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CONTENTS

THE ITINERANT JUSTICES OF HENRY II

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Preface

Henry II (1154-1189) is most often described as the father of English common law. Indeed his reign is pre-eminent in English history for its legal progress. Yet, many of the reforms and innovations credited to Henry II have antecedents dating back to the reign of his grandfather Henry I (1100-1135), if not before. As Pollock and Maitland point out in their monumental History of English Law, "Under Henry II the exceptional becomes normal." The system of itinerant justices employed by Henry II to centralize and unify the whole of English law is a case in point.

The purpose of this paper is to illustrate how the itinerant justice came to be an integral part of the legal machinery utilized by Henry II and, in so doing, to examine the role of the itinerant justice, his duties and his significance, during the reign of this versatile twelfth-century monarch.

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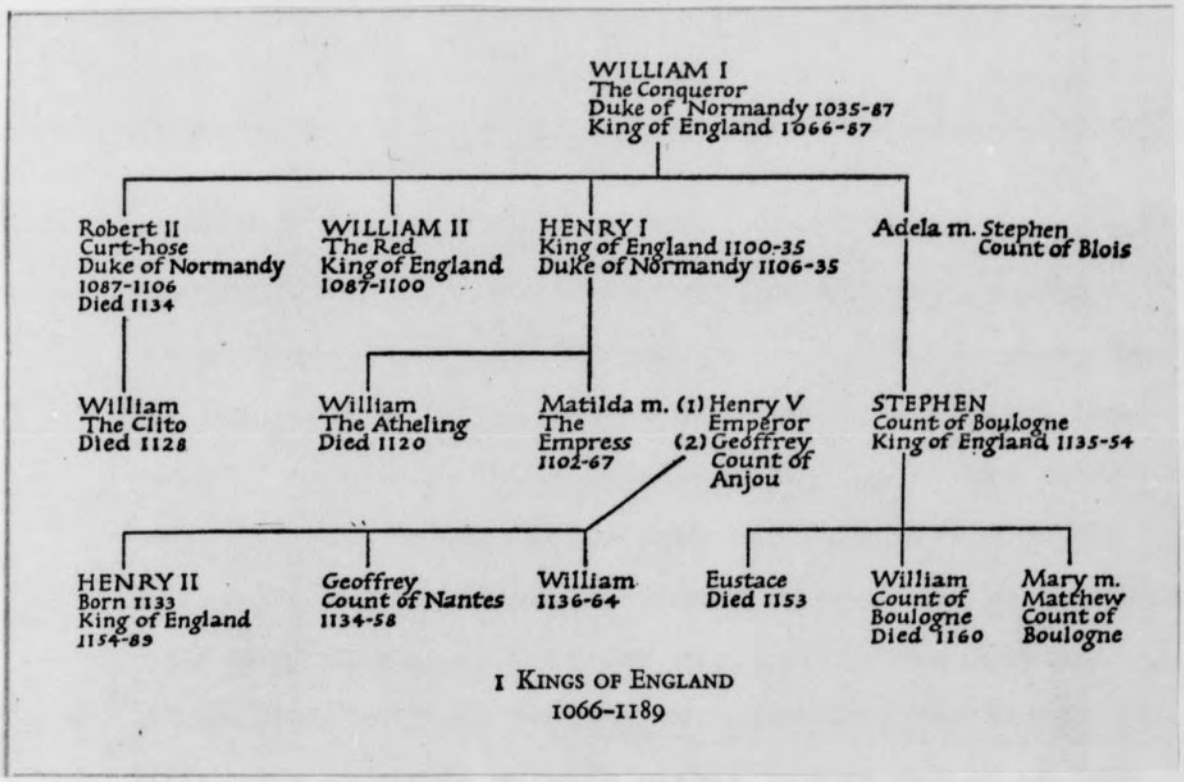

I KINGS OF ENGLAND
1066–1189

John T. Appleby, Henry II, The Vanquished King (London, 1962), p. 9.

I

SUMMARY OF THE EVOLUTION OF THE ITINERANT JUSTICE PRIOR TO THE REIGN OF HENRY II

1066-1100

In spite of the fact that there were no royal justices, itinerant or otherwise, in regular employment during the period 1066-1100, the practice of sending commissioners through the country on royal business, be it judicial or fiscal, began soon after the Norman Conquest.[1] Although it is possible that there were times when the Old English kings sent representatives to the shires to settle disputes, "there seems to be no evidence that they did so and, so far as we know, the practice of the Conqueror in sending out commissioners to try difficult disputes between highly placed men or to conduct a nation-wide enquiry marked a new departure,"[2] and thereby laid the foundation--slight though it was--for the institution of the itinerant justice.

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[1] W. S. Holdsworth, A History of English Law (London, 1903), I, 32.

[2] H. G. Richardson and G. O. Sayles, The Governance of Medieval England from the Conquest to Magna Carta (Edinburgh, 1963), p. 173. Bishop Stubbs, however, in the first volume of his Constitutional History of England briefly mentions the judicial circuits of Edgar and Canute, but does not acknowledge his source of information.

We know that already under the Conqueror powerful barons and trusted prelates who were close to the king as advisers and who were most prominent in the curia regis were on occasion commissioned to try pleas of the crown in the shire courts. Among the early instances of the king's missi presiding in the local courts can be found the following cases: the Bishop of Coutances presiding at a famous session on Penenden Heath; he and others presiding over the country court of Worcestershire and also over a combined moot of the eastern counties; and, Lanfranc presiding at Bury over a combined moot of nine shires.[3] Some historians even contend that the Conqueror's Domesday inquest may be regarded as the first legitimate eyre on grounds that, as they traversed the kingdom in an effort to determine the yearly incomes due the king, the royal commissioners also "settled many cases and recorded others for future decision."[4] Be that as it may, one cannot help but admit that although these infrequent royal commissions were a far cry from the general eyres of Henry II, the men employed on these royal journeys may be regarded as the legitimate precursors of the itinerant justices so prominent in the days of Henry Plantagenet.

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[3]Frederick Pollock and Frederic William Maitland, The History of English Law before the Time of Edward I (Cambridge, 1911), I, 109, Note 2.

[4]Frank Barlow, The Feudal Kingdom of England, 1042-1216 (London, 1955), p. 99.

These sporadic judicial delegations were continued with new vigor during the reign of William Rufus (1087-1100)[5] and were supplemented in some counties by resident justices who, in lieu of the sheriff, heretofore the sole representative of royal power on the local plane, were empowered to hear the pleas of the crown.[6] The chief agent of the crown, the king's rather unscrupulous minister Ranulf Flambard, whose position under Rufus foreshadows the office of chief justiciar,[7] seems to have been closely connected with these proceedings.

> It was Ranulf who drove the local courts hard in the royal interest, who visited the shires on eyre with other royal 'barons', investigating the rights and revenues of the king, who collected geld and supervised the treasury and the sheriffs.[8]

The Anglo-Saxon Chronicle states that Ranulf "managed" the king's councils "over all England and superintended them."[9]

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[5]As Sir James Ramsay has pointed out, "The expression of the Petersborough Chronicler, that he (William Rufus) 'drove' and managed all the 'gemots' of the country, would imply an interference with the action of even the ordinary local courts," The Foundations of England (London, 1903), II, 168.

[6]Bryce Lyon, A Constitutional and Legal History of Medieval England (New York, 1960), p. 168.

[7]In 1091 Ranulf Flambard signs not as Justiciarius but simply as Thesaurius. Ramsay, The Foundation of England, II, 225.

[8]Barlow, p. 99.

[9]The Anglo-Saxon Chronicle, version E, in English Historical Documents, 1042-1189, gen. ed. David C. Douglas (New York, 1953), II, 175.

Ranulf's name appears on the judicial commissions of 1095 and 1096.[10] The 1096 commission is known to have had a circuit including Devon and Cornwall for the specific purpose of hearing royal pleas (ad investiganda regalia placita).[11] Ranulf, whose essential function was to control the king's legal and financial business while Rufus himself was engrossed in pursuing the deer or making war, seems to have been quite expert while on such commissions at the task of exorting funds later lavished by the king on bribes and mercenaries in his efforts to win the duchy of Normandy from his brother Robert.

Two inseperable motives seem to account for this embryonic development of these royal commissions: the insatiable royal greed[12] and need for money coupled with the slow realization that the rapidly expanding power of the sheriffs must be checked. Better justice, if indeed there was any improvement because of these sporadic missions, seems to have been but a by-product.

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[10] Lyon, p. 191.

[11] Ibid., p. 168.

[12] In the Anglo-Saxon Chronicle can be found the following description of the royal greed of the Conqueror:

> The king was so very stark
> And deprived his underlings of many a mark
> Of gold and more hundreds of pounds of silver,
> That he took by weight and with great injustice.
> From his people with little need for such a deed.
> Into avarice did he fall
> And loved greediness above all.

English Historical Documents, II, 164.

It must be remembered that one of the major sources of revenue for the crown were amercements from cases known as the pleas of the crown. Because they were considered injuries to the king or breaches against his prerogative right, these cases were considered far more serious than the more ordinary crimes such as theft and were therefore heard in a royal court with all profits being enjoyed solely by the king. Beginning with such offenses as breach of the king's special peace, ambush, and neglect of military duty the list of these pleas of the crown was rapidly augmented till, as can be learned from the Laws of Henry I, it came to include some thirty-seven offenses: among them, murder, treason, breach of fealty, counterfeiting, default of justice, contempt of royal writ, Danegeld, treasure-trove, shipwreck, and a number of royal fiscal rights. Apparently when in need of funds the first Norman kings, having "wrapped up their prerogative authority with all sorts of vague powers that surpassed customary feudal rights," simply increased the royal revenue by using their royal prerogative and throwing their jurisdiction over still another offense.[13] However, by so expanding the extent of royal jurisdiction the problem of expeditiously handling the cases now crowding the royal court was created.

As Pollock and Maitland point out, under the two Norman Williams the name curia regis seems to have been

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[13]Lyon, p. 189.

borne only by those great assemblages that gathered round the king thrice[14] a year when he wore his crown and heard these now increasing pleas of the crown.[15] However, because this curia regis was itinerant and also had functions other than judicial it could not handle the very pleas designed to fill the royal coffers. Assistance on the local level was needed. Under both the Williams the chief agent of the crown in this endeavour was the sheriff, the man responsible for the fiscal, judicial, and military organization of the shire. To him fell the task of hearing the royal pleas not reserved for the curia regis. When he presided over the shire moot to hear the pleas of the crown it then became a royal court.[16] However, since the sheriff during these early days of Norman rule was almost invariably drawn from the ranks of the baronage and was himself a powerful landed magnate with substantial personal interest in the district under his jurisdiction[17] this system of delegated power had certain inherent shortcomings. In the first place, these local courts could be, as indeed they often were, used for excessive exactions and oppression. Now to be sure, exactions

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[14] At Christmas, Easter, Pentecost at Gloucester, Winchester, and Westminister. William Stubbs, ed., Select Charters and Other Illustrations of English Constitutional History, 7th ed. (Oxford, 1890), p. 141.

[15] Pollock and Maitland, I, 107-109.

[16] Lyon, p. 190.

[17] Austin Lane Poole, From Domesday Book to Magna Carta, 1087-1216, 2nd ed. (Oxford, 1951), pp. 386-387.

and oppression would not have bothered the royal conscience in the slightest had fiscal gain been commensurate. However, since the interests of the sheriffs did not always coincide with those of the crown, the accounts rendered by the sheriffs were often far from accurate and the sheriffs themselves far from trustworthy when it came to matters concerning the royal interest. Thus, both to expedite the collection of the royal revenues as well as to check the power and independence of the sheriff, royal commissions were sent from the curia regis to the shire courts. These royal missions, though far removed in both range and variety of business from the general eyres of the late 12th century, were the antecedents of the first true judicial eyres; their members, the first "itinerant justices" in the history of English law.

1100-1135

From the Pipe Roll of 31 Henry I (the only one which has survived from the reign of Henry I) it is evident that many of the counties were visited by itinerant justices. There is nothing to warrant the assumption that this practice was in any way exceptional during the reign of Henry I, at least not during the quarter of a century of rule that followed Henry's settlement with the Church and his crushing defeat of Robert at Tinchebray in 1106. However, the consensus seems to be that it is Roger, Bishop of Salisbury, the first man to be called chief justiciar of England, who

deserves the real credit for instigating and organizing the missions of itinerant justices in evidence during this period.

