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# The Court of Exchequer Comes of Age

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# Tudor Rule and Revolution

Essays for  
G. R. ELTON  
from his American friends

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Edited by  
DELLOYD J. GUTH  
and  
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# The court of Exchequer comes of age

W. HAMILTON BRYSON

The Exchequer was well established as a court of law in the thirteenth century.<sup>1</sup> For the next three hundred years, the Exchequer court seems to have carried out its duties without much change in function or status.<sup>2</sup> At the beginning of the sixteenth century, the judicial business of the Exchequer amounted to about 200 cases per year as compared with about 2500 in the court of King's Bench and 10,000 in the Common Pleas.<sup>3</sup> However, during the middle period of the reign of Henry VIII, the first signs of growth since the thirteenth century appeared. This expansion of the court of Exchequer continued steadily through the reigns of the later Tudors to the beginning of the Interregnum. In 1649 the Exchequer court established itself as a high court of general jurisdiction in both common law and equity. At this point the Exchequer can be said to have come of age as a court of law. This development began during the reign of Henry VIII and can be seen as part of the Tudor Revolution in government.

## I

The expansion of the judicial jurisdiction of the Exchequer paralleled the increase in its political and financial importance. Perhaps the court could

<sup>1</sup> See Charles H. Jenkinson and Beryl E. R. Formoy (eds.), *Select Cases in the Exchequer of Pleas*, Selden Society, XLVIII (London, 1932); John H. Baker, *Introduction to English Legal History*, 2nd edn (London, Butterworths, 1979), 44-6; S. F. C. Milsom, *Historical Foundations of the Common Law* (London, Butterworths, 1969), 20-1, 53-4; Charles Gross, 'The jurisdiction of the Court of Exchequer under Edward I,' *Law Quarterly Review*, xxv (1909), 138-44.

<sup>2</sup> There are no detailed studies of the court of Exchequer during the fourteenth and fifteenth centuries; so these generalizations should be accepted with caution, until the end of the era. Then see, DeLloyd J. Guth, 'Exchequer penal law enforcement 1485-1509' (University of Pittsburgh, Unpublished Ph.D. thesis, 1967) which gives detailed analyses of mesne process and quantified litigation. There is no published book on the Exchequer similar to Margaret Hastings, *The Court of Common Pleas in Fifteenth-Century England* (Ithaca, N. Y., Cornell University Press, 1947), and Marjorie Blatcher, *Court of King's Bench 1450-1550: A Study in Self Help* (London, Athlone Press, 1978).

<sup>3</sup> DeLloyd J. Guth, 'Notes on the early Tudor exchequer of pleas,' in Arthur J. Slavin (ed.), *Tudor Men and Institutions* (Baton Rouge, Louisiana State University Press, 1972), 106.

not have increased the scope of its jurisdiction without the approval and support of the most powerful politicians of the kingdom. Even if their good wishes were not necessary, their self-interest would not have hindered the growth of the court.

The lord treasurer was the head of the Exchequer. Although he never sat on the common law side of the court, he did sit on the revenue and equity sides. During the middle ages the office of lord chancellor seems to have been more important politically than that of lord treasurer, and the chief advisors to the king, such as Cardinal Wolsey, preferred to be appointed to the former office. From 1547 to 1612, however, the men who held the office of treasurer – Edward Seymour, William Paulet, William Cecil, Thomas Sackville, and Robert Cecil – were far more prominent politically than the chancellors of the time. With powerful politicians as head of the Exchequer department, times were favorable for the expansion of the Exchequer court.<sup>4</sup>

The fact that Thomas Cromwell, the chief advisor to Henry VIII from 1533 to 1540, was not lord treasurer is noteworthy. The treasurer during this time was Thomas Howard, third duke of Norfolk, who had been given the office in 1522; his military skills made him indispensable to the king, and he was not removed in favor of Cromwell. Cromwell received instead the office of chancellor of the Exchequer, and he significantly increased its prestige and power.<sup>5</sup> The office of chancellor of the Exchequer became the second office in importance in the Exchequer during the sixteenth century, overshadowing the lucrative offices of the chamberlains of the Exchequer. This was significant in the expansion of the Exchequer court because the chancellor of the Exchequer sat with the barons of the Exchequer to hear suits brought on the equity side of the court. The earliest equity bill of complaint presently known to have been filed in the Exchequer is that in the case of *Capull v. Ardern* (1543–5).<sup>6</sup> This suit commenced shortly after the fall of Thomas Cromwell.

