BATE'S CASE AND "LANE'S" REPORTS: THE AUTHENTICITY OF A SEVENTEENTH-CENTURY LEGAL TEXT

By G. D. G. HALL, M.A., FELLOW AND LECTURER IN LAW OF EXETER COLLEGE, OXFORD

IN 1657 William Lee, Gabriell Bedell and Daniell Pakeman published in Fleet Street, London, a volume of Exchequer Reports said to be by the late Sir Richard Lane.¹ The full title of the work was "Reports in the Court of Exchequer, Beginning in the third, and ending in the ninth year of the Raign of the late King James. By the Honourable Richard Lane, Late of the Middle Temple, an eminent Professor of the Law, sometime Attorney General to the late Prince Charles, Being the first Collections in that Court hitherto extant". The reports take up 119 pages in a slim folio volume, and are preceded and followed respectively by "two exact Alphabetical Tables, the one of the names of the Cases, the other of the Principall Matters contained in this Booke". In obedience to a Cromwellian Act of 1649 the cases had been translated from Law French into English.² Unlike most of the contemporary legal publications of this Fleet Street trio, "Lane's" Reports have no Preface or Introduction of any kind.³

Not only the trio, but many other men were publishing law reports in the middle of the seventeenth century, volumes often

¹ There was a reprint at Dublin in 1884 by C. F. Morrell, with notes and a biography of Lane. The notes are elementary and the life is based on unacknowledged quotations from standard judicial biographies.


³ Some information about the three men is given in H. R. Plomer, Dictionary of Booksellers and Printers from 1641 to 1667 (London, 1907). They began to collaborate as law publishers in 1648. Between 1657 and 1659 the trio published together the following reports: Bulstrode (3 parts; 1657, 1658, 1659), Winch (1657), "Lane" (1657), Style's Modern Reports (1658). All but "Lane" have expansive prefatory remarks.
of uncertain parentage and value.1 "Lane's" Reports probably made no stir at the time, and have been seldom cited since. In fact, they might have been wholly forgotten had it not been for one case. That case is the Case of Impositions or Bate's Case, decided in the Exchequer in 1606. It is printed in this volume of reports at pages 22-31.2 The purpose of this article is to suggest that there is no real ground for attributing the reports to Lane, and also to contend that, whoever was the author of the reports, he never reported Bate's Case which was introduced into the volume either by a collector whose manuscript the publishers used, or more probably by the publishers themselves in furtherance of a plan to improve the sales of the book.

Now the detection of such a false ascription is interesting in itself whatever the subject-matter of the imposture, but it gains in interest when the subject-matter is a famous law case, and even more so when the imposture is the evidence on which historians have universally relied when discussing the case. It may be well, therefore, at the outset, to recall the facts which led up to the decision in Bate's Case, and also the importance of the case in the seventeenth century constitutional struggle.3

In 1575 a patent was granted to Acerbo Velutelli giving him the sole right to import currants and oil from Venetian territories. Velutelli threw open the trade to others, both English and foreign, on payment of fines for licence to trade. A Venetian counter-attack led to an appeal to Elizabeth, who put a corresponding impost of 5s. 6d. per cwt. on currants landed in England from foreign ships. In 1583 Velutelli's patent was cancelled; he was succeeded until 1589 by the Venetian Company: eventually a Joint Company was incorporated in 1592 as the Levant Company, with a twelve-year monopoly of trade to Venice and Turkey. The Levant Company, like the Venetian Company before 1589 and Velutelli before 1583, raised revenue

2 Reprinted in State Trials, ed. Howell, ii. 382-94.
by permitting the import of currants by non-members on payment of 5s. 6d. per cwt. The Crown spotted this imposition in 1599, decided to levy the tax for itself, and demanded it in May 1600. It was refused, and Elizabeth cancelled the charter of the Levant Company on a technical pretext. After some manoeuvre the Company received a new charter in December 1600 which provided in effect that, in return for a payment of £4,000 a year to the Exchequer, the Company should farm the impost on currants. For the next two years the £4,000 was paid and the Company took 10s. a cwt. on currants from non-members. Then in May 1603 the Company lost its charter at a time when it owed £2,000, half the yearly rent of the farm.¹ Not until December 1605 did the Company get a new charter; the interval was devoted to a complicated struggle between the Crown, Levant merchants, English and Venetian merchants not members of the Company, and the Lord Chamberlain Suffolk. The first reaction of the Crown in 1603 was to regain the lost £4,000 a year by imposition, and in October the Lord Treasurer was directed to re-impose the former duties. An elaborate pantomime followed in which the Levant merchants cried poverty and gave bonds not cash for the impositions, and in which James affected a complete lack of interest in the state of affairs at Constantinople. In November 1604 the custom, subsidy and imposition on currants were farmed to Roger Dallison and Richard Wright for ten years at £5,322 a year—this was the Suffolk interest. In the middle of 1605 the Venetian State Papers indicate a change of attitude by the Crown, seemingly disturbed by the evidences of poor trade and unpaid representatives in the Levant, and in December letters patent established the Company on a new footing which maintained and enlarged its sphere of operation; the Company was to be open to all who subscribed a fixed sum, the Crown was to levy the imposition by

¹ This has been variously represented by writers as the result of poor trading conditions, or of a desire to conform to proclamations against monopolies, or as a crafty move to get better terms from James than from Elizabeth. The proceedings by the Crown twelve years later to recover the £2,000 make it quite plain that the Company could have paid but preferred not to, and took advantage of the consequent automatic forfeiture provided for in the letters patent of 1600 (Lincoln’s Inn, Hale MS. lxxviii (lxxiii), fols. 52r-55r).
its farmers, and the Company was to get from the Crown a present of £5,322, the first year's farm, with which to pacify the Sultan. Then in 1606 James began to demand payment on the spot.