Accidentally discovered by Henry, Roger, an indigent priest living in the suburbs of Caen, had endeared himself to the future king by the rapidity with which he could dispose of the divine service. Henry, who at the time was engaged in war with William Rufus, rewarded such merit by declaring Roger a suitable chaplain for the military.[18] On his accession in 1100, Henry I promoted Roger to the office of chancellor, two years later to the bishopric of Salisbury,[19] and in 1107 or 1108 named him justiciar. Entitled capitalis justiciarius Roger held that office until deposed by Stephen in 1139, and surrounded himself with a small body of justitiarii who, though not well trained lawyers, were expert administrators.[20] Roger, being entrusted with the management of affairs in England while the king was absent in Normandy, soon came to be regarded, as William of Newburgh points out, "the second person in the kingdom."[21]

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[18] William of Newburgh, Historia Rerum Anglicorum, trans. Joseph Stevenson, in The Church Historians of England (London, 1856), IV. part II, 410.

[19] William John Corbett, "England, 1087-1154," Ch. XVI, The Cambridge Medieval History, gen. ed. J. B. Bury, (New York, 1926), V, 533.

[20] Lyon, pp. 153-154.

[21] Since later Henry appointed John, Bishop of Lisieux to hold a similar position in Normandy, it appears that indeed Roger functioned successfully as regent and justiciar Jacques Boussard, Le Gouvernment D'Henri II Plantagenet (Paris, 1956), p. 368.

Roger's great work as justiciar was the organization of the Exchequer,[22] a board or group of barons from the curia regis specially charged with the duty of auditing the sheriff's accounts and trying cases which concerned revenue due the king. Twice a year, at Easter and Michaelmas, these barons of the Exchequer, as they were known, met around the checkered table from which they derived their name and reviewed the financial condition of the realm. Hand in hand with the development of the Exchequer seems to have come the organization of judicial circuits.

These barons of the Exchequer, it must be remembered, were merely members of the curia regis functioning in another capacity. Under Henry I the curia regis, a court in theory encompassing the whole body of tenants-in-chief, was in practice limited to the great officers of the household and such others appointed to it by mandate of the king.[23] As barons of the Exchequer these men of the curia regis were responsible, among other things, for auditing the revenue

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[22]Although most modern authorities credit Roger with organizing the Exchequer, Richard fitz Nigel in the "Dialogue of the Exchequer" states that the Exchequer "is said to have been introduced by King William at the time of the Conquest of England, though its constitution was taken from the Exchequer overseas. "Dialogue of the Exchequer," English Historical Documents, II, 498.

[23]The great officers of the household were the chancellor, the chamberlain, and the master steward and constable. Poole, p. 8.

due the king.[24] At this time assessment of revenue was still largely based on the Domesday survey. Transfers of land, changes in cultivation, the creation of new forests and other such changes, however, presented questions at the Exchequer sessions which called for occasional revisions and readjustments of payments due the king. These revisions and readjustments were effected by sending members of the Exchequer throughout the country. While settling disputed points of assessment and tenure in the several shires, these barons of the Exchequer seem to have been commissioned, as members of the king's court, to hear pleas of the crown as well. In addition to these itinerant justices there is evidence that some held standing commissions to act as the king's justices, sometimes in several counties at once.[25]

As the justices thus employed presided in the shire moots the local and central judicature were brought into immediate contact and the first substantial stepping stone

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[24]The revenue of the Crown was derived, in part, from the royal demesnes, vacant bishopries and royal abbeys, from feudal incidents--reliefs and aids--and from scutages and fines. Moreover, "Danegeld, the earliest direct taxation, which had been called into existence to meet an emergency in the late Anglo-Saxon period, became under the Norman kings a very frequent, if not an annual impost...." Poole, pp. 417-418.

[25]Kate Norgate, England Under the Angevin Kings (London, 1887), I, 25-26.

laid toward bridging the gap between royal and local justice. It must be pointed out, however, that, as in the days of the Norman Williams, extortion of maximum profit was t he main purpose of these iters.[26]

Distinguished as justitiarii totius Anglie because their functions were not confined to any one county,[27] the men employed on these itinerant missions can in no way be regarded as professional lawyers, though some, no doubt, must have had a "tincture of the new canonical jurisprudence."[28] Some like Bishop Roger owed their elevation to this task entirely to their own abilities. Of this class were Ralph Basset and his son Richard; others were under-tenants, like Geoffrey de Clinton, later a chamberlain in the king's household; still others, such as Walter Espec of Malton and William d'Aubigny of Belvoir, were barons of medium rank.[29] Although several were well-connected, none were direct descendents of the Domesday tenants-in-chief. Little wonder they were regarded by the great feudatories as nobodies.[30]

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[26]Barlow, p. 192.

[27]Richardson and Sayles, p. 174.

[28]Pollock and Maitland, I, 110.

[29]Corbett, "England, 1087-1154," p. 534.

[30]Ramsay, The Foundations of England, II, 323.

Specific information regarding the activities of justices itinerant during the reign of Henry I is meager, thus making it difficult to piece together a true picture of the extent and functions of Henry I's judicial eyres. An early charter of Henry I's names Alfred of Lincoln and Roger of Salisbury as his justitarius. Apparently these two went on eyre in the south-western counties in or about the year 1106.[31] A more specific reference comes from the Anglo-Saxon Chronicle. Under the year 1124 it is recorded that Ralph Basset and the "king's thegns" while on eyre in Leicestershire "hanged there more thieves than ever had been hanged before; that was in all forty-four men in that little time; and six men were blinded and castrated. A large number of trustworthy men said many were destroyed very unjustly there...."[32] Noting the dearth of other references to the king's eyres in that chronicle one is forced to conclude that perhaps such severity was not always common to these judicial visitations.

The bulk of information regarding the activities of the itinerant justices comes from the one surviving pipe roll of Henry I's reign--the pipe roll which presents accounts as they stood at Michaelmas 1130. As various historians have pointed out, in absence of earlier rolls it is not easy to determine the significance of many facts

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[31] Richardson and Sayles, pp. 174-175.

[32] Anglo-Saxon Chronicle, ed. Dorothy Whitelock, et al. (London, 1961), p. 191.

recorded. Moreover, since the primary concern of the barons of the Exchequer was only with the profits of justice, the Pipe Roll of 31 Henry I contains no references to any work undertaken by the justices that did not result in a fine or amercement or some other offering due the king. The pipe roll contains no details which serve beyond the bare identification of a financial item. Furthermore, the fact that items from eyres of several years previous are apparently scattered throughout the roll of 1130 makes it difficult to discern the extent of Henry's eyres. For example, scattered over the roll are items which indicate that Ralph Basset visited at least ten counties. Yet, this very same Ralph Basset is believed to have retired from active judicial work some time before, probably around 1127.[33] Needless to say, matters such as these do not facilitate drawing conclusions about the eyres held during the days of Henry I. Nevertheless, from the roll of 1130 several facts do emerge regarding the eyres commissioned by Henry I. There appear to have been a dozen justitiarii totius Anglie in office with a maximum of perhaps half a dozen functioning at any one time. While on eyre they seem to have acted in pairs--just as they did during the early years of the reign of Henry II. There is no reason to suppose they were so

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[33]Richardson and Sayles, pp. 176-177.

employed for life but presumably they were employed continuously in the service of the crown so long as they were justitiarii. Not all justitiarii, however, were sent on itinerant missions.[34] These itinerant justices appear to have been sent in all directions. At one time or another the vast majority of the counties of the realm undoubtedly experienced a visitation by one of the king's justices. Apparently Eustace fitz John and Walter Espec held pleas in the northern counties; Miles of Gloucester and Pain fitz John in the western and midland counties and in the Welsh march; and Williams d'Aubigny and Robert of Arundel and others in the southwestern counties.[35] How regular were these missions is another question. Yet, as Lady Stenton has pointed out, "not until Henry II has been more than ten years on the throne can a single pipe roll again display so much judicial activity as the Roll for 1130."[36]

Some of Henry I's itinerant justices seem to have been used quite extensively. The Pipe Roll of 1130 shows that Ralph Basset had been as active in holding pleas in the shires as his successors were in the days of Henry II. Debts incurred in "old pleas" held before him are recorded under Surrey, where he also heard forest pleas, Berkshire,

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[34] Ibid., p. 175.

[35] William Stubbs, The Constitutional History of England (Oxford, 1880), I, 433.

[36] Doris Mary Stenton, English Justice, 1066-1215 (Philadelphia, 1964), p. 62.

and Buckinghamshire. Pleas that are not yet considered "old pleas" but certainly are not new pleas are recorded under Nottinghamshire, Derbyshire, Lincolnshire, Norfolk, Suffolk, Berkshire, Wiltshire, London, and Middlesex.

> Debts resulting from his work in Huntingdonshire have been discharged but chronicle evidence shows that he had presided in the shire court there when an Englishman, Bricstan, was charged by a minor royal official, Robert Malarteis, with concealing treasure trove, letting it out at interest and trying to enter Ely abbey as a monk to avoid prosecution.[37]

Probably between these visitations he would return to the king's court to help decide the suits which had been ordered to be heard there by the king.

Even busier than Ralph Basset appears to have been Geoffrey de Clinton,[38] on record as having visited no less than eighteen counties. He and his companions heard pleas in Yorkshire, Nottinghamshire, Derbyshire, Staffordshire, Warwickshire, Lincolnshire, Norfolk, Suffolk, Northamptonshire, Huntingdonshire, Buckinghamshire, Bedfordshire, Berkshire, Wiltshire, Essex, Kent, Surrey, and Sussex. In some counties debts imposed by him for forest offenses are also recorded.[39] In all probability most of Geoffrey's

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[37] Ibid., pp. 61-62.

[38] It is interesting to note that the same Geoffrey de Clinton was accused of treason at the Easter court of 1130. Stubbs, Constitutional History, I, 444.

[39] Stenton, p. 63.

pleas go back no further than two or three years. His great activity as an itinerant justice could not have begun much earlier than 1126, the year he ceased to be treasurer--"an office that did not leave much time for judicial work in distant counties."[40] Other visitations, such as those of William of Houghton in Suffolk and those of Henry de Port in Kent, which have left but little mark on the roll probably took place much earlier.[41] While numerous items recorded on the roll cannot be accurately dated, the eyres which were in progress in 1129 and the proceeds of which were brought to account in 1130 appear to be only those of Richard Basset in Sussex and, accompanied by William d'Aubigny, in Lincolnshire, as well as those of Walter Espec and Eustace fitz John in the northern counties.[42]

By piecing together the particulars recorded as arising from the Lincolnshire eyre of 1129, it is possible to picture the proceedings of a general eyre held during the days of Henry I. First,

> ... Anschetil the 'collector' is called upon to account for 100 marks of silver and four marks of gold in respect of the pleas of William d'Aubigny; but what is covered by these sums we are not told. Then the burgesses of Lincoln account for 200 marks of silver and four marks of gold so that they may hold the city from the king in chief, and forty marks of silver and one mark of gold in respect of the pleas of William d'Aubigny. Roger

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[40] Richardson and Sayles, p. 176.

[41] Stenton, p. 62.

[42] Richardson and Sayles, p. 179.

> of Kyme next accounts for 100 marks of silver for a plea of land against Walter Godwinson. Then two men each account for sixty marks for a plea of false judgment. Ralf fitz Nigel and two of his men account for fifty, twenty and sixty marks respectively 'de placitis W. de Albino Britonis', but for what reason we are not told. Thereafter the sheriff begins to account for amercements inflicted upon the wapentakes: these entries are scattered but collecting them, we have murder fines in Aswardhurn, Aveland, Corringham and Manley, amercements for breaches of the peace in Aslacae and Langae, and for concealment of treasure trove in Kirton. Various men account for various sums for breaches of the peace and for wreck (which they have appropriated instead of turning to the king's profit). And now Richard Basset has appeared as William d'Aubigny's colleague: apparently they sometimes sit together and sometimes separately. ...Roger of La Lacelle has offered 100 shillings in order that a plea of land may be adjourned until Robert Marmion is knighted. Goislin, the Bishop's steward, has made a causey in the king's highway and is amerced twenty marks of silver and one of gold. ...Ralf Godricson offers a horse worth sixty shillings as an alternative to bringing an action to recover his lands. ...Lambert fitz Peter gives a palfrey (as relief) so that he may have his father's land, and Rolf fitz Drew does likewise, offering three falcons and four gerfalcons. Baldwin of Dirby offers 140 marks so that he may have the wardshipp of Ralf fitz Simon of Dirby, with all his land, until he is ready to be knighted. Wigat of Hackthorn is amerced one mark because he has failed in a judicial battle. Beside these informative entries we must set a great number which assign no reason for the debt, as where the sheriff accounts for fifteen marks in Leadenham and Fulbeck ...for the pleas of William d'Aubigny at Boston and we are told nothing more.[43]

Such miscellaneous entries form the pattern for the eyres of Henry I. From these entries it is evident that the justices hear the pleas of the crown, enquire about wardships and marriages and about any of the king's rights that might have been infringed, and also settle a

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[43] Ibid., pp. 177-178.

goodly portion of what appear to be civil suits. Noteworthy are the increasing number of cases concerning land which come before the justices. Apparently the old tradition of self-help is slowly giving way to the more effective procedure, expensive though it was, of royal interference. This trend was to continue during the days of Henry II.

