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Equity Cases in the Court of Exchequer 1660 to 1714

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Equity Cases in the Court of Exchequer 1660 to 1714

Edited by W. H. Bryson

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INTRODUCTION:
The Court of Exchequer

The high court of exchequer evolved within the exchequer department in the middle ages in order to determine legal disputes over the royal revenue.¹ Later, the court of exchequer began to hear common law disputes between private persons where this would assist in the collection of the royal revenue.² In the middle of the sixteenth century, the court of exchequer developed an equity side of its jurisdiction so that it could grant equitable remedies as long as there was some connection to the crown and its revenue.³ In 1649, by means of fictitious allegations of jurisdiction that could not be challenged in court, the exchequer extended its jurisdiction to all civil cases of common law and equity without limitation.⁴

The court of exchequer was presided over by the chief baron and three puisne barons. When the court sat to hear equity cases, the four barons were joined on the bench by the lord treasurer of England and by the chancellor of the exchequer; however, in practice, the latter two officers sat only infrequently.⁵

The court of exchequer had concurrent equity jurisdiction with the court of chancery. However, the exchequer was a collegial court of four to six judges, but the lord chancellor decided cases as a single judge. Although the court of exchequer heard revenue, common law, and equity cases, these three jurisdictions were kept separate procedurally and clerically. The barons heard common law cases one day and equity cases another, as did the court of chancery. The court of common pleas and the court of king's bench had no equity jurisdiction.

¹ See generally J. Manning, Practice of the Court of Exchequer, Revenue Branch (2nd ed. 1827).
⁴ Bryson, The Equity Side of the Exchequer, pp. 25–27.
The courts of equity grant equitable remedies, such as injunctions, and allow equitable defenses, such as laches. Equitable remedies are available only when common law remedies are inadequate, incomplete, or unjust. Common law remedies can be supplemented by equitable ones in matters of procedure, evidence, substantive rights, and remedies to enforce rights. Equity jurisdiction is extraordinary in the sense that, if the common law remedy is adequate and complete, then the courts of equity will not take jurisdiction over the case but will leave the litigants to pursue their common law remedies. Although there is consistency among the principles and procedures of equity, equity exists against the specific background of the common law of England. But, since equity arose expressly to supplement and to complement the common law, when the principles of common law and equity conflict, the equity result will prevail. This is the very origin and purpose of equity, that is, to correct and modernize the common law. But, if, as between the litigants, their equities are equal, the common law results will be applied by the courts of equity.

Although a small handful of equity cases appear in the yearbooks, the medieval tradition of law reporting centered on the common law courts and this tradition continued in the sixteenth and seventeenth centuries. This was so because, until the early modern period, the substantive law of England was, primarily, developed in the common law courts and the equity courts provided, primarily, more modern and sophisticated remedies to enforce common law rights. Thus, law students spent their time in the courts of common law rather than in the courts of equity, and the notes they took there were revised and reworked into law reports. For many lawyers, the habits of reporting cases they developed as students were continued after their admission to practice law, and in some cases, such as Edward Ward, after they became judges. As a result, reports of equity cases are scarce before the middle of the seventeenth century. Therefore, this collection of equity reports adds substantially to the number of seventeenth century equity reports in print.


7 These can be found through R. Brooke, La Graunde Abridgement (3rd ed. 1586), titles 'Conscience & Subpoena & Injunctions' and 'Fefferments al Uses.'

8 See below.

ble remedies, such as injunctions, and allow equitable remedies are available only when incomplete, or unjust. Common law remedies are available only when incomplete, or unjust. Common law remedies are adequate and complete, whereas equity jurisdiction over the case but will leave the court of jurisdiction over the case but will leave the

Although there is consistency of equity, equity exists against the specific jurisdiction in matters of procedure, evidence, and force rights. Equity jurisdiction is extraordinary; it is created by the court of common law when the principles of common law are not adequate and complete. Although there is consistency of equity, equity exists against the specific jurisdiction in matters of procedure, evidence, and force rights. Equity jurisdiction is extraordinary; it is created by the court of common law when the principles of common law are not adequate and complete.

