



## The Execution of Criminals in Cheshire.

WRITTEN FOR THE SOCIETY BY

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WITH A SHORT ADDENDUM BY

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IN the year 1834 a curious controversy arose between the Sheriff of the County Palatine and the Sheriffs of the City and County of the City of Chester, which resulted in a situation whereby the prompt administration of criminal justice was prevented. The case involved historical questions of some interest, for the elucidation of which it was necessary to refer to the ancient records of the Corporation of Chester.

From time immemorial it had been the unpleasant duty of the two Sheriffs of the City of Chester to execute all criminals condemned to death by the Palatine Courts, not only in the City but also in the County; although when the body of any criminal was ordered to be hanged in chains in any part of the County the gibbeting was carried out by the Sheriff of the County. The reasons suggested for the obligation thus lying upon the City Sheriffs are various and conflicting. One view put forward is that the duty was voluntarily assumed from jealousy of the juris-

diction of the County Sheriff within the City. Another, that the obligation was charged upon the City in consequence of some rescue by the citizens of felons passing through the City, and that the tenure of the houses occupied by the persons concerned in the rescue was thereafter burdened with the obligation of watch and ward. Another, and the most likely view, is that the obligation arose out of the custody of the Northgate. This gate, over which was the Earl's prison, was committed to the special charge of the City Sheriffs. Among the list<sup>1</sup> of *custumarii* of the City in 1542 we find five persons summoned to the watch by virtue of their tenure of certain houses in Watergate Street, four in Eastgate Street, four in Bridgegate Street, two in Northgate Street and *vicecomites civitatis Cestriæ pro le Northgate* itself.<sup>2</sup> On 22nd April, 1320, Edward, Prince of Wales and Earl of Chester (afterwards Edward III.), issued a writ<sup>3</sup> addressed to the Mayor and Sheriffs of the City ordering an inquisition to be held as to the dues and customs taken at the gates of the City. The inquisition was held on 6th February, 1320-1, and deals with each gate in turn. The Northgate comes second. After setting out the various dues which the *custodes porte borealis Cestrie* were accustomed to levy, the jury proceed to state: *Pro quibus vero prisīs custodes dicte porte semper custodient dictam portam una cum prisonibus in prisona dicti domini comitis ibidem incarceratis. Custodiet [sic] etiam claves patibuli, felones eciam et latrones dampnatos suspendet, et faciet bannum*

<sup>1</sup> Morris, *Chester in the Plantagenet and Tudor Reigns*, pp. 235-7. Hemingway's *Chester*, p. 351.

<sup>2</sup> A similar list in the Chester Customal, 1387-1418, does not mention the City Sheriffs. Morris, pp. 553-4.

<sup>3</sup> Morris, p. 554.

*domini Comitis infra civitatem: sonabit cornu del portmote et faciet iudicium pillorie.* An ancient version in English of this Inquisition is entered in the Pentice Chartulary as follows:—"For which prises the keper of the gates allwais shall kepe the said gate with the prisoners in the prisoune of the said erle there imprisoned Allsoe hee shall kepe the keys of the felons [*sic*]<sup>4</sup> and theeves dampned to be hanged on ye gibett and he shall cry the courtes of our soueraigne lord the Erle within the cittie and he shall ringe the bell to the portmote and shall do judgemente on the pillorie."<sup>5</sup>

Whatever may have been the origin of the custom the officers of the Corporation, as well as the inhabitants of the City from among whom the City Sheriffs were chosen, considered the imposition of this duty of attending to executions a great hardship and annoyance. If their liability had been limited to attending to the execution of persons convicted within the jurisdiction of the City, they would only have been called upon some half dozen times between the years 1780 and 1830;<sup>6</sup> but the County criminals executed within that time had been very numerous.

In 1830 an Act was passed (11 Geo. IV. & 1 Will. IV. c. 70) under which the jurisdiction, criminal and civil, of the Palatinate Court was abolished, and that of the Assize Courts was instituted. There seems to have been some suggestion that the changes proposed by this Act would involve the Sheriff of the County

<sup>4</sup> This mistranslation is no doubt the source of the incorrect version of the Inquisition given by the City Sheriffs in their statement, *post* p. 103. The County Magistrates' statement (*post* p. 99) summarises it more correctly.

<sup>5</sup> Hist. MSS. Comm., 8th Report, App. p. 362.

<sup>6</sup> Report from Commissioners on Municipal Corporations, 1835, App. Part IV., 2621.

of Chester in the future superintendence of executions, and the gentlemen of the County were prepared to object to the Bill unless their Sheriff was continued in his ancient exemption. A meeting was held attended by the members for the City and County, with many of the justices and the town clerk of Chester, at which it appears to have been arranged that the County Sheriff should be maintained in his privilege, but the arrangement unfortunately was not embodied in the Act.

