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Correspondence to coatofarms@theheraldrysociety.com

www.theheraldrysociety.com

THE IMPACT OF THE PROTESTANT REFORMATION, THE ENGLISH CIVIL WAR AND THE RESTORATION ON CHANCERY PROCEEDINGS

SUSAN T. MOORE, M.A., F.S.A

Introduction

The courts of equity came into existence in the late medieval period when people applied directly to the king with their grievances, as the common law courts were too cumbersome and slow. The Chancery court was the main court of equity, whose principle was to do 'what a good man of moral conscience' would do, and was not subject to the strictures of the common law. It was concerned with the possession of, rather than the legal claim to, lands, and thus was involved in the restoration of lands to the rightful possessor. Chancery Proceedings are therefore an invaluable source of information for people and lands.

Disputes arose when there was a major political change such as the Reformation of the 1530s and the ensuing Dissolution of the Monasteries, and with the Restoration of the monarchy in 1660 after the Civil War. These records can shed light on the real effect these great changes had on ordinary people, and the lands they held. These two periods should have had a similar effect on landholding, but actually they had very different effects. In the case of the Dissolution the Crown took possession of the monastic lands and, ignoring earlier grants by the monastic houses, granted the same lands to new people, without much thought as to the original grants.

With the period of the English Civil War, the Protectorate and the Restoration of 1660 we find that after 1649 new grants were made by the Protectorate ignoring the earlier grants, and with the restoration of the monarchy in 1660 lands reverted to their original owners. Disputes would surely arise, but actually they are very rare, in fact any reference to the period of Civil War and the disruption it must have caused to people is singularly lacking in the Chancery court records between 1640 and the 1660s. It appears that life just continued as usual; people had disputes about inheritance, about land, about loans, about mortgages etc just as they always had. One of the criteria for a case to be heard in the Chancery court was that the relevant documents were not available to the plaintiff, and very occasionally there is reference to the 'troubles' having resulted in documents being lost.

Courts of Equity

The Court of Chancery was one the courts of equity, the other principle ones being the Court of Requests, the Court of the Star Chamber, and the Court of the Exchequer. There were also a number of minor equity courts with jurisdiction over specific areas of the country. The courts of equity operated in a very different way to the common law courts. The common law courts, the King's Bench and the Common Pleas, required full documentation to be submitted, and one or more of a large variety of writs to be issued. The hearings were verbal, and the records often do not give very much information.

The courts of equity were quite different, in that there was one legal procedure for all cases, the court could order an injunction, there was no jury or cross examination,

and the final judgment was based on all the written documentation. Chancery cases are usually about inheritance of land, repayment of mortgages, disputed wills and marriage settlements.

The Records

In general, Chancery documents are a real goldmine for genealogists, often with four or five generations being described in detail, usually with dates, and especially usefully with people of the same name being differentiated. There are ten miles of Chancery records, kept at The National Archives, Kew (TNA). Most of the pleadings have been catalogued in the TNA online catalogue *Discovery*, others can be found in the calendars at TNA. They are in English rather than Latin, they are handwritten, and are reasonably legible, and in good condition. The drawback is that the records of any one case are found in multiple series of records (**Figure 1**). The keywords are:

- Plaintiff: demandeur
- Bill of complaint: acte de plainte
- Defendant: defendeur
- Answer: défense
- Interrogatory: interrogatoire
- Deposition : déposition
- Court order: ordonnance du tribunal
- Affidavit: déclaration sous serment
- Witness: témoin

The records consist of

- Bill of Complaint – by the plaintiff
- Answer - by the defendant
- Interrogatories - by the plaintiff and the defendant
- Depositions - by witnesses for the plaintiff and defendant
- Orders and Decrees – by the Judge
- Affidavits
- Masters' Exhibits

How to find documents, an illustrative case: Crocker of Pulham

The main pleadings are well catalogued and can be found by entering the surname and place that you are interested in with the word Chancery and the dates you wish to cover.

