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## Robert Paynell's Exchequer Reports (1627-1631)

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ROBERT PAYNELL'S  
EXCHEQUER REPORTS  
(1627-1631)

EDITED BY  
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Tempe, Arizona  
2009

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## PREFACE

Several of these exchequer cases reported by Robert Paynell, the equity ones, were published in 2001 in volume 118 of the Selden Society publications, *Cases Concerning Equity and the Courts of Equity 1550-1660*. These are reprinted here with permission. Thus, all of Paynell's exchequer cases are printed together here in the order that he put them in his own compilation.

Paynell's exchequer reports published here, the other exchequer cases in volume 118 of the Selden Society publications, and those in *Reports of Cases in the Court of Exchequer in the Time of King Charles I* (2006) make available in print and in English all of the exchequer reports from 1625 to 1648 presently known to this writer. It is hoped that they will speed the plow of those who will unearth the history of the seventeenth-century Court of Exchequer, about which not much is presently known.

I would like to thank personally the librarians and their staffs of the British Library manuscripts department, Lincoln's Inn, the University of Richmond School of Law, the University of Virginia School of Law, and the Yale University School of Law for their unfailing kindness and helpfulness.

## INTRO

The law reports that are printed here (There are no criminal law cases in the property, contracts, and torts, substance and illustrate the civil law of England in the seventeenth century. However, several of the cases have great political significance at the time.

Early in the reign of Charles I, the king's advisers in Parliament. They thought that the king was in bad faith by failing to cooperate with them, and it to the disadvantage of the realm. They thought to administer the kingdom without any participation of the people, the courts of law took on additional importance as a meeting place for dispute resolution before the king in England.<sup>1</sup> This was especially true as the king's revenue was administered and litigated.

Without Parliament as a source of money, the king had to look elsewhere for money. Two sources were enforcing and extending the king's prerogative: searching for concealed titles and royal lands, and using prerogative rights of the crown.<sup>5</sup> Examples of the first were the enforcement of the king's knighthood.<sup>4</sup> Examples of the latter were the king's use of prerogative rights of the crown,<sup>5</sup>

<sup>1</sup> See generally L. J. Reeve, *Charles I and the Personal Rule of Charles I* (1992).

<sup>2</sup> E.g. *Attorney General v. Rolle* (Ex. 1633), 118 Selden Soc. 611; *Attorney General v. Gouge* (Ex. 1633), 118 Selden Soc. 611.

<sup>3</sup> *Rex v. Hampden* (1637), *State Trials* 132.

<sup>4</sup> *Rex v. Stephens* (Ex. 1631), Nos. 14 and 15, 118 Selden Soc. 611.

<sup>5</sup> E.g. *Attorney General v. Bacon* (Ex. 1631), No. 98, 118 Selden Soc. 611; *Attorney General v. Burgesses of Wenlock* (Ex. 1628), No. 99, 118 Selden Soc. 611.

<sup>6</sup> E.g. *Attorney General v. Brockman* (Ex. 1631), No. 98; *Attorney General v. Berkeley* (Ex. 1631), No. 99; *Attorney General v. Taylor* (Ex. 1631), 118 Selden Soc. 611.

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## INTRODUCTION

The law reports that are printed here cover the broad range of the civil law. (There are no criminal law cases in this collection.) They include disputes over property, contracts, and torts, substance and procedure. Most of them are mundane and illustrate the civil law of England as it was in the middle of the seventeenth century. However, several of them concern the royal revenue and were of great political significance at the time.

Early in the reign of Charles I, the king and his advisors lost their confidence in Parliament. They thought that the members of Parliament were acting in bad faith by failing to cooperate with the government and, indeed, obstructing it to the disadvantage of the realm. Therefore, the decision was taken to administer the kingdom without any participation from the Commons. At this juncture, the courts of law took on additional constitutional importance as the major meeting place for dispute resolution between the Crown and the community of England.<sup>1</sup> This was especially true as to the Court of Exchequer where the royal revenue was administered and litigated.<sup>2</sup>

Without Parliament as a source of revenue for the government, the king had to look elsewhere for money. Two of the expedients that were resorted to were enforcing and extending the king's hereditary feudal rights and, similarly, searching for concealed titles and royal rights that had been lost to the Crown. Examples of the first were the enforcement of ship money<sup>3</sup> and compulsory knighthood.<sup>4</sup> Examples of the latter were suits of *quo warranto* for improperly using prerogative rights of the crown,<sup>5</sup> suits for intrusions upon royal land,<sup>6</sup> and

<sup>1</sup> See generally L. J. Reeve, *Charles I and the Road to Personal Rule* (1989); K. Sharpe, *The Personal Rule of Charles I* (1992).

