

ENGLISH LAW COURTS

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English law courts by W. D. McHugh

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PAPER READ BEFORE THE
OMAHA BAR ASSOCIATION

MARCH 14TH, 1903

W. D. McHUGH

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The visitor to the English Houses of Parliament, upon days when those buildings are shown to the public, enters near the Victoria Tower on the west. Passing through various rooms and corridors, the House of Peers and the House of Commons, he leaves the building from Central Hall. Guards and placards, throughout the building, identify all points of particular interest.

Leaving the building, the visitor passes through St. Stephens' Hall lined with statues of eminent English statesmen, to the porch leading to the Old Palace Yard.

As he passes along this porch, he sees on his right a wide portal through which a flight of stairs leads into a spacious, vacant room. Devoid of furniture, with an utter absence of all decoration, the place is, at first, unimposing. Some statues are about the walls. James I, Charles I, Charles II, William III and Mary his wife, George IV and William IV, are thus represented. The room has every evidence of neglect. Here no guards attend the visitor, and no placards are about the walls. Indeed, the visitors are few. Most of those visiting

the Houses of Parliament leave at once by the porch to the Palace Yard and the city streets.

Soon, however, the influence of the room makes itself felt upon the visitor. Its proportions are vast: two hundred ninety feet in length, sixty-eight feet in breadth and ninety-two feet in height. The height of the room is not broken by any balcony or gallery. The roof is of Irish oak, with carved timbers and beams and, in point of beauty and skill in construction, is considered a master-piece of timber architecture. The vast roof is unsupported by a pillar. Indeed, it is one of the largest halls in the world with a wooden ceiling unsupported by columns. As one views its perpendicular, Gothic style, its timbered ceiling and carved beams, the hall itself impresses the visitor with more and more of dignity.

Further examination, discloses two tablets which have been let into the floor of the hall, one on the steps and the other on the floor below. An inspection discloses the fact that these tablets mark the spots where Charles I and Strafford stood, during their trials.

When the significance of this fact is understood, the room is no longer bare or empty to one having an historical imagination. Scene after scene of English history presents itself to the visitor, and the hall in which he stands is crowded with great and important personages. For he realizes that this is Westminster Hall—the great hall originally built by William Rufus in the eleventh century—

wherein were held many magnificent festivities and stately receptions by the Norman Kings. Here, for hundreds of years, the Kings of England celebrated their coronations. Here some of the most sensational incidents in English history were enacted. Here Charles I was tried and condemned. Here Richard I was deposed. Here William Wallace, Scotland's noted champion, was condemned. Here were tried Sir Thomas More and Guy Fawkes and Lord Cobham. Here Cromwell, wearing the royal purple lined with ermine and holding a golden sceptre in one hand and the Bible in the other, was saluted as Lord Protector. Here the Lord Mayors of London, with much pomp and ceremony, were sworn into office. Here a great festival—the last one held in the hall—celebrated the coronation of George IV; when the King's champion, in full armour, rode into the hall, and, according to ancient custom, threw his gauntlet on the floor, challenging to mortal combat any one who might dispute the title of the sovereign. Here Warren Hastings was acquitted after a trial lasting seven years. One remembers at once the account of this trial by Macaulay in which occurs his famous description of this old hall. After telling of the commencement of the trial and the dignitaries who were present, and commenting upon the significance and importance of the occasion, he says:

“The place was worthy of such a trial. It was the great hall of William Rufus; the hall which had resounded with accla-

mations at the inauguration of thirty Kings; the hall which had witnessed the just sentence of Bacon and the just absolution of Somers; the hall where the eloquence of Strafford had for a moment awed and melted a victorious party inflamed with just resentment; the hall where Charles had confronted the High Court of Justice with placid courage which has half redeemed his fame."

All these stirring scenes, into which so much of England's history is crowded, invest this old hall with a dignity and importance that make the visit memorable.

But this vaulted chamber has a claim to our veneration stronger than that based upon these memories. Were all these absent, this old bare room would still be a Mecca for all students of English history and the development of modern civilization. Above and beyond all the things which have been mentioned, Westminster Hall is made near and dear to us because here, in this hall, for century after century, from Magna Charta to our own time, the Judges of the Courts of England held their seats and maintained and developed the magnificent legal system known as the Common Law.

What are the banquets, the festivals, the ceremonies and the occasional state trials which were here held, when measured in importance with the slow, sure and systematic expansion of the great legal

system which today determines and measures the rights, duties and obligations of all men on every spot on this broad globe where the English language is spoken?

A discussion of the English Law Courts, therefore, fitly begins with that historic edifice with which these courts will ever be associated.

The subject assigned, English Law Courts, is not to be considered as calling for a simple statement of the number, composition and jurisdiction of the various Courts of England. Such a treatment of the subject would be technical, tedious, and in a large degree, unprofitable.

It would seem, therefore, that what is said should be of the English Legal System. In this; in its distinctive characteristics, its origin, growth and development and the extent of its influence, all should, in a greater or less degree, be interested.

Speaking generally, in the civilized world we have but two legal systems. The one, known as the Civil Law, having its origin and much of its development in the life of Rome, is today dominant over all of Continental Europe, much of the Continent of South America, all of the colonies of France, Germany, Italy and Spain and in one of our own states, Louisiana. The other, known as the Common Law, today obtains throughout England, Scotland, Ireland, Australia, Canada, all the British Dominions, and the United States. Practically, wherever the English Language is spoken, we find the Common

Law; wherever other languages prevail, we find the Civil Law.

There is a striking contrast in the origin of these legal systems. The Civil Law came as principles adopted in the abstract; the Common Law is the embodiment of customs and practices obtaining among the people. The basis of one is theory; of the other, practical experience.

The Civil Law had its origin in Rome.

The ancient Romans had an involved, complicated legal system known as the *Jus Civile*. In a measure, religious ideas were identified with legal proceedings and some of the elaborate ceremonials of the Roman procedure partook of the nature of religious exercises.

This legal system, therefore, was close to the hearts of the Roman people. The lawyers, especially, held their *Jus Civile* in the highest reverence, and felt nothing but disdain for all other systems of law.

Partly because of the association of religion and its exercises with the administration of their law, and partly, no doubt, because of their contempt for aliens, the Romans denied the benefit of their laws to all except themselves. The law of Rome was for the Roman citizens alone. No foreigner could avail himself of the benefits or the protection of the Roman Law. That system neither measured his rights nor afforded him a remedy for an injury.

But there came a time when there were, in