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Reports of Cases in the Court of Chancery from the Time of Lord Harcourt (1710-1714)

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**REPORTS OF CASES
IN THE COURT OF CHANCERY
FROM THE TIME OF LORD HARCOURT
(1710-1714)**

British Library MS. Hargrave 80

Edited by

W. H. Bryson

Richmond, Virginia
2014

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¹ J. Campbell, *Lives of the*
pp. 296-351; S. Handley, 'H
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INTRODUCTION

The anonymous set of law reports now first published here includes cases from the Court of Chancery from 1706 to 1715, the judicial tenures of Lord Cowper, 1705 to 1708, Lord Harcourt, 1710 to 1714, and Lord Cowper again, 1714 to 1718. There were commissioners to hold the great seal and to sit in the Court of Chancery from 1708 to 1710. Although there are a few cases from the time of Lord Cowper and earlier, the vast majority are reports of cases decided by Sir Simon Harcourt, Lord Harcourt (1661-1727), who was Lord Chancellor from 1710 to 1714.¹ At the beginning of this collection of cases are nineteen slightly earlier cases, mostly from the Court of Chancery, but there are a few others; they are not in strict chronological order. Then begins the systematic reporting of Harcourt's cases. At the end of this collection are some cases from the second tenure of Lord Cowper as Chancellor, Case No. 372 to the end.

Only a few of these cases have been reported elsewhere. Six of the cases in these manuscripts were printed much later by Clement Tudway Swanston (1783-1863) in the apparatus to his nineteenth-century Chancery reports, these six cases being taken 'from Mr. Cox's notes, Lord Colchester's MSS.', i.e. Lincoln's Inn MSS. Misc. 106, 107. The importance of these reports is that they fill a gap in the printed reports from the Court of Chancery during the tenure of Lord Harcourt, about whose decisions not much has been known. From the five-year tenure of Lord Harcourt, only approximately 150 Chancery cases have heretofore been reported in print; there are now more than 350 cases from these five years in this set of reports first printed here. Edward Foss and Lord Campbell had somewhat tepid opinions of Lord

¹ J. Campbell, *Lives of the Lords Chancellors of England* (1874 ed.), vol. 5, pp. 296-351; S. Handley, 'Harcourt, Simon, first Viscount Harcourt', *Oxford Dictionary of National Biography*.

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Harcourt as a judge,¹ but there were only a few of Harcourt's opinions in print at the time when they were writing. Perhaps, a reassessment is now due.

There are two cases in these reports from the Court of Exchequer, *Constable v. Agates* (Ex. 1707), British Library MS. Hargrave 80, f. 9v, pl. 5a; Lincoln's Inn MS. Misc. 383, p. 12, and *Haanan v. King* (Ex. c. 1707), British Library MS. Hargrave 80, f. 10v, pl. 5b; Lincoln's Inn MS. Misc. 383, p. 14. These two cases have not been printed here since they are already in print at *Equity Cases in the Court of Exchequer 1660 to 1714* (ACMRS 2007), pp. 559, 560. There are two cases from the Court of Queen's Bench, *Anonymous* (Q.B. 1705), Case No. 9, and *Anonymous* (Q.B. 1705), Case No. 10, and three from the House of Lords, *Turnor's Case* (H.L. 1680), Case No. 334; *Roper v. Ratcliffe* (H.L. 1714), Case No. 346; and *Earl of Warrington v. Booth* (H.L. 1714), Case No. 347.

Although the original manuscript has not been located, three copies have been found.

Lincoln's Inn MS. Misc. 383

Lincoln's Inn MS. Misc. 383 was owned by Lucius O'Brien of Dublin and later by Lord Chancellor Alexander Wedderburn, earl of Rosslyn (1733-1805). It was bought by Lincoln's Inn in 1848 from the London bookseller, Thomas Rodd (1796-1849).² This manuscript ends with an incomplete report of *Pearson v. Rowland* (Ch. 1715), Case No. 384, herein.

Lincoln's Inn MSS. Misc. 106 and Misc. 107, ff. 1-66

Lincoln's Inn MSS. Misc. 106 and Misc. 107, ff. 1-66, is another copy of these reports. It includes most, but not all, of the cases printed here. Each case ends with a notation that it came

¹ E. Foss, *The Judges of England* (1864), vol. 8, p. 40; J. Campbell, *The Lives of the Lords Chancellors*, *supra*.

² J. H. Baker, *English Legal Manuscripts* (1978), vol. 2, pp. 108-109.

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These reports we rendered into modern s principle of *idem sonan* not the written word.

¹ J. H. Baker, *English Leg*

² H. Ellis, *A Catalogue of* pp. [v], 21.

Introduction

'from Mr. Cox's notes'. This is not sufficient to know which Cox is being referenced or, since the original is at present unlocated, to know whether Cox reported the cases himself or copied them from someone else or merely owned the manuscript book. These books were owned by Charles Abbot, baron Colchester, (1757-1829) and were presented to Lincoln's Inn in November 1848.¹ This copy is better than the other two that have been located so far; therefore, it has been used to correct silently misreadings in British Library MS. Hargrave 80.

British Library MS. Hargrave 80

British Library MS. Hargrave 80 has the title 'Cases in Chancery'. It was bought by Francis Hargrave (c. 1741-1821) from a Mr. Lynch of Dublin. Hargrave's manuscripts were bought by the British Museum (now the British Library) in 1813.² This is a professional copy of the original; corrections have been made in another hand to correct some of the obvious misreadings, such as 'marriage' for 'mortgage'. This manuscript has slightly more cases than Lincoln's Inn MS. Misc. 383, which ends with an incomplete report of *Pearson v. Rowland* (Ch. 1715), Case No. 384, herein. The British Library manuscript continues on for another fifteen cases; thus, this copy has been chosen as the basis of this edition. The case of *Anonymous* (Q.B. 1705), Case No. 10, was omitted from the British Library copy of this set of reports and from Lincoln's Inn MS. Misc. 106 and is taken from Lincoln's Inn MS. Misc. 383.

These reports were originally in English. They have been rendered into modern spelling for this edition, according to the principle of *idem sonans*, which is that a word is the spoken word, not the written word.

¹ J. H. Baker, *English Legal Manuscripts* (1978), vol. 2, p. 98.

² H. Ellis, *A Catalogue of Manuscripts . . . of Francis Hargrave, Esq.* (1818), pp. [v], 21.