV, fol. 35.

(2) NORF. Q.S. ROLLS, 21 Jas. I - Mathew Hawne.

(3) IBID, 18 Chas. I.- John Barker.

(4) COX, Derbyshire Annals, Vol. I, p. 10.

(5) FULLER, Holy and Profane State, (Ed. 1841), p. 139.

(6) 27 Elizabeth. c. 13.

together with 4s. 8d. in money, was awarded by the thrifty West Riding Bench the rather inadequate sum of 50s.<sup>1</sup> In Warwick, the victim of a similar theft collected £10. 11s. 6d.<sup>2</sup> Most unlucky of all the hundreds, however, was Evinger, in Hampshire. Here, in 1641, a claim was made for £208, but whether this huge sum was ever paid is not recorded.<sup>3</sup>

The majority of larceny cases which were tried by the Quarter Sessions were of a very minor type, and the fate of these petty pilferers was left almost entirely to the judgment of the magistrates - "Petty Larceny is when the Goods stoln do not exceed the value of twelve Pence. And for this the Offender shall be imprisoned for some certain Time, and after shall be whipped or otherwise punished by the Discretion of the Justices before whom he is arraigned."<sup>4</sup> The usual penalty inflicted for small thefts was the suggested flogging, preferably in some public spot like the market place,<sup>5</sup> but sometimes the offenders

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(1) W.R.Q.S. RECS., Vol. II, pp. 301-302, Sess. of 19 July, 1641.

(2) WAR. Q.S. RECS., Vol. I, p.234, Epiphany Sess. 1636.

(3) FURLEY, Quarter Sess. Gov't in Hampshire in the 17th Century, p. 24.

(4) DALTON, The Country Justice, (Ed. 1705), p. 493.

(5) W.R.Q.S. RECS., Vol. I, p.79, Sess. of 25 April, 1598; p.141, Sess. of 10 Jan. 1598/9; Vol. II, p.17, Sess. of 30 Sept. 1614. N.R.Q.S. RECS., Vol. I, p.16, Sess. of 1 Oct. 1605. LANCS.Q.S. RECS., pp. 145-146, Sess. of 21 April, 1602. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.16, Sess. of 2 Oct. 1616; p. 219, Sess. of 12 Jan. 1624/5; No. II, (1629-1639), p.175, 8 April, 1635. NORF. Q.S. ROLLS, 2 Chas. I, - Edward Dunham, Mathew Leese, Wm. Boyse. LINCS. (LINDSEY) Q.S. ROLLS, 1630, Index A.3. No. 159. HERTS. CO. RECS., Vol. I, p.32, Sess. for 1599-1600. WILTS. CO. RECS., p. 29, 1609.



were both whipped and put in the stocks<sup>1</sup>- "stockt, stript and whipt" as they described it in Nottinghamshire.<sup>2</sup> Now and then, however, the magistrates displayed some softness of heart, as when Jane Curtys, who had stolen two handkerchiefs and two yards of lace, was sentenced by the Norfolk Bench to be "lightly flogged";<sup>3</sup> and in the West Riding, one petty larcenist escaped with a fine of 2d.<sup>4</sup> A North Riding labourer was dealt with more severely, being whipped and sent to the house of correction for taking "a cloke of a sadd greene colour",<sup>5</sup> while a particularly brazen petty thief in Nottinghamshire was similarly punished "for being taken with his hands in the pocket of a certain William Maltby" in the very presence of the assembled justices.<sup>6</sup>

Cutting and carrying away of wood and hay was mere petty larceny, no matter what was the value of the things stolen.<sup>7</sup> The Hertfordshire magistrates therefore ordered a period in the stocks for men and women, and whipping for children, for this offence,<sup>8</sup> and a number of thefts of timber in Nottinghamshire were punished by whipping, or whipping and imprisonment in the

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(1) W.R.Q.S. RECS., Vol. I. p.105, Sess. of 13 July, 1598. N.R. Q.S. RECS., Vol. I, p. 67, Sess. of 16 Jan. 1606/7.

(2) NOTTS. CO. RECS., p. 37.

(3) NORF. Q.S. ROLLS, 3 Charles I.

(4) W.R.Q.S. RECS., Vol. II, p.155, Sess. of 4 Oct. 1639.

(5) N.R.Q.S. RECS., Vol. III, pp.117-118, Sess. of 10 July, 1621.

(6) NOTTS. CO. RECS., p. 40, 15 April, 1629.

(7) DALTON, The Country Justice, (Ed. 1705), p. 501.

(8) HERTS. CO. RECS., Vol. I, p. 32, Sess. of 1600-1601.

stocks as well.<sup>1</sup> A pair in Durham, convicted of cutting trees in Chopwell Wood, were forced to pay 10s;<sup>2</sup> and in Chester thirty yeomen, armed with swords, staves, daggers, and bill-hooks, broke into a close and removed twenty cartloads of hay, for which riotous act they were fined 40s. apiece.<sup>3</sup>

Grand larceny (i.e. when the articles<sup>stolen</sup> were worth more than 12d.) was felony, and was therefore a capital offence.<sup>4</sup> Many magistrates, as we have already seen, preferred to leave these more important cases to the Assizes for trial, but some of the justices were hardy enough to deal themselves with persons accused of felonious theft. The Norfolk Sessions in one year condemned to death no less than twenty persons for thefts of every conceivable kind - table-linen, a quantity of butter, several pieces of pork, even a flannel petticoat - and tried forty-three other cases of felony in which the criminals were not hanged.<sup>5</sup> In Middlesex, too, the justices of the peace ordered the execution of a woman who had made off with a variety of household goods.<sup>6</sup>

In country districts, the stealing of farm animals was naturally a frequent occurrence, especially in the cattle-raising

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(1) NOTTS. CO. RECS., p. 39, 1612, 1625, 1632.

(2) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 370, Sess. of 7 Oct. 1629.

(3) CHESTER Q.S. RECS., 1630, File II, fol. 1, July, 1630.

(4) DALTON, The Country Justice, (Ed. 1705), p. 493.

(5) NORF. Q.S. ROLLS, 21 Jas. I.

(6) MIDD. SESS. RECS., (New Series), Vol. I, p.394, March 1614.

North, and many presentments for the theft of cows and sheep were made at the Quarter Sessions of the North and West Ridings.<sup>1</sup> A butcher in Norfolk was hanged in 1605 for stealing a dun cow and a red cow;<sup>2</sup> but in the same county two other men who removed cattle from a close forfeited only 6s. 8d. each,<sup>3</sup> and a Yorkshire-man "convicted for the unlawfull takeinge and detayninge of a hoggeswyne" was fined 10s.<sup>4</sup>

The stealing of horses was held to be a peculiarly deadly sin, and the offender might expect no mercy from the Law. A horse-thief in Wiltshire,<sup>5</sup> and a number in Norfolk - one of them apparently a woman<sup>6</sup> - were hanged without any hesitation by the justices of the peace.

Robbery with violence was another crime in which there could be no escape for the convicted malefactor. Adam Porynger was executed by the Norfolk justices because he assaulted Roger Collyson, beat him, and finally relieved him of his shirt. Fortunately for the victim, the attack took place in the warm month

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(1) N.R.Q.S. RECS., Vol.I, p.8, Sess. of 9 July, 1605 - 3 cases. W.R.Q.S. RECS., Vol.I, p.31, Sess. of 12 Jan. 1597/8; p.64, Sess. of 25 April, 1598; p.68, same Session.

(2) NORF. Q.S. ROLLS, 18 Jas. I, - Edward Chapman. (This indictment should be filed with 3 Jas. I.)

(3) IBID, 11 Jas. I, - Thos. Bale and Robt. Bale.

(4) Y.A.J., Vol.V, p.399, (West Riding), Sess. of 9 Oct. 1639.

(5) WILTS. CO. RECS., p.89, 1628, Gyles Williams.

(6) NORF. Q.S. ROLLS, 5 Jas.I, Hugh and Rebecca Jones; 11 Jas.I, Wm. Wiggin, Stephen Howett; 5 Chas.I, Jos. Elgood; 9 Chas.I, Wm. Smyth. NORF. Q.S. BOOK OF PROCEEDINGS, Norwich Castle Sess., 14 Jan. 1639/40, John Marton, Frances Godfrey.

of July.<sup>1</sup> Akin to theft with violence was burglary,<sup>2</sup> in that it also put those robbed in fear of their lives, and the burglar, like the footpad, could expect no mercy whatever. In 1607, a Norfolk labourer broke into a house and stole a petticoat, a handkerchief and a pair gloves, worth, altogether, 11d. He was hanged.<sup>3</sup> Even more shocking was the execution, by the same magistrates in the same year, of Thomas Clarke, convicted of entering a dwelling by night and stealing a piece of leather worth 8d.<sup>4</sup> Twenty years later, five people, three of them women, were hanged by the Wiltshire Bench for a similar crime.<sup>5</sup> And while breaking into a house in the daytime to steal was not technically burglary, it was also a capital offence - a fact which makes it a little difficult to understand the conduct of a Hertford man who went to the trouble of forcing his way into a building in order to make off with a "dogge chaine".<sup>6</sup>

The hanging of the thieves themselves did not account for all the executions ordered by the Quarter Sessions. Accessories to a felony, either before or after the fact, were held to be equally guilty with the principals, and so were liable to

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(1) NORF. Q.S. ROLLS, 11 Jas. I.

(2) Cowel in his Law Dictionary, (Ed. 1727), describes burglary as "a felonious entring into another Man's Dwelling, wherein some Person is, or into a Church, in the Night-Time, to the end to commit some Felony."

(3) NORF. Q.S. ROLLS, 5 Jas I, - Nicholas Cruces.

(4) IBID.

(5) WILTS. CO. RECS., p. 84, Sess. of 2 Oct. 1627.

(6) HERTS. CO. RECS., Vol. V, p.374, Sess. held 11-12 Jan. 1646/7.

the death-penalty.<sup>1</sup> A family of Wiggs - Johanna, Elizabeth and William - was hanged in Norfolk for sheltering a man whom they knew to be a thief,<sup>2</sup> and Jane Hunter in Middlesex was also executed for "helping and receiving" a fugitive robber.<sup>3</sup> The justices of Wiltshire were more merciful, for they contented themselves with ordering the branding and flogging of a woman who had hidden two sheep-stealers.<sup>4</sup>

Human life was not as highly valued in the 17th century as it is today, but at times the disproportion between the crime of theft and the penalty of death struck even the insensitive minds of the men of the Stuart period. To juries composed of reasonable and moderate people, the Law offered a power by which the unfortunate thief might be saved from the gallows. Every indictment had to state the value of the article or articles stolen, and the Grand Jury could therefore reduce the crime to mere petty larceny by placing the value at less than 12d. And if the Grand Jury did not take this course, the trial jury could, in its turn, find the man guilty of theft only to the sum of 9d. or 10d. or 11d.<sup>5</sup> - and this was actually done in a number of cases.<sup>6</sup>

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(1) DALTON, The Country Justice, (Ed. 1705), p. 533.

(2) NORF. Q.S. ROLLS, 21 Jas. I.

(3) MIDD. SESS. RECS., (New Series), Vol. I, p.160, 1613.

(4) WILTS. CO. RECS., p. 83, Sess. of 3 April, 1627.

(5) WINGATE, Justice Revived, (Ed. 1661), p. 229.

(6) CHESTER Q.S. RECS., 1625, File IV, fol. 34. W.R.Q.S. RECS., Vol. II, p.272, Sess. of 4 May, 1641. LINC.S. (LINDSEY) Q.S. ROLLS, 1629, Index A.2.- Isabell Lyntton. NORF. Q.S. ROLLS, 5 Chas. I.- Wm. Key. MIDD. SESS. RECS., (New Series), Vol. I. p. 36, 1613.

As a result of this practice, the values placed on various goods would drive a credulous student of 17th century economics mad. Two pairs of sheets were declared to be worth 10d.,<sup>1</sup> and three yards of "bayes" 11d.<sup>2</sup> A Durham jury had some difficulty in accomplishing the necessary reduction, since Ann Hall had stolen 10d. in money, as well as an assortment of clothing, but the twelve good and lawful men were equal to the occasion, and unblushingly valued three linen napkins, three "neck-clothes", four coifs, and four "Cros-cloathes" at a total of 2d.<sup>3</sup> Even more outstanding was the achievement of a jury in Middlesex in its verdict upon Austa [Eustacia] Grobham, indicted for stealing 12s. in money; she was found guilty to the value of 10½d.<sup>4</sup>

It was in the indictments of sheep-stealers that some of the most blatant undervaluations occurred. A good wether sheep was ordinarily priced at about 16s.,<sup>5</sup> but in accusations in Lincoln, Norfolk, Worcester, and Huntingdon, a single sheep unaccountably became worth 10d.;<sup>6</sup> in Durham, the same sum repre-

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(1) DUR. SESS. PLEA ROLLS, 7 Chas. I. Membrane 18 - Wm. Wilson.

(2) LANCS. Q.S. RECS., p. 84, Sess. of 21 Jan. 1600/1.

(3) DUR. SESS. PLEA ROLLS, 1 Chas. I, Membrane 15, Sess. of 11 Jan. 1625/6.

(4) MIDD. SESS. RECS., (New Series), Vol. I. p. 159, 1613.

(5) NOTTS. CO. RECS., p. 37.

(6) LINCS. (LINDSEY) Q.S. ROLLS, 1630, Index A.3, No. 153, NORF. Q.S. ROLLS, 5 Jas. I.- Robt. ffunnell. WORCS. Q.S. ROLLS, Part I, p. 193, No. 25, 1614. ADD. MSS., 34,400, No. 134, Huntingdon Sess., 1630.

sented the value of two wethers,<sup>1</sup> and in the North Riding, of four.<sup>2</sup> The most barefaced undervaluation of sheep occurred in the West Riding, however, where Richard Watson, indicted for the theft of six wethers, was found guilty to the value of 10d.<sup>3</sup>

One group of magistrates in the North Riding objected to this allowing of thieves to escape their just deserts. They considered it a flouting of justice, and ordered that "all such presentmentes as come under the handes of the High Constables shall henceforth be delivered in Court to the handes of the Clerke of the Peace, and not to be put to the discretion of the Jury to alter or diminishe at their pleasures, as they have often done to the hinderance of his Ma<sup>ties</sup> service."<sup>4</sup> Nevertheless, some three years later this same hard-hearted Bench meekly sentenced to flogging William Whitehare of UGGLEBARBY, who had stolen five yards of cloth, two and a half yards of "hemp lyn", stockings, shoes, a flannel blanket, and six yards of "roopes"- all valued at a total of 10d.<sup>5</sup>

The punishment of larceny as a crime was carried out under Common Law, but Statute Law also did its part in the protection of men's possessions. Since the Members of Parliament

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(1) DUR. SESS. ORDER BOOK, No. I. (1616-1629), p. 181, Sess. of 23 April, 1623. DUR. SESS. PLEA ROLLS, 10-11 Chas. I, Membrane 17, Sess. of 13 Jan. 1635/6.

(2) N.R.Q.S. RECS., Vol. I. p.242, Sess. of 8 Jan. 1611/2.

(3) W.R.Q.S. RECS., Vol. II, p. 38, Sess. of 11 Oct. 1637.

(4) N.R.Q.S. RECS., Vol. I p. 139, Sess. of 11-12 Oct. 1608.

(5) IBID, p. 221, Sess. of 12 April, 1611.

were drawn from the gentry, they very naturally felt a keen interest in the safeguarding of all property, but particularly dear to their hearts was the preservation of the birds and beasts that were reared for hunting. As a result, law after law was passed to put an end to the unauthorized killing of partridges, pheasants, rabbits and deer. An early statute declared that anyone who tried to conceal his poaching operations at night was a felon, and thus was liable to the death penalty.<sup>1</sup> This harsh law was followed by other enactments less merciless, it is true, but still quite sufficiently uncompromising. Stealers of pheasants and partridges were to forfeit 20s. and 10s. respectively, or spend a month in gaol.<sup>2</sup> Those who used snares or harepipes could be fined 10s. for every hare so caught, or be imprisoned three months without bail,<sup>3</sup> while the pursuit of deer or conies in a park would earn the poacher a similar term in gaol, together with either a £10 fine, or the payment of treble the value of the stolen animals, at the election of the injured owner.<sup>4</sup>

This kind of crime naturally seemed to the justices of the peace to be very heinous indeed, and every right-minded magistrate regarded the infringement of class privilege, represented by game preservation, as a matter of personal concern.

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(1) 1 Henry VII, c. 7.

(2) 23 Eliz. c. 10.

(3) 1 James I, c. 27.

(4) 7 James I, c. 13.



Consequently the justices displayed a gratifying zeal in the enforcement of the laws against poaching, and Peter Matterson of Dunsforth could feel that he had escaped lightly when he was fined by the Bench 6s. 8d. for killing a "haire with a nett".<sup>1</sup> Frequent presentments were made at the Quarter Sessions for hunting rabbits with greyhounds,<sup>2</sup> and for "keeping an unlawfull dogg";<sup>3</sup> in Durham the possessor of such a prohibited hound was fined 40s.<sup>4</sup> At the Sessions, too, charges were laid against people who, contrary to the statute, tracked hares in the snow.<sup>5</sup> The severity with which such cases were punished varied a good deal. Two men in the North Riding were fined a mere 18d. for a "coney", but were charged 20s. costs as well.<sup>6</sup> In Huntingdonshire, Robert Musterd was caught "Coursinge a hare" and had to pay 6s. 8d., while Edward Sibley, tried at the same time for the same offence, escaped with only 5s.<sup>7</sup> Two West Riding men in 1598 forfeited a mere 2s. 6d. each for tracing rabbits in the snow;<sup>8</sup> yet later in that year the same Bench

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- (1) W.R.Q.S. RECS., Vol. II, p.12, Sess. of 11 Jan. 1613/4.
  - (2) LANCS. Q.S. RECS., p.85, Sess. of 21 Jan. 1600/1 - two cases; p. 199, Sess. of 11 Jan. 1603/4; p.284, Sess. of 7 Oct. 1605.
  - (3) NOTTS. CO. RECS., p. 89.
  - (4) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.49, Sess. of 5 Oct. 1631.
  - (5) LANCS. Q.S. RECS., p.204, Sess. of 18 Jan. 1603/4. WORCS.Q.S. ROLLS, Part II, p. 658, No. 21, 9 Jan. 1637/8.
  - (6) N.R.Q.S. RECS., Vol. II, p.54, Sess. of 4-5 Oct. 1614.
  - (7) ADD. MSS., 34,399, fol. 130, Huntingdon Sess. 24 May, 1608.
  - (8) W.R.Q.S. RECS., Vol. I, p. 51, Sess. of 14 Jan. 1597/8.

fined William Brotherton 6s. 8d.<sup>1</sup> After that the value of hares seems to have remained static, since poachers paid, as the statutory "treble damages", 20s. per animal.<sup>2</sup>

Game birds as well as rabbits were from time to time illegally removed from gentlemen's parks, and poachers of swans, partridges, wild geese, ducks,<sup>3</sup> and "fesants"<sup>4</sup> were presented at the Quarter Sessions. In Norfolk and in Devon, stealers of partridges were given gaol sentences;<sup>5</sup> Edward Goodyere, convicted in the North Riding of shooting a pigeon, had to pay a penalty of 20s.<sup>6</sup> Less severe was the punishment of two other North Riding men, who were fined 5s. each "for keping settinge dogges and using nettes and ingynges wherewith they have often used to take partridges and other fowle".<sup>7</sup>

Deer poaching, too, was not unknown. We can imagine the feelings of Ralph Beiston, J.P., when there were brought before the Quarter Sessions at which he was sitting as judge five men who had entered his park with a pair of greyhounds, and "chasaverunt et fugaverunt" his deer.<sup>8</sup> There is, unfortun-

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- (1) W.R.Q.S. RECS., Vol. I, p.87, Sess. of 9 June, 1598.
  - (2) IBID, Vol. II, pp.187-188, Sess. of 14 April, 1640. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.193, Sess. of 7 Jan. 1623/4.
  - (3) NOTTS. CO. RECS., pp. 90-91.
  - (4) SOMER. Q.S. RECS., Vol. II, p.177, No. 12, Sess. of 11-12 April, 1632.
  - (5) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. at Norwich Castle, 19 April, 1642. HAMILTON, Devon Quarter Sessions, p.111.
  - (6) N.R.Q.S. RECS., Vol. I, p.262, Sess. of 8 July, 1612.
  - (7) IBID, p. 216, Sess. of 3-5 April, 1611.
  - (8) W.R.Q.S. RECS., Vol. I, p.30, 12 Jan. 1597/8.

ately, no evidence as to whether his natural indignation was permitted to affect the fate of the prisoners, but in a similar case in the same Riding - albeit forty years after - the culprits received the full penalty, although they had not succeeded<sup>1</sup> in killing the stag they were hunting. In 1638, however, two poachers who slew a deer in the park of another justice of the peace were sentenced to the statutory three months in gaol, but were let off with a fine of £3. 6s. 8d. (instead of £10.) "if he [the owner] please to accept thereof".<sup>2</sup> In Hertfordshire, Thomas Bareleggs and Thomas Kirby, convicted of poaching in the park of the Earl of Salisbury, merely suffered imprisonment,<sup>3</sup> but three Durham men were fined £10, sent to gaol for three months, and forced to find security for their good behaviour for the next seven years.<sup>4</sup> It was in the West Riding, however, that the poaching fraternity struck a note of real originality. There seven bold hunters set out one night, armed with a startling arsenal which included "stakes, swords, daggers, bucklers, bows and arrows". The precise value of a buckler in hunting deer is a little obscure, but the weapons were evidently effective, for with the aid of several greyhounds the valiant seven slew "two doe fawns".<sup>5</sup>

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(1) W.R.Q.S. RECS., Vol. II, p. 33, Sess. of 5 Oct. 1637.

(2) Y.A.J., Vol. V, (West Riding Sess.) p. 381, Sess. of 10 Oct. 1638.

(3) HERTS. CO. RECS., Vol. V, p.150, Sess. of 3 Oct. 1631.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 163, Sess. of 10 July, 1622; p.348, Sess. of 14 Jan. 1628/9.

(5) W.R.Q.S. RECS., Vol. I, pp.214-215, Sess. of 12 Jan. 1601/2.

When the magistrates had so much difficulty in protecting their own parks, it is easy to understand how the Royal stock of deer suffered a good deal at the hands of poachers. King James had not been long on the throne before he issued a proclamation against unlawful hunting,<sup>1</sup> and he followed this up in 1609 with another one, complaining that his sport was being interfered with, and threatening dire penalties.<sup>2</sup> These fulminations can have had little effect, for we find letters written by the Privy Council at frequent intervals to the justices of the peace of different counties, commanding in varying tones of urgency that the destruction of the King's deer be stopped.<sup>3</sup> In fairness to the justices, however, it must be admitted that there are signs of a few stirrings of activity. A poacher was sent to prison for entering the King's park at Brancepeth and stealing deer,<sup>4</sup> while the Middlesex magistrates gave several illegal hunters the full punishment of a £10. fine each, three months in gaol, and security for good behaviour during the ensuing seven years.<sup>5</sup> One of these offences was committed in the wilderness of Hyde Park.

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(1) STEELE, Proclamations, No. 946, 16 May, 1603.

(2) IBID, No. 1084, 9 Sept. 1609.

(3) CAL. S.P. DOM., Jac.I, XLVIII, 23, [P.C.] to [J.P.'s] of Essex and Herts, Sept.? 1609. ACTS OF P.C., 1619-1621, p.263, P.C. to 3 J.P.'s of Norf., 23 July, 1620; 1621-1623, p.95, P.C. to sheriff and J.P.'s of Sussex, 29 Nov. 1621. CAL. S.P. DOM., Car.I, LXXI, 47, P.C. to J.P.'s of Leics., 20 July, 1627, Whitehall.

(4) DUR. SESS. ORDER BOOK, No.I, (1616-1629), p.230, Sess. of 13 July, 1625.

(5) MIDD. CO. RECS., Vol.II, p.89, Sess. held 24 June, 1613; p.236, Sess. held 27 April, 1620.

It was largely to help in the preservation of game that laws were made against the carrying of guns. Only the more substantial members of the community were permitted to use guns at all,<sup>1</sup> and no one whatever might hunt with hail-shot - the ancestor of our modern duck-shot - on pain of a £10. fine and imprisonment for three months.<sup>2</sup> Presentments were made at the Quarter Sessions of unauthorized people who carried guns,<sup>3</sup> and other persons were indicted for hunting with "hand-gunes"<sup>4</sup> or shot-guns.<sup>5</sup> The magistrates seem to have been reluctant to inflict the full legal penalty - which was, indeed, ridiculously severe - upon those who used the prohibited hail-shot. A Nottinghamshire labourer who had committed this offence was merely fined 20s. and bound over not to shoot again for seven years,<sup>6</sup> and Thomas Yates in the North Riding escaped even more lightly, being let off with a penalty of 10s., "because a poor man".<sup>7</sup> At the Durham Quarter Sessions, an informer gave evidence that Christopher Staward had loaded a "fewling peece" with shot and "exonerabat

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(1) 33 Henry VIII, c. 6.

(2) 2 and 3 Edw. VI, c. 14.

(3) NOTTS. CO. RECS., p. 92. WORCS. Q.S. ROLLS, Vol. I, p.221, No. 64, 1616.

(4) W.R.Q.S. RECS., Vol. I, p.168, 8 Oct. 1599. LANCS. Q.S. RECS. p. 194, Sess. of 12 Oct. 1603; p.198, Sess. of 11 Jan, 1603/4. SOMER. Q.S. RECS Vol. II, p.91, No. 28, Sess. of 13-16 Jan. 1628/9. NOTTS. CO. RECS., p. 92.

(5) W.R.Q.S. RECS., Vol. I, p.155, Sess. of 10 July, 1599. LANCS. Q.S. RECS., p.79, Sess. of 19 Jan. 1600/1. WORCS. Q.S. ROLLS, Part II, p.696, No. 32, 1642.

(6) NOTTS. CO. RECS., p. 92, 1621.

(7) N.R.Q.S. RECS., Vol. I, p.214, Sess. of 3-5 April, 1611.

anglice did discharge" it at certain rabbits. Staward put himself on the mercy of the court and was fined 13s. 4d.<sup>1</sup> Sometimes, however, the Bench was adamant, for a Yorkshire poacher who shot a hare was fined the whole £10. and given the three months' imprisonment as well.<sup>2</sup> After this severity it seems odd to find that in the same North Riding a violent-tempered farmer who flourished a loaded pistol in a neighbour's face, threatening to kill him, was let off with the rather inadequate fine of 6d.<sup>3</sup>

One exception was made to the general ban on the use of shot-guns. Owners of falcons might legally obtain licences from the Quarter Sessions to shoot small birds for "hawks meat",<sup>4</sup> and in 1631 the Warwickshire Quarter Sessions gave permission to Goodere Oneale, gentleman, "to shoot hail shot in any hand gun or birding piece at crow, chough, pie, rook, ringdove, jay, or any other small birds for hawks' meat only, so as he the said Goodyer do not shoot at any beasts or fowls of warren or at any other thing prohibited by the law".<sup>5</sup>

Quarrels over all sorts of property made a great deal of work for the keepers of the peace. The average man of the 17th century was much more self-reliant than his modern brother,

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(1) DUR. SESS. PLEA ROLLS, 12 Jas. I, No. 5, Membrane 14. Information laid at Sess. of 12 April, 1614, judgment given at Sess. 11 Jan. 1614/5.

(2) N.R.Q.S. RECS., Vol. II, pp.239 and 241, Sess. of 11 July, 1620.

(3) IBID, Vol. III, p.316, Sess. of 12 July, 1631.

(4) 1 James I, c. 27.

(5) WARWICK Q.S. RECS., Vol. I, p.112, Epiphany Sess., 1631.

and if he believed, or pretended to believe, that his neighbour's farm ought to be his, he often evicted the neighbour by force, and installed himself on the disputed land. The natural retort of the dispossessed man was to gather his friends together and make a vigorous effort to dislodge the invader. This kind of strife was not, of course, countenanced by the authorities. In the event of such a "forcible entry", any justice of the peace was empowered to make enquiries in the district as to the facts of the case, and if violence had actually been used, he might arrest the attacker and restore the original owner, pending a settlement at law.<sup>1</sup>

The Quarter Sessions had many complaints of violent dispossession brought before them. Three presentments for this were made at a single meeting of the Lancashire Bench,<sup>2</sup> and three more at another Sessions shortly after.<sup>3</sup> Similar indictments appear in the records of, for example, the West Riding, Nottinghamshire, and Norfolk,<sup>4</sup> At the bottom of some of the presentments there is written the note "fiat restitutio",<sup>5</sup> or "restitutio conced'".<sup>6</sup>

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(1) 15 Richard II, c.2. 8 Henry VI, c. 9.

(2) LANCS. Q.S. RECS., p.79, Sess. of 19 Jan. 1600/1 - Greene, Leigh, and Goolden.

(3) IBID, p.101, Sess. of 29 April, 1601 - Pilkington, R. and E. Beyly.

(4) W.R.Q.S. RECS., Vol. I, p.211, Sess. of 12 Jan. 1601/2. NOTTS. CO. RECS., p.55. NORF. Q.S. ROLLS, 5 Chas. I, 12 Nov. 1629.

(5) NORF. Q.S. ROLLS, 5 Jas. I, - Wm. Yongman; 7 Chas. I, - Robt. Younge; 9 Chas. I, - Francis Asteley. WORCS. Q.S. RECS., Part I, p.102, No. 164, 1607.

(6) CHESTER Q.S. RECS., 1630, File IV, fol. 22; 1631, File I, fol. 16.

The punishment for forcible entry was a fine which the justices could set at any figure they pleased. Consequently the penalties imposed varied enormously with the disposition of the magistrates and the culpability of the offender. Some were as low as 1s.<sup>1</sup> and others as high as £10.,<sup>2</sup> but in most cases the amounts were set at a reasonable level.<sup>3</sup>

Less violent and more subtle in their methods than those who resorted to forcible entry were the ingenious brotherhood who endeavoured to acquire the possessions of the simple-minded by fraud and forgery - the cozeners and conny-catchers of the Elizabethan writers. Parliament tried to discourage these confidence men by enacting that any who by counterfeit letters or false tokens should fool the gullible into parting with money or valuables would be liable to any sort of corporal punishment, short of death, which the justices of the peace might see fit to inflict;<sup>4</sup> and on several occasions the magistrates were called upon to deal with such gentry. Roger Akerman was sentenced by the Durham Sessions "to be sett vpon the pillory, and a paper vpon his head in capitall lettres for Cosening the kinges people by false tokens, and is to be whipped, and after sent back

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(1) N.R.Q.S. RECS., Vol. III, p.322, Sess. of 4 Oct. 1631. NOTTS. CO. RECS., p. 56, 1612.

(2) N.R.Q.S. RECS., Vol. I, p.96, Sess. of 8 Oct. 1607 - Christopher Danby.

(3) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.303, 11 July, 1627 - 3s. 4d.; p.370, 7 Oct. 1629 - 10s. W.R.Q.S. RECS., Vol. II, p.120, 23 April, 1639 - 20s.; p.219, 14 July, 1640, £5. N.R.Q.S. RECS., Vol. I, p.96, 8 Oct. 1607 - £3 and £5. CHESTER Q.S. RECS., 1633, File I, fol. 3, 9 May, 1633 - 30s. Etc..

(4) 33 Henry VIII, c. 1.



to the house of Correction." <sup>1</sup> Another swindler in the same county, "Indicted for Cosenage by a Counterfett letter," was committed to the gaol "vntill Satterday sennight and to be sett vpon the pillory w<sup>th</sup> a paper vpon his head w<sup>th</sup> this inscription for cosonage by a Counterfet letter"- but was spared the whipping. <sup>2</sup> In Middlesex a man and his wife, found guilty of fraud, were ordered to be carted to Cheapside, pilloried there, then carted to Fulham and put in the stocks with the usual descriptions of their crime affixed to them. <sup>3</sup> A year later a servant who had defrauded his master was fined £5 by the same Bench, and was imprisoned at the will of the court as well. <sup>4</sup>

Yet though these sharpers were dealt with so firmly, there were times when the magistrates displayed a surprising leniency. A Middlesex woman convicted of cozenage was punished no more than by committal to the gaol until she should return the £5 she had extracted from her victim. <sup>5</sup> In the West Riding, two plausible rascals tricked a young girl into giving them £17, but when they were brought before the justices, they also were merely forced to make restitution. <sup>6</sup> More remarkable still

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(1) DUR. SESS. ORDER BOOK, No. I. (1616-1629), p.221, Sess. of 12 Jan. 1624/5.

(2) IBID, p.256, Sess. of 9 April, 1626.

(3) MIDD. SESS. RECS., (New Series), Vol. I, p.14, Sess. of 13-14 Jan. 1612/3.

(4) IBID, p. 41, 19 July, 1614.

(5) IBID, p. 2, Sess. of 1-2 Dec., 1612.

(6) W.R.Q.S. RECS., Vol. II, p. 195, Sess. of 14 April, 1640.

is the calmness with which the activities of a Warwickshire forger were regarded. This enterprising fellow was accused of holding pensions in several counties, "gotten by undue practices and by several feigned names." Wishing to add Warwick to his list of benefactors, the said Farr, the charge continues, "did ... draw a petition to the King's Majesty and subscribe and answer to the same petition and did subscribe the name of Sir Ralph Freeman (one of the Masters of Request) thereto." One would expect the Sessions at this point to have issued a warrant of arrest, but the justices merely commanded Farr to come and answer - a command which he very naturally disregarded. Thereafter the magistrates apparently took no further action in the case than to order the Treasurers not to pay the pension until the accused should come into Court and clear himself.<sup>1</sup>

Extortion by threats was also punished in the Quarter Sessions. Men who made a profession of informing were in an especially favourable position for levying blackmail, since most countrymen would rather pay a bribe than be dragged into court. By statute, an informer taking any money in connection with an offence without permission of the court was liable to a £10 fine, two hours in the pillory, and permanent disablement from informing,<sup>2</sup> but some magistrates were willing to mitigate the punishment. An extortionate informer in Norfolk, who, had squeezed 4d.

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(1) WARWICK Q.S.RECS., Vol.I, pp.182-183, Michaelmas Sess., 1633.

(2) 18 Eliz., c. 5. DALTON, The Country Justice, (Ed.1705),p.665.

out of his victim, was fined the round sum of 10s.,<sup>1</sup> and Christopher Rockley was put in the stocks for an hour by the North Riding magistrates because he had taken 12d. from Richard Bagley for not informing against him.<sup>2</sup> In Middlesex, the justices had to deal with a seasoned blackmailer. Jane Somersall privately accused one Francis Greene, gentleman, of having gotten her with child, and forced him to pay heavily to avoid her "unjust clamours" against him. Finally Greene took her to court on a charge of theft, and it was found that the child was entirely imaginary. Moreover, "it was also proved in Court that it was a common practice of the said Jane to accuse persons of ability in such sort to the end to draw money from them." She was ordered by the justices to be thoroughly flogged, and imprisoned in Newgate until her husband should find security for her future good behaviour.<sup>3</sup>

Obtaining money by "usury" was regarded as another form of social parasitism, for the Medieval disapproval of lending money at exorbitant interest persisted through the 16th and early part of the 17th centuries. In Elizabethan times, the charging of interest higher than 10% could be punished by forfeiture of treble the value of the loan, fine, and imprisonment,<sup>4</sup> while in the reign of James I. the maximum rate was lowered to 8%.<sup>5</sup>

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(1) NORF. Q.S. ROLLS, 5 Jas. I.,- John Leamay.

(2) N.R.Q.S. RECS., Vol. II, p.56, Sess. of 7-8 Oct. 1614.

(3) MIDD. SESS. RECS., (New Series), Vol. II, p.164, 1615.

(4) LAMBARD, Eirenarcha, (Ed. 1619), p. 449.

(5) 21 James I. c. 17.

There were a few presentments at the Somerset Quarter Sessions on the charge of exacting excessive interest,<sup>1</sup> and in the North Riding we have further information as to what actually happened to the offender. Christopher Peycock, who charged 13s. 4d. a year on £4. (or about 16.5%) was quite appropriately fined 13s. 4d., although no mention is made either of the treble value or of the imprisonment.<sup>2</sup>

Examples of the protection of private property against wilful damage also appear among the Quarter Sessions records. In Durham, a man was fined 2s. 6d. for breaking into a close and deliberately destroying the crops growing there.<sup>3</sup> Another destructive fellow in the same county was forced to pay 10s. for throwing down a stone wall,<sup>4</sup> and a third was fined £5. for breaking windows.<sup>5</sup> Horses seem to have been particularly subject to vengeful or mischievous attacks, as we find several indictments for unlawfully cutting their tails. One man convicted of this offence was fined only 12d.,<sup>6</sup> while another had to pay 20s.<sup>7</sup> Edward Cocke in Norfolk "fugauit et chasiauit" two

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(1) SOMER. Q.S. RECS., Vol. II, p.117, No. 41, Sess. of 12-15 Jan. 1629/30; p.172, No. 24, Sess. of 10-13 Jan. 1631/2.

(2) N.R.Q.S. RECS., Vol. I, p. 97, Sess. of 8 Oct. 1607.

(3) DUR. SESS. PLEA ROLLS, 10-11 Chas. I, Membrane 7, Sess. held 8 April, 1635 .

(4) IBID, 1 Chas. I, Membrane 1, Sess. of 27 April, 1625.

(5) DUR. SESS. ORDER BOOKS, No. II, (1629-1639), p.162, Sess. of 14 Jan. 1634/5.

(6) W.R.Q.S. RECS., Vol. II, pp.92-93 , Sess. of 3 Oct. 1638.

(7) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.175, Sess. of 8 April, 1635.

colts on the common, and was charged 12d. by an unsympathetic Bench for his sportiveness.<sup>1</sup> Peter Hodshon was fined £6. 6s. for killing a neighbour's horse, and was committed to gaol until he should produce the money.<sup>2</sup> Two Yorkshiremen introduced a slight variation when they chased sheep instead of horses - an amusement which cost them 5s. apiece.<sup>3</sup> In the same West Riding, one George Clifton wished to have the use of a cow without paying for it, and so he unobtrusively entered the close of a neighbour and milked the cattle there, "consuming and disposing of the milk then obtained". Had he taken the animals away, he might have been hanged; as it was, he escaped with a fine of 5s.<sup>4</sup>

Thus dishonest people found the laws against thieving vigorously enforced by the justices of the peace. The latter, indeed, being themselves property owners, had every reason to take a keen personal interest in the prosecution and punishment of cheats, poachers, and pilferers of all kinds. No class bias would here interfere with their efficiency, for gentlemen would be unlikely to err in this particular way, and the magistrates' zeal is indicated by the fact that the Privy Council, whose watchful eye observed most of the local justices' failings, rarely charged them with negligence in the suppression of petty

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(1) NORF. Q.S. ROLLS, 21 James I.

(2) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 224, Sess. of 12 Jan. 1636/7.

(3) W.R.Q.S. RECS., Vol. II, p. 120, Sess. of 23 April, 1639.

(4) IBID, p. 76, Sess. of 9 July, 1638.

theft. On the other hand, they do not seem to have allowed themselves to be unduly carried away by the righteous wrath of the property owner against the thief. Some of them, it is true, were perfectly willing to hang offenders, but such severity was an accepted commonplace in the judicial procedure of the time. The justices' frequent acceptance of the most barefaced undervaluation of stolen articles, together with their occasional mitigation of the official punishments, show that they were, in many cases, commendably prepared to lubricate the wheels of the Law with the oil of common-sense.

On the whole, then, their activities in the protection of private possessions were reasonably successful. Sir Edward Coke was undoubtedly biassed, but he had some basis for his claim when he said of the work of the local magistrates, "It is such a forme of subordinate government for the tranquillity and quiet of the realm as no part of the Christian world hath the like, if the same be duly executed." <sup>1</sup>

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(1) COKE, Institutes, Part IV, (Ed. 1797), p. 169.

## CHAPTER IX.

### THE JUSTICES AT WORK — METHODS OF PUNISHING CRIMINALS.

In order to carry out efficiently their duties as Conservators of the Peace, the justices needed to have at their disposal the means of punishing offenders in exemplary manner. This chastisement had to be done in such a way that convicted malefactors would be unlikely to err again, while at the same time potential criminals would be dissuaded from embarking upon like enterprises. The prevention of second offences in a large number of crimes was achieved by an unstinting use of the gallows, but less drastic deterrents for minor offenders were needed as well. Consequently the magistrates were given power to direct the establishment of places of detention, such as the gaol and the house of correction, as well as of actual instruments of punishment, like the stocks and the whipping-post.

In 1532 a statute authorized the local justices to arrange for the erection of prisons in twenty-five counties.<sup>1</sup> Warwick was included in the list, but either the magistrates there

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(1) 23 Henry VIII. c. 2.

found some way to evade putting up their building, or else the new gaol fell down, for by 1625 the gaoler was reported to be confining his prisoners in his own home. This practice was thoroughly unsatisfactory, since the house was "far too weak and slender for the safe and secure keeping of such notorious and dangerous felons and malefactors as are oftentimes thereunto committed," and as a very natural consequence "divers prisoners perceiving the weakness of the said house did all generally break away".<sup>1</sup> The gaol in St. Albans was also in a ruinous state - so much so that the Privy Council had to order the justices to take action before the winter should complete its destruction.<sup>2</sup>

The condition of the prisoners in such unwholesome places of confinement was pitiable indeed. A Somerset man awaiting trial for homicide in self-defence petitioned the justices for release on bail from the prison, "in which woeful place he is like to come to untimely death by means of contagious and loathsome airs and discontent of mind".<sup>3</sup> Even worse was the Derbyshire gaol, which was a most revolting hovel, damp and filthy, built over the open town sewer. Here, in 1610, the brook rose in the night and drowned three of the wretched prisoners locked helpless inside.<sup>4</sup>

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(1) WAR. Q.S. RECS., Vol. I, pp. 2-3, 1625.

(2) ACTS OF P.C., 1619-1621, p.235, P.C. to J.P.'s of Herts, 1620.

(3) SOMER. Q.S. RECS., Vol. II, p.33, No. 94, Sess. of 3-5 April, 1637.

(4) COX, Three Centuries of Derbyshire Annals, Vol. II, p.4, 1610.



Among the Quarter Sessions records there are references to occasional attempts on the part of the magistrates to build new prisons<sup>1</sup> or to repair the old ones. The Nottinghamshire Bench spent £4. 3s. 4d. in 1613 upon improvements for the gaol,<sup>2</sup> and some twenty years later the justices of Hertfordshire commanded that "£40 shall be levied towards repairing the gaol at Hertford, which is very ruinous".<sup>3</sup> In Durham, the magistrates seem to have kept up a fund for this purpose, as at the Easter Sessions in successive years orders were made that "the Sessment for the Marshalsey Gaole and house of Correcon is to remayne as formerly itt hath bene".<sup>4</sup>

On the whole, however, the justices were anxious to waste as little money as possible on gaols and gaol-birds, and one of their official powers enabled them to reduce the number of inmates in the prisons very materially. By statute, two justices of the peace could let out on bail all offenders whose crimes were not very grave ones,<sup>5</sup> and the magistrates at times exercised their authority with more enthusiasm than discretion. The justices of Derby actually bailed a known murderer,<sup>6</sup> and

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(1) CAL.S.P.DOM., Car. I, CCCCXLI, 42, P.C. to Lord Lieut. of Cumberland, 5 Jan. 1639/40. WAR. Q.S. RECS., Vol. I, pp. 2-3, Easter Sess., 1625.

(2) NOTTS. CO. RECS., p. 28.

(3) HERTS. CO. RECS., Vol. V, p.48, Sess. of Jan. 1624/5.

(4) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.12 - 1630; p.44 - 1631; p.68 - 1632, etc..

(5) 3 Henry VII. c. 3.

(6) ACTS OF P.C., 1619-1621, p.34, P.C. to J.P.'s of Derby, Sept. 1619.

a magistrate in Middlesex took a recognizance for the appearance at the next Gaol Delivery of a lady who was very strongly suspected of having disposed of her husband.<sup>1</sup> The situation became really serious in the Middle Shires, however, where "the baylinge of theeves, whoe once bayled never or seldome retourne to make their appearance before Justice, is too ordinarylie practized".<sup>2</sup> The Star Chamber, indeed, had to make for that district a special order that "noe notorious offendor be bayled, or any offendors for stealths of cattell, or other thinges be bayled but in open courte or sessions".<sup>3</sup> This injunction suggests an unpleasantly furtive connivance on the part of the magistrates at the escape of the "notorious offendors". On the other side of the picture there is the conscientiousness of the Durham Quarter Sessions, which voluntarily tightened up the restrictions on bail,<sup>4</sup> while one tyrannical justice in Northampton went so far as to refuse to accept security from a prisoner whom he did not like personally<sup>5</sup> - an act of high-handedness which nearly cost him his place on the Commission.<sup>6</sup> Truly it

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(1) MIDD. CO. RECS., Vol. II, p. 48, 26 Jan. 1608/9.

(2) ACTS OF P.C., 1615-1616, p.405, P.C. to Lords Lieutenants of the Middle Shires, 19 Feb. 1615/6.

(3) IBID, 1616-1617, p.380, Resolutions ... touching the Government of the Middle Shires, 21 Nov. 1617.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.124, Sess. of 10 Jan. 1620/1.

(5) CAL. S.P. DOM., Car. I. CCCLXXIX, 110, Robert Weldon to Sir John Lambe, 26 Jan. 1637/8, Northampton.

(6) IBID, CCCXCIII, 75, Dr. Robt. Sibthorpe to Sir John Lambe, 29 June, 1638.

behooved the justices to steer a careful course between laxity and over-officiousness, for a refusal of lawful bail was a fine-able offence in a magistrate, while the improper granting of it was counted as aiding an escape.<sup>1</sup>

Closely related to the prison, and sometimes thriftily combined with it,<sup>2</sup> was the house of correction. As its name indicates, it was primarily intended to be a place of punishment, where rogues, idlers, and petty offenders of all sorts would receive due chastisement. Some economical magistrates found it useful, however, as a poor-house also; the Quarter Sessions of Warwick in 1625 ordered that Stratford-on-Avon should "erect and build a house of correction or workhouse wherein to set the ... poor on work and for the punishing of those idle and lewd people that will not work".<sup>3</sup> Indeed, so useful were the houses of correction that a statute in the reign of James I. commanded that at least one should be built in each county, and furthermore laid a fine of £5. upon every justice of the peace in any shire in which there should be no such house erected by Michaelmas of the next year.<sup>4</sup> As a result of this threat, a good deal of activity ensued. Nottinghamshire immediately erected its house,<sup>5</sup> and the North Riding outdid this zeal by arrang-

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(1) WINGATE, Justice Revived, (Ed. 1661), p. 23.

(2) SOMER. Q.S. RECS., Vol. I. pp. 128-129, No. 34, Sess. of 10-13 Jan. 1614/5.

(3) WAR. Q.S. RECS., Vol. I, p. 11, Trinity Sess., 1625.

(4) 7 James I. c. 4.

(5) NOTTS. CO. RECS., p. 28, Sept. 1611.

ing for two.<sup>1</sup> The Hampshire justices, however, were much more frugal, and merely rented premises from a Winchester citizen.<sup>2</sup> Orders for building appear in more leisurely fashion in other counties, where, possibly, there were houses of some<sup>sort</sup> already in operation at the time of the passing of the statute. In 1618 the Lancashire justices authorized the collection of £700. for a house at Preston,<sup>3</sup> and the Chester Sessions ordered the building of one in 1631.<sup>4</sup> In Somerset, the justices directed the erection of no less than three houses all at once,<sup>5</sup> and some years later the magistrates of Wiltshire followed suit by raising £1200. for a similar project.<sup>6</sup> Hertfordshire also had more than one - a Sessions order mentions "the several Houses of Correction in the county".<sup>7</sup>

Once built, the houses of correction had to be maintained at the expense of the county. Orders for the collecting of money for necessary repairs are dotted through the Quar-

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(1) N.R.Q.S. RECS., Vol. I. p. 203, Sess. of 2-3 Oct. 1610.

(2) FURLEY, Quarter Sessions Government in Hants. in the 17th Century, p. 41

(3) MANCH. Q. SESS., p. 46.

(4) CHESTER Q.S. RECS., 1631, File III, fol. 23, Sess. of 20 Oct. 1631.

(5) SOMER. Q.S. RECS., Vol. I. p. 351, No. 8, Sess. of 5-7 Oct. 1624.

(6) H. MSS. COMM., Various Collections. Vol. I. p. 98, Wilts. Sess. Recs., 1631.

(7) HERTS. CO. RECS., Vol. V. p. 142, Sess. of 18-19 April, 1631.

ter Sessions records,<sup>1</sup> and additional funds had to be raised by the justices for the payment of the masters.<sup>2</sup> The governor of the Norfolk house received only £10. per annum,<sup>3</sup> but the Durham Sessions allotted a yearly salary of twice that sum;<sup>4</sup> in Chester, the master was paid £25,<sup>5</sup> and in Warwickshire, £26. 13s. 4d.<sup>6</sup>

Not only did the justices regulate the salaries of these officials - they also controlled their appointments.<sup>7</sup> The position cannot have required very high qualifications, for the Hertfordshire Sessions gave the post to a labourer.<sup>8</sup> In Durham, the magistrates appointed William Atkinson to be "M<sup>r</sup> during his good behaviour".<sup>9</sup> Eight years later the position was given to Thomas Sutton,<sup>10</sup> but it is not stated whether the change was caused by Atkinson's death or by the deterioration of his conduct.

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- (1) SOMER. Q.S. RECS., Vol. I. p.20, No. 13, Sess. of 28 June, 1608; pp.95-96, No. 57, 1613; p.101, No. 13 (7), 1613. DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.97, Sess. of 9 Jan. 1632/3; p.149, 9 July 1634. NOTTS. CO. RECS., p.30, 29 April, 1633. Y.A.J., Vol. V. pp.373-374 (W.Riding) Sess. of 3 April, 1638.
  - (2) DALTON, The Country Justice, (Ed. 1705), p.113. SHEPHARD, Guide to J.P.'s, (Ed. 1663), p. 287.
  - (3) NORF.Q.S.ROLLS, 9 Jas.I, Order of Walsingham Sess.,22 Mar.1610.
  - (4) DUR.SESS.ORDER BOOK, No.I, (1616-1629),p.80,Sess. of 7 Apr.1619.
  - (5) CHESTER Q.S. RECS., 1631,File III,fol.23, Sess. of 20 Oct.1631.
  - (6) WAR. Q.S. RECS., Vol. I, p.267, Trinity Sess., 1637.
  - (7) SHEPHARD, Guide to J.P.'s, (Ed. 1663), p. 287.
  - (8) HERTS.CO.RECS., Vol.V, p. 112, Sess. of 13 April. 1639.
  - (9) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.44, Sess. of 20 April. 1631.
  - (10) IBID, p. 313, Sess. of 10 July, 1639.

The justices were expected to keep an eye upon the state of their houses of correction, and some of the Sessions took their responsibility seriously enough to draw up definite sets of regulations for the masters to follow.<sup>1</sup> In Middlesex, these rules were very detailed. The inmates were to have fresh straw for their beds every month; their linen, "if any they have", was to be washed; and every Sunday, Tuesday and Thursday they were to be given warm pottage.<sup>2</sup> The Norfolk magistrates directed that the prisoners were to have sheets, and clean straw monthly. At meals, they were to be grouped in fours; each group was to have in the morning "a mess of pottage", and at noon and night one pound of beef, two pounds of coarse bread, two quarters of small beer, and on fish days a pound of cheese instead of the meat. Moreover, the spiritual welfare of the inmates was not to be neglected, for prayers were to be read by the governor at 6 a.m., 7 p.m., and meal times.<sup>3</sup> The reformation of the prisoners appealed also to the Lancashire magistrates, who hopefully ordered "that the sd m<sup>r</sup> and Governo<sup>r</sup> shall apointe one of his serv<sup>ts</sup> who shall twice adae or once at the least reade theim praiers and once a moneth procure theim a sermon whearby they maie bee instructed in the feare of god and taught theire duties the better to reclaime theim from theire ould course of lyfe".<sup>4</sup> Furthermore, these same Lancashire jus-

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(1) NOTTS. CO. RECS., p. 30, 1619.

