Robert Paynell's King's Bench Reports (1625-1627)

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ROBERT PAYNELL'S
KING'S BENCH REPORTS
(1625-1627)

EDITED BY
W. H. BRYSON

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INTRODUCTION

None of the reports of cases from the Court of King’s Bench from the first two years of the reign of Charles I is very good, but, on the other hand, none of them is totally useless. Many of these reports have been insulted by later judges, but, as time has gone by, they have been regularly cited, being the best evidence available of the law at the time. The optimal use of them is to read all of the reports of the same case, both those in print and those still in manuscript, plus the record of the case, which is in the archive of the court in the Public Record Office, in order to have the maximum information. Ideally, each of these reports and records of the cases would be translated into English and printed together *seriatim*, similarly to Eagle and Younge’s reports of tithe cases. Such a project is beyond the resources of the present editor; however, this present publication is offered as a small contribution to the greater effort.

The reports that have found their way into print are not necessarily the best, although they are now, of course, the ones that are the most familiar. As will be discussed, many of the attributions of authorship are dubious or false. However, the anonymity to the present generation of lawyers and judges should not by itself detract from their validity. This is because the preservation and printing of law reports in the seventeenth century was quite haphazard, being undertaken more often than not by printers acting without any help or advice from lawyers.

Modern editions of the law reports of this period, 1625 to 1627, will shed much light on the obscurity of the sources of this period of legal history. The following discussion centers on the individual sets of King’s Bench law reports from this time.  

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Robert Paynell

Robert Paynell was born in 1602, the son of Henry Paynell, Esquire, of Belaugh in the County of Norfolk. His mother was Bridget Walpole, the daughter of John Walpole of Houghton in Norfolk. In December 1617, he matriculated at Christ's College, Cambridge. He was admitted to Gray's Inn on 2 June 1619, called to the bar on 8 November 1626, and made an utter barrister on 24 November 1645. In 1640, he participated in the creation ceremony of Francis Bacon (d. 1657) as a serjeant by distributing the customary gold rings. Bacon was from King's Lynn and a member of Gray's Inn, and he was the son of Paynell's aunt, Elizabeth. It is possible that this connection was the reason that Paynell chose to join Gray's Inn. Paynell sat regularly as a justice of the peace in Norfolk.

Robert Paynell died in 1657 as a serjeant by distributing the customary gold rings. The inference is that he did not personally attend these sessions. At the end, he acknowledges that he missed a three cases which he explains because he was absent from court on the day that they were argued.

Although Paynell's King's Bench reports are now first published herein. The best manuscript, and the one used for this edition, is British Library MS. Add. 35961, ff. 2-66. There is another copy in British Library MS. Lansdowne 1083, ff. 3-104. Both of these are in law French. Robert Paynell is identified as the reporter of these King's Bench cases at British Library MS. Add. 35961, ff. 13, 52, and British Library MS. Lansdowne 1083, ff. 16v, 80. It is clear that Paynell was the creator, rather than the copier, of these reports in that he explains the absence of cases from two terms in 1625 by the adjournment of the court to Reading to avoid the outbreak of the plague. The inference is that he did not personally attend these sessions. If he was merely copying other reporters, this note would have been superfluous. Also, at the end, he adds three cases which he acknowledges that he missed because he was absent from court on the day that they were argued.

4 J. Peile, Biographical Register of Christ's College (1910), vol. 1, p. 321.
11 See Note, No. 19.
12 See the note preceding case No. 285.
Introduction

Although Paynell's King's Bench reports have survived in only two manuscripts, some individual cases have been incorporated into other collections of cases. Paynell's reports were part of a large body of manuscript law reports that circulated among the legal profession in the seventeenth century. The various manuscript collections (some large, some small) were lent, copied (in whole or in part), paraphrased, vouched (i.e. cited) in court, and randomly printed. Thus did the law students, practitioners, and judges create their own personal professional libraries. The evidence that Paynell's King's Bench reports were included in this amorphous body of law reports is that some of his cases appear in the other collections. For example, his report of one of the hearings of Cole v. Shury (1626), No. 168, was used in Latch 264, 82 E.R. 378. Paynell's report of Rex v. Beverley (1626), No. 28, was the basis of Latch 224, 82 E.R. 357. Bowyer v. Rivet (1626), Popham 153, 79 E.R. 1252, is based on Paynell's report, below, No. 26.

