*How Wales lost its judicature: the making of the 1830 Act for the Abolition of the Courts of Great Sessions**

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The 1830 Administration of Justice Act (11 Geo. IV and 1 Wm. IV cap. 70) by which the courts of great sessions and Welsh judicature were abolished, was ostensibly introduced to release resources for the appointment of much needed additional judges in the English courts of exchequer, king's bench and common pleas. It also terminated the separate provisions made for Wales under the 'Second Act of Union' of 1543 (34-35 Hen. VIII cap. 26).[1] English court judges were appointed by the lord chancellor, and disqualified from being MPs or practising barristers, but until October 1830 the judges who administered English law and provided equitable and criminal jurisdiction in the circuits of North Wales (Anglesey, Caernarfonshire and Merioneth), Chester (Flintshire Denbighshire and Montgomeryshire), Carmarthen (Cardiganshire, Carmarthenshire and Pembrokeshire) and Brecon (Glamorgan, Breconshire and Radnorshire) were treasury appointees, able to sit in Parliament as government placemen and practice at the English bar. Judicial appointments to the English and Welsh courts thus had different

* Discussions with Glyn Parry and Peter Roberts are gratefully acknowledged. For details of the MPs and constituencies mentioned see *History of Parliament: Commons, 1790-1820*, ed. R.G. Thorne (1986); *History of Parliament: Commons, 1820-32*, ed. D.R. Fisher (forthcoming, 2009). Limitation of space precludes a full and detailed coverage of petitions, the press and public meetings.

1 Sir W. Holdsworth, *A History of English Law*, XIII. 404-5; For establishment of the Welsh courts see P.R. Roberts, 'The Act of Union in Welsh History' *Transactions of the Honourable Society of Cymmrodorion* (1972-3) 51-52; idem. 'The Welsh Language, English Law and Tudor Legislation', ibid. (1989), 19-75; and 'Precedents for autonomous Welsh government, 1536-1653, *Literature and Politics in the Celtic World. Sydney Series in Celtic Studies* No. 4 (2000), 2-16. For the courts' place in English legal history see D. M. Walker, *Oxford Companion to the Law* (Oxford, 1980), 407, 1282-3; A.H. Manchester, *A Modern Legal History of England and Wales 1750-1950* (London, 1980), pp. 15-20; *Communities and Courts in Britain, 1150-1900*, eds. C. Brooks and M. Lobban (London, 1997), xx, 179-98; M. Lobban, 'Henry Brougham and Law Reform', *English Historical Review* [*EHR*], CXV (2000), 1184-1215.

political connotations. The convention of not opposing crown appointees on re-election (a standard requirement of holding a government post) was thrice breached after 1815 when MPs became Welsh judges, and the lord chancellor was 'the person [b]lamed' when appointees to the Indian, Welsh and Scottish courts, for which he was not responsible, proved unsatisfactory.[2] The history of the great sessions, their records, officers, practices and the threats to their powers has been ably treated elsewhere, together with the linguistic issues. These recent publications include analyses of the rates of, and reasons for, litigation as well as the findings of the 1817 and 1820-21 parliamentary select committees and the 1828-9 commission on the practice and proceedings of the superior courts of common law which eventually recommended their abolition.[3] The following discussion accordingly focuses on partisan attitudes and the hitherto neglected consultative and parliamentary processes by which abolition was sanctioned.[4] It also casts doubt on the feasibility of bringing it about while the anti-Catholic Tory John Scott, first earl of Eldon was lord chancellor and Speaker of the House of Lords, in 1801-6 and 1807-27. For Eldon was a cautious practitioner who saw the Welsh courts as a valuable source of local (and parallel) chancery jurisdiction, when his own court of chancery in Westminster was prone to delays and intense pressure of business.[5] In Wales, where abolition was largely unsolicited, the intended minutiae of the 1830 act caused a political storm akin to that generated by the treasury's decision to lease crown lands in 1778, and it became the subject of concerted and predominantly hostile petitioning campaigns fuelled by self-interest, local rivalries and national concerns.[6]

The propriety of preserving the Welsh jurisdiction when the 'original motives ... which made the ancient separation prudent and even necessary, no

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2 BL Add. 40315, ff. 6, 7, 70-82, 229, 262-3. See also below.

3 Glyn Parry, *A Guide to the Records of Great Sessions in Wales*, (Aberystwyth, 1995) [henceforth Parry, *Great Sessions*], i-xlix; W.R. Williams, *The History of the Great Sessions in Wales 1542-1830*, (Brecon, 1899); W. Llewelyn Williams, *An Account of the King's Court of Great Sessions in Wales*, (London, 1916); M. Ellis Jones, 'An invidious attempt to accelerate the extinction of our Language': The abolition of the Court of Great Sessions and the Welsh Language', *Welsh History Review* [*WHR*] XIX (1998), 226-64; W.H.D. Winder, 'Equity in the Courts of Great Sessions', *Law Quarterly Review*, LV (1939), 106-121; H Horwitz and P. Polden 'Continuity or Change in the Court of Chancery in the Seventeeth and Eighteenth Centuries' *Journal of British Studies [JBS]* XXXV (1996), 24-57; M. Henry Jones, 'Montgomeryshire and the Abolition of the Court of Great Sessions, 1817-1830', *Montgomeryshire Collections*, LX (1967-8), 85-103.

4 Parry, *Great Sessions*, xxxviii.

5 *Oxford Dictionary of National Biography*, *sub* Scott, John, first earl of Eldon (1751-1838); C. W. Brooks, *Lawyers, Litigation and English Society since 1450* (London, 1998), 101.

6 P.D.G. Thomas, 'A Welsh Political Storm: The Treasury Warrant of 1778 concerning Crown Lands in Wales', *WHR*, XVIII (1997), 430-449.

longer exist' had been discussed periodically since the dissolution in 1689 of the Court of the President and Council of Wales and the Marches at Ludlow. This had left the Welsh courts increasingly susceptible to encroachments by chancery and king's bench, during an era when the boundaries between equity and common law were disputed.[7] By 1780, when Edmund Burke proposed a parliamentary 'bill for more perfectly uniting to the Crown the Principality of Wales and the County Palatine of Chester, and for the more commodious administration of the same', the topic had been in contention for more than a decade.[8] Burke's scheme failed, but the association he established between Wales's separate judicature, English jurisprudence and chancery reform persisted.[9] The future Speaker of the House of Commons Charles Abbot, 1st Baron Colchester, referred to it in a treatise on judicial practice which he published when a barrister on the Chester circuit in 1795, and the 1798 Commons' select committee on finance in the courts of justice recommended merging the four courts into a single circuit to cut costs.[10] Excluding the Scottish court of session,[11] the parliamentary campaign for legal reform lost momentum during the Napoleonic wars and the Welsh courts were ignored until 18 March 1817, when, as part of a general attack on 'placemen', Samuel Romilly, the leader of the radical Whig 'Mountain' (so named in recollection of the French revolutionary radicals of the 1790s, who sat together high up at the back of the National Convention in Paris), objected to issuing a new writ for Bridport following the appointment one of its MPs, William Draper (Serjeant) Best as second judge on the Chester circuit (he became first judge in 1818).[12] No Welsh MP contributed to that day's debate, but the Whig leader and former Irish lord chancellor in Lord Grenville's ministry, George Ponsonby, who considered the presence of Welsh judges in Parliament unconstitutional, revived the issue on the abolitionists' behalf on 1 May 1817. He was supported in debate by Grenville's nephews the Denbighshire MP, Sir Watkin Williams Wynn of Wynnstay and his brother Charles, the MP for Montgomeryshire and leader of the third party in the Commons (where that

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7 M. Macnair, 'Common Law and Statutory Imitations of Equitable Relief under the Later Stuarts', *Communities and Courts in Britain, 1150-1900*, 115-31; *House of Commons Sessional Papers of the Eighteenth Century* ed. S. Lambert, (Wilmington, 1975), XXIX. 507-18; Parry, *Great Sessions*, pp. x-xxii.

8 H. Owen, *English Law in Wales and the Marches* (London, 1900) 24-27.

9 D. Lieberman, 'Blackstone's Science of Legislation', *JBS*, XXVII (1988), 117-149, especially 145-9.

10 Charles Abbot, *Jurisdiction and Practice of the Court of Great Sessions of Wales upon the Chester Circuit* (London, 1795).

