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Miscellaneous Reports of Cases in the Court of Delegates from 1670 to 1750

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MISCELLANEOUS REPORTS OF CASES
IN THE COURT OF DELEGATES
From 1670 to 1750

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EDITED BY
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Richmond, Virginia

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INTRODUCTION

In 1971, G. I. O. Duncan published a learned and useful book entitled *The High Court of Delegates*. This excellent treatise describes the jurisdiction, administration, procedures, and records of this court with exceptional clarity. In 2004, the substantive law of the Court of Delegates was fully and admirably expounded by R. H. Helmholz in *The Oxford History of the Laws of England, Volume 1, The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*. For the next step in the study of this court to be taken, more of the source materials from this court need to be made available, and it is to further this goal that this collection of reports of cases is published.¹ Although the official records, including the decrees, of this court have been preserved in the Public Record Office, nevertheless, the unofficial reports composed by the lawyers and judges give a unique, if sometimes quirky, insight into the law, and the reasons of the law, that was adjudicated there. Therefore, this collection of reports of cases has been compiled and disseminated.

When I first approached the publication of reports from the Court of Delegates, I considered the inclusion of all of them. However, the initial

¹ R. H. Helmholz, 'The *Ratio Decidendi* in England: Evidence from the Civilian Tradition', in W. H. Bryson and S. Dauchy, *Ratio Decidendi*, vol. 1, pp. 73-86 (2006).

investigations demonstrated that, after about 1750, the systematic reporting of cases in the English courts of civilian and ecclesiastical law had begun, and many of these reports were already in print. Therefore, 1750 is the *terminus ad quem* for this book. Then, after I had finished all further searches for case reports, only two had been found before 1670. Thus, that date has been made the *terminus a quo*, with these two earlier cases included as a bonus. Perhaps the reason for this paucity of reports before 1670 was the prohibition on the judges to explain their reasons, as stated by Sir Julius Caesar in 1613.¹ This was also the contemporaneous custom in the courts of France.²

Giving reasons invites debate. Debate over the correctness of a judicial decision tends to undermine it. Furthermore, finality is not served by debate. This is the reason why, today, trial court judges instruct juries to return general verdicts, *i.e.* verdicts giving no comments or explanations.

However, jurisprudence thrives on debate, thesis and antithesis. Practicing and academic lawyers very much want to understand the reasons of the law, particularly the law as it is applied by the courts. Moreover, it is good for the general public's confidence in the administration of justice to know that the rules of the law are reasonable and predictable. As Justice Charles S. Russell of the Supreme Court of Virginia put it: 'It is very helpful to counsel, litigants, and appellate courts when trial judges give careful, patient, and reasoned explanations for their rulings. It is not conducive to a good public perception of the administration of justice when rulings are made peremptorily and without explanation. Even if such rulings have been carefully considered, they may appear to be arbitrary snap judgments to litigants and spectators.'³

The reports of cases in the Court of Delegates were privately made, even though the court was not supposed to give its reasons, and, certainly, none were given in the court's official records. These scattered and very miscellaneous reports have been gathered together here for the aforesaid reasons.

¹ G. I. O. Duncan, *The High Court of Delegates* (1971), pp. 173-174.

² V. Demars-Sion and S. Dauchy, 'La non motivation des décisions judiciaires dans l'ancien droit français: un usage controversé', in W. H. Bryson and S. Dauchy, *Ratio Decidendi*, vol. 1, pp. 87-116 (2006).

³ *Homeowners Warehouse, Inc. v. Rawlins* (1991), 242 Va. xiii, xv, 409 S.E.2d 115, 116 (Russell, J., dissenting).

Should anyone be interested in the period after 1750, the following manuscripts of reports in the Court of Delegates await their editors:

University of Kansas MS. E 181 (1765-1769)

Middle Temple MS. 6 (1771-1777) (cases from Doctors' Commons)

Harvard Law School MS. 4055, vol. 2 [formerly MS. 2093.2] (1795-1801)

Middle Temple MS. 39G (1815-1840) (cases from Doctors' Commons)

There well may be others that are presently unknown to this writer.

