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PERSONAL ACTIONS IN THE HIGH COURT OF BATTLE ABBEY 1450–1602

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THE relationship between the jurisdictions of local courts and central courts in late-medieval and early-modern England remains largely unexplored. It is nevertheless important to an understanding of the development of the common law, because of the prevailing notion that the great increase in litigation in the royal courts in the early Tudor period was connected with a decline in the use made of local courts. A massive transfer of business to the centralised royal courts might have affected the common law in ways other than the purely numerical, in that it could have brought a reception of legal ideas and remedies already well known out in the country. On that footing, the appearance of new kinds of action in the central courts at this period may represent transfers of jurisdiction rather than changes in legal thinking.

It is extremely difficult to test such assumptions. There is no way of surveying all local courts in the Tudor period, since most of the records have been lost; we find glimpses of their operation in the central records, in proceedings for error and false judgment, but insufficient material on which to build a reliable impression of levels and types of business across the country generally. In the nature of things, the courts whose records have been preserved were those untypical courts which continued to flourish when others went by the board. Nevertheless, although we cannot safely generalise from single instances, unless we make some attempt to understand what we have we shall never be any the wiser. We need studies of the surviving records of local courts of all kinds—whether rural or urban, seignorial or communal, secular or ecclesiastical, private or royal—to establish what kinds of litigant used them and for what kinds of business, what kinds of procedure they used and how effective it was, whether any significant changes occurred in the scope and nature of their business during the early Tudor period, and whether there is any evidence of the harmonising influence of common-law practitioners and their methods.

An opportunity to study the records of the court of Battle Abbey,

now in the Huntington Library in San Marino, California,[1] explains the choice of this jurisdiction for a preliminary foray into the unknown. It is perhaps not the ideal starting point, since there is little reason to think the court was typical of anything. Its wide powers, indeed, may have made it extremely unusual. But even that is more than we know. It is hoped that a summary account of its work will prepare the way for other and better studies of a wider range of local tribunals, undertaken with a similar range of questions in mind.

The Jurisdiction of Battle Abbey

Battle Abbey was founded by King William I on the Sussex coast, not far from the scene of the Battle of Hastings, as a thanksgiving for his victory.[2] Since before the time of legal memory, the abbot possessed a wide jurisdiction to hear all manner of pleas within the liberty (the *leuga*, banlieu, or "lowey") of the abbey. Whether the jurisdiction was in fact obtained from William I himself is a question obscured by forgery,[3] and not for the present purpose important. It is enough to know that the ancient charters recognising the jurisdiction were accepted by the central royal courts as providing a lawful basis for the abbot's court,[4] and were recognised at a marshalsea court held at Battle in 1324.[5] A charter of Edward IV confirming the liberties in 1462 was enrolled in the Common Pleas,[6] and claims to cognizance of pleas made by the abbot in that court were accepted

[1] The writer is grateful to the Huntington Library for providing him with a Research Fellowship in 1983, and to the legal history colloquium at New York University School of Law in 1991 for some helpful suggestions.

[2] W. Dugdale, *Monasticon Anglicanum* (1821 ed.), vol. III, pp. 233–234; T. Tanner, *Notitia Monastica* (1787 ed.), sig. Xx. For a full history of the liberty, see E. Searle, *Lordship and Community: Battle Abbey and its banlieu 1066–1538* (Toronto, 1974), pp. 197–246.

[3] See E. Searle, "Battle Abbey and Exemption: the forged charters" (1968) 83 Eng. Hist. Rev. 449–480.

[4] An allowance of cognizance to the abbot of Battle is noted in Y.B. Mich. 21 Edw. III, fo. 38, pl. 34; but it is not stated whether it was in Battle. The abbot had extensive privileges in parts of Kent: 6 Edw. II, *Placita de Quo Warranto*, p. 333; 27 Edw. III, Lib. Ass., pl. 72; Rast. Ent., *Conusance*, pl. 1. *Cf.* also Y.B. Trin. 34 Hen. VI, fo. 53, pl. 21 (dated Mich. 35 Hen. VI).

[5] Brit. Lib., MS. Harley 3586, ff. 34v–35r (abbey register): "Placita aule domini regis apud Bellum die mercurii proxime post festum Sancti Bartholomei anno regni regis Edwardi nunc xviij^{o}. Johannes atte More attornatus abbatis et conventus de Bello venit in curia coram senescallo et marescallo die mercurii supradicto et calumpniat quod dictus abbas curiam suam per omnia teneat ut in quadam clausula carte eorundem abbatis et conventus, quam dictus Johannes in curia predicta protulit, plenius continetur . . . [*sets out parts of two charters*] Quibus libertatibus Galfrido Scrop tunc capitali justiciarii domini regis existenti et Edmundo Passellee monstratis, ut per discretum consilium suum dicte libertates sicut per progenitores domini regis et per ipsum dominum regem nunc conceduntur debito modo allocarentur, per quorum discretionem et consilium predicte libertates eisdem abbati et conventui in omnibus allocantur."

[6] H.E. Huntington Library, Battle Abbey records [hereafter BA] 630, 683, 684 and 687 cite Hil. 2 Edw. IV, rot. 345.

both before and after 1462.[7] The large number of claims to cognizance after that date does not betoken continual challenges to the jurisdiction: on the contrary, the claims were mostly made in what seem to be collusive actions of covenant, contrived with the intention of having the record transmitted to Battle for the purpose of levying fines of land there. Not only could private suitors use the jurisdiction, but the abbot sometimes sued in his own court, and in 1466 took pains to have it recorded in the Common Pleas that his right to cognizance obtained "even if the abbot himself be party" (*licet abbas fuerit pars*).[8]

Although pleas to the jurisdiction were occasionally made in the Battle court,[9] and in 1494 a cognizance claim in the King's Bench was successfully challenged on the ground that it had not been made soon enough,[10] the extent of the court's jurisdiction was generally well settled. The charters and records combined to give the court a wide regalian jurisdiction: that is, a jurisdiction over land within the liberty and in all personal actions arising there, including trespass against the King's peace. The court was not subject to a forty-shilling upper limit, and it could try cases by jury. In both these respects it had a wider authority than the neighbouring Lathe Court, another unique jurisdiction, which seems to have undertaken the work of all hundredal courts within the rape of Hastings.[11] The rolls show that the abbot's high court[12] was considered distinct from the hundredal

[7] The following rolls are cited in the abbey records: Mich. 8 Hen. VI, rot. 622 (BA 577); Mich. 24 Hen. VI, rot. 608 (BA 630); Mich. 39 Hen. VI, rot. 407 (BA 577); Trin. 6 Edw. IV, rot. 358 (BA 630); Pas. 16 Edw. IV, rot. 332 (BA 683, 684); Trin. 16 Edw. IV, rot. 330 (ibid.); Mich. 16 Edw. IV, rot. 336 (BA 687); Hil. 8 Hen. VII, rot. 103 (BA 764); Hil. 14 Hen. VII, rot. 151 (BA 753); Pas. 14 Hen. VII, rot. 143 (BA 977); Pas. 16 Hen. VII, rot. 103 or 240 (BA 764); Mich. 6 Hen. VIII, rot. 537 (BA 789, 818, 979); Pas. 14 Hen. VIII, rot. 137 (BA 818, 820a, 839, 841c); Trin. 14 Hen. VIII, rot. 129 (BA 839, 841c). In Harvard Law Sch. MS. 1201 there is a copy of an exemplification of a Battle charter, and of the record of a fine removed to Battle, Trin. 13 Hen. VIII, rot. 339 (citing Trin. 12 Hen. VIII, rot. 134). The abbot's jurisdiction was recognised in *Purfet's Case* (1339) Y.B. Mich. 13 Edw. III (Rolls Ser.), p. 69, pl. 36.

[8] *Abbot of Battle* v. *Twysden* (1466) BA 630. For grants of cognizance *licet fuerit pars*, see D.E.C. Yale, "*Iudex in Propria Causa*: an Historical Excursus" (1974) 33 C.L.J. 80–96. The abbot also claimed cognizance in actions brought against him: *J.B.* v. *Abbot of Battle* (1457), Y.B. Hil. 35 Hen. VI, fo. 54, pl. 18; Fitz. Abr., *Conusauns*, pl. 12.

