

1970

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Recommended Citation

W. Hamilton Bryson, *Exchequer Equity Bibliography*, 14 Am. Jour. Leg. Hist. 333 (1970).

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Exchequer Equity Bibliography

by WILLIAM HAMILTON BRYSON*

This essay is concerned with the secondary bibliography of the equity jurisdiction of the Court of Exchequer. It forms the preliminary inquiry of a general study of the history of this jurisdiction. This bibliography is in essay form because a list would not adequately explain the comparative significance of the various works. Moreover, the titles of the works are frequently misleading; some of the earlier ones have been attributed to the wrong author, and the relationships among them have never before been sorted out. Finally, this is the only place where all of these related works have been brought together; the existing bibliographies are incomplete primarily for the reason that they were compiled from an examination of the titles only and not of the contents of the works. This same criticism can be made of the indices of the manuscript collections, most of which were made by scholars who had no legal background. While every care has been exercised in the search for entries for this bibliography, there is no telling what may be discovered tomorrow. Therefore, with this preliminary caveat, let us proceed to the books.

The material arranges itself into four sections. The first group consists of manuscripts concerning the duties of the various Exchequer officers; they date from about 1570 to 1670. The second group contains several printed books which were first published between 1652 and 1726; each has a section on equity procedure in the Court of Exchequer. They seem to have been written as manuals for clerks and students. The third part is a list of three substantial treatises which were first printed between 1795 and 1806. The final section covers the modern period and is the smallest and the most disappointing for the investigator. This is the section which would have included relevant works of legal history, if there were any.

One of the more intriguing books was the one printed in 1658 and attributed to Thomas Fanshawe. [Peter Osborne], *The Practice of the Exchequer Court, with its severall offices and officers. Being a short narration of the power and duty of each single person in his severall place. Written at the request of the Lord Buckhurst, sometime Lord treasurer of England. By Sir*

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T.[homas] F.[anshawe] *Whereunto are added the rules and orders of proceedings by English bill*, London, 1658. The addition concerning English bills will be considered in the next section because it has no connection with the main body of the work; it is not included in any of the manuscripts and probably was written at a later date. A cursory search reveals the existence of twenty-five manuscript copies of this treatise.¹ The printed book and most of the manuscripts contain descriptions of the duties of all of the officers of the Exchequer plus the articles or directions of Queen Mary I for uniting the Court of Augmentations and the Court of First Fruits and Tenths to the Court of Exchequer. The first officer discussed is the Lord High Treasurer. This discussion is in the form of alternating statements and comments or "answers" thereon; the rest of the officers are described in simple paragraph form without any commentary or reply.

As indicated above, the editor in 1658 made an error in assigning the authorship of the manuscript to Thomas Fanshawe, the King's Remembrancer,² instead of Peter Osborne, the Lord Treasurer's Remembrancer.³ Obviously the editor relied on a later copy of the work; Osborne's original manuscript, which was sent on 9 October, 1572, to Burghley, has not been discovered. Based upon a sort of colophon in Brit. Mus. ms. Lansd. 171 f. 431, Dr. R. B. Outhwaite has demonstrated clearly that the treatise was written by Osborne and that quite apart from the positive attribu-

1. British Museum mss.: Eg. 3369, Lansd. 171 f. 408, Lansd. 253 f. 493, Lansd. 626, Add. 22591 f. 151, Add. 36081 f. 13, Harg. 278 f. 174, Harg. 209(A), Harg. 209(B); London Borough of Barking Libraries (Fanshawe Papers): Valence House ms. M.51, Valence House ms. M.54(B); Temple Univ. Library ms. (no. 3 in DeRicci's *Census*, supp.); Oxford Univ. Bodleian Library mss.: Rawl. D.713, Carte 122, Ashm. 856 f. 271; Cambridge Univ. Library: Gg.2.7; Trinity College, Dublin, Library mss.: 853, 854; Public Record Office: E.369/131, S.P. 14/193 part 26; Lincoln's Inn: Maynard 59(19); Inner Temple: Petyt no. 515 vol. 9; Folger Shakespeare Library mss.: V.b.64, V.b.71; Northamptonshire Record Office ms. F.H.31.

2. Fanshawe was the King's Remembrancer from 1568 until 1601, a member of the Middle Temple, and a member of Parliament in 1572, 1584, 1588, 1593, 1597. *Dictionary of National Biography*, vol. 18, p. 189, *sub nom.* Fanshawe, Thomas (1530?-1601); J. and J. A. Venn, *Alumni Cantabrigienses*, Part. 1, vol. 2, p. 120. H. C. Fanshawe, *History of the Fanshawe Family*, Newcastle-upon-Tyne, 1927, pp. 20-26.

