

The Lives of the Chief Justices of England: In Four Volumes

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The Lives of the Chief Justices of England by John Campbell Baron Campbell Copyright © 2017 by HardPress Address: HardPress 8345 NW 66TH ST #2561 MIAMI FL 33166-2626 USA Email: info@hardpress.net

TO THE HONORABLE DUDLEY CAMPBELL. My Dear Dudley, As you have chosen the noble though arduous profession of the Law, I dedicate to you the Lives OF THE Chief Justices, in the hope that they may stimulate in your bosom a laudable ambition to excel, and that they may teach you industry, energy, perseverance, and self-denial. Learn that, by the exercise of these virtues, there is no eminence to which you may not aspire, and, from the examples here set before you, ever bear in mind that truly enviable reputation is only to be acquired by independence of character, by political consistency, and by spotless purity both in public and private life. I cannot hope to see you enjoying high professional distinction; but, when I am gone, you may rescue my name from oblivion, and, if I should be forgotten by all the world besides, *you* will tenderly remember Your ever affectionate Father. CAMPBELL.

PREFACE.

My original design was to be the biographer of the most eminent Magistrates who have presided in Westminster Hall. This was not completed by writing the Lives Of The Chancellors, for many of our most important and interesting legal worthies never held the Great Seal. Some of them as Lord Coke and Lord Hale had not the offer of it, from the preference naturally given to mediocrity; and others as Lord Holt and Lord Mansfield resolutely refused the offer, because they preferred the functions of a Common Law Judge. I should not, therefore, have contributed my proposed share of honor to the deceased, or of instruction to the rising generation, without adding the Lives Of The

Chief Justices. I confess, likewise, that I was eager to trace the history of those who had illustrated the department of English jurisprudence to which, while at the bar, I chiefly addicted myself. I may not be altogether unqualified for the task, as I have been long familiar with their characters, and I am entitled to speak with some little confidence of their decisions. However, I cannot venture to draw the Chief Justices at full length in a consecutive series. The Chancellors, although sometimes insignificant as individuals, were all necessarily mixed up with the political struggles and the historical events of the times in which they flourished; but Chief Justices occasionally had been quite obscure till they were elevated to the bench, and then, confining themselves to the routine of their official duties, were known only to have decided such questions as "whether beasts of the plow taken in *veto* may be rep levied?" So many of them as I could not reasonably hope to make entertaining or edifying, I have used the freedom to pass over entirely, or with very slight notice. But the high qualities and splendid career of others in the list have excited in me the warmest admiration. To these I have devoted myself with unabated diligence; and I hope that the wearers of the "Collar of S S "1 may be deemed fit companions for the occupiers of the " Marble Chair," who have been so cordially welcomed by the Public.

I have been favored with a considerable body of new information from the families of the later Chief Justices, "of Lord Chief Justice Holt, Lord Chief Justice Lee, and Lord Chief Justice Ryder. But my special thanks are due to my friend Lord Murray, Judge of the Supreme Court in Scotland, for the valuable materials with which he has supplied me for the Life of his illustrious kinsman, Lord Mansfield, hitherto so strangely neglected or misrepresented. 1 This has been from great antiquity the decoration of the Chief Justices. Dugdale says it is derived from the name of Saint Simplicity, a Christian Judge, who suffered martyrdom under the Emperor Diocletian: "German veto S S indicant nomen." (Or. Jut. xxxv.) In taking farewell of the Public, I beg permission to return my sincere thanks for the kindness I have experienced both from friends and strangers who have pointed out mistakes and supplied deficiencies in my biographical works," and earnestly to solicit a continuance of similar favors. House, Aug. 10, 1849.

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CHAPTER I. LIVES OF THE CHIEF JUSTICES FROM THE CONQUEST TO THE REIGN OF EDWARD I.
 THE office of Chief Justice, or Chief was introduced into England by William the Conqueror from Normandy, where it had long existed.¹ The functions of such an officer would have ill accorded with the notions of our Anglo-Saxon ancestors, who had a great antipathy to centralization, and prided themselves upon enjoying the rights and the advantages of self-government. The shires being parceled into hundreds, and other subdivisions, each of these had a court, in which suits, both civil and criminal, might be commenced. A more extensive jurisdiction was exercised by the County Court, a tribunal of high dignity, over which the Bishop, and the Earl, or Alderman, presided jointly. Cases of importance and difficulty were occasionally brought by appeal before the and here they were disposed of by the voice of the majority of those who constituted this assembly. We do find, in the Anglo-Saxon records, a notice of "Grotius Anglia e Alderman nus," but such "a creation seems to have taken place only on rare emergencies, and we have no certain account of the duties entrusted to the person so designated.¹ In Normandy the interference of the supreme government was much more active than in England, and there existed an officer called CHIEF who superintended the administration of justice over the whole dukedom, and on whom, according to the manners of the age, both military and civil powers of great magnitude we're conferred.' ¹ Of the two names "Justice" and we have this account by Spelaean : " al. Prior in jurist nostril formulas, solummodo brusque ad acetate 3. alters jam Se efferent e, haem dispirit: fed ind e Jodie in vernacular et jurist annalists Gallic o-Normancis 'Â«' level 'Justice' non 'Justicer.'" In Scotland, where this office was introduced, along with almost every other which existed in England under the Norman kings, the word prevailed, and hence we now have the " Court of Judiciary." See " Lives of the Chancellors," vol. i. p. 5.