A search for Crocker of Pulham in Dorset in *Discovery* shows the reference for this document is C 3/142/11. I am interested in this case because it concerns a grant by an abbot, which was then disputed after the Dissolution. John Phelps alias Phillippes of Sherborne, butcher claims that the Abbot of Cirencester held the manor of Pulham and that in 1534/5 he granted a reversion of lands in Pulham to the plaintiff, lands which were held by Agnes Lullington for life, to be held as copyhold lands, as confirmed by a copy of the manorial court roll. Agnes Lullington died, and so the lands came to the plaintiff as the person holding the reversion. He has held the lands until recently he claimed he was expelled by William Crocker and his wife Edith, who had got hold of all the relevant deeds; but in view of his holding the reversion he asks the court to allow him to have the lands back again. In their Answer William Crocker and his wife say that the reversion was granted to John Cooke and his daughters. John Cooke was the father of Edith and

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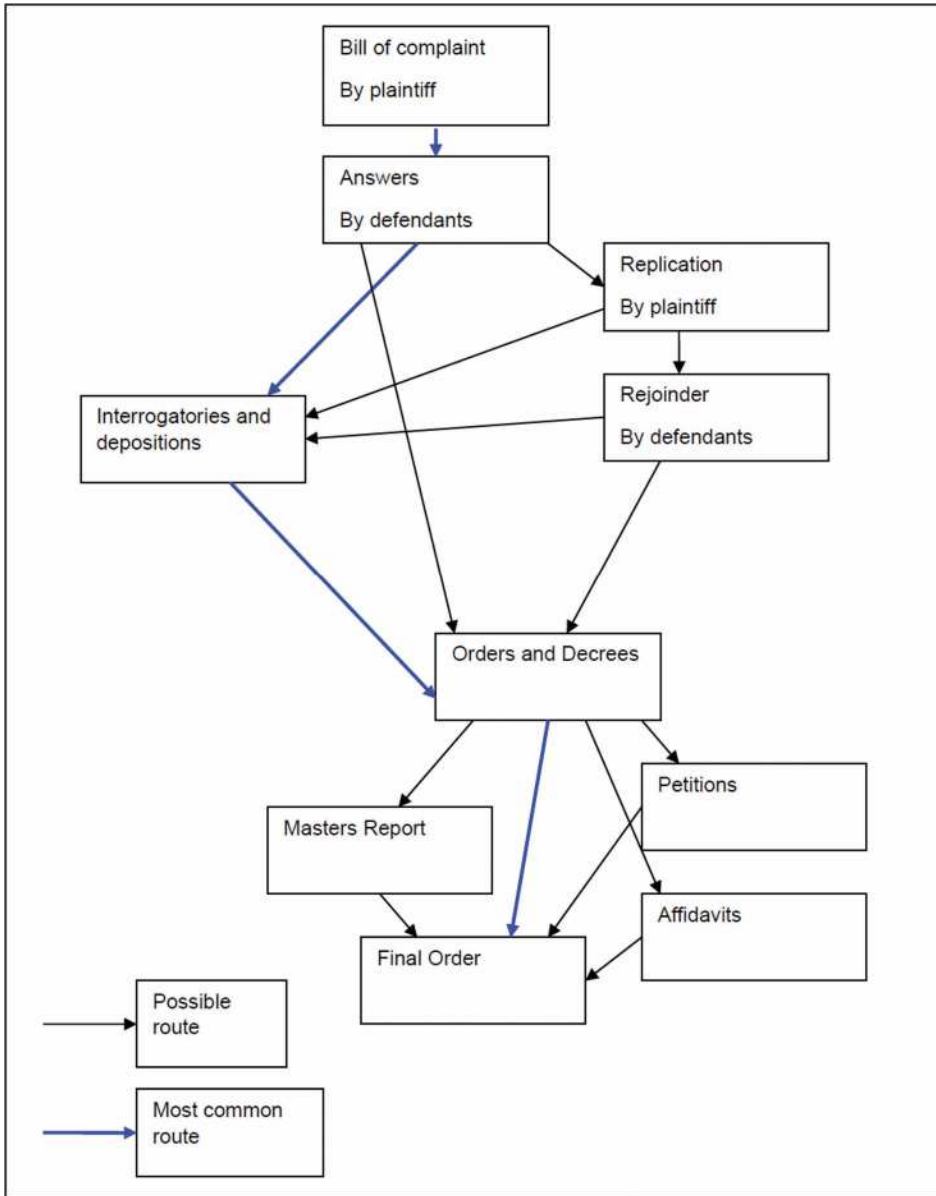


