

Law Reporting in Britain

PROCEEDINGS OF THE ELEVENTH
BRITISH LEGAL HISTORY CONFERENCE

Edited by
CHANTAL STEBBINGS

**LAW REPORTING IN
BRITAIN**

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Preface

This volume is a collection of most of the principal papers delivered at the 11th British Legal History Conference, held in July 1993 at the University of Exeter, U.K. The theme of the conference, which is reflected in this volume, was *Law Reporting*, and the volume accurately represents a coherent historical study of various aspects of the history of law reporting in Britain. The conference adhered closely to this theme; all the papers there presented dealt with some aspect of law reporting, and were selected to cover as many different aspects of the theme as possible, both in content and in chronology, while retaining academic rigour. While this volume is limited to essays on the subject of law reporting which are either entirely British in content, or have a significant British element, the conference received contributions from many eminent legal historians of both the Common Law and the Civil Law traditions. Presentations were heard from South Africa, New Zealand, Canada and the USA. Many of the papers presented but not included in this volume will appear in due course in other publications.

While there is, as the conference made clear, much current and scholarly research into the subject of law reporting, with its intimate involvement in the doctrine of judicial precedent, books dedicated to the subject are few, and most research is found in diverse legal journals. This volume seeks to address this issue and, while of course not comprehensive, does purport to cover at least one aspect of each of the principal areas of the subject. John Baker and David Seipp address the reporting of criminal cases, while Michael Macnair discusses the reporting of Chancery cases and William Gordon and Alain Wijffels explore the civilians in Britain. Modern legal history is not neglected, being the subject of the essays by Steve Hedley and Raymond Cocks. The chronological development of law reporting is discussed by Paul Brand, David Ibbetson and Hamilton Bryson, while James Oldham reflects on manuscript law reports. Indeed, as a whole, the essays reflect the long and continuous development of law in Britain, covering a period of some 600 years of law reporting.

I would like to extend my warmest thanks to all those who participated in the Conference, speakers and delegates, to make it such an enjoyable and, I hope, fulfilling occasion. It was held in that atmosphere of stimulating

and friendly scholarship which is characteristic of legal historians, with old friends and colleagues reunited, debates resumed. I would also like to take this opportunity to thank the University of Exeter for hosting the conference, and to thank warmly the *Journal of Legal History*, Oxford University Press, Cambridge University Press, the Society of Public Teachers of Law and the University of Exeter for their generous, and much appreciated, financial support. We all eagerly await the next conference to be held in Durham in 1995.

Chantal Stebbings

Exeter, June 1994

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The British Legal History Conference

The first British Legal History Conference was held in 1972 in Aberystwyth, on the initiative of Professor Daffyd Jenkins. Since then there have been meetings at London/Cambridge (1974 and 1975), Edinburgh (1977), Birmingham (1979), Bristol (1981), Norwich (1983), Canterbury (1985), Cardiff (1987), Glasgow (1989) and Oxford (1991). The Conference has become established as a leading forum for the discussion of all aspects of the history of law.

Proceedings of the Conference have been published as follows:

Legal History Studies 1972, ed. D. Jenkins (University of Wales Press, Cardiff, 1975)

Legal Record and the Historian, ed. J.H. Baker (Royal Historical Society, London, 1978)

Law, Litigants and the Legal Profession, ed. E.W. Ives and A.H. Manchester (Royal Historical Society, London, 1983)

Customs, Courts and Counsel, ed. A. Kiralfy, M. Slatter and R. Virgoe, in *Journal of Legal History*, 5 (1984), and as a separate volume (Frank Cass, London, 1985)

The Political Context of Law, ed. Richard Eales and David Sullivan (The Hambledon Press, London, 1987)

Legal Record and Historical Reality, ed. Thomas G. Watkin (The Hambledon Press, London and Ronceverte, WV, 1989)

Legal History in the Making, ed. W.M. Gordon and T.D. Fergus (The Hambledon Press, London and Rio Grande, OH, 1991)

The Life of the Law, ed. Peter Birks (The Hambledon Press, London and Rio Grande, OH, 1993)

The Beginnings of English Law Reporting

Paul Brand

The first English law reports were compiled during the final years of the reign of Henry III. By the early 1290s the first collections of reports of cases heard during particular terms in the Common Bench and of cases heard during particular eyre sessions were being compiled. The practice of law reporting had become well established by the end of the reign of Edward I.

