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Samuel Dodd's Reports, 1678-1713 and Miscellaneous Exchequer Cases, 1671-1713

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Samuel Dodd's Reports
1678–1713

and

Miscellaneous Exchequer Cases
1671–1713

Edited by
W. Hamilton Bryson

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Introduction

Samuel Dodd

Samuel Dodd was born in London in 1652, the son of Ralph Dodd, who was originally from Cheshire. Samuel Dodd was a student at Merchant Taylors’ School in London beginning on 11 September 1664.\(^1\) He was admitted as a student at the Inner Temple in 1670 and was called to the bar in 1677.\(^2\) Judging from his reports, Dodd appears to have developed a specialized practice in the court of exchequer by the mid 1680s. He acquired in due course a substantial legal practice. He represented Robert Williamson, one of the bankers in *The Bankers’ Case* (1690-1700).\(^3\) Dodd was offered a judgeship in 1696 but declined because he felt that he could not afford the consequent reduction in income.\(^4\) In 1699, he represented the duchess of Norfolk in her divorce proceedings in Parliament.\(^5\) He was made a bencher of his inn in 1700.\(^6\) Another indication of his success and distinction as a barrister is his appointment by the House of Lords in 1710 to be counsel for Dr. Henry Sacheverell at his trial upon his impeachment.\(^7\)

Upon the accession of George I in 1714, Dodd was knighted, and, on 22 November 1714, he was made chief baron of the court of exchequer in succession to Sir Edward Ward.\(^8\) Chief Baron Dodd died in office on 14 April 1716, only seventeen months into his tenure as a judge; he was sixty-two years of age. He was buried in the Temple Church in London. Samuel Dodd was married to Isabel Croke, daughter and co-heir of Sir

\(^{1}\) C. J. Robinson, *Register of... Merchant Taylor’s School* (1882), vol. 1, p. 269.
\(^{3}\) *State Trials* (Howell, ed., 1816), vol. 14, col. 109. Dodd also reported this case; see Nos. 106, 111, 113, 118, 201.
\(^{4}\) *Note (1696)*, No. 194.
\(^{5}\) *State Trials* (Hargrave, ed., 1777), vol. 5, cols. 277-278.
\(^{7}\) *State Trials* (Hargrave, ed., 1777), vol. 5, col. 641 (Dodd’s arguments are printed at cols. 717-721, 752-753, 763-764, 755-756).
Robert Croke, member of Parliament and clerk of the pipe; they had two sons, one of whom, John (d. 1719), was a member of Parliament. 9

Dodd's Reports

The cases in Dodd's reports date from 1678 to 1713. Before 1685, almost half of the cases are from the court of king's bench. Thereafter, the vast majority are from the court of exchequer; there are cases from the equity, common law, and revenue sides of this court. The total count for the entire collection is as follows:

- Exchequer: 145
- King's bench: 50
- House of Lords: 11
- Chancery: 10
- Common pleas: 10
- Delegates: 1

The remainder of the cases are unclear as to court or are notes about judges and serjeants.

The subjects of the cases reported by Dodd reflect, no doubt, his own and his clients' interests:

- Tithes and other church revenues: 52
- Land, trusts, family settlements: 51
- Wills and decedent's estates: 35
- Debts, business, bonds, bankruptcy: 30
- Crown revenue: 29
- Court procedure: 29
- Crimes: 9
- Torts: 9
- Miscellaneous: 16

These figures, when compared to the statistics compiled by Professor Henry Horwitz from the records of the equity side of the court of exchequer,10 show that Dodd's reports reflect generally the nature of the business of this court.

The original manuscript, which is now lost, was written primarily in law French, but law French and English sentences are sometimes intermingled with no apparent system. Although Dodd's original is not to be found, three or four copies that were made from the original have survived.

