

January 1930

The Year Books

Charles J. Kelly

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Charles J. Kelly, The Year Books, 8 Dicta 3 (1930).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

DICTA

Vol. VIII

DECEMBER, 1930

No. 2

THE YEAR BOOKS

*By Charles J. Kelly of the Denver Bar**

IN recent years new interest has been awakened in The Year Books; historians, lawyers, philologists, students of English literature and scholars of all kinds have been attracted to a study of these books, books which have been generally pictured to us as obsolete reports of old law cases.

In Pollock and Maitland's, *History of English Law*, Vol. II, page 460, it is written,

"They should be our glory for no other country has anything like them; they are our disgrace for no other country would have so neglected them."

What are the Year Books? Plowden in the preface to his commentaries or reports published in 1571 wrote,

"In former times as I have heard on good authority there were four reporters of our law cases, who were men selected for that purpose, and who had an annual stipend for their labors in the matter paid by the King of this Kingdom and they conferred together in drawing up and producing a report. And their Report by reason of the number of the reporters and their approved learning carries great authority as it rightly deserves."

Blackstone supplementing Plowden wrote,

"These reports were taken by the prothonotaries or chief scribes of the court at the expense of the crown, and published annually, hence known as year books."

Our own Chancellor Kent says:

"The oldest reports extant on the English law are the Year Books, which consist of eleven parts or volumes written in law French, and extend from the beginning of the reign of Edward II, to the latter end of the reign of Henry VIII, a period of about two hundred years."

". . . The great authenticity and accuracy of the Year Books arose from the manner in which they were composed. There were four reporters appointed to that duty, and they had a yearly stipend from the crown, and they used to confer together, and the reports being settled by so many persons

*A paper presented before the Law Club of Denver.

of approved diligence and learning carried great credit with them. But so great have been the changes since the feudal ages, in the character of property, the business of civil life, and the practice of the courts, that the mass of curious learning and technical questions contained in the Year Books have sunk into oblivion; and it will be no cause for regret if that learning be destined never to be reclaimed. The Year Books have now become nearly obsolete, and they are valuable only to the antiquary and historian, as a faithful portrait of ancient customs and manners."

Maitland, writing in latter times (Selden Society's Year Books, Series Vol. 1, page 17) in answer to his question, "What has the whole world to put by their side?" said,

"Are they not the earliest reports, systematic reports, continuous reports of oral debate? In 1500, in 1400, in 1300 (and even before then) English lawyers were systematically reporting what of interest was said in Court. Who else in Europe was trying to do the like—to get down on paper or parchment the shifting argument, the retort, the quip, the expletive? Can we for example, hear what was said at Constance or Basel as we can hear what was really said at Westminster long years before the beginning of the Conciliar age?"

Dr. Holdsworth in History of English Law, Vol. II, p. 460, has written,

"There were many mediaeval reports of various kinds, which record contemporary events. There are no other mediaeval records except the Year Books which photograph the actual words and actions and idiosyncrasies of the actors as they were bringing these events to pass. . . . When we read the Year Books we think of a human reporter, mainly interested, it is true in law, but for all that, keenly alive to the exciting incidents of the trial which is proceeding before his eyes, to judicial wit and criticism and temper, to the shifts and turns of counsel, to the skilful move or the bungling omission, even to the repartee and the exclamations which the heat of a hardly contested fight evoke."

These books contain, then, not alone the reports of cases, but portray to us in the living language of that time the manners, customs and expressions of the people. They contain, as one writer says, a treasure trove of knowledge for one interested and equipped to find it when he meets it. These old manuscripts are scattered all over England; at Cambridge and Oxford, in the libraries of the Inns of Court and in the British Museum. None are to be found in The Public Record's Office; all the volumes extant are traceable to private ownership. As far as is known, the earliest Year Book in existence is of the 18th year of Edward I (1289-90).