On 2 April John Bate, a member of the Company, landed currants at London, paid the statutory poundage and refused to pay the imposition. On 11 April he was committed to the Marshalsea. Meanwhile the Commons were debating the Grievances to be exhibited to the King, and on 11 April counsel were heard for both merchants and farmers.\(^1\) When the Grievances were delivered to the whole House, the imposition on currants was no. 5; this was on 10 May.\(^2\) On 27 May the King prorogued Parliament, having decided to allow Bates Case to be resolved in the Exchequer Court. During the week 30 June-5 July counsel on both sides argued the case in the Exchequer; Topham and Davenport for Bate, Bacon and, perhaps, Doddridge for the King. The following Monday, 7 July, argument was concluded, and on the same day Dorset wrote to Salisbury that the Barons were for the King but thought it better to delay judgment until the next term, that they might have time to prepare reasoned statements—the Exchequer Trinity Term was due to end in two days. The following term Snigg and Savill declared for the Crown on Saturday, 8 November; on 10 November Clarke and Chief Baron Fleming did the same.\(^3\) With this result the King was able to answer the Grievance about currants in a reply read to the Commons on 19 November.\(^4\) For the time being the question of impositions was dropped.

The case does not seem to have excited quite as much contemporary interest as the attention paid to it nowadays would lead one to expect. Currants were only one of many commodities carrying an imposition, and Bates Case one of a line of cases from 1554 onwards about the legality of imposts.\(^5\) Moreover, it was decided at a time when the binding force of judicial

---


\(^2\) Ibid. p. 153.

\(^3\) A fuller account of this chronology, with details of the manuscript reports on which it is based, is given in my article on “Impositions and the Courts, 1554-1606”, which will appear in the Law Quarterly Review.

\(^4\) Commons Journals, i. 317.

\(^5\) See n. 3, supra.
precedent was as yet unknown; it was reported in manuscript but not printed for fifty years; and it was overshadowed by later events and in particular by the issue of a new Book of Rates in 1608, "which alarmed public opinion as the decision in Bates's Case failed to do"; and by the great Debate on Impositions in 1610. To a later age, however, the case stood out as one of the earliest clashes between Crown and Common Law in the constitutional struggle which was to ruin the Stuarts. Hallam, who saw the matter in terms of white right and black wrong, regarded the tax as indefensible, the decision as evidence of corruption and subservience. He was corrected in detail by Hubert Hall, who in his turn had to suffer the savagery of John Horace Round. Modern tendencies to specialization have meant that discussion of the case is now often from a particular angle, that of the constitutional historian, the lawyer, the political scientist. So that, from one point of view, the case illustrates "the old distinction between jurisdiction and gubernaculum", between those who "were relying exclusively on the precedents of the ancient jurisdiction" and those who "with equal justice could cite innumerable instances of royal acts of government beyond or even against the common law". On the other hand, lawyers, admitting the complexity of the affair but preferring to stick to the legal point, have said that "the gist of the decision was that the King might impose what duties he pleased if it was only for the purpose of regulating trade and not of raising revenue, and the Court could not go behind the King's statement that the duty was in fact imposed for the regulation of trade". To

2 The judges were "some corrupt with hope of promotion, many more fearful of removal, or awestruck by frown of power" (Constitutional History of England (London, 1810), p. 229).
4 The unfriendly correspondence between Hall and Round on this subject is in The Antiquary, vols. vi and vii passim.
6 Keir and Lawson, op. cit. p. 37. It was a point of great importance in Bates's Case whether James imposed for revenue or to control trade. The facts,
others the speech of Chief Baron Fleming, in which he distin­

guished between the absolute and ordinary power of the

King, has been the basis for discussion as to the nature of royalist

pretensions, “a first halting step toward the formulation of a

tory of ‘absolute’ prerogative such as would cover and

justify almost all the positive claims made and disputed down

to 1640”.1 Whatever the approach, however, these accounts

have one thing in common. They all depend on the report of

Bate’s Case printed in “Lane’s” Reports. The universal

acceptance of such a report, which, unlike an official entry on

the plea rolls, carries no authority beyond that of its maker,

seems to imply two beliefs; first, that this is the only available

report of the case, and second, that it is a report from a respect­
able source. The first belief is certainly wrong, for at least six

versions of the case exist in manuscript, and these I have detailed

elsewhere.2 The second belief is probably wrong, and to prove

it so is the purpose of this article. The arguments for this con­
tention are not conclusive; there will be no production of an

autograph manuscript with collector’s or publishers’ amendments

or additions. But the evidence does seem to point indirectly to

these conclusions which, if correct, throw interesting new light

on a trade already known to have few scruples. This evidence

comes from the life of Sir Richard Lane, from the printed book

itself, from the Registers of the Stationers’ Company, and

from the extant manuscripts of “Lane’s” Reports, which are

numerous.

The list of manuscripts which follows is almost certainly

incomplete. It covers only the Bodleian Library at Oxford,

the University Library at Cambridge, the college libraries of

these two universities, the British Museum and the Inns of

as distinct from legal presumptions, are these: the Elizabethan Company had

forfeited its charter when the first £2,000 was due to James; in November 1604,

when it was discovered that no bonds for impositions had been met, the Crown

remitted all arrears, about £6,000; from then to the beginning of 1606 the

only possible revenue was the first year’s farm of £5,322, and that was given to

the new Company. In short, until early in 1606 James had not a penny from

the impost on currants.


2 See p. 408, n. 3, supra.
Court. Yet it might, on the other hand, be criticized as excessive because, for the purpose of this article, "extant manuscripts of 'Lane's' Reports" means all collections of cases in which appear cases also found in the printed book of 1657. There are nine such manuscripts, and they can be divided into three groups, but this division is based solely on the present content of the manuscripts, and implies nothing at all as to provenance or kinship with one another. All of them are copies, some earlier than others, but certainly none later than the end of the seventeenth century. Five of them (Ha, Hy, Ca, L, Hb) are wholly or in part in the same hand, which suggests that they may be the product of one copying agency in the early part of the century. It is unlikely that any of them was, or can have been, used by the publishers in 1657, but it will be easier to explain this statement after giving the list of manuscripts.

