

## SOME CIRCUIT CUSTOMS.

BY MICHAEL MOSCOW.



ENTRY TO LINCOLN  
CASTLE YARD.

THE circuits of the judges are of such great antiquity and of such importance to the

lieges of the Crown that it is not matter of surprise that the system existing to-day is an agglomeration of customs more or less curious and quaint.

But, however quaint and however curious, there has been good reason for their currency.

In theory, the king was supposed to visit every part of his realm at stated intervals, and administer justice then and there to all who needed it; but in practice, and after a few trial trips, he sent his itinerant justices to act the part—and, speaking generally, there is little doubt that the understudies were superior to their lord. Hence we have had handed down a scheme of criminal law and practice that is unique and, for the most part, efficient and fair.

According to the erudite, these journey-men judges were originally collectors of the king's revenue, which centuries ago was derived chiefly from the royal demesnes, from the Danegelt or land tax, from the fines of local courts, and in the feudal days from baronial estates; filling up their time with such pleasing details as the fixing of amercements, the making of assizes, and in the general upholding of the fiscal rights of the Crown. Doubtless their lot was, as Mr. Gilbert would put it, "not a happy one." But when the sovereign gave them plenary powers to administer justice in his name and as his representative, it is only natural to suppose that they wiped out many a personal score in the name not only of their Royal master, but of that unfortunate female yclept *Justitia*, whose effigy to this day garnishes many a law court otherwise destitute of ornament or grace. Cruel satire

it is to blindfold the poor lady, and, knowing the feminine aversion to lethal weapons, to put into her right hand a naked sword, while the left holds a pair of scales. What misogynist would ever admit that a woman could possibly hold the balance of judgment? and, it might be whispered by "the mere man," what reasonable being would wish her to go against the order of nature and to do anything of the sort?

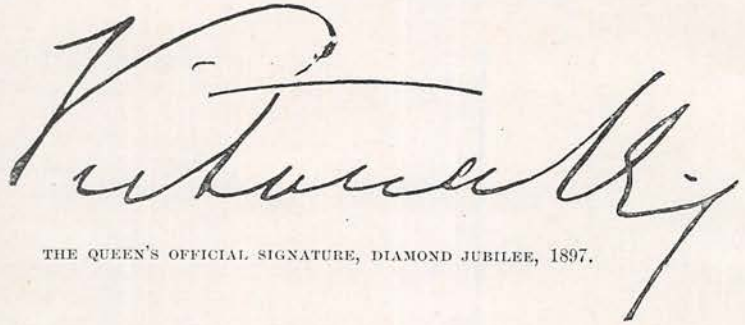
But to return to the circuits. They are nowadays chosen by her Majesty's judges, one by one, in the order of seniority on the Bench, some circuits offering greater advantages than others in point of location. The favourite ones are: the South-Eastern, comprising Cambridgeshire, Huntingdonshire, Norfolk, the County of the City of Norwich, Suffolk, Essex, Hertfordshire, Kent and Sussex; the Oxford, comprising Bucks, Oxfordshire, Worcestershire, the County of the City of Worcester, Herefordshire, Monmouthshire, Gloucestershire, the County of the City of Gloucester, Shropshire and Staffordshire; and the Western, which includes the South-Western counties of England, with the county city of Bristol tailing off a very romantic round of places. The county cities, it may be here observed, are very proud and tenacious of their rights of separate jurisdiction, usually bestowed by Royal favour or charter for some signal service to the Crown. The capital city of Norfolk would be mortally offended if some luckless official were to refer to it on "commission day" in any less term than that of "the Ancient City of Norwich"; while the umbrage of the Ancient and Faithful City of Worcester would know no bounds if these sonorous adjectives were omitted. The favour of the Stuarts lives long and will of a verity die hard. Latterly the right of a separate assize has been granted on account of the growing importance of a place, and as usually a slice or division of the adjacent county has been included. This scheme applies to the great centres of Liverpool, Manchester, Leeds, and Birmingham, none of which enjoy the exclusive jurisdictional privileges of the old cathedral towns already named, and to Exeter, Lincoln, Chester, York, Newcastle, Nottingham, and Leicester.

