

Abstract

In nearly 700 years of activity the position of the Court of Common Pleas in the English legal scene was paramount. This article examines the court's surviving Brevia files, recently accessioned into series CP 52 at The National Archives. It unravels their archival journey from their creation by the court's clerks through centuries of neglect and often poor storage conditions up to the digital world of The National Archives online catalogue, with a focus on variation and change in the court's record keeping practice over time. It also outlines the complex task of arranging and cataloguing the files so that they could be made available to researchers.

'Almost too ruinous to be repaired': the Unknown Treasures project at The National Archives and the Court of Common Pleas Brevia files

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In 1731, following a fire at the Cottonian Library, a parliamentary commission was appointed to report on the condition of public records. Amongst the various accounts of this survey across many of the storehouses in which the royal archives were then being kept, we find this comment relating to an important part of the records produced by the Court of Common Pleas, the principal court dealing with civil litigation in England:

The Records in the Office of the Custos Brevium of the Court of Common Pleas are well digested; but the room at Westminster belonging to the Office seems almost too ruinous to be repaired; the floor is broke; and the windows are without Glass; the records are exposed to the injuries of the weather.

[...] Any Writ or Record (the term and year being known) may be found in a quarter of an hour and whether any other way that it is now, and always heretofore has been practised, can be found out to make the same more useful to the Publick, is humbly submitted to your Honours.¹

The Court of Common Pleas, alongside the King's Bench and the Exchequer of Pleas, was one of the most important English civil courts, dealing in the main with disputes over real property and debt. From the twelfth century to the second half of the nineteenth century, when it was abolished, the Court helped to shape the Common Law as we now know it.

Browsing the descriptions within Discovery, The National Archives' online catalogue, under the department code CP² will reveal the complexity and variety of the work carried out by this court, represented by the various series that comprise material produced during the centuries of its activity. Most of these records have been accessible to the public for many decades. However, for a variety of reasons, including the fact that some of them were summarised in the Plea Rolls (record series CP 40),³ which have long been used by historians, some of the records in the custody of the *Custos Brevium* (keeper of the writs) have been overlooked for centuries, nearly forgotten, and most importantly have remained largely inaccessible to researchers.⁴

Finalising the accessioning of these records was the reason behind the Unknown Treasures project, started in 2014 at The National Archives. The project was devised and delivered as a collaborative enterprise involving colleagues from across the organisation and led jointly by the Head of Cataloguing and the Head of Medieval Records. Two editors were employed on eighteen-month contracts from June 2014 to carry out the bulk of the sorting, repackaging, (re-)arranging and cataloguing required.⁵ They were supported by various permanent members of staff, notably medieval records specialists (who provided records advice and practical assistance with sorting), conservators in the Collection Care Department (who assessed the physical condition of the records) and Document Services (who ensured safe transport and delivery of the records).

Record series CP 52⁶ was the first objective of the project. Accumulated within CP 52 are writs (Brevia in Latin) issued by the Court in the name of the monarch, and addressed to the sheriffs of the

English counties (except for the palatinates of Chester, Durham and Lancaster, which had special privileges and courts). Although there were different kinds of writs, they can be divided into two main categories: original and judicial writs. Both were normally written in Latin.

Original writs were the first step in commencing the legal action: these records were produced in Chancery, paid for by the plaintiff and then dispatched to the sheriff of the county that was most relevant to the case. The most common form of original writs in CP 52 were the so called Precipe writs: the sheriffs were to command (*precipere* in Latin) the defendant, if he could be found in his bailiwick, to do what the plaintiff was asking of him, for example paying up debts. Otherwise the defendant was to appear before the court at a given date, known as return days. These worked in practice as a summons for the defendants.

Unlike original writs, which were witnessed by the monarch, judicial writs were those produced at a later stage, and were witnessed by the Chief Justice; these writs are particularly interesting because they give us an insight into how the different records of the court were interrelated. At the bottom of each judicial writ the rotulus number of the related Plea roll is given in Roman numerals. After receiving the order, the sheriffs were to act accordingly and then return the writs, known, in fact, as returnable, to the Court, endorsed with their actions. The most common response was '*non est inventus*' (he was not found). Any further documentation to be sent, such as jury panels or lists of pledges, was sewn to the writs.

