



The Law Commission

(LAW COM. No. 72)

JURISDICTION OF CERTAIN ANCIENT COURTS

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by Command of Her Majesty
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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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The Honourable Mr. Justice Cooke, *Chairman*.

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THE LAW COMMISSION
JURISDICTION OF CERTAIN ANCIENT COURTS

DRAFT CLAUSE AND SCHEDULES

*To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain*

1. In performance of the duty imposed on us by section 3(1) of the Law Commissions Act 1965 with respect to the simplification and modernisation of the law we have prepared the draft clause and Schedules which accompany this report as Appendix 1 and an explanatory note on the contents of the draft clause which is Appendix 2.

2. The legislation proposed in this report is in the form of a draft clause with Schedules attached, rather than a draft Bill, because we had it in mind that the convenient method of dealing with this subject-matter might be in a Bill dealing also with other topics connected with the administration of justice. The events which have led up to the presentation of this report are as follows.

3. In 1969 the Report of the Royal Commission on Assizes and Quarter Sessions¹ recommended in effect (paragraphs 368 to 383) that all local courts of special jurisdiction in England and Wales which still held regular sittings should be abolished. Effect was given to this recommendation as from 1 January 1972 by sections 41 to 43 of the Courts Act 1971.

4. Section 41 merged the Palatine Courts with the High Court. Section 42 abolished the Mayor's and City of London Court as constituted immediately before the commencement of the Act; and section 43 abolished the following courts of record, namely—

- (a) the Tolzey and Pie Poudre Courts of the City and County of Bristol;
- (b) the Liverpool Court of Passage;
- (c) the Norwich Guildhall Court; and
- (d) the Court of Record for the Hundred of Salford.

5. In paragraph 384 of their report the Royal Commission referred in general terms to a number of other local courts in England and Wales but said that as these courts were practically moribund they would leave it to the Government to decide whether formal termination of their existence was worth while. The Government of the day did think this worth while but because of the lack of time in which to carry out the necessary consultations they were unable to abolish these other courts in the Courts Act 1971².

¹ Cmnd. 4153.

² See *Hansard*, 22 April 1971, Vol. 317, Col. 842.

6. However, since then section 221 of the Local Government Act 1972 abolished as from 1 April 1974 the 141 borough civil courts in England and Wales listed in Schedule 28 to that Act.

7. The draft clause which we now submit proposes to carry the rationalisation of the court system further by curtailing the jurisdiction of the inferior courts in England and Wales which are specified in Part I of Schedule A to the draft clause. This would involve the consequential repeal of most of the enactments specified in Schedule B. The other enactments proposed for repeal in Schedule B relate to courts which have already been abolished.

8. Before we formulated our proposals we conducted preliminary consultations with (among others) the 132 or so authorities responsible for the numerous miscellaneous courts specified in 9 Halsbury's Laws (3rd ed.) paragraphs 1169 to 1335.

9. At that preliminary stage our proposals were different from those now embodied in the draft clause. Our preliminary proposals were that where a court had no functions other than judicial functions it should be abolished altogether, its judicial functions being transferred if necessary to the ordinary courts.

10. In our preliminary consultations we made it clear that where a court possessed non-judicial functions which were still being exercised, which were valued locally, and which it was desired to maintain, the court could be specifically preserved for the exercise of those functions.

11. At the conclusion of the preliminary consultations we formulated provisional proposals in an explanatory memorandum. The provisional proposals were in substance identical with the preliminary proposals described in paragraphs 9 and 10 above. The memorandum, which was completed in April 1974, was widely circulated to everybody who might be affected by the proposals, and in preparing the recommendations of this report we have taken account of all the comments we have received.

12. The bodies to whom the explanatory memorandum was circulated included the General Council of the Bar of England and Wales, The Law Society, and all the government departments concerned. In May 1974 the Bar Council informed us that their Law Reform Committee had considered the memorandum and did not wish to make any comments. In August 1974 the Secretary of the Contentious Business Committee of The Law Society informed us that he had tested the opinions of solicitors throughout the country and that there would seem to be no objection to the proposals.

