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THE ENGLISH JUDICIAL SYSTEM.[1]

THE English judicial system comprises, among others, the following tribunals:—the Courts of Requests; the County Courts; the great courts of original common-law jurisdiction, such as the Common Pleas, King's or Queen's Bench, and Exchequer; the like courts of equity jurisdiction, such as that of the Vice-Chancellors, the Master of the Rolls, the Lords Justices and the Lord Chancellor; the Court of Probate, Divorce, and Admiralty; the Criminal Courts, such as the Petty Sessions, Quarter Sessions, the Oyer and Terminer, and the Central Criminal Court. Finally, there are the strictly appellate courts, such as the Court of Criminal Appeal, the Court of Exchequer Chamber, the Judicial Committee of the Privy Council, and the House of Lords.

These various courts will be grouped together under the following arrangement:—

I. *The Courts of Requests and Councils of Conciliation.*
II. *The County Courts.*
III. *The Superior Courts of Common Law Jurisdiction.*
IV. *The Superior Courts of Equity Jurisdiction.*
V. *The Courts of Probate, Divorce, and Admiralty.*
VI. *The Criminal Courts.*
VII. *The Strictly Appellate Courts.*

[1] The object of this article is to give a general view of the English courts as at present constituted. It has been thought that the use of the new English Reports might thus be materially facilitated. Some comparison is instituted between these courts and those now subsisting in New York.

I. Courts of Requests and Councils of Conciliation.

The organization of *Courts of Requests* is detailed in Tidd's Practice, vol. 2, pp. 988–993. They are substantially courts established in various cities and towns for the recovery of small debts, not exceeding, generally, five pounds. In such cases a plaintiff cannot recover costs if he sue elsewhere.

A Council of Conciliation, to adjust amicably matters of difference between masters and workmen, not including servants in husbandry, may be licensed and thus come into existence under 30 & 31 Vict. c. 105 (1867).

II. County Courts.

There had existed in England from the time when the kingdom was divided into shires or counties, that is from the time of Alfred, a court in every county, known as the *County Court*. They were anciently the chief courts, but after Magna Charta their powers were restricted, and they were ultimately reduced in civil cases to actions involving no greater amount than forty shillings, where the cause of action arose in and the defendant dwelt in the county; in addition to which the practice in these courts was complicated and dilatory as well as expensive, and in certain cases actions had to be brought upon their judgments to render them effectual.

In 1846 (28th August, 9 & 10 Vict. c. 95), an Act of Parliament was passed, by which they were converted into most useful courts, and they are now among the most popular tribunals in England.

Under this act the counties of England were divided into districts, in each of which a County Court was directed to be held, for the recovery of "any *debt*, *damage*, or demand, not exceeding fifty pounds," at least once a month, or at such other intervals as a Secretary of State may direct. There are in England and Wales fifty-two counties, which in 1857 comprised sixty circuits, each circuit embracing several towns or judicial districts, and for each a county judge is appointed by the Lord Chancellor. The city of London proper is not embraced in this arrangement, but has a court of its own for the recovery of small debts, but the other parts of London are.

In addition to its common-law jurisdiction, which has been much

extended, the County Court has recently had important equitable and admiralty jurisdiction conferred upon it (31 & 32 Vict. c. 71); and it may exercise the powers of a Court of Probate in certain cases.

The mode of procedure in law and equity, is regulated by a complete set of rules, found in the "Weekly Notes" of January 11th 1868.

The judge tries an action for the recovery of money, unless, where the amount is beyond five pounds, one of the party demands a jury. Either party may also demand a jury in cases of interpleader, replevin, and proceedings in the nature of *scire facias;* other actions are tried by the judge alone. Ten jurymen are summoned to attend a court for the trial of causes, unless the judge shall otherwise order.

The judge may direct a judgment for money to be collected by instalments, or he may stay the collection or the payment of the instalments temporarily, in cases where the party is unable from sickness or other sufficient cause to discharge the debt.

The judge may in his discretion grant a new trial.

These courts are organized under the following acts: 9 & 10 Vict. c. 95 (28 Aug. 1846); 12 & 13 Vict. c. 101 (1 Aug. 1849); 13 & 14 Vict. c. 61 (14 Aug. 1850); 15 & 16 Vict. c. 54 (30 June 1852); 19 & 20 Vict. c. 108 (29 July 1856); 28 & 29 Vict. c. 99 (1865); 31 & 32 Vict. c. 71.