Though the City Sheriffs continued for a few years to execute the criminals under the orders of the judge of Assize, public opinion in the City was probably accurately reflected in the remarks made by Mr. Hemingway in his *History of Chester*,<sup>7</sup> published in 1831. "Some efforts, I believe, were made by the Sheriffs a few years ago in order to be relieved from this irksome part of their duty by a representation to the Home Secretary, but without success. And it is somewhat surprising that Mr. Peel, who has so much distinguished himself by abrogating old laws founded upon feudal and obsolete customs, should not have yielded to so reasonable a demand. The City of Chester possesses all the attributes and immunities of an independent County except this disgraceful adjunct, from which it ought in reason to be exempted; there being no other County in the Empire upon whose civil officers the burden is cast of executing the criminal law on culprits beyond their own precincts and jurisdiction. It is high time that the corporate body and the whole of the citizens should cordially unite in pressing on the Government or the legislature the removal of this evil, at once oppressive and expensive."

<sup>7</sup> p. 352.



In 1834 the City Sheriffs were advised that they were no longer bound to execute, under the Act of 1830, and the following Memorial was accordingly presented to the Home Secretary, Lord Melbourne:—

TO THE RIGHT HONORABLE LORD MELBOURNE,  
Secretary of State for the Home Department.

THE MEMORIAL of George Eaton and Joseph Ridgway  
Sheriffs of the City of Chester and County of the  
same City

SHEWETH

That the County Palatine of Chester is a County Palatine by prescription and that the City of Chester was and is parcel of the said County Palatine.

That there had been immemorially previous to the Act passed in the first year of the reign of our present Sovereign King William IV. entitled "An Act for the more effectual administration of Justice in England and Wales," within the said City Palatine an original superior Court called the Session at Chester held before the Justice of Chester who sat *in Banco*; And that the Justice of Chester for the time being had immemorially used and exercised all the powers and authorities of an original superior Court throughout the said County Palatine in as full and ample a manner as the Court of King's Bench and Common Pleas at Westminster.

That the Courts of the County Palatine of Chester were anciently held within the City of Chester.

That King Edward I. whilst he was Earl of Chester during the reign of his father King Henry III. granted<sup>8</sup> to the Citizens of Chester power [to appoint] two Sheriffs of themselves annually.

That it appears that the oath always taken in the most ancient times by the Sheriffs of the City of Chester was to obey and execute the Mandates of the Earl of Chester.

That the Mayor had as early as the reign of King Henry III. and still hath in his Court of Crownmote power and authority to try capital offences and to award capital punishment for crimes committed within the City.

<sup>8</sup> I can find no evidence of this grant except that from about 1256 two sheriffs from the city appear as witnesses to local deeds.

That the Earl's Chamberlain and Justiciar hath as it appears from a record in the reign of Henry III. exercised a concurrent Jurisdiction in the City of Chester both civil and criminal.

That the Earldom of Chester was seized by King Henry III. and conferred upon his son King Edward I.

That when the King of England had no firstborn Son living the Earldom was in abeyance and the powers and authorities thereto belonging were executed by the King for the time being.

That Arthur Son of King Henry VII. was Earl of Chester until his death which took place in the seventeenth year of his father's reign.

That King Henry VII. by his Charter<sup>9</sup> under the Seal of the County Palatine dated the sixth day of April the twenty-first year of his reign granted that the City and all the ground within the ditch of the said City with the suburbs and hamlets within the precinct and compass of the same and all the ground within the precinct and compass of the City of Chester and the suburbs and hamlets (wholly excepting the Castle within the walls of the City) be exempted from the Shire of Chester and be a County by and in itself distinct and separate from the County of Chester and to be called the County of the City of Chester.

That anciently previously to the charter of King Henry VII. the Earl's Palatinate Courts were held within the City of Chester.

That subsequent to the same Charter they have always been held within the Castle of Chester.

That as well before as since the granting of the said Charter by King Henry VII. all the criminals condemned to be executed by the Palatinate Courts have been executed by the Sheriffs of the City of Chester.

That since the said Charter of Henry VII. matters have been removed out of the City Courts into the Palatinate Courts by *Certiorari*.

That the Palatinate Courts have exercised a paramount Jurisdiction over the City reversing and confirming Judgments given in the City Courts upon writs of Error.

<sup>9</sup> Morris, p. 524.

That the Sheriffs of the City of Chester have constantly obeyed the writs orders and rules issued and made by the Court of Great Session (the late Palatinate Court) viz. by arresting persons upon writs of *Latitat* issued out of the said Court of Session, making returns to writs and bringing up the Bodies of Prisoners confined in the Gaol of the City into the Court of Session to be charged with a declaration and then taking them back to the City Gaol.

That the orders made by the Court of Session (the Palatinate Court) upon the Sheriffs of the City of Chester to execute criminals condemned by the said Court of Session was by a rule of the said Court.

That by an Act passed in the first year of his present Majesty's Reign entitled "An Act for the better administration of Justice in England and Wales," it was enacted<sup>10</sup> that all the power authority and Jurisdiction of His Majesty's Court of Session of the said County Palatine of Chester and of the Judges thereof should cease and determine at the commencement of that Act.

That your Memorialists have been advised that since the abolition of the Palatinate Court they are not bound to execute the criminals condemned in the Assize Court of the County of Chester and that the Judge of Assize hath no power or authority to order or command the Sheriffs of the County of the City of Chester to do any act whatever. The Sheriff of the County attends the Judge of Assize and that he is the only Officer of Law obliged to execute the orders of the Judge holding the Assize for the County of Chester.

