Reports of Cases in the Court of Exchequer in the Time of King Charles I (1625 to 1648)

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Recommended Citation

Reports of Cases in the Court of Exchequer in the Time of King Charles I (1625 to 1648) (William Hamilton Bryson ed., 2006).
REPORTS OF CASES
IN THE COURT OF EXCHEQUER
IN THE TIME OF KING CHARLES I
(1625 to 1648)

Edited by
W. Hamilton Bryson

William S. Hein & Co., Inc.
Buffalo, New York
2006
FOREWORD

This collection by Hamilton Bryson of previously unreported plea-side cases from the Court of Exchequer in the seventeenth century will be welcomed by legal historians. What we know about the growth of the common law in the early modern era has been largely derived from printed sources. The reality, however, is that a great many of the decisions of England's common law courts in the seventeenth and eighteenth centuries were never reported. No official court reporting existed until well into the nineteenth century. For the most part in earlier times, judicial decisions were brought into print only when enterprising individuals (often young barristers or attorneys) attended court, took notes of the cases, and arranged for their publication.

By the mid-seventeenth century, the three common law courts in England (King's Bench, Common Pleas, and Exchequer) had a largely coextensive jurisdiction in non-criminal cases. The Court of Exchequer, however, maintained a dual jurisdiction—a common law (plea) side, and an equity side.¹ The work of the equity side of the Court of Exchequer has been brought to light by Professor Bryson in his earlier work.² In the present volume, he introduces us to the plea side of the court during the reign of Charles I, 1625 to 1648. This was a formative period in the common law, yet because there are no printed reports, much of what the court was doing on the plea side during this time has been a blank.³ Indeed no printed reports exist for


³ In 1657, Richard Lane published Exchequer reports for the years 1605 to 1612 during the reign of James I. On the title page, Lane described his publication as follows: “Reports of the Court of Exchequer, beginning in the Third, and ending
Exchequer Cases

the Court of Exchequer for over three-quarters of the seventeenth century.¹

Professor Bryson’s transcriptions from the reign of Charles I reveal that, despite the absence of printed reports, important matters were deliberated in and decided by the Court of Exchequer. The standout case is *Rex v. Vermuyden*, popularly known as the Sutton Marsh case.² Competing claims to riparian land, river bottomland, tidal marshland, and the seashore were common in the seventeenth century. This is evident, for example, in seminal essays by Sir Matthew Hale that were first published in the eighteenth century by Francis Hargrave,³ and in Stuart Moore’s classic, thousand-page, nineteenth-century treatise, *A History of the Foreshore*.⁴ Moore’s thirteenth, fourteenth, and fifteenth chapters are devoted entirely to the reign of Charles I and to Hale’s manuscripts. Moore observed that

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¹ In addition to Lane’s Reports, the only seventeenth-century printed reports devoted to Exchequer cases are Hardres’ Reports, covering the years 1655 to 1669. Reporting in the Court of Exchequer was somewhat better during the eighteenth century, but the printed record remains grossly incomplete. There are no printed Exchequer reports whatever for thirty-seven years in the eighteenth century; for twelve additional years there is only one reported case per year, and for nine more years there are only two per year.

² Case No. 45, below.

³ Hale’s three works, written in the 1660s, were *De Jure Maris, De Portibus Maris*, and *Concerning the Customs of Goods Imported and Exported*. See F. Hargrave, *A Collection of Tracts Relative to the Law of England* (London, 1787).

⁴ Stuart A. Moore, *A History of the Foreshore and the Law Relating Thereto* (London, 1888). Moore’s title page adds: “With a Hitherto Unpublished Treatise by Lord Hale, Lord Hale’s ‘De Jure Maris.’” Moore later explained that what he was printing was what he determined to be Hale’s first draft of the three essays that had been previously published by Hargrave. *Id.* at pp. xli, 318.

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² According to Moore, the Sutton Marsh litigation is incomplete, with the exception of the full text of the transcript report of the case by Hargrave, which is not addressed in the text of the transcript. Moore later explained that what he was printing was what he determined to be Hale’s first draft of the three essays that had been previously published by Hargrave. *Id.* at pp. xl-xlii.
the second part, concerning the right of the king to the shore, of Hale’s first treatise, a legal and historical narrative touching the customs, “would appear to be an argument prepared for the case of Rex v. Oldsworth, concerning Sutton Marsh.”1 Rex v. Oldsworth was the first round of the Sutton Marsh litigation, heard in Hilary Term 1636/37. It was followed in Trinity Term 1637 by Rex v. Vermuyden. Moore’s treatment of Rex v. Vermuyden is taken from the Lansdowne manuscripts and is incomplete, even though lengthy excerpts are quoted. In the present volume, Professor Bryson brings out for the first time the full text of Rex v. Vermuyden. His source is a manuscript report of the case by Hardres, which is more detailed than the Lansdowne version. Professor Bryson’s transcription of this phase of the Sutton Marsh litigation is a substantial contribution to the historical record.2

Other cases in the transcriptions that follow are of interest. We take for granted today the utility of statutes of limitation, but, in the early seventeenth century, the concept was new and undeveloped. Enacted in 1624 for the purpose of quieting estates and avoiding lawsuits, the Statute of 21 James I, c. 16, established differing limitation periods for designated causes of action, ranging from twenty years down to two years. Questions of pleading and procedure were not addressed in the text of the statute, and these came before the Court of Exchequer in the years 1639 to 1641. The court determined that a claim that an action was untimely had to be affirmatively

1 Id. at pp. xl-xl.

2 According to Moore, the Sutton Marsh matter was not settled by the 1637 judgment in Rex v. Vermuyden, but the litigation “dragged on till the Revolution, the last order being made on 13 October, 16 Charles I, A.D. 1640, and the Crown, so far as we can discover, never got into possession.” Moore, A History of the Foreshore, p. 304.
pleaded by the defendant, and that the defendant’s plea must allege the time when the plaintiff’s cause of action accrued.

