2002

The Chancery Reports of John Herne And of George Duke (1599 to 1674)

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THE CHANCERY REPORTS
OF JOHN HERNE
AND OF GEORGE DUKE
(1599 TO 1674)

Edited by
W. Hamilton Bryson

William S. Hein & Co., Inc.
Buffalo, New York
2002
INTRODUCTION

These reports of cases are focused on the correction of abuses of charities and breaches of trusts to charitable purposes. Although these cases were decided in the seventeenth century, they deal with problems that continually arise today. Trustees of charities are always tempted to serve themselves rather than the intended beneficiaries, and the donors and donees are normally unable to do much about it. The donors, if they are not dead, have usually made an irrevocable gift to a charity, usually a charitable trust or a non-stock corporation, which has a self-perpetuating governing body. Such trustees or directors have a vested control over the gift to the charitable purposes and are usually beyond the control of the donor. Frequently, the prospective donees have not yet been identified and thus have no standing to complain about any malfeasance in the management of the charity. Thus the government acting through the attorney general regulates the operation of public charities. The attorney general, directly or through relator actions, minority trustees and directors, and, possibly, donees, can sue in court to enforce the donor’s charitable intentions.

In addition, modern tax laws are designed to encourage charitable donations. This often results in the creation of sham and fraudulent charities that are created purely for tax avoidance purposes. While such schemes could be dealt with as were the gifts in mortmain in medieval England, they could perhaps also be turned into genuine charities by the established principles governing public charities.

Many of the reports reprinted here were decided under the Statute of Charitable Uses. However, this Statute, which is no longer in force, did not create new substantive rights; it only set up new procedures and remedies to protect those rights. ‘[C]ases of charity in courts of equity in England were valid independently of and previously to the Statute of Elizabeth.’ Fraud and mis-

1 Stat. 43 Eliz. I, c. 4 (Statutes of the Realm (SR), IV, 968-970).
3 Incorporated Society in Dublin v. Richards, 1 Drury & Warren 258, 308 (1841).
management of public charities and trusts to charitable purposes has always been contrary to the law. Thus, the basic law of public charities has survived the repeal of this famous legislation. Since the problems of regulating charities and the basic law in reference thereto are the same today as they were three hundred years ago and since these relevant case reports are not readily accessible to most members of the legal profession, a new edition of them has been prepared.

The Reports

The law reports edited here are the reports of cases first published by John Herne and by George Duke in their editions of The Law of Charitable Uses. All of the cases in the first edition by Herne are also repeated in the later editions. The reports which they copied or abridged from other printed reports have not been included, since the full versions are otherwise easily accessible today. However, the reports that they first printed are not very accessible, as the several editions of this work on charitable trusts are long out of print and not easy to find.

John Herne may have created some of the reports in his book, but it is more likely that he copied them from manuscripts made by others. Twenty of his cases are also used in Tothill’s reports. These cases appear in both Herne and Tothill in the same order, except for the last case, Windsor v. Paupers of Farnham (Ch. 1626). The latest case common to both publications is Bramble v. Poor of Havering (Ch. 1639). A comparison of Herne’s and Tothill’s versions of the same cases shows that neither was relying on the other, but each was using copies of the same.

The Law of Charitable Uses

The law of charitable uses is set forth and explained by persons who prosecute commissions granted on exceptions and upon proceedings upon the said statutes, T.R. for Timothy Twyford...

6 p., 151, 5 p.; 15 cm.; 26 and 27 are switched.

The law of charitable uses is set forth and explained by persons who prosecute commissions granted on exceptions and upon proceedings upon the said statutes, T.R. for Timothy Twyford... [8], 271, [7] p. (the A4 B-S8 T4. T4 blank)


Introduction

The Law of Charitable Uses

_The Law of Charitable Uses_ is a single law book that had four editions, each of which expanded significantly upon the previous one. The first edition, which was published in 1660, is by John Herne; the second edition, in 1663, is also by John Herne; the third, in 1676, is by George Duke; and the fourth, in 1805, is by George W. Bridgman.

The law of charitable uses: wherein the Statute of 43 Eliz. Chap. 4 is set forth and explained; with directions how to sue out and prosecute commissions grounded upon that statute: also presidents, inquisitions, and decrees, with diverse judgments, and resolutions, upon exceptions and appeals against decrees; and other proceedings upon the said statute. By John Herne. London: Printed by T.R. for Timothy Twyford . . . 1660.

6 p., 151, 5 p.; 15 cm. Signatures: A3-T2; page numbers 26 and 27 are switched, page number 83 twice. Wing (2d) H1568.

