

SELECTIONS.

LOCAL COURTS, AND THE BOUNDS
OF THEIR JURISDICTION.

BY MR. SERJEANT PULLING.

We all now admit the value of local courts, and the necessity of bringing home justice to every man's own door. Our surprise is, how the principle could be so long successfully defied; how, in civil cases, the quibbles, and dishonest fictions, resorted to in Westminster Hall, to bring our ancient system of local courts into contempt, could be suffered to prevail; how, for justice administered on the spot, our forefathers could tolerate the gradual substitution of a compound of law, doled out at a distance, at a great cost, in a very pedantic form, and of so very artificial a character as to almost defy the detection of the *simple* justice as one of its ingredients. We are apt to forget, in considering our legal institutions, and the reforms to which they have been subjected, how much of good is derived from a remote period, how much of evil and abuse from that which has intervened. In dealing with the subject of local courts, the innovations that were gradually introduced, the reforms which have been effected, and the reforms which are still needed, it is usual to dwell only on the question of civil jurisdiction, whereas there is hardly anything that is applicable to this part of the subject which cannot, with equal force, be brought to bear on the question of criminal jurisdiction.

The principle of Alfred's Code of Laws was, that all matters, both of civil and criminal jurisdiction, should be disposed of in the locality in which they occurred, by local judges, and by a jury chosen from the immediate locality. If the County Court, before the innovations of the Norman lawyers, was the universal Court of First Instance in civil cases, its other chamber, the Sheriff's Tourn, had a similar jurisdiction in criminal cases. If it was through the subterfuges of Westminster Hall that the old County Court lost its importance as a civil tribunal, it was by means also of its legal subterfuges that its criminal jurisdiction became a dead letter. The usurpation of the civil jurisdiction of the old County Courts by the Courts at Westminster Hall, was not a greater innovation than the narrowing the criminal jurisdiction of the Sheriff's Tourn by a succession of *judge-made laws*, and the substituting for this jurisdiction the authority conferred by the royal commissions of oyer and terminer and gaol delivery, and that much slighter guarantee for judicial efficiency, the mere commission of the peace. We express wonder at this day how such unwarrantable encroachments on the constitution could have been effectually made; how the Legislature could have remained silent or ineffective in dealing with such innovations; how it could be endured that an arbitrary test of the limit of jurisdiction in civil cases,

the amount of 40s., fixed at a time when it represented at least forty times the present value of that sum, should have continued till twenty-five years ago to have been adhered to, in defiance of the notorious changes in the value of money, and how, for the legal recovery of all sums exceeding 40s. it became competent to the suitor, if not compulsory, to resort to the cumbrous, costly, and dilatory machinery of an action or suit in the Superior Courts at Westminster. But it is not the less true that during the 568 years which elapsed between the date of the Statute of Gloucester, and the passing the County Court Act of 1846, the only remedy afforded by the Legislature against the abuses that had crept into our system of administering justice in small debt cases, was the institution by special favour in some towns, of *Small Debts Courts*, of a worse description than the old institutions so unnecessarily laid aside, and rapidly productive of so many evils, that the scant and costly justice of the Courts of Westminster Hall was preferred to the injustice which was so frequently the produce of these eccentric tribunals.

The want of an effectual substitute for the old system of local courts of criminal jurisdiction led, as we all know, to that chaos of legal enactments, giving the jurisdiction of justices of the peace, who, originally appointed as conservators of the peace, came at the whim of every fresh Parliament to have gradually heaped upon them judicial functions more extensive and varied, confused and unintelligible, than perhaps have ever been conferred on any honorary official body of men expected by a fiction of law to understand their duties.

Our system of local courts of civil jurisdiction is now thoroughly established. For the success of this institution we are, if the truth must be told, less indebted to Westminster Hall, or the woolsack, than to wholesome public feeling, which has given earnest welcome to an institution, essentially good, based on the ancient principles of our constitution, and, after unwarrantable restrictions placed on it by the Courts at Westminster, revived to make up for their shortcomings. It is quite unnecessary to dwell upon the ordeal the institution of our modern local courts had to go through. Bigotry, prejudice, and selfish interests pointed out nothing but evil from the experiment, the spread of a spirit of litigation and extortion, the deterioration of judicial character, the destruction of the Bar, and the legal profession generally; and whilst the sudden creation of such a large number of new judicial offices brought into the field a little army of candidates, it certainly cannot be said that, as a rule, the most eligible were selected. It came to be a practice in Westminster Hall to speak of the County Court Judges with disparagement; stupid anecdotes, illustrating their inefficiency, were circulated, and if, by any subterfuge, the jurisdiction of the County Courts could be excepted to, it seemed justifiable and right. Whether,