Group I is represented by six manuscripts, Ha, Hy, L, Ca, Cb and A. The cases in these manuscripts are those in the printed volume, save that the manuscripts lack Wickham v. Wood ("Lane", p. 113), Beckett's Case ("Lane", p. 118) and the final note on fooffment to uses ("Lane", p. 119); they have, on the other hand, about forty cases distributed throughout the series which are not in the printed book. The manuscripts in the group are:

Ha = British Museum, Hargrave MS. 33, fols 5r-76v: formerly in the possession of E. Ummfreville whose Index refers to it as "Repts. in Scaccario etc. tempore Jacobi primi". It later belonged to Francis Hargrave, who added, "Lane, many of which not printed"; Hargrave was, however, referring to the cases at fols. 77r-94r which are in a different hand and have no evident connection with the earlier set of cases.

Hy = British Museum, Harleian MS. 4814, fols. 218r-264r. Some of the cases found in Ha are missing. It is not ascribed internally or in the catalogue to Lane.

L = Longleat (Marquis of Bath) MS. 244. The reports cover 70 folios, but the foliation of the book stops at fol. 53. The contents are exactly as in Ha. It is not ascribed internally or in the catalogue to Lane.

1 Even so I have excluded Lincoln's Inn, Maynard MS. 2, which contains many of the cases in "Lane", often in abbreviated versions, the order of cases differing from that of any other manuscript and some of the cases being repeated as many as three times. In no way, however, do the contents differ from those of the other manuscripts in a manner material to this article.
Ca = Cambridge University Library MS. Gg 11-23, fols. 17r-25v (A) and 157r-219v (B). This volume illustrates the common desire of collectors of law reports to have a chronological run (in this case from Mich. 2 Jac. to Mich. 11 Jac.), even at the expense of dismembering an extant set of reports. A and B were clearly together at one time. They are in the same hand; the original (and still surviving) foliation of A is 1-8 and of B 9-72; fol. 8r of this old foliation carries a catchword found on fol. 9r (now fols. 25v and 157r); the folios are pierced in a way not found elsewhere in the volume. They were separated to allow the chronological insertion of cases in 4 and 5 Jac. Moreover, A is preceded by 17 folios of cases in 2 Jac. The content of Ca is exactly as in Ha. It is not ascribed internally or in the catalogue to Lane.

A = British Museum, Add. MS. 35955, fols. 99v-147r. The whole manuscript is a volume of miscellaneous reports. On fol. 99v Bret v. Johnson begins in the form common to all the manuscripts. At the top of fol. 100r the report stops abruptly, and there is a reference to reports of the first two stages of this case earlier in the same volume (at fols. 65v and 69r; see infra, p. 423). Then “Lane’s” Reports continue with the Mayor of Lincoln’s Case, and at fol. 102r comes the third stage of Bret v. Johnson as found in “Lane” (infra, p. 424) but minus Serjeant Nichols’ speech, and somewhat abbreviated. The cases from “Lane” stop after Calvert v. Kitchin (Ha fol. 70r; “Lane”, p. 104). Several of the cases are abbreviated, and a few found in Ha are missing. The reports are not ascribed internally or in the catalogue to Lane.

Group II is represented by two manuscripts only, La and Lb. Each contains about twenty cases, none of them found in Group I. They are mostly from the Exchequer, but only two (Wickham v. Wood and Beckett’s Case) are in the printed book. Even these are reported in the manuscript at greater length than in the 1657 work and only with considerable and imaginative efforts in translation and re-ordering can the publishers have produced the printed reports of these two cases from these versions. They are included here, however, because this set of twenty cases appears again in Group III, and because several of the cases bear the same name as cases reported in Group I and the printed book, but seem to be later stages of those cases. The manuscripts are:

La = British Museum, Lansdowne MS. 1172, fols. 201r-295r. Written in a large hand, probably of the late seventeenth century. It later belonged to E. Umfreville, who labelled it as “part of Lane’s Reports”, but made the mistake of putting page references to the printed book against the reports of those later stages noted above. It is catalogued as part of Lane’s Reports.
BATE'S CASE AND "LANE'S" REPORTS 413

Lb = British Museum, Lansdowne MS. 1098, fol. 30r-107v. The content is the same as La, in a hand of about the same time. It is not ascribed internally or in the catalogue to Lane.

Group III is represented only by Hb (fol. 1r-110v), which is a composite of Groups I and II, consisting of Group I with Group II interpolated at fol. 83r-110v. In addition, however, to the cases already noted in Group II (including Wickham v. Wood and Beckett's Case) there are three others, one from the Chancery and two from the Exchequer.

Hb = British Museum, Hargrave MS. 16, fol. 3r-111r. The manuscript belonged to Sir Henry Calthorpe, in whose execrable handwriting are the running titles at the top of the pages and the marginal notes. It later belonged to Francis Hargrave, who labelled it "Sir Henry Calthorpe's Copy of Lane's Reports". To fol. 83r the content is as in Ha, then follow the cases from La and Lb with the three additions, and at fol. 110v the order reverts to Ha again. At fol. 83r the handwriting becomes that which is found in four other of the manuscripts and this hand continues to the end of Hb.

The difficulty in saying that any of these nine manuscripts was, or could have been, used by the publishers is that Hb alone contains enough cases, but even it lacks the note on feoffment to uses ("Lane", p. 119) and has Wickham v. Wood and Beckett's Case in a different form. The versions in "Lane" and in Hb may have a common origin but those in "Lane" can hardly be taken from Hb. The handwriting common to five of the manuscripts 1 may lead to conjecture, but has suggested no obvious solution, save that the present confused state of the manuscripts may in part result from the vagaries of a professional copyist. It is possible that the original "Lane's" Reports is represented by Group I, that Group II is the work of another man (or perhaps the later work of the same man, since later stages of the same cases appear), and that Group III is a composite work. To conjecture further would require a greater degree of collation than has been attempted, and a greater measure of trust in the results to be obtained from such collations. The difficulty is not, in any case, material to the contentions that follow, though its solution would add to our knowledge of publishers' methods with law reports.

1 It occurs as follows: Ha—all; Hy—fol. 224r to end; Ca—all; L—fol. 52r to end; Hb—fol. 83r to end.
Though the main contention in this article concerns Bates Case, there is first to be considered the suggestion that Lane was perhaps not the author of any of the reports in the printed book. There is an account of Lane’s life in the Dictionary of National Biography, but a fuller statement of his legal career will help to show that he is not likely to have written the reports.

