STUDIES IN ENGLISH CIVIL PROCEDURE.

III. THE COUNTY COURTS.*

There are two aspects in which procedure in English county court actions may be viewed by American lawyers interested in procedural reform. Because the county court is essentially a small debt court, it is instructive to the municipal tribunals that are coming into being in all our metropolitan centres; and because it is a unit in a system of local courts covering the whole of England its relation to the rest of the system offers suggestive analogies to those who look forward to the time when the local or county courts in each of the American States will be consolidated into one great court covering the entire State.

It is not proposed here to draw illustrations from the varied powers of the English county court over equity, bankruptcy, or admiralty matters, or over many subjects of special statutory jurisdiction, but to restrict the description to the ordinary business that constitutes the bulk of its proceedings. Again, although its jurisdiction ¹ now includes (with a few exceptions) all civil actions ² in which the value of the subject matter, debt or damages, land or goods, does not exceed £100, yet by far the most of the actions brought in it are for sums under £20, the limit set for the county court jurisdiction when it was created by statute in 1846.³ In fact the average sum sued for during the last

*For Part One, The Atmosphere, see 63 Univ. of Penna. L. Rev. 165; for Part Two, The Rule-Making Authority, see 63 Univ. of Penna. L. Rev. 151.

¹ For a complete account of English county court jurisdiction and procedure in brief compass, see vol. 3 of Stephen's Commentaries or vol. 2 of Odgers' Common Law. There are two handbooks of recent date: C. Jones' County Court Guide (1909) and County Court Practice Made Easy (1911), both published by Effingham Wilson (London). A review of the history and powers of the county courts may be found in an essay by the late Sir Thomas Snagge: "Fifty Years of the English County Court," in 42 Nineteenth Century 560 (1897).

² There is no jurisdiction over criminal matters in the county courts.

³ Of the 1,224,000 plaintiffs entered in 1913, 1,207,000, or 98½ per cent., were under £20, and only 3,204, or 1.3 per cent., were over £50.
twenty-five years has been about £3, in spite of an annual aver-
age of nearly one million two hundred and fifty thousand actions
begun. Another important feature of county court work is
that the number of seriously disputed claims, in proportion to the
whole number of plaints, is very trifling. Over ninety-nine
per cent. of all the judgments rendered are for the plaintiff, and
of these more than one-half are given in default of either appear-
ance or defence.

The county court is essentially, therefore, a means for the
enforcement of small debts which are undisputed, with only an
occasional disputed claim to be separated out from the rest, and
its procedure is constructed accordingly. The main outlines of
the procedure in ordinary cases are exceedingly simple. The
plaintiff goes to the office of the court, enters his plaint, and is
told when to come back for the hearing; a summons is thereupon
filled out in the office and served by a bailiff of the court, notify-
ing the defendant that he must appear on the return day and de-
fend the action; on the return day, both parties must attend in
court personally, the action is heard, and judgment is entered
according to its issue. No formal “appearance” is entered, there
are no written pleadings, and in a large proportion of cases the
parties appear in their proper persons, without attorneys to
speak for them.

American readers will recognize in this a summary proced-

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4 The raising of the limit of jurisdiction in 1903 from £50 to £100 had no
effect upon the size of the average sum sued for, and increased the total
number of actions brought by only .2 of 1 per cent.
5 A county court action is begun by “entering a plaint.”
6 There is no “appearance,” in a technical sense, required in the county
court. All the defendant must do is come to the hearing.
7 In 1913 out of 802,600 judgments rendered, 794,500 were for the plain-
tiff. Yet out of this enormous volume of cases determined, less than one
in a thousand were appealed or re-tried; there were 167 appeals and 621 new
trials, that is 8 out of every 10,000; and many of these “new trials” were
not re-trials, but merely in the nature of hearings on motions to open default
judgments.
8 In 1913, out of over 800,000 actions in which judgment was given, less
than 32,000, or about 4 per cent., were heard by a judge or a judge and jury.
Many small disputed claims are, however, heard by the registrar, as to which
see below.
ure identical with that in use throughout the Union before the minor judiciary variously styled magistrates, burgesses, justices of the peace, etc. But there the likeness ceases. The English county court is equipped with a personnel, and with special machinery for adaptation to the needs of defended actions, which are so superior to those possessed by American minor courts that it would only be confusing to regard them as similar institutions. Instead, an attempt will be made to give a somewhat completer sketch, though only a sketch, of a county court action that runs the average course, to use as a sort of outline map into which the reader can insert, on a scale true to their relative merits, the procedural details which are here selected for especial mention.  

I

Outline of Procedure.

I. Entering a plaint is, then, the first step taken in an action. To do this the plaintiff files a praecipe which he has filled out according to instructions printed on it, stating his own name, address and occupation, and those of the defendant, and stating also what the claim is for. We will suppose the case of the B Supply Company suing Brown, a grocer, for £3 "for goods sold and delivered". As the sum is over £2 the plaintiff must file with his praecipe two copies of particulars of the claim; these are merely copies of the usual invoice for the goods, one for the court and one to be served on the defendant. Handing the praecipe and the copies of particulars to the proper clerk in the office of

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9 Procedure in the county courts has changed very little in outline since they were founded in 1846. The following is a list of county court practice books in chronological order, which shows the development from time to time:

Anderson (1830, practice in the old local courts superseded by the county courts); Archbold (1848); Cox & Lloyd (1850); Broom (1858); Pollock (1864); Shortt (1868); Heywood (1876); Pollock (1880); Davis (1886); Lewis (1890); Annual or Yearly Practices since then. They present an interesting panorama.

