

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE
OF COLUMBIA UNIVERSITY

Volume XXXII

**THE ENFORCEMENT OF THE
STATUTES OF LABOURERS**

During the First Decade after the Black Death

1349-1359

BY

BERTHA HAVEN PUTNAM

COPYRIGHT, 1908
BY
BERTHA HAVEN PUTNAM

PREFACE

WHILE taking a course of lectures on the history of English Poor Law, given by Professor F. H. Giddings of Columbia University, I became interested in the law of parochial settlement and in its effect on the mobility of the working-man. My original purpose had been to give an account of its origin and development and of its final repeal during the era of the abolition of the Corn laws. Beginning with a study of the earliest instances of national legislation dealing with the labouring classes, I was, of course, led to consider the ordinance and the statute of labourers of 1349 and 1351, and found that although these measures and their consequences had been frequently discussed by economic historians, no detailed investigation had as yet been made of the methods and machinery by which they were enforced. This monograph presents the results of such an investigation, based chiefly on an examination of the manuscript sources in the Public Record Office, London.

I am indebted to many scholars both here and in England for valuable assistance on specific problems, and in the discussion of these problems I have sought to make clear my indebtedness. To others I am under still heavier obligations. My warm appreciation is due to my former teacher, Professor C. M. Andrews, once of Bryn Mawr, now of Johns Hopkins, who has given me freely of his time and has helped me with many suggestions. It is not easy adequately to express my gratitude to Mr. Hubert Hall, of the Public Record Office, for the generosity with which his

paleographical skill and scholarship have been placed at my service at every stage of my work—from the reading of my first manuscript to the collation of my final copy. For my transcripts of manuscript material I must thank several transcribers, but more especially Miss Mary Trice Martin; without her coöperation I could hardly have ventured on printing the appendix. In addition to making many of my transcripts, she has collated with the original manuscripts the typewritten copy of the text of all my documents and has verified all my references to manuscript sources.

For the arduous task of seeing this monograph through the press, my grateful acknowledgments must be made to Professor E. R. A. Seligman. My thanks are also due to Dr. Eugene E. Agger for correcting the English proof and to Mr. Otis Hill, Dr. Richard Riethmüller and Dr. Clarence Perkins for assistance in reading the Latin and French proof.

Through the courtesy of the editor and publishers of the *English Historical Review* I am enabled to make use of my article entitled "The Justices of Labourers in the Fourteenth Century," which appeared in July, 1906.

NEW YORK, September, 1908.

TABLE OF CONTENTS

	PAGE
INTRODUCTION.—The Black Death and the enactment of the ordinance and of the statute of labourers	1
PART I	
The Enforcement of the Statutes of Labourers by Special Machinery	7
CHAPTER I	
ACCOUNT OF THE JUSTICES OF LABOURERS	9
(1) The form of their commissions	10
(2) Their relation to the keepers of the peace	17
(3) Method of appointment and removal	26
(4) Territorial districts of their jurisdiction	36
(5) Their oath of office	40
(6) The amount of their salaries	44
(7) The personnel of the commissions	49
CHAPTER II	
PROCEEDINGS BEFORE THE JUSTICES OF LABOURERS	57
(1) General description of the sessions and of the sessional records	58
(2) Procedure in sessions	65
(3) Clauses of the ordinance and statute most frequently enforced	71
(4) Economic and social status of the delinquents	77
(5) Penalties	82
(6) Rates of wages and prices	87
(7) Supervision of the proceedings of the justices of labourers	92

	PAGE
CHAPTER III	
THE DISPOSITION OF THE MONEY PENALTIES UNDER THE STATUTES OF LABOURERS	98
(1) Period of the triennial grants of 1348 and 1352; the claims of the taxpayers	99
A. Tenth and fifteenth of 1348	99
B. Tenth and fifteenth of 1352	106
(a) System of collection and distribution of the penalties .	108
(b) Embezzlement by collectors	120
(c) A comparison of the amount of the penalties with that of the tax	127
(2) Period after the cessation of the triennial grants of 1348 and 1352.	131
A. The rights of the crown: Easter, 1351, to Easter, 1352; Michaelmas, 1354, to November, 1359	131
B. The claims of the lords of franchises	138
PART II	
The Enforcement of the Statutes of Labourers in the Old Local Courts and in the Central Courts	151
CHAPTER I	
THE OLD LOCAL COURTS: COMMUNAL COURTS OF THE COUNTY AND OF THE HUNDRED; SEIGNORIAL COURTS, FEUDAL AND FRANCHISE; MUNICIPAL COURTS	153
CHAPTER II	
CENTRAL COURTS: KING'S BENCH AND COMMON PLEAS, 1349-1377	166
(1) The treatment of the sources	166
(2) Numerical account of actions on the statutes of labourers . .	170
(3) Clauses of the ordinance and statute on which the actions are brought	174
(4) Classes to which the compulsory service and contract clauses applied	179
(5) The contract	189
(6) The effect of the compulsory service and contract clauses on the lord's relation to his villeins	199
(7) Judgments and verdicts	206

	PAGE
PART III	
Summary of the Work of the King's Council	215
Conclusion	219
APPENDIX	
I. ACCOUNT OF SOURCES	3*
II. DOCUMENTS, EXTRACTS FROM DOCUMENTS, LISTS AND TABLES .	6*
A. <i>Parliament and council</i>	6*
1. List of parliaments 1349-1359	8*
2. Enactments	8*
Extracts from Close Rolls and Statute Rolls	8*
B. <i>Chancery. (Administrative side)</i>	19*
1. Extracts from Chancery enrollments, chiefly Patent Rolls, and corresponding documents for the palatinates	21*
2. Chronological list of commissions to enforce the statutes of labourers issued during the years 1349-1359	32*
3. List of the 671 justices responsible for the enforcement of the statutes during the decade	43*
4. List of territorial districts for which separate commis- sions for labourers were issued between 1352 and 1359.	138*
C. <i>Local courts under crown-appointed justices</i>	142*
1. Quarter sessions records	142*
Extracts from Ancient Indictments and Assize Rolls	145*
2. Records illustrating the supervision of the justices in ses- sion	239*
Extracts from Assize Rolls, Coram Rege Rolls and County Placita	241*
D. <i>Exchequer</i>	255*
1. Extracts from Assize Rolls, Memoranda Rolls and Ori- ginalia Rolls	258*
2. Extracts from Lay Subsidies and Memoranda Rolls	268*
3. Extracts from Memoranda Rolls	289*
4. Accounts of the collectors of the triennial of 1352. A table of figures taken from Enrolled Subsidies. Ex- tracts from Accounts, K. R., Enrolled Subsidies and Lay Subsidies	312*
5. Extracts from Accounts, K. R., Close Rolls, Memoranda Rolls and Pipe Rolls	363*
6. Extracts from Accounts, K. R., Memoranda Rolls, Patent Rolls and Pipe Rolls	373*

	PAGE
E. <i>Records of the old local courts</i>	391*
Extracts from Assize Rolls and Court Rolls.	391*
F. <i>Records of the central courts</i>	400*
1. Extracts from Ancient Indictments and Assize Rolls	400*
2. Form of writs, counts, exigends, pardons for outlawry from the <i>Registrum. Novæ Narrationes</i> , Coroners' Rolls and Patent Rolls	411*
3. List of 44 reports from Year Books and abridgments and of the corresponding records from <i>Coram Rege</i> Rolls and <i>De Banco</i> Rolls	416*
4. Cases 44, 31, 6, 42 and 20	419*
5. Cases 10, 17, 28, 32 and 36	439*
6. Cases 9, 38 and 43	452*
Bibliography of printed sources	464*
Index	475*

CITATIONS IN FOOTNOTES.

Printed sources:

A. H. R.—American Historical Review.
 E. H. R.—English Historical Review.
 R. D. K.—Report of the Deputy Keeper.
 Cal.—Calendar.
 Rot. Parl.—Rotuli Parliamentorum.
 Statutes—Statutes of the Realm.

Since the full titles and names of authors are given in the bibliography, in general only shortened forms are used in the notes, but it is hoped that the abbreviations are all obvious.

Manuscript sources, in Public Record Office unless otherwise indicated:

Claus.—Rotuli Literarum Clausarum.
 Pat.—Rotuli Literarum Patencium.
 Orig.—Originalia.

In each case the first numeral refers to the regnal year of Edw. III.
 Mem. K. R.—Memoranda Roll of the King's Remembrancer.

Mem. L. T. R.—Memoranda Roll of the Lord Treasurer's Remembrancer.

The first numeral refers to the regnal year and is followed by the abbreviation for the law term, then by the sub-title and by the number of the membrane when the latter is given.

Law terms:

Hill.—Hilary.
 Pasch.—Easter.
 Trin.—Trinity.
 Mich.—Michaelmas.

