

ENGLISH LEGAL HISTORY AND ITS SOURCES

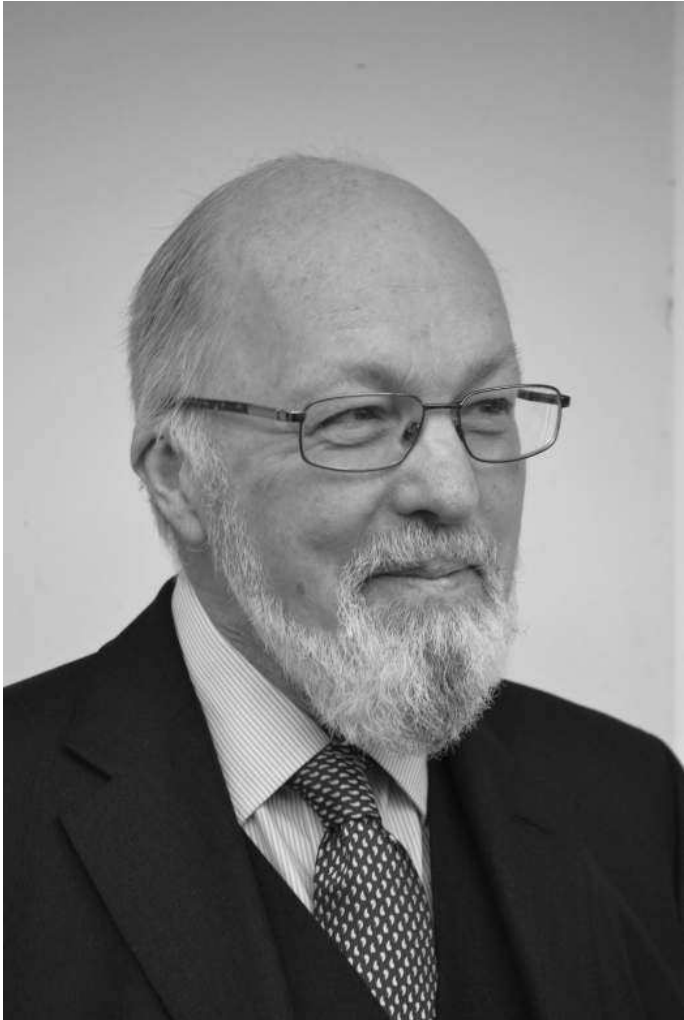
This volume honours the work and writings of Professor Sir John Baker over the past fifty years, presenting a collection of essays by leading scholars on topics relating to the sources of English legal history, the study of which Sir John has so much advanced. The essays range from the twelfth century to the nineteenth, considering courts (central and local), the professions (both common law and civilian), legal doctrine, learning, practice and language, and the cataloguing of legal manuscripts. The sources addressed include court records, reports of litigation (in print and in manuscript), abridgements, fee books and accounts, conveyances and legal images. The volume advances understanding of the history of the common law and its sources, and by bringing together essays on a range of topics, approaches and periods, underlines the richness of materials available for the study of the history of English law and indicates avenues for future research.

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ENGLISH LEGAL HISTORY AND ITS SOURCES

Essays in Honour of Sir John Baker

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Nisi per legem terre



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CONTENTS

<i>List of Figures</i>	page	viii
<i>List of Contributors</i>		ix
<i>Sir John Baker</i>		xi
<i>List of Abbreviations</i>		xv
<i>Table of Statutes</i>		xvi
<i>Table of Selected Cases</i>		xvii

PART I Law Reports and Reporting 1

- | | | |
|---|---|----|
| 1 | Year Book Men | 3 |
| | DAVID J. SEIPP | |
| 2 | Errores in Camera Scaccarii | 23 |
| | DAVID IBBETSON | |
| 3 | Law Reporting in the Seventeenth Century | 44 |
| | W. HAMILTON BRYSON | |
| 4 | The Law of Contracts as Reported in <i>The Times</i> ,
1785–1820 | 54 |
| | JAMES OLDHAM | |

