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The Royal Courts of Equity in England in the XVI - XVII centuries

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The subject of research are the courts of England in 16-17 centuries.

The purpose of article is to answer the question which courts must be included to a number of "courts of equity".

Methodology. Historical analysis of the scientific literature, of the English legislation and judicial practice of the 16-17 centuries.

Results. The priority for the Court of Star Chamber was to protect the interests of Royal power and not the rights of people. Moreover, this court did not seek to bridge the gaps of common law. In this regard, his reference to the number of “courts of equity” is incorrect.

Star Chamber had a close relationship with the Privy Council. There were no clear boundaries between them during the XVI century. The Star Chamber was the emergency Committee of the Privy Council

The purpose of the Court of Requests was to ease social tensions, to create the impression of caring filed emanating from the monarch and the nobility.

Despite the fact that the Court of the Requests was conceived as "a court for poor people", it became popular wealthy people under the rule Henry VIII.

The Court of High Commission was a court focused on the strengthening of Royal power. In its activities it has been focused on improving the rights of the Kingdom.

The Court of Exchequer provided judicial protection for some types of transactions that are not recognized by the common law. In this it is similar to the Chancery Court. Initially, the Court of the Exchequer has been focused on protecting the interests of the crown. Therefore, the function to eliminate the gaps of the common law could not be implemented in full.

The Chancery Court, unlike the special courts were required to consider complaints coming from citizens about the inability to get a fair trial.

Conclusions. The criteria for judicial institutions to be considered as “courts of equity” are: the purpose of the establishment of the court was to fill gaps in the common law; interference with the jurisdiction of other courts, in fact, has been focused on the eradication the deficiencies of the common law; the court of equity was not supposed to apply a legal fiction in their practice; specialization in civil cases. The number of “courts of equity” may be assigned only by the Chancery Court.

The article deals with definition of «court of equity» of England XVI-XVII, considered the possibility of applying this definition to some kings courts, also named as prerogative courts, such as Court of Star Chamber, Court of High Commission, Court of Requests. The article also considered the possibility of applying this definition to Court of Exchequer and Chancery court.

Keywords : «Court of equity», Court of Star Chamber, Court of High Commission, Court of Requests, Court of Exchequer, Chancery Court.

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1. The relevance of the subject of research

The development of the law of our country is connected with many factors. One of them is the study and adaptation of the experience of other states in the regulation of various legal relationships. In this context, the practice of the so-called "courts of justice" is particularly interesting. This is due to the fact that the conservatism of common law judges did not allow establishing proper legal regulation, and as a result, proper legal protection of relations is not provided for by common law. The emergence of legal regulation of a number of transactions, such as trust management, is related to the jurisprudence of the Court of the Chancellor, also called the first of the "courts of justice". At the same time, up to the present time, the question of which courts should be classified as "courts of justice" has not received sufficient reflection in the literature.

2. Extraordinary courts in the system of "courts of justice"

Extraordinary courts were also often referred to the group of courts of justice. The main task of these courts was to strengthen the royal power and to fight with its opponents

Extraordinary (prerogative) courts were guided not by a common law but by considerations of "reason", they did not have a system of "claim formulas", and cases were initiated on the basis of "bills" of the parties [1, p. 189]. One of the arguments of referring to the number of "fair" courts is the lack of application of the practice of using precedents. At the same time, as demonstrated by T.V. Aparova [2, p. 240], the connection with their previous decisions, which are opposed by the courts of justice, was formed only by the XIX century. But even then, the connection with precedents was not absolute.

Extraordinary courts were formed by the royal power and endowed with extensive powers as opposed to the courts of common law. Among the researchers of English law there is no common opinion about which courts should be considered to be the courts of justice. But basically, they include the Court of the Star Chamber (3, p. 130-137), the High Commission (4, p. 130-134], the Court of Requests [5, p. 136-150; 6, p. 70]. Also, a number of researchers considered the Treasury Court to be "fair", although it was not prerogative.

The creation of extraordinary courts caused the complication of the political situation in the country under the Tudor dynasty, and under the Stuarts their existence exacerbated the dissatisfaction with the royal power. In order to establish the degree of validity of referring the above-mentioned courts to the number of "fair", it is necessary to give a brief description of each of them.