[9] There are examples of 1482 and 1522 in BA. Cases were occasionally removed into Chancery by *corpus cum causa* (as in *Oxenbrigge* v. *Steward of Battle*, C1/61/549, *c.* 1480/83) or *certiorari* (as in BA 743 and 745, 1483; *Whityng* v. *Steward of Battle*, C1/66/187, *c.* 1480/83). In 1579 a recovery of £50 was halted by an Exchequer writ of privilege (BA vol. 96, m. 49). But in 1600 two writs of *corpus cum causa* from the Common Pleas failed to stop judgment (BA vol. 98, mm. 60–85).

[10] *Moyle* v. *Abbot of Battle* (1494) Y.B. Mich. 9 Hen. VII, fo. 10, pl. 6; Caryll's report, Y.B. Trin. 16 Hen. VII, fo. 16, pl. 17 (misdated); KB 27/931, m. 40d.

[11] See E.J. Courthope and B.E.R. Pomeroy, *Lathe Court Rolls and Views of Frankpledge in the Rape of Hastings 1387–1474* (1931), Sussex Rec. Soc. vol. 37. The rolls are in the British Library, Add. Ch. 31524–31814. That there was a 40s. limit there is shown by examples of 39s. damages (pp. 76, 82), and particularly by a judgment for 39s. 11½d. damages (p. 104). One plaintiff brought detinue for a grammar book valued at 39s. 11d. (p. 79). Trial there was always by wager of law.

[12] This style was used only after the dissolution. In the earlier rolls there is no style: the caption is simply, "Bellum. Curia tenta ibidem . . .".

and manorial courts kept at Battle, whose work was enrolled separately, although occasionally items of manorial business found their way into the records of the high court. Real actions, as opposed to the routine manorial business of admitting tenants and exacting their dues,[13] were in practice seldom used,[14] and common recoveries are represented only by an isolated instance in 1589.[15] The abbey also had a view of frankpledge or lawday, at which other kinds of business were transacted.[16]

After the dissolution, the abbey was granted in 1538 to Sir Anthony Browne,[17] and the jurisdiction continued to be exercised in the "Alta Curia" of the Browne family, viscounts Montagu. In 1721, Anthony Montagu sold the abbey to Sir Thomas Webster. Although the Webster family kept up the view of frankpledge until at least 1727, and the manorial courts a good deal longer,[18] the Alta Curia with which we are concerned seems to have ceased functioning long before the end of the Montagu period. The last surviving rolls of the high court are from 1602,[19] but since the court was at that date still highly active it seems likely that it continued into the Stuart period.

Sir Thomas Webster's descendant, Sir Godfrey Vassal Webster (1789–1836), sold the records in 1835 to the celebrated manuscript collector, Sir Thomas Phillipps. Phillipps disbanded the rolls, and had the post-dissolution membranes bound into codices. These latter are incomplete, and contain the records of the Alta Curia for the years 1541–42, 1544–46, 1553–59, 1572–73, 1577–84, 1585–87, 1588–89, 1591–98 and 1600–02 only. The Huntington Library acquired these records from the owners of the Phillipps collection in 1923.[20]

The Steward and Legal Representatives

The rolls do not generally show who presided over the court, but in conformity with the charters it should have been the abbot's bailiff (*ballivus*).[21] The "bailiff", for this purpose at least, was in later times called the steward (*senescallus*). Although in other contexts these titles generally indicate distinct officials, it is clear from the names

[13] For this kind of business, see Searle, *Lordship and Community*, pp. 404–406.
[14] There is mention in 1534 of an action in the nature of an assize of mort d'ancestor (BA 874).
[15] BA vol. 97, m. 77. This was by writ of entry in the *post*, with voucher, in the manor court. The effectiveness of manorial recoveries was not then settled: see *Dell* v. *Hygden* (1595), Baker and Milsom, *Sources of English Legal History* (1986), 203.
[16] Searle, *Lordship and Community*, pp. 407–417.
[17] *Letters and Papers of Henry VIII*, vol. XIII, pt. 1, no. 249(8).
[18] The last register book of the court baron in the Huntington Library ends in 1737, but it is recorded that courts were kept up until about 1930: *The Victoria History of the County of Sussex*, vol. IX (1937), p. 106.
[19] BA vol. 98, m. 89.
[20] J.H. Baker, *English Legal MSS. in the U.S.A.*, vol. I (1985), p. 48, no. 143.
[21] The bailiff is so mentioned in the claims to cognizance.

used in claims to cognizance that at Battle the older title was preserved artificially to comply with the wording of the charters. There was also an executive officer called a bailiff serving the Battle court,[22] and we may reasonably doubt whether he was the same as the steward: one could not properly be judge and officer at the same time.

The court was attended by suitors; but more than half of them bought annual exemptions from attendance, and whether the remainder played any role in the decision-making process is simply not evident. Certainly they did not rule on questions of law, since cases of difficulty were reserved until the steward was present;[23] mention of such an adjournment doubtless indicates that the case had begun before an under-steward.

As in other local courts, the steward was traditionally a lawyer. Battle Abbey had even enjoyed the services, as steward, of a distinguished serjeant at law in the time of Edward III.[24] The steward at the beginning of our period was Bartholomew Bolney, a Sussex member of Lincoln's Inn,[25] who was appointed on 16 May 1428 with an annual stipend of 66s. 8d., a livery, a room in the abbey, and a right to commons in hall.[26] He held the office for 48 years, at least until July 1476,[27] but must have resigned shortly before his death in 1477, for in December he had been succeeded by Vincent Finch.[28] Finch was another local lawyer, a member of Gray's Inn,[29] and (from 1485) member of parliament for Romney.[30] Finch owned the manor of Whatlington, Sussex,[31] and at his first court was distrained for arrears of rent therefrom.[32] He was principally of Sandhurst, Kent, and served as a justice of the peace for Kent from 1498 until his

[22] The court issued its precepts to the bailiff.

[23] *E.g.* BA 763 (1500): "materia . . . remanet ut prius usque adventum Vincentii Fynche senescalli curie ad inde judicandum secundum legem". In BA 752 (1498) there is a similar respite until the coming of the high steward (*magnus senescallus*). In 1536 the high steward (the earl of Wiltshire) seems rarely to have attended, and several cases were adjourned to await his coming (BA 883–888).

[24] Robert Belknap (created serjeant in 1362) was steward from 1352: BL MS. Harley 3586, fo. 19v (copy of instrument of appointment); Searle, *Lordship and Community*, p. 420.

[25] Admitted 1425, having previously been at New College, Oxford; J.P. Sussex 1444–76; steward of the bishop of Chichester. There is a brass figure, in armour, at West Firle, Sussex.

[26] M. Clough ed., *The Book of Bartholomew Bolney*, Sussex Record Soc. vol. 63 (1964), p. xxv, citing BA chartulary.

[27] He is mentioned as "bailiff" in a fine of 26 July 1476: BA 683–684. (Also in a fine of 1474: BA 662.)

[28] Fine of 6 Dec. 1476: BA 687. (Also in a fine of Feb. 1477: BA 985.) Bolney did not die until April 1477: *Bolney's Book*, p. xxvi.

[29] He is described in 1466 as "of Greysynn": BA 5, no. 1938 (information supplied by Mr. C.H.C. Whittick); Searle, *Lordship and Community*, p. 423.

[30] J.C. Wedgwood and A.D. Holt, *History of Parliament: Biographies of the Members of the Commons House 1439–1509* (1936) p. 326. His father was also called Vincent, and was J.P. Sussex 1466–76. According to Wedgwood (n. 4) he was probably the ancestor of Heneage Finch, Lord Nottingham.

[31] *The Victoria History of the County of Sussex*, vol. IX, p. 113.