In Easter term, 1627, Paynell reported a case from the Court of Exchequer. The next term, he began his Exchequer reports, leaving the King's Bench reports to his old friend from Christ's College, Cambridge, and Gray's Inn, Thomas Widdrington.

New Benloe


References:

7; F. Blomefield, History of the County of Colchester (1910), vol. 1, p. 321.
9 Ips's Inn (1901), vol. 1, pp. 274, 354.
11 Francis Bacon (c. 1587-1657), Oxford Dic-
died in 1584, and thus there can be no possible connection between him and the cases from the reigns of James I and Charles I. The title of the book and the preface also make it clear that the latter text was added by the editor or the publisher. These cases are only said to have been "collected by a skillful hand."

There are 135 cases dating from Pas. 1 Car. I to Pas. 3 Car. I, 1625–1627: Benloe 146–204, 73 E.R. 1014–1060, Cambridge U.L. MS. Gg.2.30, ff. 73–79.

**Edward Bulstrode**

*The Third Part of the reports of Edward Bulstrode... Of divers resolutions and judgments, given... by the grave, reverend, and learned judges, and sages of the law. Of... cases and matters in law: with the reasons and causes of their said resolutions and judgements, given in the Court of King's Bench in the time of the late reign of King James and the beginning of King Charles.*


These reports were prepared for the press by Bulstrode himself; "The Epistle Dedicatory" is signed by Edward Bulstrode.

There are 24 cases dating from Mich. 1 Car. I to Pas. 2 Car. I, 1625–1626; they are printed at 3 Bulstrode 295–341, 81 E.R. 245–282 (1908).

**Sir George Croke**

*The reports of Sir George Croke, knight; late, one of the justices of the Court of King's-Bench; and formerly, one of the justices of the Court of Common-Bench, of such select cases as were adjudged in the said courts... Collected and written in French by himself; revised and published in English, by Sir Harebottle Grimston, baronet.*

London: Printed by R. Hodgkinsonne, 1657.

The reports of Sir George Croke (1560–1642) for the period of the reign of Charles I were made by Croke himself while he was a judge. Although they were published posthumously, they were prepared for the press by Sir Harbottle Grimstone (1603–1685), Croke's son-in-law, who was a scholarly lawyer. This volume is today referred to as Cro. Car.; however, in the older law books, it was sometimes referred to as 1 Cro. because it was the first of Croke's reports to be published, as it contained the more recent cases. These reports are good, and there were several editions before the last one in the *English Reports*, vol. 79, pp. 609–1124 (1907).

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Introduction

John Godbolt

Reports of certain cases, arising in the several courts of record at Westminster: in the reigns of Q. Elizabeth, K. James, and the late King Charles... Collected by very good hands, and lately re-viewed, examined, and approved of by the late learned Justice Godbolt, and now published by W. Hughes. London: Printed by T.N. for W. Lee, D. Pakeman, and Gabriell Bedell, 1652. 4 p. l., 451 (i.e. 439), (11) p. 22 x 18 cm.

78 English Reports 1–265 (1907).

The reports currently attributed to John Godbolt (d. 1648), a justice of the Court of Common Pleas from 1647 to 1648, were edited by William Hughes of Gray’s Inn and published posthumously in 1652. This book has no preface. After the “Finis” of Godbolt’s reports at page 451, below a line of printer’s ornaments, is added “I have perused this Collection of Reports, and think them fit to be printed. Per me Johannem Godbolt, Unum Justiciar’ de Banco 18. Jun. 1648.” Thus, a close reading of the title and this colophon discloses that these reports were not composed by Godbolt himself.