13. While we believe that our provisional proposals commanded general agreement, they did not secure the assent of the authorities concerned with—

(a) the Over Court Leet³ (described by the responsible authority

³ Over was a manorial borough. Its ceremonial property is now held by the Winsford Town Council in Cheshire.

as no longer in existence) which is one of the courts covered under the heading "General" in Part I of Schedule A and is referred to in section 22 of the Municipal Corporations Act 1883, which we propose for repeal; and

- (b) the King's Lynn Court of Tolbooth (described by those responsible as "alive in name only"), the Maldon Court of Record for passing the Estates of Married Women (described by the responsible authority as "of no further practical value") and the Peterborough Dean and Chapter's Court of Common Pleas (which has not sat for eighty years), all of which are nominate courts included in Part I of Schedule A.

14. We have no desire to oppose the wishes of those who, solely on historical grounds and so as not to sever links with the past, desire to retain their courts. There is, however, a practical difficulty. In the introduction to Appendix 2 to this report we cite authorities which show that, until the jurisdiction of a moribund court is taken away by statute, the jurisdiction is capable of being revived, however long the period for which the jurisdiction has been in desuetude. We doubt whether the court authorities of an obsolescent court would in all cases welcome an order of mandamus requiring the court to be held. Moreover, proceedings before such courts may consume time, and may entail trouble, expense and uncertainty which could hardly be justified if an alternative remedy is available by the familiar proceedings of an ordinary court.

15. We think it possible, by a modification of our provisional proposals, to meet the wishes of those who wish to retain ancient traditions while at the same time removing the danger of inopportune attempts to revive jurisdictions which serve no useful purpose. The recommendations which we now make in this report are framed with those two objectives in mind.

16. The recommendations extend to all the courts specified in Part I of Schedule A to the draft clause annexed to this report. With a qualification which we mention in paragraph 22 below, the recommendations are as follows—

- (1) All the courts specified in Part I of Schedule A should be deprived by statute of their jurisdiction to hear and determine legal proceedings.
- (2) The statute should not, however, abolish the courts altogether. Accordingly, the courts will survive and be able to exercise any non-judicial functions which it is now customary for them to exercise.
- (3) The Lord Chancellor should be empowered to make orders for transferring any jurisdiction formerly exercised by any of the courts in question to the High Court, the Crown Court, a county court or a magistrates' court, as the case may require.

17. We think that the effect of the above recommendations will be to prevent the revival of obsolete jurisdictions, to preserve all the

non-judicial functions which these ancient courts may in practice have, and to make provision for securing that the ordinary courts will have all the judicial powers which the ancient courts formerly possessed.

18. Our recommendations extend to all courts in England and Wales which fall within certain broad classes, such as courts baron, courts leet and courts of pie poudre. It would hardly be practicable, nor is it we think necessary, to specify by name all the very numerous courts which fall within these classes. The classes themselves are set out under the heading "General" in Part I of Schedule A. There are, however, certain courts which do not fall, or do not clearly fall, within the classes which we have set out, but which should in our view be treated in the same way (and for the same reasons) as the courts which do fall within those classes. We have specified these courts individually under the heading "Nominate courts" in Part I of Schedule A.

19. Whenever we have been able to identify with certainty the non-judicial functions of one of the courts with which we are concerned, we have included a statutory description of those functions in Part II of Schedule A. We have done this for the sake of greater precision where such precision is attainable. The fact, however, that a court is not included in Part II of Schedule A will not prevent it from exercising any non-judicial functions which it is at present customary for the court to exercise.

20. Except in the case of the Bucklebury Court Baron in Berkshire, there is, so far as we are aware, complete unanimity in regard to all the courts specified in Part II of Schedule A. In the case of the Bucklebury Court Baron, the lord of the manor (who, when our provisional proposals were being discussed, wanted the court to be abolished) is in disagreement with the commoners (who asked for the court to be preserved). The court has sat in recent years and there is no disagreement as to the description of the court and its business. We therefore include it in Part II of Schedule A.

21. In the case also of the Court Leet for the Manor of Staines, there is disagreement between the lord of the manor and the commoners. In this case, too, when our provisional proposals were under discussion, the lord of the manor wished for the abolition and the commoners for the preservation of the court. Moreover, we have not succeeded in securing the agreement of those concerned to the description of the court's business. This court is accordingly not included in Part II of Schedule A; but, notwithstanding that, it will, under our recommendations, continue to be able to sit and transact such non-judicial business as it is now customary for the court to transact.