[32] BA 687.

death in 1524. He received the same stipend as Bolney.[33] In 1524 he was succeeded by Thomas Nevile of Gray's Inn,[34] who was followed before 1535 by Thomas Boleyn, earl of Wiltshire.[35] Doubtless the earl attended few courts in person, though it is not known who acted as under-steward at this period. There had been an under-steward as early as 1477–78, at the beginning of Finch's tenure, when an unnamed under-steward was paid 30s.[36] A possible holder of the office is John Bokeland (d. 1501/02), who deputised for Finch in 1481.[37]

The legal training of the stewards at the inns of court would account for similarities between the forms used at Battle and the forms of the common law, and we may reasonably suppose that it was the stewards who imposed the principal legal influence on the court. It is unlikely that the attorneys were the medium of such influences, because they do not seem (at any rate in the fifteenth and early sixteenth centuries) to have been drawn from the Westminster legal class. The Battle court records reveal the names of 24 men appointed by parties as their attorneys during the period 1450–1500,[38] but none of them was a Common Pleas attorney and it seems unlikely that any were professional lawyers.[39] Two-thirds of them occur only once, and several of the remainder appear to be minor abbey officials.[40] Only one of them has been found acting in another court—the Lathe Court in 1455—and he was a "yeoman".[41] The attorneys,

[33] The beadles' rolls record payments of 66s. 8d. to Finch (by name from 1518: BA 95) until 1524.

[34] He was paid 66s. 8d. in 1524–25 (BA 85). The hand in the rolls changes in June 1524. Nevile is named steward in a fine of 7 June 1526 (BA 841d).

[35] *Valor Ecclesiasticus*, vol. I, p. 349. His fee was £14 6s. 8d.

[36] Beadles' accounts (BA 102). There are changes of hand in the rolls in Oct. 1469 and March 1471, and a change of format in 1471/73, which may have resulted from the appointment of an under-steward. Perhaps Bolney was becoming too aged to perform his duties in person.

[37] Final concord in BA 733d. In 1481–82 an attempt was made to pay the under-steward 66s. 8d., but the item is deleted from the accounts. Bokeland was one of the abbot's coroners for the liberty of Battle in 1486 (74 Sussex Record Soc. xxxi) and was appointed an arbitrator in 1501 (BA 764). He made his will on 6 Aug. 1501, and it was proved on 3 March 1502 (P.C.C. 2 Blamyr).

[38] Those occurring more than once were, in chronological order: Nicholas Okehurst (1450, 1465); John Draper (1450, 1463); John Lucas (father and son, 1460–1520); John Jefferay (1463, 1466); Thomas Underclyffe (1465–70); Richard Colman (1470–76); John Smalewode (1473–1510); William Creche (1477–83); John Gotle (1478–83); Nicholas Moraunt (1480–82); and John Westbourne (1473–82).

[39] The names were checked against the writer's unpublished list of Common Pleas attorneys 1450–1530, and of known members of the inns of court and chancery in the same period.

[40] John Lucas I had been beadle 1449–59, and Richard Colman was beadle 1459–69 (in both cases just before their first acting as attorney); John Westbourne (d. 1502) acted for the abbot at Westminster in Hil. 1479, presumably as a solicitor (P.R.O., SC6/1878), and lived at Salehurst (will, P.C.C., 19 Blamyr); Nicholas Moraunt (d. 1532) was the abbot's receiver in 1497/99 (P.R.O., SC6/1874, fo. 1), and evidently lived at Battle (will, P.J.D.B., vol. I, p. 1, desired burial there). John Lucas II (d. 1520) was of Sharpisham in Battle.

[41] Nicholas Okehurst: 37 Sussex Rec. Soc. at p. 105. Described as yeoman in 1450 (BA 566, defendant). There was an attorney called John Westbourne in the 1440s and 1450s, but he was probably of Gloucestershire and lived too early to be the Battle attorney: P.R.O., E13/146, m. 29 (attorney in the Exchequer, 1456); CP 40/745, m. 323 (mainpernor, Glouc s case, 1447).

then, were purely local men, and at best were of the administrative or minor official class rather than lawyers.

The Litigants

Use of the court was not confined to any particular class. We have noted that the abbot himself sued in it; so did his monks[42] and officials.[43] Plaintiffs in both centuries include knights,[44] city merchants[45] and secular clergy,[46] and actions were occasionally brought against esquires.[47] The vast majority of litigants, however, were local tradesmen and inhabitants below the gentry class. The same family names occur again and again, as plaintiffs and defendants, and, if we may suppose the adult male population to have been around 120 to 150,[48] it seems that most if not all of these men—and a few women also—made use of the court from time to time, or found themselves sued in it.

The same people were so often suing each other in cross-actions, or discontinuing one action in order to commence another, that the number of discrete disputes is difficult to quantify.[49] For instance, in the following sample from the records for 1526–28 (Table I) some parties occur several times (e.g., Frensshe, 10 actions; Burder, 11 actions; Freman, 7 actions), and a number of actions are found to be between the same parties, sometimes perhaps in respect of the same subject-matter. Nearly all the litigants in this table can be shown from the lay-subsidy returns to have been residents of Battle or to have had some property there.

[42] *E.g.*, Richard Excetre, the sacrist, in 1468 (BA 634) and 1480 (BA 722, 727). Monks, being *civiliter mortui*, had to be joined with the abbot as plaintiff.

[43] *E.g.*, Robert Oxenbrigge, esquire, in the 1480s (BA 722, 733*bis*, 736). He was steward of the abbot's household (P.R.O., SC1/1878, m. 8).

[44] *E.g.*, Sir Thomas Echyngham in 1474 (BA 663); Sir Edward Guldeford in 1513 and Sir William Finch in 1517 (BA 799).

[45] *E.g.*, John Lucy, haberdasher of London, in 1482 (BA 736); Thomas Northland, alderman of London, in 1482 (BA 737; and see his will, P.C.C. 23 Logge).

[46] *E.g.*, William Mill, rector of Warbleton, in 1482 (BA 737); and Henry Sharpe, dean of Westminster, the same year (BA 738).

[47] *E.g.*, James Pesemersshe, son of Sir John, in 1481 (BA 726); Goddard Oxenbrigge in 1482 (BA 742). Cf. Searle, *Lordship and Community*, p. 403.

[48] This is suggested by the lay subsidy returns of 1524–25: J. Cornwall ed., *The Lay Subsidy Rolls for the County of Sussex 1524–25*, Sussex Record Soc. vol. 56 (1957), at pp. 153–157.

[49] For a valuable study of the complex credit relationships in a medieval village, based on similar court records, *cf.* E. Clark, "Debt litigation in a late medieval English vill" in J.A. Raftis ed., *Pathways to Medieval Peasants* (1981), pp. 247–279.

TABLE I

LITIGANTS AT BATTLE, 1526–1528[50]

BIBILL, Thomas, clerk. [Unidentified; not a graduate.] *T.B., clerk* v. *John Burder*: covenant (nonsuit on 4 Jan. 1526); covenant (4 Jan. 1526, nonsuit); covenant (28 June 1526, recovers 8d.). Cf. *Burder* v. *T.B.*: deceit (25 Jan. 1526, stayed).

BOYS, John. [Probably the John "Boye" who in 1557 desired burial at Battle: 41 Sx R.S. 80.] *See Swane* v. *Boys*.

BOYS, William. [William "Boyes" was assessed at £30 in Battle, 1524 (LS p. 154).] *W.B.* v. *John Burder*: debt (4 Jan. 1526, settled); debt (19 July 1526, settled).

BURDER, John. [John "Border" was assessed at £5 in Battle, 1525 (LS p. 156). In 1524 he was similarly assessed, but in Nendfeld Hundred (LS p. 142). Complained of arrest in his own house at Battle, 1527 (Searle, *Lordship and Community*, p. 412).] *See Boys* v. *Burder*; *Bibill* v. *Burder* (and *Burder* v. *Bibill*); *Fynch* v. *Burder*.

CHAMBER, Richard. [Perhaps the one assessed at £60 in Litlington in 1524 (LS p. 120).] *R.C.* v. *John Playsted*: replevin (22 Aug. 1527, settled); replevin (26 Sept. 1527, settled).

COLBROND, William. [Assessed at £6 in Battle, 1524 (LS p. 155). Cf. LS p. 138] See *Eston* v. *Colbrond*.

COWPER, Richard, [Richard "Couper" assessed at £1 10s. in profit, Battle, 1524 (LS p. 155); reduced to £1 in 1525 (ibid.).] See *Vissenden (Fyssynden)* v. *Cowper*.