Although the visitations of the itinerant justices during the reign of Henry I were not enforced with the systematic regularity evident during the reign of his grandson, these missions proved of benefit to king and subject alike. By having the wit to perceive that pressure applied by relatively well-trained agents in accordance with something resembling uniformity of rule, Henry, who loved money no less than William Rufus, was able to fill the royal coffers almost to the brim, establish a system of communication with all corners of his realm, and substantially quash the power of the sheriffs, heretofore acting, for the most part, as a law unto themselves. His subjects, on the other hand, accustomed to the ill-regulated judicial proceedings in the shire courts, were slowly beginning to realize that better justice was to be had in the court of the king. Judging from an episode recorded in the Battel Abbey Chronicle the guilty "trembled for the consequence" when faced with trial in a court held in the king's name. One Gausfried even attempted

Counties Visited During Reign of Henry I

to break out of such a court by force.[44]

All in all, the most important result of the practice of sending out itinerant justices on the king's business was the fact that a concrete step was taken toward disseminating throughout the land a common standard of justice based on the practice of the king's own court.

1135-1154

> Though still performing their judicial visitations in some areas during Stephen's reign the itinerant justices almost disappeared from the legal panorama and had to be revitalized by Henry II, who had become familiar with such an institution in Anjou and Normandy.[45]

Having no pipe rolls for the reign of Stephen one cannot be positive whether the foregoing conclusion is accurate or not. However, by noting the general trends of justice during Stephen's reign as described by contemporaries or near-contemporaries it would appear that the preceeding conclusion is not far from wrong.

William of Newburgh states that during the reign of Stephen "the law was powerless of necessity, because the king was powerless. Some persons did whatever seemed right to themselves; many of opposite inclination did what in their own minds they knew to be wrong." He goes on to say that neither the king nor the empress had the power to effectually curb their adherents or to maintain

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[44] Chronicle of Battel Abbey from 1066 to 1176, trans. Mark Antony Lower (London, 1851), p. 54.

[45] Lyon, p. 283.

discipline over their respective factions, that numerous castles were erected in the several provinces, and that "there were now in England, in a certain measure, as many kings, or rather tyrants, as there were lords of castles; each...possessing a power, similar to that of kings, indictating laws to their dependents."[46] Describing the blood-curdling torments inflicted on the people by these local tyrants in their efforts to extort gold and silver, the author of Anglo-Saxon Chronicle emphasizes that such misery "lasted the nineteen years while Stephen was king and it was always going from bad to worse."[47] Similar statements in Gesta Stephani corroborate this picture of lawless abandon occurring because "justice is trampled under foot and laws are broken."[48]

The contention that itinerant justices all but disappeared from the legal scene during Stephen's reign can be further corroborated by the fact that once Roger of Salisbury, the chief organizer of the itinerant missions was dismissed in 1139, no successor appears to have been appointed to carry on the work begun by the Bishop of Salisbury. Moreover, from the "Dialogue of the Exchequer"

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[46]William of Newburgh, pp. 428-429.

[47]Anglo-Saxon Chronicle, ed. Whitelock, p. 199.

[48]Gesta Stephani, trans. K. R. Potter (London, 1955), pp. 127-128.

comes the information that the Exchequer system was "wellnigh destroyed" by the civil war of Stephen's reign.[49] Since this was the case one could well conclude that the itinerant missions followed suit. However, in the absence of records which would truly settle the matter, an equally strong case could be built for the contention that perhaps the use of itinerant justices did not fall into complete oblivion after all.

Since Matilda did not arrive in England until late 1139 and Roger, the justiciar, continued in office until 1139, there is nothing to warrant the assumption that the practices in evidence during the latter years of the reign of Henry I were abolished the day Stephen claimed the throne. Moreover, with the death of Robert of Gloucester, Matilda's half-brother, and the departure of the Empress for the continent early in 1148 the so-called civil war was virtually at an end. "There were still many and some serious sporadic disorders, the work of individual barons and their retainers, but relatively during the years 1148 and 1153 the country was at peace."[50] The use of itinerant justices could easily have been resumed during these years. Some historians contend that there are grounds for believing that toward the end of Stephen's reign Richard de Lucy

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[49]"Dialogue of the Exchequer," English Historical Documents, II, 521.

[50]Poole, p. 150.

functioned as a sort of justiciar.[51] If this be true, perhaps his duties included seeing that judicial missions be resumed. In fact one can even go so far as to question whether itinerant missions were completely suspended during the period of actual warfare . The "official" war, it must be remembered, was confined within fairly narrow limits. Earl Robert, from his strongholds at Gloucester and Bristol, attempted to extend his power to the east, while Stephen, generally with Oxford as his headquarters, devoted his time to dislodging his opponent from his position in the west. Consequently, the bulk of the fighting took place in Wiltshire and Gloucestershire and in the borders of the adjacent counties. Outside this area the war was conducted by individual barons bent on serving their own interests. Just how far this private war dislocated the normal life of the country is difficult to determine since evidence is both insufficient and contradictory.[52] It is known, however, that in 1139 Stephen and his immediate followers took time to settle a dispute between the Archbishop of Canterbury and the Abbot of Battle Abbey concerning a wreck in the Dengemarsh and that in 1148 they heard "without delay" the first stages of that long drawn-out controversy between Hilary, bishop

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[51]Richardson and Sayles, p. 166.

[52]Poole, p. 151.

of Chichester and Walter, abbot of S. Martin of Battle concerning the dignities and liberties of their respective churches.[53] These cases do not stand alone. A scene in the shire court held in the bishop's garden of Norwick soon after 1148 casts further light on the path of justice during the reign of Stephen.

> A controversy arose as to whether the jurisdiction in a particular case belonged to the shire or to the abbey of Bury St. Edmunds. It was decided (in favour of the abbey) on the testimony of an aged knight who had solid grounds for his claim to be an authority on precedent, for he vouched for the fact that fifty years had passed since he first began to attend the hundred and county courts with his father. He prefaced his evidence with these words: 'I am, as you see, a very old man, and I remember many things which happened in King Henry's time and even before that, when right and justice, peace and loyalty flourished in England. But because in the stress of war, justice has fled and laws are silenced, the liberties of churches, like other good things, have in many places perished.' The old man speaks with a bluff honesty that rings true; but his words cut both ways. The laws might have been silenced and justice might have flown, but here a properly constituted court, presided over by a king's justice (William Martel), is seeking for precedents from the good old times and was making a gallant effort to get to the rights of the matter.[54]

Thus, it appears that justice was not entirely suspended during this troubled epoch. Poole has pointed out that there are even traces of legal development during Stephen's reign. "It is indeed an odd circumstance that the earliest evidence for the procedure of recog-

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[53] Chronicle of Battel Abbey, pp. 72-78.

[54] Poole, p. 156.

nition of novel disseisin and of the assize utrum, commonly attributed to the legal genius of Henry II, with many of its familiar formulae, appears in the reign of Stephen."[55]

While it is impossible to establish the role, if any, of justices itinerant during Stephen's reign, it is known, however, that local justiciars, instituted by William Rufus and continued by Henry I, experienced a period of prominence during the reign of Stephen. The only official definition of this office comes from a writ Stephen issued at the seige of Drax in 1154:

> Stephen King of the English to the earls, barons, abbots, sheriffs, ministers and citizens of Lincoln and to all his faithful people of Lincoln and Lincolnshire, Greeting. Know that I have granted to Robert Bishop of Lincoln my justice--iustitiam mean--of Lincoln and Lincolnshire. Wherefore I will and firmly command that the same Robert shall hold my justice as well and in peace and honourably and fully as Robert Bloet or Alexander, Bishops of Lincoln, best had it. And I command you that by the summons of his ministers you came to hold my pleas and make my judgments as you did best and most fully in the time of King Henry my uncle. And if you do not do this, he (the Bishop) will do justice on you through your chattels that you do it. Witness, Hugh the Bishop of Durham, Richard de Luci and Richard de Canvill'at Drax.[56]

These local justiciars resembled the itinerant justices of the reign of Henry I in that their duties appear to

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[55] Ibid., p. 157.

[56] Registrum Antiquissimun of Lincoln Cathedral, 1: pp. 63-64, from the Calendar of Charter Rolls, 4: p. 139 (13), quoted in Stenton's English Justice, p. 66.

be somewhat similar, in that they apparently removed the pleas of the crown from the control of the sheriffs, and in that they derived their authority from a direct royal grant. However, unlike the itinerant justices of Henry I, these local justiciars usually functioned in no more than one or two counties at a time, were usually men with powerful local connections, and had no particular training for their office. These local justiciars were to fade from the legal panorama once Henry II made his major moves toward systematizing itinerant missions.

In conclusion, reviewing both the pros and cons in regard to the employment of itinerant justices during the reign of Stephen, one cannot help but concede that their use was nowhere as extensive or regular as in the days of Henry I. However, to say that their use was completely suspended seems rather foolhardy.

II

SYSTEMATIZATION OF THE EMPLOYMENT OF ITINERANT JUSTICES BY HENRY II

During the reign of Henry II itinerant justices came to be regarded as full-fledged members of the Angevin judicial system. Their use was institutionalized, regularized, and systematized in the course of some twenty-five years, years marked by numerous experiments designed to realize the full-potential of these representatives of royal authority. If Henry is to be regarded as a great legal innovator when it comes to the use of itinerant justices it is because of the new twists and experiments he applied to the procedures begun by his predecessors.

Henry's use of itinerant justices reflects the varying political fortunes of his reign. He did not, as some authorities insist, "immediately (begin) sending out itinerant justices with the view of organizing the counties into judicial circuits and making the eyres systematic."[1] When he came to the throne of England he was but a very young man--twenty-one, to be exact--whose primary concern was, of necessity, to secure

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[1]Lyon, p. 283.

England and consolidate his continental domains. These concerns, as well as the later quarrel with Beckett, did not afford very much time to an extensive program of legal reform, no matter what Henry's intentions might have been. Whereas the charters and writs of the latter part of the reign suggest the routine of a governmental bureau those of the early years suggest the influence of individual circumstance.[2] In the later years when there were fewer political events to occupy his attention, the king was able to focus more fully on the details of administration, on the details of the judicial eyres.

1154-1165

Much more common than pleas heard before itinerant justices during the early years of the reign of Henry II appear to be cases pleaded before the king himself as he, in company with his immediate followers, the small council,[3]

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[2]Doris Mary Stenton, "England: Henry II," ch. XVII, The Cambridge Medieval History, V, 573.

[3]Absolutistic in nature and practice the Angevins preferred to do most of their governing through the small council composed of those most intimate with the king - the justiciar, the chancellor, such household officers as the chamberlains, constables, and chaplains. Also included were royal relatives and those barons whose services were deemed particularly valuable to the crown. Though still the highest court of the realm, the great council, a curia regis as was the small council, heard only the great causes of the realm. For example, in 1164 they heard the charge that Henry of Essex had committed treason in the Welsh campaign of 1157 by dropping the royal standard and spreading the word that Henry II was dead. Lyon, pp. 248-250.

traversed the provinces at a "breackneck speed that was the despair of his court,"[4] attempting to establish peace and order, curb the power of the rebellious barons, and increase the revenues due the crown--the royal treasury had diminished considerably because of the lavishness with which both Stephen and Matilda "bought" their respective supporters. Peter of Blois, Archdeacon of Bath, pictures him as scurrying from place to place. "If need be, he can make four or five days' journey in one.... For he does not lie in his palace like other kings, but traverses the provinces and looks into the deeds of all men...." In fact, states Peter, he "never sits, except only when he is riding or eating."[5]

As the royal entourage traversed the kingdom, the supreme "fount of justice" itself appears to have been always open to any suitor who had the time and could meet the expense of tracking down its ever-shifting whereabouts. Walter Map chastizes the king for being "accessible to those who seemed unworthy of such access."[6] Since Map himself was an aristocrat of the

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[4]John T. Appleby, Henry II, the Vanquished King (London, 1962), p. 42.

[5]Peter of Blois: Epistola LXVI, in Migne's Patrologia, vol. CCVII, cols. 195-210, quoted in Appleby's Henry II, p. 257.

