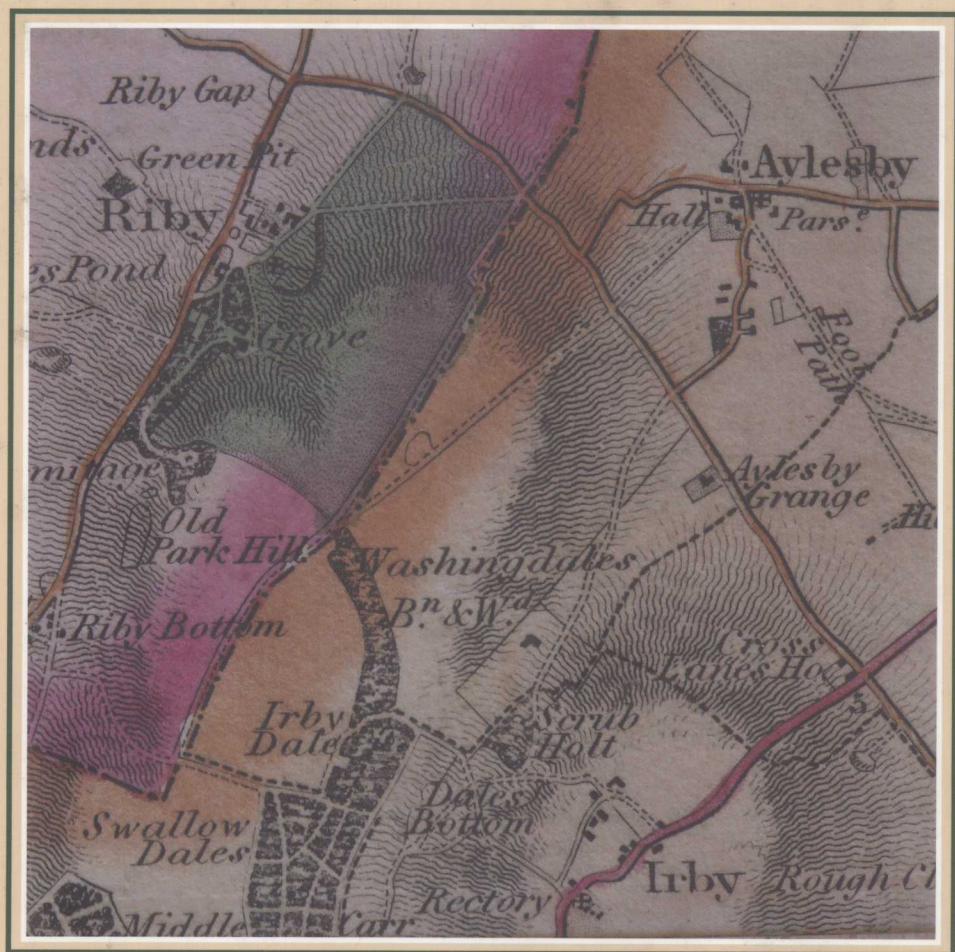


The Country Justice and the Case of the Blackamoor's Head

The Practice of the Law in Lincolnshire,
1787-1838



Edited by
B. J. DAVEY and R. C. WHEELER

THE COUNTRY JUSTICE
AND THE CASE OF
THE BLACKAMOR'S HEAD
THE PRACTICE OF THE LAW
IN LINCOLNSHIRE, 1787-1838

PART I:
THE JUSTICE BOOKS OF THOMAS DIXON OF RIBY, 1787-1798

EDITED BY
B. J. DAVEY

PART II:
PAPERS IN THE CASE OF *THOROLD v. CATYON*, 1830-1838

EDITED BY
R. C. WHEELER



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PREFACE

The Society is most grateful to the respective depositors for permission to publish the documents printed in the two parts of this volume. Thanks are also due to the staff of Lincolnshire Archives for their ready assistance.

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Nicholas Bennett
Hon. General Editor

ABBREVIATIONS

CKS	Centre for Kentish Studies
LAO	Lincolnshire Archives
LRS	Lincoln Record Society
RO	Record Office
RS	Record Society

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**THE JUSTICE BOOKS OF THOMAS DIXON
OF RIBY, 1787–1798**

**EDITED BY
B. J. DAVEY**

INTRODUCTION

The Justice Books of Thomas Dixon of Riby, 1787–1798

Thomas Dixon was the only Lincolnshire magistrate to leave records of his work ‘out of sessions’. In three small ‘Justice Books’ he noted all those petty crimes and disputes brought to ‘my house at Riby’ between his appointment to the Bench in 1787 and his death in 1798. Unique for Lincolnshire, such records are rare nationally and only a handful have been published.¹ Dixon’s books are brief. The first, hardback, predominantly contains summary convictions and commitments to the houses of correction during the early years of his magistracy. The other two are much smaller softback pocket-books, mainly formal records of ‘Informations and Complaints’ heard between