3. Osborne was the Lord Treasurer's Remembrancer from 1552 until 1592, a barrister of Lincoln's Inn, and a member of Parliament in 1562, 1571, 1572, 1584, 1588. *Dictionary of National Biography*, vol. 42, p. 292, *sub nom.* Osborne, Peter (1521-1592); J. and J. A. Venn, *Alumni Cantabrigienses*, Part 1, vol. 3, p. 285; *Calendar of Patent Rolls, 1550-1553*, p. 312.

tion it is unlikely that it could have been written by Thomas Fanshawe.⁴ This same manuscript supplies the proper date of 1572, the year in which Burghley was made Treasurer; Buckhurst was made Treasurer in 1599. Dr. Outhwaite's deductions are corroborated by Brit. Mus. ms. Eg. 3369, which states at the beginning "This booke was writt at the desire of my Lord Treasurer Burleigh, by Peter Osborn Esquire, Treasurers Remembrancer of the Exchequer of Chicksands in the County of Bedford Anno Domini, 1572."⁵ This manuscript includes at the beginning a list of Exchequer officers in 1572; it refers to the *Queen's* Remembrancer, *Queen's* Attorney, etc.⁶ It does not include the articles about the Court of Augmentations or the Court of First Fruits and Tenths. But the most important feature of this manuscript is that it has only the statements of the duties of the office of Treasurer; there are not any "answers"; these must have been added later. This is the only manuscript which attributes the work to Osborne, and, except for Valence House ms. M.54(B), the only one which does not have Fanshawe's answers. Therefore, this manuscript must be the closest in content, which we have, to the original. It is clear that Brit. Mus. ms. Eg. 3369 is not the original because the second part of this manuscript book is a treatise dated 1598 and is in the same hand. It seems reasonable to suppose that both were copied sometime after 1598.

The next item in the developing manuscript tradition is Valence House ms. M.54(B). As mentioned above, this is the only other manuscript which does not have Fanshawe's answers. However, it does add a list of Exchequer officers in 1599, which follows the same form as the 1572 list. This manuscript is among the Fanshawe papers at Valence House in Essex, the seat of the Fanshawe family for several centuries. It is quite possible that this copy was part of Thomas Fanshawe's preparation of the copy for Lord Buckhurst.

In close association with this copy but of slightly later making is Brit. Mus. ms. Lansd. 171. The title of this last mentioned manuscript states that it was written by Fanshawe for Lord Buckhurst, the Lord High Treasurer. Therefore this copy was made after Fanshawe had presented the copy with his answers to Lord

4. R. B. Outhwaite, "A Note on *The Practice of the Exchequer Court, With its severall Offices and Officers*; by Sir T. F.," *English Historical Review*, vol. 81, p. 337 (1966).

5. This manuscript is described in *Historical Manuscripts Commission Report No. 11, Part 7*, p. 40 (1888).

6. The only other manuscripts which have this list and refer to the queen rather than the king are Brit. Mus. ms. Lansd. 171 and Valence House ms. M.54(B).

Buckhurst. As previously stated, these two have in common with Brit. Mus. ms. Eg. 3369 but with none of the others, the list of the 1572 officers, the 1572 "endorsement" at the end and the references to the queen's officers. The references to the queen date these two as before her death on 24 March, 1603. Sir Thomas Sackville, Lord Buckhurst, was made Treasurer on 15 May, 1599,⁷ therefore these two copies were made between 1599 and 1603. Fanshawe's answers were probably composed in 1599, the year Lord Buckhurst was made Treasurer and the date of the second list of Exchequer officers. In any case, the answers must have been written before 1601, the date of Fanshawe's death.

The fourth stage of the development contains Oxford Bodl. ms. Rawl. D. 713 and the Temple Univ. ms. These two differ from the earlier ones by their omissions of the lists of officers and their references having been changed to the king. This dates them after 1603. They differ from the ones not yet mentioned and the 1658 book by their inclusion of a chapter describing the duties of the clerks in the Lord Treasurer's Remembrancer's Office, which dates them earlier. These two and the two in the preceding paragraph do not follow any pattern as to the inclusion of the articles in regard to the Courts of Augmentations and of First Fruits and Tenths, so no conclusions can be drawn from this variation.

The other manuscripts and the printed book⁸ all have the answers of Fanshawe, the references to the king, and the articles for uniting the Courts of Augmentations and of First Fruits and Tenths to the Exchequer. They all omit the section on the clerks of the Lord Treasurer's Remembrancer's Office.

The titles of the manuscripts also furnish some insight as to the relationships among them. The title of Brit. Mus. ms. Eg. 3369, the earliest, is "What every of the said Officers at this day usually doth by his said office." The fact that Valence House ms. M.54(B) is almost the same and Brit. Mus. ms. Lansd. 171 is only an expanded variation corroborates the conclusion that these two are the closest to Brit. Mus. ms. Eg. 3369. The fact that the title of this manuscript is one of the two most simple confirms the suggestion that it is the oldest survivor. Brit. Mus. ms. Add. 22591 and Folger V.b.71 also have variants of this title. It is interesting to notice that Brit. Mus. ms. Eg. 3369, ms. Add. 22591, and Valence House ms. M.54(B) are

7. He was not created earl of Dorset until 1604; this is further evidence for the date of these manuscripts, since he is referred to as lord Buckhurst in all of them.