10 All necessary forms are prescribed in the appendix to the County Court Rules of which two annotated editions are published annually—the Annual and Yearly—by private enterprise. Blank forms are supplied to parties without charge by the office of the court.
the court, together with the plaint fee, the plaintiff is given in return a "plaint note". This serves several purposes. It is primarily a receipt for the plaint fee, which identifies the plaintiff and must be produced by him on all subsequent occasions when he applies for anything to the court. It also informs the plaintiff of the number his action has been given, and, what is most important, the day and time when his action will be heard. This day and time are fixed by the clerk according to the volume and state of the business in the court; if the court is in London or one of the big cities and sits continuously, the custom is to set down from one hundred to one hundred and fifty actions for hearing on one day, then to put down the next one hundred to one hundred and fifty for the next day, and so on, the result being that the hearing is usually fixed for a day three weeks or a month distant from the day the plaint is entered. Each batch of thirty to fifty summonses is fixed for the same hour, 10.30, 11.30 or 12.30. In the country districts where a court usually sits only one or two days a month, the hearing is put down for the next sitting of the court. The plaintiff then takes his plaint note and goes away to await the hearing day.

2. In the office of the court a summons is written out from the instructions in the praecipe. The form of this summons is so interesting that it is worth quoting in full. On its face are printed these words, under the usual caption:

"You are hereby summoned to appear at a county court to be helden at on the day of , at the hour of in the forenoon, to answer the plaintiff to a claim, the particulars of which are hereunto annexed.

Registrar.

Debt or Claim
Costs of Plaint
Solicitor's Costs

Total Amount
Dated this day of , 1915.
To the defendant. N. B.—If you owe the money, and will

This is 1s. in the £, and 1s. in addition if the claim is over £2, the total not to exceed £1.11. On a plaint for £3 and costs the fee would therefore be 5s.
consent to a judgment, you will save half the hearing fee\textsuperscript{12} (see back).

Letters must be addressed to ‘The Registrar,’ County Court, …

On the back of the summons are these directions:

“If you confess the Plaintiff’s claim,—by doing which you will save half the hearing fee,—you should sign a confession, printed forms for which may be obtained at any office, before the Registrar of any Court, and forward it to the Registrar of this Court FIVE CLEAR DAYS (or if the claim exceeds £50 TEN CLEAR DAYS) before the return day, that is, the day of trial. The confession, if not signed before a Registrar, must be signed before a solicitor; but you may deliver your confession to the Registrar of this Court at any time before the action is called on, subject to the payment of any further costs which your delay may have caused the Plaintiff to incur.

“If you and the Plaintiff can agree as to the amount due and the mode of payment, and will, before the action is called on for trial, sign a memorandum of such agreement at the Registrar’s office of this Court, or before a solicitor, you will save half the hearing fee.

“If you pay the debt and costs, as stated in the Summons, into the Registrar’s office FIVE CLEAR DAYS (or if the claim exceeds £50 TEN CLEAR DAYS) before the day of trial, you will avoid further costs, unless the Court orders you to pay any further Costs properly incurred by the Plaintiff before receiving Notice of such payment; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the Plaintiff to incur.

“If you admit a part only of the claim, you may, by paying into the Registrar’s office the amount so admitted FIVE CLEAR DAYS (or if the claim exceeds £50 TEN CLEAR DAYS) before the day of trial, together with costs proportionate to such amount, avoid further costs, unless the Plaintiff proves at the trial an amount exceeding your payment, or the Court orders you to pay any further costs properly incurred by the Plaintiff before receiving Notice of such payment.

“If you intend to dispute the Plaintiff’s Claim on any of the following grounds,—

\textsuperscript{12} The hearing fee is 2s. in the £. The American reader will ask: “Why need there be a hearing at all, if the defendant ‘will consent to a judgment’ and why should he pay even half the fee?” The answer is that judgment debtors practically never pay the debt in one payment; the order made by the court is almost invariably for payment by instalments, and the hearing is necessary so that the size and frequency of the instalments can be arranged or approved by the court.
"1. That the Plaintiff owes you a debt which you claim should be set off against it;
"2. That you were under Twenty-one when the debt claimed was contracted;
"3. That you were then, or are now, a married woman;
"4. That the debt claimed is more than six years old;
"5. That you have been discharged from the Plaintiff's claim under a Bankruptcy or Insolvency Act;
"6. That you have already tendered to the Plaintiff what is due;
"7. That you have a Statutory or equitable defence;
"8. That you intend to rely on fraud or misrepresentation.

"You must give notice thereof to the Registrar FIVE CLEAR DAYS (or if the claim exceeds £50 TEN CLEAR DAYS) before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the Registrar as many copies of such notice as there are Plaintiffs, and an additional copy for the use of the Court. If your DEFENCE be a SET-OFF, you must, with the notice thereof, also deliver to the Registrar a statement of the particulars thereof. If your DEFENCE be a TENDER, you must pay into Court the amount tendered.

"If the debt or claim exceeds five pounds you may have the action tried by a Jury, on giving notice in writing at the Registrar's office TEN CLEAR DAYS (or in actions under the Employers' Liability Act, 1880, FIFTEEN CLEAR DAYS) before the day of trial, and on payment of eight shillings for the fees of such Jury.

"Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the Registrar of this Court, upon payment of the proper fee."