ESTON, William, the younger. [Served on Battle coroners' jury, 1520 (74 Sx R.S. 13, no. 51). Assessed at £4 in Battle, 1524 (LS p. 153).] *W.E. jun.* v. *William Colbrond*: replevin (9 Aug. 1526, submitted to arbitration); replevin (11 Oct. 1526, issue); replevin (8 Nov. 1526, issue).

FREMAN, John. [Constable at Battle, 1514–15; died 1532 (Searle, *Lordship and Community*, p. 436 n. 56). Assessed at £13 6s.8d. in Battle, 1524 (LS p. 154).] *J.F.* v. *Richard Frenssh*: debt (14 March 1527, confesses 29s. 9d. and wages law as to 15s. 11d.); covenant (14 March 1527, verdict for defendant); debt (17 Oct. 1527, nonsuit). See also *Swane* v. *J.F.* (and note there on *J.F.* v. *Swayne*).

FRENSSH, Richard. [Assessed at £1 in wages, Battle, 1524 and 1525 (LS pp. 154, 155).] See *Freman* v. *Frenssh*; *Mercer* v. *Frenssh*; *Ode* v. *Frenssh* (and *Frenssh* v. *Ode*).

FYNCH, Henry. [Doubtless the Harry Fynch assessed at £10 in Netherfield, 1524 (LS p. 145). Netherfield was in Battle and had belonged to the Finch family since the time of Edward III; Henry was a younger brother of Sir William, lord of the manor of Netherfield (VCH Sussex, IX, 113).] *H.F.* v. *John Burder*: debt (31 Jan. 1526, nonsuit); debt (14 March 1527, verdict for 41s.). Cf. *Burder* v. *H.F.*: account (11 July 1527, nonsuit); debt (26 Sept. 1527, nonsuit); debt (17 Oct. 1527, settled).

MERCER, Simon. [A Frenchman, assessed at £1 in Battle, 1524 (LS p. 153).] *S.M.* v. *Richard Frenssh*: debt (28 June 1526, settled); debt (31 Jan. 1527, recovers).

ODE, Marmaduke. [Assessed at £1 in profit, Battle, 1524 (LS p. 154); in 1555 requested burial in Battle churchyard (41 Sx R.S. 83).] *M.O.* v. *Richard Frensshe*: debt (10 Jan. 1527, recovery on failure to make law); trespass (14 March 1527, damages taxed). Cf. Frensshe v. M.O.: trespass (13 June 1527, nonsuit); debt (13 June 1527, nonsuit); debt (17 Oct. 1527, nonsuit).

PARKER, John. [A fletcher; served on Battle coroners' jury, 1509 and 1521 (74 Sx R.S. 9, no. 36; 13, no. 51). Found a drowned girl in the yard of the Chequer Inn in Battle, 1522 (ibid. 14, no. 54). Assessed at £1 in profit, Battle, 1524 (LS p. 154).] See *Swane* v. *Parker*.

PLAYSTED, John. [Feodary of the duchy of Lancaster in Sussex 1504–23 (Somerville, *Duchy of Lancaster*, p. 619). Bailiff and coroner of Pevensey rape (74 Sx R.S. xxx). Of Arlington, Sussex. Assessed at £53 in "Wodhorne Rectorie", 1524 (LS p. 119), increased to £60 in 1525 (ibid.).] See *Chamber* v. *Playsted*.

[50] In this Table, LS refers to *The Lay Subsidy Rolls for the County of Sussex 1524–25*, 56 Sx R.S. (1957). Sx R.S. refers to the Sussex Record Society.

SWANE (SWAYNE), Robert. [Assessed at £18 in Battle, 1524 (LS p. 155).] *R.S.* v. *John Parker*: debt (19 July 1526, settled); debt (8 Nov. 1526, settled). *R.S.* v. *John Boys*: debt (20 Dec. 1526, settled); debt (7 Nov. 1527, nonsuit). *R.S.* v. *John Freman*: trespass (11 July 1527, verdict for 2s.); trespass (1 Aug. 1527, submitted to arbitration). Cf. *Freman* v. *R.S.* ("*Swayne*"): curia claudenda and trespass (26 Sept. 1527, issue); curia claudenda (19 Dec. 1527).

VISSENDEN (FYSSYNDEN), John. [Assessed at £18 in Battle, 1524 (LS p. 155), reduced to £17 in 1525 (ibid.).] *J.F.* v. *Richard Cowper*; debt (29 Nov. 1526, settled); debt (26 Sept. 1527, settled).

THE TYPES OF SUIT

The present study is concerned with litigation in personal actions, with what we should today call contract, tort and personal property, and not with manorial or public business. Personal actions were the staple business of the High Court at Battle until the end. However, because of changes in the manner of enrolment after 1471,[51] it is only possible to analyse actions into the types of claim before that date. The breakdown for the periods 1450–51 and 1460–71 combined, for cases proceeding as far as the plaintiff's declaration (or beyond), is shown in Table II (see page 517).

For the later period, as a result of the introduction of paper files (since lost), the rolls indicate the forms of action only in general terms. A table of the actions used in seven specimen periods from 1480 to 1601, arranged by forms of action only, will be found in Appendix I.[52] Apart from the appearance of a few additional forms of action,[53] three principal changes may be noted between the third quarter of the fifteenth century and the 1580s.

First is the decline of trespass. The tables (Table II and Appendix I) show a decline from about a quarter of all actions in the fifteenth century to less than 4 per cent. in 1578–80. This may be slightly exaggerated, because the word "trespass" was used in the fifteenth century to include what we would term "case"; but Table II shows that the latter could not have accounted for more than a handful of the fifteenth-century trespass cases. It is probable that actions for forcible trespass declined because the damages were usually very low, often much less than the costs.

Secondly, there is the rise of debt. In the fifteenth century, debt accounted for only about half of all the actions commenced, whereas by the 1550s the proportion had risen to 70 per cent. By the 1580s, debt actions as such had fallen to their former level; but there was a marked increase in unspecified actions on the case, and it is a

[51] See p. 520, below.

[52] Counting was exceptionally tedious, because the multiple entries in a case at each stage made it necessary to list each case by the parties' names.

[53] *E.g.*, replevin, account, *curia claudenda*, and "deceit".

TABLE II

ANALYSIS OF TYPES OF SUIT AT BATTLE
1450–1451, 1460–1471

DEBT		
for the price of goods	27	
on an accounting together	7	
for rent	7	
for work done	5	
on a bond	4	
on a loan	4	
against a surety	2	
on a hiring of goods	1	
for money laid out	1	
for money received	1	
on recovery in the Lathe Court	1	
total		60
TRESPASS		
with animals	13	
taking goods	6	
going on land	4	
nuisance	3	
cutting trees and broom	3	
negligence	2	
encroachment on land	1	
abducting a wife	1	
releasing animals from pinfold	1	
wounding	1	
false imprisonment	1	
total		36
COVENANT		
to perform services	4	
to pay for goods	2	
to convey land	1	
to lay out money	1	
to return borrowed goods	1	
to resign benefice	1	
to repair premises	1	
to vacate premises	1	
total		12
DETINUE		
against bailee (or not stated)	8	
on custom for heir to have principal chattels	2	
against seller of goods	1	
against taker of goods	1	
total		12
OTHER		
action on Statute of Labourers against a priest retained to say divine service[54]	1	1
Grand total		121

[54] Such an action did not properly lie: Y.B. Trin. 50 Edw. III, fo. 13, pl. 3; B.H. Putnam, *The Enforcement of the Statute of Labourers 1349–1359* (1908), p. 432.

reasonable guess that many of these were actions of *assumpsit* for money.