British Library MS. Hargrave 71, ff. 33-125v, is a copy that was made from the original in 1723 by John Wainwright. At the end of these cases, at folio 125v, is written: 'I transcribed these cases from a manuscript belonging to the late Chief Baron Dodd written with his own hand. I began it last Long Vacation and finished it this day, viz. the 21st of December 1723. /s/ John Wainwright.' On the pastedown of the book is written: 'Bought of Mr. Lynch of Dublin with other MSS. which in the whole cost me £60. /s/ F[rans]c[is] H[argrave].’ The manuscripts of the scholarly barrister Francis Hargrave (c. 1741-1821) were bought by the British Museum (now the British Library) in 1813.11

Brasenose College, Oxford, MS. 59, pp. [169-270] (1-120 in the middle of the book), is a very neat and readable copy. On page 270 (or 120), at the end of the reports, is written: 'These cases were transcribed from a manuscript written by the late Lord Chief Baron Dodd's own hand.'

Harvard Law School MS. 1169(b), pp. 1-80,12 another copy in law French, is also similar to BL MS. Hargrave 71. However, it is not as good or complete. It omits the cases of Chase v. Box (Ch. 1700), No. 234, and Stringer v. Hundred of Candleshaw (1703), No. 255.

Indiana University Lilly Library MS. Parker, ‘Cases in the Exchequer’, vol. 1, pp. 213-236, and vol. 2, pp. 1-96, is Thomas Parker’s copy.13 There is a colophon as follows. ‘These cases were transcribed from a manuscript belonging to the late Chief Baron Dodd written by his own hand, [*] which Benjamin Hall of Clifford’s Inn, Esq., executor of the Lady Dodd, who was executor of the chief baron, lent me, and I carefully collated this copy with the original with all the exactness I could. Witness my hand. /s/ T[homas] P[arker]. Mr Hall had a brother, who was a tradesman in or about the Old Jewry, London, but I have been informed that he has left off trade and retired to the family seat and estate in Yorkshire, and I presume that the original manuscript is in his possession, if living, or of some younger branch of the family, if dead. /s/ T[homas] P[arker].’14 It is interesting to note that this manuscript is in English; thus it appears that Parker was translating as he was transcribing. The first case in this copy is Martin, qui tam v. Powell (Ex. 1688), No. 77.

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14. The words from the asterisk to the end of the quotation are in the handwriting of Thomas Parker.
British Library MS. Hargrave 70, pp. 95-118, is a very abbreviated version of 72 of the cases in Dodd's reports; it is entirely in English. Harvard Law School MS. 1216, pp. 86-99, is another copy of this version, but one that is not as good.

Indiana University Lilly Library MS. Parker, 'Tithes', pp. 58-64, 174-196, is a very incomplete copy of Dodd's reports. It is in English.

The existence of at least five eighteenth century copies of Dodd's reports shows that they were well known and were generally available to the practicing bar in the eighteenth century. Most of Dodd's cases on the subject of tithes were printed in the reports edited by Rayner, by Gwillim, and by Eagle and Younge, all of whom acknowledge Dodd's manuscript as their source. For example, the report of Wilbraham v. Saunders (Ex. 1695) at 1 Eagle and Younge 607 expressly acknowledges 'Dodd's MS. No. 70, p. 90, No. 71, p. 156', thus referring to the two copies in the British Library. A few of Dodd's cases were printed at the end of Parker's reports. One of these, Poole v. Attorney General (Ex. 1709), No. 278 and Parker 272, 145 E.R. 777, was disparaged because of its brevity and the anonymity of the reporter in Tito v. Waddell (No. 2) (Ch. D. 1977), [1977] 2 W.L.R. 496, 635. Dodd's report of Regina v. Lord Griffin (K.B. 1708), No. 272, is printed in State Trials (Hargrave, ed., 1778), vol. 10, col. 203. M. Foster, Crown Law (1762), pp. 185, 217, refers to Dodd's manuscript report of Regina v. Gregg (1707), No. 270.

The British Library MS. Hargrave 71 is the best copy and is the one that has been chosen as the basis of the translation given here. The law French and the English passages have been rendered into modern English spelling and punctuation.