The Court's original filing system worked around the return days when the Court sat at Westminster, usually of the duration of a week during the four legal terms of Michaelmas, Hilary, Easter and Trinity.⁷ Writs due to be returned on the same date were collected by county and later filed together (they were initially spiked and then strung onto a long thong) so that files were created for each return day. This practice started with Edward I and continued almost unaltered at least until the return days were abolished in 1832, because it was a very effective arrangement, both for storage and retrieval purposes.

Before giving an outline of more recent work, it is appropriate to mention that these records were subject, during at least two centuries, to several attempts at sorting following their transfer to the (former) Public Record Office. The Common Pleas files were removed from 814 sacks into boxes at Chancery Lane between 1987 and 1992.⁸ Subsequently, between 2001 and 2007, the material up to the tenth year of the reign of Richard II (1386-1387) was accessioned, and the rest of the boxes were moved to offsite storage facilities hired by The National Archives, DeepStore in Winsford (Cheshire), to hold some of the vast quantity of records in its care.⁹ The Unknown Treasures project included two visits to DeepStore but for the most part boxes needed to be ordered from there and delivered to Kew to be inspected and catalogued, then returned to Deepstore after accessioning. The box movement presented some logistical difficulties. For instance, we had to organise the limited space we had been allocated and carefully keep track of thousands of boxes going back and forth between Cheshire and London.

The initial challenge we had to face was to identify those files which lay within the scope of our project, as opposed to the large volume of miscellaneous material that was distinct from the Brevia files but kept in the same Victorian sacks alongside them. These included much material produced by the Court of Common Pleas, such as Recorda¹⁰ and Postea files¹¹, but also records produced by the main criminal court, the Court of King's Bench.

Having identified the relevant files, we proceeded in deducing the information that we needed to assign to each file its unique reference: the name of the monarch, the regnal year, the legal term and finally the aforementioned return day. Many of the files have all of the data that we needed on the (in most cases) original parchment cover, written by the Court's clerks for reference. However, we soon realised that the internal structure of the file needed to be considered as well. Within each file, the writs are grouped by county and the counties are arranged in a standard order, broadly following a geographical pattern. During the thirteenth and fourteenth centuries, this was: Norfolk, Suffolk, Essex, Hertfordshire, Cambridgeshire, Huntingdonshire, Middlesex, London, Kent, Surrey,

Sussex, Hampshire, Wiltshire, Somerset, Dorset, Devon, Cornwall, Herefordshire, Worcestershire, Gloucestershire, Oxfordshire, Berkshire, Buckinghamshire, Bedfordshire, Northamptonshire, Rutland, Shropshire, Staffordshire, Warwickshire, Leicestershire, Nottinghamshire, Derbyshire, Lincolnshire, Yorkshire, Northumberland, Cumberland, Westmorland and Lancashire.¹² From the sixteenth century onwards, Monmouthshire and Welsh shires (for outlawries only) were added following Worcestershire, and the order of the last few counties (after Derbyshire) could vary. Therefore, a clerk looking for a particular writ would have known exactly which part of the file he had to start from.

Very early on, from the files for Edward II's reign (1307-1327), it became clear that some of the return days, usually the first and second in each term, were busier than others, with more writs issued and due to be returned. This caused the splitting of the files into two parts: part 1, included counties from Norfolk to Gloucestershire and was usually labelled simply 'Brevia'; part 2 started with Oxfordshire and was labelled 'Oxon', from the Latin name for Oxfordshire.

Part 1 for each first return day also contained letters to justices and warrants of attorneys. Letters to justices included *dedimus potestatem* writs, empowering them to proceed in levying fines; by the reign of Elizabeth I (1558-1603) these writs were collected in separate files and constitute separate record series.¹³ Writs of *exigi facias*, which were in practice the final call from the sheriffs to the defendants to appear before the Court, authorising the beginning of the process of civil outlawry, shared a similar fate: these were originally filed at the bottom of the Oxon files for the first return days, but from the sixteenth century are in series CP 59.¹⁴

Over the centuries there were changes within the Court and the way its records were arranged. For instance, Henry VIII (1509-1547) reorganised the return days, shortening Trinity term by abolishing return days based on the feast day of the Nativity of St John the Baptist (24 June). Elizabethan times saw an increase in cases brought before the Court, so that the first and, this time, last return days were each split into three parts. Alongside *Brevia* and *Oxon* files, a third file was created for these

busiest return days, labelled 'Midd', for writs addressed to the sheriffs of Middlesex and London. In 1641, during the reign of Charles I the most important change concerned the reorganisation of Michaelmas term, with the abolition of the Octave and Quindene. The Interregnum period (1649-1660) brought a series of important changes: Latin was abolished and English used instead for all proceedings (although the formulae of the writs remained essentially static), and the palatinates lost their privileges, so that writs addressed to the sheriffs of Durham, Cheshire or Lancashire were filed with writs for the rest of the counties. Latin returned as the official language for orders by 1661, some months after the Restoration, causing some of the files to be in two languages, Latin and English.