III. The Higher Common Law Courts.

1. *The Court of Common Pleas.*—The jurisdiction of this court is well known. It is mentioned in *Magna Charta*, and was at that early day fixed at Westminster. It consists of a chief justice and five[1] *puisne* judges. An appeal lies from this court to the Exchequer Chamber, which is in that case composed of the judges of the Courts of Queen's Bench and the Exchequer.

2. *The King's* or *Queen's Bench.*—This court has both civil and criminal jurisdiction. It also keeps inferior courts within the bounds

[1] Each of these courts, until recently, consisted of five judges. An "additional" judge was appointed in each of the courts August 24th and 25th 1868: Weekly Notes 499, September 5th 1868. The authority to make such appointment is found in 31 & 32 Vict. c. 125. The principal object of this increase of number, is to form a "rota" of judges to try petitions of elections—one judge being taken from each court.

of their authority, commands magistrates and others to do their duty when there is no other specific remedy, and superintends all civil corporations. It consists of a chief justice and five[1] *puisne* judges. An appeal lies from its decisions to the Exchequer Chamber, which in that case consists of the judges of the Courts of Common Pleas and Exchequer.

3. *The Court of Exchequer.*—This was at one time both a court of law and a court of equity. Its jurisdiction as a court of equity is abolished and transferred to the Court of Chancery: 5 Vict. c. 5. It is now only a court of law and revenue.

Its ordinary jurisdiction as a court of law was originally gained by a legal fiction. It may now be said that nearly every civil case can be brought before this court, though it cannot issue the prerogative writs of the Queen's Bench. It consists of a chief baron and five[1] *puisne* barons; an appeal lies from this court to the Exchequer Chamber, which in that case consists of the Judges of the Queen's Bench and Common Pleas.

It is enacted by 13 Wm. III. c. 2, that the commissions of the judges of the superior courts shall be made during good behavior, and their salaries ascertained and established; but that they may be removed on address of both Houses of Parliament. By 1 Geo. III. c. 23, and 1 Ann. st. 1, c. 8, they are continued in office notwithstanding the death of the king, for six months after such decease. The rule of life tenure was adopted, "because the independence and uprightness of the judges was looked upon as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of the people; and as most conducive to the honor of the state," Commons Journals, 3d March 1761. Provision is made for a retiring pension after fifteen years' service.

4. *The Commission of Assize and Nisi Prius* tries such causes in the great Courts of Common Pleas, Queen's Bench, and Exchequer, as are ripe for trial by jury. It is composed of two or more commissioners, of whom a judge of the superior courts, or a sergeant at law, or barrister of certain standing, must be one, who are twice in every year (except in certain northern counties) to hold Circuit or "Nisi Prius" courts in each county. This rule does not apply to London and Middlesex, where courts of this

[1] See note on preceding page.

kind are held much more frequently to accommodate the pressure of business. The practical result of this system is, that the judges of each of these courts try questions of fact with a jury, and also sit in *banc* to review the decisions which are made in the court below.

It is substantially the system now existing in New York, and permits a judge to review in *banc* his own rulings at *Nisi Prius*.

IV. The Superior Courts of Equity.

The judges in the Courts of Equity consist of three Vice-Chancellors, a Master of the Rolls, two Lords Justices, and the Lord Chancellor.

1. *The Courts of the Vice-Chancellors.*—The first act upon the subject of the Courts of the Vice-Chancellors, 53 Geo. III. c. 24 (23d March 1813), created a single Vice-Chancellor, known as the Vice-Chancellor of England. Under a late act, 5 Vict. c. 5, two additional Vice-Chancellors were created: see, also, 14 & 15 Vict. c. 4; 15 & 16 Vict. c. 80. These statutes substantially provide that each of the Vice-Chancellors shall hold a separate court, and may exercise all the jurisdiction of the Court of Chancery, subject to the appellate jurisdiction of the Chancellor, or of the Court of Appeal in Chancery. There can be no appeal from one Vice-Chancellor's decision to another. The tribunals of the Vice-Chancellors form substantially three separate courts of original jurisdiction in equity, which are called by the name of the Vice-Chancellors who sit in them.