For the sub-titles the only abbreviations used are the following:

Breu. *Baron*.—Breuia directa baronibus.
 Breu. *Ret*.—Breuia retornabilia.
 Breu. *Irret*.—Breuia irretornabilia.

Plea Rolls:

De Banco—*De Banco* Rolls.
Coram Rege—*Coram Rege* Rolls.

The first numeral refers to the regnal year and is followed first by the law term, then by the number of the membrane, and lastly by the name of the county. In the *Coram Rege* Rolls, either "Rex" or the name of the chief justice has to be added just before the number of the membrane in order to distinguish between the two portions of the roll.

ERRATA.

- Page 3, note 2, line 5, *for* 89 93 *read* 89-93.
Page 30, note 1, line 2, *for* Ramsay *read* Ramsey.
Page 54, note 6, line 2, *for* 3157 *read* 1357.
Page 69, line 8, *for* snpersedeas *read* supersedeas.
Page 73, line 7 from bottom, *for* " or he *read* or " he.
Page 200, note 6, *for* pt. i, ch. i, s. 7, *read* pt. i, ch. ii, s. 7.
Page 41*, line 16, *add* manor of Kirton twice.
Page 58*, *for* Brughbrigg *read* Burghbrigg.
Page 66*, *for* Coluyll *read* Colvyll.
Page 140*, line 18, *for* 8 July / 30 *read* 26 March / 30.
Ibid., line 21, *for* 8 June / 30 *read* 8 July / 30.
Page 159*, line 7, *for* Iohanes *read* Iohannes.
Page 171*, last line, *for* Johannes *read* Iohannes.
Page 191*, line 2 from bottom, *for* Thirty years *read* Thirty days.
Page 216*, line 23, *for* Iohannis *read* Iohannis.
Page 224*, line 2 from bottom, *for* Regeri *read* Rogeri.
Page 253*, last line, *for* Roberti *read* Roberto.
Page 302*, line 5, *for* attacheret *read* attachiaret.
Page 374*, line 3 from bottom, *for* adudicata *read* adjudicata.
Page 413*, throughout extract from *Novae Narrationes*, *for* v *read* u.
Page 416*, line 4, *for* three *read* two.
Page 425*, last line, *for* concordati *read* concordari.
Page 454*, line 6 from bottom, *for* ipsuis *read* ipsius.

INTRODUCTION

THE BLACK DEATH AND THE ENACTMENT OF THE ORDINANCE AND OF THE STATUTE OF LABOURERS

THE Black Death reached Dorsetshire in August, 1348,¹ and spreading first toward the west, and then toward the northeast, appeared in London by the end of September or the beginning of November;² it was at its height in Surrey and Hampshire during the following spring,³ and in the northern and eastern counties during the summer and early autumn,⁴ ending nearly everywhere in England by the last months of 1349.⁵ Estimates of the mortality during these fourteen or fifteen months vary from nine-tenths to one-fifth of the total population; a half is probably fairly near the truth,⁶

¹Creighton, *Hist. of Epidemics*, i, 116; for discussion of the exact date, see Gasquet, *The Great Pestilence*, 71-74.

²Creighton, *loc. cit.* ³Gasquet, *op. cit.*, 112-114. ⁴*Ibid.*, 67, 128.

⁵Creighton, *op. cit.*, i, 177, gives Michaelmas, 1349, as the latest date, but Gasquet, *op. cit.*, 160, quotes an instance in the north as late as the spring of 1350.

⁶*Eulogium Historiarum*, iii, 213, one-fifth; Le Baker, *Chronicon*, 99, nine-tenths; Rogers, *Work and Wages*, 223, a third; Jessopp, *The Coming of the Friars*, 205-206, a half in East Anglia; Creighton, *op. cit.*, i, 123-139, gives various estimates for specific localities; Gasquet, *op. cit.*, 194-195, inclines to a half; Cunningham, *Growth of Eng. Industry and Commerce*, i, 329-336, in a summary of the effects of the plague and of the statutes of labourers, inclines to the theory of "nearly a half." For an accurate estimate in one district, cf. Little, "Black Death in Lancashire," in *E. H. R.*, v. These modern calculations are based largely on records of presentations to livings and on the evidence furnished by manorial court rolls. The sources examined for this monograph contain much information both direct and indirect as to the devastation of the country.

representing perhaps two and a half millions of deaths.¹ While the plague was by no means confined to the labouring classes, the consensus of opinion is that the death rate was highest among the poor;² complaints as to the scarcity of labour of all kinds, especially agricultural, of the exorbitant wages demanded by the labourers fortunate enough to survive, and of the consequent inability of landowners to till their lands, arose immediately, and have been recorded by all commentators from the contemporary chroniclers³ down to the modern economic historians.⁴ Parliament being unable to meet on account of the pestilence, the responsibility of dealing with the emergency fell upon the king's council;⁵ the result was the issue on 18 June, 1349, of the famous ordinance of labourers.⁶ The continuance of the seriousness of the labour problem is given as one of the reasons for the summoning, for February, 1351, of the first parliament that sat after the plague;⁷ the statement of the commons that the council's decree is not obeyed is met by the statute of labourers, not as a re-enactment of the ordinance, but as a supplement to it.⁸ The provisions of

¹The total number of deaths is also a debatable question; Cunningham, *op. cit.*, i, 331-332, summarizes the controversy between Seebohm and Rogers on this point. See my bibliography for references to their articles.

²Gasquet, *op. cit.*, 195; Creighton, *op. cit.*, i, 124.

³Of the chroniclers Knighton gives the fullest description; ii, 58-65, 74. Cf. also *Eulogium Historiarum*, iii, 213-214; *Chronicon Angliae*, 27; Le Baker, 98-100; Avesbury, 406-407.

⁴Gasquet and Cunningham both contain references to many valuable manuscript documents.

⁵Stubbs, *Const. Hist.*, ii, 418, note 2, 428, note 1.

⁶App., 8-12. ⁷*Rot. Parl.*, ii, 225b.

⁸*Ibid.*, ii, 227b; for the text of the statute see app., 12-17. The usual opinion, even that of Stubbs, is that the statute re-enacted the ordinance. In reality the latter was not made a statute until the next reign; *Statutes*, 2 R. II, st. i, c. 8.

the two measures will later be analyzed in detail; here it is sufficient to say that their main object was to secure an adequate supply of labourers at the rate of wages prevailing before the catastrophe,¹ and that the notable feature of these enactments is that they constitute the first important attempt of the central authorities to apply to the country as a whole, uniform legislation on wages and prices,—matters that had been previously left to local control.²

In considering this legislation there are two questions that must be answered; first, were its provisions legitimate, and second, were they effective? Among historians we find strongly opposed opinions on both these points. On one side it is urged that the statutes³ represent an endeavor to perpetuate villeinage and to hinder the movement toward freedom⁴ and aimed to restrict wages in the interests of the employer to a degree that

¹Since the supply was to be provided in part by the compulsory labour of the able-bodied vagrant, it is true, as Cunningham points out, *op. cit.*, i, 335, that this portion of the ordinance marks the beginning of what afterwards developed into a poor law. I am not here concerned with this later development, which was certainly not foreseen by the framers of the measure.

²For an account of the action of the central government on economic questions previous to 1349, see Cunningham, *op. cit.*, i, 270 *et seq.*, 329-330, ii, 6-7; and Ashley, *Ec. Hist.*, i, ch. 3. The closest analogy to the present enactment is that of the ordinance of prices of 1315, which was speedily withdrawn; *Rot. Parl.*, i, 295; Trokelowe, 89 93; Stubbs, *op. cit.*, ii, 350. I shall deal with the subject to a slight extent in pt. ii, ch. i.

³Throughout this work for the sake of brevity I use "statutes" to include the ordinance and the statute, except when it is essential that a distinction between them should be made.

⁴Eden, *State of the Poor*, i, 41-42; Mackay, *Hist. of Eng. Poor Law*, iii, 13-17; Nicholls, *Hist. of Eng. Poor Law*, i, 45; Pashley, *Pauperism and Poor Laws*, 161-163; Seebohm, "Villainage in England," in *E. H. R.*, vii, 458.

PART I

THE ENFORCEMENT OF THE STATUTES OF LABOURERS BY SPECIAL MACHINERY

The assertion by the central government of its right to legislate on economic matters for the whole country on a scale previously unheard of necessarily included the duty of providing for the administration of the legislation; the special machinery devised for this purpose must first be described.

