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978-1-107-04058-8 - Law and Legal Process: Substantive Law and Procedure in
English Legal History
Edited by Matthew Dyson and David Ibbetson
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LAW AND LEGAL PROCESS

Substantive Law and Procedure in English Legal History

This collection of papers from the Twentieth British Legal History Conference explores the relationship between substantive law and the way in which it actually worked. Instead of looking at what the courts said they were doing, it is concerned more with the reality of what was happening. To that end, the authors use a wide range of sources, from court records to merchants' diaries and lawyers' letters. The way in which the sources are used reflects the possibilities of legal historical research which are opening up in the twenty-first century, as large databases and digitised images – and even online auction sites – make it a practical possibility to do work at a level which was almost unthinkable only a short time ago.

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Serchus a Pharchus
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In
Affectionate and Respectful
Memory
of
Dafydd Jenkins
1911–2012
Founder and Father of these Conferences

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PREFACE

The Twentieth British Legal History Conference was held in Cambridge, 13–16 July 2011, the third occasion on which Cambridge had played host. A total of eighty-one papers were delivered over the four days of the conference, and at least as many offers of papers had to be refused to avoid overburdening the programme. As it was, the programme had to be arranged in three parallel sessions with only a small number of plenary lectures, and the customary free afternoon with an organised outing had to be abandoned.

The core theme of the conference was Law and Legal Process, broadly interpreted to include all aspects of the interactions between legal practice and legal doctrine. The present volume is a selection of the papers delivered on that theme, reflecting the many ways in which these interactions have occurred in the history of the common law. They range between the study of a single case (Holmes) to the wide-ranging consideration of the nature of law at the interface of substance and process (Donahue). Some have their focus on the way in which the law worked in practice, some on the operation of law within courts; but they are held together by the common theme that the law should be understood not simply as a set of rules, but as a practical science whose functioning is an integral part of its being.

Some of those in Cambridge had themselves been at the first British Legal History Conference in Aberystwyth in 1972, and the conference provided an opportunity to reflect on the development of the study of legal history over the last forty years. Patrick Polden's paper in the present volume charts this through a history of the conferences. Particular attention was paid to the work of Brian Simpson, who had died earlier in the year, and to John Baker, who retired from the Downing Chair of the Laws of England in Cambridge in the summer of the conference.

As well as the editors of this volume, the organising committee of the conference was made up of Isabella Alexander, John Baker and Neil

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Jones. It is only right that we should put on record that most of the burden of organisation was borne by Neil Jones. We are in his debt for all of his labour on behalf of the community of legal historians. We would also like to thank those organisations who provided sponsorship for the conference: the Journal of Legal History, Hart Publishing, Oxford University Press and Cambridge University Press. The publishers of the volume have made the job of the editors an easy one, and we are especially grateful to Finola O'Sullivan for her help and advice.

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ABBREVIATIONS

<i>Bracton</i>	<i>Bracton on the Laws and Customs of England</i> , G. E. Woodbine (ed.), S. E. Thorne (trans.) (Cambridge, Mass.: Belknap Press, 1968–77)
CCR	<i>Calendar of Close Rolls</i>
CFR	<i>Calendar of Fine Rolls</i>
CIPM	<i>Calendar of Inquisitions Post Mortem</i>
CPR	<i>Calendar of Patent Rolls</i>
CR	<i>Close Rolls</i>
CRR	<i>Curia Regis Rolls</i>
HMC	Historical Manuscripts Commission
PROME	<i>Parliament Rolls of Medieval England</i>
RP	<i>Rotuli Parliamentorum</i>
RS	Rolls Series
Seld. Soc.	Selden Society
SR	<i>Statutes of the Realm</i>
St. Tr.	State Trials

Except where expressly stated, archival sources are in the National Archives, London.

Where possible, reference is also given to the the image number ([IMG]) on the Anglo-American Legal Tradition database, www.aalt.law.uh.edu/, abbreviated as AALT.