Charles II's reign (1660-1685) did not, however, witness a complete return to past practices. On the contrary, it witnessed a dramatic change in the organisation of the records. First and last return days were split into five parts, each of them associated with a pictographic symbol which was later depicted on the cover of individual files. A heart, for example, represented counties from Norfolk to Hertfordshire; a ladder stood for Huntingdonshire to Sussex (including Middlesex and London); a bird (specifically a crow, or perhaps – considering that this group included Cornwall – a chough) designated Hampshire to Gloucestershire; a belt buckle indicated Oxfordshire to Staffordshire; and finally the last part of the sequence, starting with Warwickshire and encompassing the shires of the North and northern Midlands of England, was labelled with a bell.

It is still not clear to us why these symbols were chosen and not others. We have speculated that they may have resembled the names of the clerks or offices in charge of the different groups of counties.¹⁵ It is most probable that they were adopted to make the storage and retrieval of the files easier, exactly as court's clerks up to the reign of Henry VII (1485-1509) used red ink to make the initial B (for Brevia) and O (for Oxon) more visible. The new system was so successful that the symbols which were originally hand-drawn were, by the time of James II, printed, suggesting that the court clerks had stamps made to ease their job

By 5 George I (1718-1719) as result of the gradual decrease in the court activity, fewer writs were issued and, consequently, it was possible for the clerks to consolidate all the return days in fewer files. The material referring to the two busiest return days, the first and the last, was kept together and divided in five parts, each marked with one of the aforesaid symbols. The rest of the writs were gathered into one separate file labelled 'middle return days'.

The last occurrence of the symbols happened during the reign of George II. With the introduction of the Gregorian calendar in 1752, Michaelmas term was further shortened. Moreover, by this time only two small files per legal term were produced and it was no longer necessary to divide them in further parts. Finally, in 1832 the return days were abolished. With the Supreme Court of Judicature Act 1873¹⁶ the court itself became a division of the High Court of Justice; it was abolished altogether, by merger into the Queen's Bench Division, in 1880.¹⁷

A crucial step in making these records available to researchers was to assign them the unique references under which they are stored and can be ordered. Instead of the simple sequence of running numbers (1, 2, 3, etc) used for most record series at TNA, our referencing system for CP 52, as already mentioned, reflects the Court's arrangement of the files by legal terms and return days. Starting with Edward I as number 1, each monarch is represented by a number, followed by the regnal year (or calendar year for the Interregnum period), then the legal term, the return day and, if necessary, part (1 for writs up to Gloucestershire and 2 for the 'Oxon' portion).¹⁸ When the Middlesex part was introduced we had to adjust our referencing system accordingly, so between part 1 and part 2 we created part 1A. For the later, five-part arrangement a further change was necessary: heart, ladder, bird, buckle and bell become, respectively, part 1, 1A, 1B, 2 and 2A. This system has allowed catalogue entries to be fitted into the correct chronological sequence even when a file was identified weeks or months later than others of a similar date.

To give one example among thousands, CP 52/15/1/3/1/1 is described as 1 Eliz I, Morrow of Trinity, part 1. The reference breaks down as: CP for the Court of Common Pleas, 52 for the series of Brevia

files, 15 for Elizabeth I, 1 for her first regnal year, 3 for Trinity term,¹⁹ 1 for the first return day of that term, and 1 for the Norfolk to Gloucestershire portion.

As should be clear from this description, it was outside the scope of our project to describe pieces in any further detail, because each file contains hundreds, occasionally thousands, of writs. As each writ usually has a different date and as return days covered several days during the term, we decided to assign each file the date as covered by the legal term.²⁰ The date for this piece will then cover the whole of Hilary term 1559, from 23 January until 13 February. Producing brief descriptions has allowed us to accession a great number of records without sacrificing precision, which was the main aim of our project.