CHAPTER I

ACCOUNT OF THE JUSTICES OF LABOURERS

THE lack of accurate knowledge as to the extent of the enforcement of the statutes of labourers is in no way more clearly shown than by the fact that there has not even been unanimity among historians as to whether these statutes were, in the beginning, as was certainly the case later, included in the jurisdiction of the justices of the peace or whether they were left to a separate commission.¹ My first task, therefore, is to establish the identity of the justices mentioned in the ordinance and the statute.²

¹I am indebted to Professor Cheyney for having called my attention to this question and to Professor C. A. Beard for many valuable suggestions. Lambard (*Eirenarcha*, 562-3), referring to the statutes for the regulation of the sessions of the justices of the peace, writes: "The first of these foure Statutes" (*i. e.*, 25 Edw. III, c. 8) "doth (in shew, and in common opinion) concerne the Sessions of the Iustices of Peace, but in truth it belongeth not at all to them: for it was made to direct the Iustices of Labourers in the times of holding their sessions: and they were not Commissioners of the peace, but speciall Iustices for the causes of Labourers alone, not resiant in the countrey, but sent downe for the time of that seruice, as it may expressly appeare, not onely by the preamble and all the parts of the said statute it selfe, but also by the statutes 28 Ed. III, cap. 5, 31 E. III, cap. 6, and 34 E. III, cap. 11, during all of which time also, the Wardens of the peace were neither called Iustices by any Statute, nor authorized to deale with Labourers." For the same view *cf.* Howard, *The King's Peace*, 40, and Beard, *Justice of the Peace*, 60-61. For the theory that the persons assigned to execute the statutes of labourers were probably the keepers of the peace, see Reeves, *Hist. of Eng. Law*, ii, 330. The historians of the English Poor Law have usually shirked the question altogether.

²The main portions of this section and of section 2 have already appeared in my article on the "Justices of Labourers" in *E. H. R.*, xxi.

(1) *The form of their commissions.*—From the point of view of the jurisdiction of the justices responsible for the enforcement of the statutes of labourers and, therefore, also from the point of view of the form of their commissions, four periods are distinguishable for the reign of Edward III, three of which fall within the decade 1349–1359.¹

1. Of these the first, running from 18 June, 1349, the date of the ordinance of labourers, to February, 1351, the date of the statute of labourers, or more strictly to 15 March, the date of the first commission issued as a result of the statute,² was a period of various administrative experiments. The ordinance, while specifying the duties of existing local officials, bailiffs, constables, *etc.*, merely refers in the victuallers' clause³ to *iusticiariis per nos assignandis*, with no account of their powers; one must turn to chancery enrollments for information as to these justices. On 20 February, 1350, a commission for seven counties was issued for the preservation of the peace and the enforcement of the ordinance of labourers;⁴ on 15 June a commission for the enforcement of the ordinance was issued by the bishop of Durham for five districts within his palatinate;⁵ commissions were also

¹ For the fourth period, see the article just mentioned, 526–527.

² App., 34.

³ App., 11.

⁴ “De pace conseruanda;” app., 33. As I am here dealing with justices I have omitted from the discussion in the text the two earliest recorded commissions issued in pursuance of the ordinance, namely, one of 6 Dec., 1349 to the chancellor of the university and to the mayor of Oxford, app., 33, and one of 8 Dec. to the mayor and sheriffs of London, app., 33, note 1.

⁵ App., 27, and note 3. Mr. Lapsley in *The County Palatine of Durham*, 257, note 3, refers to a commission to execute the statute of labourers in Rot. Hatfield, ann. 1, m 1 d, curs. 30; evidently by an error, as the first year of Bishop Hatfield's pontificate was 1345, and therefore previous to the labour legislation.

issued for the enforcement of the ordinance on 20 October for Lancaster,¹ and on 12 and 18 November for Lindsey and Suffolk respectively;² while from sources other than the Patent Rolls there is evidence that for this same year justices were executing the ordinance in Dorset,³ Essex,⁴ Northampton⁵ and Surrey,⁶ and in Lindsey⁷ even previous to November, 1350. In the case of both Dorset⁸ and Lindsey⁹ the Patent Rolls show that these same men were already acting as keepers of the peace. There is, therefore, a total of sixteen commissions,¹⁰ nine

¹ “De inquirendo de malefactoribus in comitatu Lancastrie;” app., 34. Henry of Lancaster received palatine rights on 6 March, 1351; *R. D. K.*, xxx, v. During the rest of the decade therefore commissions were issued by him instead of by the king; *cf.* p. 16, *infra*.

² “De operariis castigandis;” app., 34. Although this document was printed by Rymer, the only reference to it that I have found in modern writers is in Creighton, *Hist. of Epidemics*, i, 182: “The same ordinance (*i. e.*, 23 Edw. III), with some added paragraphs, was re-issued on the 18th November, 1350, to the county of Suffolk and to the district of Lindsey (Lincolnshire).” The text shows that the document is a commission to justices, not a re-issue of the ordinance.

³ Mem. L. T. R., 31, Hill., Recorda, rot. 9, Somerset' Dorset', “De vicecomite comisso prisone quia supersedit levacioni debitorum Regis;” a reference to “Roberto fitz Pavn et Iohanne de Munden et sociis suis custodibus pacis et ad excessus operariorum Regis in comitatu Dorset' anno xxiiiio.”

⁴ App., D, 1.

⁵ Orig., 24, m. 33, 12 June, “De compellendo stipendarios soluere excessiua per ipsos recepta subtaxatoribus;” Walter de Mauny and his companions are referred to as having power to enforce the ordinance; the wording indicates powers for the preservation of the peace also. On the same roll there is a similar reference to William de Thorp and his companions as acting in Leicester.

⁶ App., 248–249.

⁷ App., 242–243.

⁸ Pat., 23, pt. 2, m. 27 d, 1 July; *Cal.*, viii, 382.

⁹ App., 243, note 1.

¹⁰ The commission for the several divisions of Durham is counted as only one.

of which certainly included jurisdiction both for the preservation of the peace and under the ordinance of labourers. For the same period there are a number of separate commissions of the peace,¹ so that evidently neither system had become fixed.

The experimental character of these first attempts at enforcement is shown by the varying forms of the above commissions. That for Durham is *sui generis*, couched in vague terms, scarcely intelligible, but for the marginal heading; the joint commission² includes eight important clauses: 1. The preservation of the peace under the statutes of Winchester and Northampton. 2. Powers of array. 3. Inquiry by sworn inquest as to the violence committed by vast multitudes of malefactors. 4. Inquiry as to labourers who had received excess wages contrary to the ordinance. 5. Inquiry as to misappropriation by local officials, bailiffs, *etc.*, of the penalties imposed on such labourers. 6. Inquiry as to similar misappropriation by the subsidy collectors.³ 7. Punishment of offences against any portion of the ordinance. 8. Power of two of the commission to hear and determine cases of homicide and felony.⁴ The commission for Lancaster omits clauses 1, 2, and 8, but contains an almost exact duplicate of the remainder of the joint commission, with merely slight verbal variations in clause 3. The form of the commissions for Lindsey and Suffolk is, however,

¹ Pat., 23, pt. 2, m. 27 d, *Cal.*, viii, 382-383; 24, pt. 1, m. 38 d, *Cal.*, 516.

² "Joint commission" is used throughout to describe commissions having jurisdiction over both the preservation of the peace and the statutes of labourers.

³ For the duties of the collectors, *cf.* pt. 1, ch. iii, s. 1, A.

⁴ The usual instructions to the sheriff and the authority to hear and determine unfinished indictments are not touched on in this analysis.

entirely different; the letter patent begins with the recital of the whole ordinance and continues with the statement that in consequence of the complaints of its non-observance that have reached the council, special justices are now appointed to punish all offenders against the measure, ending with the reservation that these justices are not to interfere with the rights of the justices of the peace or of the collectors of the subsidy.

In view of the small proportion of counties here represented one is somewhat puzzled by the clause in the preamble to the statute of labourers: *Sur quoi commissions furent faites as diuerses gentz en chescun counte denquere et punir touz ceaux que venissent au contraire.*¹ The length of time between June, the date of the ordinance, and the following February, the date of the first enrolled commission,² is also difficult to explain. It seems probable either that, as in the case of the five counties mentioned, commissions similar to those recorded, or at least supplementary instructions to the existing keepers of the peace, had failed to get enrolled,³ or that some other set of officials received the powers referred to in the preamble. The evidence in favor of this last possibility will be given in full later.⁴

2. The second period, from 15 March, 1351, to December, 1352, was one of joint commissions of the peace and for labourers.⁵ It has already been emphasized that the statute of labourers passed in February, 1351, was not a re-enactment of the ordinance but a supplement to

¹ App., 12.

² *Cf.* p. 10, note 4, *supra*.

³ For the years 1351-1359 the indications are that comparatively few commissions were omitted from the Patent Rolls, *cf.* p. 21, note 1.

⁴ Pt. 1, ch. iii, s. 1, A.

