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SN 5642 - High Court of Chivalry, 1634-1640

Study Documentation

Introduction

The aims of this project were to produce a calendar of the records of the Court of Chivalry in the 1630s and then use this material to analyse concepts of noble honour. Recent work has highlighted the importance of honour in the social and cultural life of early modern England, and our project has confirmed and illustrated this. In March 1634 (not 1633 as the standard accounts have hitherto asserted) the ancient Court of Chivalry, the supreme forum for trial in matters of honour, was established for the first time on a regular basis, with weekly meetings and routine procedures based on Roman Civil Law. This happened largely because the Earl Marshal was given authority to hear pleas of slander and defamatory words or actions, on the basis of a Jacobean proclamation empowering him to intervene in disputes liable to provoke a duel. In the period between March 1634 and its suspension as a result of investigation by the Long Parliament in December 1640 the court heard well over a thousand cases, most of them relating to defamatory language and all of them brought by plaintiffs able to demonstrate their noble lineage. The records generated by these processes – which were scattered among the archives at the College of Arms and Arundel Castle in Sussex – have long constituted one of the great unused sources for the history of Charles I's reign. Surviving material covers every stage of the court's proceedings and we have reconstituted the surviving archive on a case by case basis. We have produced a published calendar of the archive – *Cases in the High Court of Chivalry 1634-1640* (Harleian Society, 2006-7) – which provides an extensive scholarly account of the court's proceedings and then summarises the content and case papers of each of the 738 cases for which we have been able to recover material. We have also set up web site – 'The Court of Chivalry 1634-1640', www.court-of-chivalry.bham.ac.uk – which contains our transcripts and summaries of all the case papers, together with explanatory and introductory material, over a million words of text with extensive illustrations.

AHDS History note: The explanatory material found below has been copied from the above referred website and it is aimed at providing the necessary guidance to view and understand the 738 records available in this data collection.

Conventions

New style dating, with the year presumed to begin on 1 January, has been used in the case headings and abstracts; however, to provide greater precision for those researching cases in detail, in the calendars of case papers, old style dating has been used.

Summaries have been provided where documents follow a common form, where material is being repeated or can be condensed, or where the original document is in Latin. Full transcriptions are generally provided where the precise wording might be considered important, that is, for the most part, in petitions, libels, interrogatories, depositions and submissions (however, it should be noted that in the transcriptions redundant terminology, such as 'the said' has been omitted, and legal terms, such as 'producent' have been altered to the name of the person referred to).

In the transcriptions the symbol * has been used to denote passages which have been added to the original and <> to indicate passages which have been crossed out.

Throughout this web site, references without a prefix refer either to the numbered boxes of the Curia Militaris collection at the College of Arms, or to bound volumes at the college. References with the prefix EM refer to the Earl Marshal's papers at Arundel Castle. Manuscripts from other repositories are indicated with a prefix.

For full transcriptions and samples of many of the documents calendared here, see GD Squibb, *The High Court of Chivalry* (Oxford, 1956), appendix ix-xxv.

Glossary

arbitration

a hearing before referees chosen by the two parties to settle a dispute

bill of costs

itemized list of the expenses incurred by each party in the course of the case

bond

an agreement by which the party undertook to do what was required by the court on pain of forfeiting a stipulated sum of money (usually £100)

citation

an instruction by the Register of the court to all officers of the crown declaring that an individual had been summoned to appear before the court

definitive sentence

a document put forward by each side to the judges outlining the verdict that they sought

fiat

an abbreviation of *fiat processus*, this is the instruction by the Earl Marshal or his deputy, acting on the advice of the King's Advocate that a case should be allowed to proceed

King's Advocate

the most important court official responsible for promoting office cases (actions on

behalf of the king or judge of the court), and also advising the Earl Marshal or his deputy whether process should be granted on an initial petition

interrogatories

questions drawn up by an advocate to be put to witnesses in order to establish the case being made by either plaintiff or defendant

letters commissory

a commission from the court to named persons requiring them to take evidence on behalf of a party in the case

letters remissional

a document taking exception to witnesses

letters substitutional

letters allowing one person to act in place of another, used mainly where the notary public administered interrogatories to witnesses in place of an advocate

libel

the plaintiff's initial pleading in which he usually establishes his own claim to gentility, explains the facts which constitute the cause of his action and pleads for relief from the court

notary public

an official authorized to draw up or attest copies of legal proceedings, in these cases often acting as the deputy to the Register in authenticating witness depositions

porrect

put forward in writing

Register

senior court official formally responsible for registering the acts of the court and preserving its records

submission

formal acknowledgement of wrongdoing and apology for this, usually performed by the defendant in public

Procedure

Procedure in the High Court of Chivalry was similar to that used in the Court of Star Chamber and equity courts, such as the Court of Requests or Chancery. Plaintiffs would initiate proceedings by a libel, the equivalent of a bill of complaint; facts would be ascertained through presenting documentary evidence, or, more commonly, issuing interrogatories and taking depositions from witnesses. This material would then be

referred back to the judges of the court who would pronounce on guilt and innocence. The main difference from common law procedure was that there was no use of juries.