<sup>2</sup> E.g. *Attorney General v. Rolle* (Ex. 1628), No. 102 (tonnage and poundage); *Attorney General v. Gouge* (Ex. 1633), 118 Selden Soc. 643 (the impropiators).

<sup>3</sup> *Rex v. Hampden* (1637), *State Trials* (F. Hargrave, ed., 1776), vol. 1, col. 505.

<sup>4</sup> *Rex v. Stephens* (Ex. 1631), Nos. 142, 174; H. H. Leonard, 'Distraint of Knight-hood: The Last Phase, 1625-41,' *History*, vol. 63, pp. 23-37 (1978).

<sup>5</sup> E.g. *Attorney General v. Bacon* (Ex. 1627), No. 41; *Attorney General ex rel. Ward v. Burgesses of Wenlock* (Ex. 1628), No. 96.

<sup>6</sup> E.g. *Attorney General v. Brockman* (Ex. 1628), No. 89; *Rex v. Aldus* (Ex. 1628), No. 98; *Attorney General v. Berkeley* (Ex. 1631), 118 Selden Soc. 610; *Attorney General v. Taylor* (Ex. 1631), 118 Selden Soc. 611 (purpresture over navigable waters); *Attorney*

revocations of royal grants for various defects therein.<sup>7</sup> However, this was perhaps carried too far. In the words of Professor W. J. Jones, 'A vigorous restatement of royal rights had assumed the character of a financial racket.'<sup>8</sup>

In the early 1640s when King Charles I was in retreat, the Long Parliament impeached all of the high court judges. Although the charges of high treason could not be seriously maintained, the charges of high crimes and misdemeanors were pressed.<sup>9</sup> The members of the Long Parliament believed that the judges had ruled improperly in favor of the king and against the law in the cases in which the king had an interest. For example, Parliament passed a Statute declaring that compulsory knighthood had never been the law of England.<sup>10</sup> However, the public records that were the foundation of the attorney general's argument fully supported the judgment of the court of exchequer.<sup>11</sup> Thus, these exchequer reports publish here for the first time the barons' opinions with their learned reasons. It is left to the reader to decide whether the barons of the exchequer were vindicated as to the charges of the politicians of the Long Parliament.

### 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.<sup>12</sup> In December 1617, he matriculated at Christ's College, Cambridge.<sup>13</sup> He was admitted to Gray's Inn on 2 June 1619,<sup>14</sup> called to the bar on 8 November 1626, and made an utter barrister on 24 November 1645.<sup>15</sup> In 1640, he participated in the creation ceremony of Francis Bacon (d. 1657) as a serjeant by distributing the customary gold rings.<sup>16</sup> Bacon was from

General v. Moore (Ex. 1637), 118 Selden Soc. 675 (purpresture over navigable waters); Rex v. Vermuyden (Ex. 1637), Exch. Cases temp. Car. I, p. 78 (intrusion in Sutton Marsh); Attorney General v. Simpson (Ex. 1639), 118 Selden Soc. 678; Attorney General ex rel. Tiringham v. Yarsley (Ex. 1639), 118 Selden Soc. 687.

<sup>7</sup> E.g. Attorney General v. Farmer (Ex. 1627), No. 45; Attorney General v. Blage (Ex. 1630), 118 Selden Soc. 608; Attorney General v. Dutton (Ex. 1637), 118 Selden Soc. 674.

<sup>8</sup> W. J. Jones, *Politics and the Bench* (1971), p. 98.

<sup>9</sup> *State Trials* (F. Hargrave, ed., 1776), vol. 1, col. 695.

<sup>10</sup> Stat. 16 Car. I, c. 20 (SR, V, 131).

<sup>11</sup> Rex v. Stephens (Ex. 1631), Nos. 142, 174.