That a considerable extent of land surrounding and adjoining the area of the Castle of Chester has been annexed to it and now forms part of the County by virtue of the Act<sup>11</sup> for rebuilding the Gaol of the said County of Chester directing that all land purchased for the purposes of the Gaol should become part of the County of Chester.

That there is before the Gaol of the Castle of Chester a very large area consisting of at least two thousand square yards surrounded by a sunk fence and iron palisade and

<sup>10</sup> Sec. 14 of 11 George IV. and 1 William IV., c. 70.

<sup>11</sup> 28 George III., c. 82.

there is also two acres of land at the least outside of such sunk fence which has been purchased for the purposes of the Gaol and consequently forms part of the County of Chester.

That your Memorialists respectfully beg to express their intention from henceforth of declining to do execution upon any criminal condemned to be executed by the Court of Assize for the County of Chester.

Your Memorialists therefore humbly pray that you will lay their Memorial before the Law Officers of the Crown for their opinion whether they are since the abolition of the Palatinate legally bound to execute criminals condemned to be executed by the Judge of Assize of the County of Chester.

G. EATON.

CHESTER, 4 June 1834.

J. RIDGWAY.

The opinion of the Attorney General and Solicitor General was at once taken by the Crown and was intimated to the City Sheriffs as follows:—

Gentlemen,

WHITEHALL, June 30th, 1834.

I am directed by Viscount Melbourne to acquaint you, with reference to your memorial addressed to his Lordship, that a case has been prepared and laid before the Attorney and Solicitor General for their opinion—whether, since the abolition of the Palatinate Court, the Sheriffs of the City of Chester and County of the same City are legally bound to execute Criminals condemned to death at the Assizes holden for the County of Chester? and I am to inform you that they have reported to Viscount Melbourne their opinion that the Sheriffs of the City of Chester are not any longer bound to execute criminals condemned to death at the Assizes for the County of Chester, and that such criminals ought to be executed by the Sheriff of the County.

I have the honor to be,

Gentlemen,

Your obedient Servant

George Eaton, Esqre.

S. M. PHILLIPS.

Joseph Ridgway, Esqre.

Sheriffs of the City of Chester  
and County of the same City.

The Magistrates of the County on behalf of the present and future Sheriffs, drew up a Statement of matters from their point of view:—

STATEMENT of the Magistrates of the County of Chester.

The origin of the custom of the Sheriffs of the City of Chester executing the County Criminals is almost lost in antiquity, but it seems to be made out from the records of the Corporation referred to by Mr. Hemingway in his *History of Chester* published in one thousand eight hundred and thirty one that the Mayor and Citizens were Keepers of the Northgate of the City and were entitled to certain Tolls in respect to which they were bound to watch the said Gate and the prisoners in the Prison adjoining, to keep the key of the Felons' Gallows and hang up all the condemned Criminals and perform other services.

These duties in process of time appear to have devolved upon certain customary Tenants of the City sixteen in number who were bound amongst other services to watch and bring up Felons and Thieves condemned as well in the Court of the Justiciary of Chester in the County there as of the City as far as the Gallows, for which these Tenants had certain privileges and exemptions. The houses held by this tenure are enumerated in Mr. Hemingway's book.<sup>12</sup>

This personal service appears to have been subsequently commuted for a payment to the Keepers of the North Gate Gaol of two shillings and sixpence called a Gabel<sup>13</sup> or execution rent by the occupier of each of these houses on every execution, which has been regularly paid until the last three or four years when it has not, it is said, been demanded, the Sheriffs of the City having executed the Criminals. The Tenants of these houses are said by Mr. Hemingway to be exempted from serving on Juries.

The Judiciary was no doubt the Officer of the ancient Earls of Chester but the Earldom of Chester became vested

<sup>12</sup> P. 351. See also Morris, 195-6, 234-7. The customary tenants were not responsible for the execution, but only for the custody of the criminals.

<sup>13</sup> This is an error. The gabel rents were quite a distinct and different source of revenue.

in the Crown not long after the Conquest and by the express direction of an Act of Parliament passed 27 Hen: VIII. c. 5 the Lord Chancellor had authority to appoint Justices of Gaol Delivery by Commission under the King's Great Seal who should have full power and authority to inquire hear and determine all things inquirable before the Justices of Gaol Delivery in other Shires of England, not as the Lancashire Judges were authorized to be appointed by another statute passed in the same year (c. 24) which directs that "the Justices of Gaol Delivery shall be made and ordained under the King's usual Seal of Lancaster."

Whatever may have been the form of the appointment of the Judges presiding in the Courts of the County from the time of the union of the Earldom with the Crown (which cannot at present be ascertained) and previously to the statute of Henry VIII., it is clear that since that statute such Judges have been appointed by a Patent under the Great Seal of England containing a regular Commission of General Gaol Delivery which commission conferred no special power on the Justices thereby appointed to require the City Sheriffs to execute the County Criminals but those Officers acted by immemorial usage and unquestionable liability. The Patent also contained a commission of Oyer and terminer for administering Justice in civil matters arising within the Court of Session of the County Palatine. It appears therefore that Criminal Justice in the County of Chester has long been administered under the same authority as in the other counties of England, although the Judges previously to 11 Geo. IV. and 1 Wm. IV. remaining individually the same a new Commission of Gaol Delivery was not issued at each Assize.