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Cases Concerning Equity and the Courts

Reports of Exchequer Cases

The court of the exchequer had the smallest case load of the four high courts at Westminster. Therefore, one should not be surprised to learn that the number of law reports of cases there was the smallest. Indeed, it was the smallest by far. The first collection of exchequer cases is that attributed to Richard Lane; it was published posthumously in 1657, and it covers the period 1605 to 1612. The next collection was by Robert Paynell; the cases date from 1627 to 1631; they are presently in manuscript only, except for the equity cases, which are published in the Selden Society series, volume 118. An edition of Paynell's reports is currently being prepared for publication. The third set of exchequer reports was made by Thomas Hardres; this book covers the period 1655 to 1669; the first edition was published posthumously in 1693. Hardres' reports include sixty-eight equity case reports dating from 1660 to 1669. Samuel Dodd's reports date from 1678 to 1713, but they were not printed until the year 2000. Edward Ward's extensive exchequer reports date from 1660 to 1713. Ward reported numerous equity exchequer cases, and they are printed here for the first time; they constitute a significant increase in the quantity and quality of the case law from the exchequer in the seventeenth century.

Edward Ward

Edward Ward was born in June 1638; he was the second son of William Ward of Preston, Rutland. Edward Ward was a student at Clifford's Inn, and then in June 1664, he was admitted a student at the Inner Temple. He was called to the bar in 1670 and quickly developed a substantial practice in the court of exchequer. He was politically connected with the Whigs. In 1687, Ward was elected a bencher of the Inner Temple, and Treasurer in 1693.

10 There are several miscellaneous exchequer cases reported here and there among the general law reports.


14 Samuel Dodd's Reports 1678–1713 and Miscellaneous Exchequer Cases 1671–1713 (2000). This book also publishes new editions of the few miscellaneous exchequer cases printed in the other reports of the period. This is with a view to having in one place all of the printed exchequer cases between the exchequer reports of Thomas Hardres and those of William Bunbury.
Upon the accession of William and Mary, he was offered a seat in the court of common pleas, but he declined this honor. On 30 March 1693, he was appointed attorney general, and he was knighted on 30 October 1693. On 30 March 1693, he was appointed attorney general, and he was knighted on 30 October 1693. On 8 June 1695, he was made chief baron of the court of exchequer. In May 1700, he was one of the commissioners to hold the great seal during the temporary vacancy in the office of the lord chancellor.

Ward was married to Elizabeth Papillon of London in 1676, and they had ten surviving children. His eldest son, Edward, became a distinguished barrister.

Sir Edward Ward died at his house in Essex Street, Strand, London, on 14 July 1714, and he was buried at Stoke Doyle, Northamptonshire.

The manuscripts of Ward's case reports are all in the library of Lincoln's Inn. The earliest and the neatest in appearance are in two volumes now labeled as Misc. 499 and Misc. 500. Ward, himself, called them Book 1 and Book 2, or L.1 and L.2. These two volumes include exchequer cases from 1660 to Trinity term 1673. Actually the first thirty-eight pages of Misc. 499 are a collection of reports from Mr. Weston of Gray's Inn and of cases in the court of common pleas in the years 1654 and 1655; the last part of Misc. 500 are reports from the king's bench, which seem to have come from Holt. These groups of cases appear to have been copied en bloc by Ward. The earliest cases were probably copied at the beginning of his law studies before he began collecting his own reports.

The cases in Misc. 499, pp. 41 to end, and Misc. 500, ff. 1-220, were collected by Ward himself from the courts of the exchequer and the king's bench from 1660 to 1673. On page 112 of Misc. 499 is a reference to 'L.A. fo. 1'; it is next to a case heard in Michaelmas term 1664. The last such reference is on folio 220 of Misc. 500 to 'F.192'. These notebooks of Ward, which he numbered A through F, are not in Lincoln's Inn. Perhaps Ward himself discarded them after having transcribed or rewritten the reports he wanted from them into his books one and two (Misc. 499 and 500).

However, notebook G, which begins in Michaelmas term 1673, is Lincoln's Inn Misc. 555. Note that it begins the very next term after the exchequer cases in Misc. 500 (Ward's Book 2) end. From this, similarity of handwriting, and cross-references, it can be seen that Misc. 499 and 500 are indeed Ward's reports.