Reports from this earliest stage of English law reporting survive in at least forty-six different MSS. Comparatively little of their content is as yet available in print. Some reports belonging to this period were printed, albeit in severely truncated form, in Sir Anthony Fitzherbert's *La Graunde Abridgement* of 1514–16. During the great age of Year Book publishing printers found a ready market for Year Books of the reign of Edward III but fought shy of printing earlier reports. Year Books of the reign of Edward II were eventually put into print in 1678. A further two centuries were to elapse before publication of the reports of the reign of Edward I began.

Between 1863 and 1879 Alfred John Horwood edited five volumes of reports belonging to the reign of Edward I as part of the Rolls Series. Horwood's work made a substantial body of reports available in print in what are reasonably accurate and intelligent texts. There were two main defects in his work. Horwood took all his reports from just four MSS and did not make full use even of those MSS.¹ He was, moreover, quite uncritical in accepting the ascriptions of cases to particular courts and dates given in the subheadings of his manuscripts. He made no attempt to check whether or not these were accurate or even to ascertain to how much of the succeeding text they applied. The only sure way of doing this is by finding the plea-roll enrolments which correspond to the reports, a practice pioneered by his successor Pike in his Rolls Series edition of *Y.B. 12 & 13 Edward III* in 1885. It should still have been clear to Horwood, if only from the names of the justices mentioned in the reports, that some

¹ When two or more of his manuscripts reported the same case he did not attempt to collate the different versions found in the various manuscripts. He did not even print the wholly independent reports of the same case which they sometimes contained.

of the reports he printed and assigned to particular courts and dates could not have come from them.²

Horwood edited no reports of a date earlier than 1292.³ He was certainly aware that at least one of his four MSS contained earlier reports.⁴ All four of the MSS he used in fact contain earlier reports.⁵ No such reports found their way into print until 1952 when W.H. Dunham Jr published two collections of reports, copies of enrolments and notes drawn mainly from two different MSS now in the British Library and dating from the final years of the reign of Henry III and the first six years of the reign of Edward I as part of a Selden Society volume.⁶

The reports of the period prior to 1307 currently available in print are thus drawn in the main from just six out of the forty-six surviving MSS known to contain such reports and many, and perhaps a majority, of the reports of the same period even in those six MSS remain as yet unpublished. I have been working for some years on the entire corpus of pre-1307 reports and have made substantial progress in transcribing and identifying the reports which they contain. Volumes I and II of *The Earliest English Law Reports*, which will contain all the reports which can be identified as being of Common Bench cases and of a date earlier than 1290, should appear as a Selden Society volume in 1995. I want here to look at the wider corpus of surviving pre-1307 reports and to attempt to find answers to a series of related questions. I will try to establish when law reporting began and what form the earliest surviving reports took; when the practice of making collections of termly law reports and reports of cases heard in particular eyres first developed and why; the relationship between chronologically arranged collections and other collections arranged on a topical basis; who compiled reports and for what purposes; and to what uses reports were put.

² Many of the reports Horwood assigned to the 1293–94 Middlesex eyre contain the names of justices who did not sit in that eyre. Some even contain the names of justices who had died or were out of office by the time that eyre was held: see e.g. *YB 21 & 22 Edward I*, pp. 429–33 (case heard before Saham, one of the justices disgraced in 1290), 483–85 (case heard before Gisleham, a justice of the Common Bench who died early in 1293).

³ This is not entirely true. The earliest reports he knew he was editing belonged to that year. Among the reports he printed as belonging to the 1294 Middlesex eyre, however, there are individual Common Bench reports from various terms in 1290 (*YB 21 & 22 Edward I* at pp. 399–407, 433–45) and a whole section of reports from Michaelmas term 1291 (*YB 21 & 22 Edward I* at pp. 477–605). There is also a report which must be from the 1280s at *YB 21 & 22 Edward I*, pp. 429–33 and two further reports from the 1280s among the reports Horwood printed as belonging to the 1302 Cornwall eyre (*YB 30 & 31 Edward I*, pp. 279–85).

⁴ *YB 20 & 21 Edward I*, p. xv.

⁵ The other three MSS have earlier reports in those sections where the reports are arranged topically rather than chronologically. Horwood noted the existence of these sections but made no attempt to identify or edit their contents.

⁶ *Casus Placitorum and Reports of Cases in the King's Courts, 1272–1278* (69 Selden Soc.).

Over 300 cases heard prior to 1290 are the subject of surviving reports. There are reports of just over 140 Common Bench cases and of a slightly larger number of General Eyre cases. Most of the latter come from the 'northern' eyre circuit of 1278–88. There are also two reports of cases in the Exchequer of the Jews, around fifty reports of assizes heard before a variety of justices and a number of reports which cannot as yet be identified as coming from any particular court.