11 N. Phillipson, *The Scottish Whigs and Reform of the Court of Session* [*Stair Society XXXVII*, 1990].

12 *Parliamentary Debates* [henceforward *PD*] XXXV. 1166-9; D. Rapp, 'Left-Wing Whigs: Whitbread, the Mountain and Reform, 1809-1815', *JBS*, XXI (1982), 35-66.

month he failed to succeed Abbot as Speaker), and by John Frederick Campbell, the 'Blue' or Whig MP for Carmarthen. Campbell's father the 1st Baron Cawdor, a quondam political ally of Lord Grenville, detested the courts, which, he complained, had served the interests of his opponents during *quo warranto* proceedings in Carmarthen, where William Russell Oldnall (afterwards Russell) had published a treatise on the court's practices, suggesting useful improvements.[13] The Liverpool ministry's foreign secretary and leader of the House of Commons, Lord Castlereagh, refuted criticism of the Welsh judges, but conceded a select committee with Ponsonby as chairman: 'to inquire and report opinion on the administration of justice in Wales'.[14] As a matter of form, 10 of its 22 members (the quorum was 5) sat for Welsh constituencies, another, Davies Davenport, for Cheshire and at least two more, Joseph Foster Barham of Trecwn, Pembrokeshire, and the dean of the court of arches Sir John Nicholl of Merthyr Mawr, Glamorgan, had estates and influence in Wales.[15] When a breach of promise action brought by Ann Evans of Caernarfon against Thomas Jones of Pentir was heard in king's bench on 29 May 1817, the lord chief justice Lord Ellenborough expressed regret that the cause had been removed from Caernarvonshire and the Welsh courts.[16] This signalled a government resistance to change. Ponsonby died without completing his report, but not before compiling details of the bills of complaint and declarations filed since 1812. He also heard the testimony, over 14 days between 8 May and 26 June, of 36 witnesses. They included Lords Dynevor, Cawdor and Bulkley, William Owen of Glansevern, Montgomeryshire, then a commissioner of bankrupts, the Ruthin attorney Goodman Roberts, and the former recorder of Chester and MP for Milborne Port Hugh Leycester, chief justice since 1802 of the North Wales circuit, and vice-chamberlain since 1803 of the Cheshire palatine court.[17] Their interim report, with the testimony appended, was presented to the Commons by

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[13] *PD*, XXXVI. 97; J.J. Sack, 'The decline of the Grenvillite faction under the first duke of Buckingham and Chandos, 1817-29', *JBS*, XV (1975), 112-34; W. Spurrell, *Carmarthen* (1879), 140; NLW ms 481 E, f. 28; W. Russell Oldnall, *Practice of the Court of Great Sessions on the Carmarthen Circuit* (London, 1814).

[14] *PD*, XXXVI. 97.

[15] *Journals of the House of Commons*, [henceforward *CJ*] LXXII. 228, 265. The committee were George Ponsonby, James Abercromby, Joseph Foster Barham, Henry Clive, William Courtenay, Davies Davenport, Benjamin Hall, James MacDonald, Sir Thomas Mostyn, Sir John Nicholl, Sir John Owen, Berkeley Paget, Sir Arthur Piggott, Lord Robert Seymour, Sir Samuel Shepherd (as attorney general), Nicholas Vansittart (as chancellor of the exchequer) Walter Wilkins, Charles Watkin Williams Wynn, Sir Watkin Williams Wynn, Thomas Wood, Sir Charles Wrottesley, John Jones was added on 14 May.

[16] *The Times*, 30 May 1817.

[17] *CJ*, LXXII. 239, 252, 254, 362, 379, 390, 398, 406; *British Parliamentary Papers* [henceforward *PP*] (1817), V. 309-428.

Charles Williams Wynn on 4 July 1817 and 10 March 1818, and printed.[18] Among the courts' shortcomings it mentioned

> the long period of the year during which recoveries could not be suffered or fines levied; the inability of the courts to compel the attendance of witnesses residing outside their jurisdiction; the diversity of practice on the different Welsh circuits with respect to writs of *certiorari*, and the requirement that judges and counsel spend a similar period of time [six days] at each assize town irrespective of the amount of business.[19]

However, as the barrister Christopher Temple noted, proceedings in great sessions were demonstrably cheaper and faster than their equivalents in chancery.[20] On 13 May 1818, too close to the dissolution for any prospect of success, the MP for Pembroke Boroughs, John Jones, an ambitious Welsh-speaking barrister practising on the Carmarthen circuit and the popular leader of the 'Red' or predominantly Tory anti-Cawdor party in Carmarthen, brought in a bill to remedy faults identified in the report.[21] Jones was a Tory ministerialist, but the measure, which Campbell naturally opposed, was not taken up by the government, and at the general election in June the fate of the judicature was an issue only in Anglesey, which, not for the last time, resisted the transfer of its assizes from Beaumaris to Caernarfon; and in West Wales, where, under a local agreement, Cawdor's nominee John Hensleigh Allen of Cresselly replaced Jones as MP for Pembroke Boroughs. Campbell defeated Jones in a bitter contest in Carmarthen. A satirical ballad depicting the Haverfordwest sessions dates from this period.[22]

In the Commons on 21 May 1819 Campbell and Allen proposed legislating to unite the judicial systems of England and Wales. Charles Williams Wynn and Thomas Frankland Lewis (then the Grenvillite MP for Beaumaris) and the barrister James Scarlett were supportive, but on Eldon's advice the measure was strenuously opposed by Castlereagh and the Breconshire MP, Thomas Wood, described in 1820 by Charles Williams Wynn as 'a very good natured, very silly brother in law of Lord Castlereagh who resides but little in Wales but has a great love for speechifying'.[23] The proposal was shelved, but the

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[18] *CJ*, LXXII. 450; LXIII. 156; Owen, *English Law in Wales and the Marches*, 27.
[19] *PP* (1817), V. 309.
[20] M. Henry Jones, *Montgomeryshire Collections* LX. 90; *PP* (1817), V. 354.
[21] *PD*, XXXVIII. 618.
[22] *Carmarthen Journal*, 3 July 1818; BL Add. 40363, f. 144; NLW ms 6106 D; Carmarthen RO, Cawdor mss 2/136; NLW, Castell Gorfod mss 40.
[23] *PD*, XL. 666-7; NLW, Coedymaen mss II 939.

Welshpool attorney R. Owen, writing in the *Salopian Journal* as the fictitious plaintiff John Doe, revived it when George III's death precipitated a general election in 1820, at which the steward of Welshpool and Llanfyllin, the barrister Panton Corbett, a political devotee of Lord Clive and the Williams Wynns became an MP for Shrewsbury with the radical Whig 'Mountaineer' Henry Grey Bennet. [24] Jones had been dissuaded from opposing Cawdor's nominees in order to facilitate the unopposed election for Carmarthenshire of Lord Dynevor's heir, George Rice Rice (afterwards Trevor).[25] However, he was the principal speaker at Llandeilo on 10 May 1820 when the county petitioned urging the reforms he had advocated in 1818, preparatory to their re-introduction by the principal justice of Chester and MP for Dorchester, Charles Warren.[26] The petition's objectives were commended in the Lords by Dynevor, and in the Commons, where Allen and Campbell derided them, by Rice and the Pembrokeshire MP, Sir John Owen. Pembrokeshire's petition, whose adoption the Blues had opposed, also demanded 'a sufficient court of equity' for Wales and an end to politically appointed judges.[27] On 1 June, with pointed references to Burke and Abbot's recommendations and oft-rehearsed criticisms of the Welsh courts' procedures and professional men, Campbell moved for a select committee 'to consider the state of the court of judicature in Wales; the propriety of abolishing the same; and the means by which Wales may be most readily included within the English circuits, and to report their opinions thereupon to the House'. Warren responded with an emotional defence of the Welsh judiciary for which, according to Charles Williams Wynn, he was 'well-roasted', fuelling further criticism from the 'Mountain', and claims and counter-claims by members of the 1817 committee that Ponsonby had abandoned the idea of abolishing the Welsh courts.[28] Allen's brother-in-law the Whig Sir James Mackintosh noted in his diary:

> Campbell made a capital speech on the Welsh judicature. He really showed as great a power of clear conception as most men in the House and a happier flow of early and elegant expression than almost anyone. Lord Cawdor sat under the

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[24] *Salopian Journal*, 2, 16, 23 February, 1, 8 March 1820.

[25] NLW, Dolaucothi V2/36; *Cambrian*, 12 February 1820.

[26] *Carmarthen Journal*, 28 April 1820; Parry, *Great Sessions*, p. xxxi, makes the correlation without referring to Jones's bill. *Journals of the House of Lords* [henceforward *LJ*] LIV, 84; *CJ*, LXXV. 237 erroneously attributed the petition to Caernarvonshire.

[27] *The Times*, 26 May 1820; *Cambro-Briton*, I (June 1820), pp. 396, 439; *CJ*, LXXV. 294; LJ, LIII. 140;

[28] Coedymaen mss II 939.