(2) MIDD. CO. RECS., Vol. II, p.120, Epiphany Sess., 1615/6.

(3) NORF. Q.S. ROLLS, 9 Jas. I., Orders made for the house of correction at the Walsingham Sess., 22 March, 1610.

(4) MANCH. Q. SESS., p. 88, 1619.

tices, who seem to have been extraordinarily conscientious, agreed to take turns at inspecting the condition of the house of correction and its inmates every month.<sup>1</sup> That such systematic control was urgently needed was pointed out by Bacon, who wrote, "If it be objected, that houses of correction in all places have not done the good expected, as it cannot be denied, but in most places they have done much good, it must be remembered that there is a great difference between that which is done by the distracted government of justices of peace, and that which may be done by a settled ordinance, subject to a regular visitation, as this may be."<sup>2</sup> Many magistrates did, indeed, feel that their responsibilities had been discharged if they fined the master for neglect of duty,<sup>3</sup> or in cases of gross incompetence, dismissed him.<sup>4</sup> John Hemyng was discharged by the Warwick Sessions for unsatisfactory conduct in general, and in particular for neglecting to set rogues to work, and for absenting himself frequently without providing a substitute to perform his duties.<sup>5</sup>

The justices also saw to the construction of other apparatus for punishment. In the North Riding, the town of

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(1) MANCH. Q. SESS., p. 87, 1619.

(2) BACON, Works, (Ed. by Montagu, 1826), Vol. V, p. 379. "Advice to the King about the Charterhouse".

(3) SOMER. Q.S. RECS., Vol. II, p.289, No. 8, Sess. of 9-12 Jan. 1637/8.

(4) IBID, Vol. I, p.352, No. 13, Sess. of 5-7 Oct. 1624.

(5) WAR. Q.S. RECS., Vol. I, p.99, Trinty Sess., 1630.

Langthorne was presented at the Quarter Sessions for having "neither stockes nor cockinstole for the punishing of offenders",<sup>1</sup> and a little later the same magistrates ordered the inhabitants of Goversett to "make a paire of Stockes for the punishing of rogues".<sup>2</sup> The Middlesex Bench commanded South Mimms to provide itself with a whipping-post and cuckingstool.<sup>3</sup> In Lincoln, when the justices were informed that "there hath beene in former tyme a Cage and Pillarie in Waineflett all Saintes w<sup>ch</sup> is now decayed", they levied a tax for the necessary repairs.<sup>4</sup> A cage was also used in Chester - one Richard Leighton, a cozener, was confined in it for an afternoon.<sup>5</sup>

Most terrible of all the punishments which the justices could inflict was the "peine forte et dure"- pressing to death. However, the torture of the peine was definitely to be used only in cases where a suspected criminal refused to plead either guilty or not guilty. Dalton urges the magistrates to do all in their power, before pronouncing judgment upon such a prisoner, to induce him to withdraw his refusal, telling him three or more times "the danger of standing Mute, and the grievousness of the Judgement, de peine forte et dure".<sup>6</sup> Yet sometimes no

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(1) N.R.Q.S.RECS., Vol.I, p. 56, Sess. of 13 Oct. 1606.

(2) IBID, Vol. II, p.196, Sess. of 12 Jan. 1618/9.

(3) MIDD.CO.RECS., Vol. III, pp.6-7, Sess. of 16 Jan. 1625/6.

(4) LINCS. (LINDSEY) Q.S. ROLLS, 1637, Index A.8, Sess. of 11 July, 1636.

(5) CHESTER Q.S. RECS, 1631, File II., fol. 37, Sess. of 28 June 1631.

(6) DALTON, The Country Justice, (Ed. 1705), p. 515.



amount of warning would suffice to change the criminal's mind, and in such cases the law had to take its course. Between 1613 and 1615, five suspected thieves of Middlesex refused to plead in the Quarter Sessions, and so were sentenced to be pressed to death.<sup>1</sup>

At the other end of the scale of severity was the mild punishment of fining. Here the justices exercised a good deal of discretion. In the matter of riot and affray, for example, they could set the penalty at any sum they pleased; the North Riding Bench imposed a fine of 1s.,<sup>2</sup> and the Hertford magistrates exacted £20.<sup>3</sup> Occasionally fines were used in terrorem, as a warning,<sup>4</sup> but more usually they were intended to be collected, and a North Riding brewer who refused to pay the sum imposed upon him was ordered to be flogged.<sup>5</sup>

Sometimes the magistrates definitely assessed the fine on the basis of the offender's ability to pay, rather than on the seriousness of the crime. Richard Tiplady, who had refused to help the constable make an arrest upon a justice's warrant, was "fined 5s. only, because a poor man",<sup>6</sup> and a barrator in

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(1) MIDD. SESS. RECS., (New Series), Vol. I, p.145 - Geo. Fisher; p.415, Thos. Bond and John Ryder; Vol. II, pp.110-111 - Wm. Backe; p.245 - Peter Longe.

(2) N.R.Q.S. RECS., Vol. I, p.239, Sess. of 3 Oct. 1611.

(3) HERTS. CO. RECS., Vol. I, p.39, Sess. for 1609-1610.

(4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.174, Sess. of 8 Jan. 1622/3.

(5) N.R.Q.S. RECS., Vol. IV, p.45, Sess. of 30 Sept. 1635.

(6) IBID, Vol. I, p.141, Sess. of 10 Jan. 1608/9.

the West Riding, who originally had a penalty of £6. 6s. 8d. imposed upon him, in the end paid only £3. 6s. 8d.<sup>1</sup> A Durham man was indicted for cutting broom, and the Bench "vtterly disliking the meanesse of the offence" fined him 2d.- and even that tiny sum was eventually remitted.<sup>2</sup>

This practice of mitigating fines was occasionally carried to extremes. According to the ruling of the Judges of Assize in 1633, statutory penalties should not be altered: "If the Party be convicted, or confess the Fault, it is not in the Power of the Court to mitigate the Fine, in such Cases where the Statute makes it certain".<sup>3</sup> This was a hint to some of the justices of the peace, who had been reducing fines even when the penalty was fixed by law. Thomas Yates in the North Riding, for example, was convicted of shooting doves with hail-shot, and was merely fined 10s."because a poor man",<sup>4</sup> although according to the statute he should have paid £10.<sup>5</sup> The justices in the same Riding fined James Tailor 7s. 6d. for erecting two cottages without four acres of land around them,<sup>6</sup> when the statutory penalty amounted to £20,<sup>7</sup> and a few years later levied

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(1) W.R.Q.S. RECS., Vol. I, pp.95-96, Sess. of 25 April, 1598.

(2) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p.30, Sess. of 9 July, 1617.

(3) DALTON, The Country Justice, (Ed. 1705), p. 233.

(4) N.R.Q.S. RECS., Vol. I, p.214, Sess. of 3-5 April, 1611.

(5) 2 and 3 Edward VI. c. 14.

(6) N.R.Q.S. RECS., Vol. III, p.228, Sess. of 14 Jan. 1624/5.

(7) 31 Eliz. c. 7.

6s. 8d. upon two engrossers of wheat, instead of the full legal fine of £60.<sup>1</sup>

More questionable still was the right of the Quarter Sessions to inflict a punishment less than death upon convicted felons, as some magistrates did. Barnard Spence was let off by the North Riding Sessions with a fine of 2s., when he had stolen a sheep worth more than 12d., and so was guilty of grand larceny.<sup>2</sup> A tanner in the West Riding was fined 2s. 6d. for the theft of a wether valued at 5s.,<sup>3</sup> and the West Riding justices levied only 3s. 4d. upon a labourer who confessed that he had taken a sheep and a lamb.<sup>4</sup> The same sum was paid by John Griffen and Francis Nethercott of Middlesex, who made off with a number of iron bars worth 10s.<sup>5</sup> In was in Yorkshire, however, that thieves seem to have had the most astonishing luck. Two butchers and a labourer in the West Riding stole "three kine, value each of them £3." They were fined 12d.<sup>6</sup> The same small sum was paid by a pair of North Riding cattle-thieves, who feloniously took three cows worth £8.<sup>7</sup>

Criminals convicted of grand larceny received other

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(1) N.R.Q.S. RECS., Vol. III, p.354, Sess. of 9 July, 1633.

(2) IBID, Vol. I, p.179, Sess. of 12 Jan. 1609/10.

(3) W.R.Q.S. RECS., Vol. II, p.296, Sess. of 19 July, 1641.

(4) IBID, p. 91, Sess. of 3 Oct. 1638.

(5) MIDD. Q.S. RECS., (New Series), Vol. II, p. 19-20, 1614.

(6) W.R.Q.S. RECS., Vol. II, p.292, Sess. of 13 July, 1641.

(7) N.R.Q.S. RECS., Vol. II, p.88, Sess. of 18-19 April, 1615.

light forms of punishment also. Several were flogged,<sup>1</sup> or put in the stocks and flogged.<sup>2</sup> At a meeting of the Wiltshire Sessions, Mathew Browne, guilty of stealing four pounds of woollen yarn worth 20d., was sentenced to be "whipped in the open market instantly",<sup>3</sup> and a Worcestershire man convicted of the theft of six sheep was sent to the house of correction for a month.<sup>4</sup>

More painful, yet still infinitely preferable to hanging, was the punishment of branding, which was inflicted upon a number of offenders convicted of major thefts.<sup>5</sup> In Wiltshire, the letter burned on was an F,<sup>6</sup> while in Yorkshire a capital T was used.<sup>7</sup>

This branding may quite possibly have been part of the perfectly legal procedure of granting Benefit of Clergy. Men found guilty of grand larceny were not among the criminals specifically denied this loop-hole, and certainly a great many thieves convicted at the Quarter Sessions asked for the book,

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- (1) N.R.Q.S. RECS.,<sup>Vol. II.</sup> p.199, Sess. of 7 April, 1619; pp.171-173, Sess. of 11 July, 1623; p.189, Sess. of 8 Jan. 1623/4. W.R. Q.S. RECS., Vol. I, p.130, Sess. of 8 Jan. 1598/9. LINCS. (LINDSEY) Q.S. ROLLS, 1629, Index A.2.
  - (2) LINCS. (LINDSEY) Q.S. ROLLS, 1625, Index A.1., No. 103.
  - (3) WILTS. CO. RECS., p. 122, Sess. of 6 July, 1637.
  - (4) WORCS. Q.S. ROLLS, Part II, p.529, No. 259, 1633.
  - (5) N.R.Q.S. RECS., Vol. III, p.203, Sess. of 13 July, 1624. W.R. Q.S. RECS., Vol. II, p.47, Sess. of 11 Jan. 1637/8 - two cases. NORF. Q.S. ROLLS, 6 Chas. I, - Edw. Cole. WILTS. CO. RECS., p.29, 1610; p.41, Sess. of 3 May, 1614.
  - (6) WILTS. CO. RECS., p. 87, Sess. of 13-14 Jan. 1628.
  - (7) N.R.Q.S. RECS. Vol. II, pp. 198-199, Sess. of 7 April, 1619.

"read", were branded, and discharged.<sup>1</sup> At a single Sessions in<sup>2</sup> the West Riding, five men successfully claimed Benefit of Clergy, while the Norfolk magistrates branded forty-three "clerks" in a year.<sup>3</sup> It is quite obvious that these men had merely recited their verse from memory, for they were of a class which was totally illiterate - labourers, tinkers, butchers, glovers, shepherds, and the like.

By no means all the thieves who claimed Benefit of Clergy succeeded in escaping the halter, for on many of the indictments there appears a cryptic note which contains a whole tragedy of disappointed hope - "pet' libr' non lexit sus'." <sup>4</sup> Moreover, evading the gallows by appealing to clerical privilege was a game which could be played only once.<sup>5</sup> In 1613 a Middlesex sheep-stealer asked for the book, but his request was refused on the ground that he had had it before, and so he was

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(1) N.R.Q.S. RECS., Vol. III, pp.225-226, Sess. of 11 Jan. 1624/5. CHESTER Q.S. RECS., 1625, File IV, fol. 31, fol. 37. W.R.Q.S. RECS., Vol. II, p.35, Sess. of 11 Oct. 1637; p.186, Sess. of 14 April, 1640; p.275, Sess. of 4 May, 1641; p.303, Sess. of 22 July, 1641; p.332, Sess. of 13 Oct. 1641. NOTTS. CO. RECS. p.34, 18 April, 1634. LINCS. (LINDSEY) SESS. ROLLS, 1630, Index A.3. No. 155. NORF. Q.S. ROLLS, 5 Jas. I, - John Ansell; 11 Jas. I, - John Magg; 2 Chas. I, - Rich. Margetrode. H.MSS.COMM. Various Collections, Vol. I, p.73, Wilts.Q.S.Rec., 1603. WILTS. CO. RECS., p.75, Sess. of 5 Oct. 1624.

(2) W.R.Q.S. RECS., Vol. II, pp.37-38, Sess. of 11 Oct. 1637.

(3) NORF. Q.S. ROLLS, 21 Jas. I.

(4) IBID, Jas. I, Various dates - Christopher Shardelowe (1605); 5 Jas. I, - Wm. Dawber; 5 Chas. I, - John Taylor; 9 Chas. I, - Christopher Sherlye (misplaced), and Wm. Middleton. MIDD.SESS. RECS., (New Series), Vol. I, p.161, 1613; etc.

(5) 4 Henry VII. c. 13.

duly hanged.<sup>1</sup>

Women, of course, could not claim Benefit of Clergy, but a statute in the reign of James I. allowed them a certain amount of privilege. If the theft lay between 12d. and 10s., and was neither robbery from the victim's person, nor burglary, the woman might for the first offence be branded, and then be additionally punished by whipping or confinement in the stocks or imprisonment, at the discretion of the justices.<sup>2</sup> Two women in Norfolk and two in the West Riding, convicted of theft, were sentenced in this way.<sup>3</sup> In Middlesex, however, a woman and two men were found guilty of stealing household goods worth 35s. 4d.; the men claimed Benefit of Clergy and were branded, but the woman was unable to ask for her privilege because the value of the stolen articles was above the statutory limit of 10s., and so she was hanged.<sup>4</sup>

The justices seem to have raised no objection to the evasion of the law by the recital of a memorized verse. The disgruntled magistrate of Somerset, Edward Hext, did indeed protest that "these [malefactors] that thus escape ynfect great numbers, ymboldenyng them by ther escapes, some havynge ther books by intreatye of the Iustices them selves that cannot reade

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(1) MIDD. SESS. RECS., (New Series), Vol. I, p.167, 1613.

(2) 21 James I. c. 6.

(3) NORF. Q.S. ROLLS, 5 Chas. I.,- Johanna Cranwell; 11 Chas. I.,- Johanna Moundford. W.R.Q.S. RECS., Vol. II, p.186, Sess. of 14 April, 1640 - Alice Meller; p.319, Sess. of 7 Oct. 1641 - Anne Critchley.

(4) MIDD. SESS. RECS., (New Series), Vol. II, p.161,1614.

a word",<sup>1</sup> but his point of view seems to have been an unusual one, and his very complaint indicates the tolerance with which other magistrates regarded the stretching of clerical privilege.

One group of justices found a particularly convenient way of disposing of felons without hanging them. In 1614 the Middlesex Sessions ordered the execution of William Clarke, but respited him "for the Bermudas",<sup>2</sup> and during the next month sent two convicted highwaymen after him.<sup>3</sup> Indeed, so pleased were the magistrates with this economical yet effective way of ridding England of undesirable people that when Joan Sansom came before them for theft and was found not guilty, she was nevertheless shipped off to the West Indies.<sup>4</sup>

Sometimes the justices devised especially appropriate punishments for petty offenders. In Somerset, a woman was put in the stocks, and before her was hung a lock of the wool she had stolen.<sup>5</sup> The Lancashire Bench set Ellen Blundell also in the stocks, with a purloined shirt prominently displayed near her.<sup>6</sup> Just as humiliating and much more painful was the punishment of a North Riding sheep-stealer, who was whipped at the

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(1) AYDELOTTE, Elizabethan Rogues and Vagabonds, Appendix 14, p.169, Hext to the Lord Treasurer, 25 Sept. 1596.

(2) MIDD. SESS. RECS., (New Series), Vol. II, p.22.

(3) IBID, p. 25.

(4) IBID, p. 25, July, 1614.

(5) SOMER. Q.S. RECS., Vol. I, p.11, No. 91(c), Jan. 1607/8.

(6) LANCS. Q.S. RECS., p. 177, Sess. of 11 July, 1603.

cart's tail and then set in the stocks with a sheep-skin about him.<sup>1</sup> However, since his chastisement took place in January, he may have been glad of the covering. Edmund Harrison confessed to the West Riding magistrates that he had stolen six chickens, and was thereupon consigned to the stocks "with feathers picked in his apparaile".<sup>2</sup> Most original, however, was a form of correction invented by the North Riding justices. Tristram Hogg, convicted of defrauding John Hamond of £10. by cozening, was ordered to restore the money. He was, in addition, "to be shaved close on the one halfe of his head and the one halfe of his beard, and to be bound one whole year to the good behaviour".<sup>3</sup>

Thus in the imposing of sentences, the justices were evidently given an astonishingly free hand. The records therefore show endless variations in practice, not only between one county and another, but also between Sessions and Sessions in the same shire as the personnel of its Bench changed. The exercise of such a wide choice of punishments was undoubtedly beyond the power of the justices, but the Privy Council does not seem to have made any great effort to discourage the judicial vagaries of the county Benches. Indeed, a closer approach to equitable judgment could often be achieved by allowing free play to the justices' personal acquaintance with the circum-

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(1) N.R.Q.S. RECS., Vol. II, p. 82, Sess. of 10-11 Jan. 1614/15.

(2) W.R.Q.S. RECS., Vol. I, p. 118, 4 Oct. 1598.

(3) N.R.Q.S. RECS., Vol. III, p. 238, Sess. of 15 July, 1625.



stances of their cases. The difficulty that such amateurs lacked an adequate background of legal knowledge was, of course, a serious one, especially since precedent plays such a vital part in English law, but the gaps in the local justices' information were at least partially filled by the invaluable handbooks printed for this very purpose. The other grave danger, that an untrained magistrate with more zeal than discretion might let personal feeling upset his impartiality, was minimized by the fact that sentence in most cases was delivered by a group, not an individual. And so, as the system apparently worked no widespread injustice, the central authorities were prepared to wink their official eyes at any slight irregularities in the judgments rendered by the Quarter Sessions.

## CHAPTER X.

### THE JUSTICES AT WORK — THE ATTEMPT TO SOLVE SOCIAL PROBLEMS.

The 16th century saw in England the development of a real idea of social responsibility - the idea that the welfare of the individuals who make up each community is the concern of the community as a whole. The elimination of public nuisances, such as things which created unnecessary smells or other annoyances in a neighbourhood, thus came into the sphere of activity of the justices of the peace, as well as work for the alleviation of poverty, sickness, unemployment, and other social ills.

Although, judged by modern standards, the men and women of Stuart times would hardly be considered fastidious, there were limits to the filth and "noysomness" which even they could endure, and the magistrates therefore were called upon to deal with people who left all kinds of unpleasantnesses in inconvenient places. Gilbert Glover of Worcestershire was presented at the Sessions "for not carrying away a dunghill from before his door to the great annoyance of the neighbours thereby".<sup>1</sup>

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(1) WORCS. Q.S. ROLLS, Part II, p.600, No. 162, 1635.

The inhabitants of St. Nicholas parish in Durham were threatened by the justices with a £20. fine if they did not forthwith remove the filth they had been throwing under Elvett Bridge,<sup>1</sup> and the Middlesex magistrates committed to gaol one James Ewer, who first of all brought down their wrath upon him by piling dung before the gate of Hicks Hall (the Middlesex Sessions House), and then added to his offence by being impertinent to the justices when he was brought before them.<sup>2</sup>

The public roads seem to have been among the favourite unauthorized spots for depositing sewage; in Nottinghamshire, indeed, one of the King's highways was so "defiled" that travellers protested vigorously about its condition.<sup>3</sup> In the North Riding, a man was commanded by the Sessions to take away, under penalty of £5, the manure and timber which he had thrown upon the common way.<sup>4</sup> An order of the Lancashire Quarter Sessions directed the removal of dung heaps from the streets of Manchester,<sup>5</sup> and Richard Jefferyes of St. Giles-without-Cripplegate was called before the Middlesex Bench for throwing filth on to the road.<sup>6</sup> In Worcestershire, the constable of Whistons complained to the justices about the revolting state of the high-

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(1) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p.114, Sess. of 10 July, 1633.

(2) MIDD. SESS. RECS., (New Series), Vol. I, p.69, 1613.

(3) NOTTS. CO. RECS., p. 69.

(4) N.R.Q.S. RECS., Vol. IV, p.31, Sess. of 8 April, 1635.

(5) LANCS. Q.S. RECS., p.170, Sess. of 11 May, 1603.

(6) MIDD. SESS. RECS., (New Series), Vol. I, p.7, Sess. of 13-14 Jan. 1612/3.

ways arising from the "placing of muckhills and miskens upon the same to the great annoyance of the neighbours there dwelling by reason of the noysomness of the smell".<sup>1</sup>

Dirt and disagreeable odours were found in other less public but equally undesirable spots. A man and wife in Middlesex were set in the stocks for six hours for "emptying a great quantity of night-work into the common sewer",<sup>2</sup> and in the same county two butchers were called to answer before the justices for keeping a slaughter-house "and for causing a horrible smell in the same yard".<sup>3</sup> Some years later, John Cocke and John Raven were presented at the Norfolk Sessions "for abusing the Comon Brooke by washing of Loathsome and filthye Clothes therein."<sup>4</sup>

Other interferences with the well-being of the community were dealt with at the Quarter Sessions. A penalty of £5. was laid upon a West Riding gentleman unless he would cease to "stopp or hinder the watercourse at Kirkbie Hall as far as a Mill commonly called Knack Milne at Thorp Underwood, to the great damage of all the inhabitants adjoining".<sup>5</sup> John Brooke, who was erecting a cottage in the middle of a bridge in Taunton, was ordered to desist and to tear down the part already built;<sup>6</sup>

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(1) WORCS. Q.S. ROLLS, Part II, p.524, No. 238, 1633.

(2) MIDD. SESS. RECS., (New Series), Vol. I, p.190, 1613.

(3) IBID, p. 57, 1612.

(4) NORF. Q.S. ROLLS, 3 Chas. I.

(5) W.R.Q.S. RECS., Vol. II, pp.102-103, Sess. of 8 Jan. 1638/9.

(6) SOMER. Q.S. RECS., Vol. I, p.317, No.8, Sess. of 23-25 July, 1622.

and a Middlesex tomb-maker was presented before the magistrates "for annoying the street near Charing Cross with loading carts, turning the Judges and all other passengers into the channel".<sup>1</sup>

The ownership of troublesome animals also brought men before the magistrates. Several people in Norfolk were charged with keeping mangy horses on the common.<sup>2</sup> A gentleman was presented at the Quarter Sessions of the same county "for the Comone Anoyance of the Kinges Leege peopel w<sup>th</sup> a dead Swyne which Lay nere the Kinges high way" for a month.<sup>3</sup> In Middlesex, the owner of a "Curste Mastie dogge", which had attacked a neighbour three times, was haled before the magistrates.<sup>4</sup> Richard Clemens appealed to the Worcestershire magistrates for protection against a cur which had bitten his servant John Thomas in the hand, "which is to the continual greef of the said Thomas", and asked the justices for "such comfort therein" as might seem best to them;<sup>5</sup> while John Gimer was called before the Norfolk Bench "for keping of an vnlawfull dooge Wich flieth vpon travelers by the way".<sup>6</sup>

While the removal of local garbage and the destruction of local pests were useful and altruistic labours, the

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(1) MIDD. SESS. RECS., (New Series), Vol. I, p.266, 1613.

(2) NORF. Q.S. ROLLS, 9 Chas. I,- Ralph Levit, —Tallowing, and John Manfield.

(3) IBID, 7 Chas. I, Verdict of the Hundred of Galleway.

(4) MIDD. SESS. RECS., (New Series), Vol. I, p.185, 1613.

(5) WORCS. Q.S. ROLLS, Part I, p.250, No. 179, 1617.

(6) NORF. Q.S. ROLLS, 3 Chas. I.

measures taken by the justices to relieve the sufferings of the poverty-stricken were of greater importance. During the reign of Queen Elizabeth, a series of poor laws, culminating in the great statute of 1601,<sup>1</sup> laid upon the community the responsibility of the support of the crippled, the unemployed, the aged, and the destitute. The justices of the peace were to see that money was raised by taxation in each parish for this purpose, and if any parish was too poor to support its own paupers, the Quarter Sessions might call upon surrounding districts to assist their less wealthy neighbours by contributions. Treasurers, appointed by the local magistrates, were to disburse this fund for poor-relief, under the direction of the justices, but the actual care of the poor was left in the hands of overseers, also appointed by and supervised by the magistrates. Thus these acts created a new administrative machine, whose smooth running depended largely upon the conscientiousness and energy of the justices of the peace.

The people at large did not take at all kindly to the idea of contributing regularly to the poor-rate, and each community, far from giving paupers or potential paupers a brotherly welcome, exhibited a lively desire to get rid of them as soon as possible. Constant quarrels therefore arose among parishes as to who was legally responsible for certain penniless unfortunates

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(1) 14 Elizabeth, c. 5; 18 Eliz., c. 3; 39 Eliz., c. 3; 43 Eliz., c. 2.

who had been so misguided as to try to move from one district to another in search of work. The parish of their first residence was only too anxious to pass on the responsibility for their support to the authorities in their second place of dwelling, whereas their new neighbours were highly reluctant to contribute to their maintenance. As a result, the unhappy paupers were all too often sent by the constables from place to place, finding no rest anywhere.<sup>1</sup> Even a dying woman, together with her baby, was callously pushed over the boundary into a different parish, in the hope of ridding the place where she fell ill of the support of her child.<sup>2</sup>

This kind of problem concerning the legal responsibility for the relief of distress was usually brought to the Quarter Sessions, and a large part of the time of the justices in some counties was occupied in settling the poor in the places whose duty it was to support them.<sup>3</sup> The Somerset Bench was constantly called upon to decide questions about the residence of paupers,<sup>4</sup> and even poor people who were still self-supporting but might in future become "chargeable" were hastily moved to the place of their legal settlement.<sup>5</sup> Richard Feare, a

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(1) W.R.Q.S. RECS., Vol. I, p.85, "Orders for the Releefe of the Poore", Sess. of 9 June, 1598. SOMER. Q.S. RECS., Vol. II, p.116, No. 37, Sess. of 12-15 Jan. 1629/30.

(2) W.R.Q.S. RECS., Vol. I, p.39, Sess. of Jan. 1597/8.

(3) WAR. Q.S. RECS., Vols. I and II, passim.

(4) SOMER. Q.S. RECS., Vol. I, p.12, No. 18(a), 1608; p.75, 1612; p.93, No. 50, 1612/3; p.110, No. 6, 1614; p.151, No. 8, 1615; etc..

(5) W.R.Q.S. RECS., Vol. II, p.185, Sess. of 22 Jan. 1639/40.

Somerset lead miner, began to go blind when he was about sixty years of age; he was shifted first to Chew Magna, then later to Wells.<sup>1</sup> Children, too, were heartlessly moved about by the Quarter Sessions,<sup>2</sup> and even were separated from their parents in accordance with the letter of the law of settlement.<sup>3</sup> Equally scant consideration was shown to cripples when the question of their lawful residence arose,<sup>4</sup> and women, too, were moved from pillar to post.<sup>5</sup>

In striking contrast to the general indifference to the feelings of these unwanted waifs was the sympathetic attitude of the Huntingdonshire justices towards Humfrey Thompson, labourer. Thompson went with his family to visit friends in a neighbouring village, and on his return found that his landlord would not let him into his old house. The whole family then wandered about "seeking a habitation", which no one would give them for fear of committing the neighbourgood to their support. The magistrates, however, were of the opinion "that no man ought through hard vsage to be compelled to be a vagrant", and ordered the village of their original residence to take care of them.<sup>6</sup>

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(1) SOMER. Q.S. RECS., Vol. I, pp. 4, 11, 13, 1608.

(2) WAR. Q.S. RECS., Vol. I, p.61, Trinity Sess., 1628.

(3) SOMER.Q.S.RECS., Vol.I, p.265, No.2, 1620; Vol.II, p.15, No.I, 1626.

(4) IBID, Vol. I, pp.15-16,- John Lyder, 1608.

(5) IBID, Vol. II, pp. 1-2, No. I, April, 1625.

(6) ADD. MSS., 34,400, No. 202, Order of Epiphany Sess. at Huntingdon, 1632/3.



Occasionally parishes really could not afford to keep all their own poor, and then the justices had to find the funds elsewhere. Sometimes a prosperous parish adjoining the indigent one was rated,<sup>1</sup> on the ground that having few poor of its own it ought to be able to help a place that was overburdened.<sup>2</sup> Of course, if the wealthy parish later found itself in difficulties, the contribution to its neighbour was stopped.<sup>3</sup> Sometimes, however, two parishes quarrelled so bitterly over combined action in poor relief that the Sessions had to make a rule that they should "noewayes intermeddle, thone with thother, ffor Anie leavey, hereafter to be made, concerninge their poore there".<sup>4</sup> The North Riding avoided all such dissensions by helping indigent parishes out of the county fund.<sup>5</sup>

Part of the burden of the care of the poor could be lifted from the community by invoking the law which made the paupers' relatives responsible for their maintenance.<sup>6</sup> Children were often put into the charge of their grandparents,<sup>7</sup> and a

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(1) SOMER. Q.S. RECS., Vol. I, p.33, No. 108, Sess. of Jan. 1608/9; p.163, No. 26, Sess. of 9-12 Jan. 1615/6.

(2) NOTTS. CO. RECS., p. 121, 1641.

(3) SOMER.Q.S.RECS., Vol.II, p.21, No.6, Sess. of 11-13 July,1626.

(4) NORTHANTS. Q.S. RECS., p. 260, Appendix VII, Sess. order, March, 1627.

(5) N.R.Q.S.RECS., Vol.II, p.84, Sess. of 10-11 Jan. 1614/5.

(6) 43 Eliz., c. 2.

(7) SOMER.Q.S.RECS., Vol.I, p.51, No.47, Sess. Rolls for 1609-1610. DUR. SESS. ORDER BOOK, No.I, (1616-1629), p.367, Sess. of 8 July, 1629. CHESTER Q.S. RECS., 1630, File IV, fol. 29, Jan. 1630/1.

boy and a girl in Hertfordshire were consigned to the care of George Addams, their "grandfather-in-law".<sup>1</sup> Sometimes the boot was on the other leg, and the children were made responsible for the support of their parents.<sup>2</sup> A son in Nottinghamshire was ordered to pay 16d. weekly for the maintenance of his father,<sup>3</sup> and another was to supply his parents "with all necessary provision as food, drink, clothing, and such like".<sup>4</sup> A husband, of course, could be forced to support his wife, though one man who neglected his duty in this respect was made to provide only the modest sum of 6s. 8d. quarterly for his wife's maintenance.<sup>5</sup>

Respectable people could be brought to destitution by a variety of accidents, and common among these was fire. In days when fire-fighting apparatus was practically non-existent, and when thatched roofs and open flames invited disaster, fires were not only frequent but catastrophic. In 1612, the village of Tiverton in Devon was practically wiped out by fire. A hundred of the homeless were at once quartered in neighbouring parishes by the Quarter Sessions, and a general collection was taken up in the county for their relief.<sup>6</sup> Many individuals

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(1) HERTS. CO. RECS., Vol.V, p.206, Sess. of 5-6 Oct. 1635.

(2) SOMER.Q.S.RECS., Vol.I, p.73, No.42, Sess. Rolls for 1611-1612.

(3) NOTTS. CO. RECS., p. 121.

(4) IBID.

(5) N.R.Q.S.RECS., Vol.1, p.248, Sess. of 14 Jan. 1611/2.

(6) HAMILTON, Devon Quarter Sessions, p. 90.

whose possessions had been totally destroyed by fire also applied to the Sessions for permission to go about asking for charitable donations, and if the Court found that the petitioners' state was indeed desperate, the necessary licence was granted. Naturally, such requests were numerous, and some of them were pitiful indeed. A Hertfordshire widow with eight children lost by fire her house, with all her household possessions and a considerable stock of grain, to the value of £40.<sup>1</sup> The justices of the peace of the West Riding received an appeal from James Leminge, who lost in one disastrous conflagration "not onely his said house together with all his household stuffe, as beds, bedstocks, tables, boards, coverletts, sheets, chaires, stooles and all that he had, but also two of his children were sore scorched with the flame and verie narrowly escaped the danger of the said fire". The Sessions in this case requested all clergymen to ask their congregations at Divine Service for a charitable donation.<sup>2</sup> Even more explicit were the magistrates of Hertfordshire in commending to the sympathetic consideration of the inhabitants of the county the sad case of Philemon Francis, "a verrie poore man", lately rendered completely destitute by fire, for the ministers were asked to collect alms on Sunday in their churches "from seate to seate".<sup>3</sup>

Sometimes a straight grant from the funds for poor

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(1) HERTS. CO. RECS., Vol. I, p.48, 10 May, 16--?

(2) Y.A.J., Vol. V, p.400, (W. Riding Recs.), Sess. of 14 Jan. 1639/40.

(3) HERTS. CO. RECS., Vol. V, p.68, Sess. of 9-10 Jan. 1625/6.

relief was made to those whose possessions had been burnt.<sup>1</sup>

William Payne in Somerset, who had suffered from floods as well as from fire, was given only 40s.,<sup>2</sup> but the Hertfordshire magistrates allowed Samuel Bawcocke and William Teadder £5. each.<sup>3</sup>

Ship-wreck also brought sudden calamity upon self-respecting men. George Mylles, who had "sustained great loss by sea" was allowed £6. out of the poor fund by the Somerset Bench,<sup>4</sup> but the hard-headed North Riding justices granted only 10s. in a similar case.<sup>5</sup> One poor man in Chester lost his ship before he had even finished paying for it, and was granted permission by the justices to solicit "the charitable devotion of all well disposed people", but there is no information as to what amount he was able to collect.<sup>6</sup>

Unemployment, then as now, caused a great deal of distress; but sometimes a man's lack of occupation was merely a cover for laziness, and so the justices of the peace were given power to force idle people to work.<sup>7</sup> Richard Sutter was presented at the Wiltshire Quarter Sessions for "deniing to worke",<sup>8</sup>

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(1) N.R.Q.S.RECS., Vol.I, p.7, Sess. of 11 April, 1605; p.262, Sess. of 8 July, 1612; p.297, no date. WAR.Q.S.RECS., Vol.I, p.186, Michaelmas Sess., 1633.

(2) SOMER.Q.S.RECS., Vol.I, p.13, No.21, Sept. 1607.

(3) HERTS.CO.RECS., Vol.V, p.157, Sess. of 9 April, 1632.

(4) SOMER.Q.S.RECS., Vol.I, p.35, No.112, Jan. Sess., 1608/9.

(5) N.R.Q.S.RECS., Vol.III, p.205, Sess. of 13 July, 1624.

(6) CHESTER Q.S.RECS., 1631, File IV, fol.42, Sess. of 24 Jan. 1631/2.

(7) 43 Eliz., c. 2.

(8) WILTS. CO. RECS., p.26, Sess. of 4 Oct. 1608.

and Jeremiah Wallis of Huntingdonshire was bound over to answer at the next Sessions for his "idle life".<sup>1</sup> In the West Riding, Thomas White and his daughter, unemployed, were offered the position of "heard for Swine", but they contemptuously refused it. The justices thereupon promptly consigned the haughty pair to the house of correction as "idle persons and Loyterers".<sup>2</sup>

Pressure could also be brought to bear upon employers, both to force them to provide work for the unemployed and to refrain from discharging people in times of depression. The Privy Council in 1622 ordered the justices of Suffolk to call before them the more well-to-do clothiers, "and to deal effectually with them for the employment of such weavers, spinners, and other persons who are now out of work".<sup>3</sup> A similar attempt to "induce the richer sort" in Hertford to provide employment for farm labourers failed to produce any results other than a crop of complaints,<sup>4</sup> while the clothiers of Essex nearly ruined themselves in trying to carry out the suggestions of the magistrates as to their continuing to employ all their work-people during one of the periodic collapses of the woollen trade.<sup>5</sup>

It must be admitted that in their efforts to avoid unemployment, the magistrates at times were a trifle unreasonable.

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(1) ADD.MSS., 34,399, fol. 169, Huntingdon Sess., 9 June, 1612.

(2) Y.A.J., Vol.V, p.390, (W.Riding Recs.), Sess.of 23 April,1639.

(3) H.MSS.COMM., Report 13, Appendix 4, p.439.

(4) LEONARD, Early English Poor Relief, p.231.

(5) CAL.S.P.DOM., Car.I, CCCLV, 67, Petition of clothiers of Bocking, Braintree and Coggeshall to P.C., 4 May, 1637.

Agnes Hart was committed by the Norfolk Bench to the house of correction "till she gett herselfe a maister to serue him for one yeare"-<sup>1</sup> although securing work when she was imprisoned must really have been rather a difficult task for the unfortunate woman.

Sometimes the poor needed only a house, but the finding of shelter was not as simple as one might expect. The erection of cottages was rigidly limited by law,<sup>2</sup> and the taking of numbers of lodgers was as strictly prohibited.<sup>3</sup> Consequently the finding of shelter for the homeless was left to the people charged with the care of the poor. The Lancashire Sessions ordered that a dwelling-place be found for Elizabeth Rymington,<sup>4</sup> and in Somerset the overseers were commanded to provide a house for "Thompson Reede, an impotent widow", so that "she be not compelled to make any further complaint for the same".<sup>5</sup> The parish of Weston in Warwick was ordered to pay the rent of 8s. a year for William Hancoxe, whose landlord had put him out for being in arrears.<sup>6</sup> In all these cases the magistrates showed a good deal of sympathy for the homeless poor, but the Durham

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(1) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. of 19 Jan. 1639/40.

(2) 31 Eliz., c. 7.

(3) IBID.

(4) LANCS.Q.S.RECS., p.102, Sess. of 6 July, 1601.

(5) SOMER.Q.S.RECS., Vol.I, p.266, No.17, Sess. of 11-15 Jan. 1619/20.

(6) WAR.Q.S.RECS., Vol.I, p.60, Trinity Sess., 1628.

sessions most unkindly decreed that Cuthbert Spencer "shall  
eyther finde himselfe a house or els be sent to the house of  
Correccion".<sup>1</sup>

The problem of finding shelter<sup>for the poor</sup> was sometimes solved by  
the erection of community asylums, which could be economically  
combined with the houses of correction. Bacon wrote, "I commend  
most houses of relief and correction, which are mixt hospitals;  
where the impotent person is relieved, and the sturdy beggar  
buckled to work; and the unable person also not maintained to be  
idle, which is ever joined with drunkenness and impurity, but is  
sorted with such work as he can manage".<sup>2</sup> Suffolk had a com-  
bined institution of this kind,<sup>3</sup> and there was another at Crew-  
kerne in Somerset.<sup>4</sup> At Salford and Taunton in the latter county,  
however, there were separate almshouses.<sup>5</sup> The Hertfordshire  
justices ordered the erection of a refuge for paupers "on a  
piece of waste land given to the parish of Hunsden by Henry,  
Earl of Dover, for the purpose, the poor having been previously  
housed in private houses".<sup>6</sup> In Norfolk, the inhabitants of Ayl-  
sham wanted to lodge all their paupers, three hundred in number,

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(1) DUR.SESS.ORDER BOOK, No. II, (1629-1639), p.44, Sess. of  
13 July, 1631.

(2) BACON, Works, (Ed. by Montague, 1826), Vol.V, p.379.

(3) WINTHROP PAPERS, Vol. I, p.275, "Common Greuances Groaninge  
for Reformation", written about 1623-1624.

(4) SOMER.Q.S.RECS., Vol.II, p.139, No.3, Sess.of 11-14 Jan. 1630/1.

(5) IBID, Vol.I, p.164, No.28 - 1616; Vol.II, p.37, No.28 - 1627.

(6) HERTS.CO.RECS., Vol. I, p.62, 1639.

in "one great house in the towne whereof ther was no use, but to kepe certeyne rotten stuff that was used to the settinge forward of a superstycyous and ungodly game, which by many yeares before was not played"; the scheme, however, fell through because of the opposition of a local gentleman of great influence and obstinacy.<sup>1</sup>

Often those requiring the assistance of the parish were not only unable to find shelter, but were utterly penniless and incapable of supporting themselves, either because of age, or through constitutional inability to make both ends meet. John Kempe petitioned the Norfolk Sessions for assistance, stating that since his wife's death he and his four young children had become utterly impoverished and were like to perish. It seems probable that perish they did, since the court granted the five of them the munificent sum of 8d. weekly.<sup>2</sup> Randle Jackson in Lancashire, on the other hand, was given a shilling a week all to himself.<sup>3</sup> An aged couple in Warwickshire, having become decrepit and unable to maintain themselves, received a weekly allowance of 6d.,<sup>4</sup> and the Chester magistrates provided for 3s. a month for Richard Dod, over eighty years of age and "very impotent and disabled to work".<sup>5</sup>

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(1) CAMDEN SOC., Series III, Vol. XXVI, Stiffkey Papers, pp.60-61, no date.

(2) NORF.Q.S.ROLLS, 7 Chas.I, pet. of John Kempe of Pensthorp.

(3) LANCS.Q.S.RECS., p.216, Sess. of 25 April, 1604.

(4) WAR.Q.S.RECS., Vol.I, p.102, Trinity Sess. 1630.

(5) CHESTER Q.S.RECS, 1641, File II, No.39, Sess. of 13 July, 1641.



The sick and <sup>the</sup> injured also received help from the community.<sup>1</sup> A Cornish stone-cutter, whose leg was broken in a quarry accident, was given £2. 13s. 4d.,<sup>2</sup> and in the same county a baker who was "benumbed in his limbs" received 40s.<sup>3</sup> A surprisingly large grant was made to Anthony Coldwell, curate of Swinton, "A verie poore man, haveinge bene longe sicke and layen in greate miserie and necessitie and noe way able to releive himself, his wife and children." The West Riding justices, touched by his miserable condition, allowed him 3s. 4d. weekly until he should recover.<sup>4</sup> In Warwickshire, another distressed clergyman was treated with less unquestioning generosity. He had been receiving 2s. 6d. weekly, and his wife 15d., when it was discovered that he was wasting his allowance on drink. His grant was at once withdrawn by the indignant justices, who, however, were fair even in their wrath. They did not condemn the poor man to a totally dry existence, for they ordered 40s. to be expended on the purchase of a cow "to be kept towards the relief of the said Harrison and his wife."<sup>5</sup>

The machinery for the assistance of the poor was often put under heavy strain by the frequently-recurring scourge of

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(1) CAL.S.P.DOM., Car.I, CCLIX, 28, J.P.'s of Surrey to P.C., 24 Jan. 1633/4.

(2) IBID, Addenda, 1580-1625, XL, 50, Fras. Butler and three others to J.P.'s of Cornwall, 10 Jan. 1613/4.

(3) IBID, 58, Bar. Grenville and Phil. Bevyll to J.P.'s of Cornwall, 30 May, 1614.

(4) Y.A.J., Vol.V, p.382, (W.Riding Recs.), Sess.of 12 Oct. 1638.

(5) WAR.Q.S.RECS., Vol.I, p.210, Epiphany Sess., 1635.

the plague. A statute in the early 17th century enabled the justices of the peace to levy a special tax for the support of the victims, and if the financial burden was too great to be borne by the healthy people in the stricken village, the district for five miles about might be made to contribute.<sup>1</sup> Consequently the Quarter Sessions often issued orders for rates to be levied upon localities surrounding places where the plague was raging,<sup>2</sup> and in cases where the disease was particularly wide-spread, the whole county was taxed.<sup>3</sup> In 1625, the Durham justices ordered the collection of a penny in the pound throughout the county,<sup>4</sup> and eleven years later a much higher rate was levied - one shilling in the pound.<sup>5</sup> When, however, in 1603, an attack of the plague in Wiltshire caused a great deal of unemployment, the Sessions were able to take the necessary money from the regular poor-rate fund, without imposing any special tax.<sup>6</sup>

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(1) 1 James I, c. 31.

(2) LANCS.Q.S.RECS., pp.274-276, Sess. of 17 July, 1605. NOTTS.CO.RECS., p.102. WORCS.Q.S.ROLLS, Part I, p.152, No.151, 18 April, 1610. MIDD.CO.RECS., Vol.III, pp.3-4, May, 1625. SOMER.Q.S.RECS., Vol.II, pp.11-12, No.2, Sess. of [Jan.] 1625/6. WILTS.CO.RECS., p.28, 1609. CAMDEN SOC., Old Series, No.41, (1848), Diary of Walter Yonge, Esq., p.95, (1626).

(3) LANCS.Q.S.RECS., p.285, Sess. of 9 Oct. 1605. W.R.Q.S.RECS. Vol.I, p.72, Sess. of 25 April, 1598; Vol.II, pp.260-261, 14 Jan. 1640/1. CAL.S.P.DOM., Car.I, CCCLVII, 119, P.C. to J.P.'s of Suffolk, 30 May, 1637.

(4) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.240, Sess. of 30 Sept. 1625.

(5) IBID, No.II, (1629-1639), p.208, Sess. of 13 July, 1636.

(6) WILTS.CO.RECS., p.11, Sess. of 12 Jan. 1603/4.

Sometimes not even a county rate was sufficient to furnish money enough for plague-relief, and an even wider district was called upon to contribute. The inhabitants of Northamptonshire were asked to give what they could to help plague-infected Lincoln,<sup>1</sup> and the people of the dioceses of Canterbury, London, Winchester and Lincoln were called upon to assist the poor of Cambridge.<sup>2</sup> A little later, Kingston-upon-Hull was in difficulties, and the Privy Council ordered all three Ridings of Yorkshire to contribute.<sup>3</sup>

The magistrates were also expected to see that the plague did not spread. Those victims who were already ill were past help, and were commended to Providence and left to their fate, for there was no known cure for the deadly disease, and the sufferers lived or died while friends and relatives stood by, helpless and uncomprehending. For the safety of those not yet stricken, the justices imposed strict quarantine upon families which had been exposed to infection,<sup>4</sup> or issued orders for the isolation of whole districts in which the plague was rampant.<sup>5</sup> For this latter purpose, watches were set to turn

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- (1) CAL.S.P.DOM., Car.I, CCXV, 49, Bish. of Peterborough to Sir John Lambe, 16 April, 1632.
  - (2) IBID, CLXIX, 36, King to all Archbishops, J.P.'s, etc. 25 June, 1630, Westminster.
  - (3) IBID, Car.I, CCCLXXXI, 13, Mayor and<sup>9</sup> others of Kingston-upon-Hull to P.C., 2 Feb. 1637/8, Kingston.
  - (4) N.R.Q.S.RECS., Vol.I, p.73, Sess. of 14 April, 1607. NOTTS. CO.RECS., p.102. HAMILTON, Devon Quarter Sessions, p.105.
  - (5) NOTTS. CO. RECS. p. 102.

back all wanderers,<sup>1</sup> and in Wiltshire any people who broke the quarantine regulations were ordered to be sent to the house of correction for a month.<sup>2</sup> In some places, special pest-houses or lazar-houses were built, where the sick could more easily be isolated.<sup>3</sup>

Industries which might involve the handling and transportation of infected materials were shut down. A trader who distributed contaminated wares which he had brought from London to the North Riding was fined £40 and put in the stocks for three hours - but the severity of his punishment is more understandable when we read that to his other crimes he had added that of vowing to shoot any justice who dared to interfere with his activities.<sup>4</sup> The paper-mills of Middlesex, for which quantities of rags and old clothes were collected all over the countryside, were closed down until the contagion should pass.<sup>5</sup> Fairs were suppressed,<sup>6</sup> and assemblies for wakes, May-games,

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- (1) W.R.Q.S.RECS., Vol.I, pp.125-126, Sess. of 6 Oct. 1598. CAL.S.P.DOM., Car.I, CLXIV, 60, J.P.'s of Southwark to the P.C., 16 April, 1630. SOMER.Q.S.RECS., Vol.II, pp.6-8, No.16, Sess. orders of 19 July, 1625.
  - (2) H.MSS.COMM., Various Collections, Vol.I, p.73, Wilts. Sess. Recs., Jan. 1603/4.
  - (3) HAMILTON, Devon Quarter Sessions, pp.90-91. CAL.S.P.DOM., Car.I, CCCLVI, 91, P.C. order, 17 May, 1637.
  - (4) N.R.Q.S.RECS., Vol.III, p.275, Sess. of 3 Oct. 1626 - case of Robert Bossall.
  - (5) CAL.S.P.DOM., Car.I, CCCXXXI, 61, P.C. to J.P.'s of Middlesex, 18 Sept. 1636, Oatlands.
  - (6) IBID , CCCLVI, 72, P.C. to J.P.'s of Surrey, 16 May, 1637.

morris-dancing, and, of course, bear and bull-baiting, were strictly forbidden.<sup>1</sup>

Some inkling of the value of fumigation seems to have struck the authorities, for after the terrible epidemic of 1625 the Privy Council wrote to the justices of the peace of Middlesex, "We have thought fitt at this tyme to will and require you to use your best diligence ... to have such houses as have beene infected to be carefully clensed and secured from future contagion and especially the household stuffe in them and namely the beddinge both by frequencie of fyer and exposeing them to the frostie and kindlie weather which it may please God to send and by all other good meanes usuall in lyke cases".<sup>2</sup>

A number of people were unable to support themselves because of mental disorders, and the care of lunatics<sup>therefore</sup> often fell upon the parish authorities. Two women of Somerset, weak in mind and suspected of having incendiary tendencies, were committed by the justices to the house of correction, "to be kept in such manner as the law requireth for all such dangerous and disordered persons".<sup>3</sup> The house of correction, indeed, seems to have been a favourite place for consignment of pauper lunatics,<sup>4</sup>

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(1) WAR.Q.S.RECS., Vol.I, p.35, Trinity Sess. 1626. CHESTER Q.S.RECS., 1631, File III, fol.102, Sess. of 20 Oct. 1631.

(2) ACTS OF P.C., 1625-1626, p.258, P.C. to J.P.'s of Middlesex and Surrey, 4 Dec. 1625.

(3) SOMER.Q.S.RECS., Vol.I, pp.99-100, No.5, Sess. of July, 1613; pp.223-224, No.15, Sess. of 13-16 Jan. 1617/8.