22. There is one respect in which our proposed legislation departs from the general scheme above described. The effect of our proposed clause is that whenever a court is specified in Part II of Schedule A, it will continue to be able to exercise the functions described in relation to it in column 2 of that Part, whatever the nature of those functions. In general those functions are non-judicial, but in the case of at least

one of the courts specified in Part II of Schedule A (the Estray Court for the Lordship of Denbigh) the functions described in column 2 of the Schedule are of a judicial nature. Our reason for recommending the preservation of these judicial functions is that they are well defined and regularly exercised by the court in question, and that as they have a demonstrable contemporary utility there is no case for taking them away.

23. The principle we have endeavoured to follow is that jurisdictions which are not obsolete should be preserved. Accordingly, the draft clause is not intended to affect the following courts, and in each case the authority concerned has accepted that it would not do so—

The Barmote Courts of High Peak.

The Barmote Courts of Wirksworth and adjacent liberties.

Any court at Cambridge University established under the Statutes of the University including the Septemviri and the Court of Discipline and the appellate jurisdiction of the Chancellor either alone or with assessors.

The Court of Chivalry.

The Courts associated with the Cinque Ports:

The Cinque Ports Court of Admiralty,

The Cinque Ports Salvage Commissioners,

The Court of Shepway, and

The Courts of Brotherhood and Guestling.

The Court of Claims.

Coroners' Courts.

The Dean Forest Verderers' Court.

The Ecclesiastical Courts.

The Court of the Duchy Chamber of Lancaster.

The Court Leet for the Manor of Laxton.

The City of London Chamberlain's Court.

The New Forest Verderers' Court known as the Court of Swainmote and Attachment.

The Disciplinary Courts of the University of Oxford.

Courts of Survey.

(Signed) SAMUEL COOKE, *Chairman.*

AUBREY L. DIAMOND.

STEPHEN EDELL.

DEREK HODGSON.

NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*

2 December 1975.

APPENDIX 1

DRAFT CLAUSE AND SCHEDULES

Curtailment of jurisdiction of certain ancient courts.

(1) Subject to subsection (2) below, the courts specified in Part I of Schedule A to this Act shall cease to have any jurisdiction to hear and determine legal proceedings, but they may continue to sit to transact such other business, if any, as was customary for them in the year 1975.

(2) In the case of the courts specified in Part II of the said Schedule the business that is to be treated as having been customary for any court in 1975 shall (apart from business relating to the appointment of officers of the court) be the business specified in relation to that court in column 2 of that Part; and any such court may transact any business so specified notwithstanding anything in subsection (1) above.

(3) The Lord Chancellor may from time to time by order make any incidental or transitional provision which he considers expedient in consequence of this section and may by such an order provide—

- (a) for enabling any jurisdiction appearing to him to have been formerly exercised by any of the courts specified in Schedule A to be exercised instead by the High Court, the Crown Court, a county court or a magistrates' court;
- (b) for such amendments or repeals of provisions of any local Act as appear to him to be required in consequence of this section.

The power to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and any such order may be varied or revoked by a subsequent order made under the power.

(4) The enactments specified in Schedule B to this Act (which includes enactments relating to certain courts abolished before this section was enacted) are hereby repealed to the extent specified in column 3 of that Schedule.

(5) Notwithstanding the repeal by this Act of the Mayor's Court of London Procedure Act 1857, the Mayor's and City of London (Original Actions) Rules 1967 (which, by virtue of paragraph 7 of Schedule 5 to the Courts Act 1971, apply in respect of certain actions that were started in the Mayor's and City of London Court and, in accordance with that paragraph, are to be continued in the county court) shall continue to apply in respect of any actions not finally disposed of at the commencement of this Act in respect of which they then apply; and those rules may be varied or revoked as they might have been varied or revoked if the said Act of 1857 had not been repealed.

1857 c. clvii.
S.I. 1967
No. 871.
1971 c. 23.

SCHEDULE A

CURTAILMENT OF JURISDICTION OF CERTAIN COURTS

PART I

Courts whose jurisdiction is curtailed

General

Courts Baron.
Courts Leet other than the Court Leet for the Manor of Laxton.
Customary Courts of the manor.
Courts of Pie Poudre.
Courts of the Staple.
Courts of the clerks of the markets (or clerk of the market).
Hundred Courts.
Law Days.
Views of Frankpledge.
Common law (or Sheriffs') county courts as known before the passing of the County Courts Act 1846.