<sup>12</sup> W. Rye, *Norfolk Families* (1913), p. 657; F. Blomefield, *History of the County of Norfolk* (1806), vol. 4, p. 295.

<sup>13</sup> J. Peile, *Biographical Register of Christ's College* (1910), vol. 1, p. 321.

<sup>14</sup> J. Foster, *The Register of Admissions to Gray's Inn* (1889), p. 154.

<sup>15</sup> R. J. Fletcher, *The Pension Book of Gray's Inn* (1901), vol. 1, pp. 274, 354.

<sup>16</sup> J. H. Baker, *Order of Serjeants at Law* (1984), pp. 440, 498.

King's Lynn and a member of Gray's Inn and Elizabeth.<sup>17</sup> It is possible that this connection led him to join Gray's Inn. Paynell sat regularly in the Northamptonshire term 1650 to 1657; however, he sat in the Norfolk term 1658 to 1665. He was married to Judith Duke, the daughter of John Duke of Northampton, who died in 1677, and had two sons, Robert Paynell, who died in 1677, and John Paynell, who died in 1658 and was buried in the Church of St. Andrew's, Lynn.

### The Exchequer

Robert Paynell reported systematically from the Michaelmas term 1627 to 1629, if not longer. Before his term 1627, he used his own words, he reported cases in his own words, but from the term 1625 to Hilary term 1627.<sup>21</sup> Paynell did not report for his private future uses, nor was he making notes to be in court on a particular day on his own account when the court sat to hear formal arguments. It was his intention to report the proceedings for a wider audience than himself alone. In his reports, he reports the arguments of the lawyers and the opinions of the judges. In the case of *Attorney General v. Bacon* (1627), he reported the opinion of the chief baron, which was much better than those of the other judges. He also reported the argument of the attorney general in *Attorney General v. Moore* (1637), 118 Selden Soc. 675. Such self-conscious comments would be made only for personal use. No such comments are found in the reports of Arthur Turnour, several of which are in the Library MS. Add. 35961 (Trinity term 1627).

The best exemplars of Robert Paynell's reports are in the Library MS. Add. 35961 (Trinity term 1627).

<sup>17</sup> W. R. Prest, *The Rise of Barristers* (1984), p. 145. 'Sir Francis Bacon (c. 1587-1657)', *Oxford Dictionary of National Biography*, vol. 1, p. 145.

<sup>18</sup> D. E. H. James, *Norfolk Quarter Sessions* (1924), part 1, vol. 3, p. 324; C. E. Blomefield, *Norfolk* (1924), part 1, vol. 3, p. 324; C. E. Blomefield, *Norfolk* (1924), part 1, vol. 3, p. 324.

<sup>19</sup> W. Rye, *supra*; F. Blomefield, *supra*.

<sup>20</sup> Attorney General v. Bradshaw (Ex. 1627), 118 Selden Soc. 678.

<sup>21</sup> BL MSS. Add. 35961, f. 1; Lansdowne MSS. 100, f. 1.

<sup>22</sup> Whitmore v. Porter (Ex. 1627), No. 41; Bigot v. Smith (Ex. 1627), No. 47; Rex v. Harris (Ex. 1629), No. 128.

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King's Lynn and a member of Gray's Inn, and he was the son of Paynell's aunt, Elizabeth.<sup>17</sup> 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 from 1650 to 1657; however, he sat in the Norwich sessions only.<sup>18</sup> In 1642, he married Judith Duke, the daughter of John Duke, M.D., of Colchester, and they had two sons, Robert Paynell, who died in 1677, and John Paynell. Robert Paynell died in 1658 and was buried in the Church of St. John the Baptist in Norwich.<sup>19</sup>

### The Exchequer Reports

Robert Paynell reported systematically the cases in the Court of Exchequer from 1627 to 1629, if not longer. Before his 'coming to report in the exchequer,'<sup>20</sup> to use his own words, he reported cases in the Court of King's Bench from Easter term 1625 to Hilary term 1627.<sup>21</sup> Paynell was not merely taking notes for his own private future uses, nor was he making notes of random cases while he happened to be in court on a particular day on his clients' business. He was usually there when the court sat to hear formal argument and to render formal opinions, and it was his intention to report the proceedings in court for publication to serve a wider audience than himself alone. In many cases, he records extensively the arguments of the lawyers and the opinions of the judges. He explains in several reports that he had not been in court or could not hear some of the arguments.<sup>22</sup> In the case of *Attorney General v. Bacon* (Ex. 1627), No. 41, Paynell stated that he reported the opinion of the chief baron only because it was more complete and much better than those of the other judges of the court. The same was said of an argument of the attorney general in *Attorney General v. Brockman* (Ex. 1628), No. 95. Such self-conscious comments would not be expected in private notes made only for personal use. No such comments are to be found in the exchequer reports of Arthur Turnour, several of which are printed below in the Appendix.