Richard Lane was born at Harpole in Northamptonshire in 1584. His father has, without evidence, been variously described as “yeoman” and “poor though of good family.” The son went to Westminster School and thence, perhaps, to Cambridge, but he certainly never graduated. In 1605 he became a student of the Middle Temple in London. His progress in the Inn is clearly marked in the Parliament Books to the day in February 1613 when he had satisfied the new regulations designed to arrest the educational decline of the Inns, and was confirmed and sworn as Utter Barrister.

For a space of fourteen years the entries relating to Lane in the Parliament Book are confined to penalties for absence from Readings, and notes that he is surety for a newly admitted

1 Northampton Borough Records, ed. J. C. Cox, ii (Northampton, 1898), 106.
2 R. M. Sergeantson, History of the Church of St. Peter, Northampton (Northampton, 1904), p. 180. In 1602 Richard Lane, senior, was assessed for subsidy on his goods at £5 13s. 4d. (Northants Record Society, ed. J. Wake, iii. 96). It is not safe to attempt absolute conclusions from such figures, but comparison with other figures gives these results: in the 10 hundreds of the West Division of Northamptonshire 365 were assessed on goods at less than Lane, 15 at the same amount, 19 at a higher amount. In his own hundred of Wymersley these figures are 56, 1, 2. This takes no account of assessments on land, paid usually by a small and prosperous minority.

3 According to J. Welch, Alumni Westmonasterienses (London, 1852), p. 70, Lane went from Westminster to Trinity College, Cambridge, in 1602. There is no mention of him in the volume of Admissions to Trinity College, Cambridge, 1546-1700, ed. W. W. Rouse Ball and J. A. Venn (Cambridge, 1913), but the information for this period is based on University not College sources. In any event Lane never graduated (The book of matriculations and degrees at Cambridge, 1554-1659, ed. J. and J. A. Venn (Cambridge, 1913)). According to G. F. R. Barker and A. H. Stenning, The Record of Old Westminsters, ii (London, 1928), 553, he was “elected head to Trinity College Cambridge 1602 but was never admitted”.

student. Then on 9 February 1627 Lane was appointed with three others to provide the Lent Reader’s Feast, a customary prelude to advancement. The following February he was chosen with three others to stand at the Cupboard. Those who stood at the Cupboard argued in turn the Reader’s case; four times at the Cupboard were normally followed by election as next Reader. Sir Robert Brerewood, whose account of the Middle Temple Dugdale transcribed without acknowledgement, noted that “no man ought to take upon him to be a Cupboard man unless he Resolveth to read when his turn cometh; . . . yet time alone makes not a Cupboard man”. It is not easy to discover what had made Lane a Cupboard man; certainly time alone seems to have made him a Reader, for on the first three of the four occasions on which he was chosen to stand at the Cupboard he paid £5 fine for not being at the Cupboard. On the fourth occasion, the Autumn Reading of 1629, there is no record of a fine and in October he was chosen next Lent Reader. According to Dugdale he did not read (“electus; sed non legebant causa pestilentiae, fol. 50a”), but this reference to the manuscript Parliament Book of the Middle Temple is to the Autumn Reading following Lane’s. Lane did, in fact, read in Lent, and in a manuscript volume of Readings in the Hargrave Collection there is a brief version of “Mr. Lane’s Lecture Quadrages 1629 [i.e. 1630], sur lestatut de 21 H 8 cap 13 de Non Residence”. Lane continued his progress; in 1636 he moved into the chamber of Sergeant Malet, a Bencher’s chamber; in January 1637 he and Sir Henry Calthorpe were appointed to discuss with certain Benchers of the Inner Temple an amicable settlement of the controversy between the two houses; in

1 Minutes of Parliament, ii. 716.  
2 Ibid. ii. 729.  
4 Minutes of Parliament, ii. 731, 738, 745.  
5 Ibid. ii. 752, 757.  
6 Origines Judiciales, p. 220. I am indebted to the Librarian of the Middle Temple for permission to confirm Dugdale’s error from the manuscript Register of the Society.  
7 British Museum, Hargrave MS. 91, fols. 338r-347v. It is a brief account in a style suggesting notes taken at the time of the Readings by one of the audience.
October of that year he was confirmed as Treasurer of the Middle Temple. From this date until his flight from London in 1644 there is little of interest to note about him in the Temple.

The unhappy events of Lane's later career are better known and can be briefly stated. He was a devoted Royalist. His defences of Strafford, Berkely and the Twelve Bishops in 1640-2 were followed in 1644 by flight to Oxford, where he was successively knighted, called to be a sergeant and given the degree of D.C.L. In his absence the Benchers of his Inn, in obedience to an order of the Commons, gave to Bulstrode Whitelocke the chambers formerly occupied by Lane, and the books and manuscripts therein. In 1645 Lane was made Lord Chief Baron of the Exchequer, and in the next year he became Lord Keeper. After the surrender of Oxford in 1646 he went into exile with Prince Charles, and died in Jersey in 1650.

At this point it is necessary to go back to a problem already indicated. In 1613 Lane was finally called to the bar; in 1627 he was appointed to stand at the Cupboard. He must have made some reputation as a lawyer. How had he done this? Foss was content to say that "it may be inferred that his early practice was in the Exchequer, from his Reports of Cases in that court from the 3rd to the 9th James I, 1605-1612".

1 Minutes of Parliament, ii. 843, 858.
2 Minutes of Parliament, ii. 930. Whitelocke's receipt for these and for some books and manuscripts of Lord Littleton, dated 2 September 1646, is printed in F. Peck, Desiderata Curiosa, ii. (London, 1779), 366. According to Anthony Wood, Fasti Oxonienses, ed. Bliss, ii (London, 1820), 64, Lane's son went to Whitelocke to seek his father's papers, "but Whitlock would not own that he ever knew such a man as sir Richard, and therefore he kept what he had of his". Whitelocke nowhere in his Memorials mentions Lane's books and manuscripts, though he speaks of keeping Littleton's papers, "to have the present use of them, and resolving, if God gave us an happy accommodation, to restore them to the owner or to some of his family" (Memorials of the English Affairs (London, 1732), p. 172). An examination of the Whitelocke papers at Longleat, however, revealed only a copy of the original Commons order (vol. ix. fol. 18r); nothing else relating to Lane seems to be there.