PART II Courts and Records of Litigation 77

- | | | |
|---|---|-----|
| 5 | Reading Terminology in the Sources for the Early Common
Law: Seisin, Simple and Not So Simple | 79 |
| | JOHN HUDSON | |
| 6 | ‘A Photograph of English Life?’: the Trustworthiness of the
Thirteenth-Century Crown Pleas Rolls | 100 |
| | HENRY SUMMERSON | |
| 7 | Law, Lawyers and Legal Records: Litigating and Practising
Law in Late Medieval England | 121 |
| | JONATHAN ROSE | |

- 8 The Fees They Earned: the Incomes of William Staunford and Other Tudor Lawyers 139
 NIGEL RAMSAY
- 9 The Fifteenth-Century Accounts of the Undersheriffs of Middlesex: an Unlikely Source for Legal History 159
 SUSANNE BRAND
- 10 Local Courts in Eastern Sussex, 1263–1835 176
 CHRISTOPHER WHITTICK
- PART III Images of the Law 201**
- 11 Visualising Legal History: the Courts and Legal Profession in Image 203
 ANTHONY MUSSON
- 12 The Engraved Facsimile by John Pine (1733) of the ‘Canterbury’ Magna Carta (1215) 223
 SIMON KEYNES
- PART IV Legal Practice and Legal Learning 245**
- 13 The Abbess, the Empress and the ‘Constitutions of Clarendon’ 247
 ELISABETH VAN HOUTS
- 14 The *Tractatus de Antiquo Dominico Corone* Ascribed to Anger of Ripon 265
 PAUL BRAND
- 15 Another Way of Doing Manuscript Catalogues? 282
 CHARLES DONAHUE, JR
- 16 Common Opinion in the Fourteenth Century: Before the Common Learning, Before the Inns of Court 300
 IAN WILLIAMS
- 17 Henry Sherfield’s Reading on Wills (1624) and Trusts in the Form of a Use Upon a Use 318
 NEIL JONES
- 18 Civilians in the Common Law Courts, 1500–1700 342
 R. H. HELMHOLZ

CONTENTS

vii

- 19 The Widow's Apparel: Paraphernalia and the
Courts 358
JANET S. LOENGARD
- 20 'The Glorious Uncertainty of the Law': Life at the Bar,
1810–1830 373
MICHAEL LOBBAN
- Index* 396

FIGURES

- Frontispiece: Sir John Baker. *page* ii
- 12.1: Initial T, in R. Thomson, *An Historical Essay on the Magna Carta of King John* (London, 1829), 394. 236
- 12.2: John Pine's engraved facsimile of the burnt Cottonian engrossment of Magna Carta, first issue (1733), with 'Cottonian' panels above and below, and the coats of arms attributed to the twenty-five barons forming the borders to each side. 244

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SIR JOHN BAKER

Per quinquaginta annos magister doctissimus! It is now almost fifty years since the appearance of the first edition of John Baker's *Introduction to English Legal History*.¹ Only a few years later he modestly told an enquiring undergraduate – one of the editors of the present volume – not to bother reading it since it was all wrong. Any teacher of the subject today would tell an undergraduate that it is essential to read the current edition of the *Introduction*, and this is a measure of John's authority in the field. It is also an indication of the volume of scholarship which has been published in the half century since that first edition appeared, and a reflection of how much more is known. Much of this has been the achievement of John himself. He has been an inspiration to all the contributors to this volume: friend to all, teacher to many, and husband to one.

It is almost impossible to assess John's contribution to legal-historical scholarship without appearing to exaggerate; but it is no exaggeration to say that it has revolutionised the way in which research has been carried out. Compare much of what was written before with what is written now, and the difference is little short of startling. Most obvious is the use of manuscript reports. He was not, of course, the first person to foray into the manuscripts of the sixteenth and seventeenth centuries. Brian Simpson had begun to look at those of the late fifteenth and early sixteenth centuries; but John's work went way beyond this. The potential value of this material was shown in his early pair of articles almost coyly entitled 'New Light on *Slade's Case*'.² This was not merely some new light, but a thoroughgoing re-examination of one of the best-known cases in the common law. The manuscript reports of the different stages of the argument made it overwhelmingly clear that Coke's report

¹ J. H. Baker, *An Introduction to English Legal History* (London, 1971).