Several months after the accession of Elizabeth I, Sir Walter Mildmay was appointed chancellor of the Exchequer. He was an active politician in the middle rank of Tudor government. During his thirty-year tenure as chancellor of the Exchequer, the equity side of the Exchequer picked up a large amount of judicial business, and its office procedures and archives were established.<sup>7</sup> Between the appointment of Cromwell to this office

<sup>4</sup> W. Hamilton Bryson, *Equity Side of the Exchequer* (Cambridge, CUP, 1975), 34–41, 171.

<sup>5</sup> G. R. Elton, *The Tudor Revolution in Government* (Cambridge, CUP, 1953), 114–19, 266.

<sup>6</sup> PRO, E 111/14.

<sup>7</sup> Stanford E. Lehmberg, *Sir Walter Mildmay and Tudor Government* (Austin, University of Texas Press, 1964); Bryson, *Equity Side of the Exchequer*, 20–1, 41–6, 106–7, 173.

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and the death of Mildmay, the equity jurisdiction of the court was initiated and firmly established.

The office of baron of the Exchequer was ancient. This is indicated by the use of that general word 'baron,' i.e. man, to describe the office. A baron of the Exchequer in the distant medieval past was an officer who did all tasks including the judging of disputes involving revenues. In the middle ages his judicial functions were not his most important duties. However, in the Tudor period, the barons of the Exchequer as judges became more significant. Before 1579 only the chief barons were appointed from the ranks of the serjeants; the puisne barons were usually barristers, but often they were men of only modest legal professionalism. After 1579 all of the barons were appointed from the lawyers of the rank of serjeant. As of this date the barons of the Exchequer were of equal education and social rank with the justices of the other high courts at Westminster, and this was very important for the prestige of the court of Exchequer.<sup>8</sup> When the barons were members of Serjeants Inn and served as justices of assize, the self-congratulating snobbery of the other high courts lost its force, and some very eminent jurists have sat in the Exchequer – men such as Hale, Gilbert, Parke, Alderson, and Pollock. The professional equality of the Exchequer bench by the end of the reign of Elizabeth I made it easier and perhaps more appropriate for the Exchequer court to expand its jurisdiction. Chief Baron Sir John Walter, who sat from 1625 to 1630, was a notable champion of the jurisdiction of his court.

The financial functions of the Exchequer were diminished in the first half of the sixteenth century by the use of the king's privy chamber and various other departments to handle much of the royal revenue. By 1550, however, the chamber as a treasury had ended.<sup>9</sup> In 1554 the financial functions of the court of Augmentations and the court of First Fruits and Tenth were given to the Exchequer, and these two institutions were suppressed.<sup>10</sup> This increased financial activity in the Exchequer in the second half of the sixteenth century drew attention and litigation to it.

It is submitted that the partial eclipse of the Exchequer in the first half of the sixteenth century was owing to its control by the second and third dukes of Norfolk, who were successively lords treasurer from 1501 to

<sup>8</sup> Bryson, *Equity Side of the Exchequer*, 48–51.

<sup>9</sup> Elton, *Tudor Revolution in Government*, 169–77; Walter C. Richardson, *History of the Court of Augmentations, 1536–1554* (Baton Rouge, Louisiana State University Press, 1961), 22–9; Walter C. Richardson, *Tudor Chamber Administration, 1485–1547* (Baton Rouge, Louisiana State University Press, 1952). But now see Dale E. Hoak's essay, above, 87ff., esp. 106–7.

<sup>10</sup> Elton, *Tudor Revolution in Government*, 230–43; Richardson, *Court of Augmentations*, 436ff.

1546. They were too useful to be removed from their offices, but they were too independent to be entrusted with any more power than was necessary. Thus, while they held the office of treasurer, their power, income, and patronage were kept in check by diminishing the activities and responsibilities of the Exchequer. In 1546 the third duke of Norfolk was arrested and stripped of his offices. Shortly thereafter the Exchequer under William Paulet began to be revived as the major financial institution of the kingdom. (Only the court of Wards and Liveries remained to handle any significant part of the revenues of the Crown.) From 1547 to the end of the Tudor period, the lord treasurer was one of the major ministers, if not the prime advisor, of the monarch. To say that the institution was the tool of its head would be an overstatement, but the political position of its head, the treasurer, directly affected its role in the national government.