8. See section F in the outline *infra*. The printed edition of 1658 adds the part on English bills, which will be discussed later since it is not in any of the manuscripts.

the only manuscripts which do not mention Fanshawe or Lord Buckhurst in their titles; all of the others do. Thus it is easy to understand how the 1658 printer thought Fanshawe to have been the author.

The other manuscripts can be divided into two categories distinguished by whether they imply that Fanshawe wrote only the answers about the Treasurer's office or that he wrote the entire thing. A typical title from the first group is that of Brit. Mus. ms. Lansd. 253, "An answer made by Mr. Fanshawe or rather a declaration of his opinion touching those Articles beginning here as followeth concerning the Lord Treasurers office and this answer was made at the request of the Lord Buckhurst. What every one of the Court of Exchequer doe by vertue of his office."⁹ The best example from the second group is Trinity Coll., Dublin, ms. 854, "A short compendium or brief declaration of what every officer of his Majesty's Court of Exchequer ought to do by virtue of his office as also the articles of the uniting of the late court of Augmentations and Revenues of the Crown and the late court of First Fruits and Tenths, to the court of Exchequer at Westminster, written at the request of the Right Honourable the Lord Treasurer Buckhurst by Mr. Fanshawe with a declaration of his opinion concerning the same."¹⁰ This distinction between the manuscripts is not absolutely rigid; it is a distinction of suggestions or rather of our inferences. The titles of the manuscripts vary slightly among themselves within each category.

However, the division shows an unconscious growth and development in the titles and in the manuscript tradition of the tract. It indicates clearly that Thomas Fanshawe himself did not ever claim to be the author of anything more than the "answers" to the first chapter or to be a knight but that the editor in 1658 made these errors innocently due to his copying one of the later manuscript versions. In seventeenth-century legal publications printers were not infrequently careless over attribution of authorship. Many law books were printed without any mention of the author at all. Others, such as this, gave only the author's initials. Printers printed any manuscript they could find which they thought would sell; people used verbatim entire sections of other works in their own; books were

9. The other manuscripts in this category are Brit. Mus. mss. Lansd. 171, Harg. 209(A), Harg. 278, Add. 36081; P.R.O.: E.369/131, S.P.14/193 part 26; Oxford, Bodl. mss.: Carte 122, Ashm. 856; Valence House ms. M.51; Temple Univ. ms.

10. The other manuscripts in this category are Trinity College, Dublin, ms. 853; Lincoln's Inn Maynard 59(19); Inner Temple Petyt no. 515, vol. 9; Cambridge Univ. Lib. Gg.2.7; Brit. Mus. ms.: Lansd. 626.

written as joint efforts.¹¹ The idea of literary property was only beginning to develop fitfully during this period.¹²

The relationships among the manuscripts can be more easily seen in outline form.

- A. (1572 original—unknown)
- B. Brit. Mus. ms. Eg. 3369
- C. Valence House ms. M.54(B)
- D. Brit. Mus. ms. Lansd. 171 f. 408
- E. Oxford Univ. Bodl. ms. Rawl.D.713
Temple Univ. ms.
- F. (others distinguished by title only)
 - 1. Brit. Mus. ms. Add. 22591 f. 151
Folger Shakespeare Library ms. V.b.71
 - 2. Brit. Mus. ms. Lansd. 253 f. 493
Brit. Mus. ms. Harg. 209(A)
Brit. Mus. ms. Harg. 278 f. 174
Brit. Mus. ms. Add. 36081 f. 13
P.R.O.: E. 369/131
P.R.O.: S.P. 14/193 part 26
Oxford Univ. Bodl. ms. Carte 122
Oxford Univ. Bodl. ms. Ashm. 856 f. 271
Valence House ms. M.51
 - 3. Trinity Coll., Dublin, ms. 854
Trinity Coll., Dublin, ms. 853
Lincoln's Inn ms. Maynard 59(19)
Inner Temple ms. Petyt no. 515, vol. 9
Cambridge Univ. Library ms. Gg.2.7
Brit. Mus. ms. Lansd. 626
 - 4. (miscellaneous)
Brit. Mus. ms. Harg. 209(B)
Folger Shakespeare Library ms. V.b.64
Northamptonshire Record Office ms. F.H.31
printed edition of 1658

It cannot be determined which manuscript was copied from which. However, it can be stated as a probability that one was the progenitor of its group because the others preserved its additions and omissions, and also that one copied one from a preceding group. It

11. See J. W. Wallace, *Reporters*, 4th ed. Boston, 1882, pp. 7-24; W. S. Holdsworth, *History of English Law*, London, 1924, vol. 5, pp. 365-387, vol. 6, pp. 604, 617-619, App. 4, pp. 683-699.