Poor storage conditions meant that many of the original files broke during the centuries, mainly because the thong keeping the writs together, that had been soft and flexible when first used, snapped as it became dry and stiff. Therefore, parts from the same file came to be separated over time and had come to be in different boxes. It became an essential part of our work to try to reunite broken or partial files, putting back together what had been separated possibly for centuries. It felt rather like working on a jigsaw with extra pieces. Indeed, we found that, while storing and reuniting the files, following archival principles, we were also emptying many boxes. Fewer boxes means less storage space needed and hence reduced storage costs; this was an unexpected and welcome financial benefit.

The Unknown Treasures project formally ended in December 2015 but work did not stop there. Since that time, the Catalogue and Taxonomy Department, with the support of other colleagues, has continued to reduce the historic cataloguing backlog as business-as-usual. As of March 2018, CP 52 was available up to the end of George III's reign. We are aware that there are still unopened sacks at DeepStore that could potentially contain more files belonging to this series, as there are some gaps still to fill. We have also identified further boxes believed to contain other records from the Court of Common Pleas and plan to verify their contents and make them available too in due course. Some

external funding could be necessary to achieve all that we would wish, but improvement work is already happening.

In the meantime the records are ripe for research. More than five thousand files, never available before, are ready to be studied and reveal their potential. Inevitably, these documents are not easy reading and researchers interested in them will need to overcome some hurdles. Some skill in Latin and palaeography is required, as for many records of the same age. In addition, some of the files are very large and difficult to unroll. As the files are stored offsite, researchers will also need to order them in advance.

Nevertheless, those who are persistent will be rewarded by the opportunity to see records that were left unread for centuries. Each of the hundreds of writs within each file is, in fact, interesting in itself. Both parties were named; defendants especially had to be identifiable beyond any doubt, and their occupations and places of origin or residence were also supplied, alongside aliases if needed. In addition, the reason behind the lawsuit is generally given and occasionally names of clerks. On the dorse, as mentioned above, are the sheriffs' comments with their signatures. It is clear, therefore, that these records could be used for a variety of research purposes: they are name-rich enough to appeal to family or social historians, but also shed light on how the Court worked and how it arranged and kept its own records; consequently they are potentially interesting for historians of the law as well. Moreover, the survival rate of the files allows other types of analysis. For examples, the formulae used for the writs and the language stayed basically unchanged during the centuries; however, we can observe the evolution of the Court hand, and its abolition during the Interregnum decade with the introduction of personal handwriting.

Five centuries ago the keeper of the writs demanded a small fee to allow someone to look for a breve; 300 years ago a quarter of an hour was necessary to identify the correct file or writ. Now it is possible to identify and order that same file through Discovery, without charge and in seconds. This is a tremendous achievement and the result of the synthesis between technology and traditional

archival skills. These are centuries-old records that still hold the fascination of unknown and undiscovered territories, from the ruinous old room with a broken floor to their present safe and controlled environment. Finally occupying their legitimate place as part of the well-structured archive of the Court of Common Pleas, and alongside the rest of the public records, they can now be seen and enjoyed by everyone.

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1 Great Britain. Parliament. House of Commons (1732). A Report from the Committee Appointed to View the Cottonian Library. House of Commons, 1732, pp. 5, 149.

2 All documents cited in this article are held by The National Archives. Henceforward they will be cited by reference only. CP, Records of the Common Pleas and other courts, <http://discovery.nationalarchives.gov.uk/details/r/C61>.

3 CP 40, Court of Common Pleas: Plea Rolls, <http://discovery.nationalarchives.gov.uk/details/r/C5417>.

4 As Margaret Hastings recounts in her book, during her research she was able only to look at few examples. Margaret Hastings, *The Court of Common Pleas in Fifteenth Century England: A study of legal administration and procedure*. Cornell University Press, 1947. See also R C Palmer, *The County Courts of Medieval England, 1150-1350*, Princeton, New Jersey, 1982, which makes extensive use of a limited number of CP 52 files made especially available to the author.

5 These were the author and Matthew Tantony.

6 CP 52, Court of Common Pleas: Brevia Files, <http://discovery.nationalarchives.gov.uk/details/r/C5429>.

7 For a detailed explanation of legal terms and return days, see C R Cheney, *A Handbook of Dates For students of British history*, new edition, revised by Michael Jones, Cambridge University Press, 2004, pp. 98-105.