And it is inferred that the 14th Section of that Act directing that all the power and authority of His Majesty's Court of Session and of the Judges thereof should cease, and the 19th Section providing that from thenceforth Assizes should be held for the Trial and Dispatch of all matters Criminal and civil within the County of Chester under Commissions of Assize, Oyer and terminer and Gaol Delivery as for other Counties in England, made no real

change in the principle of the Court in which Criminal Justice was administered but was intended to vacate the then existing patents and to substitute for the then presiding Officers the Judges of the Realm who succeeded to the administration of the Criminal Justice of this County with any peculiarities attending the executive departments of it.

When this Act was passing through Parliament the City of Chester, which has a peculiar and exclusive Criminal Jurisdiction, claimed to be exempted from the provisions of the Act and a clause being presented by them for that purpose it was suggested that the liabilities and duties of the City should be preserved as well as their privileges, and the following clause<sup>14</sup> was introduced for both purposes:—

“PROVIDED ALWAYS and be it further enacted that nothing in this Act contained shall be construed to abolish or affect the obligations and duties or the jurisdiction or rights now lawfully imposed upon performed or claimed and exercised by the Mayor and Citizens of Chester in the Courts of the County of the City of Chester or otherwise save and except that such writs of Error or false judgment as may now by any Charter or usage of the said Corporation be brought upon the judgments of the said Courts or any of them before any of the Courts abolished by this Act shall hereafter be issued as in other cases from inferior Courts and be returnable into His Majesty’s Court of King’s Bench.”

It is contended therefore that the reservation of the obligations duties and jurisdiction lawfully imposed upon performed or exercised by the Mayor and Citizens of Chester in the Courts of the City of Chester or otherwise is perfectly general and does (as it was unquestionably intended to do) preserve the liability on the City Sheriffs to execute the Criminals condemned to death at the Assize held for the County.

But supposing the Act of 11 George IV. and 1 William IV. were held to relieve the City Sheriffs from the duty in question it is by no means clear that it can be legally imposed upon the Sheriff of the County and by prescription [he] is

<sup>14</sup> Sec. 15.

in this County entirely exempt from all responsibility for the custody of prisoners either criminal or debtors. That responsibility lies with the constable of the Castle of Chester who holds his office by Patent under the Great Seal with an annual salary from the Crown. The rights and privileges of this Officer are of immemorial usage and have been recognized by the legislature. An Act of Parliament passed in the 28th George III. [c. 82] for taking down and rebuilding the Gaol of the Castle of Chester &c. recites (fo: 17) That the Constable of the Castle of Chester is entitled in right of his Office to the possession of certain buildings &c. adjoining the Gaol and is also entitled in right of his said Office to the custody by himself or his lawful Deputy of all the prisoners in his said Gaol of the Castle of Chester. Power is then given by the Act to certain Commissioners to take down the Constable's house with a view to improvements, with a proviso that the rights and interest of the said Constable and his successors Constables of the said Castle of Chester for the time being to the custody of the prisoners in the Gaol of the Castle of Chester and to the salary fees and perquisites appertaining to the said office of constable of the Castle of Chester as Gaoler or Keeper of the said Gaol shall be continued and preserved to the said Constable and his successors and shall extend to the said Gaol Yards &c. when rebuilt, the same to be considered within the County and within the precincts or liberties of the said Castle of Chester and to be subject to the like exercises of the said office of Constable of the Castle of Chester as the then present Gaol.

The reply of the City Sheriffs was as follows:—

The Sheriffs of the County of the City of Chester conceive that there is nothing in the Statement made by the Magistrates of the County of Chester calculated to shew that any liability now rests upon the Sheriffs of the City of Chester to execute convicts condemned to die by the Judge of Assize for the Shire of Chester or in the least to rebut or impugn any of the facts stated in the Memorial presented to the Right Honorable Lord Viscount Melbourne setting forth the reasons why they considered themselves no



longer liable to be called upon to execute county convicts.

If it were admitted that upon an Inquisition tested in the name of Edward the Black Prince<sup>15</sup> the Keeper of the Northgate was entitled to certain Tolls in kind (which have not been received for some centuries) in respect whereof he was bound to watch the said Gaol and keep the Prisoners in the Prison of the said Earl there imprisoned, to keep the key of the Felons [*sic*]<sup>16</sup> and Thieves condemned to be hanged on the Gibbet, to cry the Courts of the Sovereign Lord the Earl within the City, to ring the Bell to the portmote and to do judgment on the Pillory, and were they to admit that the keepership of the said Gate was conferred upon the Mayor and citizens, no liability was thus cast upon the Sheriffs of the City of Chester to execute criminals convicted before the Earl's Justiciar in his Palatinate Court. The origin of the call upon them to perform that service was that as soon as they were created by virtue of a charter granted by Edward I. whilst he was Earl of Chester to the Citizens of Chester to elect them, they became officers as necessarily attendant upon the Earl's Palatinate Court as the Sheriff of the County inasmuch as before the City of Chester was separated from the Shire of Chester by King Henry VII's Charter, that Court was held within the City of Chester, and as the Sheriffs of the City were bound to take an oath to obey and execute the mandates of the Earl they would be consequently bound and compelled to execute the criminals convicted in the Earl's Court if so commanded to do by the Earl's Justiciar, and it was the more likely that they would be called upon to this service the Court being held within the City.