12. Holdsworth, *op. cit.*, vol. 6, pp. 364-379.

is interesting to note the large number of copies of this treatise which have survived. It is not and never has been a particularly valuable work, and there is no reason to think that anyone made a special effort to preserve it; there were probably many more copies which have been lost over the centuries. At least one copy, Brit. Mus. ms. Add. 36081,¹³ and probably others were made after the treatise was printed. The probable explanation for this and for the large number made over all is that the apprentice clerks in the Exchequer were required to copy it as a learning exercise. We know that in the seventeenth century and later they were required to do a five-year apprenticeship before being allowed to practice,¹⁴ and it is quite possible that this was a means of teaching them and keeping them from idleness. Another possibility is that they were made for the use of newly appointed senior officials. In the seventeenth century the treasurers and chancellors of the Exchequer were primarily successful politicians, whose experience at the Exchequer was limited. Also the barons were by then recruited from Serjeants' Inn and thus were unfamiliar with the financial aspect of the court. These officers would require some sort of introduction to the technicalities of the Exchequer.

The next work to be considered has never been printed in any form. Lawrence Squibb, *A Booke of all the severall officers of the Court of the Exchequer, together with the names of the present officers, in whose gift, and how admitted, with a briefe Collection of what is doon by each Officer According to the State of the Exchequer at this day. January, 1641*. At the time this short essay was written Lawrence Squibb held a reversion to one of the four offices of Teller of the Exchequer.¹⁵

This piece is primarily a list of the lesser officers of the Exchequer with brief descriptions of their duties. Its major value is the description of the office and responsibilities of the King's Remembrancer, which comes first and is considerably more complete than those for the others. Of the thirteen manuscripts¹⁶

13. This manuscript is dated 1700.

14. Northamptonshire Record Office mss. F.H.2163 and F.H.2213 (1674); Fowler, *Practice of the Court of Exchequer*, London, 1795, vol. 1, pp. 9, 10; Turner, *Epitome of the Equity Side of the Exchequer*, London, 1806, p. 1; Lincoln's Inn ms. Misc. 310, 2d return, 18th answer (1820).

15. He had held lesser offices in the Exchequer for some time; in 1632 he was in the employment of the Chancellor of the Exchequer and later was an officer for cards and dice. He also had close relatives who held exchequer posts. See *Calendar of State Papers* for 1632 onwards, *passim*.

16. Public Record Office: S.P. 16/488 part 103, A.O. 16/196; London Borough of Barking Libraries (Fanshawe Papers): Valence House ms.

which have been discovered so far, the one at the Public Record Office is a draft of the original. This manuscript is the shortest; numerous paragraphs were added later. It is the only one which mentions the author; apparently the later copyists were not concerned. Finally this manuscript, with two exceptions,¹⁷ is the only to give the proper date of "1641", which is the date all of the listed officers were serving together in the Exchequer. By the modern calendar this would be 1642; in the seventeenth century the legal year started on the twenty-fifth of March.

The next oldest surviving manuscript of this work is Brit. Mus. ms. Add. 30216, which is dated 1692. This and four others¹⁸ which follow it, are copies of the original work but with the names of the officers of 1692 substituted. They are more complete than the original draft in the Public Record Office, but they do not contain an error in the twelfth paragraph, which is found in all the other manuscripts, i.e. the miscopying of "intrusions" as "instructions". Also they add a paragraph explaining that Henry Ayloff held the office of King's Remembrancer in trust for Lord Fanshawe. Otherwise, there are no significant differences in the substance of the 1692 work from the 1642 work in its final form. The remaining copies¹⁹ were made after 1712 from an original which was made before the 1692 version. Brit. Mus. ms. Add. 38419 was made after 1764. It is interesting to note that so many copies were made at such late dates. The lists of the majority were at least twenty years out of date when they were copied. The sketches of the duties of the officers were much less complete than others which had found their way into print.

There is one other manuscript tract which must be mentioned for the sake of completeness. *A briefe Collection of the Principall Under-Officers & Clerkes appertayninge to your Majesties Exchequer commonly kept at Westmynster, with a lyke Declaration aswell of their severall functions, fees, rewards, and allowances of auncient time accustomed, as also wythin whose guift the same byne, when they become voyde.*²⁰ This is an anonymous sixteenth or

M.54(A), Valence House ms. M.54(C); Lincoln's Inn ms. Hill 86; London Univ. Library ms. 57; British Museum mss.: Harl. 3278, Eg. 2436, Stowe 327 f. 19, Add. 24689 f. 14; Add. 30216, Add. 38419; Oxford Univ. Bodleian Library ms. Rawl. C.715.

17. Valence House ms. M.54(C) and Oxford Bodl. ms. Rawl. C.715.

18. Brit. Mus. mss. Add. 24689, Add. 38419, and Stowe 327; and P.R.O.: A.O. 16/196.

19. Valence House ms. M.54(A); Valence House ms. M.54(C); Lincoln's Inn ms. Hill 86; London Univ. Lib. ms. 57; Brit. Mus. mss. Harl. 3278, Eg. 2436; Oxford Bodl. ms. Rawl. C.715.