Sir William Jones


British Library MS. Hargrave 317 is an English translation made by Francis·Hargrave (d. 1821).

These reports of cases dating from Mich. 18 Jac. I to Mich. 16 Car. I, 1620–1640, were made by Sir William Jones (1566–1640) while he was a judge. After his death, his manuscript was given to the printer by his two daughters, his co-executrices, for publication in 1675. It being published posthumously, there is the usual doubt as to whether the manuscript was of Jones’s composition or merely of Jones’s ownership.

Jones appears to have made the reports in Harvard Law School MS. 1235 (formerly 5030) (20 Jac. I through Mich. 4 Car. I, 1622–1628),16 some of which were printed in Latch’s reports.17


17 See below.
Sir William Noy

Reports and cases taken in the time of Queen Elizabeth, King James, and King Charles collected and reported by that learned lawyer, William Noy . . . now translated into English; with two necessary tables of the cases and contents, for the readers ease and benefit. London: Printed by F.L. for Matthew Walbancke . . . and T. Firby . . . 1656. [13], 185, [10] p.; Errata: p. [9] at end.

Reports and cases taken in the time of Queen Elizabeth, King James, and King Charles collected and reported by that learned lawyer William Noy . . . Containing most excellent matter of exceptions to all manner of declarations, pleadings, and demurrers, that there is scarce one action in a probability of being brought, but here it is thoroughly examined and exactly laid. 2d ed., car. and amended. With two necessary tables of the cases and contents for the readers ease and benefit. London: Printed by T.R. for Samuel Heyrick, 1669. 2 p. 1., 185, [15] p. 29 cm.


The reports which have been attributed to Sir William Noy (1577-1634) could not possibly have been made by him. This is because the first case in this set of reports is dated 1559; Noy was born in 1577; Noy died in 1634; and the last case reported is dated 1639. Moreover, these reports were first printed posthumously in 1656. Most of the cases date from the latter part of the reign of Queen Elizabeth I and from the time of King James I. They are not printed in strict chronological order, which suggests that they were copied from various sources.

There is a block of 75 King's Bench cases from the first three years of the reign of King Charles I, 1625 to 1628, printed in the middle of Noy's reports at Noy 75-97, 74 E.R. 1042-1063.

Sir John Popham

Reports and cases collected by the learned, Sir John Popham, knight . . . Written with his own hand in French, and now faithfully translated into English. To which are added some remarkable cases reported by other learned pens since his death. With an alphabetical table, wherein may be found the principal matters contained in this book. London: Printed by Tho. Roycroft for John Place, 1656. 4 p. l., 212, [7] p. 29 cm.


Sir John Popham died in 1607, and his reports were published posthumously in 1656. Thus he could not have been responsible for the reports of the cases from the time of Charles I. This is clearly acknowledged on the title page and in the preface. Moreover, at the end of the Elizabethan cases, on page 123 (79 E.R. 1228), is written "Here ends the Lord Popham's Reports." Page 124 is blank. Page 125, the first folio of quire KK, begins with "An Addition of Certain Select Cases in the Time of King James and King Charles." The editor states in the preface that the later cases "were taken by judicious pens."
William Noy

Elizabeth, King James, and King Charles

William Noy... now translated into English. To which are added several tables of benefit. London: Printed by T.R. for H. Twyford, T. Dring, and J. Place, 1662. [12], 275, [18] p.; 29 cm.

Cases determined in the Court of King's Bench, during the I, II, & III years of Charles I collected by John Latch... first published, in Norman-French, by Edward Walpoole... translated into the English language, by Francois-Xavier Martin. Plusieurs tres-bons cases, come ils estoyent adjudges es trois premiers ans du raign du feu Roy Charles le Premier en la Court de Bank le Roy. Newbern, [N.C.]: From the translator's press, 1793. [8], 2-275 (i.e. 215), [21] p.; 20 cm. (8vo).