Nominate courts

The Basingstoke Court of Ancient Demesne.
The Cambridge University Chancellor's Court.
The Coventry Court of Orphans.
The Estray Court for the Lordship of Denbigh.
The Great Grimsby Foreign Court.
The King's Lynn Court of Tolbooth.
In the City of London, the Court of Husting and the Sheriffs' Courts for the Poultry Compter and the Giltspur Street Compter.
The Macclesfield Court of Portmote.
The Maidstone Court of Conservancy.
The Maldon Court of Record for passing the Estates of Married Women.
The Melcombe Regis Court of Husting.
The Newcastle-upon-Tyne Courts of Conscience or Requests and Conservancy.
The Norwich Court of Mayoralty.
The Court of the Chancellor or Vice-Chancellor of Oxford University.
The Peterborough Dean and Chapter's Court of Common Pleas.
The Ramsey (Cambridgeshire) Court of Pleas.
The Ripon Court Military.
The Ripon Dean and Chapter's Canon Fee Court.
The St. Albans Court of Requests.

The Court of the Hundred, Manor and Borough of Tiverton.
 The York Courts of Husting, Guildhall and Conservancy.
 The Ancient Prescriptive Court of Wells.
 The Cheney (or Cheyney) Court of the Bishop of Winchester.

PART II

Description of business customary in 1975
 for certain courts

Court	Business which the court may sit to transact
The Alcester (Warwickshire) Court Leet, Court Baron and View of Frankpledge.	The taking of presentments with respect to matters of local concern. The presentation of audited accounts of the manor.
The Ashburton Courts Leet and Baron.	The appointment of a portreeve and other officers. The taking of presentments with respect to matters of local concern.
The Bideford Manor Court.	The appointment of a people's warden, tything man and waywardens. The taking of presentments with respect to matters of local concern.
The Court Leet and Court Baron of the Ancient Manor of Bowes in the County of Durham.	The taking of presentments with respect to matters of local concern. The presentation of audited accounts of the manor. The management of the commons in the manor.
The Ancient Court Leet and Court Baron of the Manor of Bromsgrove.	The appointment of a bailiff, reeve and other officers. The taking of presentments with respect to matters of local concern. The annual proclamation of the ancient charter granted in or about 1199. The observance of the ancient custom of the Midsummer Fair.
The Bucklebury Court Baron.	The taking of presentments with respect to matters of local concern. The appointment of tythingmen and haywards.
The Courts Leet and Baron of the Barony of Cemaes in the County of Dyfed.	The taking of presentments with respect to matters of local concern. The management of the common lands on the Preseli Hills in the County of Dyfed.
The Clifton Courts Leet and Baron and View of Frankpledge.	The taking of presentments with respect to matters of local concern. The appointment of pasture masters or byelaw men and other officers.

Court	Business which the court may sit to transact
The Manorial Court for the Hundred and Borough of Cricklade.	The appointment of a hayward. The management of the common lands in the Hundred and Borough of Cricklade.
The Croyland View of Frankpledge, Court Leet and Great Court Baron.	The management of the commons and village greens within the Lordship of Croyland.
The Danby Court Leet and Court Baron.	The management of the commons in the manor of Danby.
The Estray Court for the Lordship of Denbigh.	The adjudication of claims concerning the ownership of stray sheep.
The Manor of Dorney with Boveney Court Leet with Court Baron and View of Frankpledge.	The taking of presentments with respect to matters relating to Dorney and Lake End Commons.
The Manor Court of Dunstone (otherwise Blackslade).	The appointment of a foreman and reeve. The taking of presentments with respect to matters of local concern. The management of the commons in the manor.
The Court Baron of East Horndon.	The management of the commons in the manor of East Horndon.
The Courts Leet and Baron of the Manors of Eton-cum-Stockdales in Colenorton.	The appointment of a bailiff and hayward. The taking of presentments with respect to the management of the commons in the manors and other matters of local concern.
The Manor of Fyling Court Leet.	The management of the commons in the manor.
The Court Baron for the Manor of Heaton in the City of Bradford.	The annual appointment of a foreman. The taking of presentments with respect to matters of local concern. The occasional perambulation of boundaries.
The Court Leet and Court Baron of the Manor of Henley-in-Arden in the County of Warwick.	The taking of presentments with respect to matters of local concern.
The Town and Manor of Hungerford and Manor and Liberty of Sanden Fee Hocktide Court and Court Leet.	The appointment of a constable, portrieve, tithingmen and other officers. The administration and regulation of common rights and matters connected therewith.
The City of London Court of Husting.	The enrolment of wills and deeds.
The Manor of Mickley Court Leet and Court Baron.	The taking of presentments with respect to matters of local concern.
The Court Leet and Baron of the Manor of Mynachlogddu in the County of Dyfed.	The management of the common lands in the Parish of Mynachlogddu.