20. British Museum mss.: Harl. 830 f. 218, Lansd. 151 f. 150, Lansd. 171 f. 315, Add. 4572 f. 28, Add. 38008; Oxford Univ. Bodleian Library ms. Carte 122 f. 62; Lincoln's Inn ms. Hill 87; London Univ. Library ms. 9.

seventeenth century work which gives a few sentences of sketchy information about the lesser officers of the Exchequer and concludes with a list of abuses in the revenue side of the court.²¹ The light shed on the equity side is minimal. The *Dialogue of the Exchequer*²² discusses only briefly the officers in the mediaeval period; but since the equity side of the court had not appeared by the time this work was written, it is of no help.

The second part of this bibliography is a consideration of several printed books which have sections or chapters on the procedure of the equity side of the Exchequer. This information is much more enlightening than the scanty glimpses given as part of descriptions of officers and their duties.

The first book on the law of the Court of Exchequer is a collection of paragraphs culled from the most important sources of English law: the yearbooks, the statutes, Coke, Dyer, Brooke, Fitzherbert, Plowden, *et al.* [William Byrde], *A Compendium of the several branches of Practice in the Court of Exchequer at Westminster, viz. 1. His majesties Revenue. 2. Proceedings by English Bill. 3. Actions at Law brought in the Office of Pleas; with Commissions, Injunctions, and other Process and Pleadings relating thereunto*, London, 1688; 1689; 1692. This treatise has heretofore been attributed to William Brown, a clerk of the Court of Common Pleas. Brown, however, did not write the text. He printed Byrde's short manuscript treatise on the Exchequer, gathered together an extensive collection of samples and forms, and wrote an elaborate dedication and preface. He signed the dedication and preface, but his name does not appear on the title-page. It is quite possible that he copied a manuscript which did not attribute the authorship to anyone. In his preface, Brown does not claim that he wrote the book but only that he "collected" the material for it. Judging by his numerous other publications, this seems reasonable and in character. Though a minor officer in the Court of Common Pleas, he set loose a flood of form books and practice manuals for all of the high courts at Westminster. He was more a compiler than an author.

The compendium part, the first forty-nine pages, is the section which is of greater interest. Five manuscripts²³ of this part have

21. For more information on the section on revenue abuses, see S. Jack and R. S. Schofield, "Four Early Tudor Financial Memoranda," *Bulletin of the Institute of Historical Research*, vol. 34, p. 189 (1963). This article dates the earlier version of this tract as c. 1520 and the later version as after 1554.

22. *The Course of the Exchequer, by Richard, son of Nigel*, trans. by C. Johnson, London, 1950.

23. Trinity College, Dublin, ms. 854 f. 84; British Museum mss.: Harl. 1303, Harg. 168 f. 219, Add. 48063 f. 119; Oxford Univ. Bodleian Library ms. Perrott 7 f. 89.

been found so far. Of these the most interesting is Trinity College, Dublin, ms. 854, which is intitled "A Discours Of the Courte of the Exchequer Collected by William Byrde sometymes of Grayes Inne Esquyer."²⁴ This title is the authority for attributing the authorship of this first part of Brown's compilation to Byrde. If Byrde only made the copy at Trinity College, Dublin, then it is unlikely that the word "collected" would have been used. The work, moreover, is more a collection than anything else, a collection of cases out of the older books. Almost every paragraph is concluded by the citation of authority.

The exact date of the *Compendium* or *Discourse* is not clear; no help is to be had from the manuscripts themselves. The earliest possible date is 1615 since there are references to the eleventh volume of Coke's *Reports*. Since there is a reference to "King James", this indicates that it was written before 1685 when James II became king. However, due to the diligent use of works dating from 1615 and the several decades before and due to the complete absence of anything which appeared afterward, it would seem that it was written very shortly after 1615. If this is so, then it makes it less likely that Brown was the author because Brown did not publish his first thing until 1671,²⁵ and his last work appeared as late as 1704.²⁶

It is possible that the copyist wrote down William "Byrde" in place of William "Brown". However, Byrde is described as being of Gray's Inn and an esquire. In Brown's books he is described as a mere gentleman. Also it is not likely that a clerk would have been a barrister. This is not absolute proof. It is possible that the copyist was in error on this point also, but the probabilities diminish with each additional possibility of error.

The earlier two manuscripts are Trinity College, Dublin, ms. 854 and Brit. Mus. ms. Harl. 1303. These two are the only ones which have the citations to authorities throughout the entire work and the only ones which give as the sample subpoena, a subpoena ad rejuendum.²⁷ The latter manuscript is clearly a copy; therefore, if either is the original, it must be the former. But, of course, the former may be a copy also. Either of these two could have been the manuscript which Brown used, because he has the citations all the way through. Also, Brown copied the sample subpoena ad rejuendum, but he placed it in the second part of his book with the

24. The other four manuscripts are entitled simply "The Court of the Exchequer."

25. *Formulae bene Placitandi*.

