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Sir John Randolph's King's Bench Reports 1715 to 1716

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SIR JOHN RANDOLPH'S
KING'S BENCH REPORTS
1715 to 1716

Edited by
W. Hamilton Bryson

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Preface

The editor would like to acknowledge contributions of the following persons who helped make this book possible: While these words may sound trite to many, those who have spent time with me will agree. John M. Hemphill was the first to realize the importance of this manuscript, which he discovered in the possession of J. D. Sowerby or anyone else. Only some of the insights of John M. Hemphill and others have been able to make the project possible. I want to express my appreciation to Gerard W. Gawalt and Charles Kelly, who have been instrumental in locating the manuscript, which has had a significant impact on the project. Without their assistance, this effort would have been impossible.

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SIR JOHN RANDOLPH

John Randolph was born circa 1693 at Turkey Island, Henrico County, Virginia.¹ His father was William Randolph (1650-1711), who came from Morton Morrell in Warwickshire, England, to Virginia in 1674, married Mary Isham (c. 1659-1735) of Bermuda Hundred, Henrico County, Virginia, served as Attorney General of Virginia, and established a large family and a large fortune. John Randolph's education began at home under a tutor, who was a protestant clergyman, a Huguenot refugee. When he was twelve, he entered the College of William and Mary in nearby Williamsburg. Here, he succeeded in his studies to the point of being first scholar in 1709.² He remained at William and Mary until 1711 or 1712.

On October 1, 1712, the governor of Virginia appointed Randolph king's attorney for Charles City, Henrico, and Prince George counties. There is no evidence remaining of his legal studies, but he must have been seriously reading law to have been given this appointment. His father and one of his older brothers, William (1681-1742), were lawyers. His friend, William Byrd, II (1674-1744) of Westover, had the best law library in America, and this was available to Randolph, as well as whatever law books his father and brother had. After two years in the practice of law, he decided to further his legal education and professional prestige by additional legal study in London. In the autumn of 1714, he sold over 500 acres of land to finance this venture, and soon thereafter; he embarked for England.

On May 17, 1715, he was admitted a student at Gray's Inn.³ At this time, the inns of court controlled the admission to the


² W. Byrd, II, The Secret Diary of William Byrd of Westover, 1709-1712 (1941), pp. 317-318 (John Randolph had made "great progress" in Greek), p. 433 (Randolph was first scholar).

³ J. Foster, Register of Admissions to Gray's Inn, 1521-1889 (1899), p. 360.
practice at the bar in England; however, legal instruction in the inns had ceased some seventy-five years before, and legal education, in fact, was a matter of reading law under the direction of a practicing barrister and observing proceedings in court. Randolph’s reports begin Easter term 1715; thus he began the serious study of law soon after his arrival in London and even before his formal admission to Gray’s Inn. He did not come to London without friends and connections. Two of his older brothers, Isham (1687–1742) and Edward, were living there at the time, and his late father’s business associates would have received him warmly.

Although we do not know the name of the barrister in whose chambers Randolph studied, the existence of his reports shows that he diligently attended the courts, observed the proceedings there astutely, and made careful notes. Several of the reports end with lists of cases cited; perhaps these notes were compiled so that he could later read these cases in his master’s library. The judges and lawyers observed and reported were of the highest caliber and furnished excellent examples for his own future law practice. Sir Thomas Parker (d. 1732), chief justice of the king’s bench, was later lord chancellor with the title of earl of Macclesfield. Sir Robert Eyre (d. 1735) was later chief baron of the court of exchequer and then chief justice of the court of common pleas. Randolph heard and reported the points argued by numerous serjeants at law: Sir John Cheshire (d. 1738), Sir Francis Page (d. 1741), John Darnall (d. 1735), Edward Whitaker (d. 1729), Thomas Pengelly (d. 1730), who was later chief baron of the court of exchequer, William Salkeld (d. 1715), William Branthwaite (d. 1729), John Comyns (d. 1740), and Sir Nicholas Hooper (d. 1731). Among the barristers arguing in court were Sir Robert Raymond (d. 1733), who was later chief justice of the court of king’s bench, and Philip Yorke (d. 1764), who was later lord chancellor and earl of Hardwicke.