The law of charitable uses, wherein the Statute of 43 Eliz. chap. 4. is set forth and explained, with directions how to sue out and prosecute commissions grounded upon that statute: also presidents, inquisitions, and decrees, with divers judgments, and resolutions, upon exceptions and appeals against decrees; and other proceedings upon the said Statute. The second edition, much enlarged and amended. By John Herne. London: Printed by J.S. for Timothy Twyford . . . 1663.

[8], 271, [7] p. (the first leaf blank); 15 cm. Signatures: A4 B-S8 T4. T4 blank?; Advertisements on last leaf. Wing

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added, the law of mortmain, George II. c. 36; the whole enlightened by an abridgment adapted to the use of every church, bishops, cathedrals, colleges ecclesiastical as well as parochial. Abridged by Richard Whalley Bridg., 1805.

xxxii, 4, 689, [52] p.

Timothy Twyford

Timothy Twyford was a member of both Herne's Pleader in 1657 and Herne's Conveyances in 1658 editions of his works.

John Herne, the son of John Herne, the elder, died before he could be called to the bar; he gave a reading on the title gentleman after the War and the consequent change of court in London. He never called to the bar; he gave a reading on the title gentleman after the War and the consequent change of court in London. He

1 H. R. Plomer, Diction. 1667, p. 183 (1907).

2 The elder John Herne was a member of the Inner Temple; he gave a reading on the title gentleman after the War and the consequent change of court in London. He never called to the bar.

3 Records of the Hon. Soc. 1896.
Introduction

added, the law of mortmain, as established by the statute of 9 George II. c. 36: the whole continued to the present time. En-
tertained by an abridgment of all the adjudged cases, particularly
adapted to the use of every professor of the law, as well as all
bishops, cathedrals, colleges, parishes, and all corporations,
ecclesiastical as well as civil; and all eleemosynary foundations,
by Richard Whalley Bridgman, Esq. London: W. Clarke and Sonis,
1805.

xxxii, 4, 689, [52] p. 25 cm.

Timothy Twyford and Henry Twyford

Timothy Twyford was the publisher of the first two editions
of The Law of Charitable Uses in 1660 and 1663 as well as
Heme’s Pledger in 1657.

Henry Twyford was the publisher of the third edition of The
Law of Charitable Uses in 1676. He also published editions of
Heme’s Conveyances in 1656 and 1658, Heme’s Pledger in 1657,
and Heme’s Modern Assurancer in 1658.1

John Herne

John Herne, the son of John Herne of London,2 was admitted
to Lincoln’s Inn on 11 February 1636.3 Judging by the addition
of the title gentleman after his name on the title pages of the 1656
and 1658 editions of his book The Law of Conveyances, he was
never called to the bar; otherwise he would have been called
esquire. Perhaps, his legal education was interrupted by the Civil
War and the consequent disruption of the royal courts and the inns
of court in London. He was a secondary in the Court of King’s

1 H. R. Plomer, Dictionary of the Booksellers and Printers . . . 1641-
1667, p. 183 (1907).

2 The elder John Herne was a prominent barrister and bencher of Lincoln’s
Inn; he gave a reading on the Statute of Sewers which was translated and

3 Records of the Hon. Society of Lincoln’s Inn: Admissions, vol. 1, p. 229
(1896).
Bench (Upper Bench) at least between 1652 and 1663. His last known publication was printed in 1663.

Herne's name appears on the title page of both the first and the second editions of The Law of Charitable Uses, and he signs the prefaces of both editions, 'To the Reader', with his initials. Although Herne's name does not appear on the 1676 edition of this work, it is clearly the same work, though 'revised and much enlarged', as is declared on the title page and is confirmed by a comparison of the texts.

Herne's other works were:

The law of conveyances, shewing the natures, kinds, and effects, of all manner of assurances, with the manner of their several executions and operations. Also directions to sue out and prosecute all manner of writs, of extent, legit, and judicall writs upon statutes, recognizances, judgments, &c. A warrant to summon a court of survey: and the articles to be given in charge, and inquired of in that court. With an exposition of diverse obscure words and terms of law, used in ancient records, &c. And also plaine decimal tables, whereby may be found the true values of lands, leases, and estates, in possession, or reversion. With a concordance of years, &c. By John Herne gent. London, Printed by T.R. for H. Twyford and T. Dring, 1656.