They are written in Anglo-French or Anglo-Norman. In those days there were four different dialects spoken in France—Norman, Picard, Burgundian and French, the language of the Ille De France. These dialects were so widely different that a Norman looked upon French as a foreign tongue. Roger Bacon said that,

“What you may quite properly say in the language of the Picards would horrify the Burgundians and even the nearer Frenchmen.”

Sir Frederick Pollock, though unwilling to commit himself on the question of the written language being Anglo-French or Anglo-Norman, says,

“Historical warrant may be vouched for either usage. The dialogue of the Exchequer speaks of ‘Normanni’ in contrast with ‘Angli’, but in the earlier documents the men who came over with William the Conqueror’s great lords are called Frenchmen.”

What was the purpose of the books? The text books tell us that they were court rolls intended for the preservation of the rights of the parties. Maitland was of the opinion that they were in the nature of student’s note books—books in which students jotted down anything that struck their fancy and later he wrote that the purpose of them was “science, jurisprudence and the advancement of learning”.

Mr. Wm. Craddock Bolland, M. A., Barrister at Law, a member of Lincoln’s Inn, scholar of Magdalene College, Cambridge, in 1920 delivered a series of lectures at the University of London. Mr. Bolland also edited from 1910 to the time of his death in 1927 The Selden Society Edition of the Year Books. He is well qualified to speak with authority. He says that the evidence is all against their being used for the purpose of citation in court, because case law practically did not exist in those times. If a sergent wanted to cite a precedent, he would base it on a personal reminiscence, beginning with such phrase as “I remember”. On one occasion the court said that in its rulings and judgments it was guided by the circumstances of the individual case before it and not by precedent. His theory is that as pleading in that day was not a matter of precision and precedent settled in writing before the parties came into court, but partaking somewhat of

the nature of a game of chess, the books were written for the instruction of the sergeants.

Who wrote the Year Books? The text book tells us, they were written by the chief scribes of the court at the expense of the crown.

Mr. Bolland says of all the questions in connection with the Year Books, this is the hardest to answer. And then, in most convincing fashion he expounds his theory, taking a whole lecture to do so. He begins by discussing the Plea Rolls which he says are as necessary for a full understanding of the Year Books as the Year Books are necessary for the full understanding of the Plea Rolls. The Plea Roll was what we know today as the record drawn up for the purpose of preserving an exact account of the proceeding in court. Engrossed upon it were the names of the parties to the action, the plaintiff's statement of his case, the defendant's statement of his defense, and the pleas upon which both parties rested their case, the issue left to a jury, the verdict of a jury, and the judgment of the court. These Rolls were pieces of parchment about a yard long and ten inches wide. The language in which they were written was Latin and the script used the Court hand, a formal hand modeled upon the accepted pattern of writing of that time. The Year Books were written on parchment, but in the cursive hand. The language used was Anglo-Norman or Anglo-French, as you will. The record was not burdened with the plea or arguments of counsel which were later abandoned by the parties or disallowed by the court. In the Year Books, however, pleas and arguments were reported. The record differed widely from the report in French, each containing matter omitted from the other; each illustrating the other and neither being complete without the other. The report tells what passed between the Judges and the lawyers, and the parties in their own words, while the Plea Rolls speak the language only of the clerk. The use of parchment in the Rolls was extravagant, while in the books every effort was made to make a sheet go as far as possible, indicating that the parchment for the books was not supplied by an official source. Mr. Bolland says that the generally accepted theory of an official origin of the Year

Books rests upon the authority of the following words written by Plowden in the preface to these Commentaries,

"In former times, as I have heard on good authority, there were four reporters of our law cases, who were men selected for that purpose, and who had an annual stipend for their labors in the matter paid by the King of this Kingdom, and they conferred together in drawing up and producing a report. And their report, by reason of the number of the reporters and their approved learning, carries great authority as it rightly deserves."