The defendant understands from this advice that it is cheaper to settle than to delay. The summons is then turned over by the office to the high bailiff of the court, for service. In each court there is a high bailiff whose duties consist in supervising the service of all process that issues from the court, and in holding goods or persons taken in execution. He will send out one of his bailiffs to serve the defendant with the summons. In the High Court the writs are served by the plaintiff's solicitor; there is no court officer to perform that function; but in the county courts, although it is permissible for the plaintiff in exceptional cases to have his solicitor (when he employs one) serve the summons, the rules require service in the ordinary case to be by a bailiff, as that eliminates a great deal of confusion due to improper service, especially in the large number of cases where
the plaintiff does not employ a solicitor. The summons must be served at least Ten Clear Days before the day fixed for the hearing (the return day), and it is usually served by delivering it to the defendant personally or to some person apparently not less than sixteen years old at his place of dwelling or business.

3. In the average defended action and in nearly all undefended actions, nothing happens between the service of the summons and the day of the hearing, except that in the former necessary witnesses may be subpoenaed. The defendant needs to enter no formal "appearance", and there are no written pleadings. If there is a real defence, the defendant may require the plaintiff to give him better particulars of the claim, or the parties may interrogate each other or obtain discovery of documents. These steps are carried out in practically the same manner as in the High Court, from the practice of which they are copied. Or the defendant may, as the summons requires him to do, give notice of some special defence. Such notices are comparatively rare.

4. On the return day the plaintiff goes to the court with his books or papers, ready to prove his claim. The first thing he must do is to pay the hearing fee. Then he is directed to go into the registrar's court to wait for his case to be called. The functions of the registrar are the secret of the county court's efficiency, and explain how a small staff of fifty-five judges is sufficient to dispose of an annual average of one million and a quarter of actions. Every case is first 'called' in the registrar's court. We come back to our case of the B Supply Company v. Brown. The Supply Company's manager has come into the registrar's court at 11.30 on the hearing day as directed. From the doorkeeper he learns that his case is the tenth on the 11.30 list, and he listens for his name. The registrar is sitting in wig and gown at a table slightly raised above the floor; to right and left of the

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23 A good description of High Court procedure can be found in Stephen or Odgers cited in note 1, and especially in A. M. Wilshere: Procedure in an Action in the King's Bench Division. (London, 1913.)

24 Fees are many and high in the county courts, owing to the policy of the Treasury that the courts ought to be self-supporting.
table are witness boxes, one plainly labelled "Plaintiff," the other "Defendant". When the Supply case is called the manager promptly steps into the "Plaintiff" box, and Brown, who is in court, steps into the box marked "Defendant". Then the following conversation ensues:

Registrar (to Brown): Do you owe this money?
Brown: Yes, I do.
Registrar: Well, how can you pay it?
Brown: I can pay five shillings a month.
Registrar (to Supply Company's manager): Will you take five shillings a month?
Manager: He can pay more than that, sir. He's had these goods and sold them.
Registrar: What do you suggest he can pay?
Manager: He ought to pay at least a pound a month.
Brown (protesting): I couldn't do it, business is very bad now.
Registrar (to manager): Will you take ten shillings a month?
Manager: Yes, if he will promise to keep it up.
Registrar: Judgment for £3 and costs, ten shillings a month, first payment in twenty-eight days. Next case.

The whole thing is over in a very few minutes. Frequently the defendant instead of coming into court, merely writes a letter to the registrar, admitting the debt and offering to pay certain instalments. If he has done that, the registrar informs the plaintiff of the offer, which is usually accepted unless the instalments are manifestly too small, when the registrar will increase them in his order. Lastly, it frequently happens that the defendant neither writes nor appears. In that case the plaintiff is sworn and testifies to the truth of his claim; thereupon the registrar will give judgment, in instalments according to the defendant's occupation and the size of the claim. The amount of the judgment is seldom made payable forthwith, and then only if the plaintiff satisfies the registrar that the defendant has means enabling him to comply with such an order. In many busy courts over a hundred judgments will be given in this way in the course of a morning, and some work even faster.

5. The other possibility is that Brown appears and, in answer to the registrar's question, replies that he disputes the claim.
In our hypothetical case the claim is over £2; if it had been under that sum the registrar would ask Brown and the plaintiff to wait until the end of the list, and he would then try the case himself.\textsuperscript{15} But as it is over £2, the registrar says: "You must go into the judge's court and wait there for your case to be called." If the parties are afraid the judge's list for the day is heavy, and that they will have to wait around most of the day, they will, if the case is simple, ask the registrar to take it, and he will either hear it at the end of the "undisputed" list, or make an appointment with the parties to hear it early in the forenoon. But if the case is such that the parties prefer to go before the judge, they go into the next room, where the judge is holding court, and they wait to be called; the registrar sends the papers in to the judge's clerk, who adds them to the list of business for the day. Thus, of all the mass of actions begun, only those as a rule in which over £2 is claimed, and where the parties prefer the judge to the registrar, ever go beyond the registrar to the judge. In 1913, out of over eight hundred thousand judgments entered, only thirty-one thousand eight hundred were rendered by the judge.\textsuperscript{16}

6. In the judge's court the day is opened with minor applications made to the judge in respect of cases which have previously been transferred to his list; then any adjourned cases which have stood over from previous trial days are taken. These matters occupy the judge until cases begin to come in from the registrar's court next door, after which the judge's list is "fed" with cases sent in from the registrar. In very few cases is there a jury. There were only eight hundred jury cases in 1913 as against thirty-one thousand heard by a judge alone. A county court jury, by the way, contains only eight jurors. If the case of B Supply Company against Brown is so far down the list that it cannot be reached on the same day the judge will permit the parties to go, and the judge's clerk will fix a day later in the

\textsuperscript{15}The registrar must first ask the parties if they wish him to hear the case, and they almost invariably do. O. 22, R. 25.