The earliest English law report so far identified comes from Michaelmas term 1268. It is of a case brought by writ of entry in the Common Bench. The serjeants and justices involved are not named,⁷ and the report records their interchange in the form of indirectly reported speech ascribed to the parties concerned, just like a plea roll enrolment.⁸ The language of the report is Latin but it is not the smooth Latin of the clerks who made the plea roll enrolments. The reporter also preserves much more of the unsuccessful arguments subsequently discarded by the parties than was normal in enrolments. This is the first in a sequence of five entries relating to specific cases heard in the Common Bench in Michaelmas term 1268 which was copied, probably by mistake, into a fifteenth century MS now in the Huntington Library in California.⁹ None of the other entries is a law report in quite the same sense, though at least one other entry does record (albeit in indirect speech) some of the dialogue between the parties.¹⁰ From not much later comes a short section of notes and reports copied into Cambridge University Library MS Dd.7.14.¹¹ It contains eleven entries. Some are certainly case-derived. A majority merely summarise a single point of law. Three do, however, give us (although in Latin and in indirect, reported speech) some of the dialogue between parties to litigation which resemble, but are done with rather more skill than, the 1268 report. One can probably be identified as the report of a case heard in the 1269 Northamptonshire eyre.¹² Another is a report of a case heard in the Common Bench in Hilary term 1272.¹³ A third refers to the opinion of Richard of Middleton, probably an opinion given while he was acting as the senior justice of an eyre circuit in 1268–69 on a circuit which included Northamptonshire.

⁷ Only the heading identifies the case as having been heard in the fifty-second regnal year (of Henry III) before Martin of Littlebury.

⁸ This will be 1268.1 in vol. I of *The Earliest English Law Reports*. All other such references are likewise to reports to be published in that volume or vol. II of *The Earliest English Law Reports*.

⁹ San Marino, CA, Huntington Library, MS HM 19920, fos 40r–42r.

¹⁰ 1268.4.

¹¹ At fos 358r–359r.

¹² This is the report at the bottom of fol. 358v and top of 359r. It only uses first names but the count used and the facts of the case are sufficiently distinctive to show that it is the same case as that of which only the initial count was copied into CUL, MS LI.4.18, fol. 189v (which gives the full names of the parties and the place concerned).

¹³ 1272.1.

The latest example of this type of early report so far found is of a case of 1287. It was always comparatively uncommon.¹⁴ A second type of early report takes the form of French dialogue in direct speech ascribed to the parties involved (rather than to the serjeants who actually spoke for them) and to wholly anonymous justices. The first undoubted example is of a case heard in the 1272 Lincolnshire eyre,¹⁵ and reports of this kind remain not uncommon throughout the period down to 1290.¹⁶ There are also a number of reports of generally similar form but with the speaker of a single speech identified as a particular serjeant or justice.¹⁷

The third main type of early report resembles the second in giving in direct speech at least part of what was said in court but also identifies at least some, though generally not all, of the lawyers, judges and clerks who are participants in the case. The earliest identified report of this kind (the classic form of Year Book report) comes from a collection of reports mainly of the 1280s in Cambridge University Library MS Dd.7.14.¹⁸ It is a report of a Common Bench case heard in Michaelmas term 1270.¹⁹ The same collection also includes a similar report of a second case from the 1272 Lincolnshire eyre.²⁰ Three other unidentified reports of the same kind probably dating from before 1273 are printed by Dunham in *Casus placitorum*.²¹ Reports of this kind are by far the most common type of report even in this early period of law reporting. The vast majority are in French. A small minority are in Latin.²²

Most of the thirty-nine MSS which contain pre-1290 reports contain no more than a handful of such reports. Only five MSS contain more

¹⁴ For other Common Bench examples see 1273.1; 1276.2 (ii); 1276.7 (ii) (with one passage of direct speech); pre-1279.2 (ii); pre-1279.3 (i); pre-1279.4; 1283.4; 1283.5 (ii); 1287.4 (i); 1287.7 (iii); 1278-89.23. For a report of similar form but in French see 1284.15.

¹⁵ *Casus placitorum*, Collection I, no. 9 (at pp. 65-67). It is not identified by Dunham but is a report of the case enrolled on JUST 1/483, m. 40d.

¹⁶ For examples of reports of Common Bench cases of this type see 1274.1; 1274.2; 1275.2; 1275.4; 1275.5 (i), (ii); 1277.3; 1277.5; pre-1279.1; pre-1279.3 (ii); 1279.3; 1283.3; 1285.5 (i); 1278-89.17 (ii). Of these 1275.5 (i), 1277.5 and 1278-89.17 (ii) also have preliminary explanations of the relevant facts; 1279.3 has a single speech ascribed to 'le countur Willem'.