² J. H. Baker, 'New Light on *Slade's Case*', *Cambridge Law Journal*, 29 (1971), 51–67, 213–36, reprinted in Baker, *Collected Papers*, III, 1129–75.

of the case was not simple objective reporting as might once have been imagined, and John's commentary showed how much context could be drawn out of the study of the manuscripts containing reports of cases which had never been printed and were consequently wholly unknown. This was new territory, and no serious study of the law in this period today could rely solely on the meagre and unreliable printed sources.

A second leap forward, also visible early on, was the use of plea rolls. Maitland had made heavy use of these to map out the law before the time of Edward I. More recently Albert Kiralfy had dipped into them for his work on the development of the action on the case and Toby Milsom had delved more deeply for his work on trespass in the thirteenth and fourteenth centuries. But John was the first person to make serious use of the rolls of the years around 1500 in conjunction with the reports of the time. This won him the Yorke Prize, his essay for which became volume 94 of the Selden Society series, the commentary on his edition of Spelman's reports which had been published as volume 93.³ This work formed the basis of what is surely his masterpiece, the sixth volume of the *Oxford History of the Laws of England*, covering the period from 1483 to 1558.⁴ Half a century ago no writer on English legal history would have brought together manuscript reports and plea rolls in this way; today it is the model to which we must all aspire. Nor is it merely reports and records, but readings too that are woven into John's narrative: English law did not develop merely out of the practice of the courts, for juristic analysis and synthesis played its part too.

It would be impossible to list all the ways in which John's researches and insights have altered the landscape of legal history since the appearance of his first article in 1969. That paper, on the relations between common law and Chancery in the early seventeenth century, remains the definitive starting point for the study of the dispute between Edward Coke and Thomas Egerton.⁵ Other articles, gathered together in the three volumes of the *Collected Papers*, have shaped, or reshaped, different areas of law, and even where other scholars have contributed to the same debates John's contributions have always been fundamental. Somehow, too, he found the time to produce book-length studies: his restatement of the nature of the common law in *The Law's Two Bodies*,⁶ and the

³ J. H. Baker, *Reports of Sir John Spelman*, 2 vols. (93 and 94 Selden Society) (London, 1977, 1978).

⁴ J. H. Baker, *Oxford History of the Laws of England*, VI, 1483–1558 (Oxford, 2003).

⁵ J. H. Baker, 'The Common Lawyers and the Chancery: 1616', *Irish Jurist*, 4 (1969), 368–92, reprinted in Baker, *Collected Papers*, I, 481–512.

⁶ J. H. Baker, *The Law's Two Bodies* (Oxford, 2001).

exposition of the changing constitutional status of Magna Carta, this latter being one of the very few wholly original and groundbreaking works of scholarship spawned by the much over-hyped anniversary of the Charter in 2015.⁷

And that is only half of it. No one can ignore his editions of texts appearing as Selden Society volumes, mostly but not exclusively dating from the early sixteenth century. Only Maitland, the master of us all, can rival this output. What Maitland did for the late thirteenth and early fourteenth centuries more than a century ago, John has done for the early sixteenth century. Editing a text is a thankless labour, yet it is this work that lays down the foundations for the research of the future as well as that of the present day; and through his tenure as Literary Director of the Selden Society John has ensured that his own very high standards have been applied also in the work of other scholars.

More thankless still is the preparation of catalogues, yet John's census of English legal manuscripts in the United States⁸ and his detailed account of those in the Cambridge University Library,⁹ as well as his catalogue of readings in the Inns of Court¹⁰ are all of enormous value to scholars seeking to find the texts they need to read to carry on in John's footsteps. His little *Manual of Law French*¹¹ has an essential place on the shelves of anyone reading the legal texts of any period before the belated anglicisation of the law in the eighteenth century. Without this guide we would all be feeling our way in the dark.