[6]Walter Map, De Nugis Curialium, trans. Frederick Tupper and Marbury Bladen Ogle (London, 1924), p. 303.

true Norman breed whose very soul loathed anyone of a lower social order, his remark may be regarded as a compliment to Henry. In addition to the king himself, Thomas, the chancellor, as the king's special representative, appears to have been constantly employed in hearing causes as he accompanied the king on these journeys.[7]

Whether he was before the walls of Toulouse or in the northern most part of England a ceaseless procession of his subjects appeared before the king seeking favors or begging to be heard on a variety of matters. If a man was not satisfied with or certain of a just verdict in the local court his only recourse was to the king himself. Henry II, it is said, "was harassed by unseasonable complaints and sorely tried by wrongs, yet he bore them in silence."[8] At the most inconvenient moments he was even ready to hear the cases brought before him. In 1155,[9] three days after Hugh de Mortimer's rebellion was subjugated the king found the time and patience to listen to that most wearisome suit that Hilary, Bishop of Chichester and Walter, Abbot of Battle Abbey had waged against each other since 1148. This particular case is most interesting for several reasons. First, it

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[7]Norgate, II, 434.

[8]Map, p. 298.

[9]Sir John Edward Lloyd, A History of Wales (London, 1948), II, 496.

illustrates just how such cases were conducted by the itinerant royal court. (Of course, we must remain cognizant of the fact that the parties involved were rather important men of the kingdom.) It is quite evident that both sides are allowed ample time to explain and defend their respective position, that the parties involved are thoroughly questioned by members of the king's court, that evidence--in this case charters--on which claims are based is produced and carefully examined, and that the king apparently discusses and deliberates such cases with his court. Final decision, however, rests with the king. "After due deliberation I shall decide," he informs Thomas. Second, this particular case is of interest because it offers a glimpse of the men who helped deliberate the cases that come before the royal court. Many of them were soon to be employed by Henry II as his first itinerant justices. Present are found Theobald, archbishop of Canterbury; Roger, archbishop of York; Silvester, abbot of S. Augustine's Canterbury; Richard, bishop of London; Robert, bishop of Exeter; Gausfrid, abbot of Holme; Thomas, the king's chancellor; Patrick, earl of Salisbury; Robert, earl of Leicester; Henry of Essex, the constable; Richard de Lucy; Reginald de Warenne; and Warin fitz Gerald.[10]

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[10]Chronicle of Battel Abbey, pp. 95-115.

As Henry II himself was soon to realize, in spite of his willingness to hear cases brought before him during his ceaseless peregrinations, the judicial and administrative demands of the country could not be met by relying solely on the itinerant royal court, occasional meetings of the great council, and the biannual meetings of the Exchequer. The royal court was so erratic that no one knew, save the king, where the vast establishment would be next. Worn out with pursuing him all over England, Peter of Blois wrote to the king:

> Solomon says there are four things a man cannot know: the path of an eagle in the sky, the path of a ship in the sea, the path of a serpent on the ground, and the path of a man in his youth. And I can add a fifth: the path of the king in England.[11]

Not only had a suitor the task of following the king over all of England but on the continent as well. The most famous illustration of such dragged out proceedings is the Anesty case, begun in 1158 and not settled until 1163.

Richard of Anesty claiming as heir to his uncle certain lands of which Mabel de Francheville, whom he asserted to be illigitimate, was in possession, began the case by sending to Normandy for the king's writ. Soon thereafter he had to send for another writ directing the case to an ecclesiastical court since the question

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[11] Peter of Blois, quoted in Appleby's Henry II, p. 63.

of bastardy was involved. In the ecclesiastical court the case dragged from place to place from month to month. Meanwhile, since the king had summoned the army for the expedition of Toulouse, Richard himself had to go to Gascony for yet another writ bidding the ecclesiastical court proceed despite the war. Litigation dragged on for yet another year. Then once more Richard had to cross the Channel because he needed the king's leave to appeal the case to the Pope. At length the case came back to the royal court. For weeks on end Richard followed the court. Finally, five years after the proceedings had begun the case was decided in Richard's favor. "by grace of the lord king and by the judgment of his court."[12] No doubt the fact that the ecclesiastical court was involved contributed to this delay in settlement. Nevertheless, the expense and time involved in the Anesty case was not exceptional. A land dispute, described in the Chronicle of Battel Abbey, between the Abbot of Battle Abbey and Gilbert de Baillol was also subject to countless delays because the king was now in Normandy, now in various parts of England.[13] Thus, it is evident that in these early years of the reign of Henry II royal justice was, as Pollock and Maitland so

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[12]"Suit of Richard 'de Anesti' against Mabel 'de Francheville' (1158-1163)," in English Historical Documents, II, 456-457.

[13]Chronicle of Battel Abbey, p. 118.

aptly put it, "still very royal indeed."[14]

Walter Map, later one of Henry II's own itinerant justices, suggests that such dragged out proceedings were at times deliberate on the part of the king. "His mother taught him I have heard," states Map, "to prolong every case, to hold fast for a long time whatever fell in his hands and thus to reap its advantages."[15] Giraldus accuses him of being a "seller and secret accuser of justice changeable and crafty in word."[16] No doubt the more delays the more royal writs issued, the more revenue due the crown. However, the more reliable William of Newburgh states that from the outset of his reign Henry "was anxiously vigilant that the vigour of the law which in King Stephen's time had appeared lifeless and forgotten should be revived," and that "such being the outset of the new reign, the peaceably disposed congratulated, while the lawless muttered and were terrified."[17]

It is William of Newburgh who discloses the fact that during these early years of his reign Henry also

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[14] Pollock and Maitland, I, 159.

[15] Walter Map, p. 298.

[16] Giraldus Cambrensis, Concerning the Instruction of Princes, trans. Joseph Stevenson in The Church Historians of England (London, 1858), I, Part I, 140.

[17] William of Newburgh, p. 444.

"appointed officers of law and justice throughout his realm."[18] While no doubt the majority of these were the local justiciars so prominent in the reign of Stephen, there appears to have been some use of itinerant justices as well. However, these itinerant justices held their commissions but occasionally and without systematic organization.

Stubbs states that on the Pipe Roll of 1156 there are references to placita which may have been held in 1155 or earlier by Henry of Essex in Somerset, Devon, Hampshire, Wiltshire, and Sussex; by Gregory, the bishop of Chichester, and Ralph Picot in Middlesex, Surrey, Buckinghamshire, and Bedfordshire and by the Archbishop of York in Yorkshire.[19] Between Michaelmas 1155 and Michaelmas 1156 thirteen shires were visited by one or more representatives of the king's court. The person most extensively employed in this capacity appears to have been the constable Henry of Essex.[20] "The pipe roll entries suggest that Henry was largely occupied with criminal pleas--'the pleas and murder fines of Henry of Essex' is a description of his work.[21] Thomas,

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[18] Ibid.

[19] William Stubbs, Introduction to the Rolls Series, ed. Arthur Hassal (London, 1902), p. 129, note 3.

[20] Norgate, I, 434.

[21] Stenton, p. 68.

the chancellor, also appears to have been used in this capacity, twice in the company of Henry of Essex in Essex and Kent[22] and once in that of the Earl of Leicester in Shropshire.[23] In 1156 Gregory of London, who had previously held office as sheriff in the city heard pleas in Buckinghamshire and probably in Surrey where he assisted the bishop of Chichester and Ralf Picot in assessing a scutage. In the same year one of the king's constables, Henry de Pomerai sat in Cambridgeshire[24] while, either in 1155 or 1156, one or both of Henry's II's two chief justiciars,[25] the Earl of Leicester and Richard de Lucy, heard pleas in Bedfordshire and Buckinghamshire.[26] Apparently no justices were sent out in 1157 and 1158. In 1157 there are new pleas recorded on the roll for the year, but as no judges are mentioned they were probably held by the sheriffs.[27] Actually it is difficult to

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[22]Norgate, I, 434.

[23]Stenton, p. 69.

[24]Ibid., p. 68.

[25]"Henry II apparently preferred to split the authority of the justiciar between two men; from 1155 to 1168 two prominent barons, Earl Robert of Leicester and Richard de Lucy, shared the office. Robert of Leicester seems, however, to have been superior in authority because he consistently acted as vice-regent during Henry's absences...." At Robert's death in 1168 Richard de Lucy became sole justiciar and continued so until retirement in 1179. Lyon, p. 252.

[26]Stenton, p. 69.

[27]Stubbs, Historical Introductions, p. 129, note 3.

determine just what judicial business was transacted during these early years of the reign of Henry II.

> The pipe rolls of Henry II's early years contain few subheadings to indicate the official reason of the debts due to the King. The familiar Nova placita et nova conventiones which in the later rolls and in that of 31 Henry I marks the new fines in each account reappears tentatively in the Roll of 3 Henry II. It is not until 12 Henry II, 1166, that clerks begin to enter judicial debts under the names of the judges responsible for the work.[28]

Moreover, reasons for individual debts are by no means always given. Even in 1165 no attempt has been made to enter judicial fines and amercements separately from scutage payments.[29] However, from incidental references in the Roll of 6 Henry II it is evident that William fitz John has been hearing pleas[30] in Devon, Somerset, Gloucestershire and Herefordshire. Quite probably he also visited Yorkshire in the previous year, for a debt which first appears in 1159 without any indication by whom it was imposed is described in a later roll as coming from the pleas of William fitz John. "He was hearing pleas in Somerset again, probably in 1165, and imposing so heavy an amercement on Samuel the priest of Pilton that four years later by a sworn inquest of his

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[28] Stenton, p. 69.

[29] Ibid., p. 71.

[30] Stubbs, however, says they were probably pleas of the forest. Historical Introductions, p. 129.

neighbors Samuel was pardoned £40 for his poverty.[31]

There is little evidence that between 1160 and 1166 the king made any serious attempt to maintain judicial eyres. Only two such missions seem to have taken place. In 1163 Alan de Neville was sent to hold pleas of the forest[32] and, during the same year, Richard de Lucy, the justiciar, held pleas in Cumberland, "which seem to have been of much importance, probably as being the first legal settlement of the county after its restoration by the Scots."[33] Apparently in these early years Henry had few men to spare for the purpose of undertaking the duties of a general eyre. William of Newburgh explains, however, that although the king himself was concerned with matters more pressing than organizing judicial eyres he, nevertheless, found time to review the actions of those subordinates sporadically employed as itinerant justices.

> As often, however, as any of the judges acted remissly or improperly, he was assailed by the complaints of the people, the king applied the remedy of his royal revision, and properly corrected their negligence or excess.[34]

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[31] Stenton, p. 69.

[32] Norgate, II, 124.

[33] Stubbs, Historical Introductions, pp. 129-130. Richard may well have heard these pleas during a visit paid to the north for political motives while the king was abroad between August, 1158 and January, 1163. Stenton, p. 71.

[34] William of Newburgh, p. 444.

Apparently William's observations are quite accurate. The Chronicle of Battle Abbey contains a perfect illustration of such royal revision.

Alan de Neville, chief of the king's foresters, who "by the power granted him, most maliciously vexed various provinces of England with innumerable and unusual prosecutions," entered the manors of the Abbey of S. Martin of Battel which were situated within the precincts of the forest and with force demanded money for assarts, i.e. money for lands cleared of wood and brought into cultivation. William the Conqueror, founder of the Abbey, in a charter given the abbey, had specifically declared it "free and quit forever from every custom of earthly service." This, of course, included assarts. Succeeding rulers had always honored and renewed the Conqueror's Charter. Now for the first time it was being disregarded. With force the money demanded by Alan de Neville was collected, carried to the Exchequer, and stored in the royal treasury. The abbot, upon hearing of this transaction, sent one of his monks to the Exchequer with the charter of privileges in hand to make complaint before the justices sitting there about this "unusual and unjust demand." The monk appeared before Robert, earl of Leicester, Richard de Lucy, and other barons of the Exchequer, stated his complaint, produced the charter, and demanded restitution. "The liberties of the abbey having been heard

from the testimony of the charter, the said money, now long deposited in the treasury was, by the unanimous judgment of all, withdrawn and restored to the monk before all present."[35]

As in the latter years of Henry I the men employed as itinerant justices during these early years of the reign of Henry II were either officers of state or holders of some domestic office. The two justiciars were among the greatest magnates of the land, yet neither wavered in his loyalty to the king. The Earl had been educated at Abingdon and "could hold his own in talk about the purpose of kingship with John of Salisbury. There is no evidence that Richard de Lucy had any legal training other than that which any baron might acquire to hold a manorial court of his own."[36] Only William

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[35]There is a sequel to the story, claims the Chronicle, which shows just how much gratitude Alan himself received from the very king he thus attempted to ingratiate. "When he [Alan] was brought near his end, the bretheren of a certain monastery, desiring, as it seems, a portion of his substance for their house, went to the king, beseeching him to allow them to take his body and bury it with them. The king evinced his regard for him in these terms: 'I,' quoth he, 'will have his wealth, but you may have his carcase, and the demons of hell his soul!'" Chronicle of Battle Abbey, pp. 122-123. It seems, however, that more than evincing the king's regard for Alan, this particular episode evinces the king's regard for the royal pocketbook.