¹⁷ For examples of Common Bench reports of this kind see 1276.4 (single speech ascribed to Alan of Walkingham); 1277.1 (single speech ascribed to Master Roger of Seaton); 1283.5 (i) (single speech ascribed to William of Bereford); 1283.9 (judgment ascribed to Brompton); 1284.5 (single speech ascribed to Bocking); 1288.3 (single speech ascribed to Thomas Weyland); 1278-89.7 (judgment ascribed to Weyland).

¹⁸ At fos 369v-394v.

¹⁹ 1270.2.

²⁰ As fos 370v-371r. The case reported is one enrolled on JUST 1/483, m. 30. There is a related (but inferior) version of the same report in BL, MS. Add. 5925 at fol. 58r.

²¹ *Casus placitorum*, Collection I, nos 18, 21-22 (pp. 77-78, 79-81).

²² For examples of Common Bench reports of this kind in Latin see 1283.1; 1283.6 (ii).

than thirty. In three of these five the pre-1290 reports are found in topical collections which also include a much larger number of reports of a later date. These collections cannot have been put together before the early fourteenth century. Most of the reports in Lincoln's Inn MS Miscellaneous 87, for example, are of cases heard in the Common Bench during the chief justiceship of John of Mettingham (1290–1301) and the latest cases are from the 1302 Cornish eyre.²³ In the two remaining MSS, which contain the largest number of such reports, the pre-1290 reports form part of miscellaneous collections from the 1270s and 1280s arranged in no particular chronological order. The pre-1290 reports in British Library, MS Royal 10.A.V. all come from a single section of the MS.²⁴ The Common Bench reports are mainly of cases heard during 1283 and 1284.²⁵ The eyre reports are mainly of cases heard in the 1284 Leicestershire eyre and the 1285 Warwickshire and Northamptonshire eyres. The *incipit* and *explicit* of this section suggest that the collection was copied into the MS some time after Hengham had become chief justice of the Common Bench (in Michaelmas term 1301) and by or for someone who did not know that these were old reports being passed off as new ones. It was, however, probably put together originally in or shortly after 1286, the date of the last identified material which it contains. Cambridge University Library, MS Dd.7.14, however, is our richest source of pre-1290 reports. It contains forty-eight pre-1290 Common Bench reports and sixty-nine pre-1290 eyre reports. Most come from two specific sections of the MS. The strengths of the first of these sections²⁶ are very similar to those of BL, MS Royal 10.A.V. Although there is some grouping of cases from particular periods or even particular eyres,²⁷ the overall arrangement is not chronological. There is some 1290 material in this section but it looks as though it may be a later addition to a collection originally put together in or shortly after 1286. The second substantial section is more varied,²⁸ but its largest single identifiable element consists of thirteen reports of cases heard during the 1289 Wiltshire eyre.²⁹ Again there is no obvious sign of either a chronological or a topical arrangement of cases. A single reporter may have been responsible for most of the reports in both sections.

Legal historians interested in the beginning of law reporting have, not surprisingly, looked for the precursors of these early reports. They have focussed special attention on two educational works compiled in

²³ The other similar MSS are BL, MSS Add. 5925 and 35116.

²⁴ At fos 91v–118v. It also contains notes and copies of enrolments.

²⁵ There are also reports of cases of 1277, 1281 and 1286.

²⁶ At fos 369v–394v.

²⁷ There is a sequence of eight Common Bench cases all from 1283–4 at fos 373v–375r and a sequence of eight cases all from the 1284 Leicestershire eyre at fos 380r–382v.

²⁸ At fos 396v–409v.

²⁹ Reports of cases identifiable as coming from this eyre are at fos 400v, 400v–401r, 402r (two), 405v–406r, 406r–v, 408r (two), 403r (two), 408v (two), 409r–v.

or shortly before 1260.³⁰ *Casus placitorum*, the earlier of the two, is a miscellaneous collection of legal notes which survives in a number of different manuscripts. These share much common material but differ widely from each other. A small number of the notes in the *Casus* do seem to be directly derived from real cases and have something of the exchange of arguments or allegations which are the basic and most fundamental characteristic of the Year Book report. A few ascribe the eventual judgement to a particular named justice. One even records more than one point raised in pleading in a particular case. However, such notes only form a small proportion of the *Casus* and none of the 'reports' amount to more than a few lines of text. Nor are any of the arguments reported in the form of direct speech or ascribed to particular serjeants. A few of these notes can then be seen as distant precursors of our early reports (and more particularly of the two variant early forms of law report). They seem, however, to represent a significantly earlier stage in the process of evolution of the report.