## II

The foundation of the judicial jurisdiction of the Exchequer was the settling of disputes between the Crown and a subject as to whether or how much money was due to the Crown. Informal negotiations quickly developed in the thirteenth century into formal legal proceedings. The Exchequer became what we might call a 'tax court'; the king was the plaintiff and the subject, the 'tax-payer,' was the defendant. (The word tax here includes not merely the medieval taxes due but also all other forms and types of income due to the king, private sources of income as well as public ones.) This was the theoretical foundation of the court's legal jurisdiction in the sixteenth century as in earlier times, and the sixteenth century lawyers never lost sight of it.

The duty of the Exchequer to collect the royal revenue naturally led to the determination of who owed the money. The next logical step was to assist the person who owed the money to collect it from his own debtor; otherwise he would be unable to pay his debt to the Crown or at least he would be less able to pay, a position that was logically unassailable. This second step, inaugurated in the thirteenth century, involved a separate lawsuit between the two private parties in order to assure that there was in fact a legal obligation on the part of the king's debtor's debtor. This separate lawsuit could be brought in the court of Exchequer by means of an allegation of *quo minus*, asserting that the plaintiff was 'less able' to pay the Crown because the defendant would not pay him. Thus a private party could sue another private party in the Exchequer, if the plaintiff was a debtor to the Crown and if that debt diminished his ability to settle with

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the Crown. If money was withheld, then logically the plaintiff was less able to pay, and this second requirement for Exchequer jurisdiction was legally unassailable.<sup>11</sup>

The plaintiff, in the thirteenth century and throughout the Tudor period, had to be a genuine debtor to the Crown to be able to sue in the Exchequer court. However, most people of any financial standing would have such obligations from time to time. The collection of the royal revenue was not very rigorously pursued, and many people owed the king some feudal due, rent, tax, duty, tallage, tenth, fifteenth, fine, amercement, scutage, fee, toll, hearth money, ship money, or the like. Any of these classes of debtors could have sued before the Exchequer, in contract or in tort, any other private person.

By the end of the thirteenth century, so many lawsuits between private parties, *placita communiae*, had been brought into the Exchequer court by writs of *quo minus* that a new office had to be set up to handle them. This was the office of pleas, under the supervision of the clerk of the pleas. That clerk and the sworn clerks under him handled the clerical aspects of the common law litigation between private parties; the barons sat as the judges, as they did in litigation directly involving the Crown.

To aid the king's debtors to recover from their debtors was a reasonably implied power of the Exchequer, and this extension of its jurisdiction was not questioned. Another equally valid extension of jurisdiction was to allow its officers to sue and be sued only in the Exchequer; otherwise the king's officers could be taken away from the performance of their duties, and the Exchequer would function less effectively. This privilege was in keeping with the practices of the other common law courts. The course of the common law was, or could easily be made to be, circuitous and dilatory. Some forms of action were begun with the arrest and imprisonment of the defendant by means of a writ of *capias ad respondendum*. An Exchequer officer could not properly serve the king in the Exchequer if he were busy litigating in another court. The privilege to sue and be sued only in the Exchequer, whether the litigation involved the Crown or not, was given not only to the high officials but to the minor employees as well, to anyone who was *de gremio scaccarii*.<sup>12</sup> This right was also extended to the personal servants of the Exchequer officers.<sup>13</sup>

<sup>11</sup> Jenkinson and Formoy, *Select Cases in the Exchequer of Pleas*, xxviii, xc-xci, c-cii; Harold Wurzel, 'Origin and development of *quo minus*,' *Yale Law Journal*, XLIX (1939), 39-64.

<sup>12</sup> Jenkinson and Formoy, *Select Cases in the Exchequer of Pleas*, xci-xcii, xcvi-xcix; *Stradling v. Morgan*, 1 Plowden 199, 208, 75 English Reports 305, 318 (Exchequer 1560); *Clapham v. Lenthall*, Hardres 365, 145 English Reports 499 (Exchequer 1664); that is, *The English Reports* (176 vols., London, Stevens & Sons, Ltd, 1900-30).