Mr. Bolland says,

"Blackstone embroiders and adds to Plowden's original statement without any authority at all, and tells us that these reports were taken by the prothonotaries, or chief scribes of the court, at the expense of the Crown, and published annually, whence he adds they are known under the denomination of the Year Books. That is a statement for which there is no authority to be found anywhere. It is obviously founded on Plowden's words, but it goes beyond them in the invention of prothonotaries, and the statement that these reports were published annually, and were therefore called Year Books. As a matter of fact, they were never referred to as Year Books, but simply the books."

According to Mr. Bolland, Plowden's statement rested upon vague hearsay only and it is not certain that it referred to the Year Books at all . . . for it is not applicable to the reports contained in them. . . . Sir Frederick Pollock wrote (Vol. 29, p. 211 Law Quarterly Review),

"I hold that the legend of the Year Books having an official or even a semi-official character (which I tried to find credible so long as I could) is now finally exploded."

Mr. Pike, who, with Mr. Horwood, edited a series of Year Books known as the Roll Series, was of the opinion that they had a semi-official origin, i. e., the books were written by an officer of the Court for his own use or for the use of others. Mr. Bolland says that the belief of Mr. Pike was based chiefly on the fact that there is found not infrequently in the French Year Books extracts from the official Plea Rolls which extracts could not be made without the knowledge or consent of the officer who had the custody of the Rolls (The Rolls were not open for inspection). Mr. Bolland, who had great regard for Mr. Pike's ability and his learned article says it does not carry conviction. He says that Mr. Pike does not suggest any adequate reason why the custodian of the Rolls

should be put to the expense and trouble of writing these reports without pay.

Mr. Bolland's theory in substance is that the books were written, edited and published by a syndicate of lawyers, lawyers who then as now could not make a living at their profession and who, realizing the profits that could be made from the sale of these books to the Sergeants or attorneys at law, hired students, juniors or apprentices to take notes of the proceedings in court. These notes being turned over at the end of the day to an agent of the syndicate and by the agent taken to a scriptoria where they were read aloud to the scribes who extended them.

PRINTED EDITIONS IN THE SUPREME COURT LIBRARY
STATE OF COLORADO

I. Eleven volumes of the Reports of Cases of Edward the Second with a memorandum of cases heard in the Exchequer during the first twenty years of the reign of Edward the First. Printed by an association of printers in 1678, these eleven volumes form what are looked upon as the standard black letter edition of the Year Books and are generally known as the Vulgate Edition, a name which Maitland is credited with bestowing upon them. There were none printed for two hundred years thereafter.

With respect to these printed editions, Mr. Bolland says:

"Of many of these old printed volumes one has only a superficial knowledge, but on the other hand, many of them, the earlier ones especially, have been read, and read and studied very carefully, and what is the considered judgment passed upon them by those whose full competence to judge is acknowledged. 'Those who have attempted to read them,' Maitland wrote, 'well know how bad they are' and he referred to them again as 'that hopeless mass of corruption that passes as a text of the Year Books.' No one who knows anything about them will think that Maitland was in the least degree exaggerating in so speaking of them. The original manuscripts one knows are corrupt enough, are full of bewildering omissions and blundering perversions and distracting mistakes of all kinds, but what these old printers found quite bad and more than bad enough, they have still left worse."

II. *The Roll Series*—The Full Title being CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES.

In January, 1857, the Master of The Rolls submitted a

proposal to the Treasury for the publication of materials for the History of England from the Invasion of the Romans to the Reign of Henry, the 8th. As a part of that work, Mr. Alfred J. Horwood was commissioned some time before 1863. Mr. Horwood edited five volumes of the reign of Edward First, reports of the 20th, 21st, 22nd and 30th to the thirty-fifth years inclusive. At the time of his death, he left unfinished a volume of the 11th year and the first three terms of the 12th year of Edward III. Mr. Luke Owen Pike succeeded him as editor and completed the gaps between the 18th and 21st years of Edward III and also re-edited and published the reports of the 17th and 18th years. Mr. Horwood's contribution was a text in fully extended French with a translation in English. Mr. Pike further contributed by supplementing wherever possible the report by the corresponding record in the Plea Roll.