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15 Samuel Dodd's Reports, Note, No. 305, gives the date of death as 16 July.
18 E.g. the cross-references back and forth between LI MS. Misc. 500 (L.2), f. 220, and LI MS. Misc. 557 (L.K), f. 83.
Mary, he was offered a seat in the court of honor. On 30 March 1693, he was appointed knighted on 30 October 1693. On 8 June, he court of exchequer. In May 1700, he was great seal during the temporary vacancy in Papillon of London in 1676, and they had an Essex Street, Strand, London, on 14 July, Edward, became a distinguished barrister.

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These notebooks seem to have been used in the courtroom for taking notes. Misc. 555 consists mainly of jottings of points made during arguments with here and there an occasional report suitable for editing. He leaves spaces at the end of most cases for future personal comments and cross-references. As time goes by, the notes become fewer and the reports become more frequent, longer, and much better. It is interesting to watch Ward's abilities as a reporter grow with experience. By 1683, when Book K is begun, the notes of arguments are very infrequent; also, by this time, Ward rarely notes a case that was not in the exchequer except for the notable state trials of his day. He has become a specialist in exchequer practice, handling equity, common law, and revenue litigation there.

Perhaps the reason that these cases were not transcribed into a book three was that, by 1673, his practice was such that he did not have the time to do it. Perhaps his skill as a reporter had become such that it was no longer necessary to rewrite his reports.

In Trinity term 1695, Ward was raised to the position of chief baron of the exchequer. In this same term, he began a new notebook, M, which is exactly the same in form as the earlier ones except that Ward switched over from law French to English. Book M (Misc. 559) ends with Michaelmas 1697.

19 Book J is referred to, inter alia, at LI MS. Misc. 557, f. 8, and LI MS. Misc. 558, f. 18. The cases in Book J were copied in the Georgetown manuscript; see below.
By way of summary, Ward’s reports have been transcribed from his books one and two (1660–1673), books G through M (1673–1697), and from his papers (1696–1714). His reports constantly improve in quantity and quality until a year after he becomes chief baron, 1697, and then he is unable to keep up the volume of this part of his legal career. The importance of Ward’s reports is that they neatly fill with a good selection of well-reported equity exchequer cases the gap between the reports of Hardres (1655–1669) and Bunbury (1713–1741).

An eighteenth-century copy of Ward’s manuscripts is in the Georgetown University Law Library. GUL MS. B88–7 is a copy of LI MS. Misc. 556 [Ward Book H], Ward Book J which was lost before the Ward manuscripts came to Lincoln’s Inn, and the first part of LI MS. Misc. 557 [Ward Book K]; these reports date from 1677 to about 1685. GUL MS. B88–8 copies the second part of LI MS. Misc. 557 [Ward Book K], LI MS. Misc. 558 [Ward Book L], and LI MS. Misc. 559 [Ward Book M]; these reports date from about 1685 to 1697. GUL MS. B88–9 is a copy of Chief Baron Ward’s judicial notebooks, including cases from 1698 to 1707, copying LI MSS. Misc. 532, Misc. 533, and Misc. 536. The copies of the judicial notebooks are continued in GUL MS. B88–10, which copies LI MSS. Misc. 538 and Misc. 539, which have reports and notes from 1708 to 1714, when Ward died. It is clear that the Georgetown manuscripts are copies of the Lincoln’s Inn manuscripts because the former copy the cross-references in and to the latter, e.g. GUL MS. B88–7, p. 365, refers to a case on page 75, which is on page 348 of the Georgetown manuscript. 20

Indiana University Lilly Library Parker MS. ‘Cases in the Exchequer, vol. 6’, pp. 120–150, copies twenty-seven cases from Ward’s manuscripts; these cases date from 1677 to Trinity term 1680. On page 120 is written ‘the following cases, to folio 150 inclusive, were transcribed from and examined with the late Lord Chief Baron Ward’s original manuscripts, whose manuscripts are at the family seat of Stoke Doyle near Oundle in Northamptonshire.’

Robert Price reported many exchequer cases from the time when he sat as a baron of this court. His manuscript reports have not heretofore been printed, and those cases from the equity side of the court are now published herein.