A student in London, John moved to Cambridge almost fifty years ago and has been in Cambridge ever since. His work has all the characteristics of the very best of Cambridge scholarship: scrupulous fidelity to sources, a sharp eye for the telling detail and interpretative sophistication. An early volume of papers was published under the title *The Common Law Tradition*.¹² John's work exemplifies the best of that tradition.

⁷ J. H. Baker, *The Reinvention of Magna Carta 1216–1616* (Cambridge, 2017).

⁸ J. H. Baker, *English Legal Manuscripts in the United States of America: A Descriptive List*, 2 pts (London, 1985, 1991).

⁹ J. H. Baker with J. S. Ringrose, *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge, 1995).

¹⁰ J. H. Baker, *Readers and Readings in the Inns of Court and Chancery* (13 Selden Society, Supplementary Series) (London, 2000).

¹¹ J. H. Baker, *Manual of Law French*, (2nd edn, Aldershot, 1990) (1st edn, London, 1979).

¹² J. H. Baker, *The Common Law Tradition: Lawyers, Books and the Law* (London and Rio Grande, 2000). A full bibliography of published works to 2013 is provided in Baker, *Collected Papers*, III. 1578–97.

It is appropriate to end with words of the late S. F. C. Milsom, commenting in 1973 on John's earliest work.

It has for some time been apparent that we know less than we had thought about the sixteenth and early seventeenth centuries; and Baker is having considerable success in finding important materials in that period and in exploiting them. I am not always sure that I agree with him; and occasionally I have felt that he tries to do rather too much [!]. But that is a fault on the right side since there is so much to be done; and I have no doubt that he will make substantial and important contributions to legal history.

We offer this volume in deep appreciation of John, and of the substantial and important contributions which he has indeed made to legal history, surely far exceeding what even Toby Milsom had foreseen in 1973.

ABBREVIATIONS

AALT	Anglo-American Legal Tradition: Documents from Medieval and Early Modern England from the National Archives in London, database at aalt.law.uh.edu
Baker, <i>Collected Papers</i>	Sir John Baker, <i>Collected Papers on English Legal History</i> , 3 vols. (Cambridge, 2013)
Baker, <i>Men of Court</i>	Sir John Baker, <i>The Men of Court 1440 to 1550: A Prosopography of the Inns of Court and Chancery and the Courts of Law</i> , 2 vols. (18(1) and (2) Selden Society, Supplementary Series) (London, 2012)
BL	British Library
Bodl. Lib.	Bodleian Library, University of Oxford
CCR	<i>Calendar of the Close Rolls</i>
CRR	<i>Curia Regis Rolls</i>
CUL	Cambridge University Library
HLS	Harvard Law School Library
LI	Lincoln's Inn Library
Lib. Ass.	<i>Liber Assisarum</i>
LPL	Lambeth Palace Library
ODNB	<i>Oxford Dictionary of National Biography</i> , ed. H. C. G. Matthew and B. Harrison, 60 vols. (Oxford, 2004), and at www.oxforddnb.com
PRO	Public Record Office (now under the superintendence of The National Archives)

TABLE OF STATUTES

Magna Carta 1215	223–244, 358
9 Hen. III, Magna Carta 1225	358
3 Edw. I, Statute of Westminster I, c. 15	146
7 Edw. I, c. 1	351
1 Edw. III, st. 2, c. 11	351
16 Ric. II, c. 5	351
8 Hen. VI, c. 16	135
4 Hen. VII, c. 17	322
21 Hen. VIII, c. 5	350
21 Hen. VIII, c. 13	351, 354
23 Hen. VIII, c. 9	349, 351
27 Hen. VIII, c. 10	321
32 Hen. VIII, c. 1	319
34 & 35 Hen. VIII, c. 5	319
37 Hen. VIII, c. 21	351
13 Eliz. I, c. 20	351
27 Eliz. I, c. 8	24
31 Eliz. I, c. 1	36
1 Jac. I, c. 11	348
29 Car. II, c. 3	389
4 Will. & Mar., c. 2	365
9 Will. III, c. 15	378
11 Geo. I, c. 18	365
43 Geo. I, c. 58	387
3 Vict., c. 10	199