Southampton is also a county, but for assize purposes it is included in the Hampshire centre, Winchester.

"Plucky little Wales" is also a deservedly favourite touring ground with the judges, especially in the summer. Until recently there was no railway communication between some of the assize towns, and the writer has experienced on a sweltering day in July the delights of being packed inside a stuffy omnibus, called by courtesy a coach, in close company with market dames of the peculiarly ample and comely proportions only to be found in Cambria, the remaining spaces of the vehicle being filled up with fish, fruit and vegetables of the most aromatic sorts.

The circuits having been chosen, the fiat of the Queen goes forth to the judges: "Let the following judges or any of them go the . . . circuits, and hold the assizes for the County of Surrey, and let all the names be in the commissions respectively," her Majesty heading the document in the upper

places are fixed, and the sheriffs almost immediately receive from the judges the precepts to be in attendance on the "commission day," and to summon a sufficiency



THE QUEEN'S OFFICIAL SIGNATURE, DIAMOND JUBILEE, 1897.

of jurors—grand, special, and common—for the disposal of the county business.

Arrived at the circuit town, the judge is received in state by the sheriff and his chaplain, the under-sheriff and the *posse comitatus*, and, to the tootling of trumpets, is escorted to his "lodgings"—usually a fine old house set apart for the purpose by the county; or, it may be, the private residence of some gentleman of position who for a consideration yields up possession of his *lares et penates* to her Majesty's representative for the duration of the assize. No one is allowed to stay in the house while the judge and his staff are in residence, except by special invitation of his lordship. Thus is the sacred person of the judge encompassed round about with exclusiveness, and for a reason that will commend itself when his high office is remembered.

The commission day is one of bewilderment to the unaccustomed spectator. The judge having entered the assize court in ceremonious fashion, and accompanied by the various state officials of the county, the high sheriff

is called upon by the crier in stentorian and startling tones to "return the several writs and precepts to him directed and delivered and returnable there that day,



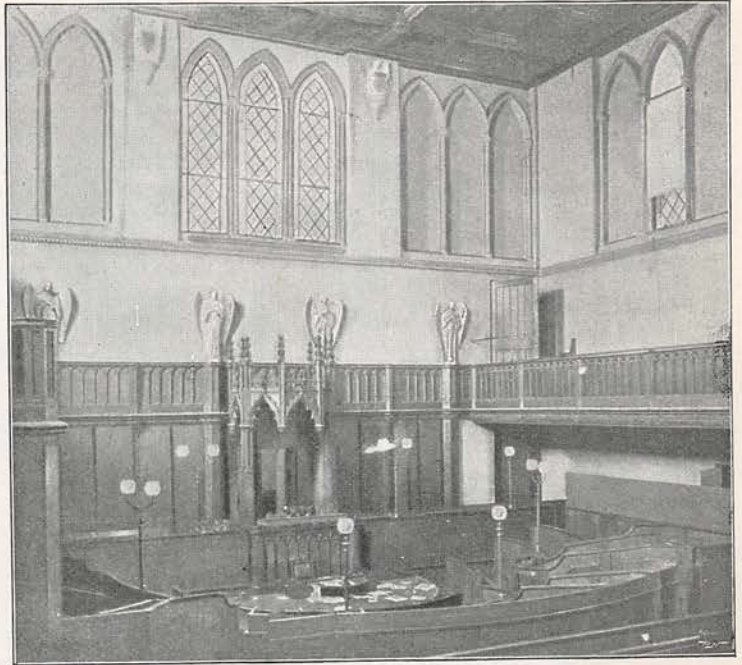
ARRIVAL OF THE JUDGE AT HIS LODGINGS, DERBY.