III. *The Selden Society's Edition.*

Maitland was the first editor. He commenced with a new edition of Edward II. The first volume was published in 1903 which was followed in series by three other volumes. Mr. Bolland says of Mr. Maitland's work,

"I need not say more about these volumes now than that they fully reach the standard of Maitland's best work, the standard of absolute excellence. But, I must direct the attention of those who do not know them to the wonderfully luminous and informing introduction to this first and third volumes. No words of praise can well be too high for them. In that, to the first volume he put together what is nothing less than a complete grammar of the Anglo-Norman language of the earlier Year Books and the French government paid him the great compliment of having this reprinted in a French translation for the use of school and colleges in France."

IV. *The Ames Foundation.*

A series of cases tried during the reign of Richard II, 1388-1389. By George F. Driser of the Philadelphia Bar, Librarian of the Herst Free Library.

What, you may ask, has been gained from a study of these books that is of interest to us as lawyers? Did you ever hear of a Bill in Eyre? Bolland, in 1920, said,

"You may search from cover to cover every book on our law and procedure and upon the history of our law and procedure that has been printed

more than seven or eight years and not a word will you find in any of them about Bills in Eyre."

All knowledge of these bills, he says, had been lost for over six hundred years because the Year Books of the Genral Eyre in which it was buried had never been printed, or perhaps read. In the olden days ordinary justice was administered in the Court of the Common Bench. The procedure was by the use of a writ that fitted the particular grievance. If there was no writ for that grievance, then the subject was without remedy. Process in the Common Bench was slow and not inexpensive, and further, the court sat only at Westminster. Every few years the King sent out his Justices to hold a general Eyre in every county in the kingdom. These Justices possessed the King's residual or extraordinary function of causing justice to be done where ordinary means failed. Arriving at the County Seat, they held court ready to receive any and all complaints. The Justices inquired into the complaints, bound by none of the shackles which bound them when trying a case in an ordinary way by writ. They were administering a sort of primeval law, absolute equity. No rules stood in their way to prevent their finding out the exact truth of the matter. They did not concern themselves with finding out what, if any, particular law applied to the matter. They were there to see that right was done no matter what the law said. They even interrogated the parties, a thing unknown to common law process. This equitable jurisdiction of the Justices in Eyre is earlier than the equitable jurisdiction exercised by the Chancellor or even by the King's Counsel. It is the very beginning of our English equity.

It is disclosed from a case tried in the reign of Edward III that the Court might hear the verdict of the jury at a place other than the court room. It appears that the jury not being able to agree, the Court went home, but on being informed that the jurors had agreed, Justice Thorpe took their verdict in Saint Clement's Church. Afterwards Sergeant Cole objected to the verdict being carried into effect

because it was not taken at the proper time and place, to which objection Chief Justice Scot replied,

“We can take a verdict by candle-light if the jury will not agree; and if the Court were to move we could take the jurors about with us in carts, and the Justices of Assize do so.”

The year books contain many proverbs and proverbial sayings. Here is one of the many cited by Bolland: In a case tried before Chief Justice Metingham in the 15th year of Edward I's reign, the paternity of a party to the action was contested. Though it was admitted that he was born within wedlock it was alleged that his father was not his mother's husband. But the Chief Justice refused to entertain any such objection. “Hwo so boleyth myn kyn,” he said, “ewere is the calf myn.” (Whoso bulleth my cow, the calf is always mine.)

Many other matters of interest are contained in them, one of which is that Bolland found from a study of them that our notion of the statute *de donis condicionalibus* is all wrong—“that the doctrine so universally held and taught for centuries past, right down to the present time is incorrect.”

He cites a case tried in the 5th year of Edward II where-in Chief Justice Bereford held that the statute did not restrain the heir of the grantee but only the original donee. However, the Chief Justice said it was the intent of him that drafted the statute to bind the issue in fee tail to the fourth generation and he supplied the missing words to give it that effect.