[36]Stenton, pp. 70-71.

Counties Visited During Early
Years of Reign of Henry II
(1154-1166)

fitz John was a quasi-professional judge, "the first to be appointed by Henry II." However, he was as much an administrator as a lawyer and in his later years he was chiefly employed with the royal household.[37]

Briefly reviewing the years 1154-1165 it seems safe to say that judicial eyres were the exception, not the rule, during these early years of the reign of Henry II. In fact the whole period 1154-1166 is marked by a singular lack of judicial activity when compared with the years to which are to follow. It must be noted, however, that the infrequent visitations of the itinerant justices, even during these early years of Henry II's reign, were vastly more profitable to the king than the returns from either the sheriffs or the local justiciars. It therefore comes as no surprise to learn that from 1166 onward the itinerant justice is to play an ever-increasing role in the legal and administrative machinery of Henry II.

1166-1175

Just as the year 1166 may be regarded as a landmark in the legal history of the entire reign of Henry II so may the year 1166 be regarded as a landmark in the history of itinerant justices. At a council held at Clarendon in the early part of the year, probably in

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[37]Richardson and Sayles, p. 197.

February, Henry issued the Assize of Clarendon, the first truly legislative enactment of his reign. This assize is "the earliest official document providing for the great administrative changes introduced by Henry II, and particularly for those effected in the sphere of local jurisdiction."[38] Aimed at the establishment of a more efficient and uniform administration of law - for the first time in English history criminal justice was to be administered throughout the land in accordance with the same rules - the Assize of Clarendon suggests that the visitations of the itinerant justices are to become regular and that the duties of the justices are to be specifically defined. Mentioned six times in the articles of the assize, the justices are for the first time explicitly referred to as "itinerant justices" in Article 19.[39]

The principal provision of the assize provides that throughout the several hundreds a jury of present-

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[38] English Historical Documents, 1042-1189, gen. ed. David C. Douglas, II, 407. Some historians consider the Constitutions of Clarendon issued in 1164 to be of almost equal importance on the grounds that "they are the first rational code of laws in England, as opposed to either tribal custom or a rambling set of unrelated 'liberties' ....Appleby, p. 95. However, they make no mention of itinerant justices.

[39] See Assize of Clarendon (1166) in English Historical Documents 1042-1189, II, 408-410.

ment[40] made up of twelve "of the more lawful men" of each hundred and four of the more lawful men of each vill (township) is to be used to discover the names of those men suspected of being robbers, murderers, or thieves or the harbourers of such since "the lord king has been king." Sworn to tell the truth this jury is required to divulge, when questioned by the justices or sheriffs, the name of any person reputed to be guilty of such offenses. The men so named are to be put to the ancient ordeal of water. Those found guilty are to lose one foot; those proved innocent by ordeal, "if they have been of ill repute and openly and disgracefully spoken of by the testimony of many and that of the lawful men," shall be freed to abjure the realm within eight days. In both cases the king has sole rights to the chattels of the accused.

While both the sheriffs and the itinerant justices may question a jury of presentment, the king's justices alone, judging from article 4 of the assize, are to act as the trial judges in these cases, with the sheriff playing a definitely inferior role.

> And when a robber or murderer or thief or receiver of them has been arrested through the aforesaid oath, if the justices are not

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[40]"Although the line of descent from the chief thegns of Ethelred's Wantage code through the jurors of the Pipe Roll of 31 Henry I to the presenting jurors of the Assize of Clarendon proves that the presentment of crime was no innovation in 1166, the stern uniformity of practice established by the Assize was undoubtedly new." Stenton, p. 71.

> about to come speedily enough into the county where they have been taken, let the sheriffs send word to the nearest justice by some well-informed person that they have arrested such men, and the justices shall send back word to the sheriffs informing them where they desire the men to be brought before them. And together with them let the sheriffs bring from the hundred and the vill, where they have been arrested, two lawful men to bear the record of the county and of the hundred as to why they have been taken, and there before the justices let them stand trial.[41]

However, the success of this assize does to a large degree depend on the speed and promptitude of action on the part of sheriffs.

The king left England for Normandy in March; he was to be out of the country for the next four years.[42] The country at large learned of the assize through pleas held before two magnates whose authority no one dare question: Richard de Lucy, the younger justiciar, and Geoffrey de Mandeville, the earl of Essex. Before he died in October of 1166,[43] the Earl had accompanied Richard in seventeen out of the eighteen counties where the assize was held.[44] Starting apparently in East Anglia in the spring of 1166 they traversed the home counties

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[41] "Assize of Clarendon (1166)," English Historical Document, II, 408.

[42] Stenton, p. 71.

[43] Richardson and Sayles, p. 200.

[44] Stubbs, Historical Introductions, p. 130. Appleby, however, states that twenty-seven counties were visited while Boussard contends that only in sixteen was the assize held: Buckinghamshire, Bedfordshire, Derbyshire, Cambridgeshire, Huntingdonshire, Nottinghamshire, Northumberland, Essex, Hertfordshire, Norfolk, Suffolk, Surrey, Kent, and Yorkshire. Appleby, p. 120. Boussard, pp. 495-496.

and went as far as Northumberland. Alan de Neville seems to have visited Staffordshire with the same commission but he appears to have been chiefly employed trying pleas of the forest. Earl Geoffrey's death at Carlisle apparently put an end to the eyre as projected.[45] Much of the country was apparently left unvisited until the eyres were resumed in 1168 on a different plan. "In 1166 Carlisle, Lancaster, Shropshire, Devon, Herefordshire, Cornwall, and possibly, Northamptonshire seem, from the pipe roll evidence temporarily to have escaped visitation."[46]

The vigor and severity with which the Assize of Clarendon was enforced is shown by the Pipe Roll of 12 Henry II. The roll is swelled by long lists of names of men and women whose goods have been forfeited to the king, either because they had shirked attendance at court, fled from justice, or had been apprehended and convicted.[47] In Yorkshire alone 129 persons are listed as fugitives who fled the country rather than face the king's justices, or as having 'failed in the judgment of water.'[48] Apparently the clause binding all "qualified" free men to be ready to serve on the juries of presentment was

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[45] Richardson and Sayles, pp. 199-200.

[46] Stenton, p. 72.

[47] Sir John Ramsay, The Angevin Empire (A.D. 1154-1216) (London, 1903), p. 79.

[48] Appleby, p. 120.

strictly enforced. One attempt to evade jury duty was punished with a fine of 5 marks.[49]

There seems to be some confusion whether the death of the Earl of Essex in 1166 ended or merely interrupted the enforcement of the Clarendon Assize. It is known that in 1167 enforcement was suspended while Alan de Neville, the chief justice of the forests, conducted a full-scale forest eyre, actually begun the previous year.[50] Lady Stenton states that the king appointed additional judges almost every year and that the enforcement of the assize went on during 1168, 1169, and 1170: "In 1168 the work of enforcing the Assize of Clarendon mainly fell on the chief justiciar, Richard de Luci, who again visited Yorkshire, and on Richard of Ilchester, Archdeacon of Poitou, Guy the dean of Waltham, and Reginald de Warenne, supported in Kent by Henry fitz Gerald, the Chamberlain, and elsewhere by William Basset, the third generation of his family to serve the king as judge."[51] Stubbs, however, states

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[49]Norgate, II, 124.

[50]Norgate, II, 124. Stubbs, Constitutional History, I, 532. Stenton, p. 73. Boussard, who states a total of twenty-one counties were visited in the course of the year, suggests that Alan de Neville was responsible for enforcing the Clarendon Assize. Boussard, p. 496. However, since his chief role was to hear pleas of the forest, it is extremely doubtful whether Alan de Neville heard other pleas as well - and in twenty-one counties, no less.

[51]Stenton, p. 73.

that the purpose of the 1168 eyre was the collection of an aid, a strictly feudal impost, which Henry demanded for the marriage of his eldest daughter. The men listed by Stubbs as engaged in this endeavour are the very same ones, with the addition of William fitz John, named by Stenton as commissioned to enforce the Assize of Clarendon. Stubbs further states that the collection of the aid occupied these men, most of whom were barons of the Exchequer, for a period of two years, and was met with great complaints on the part of the people.[52] In all probability the eyres of 1168 and 1169 were a combination of judicial and fiscal investigation and, as Norgate suggests, "the system begun by the Assize of Clarendon was by no means suffered to fall into disuse."[53] In 1169 a younger Alan de Neville, assigned to work with William Basset, and Oger the dapifer, assigned to work with Guy the dean of Waltham, were added to the list of itinerant justices. "In 1170 the names of John Cumin, younger brother of a Warwickshire landowner and later to be Archbishop of Dublin, and Geevase of Cornhill, who had been justiciar of London under Stephen, were added to the company of judges in eyre, while in the North two barons of those parts, William de Stuteville

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[52]Stubbs, Constitutional History, I, 532.

[53]Norgate, II, 125.

and Hugh de Moreville, were tried out."[54]

The commissions sent out during the period 1167-1170 do not appear to have travelled in accordance with a well-defined principle of circuits. Some justices visited but one county; others were sent to as many as twelve.[55]

During these years immediately following the issuance of the Assize of Clarendon the king's itinerant justices were

> ...scarcely regarded as judges administering justice so much as tax gatherers for a needy treasury. The people at large groaned under the heavy burden of fines and penalties and charges for the maintenance of an unaccustomed justice. When in the visitations of 1168, the judges had to collect, besides the ordinary dues, an 'aid' for the marriage of the king's daughter, the unhappy tax-payers, recognizing in their misery no distinction, attributed all their suffering to the new reform, and saw in their king not a ruler who desired a righteous judgment but one who thirsted after gain.[56]

However, in not all instances were the itinerant justices regarded as unnecessary evils. Probably at the same time that Henry II issued the Assize of Clarendon he authorized the Assize of Novel disseisin, the words of which have not come down to us, and commissioned the itinerant justices to settle disputes concerning recent

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[54]Stenton, pp. 73-74.

[55]See lists in Boussard's Le Government D'Henri II, pp. 497-499.

[56]Mrs. J. R. Green, Henry the Second (London, 1900), p. 122.

dispossession.[57] Pollock and Maitland state that alongside the records of abundant profits reaped from the criminal pleas the pipe rolls of these years give us "our first tidings of men being amerced for disseisin 'against the king's assize'."[58] Apparently there were some subjects who experienced a newly kindled hope of justice when the itinerant justices visited their shire.

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[57] "If one person is dispossessed, that is dispossessed of his free tenement, he is to have remedy by royal writ: a jury is to be summoned; in the presence of the king's justices it is to answer this simple question about seisin and disseisin; if it gives the plaintiff a verdict he is to be restored to his possession." Pollock and Maitland, II, 146. In cases of Novel disseisin the king's writ reads as follows:

> "The king to the sheriff greeting. N. has complained to me that R. has unjustly and without a judgment dispossessed him of his free tenement in such-and-such a village since my last voyage into Normandy; therefore I command you that, if the aforesaid N. should make you security for prosecuting his claim, then you shall cause possession of that tenement to be restored to him, together with the chattels taken on it, and you shall cause the tenement with the chattels to be in peace until the Sunday after Easter, and in the meantime you shall cause twelve free and lawful men of the neighbourhood to view the land, and have their names enrolled. And summon them by good summoners to appear before me or my justices prepared to make the recognition. And put R. (or his bailiff, if he cannot be found) under safe pledge to be there at that time to hear such recognition, and have there, etc. Witness, etc."

Glanville, "Concerning the Laws and Customs of the Kingdom of England," English Historical Documents, II, 475.

[58] Pollock and Maitland, I, 145-146.