¹ Lincolnshire Archives Office (LAO), Dixon 8/1/1–4. The most relevant published notebooks are: Alan F. Cirket (ed.), *Samuel Whitbread’s Notebooks, 1810–11, 1813–14* (Bedfordshire Historical RS 50, 1971); Elizabeth Silverthorne (ed.), *Deposition Book of Richard Wyatt, JP, 1767–1776* (Surrey RS 30, 1978); Elizabeth Crittall (ed.), *The Justicing Notebook of William Hunt 1744–1749* (Wiltshire RS 37, 1982); Michael McGarvie (ed.), *The King’s Peace, The Justice’s Notebooks of Thomas Horner of Mells, 1770–1777* (Frome, 1997); Gwenda Morgan and Peter Rushton (eds), *The Justicing Notebook (1750–64) of Edmund Tew, Rector of Boldon* (Surtees Society 205, 2000). There is a good list of unpublished sources in Douglas Hay, *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, 2004), 75n. Hay’s list includes the notebooks of: Sir William Bromley (Warwicks RO, CR 103), part published in *Warwick County Records* 9 (1964); Sir Roger Hill (Bucks RO, D/W 97/8/8), extracts published in *Records of Buckinghamshire* 17:3 (1963), 182–188; Devereux Edgar (Suffolk RO, qS 347.96 and HA 247/5/4); Sir Thomas Ward (Warwicks RO, CR 162/688); Sir Gervase Clifton (Nottinghamshire Archives, M8050–51); The Reverend Henry Gorges Dobyns Yate (Hereford and Worcester RO, BB88/1); George Turner (Suffolk RO, HD 258/1). S. K. Sullivan, in ‘Violence, local magistrates and the informal law 1700–1833: magistrates and mediation in Kent’, in M. Adams, D. Barker and K. Poludniewski (eds), *Law and Public Policy: Taming the Unruly Horse?*, Australasian Law Teachers’ Association, 62nd Annual ALTA Conference, University of Western Australia (2007), draws attention to the riches of magistrates’ notebooks and papers in Kent: see Centre for Kentish Studies (CKS), TR 1564/1 (William Brockman, 1689–1701 and 1713–24); U442/045 (Paul D’Aranda, 1707–9); TR 1564/1 (James Brockman, 1725–67); U951/04 (Wyndham Knatchbull, 1734–47); U120/09 (notebook) and U120/011 (papers) (Edward Filmer, 1740–54); TR 1564/1 (Ralph Brockman, 1770–81); U2802/01 (A. Bradley, 1817–19); U951/05–06 (Edward Knatchbull, 1819–22 and 1830–35); U1482/01 (D. James, 1820–26); U2639/01 (Montagu Pennington, 1809–33); Bromley Records Office (BRO), U310/014 (William Emmett, 1711–37); U310/014 (G. Norman, 1792–1802).

1793 and 1798. In all there are entries concerning just over one hundred cases, most in Dixon's hand. The text below also includes information from: the local press, Lindsey Quarter Sessions minutes and rolls, calendars and accounts of the keepers of the houses of correction, parish officers' accounts and Dixon's other notebooks relating to his domestic and farming affairs. Although brief, Dixon's books are of interest, not only because of their rarity, but also because they appear to differ significantly from other known records. As such, they make a contribution to recent debates about magistrates and summary justice in the eighteenth century.

Summary Justice in the Eighteenth Century

Traditionally, magistrates have received a harsh press. It is almost obligatory to begin with Fielding's country justice who committed two men to the house of correction for cutting a twig: 'and with great lenity too; for if we had called it a young tree they would have been both hanged'.² Savagery was matched by injustice. The Hammonds' example was the Duke of Buckingham, who 'tried and convicted a man of coursing on his estate. The trial took place in the duke's kitchen: the witnesses were the duke's keepers.'³

Such anecdotes need to be placed in a wider context, for summary justice was only one part of the criminal law. The most serious offences were tried at Assizes. Twice every year, in March and July, the king's judges came to Lincoln. Escorted into the city by the sheriff and 'forty spearmen in blue uniforms', they were met by the leading gentry of the county who not only acted as the grand jury in the coming trials, but gathered for the social commotion of assize week, to manage county property, orchestrate coming elections, to dance, to gamble and to marry off sons and daughters.⁴ The judicial business opened with the assize sermon in the cathedral, the robed judges then leading a procession across the bail to the castle. Those prisoners who had been held in 'The Pit', the notorious subterranean dungeon below the gaoler's house in the castle yard, were 'delivered' for swift trials. The proceedings ended with the black cap or the white gloves, and were often completed some days later by the grisly ritual of executions.