left-hand corner with that characteristic signature of hers, which her loyal subjects will rejoice to hear is as firm and fine as ever. Upon this the dates of the various

in order that my lords the Queen's justices may proceed thereon." Mutual stately bows lending dignity to the ceremony, the sheriff then hands the parchments to the judge, upon which they are passed to the clerk of assize, who breaks the seals and proceeds to call the grand jury from the panel-roll. Twenty-three county magnates usually answer, and they are at once sworn by the judge's marshal "to present no person out of envy, hatred, or malice, nor to leave anyone unrepresented through fear, favour, gain, reward, or the hope or promise thereof; but to present all things truly and indifferently, according to the best of their skill and understanding"—an oath that is always honoured in the strict observance.

The crier then proclaims silence whilst the charge is being delivered to the grand jury, and having made the ladies in court first feel creepy and then indignant by adding that the pains of imprisonment will follow any disobedience of this irksome injunction, he subsides into the seclusion of his "box."

Now comes the judge's charge, for the most part a brief but masterly *résumé* of the most difficult cases, with some added remarks on the law as applicable thereto. No



CROWN COURT, LINCOLN.

counsel is allowed to be in court during this address, unless he happens to be a barrister who is also a reporter on the *Times*; in that case he appears divested of the glories of wig and gown. The charge over, the grand jury retire to receive and consider the bills of indictment against the prisoners awaiting their trial, and to hear a substantial number of witnesses for the prosecution.

Supposing an indictment receives the indorsement of the grand jury, "A True Bill," it is brought into court by two or three of their number, and passed from the gallery to the well, sometimes by means of a Brobdingnagian fishing-net or a mammoth letter-clip at the end of a pole, great being the joy of the unwashed gods "over the clock" if the parchment escapes from its quivering cage and comes fluttering down. The prisoner is now called from the dungeon deep to plead to the charge against him. The entrance to the dock is, as a rule, by a staircase,



A GARDEN VIEW OF THE JUDGE'S LODGINGS AT BURY ST. EDMUNDS.

dark, steep, and tortuous enough; but at some few places in the country the unhappy wretch has to come up through a trap-door. It is distressing in these circumstances to see an exit after sentence. The trap is pulled up with a wrench by the warders, and the convict given the signal to descend. He does so precipitately, and the heavy wooden flap descends upon his vanishing form with a bang—a far more effective “curtain” than any ever yet devised by dramatic genius.

indictment is read over to the prisoner, and he may plead “guilty” or “not guilty,” according to his beliefs. If “guilty,” then the only remaining matter is the sentence; but if “not guilty,” there follows the trial by the petit or common jury. In murder or felony cases the jurymen are sworn one at a time, the prisoner being allowed to challenge any juror “as he comes to the book to be sworn, and before he is sworn, when the objection will be heard.” The privilege of challenge is very seldom exercised, a prisoner, as a rule, being a stranger to the whole panel of “good men and true,” and stolidly indifferent to the individuals who compose it. Sometimes defending counsel will challenge a considerable number, to the discomfiture of the under-sheriff where jurors are scarce owing to “excuses” and illness. A postponement of the trial sometimes results, and is the result schemed for. In cases of misdemeanour the jury are sworn *en bloc*, and no public challenge is allowed.

The jury having been pledged on oath to “well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar whom they shall have in charge, and a true verdict give according to the evidence” (as if a *verdict* could be anything but true!), the prisoner is formally given in charge to the jury by the clerk of assize, perchance in the following phrases: “Gentlemen of the jury, the prisoner at the bar, William Sikes, is charged, and the indictment against him charges that he, on the first of January last, did burglariously break into and enter the dwelling house of Richard Roe, and steal therein one dozen silver spoons, a biscuit box, two gold watches, fifty cigars, and a warming pan, his goods and chattels. To this indictment he has pleaded ‘not guilty,’ and it becomes your duty to hearken to the evidence, and to say by your verdict whether he be guilty or not.” Counsel for the prosecution then opens the case and proceeds to call his witnesses, each of whom the prisoner, if undefended, has the right to cross-examine. The evidence being closed for the Crown, the prisoner is asked by the judge if he has any witnesses to call or any statement to make to the jury. Usually “No, my lordship,” is the mumbled response to both invitations, and the judge thereupon sums up the case to the jury, indicating the salient points and discrepancies, and directing them on the law applicable to the facts, but the facts themselves he scrupulously leaves to the jury for their consideration. A jury



INTERIOR OF COUNTY GAOL OF LINCOLNSHIRE (A TYPE OF PRISON NOW ABOLISHED).