Where we do get what sounds like real courtroom dialogue is in *Brevia placitata*. John Baker has recently suggested that this dialogue may not be, as Maitland thought, more or less imaginary but that it may be 'based on real cases, albeit with the details removed'.³¹ This is an attractive hypothesis but one difficult to test in the absence of that identifying detail.³² Some of the factual situations presupposed in the cases were so commonplace that it is difficult to believe that the dialogue needed to be taken from any specific case.³³ Others look more plausibly special but raise other difficulties. Are we really to believe in a case brought by the writ of right *de rationabili parte* in which it was alleged that the defendant was a bastard born before the marriage of his parents and the *bishop* was instructed to enquire into this point?³⁴ This would only be plausible if the compiler was using his knowledge of a case heard before 1236, not in any case heard after that date.³⁵ There are also difficulties about accepting as genuine the long *ne vexes* case with its intricate argument about the obligation of suit of court found in at least seven of the MSS of *Brevia placitata* (and which, if genuine, must date from before the legislation on suit of court

³⁰ The relevant literature is reviewed by John Baker in 'Records, Reports and the Origins of Case-Law in England', in Baker (ed.), *Judicial Records, Law Reports and the Growth of Case Law* (Berlin, 1989), pp. 15–46 at p. 18.

³¹ *Ibid.*, p. 18.

³² There is also a further difficulty. The compilers of *Brevia Placitata* are most likely to have drawn on cases heard during the second half of the 1250s. Most of the plea rolls for that period do not survive.

³³ For examples see the passages of dialogue which follow the writ of dower *unde nichil habet*: *Brevia placitata*, pp. 5–6, 45–46; the writ of *precipe in capite*: *Brevia placitata*, pp. 53–54, 163–64.

³⁴ *Brevia placitata*, pp. 7–8, 48–49, 159–60.

³⁵ Thorne, *Bracton*, iii, pp. xiv–xvii.

of 1259).³⁶ This supposes that the socage wardship of an infant would be granted by a lord's court to a paternal uncle who was already in possession of the other share of the inheritance, in breach of a long-standing and apparently generally observed rule that socage wardships be held only by relatives who could not inherit the land concerned. The dialogue in *Brevia placitata* was clearly written by someone well-acquainted with the verbal formulas used in the courts and in its dialogue we can probably hear the voices of the professional lawyers and justices of the 1250s, but I am not convinced that all or even any of the dialogue represents even edited versions of actual courtroom discussions.

Some early law reports were themselves also certainly used to teach law. The earliest identified law report (of a Common Bench case of Michaelmas term 1268) has at the end what seems to be a teacher's comment on the case. The fifth note in this same sequence, after giving the general principle illustrated and established by the case, goes on to point out the rule which the case shows. It seems likely that these reports and notes were being used in teaching not long after the cases were heard. They now survive only in a fifteenth-century MS but in none of the three entries where there is a reference to the regnal year when the case was heard (the fifty-second regnal year of King Henry III) is the king concerned specified.³⁷ This indicates that the original text was compiled before the end of Henry's reign. Nor was it just the earliest surviving reports that were used for this purpose. A substantial minority of pre-1290 reports have at some point (often at the beginning) a *casus* (a statement of facts relevant to the case) which is most likely to have been the work of a teacher trying to explain the case to his students.³⁸ We are also clearly hearing a later teacher in a comment intruded into the middle of a report of a replevin case of 1285 and in two notes at the end of the same report.³⁹

Some pre-1290 law reports were, then, used for educational purposes. This does not prove that all the reports of this period were compiled with educational purposes in mind. Serjeants involved in litigation might well have found it helpful to possess some kind of *aide-memoire* of what had been said in court, particularly if the litigation itself took place over several days. There is at least one reference from the 1280s to one of the serjeants possessing a clerk who might have kept such a record.⁴⁰ Clients might well have expected their attorneys to tell them what had been said in court by their serjeants, by their opponents and by the justices. Those same

³⁶ *Brevia placitata*, pp. 133–36, 219–21.

³⁷ 1268.1; 1268.2; 1268.5.

³⁸ For examples see 1275.5 (i); 1277.5; 1283.9; 1283.10; 1284.4 (i); 1287.3 (i); 1288.2; 1278–89.17 (ii); 1278–89.21 (i).

³⁹ 1285.5 (i).