TABLE OF SELECTED CASES

Year Books

- 22 Edw. I (RS) 428 301
 12 Edw. II (81 Selden Society) p. 21, Pas. pl. 36 314
 17 Edw. II, fo. 499, Mich. pl. [11] 309
 5 Edw. III, fo. 53a, Mich. pl. 70 309
 8 Edw. III, Lib. Ass., fo. 15b, pl. 11 310
 13 Edw. III, Lib. Ass., fo. 39b, pl. 8 309
 13 Edw. III, Lib. Ass. fo. 39b, pl. 9 308, 313
 13 Edw. III (RS), p. 272, Pas. pl. 57 313
 13 Edw. III (RS), p. 10, Mich. pl. 7 310
 16 Edw. III (RS), p. 294, Mich. pl. 10 313
 17 Edw. III, Lib. Ass., fo. 48b, pl. 2 307
 17 Edw. III (RS), p. 24, Hil. pl. 8 310
 17 Edw. III (RS), p. 158, Hil. pl. 34 310
 17 Edw. III (RS), p. 252, Mich. pl. 48 313
 19 Edw. III, Lib. Ass., fo. 69a, pl. 5 309
 20 Edw. III (RS), p. 556, Mich. pl. 111 309
 24 Edw. III, fo. 58b, Trin. (2nd) pl. 47 312
 24 Edw. III, fo. 64b, Mich. (2nd) pl. 67 309
 26 Edw. III, Lib. Ass., fo. 124a, pl. 34 309
 26 Edw. III, Lib. Ass., fo. 132a, pl. 66 312
 19 Hen. VI, fo. 31a–31b, Mich., pl. 59 19
 33 Hen. VI, fo. 31b, Mich. pl. 5 361, 370
 37 Hen. VI, fo. 27, Trin. pl. 5 361–2
 3 Edw. IV, fo. 21b, Mich. pl. 17 301
 18 Edw. IV, fo. 11b–12a, Mich. pl. 4 361–2
 12 Hen. VII, fo. 15a, Pas. pl. 1 302
 12 Hen. VII, fos. 22a–24b, Trin. pl. 2 361–2
 13 Hen. VII, fo. 22b, Pas. pl. 9 301
 15 Hen. VII, fo. 6a, Pas. pl. 2 302
 27 Hen. VIII, fo. 12b, Pas. pl. 32 12
 27 Hen. VIII, fo. 23a, Trin. pl. 21 12

Named Cases

- Adams *v.* Lindsell (1818) 56
 Alice *v.* Abbot of Barlings (1278–89) 301–2
 AG *v.* Abington (1613–19) 321
 AG *v.* Gouge (1633) 50
 AG *ex rel.* Marriott *v.* Lord Wharton (1706–8) 47
 Anon. (1492) 311
 Anon. (1566) 350
 Anon. (1579) 352
 Anon. (1583) 354
 Anon. (1601) 347
 Anon. (1611) 355
 Armory *v.* Delamirie (1722) 354
 Ashford *v.* Thornton (1818) 376
 Atnoke *v.* Leche (1595) 35, 38
 Austyn *v.* Twyne (1594) 352
 Ayres *v.* Rowley (1818) 391
 Bagshaw *v.* Playne (1596) 26–27
 Baker *v.* Rogers (1599) 345
 Banks *v.* Brand (1815) 377
 Battie *v.* Smith (1663) 351
 Beare *v.* Stevens (1608) 26–27, 31
 Becher *v.* Turgys (1596) 26, 29, 43
 Bedell *v.* Stanborough (1597) 34–36, 40, 43
 Bertie *v.* Herenden (1560) 319
 Bindon, The Viscountess, her Case (1585) 367–8, 370–1
 Bishopp *v.* Gynn (1596) 35, 39, 42
 Bloyhou *v.* Earl of Cornwall (1291) 270
 Botham *v.* Dixon (1809) 67
 Boweles *v.* de la More (1291) 277
 Bowles *v.* Atkinson (1799) 72
 Bradish *v.* Bishop (1591) 35, 37
 Buckingham *v.* Drury (1762) 369
 Buckley *v.* Rice Thomas (1554) 354
 Bulkley *v.* Wood (1596) 36, 39, 43
 Burrowes *et al.* *v.* High-Commission Court (1615) 354
 Burton *v.* Pierpoint (1722) 371
 Bury's Case (1598) 349
 Callard *v.* Callard (n.d.) 29, 42
 Cary *v.* Appleton (1674) 371, 372
 Casbett *v.* Casbett (1588) 351
 Catcher *v.* Barker (1600) 35, 41
 Chamberlain *v.* Nicholls (1595) 37–38, 42
 Cholmley (Lady), Case of the creditors of (1691) 366