In 1170 there was a lull in the judicial activities while the full-scale Inquest of Sheriffs was undertaken. When Henry II returned from the continent in the spring of 1170 after an absence of four years he was met with loud complaints of exactions and oppressions suffered at the hands of the sheriffs and bailiffs. No doubt the itinerant missions also revealed abuses in the local courts. Henry, at that time anxiously contriving the recognition and coronation of his eldest son, took swift action to redress the grievances of the people. No doubt remembering his own troubled accession to the throne Henry realized the advantages in maintaining his subjects reasonably pacified. Moreover, "Henry II may have been a tyrant but he was not prepared to let the people suffer under a host of petty tyrants."[59] Shortly after Easter at a great Council of London,[60] he ordered a commission of "itinerant barons" to enquire into the conduct of the sheriffs throughout the several shires. The commission was composed of barons and clergy,[61] presumably none of whom were the itinerant justices used to enforce the Assize of Clarendon. From the instructions given them it appears that they were to make a thorough investigation of the whole system of

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[59] Barlow, p. 311.

[60] Stubbs, Select Charters, p. 147.

[61] Stenton, p. 74.

local judicial administration. They were not only to enquire into the receipts of the sheriffs but also, judging from articles 4-8 of the instructions,[62] into the receipts and actions of the itinerant justices. They were to determine whether bribes have been taken either by the sheriffs, itinerant justices, or royal foresters; whether all "aid" due the king has been delivered to the royal treasury; whether anyone has been unjustly accused; and whether the chattels due the king as a result of the Clarendon Assize have been duly collected. The inquest appears to have been quite thorough. No doubt many of the "itinerant barons" were more than willing to scrutinize the actions of the men who had supplanted them in the power structure of the shire. The reports of the barons must have been a sorry tale of corruption and misappropriation. As a result of the inquest 22 of the 29 sheriffs of the kingdom were removed from office.[63] It is interesting to note that Ranulf de Glanville, the future justiciar, and William Basset, one of the king's justices, are among those forced to relinquish their office. The vacant shrievalties were filled with men from the curia regis and the Exchequer, thus bringing shire and royal court one step closer.

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[62]"The Inquest of Sheriffs," English Historical Documents, II, 438-440.

[63]See table compiled by Stubbs in English Historical Documents, II, 437-438.

There is no evidence to indicate the resumption of judicial missions during the remaining months of 1170. Henry's attention was diverted to matters other than judicial. On the one hand he was faced with the prospect of war with King Louis VII of France, who was incensed that his daughter Margaret was not crowned with her husband, the newly crowned king of England; on the other, he was faced with the prospect of having his careful provisions providing for an orderly succession undone. Beckett, now in the sixth year of his exile, was threatening to excommunicate all who had participated in the coronation of "the King the King's son", as the younger Henry was henceforth to be called. When Beckett made good his threats the Angevin rage knew no bounds. Wishing to relieve the king of "disturbances of mind which they observed to be preying upon him," four knights of his household crossed the Channel and five days after Christmas hacked the Archbishop to death in the consecrated precincts of his own cathedral.[64] Needless to say, the murder of the Archbishop of Canterbury profoundly shocked all Christendom. Without a doubt this was a far from auspicious climate in which to renew judicial missions. Anxious to distract public attention from the Beckett murder, Henry turned his attention to asserting his authority over Ireland--actually he had

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[64]The Chronicle of Florence of Worcester, trans. Thomas Forester (London, 1854), pp. 288-293.

toyed with the idea of conquering Ireland from the very first years of his reign. Moreover, recent events in Ireland led him to believe this was the proper time to put his plans into effect.[65] A scutage was levied for this endeavour but whether it was collected by the sheriffs or the itinerant justices is unknown.[66]

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[65]In 1166, Dermot McMurrough, King of Leinster, had been driven out of Ireland by Rory O'Connor, High King of Ireland, and Tiernan O'Rourke, Lord of Meath. Dermot had gone to Henry in Aquitaine to ask for help in regaining his kingdom. Henry, too busy at the time with his efforts to subdue the rebels in Aquitaine to give him any assistance, had nevertheless authorized Dermot to enlist the help of any of the king's subjects willing to embark on such an adventure. Richard of Clare, Earl of Pembroke, commonly known as "Strongbow", was the most powerful man to respond to Dermot's invitation. Dermot promised him the hand of his daughter as well as the succession to the Kingdom of Leinster in return for his help. In August 1170 Strongbow landed in Ireland with over a thousand soldiers. Meanwhile, Dermot, with the help of other English and Welsh adventurers had regained his kingdom. Aspiring to even greater things, probably the position of high king, Dermot, with the help of Strongbow captured Waterford and Dublin. True to his word, Dermot gave Strongbow his daughter, and when he died, in May 1171, Strongbow succeeded to his title and lands. By this time Henry had become alarmed that one of his subjects was in the process of setting himself up as king in a land upon which Henry himself had designs. When Strongbow refused to come before the king to give a personal account of his actions and intentions, Henry II was determined to go to Ireland and investigate the state of affairs for himself. Appleby, pp. 184-185.

[66]Stubbs, Historical Introductions, p. 130.

The years 1173 and 1174 brought still further diversions from matters judicial. In 1173, shortly after Easter, Henry the younger, chafing because he had a title but no jurisdiction whatsoever, rebelled against the authority of his father, Henry II. He was soon joined in rebellion by "the whole of the kingdom of France, Richard his brother, earl of Poitou, and Geoffrey, earl of Bretagne, and nearly all of the earls and barons of England, Normandy, Aquitaine, Anjou, and Brittany."[67] While Henry was in the process of subjugating these rebels, William, King of Scots, who had never relinguished his claim to Northumberland, took advantage of the situation, collected an army, and invaded England. It was not until July of 1174 that the King of Scots was captured. Peace with the younger Henry was made the following September.[68] No judicial missions, as such, were sent out during these turbulent years. During 1173, however,

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[67] Roger of Hoveden, Annals, trans. Henry T. Riley (London, 1853), I, 385. Of course, Roger exaggerates when he states that "nearly all" of the earls and barons joined in the rebellion. Nevertheless, the rebellion was serious enough to warrant Henry's full attention.

[68] Hoveden, p. 385. While Henry was occupied with quelling the rebellion on the continent, the justiciar, Richard de Lucy, was in charge of military operations in England. Poole states that Richard de Lucy, the justiciar, and Ranulf de Glanville, the future justiciar "were almost entirely responsible for the failure of the rebellion in England." Poole, p. 334.

a tallage was assessed by six companies of "barons", and the "principle of circuits was for the first time introduced."[69] Several of the men employed on this mission had earlier functioned as itinerant justices enforcing the Clarendon Assize--for instance, John Cumin, Gervase de Cornhill, and William Basset, whose dismissal as sheriff in 1170 apparently did little to jeopardize his career. Thus, it is evident the king relied on basically the same group of men for the various tasks of administering the kingdom. The following year the business of the kingdom was transacted by the sheriffs in association with a clerk, and under the writ of the justiciar. It is uncertain whether this "business" was fiscal or judicial.[70]

When he returned to England in 1175 Henry commissioned Ranulf de Glanville, who had managed to regain

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[69]Stubbs, Historical Introductions, p. 130, also note 3, p. 130. (1) In the Eastern counties, Seffrid the Archdeacon, Wimar the Chaplain, Adam de Gernemue, and Robert Mantell. (2) In Wessex, Wido the dean, Hugh de Bocland, Richard Wilton, and William Ruffus. (3) In Kent, Bucks, and Beds, Richard the Archdeacon, Reginald Warenne, and Nicholas the Chaplain. (4) In West Mercia (Glouc., Heref., etc.), John Cumin, Walter Map, and Turstin fitz Simon. (5) In East Mercia (Northants., Notts., etc.), William Basset, John Malduit and John of Dover, clerk. (6) In Surrey and the home district, Reginald de Warenne and Gervase de Cornhill.

[70]Stubbs, Historical Introductions, p. 130.

the royal favor,[71] and Hugh de Cressy to hear pleas in the northern and eastern counties; to the western and southern ones he sent William de Lanvallei and Thomas Basset.[72] In addition to these two itinerant courts can be added still another--that of the king himself. As Round points out,

> In the Pipe Roll of 1175 and its immediate successor we find "placita in Curia Regis" held by a single group of judges--William fitz Ralf, Betram de Verdun and William Basset (Thomas Basset is a substitute in one case and William fitz Audelin in another)--quite distinct from the 'placita' of the justices in eyre, which were not described as 'in curia regis'.[73]

Thus, it appears that the pleas held in curia regis were held by a distinct group of judges in the train of the king himself, whose iter, states Round, began at Reading, June 1175. More counties than ever before appear to have been visited. Ranulf de Glanville and Hugh de Cressy hear pleas in Buckinghamshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Northamptonshire, Nottinghamshire, Derbyshire, Lincolnshire, Essex,

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[71] In 1174, being then sheriff of Lancashire, Ranulf performed a signal service for the king and kingdom: At a critical moment he surprised the invading Scots near Alnwick and captured their king. From that time forward he stood high in the king's favor. Pollock and Maitland, I, 163.

[72] Stubbs, Historical Introductions, p. 130.

[73] J. H. Round, Feudal England (London, 1895), p. 513.

Hertfordshire, Norfolk, Suffolk, Oxfordshire, and Yorkshire; William de Lanvallei and Thomas Basset, in Herefordshire, Gloucester, Staffordshire, Shropshire, Worcestershire, Somerset, Devon, Wiltshire, Hampshire, Berkshire, Werwickshire, Leicestershire, Sussex and Kent. The counties visited by William Basset, William fitz Ralf, and Betrum de Verdun are among those listed as being visited by one or the other of the two commissions mentioned above: Essex, Hertfordshire, Buckinghamshire, Bedfordshire, Cambridgeshire, Huntingdonshire, Leicestershire, Northamptonshire, Norfolk, Suffolk, Staffordshire, and Yorkshire.[74] There is no discernable specialisation evident to distinguish the pleas held in curia regis from those of the regular itinerant justices.

1176-1189

The year 1176 is of utmost importance in the history of itinerant justices under Henry II.

> In the report of their proceedings in the Pipe Roll of the year they are for the first time since the Assize of Clarendon officially described by the title which they had long borne in common speech, 'justitiae itinerantes' (or errantes), justices-in-eyre; and it is from this time that the regular institution of itinerant judges is dated by modern legal historians.[75]

The year 1176 marks the beginning of a vigorous attempt to put the eyre system on a permanent basis.

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[74] See lists in Boussard, pp. 502-503.

[75] Norgate, II, 177. Italics are mine.

At a meeting of the Great Council held at Northampton in January of that year the staff of the itinerant courts was considerably enlarged, the duties of the justices expanded, and the principle of subdivision found so useful in collecting the tallage of 1173 adopted. For the first time, even the chronicles seem to regard the action taken at Northampton as being of prime importance. Roger de Hoveden states that in this the twenty-second year of his reign Henry II came to Northampton and there "held a great council on the statutes of his realm, and in the presence of the king, his son, and of the archbishops, bishops, earls, and barons of his realm, by the common consent of all divided his kingdom into six parts, to each of which he appointed three justices itinerant...."[76] Hugh de Cressy, Walter fitz Robert, and Robert Mantel were assigned to the counties of Norfolk, Suffolk, Cambridgeshire, Huntingdonshire, Bedfordshire, Buckinghamshire, Essex, and Hertfordshire; Hugh de Gundeville, William fitz Ralf, and William Basset to the counties of Lincolnshire, Nottinghamshire, Derbyshire, Staffordshire, Warwickshire, Northamptonshire, and Leicestershire; Robert fitz Bernard, Richard Gifford, and Roger fitz Remfray to the counties of Kent, Surrey, Southamptonshire, Sussex, Berkshire, and Oxfordshire;

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[76]Hoveden, I, 406.

Circuits of 1176

William fitz Stephen, Bertram de Verdun, and Turston fitz Simon to Herefordshire, Gloucestershire, Worcestershire and Shropshire; Ralph fitz Stephen, William Ruffe, and Gilbert Pipard to Wiltshire, Dorset, Somerset, Devonshire, and Cornwall; and, finally, Robert de Wals, Ranulf de Glanville, and Robert Pikenot to Yorkshire, Richmondshire, Lancaster, Coupland (part of Northumberland), Westmoreland, and Cumberland.[77] In most cases one of the three justices assigned to a particular circuit was also sheriff in one of the counties in that circuit.[78] Then the king caused all the above-named justices to "swear upon the Holy Evangelists, that they would with good faith, and without evil intent" observe the assize--a recension of the Assize of Clarendon--issued at Northampton and cause it to be "inviolably observed by the people of his realm."[79]

Apparently issued as a set of instructions to the newly appointed itinerant justices, the Assize of Northampton, while in the main but a recapitulation of the decisions made at Clarendon, increased both the

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[77] Ibid., pp. 406-407.

[78] Stubbs, Constitutional History, I, 546.