⁴⁰ CP 40/50, m. 53d (deed delivered to Henry Warner, the clerk of Alexander of Coventry).

attorneys might also be called upon to avow or disavow what had been said by 'their' serjeants. This meant they needed to follow what was said in court.⁴¹ They also had the requisite opportunity.⁴² An attorney involved in the litigation seems by far the most likely author for a report which follows a case from the 1285 Northamptonshire eyre into the Common Bench the following year.⁴³ The same is also true of a report which covers in detail both what happened in a Common Bench case in 1287 and the subsequent and related King's Bench error proceedings three years later.⁴⁴

Nor was it just the lawyers involved in the case who might need their own record. The clerks of the court who were to prepare the official enrolled (and generally highly compressed) version of what had been said must have needed to make their own rough first draft of the enrolment. Some of these rough drafts, and even some of the drafts produced in subsequent intermediate stages, may well have found their way into circulation among these early reports. This would explain some of the Latin reports which are in indirect speech but do not have the polish of the related plea roll enrolments.⁴⁵ A particularly strong case can be made for a Latin report of a *quare impedit* case of 1283. This is difficult to follow because the reporter has failed to notice and fully record the intervention and involvement of a third, rival claimant to the same advowson. Exactly the same problem arises (and for exactly the same reason) in the plea roll enrolment of the same case.⁴⁶ There were other reasons for clerks associated with the court to keep their own record of what had been said. A substantial proportion of early reports are of cases adjourned for judgment. When this happened the justices may simply have relied on the plea roll enrolment in their subsequent private discussion of the point at issue or they may have relied on the memories of the justices involved in the hearing. A third possibility is that what they actually used was an unofficial record of what had been said made for them by their clerks. Some of our reports may have had their origins in such unofficial reports.

When cases were adjourned for judgment justices also sometimes consulted the justices of other courts before giving judgment.⁴⁷ Some of our reports may have had their origin in reports of cases sent to those other justices for

⁴¹ P. Brand, *The Origins of the English Legal Profession*, (Oxford, 1992) pp. 98–100.

⁴² *Ibid.*, p. 87.

⁴³ 1286.3 (ii). A different set of serjeants were used by the litigants in the Common Bench. The author of this report also knew the reasons for the eventual non-suit of the plaintiff. See also 1275.4 and 1275.5 where the authors of the reports knew both what had been said in pleading in the 1275 Worcestershire eyre and of the eventual judgment given in the cases concerned in the Common Bench.

⁴⁴ 1287.3 (i) (though at least one serjeant (Higham) was present at both stages).

⁴⁵ For what look like possible examples see 1276.2 (i) (an incomplete report); 1276.7 (ii); pre-1279.2 (ii); pre-1279.3 (i); 1287.7 (iii).

⁴⁶ 1283.1.

⁴⁷ P. Brand, *The Making of the Common Law*, (London, 1992) pp. 393–98.

their advice. One plausible example is a French report of a case heard in the 1284 Leicestershire eyre. This gets the names of the parties completely correct and notes the adjournment of the case for judgment. At the end it has a brief and authoritative note in Latin which looks like a response to a request for advice on the point at issue:

'I say that the [verdict of the] inquisition which was taken should not prejudice John junior since they were not parties to a plea because the king was seised of the manor at the time.'⁴⁸

Reports from the second half of Edward I's reign are almost ten times as numerous as those for the period prior to 1290. It is also from shortly after 1290 that there come the first surviving collections of reports belonging to particular Common Bench terms or particular sessions of the General Eyre.

Collections of eyre reports specifically ascribed to particular eyres survive for each of the eyres on the 'southern' eyre circuit of 1292–94, for the 1299 Cambridgeshire and Isle of Ely eyres and for the 1302 Cornish eyre. Most exist in only a single MS, although there are four surviving MSS of the 1302 Cornish eyre. Horwood edited most of these collections but did not know of the reports of the 1293–94 Kent eyre,⁴⁹ or of the 1299 Cambridgeshire and Isle of Ely eyre.⁵⁰

The earliest surviving collection of Common Bench reports from a particular term belong to Michaelmas term 1291. Horwood edited these as part of the enormous collection of reports he wrongly ascribed to the 1294 Middlesex eyres.⁵¹ Horwood also edited Common Bench reports for Hilary term 1292 and for Easter and Trinity terms 1293.⁵² During the first half of the 1290s, however, there also existed an alternative form of chronological collection, one which mixed together reports from two consecutive terms. Among the reports printed by Horwood as belonging to Easter term 1293 are two such collections: one of reports belonging to Hilary and Easter terms in 1292⁵³ and another of reports belonging to Trinity and Michaelmas terms of the same year.⁵⁴ There is another and quite different sequence of reports mainly from these last two terms in BL,

⁴⁸ CUL, MS Dd.7.14, fos 381r–v.