3 Lane's later career is well described in the D.N.B. The peculiar circumstances of his death and funeral in Jersey are given in Northamptonshire Notes and Queries, N.S., vol. v, pp. 162.
years of these reports are, of course, the years of Lane's student-
ship, and naturally he plays no part in them. But even after
his call, there is no mention of his name as counsel in any pub-
lished report until the trial of Strafford in 1641. He could not,
of course, appear in the Common Pleas where the sergeants
still had the monopoly. The Exchequer suffers from lack of
reporters at this period: "Lane" is too early for this purpose,
"Jenkins Centuries" ¹ contains few Exchequer cases and is
mainly an abridgement of other reporters, Hardres ² is too late.
However, the reports attributed to Littleton,³ though predom-
inantly from the Common Pleas, contain a selection of Exchequer
cases from 3 and 4 Charles I in which many counsel are men-
tioned; but Lane makes no appearance. Though excluded
from the Common Pleas, there was no reason why Lane should
not have practised in the King's Bench, even if his main interest
was in the Exchequer; many of the counsel mentioned in
"Lane's" Reports in the Exchequer appear in King's Bench
reports also. Not so Lane, who appears nowhere. Perhaps,
then, Lane was not busy at Westminster but elsewhere. Several
possibilities exist.

In the first place, Lane kept up his local connections in
Northamptonshire. It was the custom of the Borough of
Northampton to have an official for ordinary legal work called
the town attorney or counsel, who was appointed for life. On
the removal of Francis Tate to Wales in 1602 his place as
attorney to the town was taken by Francis Harvey.⁴ According
to one authority, in 1615 "Lane was chosen counsel for, or
deputy recorder of, Northampton".⁵ There is no evidence
for this in the manuscript Borough Books of Assembly, but two
conveyances to the Corporation in 1622 are said to be done in
the presence of Francis Harvey and Richard Lane; perhaps
Lane was assistant to Harvey.⁶ In 1624 Harvey was appointed

¹ Published in Law French in 1661, and containing 800 cases from 1220 to
1623. ² Published in English in 1693, and covering the period 1655 to 1669.
³ Published in English in 1683, and covering the period 1626 to 1632; the
doubt as to authorship comes from Wallace, op. cit. p. 266.
⁴ Northampton Borough Records, ii. 72. ⁵ D.N.B.
⁶ Stuart A. Moore, MS. Calendar of Northampton Borough Records (North-
ampton Borough Muniments), 1864, pp. 182, 187.
a judge of the Common Pleas, and on 24 January 1625 Lane succeeded him as attorney and was made a freeman of the Corporation.\(^1\) In 1631 the Recorder of Northampton died, and on 20 February 1632 Lane was elected Recorder.\(^2\) This progress in the town suggests that Lane may have been active locally, and perhaps travelled the Midland circuit, which began at Northampton. Unfortunately reporting was almost wholly confined to Westminster. Of the published reports the only exception for this period is Clayton's *Reports and Pleas of Assizes at Yorke*, and the manuscripts are not more helpful. There is nothing from the Midland circuit.\(^3\)

A further possibility concerns Lane's relations with the Crown. His devotion in later years has already been noted; but as early as 1634 he had been made Attorney General to the Prince of Wales,\(^4\) and letters of that time show that he was busy on Royal affairs and declaring himself "most ready to set all private respects aside to wait upon his Majesty's service".\(^5\)

This biographical detail shows that Lane is not a prominent candidate for authorship of the Reports. The Reports, according to the title-page, run from 1605 to 1611. Lane was not called until 1613. It would be necessary, then, to suppose that he wrote the reports while a student. It is true that students did write reports, but however natural it might be that a practitioner should confine his reporting to one court, it is surprising that a student should so restrict his activities, and even more surprising that he should choose the Exchequer. The evidence of the middle years does not help; Lane is office holder in his native Northampton, legal adviser to the Crown, perhaps on the Midland circuit or in Cambridge, but apparently not in the courts at Westminster. In his last years he became Lord Chief

\(^1\) Northampton Borough Muniments, MS. Books of Orders of Assembly, i. 790.

\(^2\) Ibid. ii. 21.

\(^3\) Nothing, that is to say, from an inspection of potentially helpful manuscript reports in the libraries searched for "Lane's" Reports.

\(^4\) *Cal. S.P. Dom.* 1634-5, p. 221.

\(^5\) *Hist. MSS. Comm.* (Cowper), ii. 36 and 73. This last letter was written from Northampton. According to Barker and Stenning, op. cit. ii. 553, Lane was "counsel to Cambridge University, 1635".
Baron of the Exchequer, but his choice from among few candidates to preside over a Court lacking business does not make it necessary to suppose him learned in the ways of that Court.

So much for the evidence from Lane's career. Further negative evidence comes from the manuscripts. All the manuscripts which have been detailed above are in seventeenth century hands. Hb, indeed, can be dated before 1637, for it belonged to Sir Henry Calthorpe whose annotations it carries throughout, and Calthorpe died in that year. Moreover, Hb is one of the five manuscripts wholly or in part in the same hand, and this suggests that all five were the work of one agency at about this date or earlier. Yet not one of the manuscripts has an ascription to Lane in a contemporary hand. In fact, only three of them are catalogued as Lane's Reports (Ha, Hb and La), and in each case it is on the strength of identification by an antiquarian owner of the manuscript at a much later date, long after the printing of "Lane's" Reports. It is particularly surprising that Calthorpe did not himself ascribe the reports in Hb to Lane, if they were his, for it will be remembered that he was a fellow member of the Middle Temple and had, with Lane, represented his Inn in talks with the Inner Temple in January 1637.