This increase in actions on the case is the third noteworthy change in the Tudor period. The rolls do not distinguish between trespass and case until the 1490s, though (as may be seen from Table II) the trespass category included non-forcible wrongs such as deceit,[55] negligence[56] and nuisance.[57] Actions of trespass *in casu suo* are mentioned, without details, in 1493 and 1494,[58] while trespass *super casum* becomes a fairly common form from the 1520s;[59] we also find *debitum super casum*,[60] and *deceptio super casu*,[61] which seem to show some uncertainty as to the categorisation of "case" in the absence of a writ. Although, for want of enrolled declarations, we are unable to analyse these actions in detail, the range certainly included slander,[62] *assumpsit*,[63] nuisance[64] and trover.[65] Such indeed was the increase in case that by 1580 it was vying for place with debt and account, and was used for 40 per cent. of all cases. The main reason, as guessed above, was probably the use of *assumpsit* to recover debts; but this is hidden from view, and it is not clear what reason (other than current fashion) would have led plaintiffs at Battle to prefer case. Without knowing the reason, it is impossible to explain why, in 1600, debt seems to have been again in the ascendancy and case in comparative decline. Our best guess is that more actions were being brought on bonds.[66]

Process and Pleading

The high court met every three or four weeks, or about fourteen times a year.[67] As with many local courts, the rolls record the progress

[55] Deceit is ambiguous, because it might indicate either an action on a warranty or *assumpsit*. The latter is suggested by a plea of deceit "in making a mill" in 1477 (BA 695).
[56] Treated as trespass in 1466 (BA 625) and 1469 (BA 636).
[57] Treated as trespass in 1466 (BA 624) and 1481 (BA 732).
[58] BA 748 (settled) and 749 (demurrer).
[59] *E.g.*, two examples in 1521 (BA 817, 818) and another in 1522 (BA 823).
[60] In 1524 (BA 830) and 1535 (BA 878). *Cf.* the King's Bench examples in 94 Selden Soc. *257* n. 3 (1518, 1528, 1543).
[61] In 1544 (BA vol. 97, m. 83); it appears from the verdict that this was a case of negligence in looking after a cow. *Cf.* the King's Bench example of 1514 (*deceptio super casu* by bill) in 94 Selden Soc. *268*.
[62] *E.g.*, *placitum de mala vox* in 1526 (BA 838); verdicts in case in 1533 (BA 868) and 1536 (BA 888). In a case of 1583, the verdict (presumably emulating the declaration) sets out the words with innuendoes (BA vol. 97, m. 36).
[63] *E.g.*, in 1581 there are six verdicts which refer to undertakings.
[64] *E.g.*, *placitum nocumenti* in 1527 (BA 848), unless this is a *quod permittat*.
[65] *E.g.*, one plea of trespass on the case is later described as detinue (BA vol. 96, m. 6). *Cf.* verdict referring to the finding of goods (BA vol. 96, m. 43).
[66] This conjecture is reinforced by the appearance of judgments for round figures such as £100 and £200: see p. 525, below.
[67] The mean figure for the 14 years analysed in Appendix I is 14 times.

of each suit from court-day to court-day, beginning with the plaintiff's plaint (*querela*), and this enables each stage to be dated exactly. The procedure was similar to that of the central courts, except that precepts to the bailiff were used instead of writs to the sheriff, and more flexibility was allowed in making amendments and granting adjournments.

As soon as the plaint was received, the bailiff was supposed to summon the defendant or attach him (by the precept *pone per vadium et plegios*). If the bailiff returned that the defendant had nothing within the jurisdiction whereby he could be attached, a precept of *capias* issued, followed if necessary by an *alias* and *pluries capias*. If the summons or first attachment was unsuccessful, a *distringas* was used, followed by a *melius distringas*, and any number of further precepts to distrain.[68] Outlawry does not seem to have been available, and therefore it was often necessary to issue a good many precepts in the same case; but the precepts were only three or four weeks apart, and in the majority of cases either the defendant appeared or the suit was compromised or discontinued well within one year. The bailiff was sometimes punished for defaults.

After appearing, the defendant could—and nearly always did—imparl until the next court. He was then regularly allowed a second imparlance, which was usually said to be "peremptory": that is, if the defendant failed to answer on the day he lost by default. In practice, the *dies peremptoria* was sometimes extended. Also, both parties were allowed essoins; but if a party failed to "warrant" his essoin at the next court he lost by default.[69] Defendants who had been arrested could be committed to the bailiff's prison pending the suit.[70] By 1570, when most defendants seem to have been attached without a preliminary summons, it had become the practice for defendants on appearance to be admitted to mainprise, and for both parties at that stage to enter warrants of attorney. Whether that merely put on to the roll what had already been taking place informally is a matter for conjecture; certainly the enrolment of warrants of attorney was rare before then,[71] even though other entries show that attorneys were often used.

The pleadings followed the same order as at Westminster, and the successive steps are named in the rolls themselves as *narratio*

[68] *E.g.*, in *Feld* v. *Mell* (1487), which begins in BA 726, there were 15 precepts of *distringas*. In *Eston* v. *Pett* (1527), which begins in BA 850, after 7 precepts of *distringas* the bailiff returned that the defendant had nothing to distrain within the jurisdiction, and so a *capias* was ordered.

[69] *E.g.*, BA 877 (1534), 888 (1536).

[70] In 1483 the bailiff was amerced for not having the body of Goddard Oxenbrigge, arrested in two pleas of debt, and returned that he had been let out by unknown malefactors at night (BA 743).

[71] Cf. BA 672 (warrant of 1475).

(count), *responsio* (answer), *replicatio* (replication), *rejungere* (rejoinder), *surrejungere* (surrejoinder)[72] and *rebotare* (rebutter).[73] Instead of being entered all together on an issue roll, as at Westminster, the pleadings were put in from court-day to court-day and filed. Thus, when the defendant answered, the plaintiff was given a day to reply, and was then regularly allowed a second but peremptory day to reply. When the plaintiff replied, the defendant was given a day to rejoin, and so on until issue was reached.

Until 1471, the Battle court rolls are plea rolls, setting out where appropriate the declaration and subsequent pleadings in the same manner as the rolls of the Common Pleas; but after 1473–74[74] they are merely memoranda rolls, minuting the stages in the cause but not the pleadings themselves. The reason for the change is that the court adopted the practice of keeping the paper pleadings on file ("in filaciis") instead of entering them of record.[75] Since these files of papers have not survived, details of claims after 1471 are mostly wanting. We know that before 1471, at any rate, the pleadings followed the common-law forms closely. The plaintiff counted, often by attorney, and concluded by laying his damages and offering suit. The defendant made the formal defence and then pleaded, either generally or specially; but special pleas[76] and pleas in abatement[77] are very uncommon. One noticeable difference from the central courts was that in covenant, since a deed was unnecessary, the defendant could plead that he did not make the covenant ("Nullam talem conventionem fecit") and put himself upon the country.[78] In trespass actions the general plea was sometimes "He did no such trespass" ("Nullam talem transgressionem fecit"), instead of Not guilty; but that was a form which had parallels in the fourteenth-century central courts.

Occasionally demurrers are noted in the rolls, though the reasons never appear. The procedure differed from that of the central courts in that the party who made the objection in law, after his opponent

[72] BA vol. 96, m. 25 (1578).

[73] BA vol. 95, m. 6d (1554); vol. 96, m. 46 (1579).

[74] The rolls from 1471 to 1473 are missing.

[75] From 1474 there are frequent references to pleadings *in papiris*: *e.g.*, "placitum patet in papiris" in 1474 (BA 661); answer made "ut patet in billa inter philacia" in 1481 (BA 728); declaration "in filaciis hujus curie" in 1483 (BA 744). The filed documents were not confined to pleadings: *e.g.*, submission to taxation, "prout in filaciis" in 1474 (BA 661) or "in papiris" in 1494 (BA 749).

[76] *E.g.*, in cattle-trespass the defendant pleads the fault of a third party in not fencing the land, *absque hoc* that he did any trespass (BA 834); in an action on the Statute of Labourers, the defendant pleads a retainer on condition of payment by instalments (BA 639); in debt on a bond, the defendant pleads duress of imprisonment (BA 592).

[77] *E.g.*, co-executrix not named (BA 612); one of the plaintiffs not an administrator (BA 754); excommunication (BA vol. 96, mm. 39–48). In BA vol. 96, mm. 26–43, there is evidently some confusion between a plea in abatement and a demurrer to the declaration.

[78] Verdicts on such pleas are entered in BA 845 and 846.

had joined in demurrer, had to state the reasons ("narravit causas de insufficiencia"), to which his opponent could then respond;[79] but these declared causes, unfortunately, are not enrolled.