> gallery, a justly delighted hearer. Warren made a wretched figure. He chose to take all arguments against the system as a personal attack on himself. He struggled ineffectually to conceal his agitation under the appearance of a gross and vulgar buffoonery which much resembled a total indifference to character. [Thomas] Creevey hacked him coarsely but carefully with a butcher's knife. Lord John Russell stabbed him with a polished dagger.[29]

Castlereagh conceded the committee but, by means of an amendment, restricted its remit to that of 1817. Of the Welsh MPs who spoke, Charles Williams Wynn was for abolition but against precipitate action; Thomas Wood defended the courts, opposed the committee's revival and argued that Wales remained too backward for assimilation. Allen, backed by Barham, claimed that the South Wales businessmen and industrialists wanted the courts abolished, dismissed the partisan Carmarthenshire petition, and poured scorn on Wood's credentials as a Welshman, albeit without the anger his denigration of the language as an uncivilising force generated between July and December 1820 in *Seren Gomer*.[30]

Chaired by Campbell, the select committee was nominally composed of the available members from 1817 with Allen, Chetwynd, Corbett, Mackintosh, Rice, Russell and William Cust, whose sympathies lay with the abolitionists.[31] They sat during two parliamentary sessions and added statistics and testimony to that previously collected but, even so, the evidence failed to substantiate the criticisms of the Welsh courts in Campbell's interim report of 9 July 1820 and final one of 14 June 1821. To faults noted in 1817, he added the inconvenience of a court from which there was no appeal save to the House of Lords, or by writ of error to king's bench; and the regular over-use of writs of *certiorari* to delay proceedings. Like Abbot, he dismissed the notion of the court as national institution superior to the English local courts, then under investigation, and explained how anomalies in circuit practice had produced four separate jurisdictions in Wales. He concluded that 'minor difficulties might be removed by new regulations, but no right administration of justice could be obtained without such fundamental changes as would amount to a new jurisdiction'.[32] In September when the validity of *certiorari* actions was tested in the case of *Rogers v. Rees*, Eldon upheld the Brecon court's judgement.[33]

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[29] BL Add. 52444, f. 125.

[30] *CJ*, LXXV. 265, 294; *PD* (New Series) [henceforward *PD* (n.s.)], I. 745-68; *Salopian Journal*, 7 June 1830.

[31] *CJ*, LXXV. 265, 269, 277, 294, 340.

[32] Ibid. 294, 296, 363,369, 458; Owen, *English Law in Wales and the Marches*, p.28; *PP* (1820), II. 235-9.

[33] *Salopian Journal*, 5, 12 September; *Hereford Journal*, 5 September 1821.

Campbell's succession as 2nd Baron Cawdor in June 1821 brought Jones, the victor at the ensuing Carmarthen by-election, back into Parliament.[34] That August the grand jury of Caernarvonshire declared themselves (as again in 1822) 'perfectly satisfied with the administration of justice ... [and] the judicature as it now stands'.[35] Despite supportive petitions from the high sheriff and grand jury of Glamorgan, where the Swansea pottery manufacturer and former editor of the *Cambrian*, Lewis Weston Dillwyn of Penlle'rgaer, pressed the abolitionists cause, and from his fellow Pembrokeshire JPs, Allen failed to revive the issue in the Commons in 1822, through motions for reconsidering the committee reports, 16 May, and for reorganising the Welsh circuits, 23 May.[36] He had been backed on the 23rd by Barham, Mackintosh, Scarlett and Wood, who had modified his views, but the attorney general Sir Robert Gifford and Charles Williams Wynn, who had recently joined the government as president of the India Board, pointedly denied him their support. His bill proposed a north-south division, hearing North Wales cases in Shrewsbury and Chester and making Gloucester, Hereford, Monmouth and Worcester the assize towns for South Wales, and was forfeited (on 23 March) when the House was found to be inquorate.[37] An alternative measure drafted by Thomas Markham of Nash and sponsored by the 2nd marquess of Bute,[38] was broached before Jones successfully introduced his bill to enlarge and extend the powers of the judges of great sessions the following week (30 May). As Jones intended, it was circulated to MPs and the counties during the summer recess for comment, preparatory to its re-introduction.[39] The bill provided for witnesses residing outside the jurisdiction of great sessions to be subpoenaed by the court of exchequer, king's bench or common pleas. It gave those courts the right to grant new trials for parties dissatisfied with verdicts obtained in great sessions. It preserved the expedition of the Welsh courts. It permitted writs to be issued and returned in vacation and testimony taken from witnesses residing beyond the jurisdiction of great sessions on the same terms as the Westminster courts of chancery, king's bench and common pleas. It also

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[34] M. Cragoe, 'The Golden Grove Interest in Carmarthenshire Politics, 1804-21', *WHR*, XVI (1993), 467-93; *Carmarthen Journal*, 22, 29 June, 6, 13 July 1821; Cawdor mss 2/135-7; *PP* (1835), XXIII. 347.

[35] UCNW Porth-yr-Aur mss 1284, 1266D; *North Wales Gazette*, 2, 9 August 1821.

[36] *Cambrian*, 11 May 1822; *CJ*, LXXVII. 271, 292, 362-3; *LJ*, LXV. 179-80, 275.

[37] *The Times*, 17 May 1822; *PD* (n.s.), VII. 729-35; *Salopian Journal*, 31 May 1822.

[38] Having consulted Nash over the 1820 and 1821 select committee reports, Bute suggested 'putting together the 'heads of a bill to remedy the principal defects from which we suffer at present under the Welsh Judicature, such as the trial of new issues, the want of power to summon witnesses from England, the removals to Hereford, the low stamp for attorneys, etc. ... [that] might even now be passed in this session, or ... be very useful to see ... in some shape' NLW, Bute mss L65/14, 17, 19.

[39] *CJ*, LXXVII. 302; *The Times*, 31 May 1822; *PD* (n.s.) VII. 759.

sought to empower great sessions to dismiss certain court officers, and to secure suitors' money in the court of exchequer. Beaumaris, the pocket borough of the Williams Bulkleys of Baron Hill, would no longer be the sole assizes town for Anglesey, and grievous clauses in the 1773 Act (13 Geo. III cap. 51), forbidding Welshmen from trying actions under £10 in the Westminster courts were to be repealed. The transfer of debt, trespass, assault, battery and other personal actions from great sessions to neighbouring English counties was regularised, and no writ of certiorari could be issued without notice and a special affidavit. Judges' salaries, the qualification for petit jury service, fines, recoveries and fees would be on a par with those in the Westminster courts, leviable in vacation and effective from the date of caption.[40] Justifying the appointment of the MP for Newport (Isle of Wight) Jonathan Raine as a Welsh judge in March 1823, Lord Liverpool had observed that Raine's 'station and standing in the profession afforded a better security that his nomination would be less likely to provoke an inconvenient motion in Parliament ... [than] any other person'. Although Raine was opposed at the subsequent by-election he kept his seat, but afterwards, possibly to avoid controversy, he 'retired from practice at the common law bar'.[41]

Jones introduced his bill unchanged on 18 March 1823, endorsed in petitions from his allies on the grand juries of Cardiganshire and Carmarthenshire and a favourable press. Late sittings, requests for information on the courts' business and deferrals delayed its progress; and it was circulated again to magistrates and great sessions officials during the 1823 recess.[42] When reintroduced on 16 Feb. 1824 it incorporated substantial changes. (Sir) John Singleton Copley and (Sir) Charles Wetherell had recently been appointed attorney and solicitor general; and Peel's current priorities were to relieve pressure on Eldon (the subject of an unsuccessful breach of privilege motion on 1 March) and to delay chancery reforms, then under consideration by a commission packed with government supporters (they reported in 1826). Jones's bill now concentrated on the equity jurisdiction of the courts of great sessions. It directed all appeals to the court of exchequer and its provisions for judges to rule and refer unsuited cases and regulations on jury service had been scaled down.[43] Most Welsh grand juries had recently endorsed the 1823 bill in draft, but its successor was severely criticised at its second reading on 11 March 1824, which coincided with opposition raised to the re-election for

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[40] *PP* (1822), II. 1499-1513.

[41] BL Add. 38193, f. 190; 40311, ff. 13-15; *Royal Cornwall Gazette*, 22, 29 March 1823.

[42] *CJ*, LXXVIII. 133, 135, 227, 276-8; *LJ*, LV. 654, 724, 729, 759, 799, 812-3 (Accounts 43); *Salopian Journal*, 16, 23 February, 8 March 1823; *The Times*, 19 March 1823.

[43] *PP* (1824), III. 327-41; Lobban, *EHR*, CXV. 1187; R.A. Melikan, *John Scott, Lord Eldon, 1751-1838*, 201-3; *The Times*, 2 Mar. 1824; BL Add. 38302, ff. 101, 156.