Miscellaneous Exchequer Cases
(1671-1713)

The miscellaneous exchequer reports in the second part of this book are taken from various sources; most are from the printed reports. The notes added by the later editors of the reports, which consist primarily of references to later cases, have not been included here; however, they may be of use to the reader, in which case, the older editions of these reports can be consulted.

The purpose of this collection of cases is to put in one place the reports of exchequer cases for the period between the end of Thomas Hardres' reports and the beginning of the period, 1670 to 1714, is a large collection of cases relating to the court of exchequer. These cases concentrate on the exchequer decisions of Robert Price, and Samuel Dodd. Note also that Hutton Wood, in his report on cases relating to tithes disputes, court of exchequer dating from 1671.

Some Important Cases

A. Earl of Macclesfield v. Starkey

The court of exchequer held in Starkey that a member of a grand jury may not give anything contained in a presentment of the grand jury as Bushel. These cases established the independence of the grand jury as an important precedent for judicial proceedings.

Perhaps the reason that this case is reported in print is that it involved treason, by a member of a very dangerous time in English history. While it is impossible to foresee which cases will be useful and interesting to later candidates.


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Fourth century copies of Dodd’s reports and were generally available to the public. Most of Dodd’s cases on the exchequer cases edited by Rayner, by Gwillim, and were generally available to the public. Most of Dodd’s cases on the exchequer are in English. Most of Dodd’s cases on the exchequer, as well as those of Edward Ward, Robert Price, and Samuel Dodd; Dodd’s reports are now printed here. Note also that Hutton Wood, in his reports of exchequer decrees and orders relating to tithes disputes, published 307 equity decrees from the court of exchequer dating from 1671 to 1714.

Some Interesting Cases

While it is impossible to foresee which of the cases now first printed here will be useful and interesting to some future reader, there are several likely candidates.

A. Earl of Macclesfield v. Starkey (1685), Nos. 58, 328, 332

The court of exchequer held in the case of the Earl of Macclesfield v. Starkey that a member of a grand jury cannot be sued for defamation for anything contained in a presentment. This case is as important in the history of the grand jury as Bushell’s Case (1670) is for the petit jury. These cases established the independence of jurors, and the case reported here is an important precedent for the law of privileged statements made during judicial proceedings.

Perhaps the reason that this obviously important case was never reported in print is that it involved politically sensitive issues, to wit high treason, by a member of a very prominent aristocratic family at a very dangerous time in English history. In 1683, during the time of the Popish Plot and the Exclusion Crisis, the grand jury of Cheshire, including the defendant John Starkey, presented the earl of Macclesfield and others as persons who should give bonds to keep the peace since they were believed to be friends and supporters of the duke of Monmouth. A year and a half later, the duke of York, whom some would have excluded from the throne, became king, and the earl of Macclesfield sued Starkey for defamation in order to clear his reputation.

18. H. Wood, A Collection of Decrees by the Court of Exchequer in Tithe Causes from the Usurpation to the Present Time (1798-99), 4 vols.
The political importance of this case is attested to by the fact that not only did Dodd make a short report of this case, which was not much different from his other reports, but someone was sent into court to make a complete transcription of the judges' opinions. The unusual procedure of having a shorthand stenographer present in court would have been very obvious to the court. They knew that they were being watched in this case by King James II, who removed judges according to political whim and who, it has been said, 'learned nothing and forgot nothing'. (The only other seventeenth century exchequer case similarly recorded, known to this writer, was the politically sensitive Case of the Impropriators (1633).) After lengthy and learned opinions, the court of exchequer held unanimously against the earl of Macclesfield and in favor of grand jury immunity.

It is to be noted by way of denouement that shortly after this decision, the duke of Monmouth's Rebellion occurred and, upon its failure, the earl of Macclesfield was ordered to be arrested, but he escaped abroad. During the Glorious Revolution, when it was the turn of King James II to escape abroad, the earl of Macclesfield returned to England with the prince of Orange and shortly thereafter prosecuted an appeal to the House of Lords. The appeal, however, was refused on procedural grounds, because it was a direct appeal from the court of exchequer. The appellant should have appealed to the court of exchequer chamber.