Although only reports from the law courts for one and a quarter of a year, 1715 to 1716, have survived, Randolph continued his activities in court until late 1718, except for January and February, when he had smallpox. He was called to the bar on October 25, 1717, “by the favour of the Bench,” which was not unusual for an elder son. Considering Randolph’s previous experience in Virginia, this early call to the bar was not surprising.

On February 17, 1718, he was in London, to say good-bye to his family, and to help his parents arrange to have letters to carry home. He was back in Virginia by February 17, 1718, when he was sworn into office as a Burgess, the lower house of the General Assembly.

In 1718, Randolph commenced his career in Williamsburg. He was immediately elected to the General Court in Williamsburg. He was in Williamsburg during April and May of 1718, when he was sworn into office as a Burgess, the lower house of the General Assembly. He was immediately elected to the Burgesses and Treasurer of Virginia, a position until his untimely death in 1726.

Randolph was appointed intendant of Virginia in 1720, and he held this position until his death. He was the political leader of the western counties of Virginia and was one of the political leaders of the colony. He was instrumental in the establishment of the College of William and Mary, and he served as a member of the Board of Visitors.

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continued his activities in court until at least late September, 1717, except for January and February, 1717, when he was ill with smallpox. He was called to the bar of Gray’s Inn on November 25, 1717, “by the favour of the Bench,” in other words, earlier than normal, which was not unusual but involved an additional fee. Considering Randolph’s previous experience in legal practice in Virginia, this early call to the bar is not noteworthy.

On February 17, 1718, he went to see William Byrd, II, who was then in London, to say good-bye and to receive some letters to carry home. He was back in Virginia on April 28, 1718, when he was sworn into office as Clerk of the House of Burgesses, the lower house of the General Assembly.

In 1718, Randolph commenced his law practice in the General Court in Williamsburg. He was highly successful in every respect. He also resumed the habit of reporting cases, and a manuscript of his reports of cases in the General Court from 1729 to 1732 has survived. (It was edited for publication in 1909.) These reports and the Virginia reports by Edward Barradall give ample summaries of the arguments of counsel, and the reports of Randolph’s arguments in court show a learned and sophisticated approach to the practice of law.

In addition to being one of the leaders of the Virginia bar, he was one of the political leaders of his time. He was appointed king’s advocate in the local Vice-Admiralty Court in 1718, and he served as Clerk of the House of Burgesses from 1718 to 1734. He resigned as Clerk in the latter year in order to be elected to represent the College of William and Mary in the General Assembly. He was immediately elected Speaker of the House of Burgesses and Treasurer of Virginia and held these important positions until his untimely death in 1737.

Randolph was appointed interim Attorney General for the

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8 H. R. McIlwaine, Journals of the House of Burgesses (1912), vol. 5, p. 179.

Randolph's Reports

John Randolph's reports of formal title:

Cases adjudged and argued in Bench, Common Pleas, and Chamber upon writs of error, Chancery decreed by the Lord Chief and Master of the Rolls and some taken for my own satisfaction 4th years of King George c. 1736.

Sir John Randolph was married to Susanna Beverley (1693-1767). They had four children: Beverley (1719-1764), Peyton (1721-1775), who was president of the first Continental Congress, Mary (c. 1724-1768), and John (1727-1784), who was the last colonial Attorney General of Virginia. Sir John's health began to deteriorate in the autumn of 1736, and he died on March 22, 1737, at the age of forty-four in Williamsburg. He was buried in the crypt of the chapel of the College of William and Mary.

However, only reports of cases from Hilary term 3d Regis through Easter term 1716, have survived. Those few that are reported in print, are presently moldering in some unknown location, sadly, that they are still in existence.

The vast majority of Randolph's reports are shorter elsewhere. However, they do add further details and another perspective in the case of Temple v. Wells, No. 60, a later hearing than the one reported by Fortescue, 56, reports an earlier hearing than the one reported by the "Reports.

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10 J. G. Marvin, Legal Bibliography (1882), p. 386, is less critical "much authority."
John Randolph’s reports of English cases begin with a formal title:

Cases adjudged and argued in the court of King’s Bench, Common Pleas, and in the Exchequer Chamber upon writs of error with some cases in Chancery decreed by the Lord Chancellor Cowper and Master of the Rolls and some trials at nisi prius taken for my own satisfaction in the 1, 2, 3, and 4th years of King George during which time I diligently attended the Court of King’s Bench except Hilary term 3d Regis during which I lay sick of the smallpox.