Barnstaple of Michael Nolan, following his appointment as a judge on the Brecon circuit.[44] The Tory MP for Glamorgan 'Sir Christopher Cole' now joined the radical Joseph Hume in lamenting the bill's failure to bar Welsh judges from sitting in Parliament; but no MP for a Welsh constituency followed Allen to the division lobby on 11 March, when he failed by 42 votes to 19 to kill the bill by adjournment (i.e. by postponing it until it could no longer be enacted that session).[45] Cawdor and Bute were similarly unsuccessful in arresting its progress in the Lords, where it was entrusted to Dynevor and Shaftesbury, and commended by Eldon, who spoke highly of the Welsh courts. Amendments that would have enabled English solicitors to practise in the Welsh courts and prevented Welsh judges sitting in parliament were rejected, and the bill, from which the Beaumaris clause was omitted, and to which powers of referral to the courts of king's bench and common pleas were restored, was enacted on 24 June 1824 (5 Geo. IV, cap. 106).[46] Of possible reforms identified by the 1817 committee, only that governing the length of the sessions remained unaddressed. Pleadings could be delivered during vacations, testimony taken by commission, and justices' decisions in one county made valid throughout the circuit. The contentious issue of surety for fines and recoveries was dealt with and the flow of cases to courts outside Wales was checked by raising the threshold of disqualification from £10 to £50. 'Jones's Act' was generally considered a 'great boon' whose principal weakness, according to contemporary lawyers, was that it failed to give each Welsh judge concurrent power with other judges on other circuits and the ability to change circuits as in England – an innovation the prothonotaries of the great sessions would have strenuously opposed. Cheshire, to whose palatine jurisdiction the Act did not extend, subsequently sought to share its benefits.[47] Writing in November 1825 to the Brecon attorney John Jones, George Bevan observed:

> Being really desirous of understanding the much mooted question of our Welsh Judicature, I have been taking some pains to accomplish it. The result of my enquiries is, certainly, a considerable change of opinion: for I find we have many important privileges, I was not till now aware of. Is it too much to ask you whether the accompanying paper, which I beg the favour of you returning to me, contains a

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[44] BL Add. 40362, f. 101; *The Times*, 9, 10, 11 March 1824.

[45] *PD* (n.s.), X. 926-8, 1484-8; *Seren Gomer* VII (1824), 92, 224; *CJ*, LXXIX. 150, 249, 378, 407, 530, 536.

[46] *PP* (1824), XI. 1088-9; *LJ*, LVI. 322, 377, 386. 410, 411, 415, 440, 450, 457, 465; *The Times*, 17 February, 22 June 1824; *Cambrian*, 26 June 1824.

[47] *Montgomeryshire Collections*, LX. 93; *CJ*, LXXIX. 397; NLW, Garn mss (1956), J. Edwardes to J.W. Griffith, 11 Sept. 1829.

> fair balance of disadvantage and advantage, and a statement of what we seem to want to perfect our jurisdiction? P.S. What was Mr. Jones's and what Mr. Allen's bill? Is either printed? [48]

Jones's act was hailed by the West Wales 'Reds' at the 1826 general election, when Jones was unopposed. Sir John Owen's son Hugh now replaced Allen as MP for Pembroke Boroughs and Richard Bulkley Phillips, who subsequently opposed Cawdor's plans for the Welsh courts, became the MP for Haverfordwest.[49] Motions for chancery reforms served to test party strength in the Commons after Lord Liverpool suffered a stroke and the Liberal Tory George Canning was appointed to head a coalition ministry. Copley (Baron Lyndhurst), whom Eldon had held in high regard, now replaced him as lord chancellor. With Allen out of parliament and Cawdor politically subservient to Lord Lansdowne, at whose suggestion Lord Goderich's short-lived ministry secured him an earldom, the future of the Welsh courts remained in abeyance.[50]

The Tory duke of Wellington, who became prime minister in January 1828, was committed from the outset to retaining Lyndhurst as lord chancellor, assimilating the Scottish legal system and consolidating those for Ireland and Wales.[51] In lieu of authorizing inquiry by select committee and examining selected witnesses, his ministry responded to the Whig lawyer Henry Brougham's attack on the entire legal system, delivered with 'great tolerance, judgment and talent' in an epic six-and three-quarter-hour Commons speech on 7 February 1828, by appointing a royal commission on the courts of common law.[52] From 52 Lincoln's Inn Fields they considered the 1798 and 1817-21 reports and sounded opinion in the counties and among lawyers by circulating leading questionnaires to 'intelligent persons resident in the Principality of Wales, whether professional or unprofessional, and not interested in the existing establishment'.[53] With Eldon out of office, no serious opposition within government to abolishing great sessions was anticipated and the commissioners, John Bernard Bosanquet, Henry John Steven, Edward Hall Alderson, James Parke John Patteson, who each received £1,200 per annum., and their secretary George Faulkener (whose annual salary was £800), were

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[48] NLW, Maybery mss 4408.

[49] *Cambrian*, 27 May, 17, 24 June 1826.

[50] BL Add. 40315, ff, 265-8, 312; Oxford *DNB*, *sub* Copley, John Singleton (1772-1863).

[51] Southampton UL, Wellington mss WP1/915/3; P. Jupp, *British Politics on the Eve of Reform: The Duke of Wellington's Administration, 1828-30* (Basingstoke, 1998), 145-7, 154.

[52] Northants RO, Agar Ellis diary, 7 Feb. 1828; *PP* (1829), IX. 380-1, 417-9.

[53] TNA HO43/36, p. 476; *PP* (1829), IX. 380-1, 417-9.

advised accordingly and given until May 1831 to report on the entire system, taking chancery and provincial jurisdictions first.[54] To the mortification of the 'Reds', who professed political allegiance to Peel as home secretary and leader of the Commons, their applications for patronage, including Jones's to become a judge on the Brecon circuit, were summarily rejected (Nathaniel Gooding Clarke was chosen), and henceforward, appointments to the Welsh courts, like English ones, were closely vetted by Lyndhurst.[55] On 22 April the Whig MP for Stockbridge, George Wilbraham of Delamere Lodge, near Northwich, had Cheshire's palatine jurisdiction, which John Fane sought to improve and preserve, added to the committee's remit by means of a superfluous inquiry motion, for which he had sought the support of Brougham and the Cheshire bench.[56] In the Lords on 6 May, Lyndhurst assured Cawdor that great sessions and the English court of chancery were under comprehensive investigation.[57] Brougham's condemnation of great sessions as the 'worst [court] ever established' was hotly debated in the English and Welsh language press, and expanded upon in August in a vitriolic open letter from Cawdor to Lyndhurst.[58] Essentially a rehash of his 1821 criticisms and Allen's 1823 proposals, with additional options for re-organising circuits appended, the letter was fortuitously timed, despatched to the commissioners and widely discussed. As its author intended, it gained sway as a reflection of the true state of opinion in Wales and among educated Welshmen. Its recommendations were approved in principle by Bute and Lewis Weston Dillwyn of Penlle'rgaer, and 25 of the 27 Glamorgan magistrates at the October 1828 quarter sessions in Swansea, recommended abolition and Cawdor's scheme in a memorial to the commissioners (it received 85 signatures).[59] Cawdor's local agent Richard Benjamin Williams of Llandeilo and the leading Carmarthenshire Whigs, submitted supportive letters, and favourable memorials were forwarded by Cawdor's tenants and supporters (described as 'the leading gentry') in Cardiganshire and Merioneth.[60] Lithographed copies of Williams's memorial which had been circulated

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54 TNA HO43/38, p. 471; HO43/39, pp. 15, 76; HO44/18, pp. 143-4, 150-1, 167-8, 191-2, 218-9, 220-1; *PP* (1829), IX. 36 (cited in Parry, *Great Sessions*, p. xxxvi).

55 BL Add. 40395, ff. 30-35, 57-59, 92-94; Wellington mss WP1/920/9, 19, 33; 945/5.

56 UCL, Brougham mss, G. Wilbraham to H. Brougham, 12 March; *Chester Chronicle*, 2, 9 May 1828; *PP* (1829), IX. 367; J. Faulkner (jun.), *Practice of the Court of Session for the County of Chester* (Chester, 1822).

57 *The Times*, 7 May 1828.

58 Ibid. 20 August 1828; Jones, *Crime in Nineteenth Century Wales*, 254.

59 *Cambrian*, 18 October 1828.

