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The Ancient Tolzey and Pie Poudre Courts of Bristol

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THE ANCIENT TOLZEY AND PIE POUFRE COURTS OF BRISTOL.

By SANFORD D. COLE

THE Tolzey Court of Bristol is an ancient institution which has escaped the fate of most of the old local courts that once formed an important part of our national system of administering justice. It belongs to the class of borough courts which flourished during the Middle Ages. Most of these have sunk into almost complete disuse and oblivion, but the Tolzey Court has survived, and its continuance as an active tribunal has preserved some interesting old forms and features.

In Bristol itself there have existed, besides the Tolzey, a number of courts exercising local jurisdictions of various kinds, but they have disappeared, with the exception of a Court of Pie Poudre, which maintains a nominal existence through having become amalgamated with the Tolzey Court. From its nature and jurisdiction the Court of Pie Poudre would originally be distinct and separate from the Tolzey Court, but the two became amalgamated at some period more or less remote, and they are now practically one institution. They have been so closely connected with each other, that in speaking of either it is necessary for the sake of completeness to deal with the other also.

A Court of Pie Poudre, it may be explained, was a temporary court set up during the holding of a fair or market for the settlement on the spot of any disputes which might arise, and such a court was incident to every fair which was held. The name is variously spelt, and several different explanations of its meaning have been given. A number of opinions on the origin and meaning of the name Piepowder by different writers are referred to by Professor Henry Morley in his

Memoirs of Bartholomew Fair. He suggests that the name is corrupted from the French for "dusty feet," and that the Piepowders were the travelling traders, the settlement of whose disputes was the primary purpose of a Piepowder Court. In support of this he points out that though the plural ending of the name was dropped in later times, it was formerly known as the Court of Piepowders, and also that in the old Scotch borough laws a travelling trader was "called pied poudreux, or destitute." This explanation seems more likely to be correct than the rather fantastic reason for the name of the court sometimes given, that justice was done as speedily as dust can fall from the traveller's foot.

It is not altogether clear with what particular fair the Pie Poudre Court which has come down to us was formerly associated. In the days of the great fairs the holding of one of these gatherings reduced everything else in the neighbourhood to a state of suspended animation because everyone was at the fair, and it appears to have been the practice in some boroughs that the ordinary borough court should be temporarily discontinued during the holding of a fair in the neighbourhood, and that its place should be taken during fair-time by a court held at the fair. There is evidence that during a period of fourteen days, commencing on the last day of September, the Tolzey Court was discontinued, or rather it seems to have been transferred with altered functions for the time being, to the open street in Old Market. Up to the present time writs issued from the Tolzey Court Office during this period have the words "held in the Old Market there" added to the ordinary title of the Tolzey Court, and the proclamation of the opening of the court in Old Market is still regularly made.

The formality of opening the old court of the fair may be witnessed in Old Market at ten o'clock in the morning on the last day of September in every year. The brief ceremony is so quickly over that it is scarcely noticed by most of the passers-by. Nevertheless it is of great historic interest. It is a link that momentarily recalls the life and daily doings

of bygone mediæval times. Nowadays the number of quaint ceremonies whose performance can be traced back into the dim and remote past is becoming smaller and smaller, and it is worth attempting to appreciate the significance of those that survive. The annual incident in Old Market has lost its former elaborateness, but its essentials are preserved. On the pavement beneath the overhanging upper storeys of the old "Stag and Hounds" there stands at the appointed hour the serjeant-at-mace of the Bristol Tolzey Court proclaiming the holding of a Court of Pie Poudre.¹ The officer makes proclamation in the following terms: "All manner of persons having anything to do at this Court of the Tolzey for the City and County of Bristol held and kept here this day in the Old Market, draw near and give your attendance." After a moment's interval this is followed by an announcement that the court is adjourned, made in these words: "All manner of persons who have anything further to do at this Court of the Tolzey for the City and County of Bristol, held and kept here this day in the Old Market, may now depart hence and give their attendance at the Tolzey Court Office forthwith. God save the King, the Judge of this Court, and his Deputy." Heads are uncovered during the ceremony, but the serjeant-at-mace wears no special dress, and after performing his annual duty he walks quietly away. There is a wealth of meaning and of memory in this fragment of a historic ceremony. The tribunal declared open is none other than the justice seat before which our forefathers, gathered together in one of the periodical fairs wherein all their simple trading was done, came to settle the disputes arising out of their bargaining. For the origin of fairs and markets we must search long previous to the period when population began to concentrate in towns and cities. In every temporary gathering for the purpose of trade a temporary court to settle disputes before the wayfaring traders departed was