2. *The Master of the Rolls* was originally the chief of the masters in chancery, and has, for a long period, administered justice in a separate court. His jurisdiction, which was for a long time in dispute, and which formed the subject of a learned examination, attributed to Lord Hardwicke, is now regulated and defined by the statutes of 3 Geo. II. c. 30, and by 3 & 4 W. IV. c. 94, § 24. An appeal lies from his judgment to the Lord Chancellor, or to the Court of Appeal in Chancery. Thus, by reason of this tribunal, there is substantially a fourth Court of Equity of original jurisdiction. The Master of the Rolls is also custodian of the public records: 1 & 2 Vict. c. 94. This judge is sometimes a peer, and can, in that case, of course, participate in the judicial business of the House of Lords. This is the case with the present judge, Lord Romilly.

3. *The Court of Appeal in Chancery.*—The office of Lord Justice of the Court of Appeal in Chancery was created by 14 & 15 Vict. c. 83. This act provided for a Court of Appeal in Chancery consisting of two Lords Justices and the Lord Chancellor. In practice, the court is held, in ninety-nine cases out of a hundred, by the two Lords Justices. It may be held, however, by one of the Justices with the Lord Chancellor, or by the Lord Chancellor alone; or by either of the Lords Justices under certain restrictions alone: 30 & 31 Vict. c. 64; 31 Vict. c. 11. It is only the judicial powers of the Court of Chancery that are vested in this tribunal—except when the Lord Chancellor is sitting alone. The judges of this court may be designated by the Lord Chancellor to sit for either of the Vice-Chancellors, or the Master of the Rolls, in case of their inability to hold a court. The salary of each Lord Justice is £6000, with provision in certain cases of a retiring annuity of £3750, after fifteen years of service. An appeal lies to this tribunal from the decisions of the Vice-Chancellors and Master of the Rolls, and thence to the House of Lords. It is, however, the final Court of Appeal in Bankruptcy Cases, exclusive of the Lord Chancellor.

This court, though always well manned, is considered by the best authorities to have a faulty construction, as the two judges often differ in opinion, whereupon, the case substantially remains undecided. In such a case, there is a technical affirmance of the decree of the lower court.

All the equity judges, already noticed, hold offices during good behavior, in the manner described respecting the judges of the courts of law.

4. *The Lord Chancellor.*—The jurisdiction of the Chancellor is of two kinds—ordinary and extraordinary. In the ordinary jurisdiction he observes the order and method of the common law; the extraordinary jurisdiction is that which he exercises as a Court of Equity.

The jurisdiction of this court is so well known that it is unnecessary to do more than allude to it. The Chancellor holds his office not for life, but at the will of the sovereign. An appeal lies from his judgments to the House of Lords. He hears appeals from the Vice-Chancellors and Master of the Rolls, either alone, or as a member of the Court of Appeal in Chancery. The office may be filled by a person having the title of Lord Keeper, or in

case of a vacancy, by Commissioners who exercise both the common law and statutory powers of the Lord Chancellor: see 3 & 4 W. IV. § 30.

V. Courts of Probate, Divorce, and Admiralty.

1. *Court of Probate.*—It is well known that the Surrogates' Courts of New York are modelled on the plan of the Ecclesiastical Courts, which formerly existed in England. The system now abandoned in England still remains in force in that state.

This change in the English system occurred in 1857. By 20 & 21 Vict. c. 77, as modified by 21 & 22 Vict. cc. 56 and 95, an entirely new organization was introduced. The voluntary and contentious jurisdiction of ecclesiastical and other courts having probate powers ceased. It is hereafter to be exercised by a Court of Probate, having a single judge, who holds his office during good behavior. He must be an advocate of ten years' standing, or a barrister of fifteen years' standing. He receives a salary of £4000, or in case he discharges the duties of either the Court of Admiralty or of Divorce, or of both, £5000. A provision is made for a retiring pension.