The best exemplars of Robert Paynell's reports of exchequer cases are British Library MS. Add. 35961 (Trinity term 1627 to Hilary term 1629) and British

<sup>17</sup> W.R. Prest, *The Rise of Barristers* (1986), p. 342; G. V. Benson and J. M. Blatchly, 'Sir Francis Bacon (c. 1587-1657)', *Oxford Dictionary of National Biography* (2004), vol. 3, p. 145.

<sup>18</sup> D. E. H. James, *Norfolk Quarter Sessions Order Book 1650-1657* (1955), passim.

<sup>19</sup> W. Rye, *supra*; F. Blomefield, *supra*; J. Venn and J. A. Venn, *Alumni Cantabrigienses* (1924), part 1, vol. 3, p. 324; C. E. Wright, *Fontes Harleiani* (1972), p. 271.

<sup>20</sup> *Attorney General v. Bradshaw* (Ex. 1627), No. 24.

<sup>21</sup> BL MSS. Add. 35961, f. 1; Lansdowne 1083, ff. 16v, 80.

<sup>22</sup> *Whitmore v. Porter* (Ex. 1627), No. 2; *Attorney General v. Bacon* (Ex. 1627), No. 41; *Bigot v. Smith* (Ex. 1627), No. 47; *Rex v. Hunton* (Ex. 1629), No. 116; *Attorney General v. Harris* (Ex. 1629), No. 128.

Library MS. Harley 4816, ff. 8-26v (Easter term 1629 to Hilary term 1631). The original reports were in law French, as was the custom of the time. Other copies are to be found in the following books:

- British Library MS. Add. 11764, ff. 120-214v
- British Library MS. Add. 25193, ff. 79-93
- British Library MS. Add. 35962, ff. 54-93v, 284-381v
- British Library MS. Add. 35972, ff. 136-146v
- British Library MS. Add. 36081, ff. 78-84
- British Library MS. Hargrave 41, ff. 3-197
- British Library MS. Lansdowne 1083, ff. 91v-277v
- Cambridge University Library MS. Ii.5.22, ff. 1-107v
- Exeter College, Oxford, MS. 179, ff. 1-96
- Free Library, Philadelphia, MS. LC 14.62, ff. 163-280
- Harvard Law School MS. 1245 [formerly MS. 5051]
- Lincoln's Inn MS. Maynard 21, ff. 367-402
- Trinity College, Dublin, MS. 718, part 2, ff. 219-366
- Yale Law School MS. MSSG R29, no. 3, ff. 404-421

Twenty-eight of these cases were printed in law French in 1683 in the *Reports* wrongly attributed to Sir Edward Littleton. They are to be found at Littleton 85-146, 124 E.R. 149-179. Twenty-three equity cases were recently printed in volume 118 of the Selden Society publications.

The appendix to this edition of Paynell's exchequer reports publishes other reports of the same cases. Most of these reports were made by Arthur Turnour.<sup>23</sup>

### 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.

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

<sup>23</sup> For Arthur Turnour, see W. H. Bryson, 'Introduction,' *Cases Concerning Equity and the Courts of Equity* (2001), Selden Society, vol. 117, p. xvi; for some other reports by Turnour, see *Reports of Cases in the Court of Exchequer in the Time of King Charles I (1625-1648)* (2006).

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<sup>24</sup> Stat. 24 Geo. II, c. 23, s. 1.

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136-146v  
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3-197  
3, ff. 91v-277v  
ii.5.22, ff. 1-107v  
1-96  
14.62, ff. 163-280  
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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.<sup>24</sup>

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  
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*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.

<sup>24</sup> Stat. 24 Geo. II, c. 23, s. 1.