(4) NOTTS.CO.RECS., p.122. SOMER.Q.S.RECS., Vol.II, p.293, No.23, Sess. of 9-12 Jan. 1637/8. WAR.Q.S.RECS., Vol.I, p.257, Epiphany Sess., 1637.

and the poor-rates supplied their maintenance there.<sup>1</sup> In the West Riding, a girl who was "very much troubled with the falling sickness"- epilepsy - and whose father was too poor to support her, was committed to the care of the parish of Sheffield.<sup>2</sup> On the other hand, the Nottinghamshire Bench was distinctly unsympathetic to Christopher Levers, who was fined 1s. "for that he is not of sane memory".<sup>3</sup>

The support of men waiting in gaol for trial, and having no money wherewith to maintain themselves, was put upon the community by a statute in 1572, which gave the justices of the peace the power to rate the county in order to raise a fund for this purpose. Since, however, a limit of 8d. a week per parish was specified,<sup>4</sup> the fund can never have been large in any shire, and the usual allowance to a prisoner was about 1d. a day.<sup>5</sup> In 1630, the daily sum granted to each prisoner in the Devonshire gaol was increased by a halfpenny,<sup>6</sup> and because the scarcity of wheat in 1638 raised the price of bread in Warwick, the justices there had to double temporarily the daily grant to the prisoners,

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(1) Y.A.J., Vol.V, (W.Riding Sess. Recs.), p.379, Sess. of 1 Oct. 1638; pp.403-404, Sess. of 22 Jan. 1639/40. WAR.Q.S.RECS. Vol.I, p.257, Epiphany Sess., 1637. SOMER.Q.S.RECS., Vol.I, pp.223-224, No.15, Sess. of 13-16 Jan. 1617/8.

(2) Y.A.J., Vol.V, p.387, Sess. of 16 Jan. 1638/9.

(3) NOTTS. CO. RECS., p. 122.

(4) 14 Eliz., c. 5.

(5) WAR.Q.S.RECS., Vol.I, p.189, 1634. WORCS.Q.S.ROLLS, Part I, p.305, No.300, 1619.

(6) HAMILTON, Devon Quarter Sessions, pp. 101-102.

since they had "of late lived in extreme want by reason of the smallness of their allowance".<sup>1</sup> The Durham Sessions in 1620 ordered the payment of 40s. to the Keeper of the Gaol "for the releif of the prisoner<sup>2</sup>s", but the justices of Nottinghamshire were of a more economical turn of mind, and thriftily ordered the liberation of William Boardman, confined in the gaol for perjury, since "by reason of his indigence ... he is likely to be burdensome to the County for his maintenance there"; he was put in the pillory for an hour instead.<sup>3</sup>

The result of the inadequacy of these allowances was that imprisonment for the poor man meant slow starvation. Thirty unhappy wretches languishing in the Castle of Worcester petitioned the justices of the peace that they should be brought speedily to trial, since they "have nothing but the bare allowance of 1d. a day to relieve their fainting bodies and if they be there longer they will be starved to death with hunger cold and nakedness."<sup>4</sup> A man and wife, imprisoned for fifteen weeks in Chester on a charge of theft, were forced to sell their clothes to buy themselves food,<sup>5</sup> and when such conditions existed elsewhere, it is no matter of wonder that in 1608 it was reported that in the Devonshire gaol "divers of them

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(1) WAR. Q.S. RECS, Vol.II, p.14, Order of Easter Sess., 1638.

(2) DUR. SESS. ORDER BOOK, No.I, (1616-1629), p.106, Sess. of 27 April, 1620.

(3) NOTTS. CO. RECS., p. 28, 1632.

(4) WORCS. Q.S. ROLLS, Part I, p. 305, No.300, 1619.

(5) CHESTER Q.S. RECS., 1630, File IV, fol.30, Jan. 1630/1.

[the prisoners] of late have perished through want".<sup>1</sup> Such a state of affairs condemns the operation of the poor laws insofar as they concerned destitute prisoners.

The justices' attempts to relieve the unfortunate poor were clearly undertaken in no spirit of eager philanthropy; rather their work was done grudgingly or not at all. The destitute were, by many of the magistrates, bracketed with the nuisances which had to be removed, with as little trouble as possible, out of the public view and into a position of inexpensive obscurity. Other justices, more humane, were prepared to provide these unfortunate people with money enough for a bare existence at least. The old idea of the solid merits of voluntary charity still survived, and it was therefore with considerable reluctance that the magistrates ever laid any burden upon the rates which were collected under compulsion.

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(1) HAMILTON, Devon Quarter Sessions, p. 91.



## CHAPTER XI.

### THE JUSTICES AT WORK — MORE SOCIAL ACTIVITIES.

When the parish had contributed to the support of the inmates of the gaols, it had by no means dealt with the whole problem of impoverished prisoners, since there was also the question of the maintenance of their families. In some places, at any rate, the community assumed this responsibility also, for the justices of Worcestershire ordered the overseers of Inkbarrow to provide for the wife and children of Thomas Whoman, a prisoner in the gaol, until he should be released.<sup>1</sup> In this case there seems to have been some possibility of the man's eventual return to his family, but the situation of the children of executed felons was indeed tragic, and since the number of hangings each year was very considerable, more and more of these waifs were left stranded without any means of support other than charity. In 1631, the Judges of Assize ordered the local magistrates of Chester to care for an infant whose mother had been

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(1) WORCS.Q.S.ROLLS, Vol.I. p.211, No. 122, 1615.

put to death;<sup>1</sup> and two Somerset women, executed for felony, also left babies behind, "which children", declared the justices of the peace, "ought to be releived by the County untill other course may be taken for their releife".<sup>2</sup> In Somerset, also, £4 per annum was granted for the support of a small boy "born in the gaol of Ivelchester, whose mother was hanged for cutting purses,"<sup>3</sup> and Elizabeth Floyd, a Warwickshire widow, received a yearly pension of £3. 6s. 8d. "for her keeping of Katherine Bentt, a poor child born in gaol when her father and mother were prisoners there".<sup>4</sup>

The number of pauper children was enormously increased by the fact that many people omitted the formality of marriage, but nevertheless brought into the world offspring which they were in no position to support. The view of the law was that fornication was a temporal as well as a spiritual offence,<sup>5</sup> and by statute the parents of a bastard were made liable to heavy punishment.<sup>6</sup> Much more important than the strictly legal status of an offence, however, is the attitude of the men who deal

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(1) CHESTER Q.S.RECS, 1631, File I, fol. 33, Sess. of 28 April, 1631.

(2) SOMER.Q.S.RECS., Vol.II, p.200, No.3, Sess. of 17-19 Sept. 1633.

(3) IBID, Vol.I, p.101, No. 14(8), Sess. of [July], 1613.

(4) WAR.Q.S.RECS., Vol.I, p.26, Epiphany Sess., 1626.

(5) DALTON, The Country Justice, (Ed. 1705), p.293. WINGATE, Justice Revived, (Ed. 1661), p. 26.

(6) 18 Eliz., c. 3.

with it, and the justices of the peace were undoubtedly more concerned with the social and economic than with the moral side of incontinence. To them, the crime lay in the further burdening of the poor-rates by the creation of extra mouths to feed, and so the Nottinghamshire Bench sent Robert Taylor to prison for living incontinently with Margaret Henson, "leaving his wife and children to be a charge to the parish".<sup>1</sup> In Norfolk, a man accused of bastardy was discharged as soon as it was found that the woman was not pregnant,<sup>2</sup> and others, brought before the Sessions for the same offence, were dismissed upon production of proof that the infants were dead.<sup>3</sup> In the West Riding, the mother of an illegitimate child was sentenced by the magistrates to be sent to the house of correction, but only "if the said basterd be hereafter chardgable to the inhabitantes of that parishe".<sup>4</sup>

Often, too, the marriage of the parents exempted them from further active disapproval on the part of the justices.<sup>5</sup> Thomas Waters was even commanded by the Norfolk Bench "to marry Elizabeth ffoulgham or discharg the towne",<sup>6</sup> and the same jus-

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(1) NOTTS.CO.RECS., p. 41, 1638.

(2) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. of 28 July, 1640.

(3) IBID, 4 Aug. 1640. MIDD.SESS.RECS., (New Series), Vol.I, p. 279, 1613.

(4) W.R.Q.S.RECS., Vol.II, p.201, Sess. of 14 April, 1640.

(5) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. of 14 Jan. 1639/40, Edw. Palmer; Sess. of 12 July, 1642, John Punt. CHESTER Q.S.RECS., 1625, File IV, fol.177, John Wild.

(6) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, 11 May, 1641.

tices committed David Thrider to the gaol "for refusinge to Marye with one Ann Leuetsom of North Humleton whom he had<sup>1</sup> gott with child".

The justices had reason to be concerned with the pauper birth-rate, for the number of bastardy cases which came before them was alarmingly large. Although, as we have seen in an earlier chapter, many of the offenders were dealt with summarily by the magistrates out of Sessions, culprits were often brought before the full Bench; indeed, at a Somerset Session in 1633, twenty-four orders were made, sixteen of which concerned the support of illegitimate children.<sup>2</sup> In other counties, too, as in Nottinghamshire for example, the justices were kept busy with similar cases.<sup>3</sup>

Responsibility for the care of these children had to be undertaken by someone, and the magistrates were anxious to see that the parish poor fund did not suffer. In a few instances they gave the child to the father to keep, while the mother was ordered to contribute to its maintenance;<sup>4</sup> in Warwick, the father of a base child had to support it altogether, as the mother had decamped.<sup>5</sup> Much more usually, however, the woman was given the baby, and the man was required to pay part of the expenses of its

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(1) NORF.Q.S.ROLLS, 12 Chas.. I.

(2) SOMER.Q.S.RECS., Vol.II, p.196 et seq.

(3) NOTTS.CO.RECS., p. 122.

(4) N.R.Q.S.RECS., Vol.II, p.114, Sess. of 9 Jan. 1615/6. MANCH.Q.SESS., pp. 90-91, 19 July, 1619.

(5) WAR.Q.S.RECS., Vol.I, p.123, Easter Sess., 1631.

upbringing. A shilling a week seems to have been an amount commonly imposed,<sup>1</sup> although a Worcestershire gentleman had to pay only 3d.,<sup>2</sup> and a tailor in Somerset, 6d.<sup>3</sup> The Hertfordshire justices, on the other hand, demanded a weekly sum of 16d. from Thomas Kitchin for the support of his illegitimate son,<sup>4</sup> and James Hooper, a yeoman of Somerset, was forced to pay 18d.<sup>5</sup>

It was not always easy to be sure who was the father of a bastard, and the justices in their uncertainty sometimes made rather odd arrangements. Elizabeth Wilkinson told the Middlesex magistrates that she did not know whether Walter Withe or Robert Chiltern was the father of her illegitimate daughter. Withe was ordered to pay 20s. to the overseers of the poor, although Chiltern was proved to be the culprit and was bound over to discharge the parish of any responsibility.<sup>6</sup> In Somerset, no less than three "fathers" were forced to share equally the expenses of a base-born child.<sup>7</sup> It was in the case of another

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- (1) ADD.MSS., 34,400, No.257, Huntingdon Sess., 22 May, 1638.  
SOMER.Q.S.RECS., Vol.I, p.139, No.20, Sess. of 18-20 April, 1615. WAR.Q.S.RECS., Vol.I, p.264, Trinity Sess. 1637.
  - (2) WORCS.Q.S.ROLLS, Vol.I, p.152, No.147, 31 Jan. 1610.
  - (3) SOMER.Q.S.RECS., Vol.I, p.148, No.21, Sess. of 11-14 July, 1615.
  - (4) HERTS.CO.RECS., Vol.I, pp.67-68, No.134, Sess. Roll for 1639-1641.
  - (5) SOMER.Q.S.RECS., Vol.I, p.177, No.19, Sess. of 9 April, 1616.
  - (6) MIDD.SESS.RECS., (New Series), Vol.I, p.383, 1614.
  - (7) SOMER.Q.S.RECS., Vol.I, p.264, No.19, Sess. of 14-16 Sept. 1619.

Somerset bastard, however, that the most remarkable settlement was made: "Whereas William Engram, a very old man, hath appealed against an order ... that he should pay eight pence weekly for the support of the child of Mary Cheade; It is now ordered that he shall pay four pence, and John Hacker, a young man, shall pay four pence of the said sum".<sup>1</sup>

Occasionally the father escaped the clutches of the law altogether, and in such cases the justices cast about for anyone, however remotely connected with the affair, upon whom they could force the child. In Lancashire, John Ireland, (himself a justice on the Bench), father of a fugitive offender, was made the guardian of the infant,<sup>2</sup> and Christopher Hughes, who married a woman after she had had an affair with someone else, found himself required to maintain his wife's unofficial offspring.<sup>3</sup> Three men who, being put in charge of a reputed father, let him escape on the way to the house of correction, were made to assume his part in the support of the child until they should recapture the vanished culprit.<sup>4</sup> In Middlesex, Richard Barnes was punished for an act of mercy, for he was ordered to pay 3d. a week, with arrears, for the maintenance of a child which he had suffered to be born of a poor woman in his house, "he having had warning to the contrary".<sup>5</sup>

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(1) SOMER.Q.S.RECS.,<sup>Vol.I</sup> p.234, Sess. of 7-9 July, 1618.

(2) LANCS.Q.S.RECS., p.78, Sess. of 19 Jan. 1600/1.

(3) HERTS.CO.RECS., Vol.V, p.112, Sess. of 13 April, 1629.

(4) Y.A.J., Vol.V, p.383, Sess. of 12 Oct. 1638.

(5) MIDD.SESS.RECS., (New Series), Vol.I, p.368, [1614].

When the parents were entirely incapable of providing for their child, the parish, however reluctantly, had to assume the responsibility. The inhabitants of Ormeskirke were commanded to give Margaret Toppinge 8d. a week towards the support of her illegitimate daughter,<sup>1</sup> and in the same county, the bastard son of Richard Awty was put into the care of the overseers of the poor.<sup>2</sup> Cheshunt was ordered to maintain a child until the father could be made to pay for its keep,<sup>3</sup> while Robert Appleby of Durham, originally sentenced to provide 12d. weekly for his bastard, was found to be "vnhable to pay the sd allowance", and the parish was commanded to take charge of the baby.<sup>4</sup>

Besides making provision for the maintenance of the children, the justices had to see that the offending parents were duly punished. If the latter were lucky, they might escape with being ordered merely to do public penance at Divine Service;<sup>5</sup> in the West Riding, a guilty pair were required to make their appearance in church, "appaired in a white sheete."<sup>6</sup>

Most commonly, the punishment of the parents was that they should be "stripped naked from the middle upward and

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(1) LANCS.Q.S.RECS., p.150, Sess. of 12 July, 1602.

(2) IBID, p. 107, Sess. of 13 July, 1601.

(3) HERTS.CO.RECS., Vol.I, p.52, No.70, 1620.

(4) DUR.SESS.ORDER BOOK, No.II, (1629-1639), p.243, Sess. of 10 Jan. 1637/8.

(5) LANCS.Q.S.RECS., p.112, Sess. of 15 July, 1601. SOMER.Q.S.RECS., Vol.I, p.170, No.47, Sess. of 9-12 Jan. 1615/6.

(6) W.R.Q.S.RECS., Vol.I, p.121, Sess. of 4 Oct. 1598.

soundly whipped".<sup>1</sup> Henry Wharton was sentenced by the Middlesex justices to be flogged at the cart's tail for getting his sister-in-law with child,<sup>2</sup> and a man and woman in the North Riding were to be "carted through the markett in Beedall in full markett tyme".<sup>3</sup> A little originality was introduced by the Somerset Sessions in the sentence passed upon a pair of offenders - they were to be flogged, and the order continued, "There shall be during the time of their whipping two fiddles playing before them in regard to make known their lewdness in begetting the said base child upon the Sabbath day coming from dancing".<sup>4</sup>

A few of the fathers received special chastisement apart from the mothers<sup>5</sup> - although one, a clergyman, was specifically exempted from all corporal punishment out of respect for his profession.<sup>6</sup> Usually, however, it was the woman who was singled out for special retribution, either by flogging,<sup>7</sup> or by the statutory penalty of committal to the house of correc-

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- (1) W.R.Q.S.RECS., Vol.II, p.11, Sess.of 11 Jan. 1613/4. CAL.S.P. DOM., Car.I, CCCXII, 45, Sess. order in Northants., 26 Jan. 1635/6. SOMER.Q.S.RECS., Vol.I, p.51, No.46, May, 1609. WILTS.CO.RECS., p.36, 1612.
  - (2) MIDD.CO.RECS., Vol. II, p.157, 1620.
  - (3) N.R.Q.S.RECS., Vol.I, p.47, Sess. of 14 July, 1606.
  - (4) SOMER.Q.S.RECS., Vol.I, p.211, No.8, 1617.
  - (5) W.R.Q.S.RECS., Vol.I, p.76, Sess.of 25 April, 1598. HERTS.CO.RECS., Vol.V, p.104, Michaelmas Sess., 1628. WORCS.Q.S.ROLLS, Part I, p.309, No.324, 1619. NORF.Q.S.ROLLS, 3 Chas.I, - Simon Atkins.
  - (6) H.MSS.COMM., Various Collections, Vol.I, p.98, Wilts.Q.S. Recs, 1628.
  - (7) W.R.Q.S.RECS., Vol.II, p.16-17, Sess. of 30 Sept. 1614. SOMER.Q.S.RECS., Vol.I, p.112, No.17, 1614; pp.139-140, No.20, Sess. of 18-20 April, 1615.



tion for a year,<sup>1</sup> or by both.<sup>2</sup>

The magistrates could do little to prevent casual looseness except inflict heavy punishment upon offenders as an example and a warning, but they could wage a more effective war upon professional immorality. Keeping a bawdy house was, legally speaking, a nuisance, and anyone found guilty could be fined.<sup>3</sup> Some of the magistrates, however, took stronger measures than this. The Middlesex Sessions ordered keepers of brothels to be whipped at the cart's tail - sometimes with "a bell rung before them" - and then to be returned to prison until they should find sureties for their good behaviour;<sup>4</sup> and a widow in Nottinghamshire was sent to the house of correction "for keeping a bawdy house".<sup>5</sup> In Warwickshire the justices, as a preventive measure, shut up in the house of correction one Millicent Kempe, a lady of light virtue who had had several bastards, "and liveth so dissolutely that she [is] like rather to have more than to be reformed".<sup>6</sup>

An economical manner of arranging for the support of

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- (1) NORTHANTS.Q.S.RECS., p.55, 1630 - 3 cases. NOTTS.CO.RECS. p.123. H.MSS.COMM., **Report** 14, Appendix 2, p.33, 1635. SOMER.Q.S.RECS., Vol.I, p.149, No.22, Sess. of 11-14 July, 1615; p.253, No.16, Sess. of 6-8 April, 1619.
  - (2) SOMER.Q.S.RECS., Vol.I, p.169, No.45, Sess.of 9-12 Jan. 1615/6.
  - (3) DALTON, The Country Justice, (Ed. 1705), p. 206.
  - (4) MIDD.SESS.RECS., (New Series), Vol.I, p.108, Sess. of 18-19 May, 1613; p.324, Sess. of 11-12 Jan. 1613/4.
  - (5) NOTTS.CO.RECS., p.41.
  - (6) WAR.Q.S.RECS., Vol.I, p.127, Trinity Sess., 1631.

pauper children, legitimate or otherwise, was to bind them apprentice to some master, in whose house they would then live without expense to the parish. The magistrates had power to "compel all such as be of ability to take such Apprentices ... and if any such Master shall refuse to take such Apprentice so to him appointed, the said Justices may bind such Master over to the next general Gaol-delivery, there to answer such default".<sup>1</sup> The Privy Council highly approved of this practice, and urged the justices to place out in this way as many children as possible.<sup>2</sup> The magistrates were probably very willing to comply; the West Riding Sessions threatened with prison a man who exhibited an understandable reluctance to take an apprentice for the next twelve years.<sup>3</sup> Since, however, any single justice could exercise this compulsion,<sup>4</sup> the Quarter Sessions records include only a few of the numerous orders that must have been made.

The binding of apprentices in a casual or careless way might have disastrous results. Consequently, Dalton warns the justices that they must consider the "ability and honesty" of the master, lest he turn out to be cruel, and abuse his apprentice. The magistrates should also examine the suitability of the proposed trade to the promotion of the child's ability to

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(1) DALTON, The Country Justice, (Ed. 1705), p. 151.

(2) EDEN, The State of the Poor, Vol. I, p.158, Directions for the relief of the poor, Sect. 3, issued by P.C., Jan. 1630/1.

(3) W.R.Q.S.RECS.Vol.II, p.17, Knaresborough Sess., 30 Sept.1614.

(4) DALTON, The Country Justice, (Ed. 1705), p. 147.

earn his own livelihood.<sup>1</sup> These were much-needed suggestions, for the Quarter Sessions had constantly to consider cases in which one or other of the parties was dissatisfied with the contract, and wished to end it. A West Riding boy, apprenticed to a farmer, asked leave to change masters, "being growne to more strength and affecting an other trade more then husbandrye", and the request was granted.<sup>2</sup> In other cases, the indenture was broken by the magistrates because the master moved, stealthily or otherwise, out of the country,<sup>3</sup> or because the child was not receiving proper instruction in his trade.<sup>4</sup> In Somerset, a contract was annulled because the master "incited John Marlem his apprentice to unlawful actions and to committ theevery".<sup>5</sup> More commonly the discharge was granted on the grounds of maltreatment of the unfortunate children.<sup>6</sup> One apprentice in Nottinghamshire was freed from his master because he was "abused by unjust and unreasonable beating by his said master, and was

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- (1) DALTON, The Country Justice, (Ed. 1705), p. 150.
  - (2) Y.A.J., Vol.V, pp.402-403, Sess. of 16 Jan. 1639/40.
  - (3) SOMER.Q.S.RECS., Vol.I, p.251, No.10, Sess. of 6-8 April, 1619. LINCS. (LINDSEY) Q.S. ROLLS, 1631, Index A.4.- petition of John Dighton.
  - (4) LANCS.Q.S.RECS., p.82, Sess. of 21 Jan. 1600/1. SOMER.Q.S.RECS., Vol.I, p.151, No.6, Sess. of 19-21 Sept. 1615; p.173, No.7, Sess. of 19 April, 1616.
  - (5) SOMER.Q.S.RECS., Vol.I, p.123, No.15, Sess. of 10-13 Jan. 1614/5.
  - (6) Y.A.J., Vol.V, p.394, Sess. of 18 July, 1639. HERTS.CO.RECS., Vol.V, p.134, Sess. of 4 Oct. 1630. SOMER.Q.S.RECS., Vol.I, p.104, No.16, Sept. 1613; p.116, No.9, July, 1614; Vol.II, p.109, No.7, Jan. 1629/30.

allowed neither food, drink nor clothes". He was, furthermore, "without undergarments, and his body was black and blue by the intolerable correction of the said master".<sup>1</sup> Thomas Thomas, apprenticed to John Stocke, tailor, was discharged by the Middlesex Bench because Stocke had not "maynteyned him with sufficient apparrell as an apprentice ought to have, but kepte him full of lyce".<sup>2</sup> In another case, two brothers were misused both by the master, who starved them, and by the hired workman, who knocked them about; the complaint to the Sessions adds that "the boyes mother do geve ther master every year 10s.... because the jorneyman shall not beat them".<sup>3</sup>

Misconduct on the part of the masters was not by any means the only reason for the discharging of apprentices. The boys themselves were often lazy,<sup>4</sup> or thievish,<sup>5</sup> or both.<sup>6</sup> Some ran away, and had to be dragged back to their masters;<sup>7</sup> one such fugitive was sent to the house of correction for three months,<sup>8</sup>

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(1) NOTTS. CO. RECS., p. 128, July, 1617.

(2) MIDD. CO. RECS., Vol.II, p.47, 12 Jan. 1608/9.

(3) H.MSS.COMM., Various Collections, Vol.I, p.71, Wilts. Sess. Recs., Jan. 1602/3.

(4) SOMER.Q.S.RECS., Vol.II, p.188, No.8, Sess.of 8-11 Jan.1632/3. NORF.Q.S.ROLLS, 7 Chas.I,- petition of Thomas Copley.

(5) NOTTS. CO. RECS., p. 128.

(6) SOMER.Q.S.RECS., Vol.II, p.185, No.16, Sess.of 18-20 Sept. 1632.

(7) NOTTS.CO.RECS., p.129. HERTS.CO.RECS., Vol.V, p.37, Jan. Sess. 1623/4.

(8) HERTS.CO.RECS., Vol.V, p.108, Jan. Sess., 1628/9.

and another had to spend four hours in the stocks.<sup>1</sup> William Avery, apprenticed to Master Corder, was freed because he was about to be married, "whereby he wilbe unfitt to performe the service of the said Corder".<sup>2</sup> A master who had fallen upon evil times asked to be relieved of his apprentice, since he could no longer afford to keep the boy properly, and his request was granted.<sup>3</sup> The same magistrates discharged Agnes Ilarie from her apprenticeship to Thomas Frost, the latter "not haveinge any employment for a maid servante by reason he hath many Daughters of his owne able to Doe his worke".<sup>4</sup>

Sometimes the illness of the apprentice was the reason for the ending of the contract.<sup>5</sup> John Burie was freed in Lancashire "because he is sick of the king's evil",<sup>6</sup> and an apprentice in Somerset "by reason of an Infirmitie and vncleanesse which he hath".<sup>7</sup> The Somerset Bench also discharged Margaret Legge, she "having become an idiot, and having other infirmities",<sup>8</sup>

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(1) N.R.Q.S.RECS., Vol.III, p.134, Special Sess. held 25 April, 1622.

(2) SOMER.Q.S.RECS., Vol.II, p.202, No.8, Sess.of 17-19 Sept.1633.

(3) IBID, p.101, No.8, Sess. of 7-9 July, 1629.

(4) IBID, Vol.II, p.193, No.6, Sess.of 30 April-2 May, 1633.

(5) NORTHANTS.Q.S.RECS., Vol.I, p.97, No.16, 1631. HERTS.CO.RECS., Vol.V, p.296, 12 July, 1641.

(6) LANCS.Q.S.RECS., p.260, Sess. of 17 April, 1605.

(7) SOMER.Q.S.RECS., Vol.II, p.190, Sess. of 8-11 Jan. 1632/3.

(8) IBID, Vol. I, p.257, No.6, Sess. of 29 June-1 July, 1619.

and a clothier in the West Riding successfully petitioned the magistrates to be liberated from "Joseph Lumme, put to him as a poore apprentice", who turned out to be "a lunatique and a caytiffe and not fitt to do him any service".<sup>1</sup>

It was the earnest hope of the government - and, of course, of the rate-payers - that as many of the poor as possible should be self-supporting. This was one of the reasons for the passing of the statute in 1589 which penalized anyone who erected a cottage without four acres of land attached to it,<sup>2</sup> for it was believed that such a regulation would prevent unauthorized families from slipping into parishes where they did not belong, and living there such a precarious existence on wages that they might easily come on to the rates. The immediate effect of the law, however, was to create a serious shortage of small houses in which the poor could be lodged, and a later statute gave the Quarter Sessions power to grant permission, subject to the approval of the Lord of the Manor, for the erection of cottages without the four acres on waste land.<sup>3</sup>

The attitude of the magistrates toward the restriction on the building of houses varied from time to time and from place to place. A number of presentments for the erection of unlawful cottages were made at some of the Quarter Sessions,<sup>4</sup>

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(1) Y.A.J., Vol.V, p.380, Sess. of 3 Oct. 1638.

(2) 31 Eliz., c. 7.

(3) 43 Eliz., c. 2.

(4) NORF.Q.S.ROLLS, 5 Chas.I.,-Robt.Curson. WORCS.Q.S.ROLLS, Part I, p.27, No.27, 1600. HERTS.CO.RECS., Vol.I, p.38, Sess.Rolls for 1609-1610; p.39, Sess.Rolls for 1611-1612; p.49, 1620 - two cases; p.63, No.40, Sess. Rolls for 1639-1641.

and a few of the offenders were fined the full £10<sup>1</sup> - though it seems impossible that anyone could have expected two of these culprits, who were mere labourers in Hertfordshire, to find such an enormous sum.<sup>2</sup> On the other hand, six men in the North Riding were at a single Sessions dismissed with fines of 40s. each for this same misdemeanour,<sup>3</sup> and a year later in the same county John Browne merely had to pay 10s., and guarantee that the family living in the house would not come on the poor rates.<sup>4</sup> The justices in Somerset and Chester ordered that several cottages be pulled down, since they had been put up illegally,<sup>5</sup> but in a few cases the buildings were allowed to remain unmolested, with the occupants still in possession.<sup>6</sup>

Many people applied to the Sessions for leave to erect cottages for themselves on the waste,<sup>7</sup> and often the justices

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- (1) W.R.Q.S.RECS., Vol. II, p. 252, Sess. of 12 Jan. 1640/1.  
SOMER.Q.S.RECS., Vol. II, p. 226, No.8, Sess. of 13-16 Jan. 1634/5.
  - (2) HERTS.CO.RECS., Vol.V, p.277, Sess. of 13 Jan. 1639/40.
  - (3) N.R.Q.S.RECS., Vol.I, pp.92-93, Sess. of 8 Oct. 1607.
  - (4) IBID, Vol. I, p.139, Sess. of 11-12 Oct. 1608.
  - (5) SOMER.Q.S.RECS., Vol.I, p.331, No.3, Sess. of 15-18 July, 1623.  
CHESTER Q.S.RECS., 1633, File II, fol. 32, Sess. of 2 July, 1633.
  - (6) SOMER.Q.S.RECS., Vol.I, p.219, No.19, Sess. of 14-16 Sept. 1617. NOTTS. CO. RECS., p. 125.
  - (7) COX, Derbyshire Annals, Vol. II, p.173, 1639. HAMILTON, Devon Quarter Sessions, p. 27.

granted the necessary licence.<sup>1</sup> In Warwick, a man and his wife were allowed to build a small house which was to remain in existence only during their lifetimes, and they were to pay a yearly rent of one penny for it.<sup>2</sup> When homeless petitioners were particularly poor, the magistrates even gave instructions to the churchwardens and overseers to build cottages on unused land at the public charge.<sup>3</sup>

Enterprising people might have taken advantage of this shortage of houses to make a profit for themselves by crowding the poor into tenements, but the lodging of more than one family in a cottage was forbidden by law, under penalty of 10s. for every month during which the offence continued.<sup>4</sup> In spite of this prohibition, the practice must nevertheless have been continued to a certain extent, for the statutory fine was levied from time to time at the Quarter Sessions.<sup>5</sup> One man in Durham, who had allowed two families to live in his house for a year,

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(1) LANCS.Q.S.RECS., p.143, Sess. of 21 April, 1602; p.152, Sess. of 14 July, 1602; p.203, Sess. of 18 Jan. 1603/4; p.260, Sess. of 17 April, 1605. CHESTER Q.S.RECS., 1625, File IV, fol. 175; 1635, File III, fol.29; 1636, File II, No.52. NORTHANTS.Q.S.RECS., p.96, Sess. of [Oct.] 1636. NOTTS.CO.RECS., p.125. SOMER.Q.S.RECS., Vol.I, p.6, No's.65-66, Sess. Rolls of 1607-1608; p.41, No.13, Sess. Rolls of 1609-1610, etc.. WILTS.CO.RECS., pp.28-29, 1609, etc..

(2) WAR.Q.S.RECS., Vol.I, pp.16-17, Trinity Sess., 1625.

(3) N.R.Q.S.RECS., Vol.II, p.287, Sess. of 22 July, 1605. Y.A.J. Vol.V, p.399, Sess. of 9 Oct. 1639. NOTTS.CO.RECS., p.125. WORCS.Q.S.RECS., Part I, p.248, No.168, 30 Sept. 1617. HERTS.CO.RECS., Vol.V, p.211, Sess. of 11-12 Jan. 1635/6.

(4) 31 Eliz., c. 7.

(5) N.R.Q.S.RECS., Vol.I, p.95, Sess. of 8 Oct. 1607. NOTTS.CO.RECS., p. 127, 1616.



was sentenced to pay the accumulated sum of £12,<sup>1</sup> but in the West Riding, those who took "inmates" were merely required to contribute 4d. or 6d. monthly to the poor rates in case the parish should be put to any expense.<sup>2</sup>

The financing of all the community activities for the relief of distress had to be managed by the justices of the peace. We have seen in the previous chapter how the special taxes for plague victims were levied, and how the magistrates had to smooth out bickerings and quarrels without number which arose from these assessments. The ordinary poor rate, too, caused endless dissatisfaction, complaints, and arguments, and constant clamours assailed the ears of the harassed justices. The parish of Lanchester objected that it was being more highly rated than neighbouring Satley - the magistrates adjusted the assessments.<sup>3</sup> There were inequalities of treatment in the parish of Fingall - the magistrates smoothed them out.<sup>4</sup> In Somerset, the justices called a special meeting to go over the old rating values and put them on a more equitable basis,<sup>5</sup> and the Durham Bench summoned all those who felt they were taxed too heavily to come and present their complaint on a certain day.<sup>6</sup> In other counties,

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(1) DUR.SESS.ORDER BOOK, No.II, (1629-1639), p.50, Sess. of 13 July, 1631.

(2) W.R.Q.S.RECS., Vol.II, pp.13-14, Sess. of 3 May, 1614.

(3) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.181, Sess. of 23 April, 1623.

(4) N.R.Q.S.RECS., Vol.I, p.138, Sess. of 11-12 Oct. 1608.

(5) SOMER.Q.S.RECS., Vol.II, p.285, No.19, Sess.of 3-6 Oct. 1637.

(6) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.77, Sess. of 7 April, 1619.

people who considered that they were being charged more than their wealth warranted brought their objections to the regular Quarter Sessions. Thomas Morris complained to the Somerset magistrates that he was paying a greater amount than he could afford, and they forthwith ordered "that he shall not be compelled to pay above 4s. yearly".<sup>1</sup>

Those who obstinately refused to furnish their share of the taxes for the poor were presented at the Quarter Sessions.<sup>2</sup> In the North Riding, a defaulter was fined 5s.,<sup>3</sup> and in 1614 an order for distraint was issued against the inhabitants of Broadholme in Nottinghamshire for arrears in the poor rate.<sup>4</sup>

The difficulties of raising money for the assistance of the destitute were lessened to some extent by the fact that the fines imposed by certain statutes were definitely assigned to pauper relief. This was the case, for example, in the laws against swearing,<sup>5</sup> tippling,<sup>6</sup> and neglecting to attend Divine Service.<sup>7</sup> The penalties must have contributed a comfortable addition to the poor fund, for at a meeting of the Huntingdon-

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(1) SOMER.Q.S.RECS., Vol.I, p.167, No.41, Sess. of 9-12 Jan. 1615/6.

(2) N.R.Q.S.RECS., Vol.I, p.3, Sess. of 11 April, 1605. W.R.Q.S.RECS., Vol.I, p.94, Sess. of 11 July, 1598.

(3) N.R.Q.S.RECS., Vol.IV, p.230, Sess. of 12 July, 1642.

(4) NOTTS. CO. RECS., p. 98.

(5) 21 Jas. I. c. 20.

(6) 1 Jas. I, c. 9; 21 Jas. I, c. 7.

(7) 1 Eliz., c. 2.

shire Sessions, thirty-nine fines were imposed, of which twenty-two were marked "pauperibus".<sup>1</sup>

On the whole, the justices cannot be very highly commended for their work in connection with poor relief. It is true that they had a good deal of passive resistance with which to contend - in an order of the West Riding Sessions in 1598 there occurs the illuminating statement that "all<sup>the</sup> parishes within this division do desire to be spared from paying of money weekeley towards the releefe of the poore".<sup>2</sup> It is also true that in some places there was a really humane spirit abroad, as in a village in Wiltshire, where the inhabitants asked permission to build, at their own expense, an almshouse for the poor, "many of whom are now enforced to dwell in barns, outhouses and other unwholesome places".<sup>3</sup> The people of Halifax, too, receive high praise from John Taylor, the Water-Poet --

"As first their Charity doth much appear,  
They for the poor have so provided there,  
That if a man should walk from Morn till Night,  
He shall not see one beggar...."

and again --

"All poor men's children have a house most fit,  
Whereas they spin, and sew, and card, and knit:

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(1) ADD.MSS., 34,400, No.160, Huntingdon Sess., 11 Jan. 1629/30.

(2) W.R.Q.S.RECS., Vol.I, p.84, Sess. of 9 June, 1598.

(3) H. MSS. COMM., Various Collections, Vol.I, p.95, Wilts. Q.S. Recs., 1625.

Where all of them have something still to do,  
As their capacities will reach unto." <sup>1</sup>

Such zeal cannot have been very common, for in 1598 the Privy Council, writing a general letter to the magistrates of every county, spoke reproachfully of "the remissenes that hath bin used gennerally by the Justices of the Peace in manie partes of the realme", and urged them to greater diligence. <sup>2</sup> Among the reasons given for the appointment of a special commission in 1620 is the statement that the poor laws "are in many partes of our Realme laid aside or little regarded as lawes not in force or of small consequence, whereas in some other counties and partes of this kingdome in w<sup>ch</sup> by the diligence and industrye of sume justices of the peace and other magistrates the said lawes haue bine dulye putt in execucon there hath evidentlye appeared much good and benefitt". <sup>3</sup>

Even where the justices did<sup>do</sup> something about poor relief, there were endless delays in getting results. This was partly the fault of the overseers, who had to be constantly prodded in order to keep them up to the mark. <sup>4</sup> Margaret Taylor was granted 4d. weekly by the Durham Sessions of July, 1628; at the meeting

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(1) TAYLOR, Works, (Ed. by C. Hendley), "A very Merry-Wherry-Ferry Voyage", (1622), p. 23.

(2) ACTS OF P.C., 1597-1598, pp.388-389, 25 March, 1598.

(3) LEONARD, Early English Poor Relief, pp. 244-245.

(4) ADD.MSS., 34,400, No.265, petition of Jas. Mason to the Huntingdon Sess., 22 May, 1638. H.MSS.COMM., Report 13, Appendix 4, p.439, Feb. 19, 1621/2.

of the justices held during the following April, an irritated order was made that "Marg<sup>t</sup> Taylor is to haue her allowance of iiij d. per week henceforth, or els a warr<sup>t</sup> ag<sup>t</sup> the ouerseers". Two years later a warrant was actually issued against the poor-relief officers "to show cause why they have not paid the weekly some of 4d. per weeke to Margaret Taylor ... according to a former order in this Court".<sup>1</sup> In Warwick, too, commands had to be repeated constantly before action ensued.<sup>2</sup> It is no wonder th<sup>e</sup> North Riding justices ordered that "the Churchwardens of the townes of Screwton and Aynderby to be more diligent relieving their poore, that the Court be not troubled with any further claymours therein".<sup>3</sup>

The result of the general unsatisfactoriness of the relief situation was that in 1630 and 1631 action was taken by the central government to tighten up the whole system, the pivotal point of the new measures being an increased amount of supervision from London. In January, 1631, a special Commission for investigating the execution of the poor laws was set up, and its members were to divide the country into districts for the making of detailed inquiries.<sup>4</sup> There followed the publication of the famous Book of Orders, which instructed the justices of the peace

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(1) DUR.SESS ORDER BOOK, No. I, (1616-1629), p.331 - 9 July, 1628; p.359 - 15 April, 1629; No.II, (1629-1639), p.44 -13 July, 1631.

(2) WAR.Q.S.RECS., Order Book, 1625-1637, passim.

(3) N.R.Q.S.RECS., Vol. I, p.22, Sess. of 4 Oct. 1605.

(4) CAL.S.P.DOM., Car.I, CLXXXIII, 60, Order made by the Lords Commissioners, 1631.

to map out the counties into divisions in each of which a group of magistrates was to be definitely responsible for the efficient administration of poor relief. Every three months the sheriffs were to receive reports from all the divisions of their shires, and these reports were to go to the Lords Commissioners, via the Justices of Assize. The latter were also to inform the King concerning negligence on the part of any local magistrates within their circuits.<sup>1</sup>

For a while this shaking up seems to have done some good, and a great many reports were duly sent in.<sup>2</sup> Yet soon the inevitable slackening-off began to appear. By 1632, the Privy Council was declaring that while much admirable work was being done, signs of negligence were again to be seen,<sup>3</sup> and in 1633 the Judges of Assize told the Privy Council that the justices of the peace were not meeting often enough to execute the Book of Orders properly.<sup>4</sup> During the next year, only eighteen counties sent in their returns,<sup>5</sup> and in 1636 the Lord Keeper in his usual address to the circuit judges reminded them of their duties in connection with the execution of the poor laws, "wherein at first there was a direction given for an Accompt to be made by the

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(1) LEONARD, Early English Poor Relief, p. 158.

(2) CAL. S.P. DOM., Car.I, CLXXXV, CLXXXVI, CLXXXVII, CXCI, etc. - passim.

(3) LEONARD, Early English Poor Relief, p. 159.

(4) E.H.R., Vol. XXIII, (1908), "Progress of Inclosure during the 17th Century," by E.C.K. Gonner, p. 486.

(5) CAL.S.P.DOM, Car.I, CCLIX, 88, List of certificates for 1633.

Sheriff and the Justices of the Peace. ~~In This same~~ <sup>1</sup> was orderly kept in divers places, in others not so well".

Thus the justices cannot be given credit for a shining success in the enforcement of social legislation. Since they themselves, as wealthy local magnates, contributed a good part of the poor rate, they were - very humanly - anxious that the assessments should remain as low as possible. This led to a parsimony which at times worked great hardship. Yet in fairness, their difficulties, too, must be remembered - the novelty (and unpopularity) of the idea of social responsibility, the unwillingness of the people at large to pay for something which did not benefit them personally, and the unreliability of those negligent or determinedly economical officials, the churchwardens and overseers, were serious obstacles indeed in the way of an efficient system of relief.

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(1) RUSHWORTH, Historical Collections, Vol.II, p.358, Lord Keeper Coventry's speech in the Star Chamber to the Judges, 1636.

## CHAPTER XII.

### THE JUSTICES AT WORK — THE ENFORCEMENT OF ECONOMIC REGULATIONS.

We have seen in an earlier chapter how, during the 16th century, the central government did its best to encourage, and at the same time to control, the making and selling of goods in England. As part of this policy, a great effort was made early in the reign of Queen Elizabeth to settle by law not only what training for their occupations boys and girls should receive, but also what relationship should exist between employer and employee. The crystallization of this effort was the all-embracing Statute of Artificers.<sup>1</sup> Since no government body in London, no matter how conscientious it might be, could supervise the practical application of the statute's innumerable clauses, the local magistrates were called upon to see to the complicated business of its enforcement.

The task which faced them was one which would be undertaken with misgiving by the most hardened of modern technocrats. They were to regulate wages at their Easter Sessions each year, and punish anyone who gave or received more than the maximum

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(1) 5 Elizabeth, c. 4.



fixed. They could force all kinds of workmen to join in the harvesting, and put in the stocks those who obstinately refused. They had to see that no man carried on a trade without first serving seven years' apprenticeship, and they were given power to discharge a lazy apprentice, or one who was being maltreated, before his term of training was complete. It was their duty to make sure that servants were engaged by the year, and to punish employers or employees if they broke the contract without the express permission of a magistrate.

The putting into practice of this monumental law must have occupied a good deal of the attention of the justices, and their zeal was doubtless stimulated by the fact that any magistrates who absented themselves from the wage-rating Sessions without reasonable excuse could be fined £10.<sup>1</sup> Indeed, the North Riding justices found that their Easter Sessions could not cope with the work allotted to them by this statute, and ordered the holding of special Sessions by the magistrates "within their several divisions".<sup>2</sup>

The limitation of wages was really an extension of the old theory of a "just price".<sup>3</sup> In all fairness, therefore, the magistrates should have considered fluctuations in the cost of food, clothing and fuel when they established rates of payment, and the Statute itself commanded them to do so. But though in

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(1) 5 Eliz., c. 4.

(2) N.R.Q.S.RECS., Vol.I, p.204, Sess. of 2-3 Oct. 1610.

(3) TAWNEY, Assessment of Wages in England, pp. 533-534.

some cases they did increase wages, the rise did not nearly compensate for the leap in prices.<sup>1</sup> Too often the justices took the easiest path, and simply continued the old rates from year to year<sup>2</sup> - an understandable dereliction of duty, since they themselves were of the employer class. The evil results of such a system were recognized by the Privy Council, who wrote to the justices of Wiltshire in 1614, "Whereas it is understood that many of those poore craftsmen ... doe cheifely complaine on the small wadges gyven them by the clothier, being no more then what was accustomed to be payde 40 yeres past, notwithstanding that the prises of all kinde of victuall are almost doubled from what they were, it is ... thought fitting that ... you examine the truth of this complaint, and finding it to be as is informed, to use your best endeavors for the proportioning of their wadges unto the state of these present tymes".<sup>3</sup> Unfortunately there is no further evidence as to whether or not this command produced any improvement.

Of the activity of the justices in enforcing the rates of payment there can be little doubt. The West Riding Bench ordered the high constables to proclaim the wage scale in all market towns "and other places convenient", and to see that re-

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(1) TAWNEY, Assessment of Wages in England, pp. 559-560.

(2) IBID, p.336. DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.287, Sess. of 4 April, 1627. NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. for 1639/40.

(3) ACTS OF P.C., 1613-1614, p-458, P.C. to J.P.'s of Wilts., June ?, 1614.

fractory people were bound over to explain their conduct at the next Quarter Sessions.<sup>1</sup> Workers were presented by the tything-men of Wiltshire to the Bench there for taking excessive wages,<sup>2</sup> and in some counties men were sent to gaol for this offence.<sup>3</sup> Nor were delinquent employers spared - a North Riding widow was fined 3s. 4d. for paying her servant too much,<sup>4</sup> and the Nottinghamshire Bench sentenced George Gaskyne to a penalty of £2. 10s. because he "gave excessive wages namely 26s. 8d." to an employee.<sup>5</sup> These fines show a merciful spirit in the magistrates, as the statutory penalty for those who overpaid their workpeople was £5 and ten days' imprisonment.<sup>6</sup>

Masters sometimes tried to defraud their servants by withholding their wages, and with this form of petty tyranny the justices had no sympathy. Sessions orders were made to compel the defaulters to fulfil their obligations;<sup>7</sup> in Lincoln, the Bench even commanded that the goods of the employer should be seized in distraint if the money owed were not immediately

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- (1) W.R.Q.S.RECS., Vol.II, p.333, Sess. of 13 Oct. 1641.
  - (2) WILTS.CO.RECS., p. 105, 1632.
  - (3) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, Sess. of 6 Aug. 1640. NOTTS.CO.RECS., p.66.
  - (4) N.R.Q.S.RECS., Vol.I, p.239, Sess. of 3 Oct. 1611.
  - (5) NOTTS. CO. RECS., p. 66.
  - (6) 5 Eliz., c. 4.
  - (7) N.R.Q.S.RECS., Vol.II, p.38, Sess. of 11-12 Jan. 1613/4. NOTTS.CO.RECS., p.67, Jan. 1620/1. WORCS.Q.S.ROLLS, Vol.I, p.235, No.40, 1617. HERTS.CO.RECS., Vol.V, p.107, Sess. of 11 Jan, 1628/9; p.216, Sess. of 25-26 April, 1636. SOMER.Q.S.RECS., Vol.II, p.225, Sess. of 13-16 Jan. 1634/5.

forthcoming.<sup>1</sup>

Other infractions of the Statute of Artificers were punished by the Quarter Sessions. A number of people were presented for engaging servants without first seeing that the proper regulations had been complied with,<sup>2</sup> and two Yorkshiremen were fined £5 each for hiring servants who had no testimonials of legal dismissal from their former masters.<sup>3</sup> A clergyman in Nottinghamshire had to pay 5s. for dismissing a servant before the end of his term of service,<sup>4</sup> and Leonard Simpson was fined £2 by the North Riding Sessions for "putting awaie" his maid-servant Dorothy Cornforth, who was pregnant and accused him of being responsible.<sup>5</sup> Runaway servants were returned to their masters,<sup>6</sup> and were sometimes fined into the bargain;<sup>7</sup> lazy ones were sent to the house of correction for a flogging.<sup>8</sup> On the other hand, the justices sometimes broke the contract between master and servant when there was clear evidence of maltreat-

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- (1) LINGS. (LINDSEY) Q.S. ROLLS, 1629, Index A.2.
  - (2) N.R.Q.S.RECS., Vol.I, p.2, Sess. of 11 April, 1605; p.100, Sess. of 12 Jan. 1607/8. W.R.Q.S.RECS., Vol.I, p.48, Sess. of 14 Jan. 1597/8. NOTTS.CO.RECS., p.66.
  - (3) N.R.Q.S.RECS., Vol.II, p.239, Sess. of 11 July, 1620. W.R.Q.S.RECS., Vol.II, p.218, Sess. of 14 July, 1640.
  - (4) NOTTS. CO. RECS., Appendix E, p. 162.
  - (5) N.R.Q.S.RECS., Vol.I, p.97, Sess. of 8 Oct. 1607.
  - (6) SOMER.Q.S.RECS., Vol.II, p.93, No.31, Sess. of 13-16 Jan. 1628/9.
  - (7) N.R.Q.S.RECS., Vol.IV, p.75, Sess. of 11 July, 1637. DUR. SESS.ORDER BOOK, No.II, (1629-1639), p.110, Sess. of 10 July 1633.
  - (8) NOTTS.CO.RECS., p.68, one case in 1629 and another in 1633.

ment.<sup>1</sup> One such discharge was granted on the very adequate ground that "the saide John Ball hath oftentimes beaten and mis-used Johan Akerley his servant with undue correccion and hath likewise violently throwen a naked kniffe att her with intente to doe her harme".<sup>2</sup>

The apprenticing of boys and girls to trades also came under the eye of the justices, and we have already seen how extensively apprenticeship was used as part of the poor relief system. The regulations made by the Statute of Artificers, however, dealt with apprenticing merely as a training for a trade, and the magistrates, in enforcing the law, were faced at the Quarter Sessions with a motley collection of carpenters, weavers, mercers, blacksmiths, tailors, and even surgeons, who had not gone through their seven years' period of instruction.<sup>3</sup> In some cases, the fines imposed on the delinquents were recorded; two labourers in the West Riding who undertook to be butchers were sentenced to pay 40s. each,<sup>4</sup> and in the neighbouring North Riding a man was fined 20s. for working as a joiner without first serving his apprenticeship.<sup>5</sup>

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(1) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.136, Sess. of 11 July, 1621; p.364, Sess. of 8 July, 1629.

(2) MIDD.CO.RECS., Vol. II, p.101.

(3) W.R.Q.S.RECS., Vol.I, p.128, Sess.of 8 Jan. 1598/9; p.171, Sess.of 8 Jan. 1599/1600, etc. NOTTS.CO.RECS., p.127. HERTS.CO.RECS., Vol.V, p.178, No.7, Sess.of 7 April, 1633; p.89, No.57, Sess.of 20 July, 1626; p.145, No's.237, 238, 12 Feb. 1629/30. SOMER.Q.S.RECS., Vol.II, p.152, No.19, Sess.of 19-22 April, 1631.

(4) W.R.Q.S.RECS., Vol.II, p.266, Sess. of 20 Jan. 1640/1.

(5) N.R.Q.S.RECS., Vol.III, p.155, Special Sess. of 5 Oct. 1622.

The Statute of Artificers dealt with the people who worked; other laws - and their number was truly impressive - controlled the details of the work done. Among the trades to come under <sup>the</sup> governmental eye was, inevitably, the making of cloth, since woollens were England's chief export. Such legislation could only be enforced by vigorous effort on the part of the local authorities in the wool-weaving districts, but no more than a mild interest seems to have been displayed by the Quarter Sessions concerned. The Lancashire Bench, indeed, took action against those who overstrained cloth by stretching it upon <sup>1</sup>tanter<sup>s</sup>, and many clothiers were presented before the Wiltshire justices for breaking the regulations limiting the length and breadth of their goods,<sup>2</sup> but unfortunately the records do not show whether the magistrates took steps to punish the offenders.