Robert Price

Robert Price was born on 14 January 1655 in Cerrig-y-Druidion, Denbighshire; he was the second son of Thomas Price and Margaret Vynne Price. He was a student at St. John’s College, Cambridge, having been admitted on 28 March 1672. On 8 May 1673, he was admitted to Lincoln’s Inn, and he was called to the bar in July 1679.

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Legal Manuscripts in the United States of America,

In politics, he was a member of the Tory party, serving in Parliament from 1690 to 1700 and in 1701. Among his numerous public offices were those of recorder of Radnor, attorney general for South Wales, and king's counsel at Lud­ low. He achieved a reputation as a good lawyer and was active in several high­profile cases.

Price was made a baron of the exchequer on 24 June 1702, and on 16 October 1726, he was moved to the court of common pleas, where he sat as a justice until his death on 2 February 1733. He married Lucy Rodd of Foxley, Hereford­shire, and they had two sons, Thomas and Uvedale, and a daughter Lucy. In 1717, Price built a house at Foxley which remained in his family until 1855. He died at Kensington at the age of 78 and was buried at Yazor, Herefordshire.21

Robert Price's reports have survived in an eighteenth-century copy that is now in the Lilly Library of Indiana University. These three volumes, ‘Cases in the Exchequer’, vol. 3, vol. 4, and vol. 5, belonged to Sir Thomas Parker (d. 1784), who was a baron of the exchequer from 1738 to 1740, justice of the court of common pleas from 1740 to 1742, and chief baron from 1742 to 1772. These copies were made from the original in Price’s own hand by Uvedale Price, his son and heir, or by John Castle, his clerk, when they were in the possession of Uvedale Price at Foxley, Herefordshire. Perhaps Parker himself commissioned this copy. The original manuscript was subsequently given to the Hon. Heneage Legge (d. 1759), baron of the exchequer, and its present location is unknown.22

The scope of this volume of reports of cases includes all heretofore unpublished equity case reports from the court of exchequer that I have been able to locate. They date from the period 1660 to 1714, the time of the later Stuart monarchs of Eng­land. Thus the four hundred and sixty-nine equity exchequer cases printed here fill a major gap in the exchequer reports, that between those of Thomas Hardres, which end in 1669, and those of William Bunbury, which begin in 1713.

This book includes reports of the judges' opinions but not orders and de­crees. The formal written orders and decrees of the court were drafted by the at­torneys for the parties not by the judges, and thus they do not often give the rea­sons for the decision. Although the orders may give additional information about the case, for the numerous anonymous cases and for many others, the orders cannot be located; when they can be, they are often so bulky that it is impractical to print them. However, numerous exchequer decrees have been published in Hutton Wood, A Collection of Decrees by the Court of Exchequer in Tithe Causes (1798), which covers the period 1650 to 1798. These have been reprinted in F. K. Eagle and E. Younge, A Collection of the Reports of Cases... Relating to Tithes (1826).

Editorial Principles and Practices

Because of the great disparity of style, format, and language of the original texts, the decision has been made to translate all of the cases in law French into modern idiomatic English and not to print any of the original cases litteratim. Law French, by the time of the cases in this volume, was a language in a moribund condition. The reporters were obviously thinking in English though writing in law French; this is clear from both the vocabulary and the syntax of the sentences. This is universally true, not merely that some lawyers were linguistically superior to others in law French. In many cases, the precise English words in the mind of the writer are transparently obvious. The difficulties of translation (and they were numerous) came from the law and not the language, from elliptical writing, from poor handwriting, poor copying, and the bad state of the manuscripts. The problems would have been as difficult had the original been in English. Where there were serious doubts as to the meaning of the law French, a transcription of the original has been given in a footnote.

A transcription of the law French original in addition to the translation has not been given for several reasons. Primarily, the law French of the seventeenth century is linguistically artificial in that the writers were thinking in English and the quirks of their French are matters of legal jargon, not of linguistics. Thus, the true original language is English. Second, several reporters alternated law French and English sentences within a single case without any discernible logic or system. All the reporters used English words when they did not know the French one. Third, to publish the law French original would substantially increase the costs of this volume. Fourth, many of the original manuscripts are available in microfiche copy.