The law of conveyances, shewing the natures, kinds, and effects of all manner of assurances, with the manner of their several executions and operations. Also directions to sue out and prosecute all manner of writs, of extent, legit, and judicall writs upon statutes, recognizances, judgments, &c. A warrant to summon a court of survey: and the articles to be given in charge, and inquired of in that court. With an exposition of diverse obscure words and terms of law, used in ancient records, &c. And also plaine decimal tables, whereby may be found the true values of lands, leases, and estates, in possession, or reversion. With a concordance of years, &c. By John Herne gent. The 2d ed. cor. and amended. London, Printed by T.R. for H. Twyford and Tho. Dring, 1658.

1 Style 345, 82 E.R. 764; T. Raymond 73, 83 E.R. 40.
Introduction

4 p. Il. 179 (i.e. 210), [38] p. incl. tables. 17 cm. Wing (2d) H1571.


The pleader: containing perfect presidents and formes of declarations, pleadings, issues, judgments, and proceedings, in all kinds of actions, real, personal, and mixt; very necessary to be known, and of excellent use. Together with the termes and rolls wherein they were entred; and also diverse points of great learning, and various notes and cases to illustrate the same. As they were drawn, entred, and taken in the times of those famous prothonotaries of the court of common pleas, Richard Brownlow, Robert Moyle, John Gulston, Thomas Cory, esqrs. Collected and published for the use and benefit of the students and practicers of law, by John Herne. With exact alphabeticall tables of all the principall matters therein contained. London: Printed for Henry Twyford, Thomas Dring, and Timothy Twyford . . . 1657.

[4], 841 (i.e. 747), [20] p. 28 cm. (fol.). Wing (2d) H1574.

At the end of this book is a list of books for sale by Henry Twyford including the Conveyances by ‘John Hern of the Middle Temple, Gent.’

Wing lists a 1658 ed. of The Pleader located in the library of the Law Society, London (Wing (2d) H1575), but this writer was not able to see it.

The modern assurancer, or The clarks directory. Containing the practick part of the law, in the exact formes and draughts of all manner of presidents for bargaines, and sales, grants, feoffments, bonds, bills, conditions, covenants, joynitures, indentures; to lead the uses of fines and recoveries, with good provisos, covenants to stand seised, charter-parties for ships, leases, releases, surrenders, &c. and all other instruments and assurances now in use: intended for all young students and practizers of the law. By J.H. With an exact table wherein may be found the principall matters therein contained. London: Printed for Henry Twyford, and Nath. Brook, 1658.
Herne and Duke Chancery Cases


3 p. 1., 30 p. 19 cm. Wing (2d) H1572.

The compleat clark, and scriveners guide. Containing exact draughts and presidents of all manner of assurances and instruments now in use: as they were penned and perfected by divers learned judges, eminent lawyers, and great conveyancers, both ancient and modern. Whereunto is also added a concordance of years, from the time of King Richard the third untill this present; very usefull for conveyancers and others. With an exact alphabetical table, whereby any of the said presidents may be easily found out. Publisher London: printed by T.R. for H. Twyford, and are to be sold at his shop in Vine-Court Middle Temple, N. Brookes at the Angell in Cornhill, J. Place at Furnivals Inne Gate in Holborne, and R. Wingate, at the Golden Hind in Chancery-Lane, 1655.


At the end of Herne's Pledger (1657) is a list of other books for sale by Henry Twyford, including this work which is attributed to John Hern.

George Duke

George Duke of Wandsworth, Surrey, the son and heir of George Duke, was admitted to the Inner Temple in November 1634 and called to the bar in 1654.1 No other publication is attributed to Duke; perhaps he was hired by Twyford to enlarge the earlier editions of this book.

1 Students Admitted to the Inner Temple 1547-1660, p. 282 [1877].

Richard Whalley

Richard Whalley Bridgman, attorney and clerk to the publisher the fourth edition of this book, wrote Thesaurus Juridicus (1865), but he only published two other books: Analytical Digest (1805), and Reflections on the Study of Bibliography (1807); and After a useful and scholarly life he died on 16 November 1820 and was buried in the church of St. Mary's, Wandsworth.
Richard Whalley Bridgman

Richard Whalley Bridgman was born in 1761. He was an attorney and clerk to the Grocers' Company. In addition to publishing the fourth edition of The Law of Charitable Uses, he wrote Thesaurus Juridicus, which was a digest of equity cases, but he only published two volumes, which got up to the letter D; Analytical Digest (1805, 1807, 1813, 1822, 1823, 1824, 1832); Reflections on the Study of Law (1804); A Short View of Legal Bibliography (1807); and an edition of Buller's Nisi Prius (1817). After a useful and scholarly career in law, Bridgman died at Bath on 16 November 1820 at the age of 59.¹