For the Victorians, looking back from their more ordered arrangements of police and reformatory prisons, eighteenth-century Assizes were part of 'the bloody code', the savage and chaotically ineffectual attempt to control an unruly age by arbitrary terror. In 1975 Douglas Hay challenged this view in a striking and still influential essay, the starting-point for much modern

² Henry Fielding, *Joseph Andrews* (1742), quoted in John Rule, *Albion's People: English Society 1714–1815* (London, 1992), 227.

³ J. L. and Barbara Hammond, *The Village Labourer 1760–1832* (London, 1911), 14.

⁴ C. M. Lloyd (ed.), *Letters from John Wallace to Madam Whichcot*, LRS 66 (1973), 33.

discussion.⁵ He argued that the eighteenth-century criminal law was in fact a sophisticated and powerful system for upholding the authority and therefore the property of the rich. The essential means by which it achieved this were first, the ceremony and theatre of Assizes; second, the widespread and selective use of reprieves which encouraged dependence on those with the influence to achieve them; and third, the hanging of an occasional lord to maintain the deeply held idea that, in England, all were equal before the law. As Hay put it:

It was easy to claim equal justice for murderers of all classes, where a universal moral sanction was more likely to be found. ... The trick was to extend that communal sanction to a criminal law that was nine-tenths concerned with upholding a radical division of property.⁶

Such elements of the law created the ideology, the 'mind-forged manacles' which 'allowed the rulers of England to make the courts a selective instrument of class justice' by which, with very limited resources, the few governed the many.⁷

Although powerful and stimulating, Hay's thesis was not without difficulties. It was essentially an interpretation of assize proceedings. The problem with this was that fewer than twenty per cent, at most, of crimes and disputes were heard at Assizes. The remainder, the vast majority, were heard before local magistrates in Quarter Sessions. Studies of the copious records of these courts reveal a very different picture. Unlike Assizes, where property offences dominated the calendars, the most numerous cases tried by the magistrates in Sessions were assaults, with other inter-personal disputes like 'master and servant cases' also figuring largely. Further, in many cases the prosecutors were relatively poor, sometimes surprisingly poor: many were ill-treated servants and battered wives. In the eighteenth century these socially weaker and often illiterate people had to bring and conduct their prosecutions personally. That they did so was remarkable, and surely an indicator that they had confidence in the system. These and other features of Quarter Sessions led Peter King to conclude that, far from being an instrument of class justice, 'the criminal law may more fruitfully be described as a multi-use right within which various groups ... conflicted with, cooperated with and gained concessions from each other'.⁸

⁵ D. Hay, 'Property, authority and the Criminal Law', in Douglas Hay *et al.*, *Albion's Fatal Tree: Crime and Society in Eighteenth-century England* (London, 1975), 17–63.

⁶ *Ibid.*, 26.

⁷ *Ibid.*, 48.

⁸ Peter King, 'Decision makers and decision making in the English criminal law, 1750–1800', *Historical Journal* 27 (1984), 53. For the evidence of Lincolnshire (Lindsey) Quarter Sessions see B. J. Davey, *Rural Crime in the Eighteenth Century* (Hull, 1994).

Of course, such a conclusion was not compatible with traditional views of magistrates as local tyrants, and in two more recent important studies of summary justice King has argued for a much more complex picture of what happened in justices' parlours and at Petty Sessions. As part of his analysis he emphasises the great discretion which magistrates employed at initial hearings. Even in property offences Justice Samuel Whitbread of Bedfordshire 'clearly used his discretion in every case', exploring possibilities beyond simple conviction or committal for trial. William Hunt of Wiltshire went further, showing 'an even greater preference for informal settlement'.⁹ As in the discussion of Quarter Sessions, King also demonstrates high 'plebeian usage' of the summary courts: 'Half of all cases heard by Whitbread ... involved either poor-law or master-servant disputes. In the former case, 83 per cent were instigated by ... paupers. In the latter case very nearly two-thirds were initiated by servants.'¹⁰ Further, poorer prosecutors were adept at 'triangulation', managing their rulers by taking overseers and employers before the local magistrate.¹¹