Figure 1: Chancery diagram.

Johanne. The implication is that this Edith daughter of John Cooke is the Edith who is now married to William Crocker, and so the defendants William Crocker and his wife Edith have a right to the land through this grant to John Cooke.

The plaintiff John Phillippes alias Phelps replies to the Answer saying that there was no such grant by the abbot of Cirencester to John Cooke and his daughters Johanne and Edith. As this was about the time of the dissolution of the monasteries there would

probably have been some confusion over the various grants. So we learn that William Crocker's wife was Edith had a sister Joan who was unmarried at the time of the Chancery case, and that they were the daughters of John Cooke who was dead by this time, so a share of the lands passed to Edith's husband William Crocker. This is not a very complicated family tree, but could be full of crucial evidence that you have been seeking for years.

The Malmesbury case – another Reformation case

This case revolves around land that had belonged to the monastery of Malmesbury which was dissolved under Henry VIII and the lands were annexed by the Crown. According to the plaintiff, Henry VIII granted lands in Lyttleton-upon-Severn co Gloucester to Sir Richard Long, who then granted the land to Edmund Hampden. On his death the lands came to Elizabeth, one of his daughters, and so to her husband William Fytton. However, and there is always a 'however' in a Chancery case, a claim has been made to the same lands by Margery Orchard widow and her son Richard. They claim that the lands were granted by the Abbot of Malmesbury, long before the dissolution of the monastery at Malmesbury, to William Orchard, the now deceased husband of Margery, and father of Richard. The amount of land in question was substantial, consisting of 100 acres of arable, 40 acres of meadow and 100 acres of pasture.

One of the criteria for a case to be heard in the Chancery court rather than in a common law court was that the relevant documents were either missing or held by the defendant, and so could not be produced by the plaintiff. In this case the plaintiff claims that the grant to William Orchard was a lease for a certain number of years which have now expired, but Margery and her son have all the paperwork and so he cannot prove it.

Richard Orchard then puts his side of the story in his Answer and indeed says that Robert abbot of Malmesbury granted the lands to William Orchard on 4th October 1533 for a term of 60 years, i.e. to expire in 1593, at a rent of £4 per year. William Orchard then died and the lands descended to his son Thomas who left them to Margery in his will for her life and then to the defendant Richard their son. This is a very straightforward and typical case for this period, where the crown grants lands with no regard for any pre-existing lease.

The Monmouth case and the English Revolution

This is a rare example of a Chancery case which makes reference to the Civil War. The action was brought in 1651 by John Price of Penros co. Monmouth against Andrew Probert. We learn that John Price is a lawyer who was trained by his father, an attorney in the court of Common Pleas, and has been active for about 30 years. Once his father became elderly, John took over his father's work as clerk of the peace in Monmouthshire, which involved much travelling between London and Monmouth. For the previous twelve years John's work was confined to defending acquaintances and friends, but the 'war and unfortunate disasters' put a stop to this. One of his clients was Andrew Probert of Mago in Monmouthshire, another was Thomas Morgan of Penarne in the same county. Price ran up bills for expenses for these two men, but then war intervened. He gives us a vivid picture of living through the Civil War: "which war was so cruel in the county of Monmouth by reason of the great garrison of Ragland and the other great garrisons kept in these parts and multitude of soldiers that marched to and fro in these parts". He goes

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on to say that his house was often plundered and his books of accounts and law causes were “quite lost taken away and consumed or burned.” So, he cannot prove that he is due to be reimbursed by these clients. Yet again we find that the lack of documents is specifically mentioned as the justification for the case being heard in the Chancery court.