Before William had entirely completed his subjugation of England, eager to introduce into it the laws and institutions of his own country, so favorable to princely prerogative,â€”while he separated the civil and ecclesiastical jurisdiction, and confined the County Court (from which the Bishop was banished) to the cognizance of petty suits, â€”preparatory to the establishment of the feudal system in its utmost rigor, he constituted the office of CHIEF His plan was to have a grand central tribunal for the whole realm, which should not only be a court of appeal, but in which all causes of importance should originate and be finally decided. This was afterwards called CURIA Regis, and sometimes Lula Regis, because it assembled in the hall of the King's palace. The great officers of state, the Constable, the Marshal, the the Chamberlain, and the Treasurer, were

the judges, and over them presided the Grand "Next to the King himself, he was chief in power and 1 Huge!. Or. Jut. ch. vii. Mad. Ex. ch. i. Spell. Gloss. "Justinian." Coke's 2nd Inst. ch. vii. 'It is curious to observe that, notwithstanding the sweeping changes of laws and institutions introduced at the Conquest, the characteristic differences between Englishmen and Frenchmen, in the management of local affairs, still exists after the lapse of so many centuries ; and that while with us parish vestries, town councils, and county sessions, are the organs of the petty confederated republics into which England is parceled out, in France, whether the form of government be nominally monarchical or republican, no one can alter the direction of a road, build a bridge, or open a mine, without the authority of the "Ministry def Pouts El In Ireland, there being much more Celtic than Anglo-Saxon blood, no self-reliance is felt, and a disposition prevails to throw everything upon the government. * authority, and when the King was beyond seas (which frequently happened) he governed the realm like a vice roy."1 He was at all times the guardian of the public peace as Coroner-General,' and he likewise had a control over the finances of the kingdom.' In rank he had precedence over all the nobility, and his power was greater than that of all other magistrates.' . The administration of justice continued nearly on the same footing for eight reigns, extending over rather * more than two centuries. Although, during the whole of this period, the AU LA REGIS was preserved, yet, for convenience, causes, according to their different natures, were gradually assigned to different committees of it,â€" to which may be traced the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer, and the Court of Chancery. A distinct tribunal for civil actions was rendered necessary, and was fixed at Westminster by the enactment of Magma Chartsâ€" Communal placing non sequitur curia m nos tram, fed in liquor cert o loco;" but the suitors in other causes were long after obliged to resort alternately to York, Winchester, Gloucester, and other towns, in which the King sojourned at different seasons of the year.' At last a great legislator modeled our judicial institutions almost exactly in the fashion in which, after a lapse of six centuries, they present themselves to us at the present day, showing a fixity unexampled in the history of any other nation. The Chief was then considerably lowered in rank and power, but the identity of the office is to be distinctly traced, and therefore it will be proper that I should introduce to the reader some of the individuals who filled it in its greatest splendor. 1 Mads. Ex ch. xi., where it is said "he was wont to be styled Justice Regis, Regis, and absolutely Justice or afterwards he was sometimes styled *Keg i s Angling*, probably to distinguish him from the King's of Ireland, Normandy," &c. 'The Chief Justice of the King's Bench is still Chief Coroner of England. * It is supposed to be a remnant of this power, that, upon the sudden death or resignation of the Chancellor of the Exchequer, the Chief Justice of the King's Bench does the formal duties of the office till a successor is appointed. *" Dignitary ones reign procures, potentate ones superheat magistratus."â€"Sf>el. Gloss, p. 331. 'The Court of King's Bench is still supposed to be ambulatory, and by original writs the King orders the defendant to appear on a day named, "wheresoever we shall then be in England."