TABLE OF SELECTED CASES

xix

- Chomley *v.* Chomley (1688) 365–6, 371
 Chudleigh's Case (1594) 321
 Churchill *v.* Small (1753) 372
 Clarke *v.* Hambleton (1798) 58, 61
 Coalbrooke *v.* Hall (1787) 64–65
 Coleridge *v.* Sothebys (2012) 210
 Collier *v.* Onslow (1787) 67, 71
 Commendams, Case of (1611) 355
 Cooke *v.* Oxley (1790) 56–57
 Cotton *v.* Maryne (1597) 36, 40, 43
 Coveney's Case (1561) 353
 Cubitt *v.* Porter (1826) 392
 Dansen *v.* Hawes (1755) 365
 Dawson *v.* Husband (1600) 36, 41
 Dean, Christopher, his Case (1609) 352
 Denton (Lady) *v.* Countess of Clanrickards (1620) 353
 Dickenson *v.* Shere (1597) 30, 35, 40, 43
 Dickinson *v.* Dodds (1876) 56
 Dodson *v.* Lynn (1635) 352
 Doe d. Brook *v.* Roper (1820) 394
 Dovecote *v.* Lok and Atte Cok (1321) 316
 Elton *v.* Jordan (1815) 66
 Evans and Kiffin *v.* Ascuiethe (1625) 352
 Eyres *v.* Executrix of Eyres (1626) 355
 Farnel *v.* Tipper (1624) 344
 Farrer *v.* Billing (1818) 381, 389
 Ford *v.* Welden (1662) 350
 Fosset *v.* Ballasar (1780) 68
 Fraunces *v.* Powell (1612) 347
 Frederick *v.* Frederick (1721) 366
 Fulston *v.* Thorne (1596) 35, 39, 43
 Gale *v.* Gregory (1595) 27, 30, 38
 Gallisand *v.* Rigaud (1702) 355
 Gatefould *v.* Penn (1588) 347
 Gobbet's Case (1633) 349
 Goddard *v.* Burton (1591) 36
 Goodier, Sir Henry, his Case (1590) 352, 355
 Gorge, Ambrosia, her Case (1598) 347–8, 356
 Grantley *v.* Anslie (1789) 66, 71
 Greenway *v.* Barker (1612) 344, 347
 Grendon *v.* Dean and Chapter of Worcester (1575) 345
 Griggs *v.* Helhouse (1595) 26–27, 30–31
 Grove *v.* Banson *et ux.* (1669) 354, 356
 Grymston *v.* Reyner (1597) 27, 40, 43
 Harding *v.* Enkell (1781) 67