\textsuperscript{16}All the rest were rendered by the registrars, in one of the ways enumerated in the preceding paragraph in the text, with the exception of 83,000 "undefended default summonses," which will be explained below.
month when the case will be taken as an adjourned one and heard first in the list. But usually cases are finished off and judgment rendered on the original return day. In disputed cases the parties are usually represented at the trial by solicitors, who have the right of audience in the county courts; where the amount involved is sufficient to warrant paying several guineas in counsel fees, a barrister will be briefed, as well as in the rare cases where a point of law must be carefully presented.

7. All judgments and orders, whether made by the registrar or by the judge, are formally notified by the court to the defendant through the mail on printed forms, so that he knows exactly what he is called upon to do. Our friend Brown has been ordered to pay ten shillings a month, the first instalment in twenty-eight days. All money paid under judgments must be paid not to the plaintiff but to the court. The office of a county court is, to a certain extent, a small banking institution where innumerable small accounts are constantly running. Each payment made by a judgment debtor is credited to the account opened for the action, and the creditor is entitled whenever he pleases to draw out what money there is standing to the credit of that account.

On the notice of judgment sent to the debtor is printed a column in which his successive payments of instalments are receipted for by the court.

8. If Brown pays up his instalments regularly the Supply Company is satisfied and we have no further interest in him. But let us suppose he does not pay the first instalment; the Supply Company gives him plenty of time, but the following month he makes default in the second instalment as well, and persuasion being useless the aid of the court must be invoked. If Brown has sufficient goods an execution levied on them will bring him to terms, as a default in any one instalment makes the whole debt

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17 In London the case would be adjourned to a subsequent week of the month, but in the country courts, where the judge sits only once a month, it would have to go over to the subsequent month. To avoid that judges often sit until very late in the day in country places, to clear off the list. In some of the larger courts jury cases are grouped together for one week in the month.

18 In 1913 there was received and paid out again to suitors about £2,700,000.
payable at once. But frequently a debtor is able to claim exemp-
tions which will make it useless to levy execution for a small sum
like £3 and costs;\textsuperscript{19} in such cases the creditor must resort to the
"judgment summons". If he can prove that since the date of the
judgment the debtor has had means with which to pay the debt
and has failed to pay the instalments as ordered, the court has
power to commit the debtor to prison for a term not exceeding
six weeks; it is therefore in form an imprisonment for contempt
of court, although in practice its effect is to enforce the payment
of debts.\textsuperscript{20} If the debtor has in fact the means to pay, it is ob-
vious that the threat of imprisonment will be more efficacious
than a levy on his goods.\textsuperscript{21} The procedure is as follows: The
plaintiff fills in a simple praecipe stating the fact of the judg-
ment and the default, and, upon leaving that at the court
office with the fee, a return day is fixed. The summons is filled
out in the court office and served by a bailiff; it must be personally
served. After stating the facts upon which it is based it con-
tinues:

"You are therefore hereby summoned to appear personally in
this court on the day of , at the hour of
o'clock in the forenoon, to be examined on oath by the court touch-
ing the means you have or have had since the date of the said
judgment to satisfy the sum payable in pursuance of the said judg-
ment; and also to show cause why you should not be committed to
prison for such default."

The summons is made returnable not before the registrar,
but before the judge himself, as this is a matter touching the
liberty of the subject. Judgment summonses are always made
returnable, in the big courts, on one or two days in each week,
and heard early in the morning before the regular trials begin;

\textsuperscript{19} In 1913 there were issued 326,000 executions against goods and less
than 3,000 sales were made.

\textsuperscript{20} The procedure is under sec. 5 of the Debtors Act, 1869 (32 and 33
Vict. c. 62). A full discussion of its merits will be found in Section VII,
in a subsequent instalment of this article.

\textsuperscript{21} In 1913 there were 407,000 judgment summonses issued as against
335,000 executions against goods. There may be more than one judgment
summons for the same judgment, as a judgment summons is issuable in
respect of each instalment in which default occurs.
the same time usually elapses between issue and hearing of a judgment summons as of an ordinary summons.

In many cases the service of this summons is itself sufficient to evoke the cash, and the proceedings go no further, but if it fails to do that then on the hearing day both parties attend in the judge's court and step forward when the case is called. They are sworn and the plaintiff states briefly his knowledge of the defendant's means. It is essential that he should know something about this, as the Act puts the burden on the plaintiff of proving that the debtor has means. The usual result is, on the first judgment summons, that the judge, if convinced the debtor should have been able to pay, will make an order committing the debtor to prison, but at the same time he will suspend the committal and, as a rule, reduce the size of the instalments payable, so as to help the debtor to pay. The practical result is that the debtor feels himself a step nearer jail and will do his best to pay; many of them do pay up at this stage. The order as made refers only to the instalments for which the debtor is in default, not to the balance payable later.