It comes to this, then, that the only reason now apparent for attributing these reports to Lane is the fact that they were published seven years after his death in a volume which has no Introduction, which makes no attempt to explain the provenance of the manuscript, but simply asserts that the reports are by Lane.

It is time now to consider the second contention, that, whoever was the author of the reports, he never reported Bate's Case. The printer's manuscript does not seem to have survived, and so it is necessary to begin by comparing the printed book with those manuscripts which have come down to us. At once a

1 Ha and Hb by Francis Hargrave (1741-1821); La by Edward Umfreville (flor. 1740-1758).
2 Supra, p. 415. Moreover, the reports were not described as Lane's by the publishers when they entered them in the Stationers' Register; infra, p. 421.
remarkable fact appears, that Bate's Case is not reported in any of these manuscripts. The grouping of the manuscripts has been described above; whatever the variations, they have all in common the lack of Bate's Case. On the other hand, all the manuscripts in Group I (which most nearly approximates to the reports as printed) contain cases not found in the printed book. An analysis of Ha gives the following results. It contains 125 cases and short notes. Of these 125, 88 occur in the printed Reports, reduced in form to 86, and with 4 additions comprise the whole content of the published work.¹ These 90 cases and notes are all, with one exception, represented as being Exchequer cases.² There remain 37 cases in Ha which are not in print. They occur at fols. 18v-21r, 26v-27r, 28r-33v, 42r-44r, 45v-47r, i.e. they are well distributed throughout the manuscript. Twenty-six of these cases are said to be reported from Sergeants' Inn (as decisions of all the judges on commission, or error, or on removal from the Court of Wards); 2 from the Court of Wards; 8 from Exchequer Chamber on error; 1 only from the Exchequer.³ The significant fact, then, is that with only one exception either way, the cases included in the published volume purport to be Exchequer cases, and those excluded do not. Taken in conjunction with the presence in the published work of Bate's Case, this suggests that there may have been a

¹ The reduction from 88 to 86 is because Bret v. Johnson, which occurs in three stages in the manuscript (fols 5r-9r, 10r-12r, 15v-17v) is presented as one entry in the printed book (pp. 1-14). The four additions are the two cases and note not found in Ha (which are discussed supra, pp. 411-13), and Bate's Case.

² The exception is "Wikes by English Bill in the Exchequer Chamber Trin. 7 Jac." ("Lane", p. 54). This is not a real exception, for it is not an appeal in a Court of Exchequer Chamber but an instance of the Equity jurisdiction of the Exchequer in what Coke called "The Court of Equity in the Exchequer Chamber", 4 Inst., 118; see Holdsworth, History of English Law, 5th edn., i. (London, 1931), 240-2.

³ The exception is Waller v. Hanger (Ha, fol. 39r). A possible reason for its exclusion, if it was in the publishers' manuscript, is that a long report of the later stages of this case in the King's Bench had already been printed in Calthorpe's Reports, 33 (published 1655). Moreover, the trio had in hand the publication of Bulstrode's Reports (entered in the Stationers' Register 21 May 1656), of which the three volumes appeared in 1657, 1658, 1659; Waller v. Hanger is reported in 2 Bulst. 134, 261, and in 3 Bulst. 1. The many stages of this case, which was also reported in Moo. K.B. 1120 and 1 Rolle 138, are narrated by Coke C.J. at 3 Bulst. 20.
design to sell Exchequer cases, and to improve the sale by including *Bate's Case*.¹

This suggestion, however, rests only on evidence from extant manuscripts, which might differ materially from that used by the publisher. The nearest we can get to the original manuscript is the entry in the Stationers’ Register made by the trio when they registered their manuscript with two other sets of reports on 31 May 1656.² The entry reads: "Entred under the hand of Master Norton, warden, a booke entituled... Reports in ye Exchequer Chamber beginning in the third of King James and ending in the 11th yeare of his reigne". The entry does not specifically identify the book as "Lane’s" Reports, but the date, publishers and general description correspond too well to allow of any doubt. The entry is interesting in two ways. It mentions "Reports in ye Exchequer Chamber"; it covers the period 3-11 James I. The reference to the Exchequer Chamber is not conclusive of the presence of what we would call Exchequer Chamber cases, for it was not uncommon at that date to speak loosely of Exchequer cases as cases decided in the Exchequer Chamber. The dating, however, has a more direct bearing on the problem, for in Group I, as in this entry in the Register, the cases are dated from 3-11 James I whereas in the printed work the dating is from 3-9 James I.³

The Stationers’ Register, then, adds some force to the suggestion that the publishers tampered with their manuscript in the way outlined above. It is necessary now to see what internal evidence the printed book affords of such an operation.

¹Reference to the dates of publication given at p. 417 nn. 1, 2 and 3 will show that "Lane’s" were the first Exchequer Reports ever to be printed, a point stressed by the publishers on their title page.

²H. R. Plomer, *A Transcript of the Registers of the Worshipful Company of Stationers 1640-1708*, ii (London, 1913), 62. The significance of such an entry in the Register is discussed by R. B. McKerrow in *An Introduction to Bibliography* (Oxford, 1928), pp. 135-7. Entries of law books by the trio seem always to have been before publication, and probably on receipt of the manuscript rather than on completion of printing; e.g. Bulstrode’s Reports were entered on 21 April 1656, but the last of the three volumes did not appear until 1659.