¹ The illustration of the "Stag and Hounds" is reproduced from a drawing specially executed by our member, Mr. Armstrong, who has generously presented the original to the Society for its Bristol room.

a necessity, and its antiquity equals that of the fairs and markets themselves. Such a court, "from the earliest times of which there is record, has been known in England as the Court of Piepowder." It is a court of this description, a court similar to those that existed in the earliest periods of our island history, and whose lineage may be traced even farther back to the market courts of the Normans and the Romans, which is annually opened in Bristol on the last day of September.

The surviving observances in connection with the Pie Poudre Court, though interesting in themselves, do not throw any light on the past history of the court, or assist in determining with what particular fair it was associated. Investigation of this point introduces the question of the origin of the Tolzey Court itself. That origin is traditionally ascribed to Saxon times; but, according to Mr. John Latimer, the Tolzey Court "is supposed to have been at first held before the royal bailiffs of the Hundred of Barton Regis, of which Bristol formed a part when Domesday Book was compiled." If the Tolzey Court developed out of the Hundred Court of Barton Regis, the Old Market may have been the place where it was originally held, and its transference to the Old Market for a fortnight during every year may have had relation to that fact rather than to the holding of a fair in Old Market at that season, though during the fortnight in question the Tolzey Court certainly appears to have exercised the jurisdiction of a Court of Pie Poudre.

There is no reason to suppose that the court held in Old Market was connected with the great St. James's Fair, which was indeed held at first in Whitsun week from the time of Earl Robert. The time of that fair was altered in the eighteenth century from July to September, but its date never corresponded with the time of holding the Pie Poudre Court in Old Market. It appears from the Chartulary of St. Augustine, which is preserved at Berkeley Castle, that the fair of Bristol was held about Michaelmas in the year 1224. The Mayor's Calendar, written by Robert Ricart

(town clerk from 1479 to about 1508), mentions that on the day after Michælmass Day it was customary for the new mayor and others to go to the Guildhall and take their oaths, "And thereupon forthwith one of the bailiffs, by the maieres commandement, to go to keep the markett court."¹ On May 24th, 1550, Edward VI. granted a September fair, but it does not appear where it was held. The charter which the city obtained from Charles II. on June 2nd, 1684, contained a grant of eight fairs or markets to be held on days and at places which were named, and the charter expressly granted Courts of Pie Poudre to be held at the time of the several fairs or markets. A later charter, granted by Queen Anne on July 24th, 1710, authorised the Common Council of the City to change the times and places of all or any of the markets held within the city. There was no mention of the Old Market in the charter of Charles II., and none of the fairs or markets granted by him would have any connection with the Old Market, unless removed thither under the powers given by Queen Anne.

The links which might show the bearing of these facts on the question of the origin of the Pie Poudre jurisdiction exercised in Old Market are lacking, and the point must be left in doubt.

The references in the early charters of Bristol to its "Hundred Court" support the idea that the place was not at first a "borough," and was served by the court of the hundred in which it was situated (namely Barton Regis) instead of by a borough court. At the end of the reign of King John, however, the town had a mayor, and in the time of Edward III. two local courts had become well established. The charter granted by that monarch in 1373 referred to the Mayor's Court and the "Court of the Tolzey," and defined their respective jurisdictions. This is the earliest mention of this distinctive name in connection with Bristol. Tolzey is an old name for a place where tolls, which played a very important part in early trading, were collected. It

¹ *Ricart's Kalendar*, Lucy Toulmin Smith, 75.