The circumstance of the Sheriffs of the City having received certain Gabel or execution Rents from certain customary tenants as set forth in the Statement of the County Magistrates, amounts to but very little as according to their own shewing the Sheriff of the County of Chester when he is called upon to execute the criminals will be entitled to receive them, and the more especially when it is

<sup>15</sup> An error. The date was 1321, see *ante*, p. 92.

<sup>16</sup> See *ante*, p. 93, note 4.

taken into consideration that the service to be performed by them was merely to secure the safe custody of the criminals to the Gibbet or place of execution. The customary tenants sixteen in number as owners of certain houses were bound to bring all Felons and Thieves condemned, as well before the Justice of Chester in the County there as before the Mayor of Chester in full crown-mote there, unto the Gibbet for safe custody under a Penalty if they let them escape, for which service they were quit of all Inquisitions Juries and Assizes. But instead of performing the duty in person they have for an unknown period paid severally to the Sheriffs of the City two shillings and sixpence in lieu of personal service which they would have been bound to pay to the Sheriff of the County of Chester if he had been called upon by the Earl's Justiciar to execute the criminals condemned before him or to have attended in person.

It was not by virtue of the 27th Henry VIII. cap. 5 as asserted in the Statement of the County Magistrates that the Chief Justice of the Court of Session at Chester (the abolished Palatinate Court) was appointed but it was by virtue of the statute of the 27th Henry VIII. Chapter 24 sec. 2 that the Chief Justice of Chester was appointed under the Great Seal of England. The statute of 27th Henry VIII. cap. 5 only empowered the Chancellor to appoint Justices of the Peace, of Quorum and of General Gaol Delivery—that is, Justices to administer Justice in the Courts of Quarter Sessions in Chester and Wales as in other Shires, but it gave no authority for the appointment of Judges of the Palatinate Court as erroneously supposed in the statement made by the Magistrates of the County of Chester.

If it had been contemplated by the Legislature that the Judge of Assize appointed under the statute of the 11th George IV. should have the same power as the Chief Justice of the late Court of Session (the Palatinate Court) had over the City of Chester and its Officers, a clause would have for that purpose been introduced into that statute directing that the Judge of Assize to be from time to time appointed for the Shire of Chester should have the power and authority to direct the Sheriffs of the City of Chester as was previously

possessed by the Chief Justice of Chester sitting in the Palatinate Court.

The Palatinate included the City of Chester and consequently the Judges of its Courts had authority to command the Sheriffs of the City.

The Judge of Assize is appointed for the Shire of Chester and therefore as the City is separated from it he cannot have any power by Warrant or otherwise to command the Sheriffs of the County of the City of Chester to obey his Mandates.

Upon receipt of these statements the Law Officers of the Crown were directed to reconsider the matter and the Magistrates of the County were thus informed of the result:—

[COPY.]

WHITEHALL, July 18th, 1834.

Gentlemen,

I am directed by Viscount Melbourne to acquaint you that his Lordship has directed a further case respecting the liability of the Sheriffs of the County of the City of Chester to do execution upon Criminals condemned to death at the Assizes to be laid before the Attorney and Solicitor General with directions to them fully and maturely to reconsider their former opinion upon this question, and that they have reported to Viscount Melbourne that they continue of the same opinion as before.

I have the honor to be,

Gentlemen,

Your obedient Servant,

THE MAGISTRATES

S. M. PHILLIPS.

of the County of Chester.

The matter was however far from settled and was brought to an acute point in a few weeks. Early in January 1831, disputes were pending at Werneth and Stayley between the master spinners and the workmen's union, and on 3rd January Mr. Thomas Ashton, of the Apthorne Mill, was found shot. On 6th January a proclamation was issued in the *London Gazette* stating that the King would grant a free pardon to any person

(except the person who fired the shot) whose evidence led to the conviction of the murderers. James Garside and Joseph Moseley were eventually apprehended and were tried at the Chester County Assizes before Baron Parke on the 6th August, 1834.<sup>17</sup> The case, the facts of which were remarkable but do not concern the present matter, excited an extraordinary degree of interest, not only from the impenetrable mystery which had surrounded it for several years, but also from the circumstances under which the disclosure was made by one of the murderers which led to the apprehension of the other two. The latter were condemned to be hanged and the execution was ordered to take place on Friday, August 8th. There was considerable anxiety in the City as it was known that the County Sheriff, Mr. Gibbs Crawford Antrobus, though personally not objecting, had determined to resist the duty of execution rather than compromise the rights or privilege of the County. The Clerk of Assize in due course issued the usual warrant to the Sheriff of the County but, as was anticipated, the latter sent a letter to the Judge declining to execute the criminals as he had doubts whether he would be justified in doing so and he then retired from the City to his home. A warrant issued to the City Sheriff met with a similar response to this effect:—

The Sheriffs of the County of the City of Chester convinced as well by the opinions of the Law Officers of the Crown as otherwise that they are not legally bound to see execution done upon convicts condemned to be executed by the Judge of Assize of the County of Chester decline to attend to the Warrant made and directed to them by the Clerk of Assize of the County of Chester to see execution done upon James Garside and Joseph Moseley condemned to

<sup>17</sup> Reported and referred to in *The Times*, Aug. 9, 11, 13, 15, 18, &c.

be executed by the Judge of Assize of the Shire of Chester.