The Trial

The records show that three forms of trial were in use at Battle: the jury of twelve men, wager of law (with two to four hands), and taxation of damages. The jury was available in all personal actions, and it was not uncommon for defendants in debt to plead *Nil debet per patriam*. Wager of law was, conversely, available in trespass[80] and covenant[81] as well as in debt and detinue.

Taxation was not a procedure available at Westminster. It was used at Battle where the defendant in an action for damages (usually trespass) admitted liability but disputed the quantum of damages claimed, and put himself upon the assessment of the court. Upon such a submission to taxation, the bailiff was ordered to procure two or four taxors, or assessors (*taxatores*), who were then sworn to assess the damages. The same procedure was used, in lieu of the common-law writ of inquiry, when judgment was given by default or upon demurrer in actions other than debt. The process against taxors was the same as against jurors: *venire facias taxatores*, followed by *distringas taxatores*, followed by *habeas corpora taxatorum*. The procedure was abandoned in Elizabethan times, and an inquiry by twelve was substituted, presumably by analogy with the common-law inquest upon a writ of inquiry.

Down to the dissolution of the abbey, wager of law seems to have been more popular with defendants than was jury trial. Of course, it is well known that in Westminster Hall wager of law was regarded by Tudor times as providing a means for the unscrupulous to swear their way out of debts with the assistance of paid oath-helpers. But that cannot have been how wager of law worked in Battle, because the vast majority of defendants who waged law failed subsequently to perform it. Indeed, the chances of success after wager of law were statistically less than after submission to jury trial. A study of the costs given in such actions shows that defendants were not penalised in costs for choosing a jury. Moreover, there are cases in which defendants confessed part of the debt claimed and waged their law unsuccessfully for the rest. Since law was awarded to be performed with four hands at most, and usually with only two or three, it cannot

[79] *E.g.*, BA vol. 97, m. 83 (1544); vol. 96, m. 4 (1572); vol. 96, mm. 29–49 (1578–79); vol. 96, mm. 40–51 (1578–79).
[80] *E.g.*, in BA 629, 634, 663, 722, 744 and 747.
[81] *E.g.*, in BA 573 (*bis*) and 753.

have been too difficult to find oath-helpers in deserving cases. The most likely explanation is that wager of law was more a threat than a bar. It gave defendants some bargaining power in reaching settlements with their creditors: since alleged debtors, if their consciences allowed, had the ultimate power to bar claims outright, creditors might fear losing everything if they did not come to terms. But compurgators were presumably still honest neighbours, making bona fide decisions, and their mediation would have reduced the threat considerably. By the middle of the sixteenth century, we find that wager of law was becoming exceptional, and most defendants (even in debt) were putting themselves upon the country:

TABLE III

WAGER OF LAW AND JURY TRIAL AT BATTLE
1460–1584[82]

Years	1460–99	1524–37	1572–84[83]
WAGER OF LAW			
performed	7	1	0
failed	53	20	0
(*total*)	(60)	(21)	(0)
JURY TRIAL			
verdict for plf.	43	10	45
verdict for def.	6	0	13
(*total*)	(49)	(10)	(58)
Total	109	31	58

To be sure, the common notions about wager of law in the early modern period may need some revision in the light of country experience.[84]

JUDGMENT: DAMAGES AND COSTS

Damages were available in all common actions, and were normally assessed either by the trial jury or (when liability was not disputed) by assessors. In debt, however, where damages were in addition to the sum owed, they were assessed by the court. Whereas damages were at common law always awarded in English currency, at Battle they could (albeit rarely) be awarded in grain,[85] perhaps where grain had been consumed by animals and the judgment was perceived as

[82] Based on concluded suits only.
[83] Records available for 1572–73, 1578–80, 1581–84 only.
[84] In the hundred of Mere, Wilts., we find a default in law (with execution awarded in consequence) as late as 1586: P.R.O., SC 2/209/26, 22 Feb. 1586. (There are four successful wagers of law in the same bundle, 1584–86).
[85] *E.g.*, two examples in BA 722.

giving restitution in kind. Other remedies, such as an injunction to remove a nuisance, are very rare. Another difference from the common law is that the court apparently had the power to reduce damages considered excessive: in one case it reduced the damages from £4 to 40s., on the ground that the jury had exaggerated them, but deprived the defendant of the fruits of his victory by increasing the costs from 2d. to 33s. 4d.[86]

Costs were, like damages, assessed by the jury or (where appropriate) by taxors, but—as at Westminster—the court could add an increment. This increment was apparently intended to compensate the plaintiff for what he had spent between the original assessment and the day of judgment, and was often (as in the example mentioned at the end of the preceding paragraph) substantial. In Elizabethan times, however, Battle juries seem more often to have given nominal costs, apparently in the expectation that the full figure would be taxed by the court before judgment was given.

In actions of debt, the damages and costs were sometimes separated and sometimes combined (in which case they might be termed either damages or costs). An analysis of cases where they were separated, between 1473 and 1494, shows that there was no standard rate: both damages and costs could run between 3 per cent. and 13 per cent. of the principal sum. The mean costs awarded in debt suits were about the same as in other cases (10d. or 11d.), and so it must have been the damages which were (correctly) used to provide compensation for late payment. The evidence does not indicate that debts carried interest, even in an informal way.[87]

Judgments were enforced by precepts of *levari facias*, usually issued as of course when judgment was given, but sometimes repeated later. On occasion a *capias ad satisfaciendum* was also used.

Compromises

The Battle rolls provide us with information not paralleled in the plea rolls of the central courts concerning the termination of suits by compromise. In the central courts, the entry of a compromised suit merely stops without explanation; and since a suit might have ended for other reasons, the number of compromises is impossible to calculate. In Battle, on the other hand, a compromise (or "concord") was formally entered on the roll. The only common-law parallel is

[86] BA vol. 98, mm. 64–69. For informal attempts by the common-law courts to control damages, see R.H. Helmholz, "Damages in Actions for Slander at Common Law" (1987) 103 L.Q.R. 624–638.

[87] *Cf.* Searle, *Lordship and Community*, pp. 401–402, where it is assumed that interest was awarded.

the final concord, but this was used after early medieval times only for conveyancing purposes. An alternative method of withdrawing an action at Battle was for the plaintiff to enter a nonsuit. The later records reveal that, as at Westminster, nonsuits were sometimes entered after the jury had first retired and then returned to the bar to deliver their verdict.[88] It seems likely that these nonsuits were voluntary rather than directed (as in later common-law procedure). Over the whole period here surveyed, between 40 per cent. and 75 per cent. of all suits at Battle were recorded as having ended either by concord or by nonsuit of the plaintiff. The only visible difference between concord and nonsuit seems to have been that the defendant paid 3d. for leave to settle (*licencia concordandi*) with the plaintiff, whereas the plaintiff was amerced 3d. for a nonsuit. The legal difference between the two, at common law, was that a nonsuit did not bar the plaintiff who wished to commence a new action. At Battle there was a marked increase in the number of nonsuits, which strongly suggests that all settlements came to be effected that way instead of by formal concord.[89] Although the legal advantage of the nonsuit to plaintiffs might help to explain the virtual disappearance of concords by the 1580s, it hardly explains why the disappearance occurred at such a late date. It is tempting to see a harsher attitude to litigation, in which even villagers fought under Westminster rules of engagement.

There were some cases at Battle which simply disappeared from the record without any formal conclusion. Since the abbot lost his 3d. in such cases, it is not clear why there was no amercement.

Some Concluding Observations

Some of the facts noted in this brief survey provide an instructive comparison with what we know about litigation in the central courts. We see a court which evidently worked quite effectively in dealing with local people, and in which the majority of disputes were formally disposed of, albeit in many cases by compromise. In the procedure we see some familiarity with the ways of the central courts, but rather more strikingly an adherence to local customs which diverged from the common law as it had developed in the fourteenth century. How far trained legal counsel influenced proceedings we cannot tell, since the attorneys seem to have been laymen, and counsel in a broader sense are no more visible in the records than they are at Westminster.

[88] *E.g.*, BA vol. 96, m. 39 (1578) and m. 51 (1579).