⁵ For conciseness I use this phrase in place of "commissions to enforce the statutes of labourers."

it;¹ its importance consisted mainly in the much-needed administrative details² and in the definite mention of additional classes of labourers and of specific rates of wages. While many duties are still left to local officials, the "justices" who are to be assigned, and who are described as coming into the country to hold their sessions, are given, in successive clauses, full powers in regard to the labour legislation, including the responsibility for inquiring into the misdeeds of local officials and also for handing over to the collectors of the current tenth and fifteenth the penalties arising from infringements of the act. Every phrase in the text serves to confirm Lambard's inference that these justices were "speciall Iustices for the causes of Labourers alone."³ Hence it is a distinct surprise to find that the form of the first commissions issued as the result of the statute duplicates almost exactly that of the joint commissions of the first period.⁴ The first three clauses as to the peace, array and violence of malefactors, are identical in phraseology; clause 4, instead of referring merely to excess wages as does the corresponding clause of the earlier commission, has become a general clause for the enforcement of both the ordinance and the statute of labourers; clauses 5 and 6 relating to the supervision of certain officials are exactly identical; clause 7, on the punishment of all offences against the legislation, has only slight verbal modifications; while clause 8, dealing with homicides and felonies, is considerably amplified. Commissions of the type just described were now issued for forty-two districts,

¹ Introduction, p. 2.

² *Ibid.*; the complaints that the ordinance is not obeyed find expression in the preamble to the statute; evidently the first system of administration had proved a failure.

³ *Supra*, p. 9, note 1.

⁴ App., 21-24, and 34.

comprising thirty-nine counties and three towns¹ and during the following year commissions varying slightly in phraseology but all including jurisdiction over both the peace and the statutes of labourers were appointed for several counties and for a number of towns.²

3. The third period, from December, 1352 to November, 1359, is a period of separate commissions of the peace and for labourers, issued systematically for practically the whole country. 248 commissions are recorded on the Patent Rolls;³ the jurisdiction of those enrolled during the first five years was limited to the statutes of labourers,⁴ but in 1357 it was extended to include the enforcement of uniform standards of weights and measures.⁵ The form has been greatly simplified. The first three clauses as to the peace, array and violence of malefactors and clause 8 dealing with homicides and felonies have, of course, disappeared, as well as clause 6 providing for the supervision of the collectors;⁶ clause 4, the

¹ App., 34.

² App., 34-35.

³ App., 35-42. It must be remembered that in some counties the old joint commissions were not superseded for several years; *cf. e. g.*, Middlesex which had no separate commission for labourers until 1 Oct. of the 29th year.

⁴ App., 24-25.

⁵ In 1351 a statute had entrusted the enforcement of the uniformity of weights and measures to justices to be assigned by the king in each county whenever there should be need; *Statutes*, 25 Edw. III, st. 5, cc. 9 and 10. *Cf. Pat.*, 27, pt. 3, m. 10 d, 4 Dec. (*Cal.*, ix, 541). In 1353 and again in 1355 the commons petition, apparently in vain, that justices of labourers shall have jurisdiction over weights and measures (*Rot. Parl.*, ii, 252b-253a, 265b); yet only two years later without any statutory change, the regular form of their commission includes this jurisdiction; see app., 25-27. As a result of a petition in parliament (*Rot. Parl.*, ii, 260a) a statute had also given to justices of labourers the power to punish those who sold iron at an excessive price; see app., 17-18. It is not easy to understand the necessity for such an enactment.

⁶ All but clause 6 re-appear in the form of the commission of the peace of the period; *cf. e. g.*, *Pat.*, 30, pt. 1, m. 20 d, 12 Feb.; "De custodia pacis."

general clause for the enforcement of the legislation, has now become the opening clause, and is followed by the clause for the supervision of local officials (formerly clause 5), and by the clause on the punishment of all offences against both the ordinance and the statute (formerly clause 7). Usually the power to hear and determine unfinished indictments is included in this last. The only important modification is the addition of the clause concerning weights and measures.

In the case of the counties palatine there is less evidence as to the form of the commissions.¹ For Chester the first entry on the Recognizance Rolls is a reference to a commission for Flint, apparently dated 30 September, 1360;² but other sources show that justices of labourers, evidently on commissions distinct from those of the peace, were acting in Chester in 1352, 1353, 1356, 1357, 1358 and 1359.³ For Durham, although the statute is punctually enrolled on the Cursitor's Roll,⁴ I have found no record of any commission issued between that of 1350, already described, and one of 1369.⁵ For Lancaster, commissions for labourers entered on the Chancery Rolls were issued in 1355,⁶ 1357⁷ and 1359;⁸

¹ I have examined the manuscript evidence for the commissions for labourers only.

² "Commissio Ken ap Roppert ad inquirendum de operatoribus et artificibus," 30 Sept., 34th year; Recognizance Roll, no. 43, m. 1. Cf. Calendar in *R. D. K.*, xxxvi, app. 2, 409. I have reason to believe that the date should be a year later, but the discussion of this point does not belong to this monograph.

³ App., 145-149.

⁴ Cursitors' Records, 30, rot. 1, Hatfield, ann. 6, m. 6 d; cf. Lapsley, *op. cit.*, 125. For calendar, see app., 19-20.

⁵ Rymer, iii, pt. 2, 863; Lapsley, *op. cit.*, 179.

⁶ App., 29-31; there is some difficulty as to the date. ⁷ App., 27.

⁸ Duchy of Lancaster, Chancery Rolls of the Palatinate, ii, no. 38d;

the first of these differs slightly from the typical commission for the rest of England, but the last two are verbally identical with the form as finally fixed after the inclusion of weights and measures.

On 4 November, 1359, writs of *supersedeas* were issued to all justices of labourers throughout England;¹ never again, except for the palatinates, was a separate commission for labourers appointed. Henceforth a study of the form of the commission of the justices responsible for enforcing the labour legislation becomes a study of the form of the commission of the justices of the peace.²

(2) *Their relation to the keepers of the peace.*—For the time previous to the statute, it has been shown that the data are insufficient to warrant authoritative statements as to the number or the jurisdiction of the justices appointed;³ all that can be safely asserted is that the period was one of experiments, apparently not favorable to the separate commissions, since with the enactment of the statute the consolidation of the commissions of the peace and for labourers was universal throughout the country.⁴ The number of men assigned to each commission varies from five to ten, six, eight or nine being very usual; but from the first series of writs for the payment of wages, it appears that usually only two or three of the justices appointed to a given district were receiving salaries, their double set of duties being

"Iusticiarii assignati de operariis et mensuris;" 26 April, 9th year of the duke. There is also an association on the same roll, no. 19d, 3 May, 6th year. For calendar see app., 20.

¹ App., 31-32.

² See my article in *E. H. R.*, 526-527.

³ See preceding section.

⁴ With the exception of the palatinates.

specified in the writs.¹ It seems probable, however, that some differentiation of the work soon arose; in the next series of writs for wages, issued at a date when the joint commissions were everywhere in force, the men on the pay roll, comprising as before, only a small proportion of the whole commission, are now described as assigned merely to execute the statutes of labourers.² The explanation of the change may possibly be found in the application to the subsidy of January, 1352, of the money penalties under the statutes of labourers. The full discussion of this experiment in taxation is reserved for a later section;³ here it is to the point to note that, since the scheme necessitated the separation of the estreats of the penalties under the statutes of labourers from those for the infringement of the peace, and also put additional pressure of work on the justices who were responsible for the statutes, recourse to a division of duties and to separate sessions may easily have seemed advisable.⁴ Dissatisfaction with existing conditions is

¹ Claus., 25, m. 16; 12 July: "De vadiis pro iusticiariis assignatis soluendis." *Cal.*, ix, 314-317.

² App., D, 2, contains an example of an original writ to de Meignill in Derby and also his receipt for payment. There are similar writs to two of his colleagues while the commission for this county includes eleven names; Pat., 25, pt. 1, m. 14 d; 15 March. *Ibid.*, m. 13 d; 15 July and 20 July.

A full list of such writs are enrolled Claus., 26, m. 16; 1 May: "De vadiis soluendis iusticiariis ad inquirendum de operariis assignatis." With a slightly different form of writ,— "Aliter de huiusmodi vadiis soluendis"—the list is continued on the same membrane under the date of 20 June. These lists are summarized in *Cal.*, ix, 436-437 and printed in part in *Rot. Parl.*, ii, 455 a and b. Nearly all the justices named appear on the joint commissions of the 25th year; app., 34. For this whole subject, *cf.* pt. 1, ch. iii, s. 1, B, a.

³ Pt. 1, ch. iii, s. 1, B.

⁴ It is possible that the estreats of penalties "coram Iohanne de Bern-

recorded several times in petitions of the commons;¹ but toward the end of 1352, with no apparent connection with any of these petitions,² the issue of separate commissions for labourers began tentatively and spasmodically, and continued with increasing regularity. The following table shows the number of districts for which the two series of commissions, of the peace and for labourers, were issued during the eight years when the system of joint commissions was in abeyance.³

eye et sociis suis ad pacem in comitatu Norff' obseruandam assignatis," covering the years 24-28 Edw. III, indicate sessions of the peace distinct from those for labourers. During the first two years mentioned de Berneye was serving on the joint commissions of 1350 and 1351, and yet the estreats contain no reference to offences against the statutes of labourers. For the case of de Berneye, see next section and pt. 1, ch. ii, s. 1.