2.1. The Court of the Star Chamber

The Court of the Star Chamber appeared under Henry VII (1488) and was established to restore order, disrupted as a result of the War of the Roses. This court carried out its activity on the basis of the statute 3 H. VII c.1, which was prescribed to protect the state order. For example, the Star Chamber had to fight illegal gatherings and riots. In general, the main task of this court was "suppression of intrastate unrest" [7, p. 85-86]. At the same time, its jurisdiction was much broader than that established by law. Thus, for example, the Star Chamber accepted for consideration private complaints, which hardly touched upon state security. Such complaints include disputes over land and ordinary civil litigation [8, p. 297]. Unfortunately, not many examples of the jurisprudence of this institution are preserved, therefore, statutes, parliamentary documents, appeals of the parties are also useful for studying the jurisdiction of the Star Chamber.

Jurisdiction of the Star Chamber was expanded due to cases of a political nature under Henry VIII.

The Statute of 1529 attributed to the competence of this Chamber cases on calls for riots, insurrections, abuses in courts, property litigation, forcing to marry, etc. [9, p. 28-29]. Most of these cases were under the jurisdiction of common law courts, since the 1488 statute did not give the Star Chamber the power to study them. This was pointed out by many respondents who tried to transfer the examination to the courts of common law, but their remarks were ignored [10, p. 292]. The Star Chamber was often used by the king to persecute those who refuse to pay taxes not approved by Parliament and ensured the execution of royal proclamations.

The composition of the Court of the Star Chamber included members of the Privy Council, the Chancellor, the Treasurer, the Lord of the Seal. As assessors, consultants, bishops, secular lords, judges of the royal bench and common law were invited. Usually, the assessors were two chief judges, one bishop and one secular lord of the Council, among the persons who enjoyed the king's greatest confidence.

The proceedings in this court were based on the principles of investigation and adversary procedures. The parties in the case were summoned to London for direct participation in the examination of cases, and special commissions sent to their place of residence were created to interview witnesses. The civil process was similar to the process in the Chancellery's Court [8, p. 293]. This resemblance was expressed in a less formalism in the examination of cases than in the case of common law courts, as well as in the use of similar procedural means, such as a restraining order. In addition, the subjects who addressed there, often stated that they feared their offenders and did not trust the courts of common law. But the cost of considering the case in this court was significantly higher than in the Chancellory's Court, so few could afford to start litigation in the Star Chamber. In the criminal trial, torture was often used. The Star Chamber had the right to impose punishment, but could not sentence to the death penalty. Given the orientation of the Star Chamber for the protection of state order, it did not seek innovations that were not beneficial to the crown.

The Chamber pursued the goal of strengthening the royal power, and also fought against its opponents, bypassing the norms of common law. In fact, this court allowed the crown to quickly get rid of its ill-wishers and opponents under a legitimate pretext. At the same time, the Star Chamber continued to consider claims related to trade disputes, as well as certain cases falling under the jurisdiction of common law courts. The priority for the Court of the Star Chamber was to protect the interests of royalty, and not the violated law. Moreover, this court did not seek to remove the gaps of common law. In this regard, his attribution to the number of courts of "justice" is incorrect. In addition, the Star Chamber had a close relationship with the Privy Council. During the 16th century, there was no clear boundary between them. It can be said that the Star Chamber was an extraordinary committee of the Privy Council. Sometimes there is even a coincidence between the protocols of the Council and the Chamber. For example, July 13, 1579 the Privy Council recorded a decision on the case, considered by the Star Chamber [8, p. 315-316]. At the same time, the Council was more of an administrative institution, although it had some judicial functions. The Star Chamber was terminated in 1641 by an Act on the settlement of the activities of the Privy Council and the abolition of the court, usually called the Star Chamber.

2.2. Court of petitions

In close connection with the Privy Council there was a Court of Appeals Chamber. Sometimes it is also called the "branch" of the Star Chamber. This court arose in the XV century. From the Council Committee established to protect the rights of the poor, who could not obtain protection in the courts of common law [11, p. 207-211]. For the first time an attempt to implement the idea of accepting free applications for poor people was undertaken by Richard III in 1484, but this undertaking failed. In 1495 the Parliament adopts an act, on allowing those subjects who are poor to apply to the court without paying court costs. The Chancellor was to appoint special clerks and

lawyers for this. Apparently, this act initiated the trial of the Chamber of petitions, originally called the Poor People's Court. The name "Chamber of petitions" was fixed only in 1529 [10, p. 298].