Cambridge U.L. MS. Li.3.13 (Pas. 1 Car. I through Hil. 3 Car. I, 1625-1628). Many of these cases are the same reports as Latch's.

Cambridge U.L. MS. Hh.2.1, ff. 181 et seq., are some of the cases in Latch 54 et seg., Bathe v. Salter et seq.

Harvard Law School MS. 1197 (formerly 2074), ff. 1-117 (Pas. 1 Car. I through Mich. 3 Car. I, 1625-1627). These cases are in Latch 49-263, 82 E.R. 269-377, but Latch has other cases in addition.

Harvard Law School MS. 1235 (formerly 5030) (20 Jac. I through Mich. 4 Car. I, 1622-1628). These reports appear to have been made by Sir William Jones (1566-1640), but they are not the same collection as those printed in 1675 as W. Jones' reports. Some of the reports in this manuscript are printed in Latch's reports.

Yale Law School MSSG R29, no. 23, part 1 (Pas. 1 Car. I through Hil. 3 Car. I, 1625-1628).

There were two printed editions of the reports attributed to John Latch (d. 1655), a barrister of the Middle Temple, before the English Reports, volume 82 (1908). The first edition was given to the press for publication by Edward Walpole in 1662.

Latch's reports appears to be two sets of reports printed together. The first set ends on page 224 with Beverly's Case (Latch 224, 82 E.R. 357) and the word "Finis"; the second set begins with Reynell v. Kelley on page 225 (Latch 225, 82 E.R. 357). Page 225 is the first page of quire Hh. Thus, it appears that the
printer's compositor was given two separate sets of reports to set up in print or that there were two compositors working independently.

John Latch did not compose either of these sets of reports, but merely owned them. They were found in his possession and printed after his death with his name used as the author. The editor, Edward Walpole, states in his preface that the original manuscript "was all written by [Latch's] own hand wherein (as I apprehend) it received as much the stamp of his approbation and judgment as if he had composed it." The judges' certificate says that Latch collected and copied them from various sources. It states "These reports are all of Mr. Latch's hand, but, as we conceive, not originally taken by him, but excerpted out of some other manuscript." The judges, in 1662, thought them worth publishing to fill a gap in Coke's reports.

The editor of Geoffrey Palmer's reports later claimed that Palmer was the true author of 120 of these case reports and that Palmer had lent his manuscript to Latch. 21 It is to be noted that both Latch's and Palmer's reports were printed posthumously.

Francis Xavier Martin (1764–1846), a Frenchman, who was living in North Carolina at the time, translated these reports into English in 1793. However, he omitted some of the cases relating to ecclesiastical matters, which he mistakenly thought would be useless to his American readers.

The modern edition of 1908 is based on the first edition of 1662 and, like it, is in French.

Sir Geoffrey Palmer

Les reports de Sir Geoffrey Palmer, chevalier & baronet Attorney General... Imprime & publie per l'original. Ouvrage deux tables, l'un des nomes des cases, l'autre des principal matters conteinus en yeux. London: Printed by the assigns of R. and E. Atkins, Esquires, for Robert Pawlet, 1678. 2 p. l., 567 (i.e. 559), [43] p. front. (port.) 32 cm. Although some title pages bear the dates of 1688 and 1721, there was only one printing of this book.

81 English Reports 949–1223 (1908).


Cambridge U.L. MS. Mm.6.66 (Trin. 17 Jac. I through Hil. 20 Jac. I, 1619–1623). The second case in this manuscript is Godfrey v. Dixon (f. 13v), which is printed at Palmer 13, 81 E.R. 955, and the last case in this manuscript is Snag v. Fox (f. 268v), which is printed at Palmer 342, 81 E.R. 1114. (Palmer's printed reports continue on to page 567, 81 E.R. 1223.)