¹ These petitions are analysed in the next section.

² It is to be noted that there was not at any time during the decade any statutory enactment as to the separation or the consolidation of the two commissions.

³ This table is made up on the basis of the lists in app., 35-42; the last two columns show the frequency with which two sets of commissions were issued for a given district on different dates and often for a given district on the same date.

Regnal Year.	Commissions.	DISTRICTS				Number of Commissions in each Series issued for	
		Counties.	Towns.	Liberties, Wapentakes, Manors, etc.	Total Number of Districts.	the same Districts on same day of month.	the same Districts.
26	Peace	2	1	—	3	1	2
	Labourers	3	1	—	4		
27	Peace	13	5	—	18	11	5
	Labourers	17	5	—	22		
28	Peace	26	4	2	32	22	8
	Labourers	31	4	12	47		
29	Peace	15	2	—	17	5	12
	Labourers	59	5	4	68		
30	Peace	18	6	2	26	5	7
	Labourers	11	12	19	42		
31	Peace	10	—	—	10	—	7
	Labourers	41	2	—	43		
32	Peace	10	—	—	10	—	5
	Labourers	9	2	1	12		
33	Peace	44	—	—	44	—	9
	Labourers	9	1	—	10		

The total number of men appointed between 1349 and 1359 to enforce the statutes of labourers was 671.¹ While “justices of labourers” is commonly used in contemporary documents to refer to those members of the joint commissions having to do with the labour legislation,²

¹Of course this by no means adequately represents the number of appointments; one man may have received as many as ten or fifteen letters patent for various counties, or on successive occasions for the same county.

²The phrase also occurs during the first period; but by chance I have found it only as applied to men whose appointment is not recorded on the Patent Rolls, so that it is difficult to determine the form of their commissions.

the title belongs, strictly speaking, to the members of the separate commissions, and it is their relation to the keepers of the peace that must now be considered. Of the total 671, 501 were serving on the separate commissions for labourers issued between 1352 and 1359,¹ many of them having been already appointed on previous commissions. Now during the period of the double series of commissions 404 men were appointed as keepers of the peace; a comparison of their names with those of the 501 justices of labourers for the same period shows that 299 were identical—that is that about three-quarters of the keepers of the peace were justices of labourers. A further study of names shows that 32 of the remaining list of “keepers” had previously been appointed to the joint commissions, and that one was serving as justice of labourers in the palatinate of Lancaster, so that only 72 of the 404 are unaccounted for.² An examination of the 501 justices of labourers reveals that of the 202 names not duplicated as keepers of the peace, 80 were assigned to towns, liberties, or wapentakes that often had no commission of the peace distinct from that of the county. A comparison of the two series of commissions district by district shows that frequently the same men were per-

¹The remaining names (not included in the 501) are distributed as follows: on the joint and separate commissions previous to the statute of 1351, 30; on the joint commissions from 1351 to 1352, 113; for the palatinates, Chester, 2; Durham, 4, and Lancaster, 10; additional names not found on the Patent Rolls, 11. The latter, distributed throughout the three periods, are: Bealnap, Brewes, Burwell, Cranesle, Forster, Houel, Lovel (R.), Nevill (R. de), Northtoft, Radeswell and Rougham. For the complete list of justices, references to their appointments, etc., see app., C, 3. Both Lovel and Radeswell had been appointed to commissions of the peace in their respective counties as early as 1345; *Cal. Patent Rolls*, vii, 30 and vi, 511.

²Many of them appear on the commissions of the first period.

forming the double set of duties; in several hundred out of several thousand possible instances (roughly speaking), at the same date or within a month of the same date, a given man would be appointed on both commissions for the same district. Occasionally the two commissions are practically identical, but since the commission of the peace usually includes from eight to ten, while that for labourers ranges from two to five with three or four as the most common number,¹ merely a large proportion of the names on one list re-appears on the other. It is noticeable that the more important and distinguished names are the ones omitted from the commissions for labourers.² This tendency to make use of the same men has been so noticeable from the beginning

¹The greater number of districts, liberties, *etc.*, that receive distinct commissions of labourers, while only one commission of the peace is issued for the whole county, explains the greater total number of justices of labourers; *cf.* s. 4.

²Examples might be multiplied indefinitely, but a few will serve. In Beverley, each commission includes nine names, eight of them being identical; *Pat.*, 27, pt. 2, m. 26 d, 25 Aug., and *ibid.*, m. 25 d, 25 Aug.; *Cal.*, ix, 508-509. In Coventry, the commission of the peace is as follows: Henry Grene, William de Skipwith, Hugh de Aston, John de Meryngton, Nicholas Michel, Walter Whitwebbe, Richard Frebern (*Pat.*, 28, pt. 1, m. 21 d, 28 Feb.). The commission for labourers (*ibid.*, m. 22 d, 28 Feb.) is identical, except that Grene and Skipwith are omitted. *Cf.* the estreats given in app., D, 5. An excellent instance is that of Notts. (*Pat.*, 29, pt. 1, m. 28 d and m. 29 d, 26 Jan.). The commission for labourers includes William Deyncourt, Geoffrey de Staunton, John Lysens, John Bozon, William de Wakebrugge and John Power; that of the peace is identical, except that Grene and Skipwith are added. Apparently, however, they did not act, for according to Mem. L. T. R., 30, Trin., Breu. Ret., writs dated 8 July are issued to Deyncourt "et sociis suis iusticiariis ad pacem nostram et statuta apud Wyntoniam et Norhtamtoniam edita in comitatu Not' custodienda necnon ad excessus operariorum, seruientum et artificum in eodem comitatu puniendos assignatis," bidding them deliver their estreats into the exchequer.

that the petition of the commons in the spring of 1354 seems superfluous—*que les Gardeyns de ia Pees et les Justices des Laborers soient uns la ou bonement poet estre fait.*¹

The precise reason why the justices of labourers had proved unsatisfactory it is difficult to understand: Lambard's statement that they were disliked is not an explanation.² After Michaelmas, 1354, the penalties under the statutes no longer went to the subsidy,³ so there was not the same need for the separation of the two sets of estreats; therefore, the cumbersomeness of a system that forced such large numbers of men to act in a double capacity, making necessary two series of quarter sessions *etc.*, may have become apparent. Administrative difficulties increased in connection with the whole problem of the claims of the lords to a share in the penalties under the statutes of labourers. The climax seems to have been reached in Warwickshire and Leicestershire, and is perhaps indicated in a petition to the king in the spring of 1359 from the magnates of these counties:⁴ to their complaint of the trouble caused by the necessity of separating fines from "excess,"⁵ as well as of distin-

¹*Rot. Parl.*, ii, 257b-258a. Possibly the petition had some effect, for the duplication of names is peculiarly noticeable in the commissions issued during the following summer. Reeves, *Hist. of Eng. Law*, ii, 276, says: "The commission to execute the statute of labourers was usually directed to the same persons who were in the commission of the peace," a somewhat different statement from that quoted p. 9, note 1.

²*Eirenarcha*, 563.

³pt. 1, ch. iii, s. 2, A.

⁴Mem. K. R., 33, Trin., Breu. Baron., rot. 8d. *Cf.* also Mem. L. T. R., 33, Trin., Precepta, rot. 4 and 3, Warwick and Leicester. A peculiarly large number of claims to penalties are here recorded as made by the lords in these two counties.

⁵For the reason for this separation, see pt. 1, ch. ii, s. 5, and ch. iii, s. 2, B.

guishing between the penalties arising from the sessions of the peace and those arising from the sessions for labourers,¹ the king replied by bidding the barons of the exchequer stop all proceedings in the matter until the following Michaelmas in order, as he said, that the whole subject could be thoroughly discussed and the most suitable remedy adopted. The next step of which I have knowledge is the writ of November, 1359, suspending the action of all justices of labourers.² Of the parliament of 1360 no record of enactments exists;³ and with the exception of proclamations to be made by sheriffs,⁴ the statutes of labourers were apparently allowed to lapse⁵ until the meeting early in January of the parliament of 1361. In the meantime there must have been talk of the re-organization of the office of justice of the peace, and the tendency proved to be in favor of a consolidation of county administration.

The statute of 1361, usually regarded as marking the culmination for this century of the development of the

¹The estreats for Coventry mentioned *supra*,—a case where the two commissions are practically identical—may have been one factor in this special crisis.

²See s. 1 and app., 31-32. The writ is signed by the king's son Thomas, Edward being out of England from 28 Oct., 1359, to 18 May, 1360. Longman, *Edward the Third*, ii, 46, 57.

³Parry, *Parliaments*, lvi.

⁴Claus., 33, m. 5 d; 20 Nov.: "De proclamacione facienda de stipendiis operariorum." Printed by Rymer, iii, pt. i, 459.