The searching and sealing of the finished woollens appears to have provided a peculiarly fruitful sphere for unlawful practices. The West Riding justices punished two rascals within a year for using false seals,<sup>3</sup> and the Middlesex Bench found it necessary to stipulate that "no clothe shalbe measured by the searchers untill it be thoroughly drye"<sup>4</sup> - an order which

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(1) LANCS.Q.S.RECS., pp. 97-98, Sess. of 29 April, 1601; p.104, Sess. of 9 July, 1601.

(2) WILTS.CO.RECS., pp. 2-3, 1603.

(3) W.R.Q.S.RECS., Vol.II, pp. 240-241, Sess. of 8 Oct. 1640; p.274, Sess. of 4 May, 1641.

(4) MIDD. CO. RECS., Vol.II, p.45, 2 Dec. 1608.

suggests a very naïve type of trickery.

The North Riding justices also had some difficulty with dishonest weavers of linen. During the year 1605, six men were presented at the Quarter Sessions for stretching their cloth unduly,<sup>1</sup> and four years later George North was fined 2s. because he did "wittingly falsely and deceitfully make and worke one pece of lynnene cloth".<sup>2</sup>

The mercantilist theory on which the 17th century trading and industrial policy of England was based demanded the highest possible degree of economic self-sufficiency. The problem of providing the country with an adequate food-supply was therefore a matter about which the government felt a natural concern, and the Commission of the Peace instructed the justices to see that anyone who speculated in food was punished. Such speculation was rendered particularly tempting, because the frequent recurrence of local famines caused the price of wheat to rise and fall with surprising rapidity, and so by law only specially licensed people were allowed to deal in grain.<sup>3</sup> The licences were issued by the Quarter Sessions,<sup>4</sup> and the North Riding Bench exacted fines of 10s. from men caught trading in foodstuffs

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(1) N.R.Q.S.RECS., Vol.I, p.3, Sess. of 11 April, 1605; p.9, Sess. of 9 July, 1605.

(2) IBID, p.159, Sess. of 11-12 July, 1609.

(3) 5 Eliz., c. 12.

(4) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.195, Sess. of 7 Jan. 1623/4. SOMER.Q.S.RECS., Vol.II, p.108, Sess. of 12-15 Jan. 1629/30; p.126, Sess. of 29 June-1 July, 1630; p.156, Sess. of 12-15 July, 1631, etc. WILTS.CO.RECS., p.86, 1627.

without a permit.<sup>1</sup> In Somerset, the Sessions, "takinge notice of the greate prises of corne and butter and cheese", ordered that those licensed must put up security for their honest dealing.<sup>2</sup> "Regrators", who bought with the intention of reselling at an increased price, were presented at the Quarter Sessions,<sup>3</sup> and were fined, though the sums exacted could hardly have been of much use as deterrents - 6d.,<sup>4</sup> 2s.,<sup>5</sup> and 2s. 6d.<sup>6</sup>

Even more disastrous in their results than regrating were the practices known as engrossing and forestalling. These would nowadays be called cornering, and they had the effect of forcing prices of food up until the poor were on the verge of starvation, and hunger-riots ensued.<sup>7</sup> Offenders found guilty of engrossing and forestalling were called before the Quarter Sessions,<sup>8</sup> and fines ranging from 6s. 8d.<sup>9</sup> up to £50<sup>10</sup> were imposed;

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- (1) N.R.Q.S.RECS., Vol.I, p.94, Sess. of 8 Oct. 1607.
  - (2) SOMER.Q.S.RECS., Vol.II, p.120, No.4, Sess.of 6-8 April,1630.
  - (3) HERTS.CO.RECS., Vol.I, p.50, 24 June, 1620. ADD.MSS., 34,400, No's. 114-128, Huntingdonshire, 1630.
  - (4) NOTTS. CO. RECS., p. 130, 30 Sept. 1611.
  - (5) IBID, p. 131, 13 Jan. 1608/9.
  - (6) DUR. SESS. PLEA ROLL, 21-22 Jas. I, Membrane 6, Sess. of 7 Jan. 1623/4.
  - (7) CAL.S.P.DOM., Jac.I, XXXII, 78, Sir Rich. Knightley and Sir Eusebius Andrews to Sir Robt. Osborne, Sir Edw. Onley, and Sir John Needham, 29 May, 1608, Norton.
  - (8) W.R.Q.S.RECS., Vol.I, p.46, Sess.of 14 Jan. 1597/8; p.66, Sess. of 25 Apr. 1598. SOMER.Q.S.RECS., Vol.II, p.103, No.23, Sess. of 7-9 July, 1629.
  - (9) N.R.Q.S.RECS., Vol.III, p.354, Sess. of 9 July, 1633.
  - (10) MIDD.SESS.RECS., (New Series), Vol.I, p.386, 28 March, 1614.



a Durham<sup>man</sup> who engrossed butter had to pay a mere 9s., but he was also imprisoned for three months.<sup>1</sup>

The hoarding of wheat in times of scarcity pushed the prices even higher than usual, and in 1622 a royal proclamation ordered the justices of the peace to see that the poor were not deprived of bread at a reasonable cost.<sup>2</sup> This proclamation cannot have achieved the desired results, for in 1631 the Privy Council wrote to the magistrates of Norfolk that "the prices of ... all sortes of Graine are in manye parts still kept vp", and added sternly, "We will you to know, that as this Boarde doth expect from you a good account soe in case there shalbe found any fault or neglect on your parts, we shall conceyue of you as the cheife cause both of y<sup>e</sup> former and of the latter ill effects."<sup>3</sup>

The government, as well as trying to alleviate the distress caused by famine, made some attempt to take preventive measures. Each year an enormous quantity of grain was consumed in the making of malt to supply the innumerable alehouses with drink, and a statute in the reign of Elizabeth ordered the suppression of unnecessary public houses, and a strict supervision of brewing.<sup>4</sup> The Council expected the justices of the peace to

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(1) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.372, Sess. of 7 Oct. 1629.

(2) CAL. S.P. DOM., Jac. I, CXXXIV, 91(1), Proclamation dated 22 Dec. 1622, Whitehall.

(3) NORF. LIEUTENANCY PAPERS, pp. 175-176, P.C. to J.P.'s of Norfolk, 18 Oct. 1631, Whitehall.

(4) 39 Eliz., c. 16.

see to the execution of these commands,<sup>1</sup> but the response varied according to the locality. At some of the Quarter Sessions, licences to maltsters were granted with great caution,<sup>2</sup> or firmly denied,<sup>3</sup> and the number of brewers was materially reduced.<sup>4</sup> In years of particular scarcity, like 1608 and 1630, a few Benches utterly forbade the making of malt until the famine should pass.<sup>5</sup> Any who dared to continue to make ale against the Sessions orders were sentenced to a fine,<sup>6</sup> or to a flogging as an alternative to the payment.<sup>7</sup> Edward Hooton of Nottinghamshire was given no option - he was handed over to the constable to be "openlie whipt on Sunday next".<sup>8</sup>

In spite of this laudable zeal, however, there are indications that hordes of makers of ale continued to go their wicked way unchecked. In 1621 a bill was introduced in the House of Commons "to restrain Common Brewers and Tiplers to be Justices of the peace", on the ground that beer-making magistrates

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(1) CAL. S.P. DOM., Jac.I, CXXXIII, 52, P.C. to J.P.'s of England and Wales, [19] Oct. 1622.

(2) SOMER.Q.S.RECS., Vol.II, p.119, Sess. of 6-8 April, 1630.

(3) CHESTER Q.S.RECS., 1633, File I, fol.30, Sess.of 9 May, 1633.

(4) SOMER.Q.S.RECS., Vol.I, p.320, No.2, Sess. of 1-3 Oct. 1622; p.340, No.7, Sess.of 13-16 Jan. 1623/4; Vol.II, p.259, No.1, Sess. of 13-15 July, 1636.

(5) HAMILTON, Devon Quarter Sessions, pp, 91, 101. NORTHANTS.Q.S.RECS., p. 94, [Oct.] Sess., 1630.

(6) N.R.Q.S.RECS., Vol.I, p.91, Sess. of 8 Oct. 1607. NOTTS.CO.RECS., p. 49, 9 July, 1606.

(7) DUR.SESS.ORDER BOOK, No.II, (1629-1639), p.70, Sess. of 11 July, 1632.

(8) NOTTS. CO. RECS., p. 50, 18 April, 1642.

were not likely to be enthusiastic in their enforcement of the brewery laws,<sup>1</sup> and in 1635 the Privy Council wrote sharply to the justices of several counties that their laxity was regarded with great disfavour by the authorities.<sup>2</sup> A year later, things had come to such a pass that the Council decided that efficient control could be established only by the incorporation of all the brewers in each county.<sup>3</sup> These stirrings on the part of the central government suggest that the magistrates' work in supervising the operations of the maltsters was not an unqualified success.

The difficulties arising from the sporadic grain-shortages were intensified otherwise than by the actions of speculators and brewers. The movement for the changing of arable land into sheep-pasture, while on the wane in many parts of England by 1600, was still cutting down the size of the harvests and driving up the price of grain. Depopulation was a crime at Common Law,<sup>4</sup> and in 1630, alarmed by the serious scarcity of bread, the central government urged upon the local authorities the necessity of enforcing the law against the turning of ploughed fields into pasture, "w<sup>ch</sup> enclosures and convercons tending as they generallie doe unto depopulation are against the ancient

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(1) NOTESTEIN, Commons Debates, 1621, Vol.VII, pp. 18-20.

(2) CAL. S.P. DOM., Car.I, CCCIII, 118 and 118(1), P.C. to J.P.'s of Hunts., Norf., Cambs., Herts., and Suff., 12 Dec. 1635.

(3) IBID, CCCXXVII, 4, P.C. to J.P.'s of Sussex, June, 1636, Hampton Court.

(4) HOLDSWORTH, History of English Law, Vol.IV, p.366.

lawes of the kingdome and are of evill consequence and example as at altimes so especially at this tyme of dearth".<sup>1</sup> Presentments were made at the Quarter Sessions for "decaying husbandries", for "converting tillage ground to meadowe and pasture", and the like,<sup>2</sup> and in Huntingdonshire a justice of the peace cheerfully signed a report to the Privy Council in which he himself figured as an encloser of two hundred and fifty acres of land.<sup>3</sup> It seems likely, however, that little action was taken by the magistrates to check the movement - which, in any case, was dying a natural death - since it was the gentry who were the principal offenders,<sup>4</sup> and the humble countrymen felt a natural reluctance to bring accusation against local magnates. As Lord Keeper Coventry said, "Depopulations are an oppression of an high nature, and comonly done by the greatest persons that keepe the Iurores.vnder, and in awe, and that is the cause they are no more presented, nor brought in question".<sup>5</sup>

The government's interest in victuals did stop short at the encouragement of wheat-growing and the avoidance of waste.

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(1) LEONARD, "The Inclosure of Common Fields in the 17th Century", Transactions of Royal Hist. Soc., New Series, Vol.XIX, (1905), p. 128, P.C. to J.P.'s of Derby, Hunts., Notts., Leicester., and Northants., Nov. 1630.

(2) N.R.Q.S.RECS., Vol.I, p.108, Sess. of 15 Jan. 1607/8. HERTS. CO.RECS., Vol.1, p.34, Sess. Rolls for 1602-1603; p.38, Sess. for 1609-1610. NOTTS. CO. RECS., p.62.

(3) CAL. S.P. DOM., Car.1, CLXXXIX, 94, J.P.'s of Hunts. to P.C., [April], 1631.

(4) HOLDSWORTH, History of English Law, Vol.IV, p.366.

(5) ADD. MSS., 31,007, fol.85, Lord Keeper's Charge to the Judges in the Starchamber, 17 June, 1635.

By statute, the destruction of young fish was punishable by a fine<sup>1</sup> - in the case of salmon fry, by fine and imprisonment.<sup>2</sup> Men were presented at the Quarter Sessions for this offence,<sup>3</sup> and the nets and engines<sup>used</sup> were ordered to be destroyed.<sup>4</sup> A North Riding man was fined 2s. 6d. "for sufferinge his salmon hecques to stand in the Eske in unseasonable times, thereby killing many salmons in the time of kipper",<sup>5</sup> but in Durham, the usual penalty seems to have been £1.<sup>6</sup>

The fishing industry was encouraged by the passing of statutes which forbade the eating of flesh on Fridays and during Lent.<sup>7</sup> At the end of Elizabeth's reign, however, the Lord Keeper complained to Cecil in this connection that "admonitions and proclamations are no better esteemed than as matters of fashion, and so all grows out of fashion".<sup>8</sup> Nor did this state of affairs improve when James I. came to the throne. Year after year, orders went forth from the Council, commanding the justices

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(1) 3 James I, c. 12.

(2) 17 Richard II, c. 9.

(3) W.R.Q.S.RECS., Vol.I, pp.162-163, Sess. of 1 Oct. 1599.

(4) HAMILTON, Devon Quarter Sessions, p. 89.

(5) N.R.Q.S.RECS., Vol.III, p.199, Special Sess. of 27 April, 1624.

(6) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.11, Sess. of 10 July, 1616; p.23, Sess. of 30 April, 1617.

(7) 5 Eliz., c. 5; 27 Eliz., c. 11.

(8) H. MSS. COMM., Hatfield Papers, Vol.12, p.48, Egerton to Cecil, 9 Feb. 1601/2.

of the peace to see that the legal regulations controlling the eating of meat were enforced.<sup>1</sup> Yet in 1613, the disgusted ministers wrote angrily to the magistrates that the orders were being treated with "neglect and generall contempt", and breathed threatenings of dire punishment if the local officers did not display more energy.<sup>2</sup> This was followed by a new general command in 1615,<sup>3</sup> and at the same time letters were sent to each of the local Benches, directing the magistrates to see to the enforcement of the order-in-council.<sup>4</sup> A little mild activity followed; Richard Bower of Nottinghamshire was fined 2s. 6d. for allowing several men - one of them known as "little Twopence" - to eat hens in his house during Lent,<sup>5</sup> and some years later the same Bench exacted 6d. from an alehousekeeper who had eaten meat in Lent.<sup>6</sup> Occasionally we find the justices taking recognizances of alehousekeepers and innholders not to "utter any

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- (1) STEELE, Catalogue of Tudor and Stuart Proclamations, Vol. I, - series of P.C. orders, No. 1055, 22 Jan. 1607/8; No. 1071, 30 Jan. 1608/9; No. 1091, 12 Feb. 1609/10; No. 1106, 29 Jan. 1610/11; No. 1120, 16 Feb. 1611/2.
  - (2) ADD. MSS., 34,218, fol. 12b., P.C. to sheriff and J.P.'s of Kent, 10 Dec. 1613 - mentions similar letter to all other counties. ACTS OF P.C., 1613-1614, pp. 301-302, minute of dispatch of above letters, 10 Dec. 1613.
  - (3) CAL. S.P. DOM., Jac. I, LXXX, 1(3), Order in Council, 10 Jan. 1614/5.
  - (4) ACTS OF P.C., 1615-1616, pp. 12-13, P.C. to sheriffs and J.P.'s of England and Wales, 8 Jan. 1614/5 (dispatched 12 Jan.)
  - (5) NOTTS. CO. RECS., p. 46, 12 July, 1615.
  - (6) IBID, 29 April, 1622.

fleashe dureinge this tyme of Lent",<sup>1</sup> and in the West Riding, the Sessions issued dispensations to the butchers to dress meat for the use of the sick.<sup>2</sup> Apart from such spasmodic efforts, however, the magistrates seem to have felt no great interest in what people ate or did not eat in Lent.

Seventeenth century economy regarded the regulation of prices - the fixing of the Medieval "just price"- as a proper function of the government, and since local conditions varied enormously, the justices of the peace were the obvious government agents to perform the duty. The Middlesex Bench in 1620 laid down a price of 8s. per thousand for bricks,<sup>3</sup> and nearly twenty years later, advised the Council to enforce the same charge in order to foil the machinations of a ring of brick-makers, who had agreed among themselves to keep prices up.<sup>4</sup> In 1633 the Star Chamber ordered the magistrates "yearly and more often if there shall be occasion, to make diligent inquiry of Hay and other Horse-meat, and to make Declaration in Writing fixed in publick places, what Prices and Rates for Hay, and other Horse-meat are allowed to be taken by the Inn-

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- (1) H. MSS. COMM., Report 5, Appendix, p.401, Writ from two J.P.'s to chief constables, 15 Feb. 1626. ADD. MSS., 34,400, No.216, recognizances dated 8 March, 1635/6.
  - (2) W.R.Q.S.RECS., Vol.II, p.263, Order of Sess. of 14 Jan. 1640/1; p.253, Sess. of 12 Jan. 1641/2.
  - (3) CAL. S.P. DOM., Jac. I, CXII, 80, J.P.'s of Middlesex to P.C., "Feb. 1619/20.
  - (4) IBID, Car. I, CCCCXXX, 20, same to the same, 4 Oct. 1639.

keepers.<sup>1</sup> The West Riding justices limited the charge for ale or beer to a penny a quart;<sup>2</sup> the Wiltshire alehousekeepers could sell at only 3d. a gallon;<sup>3</sup> while the Middlesex magistrates settled 8s. a barrel as the proper price.<sup>4</sup> It is evident that in other counties also an official rate for ale was made, for a man and woman in the North Riding were fined 10s. each for selling ale at 5d. and 6d. a gallon,<sup>5</sup> and the Durham Bench sentenced William Harrison to pay £1 for charging more than a penny a quart.<sup>6</sup>

The time-honoured tricks of selling by short measure, of using false weights, or of buying by one measure and selling by another, had been made punishable offences at the end of the 15th century,<sup>7</sup> and accusations against people for all sorts of variations of such petty dishonesty came before the Quarter Sessions. A Yorkshireman was charged with using a bushel which was a quarter of a peck short.<sup>8</sup> In Norfolk, a man was presented for

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(1) RUSHWORTH, Historical Collections, Vol.II, p.200, Decree of Star-Chamber, 13 Nov. 1633.

(2) W.R.Q.S.RECS., Vol.I, pp.59-60, Sess. of 14 Jan. 1597/8.

(3) WILTS.CO.RECS., p. 26, Sess. of July, 1608.

(4) MIDD.SESS.RECS., (New Series), Vol.II, p.291, Easter Sess. 1615. MIDD.CO.RECS., Vol.III, p.1, Sess. order of 28 April, 1625.

(5) N.R.Q.S.RECS., Vol.I, p.91, Sess. of 8 Oct. 1607.

(6) DUR. SESS. ORDER BOOK, No.II, (1629-1639), p.3, Sess. of [Jan.] 1629/30.

(7) 11 Henry VII, c. 4.

(8) N.R.Q.S.RECS., Vol.I, p.3, Sess. of 11 April, 1605.



keeping two bushels, "the on to bye by and the other to sell by and the on les then the other ij or thre pints".<sup>1</sup> Most quaint, however, was the offence of five men who were brought before the Sessions because they "sell beare by the blacke poot and Jugge which is contrari to the Statud".<sup>2</sup> In the same county, two men who confessed that they were in the habit of employing illegal measures were fined 5s. each.<sup>3</sup> The Durham justices sentenced George Robinson to pay 10s. for using false weights,<sup>4</sup> but three Middlesex men who had committed the same offence were fined a mere 6s. 8d. apiece, while a fourth escaped with 3s. 4d.<sup>5</sup> The justices of the West Riding in 1611 made some attempt to prevent trouble by ordering the bailiffs of Wakefield, Leeds, Halifax, and Bradford to make a monthly search for deceitful weights and measures, and break any that they might find.<sup>6</sup>

Other forms of cheating in buying and selling were also dealt with at the Quarter Sessions. George Harreson was called before the Durham Bench for selling three undressed hides without submitting them to the officials whose duty it was to examine and seal leather before it was sold. He was fined 6s. 8d.

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(1) NORF.Q.S.ROLLS, 9 Chas.I, - Bernard Daly.

(2) IBID, 6 Chas. I,- 23 Sept. 1630.

(3) IBID, 13 Jas. I,- Wm. Nicholls, Rich. Stiles, April, 1614.

(4) DUR. SESS. ORDER BOOK, No.II, (1629-1639), p.100, Sess. of 2 May, 1633.

(5) MIDD.SESS.RECS., (New Series), Vol.I, p.323, Sess. of 11-12 Jan. 1613/4.

(6) W.R.Q.S.RECS., Vol.II, p.4, Sess. of 2 April, 1611.

for each hide.<sup>1</sup> More strange was the incredibly optimistic transgression of Elizabeth Peverell, also of Durham, who sold a lump of butter, in the centre of which a large stone was imbedded. The buyer not unnaturally noticed the stone when he came to use the butter; he complained to the magistrates, and the naïve Elizabeth had to pay 10s. for her offence.<sup>2</sup>

While the central government, by its myriad regulations, sought to control industry, it also took measures to encourage **the** manufacturers and merchants in their efforts. One of the serious hindrances to trade in the Middle Ages had been the lack of good roads, and by the 16th century, the state of the King's highways had come to<sup>be</sup> a matter of serious concern to the central government. In 1555, a statute organized the hitherto haphazard patching of the stony or marshy strips of land which were dignified by the name of roads; each parish thereafter was to do its own highway making and mending, and the justices of the peace were to fine recalcitrant individuals who refused to do their share of the unpaid four days' work each year.<sup>3</sup> For every ploughland and every plough, moreover, the owner had to furnish a cart and two men. The work was to be directed by surveyors, two of whom were to be chosen annually by the constables and churchwardens in each parish. A few years later, the number of days'

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(1) DUR. SESS. ORDER BOOK, No.II, (1629-1639), p. 260, Sess. of 4 April, 1638.

(2) IBID, p.4, Sess. of Jan. 1629/30.

(3) 2 and 3 Phil. and Mary, c. 8.

work per year was raised to six, and the surveyors were empowered to take gravel for their repairs from whatever spots they chose.<sup>1</sup>

These statutes gave to the justices of the peace the authority to supervise the supervisors, and to fine any one who did not do the duty which the law required of him. In the West Riding, however, the Grand Jury sometimes assessed the penalty upon an offending district,<sup>2</sup> while in Chester there was another slight variation from the ordinary assigning of responsibility, for there an order was made by the Sessions that a certain way should be kept up by a man whose lands adjoined it.<sup>3</sup>

Ordinarily the magistrates received presentments concerning the laxity of the inhabitants of the various parishes in mending their roads,<sup>4</sup> and then orders were made that the ways be repaired, upon pain of a fine. The size of the penalty varied tremendously -- £10,<sup>5</sup>

(1) 5 Eliz., c. 13.

(2) W.R.Q.S.RECS., Vol.I, p.104, Sess, of 13 July, 1598; p.110, Sess. of 4 Oct. 1598.

(3) CHESTER Q.S.RECS., 1631, File I, fol.34, Sess. of 28 June, 1631.

(4) W.R.Q.S.RECS., Vol.II, p.32, Sess. of 2 Oct. 1637. DUR.SESS. ORDER BOOK, No.I, (1616-1629), p.39, Sess. of 1 Oct. 1617. NOTTS.CO.RECS., p.69. COX, Derbyshire Annals, Vol.II, p.226. WORCS.Q.S.ROLLS, Part II, pp.509-514, 1633. SOMER.Q.S.RECS., Vol.II, p.18, Sess. of 12 Jan. 1629/30.

(5) N.R.Q.S.RECS., Vol.IV, p.31, Sess.of 8 April, 1635. W.R.Q.S. RECS., Vol.I, p.105, Sess.of 13 July, 1598. DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.258, Sess.of 9 April, 1626; p.327, Sess.of 9 July, 1628. CHESTER Q.S.RECS., 1633, File II, fol. 22, Sess. of 2 July, 1633.

£5,<sup>1</sup> £2,<sup>2</sup> £1,<sup>3</sup> or even a modest 10s.<sup>4</sup> Often such fines were collected from one luckless inhabitant, who then had to try to induce his neighbours to pay their share.<sup>5</sup>

Retribution for evading their legal duties fell upon individuals as well as parishes. Those who failed to put in their statutory work were presented at the Quarter Sessions,<sup>6</sup> along with others who would not cart stones when called upon to do so,<sup>7</sup> or who failed to send their wagons for the general use of the road-menders.<sup>8</sup> The legal penalty for neglecting work on the roads was 12d. for every day's default, and this was usually levied.<sup>9</sup> The North Riding officials seem to have had some difficulty in collecting the money, however, as a Sessions order stated that anyone who refused to pay would be fined a pound

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- (1) W.R.Q.S.RECS., Vol.I, p.129. Sess. of 8 Jan. 1598/9. LANCS. Q.S.RECS., p. 257, Sess. of 15 April, 1605.
  - (2) N.R.Q.S.RECS., Vol.I, p.246, Sess. of 8 Jan. 1611/2.
  - (3) IBID, p.91, Sess. of 8 Oct. 1607. WORCS.Q.S.ROLLS, Part II, p. 515, No. 185, 1633.
  - (4) W.R.Q.S.RECS., Vol. I, p.83, Sess. of 9 June, 1598.
  - (5) WAR.Q.S.RECS., Vol.I, pp.226-227, Michaelmas Sess., 1635. SOMER.Q.S.RECS., Vol.II, p.122, No.11, Sess. of 6-8 April, 1630; p.159, No.15, Sess. of 12-15 July, 1631.
  - (6) HERTS.CO.RECS., Vol.I, p.32, Sess. Rolls for 1599-1600; p.63, No.45, Sess. Rolls for 1639-1641. CHESTER Q.S.RECS., passim.
  - (7) SOMER.Q.S.RECS., Vol.II, p.47, No.3, Sess. of [Sept.] 1627.
  - (8) LANCS.Q.S.RECS., p.212, Sess. of 18 April, 1604.
  - (9) NORF.Q.S.ROLLS, 9 Chas.I, 20 Oct. 1634 - five cases. LANCS. Q.S.RECS., p.274, Sess. of 15 July, 1605. NOTTS.CO.RECS., p. 77.

instead of a shilling.<sup>1</sup> Those who failed to furnish carts were legally liable to a penalty of 10s. a day, and many were made to pay the full sum,<sup>2</sup> though in Lancashire some of the fines were as low as 4s.<sup>3</sup>

Other forms of evasion were also brought to the attention of the Quarter Sessions. John Pymmes of Norfolk was presented "for that he Cam not into the Wayes three dayes w<sup>th</sup> his Drafte and sent a little boye",<sup>4</sup> and the surveyors of Marbury, in Chester, reported to the justices that Hugh Hopkin, who owned a plough-land and "a teame", had "refused to work, but onely sent a woman to worke two dayes w<sup>th</sup> a shovell in the highwayes."<sup>5</sup>

While a good part of the unsatisfactory condition of the roads was due to the unwillingness of the ordinary man to spend his time on repair work, some of the difficulty lay in the deficiencies of the supervisors. Henry Dewell, Surveyor-General of Highways, wrote to the Privy Council in 1637 that "many parishes have not done half their work for years together by reason that poor men are chosen surveyors who are ignorant of that service and also stand in fear of their neighbours' displeasure,

(1) N.R.Q.S. RECS., VolI, pp.57-58, Sess. of 13 Oct. 1606.

(2) LANCS. Q.S. RECS., p. 274, Sess. of 15 July, 1605. NORF. Q.S. ROLLS, 9 Chas. I, 20 Oct. 1634.

(3) LANCS. Q.S. RECS., p.221, Sess. of 11 July, 1604.

(4) NORF. Q.S. ROLLS, 9 Jas. I.

(5) CHESTER Q.S. RECS., 1630, File II, fol. 44, presentment dated 1 July, 1630.

so that they dare not present them according to statute".<sup>1</sup> Parishes were reported to the Quarter Sessions for failing to elect any road officers at all.<sup>2</sup> In Worcestershire, Richard Hickman was indicted for refusing to accept the position,<sup>3</sup> and the magistrates of the same county fined negligent supervisors either £4 or £10.<sup>4</sup>

The justices took more positive measures for road improvement than mere punishment of those who tried to escape their statutory obligations. The magistrates of Somerset received a petition from the inhabitants of Charlton Mackarell that "the highways within the manor of Tucks Cary and Lights Cary are in great decay and very founderaus", and forthwith ordered that "those who have ground within the said manor, not ploughlands, nor those inhabiting, shall pay yearly two pence for every acre to the overseers of the highways".<sup>5</sup> In Chester, "an yearly allowance" was to be collected in the parish of Acton "for the mayntenance of the ... wayes",<sup>6</sup> and ten years earlier the same Bench had levied no less than £150 upon the whole county for "the finishing of Wilderspoole ... which is well knowen to

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(1) CAL.S.P.DOM., Car.I, CCCLVI, 149, Henry Dewell, Surveyor-General of Highways, to P.C., 19 May, 1637.

(2) WORCS.Q.S.ROLLS , Part I, p.130, No. 116, 1609. NOTTS. CO. RECS., p. 76.

(3) WORCS.Q.S.ROLLS, Part II, p.556, No.214, 1634.

(4) IBID, p.525, No. 243, Sess. of 13 Sept. 1633.

(5) SOMER.Q.S.RECS., Vol.I, p.109, No.2, Sess. of 3-5 May, 1614.

(6) CHESTER Q.S.RECS., 1640, File III, No.16, Sess. of 6 Oct. 1640.

be a publick waie, and for want of the Countreyes ayd hath by the ouerflowing of mersey been the Losse of some mens liues, and is a daylie spoyler of their goodes and wares".<sup>1</sup>

Methods of finding money, otherwise than by levying a definite rate, were employed by some of the magistrates. A Norfolk man, who had committed a crime of which the nature was not specified, was ordered to pay a 20s. penalty, "w<sup>ch</sup> is for and towards the repayre of the high wayes",<sup>2</sup> and the Lancashire Bench sentenced Lancelot Cowper to maintain his bastard child, and also to pay a fine to the surveyors of highways in his parish.<sup>3</sup>

An alternative to raising money when the roads were unusually bad was to decree that additional free labour was to be spent on the repairs. This method was adopted by the Hertfordshire justices, who in 1624 made all the owners of carts in Standon do an extra six days' work on the roads.<sup>4</sup> A little later, the inhabitants of the parish of Amwell were presented for failing to keep up their highways. The Court commanded that they should spend double time on their statutory service, and furthermore that the people in the surrounding Hundred of Hertford each do a day's work on the Amwell highways, until "they are well and sufficiently amended".<sup>5</sup>

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(1) CHESTER Q.S.RECS., 1630, File II, fol.105, order dated 5 July, 1630.

(2) NORF.Q.S.BOOK OF PROCEEDINGS, 1639-1644, 11 May, 1641.

(3) LANCS.Q.S.RECS., p.159, Sess. of 11 Oct. 1602.

(4) HERTS.CO.RECS., Vol.V, p.41, Sess. of 5-6 April, 1624.

(5) IBID, p. 137, Sess. of 10-11 Jan. 1630/1.

A good deal of the destruction of the surface - such as it was - of the highways, was caused by the large teams of horses necessary to pull the heavy carts of the period. In 1618, a proclamation forbade the use of more than five horses at a time,<sup>1</sup> but the waggons continued to tear up the roads.<sup>2</sup> The Middlesex magistrates were faced with the necessity of coping with ingenious evasions of the regulations, but they solved their problem neatly: "Whereas ... many haue ... by subtiltie instead of horses drawen their said Loades with oxen and horses above the said number, thinkinge thereby to avoyde the danger of the said Proclamacion; It is nowe ordered and soe determined that from henceforth three oxen shalbe taken in that case for two horses, and iiij<sup>or</sup> oxen for three horses, and soe after such rate".<sup>3</sup>

Damage done to the roads by carts and their teams was, as it were, a part of the day's work, but other and less pardonable mistreatment fell upon the highways as well. Some men enclosed sections of them,<sup>4</sup> and others dug ditches across them,<sup>5</sup>

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- (1) STEELE, Catalogue of Tudor and Stuart Proclamations, Vol.I, No. 1216, 20 July, 1618.
  - (2) CAL. S.P. DOM., Car. I, CCXXII, 36, J.P.'s of Herts. to P.C., 13 Aug., 1632; CCLX, 123, Petition of Thos. Archer to P.C., [Feb.] 1633/4.
  - (3) MIDD. CO. RECS., Vol.II, p.173, Order of Sess. of 15 Jan. 1622/3.
  - (4) NORF. Q.S. ROLLS, 5 Chas.I, - Presentment of Edw. Browne, 1 Dec. 1629.
  - (5) LANC.S.Q.S.RECS., pp.258-259, Sess. of 15 April, 1605.



or gravel pits in them.<sup>1</sup> Several enterprising people in Somerset sank the shafts of lead mines in the road which ran through the forest of Mendip,<sup>2</sup> while in Nottingham, such unusual features as wells, ponds, and barns were found in the middle of public ways.<sup>3</sup> A Worcestershire yeoman was presented for blocking the traffic by building a barge in a busy thoroughfare,<sup>4</sup> and two Middlesex coachmakers habitually constructed their carriages in the streets of St. Martin's-in-the-Fields, to the great hindrance of passers-by.<sup>5</sup> Sometimes the justices merely ordered the removal of such obstructions, under pain of penalties ranging from 10s.<sup>6</sup> up to £20.<sup>7</sup> On other occasions they fined the offenders, at as low a sum as 2s.,<sup>8</sup> or as high as £2.<sup>9</sup>

Rising water might cause severe damage to road-beds, and a statute in Elizabeth's reign had made ~~the~~ scouring of ditches compulsory.<sup>10</sup> Evidently the community was expected to per-

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- (1) HERTS. CO. RECS., Vol. I, p. 33, Sess. Rolls for 1600-1601; p. 44, 1616-1617.
  - (2) SOMER. Q.S. RECS., Vol. I, p. 12, No. 18(c), Sess. Roll for 1608.
  - (3) NOTTS. CO. RECS., pp. 77-78.
  - (4) WORCS. Q.S. ROLLS, Part II, p. 448, No. 130, 1628.
  - (5) MIDD. CO. RECS., Vol. II, p. 13, Michaelmas Sess., 1605.
  - (6) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 65, Sess. of 11 April, 1632.
  - (7) ADD. MSS., 34,400, No. 218, Huntingdon Sess., 14 June, 1636.
  - (8) N.R. Q.S. RECS., Vol. I, p. 102, Sess. of 12 Jan. 1607/8.
  - (9) NORF. Q.S. ROLLS, 13 Jas. I, - Laurence Webster.
  - (10) 18 Eliz., c. 10.

form this duty, for presentments of parishes were made at the Quarter Sessions for allowing watercourses to become blocked.<sup>1</sup> A North Riding town was fined 10s. for this offence,<sup>2</sup> but in Nottinghamshire, six parishes escaped with a payment of 1s. each.<sup>3</sup>

The Privy Council not infrequently took a hand in matters of highway repair, exhorting the justices to be more diligent, and to see that all the inferior officers also did their duty.<sup>4</sup> This interest, however, was confined to the roads near London, and especially those over which the King was accustomed to pass on his periodic visits to Royston to attend the races there.

Even when the highways themselves were passable, travellers were frequently confronted with the problem of how to cross rivers when the bridges were in a dangerous state of disrepair. Since work on bridges was very costly, no one was willing to undertake it voluntarily, and those who were legally bound to perform this very necessary service showed considerable skill in concealing the fact of their responsibility. In the reign of Henry VIII., the situation had become so serious

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(1) NOTTS. CO. RECS., p. 58.

(2) N.R.Q.S. RECS., Vol.I, p. 91, Sess. of 8 Oct. 1607.

(3) NOTTS. CO. RECS., p. 60.

(4) CAL. S.P. DOM., Jac.I, XIV, 14, P.C. to J.P.'s of Herts., 25 May, 1605; 55, same to the same. 24 June, 1605; LXI, 92, P.C. to J.P.'s of Assize, 19 Feb, 1610/1; CXXII, 135, P.C. to J.P.'s of Surrey, Essex, Middlesex, Herts., Cambs., and Hunts., [19] Sept. 1621; CXXX, 64, P.C. to J.P.'s of Essex, 13 May, 1622; Car.I, CXXXIII, 72, J.P.'s of Northumberland to the King, 13 March, 1632/3; CXXXVI, 74, J.P.'s of Notts. to P.C., 15 April, 1633; HERTS.CO.RECS., Vol.V, p.141, Sess. of 18-19 April, 1631.

that Parliament passed a statute which laid down that in cases where it was impossible to find any individual chargeable with the upkeep of a bridge, four justices - one from the Quorum - could levy a tax upon the whole county in order to raise the necessary money.<sup>1</sup>

The amount of work which devolved upon the magistrates under this law was enormous. The determination of responsibility must have entailed endless questioning, and the justices seem, on the whole, to have been anxious to make certain localities, rather than the whole county, do the repairs. A few individuals were pinned down to the performance of their duty,<sup>2</sup> but parishes,<sup>3</sup> townships,<sup>4</sup> and wapentakes,<sup>5</sup> were also commanded forcefully to repair their local bridges. In Durham, the clerk of the peace in 1618 made a memorandum that "the Iustices do Lay a fyne of fiue markes vpon the Inhabitantes of Billingham if they do not repare the bridge of Billingham before y<sup>e</sup> next Sessions",<sup>6</sup> and in Somerset, the justices split the responsibility between two parishes because part of the bridge lay in each.<sup>7</sup>

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(1) 22 Henry VIII, c. 5.

(2) NOTTS.CO.RECS., pp.80-81. ADD.MSS., 34,399, fol.130, Huntingdon Sess. of 24 May, 1608. HERTS.CO.RECS., Vol.I, p.41, 1613/4.

(3) SOMER.Q.S.RECS., Vol.II, p.4, No.2, Sess. of [July], 1625.

(4) W.R.Q.S.RECS., Vol.I, p.129, Sess. of 8 Jan. 1598/9.

(5) IBID, Vol. II, p. 4, Sess. of 2 April, 1611.

(6) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 49, Sess. of 8 April, 1618.

(7) SOMER.Q.S.RECS., Vol.II, p.142, No.18, Sess. of 11-14 Jan. 1630/1.

When repairs were needed on a bridge that spanned a river dividing counties from each other, the same procedure of making both contribute could be adopted.<sup>1</sup> Thus Warrington Bridge, lying between Lancashire and Cheshire, had its ends mended independently and at different times by the two Benches of magistrates.<sup>2</sup>

If diligent enquiries failed to unearth a person or locality which could be charged with the care of a bridge, the whole county was rated by the magistrates.<sup>3</sup> In Durham, an assessment as high as 12d. in the pound was authorized,<sup>4</sup> and when we see the sums which were collected, we can readily understand the motives which caused the self-effacement of citizens who, by ancient custom, should have been doing the repairs themselves. The mending of Wakefield Bridge in the West Riding cost £80;<sup>5</sup> another bill in the same Riding came to £120;<sup>6</sup> while Durham had to raise £155 for Yarum Bridge.<sup>7</sup>

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- (1) SHEPHARD, Guide to J.P.'s, (Ed. 1663), p. 303.
  - (2) CHESTER Q.S. RECS., 1642, File II, No. 65, Sess. of 12 July, 1642.
  - (3) N.R.Q.S. RECS., Vol.I, p.116, Sess. of 5 April, 1608; p.204, Sess. of 2-3 Oct. 1610. MANCH.Q.S.RECS., p.48, Sess. of 19 Aug. 1618. CHESTER Q.S.RECS., 1635, File III, fol.34, Sess. of 6 Oct. 1635; 1641, File I, No.36, Sess. of 11 May, 1641. SOMER.Q.S.RECS., Vol.I, p.295, No.8, Sess. of 3-5 July, 1621. WAR.Q.S. RECS., Vol. II, p. 5, Michaelmas Sess. 1637.
  - (4) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 1, Sess. of 10 April, 1616.
  - (5) Y.A.J., Vol.V, p. 371, (W. Riding Sess. Recs.), Sess. of 3 April, 1638.
  - (6) N.R.Q.S.RECS., Vol. III, p.268, Sess. of 14 July, 1626.
  - (7) DUR. SESS. ORDER BOOK, No. II, (1629-1639), p. 238, Sess. of 4 Oct. 1637.

The statute of 1530 had empowered the justices to appoint men to supervise the disbursement of the bridge funds, and to oversee the actual work of repair. In Lancashire, the magistrates chose two of their own number to act as surveyors,<sup>1</sup> and in the records of other counties there are references to the appointment of overseers of bridges.<sup>2</sup> In the West Riding, £10 was levied upon the inhabitants, and two local gentlemen were "desired to see the same frugallie bestowed about the same Bridge".<sup>3</sup>

Thus certain parts of their work of economic regulation received a good deal of attention from the magistrates. Yet a general survey of the Quarter Sessions records with which we are here concerned shows a distinct lack of activity in the enforcement of many of the innumerable laws in force at the time of James I. and Charles I. concerning trade and industry. This can be at least partially explained by the fact that the county justices were not responsible for what happened in the county boroughs scattered over England, many of which were centres of trade. In the regulation of the conditions of the two great rural occupations, agriculture and cloth-making, however, the active assistance of the magistrates was necessary to make things run smoothly, and here the justices show themselves in their worst light. It was their business to see that wages were rated

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(1) LANCS. Q.S. RECS., p. 286, Sess. of 9 Oct. 1605.

(2) W.R.Q.S. RECS., Vol. I, p. 57, Sess. of 14 Jan. 1597/8; pp. 73-74, Sess. of 25 April, 1598. DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 214, Sess. of 30 Sept. 1624.

(3) Y.A.J., Vol. V, p. 378, (W. Riding Sess. Recs.), Sess. of 12 July, 1638.

fairly in relation to the cost of living - yet prices rose, while wages lagged behind. Upon them lay the responsibility of checking the enclosure movement, but self-interest all too often caused them to neglect their duty. The light of disinterested public service burned rather dimly, indeed, when economic regulation faced the justices of the peace with the mutually exclusive alternatives of upholding the law or advancing private profits.

## CHAPTER XIII.

### THE JUSTICES AT WORK — THE MAGISTRATES AND THE RELIGIOUS SYSTEM.

The close relationship of Church and State in the early 17th century made it inevitable that the secular authorities should have a hand in the direction of ecclesiastical affairs; and here, as usual, the justices of the peace proved to be invaluable as agents of both Parliament and Privy Council. This, of course, does not mean that the justices played any official part in the acrimonious theological disputes of the day - rather they performed a purely executive function as officers whose duty it was to enforce the regulations for religious observance which were designed to produce uniformity. Shephard, indeed, states uncompromisingly that "the Justices of the Peace ... concerning the Church of England, Jurisdiction Ecclesiastical, and Doctrines of the Church of England ... have very little, or no power at all to be exercised by them, within or without their Sessions of the Peace."<sup>1</sup>

Nevertheless, occasional charges against clerics for

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(1) SHEPHARD, Guide to J.P.'s, (Ed. 1663), p. 71.

nonconformity in the conduct of church services appear in the Sessions records<sup>1</sup> - a Wiltshire rector, for example, was presented because he "hath not worne ~~the~~ serplis sence the tym he hath ben Vicar of Ockborne Saint Andrew, nether doth hee sine with the sine of the Crosse in Babtisme wch hath bene required of him"-<sup>2</sup> but there is no evidence to show that the magistrates paid any attention to these highly improper accusations. On the other side, Puritan justices sometimes tried to persuade the Quarter Sessions to proceed against clergymen of the Laudian party, who were introducing what the extreme Protestants insisted were innovations in religion.<sup>3</sup> Again, however, there is no indication that the magistrates took any active steps in the matter.

Certain blasphemous acts, especially those concerned with witchcraft, were classed as offences "against the law of nature and of man", and so came within the sphere of authority of the justices of the peace. In Devonshire, the Bench imprisoned for a year four men who had baptised a mare,<sup>4</sup> and the same magistrates bound over to his good behaviour one Michael Jeffrye, who had sprinkled water upon a dog, signed him with

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(1) NOTTS. CO. RECS., p. 139.

(2) WILTS. CO. RECS., p. 14, 1606.

(3) BIRCH, The Court and Times of Charles I., (Ed. 1849), Vol. II, pp.277-278, Mr. E.R. to Sir Thos. Puckering, 14 Feb. 1636/7. CAL.S.P.DOM., Car.I, CCCCXLII, 137, Dr. Edw. Burton to Dr. Bray, 27 Jan. 1639/40, Westham. This letter is quoted in full in the preface to the volume for 1639-1640, pp. xxi-xxii.

(4) HAMILTON, Devon Quarter Sessions, p. 84.



the sign of the cross, and christened him John in the name of the Father, the Son, and the Holy Ghost.<sup>1</sup> The Norfolk justices took action on a matter more directly concerning the Church of England - "James Nictholl Clarke being convicted for depravinge the booke of Common prayer to remayne in pryson during one whole yeare w<sup>th</sup>out bayle or maynprise".<sup>2</sup>

Disturbing a preacher in church was also a punishable offence,<sup>3</sup> and in those days of militant religious controversy, interruptions of Divine Service were no rare occurrence. A farmer of Lancashire was indicted for disturbing a clergyman in his reading from the Prayer Book by hurling a stone against a pew.<sup>4</sup> In Nottinghamshire, three men - one designated "clerk" and the other two described as "gentlemen"- were made to pay 10s. each for rioting in church.<sup>5</sup> The Lincoln Bench sentenced a disturber of Divine Service to a fine of 100 marks or six months' imprisonment.<sup>6</sup> Still more unpleasant was the punishment meted out to Francis Thompson and George Allen in the West Riding, when it was proved that they "did in most contemptuous maner bring into Hunsingor Church a Toie called the flower of the Well

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(1) HAMILTON, Devon Quarter Sessions, p. 84.

(2) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 11 Jan. 1641/2.

(3) WINGATE, Justice Revived, (Ed. 1661), p. 166. 1 Mary, Statute II, c. 3.

(4) LANCS. Q.S. RECS., p. 151, Sess. of 12 July, 1602.

(5) NOTTS. CO. RECS., p. 144, Jan. 1624/5.

(6) LINGS. (LINDSEY) Q.S. ROLLS, 1629, Index A.2., petition of Robert Taylor.

in the tyme of devyne Service wherbie the Vicar was disturbed in saieing the said Service". The two offenders were sentenced to be flogged through the town.<sup>1</sup>

The observance of the Lord's Day was the subject of a number of statutes enacted by the Puritan Parliaments which met during the reigns of the first two Stuarts. Attendance on the Sabbath at such spectacles as bull and bear-baiting, or "Interludes and Comon Plays", could be punished with a fine of 3s. 4d. to the use of the poor;<sup>2</sup> shoe-makers were forbidden to display their wares;<sup>3</sup> and carriers, drovers, and butchers were prohibited from plying their trade on Sunday.<sup>4</sup> Many people in Nottinghamshire were presented for one form or other of Sabbath-breaking, such as selling goods, permitting card-games, or playing the harp on Sunday, "piping on the Lord's Day during the time of prayer", "fiddling at night on the Sabbath", and so forth.<sup>5</sup> Simon Bayles in Durham was fined 20s. for travelling on Sunday, and the money was directed to be spent on the relief of the poor.<sup>6</sup>

The central authorities believed - with some justification - that if the people at large were forced to be present

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(1) W.R.Q.S.RECS., Vol.I, pp. 57-58, Sess. of 14 Jan. 1597/8.

(2) 1 Chas. I, c. 1.

(3) 1 Jas. I, c. 22.

(4) 1 Chas. I, c. 1.

(5) NOTTS. CO. RECS., p. 53.

(6) DUR. SESS. ORDER BOOK, No.II, (1629-1639), p. 213, Sess. of 5 Oct. 1636.

at Church of England services, they would eventually absorb Church of England beliefs. Thus, it was hoped, both "seditious sectaries" and potentially disloyal Roman Catholics would be quietly and painlessly eliminated. With this aim in view, attendance every week at some place of worship where the service was conducted according to the ritual of the Church of England had, in the first year of Elizabeth's reign, been made obligatory, and absentees could be fined 12d. for each default of appearance.<sup>1</sup> Many presentments were made at the Quarter Sessions for this offence,<sup>2</sup> and in Nottinghamshire at least, the statutory fines were often collected.<sup>3</sup> The Northamptonshire justices held special divisional meetings to deal with those who did not attend church regularly,<sup>4</sup> and the North Riding Quarter Sessions gave instructions that the individual magistrates were to take strong measures with any defaulters living in their localities.<sup>5</sup> Nevertheless in 1636 the Commissioners for Ecclesiastical Causes reported that many sectaries refused to come to church, and instead held conventicles and worshipped in their own way in

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(1) 1 Eliz. c. 2.

(2) W.R.Q.S.RECS., Vol.I, PP.51-55, Sess.of 14 Jan. 1597/8. NORF. Q.S.ROLLS, 3 Chas.I, passim, HERTS.CO.RECS., Vol.I, p.52, No's.39, 40, 1620; Vol.V, p.23, No's.224-226, [1624?]; pp.290-291, 4 Oct. 1640. MIDD.CO.RECS., Vol.II, p.6, 10 Mar. 1603/4.

(3) NOTTS. CO. RECS., p. 138.

(4) NORTHANTS. Q.S. RECS., p. 91.

(5) N.R.Q.S. RECS., Vol. II, p. 202, Sess. of 7 April, 1619.

private houses. <sup>1</sup>

Absence from Sunday morning service might be due to laziness or to a Puritan dislike of Anglican ritual, but more commonly it was a sign of adherence to the old Catholic faith. The exact number of sympathizers with the Roman Church could not be ascertained, but it was common knowledge that in some parts of the country these recusants were so numerous and so powerful that they did not trouble to hide their religion. In Northumberland, Lord William Howard's influence saved the Romanists from molestation, and under his protection they actually increased. <sup>2</sup> Lancashire, too, was strongly Catholic, and King James wrote in 1617, "It is true th<sup>t</sup> at o<sup>r</sup> first entringe to this Crowne and Kingdome wee weare informed and that too trulie that o<sup>r</sup> Cuntrie of Lancaster abounded more in papishe recusants then anie Cuntrie of England and this hath continued synce to o<sup>r</sup> great regrett w<sup>th</sup> little amendment". <sup>3</sup>

Under Elizabeth, the government had made vigorous attempts to eliminate the most successful of the Romanist teachers, the Jesuits, hoping thus to starve Catholicism out of existence. Ordained members of the Society were by statute declared traitors, unless they took the Oath of Supremacy, and anybody caught

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(1) CAL. S.P. DOM., Car.I, CCCXIV, 34, Commissioners for Causes Ecclesiastical to John Wragg, messenger of the Chamber, 20 Feb. 1635/6, Lambeth.

(2) IBID, Jac.I, LXVII, 163, Statement of the increase of recusancy in Northumberland, [1611?]

(3) MANCH. Q. SESS., Introduction, p. xxiv, remarks appended to a Book of Sports, dated 27 Aug. 1617.

harbouring one of them could be executed as a felon.<sup>1</sup> Since these offences were held to be of such a serious nature, however, the part assigned to the justices of the peace was merely to watch for and arrest disguised priests.<sup>2</sup>

More work was required of the local officials in dealing with the recusants themselves. The magistrates were expected to disarm those known to be Catholics, and to search houses for religious books and relics.<sup>3</sup> Some of the county Benches performed these duties with a good deal of gusto;<sup>4</sup> two Hampshire justices of the peace, bent upon examining the home of a Roman Catholic family, made no scruple about breaking in the doors and hacking open various locked chests.<sup>5</sup> Often, however, the magistrates merely instituted peaceful inquiries as to which of their neighbours were recusants, or had recusant wives or servants.<sup>6</sup>

As a result of such inquiries, many recusants were pre-

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(1) 27 Eliz. c. 2.

(2) CAL. S.P. DOM., Eliz., CCLXXXV, 52, Proclamation of [5 Nov.] , 1602, [Richmond].

(3) 3 Jac. I, c. 5.