This court is a Court of Record, having the powers of the former Courts of Probate. There can be no suit brought therein for legacies, or for the administration of assets. A common-law judge, or judges, may sit with the judge of the Court of Probate. It has the same powers over practitioners as common-law and equity judges. The judge may try questions of fact with a jury, or may send the issue to trial in a court of law. The issue in each case is framed in writing under the direction of the court, which has the same power over the subsequent preceedings as a common-law or equity judge. The judge may sit at chambers with the same power as in open court. The court may appoint receivers *pendente lite.*

The decision of the court in testamentary causes, when made "in solemn form," is conclusive, both upon real and personal estate, if heirs and other persons interested have been duly cited, though probate may be revoked by the court. If the will is proved "in common form," and without opposition, it may be made "sufficient," though not conclusive, evidence in any particular action where its validity might otherwise be drawn in question in this manner:—The party who desires to sustain the will may

give ten days' notice that he intends to offer the will in evidence, whereupon if the other party intends to dispute it, he must give four days' notice of such intention. *Barraclough* v. *Greenough*, in the Exchequer Chamber, reversing s. c. in Queen's Bench, 2 Law Rep. Q. B. 1, 612.

The judge of the Court of Probate and of Admiralty may sit for each other: 21 & 22 Vict. c. 95.

An appeal lies from decisions in contentious causes to the House of Lords.

When personal property is duly sworn to be worth under £200, and real estate under £300, the County Court has contentious jurisdiction, with an appeal to the Court of Probate.

The formal business of probate is transacted in the following manner:—there is a principal registry at London and forty district registries. In each district there is a district registrar; in the principal registry there are four registrars, with record keepers and other officers. The registrars and district registrars are appointed by the judge, and hold office during good behavior; clerks are appointed by the registrar for whom they act, with the sanction of the judge. Some of these officers are removable by the Lord Chancellor, and others by the judge, with the assent of the Chancellor. Registrars and district registrars must be attorneys or solicitors, and are not permitted to practise law. They have the same general powers as surrogates formerly had; they may grant probate in common form, in the name of the Court of Probate. They cannot proceed in contentious causes; when the district registrar is in doubt, respecting his duty to grant or refuse probate, he refers the case in writing to the judge, who may allow or forbid the application, or require it to be made at the principal registry.

Whenever probate is applied for at the district registry, the district registrar immediately gives notice to the principal registrar, who informs him in turn whether there is any other application pending in any other district upon the same estate. Application for probate may be made directly to the principal registrar, instead of to the district registrars.

Lists of all grants of probate and administration are sent within a limited time to the principal registrar.

2. *Court of Divorce.*—Until 1857, divorces could only be had by special Act of Parliament. By 20 & 21 Vict. c. 85, 22 Vict.

c. 108, and 23 & 24 Vict. c. 144, now made perpetual, a Court of Divorce was created, and its jurisdiction defined.

This court is composed of the Judge of Probate, Lord Chancellor, and the judges of the superior common law courts. The Probate Judge is made Judge Ordinary, and may act alone or with the other judges. In his temporary absence, the Lord Chancellor may select from the common-law judges a temporary Judge Ordinary.

The court acts on the former principles of the Ecclesiastical Courts. It may declare a marriage null, or it may dissolve it, award alimony and damages against an adulterer, and make a decree respecting the custody of children. Any judge may try questions of fact with a jury, and may grant new trials; or may order an issue to be framed and tried in a court of law. The judge may act at chambers with the same power as in court. This tribunal has the same power over practitioners as the common law and equity courts. An appeal lies from the decisions of the judge to the full court (which is organized under court rules), and from any decree of the full court annulling or dissolving a marriage to the House of Lords. The judge ordinary may, and usually does, exercise all the powers of the full court, in which case an appeal lies directly to the House of Lords.

This court may also entertain jurisdiction, under certain restrictions, of cases where a declaration of legitimacy is asked for. This declaration is final against all parties cited: 21 & 22 Vict. c. 93.

No action against an adulterer "for criminal conversation," can now be entertained in the common-law courts, but proceedings must be had before this tribunal.

The registrars of the Court of Probate are the registrars of this court, having the same power as surrogates under the Ecclesiastical Law.

3. *The High Court of Admiralty* is held by a single judge. On the retirement of the incumbent in office, when the "Probate Act" was passed (1857), the Queen may appoint the Probate Judge to sit in the Court of Admiralty. Under these provisions, the Crown may appoint the same person judge of the three courts (Probate, Divorce, and Admiralty), and after the union of these offices, they are to be held by the same person.