Court	Business which the court may sit to transact
The Norwich Court of Mayoralty.	The admission of freemen of the City of Norwich.
The Court Leet of the Island and Royal Manor of Portland.	The taking of presentments with respect to the common wastes of the manor.
The Southampton Court Leet.	The taking of presentments with respect to matters of local concern.
The Southwark Courts Leet and Views of Frankpledge for (respectively) the King's Manor of Southwark, the Guildable Manor and the Great Liberty Manor.	The pronouncement of an address by the High Steward of the Southwark Manors and the appointment of traditional officers.
The Manor of Spaunton Court Leet and Court Baron with View of Frankpledge.	The taking of presentments with respect to matters of local concern. The control and management of various common rights over Spaunton Moor, North Yorkshire.
The Spitchwick Courts Leet and Baron.	The appointment of a foreman, reeve and other officers. The taking of presentments with respect to matters of local concern. The management of the commons in the manor of Spitchwick.
The Courts Leet and Baron of Stockbridge.	The appointment of a bailiff, serjeant at mace and hayward. The taking of presentments with respect to matters of local concern. The management of the commons in the Borough of Stockbridge.
The Court Leet of the Manor and Borough of Wareham.	The taking of presentments with respect to the common, the town walls, the town pound and other matters of local concern.
The Warwick Court Leet.	The taking of presentments with respect to matters of local concern.
The Manor of Whitby Laithes Court Leet.	The management of the commons in the manor.

SCHEDULE B
ENACTMENTS REPEALED

Chapter	Short title	Extent of repeal
7 & 8 Vict. c. 19.	The Inferior Courts Act 1844.	The whole Act.
8 & 9 Vict. c. 127.	The Small Debts Act 1845.	Sections 9 to 12, 14, 16 to 21 and 23. Section 24 except the words "In the construction of this Act every word importing the masculine gender shall include females as well as males". Schedule (C).
19 & 20 Vict. c. xvii.	The Cambridge Award Act 1856.	Section 18.
20 & 21 Vict. c. clvii.	The Mayor's Court of London Procedure Act 1857.	The whole Act.
35 & 36 Vict. c. 86.	The Borough and Local Courts of Record Act 1872.	The whole Act.
46 & 47 Vict. c. 18.	The Municipal Corporations Act 1883.	Sections 6, 22 and 23.
50 & 51 Vict. c. 55.	The Sheriffs Act 1887.	Sections 18 and 40(1).
51 & 52 Vict. c. 57.	The Statute Law Revision (No. 2) Act 1888.	Section 2.
53 & 54 Vict. c. 33.	The Statute Law Revision Act 1890.	Section 4.
53 & 54 Vict. c. 51.	The Statute Law Revision (No. 2) Act 1890.	Section 2.
54 & 55 Vict. c. 67.	The Statute Law Revision Act 1891.	Section 2.
55 & 56 Vict. c. 19.	The Statute Law Revision Act 1892.	Section 2.
56 & 57 Vict. c. 14.	The Statute Law Revision Act 1893.	Section 2.
56 & 57 Vict. c. 54.	The Statute Law Revision (No. 2) Act 1893.	Section 2.
57 & 58 Vict. c. 56.	The Statute Law Revision Act 1894.	Section 2.
61 & 62 Vict. c. 22.	The Statute Law Revision Act 1898.	Section 2.
8 Edw. 7. c. 49.	The Statute Law Revision Act 1908.	Section 2.
3 & 4 Geo. 5. c. xcii.	The Derby Corporation Act 1913.	Sections 98 and 100 (2).