Certainly King warns us that 'At heart the eighteenth-century summary courts were not exclusively, or even primarily, mediation centres or arbitration tribunals ...' and when employers brought cases before local magistrates they did so within 'structures of social expectation which usually operated decidedly in their favour'.¹² However, he maintains his earlier view of the eighteenth-century criminal law as a 'use-right': if the summary courts were not 'neutral tribunals available to all' ... 'the spectrum of roles played by the summary courts ... meant that almost every social group could and did make strategic use of these judicial forums'.¹³

Hay has also given much attention to summary justice in recent years, and found little to challenge his view of the law as an instrument of class justice. He reminds us that 'in virtually all cases, magistrates were prosperous, or very wealthy' and that some of them were exceptionally harsh. He cites the Norfolk justice Thomas Hoseason who, in 1811, heard a case against one of his own employees, struck the man in the face, and sentenced him to a month in the house of correction, 'with twenty lashes'. For Hay, this is just one example of widespread 'oppressive magisterial activity of the most flagrant kind'.¹⁴

⁹ Peter King, *Crime, Justice and Discretion in England 1740–1820* (Oxford, 2000), 88.

¹⁰ Peter King, 'The summary courts and social relations in eighteenth-century England', *Past and Present* 183 (2004), 145.

¹¹ *Ibid.*, 162.

¹² *Ibid.*, 156.

¹³ *Ibid.*, 161.

¹⁴ Douglas Hay, 'Patronage, paternalism and welfare: masters, workers and magistrates in eighteenth-century England', *International Labor and Working Class History* 53 (1998), 29, 40–44.

A further important part of Hay's argument has been his use of the records of the houses of correction, showing that even where magistrates' notebooks are lacking, 'one thing we can count ... is how many men and women were committed to prison', and he finds multitudes there who must have been committed at summary hearings.¹⁵

Especially, Hay has explored the use of master and servant acts. This legislation was tightened in the eighteenth century so that by Dixon's time an erring servant could be sentenced, by a single justice sitting alone, to three months in the house of correction. Hay shows that it was extensively used, concluding that 'magisterial practice reinforced that social structure and the exploitation on which it was built'.¹⁶ This latter point is of particular interest in the study of Dixon's notebooks because he appears to have spent much of his time hearing master and servant disputes. However, it is important to examine the context of his practice because in many respects he was not a typical magistrate.

Thomas Dixon (1729–1798)

In a county Bench dominated by substantial landowners and clergymen, Dixon was a successful tenant farmer, risen from local yeoman stock. Although he became wealthy enough to live the life of a landed gentleman, he preferred to be, and remained to the end of his life, a working farmer with deep roots and many connections in the local farming community. On the day he was sworn in as a JP, he made two entries in his account book:¹⁷

October 2 1787. Quallified at Gainsborough Sessions to Act as a Justice of the Peace in and for the Parts of Lindsey.

Sold to Mr William Richardson of Willerton when I was at Gainsborough Sessions 119 drape ews out of which there was fifty double gimbers and old ews sixty-nine, in all 119 at 17s 6d per head £104 2s 6d

While he was proud to be a justice, there seems little doubt which of the day's business he considered more important and which, for him, really justified the sixty-mile round trip to Gainsborough.

Thomas Dixon was born in 1729, the only surviving child of William Dixon, a successful farmer who built up sizeable estates at Holton-le-Moor

¹⁵ *Ibid.*, 36; Douglas Hay, *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, 2004), 95.

¹⁶ Hay, 'Patronage, paternalism', 44.

¹⁷ LAO, Dixon 4/1: Account Book of Thomas Dixon of Riby, 1755–98.

and elsewhere.¹⁸ Young Thomas was educated locally, probably at Market Rasen, and in 1753 he took a holding of 670 acres of mainly grazing land at West Firsby. In 1758 he moved to Riby to occupy a mixed farm of 770 acres and here he remained for the rest of his life. He might have chosen otherwise. On the death of his father in 1781 he inherited 1750 acres in Holton-le-Moor, Thornton-le-Moor and Normanby-by-Spital, as well as properties in the Marsh around Skidbrooke. He built a substantial new house as the capital of these estates at Holton but sent his son William to live there. Thomas remained at Riby in a brick and apparently thatched farmhouse where his wife made do with only two maids and a boy. It has been described as 'a kindly if perhaps frugal household'.¹⁹