9. If the debtor still fails to pay the instalments, as modified, the plaintiff must issue another judgment summons, which will be served and heard as before. On this occasion the judge will inquire more carefully into the debtor's means, and if he is again satisfied the debtor should have paid, he will order his committal. But the order is usually in this form: "Imprisonment for fourteen days, execution suspended for a month." That means that although the debtor's arrest is formally ordered, he has a month to think it over. This final locus poenitentiae is very effective, as more than one-half of the arrests ordered are forestalled at the last moment by payment of the amount in default. But if the debtor still fails to pay, the plaintiff proceeds

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22In 1913 out of 407,000 judgment summonses issued only 259,000 were heard.
23In 1913 there were 223,000 orders of commitment made and of these 65,000 went no further.
24In 1913 out of 158,000 warrants of arrest issued, only 43,500 were actually executed. Of the rest, 87,500 were paid before arrest and 27,000 were dropped or were still outstanding at the end of the year.
by leaving at the court office a praecipe for a writ of execution directed to be levied upon the debtor’s body instead of his goods. This is the warrant of arrest, and it is served, as before, by a bailiff who is sent to take the debtor into custody. The service of this warrant is itself, as a rule, sufficient, as all but a very few of the debtors arrested pay up at once. But if the debtor still refuses to pay, he is taken off to jail. Once landed there he may make a final effort to get the money, but the more recalcitrant or the more unfortunate serve their full term, which is usually fourteen days. A debtor can be imprisoned only once in respect of the same unpaid instalment. But if he makes default in any subsequent instalment, the whole process can be set in motion again, except that the judge will be less unwilling to order the arrest of a debtor of whose stubbornness he is convinced, and will probably make the term of imprisonment longer the next time it is ordered.

It does not profit the plaintiff to push a judgment summons too far, as, if the debtor cannot in fact pay, the plaintiff loses the costs of the summons and the hearing.

10. The preceding nine paragraphs outline the procedure common to all defended actions in the county court. There remains to add a description of the “default summons”, which is a separate method of beginning actions when the claim is for a liquidated amount and not likely to be disputed. The old common law divided actions according to the form of writ, into those of tort and contract; the new procedure divides them into classes according to the nature of the claim—liquidated or unliquidated—recognizing the simple fact that less proof and less mutual information are required for the one than for the other. In the High Court this is represented by the “special” indorsement and the subsequent steps under Order XIV; in the county court there is also a form of special indorsement although the

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25 In 1913 out of 43,500 debtors arrested, 37,500 paid after arrest and were released without imprisonment.

26 In 1913 out of 6,000 debtors imprisoned 2,000 were released before the expiration of the term of imprisonment and 4,000 served the full term.

27 In 1913 out of 259,000 judgment summonses heard, 36,000 were dismissed. The fee on the summons is 3d. in the £, plus 6d., up to 5s.
facilities of Order XIV have not yet been introduced; it is the
default summons. The county court default summons is,
like the ordinary summons previously described, a notice to the
defendant that an action has been begun against him in respect
of the sum mentioned thereon, with this in addition: part of
it is separated from the rest by a perforated line, so that it may
be torn off; on this part is printed a “Notice of intention to de-
defend”, and the body of the summons notifies the defendant that
unless he sends back to the court this notice within eight days,
the plaintiff will be at liberty to enter judgment for the amount
claimed. The praecipe for the summons is similar to that for an
ordinary summons, but with it must be filed an affidavit of debt
and two copies of particulars of the debt, whether it exceeds £2
or not; furthermore, this default summons must be personally
served upon the defendant, and no other form of service will
suffice. The summons, and all papers connected with it, such as
praecipe, affidavits and judgment, are printed on a salmon-
colored paper, to differentiate them clearly from the ordinary
summons, which is printed on white. The form of the summons
is as follows:

“Take notice that, unless within eight days after the personal
service of this summons on you, inclusive of the day of such service,
you return to the registrar of this court, the notice given below,
dated and signed by yourself or your solicitor, you will not after-
wards be allowed to make any defence to the claim which the plain-
tiff makes on you, as per margin, the particulars of which are here-
unto annexed; but the plaintiff may, without giving any further
proof in support of such claim than the affidavit filed in court

28 The High Court Order XIV procedure is a development of Sir Henry
Keating’s Act (the Bills of Exchange Act, 1855). This Act was repealed,
as far as the High Court was concerned, by a Rule of Court in 1880 for-
bidding the bringing of any actions under it. But in the county court the
Act is still applied. Default summonses on the other hand, developed from
different, though contemporaneous source. They were originally recom-
mended by Lord Brougham’s County Court Reform Commission of 1855
(see 25 Law Times 163) for claims above £20, and enacted accordingly in
sec. 28 of the County Court Act, 1856 (19 and 20 Vict. c. 108); in 1867 a
further Act extended them to claims under £20 for goods sold and deliv-
ered for use in the way of trade (30 and 31 Vict. c. 142, s. 2); in 1875 they
were given their present form, applicable to any liquidated claim within the
county court limit (38 and 39 Vict. c. 50, s. 1). The present Act reproduces
it (sec. 86, Act of 1888). See Davis: County Courts Practice (6th ed.,
herein, proceed to judgment and execution. If you return such notice to the registrar within the time specified, the registrar will send you by post notice of the day upon which the action will be tried:

**NOTICE OF INTENTION TO DEFEND.**

In the County Court of , holden at

vs.

I intend to defend this action.

Dated this day of , Defendant.