There are many cases in the English common law courts concerning writs of prohibition and mandamus that touch on the jurisdiction and the law of the ecclesiastical courts, but this present collection of cases includes only cases in the Court of Delegates itself. Also, this collection of reports does not include the transcript of the divorce case of *the Countess of Essex v. the Earl of Essex* (Del. 1613).¹ There is a substantial collection of reports of ecclesiastical cases in the English courts, including the Court of Delegates, from about 1714 to 1731 in Lincoln's Inn MS. Misc. 147; as an edition of this collection is presently being prepared for the press elsewhere, these cases are not included herein. Another manuscript collection of cases from the ecclesiastical and admiralty courts, including the Court of Delegates, is Columbia Univ. Law Sch. MS. M 315; several of the reports in this manuscript have been included here, but many more are not usable because the book is so tightly bound that the entire text cannot be presently read. This book will have to be disbound before a proper transcription can be made of it.

It is interesting to observe that many cases from the Court of Delegates were cited in later cases and, indeed, many of the cases reported here were cited by later reports. While this may not prove the existence of a systematic idea of binding judicial precedent, it shows that prior cases were thought to be persuasive and useful as precedent. Indeed, the very making and publishing of case reports indicates that someone thought that they might be valuable in the future. If so, for what? The obvious answer is valuable as precedents, whether binding or simply persuasive in argument. Fundamentally, we all believe that like cases should have the same consequences, *i.e.* like results. Otherwise, there could be no predictability in life; without predictability there would be tyranny and anarchy and general nothingness.

¹ *State Trials* (F. Hargrave, ed., 1776), vol. 1, col. 315.

The Court of Delegates was created at the beginning of the Reformation in England by a Statute in 1534¹ in order to replace appeals from the English ecclesiastical courts to the Papal Curia in Rome. It was abolished in 1833, when its jurisdiction was transferred to the Judicial Committee of the Privy Council as a part of a general and larger movement for law reform in England.² In the latter third of the seventeenth century, when the House of Lords was asserting and defining its judicial jurisdiction to hear appeals from the other high courts, it expressly decided not to assert any jurisdiction over cases in the High Court of Delegates.³

The cases reported herein are appeals from the following courts, involving the issues indicated:

Archbishop of Canterbury:

- Probate etc., 59
- Marriage, 8
- Divorce, 3
- Clergy supervision, 3
- Churchwardens, 2
- Church rates, 3
- Church attendance, 1
- Defamation, 1
- Heresy, 1

Archbishop of York

- Probate etc., 1
- Clergy supervision, 1

Archbishop of Dublin

- Probate etc., 3
- Marriage, 2
- Clergy supervision, 1

¹ Stat. 24 Hen. VIII, c. 12 (SR, III, 427-429); Stat. 25 Hen. VIII, c. 19, ss. 4-6 (SR, III, 461).

² Stat. 2 & 3 Will. IV, c. 92; Stat. 3 & 4 Will. IV, c. 41.

³ *Cottington v. Gallina* (H.L. 1678), 79 Selden Soc. 661, Columbia Univ. Law Sch. MS. M 315, pt. 1, ff. 32, 61, 108; *Gravenor v. Cartwright* (Del. 1679), see below, Case No. 13; *Ellis v. Layton* (Del. 1676), see below, Case No. 9; G. I. O. Duncan, *The High Court of Delegates* (1971), pp. 51-53.

Admiralty

Collision, 1

Freight, 2

Mariner's wages, 1

Forfeited Estates Commissioners

Ownership of land, 2

Chivalry Court

Right to coats of arms, 1

These statistics do not necessarily represent the actual business of the court, but only reflect the cases reported here, which are somewhat random. There are many more reports in the manuscripts that have not yet been located, and there are probably other reports in print that were not identified.

Many thanks are due to the following archivists who rendered invaluable assistance in the compilation of this collection: Rebecca Campbell Cape and Isabel Planton of the Indiana University Lilly Library, Caitlin Goodman of the Free Library of Philadelphia, Erin Kidwell of the Georgetown University Law School Library, and Sabrina Sondhi and Sarah Shin of the Columbia University Law School Library. Also, we express our great appreciation to David Yale and the Selden Society for permission to reprint several of their case reports.

TABLE OF CASES REPORTED

[These references are to case numbers, not page numbers.]