appears that for many years a contest for jurisdiction was carried on between the Mayor's Court and the Tolzey Court. We must remember that the right to hold a court was at one time a privilege with some profit attached to it, and it was to the interest of a court to secure all the business it could. During the Middle Ages the courts in the various boroughs were commonly under municipal control, and in order that the profits to be derived from holding them might not be lost towns strove to keep business in their own tribunals by passing ordinances imposing severe penalties on any who should bring actions elsewhere when they might have brought them locally. This policy was pursued in Bristol, in common with other places. There were, however, as we have seen, different tribunals within the town competing against each other for business. In addition to the Mayor's Court and the Tolzey Court, there was also a Court of the Staple, but both it and the Mayor's Court became quite disused, and the Tolzey alone survived.

In 1461 Edward IV. granted the town to the mayor and commonalty for ever, and the Tolzey Court then became annexed to the corporate jurisdiction. "By the grant of Edward IV. to the corporation," wrote Mr. John Latimer, "all the profits of the town then belonging to the king (except the Castle and its precincts), including the pleas of the Tolzey Court—'the King's Court in the Guild-hall,'—were conveyed to the community, and the bailiffs were recognised as permanent corporate officials. An entry in the Great Red Book (fol. 982) shows that the mayor and sheriff immediately took the court on themselves, jointly with the bailiffs. The charter of Henry VII. [December 17th, 1499] abolished the office of a single sheriff, and directed that the bailiffs of the town should be chosen, as before, by the corporation, and that on their being so chosen they should be *ex officio* sheriffs. The title of bailiff was thus dropped in general parlance; but as the legal style of the Tolzey Court remained unaltered, the sheriffs were described as being 'as well bailiffs of the

mayor and commonalty as sheriffs of the county of Bristol.' Considerably before this time a legal officer had been attached to the court as assessor, who for many generations had the title of Steward of the Sheriffs' Court, and practically tried all the cases brought before him, but he possessed no legal jurisdiction unless a sheriff was on the bench, and all the processes, with a trivial exception, were tested in the name of the sheriff. This system continued until 1836, when, under the provisions of the Municipal Corporations Act, the office of steward was absorbed in that of the recorder."

There is nothing to show the situation of the original place for collecting tolls, from which the Tolzey Court is supposed to take its name. In mediæval and later times the court appears (when not sitting in Old Market) to have been held at the Guildhall, rather than at the place known as the Tolzey. Certain items in the earliest corporate audit book (1532) show that the Tolzey was a room, but after 1550 a walk beneath a penthouse roof fixed against the wall of the new council house was the place known as the mayor's or civic Tolzey, and a merchant's Tolzey or exchange was built soon afterwards. Millerd's map of Bristol (1673) has two marginal views of the Tolzey, showing the "south prospect" along the wall of the Council House, and the "north prospect" in front of All Saints' Church in Corn Street, opposite the Council House. Roque's large plan of Bristol in 1742 shows "the Tolzey" in Corn Street, while "Pie Poudre Court" is marked in the position in Old Market where the annual proclamation is made to this day.

The books in which the early records of the Tolzey Court were kept have nearly all disappeared. Among the manuscript fragments of an intended "Topographical History of Bristol," by the Rev. S. Seyer, preserved in the Bristol Public Library, is a note stating that "the Records as far back as 1438 are in the custody of the Undersheriff, at present Arthur Palmer, Esq., by whose permission I examined two of the oldest volumes, thus entitled 'The oldest book extant of the Tolzey—Court Records used up in the time of

Hugome Hungerford, Steward of the Court. Anno Dom. 1438.' I have given some extracts from these books, from which it may be seen that Pleas of debt, of trespass, &c., were held before the Steward, and seem to have been speedily determined in a manner which must have been very advantageous to the litigants."