To begin with, when the court was established on a regular footing in 1634, procedures were worked out as it went along, with the lawyers and court officials adapting to the influx of business. Early proceedings were recorded in English as well as Latin; but by October 1634 the record was being kept exclusively in Latin, the language of the civil law and its routine had settled into the form described in more detail by G.D. Squibb in his *The High Court of Chivalry* (Oxford, 1956), chp.13.

Initial Proceedings

The majority of proceedings were instance cases, begun through a complaint by an outside party. In such cases the action began with the plaintiff presenting a petition setting out the nature of the offence against him, which in most cases involved 'scandalous words likely to provoke a duel', and also underlining his own claim to gentility, because only gentlemen could plead in the court. A few actions, however, were office cases, initiated by the King's Advocate, Dr Duck, or the Kings or Officers of Arms. In such cases proceedings began with the delivery of articles against the defendant; but thereafter the procedure was much the same as for instance cases. Once a petition had been presented a decision had to be taken by the senior judge, Arundel or Maltravers on the advice of the King's Advocate, on whether there was a case to answer. Notice that process should be granted was issued in the form of a *fiat*, often inscribed on the petition, which gave the Register of the court authority to issue a citation summoning the parties or their counsel to appear. In some 48 of the cases recorded here there is no evidence of process being granted, or of any further proceedings, which makes it likely that these were actions which fell at the first hurdle. On appearance before the court both parties were required to take out bonds, the plaintiff to prosecute the case to a conclusion and the defendant to appear when required and perform any sentence imposed by the court.

The next stage of the initial proceedings was for the plaintiff to deliver his pleading, known as the libel, in which again he set out the nature of the original offence and his own claim to gentility. This claim would sometimes be challenged by the defence as a means of invalidating the prosecution, in which case, if there was any doubt, the plaintiff would be required to produce proof of his gentility, most often in the form of a pedigree or evidence of the right to bear arms. This would then be investigated and certified as acceptable or unacceptable the Kings of Arms, although they did not usually report back until later, at the time when the plaintiff's and defendant's cases were being heard. At this initial stage the defendant would often enter a personal answer, giving his version of events, but also enabling the court to establish facts which were not disputed.

The normal ordering of the initial proceedings was as follows:

1. Petition or Advice of the King's Advocate
2. Fiat

3. Citation
4. Notice of citation
5. Plaintiff's bond
6. Defendant's bond
7. Libel
8. Summary of libel
9. Personal answer

The plaintiff's/defendant's cases

The court would then proceed to interrogate witnesses, taking each side's case in turn. Sometimes, with cases from London or the home counties, interrogation would take place before the court or in front of Sir Henry Marten, sitting in his chambers. However, in most instances the court would issue letters commissory appointing gentry named by the two parties to hear depositions before a notary public of the civil courts at a convenient local venue, often an inn. Each witness would be examined on a list of interrogatories provided by the parties, with the plaintiff's witnesses being examined on the articles in his libel and a set of defence interrogatories, and then at a later stage defence witnesses being examined on the basis of the defence and a set of plaintiff's interrogatories. The resulting depositions, which sometimes ran to many pages, would be recorded and then returned to the court by the notary public. Once the process had been completed for the plaintiff, generally over a period of several weeks, the same thing would happen with the case for the defence. It was open to either party during this period to plead for a verdict on the evidence which had already been submitted, or to request that the whole matter be referred to arbitration. Pleas for an immediate verdict were not generally heeded, but the court was very keen to encourage arbitration, mindful of how destructive these disputes could be, particularly where the parties involved were substantial local gentry. There are numerous instances of cases being referred to senior gentry and noblemen in the hopes of achieving a settlement; and in 19 of the 126 cases where the outcome is known (15%) this was achieved

The normal order of proceedings and case papers during these stages of the case was as follows:

1. Letters commissory for the plaintiff
2. Appointment of notary public
3. Defence interrogatories
4. Second set of defence interrogatories