21 G. Palmer, Reports (1678), "Preface to the Reader."
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Note that the cases of Fish v. Wiseman, Marget v. Harvey,
and Man's Case (Pas.
3 Car. I, 1627), Latch 192-194, 82 E.R. 341-342, Palmer 447-450, 81 E.R.
1164-1165, are the same reports with only minor variations. In general, however,
the cases in Latch and Palmer are not printed in the same order.

Sir Thomas Widdrington

British Library MS. Add. 35961, ff. 71v-80, 97-123, 129v-142v, 150-164,
189-end (Trin. 3 Car. I through Trin. 4 Car. I, 1627-1628). Widdrington is
identified as the reporter of these cases at ff. 71v, 97, 129v, 142v, 150, 252v.

22 Some reports from the time of Elizabeth I are also associated with Godfrey: BL
MS. Hargr. 12; CUL MS. Mm.4.35; and HLS MS. 5063. L. W. Abbott, Law Reporting
Lincoln's Inn as the reporter.

23 This is stated on the title page: F. Moore, Reports (1663), t.p.; 72 E.R. 397.
24 BL MS. Lansdowne 1080, f. 1; L. W. Abbott, Law Reporting in England 1485-
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British Library MS. Lansdowne 1083, ff. 118v-140v, 167-201, 210v-225v, 234v-249, 279-356 (Trin. 3 Car. I through Hil. 4 Car. I, 1627-1629). Widdrington is identified as the reporter of these cases at ff. 118v, 167, 210v, 225v, 356. Philadelphia Free Library MS. LC 14.62, ff. 282-304v (Pas. 4 Car. I, 1628). These are the same reports as British Library MS. Add. 35961, ff. 154-164. Sir Thomas Widdrington (d. 1664), was a barrister of Gray's Inn when he made these King's Bench reports. He was later a Lord Commissioner of the Great Seal (1648-1649, 1654-1655, 1660) and Lord Chief Baron of the Exchequer (1658-1659). 25

British Library MSS. Hargrave 38 and 39

These two volumes are one continuous set of King's Bench reports dating from Pas. 1 Car. I through Trin. 7 Car. I, 1625-1631, and Pas. 9 Car. I, 1633. Edward Umfreville (d. 1786) mistakenly believed that these reports were made by Sir Thomas Widdrington. However, a comparison of these cases from Trinity term 3 Car. I, 1627, with those in British Library MS. Add. 35961 shows that these reports are not by Widdrington. There are two Exchequer cases here, Attorney General v. Bacon (1627) and Whitmore v. Porter (1627), which are the same reports as in British Library MS. Lansdowne 1092; 26 otherwise, the King's Bench reports in this latter manuscript are different.

British Library MS. Lansdowne 1092

Pas. 1 Car. I through Hil. 3 Car. I, 1625-1628. Edward Umfreville (d. 1786) mistakenly believed that these reports were made by Sir Thomas Widdrington. However, a comparison of these cases from Trinity term 3 Car. I, 1627, with those in British Library MS. Add. 35961 shows that these reports are not by Widdrington.

Harvard Law School MS. 1063, ff. 1-71v

Mich. 3 Car. I through Pas. 4 Car. I, 1627-1628. These King's Bench reports do not appear to be in print.


26 They are also found in Yale Law School MSSG R29, no. 23, part 1, ff. 254, 266v, and in CUL MS. Ll.3.13, ff. 279, 295, and printed at Robert Paynell's Exchequer Reports, pp. 394, 368.

Harvard Law School MS. 1063, ff. 1-71v

Mich. 3 Car. I through Pas. 4 Car. I, 1627-1628. These King's Bench reports do not appear to be in print.

Trinity College MS.

Mich. 22 Jae. I through Trin. 2 Car. I do not appear to be in print.