Address to which notice of trial is to be sent

On the back appears the following advice to the defendant, in addition to clauses as to special defences like those printed on the ordinary summons:

"If you pay the debt and costs, as per margin on other side, into the registrar's office before the expiration of eight days from the date of service of this summons, inclusive of the day of such service, and without returning the notice of intention to defend, you will avoid further costs unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

"If you do not return the notice of intention to defend, but allow judgment against you by default, you will save half the hearing fee, and the order upon such judgment will be to pay the debt and costs forthwith [or by instalments (to be specified as in plaintiff's written consent)].

"If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons; and you may, by paying into the registrar's office at the same time the amount so admitted, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment, or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment."

The default summons is used by plaintiffs in every case where the claim is liquidated and they are reasonably certain the defendant can be personally served. In about one-third the cases where it is used the defendant does not return the notice of defence, and the plaintiff gets his judgment eight days after

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[^29]: In 1913 out of 1,224,000 actions begun 244,500 were by default summons.
service. This is a distinct advantage over the ordinary summons, upon which judgment cannot be obtained before the return day, three weeks or a month away. If, however, the defendant returns the notice (which is usually done by mail) the court office will fix a day for the hearing, usually about two weeks off, and send notice of it to both parties by mail. Thereafter the procedure is the same as on an ordinary summons. In nine cases out of ten the notice of intention to defend is sent in merely to gain the two or three weeks' time before the hearing; in exchange for which the defendant must pay the hearing fee, of which he is warned on the back of the summons.

II

Court Organization.

Scattered over England and Wales without any very apparent method are nearly five hundred of these local courts, the sizes of which vary from Birmingham, with its fifty thousand plaintiffs a year, to tiny places like Belford and Rothbury in the Cheviot Hills with less than a hundred between them. When the courts were established in 1846 their districts coincided approximately with the Poor Law Unions, for lack of any systematic local divisions like the American county, township and borough, but with changes in population and means of communication, alterations have been made from time to time by Orders in Council under the successive County Courts Acts. At present the courts are grouped into fifty-four geographical circuits and each circuit is traveled by one judge, the size of the circuit being such that he can conveniently cover it every month in from fifteen to twenty-one days. In the largest circuits, as in London, Birmingham, and Manchester, there are only one or two courts in the circuit and the judge does no travelling, except to alternate occasionally with the judge of an adjacent court;

In 1913 out of 244,500 default summonses 83,000 judgments were entered without the "notice of intention to defend."

At present section 4, 1888.
some of the big circuits have two judges, so that there are fifty-seven judges in all; the Act allows sixty. In case of illness or unavoidable absence, a judge may appoint a barrister to act for him as deputy, subject to the Lord Chancellor's objection, or the Lord Chancellor may appoint one; and any judge may act for any other judge, upon request. The latter power is occasionally taken advantage of by a judge who wishes to sit in a different court, for the benefit of the change; a town judge and a country judge, for instance, will change places for awhile.

Barristers of at least seven years' standing are eligible for appointment to county court judgeships. The appointment, which is for life, is made by the Lord Chancellor or by the Chancellor of the Duchy of Lancaster. The custom is, upon the occurring of a vacancy, for eligible barristers to inform the Lord Chancellor by letter that they are in a receptive mood. The salary is £1500 a year, with traveling expenses in addition, and there is a pension. Many lawyers of high calibre are to be found on the county court bench, as the appointments have, on the whole, been remarkably free of political bias. The only promotion at present provided is that judges who are at first appointed to provincial circuits may later be transferred to metro-

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32 Sec. 8, 1888. For a readable account of a judge's duties see 18 L. Q. R. 237 (1902); and for an extremely entertaining one see Judge Parry's article in 89 Cornhill Magazine 345 (1904).
33 Sec. 18 and 19, 1888.
34 Sec. 8, 1888. In four circuits, the districts being wholly within the County Palatine of Lancaster, the Chancellor of the Duchy appoints.
politans centers where the work is larger and the traveling less. There has never been a case of promotion from the county court to the High Court bench, although many persons believe such a policy would strengthen the county court immensely. In the cities sittings are more or less continuous; there are no terms or other artificial divisions of the year. In most country places a sitting is held once a month but in the larger towns it may be twice a month, or more, and in the smallest places only once in two months. These variations are sanctioned by orders from the Lord Chancellor under the Act. In the month of September no sittings are held in any courts, unless there is reason to the contrary. The dates of the sittings in each place are arranged by the judge, to fit in with his itinerary, and they must be posted up three months in advance.

Procedure in the county courts is regulated partly by the Act of 1888, but principally by rules drawn by a Rule Committee of five judges, appointed by the Lord Chancellor. The rules they draft must be “approved” by the Rule Committee of the Supreme Court and “allowed” by the Lord Chancellor. The rules are of large bulk and have been often revised; the present code is the “County Court Rules, 1903 and 1914”.