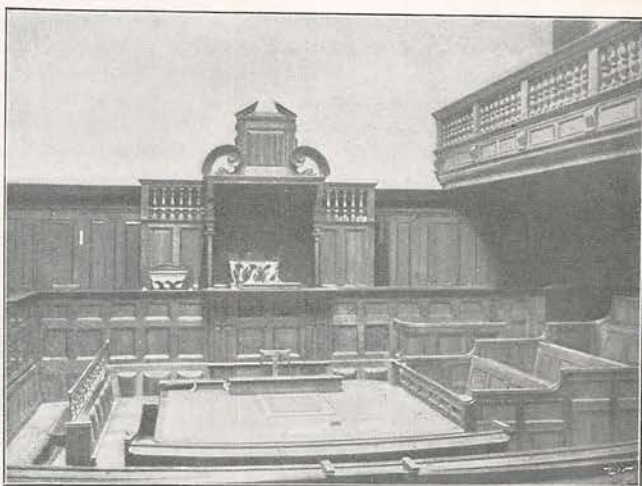
But our prisoner has not yet pleaded. Some of the older gaolers make him hold up his hand when called upon to plead, partly in token of identity and partly in observance of an old rule requiring that the prisoner be brought to the bar without irons, shackles, or other restraint, unless there be danger of escape. By the holding up of the hand the court could satisfy itself that the prisoner was free from manacles, and also see whether or not he was branded in the palm as a malefactor, of which more anon. The

would, as a rule, much prefer the judge to guide them to a decision, from the depths of his experience, instead of discussing the pros and cons, raising questions, perhaps, of which they in their ignorance would never have dreamed; but, as a rule, he is careful to say that they are the judges of the facts, and that upon them rests the real responsibility of the verdict. Sometimes he will depart from the iron rule, and give the jury a hint, which they always gratefully take and act upon—a fate that seldom attends the donation of good advice.

The law is full of figments, and one is that its court never lunches. It only “adjourns.” Woe betide the fledgling barrister who, in sweet ignorance of the fact, gets up and asks the judge to take such and such a case “after luncheon”!

As a matter of fact, this “adjournment” is the chief event of the day. Most of the jurors have had to rise at some unearthly hour in order to get to the assize town in time for the sitting of the court, often travelling twenty, thirty, or even fifty miles for the purpose; and it is little wonder that everybody rejoices when 1.30, the hour for tiffin and “spell, oh!” arrives. Even the

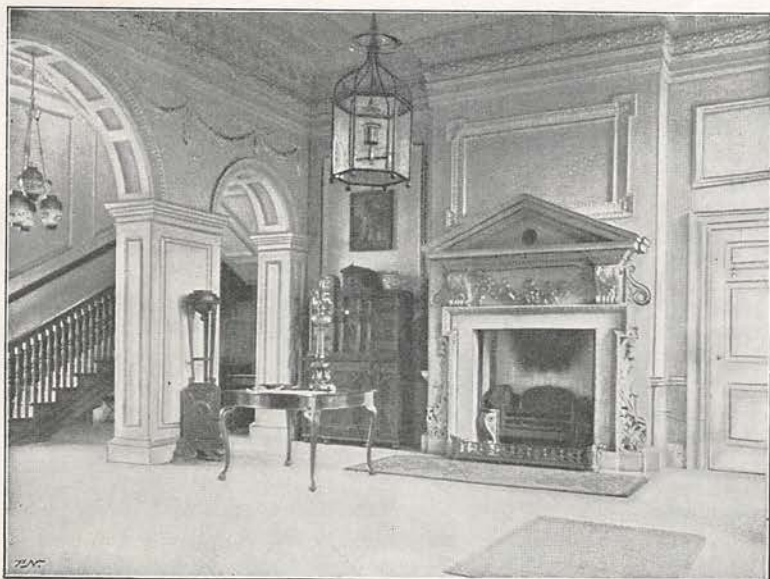
poor prisoner gets his drink of water out of a tin pot, and a halfpenny roll of brown potato-bread. Until July, 1897—when a