(4) HAMILTON, Devon Quarter Sessions, p. 74 (1605), p.121 (1640). COX, Derbyshire Annals, Vol.I, pp. 284-285, Sir Francis Coke to Sir John Coke, 17 Nov. 1625.

(5) H. MSS. COMM., Report 16, Ancaster Papers, pp. 359-360, Thos. Bishop of Winton the the Archbishop of Canterbury, 11 May, 1613, Waltham.

(6) N.R.Q.S. RECS., Vol.I, p.57, Sess. of 13 Oct. 1606. MANCH. Q. SESS., pp. 49-50, Orders made for the execution of the statutes against recusants, etc, 1618. H.MSS.COMM., Report 13, Appendix 4, p.449, undated. Articles to be enquired of by High Constables and presented at monthly meetings.

sented at the Quarter Sessions.<sup>1</sup> There can be no doubt, however, that the energy with which the hounding of Catholics was carried on was intensified or lessened in accordance with all sorts of external circumstances. In Derby, the lists of presentments varied in size with the zeal or indifference of the justices of the peace and Deputy Lieutenants,<sup>2</sup> and pressure exerted by the central authorities also undoubtedly had a good deal to do with the sporadic attacks. The figures for Nottinghamshire illustrate this latter point with particular clearness. In 1604, and again in 1605, the Privy Council gave orders that the penal statutes against recusants were to be strictly enforced,<sup>3</sup> and the number of presentments in Nottinghamshire leaped from eleven in 1604 to forty-four in 1605.<sup>4</sup> Then early in 1610, when relations with Spain were becoming badly strained, another general order for the disarming of Papists was sent out<sup>5</sup> - the Nottinghamshire presentments rose from zero in 1612 to forty-one in 1613,<sup>6</sup> and then gradually fell back again to zero in

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(1) DUR.SESS.ORDER BOOK, No.II, (1629-1639), p.68, 11 April, 1632. CHESTER Q.S.RECS., 1640, File IV, fol.20 -nearly 200 cases for the county. NORF. Q.S.ROLLS, passim, -the number is quite large. N.R.Q.S.RECS., Vol.I, pp. 4-5, Sess. of 11 April, 1605; pp.76,79, Sess. of 8 July, 1607; Vol.II, pp. 58-80, Sess. held during 1614 - 1073 presentments made in this year; pp. 215-219, Sess. of 30 Sept, 1619; Vol.III, pp.122-124, Sess. of 2 Oct. 1621.

(2) COX, Derbyshire Annals, Vol. I, p. 287.

(3) IBID, p. 277.

(4) NOTTS. CO. RECS., p. 132.

(5) CAL.S.P.DOM., Jac.I, LXXII, 11, P.C. to sheriffs, Deputy Lieutenants and J.P.'s of all counties, 10 Jan. 1612/3, Whitehall.

(6) NOTTS. CO. RECS., p. 132.

1616.<sup>1</sup> During this latter year the Judges of Assize once more demanded effective action<sup>2</sup> - and eighty-five recusants were called before the Sessions in 1617.<sup>3</sup> Finally, when the prospect of peace between Spain and England was again becoming dim after the failure of the Spanish Match negotiations, the number of presentments increased by two hundred in two years.<sup>4</sup> There is certainly more than mere coincidence in these fluctuations.

The attitude of the Stuart kings towards the Catholics was less severe than that of their advisers, and was governed more by a desire to profit by the fines levied on the victims<sup>5</sup> than by an urge to persecute for the sake of persecuting. James I. was reasonably tolerant, except when excited by fear of assassination; he was the peace-maker, bent on persuading men to conformity through intellectual argument. A Spaniard, indeed, characterized him as "no friend to persecution",<sup>6</sup> and about the same time Biondi wrote to Carleton that James was "rather religious than fanatic".<sup>7</sup> For this moderate attitude he was vigorously criticized, and the Earl of Salisbury warned him that

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(1) NOTTS. CO. RECS., p. 132.

(2) COX, Derbyshire Annals, Vol. I, p. 283.

(3) NOTTS. CO. RECS., p. 132.

(4) IBID, p. 132 - 169 in 1622, and 369 in 1624.

(5) GARDINER, History of England, 1603-1642, Vol. II, p. 164.

(6) CAL.S.P.DOM., Addenda, 1580-1625, XL, 56, Account by a Spaniard of the summoning of Parliament in April, 1614.

(7) IBID, Jac.I, LXXX, 35, Giovanni Francisco Biondi to [Carleton], 18 Feb, 1614/5, London.

"tenderness in dealing with heretics is full of danger".<sup>1</sup> That James' stand was at least partially dictated by political considerations is also evident, however, for during the years in which England was carrying on negotiations with the great Catholic countries - first Spain and then France - the Crown made no secret of bringing pressure to bear on the officers who executed the penal statutes against recusants to moderate their activities.<sup>2</sup> Charles I. was not quite so open in his approach to the delicate subject of reducing the persecution. Instead of proclaiming general dispensations, he preferred to issue letters for the staying of all proceedings against certain individual Catholics.<sup>3</sup>

In the long run, however, the attitude of the justices of the peace was of more importance to the recusants than was the severity or leniency of the King, and this attitude varied greatly according to district. In Durham, a general rounding up of Roman Catholics was carried out in January 1607, and some four hundred and twenty recusants were sentenced to pay their

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- (1) CAL. S.P. DOM., Jac. I, LXVIII, 59, Salisbury to the King, 9 Feb. 1611/2, Whitehall.
  - (2) IBID, Addenda, 1580-1625, XLII, 88(1), Lord Keeper Williams to Viscount Annandale, 20 Aug. 1622; Jac. I, CXIX, 103, Chamberlain to Carleton, 17 Feb. 1620/1; London; CXLIX, 12, Dispensation by the King, 19 July, 1623, Westminster; CLI, 61, Geo. Gage to [Sec'y Conway], 26 Aug. 1623, London; CLXXVII, 39, [Sec'y Conway] to Lord Keeper Williams, signifying the King's command for stay of prosecution of Roman Catholics, 30 Dec. 1624, [London]
  - (3) IBID, Car. I, CCV, 14, King to Judges of Assize, J.P.'s, etc., [1631?], Greenwich; CCLXX, 48, same to the same, 29 June, 1634, Greenwich.



finer for five months' absence from church.<sup>1</sup> At the statutory rate of £20 per month - the absurdly heavy penalty laid down during the general panic following the discovery of the Gunpowder Plot<sup>2</sup> - the total sum to be collected would have been positively astronomical, and it seems unlikely that the full amount was levied.

Fining was not the only form of punishment which fell upon the unfortunate Catholics. The Devonshire recusants were often imprisoned, sometimes in solitary confinement.<sup>3</sup> In Staffordshire, when several Papists complained to the Privy Council that they were being unfairly mulcted by the sheriff, the justices told the Board that in their considered opinion the local recusants were "rich in the attributes of the divell", and begged the Council to deal with a few in so exemplary a fashion that it would "make the high crests of the residue fall somewhat lower".<sup>4</sup> Elsewhere we find individual magistrates of strong nonconformist views hunting the Catholics implacably; Mr. Thomas Bigges, a leading Puritan of Worcestershire, was only prevented from "rifling" the recusants in his county by the intervention of another gentleman of influence.<sup>5</sup> In the North

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(1) DUR. SESS. PLEA ROLLS, 4 Jas. I, The whole roll consists of recusant fines.

(2) 3 Jas. I, c. 4.

(3) HAMILTON, Devon Quarter Sessions, pp. 75-76.

(4) CAL. S.P. DOM., Jac. I, CLXXIII, 77, J.P.'s of Staffs. to P.C., 22 Oct. 1624, Shenston.

(5) H. MSS. COMM., Hatfield Papers, Vol. 15, p.36, Francis Clerke to Sir Griffine Markhame, 6 April, [1603].

Riding, the Catholics received little sympathy from the Bench - a miller was imprisoned for being found in possession of "diverse Popish bookes",<sup>1</sup> and a gentleman was fined the large sum of £100 for failing to have his son baptized at the parish church within a month of his birth.<sup>2</sup> In the same Riding, a wretched tavern-keeper was "disabled to kepe an alehouse, his wife being ... a Recusant",<sup>3</sup> and a man who employed a Catholic serving-maid for eight months was sentenced to pay £80.<sup>4</sup> Others who harboured Papists were fined £120,<sup>5</sup> or even £350.<sup>6</sup>

In strong contrast to this harshness was the sympathetic attitude of some of the magistrates. In Northumberland, particularly, the laws against the Catholics were quietly forgotten,<sup>7</sup> and in Lancashire also, many of the magistrates shut their eyes to the presence of recusants all around them.<sup>8</sup> Indeed, there was every reason to believe that not a few justices were themselves strongly inclined toward the Catholic faith.<sup>9</sup> In 1607,

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(1) N.R.Q.S.RECS., Vol. 1, p.6, Sess. of 11 April, 1605.

(2) IBID, Vol.III, p.246, Sess. of 12 Oct. 1625.

(3) IBID, Vol. I, p. 109, Sess. of 15 Jan. 1607/8.

(4) IBID, p. 95, Sess. of 8 Oct. 1607.

(5) IBID,

(6) IBID, Vol. III, p.222, Sess. of 5 Oct. 1624.

(7) RUSHWORTH, Historical Collections, Vol. II, (Ed. 1721), p. 11, 1629.

(8) CAL. S.P. DOM., Eliz., CCLXXXII, 74, ---- to [Cecil?], Nov. ? 1601.

(9) LANCS. Q.S. RECS., Introduction, p. xii.

the House of Commons, possibly still a little agitated by the memory of the Gunpowder Plot, petitioned the King to command greater strictness in the enforcing of the laws against all non-conformists, but especially the Papists, "the forges of conspiracy, and firebrands of sedition and rebellion";<sup>1</sup> and three years later Sir Edwin Sandys moved "that my Lord Chancellor would take order not to make Justices of Peace, whose wives are recusants."<sup>2</sup> In 1624 the question of Popish justices was raised once more, but the Lords declined to join in a petition to have them removed from office.<sup>3</sup>

One of the chief reasons for fearing the recusants was the suspicion that they were Catholics first and Englishmen very definitely second. This suspicion became widely accepted as a certainty after Gunpowder Plot, and Parliament immediately passed a law which was designed to separate loyal from disloyal Papists. This statute established a new Oath of Allegiance, which could be exacted by two justices of the peace from any known recusant, or any stranger passing through the county.<sup>4</sup> The oath declared the swearer's belief that James was the true King of England, that the Pope had no right to depose him, and that the doctrine of the meritoriousness of the murder of an ex-

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(1) H. C. J., Vol. I, pp. 384-385, 18 June, 1607.

(2) IBID, p. 453, 23 July, 1610.

(3) CAL. S.P. DOM., Jac. I, CLXV, 34, Sir Francis Nethersole to Sir Dudley Carleton, 24 May, 1624, London.

(4) 3 James I, c. 4.

communicated prince was abominable.<sup>1</sup> Later, a further enactment spurred on those who were reluctant to take the oath - refusers were debarred from holding any judicial office, from functioning as lawyers, doctors, or apothecaries, and from practising "any liberall science"; they could also be imprisoned until the next Quarter Sessions or Assizes.<sup>2</sup>

The justices who exacted this oath were required to produce a certificate of their proceedings at their next general meeting,<sup>3</sup> and the magistrates around London seem to have been particularly conscientious in the making out of these documents.<sup>4</sup> In the North Riding, the Sessions in 1610 ordered all the justices in their divisions to administer the oath according to the statute,<sup>5</sup> and in Nottinghamshire, many persons were committed to gaol for refusing to take it.<sup>6</sup> Three recusants in Middlesex in 1613 were imprisoned without bail for a similar offence,<sup>7</sup> and the next year two others were not only sent to gaol for an in-

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(1) KILBURN, Choice Presidents upon all Acts of Parliament relating to the Office and Duty of a Justice of Peace, (Ed. 1690), pp. 292-293.

(2) 7 Jas. I, c. 6.

(3) 3 Jas. I, c. 4.

(4) CAL. S.P. DOM., Jas.I, CV, 24, 14 Jan. 1618/9; Car.I, XII, 57, 26 Dec. 1625; CCLXXIII, 47, 16 Aug. 1634; 61, 21 Aug. 1634; CCCLXXXIX, 136, 7 May, 1638; CCCXC, 169, 24 May, 1638; CCCXCV, 39, 11 July, 1638; CCCCIX, 90, 15 Jan. 1638/9; etc..

(5) N.R.Q.S.RECS., Vol. I, p.203, Sess. of 2-3 Oct. 1610.

(6) NOTTS. CO. RECS., p. 106.

(7) MIDD.SESS.RECS., (New Series), Vol.I, pp.42, 70,-1613.

definite period, but were also deprived of all their lands and chattels, and were "placed outside the protection of the Lord the King".<sup>1</sup> A few justices, on the other hand, were willing to accept as sufficient the swearing of the oath in part, insofar as it concerned temporal allegiance,<sup>2</sup> and the magistrates of Northamptonshire seem to have been generally slack about enforcing any of the regulations.<sup>3</sup>

One method of reducing the number of recusants was to see that children were not allowed to be taught by Catholic schoolmasters. An Elizabethan statute laid down that a man who acted as tutor without a licence from the bishop might be imprisoned for a year without bail, and permanently disabled from teaching, while his employer could be fined £10 for each month of the employment.<sup>4</sup> In the first year of James' reign, the penalty was raised to 40s. a day.<sup>5</sup> The Privy Council was mildly interested in the enforcement of these regulations during the early years of the 17th century; in 1601, it made enquiries as to what people kept in their service any schoolmasters or servants who did not come to church.<sup>6</sup> There does not seem to have

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- (1) MIDD.SESS.RECS., (New Series), Vol.II, p.30, 18 July, 1614.
  - (2) H. MSS. COMM., Report 16, Ancaster Papers, p.354, F. Young [a Jesuit] to John Cotton, 1 June, 1612, London.
  - (3) CAL. S.P. DOM., Jac.I, LXVII, 90, Earl of Pembroke to Salisbury, 7 Dec. 1611, Royston.
  - (4) 23 Eliz., c. 1.
  - (5) 1 Jas.I, c. 4.
  - (6) WOOD, The Reformation and Education, p. 301.

been any serious attempt to follow up the enquiry, however, and the local officials also showed practically no active interest. A Worcestershire schoolmaster was presented in 1608 for teaching without a licence,<sup>1</sup> but there is no information as to whether he was punished or not. In Durham, a man was indicted on the same grounds, but apparently he was eventually discharged without a stain upon his character.<sup>2</sup> One presentment only was made in Nottinghamshire - in 1615 William Wynne, clerk, was brought before the justices "because he is a recusant, and teaches as a schoolmaster". Again, however, there is no record as to the outcome of the case.<sup>3</sup>

In view of the work done by the local justices in establishing a uniform system of religious conduct, it is interesting to see to what extent they were themselves ecclesiastics. Commonly there were three or four ordinary clergymen on each Commission of the Peace, and usually, though not always, there was also a bishop. In a few cases, the lists of magistrates included, in addition, one of the archbishops. When Williams was Lord Keeper, his name appeared, as a matter of routine, upon all the Commissions, and during the later years of the reign of Charles I, Juxon was also on every list - as Lord Treasurer, however, rather than as Bishop of London.

The presence of these clerics in the ranks of the local

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(1) WORCS.Q.S.ROLLS, Part I, p. 113, No. 38, 1608.

(2) DUR. SESS. ORDER BOOK, No. I, (1616-1629), p. 368, Sess. of 8 July, 1629.

(3) NOTTS. CO. RECS., p. 134.

magistrates was bitterly resented by a considerable number of Englishmen. Edward Bagshaw, a reader of the Middle Temple, was questioned in Parliament for voicing doubts as to the legality of a beneficed clerk exercising civil jurisdiction.<sup>1</sup> Much more serious was a series of resolute attacks upon ecclesiastical justices of the peace launched from time to time in the House of Commons. The question was brought up in 1614, when it was advanced as a ground for barring clergymen from the Bench that a vicar who was a magistrate had no time to carry out his spiritual duties.<sup>2</sup> The bill was referred to a committee, at whose hands it apparently died. In 1621, the idea was taken up once more, and Sir Edward Peyton pointed out that as no bishop should be present at the execution of a man, so no bishop ought to be a justice of the peace.<sup>3</sup> Diggs put it even more bluntly when he declared that "clergie men are not fitt to be put In [the Commission] nor Chancellors of bishopps".<sup>4</sup> The very vigorous discussion which ensued was ended abruptly by the King,<sup>5</sup> and nothing more was done until unsuccessful attempts to revive the bill were made in 1626,<sup>6</sup> and again two years later.<sup>7</sup> During

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(1) CAL. S.P. DOM., Car.I, CCCCLXXIV, 106, Notes of Edward Bagshaw, [1640?].

(2) H. C. J., Vol. I, p. 482, 12 May, 1614.

(3) IBID, p. 590.

(4) NOTESTEIN, Commons Debates, 1621, Vol.VI, p.98, 25 Apr. 1621.

(5) H. C. J., Vol. I, p. 599.

(6) IBID, p. 832, 7 March, 1625/6.

(7) IBID, p. 884, 17 April, 1628.

Charles' personal rule, no further steps could be taken, but Archbishop Laud, then in the ascendant, does not seem to have taken advantage of his position to increase the number of ecclesiastical justices.

When the Long Parliament met, the enemies of the established system returned to the attack - "Resolved, upon question, That for Bishops or any other clergymen whatsoever, to be in the Commission of the Peace, or to have any judicial power in the Star Chamber, or in any Civil Court, is a hindrance to their spiritual function, prejudicial to the Commonwealth, and fit to be taken away by a bill"<sup>1</sup>. The matter for some reason was dropped the next month, however, and the Commons' attention was soon taken up with other problems more important than the personnel of the local Benches.

Whatever criticism might be launched against the clerical magistrates, it could not be said that they were merely dead wood on the Commission. Many attended the general meetings of the justices with as much regularity as their lay colleagues,<sup>2</sup> and a good deal of work was done by them out of Sessions also. Some of their activities were connected with breaches of public and private morality - two clerics signed the warrant for the

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(1) H. C. J., Vol. II, p. 102, 11 March, 1640/1.

(2) e.g. SOMER. Q.S. RECS., Vol. II, p. 20, Sess. of July, 1626 - 2 present; p. 23, Sess. of Sept. 1626 - 2 present; p. 25, Sess. of Jan. 1626/7 - 2 present; p. 30, Sess. of April, 1627 - 2 present. ADD. MSS., 34,399, fol. 169, Sess. of 9 June, 1612 - 11 magistrates present, 3 of whom were clerics. DUR. SESS. ORDER BOOKS, and CHESTER Q.S. RECS., passim - the names of the same clergymen appear constantly.



arrest of a man suspected of adultery,<sup>1</sup> and others made orders in bastardy cases.<sup>2</sup> Matters of a purely secular kind, however, were also dealt with by the ecclesiastical magistrates. In Chester William ffoster, D.D., called a drunkard before him to answer for his outrageous and disorderly conduct,<sup>3</sup> and the same divine, assisted by a secular colleague, commanded the suppression of a rowdy alehouse.<sup>4</sup> Other clergymen took examinations for thefts of articles ranging from furze-bushes<sup>5</sup> up to heifers.<sup>6</sup> References concerning all kinds of matters - roads,<sup>7</sup> rating for purveyances,<sup>8</sup> and collections for poor relief<sup>9</sup> - were also given to committees upon which ecclesiastical justices sat, and the Somerset Bench in 1627 called upon one of its indefatigable clerics to gather information concerning the truth or falsehood of an alleged case of fraud.<sup>10</sup> Nor was the doing of active work con-

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- (1) CHESTER Q.S.RECS., 1635, File IV, fol.87, Sess. of 26 Jan. 1635/6.
  - (2) H.MSS.COMM., Various Collections, Vol.I, p.72, Wilts. Sess. Recs., 1603. SOMER.Q.S.RECS., Vol.I, p.9, No.86 - Bishop of Bath and Wells named a referee in a bastardy case.
  - (3) CHESTER Q.S.RECS., 1633, File II, fol.58, warrant dated 17 June, 1633.
  - (4) IBID, 1631, File III, fol.50, "May the last", 1631.
  - (5) NORTHANTS Q.S.RECS., p.50, examination dated 25 Sept. 1630.
  - (6) WORCS.Q.S.ROLLS, Part II, p.395, No.223, 20 Oct. 1625.
  - (7) SOMER.Q.S.RECS., Vol.II, p.187, No.6, Sess.of 8-11 Jan. 1632/3.
  - (8) IBID, p.65, Sess. of 22-25 April, 1628.
  - (9) IBID, p.14, No. 14, Sess. of [Jan.] 1625/6.
  - (10) IBID, pp. 33-34, No. 97, Sess. of 3-5 April, 1627.

fined to the humbler ranks of clerical justices alone. Dr. Young, Dean of Winchester, joined in making a survey of the supply of corn in Hampshire,<sup>1</sup> but this mild service was overshadowed by the efforts of William Swaddon, J.P., the militant Archdeacon of Worcester. Dr. Swaddon was, indeed, one of the most active of the Worcestershire Bench.<sup>2</sup> At one time he conducted an exhaustive examination of a pair of prisoners in the county gaol concerning a theft of sheep, supposed to have been perpetrated by one Lawrence Jones, "alias Lusty Lawrence".<sup>3</sup> On another occasion there were brought before him two charitable persons who had come to the local prison "to give drink to a man condemned to die". This pair evidently sampled their donation too freely, for the underkeeper found it necessary to remove them forcibly and bring them, very late, to Swaddon's house. There they were so noisy, and their breath was so bad, that he sent them for the rest of the night to the house of correction, and when they came before him again in the morning - very sober - he bound them over to keep the peace.<sup>4</sup>

Worcestershire possessed, in addition to the energetic archdeacon, an active bishop, whose name appears on many of the orders made by the justices of that county.<sup>5</sup> The Bishop of Salis-

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(1) CAL. S.P. DOM., Car.I, CLXXXIX, 10, J.P.'s of Hants. to the sheriff, 22 April, 1631.

(2) WORCS.Q.S.ROLLS, Part I, Introduction, p. lxxxi.

(3) IBID, Part II, p.365, No.147, examination dated 2 Aug. 1623.

(4) IBID, pp. 347-348, report dated 22 March, 1621/2.

(5) IBID, Part I, Introduction, p. xx.

bury, too, signed a large number of documents connected with the work of the justices of the peace of Wiltshire,<sup>1</sup> and his brother of Exeter acted with other magistrates in investigating the rifling of the papers of the Lord Lieutenant.<sup>2</sup> Bishop William, too - as might be expected - was active in secular matters, and in 1636 we find him committing to the local gaol one William Shelley, who had tricked the constable of Buckden into letting him get possession of the ship-money assessment for Buckden, and then had refused to give it up. Shelley was to be imprisoned until the assessment should be forthcoming, and until the Privy Council, "or other in power and place", should order his release.<sup>3</sup>

Like almost all branches of the central government, the ecclesiastical Court of High Commission used the justices of the peace as local agents. In 1633, the magistrates in the southwest were enjoined to help in the arrest of Sir Robert Willoughby, and to exact security from him for his appearance before the Archbishop at Lambeth.<sup>4</sup> A little later, all the justices were called upon to assist in the confiscation of books which contained "scandalous and offensive passages hitherto

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(1) H. MSS. COMM., Various Collections, Vol.I, p.72, 1603.

(2) ACTS OF P.C., 1618-1619, p.36, P.C. to Bishop and 3 J.P.'s of Devon, [8 Feb.?], 1617/8.

(3) CAL.S.P.DOM., Car.I, CCCXXXVIII, 4(1), Williams to the Keeper of the gaol for Huntingdonshire, 24 Dec. 1626.

(4) IBID, CCXXXIV, 55, Commissioners for Eccles. Causes to Star Chamber messengers, and all sheriffs and J.P.'s, 26 March, 1633, Lambeth.

obliterated by authority", and which were being smuggled in from Holland.<sup>1</sup> Moreover, the magistrates were required to lend aid in breaking up the conventicles being held by "sundry sorts of separatists, novalists, sectaries, as namely - Brownists, Anabaptists, Arians, Traskites, Familists, and some other sorts". These people, the High Commission stated, "under pretence of repetition of sermons, ordinarily use to meet together in great numbers in private houses and other obscure places", and the justices were to help in hunting out such sectaries, that they might be brought to answer before the High Commission Court.<sup>2</sup>

What relationship, then, can be seen between the justices of the peace and the established ecclesiastical system? In the main, the magistrates appear to be merely the agents of a central authority which was determined to impose uniformity of religious conduct upon all Englishmen. During the reigns of the first two Stuarts, the growing Puritan element in Parliament attempted to restrict even this function to a hunting down of Roman Catholics. The Crown, however, remained firmly determined to make the uniformity universal, and lent the justices to the High Commission to help carry out its coercive measures.

As to what extent the justices entered willingly upon the rôle given them by the central authorities, it is impossible to make generalizations. One point emerges clearly, however;

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(1) CAL. S.P. DOM., Car.I, CCCXIV, 20, Commissioners for Eccles. Causes to the Co. of Stationers, to 3 messengers, and to all sheriffs, J.P.'s, etc., 18 Feb. 1635/6, Lambeth.

(2) IBID, CCLXV, 6, same to all sheriffs, J.P.'s, etc., 1 April, 1634, Lambeth.

the magistrates were beginning to feel themselves firmly enough established to permit them to let their own personal prejudices, rather than the orders of their superiors, govern their actions. The Privy Council might protest against the ostrich attitude of the justices in leaving recusants armed; Parliament might object to the bias of the Anglican clergymen on the Commissions; everyone might suspect the Benches of Lancashire and Northumberland of being more than faintly Roman Catholic in feeling; but no one had yet devised a really effective method of preventing the justices from exercising, or only half-exercising, their powers according to their own personal inclination.

## CHAPTER XIV.

### THE JUSTICES AT WORK -- MAGISTRATES, ARMY AND NAVY.

The office of the justices of the peace in military and naval matters was rather vague, for it was, to a greater extent even than their other functions, based upon local needs and limited by local circumstances. The suppression of crime, the enforcement of social laws, and the putting into operation of economic regulations were activities mapped out with some definiteness in the Commission or the Statutes, but the responsibility of the local magistrates in connection with the army and the navy was not so cut-and-dried. Indeed, this part of their office was in many ways more a specialized application of their ordinary functions than a set of distinct duties.

During the 16th century, the military system of England was reorganized, so as to provide a more efficiently-controlled armed force strong enough to repel foreign attack. In Elizabeth's reign, the duty of mustering and training the militia was entrusted to the Lords Lieutenants, but by the 17th century, the real work had slipped into the hands of their Deputies,

chosen from among the county gentry.<sup>1</sup> Service in the militia was a public duty, and since England had no standing army, the central authorities placed a great deal of stress upon the giving of proper training to these citizen-soldiers at the yearly musters. Here the most physically sound men between the ages of sixteen and sixty were called together to be drilled, and the necessary weapons had to be provided, free of charge, by landowners, office-holders and clergy.<sup>2</sup> It was the duty of the gentry to furnish cavalrymen, complete with horses and armour, and the justices of the peace were burdened with the special obligation of providing petronels.<sup>3</sup>

The holding of these musters required no small amount of labour, for very few farmers were willing to leave their work in the summer in order to join their neighbours in wasting valuable time doing exercises. Nor can proximity to the congregations of well-meaning but clumsy yokels, wielding unfamiliar weapons, have been particularly enjoyable - the Somerset Bench had to pay £6 compensation to one Edward Thomas, "in respect that he hath lost his left hand heretofore at a muster".<sup>4</sup> It is hardly surprising that the President of the Council of the North wrote disgustedly in 1629 that there was "an universal defection nay shaking off this duty, almost in every

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(1) SCOTT THOMSON, Lords Lieutenants in the Sixteenth Century, p. 11.

(2) IBID, p. 93.

(3) IBID.

(4) SOMER. Q.S. RECS., Vol.I, p.279, No.4, Sess. of [Sept.] ,1620.

corner of the kingdom".<sup>1</sup>

The justices of the peace were commanded in the Commission of Lieutenancy to be "attendant, aiding, assisting, counselling, and helping" in all matters pertaining to the musters.<sup>2</sup> Indeed, Bacon assigns them the leading place - "Through these [justices], in effect, run all the county services to the crown; as ... mustering men, arming them, and levying forces by commission or precept from the King".<sup>3</sup> Whether or not there was strict legal justification for this rather sweeping claim, many of the magistrates did play a very active part in the training of the militia. In the North Riding, the time and the place of the mustering was decided upon at the Quarter Sessions,<sup>4</sup> and in 1640 the Lord Lieutenant turned over entirely the summoning of the "trained bands" to two justices.<sup>5</sup> In Nottinghamshire, it was apparently not unusual for the magistrates to take full charge, for in 1614 they informed the Privy Council that they had completed the musters "according to order",<sup>6</sup> and seven years later

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- (1) CAL. S.P. DOM., Car.I, CL, 61, Viscount Wentworth, Pres. of the C. of the North, to [Lord Pres. Conway], 14 Oct. 1629, York.
  - (2) NORF. LIEUTANANCY PAPERS, pp.4-5, Commission of Lieutenancy dated 9 May, 1626.
  - (3) BACON, Works, (Ed. by Spedding, Ellis and Heath, 1870), Vol. VII, p. 469, "The Use of the Law".
  - (4) N.R.Q.S.RECS., Vol.I, p.138, adjourned Sess. held 11-12 Oct. 1608.
  - (5) CAL.S.P.DOM., Car.I, CCCCXLII, 75, Bish. Morton of Durham to Sec'y Windebank, 22 Jan. 1639/40, Bishop Auckland.
  - (6) IBID, Jac.I, LXXVIII, 15, sheriff and J.P.'s of Notts. to P.C., 10 Oct. 1614, Mansfield.



they again reported that they had held the musters, and that the trained bands were in excellent condition, except that the creation of new barons, all of whom claimed exemption from service, had considerably weakened the cavalry.<sup>1</sup> Some of the magistrates, however, were evidently not as energetic as those of Nottinghamshire, for the Council wrote doubtfully to the Lord Lieutenant of Northamptonshire, "And as for the justices of peace: wee hoape they will bee so farr from excuseinge and spareinge themselves in sendeinge theyre horses furnitures and seruantes to these musters as they will rather of theyre owne: accorde very rededly performe it: for the furtherance of the service".<sup>2</sup>

It was the duty of the Quarter Sessions to deal with defaulters who failed to put in an appearance at the musters,<sup>3</sup> and a number of presentments were made before various Benches.<sup>4</sup> John Roberts in the West Riding was fined the statutory 40s. "for not attending with a musket, for the service of the King, the musters held at Rotheram".<sup>5</sup>

In addition to Lord Lieutenants, Deputy Lieutenants, and justices of the peace - all of whom served without remuneration - there were paid muster masters. These masters were

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(1) CAL. S.P. DOM., Jac.I, CXXI, 83, sheriff and J.P.'s of Notts. to P.C., 5 June, 1621, East Retford.

(2) NORTHANTS. MUSTERS, p. 123, P.C. to Earl of Exeter, Lord Lieutenant of Northants., Jan. 1612/3, Whitehall.

(3) 4 and 5 Phil. and Mary, c. 3.

(4) N.R.Q.S. RECS., Vol.I, p.108, Sess.of 15 Jan. 1607/8. NOTTS. CO. RECS., p. 93 - 1 Oct. 1627 and 9 Jan. 1636/7.

(5) W.R.Q.S.RECS., Vol.II, p.113, Sess. of 6 Jan. 1638/9.

appointed by the Lieutenants,<sup>1</sup> but their salary was paid by the justices of the peace out of a rate levied for the purpose on the county.<sup>2</sup> The Durham master was allowed an assessment of 2d. in the pound - when he could get it; in 1624 the Sessions ordered that warrants should be issued for the collection of his wages for 1617-1618.<sup>3</sup> The Somerset master, on the other hand, was paid the very respectable sum of £50 annually.<sup>4</sup>

The trained bands were definitely for defence and for the maintenance of order,<sup>5</sup> and consequently militiamen could not be forced into service abroad. When the King embarked upon a foreign war, then, he had to find his soldiers among volunteers, or among people who, when urged to join the army, were in no position to refuse. This raising of troops was not an easy task, for service under the King's flag was not at all popular, and the appearance of the recruiting officer was usually the signal for a general scurry into hiding on the part of all able-bodied men until the officers had gone. The unhelpfulness of the attitude commonly adopted towards those responsible for

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- (1) SCOTT THOMSON, Lords Lieutenants in the Sixteenth Century, p. 86.
  - (2) N.R.Q.S.RECS., Vol.I, p.88, Sess. of 6 Oct. 1607; p.172, Sess. of 6 Oct. 1609. HERTS.CO.RECS., Vol.V, p.136, Sess. of 10-11 Jan. 1630/1. CAL.S.P.DOM., Car.I, CCXLVII, 15, Dep.Lieutenants of Hereford to Lord Lieutenant, 2 Oct. 1633, Hereford; Jac.I, CIII, 50, warrant to collect for pay, signed by two J.P.'s, 28 Oct. 1618.
  - (3) DUR.SESS.ORDER BOOK, No.I, (1616-1629), p.214, Sess. of 30 Sept. 1624.
  - (4) SOMER.Q.S.RECS., Vol.I, p.190, No.6, Sess. of 17-19 Sept. 1616.
  - (5) SCOTT THOMSON, Lords Lieutenants in the Sixteenth Century, p. 11.

finding soldiers can be judged by the statement made by the landlady of a Hertfordshire alehouse, the Leopard's Head, that "at the press for soldiers she hid five men from the constables", and that "she can convey any man from chamber to chamber into the backside....There is not such a house for the purpose within a hundred miles".<sup>1</sup>

When the disinclination to serve in the army was so strong, it is no wonder that we find four men called before the Quarter Sessions in Berkshire to answer for refusing to take the King's shilling,<sup>2</sup> the acceptance of which marked the recruit's willingness to join his Majesty's forces. The Norfolk Bench, too, ordered "Jeffery Playford for Refusinge to take pressemoney of S<sup>r</sup> Robt Kempe knight one of the leive Tenantes of this County of Norff for thee service of the kinge his Ma<sup>tie</sup>: to remayne in prison till he be discharged accordinge to law".<sup>3</sup>

The recruiting was done by authority of a royal commission sent to the Lord Lieutenant.<sup>4</sup> The latter then instructed his Deputies to find the required number of soldiers,<sup>5</sup> and the Deputies, on receipt of these orders, directed a warrant to each

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(1) HERTS.CO.RECS., Vol.I, pp.57-60, No.8, Vol. for 1626.

(2) CAL. S.P. DOM., Car.I, CCCCLXVIII, 59, P.C. to J.P.'s of Berks., 27 Sept. 1640.

(3) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 14 April, 1640.

(4) NORF. LIEUTENANCY PAPERS, p.78, Royal Commission dated 25 June, 1627.

(5) IBID, p.80, Lord Lieutenant to Dep. Lieutenants, 28 June, 1627.

of the high constables, commanding them to impress a certain number of recruits within their hundreds.<sup>1</sup> This ceremonious passing of responsibility from one to another usually produced, in the end, decidedly poor results. Since most respectable citizens were so markedly averse to joining the army, the constables found it easiest to draft in the sweepings of their neighbourhood. This practice is illustrated by an order sent in 1601 by the Deputy Lieutenants to the high constables, for the raising of soldiers for Ireland - "You must take especial care to make choice of none that are ... loose and vagrant persons, but [of] such others as have abiding within the parish from whence they shall be taken".<sup>2</sup> That there was good reason for this warning can be seen from the fact that in the North, outlaws and fugitives from justice were openly recruited for service in Ireland,<sup>3</sup> and a pair of felons in Norfolk were sentenced "to be executed yet reprimanded in gaol to the intent that they shall be sent into Ireland when a presse come for soldiers".<sup>4</sup> Three petty offenders, haled before the Devon Bench, were "spared of their whipping" on condition that they would enlist,<sup>5</sup> and two

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(1) NORF. LIEUTENANCY PAPERS, p. 81, Dep. Lieutenants to the chief constables in every several hundred, 4 July, 1627.

(2) H. MSS. COMM., Report 15, Appendix 7, p.53, precept of Dep. Lieutenants of Devon to high constables, 31 July, 1601.

(3) CAL.S.P.DOM., Jac.I, XXVII, 23, King to Lieutenancy Commissioners for Northumberland, 24 May, 1607.

(4) NORF. Q.S. BOOK OF PROCEEDINGS, 1639-1644, Sess. of 11 Jan. 1641/2 - John Penninge and James Johnson.

(5) HAMILTON, Devon Quarter Sessions, p. 87.

convicted criminals in Hertfordshire were ordered to remain in the house of correction until "there come a tyme that they may bee sent over for soldiers".<sup>1</sup> The civil authorities at Whitehall apparently accepted this practice as a convenient way of getting rid of undesirables, for on several occasions the Privy Council authorized the justices of the counties to round up the vagrants and masterless men, and send them to a place of confinement, where they could be looked over, and the best chosen to be sent overseas.<sup>2</sup> In 1617 a general warrant was issued by the King's Ministers, requiring the local magistrates to certify the names of all able-bodied men who had been convicted of theft, or other felony of a comparatively minor kind, and who could be usefully employed in service abroad.<sup>3</sup>

Evidently the justices of the peace were expected to play their part in the actual pressing of these soldiers for foreign wars, and certainly the duty of finding the money for some of the expenses incurred in recruiting fell upon them. The Elizabethan system, inherited by the Stuarts, put upon the county the responsibility of providing "coat and conduct money" for the levies<sup>4</sup> - that is, a coat for each recruit, and money to cover

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(1) HERTS.CO.RECS., Vol.V, p.44, Sess. of 12-13 July, 1624.

(2) ACTS OF P.C., 1601-1604, pp.27-28, P.C. to J.P.'s of Surrey and Middlesex, 7 July, 1601; pp.491-492, same to J.P.'s of Surrey, Middlesex, Essex and Kent, 14 Mar. 1602/3. H.MSS.COMM., Report 7, Appendix p.660, P.C. to Lieutenant and magistrates of Surrey, 27 March, 1602.

(3) ACTS OF P.C., 1616-1617, pp.101-102, open warrant dated 24 March, 1616/7.

(4) SCOTT THOMSON, Lords Lieutenants in the Sixteenth Century, p. 94.

the cost of his journey to the port of embarkation. The justices were the most convenient agents for the collection of this money, and in 1601, the Bench of Wiltshire ordered the levying of an assessment of 58s. in one of their villages "towards the coates, armour, furnishing, and conventinge of soldiers verie shortlie to be sent into her highnes warres".<sup>1</sup> The justices of Nottinghamshire issued a warrant to require a yeoman to pay "certain taxes and impositions for training of soldiers",<sup>2</sup> and the Hereford Bench certified to the Privy Council the names of those who refused to contribute their share of the coat and conduct money.<sup>3</sup>

While the armies raised in such a haphazard way were anything but models of military efficiency, there was at least no doubt as to the King's legal right to send his soldiers where he chose. The outbreak of the Bishop's War, however, created a different and extremely difficult situation. For a very long time past, England had not been invaded, and those who disapproved of Charles' religious and political policy seized the opportunity to raise the question of whether the trained bands could be required to march out of their own counties, even for the purpose of defending the realm. The King, on his part, very naturally was most unwilling to recruit an "overseas" army for

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(1) H. MSS. COMM., Various Collections, Vol.IV, p.131, John Spenser to the tythingman of "Berie towne", 6 Oct. 1601.

(2) NOTTS. CO. RECS., p. 93.

(3) CAL. S.P. DOM., Car. I, CXXVI, 14, certificate of J.P.'s of Hereford, 1628.

which he himself would have to pay. Among the local officers, opinion as to who was in the right seems to have<sup>been</sup> divided. Some of the Deputy Lieutenants and justices of the peace stood by the Crown and collected money to help cover the cost of the war<sup>1</sup> - the Sessions in the North Riding, for instance, ordered the raising of £80 for this purpose.<sup>2</sup> The Cumberland magistrates were also full of helpfulness, and evolved an ingenious method of distributing the burden of service so that everyone would share it; they chose "one able man out of every five under their command, the other four to furnish with arms and daily allowance the fifth man employed to defend them and their country".<sup>3</sup> But against this display of zeal must be placed the lack of enthusiasm, amounting at times to open insubordination, shown by other groups of magistrates. The Quarter-Master-General, writing from Ripon, declared that "here is neither deputy lieutenant, justice of peace, nor a wise constable to help us",<sup>4</sup> and when the Privy Council itself demanded from the Devon Bench an account of their proceedings upon a commission of array, the

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- (1) CAL. S.P. DOM., Car.I, CCCCLIII, 23, Dep. Lieutenants of Hants. to Lord Lieut's, 12 May, 1640, Titchborn; CCCCLX, 82, Lord Lieut. of Surrey to Sec'y Windebank, 23 July, 1640, Albury. Y.A.J., Vol. V, p.393, (W. Riding Sess. Recs.), Sess. of 16 July, 1639.
  - (2) N.R.Q.S.RECS., Vol.IV, p.180, Sess. of 14 April, 1640.
  - (3) CAL.S.P.DOM., Car.I, CCCCLXVII, 146, orders of Dep. Lieut's, J.P.'s and gentry of Cumberland, 23 Sept, 1640.
  - (4) IBID, CCCCLXXIII, 87, Sir Jacob Asteley to [Edward Viscount] Conway, 23 Dec. 1640, Ripon.

justices replied bluntly that, in their opinion, it was illegal to make their militiamen serve at the other end of England at the expense of the county funds.<sup>1</sup> Indeed, so lukewarm was the general response to the King's appeal for an army that he eventually had to conduct his campaign with a scanty force, consisting of soldiers who did not want to fight, led by nobles who hoped that the enemy would win.<sup>2</sup>

The riff-raff who found themselves swept into military service very naturally seized every opportunity to leave the ranks unobtrusively, taking with them, of course, the weapons and the coats with which they had been supplied by their county. Parliament tried to deter men from deserting by making it felony to "depart without license",<sup>3</sup> but even the threat of the gallows could not evoke any patriotic fervour from this tatterdemalion soldiery. In 1618, the Privy Council urged the justices of the peace of Middlesex, Essex, Surrey, Kent and Devon to do their utmost to capture and punish pressed men who had fled from the army,<sup>4</sup> but the only vigorous action recorded as being taken by the magistrates occurred six years later, and in Wiltshire. There seven men were "indicted and convicted for running from there Captaine havinge receyved imprest money for the Kings service in

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(1) CAL. S.P. DOM., Car.I, CCCCLXIX, 54, Dep. Lieut's and J.P.'s of Devon to P.C., 8 Oct. 1640, Exeter.

(2) TREVELYAN, England Under the Stuarts, (Ed. 1938), pp.187-188.

(3) 1 Henry VII, c. 1; 3 Henry VIII, c. 5.

(4) ACTS OF P.C., 1618-1619, p. 61, P.C. to J.P.'s of Middlesex, Essex, Surrey, Kent and Devon, 5 March, 1617/8.



his warrs and ordered to be hanged by their necks until they be dead, but afterwards reprived by the Court till the next Sessions".<sup>1</sup>

The ruffians who remained in the army were in many ways more troublesome than those who deserted, for, being armed, they were in an excellent position to plunder the countryside as they marched through on their way to the ports. In 1624, the soldiers waiting at Dover to go to the Continent looted the neighbourhood for a dozen miles<sup>round</sup> <sup>2</sup> about, and eventually a commission for martial law had to be issued before order could be restored.<sup>3</sup> It is hardly surprising, in such circumstances, that during the previous year the Council had felt it advisable to instruct the justices of the peace for Kent to disband the companies returning from the Palatinate, adding, "You may easilie conceive of how evill consequence it is, especially at this tyme, that persons of their condicion continue together in one body".<sup>4</sup>

It was the duty of the justices, as Conservators of the Peace, to suppress disorders caused by soldiers, but they do not seem to have undertaken this formidable task with any marked degree of pleasure; indeed, the Privy Council had to exhort them

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(1) WILTS. CO. RECS., p. 77, Sess. of 12 Jan. 1624.

(2) CAL.S.P.DOM., Jac.I, CLXXVII, 48, Sir John Hippisley, Mayor of Dover, and J.P.'s of Kent to [P.C.], 31 Dec. 1624.

(3) IBID, CLXXXI, 10, Sir John Hippisley to Nicholas, 2 Jan. 1624/5, Dover Castle.

(4) ACTS OF P.C., 1621-1623, p. 397, P.C. to J.P.'s of Kent, 29 Jan. 1622/3.

more than once to put forth greater efforts.<sup>1</sup> The West Riding Sessions records for 1640 contain an order for 15s. to be paid to the master of the house of correction, to reimburse him for the "breakinge the windowes of that house, wheeles, and other ymplementes used there, by the soldiers upon theire march to Selby"<sup>2</sup> - but there is no mention of action taken against those responsible for the damage. Retribution for this kind of slackness fell upon a luckless magistrate of Hertfordshire, for being charged with remissness in the exercise of his office - he had failed to arrest certain soldiers who were rioting and profaning churches - he was called before the Council, and was by that indignant body committed forthwith to the Fleet.<sup>3</sup>

The navy was in a position different from that of the army, for it was a national as well as a local institution, and had its permanent national system of officials. None the less, the local magistrates could still be extremely useful in helping to press men for service - a service which was regarded with deep disfavour by most sea-faring men, and into which, as a consequence, recruits often had to be dragged by force. In 1620, the justices of the peace of Kent were instructed to search the country for sailors who had prudently withdrawn inland at the news of the proximity of the press-gangs - a hundred of these retiring seamen were to be induced forthwith to join

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(1) CAL.S.P.DOM., Car.I, CCCCXVIII, 101, proclamation of April, 1639; CCCCLXVI, 70(1), P.C. to J.P.'s of Herts., 7 Sept.1640.

(2) W.R.Q.S. RECS., Vol.II, p.230, Sess. of 16 July, 1640.

(3) CAL. S.P. DOM., Car.I, CCCCLXVI, 44, draft of Council order, 4 Sept. 1640.

the navy.<sup>1</sup> Six years later, the magistrates of Norfolk were ordered "to supply from the the countye a third parte of the complement of your shippes out of such able boddyes as maye bee fitt to vse musketts".<sup>2</sup>

Some of the magistrates readily undertook the task of finding men for the fleet. At the end of Elizabeth's reign, Nathaniel Bacon, a justice of the peace in Norfolk, compiled a list of three hundred and sixty-seven names, headed "Marryners pressed for her Ma<sup>tes</sup> shippes by Nathanael Bacon Esquire".<sup>3</sup>

When, in 1628, the navy was being prepared for active duty, the Devon magistrates announced their readiness to help in "the furthering of the pressing of mariners for his Majesty's service", and gave instructions for the establishment of a weekly search for likely men "till his Majesty's fleete be gone".<sup>4</sup> At the same time, it must be admitted that some of the justices were not above recruiting the scrapings of the ports in order to make up their quota,<sup>5</sup> and others connived at the escaping inland of the really able-bodied men.<sup>6</sup> In a few cases, the unsatisfactory

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- (1) CAL. S.P. DOM., Jac.I, CXVI, 65, Lord [Zouch] to J.P.'s of Kent, 9 Aug. 1620, Dover Castle.
  - (2) H.MSS.COMM., Report 9, Appendix, Part I, p.309, MSS. of Great Yarmouth, P.C. to "Yermouth and Norfolk", 30 June, 1626.
  - (3) CAM.SOC., Third Series, Vol.XXVI, (1915), Stiffkey Papers, p. 69 - 1599.
  - (4) HAMILTON, Devon Quarter Sessions, pp. 107-108.
  - (5) CAL.S.P.DOM., Car.I, CCLXXXVIII, 99, examinations of 4 sailors, 15 May, 1635; CCLXXXIX, 1, Sir Henry Palmer to Nicholas, 17 May, 1635.
  - (6) IBID, XCVI, 53, William Earl of Denbigh to Nicholas, 19 March, 1627/8; CCCLI, 49, John Phillips and Thomas Lewis to the Officers of the Navy, 31 March, 1637, Dorchester.

conduct of the justices rose out of sheer snobbishness - the gentlemen of the county were not prepared to associate in any helpful way with "such mean persons" as the pressmasters.<sup>1</sup>

During the reign of Queen Elizabeth, the question of who was responsible for the upkeep of the coastal defences had been a thorny one. The seaboard towns, protesting poverty, had tried to shift the burden on to the Crown, but the thrifty Queen had been most reluctant to undertake a financial obligation while there was any chance that she might be able to leave it to someone else.<sup>2</sup> So the matter had rested, and by the reign of Charles I. the local authorities seem to have weakened in their determination not to spend any money. When, in 1627, the Privy Council required the justices of the peace of the south coast to survey the fortifications and landing-places, and repair them at the expense of the adjacent districts,<sup>3</sup> the response, from Kent at least, was satisfactory.<sup>4</sup> At the same time, the magistrates of Devon erected fortifications at Seaton on their own initiative.<sup>5</sup> Nor was the provision of military supplies overlooked by the justices, for the Bench of Suffolk issued

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- (1) CAL. S.P. DOM., Car.I, CCCLXXXI, 51, Officers of the Navy to Lords of the Admiralty, 8 Feb. 1637/8, Mincing Lane.
  - (2) SCOTT THOMSON, Lords Lieutenants in the Sixteenth Century, pp. 97-98.
  - (3) CAL. S.P. DOM., Car.I, LXVIII, 30, P.C. to Buckingham, 29 June, 1627, Whitehall.
  - (4) IBID, LXXVI, 1, J.P.'s of East Kent to P.C., 1 Sept. 1627, East Kent.
  - (5) CAMDEN SOC., Old Series, No.41, (1848), Diary of Walter Yonge, pp. 106-107.

a warrant to the constables for the levying of £3. 16s. 2d.  
for furnishing a magazine of powder.<sup>1</sup>

Very important in the defence equipment were the beacons, which were kept, ready to be lighted, on high points all over England. They seem to have been officially under the care of the Lords Lieutenants, but quite evidently their repair and upkeep was held to be the responsibility of the localities where the beacons were, since various parishes and hundreds were presented at the Quarter Sessions for slackness in looking after them.<sup>2</sup> In the North Riding, when Husthwate Beacon was blown down, the justices ordered that it should be re-erected at the charge of the neighbouring inhabitants;<sup>3</sup> and Staincrosse in the West Riding was commanded to raise 22s. "for attendinge and fireinge of beacons in that wapentacke".<sup>4</sup>

A system of beacons would have been useless had not persons been assigned to keep a sharp look-out for lights on other hills. In the West Riding, watchmen were paid for their work, and the Quarter Sessions there from time to time ordered the collection of money for the watching of the beacons.<sup>5</sup> In

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- (1) CAL. S.P. DOM., Car.I, XCIII, 43(4), J.P.'s of Suff. to constable of Lowestoft, 24 Jan. 1627/8, Ipswich.
  - (2) HERTS. CO. RECS., Vol.V, p.22, No.213, 6 July, 1612; p.39, Sess. order of Jan. 1623/4. NORF. Q.S. ROLLS, 5 Chas.I, Ersham Hundred presented in April, 1629.
  - (3) N.R.Q.S. RECS., Vol.III, p.232, Sess. of 27 April, 1625.
  - (4) W.R.Q.S. RECS., Vol. II, p.247, Sess. of 8 Oct. 1640.
  - (5) Y.A.J., Vol.V, p.386, (W. Riding Sess. Recs.), Sess. of 16 Jan. 1638/9; p.390, Sess. of 23 April, 1639; p.402, Sess. of 16 Jan. 1639/40.