So much depends, in the working of a county court, upon the registrar, and he is so unlike any officer in an American court, that a statement of his functions is appropriate. Each county court is, so far as the conduct of actions begun in it is concerned, a separate and distinct organization under the general supervision of a registrar, and it is only occasionally visited by the judge in whose circuit it happens to lie. Each court has one registrar

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36 Under Sec. 10, 1888.
37 Sec. 11, 1888.
38 A typical circuit calendar is the following, giving the dates for sittings in the Oxford Circuit in April, 1915: April 8, Rugby; 9, Northampton; 12, Oxford; 14, Bicester; 15, Abingdon; 16, Thame; 17, Woodstock; 19, Witney; 20-21, Northampton; 22, Wellingborough; 23, Banbury; 26, Warwick; 27, Kettering.
39 Sec. 164, 1888; see an article by the writer on Rule-making in the County Courts, in Law Quarterly Review, July, 1915.
40 As with the Supreme Court Rules, there are two annual annotated editions of the County Court Rules.
(a few have two\textsuperscript{41}) so that there are just over five hundred registrars in all. To be eligible for appointment one must be a solicitor of at least five years’ standing; the appointment is made by the judge of the circuit, subject to the Lord Chancellor’s approval.\textsuperscript{42} In courts where the annual number of plaints does not exceed eight thousand the registrar is not debarred from private practice, except that he may not act as a solicitor in his own court;\textsuperscript{43} in courts where the plaints exceed eight thousand annually, or where the registrar’s office is combined with that of District Registrar of the High Court,\textsuperscript{44} the Lord Chancellor may direct that he shall abstain from practice. The salary varies according to the volume of business;\textsuperscript{45} where a registrar is permitted to practice the maximum net salary is £700; where he is forbidden to practice the maximum is £1400.\textsuperscript{46} He must reside within the district of his court, and as a rule, he is selected by reason of his professional prominence in the district. The

\textsuperscript{41} Under Sec. 29 of the County Court Act, 1888 (51 and 52 Vict. c. 43), there are two registrars at each of the following courts: Liverpool, Leeds, Kingston-upon-Hull, Lincoln, Birmingham, Uxbridge, Westminster, Reading and Bristol. Three of these are very small courts, but the rest are very large ones. There are six other courts with over 17,000 plaints a year, but they have only one registrar each: City of London, Clerkenwell, Pontypool, Nottingham, Sheffield and Manchester.

\textsuperscript{42} Sec. 25, Act of 1888.

\textsuperscript{43} Sec. 25 and 41, Act of 1888. There are only 37 courts out of the 494 that exceed 8,000 plaints a year. Of these 12 are in the County of London, 18 are scattered through cities in the Midlands and 4 in Wales, so that most country registrars are allowed to practice.

\textsuperscript{44} There are 98 District Registrars of the High Court, of whom all but 6 are the local county court registrars. These include all but 16 of the registrars mentioned in the preceding note, so that in all about 108 of the 500 registrars are forbidden to practice.

\textsuperscript{45} It should be mentioned here that there is strong objection to this feature, which persists only because of the difficulty of manning the courts of small towns with good registrars: A good man will accept the position at present because it adds to his standing and does not debar him from practice; if it were made a whole-time job at a small salary, the character of the occupant would be correspondingly lower. The remedy suggested is to group together a number of small courts under one registrar paid by a fixed salary. See E. A. Parry: The Law and the Poor (1914), p. 73.

\textsuperscript{46} Sec. 45, Act of 1888. Where the number of plaints is under 200, the salary is £100 a year; for every additional 25 plaints up to a total of 6,000, the salary is increased by £4. Out of this the registrar must pay the clerks and other office expenses, except for stationery. Any surplus over the net maximum allowed must be accounted for to the Treasury. In addition the registrar receives special fees in equity, bankruptcy and other special matters.
county court registrar is always looked up to as one of the important persons in the place. His official duties may be described as consisting of three classes of work: The first is the work he does as a sub-judge, in that every action, defended or undefended, passes through his hands so that he may weed out the trial cases for the judge's court; he fixes the terms of judgment in undefended actions, hears many defended actions, and grants replevins; finally, he exercises discretionary powers under special statutes, like the Workmen's Compensation Act, 1906, under which he may refuse to register a compensation agreement if he considers it unfair or fraudulent. As outlined above, every case is first called in the registrar's court. The practice is usually to begin calling the list there half an hour before the time fixed for the opening of the judge's court. After the registrar has finished his list, he goes into the judge's court and makes minutes of all orders delivered by the judge. The second class of his duties corresponds to those of a master in the High Court; he hears all ordinary interlocutory applications, such as those for discovery, for time, for amendment, or for leave to issue process of the court when such leave is necessary; he conducts the taking of accounts and the making of special inquiries under the court's

"For instance, Sir Charles Elton Longmore, K. C. B., President of the Incorporated Law Society for 1914-15, is the registrar at Hertford; Robert Druitt, Esq., the Mayor of Bournemouth for 1914-15, is the registrar at Bournemouth, etc.

"Sec. 90, Act of 1888.

"Sec. 92, Act of 1888; Order 22 R. 25.

"Sec. 134, Act of 1888. Replevin is used in England only to recover goods unlawfully taken in distress for rent, and the replevin must be applied for to a county court registrar, irrespective of the value of the goods; if the value exceeds $100 the subsequent action will proceed in the High Court.

"6 Edw. VII c. 58, Schedule II, Par. (9).

"In large courts, where the registrar cannot finish his list in a short time, like half an hour, he does not go into the judge's court. In such courts the minutes of the judge's orders are made either by the judge's clerk or by a second registrar. At Westminster for instance there are two registrars, and they arrange their sittings alternately, each of them taking the registrar's list one day throughout the day and sitting in the judge's court the next.

"Q. 12 R. 11.

"Such leave is necessary in many cases, as for instance, where the defendant resides out of the district. See below, Sec. III."
equitable powers, and he taxes all costs. The third class are administrative: all process of the court is signed by him as registrar; he is required to enter, issue or register all plaints, summonses, writs, orders and judgments; he is responsible for the conduct of the office of the court, must see that all process and notices are correctly and promptly sent to the parties, and that proper records are kept of each action and of the general business of the court; he is custodian of all moneys paid into court, must account for their due receipt, investment, and payment out, and must give the necessary notices to the parties concerned.