Chapter	Short title	Extent of repeal
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act 1925.	Part IX.
17 & 18 Geo. 5. c. 42.	The Statute Law Revision Act 1927.	Section 2.
17 & 18 Geo. 5. c. xcii.	The Derby Corporation Act 1927.	Section 92.
10 & 11 Geo. 6. c. 14.	The Exchange Control Act 1947.	In Schedule 4, in paragraph 3, paragraph (ii) of the proviso and the word "and" immediately preceding the said paragraph (ii).
10 & 11 Geo. 6. c. 44.	The Crown Proceedings Act 1947.	Section 34.
11 & 12 Geo. 6. c. 62.	The Statute Law Revision Act 1948.	Section 2.
14 Geo. 6. c. 6.	The Statute Law Revision Act 1950.	Section 2.
2 & 3 Eliz. 2. c. 5.	The Statute Law Revision Act 1953.	Section 2.
7 & 8 Eliz. 2. c. 22.	The County Courts Act 1959.	Sections 140, 162, 198 and 205(8).

APPENDIX 2

EXPLANATORY NOTE ON THE DRAFT CLAUSE

INTRODUCTION

1. In 10 Halsbury's Laws (4th ed.) the cases referred to in paragraphs 2 and 3 below are cited as authorities for the propositions—

- (a) that the jurisdiction of an inferior court is not lost by mere non-user (paragraph 715); and
- (b) that the fact that, with very few exceptions, the remaining inferior courts are now more or less moribund or exercise purely ceremonial functions only does not affect their jurisdiction since this is not lost by mere non-user (paragraph 971).

2. In *R. v. Steward of Havering—atte—Bower*⁴ a manorial court for levying fines and suffering recoveries and for trying actions had, in fact, tried none for fifty years. It was held by the Court of King's Bench that the power remained in full force and a mandamus was issued to compel the opening of the court.

3. In *Attorney General of Isle of Man v. Cowley*⁵, a case from the Isle of Man, the Privy Council cited the decision in the *Havering—atte—Bower* case as authority for the proposition that, where any court lawfully possesses a jurisdiction for the benefit of the subject in the administration of justice, it is settled that mere non-user does not take it away.

4. In *R. v. Hastings Corporation*⁶ mandamus was granted to compel the holding of an inferior court of record for the recovery of debts which had not been held for 52 years. The defendants said that they had no objection to holding the court, if by law they were bound to do so; but that, as it appeared to them that no possible utility would result from it, and as it would be productive of much inconvenience, they wished to have the opinion of the Court of King's Bench.

5. In *R. v. Wells Corporation*⁷ mandamus was granted to compel the holding of an inferior court for the trial of causes of limited amount, within the precincts of the corporation. In answer to the rule nisi affidavits were produced showing that the court in question had been disused for 200 years, that there were no funds which could be appropriated to the holding of the court, and that no one was acquainted with the practice of the court.

6. In 1894 mandamus was granted to compel the Recorder of Worcester as judge of the Worcester Court of Pleas to entertain a plea for breach of promise of marriage⁸.

⁴ (1822) 5 B & Ald. 691; 106 E.R. 1343.

⁵ (1859) 12 Moo P.C.C. 27; 14 E.R. 821.

⁶ (1822) 1 Dow & Ry KB 148; 106 E.R. 1344, footnote (a).

⁷ (1836) 4 Dowl. 562.

⁸ See 9 Halsbury's Laws (3rd ed.) 487, footnote (I); 96 L.T. Jo. 267.

7. In *Manchester Corporation v. Manchester Palace of Varieties Ltd.*⁹ Lord Goddard (sitting as assessor and surrogate) held that the jurisdiction of the Court of Chivalry in matters relating to armorial bearings was still extant although there had been no sitting of the court since 1737. Lord Goddard said that it was not contended that the court, however long a period might have elapsed since it last sat, was no longer known to the law.

THE DRAFT CLAUSE

8. As appears from the authorities cited above, an apparently moribund inferior court might be revived as a result of an application for an order of mandamus. *Subsection (1)* of the draft clause removes the possibility of such an application being successfully made, except as therein provided, as respects any of the courts specified in Part I of Schedule A. Subject as therein stated, *subsection (1)* provides that these courts shall cease to have any jurisdiction to hear and determine legal proceedings.

9. *Subsection (1)* is expressed to be subject to *subsection (2)* because some of the business specified in column 2 of Part II of Schedule A might be regarded as being of a judicial nature. In particular the business of the Estry Court for the Lordship of Denbigh is to adjudicate on claims of ownership of stray sheep.