Allcock ads. Court (1720)	64
Anderton v. Forfeited Estates Commrs. (1723)	70
Andrews ads. Powis (1722)	68
Andrews v. Powis (1728)	76
Anonymous (1700)	43
Arthur v. Arthur (1720)	60
Ashby ads. Deye (1700)	44
Austin v. Cocke (1723)	69
Bailey v. Wilson (1745)	93
Barwick ads. Catten (1719)	57
Bath, Earl of v. Duke of Berwick (1691)	34
Beresford ads. Powell (1707)	46
Berwick, Duke of ads. Earl of Bath (1691)	34
Blunt v. Crook (1733)	84
Blunt v. Henchman (1737)	90
Boden v. Wise (1730)	80
Boone, <i>In re</i> Estate of (1682)	17
Bourget ads. Jones (1739)	91

Bridges v. Duke of Newcastle (1712)	47
Brown v. Heath (1721)	65
Buckenham ads. Gunter (1683)	22
Bulkeley ads. Lewis (1733)	83
Cardigan, Earl of ads. Petre (1686)	27
Carrwright ads. Gravenor (1679)	13
Caswall ads. Morgan (1720)	63
Catten v. Barwick (1719)	57
Chapman v. Musgrave (1671)	3
Chater v. Hawkins (1695)	38
Clare, Countess of ads. Countess of Thanet (1692)	35
Clarkson v. Spateman (1688)	29
Cleaver ads. Kindleside (1754)	96
Clewer ads. Pullen (1684)	23
Cocke ads. Austin (1723)	69
Cole v. Mordant (1676)	8
Copping ads. Crane (1697)	40
Cotton v. Cotton (1679)	15
Cotton ads. Herbert (1690)	33
Court v. Allcock (1720)	64
Crane v. Copping (1697)	40
Crook ads. Blunt (1733)	84
Cusack ads. Warren (1729)	79
Cuthbert ads. Simons (1690)	31
da Rosa v. de Pinna (1732)	82
Davis v. Mace (1734)	85
Dejeune ads. Richardson (1685)	24
Delahay v. Hopegood (1719)	58
Denne ads. Sparke (1630)	2
Dent v. Prudence (1729)	78
de Pinna ads. da Rosa (1732)	82
Desmith v. Ployart (1727)	75
Deye v. Ashby (1700)	44
Dixey, <i>Ex parte</i> (1676)	7
Dublin, Archbishop of ads. Harrison (1720)	61
Ellis v. Layton (1676)	9

Emerton v. Emerton (1683)	21
Fielder ads. Morgan (1690)	32
Finley ads. Trap (1713)	48
Fisher ads. Millesent (1719)	56
Forfeited Estates Commrs. ads. Anderton (1723)	70
Franklin's Case (1725)	71
George, <i>In re</i> (1679)	12
Gerrard, Lady v. Humble (1678)	11
Gould ads. Haydon (1700-10)	45
Gravenor v. Cartwright (1679)	13
Gunter v. Buckenham (1683)	22
Harrison v. Archbishop of Dublin (1720)	61
Hawkins ads. Chater (1695)	38
Haydon v. Gould (1700-10)	45
Heath ads. Brown (1721)	65
Henchman ads. Blunt (1737)	90
Herbert v. Cotton (1690)	33
Herbert ads. Littleton (1686)	26
Hicks v. Singleton (1688)	28
Hill v. White (1728)	77
Hopegood ads. Delahay (1719)	58
Hord v. Simpson (1672)	5
House v. Lord Petre (1700)	42
Hucks v. Williams (1734)	86
Humble ads. Lady Gerrard (1678)	11
Hurst's Case (1682)	19
Hutchinson v. Vincent (1722)	67
Hutton ads. Ness (1692)	36
Jacobs ads. Duke of Somerset (1726)	73
Jennings ads. Whitehead (1714)	52
Johnston v. Perrier (1673)	6
Jones v. Bourget (1739)	91
Joyce ads. Waller (1685)	25
Kindleside v. Cleaver (1754)	96
Layton ads. Ellis (1676)	9
Lewis v. Bulkeley (1733)	83