8 D Crook, 'Recent work on Lists of Common Law Records in the Public Record Office', *Journal of Legal History*, 15, no 2(1994), pp 163-174 at 172-173.

9 See Anna E. Bülow and Tom Gregan, 'An Alternative for the Long-Term Storage of Archival Records: A Salt Mine in Cheshire', in *Where Shall We Put It?*

Spotlight on Collection Storage Issues: Papers given at the National Preservation Office Annual Conference Held 4 October 2004 at the British Library, available through <http://www.bl.uk/aboutus/stratpolprog/collectioncare/publications/conference/conf2004.pdf> (accessed 25 August 2017).

10 Recorda files include material related to cases heard before inferior courts, sent in for examination purposes. Largely still unsorted: CP 54, Court of Common Pleas: Recorda Files, <http://discovery.nationalarchives.gov.uk/details/r/C5431>.

11 Common Pleas cases tried at Nisi Prius (meaning 'if not before') by a jury at the assizes. Although files from the reigns of William and Mary to George IV are in CP 41, Court of Common Pleas: Posteas Files, William and Mary - George IV, <http://discovery.nationalarchives.gov.uk/details/r/C5418>, and material up to the reign of queen Victoria is in CP 42, Court of Common Pleas: Posteas Files, George IV – Victoria, <http://discovery.nationalarchives.gov.uk/details/r/C5419>, earlier ones are still unsorted: CP 57, Court of Common Pleas: Recorda de Nisi Prius et Brevia Juratorum Files, <http://discovery.nationalarchives.gov.uk/details/r/C5434>.

12 The same order is used on the equivalent King's Bench Brevia Regis and Brevia files, respectively in KB 37, <http://discovery.nationalarchives.gov.uk/details/r/C10041>, and KB 136, <http://discovery.nationalarchives.gov.uk/details/r/C10070>.

13 As writs of dedimus potestatem were part of the process for levying fines, from the reign of Elizabeth I these were filed with the rest of the agreements for fines. Each series covers a reign, starting from CP 24/1, Court of Common Pleas: Concord of fines files, Elizabeth I <http://discovery.nationalarchives.gov.uk/details/r/C5378>, up to CP 24/12, Court of Common Pleas: Concords of Fines Files, William IV – Victoria, <http://discovery.nationalarchives.gov.uk/details/r/C5389>. The last series in this sequence is a collection of additional files: CP 24/13, Court of Common Pleas: Concords of Fines Files, Additional Edward II - Charles I, <http://discovery.nationalarchives.gov.uk/details/r/C5390>.

14 CP 59, Court of Common Pleas: Brevia de Exigendo et Utlagando files, <http://discovery.nationalarchives.gov.uk/details/r/C5436>. This series is still unsorted.

15 As also suggested in *The Collected Historical Works of Sir Francis Palgrave*, K. H. edited by his son Sir R. H. Inglis Palgrave, F.R.S. *Reviews, Essays and Other Writings*. Cambridge University Press, 1922. Vol I, p 146. Colleagues have speculated that the heart symbol originated as a pun on Hertfordshire; an anonymous reviewer regards this as implausible.

16 Supreme Court of Judicature Act 1873, 36 & 37 Vict c. 66.

17 The actual merger of the Exchequer Division and the Common Pleas Division with the Queen's Bench Division took place in late 1880.

<http://www.parliament.uk/about/living-heritage/transformingsociety/laworder/court/overview/judicatureacts/>

18 The referencing system was devised by C A F Meekings, formerly an Assistant Keeper of Public Records, when sorting the files of the Court of King's Bench between 1967 and 1973: C A F Meekings, 'King's Bench Files', in *Legal Records and the Historian*, ed J H Baker, London, Royal Historical Society, 1978, pp 97-139 at 120, It was adopted by Dr David Crook for the Common Pleas files.

19 The numbers assigned to each of the four legal terms vary depending on which was the first full term to start after the monarch's accession. As Elizabeth came to the throne on 17 November 1558, towards the end of Michaelmas term, the first full legal term during her reign was Hilary; hence Trinity term during her reign is represented as number 3.

20 These dates are listed in Cheney, pp. 112-143.