For George Eaton and  
Joseph Ridgway, Sheriffs  
of the County of the City  
of Chester,

JOSEPH RIDGWAY.

Friday, 8th August, 1834.

To  
THE RIGHT HONBLE  
MR. BARON PARKE.

Further to fortify their position the City Sheriffs at once addressed a fresh statement of their case to the Home Secretary, now Lord Duncannon, through the member for the City, Mr. John Jervis, afterwards Attorney General, and Lord Justice of the Common Pleas:—  
My Lord,

You are probably aware that two men have been condemned to die at the Assizes held for the County of Chester for an offence which certainly deserves immediate punishment, and you will learn from a communication from Mr. Baron Parke this day that the Sheriffs of the County of the City of Chester acting upon the opinions of the Law Officers of the Crown have respectfully refused to execute these persons and also that the Sheriff of the County of Chester has given a like refusal.

As you may probably be appealed to upon this subject I beg to state shortly some of the grounds upon which the resistance of the Sheriffs of the County of the City of Chester is founded.

Anciently the City of Chester seems to have been within, and to have formed part of, the shire of Chester, and there were then two Officers (*ballivi*) who were the Officers of the Earl of Chester and bound to obey the orders of the Earl's Justiciar whose Jurisdiction extended over the whole Palatinate comprehending the City.

By the Charter of Henry VII. the City was separated from the shire and created a County of itself, the Bailiffs, afterwards Sheriffs, then became Sheriffs of the County of the City of Chester, still liable to the Jurisdiction of the Earl's

Judges, the City being within the Palatinate throughout of the Shire, and the Judges subsequently appointed by Patent by the King as Earl (and not acting under Commission) until the Jurisdiction of the Palatinate was abolished.

Until that abolition the Judges sat in Bank, and execution of the County Criminals was ordered by Rule of Court, reciting the authority of the Judges in Bank, and directed to the Sheriffs of the County of the City of Chester; the obligation was never upon the Mayor and citizens but upon the Sheriffs, as Officers of the Earl, and was submitted to though an onerous and odious Burthen, and objectionable on account of the mode in which the unfortunate objects of punishment were necessarily hurried through the Public Streets just before they were launched into eternity, because the Palatinate Jurisdiction extended over the County of the City of Chester though not locally within the Shire of Chester.

By the statute 11th George IV. and 1st William IVth. cap 70 sec. 13, the Jurisdiction of the Courts at Westminster and of the Judges respectively was extended over the County of Chester in like manner and to all intents and purposes as the same was then exercised over other counties in England; and by the 14th Section all the power authority and Jurisdiction of the Palatinate was abolished, that authority being conferred upon the Judges of the Exchequer at Westminster for certain purposes only, viz, the suits then depending.

If the act had stopped there no question could have arisen, the authority which enforced the liability has ceased, the obligation was determined and the same Law as was applicable in England, parcel of which Law is that the Sheriff of the County shall execute the County Criminals, was extended to the County of Chester.

But it is said that the 15th section keeps alive this liability of the Sheriffs of the County of the City of Chester. It is difficult to arrive at such a construction from the wording of this clause, but in the first place this construction is opposed to the 19th, a subsequent Section which directs that the Assizes in Cheshire shall be held in the same manner as in other Counties in England and be subject to the same Laws,

there being no Law in England which would authorize a Judge to make an order upon any Sheriff not within his Commission nor answerable to his jurisdiction. In the second place, the proviso extends only to the Mayor and Citizens upon whom this obligation never was imposed, the Mayor being in fact a judicial officer, having Jurisdiction of life and death. And in the third place, even should it appear that the liability was continued, the authority to enforce it is abolished, for the Judges no longer sit in Bank, but under Commission, and cannot even compel the attendance of the Sheriffs of the County of the City, much less impose upon them a Duty of a nature so very serious. The 13th section of the Act itself shews that the County of Chester and the County of the City of Chester are distinct.

Since the abolition of the Palatinate the English Judges have refused to do more than sign the Calendar, and the Clerk of the Assize has of his own authority issued his warrant to the Sheriffs of the County of the City. Such a course is clearly illegal—he is but a Ministerial Officer, and if a fine were to be imposed upon the Sheriffs of the County of the City for disobeying the warrant, by whom could it legally be imposed and by what process could it be enforced? Certainly not by the Judges of Assize, for their commission does not extend over the County of the City, and they cannot receive a verdict even within that Jurisdiction even in a civil case without consent.