It is not known what has become of the majority of the volumes to which Mr. Seyer refers, but one book, commencing in 1489, has fortunately been preserved, and is now in the possession of F. F. Fox, Esq., of Yate House, Yate, Gloucestershire. The late Mr. John Latimer prepared a manuscript index of the names contained in it, and also wrote some notes giving a good deal of information about the court which is not to be found elsewhere. These have already been quoted from, and a further extract may be made of Mr. Latimer's remarks as to this particular volume: "The records of the court were (he wrote) kept in two books, one of them—of which this is an example—containing an entry of the causes without any indication of the results, whilst the other, called the 'Issue Book,' registered the judgments. The present volume, which begins on 1st of October, fifth of Henry VII. (1489), and ends somewhat confusedly in 1497, notifies the raising of some 1,500 actions, almost invariably relating to debts and trespasses, the amount claimed varying, with rare exceptions, from £20 down to 3s. 4d. The entries are of the briefest character and monotonously similar. 'A. B. by attorney against C. D. for trespass (or debt). Damages (say) 100 shillings.' To this the writer generally adds that pledges have been given by the plaintiff, but this appears to have been a mere form. . . . Besides the formal pledges for the plaintiff, the names of bailees for the defendant were commonly given, by which means he was protected from arrest until after the judgment of the court. In these cases the names were undoubtedly authentic. . . . The year of the court was the mayoralty year, October being the first month and September the twelfth. . . . The court

generally sat thrice weekly—on Monday, Wednesday, and Friday—and occasionally on other days, but its proceedings were frequently suspended owing to the coming round of the feasts of saints and other solemnities of the church, including now and then a ‘general procession,’ the nature of which is not explained. It will be seen from the above remarks that the register possesses no other interest than is to be derived from the names and avocations of the suitors and bailees. Judging from the number of cases, and bearing in mind the then limited population of the town, litigation must have been extraordinarily common amongst all classes.”

Besides this single fifteenth-century volume, the only old records of the Tolzey Court known to be preserved are ten cause books, which are in the Bristol Public Library, covering (with some gaps) the years from 1700 to 1758. Not much information is to be gathered from the entries of cases, but at the end of the oldest of these books is written what is presumably the form of proclamation used at the annual opening of the court in Old Market during the early years of the eighteenth century. The wording is as follows:—

“Make proclamation thrice saying Oyes Oyes Oyes.

“All manner of persons that have anything to do at the Court of the Tolzey here holden in the Old Market before the as well sheriffs of the City of Bristol as bailiffs to the Mayor and commonalty of the same City draw near and give your attendance.

“Make proclamation twice saying Oyes Oyes.

“Essoigns & proffers Essoigns & proffers Essoigns & proffers of suit or plea of any person will be essoigned or enter any plaint let them come in and they shall be heard.

“Make proclamation once saying Oyes.

“All manner of persons that do owe any suit or service to this court answer to your names as your call’d on pain of the pain that shall fall on default thereof.

“Tenants of the Bishop of Worcester come in & do your free suit & service.

“And so of the rest of the suitors.”

There are in the original some contractions and peculiarities of spelling which are not reproduced here. According to Jacob's *Law Dictionary* (1797) "Essoign" is an excuse for him that is summoned to appear and answer to an action or to perform suit to a court baron, &c., by reason of sickness and infirmity or other just cause of absence. "Proffer" signifies the offer and endeavour to proceed in an action.

It appears from the entries in these eighteenth-century court books that at the period to which they relate the court was held in Old Market for fourteen clear days (commencing on the last day of September and not counting Sundays) at nine o'clock and again at three o'clock;¹ but that the calling of the suitors at the opening was a farce is clear from an illuminating note, written after the names of the suitors, stating that "Each of them made default but they were not amerced because they were not summoned." At the end of the fourteen days business was transferred to the Guildhall for the remainder of the year, but no time of day is mentioned except in connection with the Old Market. According to Clarke's *Practice and Pleading in the Tolzey Court*, published in 1849, pleadings could not be filed in the Tolzey Court during the sitting of the Pie Poudre Court in Old Market. This rule, however, is not now operative.

The following account of the ceremony of opening the court in Old Market in 1836 appeared in the issue of *Felix Farley's Bristol Journal*, published on October 1st in that year:—

"PIE POUDE COURT.—According to annual custom, this ancient Court was opened yesterday in the Old Market, before Sir Charles Wetherell, Knt., to whose jurisdiction as Recorder, under the Municipal Corporations Act, all the Courts of Record in this City are transferred. This circumstance caused a much larger attendance than usual, and many long-resident citizens witnessed for the first time in

¹ In Ricart's time the mayor and sheriff held their court at the Tolzey every common day (except the eves of Sundays and festivals) from eight to eleven and two till five. (Toulmin Smith, 84.)