[79] Hoveden, I, 407.

penalties for criminal offenses[80] as well as the duties of the itinerant justices. As before, the itinerant justices are to question juries of presentment and litigate pleas of the crown. Moreover, they are to continue the procedure of summoning juries of recognition to help decide civil suits brought into the royal court by the king's possessory assizes.[81] In addition to their

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[80]The list of criminal offenses now includes murder, larceny, robbery, coining, and arson. Those found guilty by ordeal by water are to have not only one foot lopped off but their right hand as well. Moreover, they are to abjure the realm within forty days. Those acquitted on trial by water, if they be men of evil reputation, must abjure the realm as well. As before all profits of justice go to the king. See "Assize of Northampton," in Hoveden, I, 407-410.

[81]At Northampton the king's second possessory assize, the assize of mort d'ancestor was instituted. "The principle of mort d'ancestor is that if a man has died in seisin, that is, possession of a tenement, and was not holding it as a mere life-tenant, his heir is entitled to obtain possession of it as against every other person, no matter that such person claims and actually has a better right to the land than the dead man had." Pollock and Maitland, I, 147-148. As in cases dealing with novel disseisin, an original royal writ issued by the king to the sheriff wasall that was necessary to initiate action under the assize of mort d'ancestor. The following is an example of such a writ:

> "The king to the sheriff greeting. If G. the son of O. shall make you security for prosecuting his claim, then summon by good summoners twelve free and lawful men of the neighborhood of such-and-such a village to attend before me or my justices on such-and-such a day, prepared to declare an oath if O. the father of the aforesaid G. was possessed of his demesne as of fee of one virgate in that village on the day of his death, if he died after my first coronation and if G. be the nearer heir. And in the meantime let them view the land, and you shall cause their names to be enrolled. And summon by good summoners R. who holds the land, that he be there to hear such recognition, and you shall have there the summoners and this writ. Witness, etc...."

Glanville, "Concerning the Laws...of England," English Historical Documents, II, 473.

strictly judicial duties, the justices are to receive oaths of fealty to King Henry II from such earls, barons, knights, freeholders, and even serfs who wish to remain in the realm. Those who refuse to do fealty are to be taken as enemies of the king. Also, the justices are to command all persons who have not yet done homage and allegiance to the king to come before them to do so. Moreover, throughout the counties through which they are to go, the king's justices are to "take precautions that castles already dismantled are quite dismantled, and those which are to be dismantled are utterly razed to the ground."[82] The assize informs us that if they fail in this particular duty the king will desire to have the judgment of his court on them as "contemners of his commands." So the list of duties continues:

> The justices are to make enquiry as to escheats, and churches, and lands, and female wards, that are at the disposal of our lord the king. ...The justices are to make enquiry as to the keepers[83] of the castles, both who they

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[82]Hoveden, I, 410.

[83]These were probably the Castellans put in the castles by Henry. They were members of the familia regis, a sort of personal military staff.

Because numerous baronial castles were confiscated by the crown, particularly during the early years of Henry II's reign as well as during the rebellion of 1173-4, the number of royal castles sharply increased during the reign of Henry II. These confiscated castles, plus the ones built by the king, were committed to the keeping of trusted officials. In addition to serving as military strong points, they played a part in the normal administration of the kingdom. Often they served as centers of local government, provincial treasuries and prisons, official residences of the sheriffs and bailiffs, and, of course, as royal residences for the king as he traversed the kingdom. R. Allen Brown, "Royal Castle-Building in England, 1154-1216," The English Historical Review, LXX (July, 1955), 353-398.

> are, and how much they owe, and where; and, after that, they are to report thereon to our lord the king. ...The justices are to cause, according to the custom of the country, enquiry to be made for those who have withdrawn from the kingdom; and, unless they are ready to return within a time named, and to take their trial in the court of our lord the king, they are to be outlawed; and the names of those outlawed are to be brought at Easter and at the feast of Saint Michael to the exchequer, and are to be sent immediately to our lord the king.[84]

Thus, it appears that the itinerant justices are to undertake a general survey of the state of the kingdom. No doubt many of the duties assigned them, such as seeing that castles are dismantled, were suggested by the rebellion of 1173-1174.

The commissions under which the itinerant justices worked lasted two years; returns were sent to the treasury both in 1176 and in 1177.[85] Moreover, in 1177, these same eighteen officers made, in addition to their judicial circuits, a general visitation of the realm for fiscal purposes. For this endeavour, however, they travelled in different combinations and made only four circuits instead of six.[86]

The coming of the justices to hold a general eyre, that is one on which they were commissioned to hear all kinds of pleas, was an important and often a much dreaded

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[84]See list of duties in Hoveden, I, 407-410.

[85]Stenton, p. 75.

[86]Norgate, II, 174.

occasion. At least fifteen days before the beginning of the eyre a general summons was sent to the sheriff ordering him to assemble the full county court.[87] All persons deemed to represent the county court were expected to fulfill their obligation, unless specially exempted by charter.[88] The summons further directed the sheriff to adjourn before the justices-in-eyre all pleas of the crown pending since the last eyre, to give notice that all who had been sheriffs or coroners[89] since the last eyre must appear before the justices to deliver up any records they might have in their possession, and to inform all who claimed any liberty or franchise to be ready to show by what warrant they held it. Moreover, public proclamation was to be made that all who had any complaints against royal or local officials must be ready to come forward to make them. Furthermore, the sheriff and his officers were directed to be constantly attending upon the justices to give them any

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[87]Holdsworth, I, 113. It must be pointed out that Holdsworth's depiction of proceedings during a general eyre is derived from a synthesis of information from the age of Glanville as well as from the later age of Bracton.

[88]Poole, p. 400.

[89]Coroners were officers who were to conduct all necessary criminal investigation prior to the arrival of the itinerant justices. Although they do not appear in the records until the Articles of Eyre of 1194, Lyon suggests that the office of coroner was created sometime during the reign of Henry II "because the regularity of the eyre system demanded such a local office to facilitate the efficient functioning of trials...." Lyon, p. 298.

necessary information. When the itinerant justices appeared the writ giving them authority was read. Then one of the justices usually addressed the court, briefly stating the cause of their coming, and the business of the court finally began.[90]

Each hundred, represented by an elected jury, came in turn before the court to answer the questions, the "articles of the eyre", put to them by the justices. Glanville informs us that, "The truth of the fact shall then be investigated by means of many and various inquiries and interrogations made in the presence of the justices. The probable circumstances of the case shall be taken into consideration, and each conjecture, whether it tends in favour of the accused or against him shall be weighed."[91] Frequently these investigations proved to be a cumbersome business. Sometimes the stories of the jurors might conflict with the records of the sheriffs and the coroners. At other times one or the other of the parties involved might fail to appear in court--he could be ill or absent on a crusade. Glanville states that a number of such excuses or essoins were recognized by law. However, the reason for such absences had to be investigated and another day fixed for hearing the case. More often than not, by the time the absent party

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[90]Holdsworth, I, 133.

[91]Glanville, "Concerning the Laws... of England," Book XIV, Chapter I, in English Historical Documents, II, 476.

could appear in court the justices had passed on to another county. The party concerned then faced the prospect of tracking down the whereabouts of the justices, or more probably, the task of taking his case to the Exchequer court at Westminster. Needless to say, such delays created a certain amount of confusion. As Poole points out,

> If we consider the inevitable delays incidental to judicial procedure, it is astonishing to read the wealth of circumstantial detail with which a suitor would support his case. But though the injured party might well have the facts so mirrored on his mind that he could rehearse them accurately several years afterwards, this could hardly be expected of those less closely concerned, the jurors and witnesses. ... The adjourned hearings at Westminster placed a severe strain on their memories. Some of the chief actors might have died in the interval. Conflict of evidence was unavoidable, for the courts were generally investigating matters of ancient history.[92]

Glanville informs us that in criminal cases any "free man of full age" as well as the juries of presentment might accuse wrongdoers before the itinerant justices. Proof, however, depended, not on human evidence, but on purgation by ordeal or, on occasion, by combat. The compurgation method of trial whereby the defendant swore his innocence supported by oath-helpers was only preserved in such privileged boroughs as London. The normal mode of trial was ordeal by water--

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[92]Poole, p. 401.

women, however, were usually made to carry hot irons. The trussed victim was lowered into a pool of water solemnly blessed by a priest. If he sank he was declared innocent--hopefully he was pulled out before he drowned; if he floated on the surface he was declared guilty. It was believed that the consecrated element would not receive a sinful body.[93] It is amazing that so large a number failed to surmount this primitive test. As seen in the Assize of Clarendon as well as in the Assize of Northampton, Henry II himself had little faith in this mode of trial for he ordered that men of bad reputation even if successful in ordeal abjure the realm. One would think that by possessing virtual power of banishment the jury of presentment could wield a certain amount of local power.

For more popular than the criminal cases brought before the itinerant justices were the civil suits. More and more subjects were beginning to take advantage of the king's possessory assizes. To settle questions of possession the suitor applied for--and handsomely paid for--the appropriate writ directing the sheriff to summon "twelve free and lawful men" to appear before the justices. After questioning this jury of recognition, sworn to tell who was the rightful possessor of the tract of land involved, the justices would then render

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[93] Ibid., pp. 401-402.

judgment. Usually these possessory assizes provided speedy remedy for the man unlawfully dispossessed.

Although the king's motives in sending out more and more itinerant justices and issuing assizes may have been the laudable ones of protecting the weak against the strong, thoughts of filling the royal treasury strayed not far from his mind. No matter what the outcome of cases pleaded before the itinerant justices the king was the victor. Should the accused be judged guilty of unlawful disseissin he was amerced; should the accused be judged innocent of unlawful disseissin his accuser was amerced for bringing a false charge into the king's court.[94] Moreover, if the jurors gave a verdict which, in the opinion of the itinerant justices, was a wrong verdict, if they had sworn falsely, a jury of twenty-four was empanelled to attaint (ad convincendum) them. Though often they may have escaped with modest fines, sometimes they suffered severe penalties.[95] Little wonder men would pay to be quit of jury duty! In the "Dialogue of the Exchequer" Richard fitz Nigel states that, on occasion, even the justices themselves, quite unwittingly, were forced to contribute to the royal treasury. The fines exacted from the offenders were to be

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[94]Glanville, Book III, Chapter VIII English Historical Documents, II, 476. Items such as "Ernold the priest owes 1 mark for false pleading" can be found in the account of Staffordshire in the Pipe Roll of 33 Henry II. "The Pipe Roll of 33 Henry II: The Account of Staffordshire," English Historical Documents, II, 578.

[95]Poole, p. 409.

recorded in the eyre rolls, which, when the Exchequer was in session, were to be handed over to the treasurer. It was up to the justices to see that they delivered these rolls to the treasurer

> ...correct and in good order, for once they have been handed over, it is unlawful even for the justices themselves to change one iota, even in a matter in which the justices are of one mind.
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> ...Inasmuch as time for correction has been allowed them, and they are acquainted with the established rule, it is their own fault. For the full payment will be exacted either from the individual debtor, or from the justices themselves. Thus, if they have entered anyone on their roll as liable to pay twenty pounds, and after the bond has been delivered to the treasurer it shall be discovered that he is liable for only ten, then the justices themselves shall make good the remainder, because their entries, made and corrected with deliberation, may not be revoked after the roll has been handed over.[96]

While the Assize of Northampton was being enforced, Henry II had been absent on the continent from August 17, 1177 to July 15, 1178.[97] Upon his return to England--this was to be his last long visit to the country--the king began his usual round of journeys throughout the country.

> So the lord king while sojourning in England, examined the judges whom he had appointed, as to whether they had dealt discreetly and well with the men of the realm. And when he had learnt that the land and its people had been overmuch burdened by the great multitude of judges, for they were eighteen in number; on the advice of the wise men of his realm he chose five only, namely two clerks and three laymen, all members of his private household. These

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[96]"Dialogue of the Exchequer," in English Historical Documents, II, 537.

[97]Appleby, 256-259.

> five he commanded to hear all the complaints of the realm and do right judgment, and that they should not depart from the king's court, but should remain there for the purpose of hearing the complaints of the people, so that if any case should come before them which they could not bring to a decision, it should be presented to the king, and determined as might seem good to him and the wise men of the realm.[98]

The complaints against the justices are not stated, but the Confession of Ranulf de Glanville, the future justiciar, noted in the pipe roll of the previous year gives some indication.