26. *Privilegia Parliamentaria*.

27. The sample subpoena was taken from Crompton's *L'Authoritie et Jurisdiction des Courts*, London, 1594.

other samples, examples, and forms. Moreover, in the manuscripts there is a short paragraph with a witty quotation from the "*Hospital Case*."²⁸ This bit is an appendage at the end of the two earliest manuscript copies; it is at the beginning of the other three but omitted from Brown's book. It is much more likely to have been omitted had it been at the end than at the beginning of the manuscript being copied.

The other three manuscripts²⁹ are sufficiently similar to constitute a group. They all have the same title, the *Hospital Case* at the beginning, and the lack of citations in the first half of the work. In addition, these three have changed the sample subpoena to a subpoena ad respondendum, which is more logical if only a single sample is to be given.

The printed book must have been a successful venture because it went through many subsequent printings. The reprint of 1699 was advertised as a second edition, but it was not. There were no changes made; the only thing new was the title-page and title. *The Practice of his Majesties Court of Exchequer at Westminster, as to proceedings in Equity by English Bill, parallel to the course used in the High Court of Chancery: containing Precedents of the most exact and authentick Forms of Bills, Answers, Bills and Demurrers, Interlocutory Orders, Commissions, Injunctions, Affidavits, Interrogatories: and such other Process and Pleadings as have been drawn by the most learned, able, and experienced, Council Clerks and Practitioners; and approved of by the said Court for more than 35 years last past. The Second Edition*, London, 1699; 1703. The last reprint appeared in 1725 under a new title. *The Practice in the Court of Exchequer, at Westminster, In its several Branches, viz. 1. His Majesties Revenue, 2. Proceedings by English Bill, 3. Actions at Law brought in the Office of Pleas. With Commissions, Injunctions, and other Process and Pleadings relating thereunto. By W. Brown, Gent. The Second Edition*, London, 1725.

Byrde's discourse is not a logically complete treatise. It is only a collection of cases, statutes, and commentaries. However, there is much valuable material here, particularly on the question of jurisdiction. It is concerned primarily with the revenue side of the court.

William West, *Symboleographie*, 1627, Part 2, ff. 291-310, has some sample exchequer equity pleadings, but there are no comments thereon.

28. "Questions in the Exchequer are wont to be resembled to Spirits, which may be raised up with much facility, but suppressed or vanquished with great difficultie." *Sutton's Hospital Case*, 10 Rep. 1 at 29, 77 Eng. Rep. 937 at 968 (K.B., 1612). Although it may appear otherwise, the court is not being compared to a ward for alcoholics.

29. Brit. Mus. mss.Harg. 168, Add. 48063; Oxford Bodl. ms. Perrott 7.

The first work to treat the subject systematically was the appendage to the *Practice of the Exchequer Court* (1658) entitled "Of English Bills and the proceedings thereupon in the Exchequer."³⁰ Since none of the manuscripts include this 25-page essay, there is no reason to think that either Osborne or Fanshawe wrote it. In fact, there is not the slightest clue as to who did write it. It was no doubt written a decade or so earlier than its publication because there are two references (pages 143 and 144) to the existence of the Court of Star Chamber; this dates its composition before 1640. This essay is an original piece of work, which discusses briefly the procedure of the equity side of the Exchequer from a paragraph on jurisdiction and one on subpoenas to final decrees and final process. There are no references to authority of any sort; it is perhaps the work of one personally experienced in exchequer practice.

This anonymous addition to the printed edition of Osborne's treatise was copied as part of the Exchequer section of an anonymous practitioners' manual in 1666. *The Compleat Sollicitor, Performing His Duty: and Teaching his Clyent to run through and manage his own Business, As well in His Majesties Superior Courts at Westminster: As in the Mayors Court, Court of Hustings, and other Inferior Courts, both in the City of London, and elsewhere*, London, 1666; 1668; 1671; 1672; 1683; 1700. The chapter on the Exchequer is about forty pages long. There is a paragraph on the origin of the Exchequer, which is amusing. Then follows about twenty pages describing the officers and their duties. The rest of the chapter is a reprint of the 1658 edition with an occasional addition. However, the references to the Star Chamber are omitted.

The 1658 appendage on English bills was also copied by another seventeenth century practice manual. *The Practick Part of the Law: Shewing the office of an Attorney, And a guide for Solicitors In the Courts of the Chancery, King's-Bench, Common-Pleas, and Exchequer, with the manner of their Proceedings in any Action Real, Personal, or Mixt (from the Original to the Execution) in all Courts; with the exact Fees of all Officers and Ministers of those Courts. . . .*, London, 1676; 1681; 1695; 1702; 1711; 1724. This book is sometimes referred to as "The Compleat Attorney and Solicitor." It was first published in 1652, and declared itself to have been "composed and collected by G. T. of Staples Inne and T. P. of Barnards Inne." The work was reprinted in 1653, 1654, 1656, 1658, 1659, 1660, and 1666, but T and P were no longer mentioned. These first seven printings are rather uninteresting because there is only a colorless five-page note on the Exchequer. However, the 1676 revision and the subsequent reprints and editions contain an adaptation

30. See above.

of the essay which appeared in 1658. The greater part of it was copied by the 1676 edition, but several paragraphs and sentences were left out probably out of carelessness. The references to the Star Chamber were omitted. At the beginning is a new description of the court officials, and at the end is a list of their fees.