[89] M.K. McIntosh, *Autonomy and Community: the royal manor of Havering 1200–1500* (1986), p. 196, detects a comparable trend a century earlier in the manorial court at Havering, Essex, where the proportion of cases ended by nonsuit increased from 33 per cent. in 1464–65 to 97 per cent. by 1497.

Nevertheless, in the rise of actions on the case—which gave no obvious procedural advantage in Battle—we seem to see professional fashions influencing local practice. The change in record-keeping which consigned pleadings to paper files, paralleled in the King's Bench by the new office of clerk of the papers[90] but at Battle having the more drastic effect of separating the pleading completely from the rolls, seems to have followed another trend which affected other local courts at the same period.[91] There are courts for which such paper files survive,[92] and it would be interesting to know more about them.

The most dramatic change revealed by the records is the enormous increase in the monetary level of claims and judgments. Although Battle was not restricted by a jurisdictional limit, there were, in fact, few demands exceeding 40s. before Elizabethan times. The highest damages noted in the fifteenth century were £10 for abducting a wife, presumably in an adulterous fashion, in 1465. Only four other recoveries of more than 40s. have been noted in the whole century. Indeed, in 125 successful actions between 1461 and 1482, the mean sum recovered was only 9s. 1d. It was little higher in the early sixteenth century. In 122 successful actions between 1513 and 1535, the mean sum recovered was 9s. 5d. By the 1570s, however, we find judgments for £50 and £100,[93] and in 1601 a judgment on confession for £200. In the two years 1578–80 the mean sum recovered in debt had risen to nearly £11, and in 1600–01 it was over £35. Even a twenty-fold increase greatly exceeded the rate of inflation during the sixteenth century. A comparison with the central courts is instructive.[94] At the end of the fifteenth century, the mean sums recovered in the Common Pleas were much higher than in Battle: in debt actions, over £16 (excluding damages),[95] and in trespass actions

[90] 94 Selden Soc. *99, 364.*

[91] *E.g.*, the hundred of Mere, Wilts., where this entry occurs on 10 March 1495 (P.R.O., SC 2/209/17): "Andreas Lecy optulit se versus Johannem Blanford in placito debiti, qui declaravit ut inter memoranda . . .").

[92] *E.g.*, the Macclesfield borough portmote: P.R.O., SC 2/312/10 (file for 1532–33). The files here contain the pleadings, with jury verdicts endorsed on the panels. After this paper was written, Mr. W.A. Champion brought to the writer's attention some interesting examples of paper pleadings, in law French, at Shrewsbury.

[93] Suggesting actions on bonds: see p. 518, above.

[94] *Cf.* some available figures for two municipal courts of the same period. In the borough portmote of Macclesfield for 1532–33, the mean sum recovered in 12 debt actions was 11s.: P.R.O., SC 2/312/10. The highest debt recovered was only 24s. But here there are no actions on bonds, and there was probably a 40s. limit.

The Staple Court of Bristol may provide a better comparison inasmuch as there was no 40s. limit; on the other hand, it was restricted to merchants. In 1509–10, the mean sum recovered in 79 actions was just under £5: E.E. Rich, *The Staple Court Books of Bristol* (1934), Bristol Record Soc. vol. 5, pp. 88–89 (total given as £384 4s. 10½d.). By 1596 the mean figure had risen to over £43.

[95] This is based on a sample of four rolls from 1494–95 (CP 40/930–932 and 934, 933 being unfit for production). In the twelve months covered there were 75 debt actions in which the total debts recovered amounted to £1,219 18s. 5d., giving a mean of £16 5s. 4d.

just under £7.[96] The high figure for debt is partly explained by the predominance of actions on bonds, which accounted for over two-thirds of debt actions and sometimes contained heavy penalties.[97] But we do not yet have corresponding figures for the Elizabethan Common Pleas with which to compare the changes at Battle.

Battle certainly followed a national trend in experiencing a surge of litigation (mostly in debt), following a decline during the early years of Henry VIII. Gaps in the rolls preclude us from tracing the fluctuations with precision, but it seems that business went into a trough in the decade 1510–20 and then picked up again in the mid–1520s. Since this follows very closely such figures as have been produced in respect of Westminster Hall,[98] it may reflect prevailing economic conditions; but, since the improvement also coincides with the appointment of a new steward in 1524, it could equally have a local explanation. At the dissolution of the abbey the jurisdiction tailed off dramatically, perhaps because of the change in administration; but by the 1570s it had returned to its fifteenth-century level, and then subsequently surpassed it. In the year when the series of rolls inexplicably stops, the court was entertaining far more suits than it ever had before. This avalanche was also matched at Westminster, and it may be that Battle as a miniature royal court was responding to current demand in exactly the same way as the central courts.

This last observation makes the need for a study of other, different, local courts very pressing.[99] For if Battle should turn out to be typical, we shall need an explanation for the flood of litigation at the centre other than the decline of local jurisdictions. The principal distinction between local and central justice may turn out not to have been qualitative or economic so much as purely jurisdictional. Local courts, including even such an extensive jurisdiction as the High Court of Battle Abbey, could reach no further than their own boundaries. Strangers and migrants were beyond their grasp, and,

[96] The same four rolls (last note) contain 31 trespass cases in which the total damages recovered amounted to £211 5s. 4d., giving a mean of £6 16s. 4d.

[97] In the sample above, 58 of the 75 judgments for debt were in actions brought on bonds. The usual sum claimed in such actions was between £10 and £20, but the figures are distorted by the occasional very large sum: *e.g.* two bonds for £100 (the largest noted) in CP 40/930, m. 149, and CP 40/932, m. 121. (Since many of the judgments were upon default or confession, it cannot be certainly known how many of the bonds were conditional; but the penal bond was the normal form by this date.) The sums claimed in debt on a contract were generally much lower, sometimes as low as 40s: *e.g.*, CP 40/931, m. 128d; CP 40/934, m. 312d. However, even a bond could be made for as little as 40s.: *e.g.*, CP 40/931, m. 333d; CP 40/932, m. 107.

[98] M. Blatcher, *The Court of King's Bench 1450–1550* (1978), pp. 10–21, 168–171; E.W. Ives, *The Common Lawyers in pre-Reformation England* (1983), pp. 199–216; C.W. Brooks, *Pettyfoggers and Vipers of the Commonwealth* (1986), pp. 48–74.

[99] A similar analysis of 58 courts held for the hundred of Mere, Wiltshire, in 1494–95, 1566–67, 1584–85 and 1600–01 (P.R.O., SC 2/209/17, 19, 26, 32) shows an increase from 27 actions a year in 1494–95 to 48 each in 1566–67 and 1584–85. There were also 48 actions in 1600–01, but by then only concords were being recorded. (42 of the 48 actions in 1584–85 ended by concord.)

even after a successful suit, execution could be levied only by the local bailiff on people and property within his bailiwick. If local courts worked well in their day, it was because the local people generally found them useful. John Freman willingly submits to its authority today because he may wish to use it himself tomorrow. Such patronage is, of course, precarious. It will be withdrawn if changing conditions give the advantage to Westminster Hall. What eventually tipped the balance of advantage can only be guessed at. It may have been a more cynical attitude towards wager of law, which in Battle could not be avoided by using case, and a correspondingly harsher attitude on the part of creditors unwilling to seek compromise. That seems unconvincing, since we find that fewer and fewer defendants were in fact choosing wager of law in the sixteenth century. It could rather have been the court's constitutional inability to provide a sufficiently extensive security for the transactions of a more mobile community. We need much more research before we can begin to answer such basic questions with any confidence.[100]

[100] One obvious piece of missing information is the extent to which Battle residents used the central courts. Such information could not be collected without considerable labour.