60 R.B. Williams, Thomas Benyon of Greenmeadow, William Owen Brigstocke of Gelli Dywyll, Thomas Foley of Abermarlais, James Richard Lewis Lloyd of Dolhaidd, the Carmarthen bankers Morris and Sons, M. Phillipps of Cwmgwili, Walter Price of Llwynbrain, Herbert Evans and James Hamlyn Williams; *Shrewsbury Chronicle*, 9 January; *Cambrian*, 7 March; *Carmarthen Journal* 17 April 1829.

elsewhere in Wales remained unsubmitted.[61] Letters to the *Cambrian* from *BENEVOLENS* in support of Brougham and abolition were countered by *AB* and *CD* and the paper war became so intense that in January 1829 the *Cambrian* and the *Carmarthen Journal* closed their columns to correspondence on the subject.[62]

John Balguy's resignation in July 1828 as a judge on the Carmarthen circuit aroused intense speculation and Wellington directed Lyndhurst on 19 July to recommend the best qualified person. On the 21st he suggested John Gurney, William Bolland, William Horne, William Elias Taunton, Serjeant Croft, Frederick Pollock or Scarlett's son-in-law John Campbell (1779-1861).[63] Applications from and on behalf of the Andover MP Sir John Pollen, Sir John Owen's kinsman, the attorney general of the Carmarthen circuit Sir William Owen, the duke of Beaufort's steward and recorder of Bristol and Swansea Ebenezer Ludlow and Jones (whose temporary appointment Lyndhurst seems to have been prepared to sanction), were rejected.[64] Informing the army's commander-in-chief Lord Hill on 23 August that his cousin James Hill would not do, Wellington wrote:

> The Welsh judicature is very much disliked in Parliament and the only mode which I can adopt to save it is to appoint ... those notoriously [i.e. known to be] the best qualified. I entertain no doubt that Mr. Hill is qualified. The question will be whether in the opinion of the heads of the profession he is the most so. If he is not, I am afraid I cannot appoint him.[65]

When filling the post became imperative after the second Carmarthen judge Samuel Hayward suffered a fatal stroke in August 1828, Lyndhurst proposed sending down Bolland, William Kenrick offered to transfer to Carmarthen from the North Wales circuit and the claims of John Law, Ludlow, Basil Montagaue, Serjeant William Rough and Owen were revived before Wellington offered the appointment without pension or compensation rights to the chancellor of the exchequer's brother Edward Goulbourn (afterwards a staunch defender of his court, who complained that its

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61 UCNW, Plasnewydd mss I. 740-52.

62 *Cambrian*, 29 March, 12, 19 April, 31 May, 7 June, 16, 23 August, 25 October, 1, 8, 15, 22, 29 November, 6, 13, 20, 17 December 1828, 3, 31 January 1829.

63 Wellington mss WP1/942/17; 945/5.

64 *Cambrian*, 16 August, 13, 20 September 1828; TNA HO43/26/276, 300; HO43/37, f. 100; Wellington mss WP1/943/7, 8; 947/20; 948/6; BL Add. 40316, ff. 12-16, 1, 29.

65 Wellington mss WP1/951/21.

abolition was a party question). Wellington transferred Clarke on similar terms to Carmarthen and sent Horne to Brecon, holding Ludlow as first reserve.[66]

Unless their submissions were motivated by private interests, respondents were generally reticent to supply the solicited responses to the commission's questionnaires. They readily and often erroneously denied knowledge of the courts and their proceedings, and distanced themselves from this exercise in affirmation by consultation by pleading ignorance and delegating the task to others. For example Glamorgan's favourable responses, including Bute's, were largely drafted by Dillwyn.[67] The result was a vast, apparently well organized, but contradictory and confusing body of text from which the commissioners could select their required information. Shortfalls were also remedied. Thus on 26 December 1828, Bosanquet, who suggested economizing by establishing larger assize districts, wrote asking his former colleague William Owen (who conferred also with his placeman cousin the naval commander and MP for Sandwich Sir Edward William Campbell Owen) to refer in his reply or write specifically to Faulkner of 'the expediency of summoning jurors from more extended districts than the present Welsh counties, with a view to securing their indifference' and to 'the practice of challenging jurors in Wales more frequently than in England'.[68] The proposition (Question 14, Sch A) was put: 'Supposing the Welsh and Palatine Jurisdictions, or either of them, should be abolished, that a correspondent accession of business should accrue to the courts at Westminster and that a new circuit should be appointed, would it not be necessary to add two new judges to the existing number?' The former exchequer baron Sir Robert Graham gave the following unwelcome response, soon submerged in an appendix:

> If you abolish the Welsh and palatine jurisdictions, or the Welsh alone, you must have additional judges: but I cannot bring myself to think that the time is arrived when it is necessary to make so important a change as the total abolition of those auxiliary jurisdictions ... Public opinion makes them a separate order of state. I know no great utility of the Palatines, but the Welsh judicature might be retained, and so improved as to satisfy the country itself.[69]

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[66] Ibid. 952/6; 955/1; 958/13, 15, 19, 24, 32; TNA HO43/36, pp. 276, 300; HO43/37, p. 100; *PP* (1829), IX. 467.

[67] NLW, Penllergaer mss, diary of Lewis Weston Dillwyn, 30 Apr., 25 Oct., 30 Nov. 1828, 6, 15, 21 Apr., 2, 21 May 1829; Bute mss L71/89-95; *PP* (1829), IX. 63, 387.

[68] NLW, Glansevern mss 869a, 1235.

[69] *PP* (1829), IX. 279-80.

Collectively, the replies indicated acquiescence rather than outright approval of the intended change, and the relative cheapness and despatch of the Welsh courts and the utility of *concessit solvere* in debt actions was commended by almost all familiar with them.[70] Responding on behalf of the Denbighshire bench, the MP for Caernarvonshire, Charles Wynne Griffith Wynne of Foelas, gave little away, submissions from Cardiganshire and Carmarthenshire was mixed, but generally hostile; and (as yet) nothing was forthcoming from Radnorshire.[71] A resolution from the justices of the peace of Anglesey categorically opposed change other than the appointment of judges on merit rather than political considerations. Their memorial concluded

> We beg to add that we are attached to our judicature, as the only national privilege that has been left to us as Welshmen; and as one of the ancient institutions of the country, we think that its defects ought to be amended, rather than the whole demolished, unless far stronger reasons can be adduced for it than we are aware of. We adopt the language of the grand jury of Caernarvon, in their resolution at the summer assizes, 1822, "We are anxious for the continuance of our local judicature, subject to such improvements as the wisdom of parliament may think proper to adopt".[72]

Of eight sitting Welsh MPs responding, only Jones and the MP for Beaumaris, Sir Robert Williams, who had vested interests in retaining the courts, opposed their abolition.[73] The 18 barristers and law officers who answered detailed questions in the 'second series' projected the Welsh courts more favourably and, with the notable exception of William Owen, cautioned against intervention until the proposed reform of the English central courts and circuits came to fruition.[74] The Chester judge Thomas Jervis initially refused to respond, citing 'self-interest'.[75] Where circuit routes and suggestions for increasing efficiency by uniting counties were proposed, these

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[70] *Montgomeryshire Collections*, LX. 85-103.

[71] *PP* (1829), IX. 381-417; D.J.V. Jones, *Crime in Nineteenth-Century Wales* (Cardiff, 1992), 15.

[72] *PP* (1829), IX. 414.

[73] Ibid. 381-2 (Thomas Wood), 382 (Robert Williames Vaughan), 386-7 (James Crichton Stuart), 386-7 (Sir Charles Morgan), 386-7 (Sir Christopher Cole), 390-2 (John Jones), 400-401 (Charles Wynne Griffith Wynne), 411 (Sir Robert Williams).

[74] Ibid. 431-5 (John Evans), 440-2 (John Hill), 419 (Thomas Jervis), 427-30 (John Jones MP), 422-6 (William Kenrick), 444-8 BH Malkin, 419-21 (Sir William Owen), 414-5, 477-83 (William Owen), 442-4 (Jonathan Raine MP), 439-40, (Serjeant Russell), 435-9 (Edward Vaughan Williams), 453-60 (R. Whitcombe), 463 (John Wyatt).

[75] Ibid. 417-66.

were copied into the final report; but without the attendant caveats that 'local opposition in the county from which the assize would be removed', and consequent disruption to the office of sheriff and jury service, would 'take very much from the advantage of any change in the jurisdiction'.[76] Before the report was published and circulated to county lieutenants and clerks of the peace (and later the mayors and corporations of assize towns), the duke of Wellington cited its likely recommendation in justification of his decision to leave a vacancy on the Brecon circuit unfilled.[77] Published on 20 April 1829, the 800-page report, denigrated by Charles Williams Wynn as 'that bulky performance', also recommended separate assize circuits for North Wales and Chester and for South Wales, and appointing three additional judges to the central courts in London. Welsh hundreds adjoining Cheshire, Shropshire, Herefordshire and Monmouthshire would be served by the assizes for those counties and the remainder grouped into four districts centred on Bangor, Dolgellau, Carmarthen and Neath.[78] Predicting that the size of the 800-page report and 'technicality of the greater part of its contents may have the effect of deterring all but professional readers from examining it', *The Times*, representing Brougham, summarized the organizational changes envisaged in chancery and common pleas and, failing to grasp that all courts in England and Wales administered English law, it pointed to the absurdity of continuing the Welsh and palatine jurisdictions'.