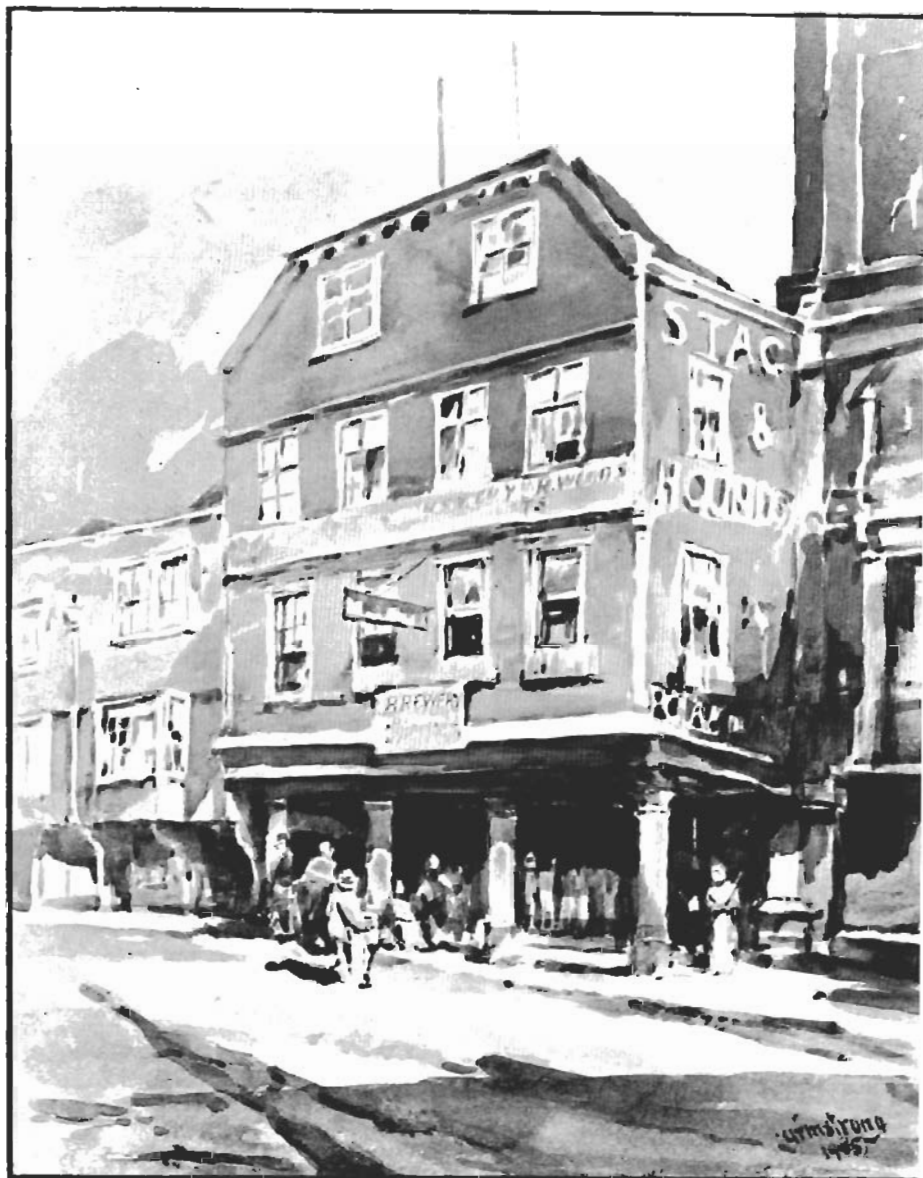
their lives the curious ceremony which has for many centuries accompanied this annual process. Arthur Palmer, Esq., the venerable and respected Prothonotary, having called upon the representatives of certain Ancients to come forth and 'do suit and service,' and none of them obeying the summons, he asked the Recorder if it was his pleasure that they should be amerced, but the learned judge did not enforce the penalties. Toast and ale, toasted cheese and metheglin (no mean beverage when well made) were then liberally distributed, not only to the gentlemen at the table, but to the outstanders, and many a hearty laugh was enjoyed at some of the unlucky wights being drenched on the outside by the contents of the tempting bowl, instead of comforting the inner man with the well-spiced ale. The Recorder returned to the Council-house in his carriage; the Prothonotary, preceded by the mace-bearers, went in procession on foot as usual. Hitherto it has been the custom for the Sheriff to preside on the day after being sworn into office, *mais nous avons changé tout cela.*"