³The last case in Group I is *Mrs. Chamberlain’s Case*, which is there dated Mich. 11 Jac.; in the printed book the case appears between two of the extra cases not found in Group I (*Wickham v. Wood and Beckett’s Case*, supra, p. 411), and is dated Pasch. 9 Jac.
It can be said at once that whether or not the trio acted the part of knaves, they certainly worked in a slipshod and clumsy way. The transcription and translation are not good.\(^1\) For the present purpose, however, it is the dating that is of interest. Many of the cases have a date (term and regnal year) at their beginning, and on every page of the book there is a marginal heading of term and regnal year. This latter heading proceeds from Mich. 3 Jac. (p. 1) to Pasch. 9 Jac. (p. 119). Such a chronological progression gives the impression that the reporter, working solely in the Exchequer, reported term by term for nearly six years. Since James I began to rule on 24 March, the sequence of terms in a regnal year should be Pasch., Trin., Mich., Hil. In fact, the book begins with the sequence Mich. 3 Jac, Hil., Pasch., and Mich. 4 Jac., which suggests that these dates were written in by someone who had forgotten or never knew this fact. Much more interesting than this, however, is the demonstrable falsity of many of the dates, and the relation this has to Bates Case. Before going into the detail of this matter it is not only fair to the publishers but relevant to the problem to say that the dating of the cases themselves follows fairly closely that given in most of the manuscripts.\(^2\) The interest of this is that if the publishers accepted the dating of their manuscript, and if that dating were incorrect, then an attempt to insert a correctly dated case in its chronological order would not be difficult to detect. Now Bates Case appears in the printed book under Mich. 4 Jac., which is the correct date.\(^3\) It is preceded in the book by a number of cases and short notes

\(^1\) Whether or not the publishers used a manuscript more defective than those now extant, the following translations show little intelligence:

p. 55. “It was moved for the King upon a lease holden for him” for “move del Roy in un leete pur luy tenus”.

p. 100. “I.S. was parson of D as appropriate” for “I.S. fuit person de D come impropriate”.

p. 117. “Yorke recovered by Indictment in the King’s Bench against Allen upon an Assumpsit” for “Yorke recover per iudgment in Ba. le Roy”, etc.

These examples are not unusual for law publishing at that date.

\(^2\) There are slight variations among the manuscripts; for Calthorpe’s attempt to correct some of the dates see the dating of Bret v. Johnson, infra, p. 423.

\(^3\) Supra, p. 408.
dated Mich. 3 Jac., Hil. and Pasch. 4 Jac.; and it is followed by cases of Hil. 6 Jac., Pasch. and Trin. 7 Jac., and so on. All this is very proper in a chronological series; yet, wherever it is possible to date from internal or other evidence the cases preceding Bates's Case, the result is to place them after and not before Mich. 4 Jac. The evidence to show that these cases were argued at a date later than Bates's Case is given below. The attempts to assign exact terms and years to the cases are not strictly necessary to this purpose, but if these conjectural dates are looked at as a series they will be seen to run from Pasch. 6 Jac. through Trin. to Mich. 6 Jac. It is for this reason that the manuscript order of cases has been retained, with Bret v. Johnson appearing in three parts. The page and date references are to "Lane's" Reports, the folio references to Hb.

**Bret v. Johnson.** The three stages into which this is divided in the manuscripts (supra, p. 430, n. 1) correspond to three stages in the argument.

(a) (pp. 1-8, fols. 3r-8v: dated Mich. 3 Jac.). Calthorpe altered the page heading in Hb from "M. 3 Jac." to "M. 5 Jac. argued Trin. 6 Jac." It is certainly at least as late as Trin. 5 Jac. for it refers to Popham as late Chief Justice, and he died on 10 June 1607. Probably Pasch. 6 Jac., the date given to it in British Museum, Add. MS. 35955, fol. 65v (a different report of this first stage).

**Case of Pirates' Goods** (p. 15, fol. 8v: dated Hil. 4 Jac.). There is no evidence to date this. Francis Hargrave's copy of the printed "Lane's" Reports now in the British Museum has a note in Hargrave's writing, "See Park Rep. in Scacc. 204, 205." I have not been able to identify these reports; they are not printed.

**The Case of Queen's College in Oxford** (p. 15, fol. 8v: dated Hil. 4 Jac.). Citation of Coke's Reports, vol. 6 (published 1607), and the appearance of Doddridge as King's Sergeant (created 25 June 1607) put the case at Trin. 5 Jac. at earliest. Probably Trin. 6 Jac., the date given in British Museum, Add. MS. 35955, fol. 70v (a different report of the case).

(b) (pp. 8-12, fols. 9v-12v: dated Mich. 3 Jac.). This stage must be as late as Trin. 5 Jac., for Tanfield is Lord Chief Baron of the Exchequer (appointed 25 June 1607). Probably Trin. 6 Jac., the date given in British Museum, Add. MS. 35955, fol. 69v (a different report of this second stage).

**Mayor of Lincoln's Case:** Huddleston v. Hill: Prohibition to Ecclesiastical Courts (p. 16, fols. 12v-13r: dated Hil. 4 Jac.). In both Ha and Hb these cases are attributed to the King's Bench and dated Trin. 6 Jac. This
heading seems also to cover the following two cases. The only internal evidence is the name Williams as counsel or judge; probably Sir David Williams, a judge of the King's Bench from 1604 to 1613.

Skelton against the Lady Airie (p. 17, fol. 13r: dated Hil. 4 Jac.). Internal evidence suggests the King's Bench, for the case is a Prohibition. In Ha and Hb it seems to be grouped under Trin. 6 Jac. with the three cases above. It is almost certainly an obscure version of a case reported as Skelton v. Robert Atye in British Museum, Add. MS. 35955, fol. 89v; and as Colton v. Dame Atee et sa fils in Cambridge University Library, MS. Gg V-5, fol. 162v. In both these reports the date, which is supported by internal evidence, is given as Trin. 6 Jac. in the King's Bench, and the latter report ends with a day given to Michaelmas Term for further argument.

Marie Reps against Babham (p. 17, fol. 13r: dated Hil. 4 Jac.). This is the same case as Reps v. Bonham, printed in Yelverton's Reports 131 as of Trin. 6 Jac. in the King's Bench. Other reports are Reps v. Bonham (Bodleian Library, Rawlinson MS. C 382, fol. 29v); Reps v. Bodham (British Museum, Lansdowne MS. 1062, fol. 155v), and Bodham v. Reps (Cambridge University Library, MS. Gg V-5, fol. 163v), all of which assign the case to Trin. 6 Jac. in the King's Bench.

Richards against Williams (p. 18, fol. 13v: dated Pasch. 4 Jac.). Judges mentioned are Chief Baron Tanfield (appointed 25 June 1607) and Baron "Hern" (i.e. Heron, appointed 5 November 1607) and so the case is at least as late as Mich. 5 Jac.