Somerset, on the other hand, the people living near the beacon were expected to take turns in standing guard<sup>1</sup> - the Sessions ordered that the inhabitants of Catsaish and Rimpleton "shall all watch their severall turnes at Corton beacon aforesaid".<sup>2</sup>

These heaps of fuel, piled in lonely spots, offered great temptation to prowlers looking for firewood. Indeed, the Nottinghamshire Bench imprisoned a labourer in the stocks for an hour "for breaking the Beacon at Norwell Woodhouse and for carrying away a board".<sup>3</sup>

Along with the rest of their military regulations, the Tudors bequeathed to the Stuarts a statute which made it compulsory for all young Englishmen to possess and to learn to use a longbow.<sup>4</sup> In Worcestershire, twenty persons were presented at the Quarter Sessions in 1627 because they had not provided themselves with the statutory equipment,<sup>5</sup> and seven North Riding men were fined 6s. 8d. apiece for "default of bowe and arrowes".<sup>6</sup> Several Somerset parishes were presented for not keeping up the public targets,<sup>7</sup> and the Nottinghamshire Bench imposed a penalty

- (1) SOMER. Q.S. RECS., Vol.I, p.252, No.12, Order of Sess. of 6-8 April, 1619; Vol.II, p.24, Order of Sess. of 19-21 Sept. 1626.
- (2) IBID, Vol.II, p.30, No.21, Sess. of 9-12 Jan. 1626/7.
- (3) NOTTS. CO. RECS., p. 64, 15 July, 1635.
- (4) 33 Henry VIII, c. 9.
- (5) WORCS.Q.S.ROLLS, Part II, p.429, No.222, 22 May, 1627.
- (6) N.R.Q.S.RECS., Vol.I, p.93, Sess. of 8 Oct. 1607.
- (7) SOMER.Q.S.RECS., Vol.I, p.297, No.16, Sess. of 3-5 July, 1621; Vol.II, p.69, No.41, Sess. of 22-25 April, 1628; No.42, same Session.

of ls. upon the inhabitants of Gotham "for not making metas angelice Butts".<sup>1</sup> The small number of these cases, however, suggests that the local authorities felt no overwhelming urge to insist upon a meticulous observance of the law.

While England was at peace with other countries during the greater part of the reigns of James I. and Charles I., the wars in which she did engage left her with a number of permanently disabled men whose support constituted a problem for the local authorities. The last of Elizabeth's parliaments had settled a system of county funds, from which money was to be drawn for the payment of pensions to "maimed soldiers and sailors". The collection was not to exceed 10d. per parish per week, and a maximum was set for the annual amount of individual pensions - £20. for commissioned officers, £15. for non-commissioned officers, and £10. for the rank and file.<sup>2</sup> The allotting of these pensions was done at the Quarter Sessions,<sup>3</sup> and the size of the allowances was - within the statutory limits - left entirely to the discretion of the magistrates. Thus while a Nottinghamshire "gentleman" was given £10. a year,<sup>4</sup> and a cripple in Chester was granted

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(1) NOTTS. CO. RECS., p..91.

(2) 43 Elizabeth, c. 3.

(3) Y.A.J., Vol.V, p.375, (W. Riding Sess. Recs.), Sess. of 3 April, 1638 - 63 old pensions renewed; p.400, Sess. of 13 Jan. 1639/40. W.R.Q.S.RECS., Vol.II, pp.208-210, Sess. of 14 April, 1640. SOMER.Q.S.RECS., Vol.I, p.165, No.32, Sess. of 9-12 Jan. 1615/6. LANCS.Q.S.RECS., p.71, Sess. of 12 Jan. 1600/1.

(4) NOTTS. CO. RECS., p. 93, 11 Jan. 1612/3.

"4 nobles per annum",<sup>1</sup> an unfortunate Yorkshireman received annually the princely amount of 6s. 8d.<sup>2</sup> Sometimes a lump sum was paid over, in full discharge of all further claims upon the county,<sup>3</sup> - one man, "upon his extreme clamour of want", was given 20s., on condition that he would thereafter leave the magistrates in peace.<sup>4</sup>

Not all the applicants actually received grants from the county. Some were refused on the ground that they were not eligible;<sup>5</sup> one, in Westmorland, was pithily characterized by the justices there as "an idle drunken pedlar".<sup>6</sup> A maimed soldier of Chester, <sup>whose</sup> ~~where~~ worthiness was vouched for by several respectable people, was also refused, without any reason being given - the application is annotated curtly, "Nil".<sup>7</sup>

Not infrequently the Council recommended deserving cases

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- (1) CHESTER Q.S. RECS., 1641, File I, fol. 17, Sess. of 11 May, 1641.
  - (2) N.R.Q.S. RECS., Vol.I, p.129, Sess. of 15 July, 1608 - Miles Brown.
  - (3) CAL. S.P. DOM., Jac. I, LXXVI, 32(1), Order on Treasurer for Eastern Cornwall for £4., 30 May, 1614. SOMER.Q.S.RECS., Vol. I, p.138, No.16, Sess. of 18-20 April, 1615; Vol. II, p.8, No. 3, Sess. of [July], 1625.
  - (4) N.R.Q.S.RECS., Vol.I, p.54, Sess. of 8 Oct. 1606.
  - (5) CAL. S.P. DOM., Car.I, CLXIV, 17, J.P.'s of Salop to P.C., 6 April, 1630, Shrewsbury; CCXX, 9, J.P.'s of Hants. to P.C., 4 July, 1632, Winchester.
  - (6) IBID, Jac.I, CXVII, 23, J.P.'s of Westmorland to P.C., 21 Oct. 1620, Kendall.
  - (7) CHESTER Q.S.RECS., 1631, File II, fol.37, Sess. of 28 June, 1631.



to the local justices,<sup>1</sup> but the latter were not at all willing to accept dictation, even from so high an authority. The Ministers were therefore much annoyed at being bombarded with complaints from their protégés saying that they were not receiving pensions, and wrote irritated letters to the justices of the peace and treasurers, commanding that the pensions should be paid, or else valid reasons for withholding them should be produced.<sup>2</sup> The Lincoln magistrates in 1619 were ordered to do as they had been told "without further delay or trouble",<sup>3</sup> and the Council in writing for the second time to the Bench of Cumberland about three highly-recommended cases expressed its surprise and displeasure that it had "found so little respect from you to the directions of this Board as ... to suffer us still to be troubled with their importunity and complaints".<sup>4</sup>

Even when a pension was granted, it was not by any means necessarily a permanent source of income to the pensioner. Eight maimed soldiers were dropped from the Wiltshire list in

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- (1) ACTS OF P.C., 1617-1619, p.95, P.C. to J.P.'s and Treasurers of Cambs., 31 March, 1618; p.393, P.C. to J.P.'s and Treasurers of Sussex, 10 March? 1618/9. CAL.S.P.DOM., Jac.I, CLII, 50(1), Sec'y Conway to J.P.'s of Somerset, 18 Sept. 1623, Theobalds; Car. I, XXV, 24, J.P.'s of Yorks to P.C., 19 April, 1626, Beverley Sessions.
  - (2) ACTS OF P.C., 1613-1614, pp. 184-185, P.C. to J.P.'s of Warwick, 18 Aug.? 1613; 1615-1616, p.32, P.C. to J.P.'s of Cumberland, 11 Nov. 1615; 1618-1619, p.433, P.C. to J.P.'s of Gloucs., [28 April], 1619. There are many more such cases among the records of the P.C.
  - (3) IBID, 1618-1619, p.420, P.C. to J.P.'s etc. of Lincs., 18 April, 1619.
  - (4) IBID, p.477, P.C. to J.P.'s and Treasurers of Cumberland, 18 June, 1619.

1601, as it was found that they had no right to the money they were receiving,<sup>1</sup> and John Arundell in the North Riding lost his grant when it was discovered that he was drawing an allowance elsewhere.<sup>2</sup> The justices of Buckinghamshire were actually accused of cancelling pensions on "frivolous and causeless ... pretences",<sup>3</sup> but the Yorkshire magistrates were admittedly justified in withdrawing Thomas Ransom's allowance of 40s. a year, as he was spending the money on stirring up trouble among his neighbours.<sup>4</sup>

If the justices chose, they could reduce a pension instead of taking it away entirely. In 1628, the Devonshire Bench was utterly disgusted with the drunkenness and "lewd conversation" of one of their lame soldiers. They would have discharged him completely, had it not been for the pitiable condition of his wife and children; as it was, they cut down his grant from £4. to 40s. a year.<sup>5</sup> Richard Washington in Yorkshire was allowed £3. 10s. at first, but the pension list is annotated opposite his name "xlv s. per ordinem pro abusu justiciorum".<sup>6</sup>

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- (1) H. MSS. COMM., Various Collections, Vol.I, p.70, (Wilts. Sess. Recs.), Sess. order of 9 July, 1601.
  - (2) N.R.Q.S.RECS., Vol. II, p. 296, Sess. of 6 Oct. 1615.
  - (3) ACTS OF P.C., 1621-1623, p.282, P.C. to J.P.'s etc. of Bucks., 11 July, 1622.
  - (4) CAL. S.P. DOM., Car.I, CCLIX, 64, J.P.'s for County York to P.C., 30 Jan. 1633/4.
  - (5) IBID, XC, 45, J.P.'s of Devon to P.C., 10 Jan. 1627/8, Exeter.
  - (6) Y.A.J., Vol. V, p.375, (W. Riding Sess. Recs.), List filed with records of Sess. of 3 April, 1638.

The allowances were, on occasions, increased instead of decreased. The Somerset justices raised the pension of William Godfrey from £2. to £3. 6s. 8d. "in consideration of his miserable estate",<sup>1</sup> and a little later the same Bench augmented the grant to another disabled man.<sup>2</sup> The West Riding magistrates first gave an allowance to a cripple; then halved it; then, deciding that "the pencion which he nowe receiveth ... is very small for his mayntenance",<sup>3</sup> raised it again - though not to the original amount.

Apart from the pensions granted to the disabled men themselves, there were other calls on the fund for maimed soldiers and sailors. The North Riding Sessions ordered the payment of 6s. 8d. to a widow "who nursed one Richard Richardson, a sick soldier, in her house till his death".<sup>4</sup> In Nottinghamshire and Warwickshire, the magistrates sometimes gave money for the support of the families of pressed men,<sup>5</sup> and the sick wife of a Yorkshire soldier was allowed 12d. weekly until she should be well enough to join her husband.<sup>6</sup>

The whole question of the payment of pensions was complicated by the limitation placed by law on the amount which

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(1) SOMER. Q.S. RECS., Vol.I, p.220, No.1, Sess. of 13-16 Jan. 1617/8.

(2) IBID, Vol.I, p.275, No.12, Sess. of 18-20 July, 1620.

(3) W.R.Q.S. RECS., Vol.I, pp.98-99, Sess. of 11 July, 1598.

(4) N.R.Q.S. RECS., Vol.II, p.4, Sess. of 1 Oct. 1612.

(5) NOTTS. CO. RECS., p. 96. WAR. Q.S. RECS., Vol. I, p. 4, Easter Session, 1625.

(6) N.R.Q.S. RECS., Vol.I, p.115, Sess. of 5 April, 1608.

could be levied.<sup>1</sup> In time of peace it was easy enough to keep the assessments down to the statutory level - the Wiltshire Sessions in 1614 continued the rate established the previous year, "threepenc weekly and not above".<sup>2</sup> When England was at war, however, the strain on the funds became very severe. In 1631, the magistrates of Berkshire wrote to the Privy Council that they could not give the allowance recommended by the Board to James Senior, but that they would grant him the first pension that should "become void".<sup>3</sup> In other deserving cases, very real hardship was worked; Captain William Davenport, who had seen considerable service in Ireland, asked the Chester Bench for relief, as he was old and poor, but the petition is annotated, "noe moneyes remaininge in the treasury . ideo nil/."<sup>4</sup> Some counties tried to solve the difficulty by taking away or reducing existing pensions, in order to raise the extra money necessary.<sup>5</sup>

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(1) 43 Eliz., c. 3-- 10d. per parish per week.

(2) WILTS. CO. RECS., p. 41, Sess. of 3 May, 1614.

(3) CAL. S. P. DOM., Car. I, CLXXXII, 46, J.P.'s of Berks. to P.C., 12 Jan. 1630/1, Reading Quarter Sessions.

(4) CHESTER Q. S. RECS., 1636, File II, fol. 42, Sess. of 7 July, 1636.

(5) IBID, 1630, File IV, fol. 24. SOMER. Q. S. RECS., Vol. II, p. 16, No. 3, Sess. of [April], 1626.

The Somerset Bench, however, evidently felt that nothing short of disregarding the legal limitation would meet the needs of their crippled veterans, and boldly ordered that an additional sum of £50.<sup>1</sup> a year should be levied.

Such was the office of the justices of the peace in connection with the military system; and, on the whole, it introduced no strikingly novel features into the regular work of the county magistrates. For the arming and training of the militia, they had to provide horses and weapons - but then, so did the other country gentlemen. They punished those who failed to appear at the musters - just as they punished watchmen who would not take their turn at watching, or constables who refused to perform their public obligations. They had to be "aiding and assisting" to the Lord Lieutenant and his Deputies; but there was nothing new in an order to the justices to help other Crown officials. Their work in levying overseas forces, too, shows nothing novel. Their main responsibility was financial - the raising of coat and conduct money - and since it was recognized that all the county funds came, to a greater or less degree, under their control, the additional levy meant merely another page in their accounts, and a little extra watchfulness over officials already under supervision. The funds for the pensions

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(1) SOMER. Q. S. RECS., Vol. II, p. 156, No. 2, Sess. of 12-15 July, 1631.

of disabled soldiers, again, were really a branch of the poor-relief system, of which the magistrates were in charge.

Thus, all in all, the justices' responsibilities in military matters added more to their hours of administrative work than to their powers and prestige.

## CHAPTER XV.

THE RELATION OF THE JUSTICES OF THE PEACE  
TO THE CENTRAL GOVERNMENT.

When a country possesses a paternal, not to say grandmotherly, central government, as well as a sturdy and independent local administration, the relations between the two are not likely to be monotonously uninteresting. In England, these relations were complicated by the fact that during the first years of the 17th century, the central government was becoming more and more obviously divided into two dissentient parts, Crown and Parliament, and the attitude of the local officials was not the same towards both.

The extent to which Parliament was prepared to rely upon the abilities of the justices of the peace may be judged by the number of statutes which put power into the hands of the local Benches. Nor was it unnatural that this profound trust should exist, for the men who sat in the House of Commons came almost entirely from the gentry of town and countryside. Often the members were themselves on the Commission of the Peace,<sup>1</sup> so

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(1) CAL. S.P. DOM., Jac. I, XCIV, 79(1), Dr. Willett to Sir John Higham, 26 Dec. 1617.

that, as Bacon said, "Those that have voices in Parliament to make laws for the most part are those which in the country are appointed and administer the same laws".<sup>1</sup> As a result, the local magistrates took a keen interest in the bills which were brought up in Westminster,<sup>2</sup> and were able to interpret intelligently the legislative acts they were called upon to enforce.

To the King, too, the justices of the peace afforded a link with the people of the country at large. It was often the magistrates who expressed to the authorities at Whitehall the general feeling of their districts; for while Parliament was the official spokesman of aggrieved Englishmen, it met only when the King chose, whereas the justices were constantly in touch with their own localities on the one hand, and with London on the other. Through the magistrates, therefore, came protests against some of the unpopular acts committed by the King and his ministers, such as the dismissal of nonconformist clergymen in 1604 and 1605,<sup>3</sup> the laying of a ruinous taxation on cloth,<sup>4</sup> and the levying of ship-money.<sup>5</sup>

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(1) SPEDDING, Letters and Life of Bacon, Vol. VI, p.304, quoted in Dowdell, A Hundred Years of Quarter Sessions, Introduction, p. lxi.

(2) H.MSS.COMM., Various Collections, Vol.VII, p.395, J.P.'s for Notts. to the two Notts. Knights of the Shire, 7 Aug. 1625.

(3) CAL. S.P. DOM., Jac.I, X, 62, J.P.'s of Lancs. to the King, Dec. ? 1604.

(4) IBID, XCVII, 85, J.P.'s [of Devon] to P.C., 25 May, 1618.

(5) IBID, Car.I, CCCLXXVI, 133, Petition of sheriff and J.P.'s of Hereford to P.C., [1637?]; CCCC, 42, same to same, 1638.



These same men who spoke for their counties could also, if need arose, be used as the mouthpiece of the Crown. It was the justices who, in 1603, were commanded to deny officially the rumours which were current early in March that Queen Elizabeth was dead;<sup>1</sup> and when, a little later, she did die, it was the justices who were required to proclaim the new ruler.<sup>2</sup>

Useful though the magistrates might occasionally be as a means of communicating the King's messages to his people, their value in other respects was much greater. Money problems had always loomed large upon the horizon of Scottish rulers, and the justices represented English middle-class wealth - a wealth which was certain to be regarded with covetous eyes by an impecunious monarch from the North. Even under the economical Elizabeth, the Treasury funds had required delicate manipulation, and the advent of the spendthrift Stuarts rapidly complicated government finances to the point of chaos. Consequently in July, 1614, James found the royal coffers almost empty, and having quarrelled with and dismissed the Addled Parliament, he appealed to his people for a free gift,<sup>3</sup> and urged the magistrates to use their influence to persuade the well-to-do to contribute lavishly.<sup>4</sup>

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- (1) CATALOGUE OF LANSDOWNE MSS., Caesar's Papers, p.38, No.157, P.C. to all J.P.'s, 15 March, 1602/3.
  - (2) HARLEIAN LIBRARY CATALOGUE, Vol.II, p.563, S.2219, No.58, P.C. to sheriff and J.P.'s of Lancs, 25 March, 1603.
  - (3) GARDINER, History of England, 1603-1642, Vol. II, p. 261.
  - (4) ADD.MSS., 34,218, fol.146, P.C. to sheriff and J.P.'s of Kent, 4 July, 1614. COX, Derbyshire Annals, Vol. II, p.106, P.C. to J.P.'s of Derby, same date.

The result was, from the King's point of view, thoroughly disappointing. The justices, far from giving an example of loyal generosity, were not at all enthusiastic, even after the Council had addressed a second request to them in September.<sup>1</sup> Indeed, the Kent Bench said openly that the collection of the gift was "a distastfull office, and a matter beyond their knowledge",<sup>2</sup> and a year after the first request had been sent out, six counties reported a total of six contributors.<sup>3</sup> All in all, no more than £66,000 came into the Treasury, and that with distinct ill-grace.<sup>4</sup>

In 1622, James decided to try again, this time to raise money for the defence of the Palatinate. The magistrates were much more willing to co-operate than on the earlier occasion,<sup>5</sup> but even then the project was a failure<sup>6</sup> - as the justices of

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- (1) ACTS OF P.C., 1613-1614, pp. 628-630, P.C. to sheriff and J.P.'s of Somerset, 15 Nov. 1614; 1615-1616, pp.42-43, P.C. to sheriff and J.P.'s of Leicester, 5 Feb. 1614/5.
  - (2) ADD. MSS., 34,218, fol. 146b, Sir John Leveson to Sir Francis Fane, 1 Aug. 1614, Blackfriars.
  - (3) ACTS OF P.C., 1615-1616, p.270, P.C. to sheriff and J.P.'s of Sussex, Hereford, Salop, Staffs., Cumberland, Westmorland, July ? 1615.
  - (4) GARDINER, History of England, 1603-1604, Vol. II, p.265.
  - (5) CAL. S.P. DOM., Jac.I, CXXX, 48, J.P.'s for part of Worcs. to P.C., 9 May, 1622; 50, Earl of Hunts. to P.C., 9 May, 1622; 62, J.P.'s of Notts. to P.C., 13 May, 1622; CXXXII, 70, J.P.'s of Leicæss. to P.C., [July], 1622; CXXXIV, 4, J.P.'s of Cumberland to P.C., 8 Nov. 1622; etc. CAMDEN SOC., Old Series, No.41, (1848), Diary of Walter Yonge, p. 57.
  - (6) CAL. S.P. DOM., Jac. I, CXXX, 60, Chamberlain to Carleton, 11 May, 1622.

Somerset pointed out, the manner of levying the contribution was considered by many to be a dangerous precedent, in spite of the excellence of the cause.<sup>1</sup> No more successful was Charles' attempt, four years later, to raise a benevolence; the magistrates reported that although they did their best, the people refused to pay.<sup>2</sup> The Council, however, was beginning to receive this excuse with a good deal of scepticism, and was convinced that the justices themselves were largely to blame.<sup>3</sup>

After this failure, the King tried to disguise his demands under the name of a loan. It was, of course, a loan which was most unlikely to be repaid,<sup>4</sup> yet those who refused to contribute were liable, by the King's express orders, to be drafted into the army and sent to serve in the English forces in Denmark.<sup>5</sup> There was, moreover, the ever-present possibility of arbitrary imprisonment for the recalcitrant. But while many weaker brethren were intimidated into paying their quota, a number of the magistrates boldly refused. Of these, Hampden, Eliot and Wentworth are well known, but others, more obscure, stood out

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(1) CAL. S.P. DOM., Jac. I, CXXX, 81, J.P.'s of Somerset to P.C., 15 May, 1622.

(2) IBID, Car.I, XXXIII, 41, 57, 59, 84, 109, 131; XXXIV, 4, 23, 30, 32, 62, 76; XXXVI, 34, 39, 41, 82; XXXVII, 50; XXXVIII, 88 - reports from J.P.'s of various shires, ranging in date from 5 Aug. 1626 to Oct. 1626. COX, Derbyshire Annals, Vol.II, pp. 106-107, J.P.'s of Derby to P.C., 17 Aug. 1626.

(3) CAL. S.P. DOM., Car.I, XXXIV, 71, P.C. to J.P.'s of Bucks., [31 Aug.] 1626.

(4) GARDINER, History of England, 1603-1642, Vol. VI, p. 158.

(5) CAL. S.P. DOM., Car.I, XXXVIII, 23, King to Commissioners for the Loan, 20 Oct. 1626.

with equal firmness. Twelve justices of Gloucestershire would neither pay their share nor help in the collection,<sup>1</sup> and some of them were promptly punished by degradation from their local Bench.<sup>2</sup> In spite of this warning example, however, a large number of the gentry continued to be stubborn.<sup>3</sup> All in all, the King's attempt to use the justices of the peace as tools for his questionable financial operations was not a success.

One of the heaviest drains upon the royal revenue was the cost of the navy. For special expeditions, Queen Elizabeth had required the maritime counties to provide ships,<sup>4</sup> and when it was decided to send an expedition to the Bay of Biscay in 1626, Charles determined to follow her example. Great was the disgust felt along the English sea-board, although, with such a clear precedent in the recent past, few ventured to argue the legality of the King's position.<sup>5</sup> None the less, some of the justices of the peace registered a protest against the demand as being utterly unreasonable.<sup>6</sup> Of these, the most daring were the magistrates of Somerset, for not only did they challenge

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(1) CAL. S.P. DOM., Car.I, LIV, 28, Commissioners for the Loan for Salop, Hereford, Gloucs., and Worcs. to P.C., 17 Feb. 1626/7.

(2) P.R.O. CROWN OFFICE DOCKET BOOKS, (Ind.4211), regnal year 3 Chas. I, 21 June, (1627).

(3) GARDINER, History of England, 1603-1642, Vol. VI, p. 155.

(4) IBID, p. 132.

(5) IBID.

(6) CAL.S.P.DOM., Car.I, XXXV, 43, J.P.'s of Gloucestershire to P.C., 8 Sept. 1626, Cirencester; LIX, 40, J.P.'s of Norfolk to P.C., 5 April, 1627, Norwich; 52, J.P.'s of Essex to P.C., 6 April, 1627, Chelmsford.

the legal basis of the levy,<sup>1</sup> but, after being sharply rapped over the knuckles by the Council for their presumption,<sup>2</sup> they had the temerity to state that their opinion that the charge was unwarranted remained unchanged, and that if they had to pay, it would be with the utmost unwillingness.<sup>3</sup> The same attitude was adopted by the people of Devon, who "for the most part did generally refuse to contribute towards the setting forth these ships",<sup>4</sup> and two years later, when Charles demanded £17,400 for the expenses of the fleet, the same county "refused to meddle therein".<sup>5</sup>

Much greater was the excitement aroused by the King's issuing of the ship-money writs between 1634 and 1640, for these touched all England, instead of merely the maritime parts. Many people refused to pay, and some of the petty officials would not distrain their goods.<sup>6</sup> In 1640, the exhausted sheriff of Hereford wrote, "Constables and collectors have done but little, for distrain they will not.... I am weary of imprisoning constables".<sup>7</sup>

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- (1) CAL. S.P. DOM., Car.I. XXXVI, 18, J.P.'s of Somerset to P.C., 19 Sept. 1626, Bridgwater..
  - (2) IBID, 94, P.C. to J.P.'s of Somerset, 30 Sept. 1626.
  - (3) IBID, LX, 32, J.P.'s of Somerset to P.C., 16 April, 1627, Glastonbury.
  - (4) CAMDEN SOC., Old Series, No.41, (1848), Diary of Walter Yonge, p.93.
  - (5) HAMILTON, Devon Quarter Sessions, p. 120.
  - (6) CAL.S.P.DOM., Car.I, CCCXI, 78, Note by sheriff of Gloucs. of those who refuse to pay, 18 Jan. 1635/6; CCCXII, 26, Account by Nicholas of conditions in Gloucs., 24 Jan. 1635/6.
  - (7) IBID, CCCCLXVI, 77, sheriff of Hereford to Nicholas, 7 Sept. 1640, Hereford.

Oddly enough, a number of the justices seem to have assisted zealously in the raising of the money,<sup>1</sup> and some were willing to help if the rates were fairly adjusted.<sup>2</sup> Others took the steps commanded, but with obvious reluctance,<sup>3</sup> or actively impeded the collection by deliberately making things difficult for the collectors.<sup>4</sup> Still others refused to pay their own quota.<sup>5</sup> The Chester magistrates drew up lists of objections to the tax,<sup>6</sup> and one of them went so far as to dare the sheriff to collect, promising to shoot the first man who should attempt to lay hands on his goods.<sup>7</sup>

Even when the King undertook to provide ships for the navy himself, he could demand of his subjects the transportation of timber at a cheap rate to the yards where the actual

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- (1) CAL. S.P. DOM., Car.I, CCCXXXIII, 2(2), Information of Roger Tudor and John Corderoy, 29 Sept. 1636.
  - (2) IBID, CCXCI, 78, Bishop and J.P.'s of Durham to P.C., [27?] June, 1635, Durham; CCCLVII, 8, P.C. order upon petitions from J.P.'s of Bucks, 21 May, 1637, Whitehall; CCCLXXVI, 133, Petition of sheriff and J.P.'s of Hereford to P.C., [1637?].
  - (3) IBID, CCXCIII, 17, Capt. Phineas Pett to P.C., 3 July, 1635, Durham.
  - (4) IBID, CCCXCII, 56, sheriff of Hereford to Richard Wotton, 11 June, 1638.
  - (5) IBID, CCCXXXV, 13, Order-in-Council, 5 Nov. 1636; CCCLXVII, 7, sheriff of Northants. to P.C., 2 Sept. 1637, Passenham; CCC-LXXXI, 84, sheriff of Hunts to Nicholas, 11 Feb. 1637/8, Ware-sley. COX, Derbyshire Annals, Vol.II, p.111, warrant for the arrest of a J.P.
  - (6) CAL. S.P. DOM., Car.I, CCCCLXIX, 46, order of Chester Q. Sess., 6 Oct. 1640.
  - (7) IBID, CCCCLIX, 21, Sir Thos. Powell [sheriff of co. Chester] to his brother, Lawrence Whitaker, 3 July, 1640, Horsley.

construction was to be done. The justices of the peace, as usual, were expected to see that the necessary carts were provided, and orders were accordingly addressed to them every now and then, urging them to ensure the presence of the wagons at the appointed times and places.<sup>1</sup> Evidently, however, the magistrates were not at all anxious to hunt about for timber-wains; the Benches of Berkshire and Dorset made every kind of excuse to avoid the unwelcome duty,<sup>2</sup> and the justices of Hampshire and Wiltshire became notorious for their unconscionable negligence.<sup>3</sup>

Other services also could be exacted by the King from his subjects under the royal prerogative. Important messages of state were sent by special messenger riding post, and in the interests of speed, the rider had to be supplied with fresh horses in relays. Horse owners were therefore liable at any time to find their animals impounded, at a set rate of 2d. a mile, for the use of messengers<sup>4</sup> - an inconvenience which was rendered all the more irritating because the impounding could be done without

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- (1) CAL. S. P. DOM., Car.I, CCCXVII, 59, P.C. to J.P.'s of Surrey, 29 March, 1636, Whitehall; CCCXLV, 60, P.C. to J.P.'s of Suff., 31 Jan. 1636/7. ACTS OF P.C., 1613-1614, pp. 118-119, P.C. to J.P.'s of Dorset, 6 July, 1613; P.C. to J.P.'s of Wilts., same date; pp. 122-123, P.C. to J.P.'s of Bucks, 8 July, 1613.
- (2) CAL. S.P. DOM., Car.I, CCX, 22, J.P.'s of Berks. to P.C., 12 Jan. 1631/2; CCXX, 66, J.P.'s of Dorset to P.C., 14 July, 1632, Assizes at Dorchester.
- (3) IBID, CCLXIII, 53, Officers of the Navy to the Lords of the Admiralty, 28 March, 1634; CCCXCI, 109, P.C. to Chief Justice Finch, 31 May, 1638.
- (4) WALKER, Haste, Post, Haste, p. 104.

notice.<sup>1</sup> Moreover, the Crown was under no obligation to pay for any damage done to the borrowed beasts.<sup>2</sup>

Sometimes the local magistrates were called upon to procure the required horses for a King's messenger;<sup>3</sup> but at a number of points on commonly-used routes of travel, permanent post-masters were appointed to keep mounts always in readiness, and the magistrates were then expected merely to assist the regular officials from time to time.<sup>4</sup> The activities of the post-masters were very generally disliked, and local officers of all kinds made themselves thoroughly obstructive by refusing to find the necessary beasts,<sup>5</sup> or by blandly producing broken-down packhorses.<sup>6</sup> The whole system was, indeed, riddled with corruption and inefficiency; complaints were lodged that the masters even levied a kind of blackmail by threatening at inconvenient times to impound horses they did not need, merely to make the owners

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- (1) PARKES, Travel in England in the Seventeenth Century, p. 52.
  - (2) WALKER, Haste, Post, Haste, p. 104. ACTS OF P.C., 1590, P.C. to Lord Talbot, 28 May, 1590.
  - (3) CAL. S.P. DOM., Jac.I, CLI, 53, Earl of Rutland to all sheriffs and J.P.'s, 25 Aug. 1623, Weymouth; Car.I, CCCCXVII, 60, Sec'y Windebank to all sheriffs and J.P.'s, 8 April, 1639, Drury Lane.
  - (4) IBID, Jac.I, CIV, 20, Lord Stanhope, Master of Posts, to J.P.'s and others, 10 Dec. 1618; Car.I, CCXXXIX, 83, same to all Dep. Lieutenants and J.P.'s, May, 1633; CCCLXXXII, 6, Sec'ys Coke and Windebank, Comptrollers-General of Posts, to all Deputy Lieutenants, J.P.'s, etc., 13 Feb. 1637/8, Whitehall.
  - (5) IBID, Jac.I, CXXXIX, 68, Complaint of John Cooke, Post at Waltham, to Sec'y Conway, 8 March, 1623, Waltham Cross.
  - (6) IBID, Eliz., CCLIII, 18, Sir Thos. Gorges to Sir Robt. Cecil, 16 July, 1595.



pay for the privilege of retaining possession of their animals undisturbed.<sup>1</sup> Often the Privy Council itself dealt with cases of malpractices by post-masters,<sup>2</sup> although on one occasion at least, the Council turned the whole matter over to the local magistrates.<sup>3</sup> No satisfactory method of eliminating the numerous defects of the system was found, however, during the reigns of the first two Stuarts.

Another thoroughly unpopular part of the Crown's prerogative was purveyance. This relic of the Middle Ages gave the King the right to exact from each county certain provisions for the royal household, and for the gathering of these supplies the magistrates were expected to make all the necessary arrangements. Some collected money on a general rate, and then had an official purveyor buy the specified number of oxen, sheep, or pigs.<sup>4</sup> In Surrey and Essex, it was "lodes of coles" which were thus provided by the local authorities;<sup>5</sup> Wiltshire furnished poultry,<sup>6</sup>

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- (1) CAL.S.P.DOM., Car.I, CCXLIV, 18, complaint of inhabitants of St. Albans against the post-master, 3 Aug. 1633, St. Albans.
  - (2) HERTS. CO. RECS., Vol.V, p.251, Evidence of abuses to be sent to P.C., April, 1638. CAL. S.P. DOM., Car.I, CCCXCIX, 51, P.C. to several J.P.'s of Wilts., 30 Sept. 1638; CCCC, 127, P.C. to J.P.'s of Hants., 31 Oct. 1638, Whitehall.
  - (3) CAL. S.P. DOM., Car.I, CCCXCIX, 5, P.C. to J.P.'s of Dorset, 24 Sept. 1638, Hampton Court.
  - (4) N.R.Q.S.RECS., Vol.II, p.125, Order of the Sess. of 10 April, 1616. Y.A.J., Vol.V, p.404, (Sess.of W.Riding), 22 Jan.1639/40. NOTTS.CO.RECS., p.109, order of Sess. of 9 Oct. 1635. WORCS. Q.S.ROLLS, Part II, pp.430-431, No.234, 1627. HAMILTON, Devon Quarter Sess., p.39, Sess. order, Oct. 1604. MANCH.Q.SESS., p.47, orders of general meeting of J.P.'s at Lancaster, 19 Aug.1618.
  - (5) H. MSS. COMM., Report 7, Appendix p.668, 8 April, 1607. CAL. S.P. DOM., Jac.I, IX, 21, Board of Green Cloth to J.P.'s of Essex, 24 Aug. 1604, Whitehall.
  - (6) WILTS. CO. RECS., p. 45, P.C. to J.P.'s of Wilts, 12 Jan. 1613, Whitehall.

and Hertfordshire contributed butter.<sup>1</sup> In order to avoid the trouble of collecting the produce, however, a number of counties made a special composition with the King, by virtue of which they handed over a lump sum in lieu of the provisions.<sup>2</sup> Some of the justices farmed out the collection of this purveyance money,<sup>3</sup> while in other localities, the Sessions themselves made the arrangements for the levying.<sup>4</sup>

The defence of the realm was one of the Crown's main functions, and so the making of ordnance came very definitely under royal control. In order to prevent foreign countries from profiting by English skill in the casting of iron, export of cannon without special permission from the King was strictly prohibited.<sup>5</sup> Several of the justices of the peace of Kent were therefore ordered in 1614 to inquire into a rumour that twenty-five pieces of "bastard culverin" were ready to be sent out of

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- (1) HERTS. CO. RECS., Vol. V, p. 49, Sess. for Jan. 1624/5.
- (2) SOMER. Q.S. RECS., Vol. I, p. 184, No. 16, Sess. of 3-4 July, 1616. ADD. MSS., 34,399, No. 230, Hunts. Sess. Recs., 1618. CAL.S.P. DOM., Car. I, LV, 42, Sec'y Conway to J.P.'s of Suff., 28 Feb. 1626/7. COX, Derbyshire Annals, Vol. II, pp. 100-101. HAMILTON, Devon Quarter Sess., p. 40. H.MSS.COMM., MSS. of Lord Mantagu of Beaulieu, (1900), p. 86, P.C. to Lord Lieutenants of Northants, 17 March, 1610/1.
- (3) N.R.Q.S. RECS., Vol. II, p. 195, Sess. of 12 Jan. 1618/9. WORCS. Q.S. ROLLS, Part I, p. 154, No. 161, 1610.
- (4) N.R.Q.S. RECS., Vol. II, p. 6, Sess. of 6 Oct. 1612. DUR.SESS. ORDER BOOK, No. II, (1629-1639), p. 77, Sess. of 11 July, 1632. SOMER.Q.S.RECS., Vol. I, p. 165, No. 35, Sess. of 9-12 Jan. 1615/6.
- (5) GARDINER, History of England, 1603-1642, Vol. IV, p. 33.

the land, and if the report was found to be true, they were to stop the project at once, and inform the Privy Council of the facts of the case.<sup>1</sup>

Gunpowder was as essential as cannon to the defence of the country. Its manufacture was therefore a royal monopoly, and the making of saltpetre, its necessary ingredient, was also controlled by the Crown. For this purpose, licences were issued to special officials to dig out of private dovecotes and stables any earth from which saltpetre could be extracted.<sup>2</sup> This power of free entrance into outhouses was used without scruple by the possessors of the permits,<sup>3</sup> and although a royal proclamation forbade unnecessary destruction of property or inconveniencing of householders,<sup>4</sup> the abuses continued<sup>5</sup> - some of the saltpetremen admitted, under pressure, that they had forced their way into houses and dug under beds in which sick persons lay.<sup>6</sup> As a

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- (1) ACTS OF P.C., 1613-1614, p.487, P.C. to Sir Richard Sands and Sir Nicholas Gilborne, J.P.'s of Kent, 6 July, 1614.
  - (2) LIPSON, Economic History of England, Vol.III, p. 358.
  - (3) IBID, pp. 358-359. CAL. S.P. DOM., Jac.I, CXIX, 45, Sir Geo. Shirley to Sir Thos. Edmondes, 28 Jan. 1620/1. H. MSS. COMM., Report 12, Appendix I, p. 394, J. Rudhall to Sir J. Coke, 4 Dec. 1629.
  - (4) RYMER, Foedera, Vol.XVIII, pp.23-25, Proclamation of 13 April, 1625.
  - (5) CAL.S.P.DOM., Car.I, CCXXXVI, 35, Geo. Peirce to Nicholas, 9 April, 1633; CCC, 63(1), Particulars of abuses committed by Mr. Thornhill, 31 Oct. 1635. NORF. LIEUTENANCY PAPERS, p.232, "Concerning the Saltpetremen", 1637.
  - (6) CAL.S.P.DOM., Car.I, CXCI, 83, Dep. Clerk of Star Chamber to Judges of Star Chamber, 14 June, 1631.

result, the saltpetremen were thoroughly unpopular, and infuriated property-owners used to cover over the floors of their dovecotes and stables with gravel,<sup>1</sup> or remove and hide the earth before the official diggers arrived.<sup>2</sup>

The justices of the peace were commanded by the central government to assist the saltpetremen,<sup>3</sup> and in 1637, when friction had become really serious, they were further instructed to settle the disputes which arose almost daily.<sup>4</sup> Occasionally the magistrates did make orders to help the diggers,<sup>5</sup> but more usually they shared the disgust of the community at large, and refused to lift a finger in assistance.<sup>6</sup> The Chester Sessions officially complained to the Lords of the Admiralty about the

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- (1) CAL. S.P. DOM., Car.I, CCLX, Petition of Deputy Saltpetremen to the Lords of the Admiralty, 8 Feb. 1633/4.
  - (2) IBID, CCLXIII, 61, Statement of Richard Bagnoll, 29 Mar. 1634; CCLXXVIII, 4, Petition of John Giffard, saltpetremen, to Lords of the Admiralty, 2 Dec. 1634; CCCI, 6, Sir Edw. Hales to constables of Faversham, 2 Nov. 1635, Tunstall.
  - (3) IBID, Jac.I, CLXXVII, 21(2), Proclamation dated 26 Dec. 1624, Westminster; Car.I, CCLXXXIV, p.579, Proclamation dated 14 March, 1634/5. ACTS OF P.C., 1616-1617, pp.253-254, open warrant to all public officers, 22 May, 1617; 1623-1625, pp.214-216, letters of assistance dated 9 May, 1624.
  - (4) CAL. S.P. DOM., Car.I, CCCLXI, 39(2), Commission to saltpetremen, dated 7 June, 1637, Westminster.
  - (5) IBID, CCLXXXII, 103 - I, Thos. Chester, J.P., to William Browne, 19 Dec. 1634, Alman-Knowle.
  - (6) IBID, CXXI, 10, Petition of John Giffard to P.C., [19 Nov.] 1628; CCL, 34, Petition of Hugh Grove, deputy saltpetremen, to Lords of the Admiralty, 9 Nov. 1633; CCLXXXII, 118(6), Lords of the Admiralty to Thos. Chester, J.P. for co. Glos., 31 Jan. 1634/5; CCXCIX, 54, Thos. Thornhill to Nicholas, 12 Oct. 1635, Sherborne.

misdeeds of the saltpetremen in their district,<sup>1</sup> while a Devonshire justice himself ejected several saltpetremen who were digging in his house.<sup>2</sup>

The King's powers in connection with manufacture extended far beyond the control of the making of things directly necessary to the defence of the realm. The Stuarts, like the Tudors, claimed the right to regulate all trade in the interests of the community,<sup>3</sup> but the unscrupulous way in which this part of the prerogative was exercised soon showed how dangerous such a power could be. Grants of monopoly of the making of goods by "new processes" were issued by the Crown to favoured groups, sometimes, it is true, in the honest belief that manufacturers of inferior or "deceitful" stuff would thus be driven out of business.<sup>4</sup> Unfortunately, the recipients of these grants were moved by no such high motives, and used their powers to stamp out ruthlessly all rival manufactures.<sup>5</sup> In 1621, the House of Commons vigorously attacked the Monopolists;<sup>6</sup> yet three years later King James granted again to Sir Robert Mansell the sole

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(1) CAL. S.P. DOM., Car.I, CCCLXXIX, 24(1), Notes by Nicholas of business to be transacted by Lords of the Admiralty, 20 Jan. 1637/8, Whitehall.

(2) IBID, CCCXX, 44, Tobias Atken, saltpetreman, to Mr. Poole, 4 May, 1639, Exeter.

(3) GARDINER, History of England, 1603-1642, Vol. IV, pp. 9, 15; Vol. VIII, pp. 71-72.

(4) IBID, Vol. IV, pp. 6-7.

(5) IBID, pp. 9, 14-17.

(6) IBID, pp. 41-55.

right to make glass,<sup>1</sup> and the justices of the peace were commanded to arrest and send before the Privy Council such "refracterie persons" as continued to manufacture glassware in contravention of the monopoly.<sup>2</sup> Parliament, again roused to opposition, at last induced the King in 1624 to sign the Monopoly Bill, by which the Common Law Judges, instead of the Crown, were to decide on the legality of future grants.<sup>3</sup>

The evil, however, was not yet dead. In 1632, Charles put the making of soap by a new process into the hands of a Soap Company, which was given at the same time the astonishing right of testing the products of rival companies and prohibiting the sale of any soap they chose to declare inferior in quality.<sup>4</sup> A storm of protest very naturally arose. The justices of the peace were commanded to assist in the seizing of the equipment used in unauthorized soap-boiling,<sup>5</sup> and to arrest such persons as the Company of Soapmakers should direct.<sup>6</sup> The magistrates, however, refused to believe the enthusiastic assurances given by the Council of the purity, not only of the soap itself, but also of

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(1) PRICE, English Patents of Monopoly, p. 76 - patent quoted in full in Appendix Y, pp. 214-225.

(2) ACTS OF P.C., 1623-1625, p. 57, Letter of assistance on behalf of Sir Robert Mansel, 14 July, 1623.

(3) GARDINER, History of England, 1603-1642, Vol. V, p.233.

(4) IBID, Vol. VIII, p. 72.

(5) CAL. S.P. DOM., Car.I, CCLIV, 34, Order of P.C. dated 29 Dec. 1633, Whitehall; CCCXXVIII, 28, P.6. to Mayors, J.P.'s, etc. 31 Dec. 1636, Hampton Court.

(6) IBID, CCLXXVIII, 53, P.C. to Mayors, J.P.'s, etc., 17 Dec. 1634.

the intentions of its makers.<sup>1</sup> When riots occurred, in which the Company's agents were manhandled, the Sessions records show no action taken against the offenders. Quite probably, many justices felt towards the Monopolists as did two of the Lancashire magistrates, one of whom descended upon a searcher employed by the Company, and forced him to restore the rival soap he had confiscated as poor in quality, while the other actually sent the searcher to prison, and refused to grant the unhappy man bail.<sup>2</sup>

A further project, sponsored by the Crown, made it necessary for the justices of the peace to be called in to serve the King. During the reign of James I, occasional efforts were made to drain parts of the great Fens by levying a general rate to cover expenses.<sup>3</sup> The government maintained that it was entirely within its rights in furthering such ventures by granting Commissions of Sewers. These Commissions authorized groups of "undertakers" to build new banks or dig new sluices, and even to imprison any who hindered their work<sup>4</sup> - although Dalton was of the opinion that new draining enterprises ought to be kept under the control of Parliament.<sup>5</sup>

(1) GARDINER, History of England, 1603-1642, Vol. VIII, p. 73.

(2) CAL. S.P. DOM., Car.I, CCCXCVII, 5, Affidavit of Francis Rideing of Manchester, searcher, 3 Aug. 1638.

(3) IBID, Jac.I, XLVII, 82, Commissioners of Sewers, Isle of Ely, to Salisbury, 16 Aug. 1609; CLVII, 11, King to Justices of Assize, sheriffs and J.P.'s, 1623?

(4) IBID, LXXXIX, 14, Order-in-Council, 8 Nov. 1616.

(5) DALTON, The Country Justice, (Ed. 1705), p. 220.

For the ordinary man, the draining of the marshes had a much more practical interest, however. The Fenmen, who for generations had enjoyed the commoner's right of pasturing cattle in the meadows and fishing in the pools, cried out against the destruction of their means of livelihood,<sup>1</sup> and their outraged feelings were voiced in the contemporary rhyme,

"Behold the great design, which they do now determine,  
Will make our bellies pine, a prey to crows and vermin,  
For they do mean all fens to drain and waters overmaster,  
All will be dry, and we must die, 'cause Essex calves  
want pasture".<sup>2</sup>

Nor was it the poorer people alone who felt that injustice was being done. A magistrate in Lincoln in 1602 not only refused to take any action against mobs who riotously destroyed banks and ditches, but was strongly suspected of having instigated the disorders,<sup>3</sup> and some years later, several justices of the Isle of Ely won great popular acclaim by announcing that their activities had saved the commons in that neighbourhood for the Fenmen.<sup>4</sup>

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(1) CAL. S.P. DOM., Jac.I, CXI, 85, Commissioners of Sewers to P.C., 21 Dec. 1619, Peterborough. GARDINER, History of England, 1603-1642, Vol. VIII, p. 293.

(2) DUGDALE, History of Embanking, p. 391 - quoted in GARDINER, History of England, 1603-1642, Vol. VIII, p. 295.

(3) H. MSS. COMM., Hatfield MSS., Vol.12, pp.177-180, evidence of Captain Lovell, undertaker for draining Spalding Fen, [May or June], 1602.

(4) ACTS OF P.C., 1618-1619, pp. 475-476, P.C. to Judges of Assize for Cambs., [June 15?] 1619.



Matters became really serious after 1631, when the Earl of Bedford undertook to work with the Dutchman, Vermuyden, in the draining of the Great Level.<sup>1</sup> The wrath and dismay among the Fenmen was profound. Mobs in Lincolnshire threatened death and destruction to any "servants of the Dutch" they could catch, specifying, with grisly relish, that they would rip up the bellies of these meddlers, and throw their hearts in their faces.<sup>2</sup> Riots broke out, and while the magistrates in some cases put down the disorders,<sup>3</sup> many were thoroughly unsympathetic toward the whole enterprise. In Yorkshire, the Doncaster Sessions heartily endorsed the grievances of their district in the matter of the flooding of certain lands in order to drain others,<sup>4</sup> and a Huntingdon justice actually used physical force against the men sent to drive the cattle off Holme Fen.<sup>5</sup> While such open boldness was not very common, the frequent repetition of orders to the magistrates of Norfolk and Lincolnshire to suppress riots against the draining operations<sup>6</sup> indicate that many of the jus-

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- (1) GARDINER, History of England, 1603-1642, Vol. VIII, p. 295.
  - (2) CAL. S.P. DOM., Car.I, CCXLIII, 2(3), Notes by Sec'y Windbank of proceedings before the P.C., 17 July, 1633.
  - (3) IBID, CCCXCII, 45, J.P.'s for Isle of Ely to P.C., 9 June, 1638; CCCCLXXXIV, 8, 2 J.P.'s of Lincs. to House of Commons, 6 Sept. 1641.
  - (4) IBID, CCXCIX, 58- I, J.P.'s at Doncaster Sessions to the Council of the North, 13 Oct. 1635.
  - (5) IBID, CCXXX, 50, Statement concerning the action of Mr. Castell, J.P., [1632?].
  - (6) IBID, CCCXXVII, 108, P.C. to J.P.'s of Lincs., 30 June, 1636; CCCLVII, 152, P.C. to 2 J.P.'s of Norfolk, 31 May, 1637; CCCCLXXII, 23, P.C. to J.P.'s of Lincs., 26 May, 1639; 104, same to the same, 31 May, 1639; CCCCLIII, 32, same to J.P.'s of Holland and Kesteven, 13 May, 1640.

tices were not at all anxious to assist the drainers. In these cases at least, local solidarity was stronger than the whisperings of an official conscience.

When the central government was interfering actively in so many branches of English life, it was constantly in need of local information, and here the justices of the peace were particularly valuable. James I. said, with a good deal of truth, that they were "the Kings eyes and eares in the countrey",<sup>1</sup> and the Privy Council frequently made use of their knowledge of the conditions in their districts. The justices investigated and reported upon complaints which had been made about all sorts of people, from royal agents and patentees<sup>2</sup> down to mere private individuals.<sup>3</sup> Occasionally they were called upon to furnish testimonials of good character.<sup>4</sup> They surveyed and recorded the quantities of wheat stored in their districts,<sup>5</sup> certified the number of local brewers,<sup>6</sup> and listed the new buildings erected

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- (1) JAMES I, Speech in the Star Chamber, 1619, (Pub. 1645), F 3.
  - (2) H.MSS.COMM., Report 7, Appendix, p.668, P.C. to several J.P.'s of Surrey, 12 Sept. 1605. CAL.S.P.DOM., Car.I, CCCXCVII, 19(1), P.C. to several J.P.'s of Hunts., 6 Aug. 1638, Oatlands.
  - (3) CAL. S.P. DOM., Jac.I, XCVII, 4, Bishop of Exeter and J.P.'s of Devon to P.C., 2 April, 1618; CXII, 34, J.P.'s of Warwickshire to P.C., 25 Jan. 1619/20.
  - (4) IBID, Car.I, CCCCVIII, 100, Certificate of 9 J.P.'s of Leicestershire, [1638?].
  - (5) IBID, Jac.I, CXXVIII, 55, J.P.'s of Sussex to P.C., 17 March, 1621/2, Grange; 65, J.P.'s of [Suff.] to P.C., 22 Mar.1621/2, Bury; CXXIX, 40, J.P.'s of Norf. to P.C., 16 April, 1622, Norwich; CXXX, 9, J.P.'s of Cambs. to P.C., 2 May, 1622.
  - (6) IBID, CXV, 120, Certificate of J.P.'s of Herts., June? 1620; CXVI, 36, J.P.'s of Sussex to P.C., 19 July, 1620; 37, [J.P.'s of Surrey] to P.C., [July 20], 1620

near London, with names and qualifications of the builders.<sup>1</sup> They were even required to interview all the foreigners living in the neighbourhood of the capital, causing each of them "to sett downe under what Prince or State he was borne, and of what sovraignty he doth depend".<sup>2</sup> Five Middlesex justices were ordered in 1633 to institute inquiries concerning the existence of certain secret societies, for rumours of furtive meetings in taverns were causing the central authorities some anxiety.<sup>3</sup> On occasions, the magistrates even went so far as to offer their opinions to the Council concerning local matters with which they were particularly familiar.<sup>4</sup>

Yet while the Privy Councillors might welcome advice which was humbly and respectfully submitted, they were very emphatic about the Board's pre-eminent position in the kingdom. In 1609, they wrote to the justices of Devon, "Our long experience in deliberation and despatch of the greatest and most important causes that concern the State and Commonwealth, hath made us better able to discern and judge in many things what course may be most likely to give expedition in such things as do depend upon the diligence and discretion of subordinate ministers, than

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(1) CAL. S.P. DOM., Jac.I, XCVIII, 72, Certificate of J.P.'s of Surrey, 4 Aug. 1618.