However, only reports of cases from five terms, Easter term 1715 through Easter term 1716, have survived. Perhaps the remainder are presently moldering in some unknown attic, but it is unlikely, sadly, that they are still in existence.

The vast majority of Randolph’s cases come from the court of King’s bench. However, there are six cases from the court of common pleas and two from the court of chancery. Fifteen of the King’s bench cases are reported elsewhere in print. Of these, five are reported only in volume ten of the Modern Reports, which has a poor reputation for quality of reporting. Thus, most of the cases printed here have not been reported elsewhere in print. Those few that are reported in print are now supplemented with further details and another perspective from an eye-witness reporter.

Randolph’s reports are shorter than the same cases in print elsewhere. However, they do add information to them. For example, Anonymous, No. 48, records comments made by Justice Pratt that were not reported by Fortescue. Elwell v. Quach, No. 56, reports an earlier hearing than that reported by Strange, and Temple v. Wells, No. 60, a later hearing than that in the Modern Reports.

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10 J. G. Marvin, Legal Bibliography (1847), pp. 520-521; J. W. Wallace, The Reporters (1882), p. 386, is less critical saying that “it does not possess much authority.”
The case that is most extensively reported by Randolph is *Fleetwood v. Thornby*, Nos. 73 and 105, in Michaelmas term 1715 and Easter term 1716. This well-known case, which involved a large amount of money, a noble fortune, was begun in the court of common pleas in 1710. Proceedings in that court in 1711 are reported by Comyns, in 1713 by the *Modern Reports*, and in 1714 by Cooke. The case was appealed to the court of king’s bench, and reports of proceedings there in 1715 and 1716 are reported by Randolph and by Strange. Further proceedings in 1717 and 1718 are reported in the *Modern Reports*, and in 1720 by Strange. The appeal to the House of Lords in 1721 is reported by Brown.

At the end of the manuscript of John Randolph’s reports is written “These notes are drawn over at large in a folio book and continued further on per J.R.” Perhaps these reports and the others were copied into another book; the surviving manuscript is much smaller than a folio. However, the surviving manuscript is not likely to be the notes actually made in court. It has a formal title, and the reports are written out in complete sentences with very few abbreviated words. It is in a neat and careful hand, certainly not the rough, hasty notes that would have been made during the hearing in a busy court room. This surviving manuscript was, in all likelihood, made shortly after the session of the court, that evening or the next morning. Otherwise, the memory of the details of the case and of the colloquy would have faded too much to have produced that which we have.

This manuscript book is written in a neat, legible hand in English entirely in the handwriting of John Randolph. It was brought back home to Virginia by Randolph; he probably brought back many printed law books also. After his death, it passed into the possession of his distinguished son, Peyton Randolph.

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11 What abbreviations Randolph did use have been extended in the editorial process.


13 Peyton Randolph (1721-1775) was at one time Attorney General of Virginia and later President of the first Continental Congress: *Dictionary of American Biography*.

Thomas Jefferson bought many of his manuscripts when his estate was sold after his death, including this book, to the United States Library of Congress. It is now bound with opinions of counsel on matters relating to 1681 to 1722; it is in the Rare Book Department of the Library of Congress catalogued as Jefferson Collection. Modern spelling and punctuation have been used. This accords with the rule of the House of Commons that a word is the spoken word, not the written word.
Thomas Jefferson\textsuperscript{14} bought many of Peyton Randolph’s books when his estate was sold after his death in 1775,\textsuperscript{15} and this manuscript was one of them. In 1815, Jefferson sold his library, including this book, to the United States to re-establish the Library of Congress.\textsuperscript{16} It is now bound with a manuscript of opinions of counsel on matters relating to Virginia dating from 1681 to 1722; it is in the Rare Books Division of the Library of Congress cataloged as Jefferson Collection, MS. No. 12, part 2.\textsuperscript{17}

Modern spelling and punctuation have been used for this edition. This accords with the rule of \textit{idem sonans}, which is that a word is the spoken word, not the written word.
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