Those reports that were originally in English have been transcribed using modern spelling and punctuation. As a matter of law, a word is a spoken thing not a written thing, and thus spelling is of no legal significance so long as the word sounds correctly. This is the rule of idem sonans. In the seventeenth century, writers were careful to spell Latin words according to the standard conventions, but the same writer felt no such constraints when writing in English and quite happily would spell the same English word, even proper nouns,23 differently within the same sentence. Thus, to transcribe the English cases litteratim instead of using modern, standard spelling and punctuation has been done, this book of reports has no more can be done in this direction to the substance of the original reports.

The modern forms of i, j, u, and u have been used for the writing of law French, names of persons and of places. Where there is some doubt or uncertainty of whether it was originally in law French, names of persons and of places are given in Footnotes.

Each case is a transcription (of a case originally in law French) of several versions of the report. The modern forms of i, j, u, and u have been used for the writing of law French, names of persons and of places. Where there is some doubt or uncertainty of whether it was originally in law French, names of persons and of places are given in Footnotes.

The headnotes, or syllabi, which are the product of the present editor, they are intended to serve as an introduction to the case. Ellipses set off by square brackets have been used to decipher a word or several words in what is missing. A question mark before the editor was unsure of the correct word. Marginalia, endorsements, etc., have been described as a general rule. Those erased within angle brackets.

Dates are all given in Old Style 24 Geo. II, c. 23, s. 1.


Principles and Practices

Instead of using modern, standard orthography is useless. Even after this has been done, this book of reports lacks a uniformity of style and appearance, but no more can be done in this direction without compromising the integrity of the substance of the original reports.

The modern forms of i, j, u, and v have been used, as this is a matter of calligraphy and typography rather than orthography. 24

Since modern usage in spelling, paragraphing, capitalization, and other punctuation has been used for the material translated into English from law French, names of persons and of places have been put into modern spelling unless there is some doubt or uncertainty. In the original, frequently the same name was spelled differently in the same report. Where the true name of a party has been found from the official record of the case, this has been used instead of a garbled version as frequently found in the manuscript report.

Each case is a transcription (of a case originally in English) or a translation (of a case originally in law French) of a single manuscript rather than a composite of several versions of the report. The manuscript used is noted after the style of the case, and after the citation to the manuscript is a note in square brackets of whether it was originally in law French or in English. Significant variations in other manuscripts are given in footnotes, but minor verbal variations are not noted.

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.

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 Old Style since New Style was not adopted in England until 1752. 25

Since the method of citation to the English cases and statutes has been established and consistently followed for several centuries, the modern scholarly conventions for footnotes have not been used. The cases are cited as follows: the name (style) of the case followed by the date of its decision by the court, if known, then the volume number, the name of the printed book of reports, and the page number. I have also given the parallel references to the nineteenth-century *English Reports Reprint* since this is the edition that is most widely available today. The yearbook (YB) cases are cited by the legal term, the regnal year, the folio number, the placitum number, and the date of the case. The statutes are cited by the regnal year followed by the chapter of the statute, and then the reference to the printed edition is given in parentheses with the volume and then the page numbers. SR refers to the edition used, i.e. *The Statutes of the Realm* (London, 1810–1828). 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.

I have attempted to locate the official written order that corresponds to the unofficial report published here. In those cases where one cannot be sure which order is the exact one, I have noted all possible ones that I was able to identify. In many cases, there were no orders for the term of the report (where the term is known), and so references to orders from preceding or following terms have been noted where possible.

The general problem is that equity cases normally took several years from filing to final decree. During the pendency of the litigation, numerous interlocutory orders would be entered; some were orders of course, others followed interlocutory hearings. The reports could have been of proceedings at interlocutory or final hearings; in most cases, one cannot know which.

On the other hand, the parties may not have ever had a formal order drafted and entered in the order books following an oral ruling delivered from the bench. Where a final decision was for the defendant or where the parties settled the case out of court, for example, money was to be saved by omitting this formality.

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<td>Athy ads. Stevens (1673)</td>
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<td>433</td>
<td>Atkyns v. Wayland (1709)</td>
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<td>298</td>
<td>Atkinson ads. Cumber (1695)</td>
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<tr>
<td>262</td>
<td>Atkyns v. Savage (1688)</td>
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