Initially, there were two judges in the Chamber. But under Elizabeth, two judges have been established, dealing with cases relating to ordinary jurisdiction, and two judges in cases relating to extraordinary jurisdiction. The President of this Court was the Lord of the Small Press. The jurisdiction of this court and the process were similar to the Chancery Court. But, unlike the latter, in the Chamber of petitions only small civil lawsuits were dealt with. At the same time, during the consideration of cases, the Chamber of petitions, like the courts of common law, pursued the goal of protecting the established law and customs. In addition, the decisions of the Chamber of Appeals were not binding, and its functions were reduced, rather, to a compromise between the parties. For example, in cases of violation of the rights of copy holders by the lord of the manor, the Chamber made a promise to observe the custom from the latter and not to oppress the peasants [8, p. 284] Thus, this court did not seek to eliminate the shortcomings of the law in force at that time, but sought to preserve the custom. The process in the Chamber of petitions was cheaper. Act 11 of the reign of Henry VII established that the poor, when applying to the court, should receive a gifted attorney, nothing was taken to draft the claim. This statute concerned all courts, and not only the Chamber of petitions. However, his acceptance led to litigation, and, in due course, he ceased to be applied [8, p. 283].

When examining cases in the Chamber of petitions, witnesses were not subjected to cross-examination and confrontation. The testimony was simply recorded, despite their inconsistency. Thus, the Chamber of Appeals was an institution that was supposed to listen to the parties and, ideally, to solve the matter to everyone's satisfaction. Most likely, the purpose of creating the Chamber of petitions was to relieve social tension, create impressions of caring for those submitted, based on nobility. "The Chamber strives not to improve the aspirations of peasant life, but only in the interests of the state order to put an end to old clashes and processes. Its attitude toward lords and copywriters sharply emphasizes the difference in their social position "[8, p. 290]. It should be noted that, despite the fact that the Court of Appeals Court was conceived as a "court for poor people" under Henry VIII, wealthy people began to resort to him. Thus, the Chamber of petitions, as well as the Star Chamber, does not seek to improve the state's right and eliminate its shortcomings, but to preserve it. The common law judges denied that the Request for Proposals was a legitimate court and demanded its elimination. The reason for this hostile attitude was the frequent use by the Chamber of prohibitive orders that hampered the consideration of cases in other courts. This led to direct conflict. In 1598, the Chamber of petitions issued a restraining order with respect to the party in the case, forbidding her to consider the case in the Court of Common Litigation. In response, the Court of general litigation issued a restraining order to the Chamber of petitions, which turned out to be more significant in legal force (the case of Tatnall v. Gomersall (1598) [12, p. 37]. Despite the fact that in the statute of Charles I, who abolished the Star Chamber, nothing is said about the Chamber of petitions, they ceased their activities simultaneously.

2.3. High commission

Another prerogative court, which is sometimes considered to be a court of justice, was the High Commission, a church tribunal introduced by Elizabeth I in 1559 to prosecute heretics and persons suspected of threatening the English church. During the reign of James I and Charles I, this institution significantly expanded its authority [13, p. 251-252]. The Commission was tasked with examining cases of all crimes and violations against the laws of the church, investigating heretical opinions, books, pursuing any disobedience of the church, insulting speeches for it, questioning all suspicious persons under oath, etc. The high commission consisted of secular and clerical persons, altogether more than a hundred people. When analyzing cases relating to religion, the High Commission was censored, it could prohibit any work, guided by church faith and their political

orientation. The commission could impose severe penalties, impose fines, imprisonment, select children from "suspicious" parents. The process was of an inquisitional nature, and the defendant was deprived of all judicial remedies. This made the High Commission's court an ideal means of punishment for dissent, as well as for disagreement with the official ideology of the state. Thus, for example, the denial of the divine origin of royalty could be the subject of consideration of this court. This led to the extreme unpopularity of the High Commission's court, and his activities aroused resentment and discontent among the opposition-minded cast of the kingdom.