10. The second limb of *subsection (1)* provides that the courts specified in Part I of Schedule A may continue to sit to transact such other business, if any, as was customary for them in the year 1975; and *subsection (2)* provides that in the cases of the courts specified in Part II of Schedule A the business that is to be treated as having been customary for any court in 1975 shall (apart from business relating to the appointment of officers of the court) be the business specified in relation to that court in column 2 of that Part.

11. *Subsection (1)* of the draft clause does not abolish any of the specified courts but, subject as therein stated, provides that these courts shall cease to have any jurisdiction to hear and determine legal proceedings.

12. There is nothing in the draft clause to prevent any court whose jurisdiction is curtailed from transacting any other business which it was customary for it to transact whether or not that court is among those specified in Part II of Schedule A.

13. Although the courts so specified will be restricted to the business specified in the said column 2 there should be no doubts or arguments as to what business these courts can transact. But there may well be such doubts or arguments as respects any court not included in Part II of Schedule A.

14. The courts have an inherent power to appoint their own officers. This is recognised by the words in *subsection (2)* which are in brackets,

⁹ [1955] P. 133, 146. See also 9 Halsbury's Laws (3rd ed.) 573.

namely “(apart from business relating to the appointment of officers of the court)”. The only officers referred to in column 2 of Part II of Schedule A are officers other than court officers, such as officers of a manor.

15. *Subsection (3)*. As all the courts whose jurisdiction is curtailed are obsolete or, as the case may be, are obsolete as respects their jurisdiction to hear and determine legal proceedings, there is no need for any transitional provisions on the lines, for example, of Schedule 5 to the Courts Act 1971 as respects the continuation of proceedings already begun.

16. However, in case anything unforeseen happens, subsection (3) would enable the Lord Chancellor, among other things—

- (a) to confer on the ordinary courts jurisdiction formerly exercised by a court whose jurisdiction is curtailed; and
- (b) to make consequential amendments or repeals of provisions in local Acts.

17. It is considered that no specific provision need be made—

- (a) as respects court property which, except where already disposed of, would remain with those entitled to hold the courts; or
- (b) with regard to court records because adequate provisions already exist in the Public Records Act 1958; see, for example, paragraph 4(1)(b) and (c) in Part II of the Table in Schedule 1.

But subsection (3) would enable the Lord Chancellor to make provision as respects court property and records should it prove necessary to do so.

18. The Lord Chancellor’s power to make orders under subsection (3) would be exercisable by statutory instrument subject to annulment.

19. *Subsection (4)* repeals the enactments specified in Schedule B which includes enactments relating to certain courts which are already abolished.

20. *Subsection (5)* contains a saving as respects the proposed repeal of the Mayor’s Court of London Procedure Act 1857. The Mayor’s and City of London Court as constituted immediately before 1 January 1972 was abolished by section 42 of the Courts Act 1971 and replaced by a court with the same title which is a county court for the City of London.

21. Paragraph 7(1) of Schedule 5 (transitional provisions consequential on merger or abolition of certain courts) to the 1971 Act provides that any proceedings which had begun in the City Court before 1 January 1972 may be continued on and after that date in the county court, whether or not the proceedings could have been begun in a county court.

22. The enactments repealed by the 1971 Act included section 19(2) of the City of London (Courts) Act 1964 which provided that non-county court actions in the City Court should be governed by rules made under section 45 of the 1857 Act, namely, the Mayor's and City of London Court (Original Actions) Rules 1967¹⁰.

23. Paragraph 7(2)(b) of Schedule 5 to the 1971 Act provided that, notwithstanding the repeal of section 19(2) of the 1964 Act, non-county court cases in the City Court should continue to be governed by the said rules. The saving in subsection (6) is necessary because some of the non-county court cases which survived by reason of the transitional provisions in Schedule 5 are still pending.

24. Although there would be power under subsection (6) to vary or revoke the rules (the latter so that they can be got rid of when it is clear that there can be no further use for them) the subsection does not save section 45 of the 1857 Act. It would not, therefore, be possible to make an entirely new set of rules for these old actions. The Registrar of the Court has confirmed that nobody would now want to do that.

¹⁰ S.I. 1967 No. 871.

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