The third class of duties he performs through clerks; the first two he must perform personally, except that if he is ill or unavoidably absent from the court, he may appoint a deputy to act for him.

In most courts the registrar is also the high bailiff, so that is an additional class of duties to be considered. The high bailiff is responsible for the service or execution, by himself or by bailiffs he may appoint to assist him, of all summonses, orders, warrants, precepts and writs, issued through his court; he must at all reasonable times give information to suitors as to the execution or non-execution of warrants or orders; in any cases where he or his bailiff has been unable to serve an ordinary summons, or it appears that the service is of doubtful sufficiency, and in all cases where a default summons has been

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"O. 24.
"Sec. 118, Act of 1888.
"Sec. 28, Act of 1888; O. 1 R. 3; O. 2 R. 2, 3; O. 54 R. 13.
"Sec. 107, Act of 1888; Sec. 166-173; O. 2 R. 10, 11, 16; O. 37. The practice of paying judgments by instalments through the court office, and the duty of distributing workmen's compensation through the county court, make this part of the office work bulk very large, so that the larger court offices do what is in effect a very considerable banking business.
"Sec. 31, Act of 1888.
"Under Sec. 37, Act of 1888, in only 67 of the 494 courts is there a separate high bailiff. These are either in the biggest courts, or high bailiffs who were appointed before 1866.
"Sec. 33, Act of 1888.
"Sec. 35, Act of 1888. For an account of service of process originating in other courts see below, Sec. III.
"O. 2 R. 33."
served, he must forthwith notify the plaintiff to that effect. It is his duty to superintend any sales of personal property, as directed by the court to be sold. And in general he performs the same duties as a sheriff performs for an American Court, except that he is an officer of the court, so that his bailiffs (americe, deputy-sheriffs) are subject to its orders, rules and discipline. The high bailiff receives his appointment from the judge of the circuit, subject to the Lord Chancellor's approval, and the high bailiff is empowered to appoint bailiffs to assist him. It is obvious that practically all his duties are physically performed by his bailiffs, so that a closer co-ordination of his work with the rest of the office of the court is obtained by vesting the title and powers of high bailiff in the registrar. This is accomplished by the Act under which separate high bailiffs are no longer appointed to fill vacancies as they occur, except where the Lord Chancellor considers it necessary. For this additional work the registrar receives an addition of one-fifth to his net salary, and also such fees as the high bailiff is entitled to retain for his own use.

In all the country courts the registrar has extensive powers in bankruptcy matters which are handled exclusively by the county courts in all places outside London. In certain seacoast courts the registrar also exercises certain powers in admiralty matters.

The office of a court must be kept open every day (with cer-

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66 O. 2 R. 18.
67 O. 23 R. 23.
68 Sec. 33, Act of 1888.
69 Sec. 37, Act of 1888.
70 One advantage of a separate High Bailiff is that he knows the resources of everybody in the neighborhood and helps to advise a judgment creditor how best to get his money.
71 Under Sec. 46 the High Bailiff is empowered to retain all "possession money," which is fees paid for keeping possession of goods under execution until they are sold.
72 Practically those of an American referee in bankruptcy under the Federal Act.
tain days excepted as provided in the rules⁷³), and it is always possible for litigants or intending litigants to go there for assistance. A witness testifying before the Judicature Commission in 1873 said: “I believe the popularity of the county courts has arisen in a great measure from the registrars being accessible, and giving more information than a salaried officer generally does. I am convinced that that has made them popular and made them work well.”⁷⁴ They often help applicants by pointing out that the right person has not been made defendant, or that some preliminary step must be taken, or similar matters of form. “No more trouble on the part of a registrar is required than of the telegraph clerk who suggests that there are unnecessary words used and that the message, as tendered, is either unintelligible or in bad English.”⁷⁵ This tradition still flourishes in all but the busiest of the courts. The registrar is the person through whom litigants keep in touch with the court; for instance, it is to him they address letters confessing or denying the debt, or offering a settlement, or asking that the size of instalments be reduced, or on any other subject, and this personal touch goes far to inspire confidence in the popular mind. Because of the continued heaping up of miscellaneous duties upon county court judges in connection with special Acts of Parliament there is at present a strong feeling that the judicial powers of registrars in disputed actions ought to be extended from £2 to £5, and that would undoubtedly lighten the labors of the judges materially.

There is an Association of County Court Registrars, to which practically all the registrars belong, which meets annually in London. Besides discussing practice matters at this annual meeting, the Association has a Standing Committee to whom the members put questions on difficult points of practice, and this makes for uniformity in all the county courts, as the Committee print their answers to such questions and distribute them to all members. The Committee also advise with the masters of the

⁷⁰O. 1 R. 3.
⁷¹Mr. Clarke, Registrar of Walsall County Court.
⁷²From an essay “On County Courts” by His Honor Judge Falconer (London, 1873), p. 54.
Supreme Court upon practice points which are common to the two courts. The Association frequently recommends changes in the rules to the County Court Rule Committee, and, although there is no statutory authority for it, the Rule Committee always submit to the Association for comment the draft of any new county court rules.76

(To be continued.)

Samuel Rosenbaum.

London.

76 See Law Journal, March 20, 1915, for an account of the last annual meeting.