<sup>13</sup> E.g., *Abbot v. Sutton*, Year Book, Michaelmas 22 Henry VI, pl. 36, fol. 19 (Common

A third area of Exchequer jurisdiction was the privilege granted to public officials who were not officers of the Exchequer but who were collectors of the royal revenue or a part of it. One of the major duties of the sheriffs was to collect moneys due to the king and to account for them in the Exchequer; many other royal officers had similar responsibilities. In addition, many types of royal income were farmed out to private persons for collection. Sheriffs and farmers of revenues were not officers of the Exchequer, yet they were required to come into the Exchequer to make their accounts. Lest they be hindered in this process of paying money to the king, they were given the privilege at their option to sue and be sued only in the Exchequer. This similarly prevented these local officers and other accountants to the Crown from being tied up in the other courts.<sup>14</sup> After their accounts were settled but before the amounts found due were paid, these persons had the slightly less advantageous position of debtors to the Crown.<sup>15</sup> It is to be noted that common law suits involving accountants to the Crown, like those concerned with debtors to the Crown, were common pleas; the king was not a party to the suit, though he was indirectly concerned in the outcome.

## III

Thus we see that the Exchequer court was hearing lawsuits from the thirteenth century onward. The barons sat as the judges in all cases, but different clerks handled the paperwork of the different branches of the court's jurisdiction. Where the litigation concerned the Crown directly, it was a part of the revenue jurisdiction of the court and would be handled by the king's remembrancer's office or the lord treasurer's remembrancer's office, depending on the nature or source of the revenue involved. The office of pleas dealt with litigation between private persons, who had the privilege to sue for common law claims in the Exchequer as debtors or accountants to the Crown. Here plaintiffs filed their writs of *quo minus*; here was handled the common law side of the court. In the middle of the sixteenth century, the equity side of the court arose within the king's remembrancer's office. As on other sides of the court, a suit in equity had

Pleas 1443), *dictum*; Leventhorp's Case, Year Book, Michaelmas 34 Henry VI, pl. 28, fol. 15 (Common Pleas 1455).

<sup>14</sup> Jenkinson and Formoy, *Select Cases in the Exchequer of Pleas*, xciii-xciv, cii-cviii; *Forde v. N.B.*, Year Book, Michaelmas 9 Edward IV, pl. 20, fol. 40 (Common Pleas 1469), *dictum*; *Young v. Clerk of the Hanaper*, Year Book, Hilary 9 Edward IV, pl. 18, fol. 53; Case 67, Jenkins 131, 145 English Reports 92 (Exchequer Chamber 1470); *Anon.*, 2 Bulstrode 36, 80 English Reports 939 (King's Bench 1612).

<sup>15</sup> *Clapham v. Lenthall*, Hardres 365, 145 English Reports 499, 500 (Exchequer 1664).



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to concern the Crown or have been brought by someone privileged to sue in the Exchequer.<sup>16</sup>

In the thirteenth century the details of the procedure are unclear. By the beginning of the seventeenth century, however, the quantity of litigation required the development of specific formulae by which royal rights could be vindicated in the Exchequer. On the revenue side, if the action was an official suit to collect money, the attorney-general sued in the king's name (*viz. Rex v. Richard Roe*). If a private party was suing for the breach of a statute which gave him a share of the penalty and the Crown the other part, then he would sue in his own name *qui tam*, 'who as well as, the king was entitled to the penalty (*viz. John Doe qui tam v. Richard Roe*). On the equity side, if the suit directly touched the Crown, the attorney-general sued in his own name and office (*viz. Attorney-General v. Richard Roe*). If the suit in equity only concerned the king indirectly, the private person, who was the real party in interest, sued by a relator information (*viz. Attorney-General ex relatione John Doe v. Richard Roe*). In actions at law and suits in equity by mere debtors to the Crown, the king was not mentioned (*viz. John Doe v. Richard Roe*).

This brings us to the consideration of Exchequer privileges of suit in relation to the other high courts at Westminster. The courts of Chancery, King's Bench, and Common Pleas stood on an equal footing with the Exchequer regarding removal of suits out of one court and into another. The writ of prohibition, which lay to inferior courts, did not travel between them. The removal of suits was based on the various privileges of the courts which in turn related to their jurisdictions. Privileges were of two sorts: special and general. The officers of the Exchequer and accountants had the benefits of the special privilege of the Exchequer, but mere debtors to the Crown had only a general privilege.