Lewis ads. Math (1671)	4
Limbery v. Mason (1734)	89
Littleton v. Herbert (1686)	26
Lugg v. Lugg (1699)	41
Mace ads. Davis (1734)	85
Mason ads. Limbery (1734)	89
Mason ads. Rushworth (1734)	87
Math v. Lewis (1671)	4
Milles ads. Woodley (1745)	94
Millesent v. Fisher (1719)	56
Mordant ads. Cole (1676)	8
Morgan v. Caswall (1720)	63
Morgan v. Fielder (1690)	32
Morrison v. Stewart (1746)	95
Musgrave ads. Chapman (1671)	3
Ness v. Hutton (1692)	36
Newcastle, Duke of ads. Bridges (1712)	47
Osborne, Lady ads. Williams (1718)	55
Overbury v. Overbury (1682-84)	18
Pearce ads. Sands (1715)	53
Pelling v. Whiston (1713-14)	49
Perrier ads. Johnston (1673)	6
Petre v. Earl of Cardigan (1686)	27
Petre, Lord ads. House (1700)	42
Phillips ads. Ward (1734)	88
Pierce ads. Young (1689)	30
Pindar v. Pindar (1722)	66
Plage ads. Spanish Legate (1611)	1
Plaxton ads. Thorpe (1731)	81
Ployart ads. Desmith (1727)	75
Popping v. Rhodes (1725)	72
Powell v. Beresford (1707)	46
Powis v. Andrews (1722)	68
Powis ads. Andrews (1728)	76
Prudence ads. Dent (1729)	78
Prudence ads. Sepe (1729)	78

Pullen v. Clewer (1684)	23
Radcliffe's Case (1720)	62
Ralph and Mary, <i>In re</i> (1677)	10
Rebow ads. Thompson (1682)	20
Rhodes ads. Popping (1725)	72
Richardson v. Dejeune (1685)	24
Roberts v. Roberts (1694-95)	37
Roper v. Smith (1719)	59
Rushworth v. Mason (1734)	87
Sacheverell v. Sacheverell (1717)	54
Sands v. Pearce (1715)	53
Sayer ads. Stanley (1713)	50
Sayers v. Sayers (1714)	51
Sepe v. Prudence (1729)	78
Shore, Lady ads. Taylor (1681)	16
Simons v. Cuthbert (1690)	31
Simpson ads. Hord (1672)	5
Singleton ads. Hicks (1688)	28
Smith ads. Roper (1719)	59
Smith ads. Thwaites (1696)	39
Somerset, Duke of v. Jacobs (1726)	73
Spanish Legate v. Plage (1611)	1
Sparke v. Denne (1630)	2
Spateman ads. Clarkson (1688)	29
Stanley v. Sayer (1713)	50
Stewart ads. Morrison (1746)	95
Stonywel, <i>In re</i> Will of (1679)	14
Taylor v. Lady Shore (1681)	16
Thanet, Countess of v. Countess of Clare (1692)	35
Thompson v. Rebow (1682)	20
Thorpe v. Plaxton (1731)	81
Thwaites v. Smith (1696)	39
Trap v. Finley (1713)	48
Turst v. Turst (1741)	92
Vincent ads. Hutchinson (1722)	67
Waller v. Joyce (1685)	25

Ward v. Phillips (1734)	88
Warren v. Cusack (1729)	79
Whiston ads. Pelling (1713-14)	49
White ads. Hill (1728)	77
Whitehead v. Jennings (1714)	52
Williams ads. Hucks (1734)	86
Williams v. Osborne, Lady (1718)	55
Wilson ads. Bailey (1745)	93
Wise ads. Boden (1730)	80
Woodley v. Milles (1745)	94
Wright, <i>In re</i> Petition of (1726)	74
Young v. Pierce (1695)	30

REPORTS OF CASES IN THE COURT OF DELEGATES

1

The Spanish Legate v. Plage (Del. 1611)

The Court of Delegates has the jurisdiction to hear appeals from the Court of Admiralty in a matter involving the possession of freight in a ship.

Moore K.B. 814, 72 E.R. 923

The Lord Legate of Spain sued in the Court of Admiralty against Reginald Plage of Hamburg, a subject of the king of Denmark, where the case was thus. Plage was pressed from Lisbon in Portugal to serve the king of Spain with his ship to transport soldiers to Rio de la Plata. And he had letters of favor from the viceroy of Portugal to trade to Brazil. He performed the service of transportation. And, afterward, for fourteen months together, he