These records can look daunting, but there is a trick to deciphering them. There are key phrases. The Bill of Complaint always starts with “Humbly complaining” or ‘Humbly showeth’. The plaintiff then sets out his, or her (and it often is a woman), side of the story, often with quite a bit of background information. About half-way through he then states his grievance with the words “Now so it is...” He might set out the various points that he wants the defendant to answer. Then at the end he asks for a Writ of Subpoena to be issued to the defendant, and it is worth noting that this is the only place in the whole document where the defendant is actually identified as such.

The Answer is similarly structured in that the opening phrase will be a complete denial of everything that has been said in the Bill of Complaint. This will be followed by a rather begrudging phrase, and he will then go through the points raised in the Bill of Complaint answering them in turn with phrases such as ‘admits it to be true’ or ‘denies’. As an aside I would always recommend transcribing Chancery documents in full as the word ‘denies’ is very small and is very easily overlooked, so you might miss the whole point of the defendant’s case.

A case making no reference to Civil War: the Exeter case

This case dates to 1669 and refers to land grants and other documents going back to 1608 (C6/79/33). The Plaintiff is William Slade and the defendants is John Lavers.

Property in Exeter, Devon is referred to on these dates:

- 20 May 6 James 1608
- 22 November 1623
- 27 March 1628
- 25 November 1628
- 23 May 1632
- 14 October 1637
- 18 July 1642
- 1 October 1642

In addition to the parties, there are references to:

- Peter Beavis of city of Exeter merchant deceased
- John Moone of city of Exeter fuller deceased, died 14 years ago, 1655
- John Lavers of city of Exeter goldsmith, the defendant
- John Moone son of John Moone the elder, deceased
- Thomas Moone son of John Moone the elder, deceased
- Anne Moone dau of John Moone the elder now wife of John Browning of city of Exeter who granted their interest to the complainant William Slade, the plaintiff

In summary Peter Beavis granted the land to John Moone in 1628. John Moone borrowed money from John Lavers, who has since taken possession of the lands. William Slade as heir to John Moone is reclaiming the land. Although this case covers the period from 1608 to 1669, and so goes right through the civil war, there is no mention of it.

What next?

When you have looked at the Bill and Answer, which are fairly easy to find as they are listed in some detail on *Discovery*, you may well ask, what next? There are many other records that you might consider looking at to get more information on the case that interests you.

Depositions

There are two types of depositions: those taken in London known as Town Deposition (C 24) and Country Depositions (C 21 and C 22). After 1714 they are filed with the pleadings, but before that date they are separately filed. Depositions are often really useful in shedding more light on the facts. The interrogatories are the questions that will be put to the various deponents (witnesses) and will start with a phrase such as:

‘Interrogatories to be administered to witnesses to be produced, sworn and examined on the Part and behalf of John Slaney, John Boyce and Elizabeth his wife, Lydia Troward widow, Stephen Beesley and Sarah his wife, Thomas Maynard and Hannah his wife in a Cause depending in the High Court of Chancery wherein they are complainants against James Crump, defendant’.

The individual questions are then listed and numbered, with the first question nearly always asking how long the deponent has known each of the parties, and any other person who is crucial to the case. In some cases the interrogatories for both the plaintiff and defendant have survived, in some cases just one or the other. The depositions usually start with details of where they are taken, such as:

Depositions of witnesses taken at the house of Thomas Morthwaite innkeeper known by the sign of the White Swan in Clitheroe in the county of Lancaster the 14th day of January 1651

The deposition of each deponent then starts with his/her name, age, and occupation. The answers to the questions are then given in order and are numbered often with the word ‘Item’ written in bold at the start of the answer to each new question. Each deponent will only answer the questions that are relevant to him/her.