⁴⁹ BL, MS Add. 37657, fos 67v–79v.

⁵⁰ BL MS Stowe 386, fos 99r–108v.

⁵¹ The sequence is printed at pp. 453–605 of *YB 21 & 22 Edward I*. It is interrupted by at least one report from the following Hilary term (*YB 21 & 22 Edward I*, p. 495) and by a report from Easter term 1293 (*ibid.*, p. 577–87). There is another report from Michaelmas term 1291 at *YB 21 & 22 Edward I*, pp. 419–27.

⁵² *YB 20 & 21 Edward I*, pp. 297–369; *YB 21 & 22 Edward I*, pp. 3–297.

⁵³ *YB 21 & 22 Edward I*, pp. 47–95.

⁵⁴ *YB 21 & 22 Edward I*, pp. 95–151.

MS Additional 31826,⁵⁵ and a similar collection of reports from Easter and Trinity terms 1295 in BL, MS Additional 37657.⁵⁶

After this initial flowering of the termly or bi-termly report form, there is a gap in the surviving termly collections until Michaelmas term 1298. Four different collections of reports survive for this term.⁵⁷ There is then a further short interval without such collections until Michaelmas term 1299. From then until the end of the reign of Edward I there survives a continuous flow of termly law reports. For most terms there is more than one surviving collection. Indeed, for Michaelmas term 1302, there are as many as six different collections.⁵⁸ Horwood printed reports for some, though not all, of these terms but he only used three of the eight MSS now known to contain chronological collections from this period. There is thus an urgent need for a new edition of even those Year Books which Horwood did edit, as well as for a scholarly text of the reports of those terms for which reports survive but which Horwood's edition omitted.

The beginning of these strictly chronological collections coincides with a noticeable increase in the number of reports surviving from any one term or eyre. For no Common Bench term prior to 1290 have I been able to find more than seven reported cases,⁵⁹ and there is only one eyre session prior to 1290 (the 1285 Northamptonshire eyre) for which there survive as many as thirty-three reported cases.⁶⁰ It seems possible that chronological collections started to be made and to circulate simply because more cases from any one term or any one eyre session were being reported. This may in turn reflect the fact that the courts themselves were now for the first time providing special facilities for reporting. The first known reference to the 'crib', an enclosure set aside for the use of the apprentices, comes in a petition from the apprentices to the king dating from early in the reign of Edward II. This specifically describes the purpose of the 'crib' as being 'for the education of [the petitioners]' and asks permission to set up a second 'crib' on the other side of the court. There is no hint that the existing 'crib' has only recently been erected and the fact that the body of apprentices had clearly outgrown the first 'crib' suggests that it had probably been established some years earlier, when the body of apprentices present in

⁵⁵ At fos 54v–60v.

⁵⁶ At fos 99r–106v.

⁵⁷ BL, MSS Add. 31826, fos 152r–154r; 37657, fos 111r–113r; IT MS Misc. 1, fos 1r–2v; CUL, MS Ee.6.18, fos 9r–10r.

⁵⁸ Horwood printed reports for this term from LI, MS Hale 188 (*YB 30 & 31 Edward I*), pp. 3–71. There are also reports for this term in BL, MS Add. 37657 at fos 186v–192r; BL, MS Stowe 386 at fos 157r–168v; LI MS Misc. 738 at fos 31r–v, 29r–v, 33r–35r (the original order); BL, MS Add. 31826 at fos 170v–183v; CUL, MS Ee.6.18, fos 70r–75r (?).

⁵⁹ Seven cases heard in Trinity term 1284 are reported. No one MS contains more than three reports.

⁶⁰ No one MS contains more than twenty of these reports.

the court had been substantially smaller.⁶¹ Perhaps it dates back to *c.* 1290. We may thus owe the beginning of the chronological collections to the provision by the court of somewhere set aside for the reporters where they could do their work.