(2) ACTS OF P.C., 1618-1619, p.249, P.C. to J.P.'s of Surrey, 6 Sept. 1618.

(3) IBID, 1623-1625, pp.132-133, P.C. to 5 J.P.'s of Middlesex, 30 Nov. 1633.

(4) CAL.S.P. DOM., Jac.I, CXXI, 67, several J.P.'s of Norf. to P.C., June [2?], 1621; Car-I, CLXXIII, 25, J.P.'s of Middlesex to P.C., 13 Sept. 1630.

those that live more remote from the higher seats of government under his Majesty, from whom all authority is derived".<sup>1</sup> This supremacy was generally accepted, and it surprised nobody when the Council interfered actively in purely local affairs. The justices of Shropshire were ordered to select a certain man as keeper of their house of correction,<sup>2</sup> and the Bench of Hereford received instructions to extend the term of office of the high constables in their county beyond the usual year.<sup>3</sup> Other magistrates were told to withdraw permits from higgler's,<sup>4</sup> or to grant licences to certain alehousekeepers.<sup>5</sup> The severity of some justices' actions was mitigated,<sup>6</sup> while other Keepers of the Peace were informed that their lenience was encouraging crime.<sup>7</sup>

Sometimes the Council's interference was merely a prod-  
ding on of lax magistrates to a more conscientious performance  
of their duties. Orders went forth that a notorious poacher

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- (1) HAMILTON, Devon Quarter Sessions, p. 79, P.C. to Sheriff of Devon, Dec. 1609.
  - (2) CAL. S.P. DOM., Jac. I, XV, 69, King to sheriff and J.P.'s of Shropshire, Sept. 1605, Whitehall.
  - (3) IBID, Car. I, CCCLV, 129, P.C. to J.P.'s of Hereford, 7 May, 1637, Whitehall.
  - (4) H. MSS. COMM., Report 7, Appendix, p. 659, P.C. to J.P.'s of Surrey, 2 July, 1601.
  - (5) ACTS OF P.C., 1613-1614, p. 261, P.C. to J.P.'s of Cornwall, 8 Nov. 1613.
  - (6) IBID, 1601-1604, pp. 405-406, Open letter to all Mayors, J.P.'s etc., Nov. 1601.
  - (7) HAWARDE, Les Reportes del Cases in Camera Stellata, p. 314, 26 Nov. 1606.

in Surrey was to be arrested and punished,<sup>1</sup> that the ruinous gaol at St. Albans was to rebuilt,<sup>2</sup> and that the recusants of Somerset were to be more severely dealt with.<sup>3</sup> In Wiltshire, at a time of serious unemployment, the justices were instructed to increase the taxation of "the abler inhabitantes to yeild some greater proporcion of releife at this tyme then their ordinary taxacions", until the situation should improve.<sup>4</sup> The justices of Kent and of Essex were commanded to take more effective measures against highway robbery, and report their proceedings to the Council;<sup>5</sup> and the magistrates of the counties around London were given emphatic orders to improve the roads over which the King had to pass on his progresses.<sup>6</sup>

The importance of the cloth-making industry in the economic life of England made the government particularly anxious to keep it in a flourishing condition. The Council therefore sent out innumerable questions, requests and orders to the local magis-

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- (1) CAL. S.P. DOM., Jac. I, CLXIX, 13, [Sec'y Conway] to J.P.'s of Surrey, 3 July, 1624, [Windsor].
  - (2) ACTS OF P.C., 1619-1621, p. 235, P.C. to J.P.'s of Herts., [July?], 1620.
  - (3) SOMER. Q.S. RECS., Vol. II, pp. 262-263, P.C. to J.P.'s of Somerset, 23 June, 1636.
  - (4) ACTS OF P.C., 1621-1623, pp. 214-215, P.C. to J.P.'s of Wilts. 8 May, 1622.
  - (5) CAL.S.P.DOM., Jac.I, CXLV, [Sec'y Conway] to Sheriff and J.P.'s of Kent, 15 May, 1623, [Greenwich]. Note of a similar letter to the Sheriff and J.P.'s of Essex.
  - (6) ACTS OF P.C., 1621-1623, pp. 218-219, P.C. to J.P.'s of Middlesex, Surrey, Kent, Essex, Herts. and Bucks., 13 May, 1622; 1623-1625, pp. 98-99, P.C. to several J.P.'s of Herts., 6 Oct. 1623.

trates concerning the manufacture of woollens. All making of deceitful cloth was to be ended,<sup>1</sup> and the local Benches were commanded to see to the equitable rating of wages for the cloth-workers.<sup>2</sup> In particularly hard times, when unemployment was pressing heavily upon the poor, the Council instructed the justices to force the clothiers to continue to keep their people at work, on the interesting ground that "whosoever had a part of the gain in profitable times must now in the decay of trade, till that may be remedied, bear a part of the public loss".<sup>3</sup> The Somerset magistrates were commanded to look into the alleged abuses perpetrated by the market spinners,<sup>4</sup> and the Hertfordshire Bench was told to encourage as vigorously as possible the making of the New Draperies throughout the county.<sup>5</sup> On occasions the Council consulted the justices as to possible measures to be taken to remedy "the decay of clothing",<sup>6</sup> and the

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- (1) ACTS OF P.C., 1615-1616, p.1, P.C. to J.P.'s of Glos., 2 Aug. 1616. CAL.S.P.DOM., Jac.I, LXXV, 85, P.C. to J.P.'s and officers of Corporations, 1613?; Car.I, CCCLVI, 13, P.C. to J.P.'s of Essex, 12 May, 1637.
  - (2) TAWNEY, Assessment of Wages in England, p. 551.
  - (3) CAL. S.P. DOM., Jac.I, CXXVII, 76, P.C. to J.P.'s of Wilts., Glos., Somerset, Worcs., Dorset, Oxon., Kent, Suff., Devon and York, 9 Feb. 1621/2, Whitehall. HAMILTON, Devon Quarter Sessions, pp. 96-97.
  - (4) CAL. S.P. DOM., Car. I, CCLXXXII, 81, J.P.'s of Somerset to P.C., 24 Jan. 1634/5, Bath.
  - (5) ACTS OF P.C., 1618-1619, pp. 43-44, P.C. to J.P.'s of Herts., 20 Feb. 1617/8.
  - (6) SOMER. Q.S. RECS., Vol.I, p.316, No.7, Sess. of 23-25 July, 1622. CAMDEN SOC., Old Series, No.41, (1848), Diary of Walter Yonge, p. 56.

local men quite frequently gave their opinions as to the reasons for the periodic depressions that struck the woollen industry.<sup>1</sup>

Often the Council's interference came at the request of the justices themselves, when their difficulties got beyond them.<sup>2</sup> The situation was very different, however, when the Board sent Anthony Wither and Samuel Lively down to the Southwest to investigate the state of the woollen industry, for part of these Commissioners' duties was to enquire whether the justices of the peace were shirking their responsibilities in connection with the making of cloth.<sup>3</sup> The hatred of the Commissioners for the magistrates, and of the magistrates for the Commissioners, was spontaneous and venomous. Wither complained bitterly that he was thwarted at every turn,<sup>4</sup> and the justices, on their part, protested with equal vigour against Wither's

(1) CAL. S.P. DOM., Jac. I, XCVII, 85, J.P.'s of [Devon] to P.C., 25 May, 1618; CXXVIII, 67, J.P.'s of Suff. to P.C., 23 March, 1621/2, Bury; CXXIX, 81, J.P.'s of Lancs. to Sir George Calvert, 30 April, 1622, Wigan; CXXX, 65, [J.P.'s of Essex] to P.C., 13 May, 1622.

(2) IBID, XCVII, 97, J.P.'s of Somerset to P.C., 9 June, 1618, Wells; CIX, 126, J.P.'s of Suff. to P.C., 8 July, 1619, Bury; CXXVIII, 50, J.P.'s of co. Glos. to P.C., 13 March, 1621/2, Gloucester; Car.I, CXLI, 1, J.P.'s of Essex to P.C., 17 Apr. 1629, Chelmsford.

(3) BARFORD, The West of England Cloth Industry, p. 535.

(4) CAL. S.P. DOM., Car.I, CCVI, 56, Statement of Anthony Wither, [1631?]; 57, similar statement, [1631?]; CCXV, 56, Anthony Wither to P.C., 18 April, 1632; CCLXVII, 15, Charges laid by Wither against Sir Francis Seymour, J.P., 2 May, 1634.

high-handedness.<sup>1</sup> At one point in the conflict, the unfortunate Commissioner was actually dropped into the Avon by the servants of an infuriated tucker.<sup>2</sup> Eventually the investigator admitted defeat. He gave up the struggle, relinquished his Commission, and left the clothier justices triumphant upon the field of battle.<sup>3</sup>

The food supply of the country was also of great interest to the central government. Orders were from time to time sent to the justices of the peace to suppress illegal buying and selling of grain,<sup>4</sup> and to prohibit the wasting of corn on the brewing of ale.<sup>5</sup> Sometimes, when a local shortage occurred, the Council instructed the magistrates to relax the regulations concerning the transportation of wheat, so that extra supplies in more fortunate counties could be sent to the famine area.<sup>6</sup> Probably with some such procedure in mind, the justices of the shires at the east and southeast were asked during the scarcity of 1621-1622 to report "what provisions and stoare of corne ... are now

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- (1) CAL.S.P.DOM., Car.I, CCLXVII, 17, Charges laid by Sir Francis Seymour against Anthony Wither, 2 May, 1634; CCLXXV, 49, J.P.'s of Gloucestershire to P.C., 14 Oct. 1634, Tetbury.
  - (2) IBID, CCXV, 56, Report of Wither to P.C., 18 April, 1632.
  - (3) IBID, CCCVII, 61, Petition of John Poole, clothier, to P.C., [1635?].
  - (4) ACTS OF P.C., 1613-1614, pp.457-458, P.C. to J.P.'s of Wilts., [June] 1614. CAL. S.P. DOM., Car.I, CCCXLV, 62, P.C. to J.P.'s near Chester, 31 Jan. 1636/7.
  - (5) ACTS OF P.C., 1625-1626, pp. 295-296, P.C. to all J.P.'s of England and Wales, 31 Dec. 1625.
  - (6) CAL. S.P. DOM., Car.I, CCCLXXVIII, 69, P.C. to all Mayors, J.P.'s, etc., 12 Jan. 1637/8.



in the countie", and what were the prospects of the next harvest.<sup>1</sup> A few years later a similar request for information brought in a flood of certificates setting forth the supplies on hand, and these were often coupled with earnest assurances that the local officials were doing their utmost to reduce prices and maintain order.<sup>2</sup> On one occasion, the central government gave specific instructions to the justices to erect storehouses, and accumulate there, during years of good crops, a supply of grain "for the releife of the countrie upon all occasions of scarcitie";<sup>3</sup> the magistrates, however, received the suggestion with a distinct lack of enthusiasm,<sup>4</sup> and the project seems to have been dropped.

We have seen already how the system of poor relief became more and more centralized,<sup>5</sup> and indeed the general tendency of the time was for the Council to exert an increasingly close control over local officials.<sup>6</sup> From Whitehall, the justices of the

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- (1) ACTS OF P.C., 1621-1623, p.154, P.C. to J.P.'s of Essex, Sussex, Kent, Cambs., Norf., and Suff., 4 March, 1621/2.
  - (2) CAL.S.P.DOM., Car.I, CLXXV, 94; CLXXVII, 43, 52, 53, 61; CLXXXII, 2, 7, 17, 39, 40; CLXXXIII, 37; CLXXXVIII, 91, 93; CLXXXIX, 30; CXC, 5, 9, 44, 51; CXCVII, 68; CCIII, 41, etc. -- Reports of J.P.'s of various divisions to P.C., ranging in date from 24 Dec. 1630 to 16 Nov. 1631.
  - (3) ACTS OF P.C., 1619-1621, pp. 112-113, P.C. to Sheriffs and J.P.'s of all counties, 26 Jan. 1619/20.
  - (4) CAL.S.P.DOM., Jac.I, CXII, 91; CXIII, 17, 21, 89, 90, - Letters from J.P.'s of various counties to P.C., dated between Feb. 1619/20 and April, 1620.
  - (5) Supra, chapter XI.
  - (6) PUTNAM, "The Justices of the Peace from 1558-1688", Bulletin of the Institute of Historical Research, Vol.IV, (1926-1927), p.146. WEBB, English Poor Law History, Part I, p.78.

peace received orders about the choice of constables,<sup>1</sup> and the measures to be taken against the spread of plague.<sup>2</sup> They were required to assist in the arrest of men whose presence was required by the Council,<sup>3</sup> and to limit the amount of tobacco planted near London.<sup>4</sup> Ordnance-workers were reported to be enticed out of England by a sinister Frenchman of unknown name - some of the magistrates in Sussex and Kent were to restrain the workmen and track down the villain.<sup>5</sup> The sisters of a man imprisoned in the Fleet were in want - the justices near his estate in Kent were to take his money for their support.<sup>6</sup> The general collection for the repair of St. Paul's was not progressing favourably - the local Benches were to stimulate the charitable impulses of the well-to-do in their districts.<sup>7</sup> Magistrates

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- (1) CAMDEN SOC., 3rd Series, Vol.XXVI, (1915), Stiffkey Papers, p.26, P.C. to J.P.'s of Norf., 7 Dec. 1609, Whitehall.
- (2) ACTS OF P.C., 1625-1626, p.127, P.C. to J.P.'s of Wilts., 5 Aug. 1625.
- (3) CAL.S.P.DOM., Jac.I, LXX, 74, P.C. to Sheriff, J.P.'s etc. of Somerset, 24 Sept. 1612, Whitehall; CXXXIII, 38, Warrant from P.C., 3 Oct. 1622, Whitehall; CXLV, 7-III, Conway to J.P.'s of Middlesex, 16 May, 1623, Greenwich; Car.I, CCCLIV, 40(8), Admiralty Lords to J.P.'s etc., 20 April, 1637, Whitehall. ACTS OF P.C., 1618-1619, p.80, P.C. to Sheriff and 2 J.P.'s of Devon, 20 March, 1617/8.
- (4) NOTESTEIN, Commons Debates, 1621, Vol.VII, p.454, Letter from P.C. to J.P.'s of Middlesex, 28 Sept. 1619.
- (5) ACTS OF P.C., 1623-1625, p.492, P.C. to various J.P.'s of Sussex and Kent, 4 March, 1624/5.
- (6) CAL.S.P.DOM., Car.I, CCCCLXIII, 59(1), P.C. to J.P.'s nearest Eltham, Kent, 31 Jan. 1639/40.
- (7) IBID, CXXXI, 31(1), Order of King in Council, 16 Jan.1632/3; CCLXXI, 88(1), Commissioners of Pious Uses to Sheriffs and J.P.'s, 15 July, 1634; CCCLXVIII, 46, P.C. to Sheriff and J.P.'s of Wilts, 26 Sept. 1637; CCCXCI, 21, P.C. to Sheriff and J.P.'s of Hunts, 26 May, 1638, Whitehall.

were commanded to raise money to pay for the returning of runaway sailors to the Navy,<sup>1</sup> for the ransoming of Christian slaves in Turkish galleys,<sup>2</sup> and for the "transplantation" of the out-cast Grahams on the Border.<sup>3</sup> Three justices in Surrey were to pacify a number of pugnacious servants who were turning a disagreement between their respective masters into a free fight,<sup>4</sup> and another group in Kent was commanded to put an end to the surreptitious removal of fuller's earth from England to foreign parts.<sup>5</sup> Still others received instructions to assist in the seizing of papers belonging to men whose political views were held to be unsatisfactory.<sup>6</sup>

But of all the odd jobs which the local magistrates were called upon to perform, those which had to do with the needs of the King were the most entertaining. The justices were to see that the official who bought bulls, bears and mastiffs for his Majesty's "games and pastimes"-this gentleman was, in-

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- (1) H. MSS. COMM., Report 7, Appendix, p. 676, P.C. to Sheriff and J.P.'s of Surrey, 30 June, 1626.
  - (2) CAL. S.P. DOM., Jac.I, CLXXIII, 22, Certificate of J.P.'s of Devon, 6 Oct. 1624.
  - (3) H.MSS.COMM., Report 10, Appendix IV, Muncaster MSS., p.265, Bishop of Carlisle, Sir Wm. Lawson and J. Pennington to J.P.'s of Westmorland, 20 Nov. 1606, Carlisle.
  - (4) ACTS OF P.C., 1615-1616, p.660, P.C. to 3 J.P.'s of Surrey, 3 July, 1616.
  - (5) IBID, 1621-1623, p.313, P.C. to 4 J.P.'s of Kent, 15 Aug.1622.
  - (6) CAL. S.P. DOM., Car.I, CCLXXII, 62, King to Windebank, 26 July, 1634, Belvoir Castle; CCCCLXVII, 83, Windebank's warrant to a messenger, 17 Sept. 1640.

cidentally, the royal barber - was charged only "an indifferent price";<sup>1</sup> they were to provide teams of horses and oxen for the transportation of the King's buckhounds to places appointed for hunt,<sup>2</sup> and they were to suppress the "insolences" of sundry cooks who were killing the royal deer.<sup>3</sup> The astonished Bench of Hertfordshire found itself required to peddle "an excellent worke of his Majestey's intituled 'The Peacemaker, or Great Bryttayne's Blessinge', lately come forth", on the optimistic ground that it would prove to be "very necessary and useful for persons of all condicions".<sup>4</sup> Several Middlesex magistrates were informed that "there is an oyle mill erected or used about Tottenham ... which is soe offensive and noysome to his Majestie when he passeth that way as it may not longer be suffered", and they were ordered to suppress it.<sup>5</sup> Nor was the modern touch lacking in the justices' special duties, for they were commanded to stage a suitable demonstration in favour of the French marriage treaty - in 1624 the Privy Council wrote to the Mayor of London and the justices of Middlesex, "We have ... thought fitt hereby to will and require you to cause this evening bonefyers, fyerworkes,

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(1) CAL. S.P. DOM., Car.I, CCCXIII, 66, King to [all J.P.'s?], 9 Feb. 1635/6, Westminster.

(2) IBID, CX, 22(19), Commission to all Mayors, Sheriffs, J.P.'s, etc., 17 July, 1628.

(3) IBID, Jac.I, CXXVII, 139, Commission to 5 J.P.'s of Middlesex, 28 Feb. 1622, Westminster.

(4) HERTS. CO. RECS., Vol.I, p.53, No.73, Lord Chancellor Bacon to J.P.'s of Herts, 2 Nov. 1620.

(5) ACTS OF P.C., 1621-1623, p.247, P.C. to 4 Middlesex J.P.'s, 10 June, 1622.

lightes in the windowes and ringing of belles ... and all other the lyke demonstracions of rejoyceing as can be thought on or put in practice thus on the suddaine".<sup>1</sup>

Not infrequently the Council found the local magistrates useful in dealing with the endless petitions and complaints that poured into Whitehall. When two aged widows in Kent appealed to the Council for justice, the Board requested some of the members of the county Bench to render an equitable decision,<sup>2</sup> and cases of debtors who asked the Council to force their creditors to give them time to pay off their debts were also sometimes referred to the local magistrates.<sup>3</sup> On other occasions, it was a petty quarrel that was sent to the justices for arbitration,<sup>4</sup> and at least one such dispute was amicably settled by the referees to the satisfaction of everyone concerned.<sup>5</sup>

When so much reliance was placed by the central authorities upon the local justices, it was inevitable that the latter should develop a rather overgrown opinion of their own importance. James I, who regarded with the deepest distaste the in-

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(1) ACTS OF P.C., 1623-1625, pp. 369-370, P.C. to Mayor of London, Lieutenant of the Tower, and J.P.'s of Middlesex, 21 Nov. 1624.

(2) IBID, 1621-1623, p. 384, P.C. to 2 J.P.'s of Kent, 31 Dec. 1622.

(3) IBID, 1618-1619, p. 109, P.C. to Sheriff and 3 J.P.'s of Kent, 19 April, 1618. CAL. S.P. DOM., Car. I., CCLXVIII, 29-29II, Petition of Roger Greg to the King, and report of the referees, May, 1634.

(4) ACTS OF P.C., 1616-1617, p. 144, P.C. to a group including several J.P.'s of Essex and Suffolk, 20 Feb. 1616/7; 1621-1623, p. 368, P.C. to 4 Somerset J.P.'s, 14 Dec. 1622. CAMDEN SOC., 3rd Series, Vol. XXVI, (1915), Stiffkey Papers, p. 17, John Popham to 2 J.P.'s of Norfolk, 16 July, 1602.

(5) CAL. S.P. DOM., Car. I., CCCCXV, 107, 2 J.P.'s of Surrey to [Archbishop Laud], [Mar.], 1638/9.

creasingly independent spirit of many of the county magistrates, wrote, "[Some] are Gentlemen of great worth in their owne conceit, and ... must haue a kind of libertie in the people, and must bee gracious Lords, and Redeemers of their libertie; and in euery cause that concernes Prerogatiue, giue a snatch against a Monarchie, through their Puritanical itching after Popularitie".<sup>1</sup> But the Privy Council, while recognizing the justices' usefulness, was not at all inclined to spare them when criticism or rebuke was merited. The Board issued several reproofs for general negligence,<sup>2</sup> and in 1609 the Lord Keeper spoke of depopulations as "a faulte in J[ustices] de peace and Sheriffes, that shoulde haue preuented and foreseene theise thinges".<sup>3</sup> The Bench of Norfolk was told to take better measures "in the observations of diuers orders and ordinances appertaininge to yo<sup>r</sup> places and offices";<sup>4</sup> the Somerset magistrates were reprimanded for failing to see that fines were estreated;<sup>5</sup> and the justices of three counties in the southwest were informed that unpleasant consequences would follow a continuance of their neglect in putting down the rebellious riots that

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(1) JAMES I, Speech in the Star Chamber, 1619, (Pub.1645), G.

(2) HAMILTON, Devon Quarter Sessions, pp.79-80,- 1609. ACTS OF P.C., 1623-1625, p.154, Minute of letter directed to the J.P.'s in all counties of England, 23 Dec. 1623.

(3) HAWARDE, Les Reportes del Cases in Camera Stellata, p.326, Lord Keeper's speech to the Judges, 1607.

(4) CAMDEN SOC., 3rd Series, Vol.XXVI, (1915), Stiffkey Papers, p.24, P.C. to J.P.'s of Norfolk, 6 Dec. 1609, Whitehall.

(5) SOMER. Q.S. RECS., Vol.II, pp.239-241, No.16, King to Judges os Assize at Taunton, 6 July, 1635.

were occurring.<sup>1</sup> Sometimes the censure took a more concrete form than mere tongue-lashing - a number of magistrates who were called before the Star Chamber and found guilty of abusing their powers were heavily fined.<sup>2</sup>

While the Council distributed rebukes with a free hand, it was also ready to give an occasional word of praise. The justices of the peace of Essex were effusively thanked for their diligence in suppressing disorders which had broken out at Earl's Colne upon Elizabeth's death,<sup>3</sup> and the Board wrote to a Dorset magistrate in 1624, "We have thought fit to signifie unto you that your proceeding and caryage ... is not onely approved and duely commended by us, but also graciously accepted by his Majesty so as you may with the better encouragement and alacrity continue lyke care and diligence on all occasions".<sup>4</sup>

Thus while the justices had reason to dread the displeasure of the King's ministers, many of them must have felt that the supervision exercised over their activities was on the whole a benevolent one. Indeed, the local Benches turned to the Council for advice on all sorts of matters, ranging from the

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(1) CAL.S.P.DOM., Car.I, CXCVI, 56, P.C. to Justices of Assize for Wilts., Dorset and Somerset, 13 July, 1631, St. James'.

(2) HAWARDE, Les Reportes del Cases in Camera Stellata, p.234, 11 Oct. 1605. B.M. STOWE MSS., 397, Star Chamber cases, fols. 11d.-13d., 20-20d., 20d.-21, Hillary, 8 Jac. I.

(3) CAL. S.P. DOM., Jac.I, I, 40, P.C. to J.P.'s of Essex, 20 April, 1603.

(4) ACTS OF P.C., 1623-1625, p. 203, P.C. to Sir Edward Lawrence, J.P. in Dorset, 13 April, 1624.

proper action to be taken against deserters,<sup>1</sup> to the best disposal to be made of certain destitute Portuguese who had been wrecked on the English sea-coast.<sup>2</sup> Sometimes active assistance was requested, against dissolute sailors who were terrorizing the countryside in Devon,<sup>3</sup> or against extortionate informers.<sup>4</sup> In 1630, the Leicester magistrates poured forth to the Council their woes concerning the malignant obstinacy and insolence displayed by various men in their county who were endeavouring to monopolize the local wheat-supply. Some of these, said the justices helplessly, refused to be bound to appear before the Board, "and then we know not what further to say unto them, more than a terrifying threatening, which some for fear value, others not at all".<sup>5</sup> To such appeals the Council seems to have lent a sympathetic ear, punishing those of whom the justices complained,<sup>6</sup> or promising to lend the weight of its authority if trouble should arise in the future.<sup>7</sup>

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- (1) CAL. S.P. DOM., Jac.I, CLXXXI, 53, J.P.'s of Essex to P.C., 13 Jan. 1624/5.
  - (2) IBID, Car.I, VI, 64, J.P.'s of Sussex to P.C., 15 Sept. 1625, Parham.
  - (3) HAMILTON, Devon Quarter Sessions, p. 89.
  - (4) CAL. S.P. DOM., Jac.I, CX, 122, J.P.'s of Wilts. to P.C., 7 Oct. 1619, Marlborough.
  - (5) IBID, Car.I, CLXXVI, 56, J.P.'s of Leicestershire to P.C., 11 Dec. 1630, Leicester.
  - (6) ACTS OF P.C., 1619-1621, p.85, P.C. to J.P.'s of Wilts., 6 Dec. 1619. CAL. S.P. DOM., Car.I, CXXVI, 14, Certificate of those in Hereford who would not pay coat and conduct money, 1628.
  - (7) ACTS OF P.C., 1623-1625, p.133, P.C. to whom it may concern, 30 Nov. 1623.



Determined as the central government was to keep in close touch with the local officials, it worked under tremendous difficulties. The appalling condition of the roads tended to isolate rural communities - a state of affairs which made the spreading of even important news a slow process. When the Council wanted knowledge concerning the administration of affairs in a particular district, it had to exert itself strenuously in order to obtain the required information. There was as yet no well-organized post service, and men in Cumberland or Durham were not anxious to run in person the hazards of boggy roads, footpads, broken bridges and treacherous fords, all to tell the Council that some country squire was not fining drunkards or putting down bear-baiting with proper assiduity. In military and financial affairs, the Lords Lieutenants and the sheriffs afforded a possible channel for the conveying of messages, but the fact that we find an ever-increasing number of communications passing directly between Privy Council and justices shows that the system of relaying orders was not found to be satisfactory in practice.

The difficulties of distance and bad communications were, to some extent, overcome by the establishment of branches of the Privy Council in the more remote and turbulent parts of the country. These were the Councils of the North and of Wales, set up for the purpose of keeping order in the lawless Border and March districts.<sup>1</sup> The conditions in these areas, however,

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(1) For details of the functions of these bodies, see R. R. REID, The King's Council in the North, (1921), and C.A.J. SKEEL, The Council in the Marches of Wales, (1904).

made it necessary that the conservators of the peace should be strong and self-reliant men, and by the beginning of the 17th century, the Council in the North found that the justices there were growing very restive under its control<sup>1</sup>- the independent attitude of the West Riding Bench, described in an earlier chapter,<sup>2</sup> was by no means unique.<sup>3</sup> In the case of the Yorkshire justices, the Council neatly checkmated its opponents by having all its own members put on the Commission of the Peace,<sup>4</sup> and other attempts to question its authority were ended by a new set of instructions, issued by the central government in 1609, commanding the justices plainly to obey the Northern Council.<sup>5</sup> No argument could circumvent this order, and the local officials subsided into a simmering silence.<sup>6</sup>

The Council of the Marches occupied a similar position on the Welsh border. Its powers of supervision over the justices of the peace of Wales passed unchallenged, but trouble arose when it claimed control over the English March counties of Hereford, Worcestershire, Shropshire and Gloucestershire as well. The fact that the Council of Wales had undeniable authorization from Whitehall to supervise the work of all the magis-

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(1) REID, The King's Council in the North, p. 237.

(2) Supra, pp. 34-35.

(3) REID, The King's Council in the North, pp. 316-339.

(4) IBID, p. 339.

(5) IBID, p. 361.

(6) IBID, p. 339.

trates in the Marches<sup>1</sup> did not make its interference any the more palatable, and in especial the justices of Hereford and Worcestershire raised their voices in angry protest.<sup>2</sup> The local officials failed, however, to achieve their earnestly-desired independence;<sup>3</sup> in 1640 a complaint was made in Worcestershire that "Justices of the Peace have been often time there (at the Council of the Marches) questioned and put to great trouble for execution of their offices of justice".<sup>4</sup> In this county at least, the last round had evidently gone to the Council.

While the Border and March Councils could keep an attentive eye upon the justices in their own districts, their area of supervision was only a small part of England. Over the rest, the central government made its control effective mainly through the Judges of Assize.<sup>5</sup> These Circuit Justices were expected to superintend, in a general way, the administration of local affairs-- as King James told them when they were about to set forth, "You goe not onely to punish and preuent offenses, but you are to take care for the good gouernment in general of the parts where you

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(1) SKEEL, The Council in the Marches of Wales, p.91. CAL.S.P.DOM. Eliz., CCLXXXIV, 65, Orders to be observed by the Council established in the Marches of Wales, 8 July? 1602.

(2) CAL. S.P. DOM., Jac.I, XXXI, 14, President of the Council of Wales to Salisbury, 26 Jan. 1608, Ludlow Castle; 16, same to the same, 30 Jan. 1608, Ludlow Castle; LXXVIII, 75, Sheriff and J.P.'s of Worcs. to Somerset, Dec.? 1614.

(3) HOLDSWORTH, History of English Law, Vol. VI, p.56.

(4) WORCS. Q.S. ROLLS, Part II, p. 686, No. 165, 14 June, 1640, presentment by the Great Inquest.

(5) LEONARD, Early History of English Poor Relief, p. 179.

trauell".<sup>1</sup> In particular, the Judges were required to find out with what regularity the local justices attended Quarter Sessions,<sup>2</sup> and with what diligence they performed their duties;<sup>3</sup> and the King expected full reports when the Circuits had been completed.<sup>4</sup>

The Judges of Assize did their best to carry out these behests. They issued directions to the county Benches concerning all manner of small things;<sup>5</sup> they considered the advisability of "altering the order of keeping Quarter Sessions" in Norfolk;<sup>6</sup> and they suggested the appointment of a beadle in every "constablerie" in Lancashire for the punishment of rogues and beggars.<sup>7</sup> The Suffolk magistrates were told to bind more poor

- (1) JAMES I, Speech in the Star Chamber, 1619, (Pub.1645), F. 2.
- (2) HAMILTON, Devon Quarter Sessions, p.68, Orders of P.C. concerning the peace and preservation of the realm, 23 June, 1605, Greenwich. RUSHWORTH, Historical Collections, Vol.II, p.358, Lord Keeper's speech to the Judges, 1636.
- (3) NOTESTEIN, Commons Debates, 1621, Vol.III, p.417 - Heath's notes. JAMES I, Speech in the Star Chamber, 1619, F. 2. EDEN, State of the Poor, Vol.I, p.157, Book of Orders of Jan. 1630/1. NOTTS. CO. RECS., p. 26.
- (4) CAL. S.P. DOM., Eliz., CCLXXIV, 5, John Chamberlain to Dudley Carleton, 13 June, 1600, London. BLAKEY, History of Political Literature, (1855), p.89 - quotes the King's speech in the Star Chamber, 1616. JAMES I, Speech in the Star Chamber, 1619, F. 2, F. 3.
- (5) MANCH. SESS., Vol.I, p.57, Directions for the J.P.'s, 1618.
- (6) H. MSS. COMM., Report 10, Appendix IV, p.93, Sir Edmund Moundford to Sir Bassingbourne Gawdy, 2 Aug. 1604.
- (7) IBID, Report 14, Appendix IV, p.28, No.63, Orders of Justices of Assize for Lancs., 1623.

children apprentices,<sup>1</sup> and the Northumberland Bench was curtly ordered to repair a bridge, the ruinous condition of which had been the cause of the drowning of many travellers.<sup>2</sup> Moreover, it behoved magistrates of tyrannous inclinations to be careful what they did, for complaints against individual justices could be made at the Assizes,<sup>3</sup> and on at least one occasion this right was exercised.<sup>4</sup> Appeals against orders made at the Quarter Sessions in Derbyshire and Worcestershire also came before the Circuit Courts,<sup>5</sup> but in each of the instances recorded, the Judges rather surprisingly referred the matter back to the Sessions for settlement.

It must not be thought that the travelling Justices were always the bogeys of the local officials. On the contrary, the Assizes were the place to which perplexed justices of the peace could take their troubles. There questions were settled on which the county Benches had not been able to agree;<sup>6</sup> there problems involving knotty points of law were

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(1) H. MSS. COMM., Report 13, Appendix IV, p.463, Sir H. Montague and Sir John Doddridge to [J.P.'s of Suffolk], no date.

(2) CAL. S.P. DOM., Jac.I, CLI, 14, Order of Judges of Northern Circuit, 19 Aug. 1623, Carlisle.

(3) 4 Henry VII, c. 12.

(4) CAL. S.P. DOM., Car.I, CCXXV, 4, Sir William Jones and Sir Thos. Trevor, Judges of Assize at Gloucester, to the P.C., 5 Nov. 1632.

(5) COX, Derbyshire Annals, Vol.II, p.192. WORCS. Q.S. ROLLS, Part I, p. 154, No. 160, 1610.

(6) N.R.Q.S. RECS., Vol.III, p.215, 27 July, 1624; p.265, July, 1626; Vol.IV, p.58, July, 1636.

solved;<sup>1</sup> and there cases were tried when the local magistrates felt that the offence was too serious for their amateur handling.<sup>2</sup> Moreover, when the county justices, as sometimes happened, found themselves faced with insubordination or obstructiveness with which they were not strong enough to deal, the Circuit Judges were ready to lend the very effective aid of the weight of their greater authority.<sup>3</sup>

When we look at the whole relationship between central and local powers, then, we see that in spite of numerous handicaps the government of the early Stuarts exercised a very considerable amount of control over the justices of the peace.

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- (1) DUR. SESS. ORDER BOOK, No.I, (1616-1629), p.7, Sess. of 10 July, 1616. LANCS. Q.S. RECS., p.108, Sess. of 13 July, 1601. WAR. Q.S. RECS., Vol.I, p.216, Epiphany Sess., 1635. LINCS. (LINDSEY) Q.S. ROLLS, 1634, Index A.6, letter signed by Robt. Creswell and Wm. Massendyn, dated 14 April, 1634. HERTS.CO. RECS., Vol.V, p.38, Sess. of Jan. 1623/4; p.170, Sess. of 29 April, 1633. SOMER. Q.S. RECS., Vol.II, p.192, No.2, Sess. of 30 April-2 May, 1633.
- (2) e.g. murder - LANCS. Q.S. RECS., pp. 300, 302, Sess. of 22 Jan. 1605/6. NOTTS. CO. RECS., pp. 35-36. SOMER. Q.S. RECS., Vol. II, p.32, No. 84, Sess. of 3-5 April, 1627. Witchcraft - NORF. Q.S. ROLLS, 5 Jas. I.,- Margery Tirrell, Alicia Nypp and Alicia Marten. NOTTS. CO. RECS., p. 45. Horse-stealing - W. R. Q. S. RECS., Vol. II, pp. 53, 57, Sess. of 17 Jan. 1637/8. NOTTS. CO. RECS., p. 37. Sheep-stealing - N.R.Q.S. RECS., Vol. III, p. 267, Sess. of 14 July, 1626. DUR. SESS. ORDER BOOK, No. III, (1640-1643), p. 35, Sess. of 13 July, 1642. NOTTS. CO. RECS., p. 37. Larceny - LANCS. Q.S. RECS., p. 259, 1605; p. 274, 1605. NOTTS. CO. RECS., p. 37. COX, Derbyshire Annals, Vol. II, p. 61. HERTS. CO. RECS., Vol. V, p. 104, Michaelmas Sess., 1628. Desertion - NOTTS. CO. RECS., p. 97, 1628. Seditious words and schismatic opinions - NOTTS. CO. RECS., pp. 107, 140,- 1619. LANCS. Q.S. RECS., p. 167, Sess. of 9 May, 1605.
- (3) LANCS. Q.S. RECS., p.225, Sess. of 16 July, 1604. CAL. S.P. DOM., Car.I, I, 93, Sir Thos. Chamberlayne and Marmaduke Lloyd, Justices of Chester, to Sec'y Conway, 30 April, 1625, Chester.

Where it failed, the reason was certainly not lack of effort. In spite of the multiplicity of its duties, the Privy Council found time to pour out upon the local magistrates a steady stream of advice, admonition or encouragement. Its main difficulty was to ensure obedience to its commands, for the Assize Justices, upon whom the duty of enforcement fell, worked under great disadvantages. Their sojourn in each district was brief - too brief for them to gain more than a very general impression of the real conditions in that locality. Fear or loyalty would often keep the ordinary farmer from informing against his Squire, and the Judges had neither the time nor the means to investigate for themselves.<sup>1</sup> Then, too, the Assizes were an event advertised for weeks beforehand, and any local scandal could be put tidily away long before the Court met.

We may therefore be inclined to wonder whether, after all, the centralization of the Stuarts was not a mere shadow. The answer to this suggestion can be found in the degeneration of the local government when the directing hand of the Privy Council was gone. In the early 17th century, the justices of the peace were the king-pins in the system of local administration which, it was claimed, was not equalled in Europe; a hundred years later, with the Privy Council a ghost of its former self, the local magistrates had become an objectionable and tyrannous squirearchy.<sup>2</sup>

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(1) LEONARD, Early History of English Poor Relief, pp. 244-245.

(2) WEBB, English Local Government: the County and the Parish, p. 345.

## CHAPTER XVI.

### CONCLUSION.

When James I. succeeded to the throne of England, he was, very naturally, deeply interested in the governmental organization of his new kingdom. The system of local administration by justices of the peace thus came under the eye of an unbiassed and by no means stupid observer, and the favourable opinion he formed of its merits was expressed some years later in a speech to the Judges of Assize. "Government by Iustices", said James, "is so lawdable and so highly esteemed by mee, that I haue made Scotland to be gouerned by iustices and Constables, as England is"<sup>1</sup> - and a greater tribute could hardly have been paid by a Scot to an institution so essentially English. The King's commendation was endorsed by no less distinguished a person than Sir Edward Coke, who wrote of the rule of the justices, "It is such a forme of subordinate government for the tranquillity and quiet of the realm as no part of the Christian world hath the like, if the same be duly executed."<sup>2</sup>

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(1) JAMES I, Speech in the Star Chamber, 1619, (Pub.1645), F. 3.

(2) COKE, Institutes, Part IV, (Ed. 1797), p. 169.



When allowance has been made for the fact that Coke, as an English lawyer, was strongly prejudiced in favour of the English legal system, there still is a good deal of truth in what he says. The social position of the justices gave them an added authority in dealing with subordinates of more humble rank, and at the same time helped to make smooth their relations with other officials of their own class. Usually they possessed wealth and leisure, and often they were endowed with intelligence as well. From time to time their friends, their neighbours, or they themselves were chosen as members of the House of Commons, and this kept them in close touch with what was being said and done in London. Their unofficial influence as large landowners, coupled with the wide powers granted to them by King and Parliament, made their position as rulers of the shire almost impregnable; and if their own strength proved to be insufficient to deal with some particularly difficult local problem, they could always appeal for assistance to the Justices of Assize, or even to the Privy Council itself.

This charming picture of an active, intelligent and public-spirited squirearchy had, however, its less admirable side. The immense responsibility resting upon the county magistrates required in them both high character and ability, and these qualities were not always easy to find. The Chancellor was as careful in his choice as, in the circumstances, he could be,<sup>1</sup> but he was not infallible. Mr. Glascock, during the course

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(1) WILSON, The Administrative Work of the Lord Chancellor in the early 17th Century, (unpublished thesis), pp. 49-50.

of his bitter attack in the House of Commons on the local magistrates, said, "For impossible it is, my Lord-Keeper should know the Quality and Sufficiency of them himself, but only Per alium, in trust, as by the Justices of Assize.... but when any desireth to be a Justice, he getteth a Certificate from divers Justices of the Peace in the Country, to the Justices of Assize, Certifying them, of their Sufficiency and Ability. And they again make their Certificate (believing the former) to the Lord-Keeper, who at the next Assizes, puts them into Commission. And thus is the Lord Keeper abused, and the Justices of Assize abused, and the Country Troubled with a Corrupt Justice, put in Authority."<sup>1</sup>

Since this diatribe was a political speech, it need not be taken at its face value; yet even when the Parliamentary ebullience is discounted, some very real basis remains for the charge of inadequacy laid by Glascock against the men who sat on the local Benches. Not a few honest and well-qualified people shrank from shouldering the heavy burden which the assumption of office would entail.<sup>2</sup> Others, having accepted the justiceship, found that a conscientious performance of all their duties would require more than human devotion - as one despairing magistrate of Somerset put it, "It is sessions with me every day all the day long here, and I have no time for my own occa-

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(1) TOWNSHEND, Historical Collections, (Ed. 1680), pp. 328-329, Mr. Glascock's Speech, 1601.

(2) DALTON, The Country Justice, (Ed. 1705), Dedication to Sir James Lee. H. C. J., Vol. I, p. 590, Petition concerning the choice of J.P.'s, 25 April, 1621.

sions, hardly to put meat into my mouth".<sup>1</sup> As a result, the magistrates on a county Bench did not necessarily represent all the ability, or even the best ability, within that shire.

There was, moreover, a very definite danger that class-prejudice might affect the work of the justices. We have seen how uncompromisingly the Sessions dealt with the poachers who disregarded the game-preserving privileges of the gentry, and the vagrants whose activities were such a menace to private property;<sup>2</sup> and when violence was done to people of good family, the offenders were apt to receive unduly severe punishment.<sup>3</sup> A very striking example of this disproportionate indignation over injury done to the aristocracy occurred in Worcestershire, when a commoner damaged the coach of a local squire; the magistrates deemed the offence worthy of imprisonment with hard labour,<sup>4</sup> and the fact that the desperado was only nine years old does not seem to have had any effect in mitigating the harshness of the sentence. Conversely, when a gentleman was found guilty of a misdemeanour, his fellow-squires not infrequently adopted a more indulgent attitude.<sup>5</sup> Men and women of

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(1) SOMER. Q.S. RECS., Vol.II, Introduction, pp. xx-xxi.

(2) Supra, Chapter VIII.

(3) N.R.Q.S. RECS., Vol.II, p.227, Sess. of 8 Jan. 1619/20 - two labourers fined £5. and £2. respectively for beating a gentleman. Compare this penalty with those described in note 5.

(4) WORCS. Q.S. ROLLS, Part II, p.653, No.254, 5 Jan. 1636/7.

(5) LINCS. (LINDSAY) Q.S. ROLLS, 1634, Index A.6., 27 Feb. 1633/4-- gentlemen fined 6d. apiece for assault. W.R.Q.S.RECS., Vol.II, p.48, Sess. of 11 Jan. 1637/8 - gentlemen convicted of having "assaulted and grievously wounded" a commoner fined 5s. each.

good birth were, indeed, brought before the Sessions on a variety of charges,<sup>1</sup> but offences such as drinking, swearing, and loss of self-control seem to have been treated as a kind of aristocratic privilege. This attitude was voiced by King James in a letter to his chief ministers - "When a man of mean quality shall prosecute against a nobleman for an offence of passion and heat only, and that provoked by ill words and saucy carriage, it is not reasonable to give way to every man's will in such a case".<sup>2</sup>

Other weaknesses besides class-prejudice impaired the usefulness of the justices. In some of the northern shires, the magistrates dared not take action against certain local men, who were powerful enough to laugh at the threats of mere country gentlemen. The result was, of course, a lawlessness which amounted at times to small-scale local warfare;<sup>3</sup> and an even worse state of affairs arose where the justices abused their extensive

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- (1) e.g. failure to pay rates - WORCS. Q.S. ROLLS, Part I, p.152, No.147, 31 Jan. 1609/10. HERTS. CO. RECS., Vol.V, p.373, Sess. of 5-6 Oct. 1646. CAL.S.P.DOM., Jac.I, CLVIII, 32, J.P.'s of Leicester to P.C., Jan. 1623/4, Leicester; Car.I, CCXCIII, 72, Examination of a gentleman taken before 2 J.P.'s of Lincolnshire, 8 July, 1635. Refusal to pay wages to servant - N.R. Q.S.RECS., Vol.II, p.38, Sess. of 11-12 Jan. 1613/4. Illegal fishing - NOTTS. CO. RECS., p.89, 9 July, 1604. Forcible entry - HERTS. CO. RECS., Vol.V, p.346, No.560(a), 31 Aug. 1644, £40. fine. Unspecified crime - N.R.Q.S.RECS., Vol.III, p.187, Sess. of 7 Oct. 1623, £10. fine.
- (2) CAL. S.P. DOM, Car.I, CCLIV, 43, King to the Lord Keeper, Lord Privy Seal and Earl Marshall, Dec. 1633.
- (3) IBID, Jac.I, CLXXXV, 43, Attorney-General Coventry to P.C., 12 March, 1624/5; Car.I, CCCII, 107, King to a group of lords, 30 Nov. 1635, Westminster.

powers. Mr. Kemp, one of the Norfolk Bench, maintained disorderly alehouses,<sup>1</sup> as did Sir Gilbert Cornewall, justice of the peace and Quorum in Worcestershire.<sup>2</sup> Even the Custos Rotulorum of Yorkshire was accused of making use of his authority "to satisfy his own Ends, if sundry Complaints be true"-<sup>3</sup> and true they quite well may have been, since eventually he was induced to resign his office.<sup>4</sup> Other magistrates, it was alleged, were ready, for a consideration, to connive at poaching, cattle-stealing and house-breaking.<sup>5</sup> The existence of such practices was known to the authorities, for when a bill was proposed in the House of Commons for ending interference by the central courts in the business of the Quarter Sessions, the objection was raised that the justices were even then often partial and sometimes malicious, and that the bill would make them "more absolute, then the Judges in Higher Courts".<sup>6</sup>

This possibility of the growth of petty tyranny was the most dangerous feature of the Stuart system of local government. It could be avoided only by the maintenance of strict

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(1) CAMDEN SOC., 3rd Series, Vol. XXVI, (1915), Stiffkey Papers, p. 52, no date.

(2) WORCS. Q.S. ROLLS, Part II, p. 697, No. 40, 19 April, 1642.

(3) STRAFFORD'S LETTERS, (Ed. by Knowler, 1740), Vol. I, p. 2, Lord President of the North to the Lord Chancellor, 15 Feb. 1613/4.

(4) IBID, p. 4, Buckingham to Wentworth, 23 Sept. 1617.

(5) JAMES I, Speech in the Star Chamber, 1619, (Pub. 1645), G. 4.

(6) H. C. J., Vol. I, p. 533, 1621.

supervision from London, and this necessary control was exercised during the first part of the 17th century by the Privy Council. The system therefore saw its best days about the end of the reign of James I, for at that time the middle-class gentry, and especially the mildly Puritan gentry, had not become hopelessly alienated from the Crown, and intervention in local affairs on the part of the King's ministers had not yet come to be regarded as an unwarranted extension of royal absolutism. Although, during the reign of Charles I, some improvements were made in local government, notably in the administration of poor relief, the dissensions between King and Commons, Laudian and Puritan, Common Law and Prerogative, were bound to have an unfortunate effect upon the harmoniousness of the relations of the country squires, not only with the central authorities, but also with each other.

And so, when all the justices' advantages have been set against their difficulties, and their good qualities have been weighed with their weaknesses, what final judgment can be passed upon their importance in the England of the first two Stuarts? A modern historian has said, "From investigations which the critical scholarship of our time has devoted to their past, the Justices have now in fact emerged upon the historical scene as one of the most continuous and vital of all the factors that have been operative in the constitutional, legal and social evolution of England";<sup>1</sup> and the local records of the early part

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(1) DOWDELL, A Hundred Years of Quarter Sessions, Preface by H. D. Hazeltine, p. ix.

of the 17th century fully support this view. To the county magistrates were entrusted the most essential functions of the government of the time - the care of the crippled, the aged, and the destitute; the regulation of the relationship between employer and employee; the control of the manufacture of the goods most important in the economic life of the country; and the maintenance of the means of communication. As we have seen in the foregoing chapters, their work in connection with these and with their other multifarious duties was far short of perfect; yet about no part of their administration can one say that here was an absolute failure. The poor-rates indeed were cut down until the pauper might well wonder whether existence on the dole were better than immediate death; but that the relief funds - small though they might be - were honestly collected and fairly distributed was the result of the vigilance of the justices. Wages undoubtedly were rated far too low in relation to the steady rise in prices, yet the magistrates saw to it that masters did not cheat their servants of the payment that was their due. In some places depopulation was permitted to continue unhindered, but in others, those found guilty of illegal enclosing were punished in accordance with the statutes. Anti-Catholic laws were laid aside for years at a time, but then there would follow a period of Protestant enthusiasm during which the justices would harry the recusants unmercifully - and so the list of achievement and failure goes on.

In the local government of the early 17th century, then, we see not one clear, coherent, logical design, but a ser-

ies of pictures, varying in attractiveness according to time and place. A high standard was set for these amateur officials by their oath<sup>1</sup> - the oath which, "for memories sake", Lambard gives thus -

"Doe equall right to rich and poore,

as wit and Law extends:

Give none aduice in any cause,

that you before depends:

Your Sessions hold, as Statutes bid:

the forfeits that befall,

See entred well, and then estreat

them to the Chequer all:

Receiue no fee, but that is giuen

by King, good vse, or right:

Ne send Precept to party selfe,

but to indifferent wight".<sup>2</sup>

Dishonest magistrates ignored these precepts, and lazy one conveniently forgot them; yet always there were enough conscientious men on the local Benches to form a solid foundation for the government of the country - a government which, without the help of the justices of the peace, could not have given the land forty years of comparative peace and prosperity.

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(1) See Appendix C.

(2) LAMBARD, Eirenarcha, (Ed. 1619), p. 54.



APPENDIX A.

COMMISSION OF THE PEACE.

Iacobus Dei gratia Angliae, Scotiae, Franciae, et Hyberniae Rex, fidei defensor etc. Praedilecto et fideli Iohanni Cantuar, Archiepiscopo etc. Necnon praedilecto Thome Egerton, militi Domino custodi magni sigilli nostri etc. salutem.