5. Letters substitutional for the plaintiff
6. Preamble to plaintiff's depositions
7. Plaintiff's depositions
8. Notary public's certificate
9. Letters remissional
10. Defence
11. Letters commissory for the defendant .
12. Plaintiff's interrogatories
13. Second set of plaintiff's interrogatories
14. Letters substitutional for the defendant
15. Preamble to defence depositions
16. Defence depositions
17. Notary public's certificate
18. Arbitration
19. King of Arms' Report

Sentence/Arbitration

Once both sides had made their case they would submit a document known as a definitive sentence in which each put forward the sentence that he sought, leaving blank spaces for the insertion of fines to the king, and damages and costs to be awarded to the other party. These would then be filled in by the Earl Marshal or his deputy when sentence was pronounced. Both sides also submitted bills, detailing the expenses incurred in the case term by term which would become the basis for the court's award of costs. At this stage it was, again, open to the court to refer the case to senior local gentry for arbitration.

The normal ordering of proceedings and case papers during the sentencing stage was as follows:

1. Plaintiff's sentence
2. Defendant's sentence

3. Plaintiff's bill of costs

4. Defendant's bill of costs

5. Arbitration

Submission

Where sentence was given for the plaintiff it generally also required that the defendant make a public submission of his guilt, either at quarter sessions, assizes or the local parish church, or at the venue where the original offence had taken place. In this he usually had to apologise fulsomely to the plaintiff for the original offence, acknowledge his honourable status and undertake never to commit a similar offence against him, or any other gentleman or noblemen. This all-important event, the performance of which had to be certified to the court, provided the element of reparation of honour which was regarded as one of the principal functions of the court. Imprisonment was not part of the formal sentence of the court, but it was used regularly to deal with defendants who defaulted on the performance of their original bond, either by failing to appear, or by not paying the fines or performing the submission required in the court's sentence. There are numerous petitions from defendants incarcerated in the Marshalsea, begging for clemency from the Earl Marshal, which indicate that the court was relatively diligent in following up on non-performance of the terms of a sentence, usually prompted by an appeal from the plaintiff.

The final stages of the case were normally as follows:

1. Submission

2. Defendant's bond on submission

3. Certificate of submission

4. Defendant's petition

Proceedings

Records of the proceedings in court, taken down by the officials, have survived (mainly in Latin, but with a few early proceedings in English) for a large number of court days. These proceedings have not been transcribed or calendared in detail here, but where they survive for a particular a summary of the proceedings is given at the end of the case papers.

The court days for which records of proceedings have survived are listed below, with an asterisk denoting full sessions of the court. Dates are followed by manuscript

references. Where these have the prefix **EM** this denotes that they are to be found amongst the Earl Marshal's papers at Arundel Castle. The remainder are in the archives of the College of Arms.