In some of the cases transcribed by Professor Bryson, only arguments of counsel are given, yet they are nevertheless noteworthy. In *Smart v. Cheney*, for example, the question involved whether there was a condition precedent to a contract obligation by the defendant to pay money owed. Smart and his wife had paid £60 to Cheney in exchange for a promise by Cheney to pay a sum to Alice, Smart’s stepdaughter and his wife’s daughter by a previous marriage, within one month of Alice’s marriage or after her 21st birthday, whichever occurred first. The agreement also provided that, if Alice’s marriage came before her 21st birthday, the marriage must be with the consent of either Smart’s wife or of the defendant Cheney. Alice married one Ball before she was twenty-one with Smart’s wife’s consent. In the lawsuit, Proctor argued for defendant Cheney that notice was required to be given to Cheney of Smart’s wife’s consent to the marriage, and that this had to be alleged in the declaration. Hale argued for the plaintiff that no notice need be given, citing *Beresford v. Gooderidge*, in which it was held that defendant’s promise to pay plaintiff £100 if plaintiff married the defendant’s daughter was enforceable despite the absence of notice of the marriage, since in the circumstances involved in the case, giving notice was not material. The court in *Beresford* observed, however, that, where a collateral thing was to be done upon a marriage day, notice ought to be given of that, and it would seem arguable that, in *Smart v. Cheney*, the notice in question was of “a collateral thing,” that is, of the consent of Smart’s wife to the marriage. In any event, the issue in *Smart v. Cheney* appears to have been an early encounter with problems of

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1 *Uvedale v. Prescott* (1639-1640), Case No. 55; *Buttolph v. Cole* (1641), Case No. 49.
2 *Davie v. Alpe* (1639), Case No. 54.
3 The amount of the sum is not given.
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by Professor Bryson, only

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dependent and independent covenants and conditions, a puzzle that

was famously addressed by Lord Mansfield in the late eighteenth


Another important exchange of arguments in the transcriptions

that follow is laid out in Town of Kingston's Case, in which the

question was whether the town could, through a bylaw, prohibit a

person from following a trade therein. The principal authorities relied

upon by counsel for both sides were Coke's decisions and his

Institutes. In the earlier case of Weavers of London, Noy moved for

judgment after a verdict that had found silk weaving to be subject to

regulation by the City, arguing that a patent from the crown could

require the holder to submit to the regulation of the occupation in a

particular place, even though the patent could not prohibit a person

from practicing a lawful occupation.

Yet another case of interest is Longe v. Dorrell, involving

whether an action for defamation could be sustained against a defendant

for filing a petition in Parliament that contained defamatory words. Both Longe and Dorrell were Justices of the Peace, and defendant claimed what would later become known as Parliamentary privilege, arguing that the words in dispute were prefened in a petition in Parliament against the plaintiff. Plaintiff, however, claimed that the writing had been published to various other persons. Defendant responded by saying that, if a copy of the Parliamentary petition had been given to a stranger who was not a member of the House of Parliament, no action would lie; nevertheless, because Parliament was the representative body of the entire realm, publication by petition in Parliament automatically constituted publication to the entire realm.

How this case was resolved is not revealed, but it is interesting to

note that it had been established in the prior century that words


1 (1773), 2 Douglas 689, 99 E.R. 437.

2 (1646), Case No. 66.

3 (1629), Case No. 12.

4 (1629), Case No. 14.
spoken as a legitimate part of legal proceedings were considered privileged.\(^1\) William Holdsworth, after acknowledging that "It was settled, by the first quarter of the seventeenth century, that no action lay against judges, witnesses, or counsel for defamatory statements made in the conduct of litigation," added that "It was settled by the case of *Lake v. King* in 1668, after considerable debate and conflict of judicial opinion, that a similar rule must be applied to documents, circulated to members of a committee of the House of Commons, and dealing with the matters which that committee was appointed to consider."\(^2\) But even though *Lake*, according to Holdsworth, determined that "documents connected with Parliamentary proceedings and published to members of Parliament had the same privilege as had already been accorded to judicial proceedings," it was decided at the end of the seventeenth century "that there was no privilege for those who published documents connected with these proceedings to the world at large."\(^3\)

Readers of this volume will find additional cases of significance to their particular interests or expertise. Certainly, the transcriptions demonstrate the active engagement during the reign of Charles I of the Court of Exchequer's plea side with fundamental questions of both substance and procedure. Those who study or are interested in how such questions were addressed in the courts during times for which there are no printed reports are in Professor Bryson's debt.

James Oldham  
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\(^3\) *Id.*, citing *Rex v. Salisbury* (1699), 1 Lord Raymond 341, 91 E.R. 1124.