Sciatis, quod assignauimus vos coniunctim et diuisim, et quemlibet vestrum, Iusticiarios nostros, ad pacem nostram in Comitatu nostro Kanciae conseruandam: Ac ad omnia Ordinationes et Statuta pro bono pacis nostrae, ac pro conseruatione eiusdem, et pro quieto regimine et gubernatione populi nostri edita, in omnibus et singulis suis Articulis, in dicto comitatu nostro tam infra libertates quam extra, iuxta vim formam et effectum eorundem, custodiendum et custodiri faciendum. Et ad omnes contra formam Ordinationem, vel Statutorum illorum, aut eorum alicuius in comitatu praedicto delinquentes, castigandum et puniendum, prout secundum formam ordinationum et Statutorum illorum fuerit faciendum: et ad omnes illos qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum minas fecerint, ad sufficientem securitatem de Pace, vel bono gestu suo, erga nos et populum nostrum inueniendam coram vobis seu

aliquo vestrum venire faciendum: et (si huiusmodi securitatem inuenire recusauerint) tunc eos in prisonis (quousque huiusmodi securitatem inuenerint) saluo custodiri faciendum.

Assignauimus etiam vos et quoslibet duos, vel plures vestrum (Quorum aliquem vestrum A.B.C.D.E.F. etc., vnum esse volumus) Iustitiarios nostros, ad inquirendum per Sacramentum proborum et legalium hominum de Comitatu praedicto, (per quos rei veritas melius sciri poterit) de omnibus, et omnimodis Felonijs, Veneficijs, Incantationibus, Sortilegijs, Arte magica, Transgressionibus, Forstallarijs, Regratarijs, Ingrossarijs, et Extortionibus quibuscunque: Ac de omnibus et singulis alijs malefactis et offensis (de quibus Iusticiarij pacis nostrae legitime inquirere possunt, aut debent) per quosque, et qualitercunque, in Comitatu praedicto factis, siue perpetratis, vel quae imposterum ibidem fieri, vel attemptari contigerit: Ac etiam de omnibus illis qui in Comitatu [sic] praedicto in conuenticulis contra pacem nostram in perturbationem populi nostri, seu vi armata ierunt, vel equitauerunt, seu imposterum, ire vel equitare praesumpserit: Ac etiam de omnibus hijs qui ibidem ad gentem nostram mayhemandam, vel interficiendam in assidijs iacuerunt, vel imposterum iacere praesumpserint: Ac etiam de hostellarijs, et ijs omnibus et singulis personis, qui in abusu ponderum, vel mensurarum, siue in venditione victualium, contra formam Ordinationum vel Statutorum, vel eorum alicuius, inde pro communi vtilitate regni nostri Angliae et populi nostri eiusdem editorum delinquerunt, vel attemptauerunt, seu imposterum delinquere, vel attemptare praesumpserint, in Comitatu praedicto: Ac etiam de quibuscunque

vicecomitibus, balliuis, Senescallis, constabularijs, custodibus gaolarum, et alijs Officiarijs, qui in executione Officiorum [sic] suorum (circa praemissa, seu eorum aliqua) indebite se habuerunt, aut imposterum indebite se habere praesumpserint, aut tepidi, remissi, vel negligentes fuerunt, aut imposterum fore contingerit, in comitatu praedicto: Et de omnibus et singulis articulis et circumstantijs, et alijs rebus quibuscunque, per quoscunque et qualitercunque in Comitatu praedicto factis siue perpetratis, vel quae imposterum ibidem fieri, vel attemptari contingerit, qualitercunque praemissorum, vel eorum alicuius, concernentibus plenius veritatem.

Et ad indictamenta quecunque [sic] sic coram vobis seu aliquibus vestrum capta, siue capienda, aut coram alijs nuper Iusticiarijs pacis in Comitatu praedicto facta siue capta (et nondum terminata) inspiciendum, ac ad processus inde versus omnes et singulos sic indictatos, vel quos coram vobis imposterum indictari contigerit (quousque capiantur, reddat se, vel vtlagentur) faciendum et continuandum.

Et ad omnia et singula felonias, veneficia, incantationes, sortilegia, artes magicas, transgressiones, forstallarias, regratarias, ingrossarias, extortiones, conuenticula, indictamenta praedicta, ceteraque omnia et singula praemissa, secundum Leges et Statuta regni nostri Angliae (prout in huiusmodi casu fieri consuevit, aut debuit) Audiendum et Terminandum: Et ad eosdem delinquentes, et quemlibet eorum pro delictis suis per fines, redemptiones, amerciamenta, forisfacturas, ac alio modo (prout secundum legem et consuetudinem regni nostri Angliae,

aut formam Ordinationum, vel Statutorum praedictorum fieri consuevit, aut debuit) castigandum et puniendum.

Prouiso semper, quod si casus difficultatis super determinationem aliquorum praemissorum coram vobis, vel aliquibus duobus, vel pluribus vestrum euinire contigerit: Tunc ad Iudicium inde reddendum (nisi in praesentia vnus Iusticiariorum nostrorum de vno, vel de altero banco, aut vnus Iusticiariorum nostrorum ad assisas in Comitatu praedicto capiendas assignatorum) coram vobis vel aliquibus duobus, vel, pluribus vestrum, minime procedatur.

Et idio vobis, et cuilibet vestrum mandamus, quod circa custodiam pacis, ordinationum, statutorum, et omnium et singulorum caeterorum praemissorum, diligenter intendatis. Et ad certos dies, et loca, quae vos, vel aliqui huiusmodi duo, vel plures vestrum (vt praedictum est) ad hoc prouideritis, super praemissis faciatis inquisitiones, et praemissa omnia et singula audiat et terminet, ac ea faciatis et expleatis in forma praedicta facturi inde quod ad iustitiam pertinet secundum legem, et consuetudinem regni nostri Angliae: Saluis nobis amerciamentis, et alijs ad nos inde spectantibus.

Mandamus enim tenore praesentium vicecomiti nostro Kanciae, quod ad certos dies et loca (quae vos, vel aliqui huiusmodi duo, vel plures vestrum vt praed' est, ei vt praed' est scire feceritis) venire fac' coram vobis, vel huiusmodi duobus, vel pluribus vestrum (vt dictum est) tot et tales probos et legales homines de balliua sua (tam infra libertates, quam extra) per quos rei veritas in praemissis melius seiri poterit et inquiri.

Assignauimus denique te praefatum Edw. Hoby Militem, custodem Rotulorum pacis nostrae in dict' comitatu nostro: ac propterea tu ad dies et loca praed', Breuia, Praecepta, Processus, et Indictamenta praed' coram te, et dictis socijs tuis, venire facias, vt ea inspiciantur, et debito fine terminentur sicut praedict' est. In cuius rei testimonium, etc. Datum<sup>1</sup> decimo septimo die Nouemb. Ann. regni nostri etc.

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(1) LAMBARD, Eirenarcha, (Ed. 1619), pp. 35-39.

COMMISSION OF THE PEACE. (English Translation)

James, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, etc. To our well-beloved and faithful John, Archbishop of Canterbury. Also to our well-beloved Thos. Egerton, Knight, Keeper of our Great Seal. Greeting.

Know ye, that we have assigned you, jointly and severally, and every one of you, our Justices to keep our Peace in our County of Kent: and to keep and cause to be kept all ordinances and statutes made for the good of our Peace, and for the conservation of the same, and for the quiet rule and government of our people, in all and every of the Articles thereof, in our said County, as well within the Liberties as without, according to the force, form and effect of the same. And to chastise and punish all persons offending against the form of those ordinances or statutes or any of them, in the County aforesaid, as according to the form of those ordinances and statutes shall be fit to be done: and to cause to come before you, or any of you, those who shall threaten any of our people in their persons, or in burning their houses, to find sufficient security for the Peace, or for their good behaviour towards us and our people: and (if they shall refuse to find such security) then to cause them to be kept safely in prison (until they shall find such security).

We have also assigned you, and any two or more of you (of whom we desire any of you, A.B.C.D.E.F., etc., to be one) our Justices, to enquire by the Oath of good and lawful men of the County aforesaid, (by whom the truth of the matter may better be known) of all and all manner of felonies, poisonings, incantations, sorceries, magic art, trepasses, forestallings, regratings, ingrossings, and extortions whatsoever: and of all and singular other misdeeds and offences, (of which the Justices of our Peace may or should lawfully enquire) by whomsoever or howsoever done or perpetrated, or which hereafter shall happen howsoever to be done or attempted in the County aforesaid: and also of all those who in the County aforesaid have gone or ridden or hereafter shall presume to go or ride in companies with armed force against the Peace, to the disturbance of our people: and also of all those who in like manner have lain in wait: or hereafter shall presume to lie in wait, to maim or kill our people: and also of InnKeepers, and of all and singular other persons who have offended or attempted, or hereafter shall presume to offend or attempt in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances or statutes, or any of them, in that behalf made for the common good of our kingdom of England and our people thereof, in the County aforesaid: and also of all sheriffs, bailiffs, stewards, constables, gaolers, and other officers whatsoever, who in the execution of their offices (about the premisses, or any of them) have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or

hereafter shall be careless, remiss or negligent, in the County aforesaid: and of all and singular articles and circumstances, and all other things whatsoever, by whomsoever or howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen in like manner to be done or attempted, in any wise more fully concerning the truth of the premisses, or any of them.

And to inspect all indictments whatsoever so before you, or any of you, taken or to be taken, or made or taken before others formerly Justices of the Peace in the County aforesaid (and not yet determined) and to make and continue the processes thereupon against all and singular persons so indicted, or which shall hereafter happen to be indicted before you (until they are apprehended, render themselves, or are out-lawed).

And to hear and determine all and singular the felonies, poisonings, incantations, soceries, magic arts, trepasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular the other premisses, according to the laws and statutes of our realm of England (as in like manner has been used, or ought to be done). And to chastise and punish those persons offending, and every one of them, for their offences, by fines, ransoms, amerciaments, forfeitures, or otherwise, (as has been used or ought to have been done according to the law and Custom of our realm of England, or in the form of the ordinances and statutes aforesaid).

Provided always, That if a case of difficulty upon the determination of any of the premisses, shall happen to appear before you, or any two of you, or more of you: then neither you



nor any two or more of you, are to proceed to render judgment therein, (except in the presence of one of our Justices of the one or the other Bench, or of one of our Justices assigned to hold the Assizes in the County aforesaid).

And therefore we command you, and every one of you, that you diligently advance the keeping of the Peace, ordinances, statutes, and all and singular other the premisses. And at certain days and places, which you, or any such two or more of you (as is aforesaid) shall for that purpose appoint, you shall make enquiries upon the premisses, and shall hear and determine all and singular the premisses, and perform and fulfill the same in form aforesaid, doing therein that which pertains to justice, according to the Law and Custom of our realm of England: saving for us the amercements, and other things thereof to us belonging.

And we command you, by virtue of these presents, our Sheriff of Kent, that at certain days and places (which you, or any such two or more of you, as is aforesaid, shall make known to him) he shall cause to come before you, or any such two or more of you (as aforesaid) such and as many good and lawful men of his Bailiwick (as well within the liberties as without) by whom the truth in the premisses may be the better known and inquired of.

Lastly we have assigned you, the said Edw. Hoby Knight, Keeper of the Rolls of the Peace in our said County: and therefore you shall cause to be brought before yourself, and your said fellows, at the said days and places, the writs, precepts,

processes, and indictments aforesaid, that the same may be inspected, and in due course determined, as is aforesaid. In witness whereof, etc. Given on the 17th. day of Nov., in the year of our reign, etc..<sup>1</sup>

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(1) Based upon DALTON, The Country Justice, (Ed. 1705), pp. 18-19.

APPENDIX B.

(The following extract from a 17th century book of legal notes among the Lansdowne MSS. gives an interesting account of the formal opening of a Sessions of the Peace.)

Instructions for Proceedings at the Sessions of the peace.

- Proclamation      Imprimis, The Cryer must make and Oyes three times, and say after you, as followeth.  
                      All manner of persons that haue beene warned to make their appearance here this day before the Kinges Ma<sup>tes</sup> Justices : And all other persons that haue for to doe at the Sessions of the Peace here holden this day for the county of M : drawe neere and giue yo<sup>r</sup> attendance vpon paine and perill shall fall thereon.
- 2<sup>d</sup> Proclam :      And then lett the Cryer make another Oyes and say.  
                      The Kinges Ma<sup>tes</sup> Justices streightly charge and comand all men to keepe silence and heare the Kinges Comission read.
- And soe read the Comission.
- 3: Proclam :      Then lett the Cryer make Oyes and say.  
                      Sheriffe of M : come into the Court. Returne the precept to the directed vpon payne and perill shall fall thereon. [f. 2]
- nota                Then must the Sheriffe deliuer in the precept w<sup>th</sup> the Pannell.
- 4: Proclam :      And then the Cryer must make another Oyes and say.  
                      Good men of the County of M : returned to appeare here this day for the body of the County of M : drawe neare and giue your Attendance vpon paine etc.
- Calling the grand Jury.      Then call the Jury as they are in the Pannell and pricke them that doe appeare and when you haue a

Oath of the  
Grand Jury.

full Jury giue the foreman his Oath as followeth. You shall diligently inquire and true p<sup>re</sup>sentm<sup>t</sup> make of all such Articles as shalbe giuen you in Charge by the Court : The Kinges Ma<sup>ties</sup> Counsell yo<sup>r</sup> fellowes and yo<sup>r</sup> owne, you shall keepe secrett : you shall not p<sup>re</sup>sent any thinge for envie or malice that you beare vnto any man nor conceale any thinge for fauor or af- fecon that you beare vnto any, but you shall p<sup>re</sup>sent the truth, the whole truth and no thing but the truth, Soe helpe you God.

Then call three at a tyme of the rest of the Jury, and giue them their oath as followeth. [f. 2d.]

Oa of the  
Grand Jury.

The same oath that yo<sup>r</sup> foreman hath taken on his part you and euery of you shall well and truely keepe on yo<sup>r</sup> behalfe, Soe helpe you God.

Et sic de ceteris.

5: Procl.

And when the Jury are sworne, then the Cryer must count them and after make an other Oyes and say. The Co<sup>rt</sup> streightly chargeth and comandeth all those that are sworne to stand neere and hearken to their Charge, And they and all otheres to keepe silence whilst the Charge is in giuing vpon paine of Imprison- ment.

6: Procl.

And when the Charge is giuen the Cryer is to make an other Oyes and say. If any person will informe the Kinges Ma<sup>ties</sup> Justices or this Inquest of any treasons felonyes Murderes Ryottes, Routes, vnlawfull Assemblies of [sic] any other thing concerning the breach of the Kinges Ma<sup>ties</sup> peace, Come forth and they shall be heard or if any man will p<sup>re</sup>- ferre any Bill of Indictm<sup>t</sup>, Bring them in, and they shalbe receiued.

nota

If there be any trauerse to be tryed betweene the Kinges Ma<sup>ty</sup> and otheres for any Ryottes Routes or such other like then after the Jury is returned cause the Cryer to make another Oyes and say. [f. 3]

7: Proclam:

You Good men of the County of M: that be returned be- tweene our Soueraigne Lord the King and A.B: for a cer- taine Ryott (or such like) comitted by the said A.B: against his highnes Peace, Drawe neare and make yo<sup>r</sup> Attendance.

Oath of a  
petty Jury

Then call them and giue the foreman his Oath (vizt.) You shall well and truely trye the issue betweene our Sou- eraigne Lord the King and A B: there at the Barre, And according to yo<sup>r</sup> evidence shall deliuer a true and direct verdict, Soe helpe you God.

And soe call the rest and giue them their oath  
vt antea.

nota

And if the Traverse doe proceed and the Jury haue  
noe day to another Sessions, Then you must charge  
the Jury and say vnto them (as followeth.)

My M<sup>rs</sup> of the Jury you shall vnderstand that before  
this time A.B. hath ~~beene~~ indicted w<sup>th</sup> in the County  
of M: for that he such a day and such a yeare (Read  
the Indictm<sup>t</sup> to them in English) Where vnto the  
said A:B: hath pleaded that he is not guilty of the  
same offence in manner & forme as he standes indic-  
ted and [f. 3d.] therevpon hath put himselfe for his  
Tryall vpon the Country, which are you, Your charge  
is therefore to inquire whither that the said A:B:  
be guilty in manner & forme as he standeth indicted  
or not And if you find that he is guilty you must  
say soe and noe more, And if you find that he is  
not guilty, you shall say soe and noe more likewise,  
And heare yo<sup>r</sup> evidence.

8. Proclam.

Then lett the Cryer make an other Oyes and say.

If any man will giue any evidence for our Soueraigne  
Lord the King to this Inquest against A.B: Lett him  
come forth and he shall be heard.

nota

And then the Evidence must be giuen on both sides  
And if they find that he is not guilty, To enter  
vpon the Indictm<sup>t</sup> Non Cul: And if they guilty [sic]  
to enter Cul.

Then Call yo<sup>r</sup> Bayliffes after the Charge is giuen.  
[f. 4.]

This to be  
done by 2.  
Questiones.

And when the Jury are to giue their Verdict You must  
aske them if they be agreed of their Verdict and who  
shall p<sup>re</sup>sent for them.

And then take their Billes that they haue found  
and say to them on this manner.

nota

You are content the Co<sup>r</sup>t shall amend them for  
manner and forme only, not altering the subs-  
tance.

And then deliuer them to the Justices to peruse  
which being done put them on a fyle for the Gaole  
deliuary.

And if you haue noe other busines of like nature  
then adiourne the Sessions the Cryer makeing three  
Oyes and say.

Adiournm<sup>t</sup>

All manner of persons that haue any more to doe at  
this Sessions of the Peace here holden this [sic] for  
the County of M: may depart hence for this time and  
keepe yo<sup>r</sup> hower heere againe by one of the Clocke  
this afternoone.

And God save the King. <sup>1</sup>

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(1) LANSDOWNE MSS., 569, fol. 2-4d. This book of legal notes  
is not dated, but was probably compiled during the latter  
half of the 17th century.

APPENDIX C.

OATH OF A JUSTICE OF THE PEACE.

Yee shall sweare, that as Iustices of the Peace in the County of Kent, in all Articles in the Kings Commission to you directed, ye shall doe EGAL right to the poore, and to the rich after your cunning, wit, and power, and after the lawes and customes of the Realme, and statutes thereof made: And yee shall not bee of counsell of any quarrell hanging before you: And that ye holde your Sessions after the forme of Statutes thereof made: And the issues, fines, and amercements that shall happen to be made, and all forfeitures which shall fall before you, ye shal cause to be entred without any concealment (or imbesilling) and truly send them to the K. Exchequer. Yee shall not LET for gift or other cause, but well and truly you shall do your office of Iustice of the Peace in that behalfe. And that you take nothing for your office of Iustice of the peace to be done, but of the king, and fees accustomed, and costs limited by the statute: and ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the parties, but ye shal direct them to the Bailifes of the said countie,

or other the Kings officers (or ministers) or other indifferent persons, to doe execution thereof: So helpe you God,  
and by the contents of this booke.<sup>1</sup>

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(1) LAMBARD, Eirenarcha, (Ed. 1619), p. 53.



APPENDIX D.

List of Statutes that concern the Office of the  
Justices of the Peace, Edward III - Charles I.

(This list, which is compiled from Lambard, Dalton, and an anonymous handbook dated 1636, is not completely accurate; a number of statutes of no great importance, and some which merely repeat earlier ones, have been omitted).

1 Edward III,	c. 14 - Maintenance.
	c. 16 - Who may be justices.
	c. 17 - Embezzlement of indictments.
2 Edward III,	c. 3 - Riding armed.
4 Edward III	c. 2 - Authority of justices.
	c. 4 - Purveyors.
	c. 10 - Sheriffs and gaols.
5 Edward III,	c. 2 - Purveyance.
	c. 10 - Corrupt jurors.
	c. 11 - Writs of attachment of felons.
	c. 14 - Arrest of night-walkers.
14 Edward III, stat. 1,	c. 10 - Sheriffs and gaolers.
18 Edward III,	c. 2 - Authority of justices.

20 Edward III,	c. 4 - Maintenance.
	c. 5 - Maintenance.
28 Edward III,	c. 11 - Robberies.
34 Edward III,	c. 1 - Authority of justices.
	c. 2 - Purveyance.
	c. 5 - Weights and measures.
	c. 6 - Measures.
36 Edward III,	c. 2 - Purveyance.
	c. 3 - Purveyors.
	c. 12 - Times of Sessions.
37 Edward III,	c. 19 - Theft of hawks.
42 Edward III,	c. 4 - Commissions of inquiry.
	c. 9 - Green wax.
1 Richard II,	c. 4 - Maintenance.
2 Richard II,	c. 2 - Forestalling.
5 Richard II, stat. 1.	c. 7 - Forcible entry.
7 Richard II,	c. 13 - Riding armed.
12 Richard II,	c. 3 - Servants and artificers.
	c. 6 - Archery and games.
	c. 7 - Vagrant beggars.
	c. 10 - Number of justices.
13 Richard II, stat. 1.	c. 7 - Qualifications of justices.
stat. 1.	c. 8 - Rates of labourers and servants.
stat. 1.	c. 9 - Measures.
	c. 10 - Cloth.
stat. 1.	c. 11 - Sale of cloth.
	c. 13 - Hunting.

13 Richard II, stat. 1.	c. 19 - Fry of salmon.
14 Richard II,	c. 11 - Number and wages of justices.
15 Richard II,	c. 1 - Forcible entry.
	c. 4 - Measures.
16 Richard II,	c. 3 - Measures.
	c. 4 - Livery.
17 Richard II,	c. 8 - Riotous assemblies.
	c. 9 - Salmon.
	c. 10 - Lawyers on the Commission of the Peace.
4 Henry IV,	c. 3 - Watches.
5 Henry IV,	c. 3 - Watches on the coasts.
	c. 4 - Multiplying gold and silver.
	c. 5 - Cutting out of tongues.
	c. 10 - Imprisonment.
7 Henry IV,	c. 3 - Estreats.
	c. 7 - Arrowheads.
	c. 14 - Livery.
13 Henry IV,	c. 7 - Riots.
1 Henry V,	c. 10 - Measures.
2 Henry V, stat. 1,	c. 4 - Residence and Sessions.
stat. 1,	c. 8 - Riots.
stat. 1,	c. 9 - Process against fugitives.
stat. 2,	c. 1 - Qualifications of justices.
3 Henry V,	c. 7 - Falsifying money.
9 Henry V, stat. 2,	c. 8 - False weights.
2 Henry VI,	c. 11 - Measures.
	c. 14 - Measures.

8 Henry VI,	c. 4 - Liveries.
	c. 5 - Weights.
	c. 9 - Forcible entry.
	c. 10 - Process with foreign counties.
	c. 12 - Embezzling of records.
	c. 14 - Writs and process.
10 Henry VI,	c. 6 - Process upon indictment.
11 Henry VI,	c. 6 - Discontinuance of process.
	c. 8 - Weights and measures.
	c. 12 - Wax.
14 Henry VI,	c. 4 - Sessions in Middlesex.
18 Henry VI,	c. 11 - Qualifications of justices.
	c. 19 - Deserters.
20 Henry VI,	c. 8 - Purveyance.
23 Henry VI,	c. 1 - Purveyance.
	c. 2 - Purveyance.
	c. 10 - Sheriffs and Knights' wages.
31 Henry VI,	c. 3 - Attachments in the Courts of the Marches.
33 Henry VI,	c. 1 - Embezzlement of masters' goods by servants.
	c. 7 - Attorneys in Norfolk and Suffolk.
1 Edward IV,	c. 2 - Indictments in sheriff's tourn.
3 Edward IV,	c. 1 - Cloth.
8 Edward IV,	c. 2 - Liveries.
12 Edward IV,	c. 9 - Escheators.
17 Edward IV,	c. 4 - Making of tile.
1 Richard III,	c. 3 - Mainprise.
	c. 13 - Measures.

1 Henry VII,	c. 7 - Hunting at night.
2 Henry VII,	c. 1 - Concealment of jurors.
3 Henry VII,	c. 1 - Concealments of inquests.
	c. 2 - Escape of murderers.
	c. 3 - Bailment.
4 Henry VII,	c. 12 - Duty of Justices.
	c. 13 - Benefit of Clergy.
7 Henry VII,	c. 1 - Soldiers.
	c. 3 - Weights and measures.
11 Henry VII,	c. 4 - Weights and measures.
	c. 9 - Incorporation of Tyndall into Northumberland.
	c. 15 - Punishment of faults in sheriffs.
	c. 17 - Partridges, hawks, swans, etc.
12 Henry VII,	c. 5 - Weights and measures.
19 Henry VII,	c. 5 - Export of gold and silver.
	c. 6 - Brass and pewter.
	c. 11 - Deer and hays.
	c. 12 - Riots.
	c. 13 - Repression of riots.
1 Henry VIII,	c. 7 - Coroners.
	c. 8 - Escheators and coroners.
3 Henry VIII,	c. 5 - Captains and soldiers.
	c. 12 - Sheriffs' panels.
4 Henry VIII,	c. 7 - Pewter and brass.
6 Henry VIII,	c. 6 - Prisoners.
14-15 Henry VIII,	c. 6 - Roads in Kent.
	c. 10 - Hunting of hares.

- 21 Henry VIII, c. 7 - Servants embezzling masters  
good felons.
- c. 11 - Restitution of stolen goods.
- 22 Henry VIII, c. 5 - Repair of bridges.
- c. 10 - Gypsies.
- c. 11 - Powdike.
- c. 14 - Abjuration.
- 23 Henry VIII, c. 1 - Benefit of Clergy.
- c. 2 - Gaols.
- c. 4 - Brewing.
- c. 5 - Sewers.
- c. 7 - Prices of wines.
- c. 16 - Export of horses to Scotland.
- c. 18 - Fish garths on Humber.
- 24 Henry VIII, c. 4 - Flax.
- c. 7 - Killing of calves.
- c. 9 - Killing of weanlings.
- c. 10 - Crows.
- 25 Henry VIII, c. 6 - Sodomy.
- c. 11 - Hunting of wild fowl.
- c. 13 - Sheep.
- 26 Henry VIII, c. 4 - Passage over Severn.
- c. 6 - Felons in Wales.
- c. 7 - Highways in Sussex.
- c. 12 - Clerks convict in Wales.
- 27 Henry VIII, c. 5 - Justices of the peace in Chester  
and Wales.
- c. 16 - Inrolment of deeds.

27 Henry VIII,	c. 20 - Payment of tithes.
	c. 24 - Justices of the peace in Lancaster.
	c. 26 - Wales.
28 Henry VIII,	c. 14 - Wines.
32 Henry VIII,	c. 7 - Tithes.
	c. 9 - Maintenance and embracery.
	c. 13 - Horses.
	c. 43 - Sessions in Chester.
33 Henry VIII,	c. 1 - False tokens.
	c. 5 - Horses.
	c. 6 - Guns and cross-bows.
	c. 9 - Unlawful games.
34-35 Henry VIII,	c. 14 - Outlaws.
	c. 26 - Laws for Wales.
35 Henry VIII,	c. 17 - Woods.
37 Henry VIII,	c. 1 - Custos Rotulorum.
	c. 8 - Horse-thieves.
	c. 9 - Usury.
1 Edward VI,	c. 1 - Sacrament.
	c. 5 - Export of horses.
	c. 7 - Process.
	c. 12 - Treason and felonies.
2-3 Edward VI,	c. 2 - Soldiers.
	c. 10 - Malt.
	c. 14 - Hand-guns.
	c. 15 - Victuallers.
	c. 19 - Eating of flesh.

2-3 Edward VI,	c. 24 - Trial of murders.
3-4 Edward VI,	c. 1 - Custos Rotulorum.
	c. 2 - Woollen Cloth.
	c. 10 - Popish books, etc.
	c. 21 - Retailing butter and cheese.
5-6 Edward VI,	c. 4 - Assault in churches.
	c. 6 - Cloth.
	c. 11 - Treason.
	c. 14 - Forestallers.
	c. 15 - Regrating tanned leather.
	c. 24 - Felts and hats.
	c. 25 - Alehouses.
7 Edward VI,	c. 5 - Wines.
	c. 7 - Fuel.
1 Mary, stat. 2.	c. 3 - Disturbing of preachers.
	c. 8 - Sheriffs.
	c. 12 - Rebellious assemblies.
1-2 Phil. & Mary,	c. 3 - Seditious words.
	c. 4 - Gypsies.
	c. 5 - Transportation of corn.
	c. 13 - Bailment of prisoners.
2-3 Phil. & Mary,	c. 3 - Cows and calves.
	c. 6 - Purveyors.
	c. 7 - Sale of horses.
	c. 8 - Highways.
	c. 10 - Examination of felons.
	c. 13 - Wool in Halifax.
	c. 15 - Purveyors near Cambridge.



- |                   |  |
|-------------------|--|
| 2-3 Phil. & Mary, | c. 16 - Watermen.  |
|                   | c. 18 - Commissioners of the peace.                                |
| 4-5 Phil. & Mary, | c. 2 - Provision of armour.  |
|                   | c. 3 - Soldiers.   |
| 1 Elizabeth,      | c. 2 - Use of Prayer Book.   |
|                   | c. 12 - Linen cloth.   |
|                   | c. 17 - Fry of fish.   |
| 5 Elizabeth,      | c. 1 - Preserving the Queen's power<br>against the Bishop of Rome. |
|                   | c. 2 - Tillage.  |
|                   | c. 4 - Labourers and servants.                                     |
|                   | c. 5 - Navy and fish.  |
|                   | c. 9 - Perjury.  |
|                   | c. 12 - Badgers and drovers.                                       |
|                   | c. 13 - Highways.  |
|                   | c. 15 - Prophecies.  |
|                   | c. 16 - Witchcraft.  |
|                   | c. 17 - Sodomy.  |
|                   | c. 20 - Gypsies.   |
|                   | c. 21 - Fishing and hunting.                                       |
| 8 Elizabeth,      | c. 3 - Sheep.  |
|                   | c. 9 - Vessels.  |
|                   | c. 10 - Bows and bowyers.  |
| 13 Elizabeth,     | c. 2 - Bulls from Rome.  |
|                   | c. 8 - Usury.  |
|                   | c. 9 - Sewers.   |
|                   | c. 13 - Transportation of corn.                                    |
|                   | c. 21 - Purveyors near the Universities.                           |
|                   | c. 23 - Paving a street without Aldgate.                           |

14 Elizabeth	c. 5 - Prisoners.
18 Elizabeth	c. 3 - Bastards.
	c. 5 - Informers.
	c. 7 - Restriction of Benefit of Clergy.
	c. 10 - Highways.
	c. 20 - Highways near Oxford.
23 Elizabeth	c. 1 - Subjects' obedience.
	c. 2 - Seditious words.
	c. 9 - Logwood.
	c. 10 - Pheasants and partridges.
27 Elizabeth	c. 2 - Jesuits.
	c. 6 - Jurors.
	c. 7 - Levying of issues lost by jurors.
	c. 12 - Sheriffs.
	c. 13 - Hue and cry.
	c. 19 - Iron mills and highways in Sussex.
	c. 24 - Sea-banks in Norfolk.
31 Elizabeth	c. 4 - Embezzling of armour.
	c. 5 - Informations.
	c. 7 - Cottages.
	c. 12 - Sale of horses.
35 Elizabeth	c. 1 - Sectaries.
	c. 2 - Recusants.
	c. 4 - Maimed soldiers.
39 Elizabeth	c. 2 - Tillage.
	c. 3 - Poor.
	c. 4 - Vagrants.
	c. 11 - Logwood.

39 Elizabeth,

- c. 15 - Benefit of Clergy taken from house-robbers.
- c. 16 - Making of malt.
- c. 17 - Soldiers and mariners.
- c. 19 - Highways in Sussex.
- c. 20 - Northern cloths.
- c. 24 - Repair of a bridge over the Wye.

43 Elizabeth

- c. 2 - Poor.
- c. 3 - Soldiers and mariners.
- c. 7 - Robbing of orchards.
- c. 13 - Blackmail.

1 James I,

- c. 4 - Recusants.
- c. 6 - Wages of labourers.
- c. 7 - Vagabonds.
- c. 8 - No Benefit of Clergy for manslaughter.
- c. 9 - Alehousekeepers.
- c. 11 - Bigamy.
- c. 12 - Witchcraft.
- c. 15 - Bankruptcy.
- c. 22 - Tanners, carriers, etc.
- c. 27 - Pheasants, partridges, etc.
- c. 29 - Observance of Lent.
- c. 31 - Plague.

3 James I,

- c. 4 - Recusants.
- c. 5 - Popish recusants.
- c. 10 - Conveyance of offenders to gaol.
- c. 12 - Weirs and fish-spawn.
- c. 13 - Deer and conies.

- 3 James I,
- c. 20 - Clearing the Thames to Oxford.
  - c. 22 - Paving Drury Lane.
  - c. 23 - Chepstow Bridge.
- 4 James I,
- c. 1 - Maintenance of peace on the Scottish border.
  - c. 2 - Cloth
  - c. 4 - Alehousekeepers.
  - c. 5 - Drunkards.
- 7 James I,
- c. 1 - Trial of felony done in Scotland.
  - c. 3 - Putting out apprentices.
  - c. 4 - House of correction.
  - c. 5 - Pleading.
  - c. 6 - Oath of Allegiance.
  - c. 7 - Workers of wool.
  - c. 10 - Alehousekeepers.
  - c. 11 - Pheasants and partridges.
  - c. 13 - Killing of deer.
  - c. 20 - Sea-walls in Norfolk and Suffolk.
- 21 James I,
- c. 4 - Informations.
  - c. 7 - Drunkenness.
  - c. 8 - Peace and good behaviour.
  - c. 12 - Actions against county officials.
  - c. 15 - Forcible entry.
  - c. 17 - Usury.
  - c. 18 - Cloth.
  - c. 19 - Bankrupts.
  - c. 20 - Cursing.
  - c. 21 - Hostlers and horse-bread.

21 James I,	c. 22 - Butter and cheese.
	c. 26 - Fraud in levying fines.
	c. 27 - Concealment of death of bastards.
1 Charles I,	c. 1 - Sabbath.
	c. 4 - Alehouses.
3 Charles I,	c. 2 - Sabbath.
	c. 4 - Alehouses.
	c. 5 - Apprentices.
16 Charles I,	c. 19 - Clerk of the Market.

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### II. PRIMARY SOURCES -- MANUSCRIPT.

ADDITIONAL MSS., (B.M.) 31007, 34218, 34324, 34399-34401 -- these last contain routine Sessions papers for Huntingdonshire -- and 38139 -- a Liber Pacis for 1604.

CHANCERY, CROWN OFFICE, (P.R.O.).

1. Docquet Books, 1595-1602, 1615-1629, 1629-1643. These contain notes of Commissions of the Peace issued, and names of men put on and off.
2. Entry Books, 1601-1605, 1606-1620, 1620-1629, 1629-1634, 1635-1645. These give lists of J.P.'s in such boroughs and liberties as had special Commissions.
3. Libri Pacis, 1621, 1628(?), 1634.

CHANCERY, PATENT ROLLS, (P.R.O.).

The lists of J.P.'s to be found on the dorse of the Patent Rolls are described in Miss Putnam's article, "Justices of the Peace for 1558-1688", in the Bulletin of the Institute of Historical Research, Vol.IV., pp. 151-152.

CHESTER QUARTER SESSIONS RECORDS, (Chester Castle, Chester).

The relevant records go back to 1600, but in 1935 those bound and available for consultation covered only the years 1625 and 1630-1642. They comprise miscellaneous Sessions documents, useful mainly for the administrative side of the work of the J.P.'s

DURHAM QUARTER SESSIONS RECORDS, (Shire House, Durham).

1. Sessions Order Books, 1616-1629, 1629-1639, 1640-1643. These are useful for the administrative work of the J.P.'s.
2. Plea Rolls, 1 James I. on — enrolled indictments, mostly unannotated.

EXCHEQUER, KING'S REMEMBRANCER, (P.R.O.).

1. Sheriffs' Accounts — for only a few counties and a few years.
2. Liber Pacis for 1626.

EXCHEQUER, PIPE ROLL, (P.R.O.).

Sheriffs' Accounts, which show attendance and payments for attendance at Quarter Sessions, although returns are not entered for all counties every year.

HARLEIAN MSS., (B.M.), No.1622 — Liber Pacis for 1625.

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LIBRI PACIS — See under Additional MSS., Chancery Crown Office, Exchequer King's Remembrancer, Harleian MSS., State Papers Domestic.

LINCOLN (LINDSEY) SESSIONS ROLLS, (Shire House, Lincoln).

Comprise routine documents of Quarter Sessions for the years 1625, 1629, 1630, 1631, 1633, 1634, 1636, 1637 (Easter), 1637 (Christmas), 1642 — useful merely for administrative work of J.P.'s. Only the documents in the 1625 group are systematically numbered.

LISTS OF J.P.'s -- See under Additional MSS., Chancery Crown Office Entry Books and Liber Pacis, Chancery Patent Rolls, Exchequer King's Remembrancer, Harleian MSS., State Papers Domestic.

NORFOLK QUARTER SESSIONS RECORDS, (Shire Hall, Norwich).

1. Norfolk Quarter Sessions Book of Proceedings, 1639-1644 — mostly notes of indictments.
2. Sessions Rolls, 1600-1642 -- include presentments, indictments, lists of jurors, recognizances, and masses of written depositions and other miscellaneous Sessions records, and are particularly illuminating on the criminal work of the J.P.'s. These documents in 1935 were sorted roughly into bundles according to regnal years, but were not arranged at all within the bundles.

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BACON, NATHANIEL, — Official Papers of Sir Nathaniel Bacon of Stiffkey, Norfolk. Edited by H.W. Saunders. Camden Society, Third Series, Vol. XXVI., (1915). These throw light upon the activities of a single J.P. out of Sessions.

BACON, NATHANIEL, — Supplementary Stiffkey Papers. Edited by F.W. Brooks. Camden Miscellany, Vol. XVI., in Camden Society, Third Series, Vol. LII., (1936).

COKE, SIR EDWARD, — The Fourth Part of the Institutes of the Laws of England, concerning the Jurisdiction of Courts. (1797). First separate edition printed 1644.

COMMONS DEBATES. See under Notestein.

COX, J. C., — Three Centuries of Derbyshire Annals, 2 vols., (1890). A written-up account, with only a few direct quotations.

CUNNINGTON, B.H., — Records of the County of Wilts., being extracts from the Quarter Sessions Great Rolls of the Seventeenth Century. (1932). Very useful, within the limitations of extracts, for both the judicial and administrative work of the J.P.'s.



DALTON, MICHAEL, - The Country Justice, (1705). Earlier editions, (the first was in 1618), were not available for this study.

DALTON, MICHAEL, - Office and Authority of Sheriffs. (1700). Earliest edition appeared in 1623.

DERBYSHIRE RECORDS. See under Cox.

DEVON QUARTER SESSIONS. See under Hamilton.

FITZHERBERT, ANTHONY, The Newe Boke of Iustices of Peace. (1560). Interesting as background.

FULLER, REV. THOMAS, The Holy State and the Profane State. (1840). First printed in 1642.

FURLEY, J. S., - Quarter Sessions Government in Hampshire in the Seventeenth Century. (No date). A written-up account, too general to be of much use in a study of this kind.

HAMILTON, A.H.A., - Quarter Sessions from Queen Elizabeth to Queen Anne: illustrations of local government and history drawn from original records (chiefly of the County of Devon). (1878). A written-up account of the local government of the Southwest, containing many quotations from useful documents.

HANDBOOKS ON THE OFFICE OF THE JUSTICES. See under Dalton, Fitzherbert, Lambard, Shephard, Wingate.

HARLEIAN MSS., - A Catalogue of the Harleian MSS. in the British Museum, with index of persons, places and matters. 4 vols. (1808-1812).

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HERTFORD COUNTY RECORDS, 8 vols., covering the years 1581-1894. Edited by W.J. Hardy, (1905-1935). Vols. I and V. are relevant, but contain mostly presentments, selected and calendared, ~~but~~ having no notes as to what action was taken on them.

HISTORICAL MSS. COMMISSION. Report 3, App., (1872); Report 5, App. Part I, (1876); Report 7, App. Part II, (1879); Report 9, App. Part I, (1883); Report 10, App. IV, (1885); Report 11, App. VII, (1888); Report 12, App. IV, (1888); Report 13, App. IV, (1892); Report 14, App. II and IV, (1894); Report 15, App. VII, (1897); Report 16, Ancaster Papers, (1907); MSS. of Reginald Rawden Hastings, Vol. II, (1930); Hatfield Papers, Vol. XII, (1910), Vol. XV, (1930); MSS. of Lord Mon-

tagu of Beaulieu, (1900); Various Collections, Vol.I -- Wilts. Quarter Sessions -- (1901), Vol. IV, (1907), Vol. VII, (1914).

JAMES I., King James his Learned and Wise Speech made in the Starre-Chamber, in the sixteenth yeare of his Reigne. (1645). The pages are not numbered, and references therefore have to be made by the signatures.

JOURNALS OF THE HOUSE OF COMMONS, 1600-1642. Printed about 1752.

KNOWLER, WILLIAM,- The Earle of Strafforde's Letters and Dispatches, with an Essay towards his Life, by Sir George Radcliffe. 2 vols. (1740). Only useful for incidental references to Wentworth as a J.P.

LAMBARD, WILLIAM,- Eirenarcha, or Of the Office of the Iustices of Peace. (1619). First published in 1581. This is the standard contemporary work on the duties of J.P.'s, and has bound with it short treatises on the offices of churchwardens, constables, and surveyors of highways.

LANCASHIRE QUARTER SESSIONS RECORDS, 1590-1606. Edited By J. Tait. Chetham Society, Vol. 77. (1917). While these records cover only a few years, they include both judicial and administrative documents; the introduction also is very useful.

LANSDOWNE MSS., A Catalogue of the Lansdowne MSS. in the British Museum, with indexes of persons, places and matters. (1819).

MANCHESTER SESSIONS, 1616-1623. Edited by Ernest Axon. Record Society for Lancashire and Cheshire, Vol. XLII, (1901). Consists largely of papers relating to routine work done by three J.P.'s of the Mosley family.

MERITON, GEORGE, - A Guide for Constables, Churchwardens, Overseers of the Poor, Surveyors of the High-ways, Treasurers of the County-Stock, Masters of the House of Correction, Bayliffs of Mannors, Toll-takers in Fairs, etc. (1679). This is the 6th edition -- the first was in 1669.

MIDDLESEX COUNTY RECORDS, 4 vols. Edited by J.C. Jeaffreson. (1886-1892). This series is made up of selected and calendared Sessions documents from 3 Edward VI. to 4 James II. Vols. II and III. are useful for early Stuarts.

MIDDLESEX SESSIONS RECORDS, New Series, Vols. I and II.

Edited by William Le Hardy. (1935-1936). A full calendar of all Middlesex Sessions records for 1612-1615, very useful.

MONTAGU, BASIL, - - Works of Francis Bacon, 16 vols. (1825-1834).

NORFOLK LIEUTENANCY PAPERS. See under Rye.

NORTHANTS. COUNTY RECORDS. See under Wake.

NORTHANTS. MUSTERS. See under Wake.

NORTH RIDING QUARTER SESSIONS RECORDS, 9 vols. (1884-1892).

Edited by J.C. Atkinson. Vols. I. to IV. cover the years for this study. The documents are calendared, but very fully, especially in the first volume. The series gives a very good picture of the work of the J.P.'s, both civil and criminal.

NOTESTEIN, WALLACE; RELF, FRANCES HELEN; SIMPSON, HARTLEY, Commons Debates, 1621. 7 vols. (1935). Valuable for relations between Commons and justices, and has an excellent index.

NOTTINGHAMSHIRE COUNTY RECORDS: 17th CENTURY. Edited by H.H. Copnall, (1915). A useful written-up account in which a number of illustrative documents are quoted in full.

RUSHWORTH, JOHN, - Historical Collections of Private Passages of State, Weighty Matters in Law, Remarkable Proceedings... 8 vols. (1721-1722).

RYE, WALTER, - State Papers relating to Musters, Beacons, Shipmoney, etc., in Norfolk, from 1626 chiefly to the beginning of the Civil War. (1907). Preface by C.H. Firth.

RYMER, THOMAS, - Foedera, 20 vols. (1727-1735).

SHEPHARD, WILLIAM, A Sure Guide for his Majesties Justices of Peace. (1663). Pages 33-64 are missing in the copy used for this study.

SMITH, SIR THOMAS, De Republica Anglorum; a discourse on the Commonwealth of England. (1906). First printed in 1583.

SOMERSET QUARTER SESSIONS RECORDS. Edited by E.H. Bates-Harbin. Somerset Record Society, Vols. XXIII-XXIV (referred to in footnotes as vols. I and II), cover the years 1607-1638. Documents are calendared, very fully.

SPEDDING, ELLIS, HEATH, Works of Francis Bacon, 7 vols. (1870). Vol. VII has several legal essays relevant to the position and work of the J.P.'s.

STATE PAPERS DOMESTIC, CALENDAR. 1600-1642.

STATUTES OF THE REALM, 11 vols. in 13. (1810-1828).

STEELE, ROBERT, - A Bibliography of Royal Proclamations of the Tudor and Stuart Sovereigns and of others published under authority 1485-1714. 2 vols. (1910). Only the first volume, which contains the English proclamations, is relevant to this work.

STIFFKEY PAPERS. See under Bacon, Nathaniel.

STRAFFORD'S LETTERS. See under Knowler.

TAYLOR, JOHN, - Works. Edited by C. Hendley.

TOWNSHEND, HAYWARD, Historical Collections of the Four Last Parliaments of Queen Elizabeth of famous memory. (1680).

WAKE, JOAN, - A Copy of Papers relating to Musters, Beacons, Subsidies, etc., in the County of Northampton, A.D. 1586-1623. Northants. Record Society, Vol. III. (1926).

WAKE, JOAN, - Quarter Sessions Records of the County of Northampton, A.D. 1630, 1657, 1657-8. (1924). This has a good introduction by S.A. Peyton, but only one of the years is relevant to this study.

WARWICK COUNTY RECORDS, 3 vols. Edited by S.C. Ratcliff, H.C. Johnson. (1935-1937). Sessions Order Books, given in full, covering the years 1625-1657. Useful for administrative work only of the justices.

WEST RIDING QUARTER SESSIONS ROLLS, 1597/8-1602. Edited by J. Lister. Yorkshire Archaeological Association, Record Series, Vol. III. (1888). Contains jury presentments in the original Latin form, and Sessions orders in the abbreviated English of the 16th century.

WEST RIDING SESSIONS RECORDS, Vol. II. Edited by John Lister. Yorkshire Archaeological Society, Vol. LIII. (1915). Contains Sessions orders (in full), 1611-1642, and indictments (calendared), 1637-1642.

WHITLOCKE, SIR JAMES, Liber Famelicus of Sir James Whitlocke, a Judge of the Court of King's Bench in the reigns of James I. and Charles I. Edited by John Bruce. Camden Society, Old Series, No. 70. (1848).

WILTSHIRE COUNTY RECORDS. See under Cunnington.

WINGATE, EDMUND, - Justice Revived: being the whole Office of a Countrey Justice of the Peace. (1661). First published in 1644. Apparently there were two editions printed in 1661, in which the pagination is different. The copy used here is the shorter.

WINTHROP PAPERS, 2 vols., (1924, 1931). Published by the Massachusetts Historical Society. These papers of the Winthrop family cover the years 1498-1628, and 1623-1630; not of great use in this study.

WORCESTER COUNTY RECORDS. 2 vols. Edited by J.W. Willis-Bund. (1899-1900). Mostly recognizances and other routine documents.

YONGE, WALTER, - Diary of Walter Yonge, Justice of the Peace and M.P. for Honiton, written at Colyton and Axminster, from 1604-1628. Edited by G. Roberts. Camden Society, Old Series, No. 41. (1848). This diary shows the intelligent interest taken by the country gentlemen in both local and national affairs.

YORKSHIRE ARCHAEOLOGICAL JOURNAL, Vol. V, pp. 371-405. Contains extracts from West Riding Sessions Order Books, made by Barber Fairless.

#### IV. SECONDARY SOURCES.

AYDELOTTE, F. - Elizabethan Rogues and Vagabonds. Oxford Historical and Literary Studies, Vol. I. (1913). The main feature of interest here is the letter of Edward Hext, J.P., printed in full in the Appendix.

BARFORD, K.E., - The West of England Cloth Industry: A 17th Century Experiment in State Control. Wiltshire Magazine, Vol. XLII. (1924).

BEARD, C.A., - The Office of the Justice of the Peace in England. (1904). Goes only to the early years of James I., but is excellent as background.

BIRCH, T., - The Court and Times of James I. 2 vols. (1848).

BLAKEY, R., - History of Political Literature. (1855).

CHEYNEY, E.P., - A History of England from the Defeat of the Armada to the Death of Elizabeth. 2 vols. (1926). Vol. II. contains several pages on the organization of local government.

- DAVIES, GODFREY, - The Early Stuarts, 1603-1660. (1937).
- DOWDELL, E.G., - A Hundred Years of Quarter Sessions - the Government of Middlesex from 1660-1760. (1932).  
Introduction by Sir William Holdsworth. Preface by H.D. Hazeltine. The period dealt with is too late for this book to be of much use here, but the introduction and preface are of value.
- EDEN, F.M., - The State of the Poor. 3 vols. (1797).  
The main feature of interest is the Book of Orders and Directions, printed in full in the first volume.
- GARDINER, S.R., - History of England from the Accession of James I. to the Outbreak of the Civil War, 1603-1642. 10 vols. (1883-1894).
- HOLDSWORTH, W.S. - History of English Law. 9 vols. (1922-1926).
- LEONARD, E.M., - The Early History of English Poor Relief. (1923). There are a number of documents quoted here which relate to the justices' activities in connection with the relief of destitution.
- LIPSON, E., - An Introduction to the Economic History of England. 3 vols. Vols. II and III, (1931); on the Age of Mercantilism, are extremely useful.
- MEREDITH, H.O. - Outlines of the Economic History of England - A Study in Social Development.
- PARKES, JOAN, - Travel in England in the Seventeenth Century. (1925).
- PRICE, W.H., - English Patents of Monopoly. Harvard Economic Studies, Vol. I. (1913).
- PROTHERO, G. W., - Select Statutes and other Constitutional Documents, 1558-1625. (1898). There is a discussion of the justices of the peace in the Introduction, pp. cxii-cxv.
- PUTNAM, BERTHA, - Justices of the Peace from 1558-1688. Bulletin of the Institute of Historical Research, Vol. IV, No.10, June, 1926. This article gives the places where lists of the J.P.'s can be found.
- PUTNAM, BERTHA, - Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries. Oxford Studies in Social and Legal History, Vol. VII. (1924).
- REID, R.R., - The King's Council in the North. (1921).

- SKEEL, C.A.J., - The Council of the Marches in Wales. (1904).
- TAWNEY, R. H., - Assessment of Wages in England by the justices of the peace. Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte, xi, (1913), pp. 307-337, 533-564.
- THOMSON, G. SCOTT- Lords-Lieutenants in the Sixteenth Century. (1923). Gives a good picture of the antecedents of the 17th century local military organization.
- TREVELYAN, G. M. - History of England. (1928).
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- TROTTER, E., - Seventeenth Century Life in the Country Parish. (1919). Useful, but relates only to Yorkshire, and more especially to the North Riding.
- WALKER, G., - Haste, Post, Haste.
- WEBB, S. and B., - English Local Government: the Parish and the County. (1924). Begins at 1688, but contains some instructive remarks on the earlier period.
- WEBB, S. and B., - English Local Government - English Poor Law History, Part I, the Old Poor Law. (1927).
- WILSON, JEAN, - The Administrative Work of the Lord Chancellor in the Early 17th Century. Ph.D. thesis, unpublished.
- WOOD, N. R., - The Reformation and English Education: a study of the influence of religious uniformity on English education in the sixteenth century. (1931).