VI. The Criminal Courts.

The criminal courts may be divided into the superior and inferior. The inferior are the general and quarter sessions of the peace. The superior embrace the assizes, including the commissions of Oyer and Terminer, general gaol delivery, assize, and Nisi Prius, as well as courts held under special commissions, the Admiralty Sessions, the Court of King's Bench, and the Central Criminal Court.

1. *The Inferior Criminal Courts.*

The term, "sessions of the peace," is employed to designate a sitting of justices of the peace, of which there are four kinds, petty, special, quarter, and general sessions. The general and quarter sessions only require notice. The general sessions is a court of record. The court may be divided into two branches for the despatch of business. By statute, it must be held four times a year, and oftener, if occasion shall require. When held at the regular period, it is called the quarter sessions; at other times, the general sessions. In the county of Middlesex the same persons are commissioned to hold the sessions and a Court of Oyer and Terminer, at the sessions house, in the Old Bailey.

Though the court of quarter sessions has, theoretically, jurisdiction over felonies, yet practically, except in Middlesex, it only entertains cognisance of petty larcenies and misdemeanors. Cases may be removed into the King's Bench on *certiorari*. There are also quarter sessions held in corporate towns and boroughs by justices of their own. By 5 & 6 Vict. c. 53, and 7 & 8 Vict. c. 50, counties and boroughs may unite and form district courts.

2. *The Higher Criminal Courts.*

(*a*) *The Assizes.*

These are held before commissioners, among whom are usually two of the common-law judges. They are held twice in each year in every county, except the four northern ones, where they are held only once, and except London and Middlesex, where they are held eight times. For the purpose of holding these courts, England is divided into six circuits.

The commissioners sit by virtue of five commissions: a commission of the peace, of oyer and terminer, general gaol delivery,

and the commissions of assize and Nisi Prius. Though the last two named, are in general, commissions of a civil nature, and have been previously mentioned, they give a somewhat extended criminal jurisdiction to the judges, as, for example, when an indictment is removed by *certiorari*, and is tried at Nisi Prius. The same persons are intrusted with all these commissions, so that they may proceed under all at the same time. Those only which demand special notice are the "oyer and terminer" and gaol delivery.

The commission of oyer and terminer is directed to a considerable number of persons, of whom the judges, sergeants at law and King's counsel therein mentioned, or some of them, must attend. They can only proceed upon an indictment found at the same assizes before themselves. They have jurisdiction over felonies and misdemeanors, whether the offender is or is not in custody.

The commission of gaol delivery is only directed to judicial persons, and authorizes the delivery of the gaol of a particular town named in the commission. They may try indictments found before other justices as well as before themselves; but cannot, in general, proceed unless the offender is in actual or constructive custody.

The judges who take the circuits are in each case appointed by the fiat of the King, under the assistance of the Lord Chancellor.

There are also special commissions of Oyer and Terminer on extraordinary occasions. The course of proceeding resembles that followed under the ordinary commissions.

(*b*) *The Admiralty Sessions.*

An account of the organization of this court is omitted. It is described in 1 Chitty's Criminal Law, pp. 153, 156.

(*c*) *The King's Bench.*

This is the highest court of ordinary criminal justice. It has jurisdiction over all criminal cases; misdemeanors are prosecuted by information, and felonies by indictment. The criminal business of this court relates principally to prosecutions by informations and indictments removed into it from other courts by *certiorari*.

(*d*) *The Central Criminal Court.*

This court was created by 4 & 5 Wm. IV., c. 36, and 7 Wm. IV. and 1 Vict. c. 77 The first act provided for the erection

of a district, to be composed of counties and parts of counties. For the purposes of criminal justice, the district was to be regarded as one county, though it embraced London and Middlesex, and parts of Kent and Surrey. Juries may be taken wholly from one county, or from the several counties, indiscriminately.

This is a high court of original jurisdiction, composed of the Lord Mayor of London, the Lord Chancellor, the common-law judges, the aldermen, recorder, and others named in the act. Any two or more may hold the court. This tribunal includes the court of general gaol delivery for London and Middlesex.