⁵The commissions of the peace of this period do not refer to the statutes of labourers; *cf.* Pat., 34, pt. 1, m. 28 d, m. 9 d, m. 6 d. There is some evidence that it had not been intended that either the justices or the statutes of labourers should be permanent; *cf. e. g.*, the phrase "tant come la iusticerie des laborers dure" of the statute of the 31st year, or "durante statuto et ordinacione predictis" in a letter patent of the 32nd year; app., A, 2 and D, 6.

powers of the justices of the peace,¹ gave to them jurisdiction over weights and measures;² but, although containing some important modifications of the existing labour statutes,³ it does not include the specific statement that the justices of the peace are henceforth to be responsible for their enforcement. In spite, however, of the lack of a definite enacting clause, the first commission of the peace issued as a result of it, included the power to punish labourers *etc.*, offending against this new labour legislation.⁴ The commissions of the peace during the years immediately following varied in form, sometimes—but not always—including the authority to deal with the earlier labour statutes also.⁵ Finally after two petitions in parliament,⁶ the statute of 1368 settled the matter definitely and brought all the labour statutes permanently within the jurisdiction of the justices of the peace.⁷ There is, however, an obstinate persistence of

¹*Statutes*, 34 Edw. III, cc. 1, 5, 6, 9, 10 and 11, 1360-1361; usually cited as 34 Edw. III, 1360. The heading on the Statute Roll, m. 10, is "Statutum factum in parlamento tento . . . anno xxxiiii^{to};" but since the session lasted from 24 Jan. to 18 Feb. 1361 (Parry, *Parliaments*, lvi and 127) it is only for one day that it can be described as taking place in the thirty-fourth year. The first commission issued after this statute is on the Patent Rolls of the thirty-fifth year, dated 20 March (pt. 2, m. 33 d.) and contains a reference to the statute made "in our last parliament." The actions in the De Banco Rolls based on clauses of this same statute always refer to it as 35 Edw. III, *e. g.*, 46, Trin., Camb., 36r, or 40, Pasch., York, 96 d.

²Cc. 5 and 6.

³Cc. 9, 10 and 11.

⁴Referred to *supra*, note 1; it is headed "De pace conseruanda." *Cf.* Lambard *op. cit.*, 39 and my article in *E. H. R.*, 526.

⁵See my article, 526-527.

⁶*Rot. Parl.*, ii, 286 b; 296 a.

⁷*Statutes*, 42 Edw. III, c. 6. It is worthy of note that the scheme had been put into practice even before the first recorded petition of the commons. The increase in the powers of the justices of the peace secured in the early years of Richard II did not affect their relation to the statutes of labourers: *Rot. Parl.*, iii, 83-85; Beard, *Justice of the Peace*, 48.

the phrase "justices of labourers,"¹—even as late as the middle of the fifteenth century—, that seems unintelligible except on the hypothesis of a recurrence to the practice of the division of the work of a joint commission;² possibly the provision in Elizabeth's labour law for a special salary for justices of the peace while executing the act³ is a survival of the old differentiation of functions.

(3) *Method of appointment and removal.*—The relation of the justices of labourers to the keepers of the peace made it inevitable that the two sets of officials should be appointed by similar methods. By the middle of the fourteenth century, the crown, that is the king and his permanent council, had made good its authority to assign the keepers, but subject to continual efforts on the part of parliament to assert its rights in the matter.⁴ The struggle lasted during the rest of Edward's reign, in regard to both the justices of labourers and the keepers of the peace, and was not permanently settled in favour of the crown until late in the next reign.⁵ For the decade under consideration three out of the five parliaments of which there are printed records⁶ contain petitions on the subject. During the second parliament of the 25th year there are complaints as to the execution of laws in gen-

¹ See my article, 530.

² Especially is this true in regard to the petitions in the Good Parliament on the labour legislation; *Rot. Parl.*, ii, 340-341, "Bille des Laboriers."

³ *Statutes*, 5 Eliz., c. 4, s. xxxi.

⁴ Beard, *op. cit.*, 42-44. For an account of the occasional election of the "conservatores pacis" in the county court at an earlier date, see *ibid.*, 23-32.

⁵ *Ibid.*, 42, note 4, refers to a petition of the third year of R. II as the last on the subject; but there is even a later one in the fourteenth year. *Rot. Parl.*, iii, 279a and b.

⁶ See app., 8, for a list of parliaments during the decade.

eral, including the labour legislation, and a request for new commissions with more comprehensive powers: that justices *esluz en cest present Parlement, par avis des Grantz et autres de la dite Commune . . . soient assignez*. The king's answer: *il voet qe les Commissions des Laborers estoient en lour force*¹ does not prevent a repetition of the request: *que commissions dez laborers soient faites as certeignes gentz en chescune countee, nomez par les ditz communes en meisme le parlement*.² The petition in the autumn of 1353 that justices of labourers and keepers of the peace *soient establiz solonc la disposition nostre Seignur le Roi et son bon Conseil* receives the king's assent: *Il plect au Roi que Justices bons et covenables soient esluz*³ and results in a statute.⁴ Finally there is a more specific request in the parliament in the spring of 1354:

que les Nouns des Justices des Laborers soient veues et examinez par le Chaunceller, et Tresorer, et Justices de l'un Baunk ou de l'autre, & en presence des Chivalers du Countee; et ceux qi sont covenables demoergent pur tiel noumbre come busoigne solonc le graundure du pais. Et en lieu de ceux qui serront oustez soient autres nomez par les ditz Chivalers, queux ne soient mye oustez sanz especial commandement nostre Seignur le Roi, ou resonable cause tesmoignee par lour compaignons.⁵

Although this petition is granted, a study of the lists of appointments and removals does not indicate that the commons exercised their right with any regularity.

¹ *Rot. Parl.*, ii, 238a and b.

² Embodied in "Statutum de Forma," *etc.*, app., D, 2; for an analysis of this document, see pt. I, ch. iii, s. 1, B, a.

³ *Rot. Parl.*, ii, 252b-253a.

⁴ App., 17.

⁵ *Rot. Parl.*, ii, 257b-258a.

Except for the 30th and 33rd years, parliament met every year during this decade, but sat for only a few weeks at a time. A glance at the dates of the appointments of the justices of labourers shows that it had not yet become the custom to issue a complete list annually;¹ instead, it appears that for nearly every month of the year some commission is issued, often for a district that has received a previous one very recently, so that many counties have as many as three commissions within twelve months.² In addition, it is apparent that frequent associations are made,—on ninety-nine occasions during the decade, including usually one or two names, sometimes more, and thus making a fairly large total.³ On the one hand, it is significant that in several instances full lists seem to have been the result of parliamentary action. For example, the long list of 15 March, 1351, or of 2 July, 1354,⁴ may easily have been discussed in the sessions immediately preceding those dates;⁵ while the list of 20 December, 1355, was also issued only a few weeks after parliament had sat.⁶ On the other hand, the equally complete list of 5 February, 1357, is dated several months before the session of that year,⁷ at a time when no parliament had met for over twelve months.

¹ See the chronological list of appointments in app., B, 2.

² This same statement is true of the keepers of the peace.

³ See app., 42, and B, 3, *passim*. The practice of associations was evidently regarded as an evil and was forbidden in the next reign; *Statutes*, 12 R. II, c. 10.

⁴ App., B, 2, contains the references to these and to the following lists.

⁵ The respective sessions had ended on 1 March and 20 May; the latter had included the petition, part of which is quoted on p. 27 and part on p. 50, and which may conceivably have had some influence.

⁶ The session had been from 12 to 30 Nov.

⁷ It began on 10 April.

Positive evidence as to how the lists are made up exists in a few instances and although referring chiefly to the "keepers" may be quoted to illustrate the method. I found among Ancient Indictments a list of twenty-three names, two of which are crossed through, with a note asking the king to grant commissions of the peace to the men named for each wapentake in Lancaster;¹ letters patent enrolled 2 June, 1350, appoint sixty men as keepers of the peace in Lancaster and include all of the above list except the two mentioned.² The people of the county of Hereford petition the king and council that Gilbert Talebot, Piers de Graunsoun and Roger de Chaundos shall be keepers of the peace;³ the joint commission of 15 March, 1351, composed of eight members, includes the two last named and Richard Talbot. An important action (to be discussed again) had been brought in the court of king's bench against de Roulegh and atte Wode, who had been removed from the joint commission in Surrey;⁴ in the winter of 1354, in the course of this process, there is a complaint to the king that there are no keepers of the peace or justices of labourers in the county, and an urgent request that Richard de Birton and Henry de Loxleye be made "keepers."⁵ Accordingly, in the following July, (there had been no full commission for Surrey since March, 1351,) two commissions are issued, one for labourers and one of the peace, both including de Birton.

¹ No. 56.

² 24, pt. 1, m. 3 d; *Cal.*, viii, 533.

³ Ancient Petitions, 5741; the petition is undated.