> The twaddle of antiquaries about the venerable origin of such institutions is worthy of no more consideration than the sordid opposition raised by individuals who profit by their present abuses. The commissioners have dealt with them very patiently, and having heard their reasons for continuing the jurisdictions, have accompanied their own recommendation that they should be abolished with unanswerable arguments... The gentlemen resident in Wales and Cheshire wish that the benefits of the English judicature should be extended to their counties: those who oppose it are "professional persons" and even they admit the necessity of extensive change.[79]

In Wales, support for abolition all but collapsed when it was realised that the commissioners recommended the partitioning and amalgamation of counties, reducing to four the number of Welsh assize towns, and depriving ten county

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[76] Ibid. 391, 408.

[77] Wellington mss WP1/995/9, 29; 997/4.

[78] Glansevern mss 1453; *Cambrian Quarterly Magazine* I (1829), 260; *Hereford Journal*, 22 April 1829, *Salopian Journal*, 22, 29 April 1829.

[79] *The Times*, 21 April 1829.

towns of that status;[80] and the report, Cawdor's 'letter' and alternative proposals dominated the inaugural issues of the *Cambrian Quarterly Magazine*.[81] English counties bordering on Wales objected that providing interpreters and dealing with Welsh jurors and additional business would delay and impair their own proceedings.[82] At their Easter sessions, the predominantly 'Red' grand juries of Cardiganshire and Carmarthenshire and certain Glamorgan magistrates memorialized Peel, their MPs and the commissioners in protest, citing the recent appointment of competent judges to assist their case.[83] On 3 May Peel asked Lyndhurst and Bosanquet to confer with the solicitor general, Sir Nicholas Conyngham Tindal with a view to introducing a bill 'as the best mode of drawing attention to the subject and [to] ensure our being ready to proceed at the beginning of the next session'.[84] However, in the Commons next day Peel resisted pressure from Brougham to legislate forthwith. Welcoming the delay and Peel's decision, Wood spoke of the hostile Breconshire petition in preparation. A crisis meeting of Welsh MPs and peers connected with Wales at the house of Sir Watkin Williams Wynn in St. James's Square on 16 May agreed to collectively oppose the proposed division of counties, and 16, including the Tory duke of Beaufort, his heir the marquess of Worcester, Lord Camden, the Williams Wynns and Sir Christopher Cole, waited on Peel early on the 19th to lodge their protest.[85] Notifying Bosanquet afterwards, Peel enclosed a copy of their memorial, which was intended as a pro-forma petition for adoption by county magistrates at quarter sessions and assizes throughout Wales. He added that their purpose was to object to the

> dismemberment or division of any of the Welsh counties: at the same time that a general concurrence was expressed in the leading principle of the recommendation contained in your report with regard to the assimilation of the Welsh jurisdiction with that of England. Under these circumstances, it may perhaps be advisable with reference to the satisfactory completion of the arrangement contemplated by the commissioners to receive

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[80] Brecon, Beaumaris, Caernarfon, Cardigan, Cardiff, Denbigh, Flint, Haverfordwest, Montgomery, New Radnor. BUT Flint assizes had already been transferred to Mold, Denbigh's to Ruthin, New Radnor's to Presteign and Montgomeryshire's to Machynlleth and Welshpool.

[81] *Cambrian Quarterly Magazine* I (1829), 16-27.

[82] *Hereford Journal*, 22, 29 April; *Salopian Journal*, 22, 29 April; *Chester Chronicle*, 24 April, *Chester Courant*, 28 April 1829; M. Ellis Jones, 'The confusion of Babel, The Welsh Language Law Courts and Legislation in the Nineteenth Century', *The Welsh Language and its Social Domains, 1801-1901*, ed. G.H. Jenkins (Cardiff, 2000), 587-64.

[83] *Cambrian*, 2 May 1829; TNA HO43/37, pp. 212, 286-7, 272-3.

[84] TNA HO43/37, pp. 212-3.

[85] Glansevern mss 905; *Chester Courant*, 26 May 1829.

> with attention and maturely to consider the representations made by parties of such great respectability ... on matters of local convenience and detail, and to postpone the introduction of a bill to carry into effect the principle of the report until the manner of executing it shall have been arranged. I am inclined therefore to request that the commissioners will take advantage of the presence in London of the parties above referred to and will confer with such of them as it may be important to consult, in regard to the best mode of effecting the great object recommended by the commissioners.[86]

Charles Williams Wynn received a copy of Peel's letter on the 20 May, with instructions 'to intimate to the parties who accompanied you to my house, that I have no doubt that the commissioners will avail themselves of the opportunity of personal communication with them'.[87] The home office acknowledged and forwarded protests against county divisions and what they termed 'local changes in the administration of justice' to the commissioners, but Peel informed Jones on 20 May that Carmarthenshire's objections to assimilation were unlikely to be complied with.[88] According to the Williams Wynns, Cawdor approved the pro-forma petition agreed on 16 May. It was rarely adopted. In July, after hearing Sir Watkin's pro-abolition address, and personal assurance that the partitioning of counties would be abandoned, the Denbighshire bench, chaired by the former Whig MP for Denbigh Boroughs John Wynne Griffith, deferred petitioning until the county met at the assize town of Ruthin on 22 September.[89] There, they rejected the pro-forma petition and Sir Watkin's claim that alternate assizes were 'of trifling inconvenience to professional gentlemen; but suitors would have the benefit of unprejudiced jurors, unacquainted with the circumstances of the case until brought before them'. Instead they adopted one modelled on those of Anglesey, Caernarfonshire and the 'Reds', opposing assimilation and advocating remedial action, the retention of *concessit solvere* and administration of justice by the 'judges of the realm'. The grand jury of Flint petitioned similarly.[90] In public defiance of Cawdor, who was 'well baited by the [legal] profession', addresses, memorials and petitions proposed by the 'Reds', were adopted at highly publicized county meetings in Pembrokeshire and Carmarthenshire in October. Cawdor's claims that his proposals would bring additional business to the Carmarthen assizes were disregarded, and his alternative petition for

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[86] TNA HO43/37 258-9.

[87] Ibid. 260.

[88] Ibid. 261-87.

[89] *Chester Courant*, 7 Sept 1829.

[90] Garn mss (1956), J. Edwardes to J.W. Griffith, 11 Sept., Copner Williams to same, 13 Sept.; *Shrewsbury Chronicle*, 25 Sept. 1829; TNA HO43/37, 453.

abolition attracted little support. Haverfordwest, whose assize town status was at stake, also adopted the petition proposed by the 'Reds', but there opinion was more evenly divided and political re-grouping following the concession of Catholic emancipation was also evident. Parliament received the petitions early in 1830.[91] Bute's allies ensured that nothing came of a proposal for a hostile petition from Glamorgan where the proposal to add part of Breconshire to the county and hold the assizes at Neath was disliked and the old Cardiff-Swansea rivalry over the right to hold assizes revived.[92] Merthyr Tydfil on the Glamorgan-Brecon border, opportunistically memorialised Bute, offering itself as an assize town.[93] On 25 November an editorial in *The Times* complained that Welshmen were 'turning Tories' and poured scorn on the deliberations and attendance at a mass meeting at Aberaeron on the 18th, when Cardiganshire's hostile petition was adopted. Libel proceedings in the court of king's bench preoccupied Lyndhurst and the attorney general Scarlett in December, 1829, when Peel responded to a similar Radnorshire memorial (adopted at Presteigne on 24 October) by summoning the county's MP Thomas Frankland Lewis to discuss county dismemberment and *concessit solvere*.[94] Meanwhile Wellington sought to avoid giving grounds for compensation by appointing a prothonotary for Brecon or filling the vacancy on the North Wales circuit caused by Kenrick's death.[95]

The king's speech on 4 February 1830 announced legislation to reform the English law courts, Welsh judicature and Scottish courts (from which Lyndhurst initially dissented).[96] There were acrimonious exchanges in the Lords between Dynevor and Eldon who opposed abolition and defended the great sessions as courts of equity, and Cawdor, Lyndhurst and Bute when the Carmarthenshire petition was received on 25 February, and they clashed again over the Pembrokeshire petition on 26 March.[97] The bill, which was almost invariably dealt with at unsociable hours as a deterrent to its critics and reporters, was introduced in the Commons late on 9 March by Scarlett, who had also drafted it. It was opposed from the government back benches by Jones, Rice Trevor, Sir John Owen and the Cardiganshire 'Red' or Tory MP William Edward Powell (whose brother Richard was chamberlain and chancellor of the Carmarthen circuit). They protested that the bill remained unprinted, presented hostile petitions and disputed claims by Charles Williams

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[91] *Cambrian*, 3, 10, 17 October; *Carmarthen Journal*, 13, 20 November 1829; Bute mss L72/102; TNA HO43/446, 458, 469; *LJ*, LXII. 39, 160; *CJ*, LXXXV. 155-7.