APPENDIX I

ANALYSIS OF LAWSUITS AT BATTLE 1480–1601

From seven two-year samples

Dates	1480–82	1511–13	1526–27	1544–46	1554–55	1578–80	1600–01
Number of courts:	31	28	32	25	19	30	30
Number of actions:							
debt	124	61	128	34	22	68	166
trespass	62	32	25	1	5	5	14
covenant	34	10	18	–	–	1	–
replevin	2	9	19	8	2	2	5
detinue	9	7	4	2	4	3	1
curia claudenda	1	1	9	1	–	–	–
account	–	–	1	–	–	–	7
nuisance	2	–	1	–	–	–	–
deceit	–	3	4	–	–	–	1
case (unspecified)	–	–	2	1	6	60	78
other	1[101]	–	2[102]	–	–	2[103]	2[103]
unknown	–	–	–	–	7	–	–
TOTAL	234	123	213	47	46	141	274
Number of recorded appearances by defendants:	64 (27%)	23 (19%)	73 (34%)	25 (53%)	21 (46%)	89 (63%)	67 (24%)
Issues:							
country	20	9	18	3	6	26	22
wager of law	24	2	17	4	3	2	3
demurrer	1	1	3	3	2	5	2
Disposal of cases:							
concord	76 (32%)	48 (39%)	83 (39%)	14 (30%)	16 (35%)	–	–
nonsuit	26 (11%)	40 (33%)	41 (19%)	9 (19%)	18 (39%)	84 (60%)	248 (91%)
verdict for plfs	6	4	5	1	3	13	6
verdict for defs	2	3	1	1	–	4	1
law performed	4	2	1	1	1	–	–
law failed	11	–	7	1	1	–	1
confessed	16	6	21	1	1	13	8
decided demurrer	–	1	–	1	–	5	2
unknown							
Judgments for plaintiffs to recover debts or damages:							
Number of such judgments	30 (13%)	4 (3%)	29 (14%)	3 (6%)	3 (7%)	26 (18%)	14 (5%)
Mean sums recovered (excluding costs)							
debt	13s. 4d.	5s. 6d.	8s. 2d.	17s. 0d.	–	218s. 1d.	712s.11d.
other actions	8s. 7d.	1s. 6d.	10s. 5d.	17s. 1d.	6d.	150s.11d.	390s. 3d.
Highest sums recovered	40s.	5s. 6d.	105s.	27s.	8d.	£100	£200
Mean costs awarded	1s.11d.	6d.	8d.	2s. 6d.	1s. 4d.	8s. 7d.	25s.10d.

[101] *De plegiis acquietandis.*
[102] Slander; *de plegiis acquietandis.*
[103] Both *assumpsit.*

APPENDIX II

TABLE OF SUMS RECOVERED AT BATTLE 1461–1601

year	DEBT			TRESPASS			OTHER		ALL		
	no.	total	mean	no.	total	mean	no.	total	no.	total	mean
1461	0	–	–	1	5s. 0d.	5s. 0d.	3	3s. 2d.	4	8s. 2d.	2s. 0d.
1462	5	14s. 9d.	2s.11d.	1	0s. 4d.	0s. 4d.	4	33s.11d.	10	49s. 0d.	4s.11d.
1463	4	30s. 3d.	7s. 7d.	0	–	–	0	–	4	30s. 4d.	7s. 7d.
1464	1	4s. 1d.	4s. 1d.	0	–	–	1	3s. 4d.	2	7s. 5d.	3s. 9d.
1465	4	51s. 2d.	10s. 4d.	1	200s. 0d.	200s. 0d.	0	–	5	251s. 2d.	50s. 3d.
1466	4	28s.11d.	7s. 3d.	1	1s. 0d.	1s. 0d.	1	0s. 8d.	6	30s. 7d.	5s. 1d.
1469	3	72s. 8d.	24s. 3d.	2	1s. 4d.	0s. 8d.	1	11s. 0d.	6	85s. 0d.	14s. 2d.
1470	4	52s. 2d.	13s. 1d.	0	–	–	1	0s. 8d.	5	52s.10d.	10s. 7d.
1474	6	76s. 1d.	12s. 8d.	9	13s. 1d.	1s. 5d.	1	0s. 8d.	16	89s.10d.	5s. 7d.
1475	7	56s. 0d.	8s. 0d.	7	19s.11d.	2s.10d.	1	0s. 4d.	15	76s. 3d.	5s. 1d.
1476	3	64s. 4d.	21s. 5d.	2	3s. 8d.	1s.10d.	0	–	5	68s. 0d.	13s. 7d.
1477	10	65s. 0d.	6s. 6d.	2	4s. 4d.	2s. 2d.	2	1s. 3d.	14	70s. 7d.	5s. 0d.
1478	3	53s. 0d.	17s. 8d.	3	4s. 6d.	1s. 6d.	3	6s. 4d.	9	63s.10d.	7s. 1d.
1481	7	41s. 6d.	5s.11d.	3	1s. 6d.	0s. 6d.	2	41s. 0d.	12	84s. 0d.	7s. 0d.
1482	5	124s. 8d.	24s.11d.	5	30s. 7d.	6s. 1d.	2	12s. 0d.	12	167s. 3d.	9s. 1d.
1493–94	1	3s. 8d.	3s. 8d.	3	0s. 8d.	0s. 3d.	3	3s. 8d.	7	8s. 0d.	1s. 2d.
1498–99	3	76s. 0d.	25s. 4d.	2	3s. 2d.	1s. 7d.	0	–	5	79s. 2d.	15s.10d.
1500–01	2	3s. 2d.	1s. 7d.	3	1s.11d.	0s. 8d.	0	–	5	5s. 1d.	1s. 0d.
1509–10	2	44s. 0d.	22s. 0d.	3	2s. 2d.	0s. 9d.	2	1s. 7d.	7	47s. 9d.	6s.10d.
1514	0	–	–	2	1s. 0d.	0s. 6d.	0	–	2	1s. 0d.	0s. 6d.
1515	1	10s. 0d.	10s. 0d.	1	0s. 8d.	0s. 8d.	1	2s. 2d.	3	12s.10d.	4s. 3d.
1516	1	1s.10d.	1s.10d.	7	2s. 1d.	0s. 4d.	1	1s.10d.	9	5s. 9d.	0s. 8d.
1517	3	17s. 5d.	5s. 9d.	0	–	–	1	0s. 6d.	4	17s.11d.	4s. 6d.
1518	3	11s. 9d.	3s.11d.	3	0s. 5d.	0s. 2d.	0	–	6	12s. 2d.	2s. 0d.
1519	1	25s. 0d.	25s. 0d.	1	0s.10d.	0s.10d.	0	–	2	25s.10d.	12s.11d.
1522	3	37s. 0d.	12s. 4d.	2	3s. 6d.	1s. 9d.	0	–	5	40s. 6d.	8s. 1d.
1523	1	6s. 0d.	6s. 0d.	1	2s. 0d.	2s. 0d.	0	–	1	8s. 0d.	4s. 0d.
1524	0	–	–	2	0s. 7d.	0s. 4d.	0	–	2	0s. 7d.	0s. 4d.
1525	3	22s. 4d.	7s. 5d.	1	1s. 4d.	1s. 4d.	0	–	4	23s. 8d.	5s.11d.
1526	6	36s. 6d.	6s. 1d.	0	–	–	2	0s.10d.	8	37s. 4d.	4s. 8d.
1527	14	143s. 2d.	10s. 2d.	2	2s. 2d.	1s. 1d.	2	105s.10d.	18	251s. 2d.	13s.11d.
1532	10	167s. 1d.	16s. 9d.	1	1s. 0d.	1s. 0d.	0	–	11	168s. 1d.	11s. 3d.
1533	20	356s. 9d.	17s.10d.	1	6s. 0d.	6s. 0d.	2	22s. 6d.	23	385s. 3d.	17s. 2d.
1534	7	55s. 9d.	8s. 0d.	2	0s. 2d.	0s. 2d.	2	1s. 8d.	11	57s. 8d.	5s. 3d.
1535	3	46s. 4d.	15s. 5d.	1	0s. 2d.	0s. 2d.	0	–	4	46s. 4d.	11s. 7d.
1536	9	104s. 1d.	11s. 7d.	0	–	–	1	0s. 4d.	10	104s. 5d.	10s. 5d.
1582	4	541s. 4d.	137s. 1d.	1	100s. 0d.	100s. 0d.	2	134s. 6d.	7	775s.10d.	110s.10d.
1601	5	4652s. 0d.	930s. 5d.	2	40s. 4d.	20s. 2d.	2	181s. 0d.	9	4872s. 4d.	541s. 4d.