Mr. Latimer refers to the Old Market ceremony in his *Annals of Bristol*, and adds that "the yearly disturbance arising from the feast ultimately led to its suppression, and the holding of the court was discontinued after 1870." It is, however, as we have seen, still proclaimed open, though not in fact held.

The Tolzey Court has power to try every kind of action to an unlimited amount, but, like all the courts of its kind, its jurisdiction has always been purely local, and exercised only within the boundaries of Bristol. Its procedure comprises, however, a special process known as "foreign attachment," by means of which the machinery of the court can sometimes be employed against persons who are in distant parts. Foreign attachment is a procedure by which a seizure is made of foreigner's goods or money found within the city for the satisfaction of a citizen to whom the foreigner is indebted. An ordinary Tolzey writ can only be served on a person within the city, and so the court can

afford no redress against persons outside the boundaries except by means of this special procedure of foreign attachment. The special custom giving a right to proceed by way of foreign attachment has prevailed only in London, Exeter and Bristol.

In Bristol the form of the proceedings in foreign attachment has preserved the Anglo-Saxon practice of compurgation in actual use down to our own time. Before the establishment of trial by jury the procedure known as compurgation, derived from old Teutonic or Anglo-Saxon law, was employed as an alternative to the ordeal or wager of battle. A man purged himself from a charge made against him by getting others who were his compurgators or oath-helpers to swear with him that they believed him to be innocent. This method was used in both civil and criminal cases, and doubtless served its purpose in primitive times, but it gradually became obsolete, and in the Bristol Tolzey Court, where it has survived, it is a mere formality. In foreign attachment the point at which the Anglo-Saxon compurgators come in is after goods have been seized. According to the recognised practice, the plaintiff then files a declaration, and on a certain court day "the plaintiff's attorney proves the debt upon oath, and, according to the form of the court, two persons appear as pledges, and swear they believe he has spoken truly. He then moves for a judgment against such goods and a warrant of appraisement." The two men who are called pledges are the compurgators, and probably a couple of officers of the court who might happen to be present would perform the duty. I understand that though a few foreign attachments are still issued every year, it is now some years since one was carried through all its stages, because most are paid off as soon as a seizure is made. Probably the period when the procedure was really serviceable was in the early days of Bristol trade and shipping. A curious case is on record where a ship was seized when twenty miles from the town of Bristol. The ship was within the territorial limits of jurisdiction, because



THE STAG AND HOUNDS,

OLD MARKET STREET, BRISTOL.

1905.

The site of the Ancient "Pie Poudre" Court.

From a Drawing by F. A. W. T. Armstrong, R.B.A.

a considerable portion of the Bristol Channel is within the boundaries of Bristol. The seizure was therefore quite regular, but the captain of the ship committed a gross contempt of court by sailing away to Jamaica with the legal official on board. On his return he had to answer for his contempt. In what way he did so does not appear, but the matter seems to have been compromised.

Apart from its special features, the procedure of the Bristol Tolzey Court is practically the same as that of the High Court of Justice. Very few of the old local courts which exist in various towns have been able to secure from the central authorities the permission which is necessary to enable them to introduce modern procedure in place of that which prevailed a century or more ago, and, hampered with cumbrous and old-fashioned procedure, they have necessarily become disused; but modern rules of practice have been sanctioned for the Tolzey Court, and it is this circumstance which is largely responsible for its being still resorted to for recovering money and obtaining redress.