⁴ See pt. 1, ch. ii, s. 7.

⁵ *Coram Rege*, 28, Hill., Rex, Surrey, 35: "et dixerunt quod nulli custodes pacis seu iusticiarii ad inquirendum fuerunt in partibus illis et domino regi supplicauerunt quod . . ." It seems almost certain that "de operariis, etc," has been accidentally omitted after "ad inquirendum."

In lieu of direct evidence, much information as to the method of appointment may be derived from a study of the changes in the commissions; in addition to those caused by death,¹ there are during this decade thirty instances of removal or discharge of individual justices² and three of the cancelling of entire commissions.³ A detailed analysis of the thirty cases gives the following results as to causation: in six, no information;⁴ in six, appointment to other duties;⁵ in one, inability to attend to the office;⁶ in two, infirmity and old age;⁷ in fifteen, merely *quibusdam certis de causis*.⁸ In the case of two of these fifteen, it appears that complaints of their misdeeds brought before the king's council by their col-

¹ Croft, Hillary, Lye, Staunton (J. de), Styuecle (J. de). On the claim of the abbot of Ræmsay to the penalties before Albert and Styuecle, justices of labourers in Hunts., the latter were summoned to the exchequer. Albert appears and states that no penalties were levied "per tempus contentum in brevi; eo quod marescalcia domini Regis per totum tempus supradictum in comitatu Hunt' extiterat. Et vltierius vobis significo quod Iohannes de Stukele mortuus est." Mem. L. T. R., 33, Mich., Recorda, rot. 2 d. We know that the latter was dead by Nov., 1357, and yet by the very end of 1358 the news had not reached the exchequer. For the manuscript references to the above names as well as to the other names in this section, see list of justices in app., B, 3.

² Adam, Beauchaump (W. de), Benteleye, Berneye, Broun, Bures (A.), Botetourt, Chaumont, Colvill (J.), Crouthorn, Debenham, Folvill, Golafre, Grey (J. de, of Rotherfield), Haldenby, Hubert, Laundels, Luscode, Michel (R.), Munden, Novo Mercato, Pakeman, Roulegh, Surflet, Sutton (J. de, of Holderness), Tyrel (the elder), Ughtred, atte Watere, atte Wode and Wychingham.

³ Essex, Northants. and Northumberland; see app., B, 2.

⁴ Adam, Benteleye, Bures, Munden, Sutton and atte Watere.

⁵ Botetourt, Laundels, Luscode, Michel, Novo Mercato and Ughtred.

⁶ Broun.

⁷ Beauchaump (see p. 34), Crouthorn.

⁸ Berneye, Chaumont, Colvill, Debenham, Folvill, Golafre, Grey, Haldenby, Hubert, Pakeman, Roulegh, Surflet, Tyrel, atte Wode and Wychingham.

leagues had resulted first in their removal and later in judicial actions against them.¹ In six instances, the reasons for a change are brought *coram consilio nostro*;² in one, *coram nobis et consilio*;³ while in seven, *coram nobis* or an equivalent phrase is used;⁴ in half of the cases, thus, the action of the crown is clearly indicated. In ten instances out of the thirty, the discharge is evidently honorable, as in four of these the verb is *exonerandus*,⁵ in five, other important duties are named,⁶ and in one, old age is alleged;⁷ in six, disgrace is implied by *amouendus*;⁸ in one, there is the doubtful phrase, "he cannot attend to the office;"⁹ in three, the commissions to the individuals named are revoked;¹⁰ while in the remaining ten the formula "appointed in the place of another" gives no clue to the motive. Fourteen of the thirty, or nearly a half, are re-appointed during the decade either to the same or to a different district; but only three of these fourteen had been described as removed;¹¹

¹ Roulegh and atte Wode; see pt. 1, ch. ii, s. 7.

² Botetourt, Golafre, Grey, Hubert, Roulegh, and atte Wode.

³ Haldenby.

⁴ Adam, Berneye, Debenham, Folvill, Pakeman, Surflet, and Wychingham.

⁵ Beauchaump, Botetourt, Golafre and Grey.

⁶ See list in note 5, p. 30; Botetourt is named in note 5.

⁷ Crouthorn; Beauchaump is classed with the "exonerandus" list in note 5.

⁸ Adam, Folvill, Hubert, Pakeman, Roulegh and atte Wode.

⁹ Brown.

¹⁰ Berneye, Debenham and Wychingham. The wording of the writ implies that it is the old joint commissions that are being revoked; Claus., 28, m. 29, 1 Aug. The news did not reach the exchequer very promptly; for on 12 Oct., 30th year, Berneye has to inform it of the change. See document quoted pt. 1, ch. ii, s. 1.

¹¹ Beauchaump, Benteleye, Berneye, Botetourt, Chaumont, Deben-

one of the three was tried in the court of king's bench and acquitted;¹ another was restored on better evidence brought before the king's council.² Parliament was meeting at the time of this last decision,³ but only three times did its sessions coincide with the dates of the instances of removal.⁴ In the first of the three cases where the entire commission was cancelled, it is because another and somewhat different commission was issued a few months later; in the second I have no information as to cause;⁵ but in regard to the third, Northumberland, there is definite evidence.⁶ A writ of the great seal, signed *per consilium*, directed to the barons of the exchequer, informs them that the letters patent to the justices of Northumberland have been cancelled on account of the state of war prevailing in that county, and in its wording clearly implies that the action of the crown had been taken as a result of complaints to the council.⁷ The story of the repeal of the special commissions⁸ as well as of the final repeal of all the separate commissions for labourers,⁹ plainly indicating action of the council

ham, Folvill (removed), Laundels, Michel, Munden, Pakeman (removed), Ughtred, atte Wode (removed); in the case of Broun, "Void" is written after the entry.

¹ Atte Wode.

² Pakeman.

³ The letter close is dated 6 Feb., 1352; the session was from 13 Jan. to 11 Feb.

⁴ In the case of Broun, Haldenby and Laundels.

⁵ Essex and Northants.; app., 35, note 10 and 37, note 2.

⁶ App., 39, note 1.

⁷ Mem. K. R., 30, Trin., Breu. Baron., rot. 2 d; pro Iohanne de Striuelyn et aliis: "propter discrimina guerrarum iminencia in partibus supradictis." Four years later it was necessary for these same justices to petition the crown to order the exchequer to stop process against them for their estreats; *ibid.*, 34, Pasch., Breu. Baron., rot. 5.

⁸ See pt. 1, ch. iii, s. 2, B.

⁹ See p. 23-24.

and of the exchequer, without interference from parliament, does not belong here; but enough has been said to make out a strong case for the theory that it is the king's council (including as *ex-officio* members both the treasurer and the chancellor) with whom the actual choice of names usually rests, and that this body is sometimes guided in its choice by the commons as well as by the advice of the local communities. It is worthy of note that although by the next century the practice began of establishing borough justices of the peace by charter,¹ at this earlier date there is no difference in method of assignment as between the county and the borough justices, either of labourers or of the peace; except that in Oxford the commissions for labourers are directed to the chancellor of the university and to the mayor of the town, and in London, to the mayor and the sheriffs.²

The striking irregularity in the dates of the appointments, the frequent issue of a commission for a district that had just received one,³ the removal of a man within a few weeks after he had been appointed,⁴ and the exceedingly numerous associations to the commissions,

¹ Beard, *op. cit.*, 148.

² P. 10, note 4 and app., 33, note 1.

³ In Worcester *e. g.*, commissions were appointed successively on 3 and 20 Dec., 1355; app., 38-39. In the course of exchequer processes for the Worcester estreats, it appears that the first set of justices had held a session for one day and had then been superseded; Mem. L. T. R., 32, Hill., Presentaciones, rot. 3 d. This must be typical of what frequently happened.

⁴ *E. g.*, Adam was appointed for Derby on 12 July and removed on 8 Aug., 1356; app., 44. Botetourt was appointed for Warwick and for Worcester on 20 Sept., 1351; on 15 April, 1352, on the ground of his commission for Warwick (issued on 20 April), he was "exonerated" from service in Worcester; on 2 July, of the same year, he was re-appointed for Worcester, and on 28 Aug., again "exonerated" from service there.

caused a constant shifting in the personnel of the commissions to an extent that must have been embarrassing and inconvenient. The failure of the council in this respect may easily have been due to lack of knowledge of local conditions and certainly explains the continuance of the endeavor of the commons to control the lists, an endeavor that did not cease with this reign.