The quarter sessions are restrained within the district from trying certain aggravated crimes. Indictments found at the sessions may be removed into this court by *certiorari*. It has jurisdiction over offences committed on the high seas. Its sessions are held in London or its suburbs, twelve times a year.

The court may be organized in parts or branches, presided over by particular members, and designated as "Old Court," "Second Court," "Third Court," &c.

VII. The Strictly Appellate Courts.

1. *The Court of Exchequer Chamber.*

This is a court consisting of the common-law judges who are not members of the court in which the action was originally tried. Thus, if the action is brought in the Common Pleas, the appellate court consists of the judges of the Queen's Bench and Exchequer. The same remark applies to the other courts. Briefly, it may be said that the system provides an appeal from six common-law judges to twelve.

2. *The Judicial Committee of the Privy Council.*

This is now the ultimate Court of Appeal in cases of admiralty, cases from the colonial courts and India, and ecclesiastical cases, and has jurisdiction over the extension of patents. It was organized by 2 & 3 Wm. IV., c. 92, 3 & 4 Wm. IV., c. 41, and 6 & 7 Vict., c. 38. It took the place of the Court of Delegates, established 25 Hen. VIII., c. 19. It is a court of record, having power to punish for contempt, &c. It is composed of the President of the Council, the Lord Chancellor, the Chief Justice of the Court of King's Bench, the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, the Vice-Chancellors,

Chief Judge of the Court of Bankruptcy, the Chief Justice of the Common Pleas, the Lord Chief Baron, Judges and ex-Judges of the Court of Probate and the Court of Admiralty, two members who have been judges in India or the Colonies, and two persons specially designated by the Crown. The archbishops and bishops, who are privy councillors, are members of this committee only in cases of criminal proceedings in ecclesiastical courts against clerks in holy orders: *Martin* v. *Mackonochie*, 2 Law Rep. (Adm. & Ecc.) 125. This court comprises, at the very least, from twenty to twenty-four individuals, while a quorum consists of four persons, although appeals may be heard under *special order* by three persons: 2 Macq. 575. The peculiarities of this court are that it has no chief, as the Lord President is not a legal functionary; its members hold office during the pleasure of the Crown, as members of the Privy Council, instead of during good behavior, which is the usual tenure: 2 Macq. 612. "Its members sit at a table, and are less like a court than any other judicial body in the world." There is an objection to the organization of this tribunal, growing out of the fact that it is impossible to tell in advance who will hold the court.

On the other hand, it is advantageous to be able to select as members of the court persons who have made the topic in question a special and particular study. Thus, in the decision of cases coming from India, members of the Privy Council will be selected who have had judicial experience in the law of that country. It is, however, said that this supposed advantage amounts to little in practice, for there are no colonial judges now members of the court, and but two judges from India who are retired Chief Justices of the Supreme Court of Calcutta. The committee does not sit regularly, and there is no "Privy Council Bar:" 25 London Law Magazine, &c., 296 (A. D. 1868). This court proceeds, in certain cases, according to the course of the civil law; may order witnesses to be examined on appeal; may direct issues at common law, and remit a cause to the court below for a rehearing.

The cardinal objection to the scheme is that there are two coordinate courts of final appeal: the House of Lords and this judicial committee. There is thus danger of a conflict of decision and of precedent. A certain class of cases reaches final adjudication in the one court, and a certain class in the other. It can-

not be denied that the decisions of this committee have been highly satisfactory, owing to the eminent ability of the men who have participated in them. It has been recently recommended by eminent gentlemen that instead of a double appellate court, there should be something resembling a judicial committee of the House of Lords, upon which leading lawyers might be placed who are not members of the House of Peers. They might report to the House of Lords, which would rarely, if ever, differ from the report. The judicial committee of the Privy Council might thus be abrogated. The present organization is due to the recommendation and exertions of Lord BROUGHAM; but his scheme has recently been pronounced a substantial failure: 25 London Law Magazine, *supra*.

3. *The House of Lords, acting Judicially.*

Theoretically, this court consists of the entire number of the House of Lords; practically, none participate in decisions except those who are known as "law lords," being persons who are peers, and are acting judicially, or who have theretofore held judicial positions. The House may call in the common-law judges to advise and assist them, but the latter cannot give a decision, nor even ask a question, and their advice may be overruled: 2 Macq. 582, 599. The equity judges cannot be summoned unless they are Privy Councillors.