Other documents – Orders & Decrees

Once you have looked at the pleadings (Bills and Answers), and the interrogatories and depositions, the next important sources are the Orders and Decrees. The calendars for these are on the open shelves at TNA, and once you find the entry you want you need to match up the volume of the calendar with the reference number for the relevant volume, noting the folio number. The actual Orders & Decrees are usually in large volumes, sometimes very, very large and heavy volumes, so having the folio number of the entry you want from the calendar is essential, although the handwriting in these can often be quite small and difficult to read. Many of the entries are purely administrative, such as requesting a defendant to put in his answer. Many, however, are much more interesting, and can include a summary of the case, with details of other orders, petitions, affidavits, and Masters’ Reports.

A typical order will start with the words:

- Upon motion this day made unto the court by xxx it was alleged... .

Followed midway through with:

- it was prayed that... .

And ending with:

- it was ordered that...

One final case

This case involves lawyers, who obviously continued all through the troubled mid-seventeenth century. Richard Colchester was one of the ‘Six Clerks’ of the Chancery Court, a valuable position, and there is a dispute between his son by his first wife against his trustees concerning the various inheritances. The case is brought in 1658, and concerns the will of Richard Colchester which was made in 1642. There is reference to two daughters, both called Elizabeth (one married to William Knight, and one married to John Cotton), and to two sons: Duncombe the son by the first wife, and Hugh the son by the second wife, as well as other unnamed children. The lands concerned were all over Gloucestershire. Yet again we find no mention of the Civil War, or any troubles or disruption to life.

Following a case

As could be seen from the illustrative cases, land had been granted by one body before the upheaval, and yet the same land was granted by another body after the upheaval, with no thought or recognition of the first grant. Because one of the qualifications for a case to be heard in the Chancery court was the lack of documentary evidence, which was essential if a case was to be heard in the common law courts, many cases will recite what the party thinks is in the missing documents. Thus we find that deeds, grants of land, marriage settlements, entailments, leases, copyhold grants, which have long disappeared are quoted in full. As I am sure you are all well aware tracing the history of a piece of land is a way of tracing the genealogy of a family.

In addition to legal documents being quoted, accounts can be some of the most useful aspects of Chancery records. If land is being disputed, it is usually the value of the land as a source of income that is the most important to the parties, so details of acreage, land use, and rents paid will often be quoted. It should always be remembered in Chancery cases that at least one of the parties is lying, and often all of them are. This means that sometimes an order will be made for a Master to investigate the truth, to determine who is receiving the rent, to have sight of the documents if the defendant holds them, and to create an inventory of all the personal goods of one of the parties. This will be produced in a Master’s Report. The Masters were also often responsible for taxing the costs of the case, and so details can be found of the expenses and charges of the lawyers involved.

From a purely genealogical point of view the ‘whereas’ clause at the start of the plaintiff’s bill of complaint is the most interesting. It is not uncommon to start with ‘my great grandfather was seised of in his demesne as of fee of a piece of land’. The great grandfather will then be named, as will his son the plaintiff’s grandfather, and then the father, usually with details of their wives and several or even all of their children. This way John the great grandfather, John the great uncle, John the father, John the uncle’s son, and John the plaintiff are all clearly differentiated.

Might we consider that times of disturbance are a bonus when it comes to searching Chancery records? In the case of the Dissolution of the Monasteries when the lands all came into the hands of the crown, there were many cases brought to the Chancery court as grants by former abbots rivalled new grants by the Crown, whereas, in the case of the

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Civil War, life tended to just go on. People continued to have disputes about lands and possessions, but the Civil War appears to have been incidental to ordinary life; and yet Parliament took control of a large number of estates of royalist supporters, which one would have thought would have led to cases in the Chancery court. This anomaly surely deserves to be the subject of an academic study.

In summary, I would recommend Chancery records for any genealogical research due to the wealth of information included in them, the sheer volume of documentary evidence, and in particular I would suggest that they are source that cannot be ignored in or soon after a period of reformation, revolution, or restoration.