General privileges gave a plaintiff only the right to sue in a certain court. A general, as opposed to a special, privilege could not be used by a defendant as the grounds for removing a case into another court.<sup>17</sup> Moreover, if a plaintiff had a general privilege and the defendant had a special privilege in another court, the general privilege deferred to the special, and the defendant could insist on being sued in his own court.<sup>18</sup> When both parties had special privileges but of different courts, then the

<sup>16</sup> Bryson, *Equity Side of the Exchequer*, 13-27.

<sup>17</sup> *Hunt's Case*, 3 Dyer 328, 73 English Reports 742 (Common Pleas 1573), *semble*: a *super-sedeas* declaring the defendant to be a debtor to the Crown was not allowed.

<sup>18</sup> E.g., *Clapham v. Lenthall*, Hardres 365, 145 English Reports 499 (Exchequer 1664); *Castle v. Lichfield*, Hardres 505, 145 English Reports 570 (Exchequer 1669); Note, 3 Salk. 281, 91 English Reports 825.

court in which priority of suit was established heard the case.<sup>19</sup> The courts were not anxious to lose business in this way, and so they insisted on the general rule that such a jurisdictional point be raised before a general appearance or pleading to issue.<sup>20</sup> Moreover, where there was a plurality of defendants, all of them would have to be privileged in order for the request for removal to have prevailed.<sup>21</sup>

The traditional method of removing suits into the Exchequer was by a writ of *supersedeas*.<sup>22</sup> However, a *supersedeas* could not be sent to the King's Bench because the pleas there were held *coram rege* and writs could not lie against the king.<sup>23</sup> The problem was resolved by having the cursitor baron take the Red Book of the Exchequer into the King's Bench and assert that the defendant was an officer or accountant in the Exchequer and could be sued only there.<sup>24</sup> The cursitor baron showed the copy of the writ of privilege which was in the Red Book, an official record, at folio 36.<sup>25</sup> Thereupon the case was dismissed to the Exchequer without any plea or prayer from the defendant.<sup>26</sup>

There were alternative methods of asserting the Exchequer privilege in the seventeenth century. It could be pleaded by the defendant,<sup>27</sup> or the

<sup>19</sup> E.g., *Baker v. Lenthall*, Hardres 117, 145 English Reports 409 (Exchequer 1658); *Clapham v. Lenthall*, Hardres 365, 145 English Reports 499 (Exchequer 1664); Note, 2 Salk. 281, 91 English Reports 825.

<sup>20</sup> E.g., Note, Year Book, Michaelmas 22 Henry VI, pl. 9, fol. 7 (Common Pleas 1443); *Young v. Clerk of the Hanaper*, Year Book, Hilary 9 Edward IV, pl. 18, fol. 53; Case 67, Jenk. 131, 145 English Reports 92 (Exchequer Chamber 1470); Case 31, Dal. 36, 123 English Reports 253 (Common Pleas 1561); *Jervas's Case*, Sav. 33, 123 English Reports 996 (Exchequer 1582).

<sup>21</sup> E.g., *S. v. T.B.*, Year Book, Michaelmas 34 Henry VI, pl. 13, fol. 29 (Common Pleas 1455); *East v. Bittenson*, Cary. 67, 21 English Reports 36; Cecil Monro (ed.), *Acta Cancellariae, or, Selections from the Records of the Court of Chancery, 1558-1624* (London, W. Benning and Co., 1847), 457, (Chancery, 1578); *Powle's Case*, 3 Dyer 377, 73 English Reports 846, Godb. 10, 78 English Reports 6 (Common Pleas 1581); *Vendall v. Harvey*, Nels. 19 at 22, 21 English Reports 779 (Chancery 1633); David E. C. Yale (ed.), *Lord Nottingham's Two Treatises: 'Manual of Chancery Practice' and 'Prolegomena of Chancery and Equity'* (Cambridge, CUP, 1965), 336.

<sup>22</sup> E.g., *Anon.*, Year Book, Michaelmas 21 Henry VI, pl. 44, fol. 22 (Common Pleas, 1442).

<sup>23</sup> Bracton, fol. 5b: George E. Woodbine (ed.), *Bracton De Legibus et Consuetudinibus Angliae* (4 vols., New Haven, Yale University Press, 1915-42), II, 33; trans. by Samuel E. Thorne (ed.), *Bracton On the Laws and Customs of England* (4 vols., Cambridge, Mass.; The Belknap Press of Harvard University Press, 1968-77), II.