NISI PRIUS COURT, DERBY.

special Act of Parliament in relief was passed—if the adjournment took place during a trial for felony, the jury were, as a matter of course, “locked up,” and provided with luncheon to the extent of a shilling a head, as a rule. A rough meal, consisting of such digestibles as salt beef, cheese, pickles, ginger-beer, and water—occasionally a jug of the mildest of malt liquor graced the

board—was “the usual thing”; and the dyspeptic juror, if forewarned, was careful to bring his own provender and “pocket pistol,” leaving the bailiff in charge to consume his share of the goodies provided by a considerate county. Some sheriffs, to their credit be it recorded, would considerably give a locked-up jury a sufficient and nourishing luncheon, with a choice of ale, mineral waters, and coffee, but this act of grace was very rare.



THE HALL IN THE JUDGE'S LODGINGS AT BURY ST. EDMUNDS.

Judging by the aroma that generally pervades a British jury on returning into court, the adjournment is mainly occupied by assiduous attentions to Miss Nicotine, the amateur tribunal doubtless requiring the adventitious aid of dark red virginia in their deliberations and cogitations.

The trial over, the prisoner is set free, or ordered to stand up for sentence, according to the verdict of the jury. This matter of sentence is one of intense interest. Not so very long ago the stealing of a sheep involved the punishment of death. Indeed, Cousin Jonathan to this day considers horse-stealing a far more serious crime than the trivial incident of murder, so strong is the spirit of the ancient Briton still within him. With our ancestors forgery, coining, burglary, highway robbery, arson, were all capital offences, and so on through a whole gamut of crimes that in these more merciful times are punished with but short sentences of imprisonment. A glance through an old prison calendar fills one with surprise that such severe sentences as were commonly passed at the beginning of the present century ever received the sanction of the Legislature. But Parliamentary corruption and indifference were responsible for much, a responsibility that was only relieved by the passing of the Reform Bill. Even in comparatively recent times it was no uncommon thing for a judge to write in his note-book, "Sentence of death recorded," for offences that would now incur but a few weeks' imprisonment, or perhaps a "discharge upon recognizances, to come up for judgment if called upon."

And the whole system of punishment was barbarous. For some offences a man would be placed in a pillory, perched on the top of a pole, where he would revolve on his own axis at the instance of an obliging officer, receiving an ovation the while from an

admiring audience around. The eggs of the ovation were, of course, "shop 'uns"—as the purveyor-papa in "Our Boys" would have disdainfully remarked—while the cat-calls that accompanied the ceremony were mostly from long-since-departed felines. Apart from the attentions of the crowd to the unlucky wight who, for the moment, found himself tasting of the bitters common to those who dwell in high places, the confinement of the pillory itself was painful to a degree. Mr. Algernon Brooker, the well-known photographic expert of Hastings, voluntarily underwent the tortures of the

situation for about ten minutes in order that the readers of the WINDSOR MAGAZINE might see for themselves how it looks. The swollen veins in his face testify to how it felt to be there!

For some capital offences it was customary after execution to cut down the culprit and immerse the remains in boiling pitch until they were in a measure weather-proof. Then the poor body would be encased in a fearsome iron cage, and gibbeted at the junction of cross roads as a warning to would-be highway robbers and murderers. A photograph is given of one of these historic machines, said to have been the last one used, in the south



IN THE PILLORY.