Harman <i>v.</i> Powell (1616)	353
Harris <i>v.</i> Austin (1615)	349
Harris <i>v.</i> Watson (1791)	59
Harvey <i>v.</i> Ashley (1748)	366
Haslam <i>v.</i> Drage (1817)	390
Hastings, Lord <i>v.</i> Douglas (1674)	363, 371
Hayes <i>v.</i> Bicknell (n.d.)	36, 39, 42
Heath <i>v.</i> Atworth (1565)	353, 355
Heden <i>v.</i> Wolfe (1620)	350
Heley <i>v.</i> Rigges (1598)	34, 36–37, 41, 43
Higgs <i>v.</i> Holliday (1600)	27, 41
Hill <i>v.</i> Good (1674)	355
Hill <i>v.</i> Warner (1595)	35, 37
Hinson <i>v.</i> Button (1620)	350, 356
Hitching <i>v.</i> Glover (1615)	345, 355
Hogg <i>v.</i> Block (1589)	36–37, 42
Holman <i>v.</i> Johnson (1775)	62
Hooper <i>v.</i> Baker (1787)	69
Hornigold <i>v.</i> Bryan (1615)	355
House and Downs <i>v.</i> Lord Petre (1700)	347
Howe <i>v.</i> Howe (1292)	270
Huddert <i>v.</i> Executors of Sir Richard Hotham (1804)	60
Hughes <i>v.</i> Hughes (1666)	347
Hurrell <i>v.</i> Underwood (1815–16)	393
James <i>v.</i> James (1612/15)	347
Johns <i>v.</i> Rowe (1633)	350
Jones <i>v.</i> Boyer (1610)	354
Jones <i>v.</i> Jones (1617)	352
King <i>v.</i> Simms (1817)	388
Kirkman <i>v.</i> Kirkman (1786)	365–6
Kitchin <i>v.</i> Calvert (1610)	345
Lancaster <i>v.</i> Lucas (1589)	345
Launde, Prior of <i>v.</i> Basset (1285)	310
Lethbridge <i>v.</i> Winter (1824)	391
Lodge (Lady), her Case (1584)	347, 353–4
Low <i>v.</i> Dun (n.d.)	36, 39
Lynche <i>v.</i> Porter (c.1610)	347
Maghull <i>v.</i> Whitelaw (1291)	270
Martineau <i>v.</i> Henslow and March (1798)	73
Mathew <i>v.</i> Mathew (1596)	36, 39–40, 63
Mayer <i>v.</i> Gowland (1779)	372
Maylord <i>v.</i> Kester (1599)	32, 43
Medham <i>v.</i> Andrews (1600)	30
Mellish <i>v.</i> Motteux (1792)	71
Milne <i>v.</i> Taylor (1793)	68

TABLE OF SELECTED CASES

xxi

Mordaunt, Lord <i>v.</i> Bridges (1594)	29
Morley <i>v.</i> Lapham (1600)	41
Morris <i>v.</i> Webber (1586)	349
Mullich <i>v.</i> Lushington (1792)	71
Mylnes <i>v.</i> Raynton (1600)	36, 41
Naldi <i>v.</i> Greville (1811)	62–63
Nelson <i>v.</i> Williams (1799)	61
Northey <i>v.</i> Northey (1740)	368, 372
Oliver <i>v.</i> Lucas (1816)	392
Osbaston <i>v.</i> Stanley (1595)	36, 38
Overton <i>v.</i> Sandewey (1442x43)	362
Oxford <i>et ux. v.</i> Goldington (1623)	350
Paine <i>v.</i> Paramour (1596)	26–28, 39, 43
Palmer <i>v.</i> Horsley (1792)	65
Parish clerk, Case of (1610)	347
Parkinson <i>v.</i> Lee (1802)	64, 70
Passy <i>v.</i> Mountford (1600)	36, 41
Pauncefote <i>v.</i> Savage (1519)	343
Payne <i>v.</i> Cell (1790)	69
Pells <i>v.</i> Brown (1620)	321
Pembroke <i>v.</i> Barclay (1597)	27
Pfister <i>v.</i> Ward (1789)	69
Piers <i>v.</i> Turner (1595)	36, 38
Pierson <i>v.</i> Smith (1791)	59
Piggot's Case (1598)	351
Pigot <i>v.</i> Gascoyn and Furthee (1596)	356
Pink <i>v.</i> Vincner (1639)	356
Poles <i>v.</i> Stafford (1596)	36, 39, 43
Porter's Case (1636)	348
Porter and Rochester's Case (1608)	347, 351
Price <i>v.</i> Price (1599)	37, 41
Prince, The, his Case (1605)	344
Purley <i>v.</i> Boweles (1290)	277
Pynchon's Case (1611)	27, 31
Pyne <i>v.</i> Hide (1596)	31
R. <i>v.</i> Archbishop of Canterbury (1812)	381
R. <i>v.</i> Marsh (1615)	344, 356
R. <i>v.</i> Mayor and Jurats of Hastings (1822)	190
R. <i>v.</i> Page and Bishop of London (1599)	352
R. <i>v.</i> Savage (1517–19)	345
R. <i>v.</i> Vermuyden (1637)	50
R. <i>v.</i> Wakley (1839)	387
R. <i>v.</i> Woolterton (1815)	386
Read <i>v.</i> Snell (1743)	366
Renoulds <i>v.</i> Green (1612)	346