"The High commission allowed such excesses in respect of cruelty and severity, which are slightly less than those allowed by the Roman Inquisition, and in addition in many cases the authority of the archbishops became even stronger, being supported and strengthened by the authority of the royal council." [13, p. 251-252] The civil jurisdiction of this court was related, mainly by family matters and probate disputes. According to the categories of cases, the High Commission competed with the common law courts. The first dispute related to the restriction of the jurisdiction of ecclesiastical courts arose in 1607, in the case of Fuller's lawyer [1, p. 243]. The latter spoke in court of the High Commission, defending his clients - the Puritans, accused of heresy. During his speech, he questioned the right of the High Commission to imprison persons accused of heresy. Then the lawyer was accused of insulting the court and was imprisoned. Fuller asked the court of the Royal Bench to "Habeas Corpus" and received it. But common law judges did not agree that the High Commission had no jurisdiction over cases of heresy. At the same time, they insisted on their right to issue prohibitive orders, and the matter of the competence of the church tribunal was attributed exclusively to the jurisdiction of the common law courts. In this example, there is also a conflict of uncertainty of judicial authority. Thus, it can be summarized that the High Commission was also a court focused on strengthening the royal power. Given the nature of the cases in question, it was a means of forcibly implanting state ideology. Also, like the prerogative courts discussed above, the High Commission in its activities was not focused on improving the right of the kingdom. July 5, 1641, the "Act on the abolition of part of the Statute of Elizabeth the First concerning the Commissions on Church Affairs" was adopted. Parliament argued the need for its abolition by the fact that in its activities there were gross violations of the rights of the subjects of the kingdom.

2.4. Court of the Treasury

Sometimes the Treasury Court is also referred to the number of courts of justice. It was one of the first steps to separate from the Royal Council. During the reign of Henry I, the Treasury became an independent department, and under Henry II a court was formed, which included the barons of the Treasury, and the head of the Court was the chief baron. For a long time this court was in the position of an administrative body, since only during the reign of Elizabeth I, the barons of the Treasury began to appoint judges. Until that time, only the chief baron was appointed from among outstanding lawyers [15, p. 34]. This court had jurisdiction over common law and justice. Initially, the Treasury considered cases of fines and fees, as well as cases of royal incomes and lands. The "fair" jurisdiction of the Treasury Court was extended to the same cases as those examined by the Chancery Court. At the same time, the jurisdiction of the Court of the Treasury was limited to cases and circle of persons concerning the interests of the Crown. During the 15th and 16th centuries, there were several groups of people in a privileged position, allowing them to apply to the Treasury Court for resolving disputes - they were Treasury employees, royal treasurers, Crown debtors, and royal officials. In addition to these persons, in some cases, the Treasury Department could be contacted by their employees [16, p. 33]. This was done to expand the jurisdiction of the Treasury. Subsequently, by applying a fiction about the debt to the Crown, the jurisdiction of this court began to expand, and the number of cases examined, respective increased.

The essence of this fiction was that the basis for the consideration of the case lay the claim that the plaintiff cannot pay the debt to the crown, in view of the fact that the defendant does not repay the

debt to him. As an example of the use of this fiction, one case, considered in 1580, is of interest. This case of Ragland v. Wildgoose [16, p. 36], which concerned the sale to the defendant of land that was in trust, and was the property of the plaintiff. To accept the claim of the plaintiff, the Treasury used the mentioned fiction, although, in fact, the plaintiff was interested in the return of the land. Thus, the subject of the claim was the sum of money. After the initiation of the case, the defendant paid the amount claimed to him by the crown. The Treasury Court was forced to recognize the plaintiff's claims as fulfilled, although in fact he received neither money nor land. Thus, the Treasury provided judicial protection for certain types of transactions that were not recognized by common law. In this it is similar to the Court of Chancellor. At the same time, the absence of a literal formation of the subject matter of the claim and the use of legal fictions could lead to a violation of the interests of certain plaintiffs. It should be noted that the purpose of the Treasury's use of these fictions was to expand jurisdiction, which in turn was aimed at increasing the revenues of this court. Initially, the Treasury Court was focused on protecting the interests of the Crown. Therefore, the function to eliminate the gaps of common law could not be fully realized. At the same time, the proceedings in this court were more like a trial in the courts of common law [6, p. 29]. In 1842, the Court of the Chancellor was transferred jurisdiction of the Court of the Treasury by the right of justice [17, p. 42].