B. Attorney General v. Gaynor Jones (1690), No. 96

The case of Attorney General v. Gaynor Jones held that a charitable trust for a purpose that failed will be redirected by the crown to a lawful purpose. The charitable intent of the settlor will not be defeated, but the trust will be given to another charitable purpose that is as near to the settlor's intent as may be legally permissible. Thus, the general charitable intent of the settlor will not be defeated, and distant heirs of the settlor, laughing heirs, as the expression is, will not be enriched. This is the doctrine of prerogative cy pres, and this case, printed here for the first time, is one of the seminal cases, which has been known and discussed ever since its rendition.

C. The Bankers' Case (1691-1696), Nos. 106, 111, 113, 118, 201

The Bankers' Case is reported by Dodd under the style of Williamson v. Regem and Attorney General v. Hornby. This famous case is usually known by Hornby's name, but of the other bankers, he used the sum of money, an annuity grant, revenue. The issues involved were political; hornby was politically sensitive. After lengthy and learned opinions, the court of exchequer held unanimously against the earl of Macclesfield and in favor of grand jury immunity.

D. Crane v. Hill (1695), No. 33

In the case of Crane v. Hill, George, an insolvent father. When Hill's father conveyed to Crane the rectory, included the right to receive tithe revenue. The appeal, however, was refused on procedural grounds, because it was a direct appeal from the court of exchequer. The appellant should have appealed to the court of exchequer chamber.

E. Regina v. Gregg (1707), No. 2

In 1707, during the war with the French, was arrested for giving secret aid to the Frenchman were both to be tried. Prosecutors for the crown sent a list of court judges for their opinions into

23. 5 Modern 29, 87 E.R. 500, St. 90 E.R. 472, Carthew 388, 90 E.R. 82, State Trials (Howell, ed., 1816), vol. 14
24. W. L. Sachse, Lord Somers: A Life...
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known by Hornby's name, but since Dodd represented Williamson, one
of the other bankers, he used the former style. This case involved a huge
sum of money, an annuity granted by a former king out of his hereditary
revenue. The issues involved were not only legally difficult, but their reso­

Cranenقرارن v. Hill (1695), No. 338

In the case of Crane v. Hill, Crane was a creditor of Hill and of Hill's
insolvent father. When Hill's father died, Crane and Hill came to an
agreement as to the debts owed to Crane. As a part of this agreement,
Hill conveyed to Crane the rectory of the parish church of Hales, which
inc wound the right to receive tithes, the rent of the glebe lands, and vari­
ous other income. Afterwards, Hill acquired a precedent and superior
right to the rectory, and he sued Crane in an action at common law and
recovered the property.

Crane then sued Hill in the equity side of the court of exchequer to
be relieved against the common law judgment. The equity court granted
Crane's petition and required Hill to give up his title and possession. The
reason of the court was that it was unfair and wrong for Hill to have a
double recovery by setting up his new right against his own conveyance
of that same right. Hill's common law judgment operated as a fraud upon
Crane because of Hill's earlier conveyance to Crane; Crane could not
plead this in the common law action of ejectment against him; therefore,
relief in equity was granted to him.

E. Regina v. Gregg (1707), No. 270

In 1707, during the war with France, William Gregg, a government
clerk, was arrested for giving secret information to a French spy. He and
the Frenchman were both to be tried for high treason. Before the trial, the
prosecutors for the crown sent a list of eight questions to all of the high
court judges for their opinions interpreting the pre-trial procedural rights

23. 5 Modern 29, 87 E.R. 500, Skinner 601, 90 E.R. 270, Comberbach 270,
90 E.R. 472, Carthew 388, 90 E.R. 825, Case 413, 1 Freeman 331, 89 E.R. 246,
State Trials (Howell, ed., 1816), vol. 14, cols. 1-114.
of the two defendants under the recent act governing trials for treason. The judges' responses are an important statement of these rights.