The difference between the theoretical and practical organization of the House of Lords leads to results sufficiently curious. As a matter of theory, "there is nothing in the resolution of the House, nor in law or anything except the general understanding and practice of the House, which would debar any half-dozen of the House coming down, and sitting upon appeals and overruling the Law Lords." In practice, the only use of the lay lords is to constitute a quorum. As the rules require that three should constitute a quorum, when only one or two "law lords" are present, one or two lay peers must be called in simply to form a quorum. They are termed in ridicule, "lay figures," take no part in the decision, and do not feel bound to pay any attention to the proceedings.

On a recent occasion, the Lord Chancellor alone constituted the "House of Lords" with two lay peers to form a quorum. He may thus sit on appeal from his own decision, and his vote alone

will sometimes affirm his own decision: 2 Macq. 584, note. Ordinarily the court consists of from three to five "law lords." Of the present "law lords" not one has ever been a judge in the common-law courts, though several of them have had great experience in the equity tribunals.

The leading objections to this court are: (1.) That its members are not bound to attend. As the attendance of members is gratuitous and voluntary, they are frequently absent. (2.) It holds its sessions only during the sitting of Parliament, so that there is much delay in the disposition of causes. (3.) It has lost much of its hold upon the public esteem by the spectacle of single judges sitting in review of their own decisions. Mr. Lewis says: "The paucity of legal members, the absence of any constitutional obligation upon legal members (except the Chancellor) to attend the transaction of judicial business, the irregularity of attendance which the engrossing avocations of those who hold judicial office elsewhere renders in their case unavoidable, the advanced years to which most have in general attained, who, by success in forensic life, reach the peerage—these circumstances have led to a want of confidence in the constitution of this high court, and a feeling of uncertainty in its administration of justice, which has occasionally been justified by the spectacle of one peer sitting in error from the judgment of a court composed of a plurality of judges; or again, the decision of judges specially versed and accomplished in the branch of jurisprudence involved, reviewed by a peer or peers having no such experience, and endowed with no such special knowledge; or again, two peers only attending and differing; or lastly, a single peer sitting alone in one character to adjudicate upon a complaint against the decisions already pronounced by him in another:" Papers of Juridical Society, Vol. 1, 142.

In order to relieve some of the difficulties of the case, a "deputy-speaker," who is a member of the bar, is sometimes appointed. He is not permitted to deliver his opinion in the House, but must retire to an adjoining room, where he can speak. After thus delivering his opinion, he returns to his seat, and remains silent. Then a layman, who is a peer, may move for judgment in accordance with his opinion.

It would seem that the whole of this awkward and complicated machinery might be avoided, if the simple method already alluded

to was adopted. A judicial committee of the House of Lords might be constituted, which should report its decisions to the House, where they might be formally affirmed.

There is a subordinate committee in the House of Lords which attends to much of the formal business connected with appeals, disposing of points of practice.

4. *Court of Criminal Appeal.*

This court is established by 11 & 12 Vict. c. 78. This statute provides that when a person has been convicted before a court of oyer and terminer, gaol delivery, or quarter sessions, the judges before whom the cause was tried may reserve the questions of law arising on the trial for the consideration of the common-law judges. A quorum consists of five members, of whom one shall be chief justice, or chief baron of one of the superior courts. The questions are presented upon "a case," and are argued as before a court in full bench and judgment delivered. The court may make such order in the matter as justice may require, and on reversal may pronounce the proper judgment, or remit the record to the court below for the proper judgment. See 3 Cox's Criminal Cases, Appendix, 3.

VIII. Courts not Described.

There is a considerable number of courts which are here mentioned simply for the sake of completeness. They are the courts of law and chancery in the counties palatine of Lancaster and Durham, the Court of Bankruptcy, the Consistory Courts, the Court of Arches, Courts Martial, Court of Chivalry, Courts Baron, Court of the two Universities, Court for the trial of Impeachments, and of the Lord High Steward. These courts are not described at length, as they are either local in their character, or their nature is such as to attract but little attention from the profession in this country.

T. W. D.