An Information against Page (p. 19, fol. 14v: dated Pasch. 4 Jac.). The only internal evidence is that Hitchcock and George Croke were opposing counsel. This is no help.

York and Allein (p. 20, fol. 15r: dated Pasch. 4 Jac.). The case is clearly an early stage of Mrs. Chamberlain's Case which appears at p. 117 in "Lane", but there is no evidence to date it.

Note on Copyholder (p. 20, fol. 15v: dated Pasch. 4 Jac.). No evidence.

Dennis against Drake (p. 20 fol. 15r: dated Pasch. 4 Jac.). Tanfield is Chief Baron and so the case must be Trin. 5 Jac. or later.

Saint Saviours in Southwark in an Information (p. 21, fol. 15v: dated Pasch. 4 Jac.). Chief Baron Tanfield is again a judge, and so the case must be Trin. 5 Jac. or later. Moreover, it is an early stage of a case reported at length in 10 Co. Rep. 66a, where Coke states that the information "is entered Hil. 5 Jac.", which puts the case nearly a year later.

Three notes (p. 21, fol. 16r: undated). No evidence.

Bret v. Johnson.

(c) (pp. 12-14, fols. 16r-18v: dated Mich. 3 Jac.). The text of the printed book and the manuscripts begins this part of the case "And after, Termino Mich. Anno Sexto Jacobi Regis". This is probably correct, for it fits with the dates for parts (a) and (b) of the case given above.
At this point in the printed book comes Bates’s Case, dated Mich. 4 Jac. Since nearly all the surviving manuscripts make the same mistake with these early cases, it is reasonable to suppose that the publishers fell into the common error and misplaced Bates’s Case when they inserted it into their manuscript.

The evidence of the manuscripts of “Lane’s” Reports, of the Stationers’ Register and of the printed Reports themselves all goes to suggest that the publishers may have introduced Bates’s Case into their Reports, which had been pruned of all but Exchequer cases and attributed to Lane. It is, of course, at best a plausible conjecture; it would have been helpful to have some contemporary advertisement by the trio to show whether any stress was laid on Bates’s Case. It is true that the title-page comments on the Exchequer origin with some pride (“Being the first Collections in that Court hitherto extant”) and that the ‘Exact Table of the Principall Matters’ refers to “An information against one for refusing to pay Impost for Currants, a famous Case”; but these are no more than the customary flourishes of the time, and no evidence of intent to deceive. It was at almost this very date that advertisements of current publications began to be carried at the back of printed books, but no such advertisement of “Lane’s” Reports has been traced.

In conclusion, it may be asked, where did the printed report of Bates’s Case come from? As I have shown elsewhere, there was no lack of reports of this case, and at least six versions exist

1 Calthorpe’s amendments to Hb have been noted. The variations in A are mentioned under the several cases, but A is incomplete and cannot have served as model for the publishers.

2 At the end of the book, unpaged.

3 E. Arber, “Contemporary Printed Lists of Books produced in England”, Bibliographia, vol. iii (1897), suggested that the practice of putting a list of publications at the back of a book may have begun by Philemon Stephens in 1656—this list is one of four in Bodleian Library, Wood MS. 22 D. None of the six volumes of reports published by the trio between 1657 and 1659 (supra, p. 405 n. 3) carries such a list in its present bound state in the Bodleian Library, but lists of this kind seem often to have been torn out preparatory to the binding of the book at a later date. “Lane’s” Reports are noted in the 1657 edition of William London’s Catalogue of the most vendible books in England (to 1 August 1657) but without any comment.
The version used in "Lane's" Reports is a translation of a Law French report of Bates Case to be found in British Museum, Lansdowne MS. 1,062 at fols. 188v-197r. This is itself a copy with scribal errors and omissions (it is almost certainly not the example used for the translation in "Lane"), but it is considerably better than the translation, making sense in some places where the English version does not. It occurs in a volume of cases which once belonged to E. Umfreville, whose comments on its origin are transcribed in the Catalogue of the Lansdowne Manuscripts. Umfreville wrote of them as "Rant's Law Cases", and added that he had seen them elsewhere as "Reeve's Cases". Neither name is that of a published book of reports, and none of the cases in the manuscript which immediately precede or follow Bates Case seems to have been printed. We are left, then, with an anonymous report from an unprinted collection, poorly transcribed and mistranslated, interpolated into another anonymous set of reports, the whole fathered by three Commonwealth publishers on to a dead

1 These versions are listed and discussed in the article referred to supra, p. 408 n. 3.
3 As examples the following manuscript readings can be compared with the printed version from "Lane":
   (a) p. 27: "and this power is guided by the Rules, which direct only at the Common Law".
   fol. 193r: et cest poer est guided per les rules queux direct solement al Comon bon".
   In attempting to make sense of this passage about the absolute power of the King, G. W. Prothero, Constitutional Documents of Elizabeth and James I, 4th edn. (Oxford, 1913), p. 341, and J. R. Tanner, Constitutional Documents of the Reign of James I (Cambridge, 1930), p. 341, both insert "not" before "guided" as having been "accidentally omitted in the report" (Prothero). This explanation does not now seem likely.
   (b) p. 28 (l. 10): "and so much for the person of Bates the subject".
   fol. 194*: et tant pour le person le roy et son power et son charge. Ore pour le person de Bates le subiect".
   The omission in the printed book makes nonsense of the passage.
   (c) p. 28 (11 lines from bottom): "this hurteth not the merchant, nor no other, but only a small number of delicate persons, and those also who are of most able and best estate, for their pleasure, but when
Royalist lawyer. This is not the safest sort of material on which to rely in writing constitutional history, a fortiori if other material lies ready to hand.

the King is in want, he is to be relieved by a general imposition or subsidie upon all the subjects.”.

fol. 194v: “delicate persons, et ceux auxi que sont de plusi able, et melior est de levy argent en cest manner de les rich pur lour pleasure, que en want de ce est reliefe per un generall impost ou subsidie sur tous les subiects” (my punctuation).

“Est” is not “estate”; the omitted words wholly change the sense.