On the other hand, the Sheriff of the County is the known Officer of the Court of Assize and within the Jurisdiction of the Judge of Assize, and there is even an instance on record in which under the old system execution has been done upon Criminals by the Sheriff of the County Palatine of Chester.

You are of course aware that the Attorney and Solicitor General have already maturely considered this question upon the Statements both of the City and County of Chester and have delivered their joint opinion in favour of the former. To these statements and opinions I beg leave to refer, and trust that in the appeal which has been made to Your Lordship you will be of the opinion that the Sheriffs of the County of the City of Chester are legally justified in the course which

after the fullest deliberation they have been advised to adopt.

I have the Honor to be

With great respect

Your Lordship's Obedient Humble Servant,

JOHN JERVIS.

Chester, 9th August. 1834.

To The Right Honorable Lord Duncannon,

Secretary of State for

The Home Department.

In the meantime, as no one would execute the criminals, there was an *impasse*. Baron Parke respited the convicts until the 18th August so as to allow time for some arrangement to be made, either by Order in Council or Act of Parliament. A suggestion was also put forward that the Secretary of State should send down a mandate ordering one or other of the Sheriffs to execute under a bill of indemnity, but both sides intimated their intention of disobeying any such commands. One of the unfortunate results of the respite was to raise unfounded hope in the minds of the convicts, and a further respite to 18th September, received on 16th August by the gaoler from the Home Secretary by command of the King, directed the condemned men to be informed that there was no hope of Royal clemency. Ultimately the Crown decided to take legal proceedings to ascertain for the future whose duty it was to superintend the execution of Cheshire criminals; but as such proceedings would take time, and it was imperative that the sentences on Garside and Moseley should be carried out at once, the Attorney General (then Sir John Campbell) moved the Court in London for a *habeas corpus* to bring up the men from Chester. On 19th November the prisoners were brought to the bar at the Court of King's Bench in custody of the keeper of the gaol at Chester and of the governor of Newgate. The



Court declined to listen to an application by the Sheriff of Middlesex, who feared that he might be directed to execute, and, after a few days allowed to the prisoners to consider the form of the novel proceedings, ordered them to be executed by the Marshal of the Court of King's Bench, with the assistance of the Sheriff of Surrey.<sup>18</sup> On 26th November both men were executed at Horsemonger Lane Gaol.

The Crown now attempted to initiate proceedings against the Sheriffs to settle the matter, but were unsuccessful. A Bill of Indictment presented against the County Sheriff was thrown out by the grand jury of the County, and a similar fate at the hands of the City jury befell proceedings against the Sheriffs of the City. Ultimately an *ex-officio* information against Mr. Antrobus was filed by the Attorney General (then Sir John Campbell), and was tried at bar on 13th February, 1835, before the Chief Justice, Lord Denman and other judges. The new Attorney General (Sir F. Pollock) explained the object of the proceedings and related the history of the matter. Mr. Lloyd, the clerk of Assize, gave an account of the procedure and of the refusal of the Sheriffs to obey the warrants served upon them. He stated that before the Act of 1830 the executions took place at Boughton within the City of Chester, but that since then they had been carried out at the city gaol within the precincts of Chester Castle. The usual form of the warrant<sup>19</sup> before the Act recited the sentence before the Justice of Chester at the Sessions of the County, held in the Common Hall of Pleas, and was addressed to the City Sheriffs and to the Constable of

<sup>18</sup> R. v. Garside and Moseley, reported in 4 Nevile and Manning's Reports 33, 2 Adolphus and Ellis' Reports, 266.

<sup>19</sup> For an example see *Cheshire Sheaf*, Series I., Vol. III., 95-6.

the Castle, and was signed by the clerk of the Crown. The form used after the Act was similar except that the clerk signed as clerk of Assize and of the Crown. Evidence was also given of allowances by way of Sheriff's "cravings" made to former Sheriffs of the County for their expenses in gibbeting the bodies of criminals condemned to be hung in chains, in parts of the County outside the limits of the County of the City of Chester, the executions having taken place within the latter. Thus, in 1777, Peter Kyffen Heron, the County Sheriff, was allowed the expense of gibbeting Samuel Thorley at the West Heath, near Congleton, and in 1790 John Arden was repaid the cost of gibbeting John Dean at Stockport Moor. The Court stated that the question whose duty it was to execute could not be settled in those proceedings as the evidence shewed that the County Sheriff had not the custody of the prisoners or the means of obtaining it, and therefore he would not have been able to execute even if he were willing to do so. The proceedings were thus abortive.<sup>20</sup>

The position was still one of statement, and in view of the approaching Chester Assizes, it became most important to get over the difficulty at once. On 26th February, 1835, leave was given by the House of Commons<sup>21</sup> to Mr. Jervis and Lord Robert Grosvenor, the two city members, to bring in a bill which they had prepared to explain the Act of 1830 "so far as relates to the execution of criminals in the County of Chester." As introduced, the Bill recited that doubts had arisen

<sup>20</sup> Reported in 4 Nevile and Manning 565, 2 Adolphus and Ellis 788, 1 Harrison and Wollaston 96, and 6 Carrington and Payne 784.