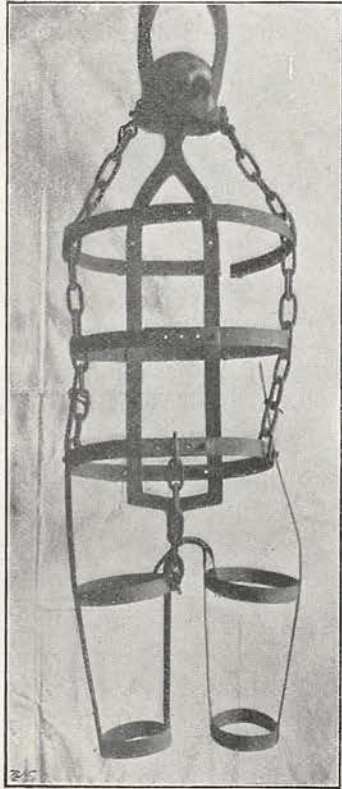
country at all events. Curiously enough, it "hung in irons" the *corpus vile* of a butcher who, nurturing animosity against a fellow-townsmen, attacked with a cleaver one whom he supposed to be his enemy in the dead of night. But he murdered the wrong man, and suffered the last penalty of the law, foiled after all of his revenge. All that now remains of the murderer is the top of his skull, and, if report be true, it was the head of his victim that he cleaved.

Branding, too, was another horrible punishment in the days of our forefathers. At the back of the dock in the Crown Court at Lancaster there can still be seen the

identical branding-iron and hand-clips used in the olden times. The left wrist and fingers of the convict were firmly gripped by these lock-clips, and the iron, having been made red-hot, was firmly pressed against the "brawne of the thumbe," leaving an indelible mark—thus, **M**—a disagreeable abbreviation of the hated word "malefactor." This horrible punishment was inflicted in open court, and it is said that it was usual for the officer carrying out the sentence to examine the scorched hand, and to turn to the judge with the

report, "A fair mark, my lord!"

The punishments in mediæval times were, if anything, more barbarous, some being of a revolting and unspeakable character. Small wonder was it that many a malefactor fled for sanctuary to some church or other privileged place. A curious relic in this connection exists to this day in



"HUNG IN IRONS."

the form of a quaint knocker on the door of Durham Cathedral. The applicant having hammered at the portal, one of the priests inside would inspect him through the eyes of the copper mask shown in the illustration, and after due parley admit the affrighted wretch to the sanctuary he so ardently sought.

The prisons of the Middle Ages, and, indeed, to within quite modern times, were at once a disgrace and a danger. On the next page is the photograph of the lower part of a subterranean dungeon, showing the posts to which the miserable inmates were chained.

Turn we now to the consideration of some circuit customs of a brighter and better order. At the summer assizes the judge



THE LAST OF THE CIRCUIT CHEFS.

receives from the landed lords more than one fat buck, killed for the occasion and labelled with a certificate of death duly signed by the head keeper to the titled donor. Usually the judge passes on a goodly portion to the Bar mess, for consumption after the forensic frays of the day have been fought.

Of the doings of the Bar mess let no alien tongue discourse. Suffice it for the curious to know that this institution is more exclusive than a masonic lodge. Each circuit has its own mess, and no member of another circuit is permitted to join it, even if he comes briefed "special" in a single case, without being mulct in divers penalties. The principal hotel of an assize town is selected as the habitation of the mess, a separate cellar being kept under lock and