26 Feb* and 5 Mar 1633/4*: **7/16**

1 Mar 1633/4*: **8/22a; 8/22b**

14 Apr 1634*: **7/8; 7/9**

26 Apr 1634*: **7/9**

Apr-May 1634*: **7/18**

3 May 1634*: **7/10; 7/11; 7/12; 7/13**

21 May 1634*: **7/12; 7/14**

24 May 1634*: **7/15**

7 Jun 1634*: **7/17**

30 Jun 1634*: **8/23**

20 Oct 1634*: **1/1**

13 Nov 1634: **1/13**

unknown date, 1634: **7/7**

24 Jan 1634/5*: **1/2**

9 May 1635*: **EM348**

30 May 1635*: **EM349**

9 Jun 1635: **8/24**

16 Jun 1635: **1/13**

19 Jun 1635: **1/13**

20 Jun 1635*: **8/25**

Jun 1635: **R.19, fos. 390-399; 1/13**

Apr 1636*: **68C, fos. 64r-67r,**

7 May 1636*: **68C, fos. 74r-83v**

9 May 1636: **68C, fos. 68v, 84r-88v**

28 May 1636: **68C, fo. 102r,**

30 May 1636: **68C, fos. 101v, 102r**

May 1636: **68C, fos. 69r, 89r-100r, 102r**

3 Jun 1636*: **68C, fos. 122r-124v**

14 Jun 1636: **68C, fo. 111r**

15 Jun 1636: **68C, fos. 111r-v**

Jun 1636: **68C, fos. 112r-121v**

8 Nov 1636*: **68C, fos. 105r-110v**

28 Jan 1636/7*: **68C, fos. 43r-49v, 51r-59r; R.19, fos. 381-2**

8 Feb 1636/7: **68C, fo. 59r**

11 Feb 1636/7*: **68C, fos. 23r-36v**

16 Feb 1636/7*: **68C, fos. 1r-11r, 14r-20v**

20 Feb 1636/7: **68C, fo. 11r**

24 Feb 1636/7: **68C, fos. 11r-12v**

29 Apr 1637*: **68C, fos. 37r-41v**

14 Oct 1637*: **8/26; 8/27**

18 Oct 1637: **8/26**

30 Oct 1637: **8/26**

31 Oct 1637*: **8/28; 7/20**

7 Nov 1637: **7/20**

10 Nov 1637: **7/20**

15 Nov 1637: **7/20**

18 Nov 1637*: **8/29; 1/3**

20 Nov 1637: **8/29**

22 Nov 1637: **8/29**

23 Nov 1637: **8/29**

24 Nov 1637: **8/29**

28 Nov 1637*: **8/30**

2 Dec 1637: **8/30**

6 Dec 1637: **8/30**

27 Jan 1637/8*: **1/5, fos. 1-15**

3 Feb 1637/8*: **1/5, fos. 23-35**

10 Feb 1637/8: **1/5, fo. 36**

12 Feb 1637/8*: **1/5, fos. 38-56, 59-69**

13 Feb 1637/8: **1/5**

14 Feb 1637/8: **1/5**

20 Feb 1637/8: **1/5**

21 Feb 1637/8: **1/5**

22 Feb 1637/8: **1/5**

1 Mar 1637/8: **1/5**

13 Mar 1637/8: **1/5**

16 Mar 1637/8: **1/5**

10 Apr 1638: **1/5**

19 Jun 1638: 7/38

20 Oct 1638*: **R.19, fos. 434r-449v**

22 Oct 1638: **R.19, fo. 453r**

30 Oct 1638: **R.19, fo. 449v**

6 Nov 1638*: **R.19, fos. 454r-468v; R.19, fo. 469r-v**

10 Nov 1638: **R.19, fo. 470r**

13 Nov 1638: **R.19, fo. 470v**

15 Nov 1638: **R.19, fos. 470v-471v**

20 Nov 1638*: **R.19, fos. 400v-412v**

24 Nov 1638: **R.19, fos. 412v-413r**

26 Nov 1638: **R.19, fo. 413r**

27 Nov 1638: **R.19, fos. 413v-416v**

28 Nov 1638*: **R.19, fos. 422r-428r**

30 Nov 1638: **R.19, fo. 429v**

Nov 1638: **1/13**

3 Dec 1638: **R.19, fos. 429v-431v**

5 Dec 1638*: **R.19, fos. 474r-484v**

12 Dec 1638: **R.19, fos. 488r-490v**

15 Dec 1638: **R.19, fo. 490v**

19 Dec 1638: **R.19, fos. 490v-491r; R.19, fo. 491r**

19 Jan 1638/9: **R.19, fo. 491v**

22 Jan 1638/9: **R.19, fo. 491v**

24 Jan 1638/9: **R.19, fo. 492r**

25 Jan 1638/9: **R.19, fo. 492v**

28 Jan 1638/9*: **1/9; 68C, fos. 125r-v**

9 Feb 1638/9*: **1/7, fos. 36-47**

20 Feb 1638/9: **1/6, fos. 20-33**

21 Feb 1638/9*: **1/6, fos. 20-33**

23 Feb 1638/9*: **1/6, fos. 1-9**

26 Feb 1638/9*: **1/6, fos. 20-33**

2 Mar 1638/9: **1/6, fos. 9-12**

9 Mar 1638/9: **1/6, fo. 12**

18 Mar 1638/9: **1/6**

19 Mar 1638/9: **1/6, fos. 12-17**

2 Apr 1639: **1/6**

4 Feb 1639/40*: **1/10; 8/31**

12 May 1640: **7/48**

30 Jul 1640: **1/12**

10 Oct 1640*: **1/11, fos. 73r-78v; 1/11, fos. 56r-64v**

14 Oct 1640: **1/11, fo. 72r**

22 Oct 1640: **1/11, fo. 72v**

24 Oct 1640*: **1/11, fos. 41r-44v; 1/11, fos. 49r-52r**

30 Oct 1640*: **1/11, fos. 13r-16v; 1/11, fos. 19r-30v**

6 Nov 1640: **1/11, fos. 39v-40r**

20 Nov 1640*: **1/11, fos. 5r-9r**

Oct-Nov 1640: **1/12**

4 Dec 1640*: **1/11, fos. 79r-87v; 1/11, fos. 1r-4v**

Unknown dates 1636-8: **68C, fos. 60r-61r, 70r-73v, 100v-101v, 102v, 124r-v**

No date: **1/13**