Closely connected with the appointment and removal of justices is the question of the possibility of an individual's obtaining exemption from the necessity of service against his will. The list of public offices given at this period in the regular letters patent of exemption does not specify either justices of labourers or keepers of the peace, although "other bailiff or minister of the king" may be interpreted to cover both. In one instance a member of a joint commission, William de Beauchamp, had received a letter patent exempting him from serving against his will in "any office or commission"¹—a slightly different phrase from the usual one—and a few weeks later, he is "exonerated" from the joint commission, presumably on the ground of this general exemption.² In four cases, however, justices of labourers who had received the regular letters patent of exemption are shortly afterwards appointed to commissions for labourers.³ In the next reign the exemptions in the printed calendars mention specifically justices of labourers and of the peace,⁴ but I am unable to say at what date the change occurred. It is possible that so early in the development of the

¹ Pat., 26, pt. 2, m. 21, 13 June; Cal., ix, 297.

² App., 49.

³ Pakeman, Pat., 27, pt. 1, m. 27, 4 Feb.; Cal., ix, 400. Aton, Pat., 27, pt. 1, m. 16, 12 March; Cal., ix, 422. Frenyngham, Pat., 27, pt. 1, m. 10, 16 April; Halsham, *ibid.*, 13 April; Cal., ix, 429.

⁴ See my article in *E. H. R.*, 530.

office of justice of the peace and of labourers, it had not become apparent how onerous the service might be; it is also to be remembered that the salaries paid were some compensation. There is still another point to be considered; were all the men named on a given commission forced to do actual work? Both for the large joint commissions as well as for the smaller separate commissions for labourers, the writs for wages answer this question in the negative, payment being made only to those justices who held the sessions.¹ Evidence from other sources confirms the truth of this statement. In actions against the justices brought by the exchequer to secure the delivery of the estreats, it is clear that a given justice may excuse himself on the plea of never having received his letter patent or of not having taken part in the session, and that he is fairly sure of being *sine die*, provided that the exchequer can obtain the estreats from some one of his associates.² On the other hand, it appears from a Northumberland case previous to the one already quoted that service was compulsory,—barring some valid excuse which must be made good in court. In this instance the justices explained that the whole community had earnestly begged them not to execute their commission, since the enforcement of the statutes of labourers against those rascally Scots, the only labourers left in the county, would drive the latter in desperation to acts of violence; after some consultation on the part of the court it is decided that the excuse of the justices be accepted.³ On what principle it was determined by a given group of men named in a commission who were to act and who not, I do not know,⁴ but the fact

¹ S. 6.

² See pt. 1, ch. iii, s. 2, A.

³ App., D, 5.

⁴ My impression is that the first named on the list, "capitalis iusticiarius" might have greater difficulty than his companions in avoiding service; *cf.* pt. 1, ch. ii, s. 1.

that the really obligatory matter was the delivery of the estreats is only one of the many proofs of the overwhelming importance of the profits of justice; the appointments may be irregular or chaotic, but there is no irregularity or chaos in the means adopted by the exchequer to compel service from some members of the commissions in each county.

(4) *Territorial districts of their jurisdiction.*—The ordinance was issued in the form of a letter close. The copy enrolled is directed to the sheriff of Kent, with a note to the effect that similar writs had been sent to all sheriffs;¹ but it has already been shown that there is no authoritative evidence as to the number of districts that received commissions in pursuance of these writs.² The statute clearly applied throughout England, including London and all other cities and boroughs, within franchises as well as without;³ but the only direct reference to the territorial limits of the jurisdiction of a given set of justices is the provision that the justices were to hold sessions in each county.⁴

An analysis of the districts that at some time during the years 1352–1359 received commissions for labourers proves that the actual practice was more complicated than the scheme implied by the statute for the joint commissions. The districts may be grouped as follows:⁵ (1)

¹ App., 11.

² S. 1.

³ App., 17. There was considerable difficulty as to London; *cf.* pt. 1, ch. iii, s. 2, A for an account of the matter. Unwin, *Industrial Organization*, 138, claims that Elizabeth's great codification was the first instance of the application of uniform economic legislation to all geographical as well as to all industrial sections of the community; but *cf.* Cunningham, *Growth of Eng. Industry*, ii, introduction, for a more accurate statement.

⁴ App., 16.

⁵ These lists are given in app., 138–141.

34 geographical counties; (2) 7 divisions of counties, *i. e.* the three divisions of Lincolnshire and Yorkshire respectively, and the Isle of Wight as distinct from the rest of the county of Southampton; (3) 8 groups of wapentakes within Yorkshire, arranged in varying combinations; (4) 22 towns, all but 2 being boroughs;¹ (5) 24 franchises in the hands either of individuals or of an ecclesiastical order; (6) 2 counties palatine; total, 97 districts. Previous to 1352, in addition to districts included in the above list,² one separate commission for labourers had been issued for Durham³ and one for Lancashire before it had become a county palatine;⁴ also joint commissions had been issued on one occasion to Holland and Kesteven classed as a single district,⁵ and to two towns⁶ that did not again receive any commissions distinct from those of the county. These few instances belonging to the complicated and changing systems of the first and second periods are not included in the totals under consideration.

A comparison with the districts receiving commissions of the peace reveals a marked contrast. The counties show some differences; Southampton is never divided and Yorkshire almost never,—the West Riding twice,⁷

¹ On the authority of Merewether and Stephens, *Hist. of Boroughs*; Newark and Southwell are the exceptions. It should be added that two of the towns comprised in the Cinque Ports group were not made boroughs until a little later.

² A glance at the list in app., 33–35, shows that during the period of the joint commissions the total number of districts was small in comparison with the figures just given.

³ See app., 27.

⁴ See app., 34.

⁵ See app., 33.

⁶ Newcastle-on-Tyne and York; app., 34.

⁷ Pat., 27, pt. 1, m. 25 d, 8 July (*Cal.*, ix, 450); 30, pt. 1, m. 20 d, 13 May.

Hasty, pur le plaintife dit, que il fuit frank, et de frank estate, prist.

Et alii è contra.

De Banco Roll, 451.

(No heading to roll.) 47 Edw. III, Trin.

Rot. 230.¹

Essex' Willelmus Whaykrylle attachiatus fuit ad respondendum tam domino Regi quam Henrico Spark de placito quare cum per Regem et consilium suum . . . (retention clause, *cf.* app., 423) predictus Willelmus Iohannem atte Ree, dryuere, nuper seruientem ipsius Henrici in seruicio suo apud Berkyng retentum . . . (identical with app., 423, mutatis mutandis).

Et vnde idem Henricus in propria persona sua queritur quod cum predictus Iohannes retentus fuisset cum ipso Henrico apud Berkyng ad deseruiendum ei ibidem in officio carucarii a festo Sancti Michaelis, anno regni domini Regis nunc Anglie quadragesimo quinto, vsque idem festum tunc proxime sequens per vnum annum integrum, idem Iohannes a seruicio ipsius Henrici ante finem termini predicti, videlicet, die Martis in septimana Pasche, anno regni domini Regis nunc Anglie quadragesimo quinto [recessit], prefatus Willelmus eundem Iohannem quamquam etc. in seruicium suum admisit et retinuit, in Regis contemptum et ipsius Henrici graue dampnum et contra formam ordinacionis predicte, vnde dicit quod deterioratus est et dampnum habet ad valenciam viginti librarum, et inde producit sectam etc.

Et predictus Willelmus in propria persona sua venit et defendit vim et iniuriam quando etc. et quicquid etc. et dicit quod prefatus Iohannes atte Ree est villanus abbatis de Waltham Sancte Crucis vt de man-

¹ For beginning of case, *cf.* De Banco, 46, Mich., 66 d, Essex.

erio suo de Wodeford; quodquidem manerium idem abbas eidem Willelmo dimisit ad firmam tenendum ad terminum annorum; quiquidem terminus nondum est elapsus et quia idem Willelmus non habuit seruientes sufficientes pro carucis et carrectis suis infra manerium predictum tentis tenendis, occupandis et fugandis, idem Willelmus eundem Iohannem qui villanus manerii predicti extit vt predictur, et potens ad laborandum non habens vnde de suo proprio se occupare potuit, ad deseruiendum ipsi Willelmo infra manerium predictum arestauit, vnde dicit quod ipse non intendit quod aliqua iniuria in hac parte assignari possit etc.

Et predictus Henricus dicit quod ipse per aliqua preallegata ab accione sua predicta repelli non debet, quia dicit quod prefatus Iohannes atte Ree liber est et libere condicionis et non villanus predicti abbatis. prout predictus Willelmus superius allegauit et hoc petit quod inquiratur per patriam, et predictus Willelmus similiter.

Ideo preceptum est vicecomiti quod venire faciat hic in octabis Sancti Michaelis per iusticiarios xii etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc. Et super hoc Iohannes Lichefeld, Willelmus Wretheman, Robertus Daundeuyte et Iohannes Wroth, iunior, manuceperunt predictum Willelmum habendi corpus eius hic ad prefatum terminum et sic de die in diem ad quemlibet diem placiti quousque iurata predicta inde inter eos transierit et iudicium inde redditum fuerit, videlicet, quilibet eorum corpus pro corpore etc.

Case 43.

Y. B., 50 Mich., 2, f. 21.

John Brid porte briefe de Trespas vers John Do-

