the Roman law is well known. Accordingly in 1503, the court of daily council., which was essentially a revival of the former court of the session, was established by means of Bishop Elphinstone. And at length, whilst the kingdom was yet in a state of distraction from the fatal losses at Flod­den, the present Court of Session or College of Justice was instituted ; and of the numerous attempts of the clergy to establish the Roman law as the common law of the land, this was the last and most successful.

According to the simple principles of our old law, all suits originated by plaint, claim, or summary application to the judge, setting forth the cause of action; and the judge was bound of common right to administer justice therein. But afterwards, a maxim was introduced that the judges were substitutes of the crown, and consequently should take cog­nisance only of what was specially referred to them. Brieves or mandatory letters from the king to the judges were then invented ; and the chancel of the royal chapel became the great *officina justitiæ,* the shop or mint where the king’s writs were framed, and sold out to parties injured, according to the exigency of the case. These writs issued out from the chancel or chancery until the institution of the College of Justice, when the chancellor and clergy, who were the principal judges there, began a mint or shop of their own in the *Bill chamber* of the court, so called because the brieves, or, as they are here termed *letters,* issue out, not on the oral application of the party, but on his “ bill” or written supplication. This course of proceeding was adopted from the court of Rome ; and it is observable, that in both cases the language employed is sometimes identical. Thus, when the request or prayer of the bill is granted, the judgment is, *Fiat ut petitur,* which are the very words used by the Pope in the like case ; and tire odd phrase, “Finds the letters orderly proceeded,” is but a verbal translation of the *Male appellatum et bene processum* of the papal court. The names of the letters are also the same, letters of advocation ion, suspension, and reduction, being equally well known in both places ; and letters of horning, caption, and relaxation, have their papal origin impressed upon them. The comparison might be carried through our whole process to its minutest technicality, and also to the style and habit of the judges. After the manner of the ecclesiastical tribunals, too, the judges deliberated in secret conclave with shut doors, parties and their counsel, and all others being removed (1537, c. 66); and there was no report of the judges’ opinions, or of the reasons of the judgment, but only of the vote or sentence. At the Revolution, however, the court was thrown open ; but so powerful is custom over all men, that to this day the great body of the practitioners continue to walk the Outer House.

In modem times the court has been altered in almost every particular; its constitution and jurisdiction, the num­ber of the judges, the distribution of the business, and the forms of proceeding. The machinery was indeed bad, but the spirit which pervaded it was worse ; and the best anti­dote to this would perhaps be the full force of public opi­nion, that is, perfect publicity, not merely of hearing and judgment, but of every step in the administration of justice.

According to its first institution, the court consisted of a president and fourteen ordinary lords, half of the temporal estate and half spiritual, of which the president likewise was one. The Lord Chancellor, who was also an ecclesi­astic, was made principal of the college, as it was termed, and as such had a vote with the judges; and there was a

reserved power to the king to appoint, at his pleasure, three or four extraordinary lords, a power which the crown always exercised, and also sometimes greatly abused. It was the Reformation which gave the first blow to the court. From that event it began to lose its ecclesiastical, which had been its earliest and most distinguishing feature. The Re­volution followed, and opened up to the public eye the here­tofore secret tribunal. And at the union with England it ceased to be supreme, though this last peculiarity, and that by which *the Lords* became so formidable in the country, was long struggled for, and is yet perhaps but imperfectly given up by the court. These important changes, how­ever, affected the spirit and character of the court, rather than its external form, which remained much as it was be­fore. But they prepared the way for alterations there too ; and during the last thirty years, a great number of public statutes have been passed, altering the details of the court, and otherwise regulating the administration of justice throughout the kingdom.

In 1808, the commencement of the period just referred to, the court was formed into two divisions; or, in effect, two communicating but equal and independent courts. The reason assigned for this change, was the greatly increased number of lawsuits from the great extension of agriculture, commerce, manufactures, and population, and the conse­quent multiplication of transactions in Scotland. There is every ground to believe, however, that much of the suppos­ed business was caused by the tedious methods of proof and written pleadings adopted by the court, and its endless judg­ments and rehearings; for in the degree in which these have been abolished, the court has been able to absorb and dis­patch the business of the other superior courts, and still to allow a decrease in the number of its judges. These are now only thirteen in all. Each division is composed of four judges ; the Lord President, who is properly head of the whole court, presiding in the First Division, and the Lord Justice-Clerk presiding in the Second. The remaining judges sit separately in the Outer House, as Lords Ordi­nary. This term was originally given to all the judges un­der the president, and they served in the Outer House by rotation; but amongst other recent changes, the five junior judges were at first made permanent Lords Ordinary, as attached to a particular division of the Inner House, but now without any such relation. The junior or youngest Lord Ordinary of all is Ordinary on the Bills, and has a peculiar class of cases assigned to him. But it is to be ob­served, that from him, and from the other Ordinaries, an ap­peal lies, or a proceeding in the nature of an appeal, to the Inner House; which, besides this appellate, has also some original jurisdiction. It is not necessary to add, that there is much imperfection in this whole system of judicature. There appears to have been little unity of design in its formation ; there is considerable complexity in its actual working, and there is no great satisfaction in its results.@@1

Let us now turn our attention to the local courts through­out the kingdom.

In early times the realm was divided into provinces, clan­ships, or counties, in each of which was a maormor, maor, mayor or mair, as the king’s executive and ministerial officer; and in every county or province there were divers judges, each exercising judicial functions. The provinces and ju­dicial districts of those times, however, are now but imper­fectly known; and, as might be expected, the series of mayors and judges cannot by any means be made out. With re-

@@@1 In the year 1800, the number of causes enrolled in the Outer House, was 2413 ; in 1810, it was 2643 ; in 1820, it was 2069 ; and in 1831, it was 1056. In the years 1836 and 1837, the business stood thus :—

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|  | **Decrees in force** | | | **Reclaiming Notes** | **Decrees in force** | **Average Number of Appeals** |
| **Year.** | **Causes Enrolled.** | **Decrees in Absence.** | **by Lords Ordinary.** | **to Inner House.** | **by Inner House.** | **to House of Lords.** |
| 1836. | 1.770 | 546 | 710 | 456 | 382 | **45** |
| 1837, | 1,565 | 564 | 600 | 356 | 375 | **45** |