Robinson <i>v.</i> Bland (1760)	62
Rone's Case (1617)	356
Ross <i>v.</i> Viale (1818)	377
Rotheram <i>v.</i> Stubbings (1595)	26
Rowe <i>v.</i> Brenton (1828)	388
Rye <i>v.</i> Fullcumbe (1601)	349
Sabell's Case (1560)	349
Sackford <i>v.</i> Phillips (1596)	26, 29, 36, 39, 42
Sambach <i>v.</i> Daston (1635)	318
Savil (Lady) <i>v.</i> Savil (1634–5)	365
Searle's Case (1614)	346
Seymour <i>v.</i> Trevilian (1737)	372
Short <i>v.</i> Hellyer (1590)	26, 29, 37, 42
Skrimshire <i>v.</i> Dover (1817)	394
Slade's Case (1602)	xi, 26
Smith's Case (1599)	352
Smith <i>v.</i> Skipwith (1610)	344
Smith and Watson's Case (1616)	372
Smith <i>v.</i> Wood (1789)	62
Smithwick <i>v.</i> Bingham (1595)	37–38, 42
Snelson <i>v.</i> Corbett and Delves (1746)	369, 372
Standish, Dr, his Case (1515)	346
Stanton <i>v.</i> Suliard (1599)	28, 40, 43
Stephen Thornton Brothers and Co. <i>v.</i> Heath (1797)	73
Stephens <i>v.</i> Totty <i>et ux.</i> (1601)	349
Stokes <i>v.</i> Porter (1559)	363, 368, 370
Stuart <i>v.</i> Wilkins (1778)	71
Stubbs <i>v.</i> Stubbs (1678)	371
Thomson <i>v.</i> Butler (1671)	346
Tinson <i>v.</i> Kingsman (1796)	55
Tipping <i>v.</i> Tipping (1721)	371–2
Townsend (Lord) <i>v.</i> Windham (1750)	363, 372
Trollop, John, his Case (1608)	353
Tynt <i>v.</i> Tynt (1729)	372
Tyrell (Lady), her Case (1674)	371
Tunno <i>v.</i> Rubichon (1796)	68
Underhill <i>v.</i> Savage (1589)	346, 354
Vanheath <i>v.</i> Turner (1621)	343
Vaux <i>v.</i> Brook (1585)	344
Ward <i>v.</i> Britton (1621)	347, 356
Waters <i>v.</i> Fuller (1809)	65
Weldon <i>v.</i> Ind (1818)	393
Weyland <i>v.</i> Weyland (1742)	365–6
Wilcox <i>v.</i> Borsley (1828)	394
Willoughby <i>v.</i> Willoughby (1600)	353

TABLE OF SELECTED CASES

xxiii

Winchester (bishopric), Case of (1565)	343, 346
Winter <i>v.</i> Lethbridge (1823–4)	392
Wiseman <i>v.</i> Jennings (1591)	26, 29, 39, 42
Wolley <i>v.</i> Moseley (1600)	35–37, 41, 43
Wood <i>v.</i> Ashe and Foster (1586)	346
Wood <i>v.</i> Denteri (1803)	56
Yate <i>v.</i> Odie (n.d.)	37, 39, 42

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