The law reports of this period also survive in collections organised not on a chronological but on a topical basis, by form of action or related types of form of action. These collections are the main source for reports of those 'missing' terms of the 1290s for which no chronological collections survive.⁶² They also contain important variant texts, indeed sometimes quite different versions, or reports of cases also found in the chronological collections. Some MSS consist wholly of topical collections of reports of this kind.⁶³ Others contain a mixture of chronological and topical collections. Lincoln's Inn, MS Miscellaneous 738, for example, has a first section (at fos 1–52) which contains chronologically arranged reports and a second section (at fos 53r–122r) which contains mainly topically arranged sections.⁶⁴ As with other topically arranged sections the main ingredient is reports from the Common Bench from the period when John of Mettingham was chief justice of the court (1290–1301) but there is at least one report of a case heard as late as Michaelmas term 1305. This report is not duplicated in the chronological collection ascribed to that term and there is other evidence to suggest that some preliminary work had been done on the cases in the chronological sections in preparation for their rearrangement within the topical sections. It is unlikely to be coincidence that the sequence of reports for Easter term 1305 has a run of eleven consecutive replevin or related cases (at fos 39r–v); still less likely that mere chance so arranged it that within the section of reports for Michaelmas term 1305 there are sequences of nine consecutive replevin reports, followed by seven consecutive debt reports, followed by four consecutive dower reports, followed by six consecutive entry reports and then three consecutive account reports (at fos 39v–41v). Clearly the process of rearranging reports into topical sections was left unfinished. What we have is a collection frozen at a particular point in the rearranging

⁶¹ SC 8/189, no. 9409, printed by Turner in *YBB 3 & 4 Edward II*, p. xlii. For another early reference to the 'crib' see *YB 2 & 3 Edward II*, ed. F.W. Maitland (19 Selden Soc., 1904), pp. xv–xvi.

⁶² Reports have been identified in these collections from every Common Bench term after 1289 other than Trinity term 1298. This was the first term after the Common Bench moved from Westminster to York and the plea roll for the term indicates that much less business than usual was transacted during it.

⁶³ These include the two closely related BL, MSS Add. 35116 and Harley 25; BL, MS Harley 2183 and LI, MS Hale 174. BL, MS. Additional 32088 is similarly arranged but its reports are abridgements and not full reports. The reports in BL, MSS Harley 493A and 493B (originally a single MS) are also arranged topically but are interspersed among related material drawn from registers of writs and instructional treatises.

⁶⁴ There are, however, also miscellaneous sequences of reports and copies of enrolments at fos 94v–96r, 100r–v, 102v–105v, 107r–v, 115r, 121r–122v.

process. Something similar can also be observed in another Lincoln's Inn MS, Miscellaneous 87. None of the topical collections is earlier than the first decade of the fourteenth century. It seems probable, therefore, that this form of arrangement only became fashionable a decade or so later than the beginning of the strictly chronological reports. Our evidence also suggests that the topical collections were themselves created through a process of rearranging what were originally chronologically arranged reports. This in turn suggests that where the only surviving reports of particular cases and particular terms come from these topical collections they bear mute witness to the existence of lost chronological collections for the terms concerned.

The reports compiled during this period were certainly used, like their predecessors, for the teaching of law. This is clearly true of the earliest termly collection of reports we now have, from Michaelmas term 1291, which has several examples of the explanatory *casus* or statement of relevant facts,⁶⁵ incorporates a number of explanatory comments and notes on points established or illustrated by the cases;⁶⁶ it even has one general piece of rather bland advice for those preparing to speak in court.⁶⁷ The collection of reports from Hilary term 1292 printed by Horwood provides even clearer evidence. It incorporates a number of notes which (while possibly inspired by a case heard during that term) in their current form are clearly the words of a teacher talking to a class.⁶⁸ If I am right about the connexion between the beginning of the termly or two-termly collections of reports and the establishment of a 'crib' for apprentices,⁶⁹ then it seems likely that many of our reports were also compiled for educational purposes: perhaps both for the self-education of the 'reporters' and for their future use in teaching other learners around the courts at Westminster or in York.

But even after 1290 this may not explain the origins of all our reports. One of the lawyers involved in the litigation seems the most likely source for a report of an annuity case which not merely records what was said in the Common Bench in Hilary term 1292, and the jury verdict delivered the following Michaelmas term, but also notes what was said before the king's council by Chief Justice Mettingham and counsel for both sides at the Easter or Michaelmas Parliament of 1293 and the terms of the eventual settlement.⁷⁰ It is also most likely that it was one of the lawyers involved who knew what had been said in preliminary meetings of the serjeants employed by one of the litigants in three cases reported in 1304 and

⁶⁵ *YB 21 & 22 Edward I*, pp. 493, 531, 535, 559, 571.

⁶⁶ E.g. *YB 21 & 22 Edward I*, p. 489 (*feoffatus fuit de serviciis et hoc est notabile ut patet in fine*).

⁶⁷ *YB 21 & 22 Edward I*, p. 567.

⁶⁸ *YB 20 & 21 Edward I*, pp. 301–3, 303, 303–5, 319–21.

⁶⁹ Above, pp. 10–11.

⁷⁰ BL, MS Add. 35116, fos 267r–v (report of case enrolled on CP 40/92, m. 95).