The first Chief of England was O DO. The beautiful the tanner's daughter of *Malaise*, who, standing at her father's door, had captivated Robert, Duke of Normandy,â€"after living with him as his mistress, bringing him a son, the founder of the royal line of England, lamenting his departure for the Holy Land, and weeping for his death,â€"was married to Herein, a Norman knight, by whom she had three children. O do, the second of these,1 possessing bright parts and an athletic frame, was bred both to letters and to arms, and, while he took holy orders, he still distinguished himself in all knightly achievements. He was a special favorite with his brother the young Duke, who made him at an early age Bishop of Bayeux. Nevertheless he still continued to assist in the military enterprises by which William extended and consolidated his continental dominions, and attracted warriors from all the surrounding states to flock to his standard. When, on the death of Edward the Confessor, the Duke of Normandy claimed the crown of England, and prepared

to wrest it from the perjured Harold, O do preached the crusade in the pulpit, and zealously exerted himself in levying and training the troops. From Bayeux he carried a chosen band of men-at-arms in ten ships, with which he joined the main fleet at a short distance from St. Valery. He was one of the first to jump ashore and he continued to ply his double trade of a priest and a soldier. At daybreak of the ever-memorable 15th of October, 1066, he celebrated mass in the Norman camp, wearing a coat of mail under his croquet. He then mounted a gallant white charger, carried a marshal's baton in his hand, and drew up the cavalry, with the command of which he was entrusted. In the fight he performed prodigies of valor, and he mainly contributed to the victory which had such an influence on the destinies of England and of France. The famous Bayeux tapestry represents him on horseback, and in complete armor, but without any sword, and bearing a staff only in his hand, with the superscription "Hic Odo Episcopus tenetis confortat," as if he had merely encouraged the soldiers. Although there might be a decency in mitigating his military prowess in the eyes of those whose souls he had in cure, there is no doubt that on this day he acted the part of a skillful cavalry officer and of a valiant trooper. 1 The eldest was Robert, Earl of Montaigne; and the youngest a daughter, Countess of Will. Gem. vii. 3; viii. 37. Pict. 153,211. Order. 255.

When the ceremony of the coronation was to take place in Westminster Abbey, he wished to consecrate the new monarch, and to put the diadem on his head; but, to soften the mortification of the English, and to favor the delusion that the kingdom was to be held under the will of the Confessor and by the voluntary choice of the people, Alfred the Archbishop of York was preferred, and he asked the assembled multitude "if they would have William for their King?" O do, as a reward for his services, received a grant of large possessions in Kent, and was created Earl of that county. In contemplation of the establishment of the AU LA REGIS, by the agency of which the Norman jurisprudence was to be introduced into England, and Norman domination perpetuated there, O do was likewise appointed GRAND Like many ecclesiastics of that time, he had attended to the Roman civil law and the learning of feuds, as well as to the canon law; and it was expected that he would be useful not only in judicial proceedings, but in the meetings of the national assembly, by which the Conqueror thought of giving an appearance of legality to his rule. This arrangement was highly successful; and so quiet did all things appear to be in England, that in the following year William returned to Normandy to show his new grandeur to his countrymen, and remained there eight months, taking with him Edgar Aetheling, the legitimate heir to the throne, and many of the principal English nobility. O do was left behind and William a redoubled knight, related to the ducal family, was associated with him in the regency. The Norman chroniclers pretend that O do on this occasion displayed prudence and humanity, but had to encounter fickleness and ingratitude; while the Saxon chroniclers assert that he oppressed and insulted the natives so as to drive them into rebellion. The result was a general insurrection all over England, and William was obliged to return and to reconquer the kingdom. O do was again most useful to him both in council and in the field, and was confirmed in his office of which he exercised for some years with undivided sway. Henry of Huntingdon, after giving an account of William having put down all resistance, and of the splendor of his court, enumerates among the grandees present "*Odo ins ct Princes Grotius Ang/itc.*"¹ I find the report of only one cause tried before him, *Bishop of Rochester v. Pechora, Sheriff of Cambridgeshire*. The defendant had seized the land of *Fracenham* in right of the King, and it was claimed by the plaintiff in right of his Church. The King ordered the trial to take place before O do, the Grand He, going 'to the spot, summoned a folk mote, or general meeting of the freeholders, who, after an impartial summing up, found a verdict for the crown.' There was another trial of high interest soon after, at which O do, the could not well preside, as he was the party sued. an Italian ecclesiastic, having succeeded Ligand, the Saxon, as primate, complained that the Earl of Kent unlawfully kept possession of large

territories, in that county, which of right belonged to the See of Canterbury. Geoffrey, Bishop of Constance, was specially appointed by the King to act as on this occasion. The trial took place in a temporary court erected on Heath, and lasted three days; at the end of which time judgment was given for the Archbishop against the Earl.' 1 L. vi. p. 371. The Saxon Chronicle says, " Kit O do) potent Episcopal in et Rehi omnibus maxi me delis. Habit auteur in Anglia et quorum Rex erst in suit ill e prim us in h ac terra."â€"Charon. Sax. p. 190. n. 20. 25.

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