[92] Bute mss L72/106.

[93] Ibid. L72/42, 109.

[94] NLW, Harpton Court mss C/517; *Greville Memoirs* eds. L. Strachey and R. Fulford (1938), i. 95, 204, 346-7.

[95] Wellington mss WP1/1059/48; 1060/3.

[96] Ibid. 1170/1; Phillipson, *The Scottish Whigs and Reform of the Court of Session*, 160-1.

[97] *LJ*, LXII. 39, 160; *The Times*, 26 February, 10, 26 March 1830.

Wynn (then in opposition) that the Denbighshire petition was a minority one. Thus provoked, Williams Wynn persuaded Peel to defer the bill's second reading to allow time for it to be printed and considered by grand juries at the spring assizes.[98] When it was printed on 22 March, it emerged that the proposal to combine and partition counties had not been dropped, but delegated to the 'king in council', empowered 'at any time to appoint such changes to be made in the place of holding the assizes for any such county or counties, or in the combinations of the several counties in Chester and Wales, as well as to combine any of the said counties with a county or counties in England, for the purpose aforesaid, as shall be found most expedient'. The same enabling procedure, conferring power on the crown to legislate further (if necessary) without resort to parliament had been used in the acts of 1536 and 1543 to introduce the system of great sessions into the whole of Wales.[99] The 1830 bill's provisions for debt litigation and regulating the practising rights of barristers and attorneys qualified in Wales were confused. It was also evident that the palatine jurisdiction of Cheshire (including its functions as a court of equity), was to be abolished and that for judicial purposes Cheshire could be united with a Welsh county.[100] The *Chester Chronicle*, which had previously praised the proposed abolition of the Welsh judicature, now condemned it and urged the people of North Wales to flock to public meetings in Anglesey and Caernarfonshire 'where they had excellent lawyers at their disposal' to petition against the measure.[101] On 24 April 1830 the Cheshire magistrates issued a statement that the 'principle and practice of the palatine courts have not been understood by the parties recommending their abolition, but have been confounded with the judicature of Wales, from which they are and always have been totally distinct'. They established a committee of peers, MPs and magistrates connected with Cheshire, under the direction of the county clerk Henry Potts to lobby and represent their interests.[102] The committee publicized their campaign in a 12-point plan, organized petitions and meetings in the Commons, engaged the Ripon MP George Spence (an equity draughtsman) to prepare amendments to the bill and urged MPs known to them, to oppose its details without making common cause with its Welsh opponents. They were to gain little except a concession on eviction law, a verbal assurance that no Welsh county would be joined to Cheshire, and an

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98 *Mirror of Parliament*, 9 March; *The Times*, 10 March 1830.

99 The provision to this effect in the 'second act of union' of 1543 (what constitutional lawyers in the late 19th century called 'the Henry VIII clause'), was later to be cited as a precedent for delegating legislation to the executive by the legislature. P.R. Roberts, 'The "Henry VIII Clause": Delegated Legislation and the Tudor Principality of Wales', T.G. Watkin, ed., *Legal Record and Historical Reality* (London, 1989), 37-49.

100 *PP* (1830), I. 1-9.

101 *Chester Chronicle*, 16 Jan., 24 Apr. 1829, 19 March, 23 Apr. 1830.

102 *Chester Courant*, 27 Apr. 1830; Cheshire and Chester Archives QCX/1/2.

unfortunate anomaly whereby the city sheriffs remained responsible for all executions in the city and county of Cheshire until 1867.[103]

The revived Whig opposition, who from March 1830 met at Lord Althorp's rooms to agree strategy, made no plans to oppose the administration of Justice bill. Brougham endorsed it. Jones, who condemned it as a 'very skeleton of a bill', failed to have its second reading on 27 April postponed; but Frankland Lewis, who had encountered a local furore over the issue at his re-election in March (following his appointment as navy treasurer), cautioned his colleagues in government against adopting a cavalier attitude. Charles Williams Wynn, who praised the bill's objectives, admitted, when challenged by the radicals Hume, Daniel Whittle Harvey and Daniel O'Connell, that it was atrociously drafted. It was also evident that it was largely unsolicited in Wales, where memorials (and petitions) adopted at the recent assizes remained unfavourable.[104] As Cawdor would gratefully acknowledge, Williams Wynn and William Owen had already taken steps to remedy this by procuring a pro-abolition petition from Montgomeryshire, where the grand jury at the spring great sessions had recently petitioned against it.[105] Informed by Owen that dismemberment of counties had been abandoned, a meeting at Welshpool on 27 April petitioned in the name of the county sheriff Henry Adolphus Proctor, reaffirming their grand jury's pleas that Montgomeryshire should remain a 'county of itself', and for the right to retain inexpensive debt collection procedures; but they also criticized the 'restraining statutes of 1773 and 1824' (Rice and Jones's Acts), and requested English jurisdiction.[106]

When reprinted on 3 May, the bill was much altered, but its provisions for the assizes and county divisions were unchanged.[107] For Thomas Frankland Lewis it remained an awkward issue. For his 'distaste for alternating [Radnorshire's assizes] with Brecon' (as subsequently occurred) and sending prisoners there to be tried 'by juries understanding the Welsh language only' was not shared by his local opponents or the grand jury.[108] Writing on 7 May to his brother-in-law the Knighton banker James Davies, he observed:

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[103] *The Times*, 23 July 1830; Cheshire and Chester Archives QCX/1/2 (report by Henry Potts); *VCH Cheshire*, II. 59-60. M. Escott, 'Quo warranto proceedings, county government and the abolition of Cheshire's palatine courts', forthcoming.

[104] TNA HO43/38, p. 304; HO44/19, ff. 380-1; 44/20, ff. 140-1, 177-8; *CJ*, LXXXV. 216, 284; *LJ*, LXII. 228, 320-1, 329, 342, 384, 429, 476; Glansevern mss 1437; *Mirror of Parliament*, 27 April; *The Times*, 28 April 1830.

[105] *Salopian Journal*, 5, 12 26 April 1830; *CJ*, LXXXV. 284; Glansevern mss 7912.

[106] *Salopian Journal*, 19, 26 April 1830; *Montgomeryshire Collections* LX. 98-100; Glansevern mss 1435, 8491; *CJ*, LXXXV. 369.

[107] *PP* (1830), I. 10-18.

[108] Harpton Court mss C/395, 398, 604, 606.

> We are all in an odd state respecting the Welsh jurisdiction and I do not see my way to any sensible result ... The Welsh gentlemen are extremely *impracticable* about it - but all the English Members laugh at our opposition and if the king's death does not stop *everything* the attorney general will carry his measure. With respect to Radnorshire it does not seem to me to be necessary to do more than make the best arrangement we can for ourselves without making common cause with the other counties ... We do not wish to take either business civil or criminal to Brecknock or to have once a year the bother of a mass of Breconshire business to be settled at Presteign. The attorney general said if this arrangement would satisfy us he would include us in the Oxford circuit by which I can deduce he meant to exclude us from the arrangement (whatever it might be) that is made for Wales. Perhaps it might turn out that after a few years the bulk of the business would be moved to Hereford (I never for a moment thought of having an arrangement connecting us with both Hereford and Brecon). If we have one assize of our own singly and in the other half year go to Hereford, I conclude the jurymen and sheriff of Radnorshire would have nothing to do with Herefordshire, that the £50 limitation would be removed and that the intermediate half year we should go as freely to Hereford as if included in that county.[109]

It is perhaps no accident that it was on 10 May, the day before the defenders of the Cheshire court met formally in the Commons, that the London Gwyneddigion and Cymreigyddion established a joint committee (six per society) to campaign for the retention of the Welsh courts.[110] Their petition, from 'Natives of the Principality of *Wales*, resident in and near the Metropolis', was received by the House of Lords on 14 May and the Commons four days later. It asked:

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[109] Ibid. C/605.

[110] The Gwyneddigion were represented by William Davies Leathart (the Society's secretary); William Hughes the secretary of the Cymmrodorion Society); David Lewis; Griffith Jones; Hugh Pierce Hughes and Richard Parry; and the Cymreigyddion were John Lloyd (Einion Môn); Thomas Roberts (Llwynrhudol) the 'father of the society'; Dr. John Morgan; John Jones; Griffith Davies and Thomas Edwards (Caerfallwch), *North Wales Chronicle*, 13 May 1830. The nicety of political lobbying by Welsh expatriates is a subject for separate discussion.