2.5. The Court of the Chancellor

Apparently, the prerogative courts were not popular with the inhabitants of the kingdom. In contrast to the Office, which managed to maneuver between the protection of interests of subjects and the interests of the crown. In addition, the Chancellor's Court sought not only to restore the violated right, but also to remove the shortcomings of a legitimate settlement of various relations. At the same time, opponents of the Chancellery were, mainly, those who saw it as a possible instrument of royal arbitrariness. Thus, the Court of the Chancellor, unlike emergency courts, was needed to examine complaints from the subjects about the impossibility of obtaining a fair trial. Judicial powers of the Chancellor, were delegated by the king, and his activities are aimed at strengthening the authority of royal power and protecting the interests of his subjects.

There is an opinion that the courts of justice were courts for the poor. Studies of a number of domestic scientists showed that the attitude towards such segments of the population was no more favorable than in the courts of common law. It should be noted that the norms of common law and the rule of law had class character. As Savin points out, "the attitude in the Chancery Court to ordinary holders was not in the least favorable than in the courts of common law" [8, p. 233-240]. Therefore, the struggle of the common law courts supported by the Parliament, with the Chancellor-backed court supported by the crown, was a struggle of political groups pursuing their own goals. It should also be added that judges and common law lawyers were faithful servants of the crown under the Tudors. This is confirmed, for example, by the fact that during the entire period of Elizabeth's rule there were no cases of dismissal of judges for political reasons [3, p. 332], even though it was with this ruler that one of the prerogative courts was established - the High Commission. In addition, the courts of common law also initially made their decisions, guided by considerations of reason and justice. But at the same time they are not considered to be the courts of justice.

3. Criteria for referring a judicial institution to the number of "fair"

It seems necessary to bring criteria for referring the judicial institution to the number of "fair": First, the purpose of creating a court was to eliminate the gaps in common law. The initial formation of a "fair" jurisdiction was related to the need to provide legal protection that promoted the development of economic relations not recognized by common law. Of course, in the dispute over the interest between the subject and the king, all the judges would give preference to the latter. At the same

time, the decisions taken by the justice court were to protect the conscientious side. The next point which should characterize the court of justice is its specialization in civil cases. For a long time there was no clear division of jurisdiction between courts in England, including the consideration of criminal and civil cases. However, the establishment of a list of crimes and possible penalties for them cannot be granted to ordinary subjects of the kingdom while the conclusion of transactions and the establishment of conditions for them was in the hands of private individuals. The commission of the crime was a violation of the interests of the state, which would necessarily be protected.

At the same time, the protection of some of the interests of frequent persons was impossible due to gaps in the law. Since the emergence of "fair" jurisdiction was associated with the need to eliminate these gaps, the justice court should specialize in the consideration of civil lawsuits. Another distinguishing feature of the court of justice was that the interference in the jurisdiction of other courts was in fact aimed at eliminating the shortcomings of common law. This should follow not only the objectives of the creation of the court, but also from its practical activities. The absence of a clear division of jurisdictions between courts has been repeatedly mentioned. This, in turn, led to disputes between them. Formal pretexts for such disputes could be plentiful, but in fact they were focused on expanding jurisdiction in order to increase the revenue of courts. It would be a mistake to say that any of the vessels described earlier did not have a material interest in increasing the flow of business, but mainly the protection of a bona fide party in a dispute that went beyond the common law was carried out only by the Chancellor. It should be noted that the court of justice should not have used legal fictions in its practice. This follows from the fact that the consideration of the controversial situation should have been as literal as possible. Otherwise, satisfaction of "fictitious" could take place. In addition, the use of these fictions could not lead to the improvement of the right of the kingdom, since fictitious interest was defended, and not real.

Conclusions

Thus, only the Court of Chancellor can be referred to the number of courts of justice.

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