> Ranulf, the victor of Alnwick, now Sheriff of Yorkshire and one of the King's justiciars, admitted that he and his servants took ' 1, 644 16s. 4d. and 2 silver dishes and 4 gold rings and 2 chargers and 16 palfreys and 3 greyhounds and 36 horses and 6 falcons and 7 mewed hawks and 75 cattle and 8 pigs and 120 sheep and 49 seams of oats and 140 cartloads of timber' as booty 'both from the county and from the land of Everard of Ras'. In exchange for two Norwegian falcons, the King issued a writ allowing him to keep his loot.[99]

By appointing five judges to move about the country in train of the royal court Henry II was merely continuing the practice adopted in 1175 when he chose William fitz Ralf, Bertram de Verdun, and William Basset to be judges in curia regis. Although designated to be an itinerant body the tribunal that later emerged from this royal court was to be a permanent central court,

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[98]From the "Deeds of King Henry II," in English Historical Documents, II, 482.

[99]Appleby, p. 260. Appleby states that this information can be found on the Pipe Roll of 23 Henry II, pp. 81-82.

sitting mostly at Westminster, a curia regis in a restricted and special sense, the original Court of King's Bench.[100]

There is no reason to suppose that the re-shuffling of the royal courts was attended by the wholesale deposition of all of the eighteen itinerant justices appointed at Northampton or by their relegation to subordinate places in the royal government. Included in the list of eight justices sent on eyre in 1178 and 1179 were six of the judges appointed at Northampton: Ralph fitz Stephen, William fitz Stephen, Roger fitz Remfray, William Basset, Bertram de Verdun, and Robert Mantel.[101] In 1178 and 1179 the circuits were reduced from six to two, each being served by four justices.[102] However, after 1179 Ranulf de Glanville and Gilbert Pipard alone of the itinerant justices commissioned in 1176 continue to serve the king in that capacity.

The year 1179 brought still further changes in the organization of the judicial system. In the summer of 1179, Richard de Lucy, sole justiciar since 1167, pleaded old age and obtained the king's reluctant permission to resign his post and retire to the monastery he had founded at Lesnes in Kent in honour of Saint Thomas

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[100]Ramsay, Angevin Empire, p. 201.

[101]Stubbs, Historical Introductions, p. 134.

[102]Norgate, II, 175.

Circuits of 1179

of Canterbury.[103] No successor was appointed until the following year. Finding his hands full of the judicial business of the realm, Henry II found it necessary to experiment once more with the judicial system of which Richard had been the head. Roger de Hoveden informs us that shortly after the justiciar's retirement, Henry II held a great council at Windsor and with the consent of the leading prelates and barons of the realm divided the country into four circuits with five judges assigned to each of three of them and six to the fourth. Richard, bishop of Winchester, Richard, the king's treasurer, Nicholas fitz Thorold, Thomas Basset, and Robert de Whitfield were commissioned to hear pleas in Southamptonshire, Wiltshire, Gloucestershire, Dorsetshire, Somersetshire, Devonshire, Cornwall, Berkshire, and Oxfordshire. Geoffrey, bishop of Ely, Nicholas, chaplain to the king, Gilbert Pipard, Reginald de Wisebec, clerk to the king, and Geoffrey Hasee were to be sent to Cambridgeshire, Huntingdonshire, Northamptonshire, Leicestershire, Warwickshire, Worcestershire, Herefordshire (in Wales), Staffordshire, and Solopshire (Shropshire). John, bishop of Norwich, Hugh Murdac, clerk to the king, Michael Belet, Richard de Pec, and Ralph Brito were to hear pleas in Norfolk, Suffolk, Sussex, Essex, Hertfordshire, Middlesex, Kent, Surrey, Buckinghamshire, and Bedfordshire. Godfrey

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[103]Hoveden, I, 514.

de Lucy, John Cumin, Hugh de Gaerst, Ranulf de Glanville, William de Bendings, and Alan de Furnelles were assigned to Nottinghamshire, Derbyshire, Yorkshire, Northumberland, Westmoreland, Cumberland (between the Ribble and the Mersey), and Lancester. In addition, these last six were appointed justices in the king's court, to hear the public claims.[104] It appears that the bishops of Winchester, Ely, and Norwich, each presiding over one of the southern circuits, were regarded as the chief justices of the kingdom. Ralph de Diceto, describing the difficulties encountered by Henry II in trying to find trustworthy men to serve as itinerant justices describes how the king came to pick these three clergymen.

> Diligently he sought out those who were lovers of justice in their various callings, and inquired among a countless host of men for one who was not corrupted by office. Thus, steadfast in his purpose, he again and again made changes in personnel while maintaining an unchanged opinion. ...For at one time the king made use of the abbots, at another of the earls, at another of the tenants-in-chief, at other times of the servants of his household and his most intimate counsellors to hear and judge cases. At length, after the king had appointed to office so many of his vassals of such diverse callings, who proved harmful to the public weal, and yet he had not quashed the sentence of any official; when he could find no other aid beneficial to the interests of his private affairs, and while he was yet reflecting on the things of this world, he raised his eyes to heaven and borrowed help from the spiritual order.
>
> ...Accordingly, passing over all who could easily become subject to worldly vicissitudes and resorting to the sanctuary of God, the king

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[104] Ibid., 514-516.

> appointed the bishops of Winchester, Ely and Norwich chief justiciars of the realm.[105]

However, since the bishops of Winchester, Ely, and Norwich, under their earlier appellations of Richard of Ilchester, Geoffrey Ridel, and John of Oxford, had long been in the employ of the king and had long shown ample capacity for secular administration, Ralph de Diceto's explanation falls short of convincing. Henry II was just utilizing the ablest administrators at hand. If he had really been so cognizant of the spiritual order as Ralph would lead his readers to believe, Henry would not have so blithely disregarded the decrees of the Third Lateran Council (1179) forbidding bishops and clerks of the Church to engage in secular business.[106] The business of the eyre of 1179 was quickly transacted and an account rendered the king on the 27th of August.[107] It seems to have been the most satisfactory one he had yet received.[108]

So long as the king himself remained in England it was unnecessary to appoint a successor to Richard de Lucy; but, should he be on the continent neither the financial nor the judicial work of the country could be

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[105] Ralph de Diceto, quoted in English Historical Documents, II, 481.

[106] See Hoveden, I, 512.

[107] Diceto, English Historical Documents, II, 482.

[108] Norgate, II, 177.

adequately carried on without someone left as regent. Accordingly, the following year, before he left for Normandy, Henry II appointed Ranulf de Glanville chief justiciar of England.[109] From that time forth the administration of the country was left in his hands. During the last nine years of Henry II's reign there was a rapid coming and going of the itinerant justices throughout the several shires. Circuits, administered by companies of justices ranging in total numbers from 3 to 22, continued to be made year after year,[110] while the king's court and the Exchequer pursued their work on lines already laid down and without further interruption.

CONCLUSION

As the itinerant justices traversed the kingdom the local populace obtained a hearing of their pleas before the most skilled men of the realm. Carrying with them the royal prerogative of the jury and the original

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[109] Hoveden, II, 538.

[110] Norgate, II, 177. As before, the duties of the itinerant justices extend beyond the judicial. In 1181 they help enforce the Assize of Arms-- Hoveden, II, 10., gives a complete list of their duties in this connection; in 1185 they make enquiry into feudal rights. Stenton, p. 77. Also, as in earlier days, disputed decisions are referred to the King, if he be in England, or to the justiciar. In 1187 the Abbot of St. Edmund's Abbey appears before the king to demand redress for the "geld and scot" unjustly placed on his lands by the justices in eyre. Jocelini de Brakelonda, Cronica, trans. H. E. Butler (London, 1949), p. 65.

writ these justices offered all free men of the kingdom a far more rational method of settling their disputes than could be had in any local court. As these itinerant justices brought the king's justice to a local level and spread it throughout the realm there was being evolved slowly but very surely a common law for the whole of England.

The institution of the itinerant justice by no means came to an end with the death of Henry II in 1189. Not long after Henry's death the curia regis split into three distinct central courts: the Court of Common Pleas, for private civil cases; the Exchequer, for governmental financial cases; and the King's Bench, chiefly for criminal cases. Below these three central courts continued to be those of the itinerant justices. However, in the course of the thirteenth century, as the central courts came to specialize in function so did the courts of the itinerant justices. The general eyres of Henry II come to be replaced by three distinct judicial commissions. One was the commission of assize composed of itinerant justices sent out to hear only possessory causes. The second such specialized commission to develop in the thirteenth century was that of gaol (jail) delivery. The king by such a commission directed certain justices to deliver a certain gaol; that is, to try all the prisoners who were in that gaol. The third

new commission, developed after that of goal delivery, was that of oyer and terminer directing the justices to hear and determine all felonies and other crimes of the county. This third commission, more comprehensive than that of goal delivery, empowered the justices to hear indictments against individuals not already in jail.[111] Since these judicial commissions came to be placed almost completely into the hands of royal justices, they injected new vigor into the now rapidly evolving system of common law. In the course of time more and more of this circuit work was done by the judges of the king's permanent courts. Because of this system of judicial missions England saw neither powerful local tribunals nor a variety of provincial laws.

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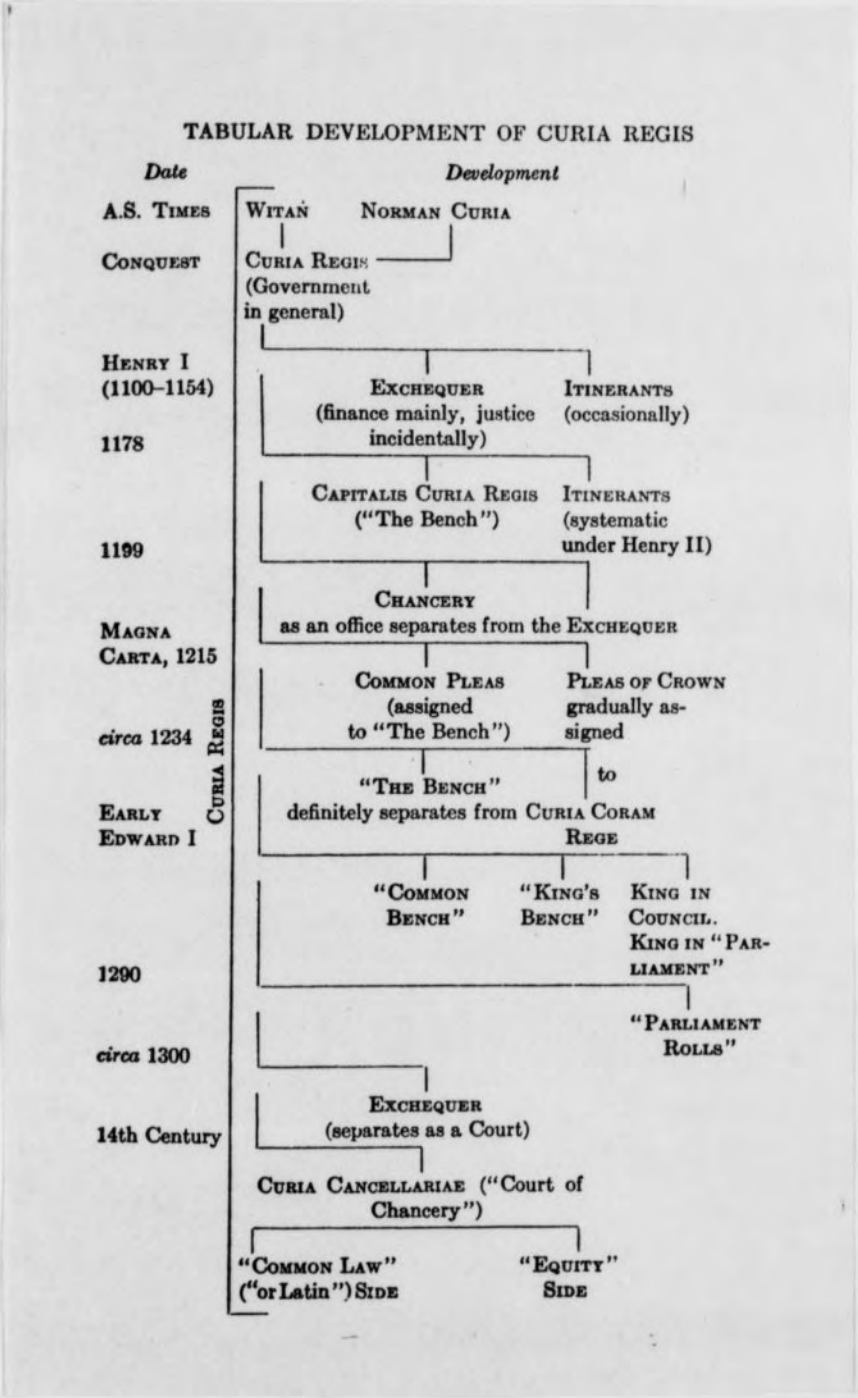
[111] Lyon, pp. 442-447.

Tabular Development of Curia Regis



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