> That the judicial limits of the Principality, as heretofore defined, may not be altered; that responsible Interpreters be appointed, and an epitome of the laws translated into the *Welsh* language; or such other means adopted as ... [Parliament] may deem most effectual for securing the due administration of justice in the Principality, without wounding the feelings of their countrymen by removing those marks which distinguish the ancient *Britons* as a distinct Nation.[111]

By 20 May the bill incorporated arrangements for keeping court records and compensating officials (including Judges Jervis, Raine and Matthew Casberd).[112] Wilbraham, Edward Davies Davenport and Spence strenuously promoted Cheshire's objectives in the Commons debate on 27 May. When Wetherell threatened to kill the bill by adjournment, Scarlett suddenly claimed that he had never liked the dismemberment of counties, although he had no objection to amalgamation. He immediately withdrew the contentious assize provisions and introduced clause W:

> That, until it shall be otherwise provided by law, one of the two judges appointed to hold the sessions of assizes under His Majesty's commission within the county of Chester and principality of Wales, shall in such order and at such times as they shall appoint, proceed to hold such assizes at the several places where the same have heretofore been most usually held within South Wales; and the other such judges shall proceed to hold such assizes at the several places where the same have heretofore been most recently held in North Wales, and both of such judges shall hold the assizes in and for the county of Chester in like manner as in other counties of England.[113]

One hundred-and-twenty-nine votes were cast in favour of the bill's recommittal in the Commons on 18 June and only 30 against. This motley minority, with Sir John Owen and Wetherell as tellers, included all the South West Wales MPs, except George Rice Trevor.[114] Edward Davenport and Lord George Bentink voted with them, and so did Edward Rogers of Stannage and Thomas Assheton Smith of Vaenol, chairmen respectively of Radnorshire and Caernarvonshire magistrates, and the Chester and North Wales bankers Owen

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[111] *LJ*, LXII. 714; *CJ*, LXXXV.

[112] *PP* (1830), I. 19-39.

[113] Ibid. 41-60, especially, 53-55; *Mirror of Parliament*, 27 May 1830.

[114] Jones, Hugh Owen Owen, Bulkeley Phillipps, Powell and Pryse Pryse.

Williams and his brother Thomas Peers Williams and their kinsman Colonel James Lewis Hughes. The remaining 'Cambrian Warriors' were Ultras and radicals committed to opposition.[115] Changes made in committee on 2 July, when Jones again failed to kill the bill by adjournment, concerned judges salaries and Cheshire.[116] At Peel's insistence, on 3 July the cabinet resolved that the bill should be enacted before the dissolution precipitated by George IV's death, with effect from 12 October 1830.[117] It was hurriedly dealt with in the Commons on 6 and 7 July, when Scarlett introduced several verbal amendments, and Hume failed (by 37-11) to carry another one reducing judges' salaries. The Lords complained that they received the bill full of errors.[118] On 10 July Peel sent a dismissive reply to W. John Lloyd, Bard to the Society of Ancient Britons, who had deigned to criticise the measure.[119]

Moving its second reading in the Lords on 13 July, after further hostile petitions had been presented, Lyndhurst painted a bleak picture of the Welsh courts. Surprisingly, Eldon barely defended them and instead criticized defects in the Scottish judicature bill (against which he lodged a protest on the 14th).[120] When Lord Tenterden had the bill committed on 16 July, Grosvenor explained that Chester's objections, couched in a petition of 28 May, no longer applied, but Skelmersdale (Bootle Wilbraham) complained that it was 'improper' to dissolve the great sessions and the palatine courts 'at once' and so deprive the Welsh of local courts where 'justice is now promptly and cheaply administered'. Eldon complained that the bill 'was more like a string of resolutions [adopted] at the *London Tavern* than an act of Parliament' and called for better arrangements for keeping the courts' records. A clause transferring Welsh curistorial business to London and Middlesex was added that day, another extending the law terms, so that rulings could (as hitherto) be provided in vacation was 'struck out', and Tenterden slipped in an amendment making evictions easier for landlords to manage.[121] A late petition from Pembrokeshire (19 July) vainly urged the Lords to reject the measure.[122] Presenting the Lords' amendments to the Commons, 22 July, Scarlett claimed

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[115] Matthias Attwood, Henry Bankes, Viscount Encombe, Arthur French, Thomas Bicliffe Fyler, Daniel Whittle Harvey, Sir Robert Inglis, Sir Edward Knatchbull, James Lambert, Daniel O'Connell, Charles Fyshe Palmer, Michael Thomas Sadler, Hugh Morgan Tuite, Edward Webb, Henry Robert Westenra and Henry White (Baron Annaly).

[116] *The Times*, 2 July 1830.

[117] Wellington mss WP1/1166/8, 1124/4, 1170/1.

[118] *Mirror of Parliament*, 6, 7 July 1830.

[119] TNA HO43/38, pp. 409, 459.

[120] *Mirror of Parliament*, 13 July; *The Times*, 14, 15 July 1830; Law, Edward, Lord Ellen borough, *A Political Diary*, ed. Lord Colchester (London, 1881, 2 Vols.) [Hereafter *Ellen borough Diary*], II. 303, 308. The lord advocate Sir William Rae had threatened resignation if the Scottish bill was not enacted before the dissolution.

[121] *Mirror of Parliament*, 16 July, *The Times*, 20 July 1830; *Ellenborough Diary* II. 312.

[122] *LJ*, LXII, 905,

that the definitive objects of the bills were unchanged; and promised remedial legislation 'next parliament' to restore to Wales the facility for rapid judgement during vacations.[123] Backed by Edward Davenport, Charles Williams Wynn requested an immediate Lords' conference on their amendments, and Spence, referring to recent petitions, produced alternative clauses for consideration. Fearing delay, Scarlett and Peel, who was already bitter at the cabinet's decision to abandon the Scottish judicature bill, refused to sanction it. Williams Wynn accordingly lodged an 'individual protest against the principle of agreeing to amendments for which no reason has been given'.[124] The bill received royal assent 'by commission' (i.e. in the king's absence) on 23 July 1830, immediately before the dissolution and the 'retiring' judges were commended in memorials adopted at the summer assizes.[125] Wales had lost its last remaining distinctive national institution, and in terms of its judicature the Union with England could be said to be complete.

The Administration of Justice Act was an issue at the 1830 general election in most Welsh constituencies. Candidates who, like the Williams Wynns, had supported it, publicly acknowledged that they done so despite their constituents' opposition to the measure. They made no apology for this; but they conceded the Act's imperfections and promised remedial legislation. Tellingly, they tacked the issue to the repeal of the Test and Corporation Acts and Catholic emancipation, 'benevolently' and popularly conceded by the Wellington ministry since the last election in 1826. Carmarthen, where the high sheriff Rees Goring Thomas claimed that Jones had 'annihilated the Blue-Red divide', raised a public subscription defray his election costs.[126] The fate of the Welsh courts was eclipsed as a petitioning issue by the 1830-3 campaign for the abolition of colonial slavery, which the Wesleyan and Welsh Calvinistic Methodists strenuously supported; and by parliamentary reform, which in Wales left even the smallest contributory boroughs enfranchised under the 1832 Act.[127] In March 1832 the *Caernarvon Herald*, which was campaigning to anglicise juries by raising the qualification threshold for jury service, rightly complained that all but the most pressing defects of the 1830 Act remained unaddressed - as indeed proved to be the case until the legal

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[123] *Mirror of Parliament*, 22 July. A note in Wellington's hand indicates that corrective legislation was intended when his ministry was brought down in November 1830; Wellington mss WP1/1124/4, 9.

[124] *The Times*, 23 July 1830; P.C. Scarlett, *Memoir of Rt. Hon. James, first Lord Abinger*, 121.

[125] *Cambrian*, 28 August 1830.

[126] Ibid. 7, 14 August 1830.

[127] D.W. Wager, 'Wales and Parliamentary Reform, 1780-1832', *WHR* vii (1974-7), 436-47. The House of Lords alone received 270. anti-slavery petitions from Wales between November 1830 and April 1831.

reforms of the 1840s and beyond.[128] The symbolic significance of the courts of great sessions, the mode of their abolition, and subsequent 'contemptuous neglect' of Welsh issues, was highlighted by the London Welsh Societies in the 1830s and 40s. It remains an emotive and important topic in Welsh history and historiography.

[128] *Caernarvon Herald*, 3 March 1832; *North Wales Chronicle* 27 March 1832; R.T. Jenkins, *Hanes Cymru yn y bedwaredd ganrif ar bymtheg* (Caerdydd, 1933), 90-100.