<sup>21</sup> For the following facts see *The Mirror of Parliament*, 1835, Vol. I., 122, 146, 154, 174, 198, 233, 242, 273, 295, 317, 325, 451, 456; *Commons Journal*, 1835; *Hansard's Debates*, 2nd Ser., Vol. XXVI., 555 and 930, &c., *Times*, 5 Mar., 1835, &c.

whether the duty of execution ought to be performed by the Sheriffs or by the Constable of the Castle of Chester, and proceeded to impose it for the future upon the latter.<sup>22</sup> This was an entirely new suggestion and led to strong opposition when the Bill was considered in Committee. The Bill was explained to the House by Mr. Jervis, who had taken steps to get copies of the memorials to the Home Secretary to be laid before the House, but was unsuccessful in obtaining production of the opinions of the Law Officers.

The Bill was opposed by the Attorney General (Sir Frederick Pollock), who agreed that the Act of 1830 had thrown the liability to execute upon the County Sheriff, though that, he said, had not been the intention of its framers. He referred to the agreement come to in 1830, and, as he did not think it right to break faith with the gentlemen of the County, he could not consent to make the County Sheriff responsible. The Constable was himself a subordinate and removable officer and ought not to be given the superintendence of so solemn a ceremony. He therefore proposed an amendment definitely stating that the City Sheriffs were to execute as before. Sir John Campbell, the late Attorney General, disagreed with this proposal as he considered the County Sheriff had been made, and should still remain, responsible, as in every other County. The Solicitor General, Sir William Follett, pointed out that it was imperatively necessary that the matter should be settled by legislation before the next Chester Assizes in order to prevent the recurrence of the recent deplorable situation. He stated that the feeling between the City and County Sheriffs was so strong that both parties were prepared to disobey the Judge's orders again.

<sup>22</sup> For the Bill as introduced see *Legal Observer*, IX., 377.

The debate was continued by Mr. Daniel O'Connell, Mr. George Wilbraham (South Cheshire), and others. The Government supported the law officers and the Attorney General's amendments were carried by 115 to 55. The rest of the course of the Bill was uneventful until the third reading in the House of Lords, when the Marquess of Westminster urged that the Bill bore hardly on the City in regard to the heavy expenses attendant upon executions, and pointed out that while the County Sheriffs were reimbursed by means of the Sheriff's "cravings," there was no such fund available for those of the City. The Lord Chancellor, who referred to the near approach of the Chester Assizes, said no new charge was imposed on the City, and that the Corporation of Chester had spent in litigating the matter ten times the capital value of the whole expense they would incur under the Act. The Bill received the Royal assent on 20th March, 1835, as 5 and 6 Will. IV. c. 1. It recites that before the Act of 1830 the City Sheriffs were liable by law and used to execute the County criminals, but since the Act doubts were entertained whether they or the Sheriffs of the County ought to do execution, and proceeds to enact that the City Sheriff shall perform the task for the future under order of the Judge. In the case of any criminal ordered by the Judge to be executed at a place within the County but not within the jurisdiction of the City Sheriffs, the Sheriff of the County might be ordered to execute.

With the liability to execute thus plainly placed upon their shoulders the Sheriffs of the City allowed the matter to rest for more than thirty years, but in 1867 they succeeded in at last shifting the duty on to the Sheriff of the County. The Act 30 and 31 Victoria,

chapter 36, passed in July, 1867, enacts by section 4 that the Sheriff of the County of Chester shall execute all persons sentenced to death in the County, any statute, law, custom or usage to the contrary notwithstanding.<sup>23</sup> The Act of 1867 was repealed in 1878, except section 4 which appears to be still in force as governing executions by the Sheriff of Cheshire, apart from the Sheriffs' Act, 1887, which charges the execution of criminals condemned at the Assizes throughout the country generally upon the County Sheriff, and applies the general law relating to Sheriffs to the Counties Palatine.

#### ADDENDUM.

In 1866 Sir Horatio Lloyd (then Mr. Horatio Lloyd), the grandson of Mr. Lloyd the clerk of Assize of 1835 previously mentioned, was appointed Recorder of the city. In the following year, 1867, the new Recorder, being anxious that the City Sheriff should be relieved from the unpleasant duty of carrying out the death sentence on County criminals, approached the County Magistrates on the subject, who consented to a clause being inserted in a Government Bill then before Parliament with reference to executions in prisons, to enable the duty theretofore falling on the City Sheriff to be transferred to the County Sheriff. Unfortunately, however, this Government Bill was not proceeded with, but at the time the late Duke of Westminster (then Earl Grosvenor and senior member for the City) was piloting through Parliament a Bill enabling the City Quarter Sessions and the City Courts

<sup>23</sup> The Act 5 & 6 William IV. c. 1 was repealed by the Statute Law Revision Act 1874.

of Pentice and Portmote for five years to be held at Chester Castle, which was by statute situate in the County, instead of in the City, in consequence of the Town Hall having been destroyed by fire. This Bill, called the "City Courts' Bill," was also promoted by the new Recorder, and the clause intended for insertion in the Government Bill was transferred to the City Courts' Bill, and now forms section 4 of the Act.