This chapter of the *Practick Part of the Law* was in turn copied by another manual. [William Bohun], *The Practising Attorney; or, Lawyer's Office: containing, The Business of an Attorney in All its Branches. viz. I. The Practice of the Courts of King's-Bench and Common Pleas . . . II. Proceedings of the High Courts of Chancery and Exchequer, from the Leading Process the Subpoena to the final Order or Decree, Interspers'd with great Variety of Bills, Answers, Replications, Rejoinders, &c. III. The Attorney's Practice in Conveyancing . . . IV. Of Court-Keeping . . .*, London, 1724; 1726; 2 vols. 1732; 1737. Bohun was called to the bar of the Middle Temple in 1705³¹ and was the author of numerous other legal handbooks. Bohun's work is not a mere copy as the others are. While sometimes he copies entire paragraphs, he frequently rephrases, and he adds a considerable amount of information. He also gives a few pages of general rules of court and has about fifteen pages of sample pleadings.

The final item in this section is another anonymous practice manual, but unlike the others it had only one edition. *The Compleat Clerk in Court; or, Practising Solicitor, In all our Courts. containing, I. The Chancery Clerk . . . II. The Exchequer Clerk, setting forth the Solicitor's Practice by English Bill and Answer, and in the Office of Pleas, in the Exchequer. III. The King's Bench Clerk . . . IV. The Common Pleas Clerk . . .*, London, 1726. It is odd that this volume should not have been reprinted because it is greatly superior to all those which had gone before; so much so that it can be considered the transition between the practice manuals and the treatises which will be discussed in the next section. This book copies bits of Bohun and the *Compleat Sollicitor* (1666), but it adds a great deal. It is like the older works in that there are no references to authority; but the coverage of the subject is much more complete and detailed. The text is strewn with sample processes, pleadings, and orders.

Following the 1737 edition of Bohun's *Practising Attorney*, there was a period of almost sixty years during which nothing at all was printed on the subject.³² This rather long gap is probably due

31. H. A. C. Sturgess, *Register of Admissions to the Honourable Society of the Middle Temple*, London, 1949, vol. 1, p. 249. R. Watt, *Bibliotheca Britannica*, Edinburgh, 1824, vol. 1, p. 128.

32. There was, however, published in this interval a quite substantial treatise on the Irish Exchequer. Gorges Edmond Howard, *Treatise on the Rules and Practice of the Equity Side of the Exchequer in Ireland*,

to a general availability of the several editions of the various manuals. Also there were numerous treatises on equity in the Court of Chancery. In 1795 there appeared the most detailed and complete work of all on the equity jurisdiction of the Exchequer. David Burton Fowler, *The Practice of the Court of Exchequer upon Proceedings in Equity*, 2 vols., London, 1795; 2d ed., 1817. Fowler from 1760 to 1827 was one of the sworn clerks in the office of the King's Remembrancer,³³ the office which handled all suits in equity in the Exchequer. In the second edition it is stated that there are "considerable additions", but in fact the only difference between the two editions is the inclusion of a few recent cases as examples. The second edition adds nothing of significance but omits the long appendix of sample bills of costs.

Fowler's treatise is quite elementary and very complete; he explains in detail all of the aspects of equity procedure as it was applied in the Exchequer. There are numerous sample forms, general rules of court, and examples from unpublished Exchequer cases.

In the next year, after the appearance of the first edition of Fowler's treatise, a single volume work was published on the equity procedure of the courts of Chancery and Exchequer. Charles Barton, *An Historical Treatise of a Suit in Equity: in which is attempted A Scientific Deduction of the Proceedings used on the Equity Sides of the Courts of Chancery and Exchequer, from the Commencement of the Suit to the Decree and Appeal; with Occasional Remarks on their Import and Efficacy; and An Introductory Discourse on the Rise and Progress of the Equitable Jurisdiction of those Courts*, London, 1796. This book was written the year after the author was called to the bar at the Inner Temple.³⁴ It is the only one which considers both courts equally and at the same time; this makes it quite easy to note the minor variations in practice and procedure between them. Barton supplies many sample forms throughout his text. However, the historical "introductory discourse" is disappointing.

The last practice manual on the subject was written by a solicitor. Samuel Turner, *An epitome of the practice of the equity*

2 vols., Dublin, 1760. Howard discusses the subject alphabetically from "Abatement" to "Witnesses"; he cites as authority cases decided in the English courts of Chancery and Exchequer, and he includes an appendix of general rules of court for the Irish practice. Although this work is considerably more elaborate than any of its predecessors in England or Ireland, it was probably not the model for Fowler since Fowler did not follow his method of arrangement of the subject matter.