In 1755 Dixon had married Martha Walkden, daughter of a local clergyman. Her father, Thomas Walkden, seems to have acted as a 'useful ... stand-in vicar' and at one time or other in the eighteenth century was presented to several local livings by the aristocratic Pelham family. However, Mr Walkden lived on, and worked, a small farm at Great Limber, five miles from Riby. Thus Martha probably shared Dixon's preference for a relatively modest lifestyle. They had six surviving children whose careers are an interesting reflection of Thomas Dixon's preferences and ambitions. The eldest boy, William, was established as a farmer in the new house at Holton-le-Moor. He grew up to be a deeply religious, practical and parsimonious man with an almost consuming sense of personal responsibility for the local community. He played a leading role as a layman in the Church of England and founded the Caistor Society of Industry. This established a workhouse for the district and co-ordinated local organisations like friendly societies and the Caistor Matron Society, which encouraged Sunday schools. Although a wealthy man he 'studiously retained the habits and manners of a plain farmer'. Intensely serious, he sought to 'spread the light of the Gospel, and at the same time keep down the rates'. It is said that he had no great affection for his father, who charged him interest on the cost of the house at Holton, and that he was especially shocked and disappointed by his father's will, under which he was to inherit the house and main estate at Holton only after the death of his mother. The only surviving letter from Thomas Dixon to son William gives no trace of animosity. It is clearly a letter from a father to a son, giving practical instructions about the movement of sheep, but it begins 'Dear Son' and ends 'I am your affectionate father ... PS Remember me to your fireside'.²⁰

Two younger sons were both given expensive university educations, were ordained and had livings purchased for them by their father. Thomas junior

¹⁸ The following paragraphs on Dixon's life and family are *ex.inf.* Dr R. J. Olney, and from Lincolnshire Archives Committee, *Archivists' Report* 22 (1971), 18–26.

¹⁹ T. W. Beastall, *The Agricultural Revolution in Lincolnshire* (History of Lincolnshire 8, 1978), 111.

²⁰ LAO, Dixon 7/5/19: Letter from Thomas Dixon to William Dixon (18 April 1794).

became Rector of Laceby (and later also a JP) and Richard was Rector of Claxby-with-Normanby. A daughter, Martha, died in 1784 at the age of twenty-one. The three surviving girls each received dowries of £3000 in money or land and all chose successful farmers or tradesmen for husbands. Rachel married a Gainsborough merchant, Jane a seed merchant from Brigg, and Ann a farmer who took over at Riby after Dixon's death. Thus the family certainly had and enjoyed wealth but for the most part they preferred a working, relatively frugal daily life and their connections and ambitions were local.

Although Thomas Dixon styled himself 'esquire' he certainly had no appetite for the cultivated inactivity of the landed gentry, or passion for their sports. He was always busy and his papers give the impression of a man who enjoyed the company of, and dealing with, other local farmers and businessmen, happier at Caistor market than he was in the drawing-room or on the hunting field. Apart from his own holding, he managed farms for two other landlords: he was Lincolnshire agent for T. F. Mackenzie who had properties at Somerby (near Gainsborough) and at Humberston, and in Riby he looked after the estate of his wealthy but not very practical neighbour, Marmaduke Tomline. Such tasks involved not only farming but a good deal of quasi-legal work in the buying, selling and administration of land.

Dixon also shared his neighbours' burden of filling the humble and troublesome parish offices. In a small village like Riby there were so few farmers that most of them had to take one of these offices each year, and Dixon was no exception. Almost every year between 1758 and 1787 he served as Churchwarden, Constable, Overseer of the Poor, or Surveyor of the Highways. In 1785 he wrote testily in the Parish Book: 'Thomas Dixon, Constable & Churchwarden, and out of pocket eleven shillings and one penny on account of being Surveyor of the Highway for the year 1784'.²¹ Such wide experience of agricultural and parish affairs no doubt prepared him for his later more exalted public appointments as Land Tax Commissioner in 1769 and Justice of the Peace in 1787.

He also found time for wider business and political activities, especially those based at Caistor. In 1792 his name headed the list of ten 'Gentlemen, Land-Owners and others' who met at the George Inn to raise a subscription for 'the intended canal' from the river Ancholme to Caistor. Although the accounts and papers of this venture have been lost, the canal was built and the newspaper advertisements of its progress suggest that Dixon played a leading role.²²

Every January he attended the Talbot Inn for the annual meeting of the Caistor Association for the Prosecution of Felons. In return for a subscription

²¹ LAO, Riby Par 7/1: Riby Parish Book, 1742–1856.

²² [*The Lincoln, Rutland and*] *Stamford Mercury*, 28 December 1792. See also Christopher Padley, 'Caistor Canal', *Lincolnshire History and Archaeology* 44 (2009), 5–22.