The headnotes, or syllabi, which are the product of the present editor. They are intended to serve as an indication of the quality or editing and printing of the book production at this time was quite limited. Although the quantity of law reports could not possibly compete with the production of printed books flourishing, perhaps this paucity of printed reports in order to control and suppress sedition in the 1640s and the repression of printed books during the Civil War. The headnotes provide a complete legal analysis of the cases, as they are intended to serve as an indication...

27 H. S. Bennett, English Books and the Regulation of the Book Trade, pp. 40-5

Introduction


Hargrave 38 and 39

of King's Bench reports dating from 1631, and Pas. 9 Car. I, 1633. Edward that these reports were made by Sir Thomas Widdrington. ff. 137–153, 210v, 225v, 282v, 356ff. 282–304v (Pas. 4 Car. I, 1628).

Hargrave MS. Add. 35961, ff. 154–164. The barrister of Gray's Inn when he made a Lord Commissioner of the Great Lord Chief Baron of the Exchequer barrister of Gray's Inn when he made a Lord Commissioner of the Great Lord Chief Baron of the Exchequer.

Lansdowne 1092

1617–1628. Edward Umfreville (d. 1786) are made by Sir Thomas Widdrington. 1617–1628. Edward Umfreville (d. 1786) are made by Sir Thomas Widdrington.

Trinity College Dublin MS. 718, part 1


Conclusion

At the beginning of the reign of Charles I, only the yearbooks and a few more recent law reports were in print. However, there was a vast corpus of reports of cases which circulated in manuscript amongst the legal community of England. Perhaps this paucity of printed reports was due to the attempted governmental control over the printing community of England, which was thought necessary in order to control and suppress sedition and heresy.27 With the fall of the royal government in the 1640s and the restrictions on printing being removed, the production of printed books flourished, including the printing of law reports.28

Although the quantity of law publishing in the 1640s and later improved, the quality of editing and printing did not get better. In fact, the quality of law book production at this time was quite poor. We have seen that there was in many instances no connection between the actual person and the reports attributed to him. Godbolt, Latch, Noy, and Palmer were not the authors of the reports sometimes attributed to them, and the appendices of later cases added to the reports of Bendlowes and Popham could not possibly have been of their authorship. However, the author of this present set of law reports is identifiable. Moreover, there are numerous cases reported here that are not elsewhere in print. Those cases that have been in print for several centuries are now clarified and enhanced by another version that is in English. And, therefore, Robert Paynell’s King’s Bench reports are now published here.

Editorial Principles and Practices

The headnotes, or syllabi, which are in italics at the beginning of each case, are the product of the present editor. The purpose of these headnotes is not to provide a complete legal analysis of the reports which they accompany, but, rather, they are intended to serve as an indication of the general subjects of the case.


Most of these cases have been reported in print elsewhere; therefore, when the case is presently generally known by another style than that used by Paynell, I have used that other style. This is primarily a matter of using a different form of a party’s name. The reason for the variations is that the reporters were in court hearing the names being orally pronounced by the judges and the counsel.

Square brackets have been used to enclose matter added by the editor; such matter are words added where there has been a deterioration in the original manuscript or a blank left in a citation. Most frequently, however, they are words added to aid the flow of the text or to make an abbreviated note into a grammatical sentence. Ellipses set off by square brackets indicates that the editor could not decipher a word or several words in the manuscript but declined to speculate on what is missing. A question mark between square brackets warns the reader that the editor was unsure of the correctness of the preceding word.

Marginalia, endorsements, erasures, and cancellations have not been transcribed as a general rule. Those erasures that have been transcribed are enclosed within angle brackets.

Dates are all given in the Old Style, with the new year beginning on January 1; the New Style was not adopted in England until 1752. 29

In making footnotes to the citations to authority in the cases transcribed, I have given parallel references to the English Reports Reprint since this is the edition that is most widely available today, but the statutory references are limited to the Statutes of the Realm. Where a case or a statute is referred to more than once in a particular case, only the first reference has been identified in a footnote.

29 Stat. 24 Geo. II, c. 23, s. 1.