33. *The Court and City Register*, London, 1759, 1760; *The Royal Kalendar*, London, 1827, 1828.

34. *Dictionary of National Biography*, vol. 3, p. 342, *sub nom.* Barton, Charles (1768-1843).

side of the Court of Exchequer, comprehending all the material authorities upon points of practice from the commencement of the suit to the decree, London, 1806. Turner borrows regularly from Fowler, but he gives due credit. The chief value of this volume is the appendix of forms and the numerous lists of one-sentence digests of cases, which are scattered throughout the book under the appropriate subject headings. Ten years later, the second edition of Fowler's treatise appeared, and this was the last thing on the subject. By 1825 the popularity of the equity jurisdiction of the Exchequer was greatly declining,³⁵ and in 1841 it was abolished.³⁶

Fowler, Barton, and Turner cite as authority and without discrimination cases from both the Chancery and the Exchequer courts. Also they frequently refer to Mitford's classic treatise on chancery pleading.³⁷ This leads to the conclusion that the procedures of the two high courts of equity were basically the same. Also it is notable that there were no separate treatises on the substance of the equity of the Exchequer; this indicates that it too was the same as the Chancery. It would be interesting to know precisely the relationship between these two courts, whether one took the initiative in developing the law and practice of equity or whether they developed *in pari passu*, but much further study must be done before anything more can be said.

Before continuing to the modern period, one small book, which has one short chapter on the subject, must be mentioned in passing. Henry Aldridge, *A Short Treatise of the History and Antiquities and Jurisdiction of all the Courts of Law, equity, ecclesiastical, military, university, copyhold, and other courts of Justice*, London, 1835. Also there was the parliamentary "Report of the Commissioners on the Duties, Salaries and Emoluments, in Courts of Justice" in 1822.³⁸ This report describes in detail the duties of all of the officers of the court and furnishes much information on the clerical procedures and the records of the court.

Since the demise of the equity jurisdiction of the court, there have been only two books to appear which touch upon the subject at all. Emyr Gwynne Jones, comp., *Exchequer Proceedings (Equity) Concerning Wales, Henry VIII—Elizabeth, Abstracts of Bills and Inventory of Further Proceedings*, Board of Celtic Studies, Uni-

35. "Administration of Justice Bill, Minutes of Evidence," *Journals of the House of Lords*, vol. 72 (appendix vol.), 1840 sess., App. No. 3, pp. 117-153.

36. Stat. 5 Vict. [1841] c. 5, s.1.

37. John Freeman Mitford, Lord Redesdale, *Treatise on the Pleadings in Suits in the Court of Chancery by English Bill*, London, 1780.

38. HC Parliamentary Papers, 1822 (125) xi, 99.

versity of Wales, History and Law Series, No. 4, Cardiff, 1939. Thomas Ieuan Jeffrey Jones, comp., *Exchequer Proceedings Concerning Wales*, in tempore James I, *Abstracts of Bills and Inventory of Further Proceedings*, Board of Celtic Studies, University of Wales, History and Law Series, No. 15, Cardiff, 1955. As their titles indicate, these works are successive compilations of abstracts of the equity cases which arose in Wales up to 1625. In fact very little remains before the reign of Queen Elizabeth I. These two books have brief, non-technical prefaces, but unfortunately their indices refer only to persons and places. The bodies of the books can be used as calendars which give the nature of the dispute and the references to all the pleadings, depositions, decrees, and orders. Although these books are limited to the Welsh counties, there is no reason to think that they are not typical of any primarily rural British shire. Thus they provide an impartially and logically selected sample of Exchequer equity cases for the period.

This study suggests that the time lag between the developments of the court and the descriptions thereof was considerable. The manuscripts mentioned in the first section describe the offices, most of which were flourishing in the early part of the sixteenth century. The manuals of the latter part of the seventeenth century describe in rough outline the procedure which had been used since the time of Elizabeth I. The treatises of the late eighteenth century set out in detail the rules which had been settled by Lord Nottingham and others a hundred years earlier. Perhaps this reflects the conservatism of the legal profession; nothing can be established except by long usage. The fourth section of this essay shows the longest gap of all: that between the demise of the jurisdiction and the writing of its history. Although the gap widens daily, steps are being taken to stop it.

Another manuscript copy of Osborne's treatise has been found since the type has been set. It is British Museum MS. Harl. 5176, ff. 52-76. This copy is divided into two distinct parts. The first is entitled "The Offices & Officers of the Court of Exchequer at Westminster & of whose guift they bee." It is only a list of offices with a note of who had the right of appointment. The second part is "What every of the said Officers at this day usually doth by his said Office"; this is the treatise. This copy does not have Fanshawe's answers nor the address and date at the end; it includes the section on the clerks of the lord treasurer's remembrancer's office; it refers to the king. Therefore, it would appear to be among the earlier copies.