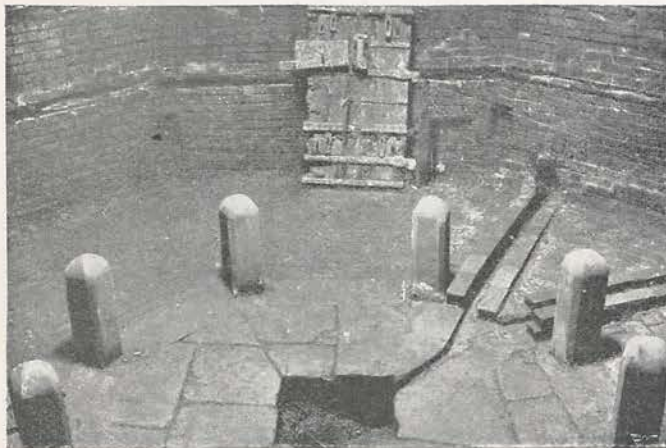


"SANCTUARY KNOCKER" ON THE DOOR OF DURHAM CATHEDRAL.

seal for the safe holding of the counsellors' wine. The best sitting-room is set apart as a sort of holy of holies, and here the ritual

is said to be at once impressive and inspiring. But no unhalloved hand may lift the curtain of the *penetrate!*

The order of things at the judge's lodgings



"IN THE DEEPEST DUNGEON."

is no less rigorously preserved. At dinner, no matter how distinguished the guests may be, the judge is always served first—as the representative of the Queen. Ladies have sometimes marvelled at the departure from the familiar rule, but are duly impressed when enlightened as to the reason. The marshal presides at the table, the judge sitting at the middle side, facing the "salt." If the occasion be a special one, such as a dinner to the Bar, any official toasts are proposed by the marshal, his lordship's close companion in his social hours. This officer is retained only for the circuit, and is usually a young relative or friend about to begin his professional career.

The judge's trusty and trusted ally, "his faithful clerk"—as many of the occupants of the Bench are pleased to style him—has the distinction of a separate set of rooms, where he may beguile the hours after court in solitary state and as best he may.

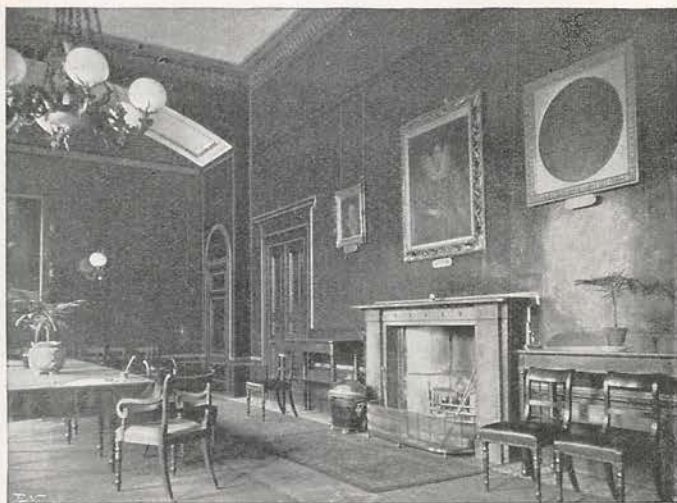
The *ménage* of a judge on circuit is necessarily rather elaborate. As becomes one holding so high and dignified an office, he is

accompanied by a proper staff of personal attendants in addition to the house servants provided by the counties. Chief among the judge's people is, of course, the cook, who travels from town to town.

Until the last few years men cooks were always engaged, the work being laborious and frequently arduous. But with the altered conditions of travel and maintenance, women have supplanted the men, as in many another sphere of life, and the circuit *chef* will soon be as extinct as the dodo. The last of the race, whose portrait is on the previous page, travelled for many years with that distinguished and esteemed judge, the late Baron Pollock.

Leave must now be taken of the judge, though not in the fashion of the good people

of that canny and entirely hospitable city, Newcastle-upon-Tyne. When the assizes are over, the corporation attend to take leave of his lordship, tendering a *jacobus* or *carolus* wherewith to buy him a dagger for defence against the feckless folk over the border. These coins are very valuable; and,



JUDGE'S DINING ROOM AT WARWICK.

as the supply is running short, it is no unusual thing for a judge's relatives to be approached after his demise with a view of buying back the broad gold pieces aforesaid!