<sup>24</sup> E.g., *Walrend v. Winroll*, Noy 40, 74 English Reports 1010 (King's Bench 1601); *Guy v. Reynel*, 2 Brownl. and Golds. 266, 123 English Reports 934 (Common Pleas 1609), *dictum*; *Anon.*, 2 Bulstrode 36, 80 English Reports 939 (King's Bench 1612); *Foster v. Barrington*, 2 Sid. 164, 82 English Reports 1313, Hardres 164, 145 English Reports 433 (King's Bench 1659), *dictum*; *Lampen v. Deering*, 2 Show. K.B. 299, 89 English Reports 951 (King's Bench 1680).

<sup>25</sup> PRO, E 164/2; this has been transcribed by Hubert Hall, *The Red Book of the Exchequer*, Rolls Series, xcix (3 vols., London, HMSO by Eyre and Spottiswoode, 1896), III, 823-4.

<sup>26</sup> *Anon.*, 2 Bulstrode 36, 80 English Reports 939 (King's Bench 1612).

<sup>27</sup> E.g., *Foster v. Barrington*, 2 Sid. 164, 82 English Reports 1313, Hardres 164, 145 English

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Red Book could have been sent into the court of Common Pleas.<sup>28</sup> However, in the eighteenth century it became customary to assert the Exchequer privilege by means of an injunction out of the Exchequer to the plaintiff; this was a personal order not to sue in the other court, but with liberty to sue in the Exchequer.<sup>29</sup> This was a far superior procedure to the clumsy and embarrassing traditional methods of *supersedēas* and direct claim of jurisdiction *in facie curiae*.

#### IV

In the sixteenth century, the court of King's Bench, which like the Exchequer had considerably less business than the court of Common Pleas, consciously expanded its jurisdiction and its case load. This was done by use of the fiction in bills of Middlesex and writs of latitat and by the extension of the scope of actions on the case.<sup>30</sup> However, during the sixteenth century the court of Exchequer remained within its ancient, traditional boundaries.

The medieval Exchequer in its role as a court of law was explicitly circumscribed by statute. The Statute of Rhuddlan of 1284, the *Articuli super Cartas* of 1300, and the Statute of 1311 had limited the court to cases concerning the Crown and the officers of the Exchequer.<sup>31</sup> Thus the hearing of common pleas was generally forbidden to the Exchequer, but the affairs of debtors to the Crown concerned the Crown sufficiently to justify extending Exchequer jurisdiction to them. In the sixteenth century litigants attempted to expand the jurisdiction of the Exchequer court by means of fictions in pleading,<sup>32</sup> but the court did not allow this.<sup>33</sup>

From the beginning of the Interregnum, however, the allegation of the Exchequer general privilege, claiming that the plaintiff was a Crown debtor, came to be used fictitiously on the equity side of the court. Unfor-

Reports 433 (King's Bench 1659); *Wentworth v. Squibb*, 1 Lutw. 43, 125 English Reports 23 (Common Pleas 1701); *Phips v. Jackson*, 6 Mod. 305, 87 English Reports 1045 (King's Bench 1705).

<sup>28</sup> E.g., *Wentworth v. Squibb*, 1 Lutw. 43, 125 English Reports 23 (Common Pleas 1701); also, Lawrence Squibb, 'A Book of All the Several Officers of the Court of Exchequer . . .', ed. by William Hamilton Bryson, *Camden Miscellany XXVI*, Camden Society, 4th series, xiv (London, Royal Historical Society, 1975), 102-3, 112.

<sup>29</sup> *Cawthorne v. Campbell*, 1 Anstr. 205, 145 English Reports 846 (Exchequer 1790); J. Manning, *The Practice of the Court of Exchequer, Revenue Branch*, 2nd edn (London, 1827), 191.

<sup>30</sup> Baker, *English Legal History*, 38-41; Milsom, *Historical Foundations*, 54-7.

<sup>31</sup> Parliamentary Statutes 12 Edward I [1284]; 28 Edward I [1300], c. 4; 5 Edward II [1311], c. 25; *SR*, i, 70, 138, 163.

<sup>32</sup> John H. Baker (ed.), *The Reports of Sir John Spelman*, Selden Society, xciv (London, 1978), 63, fn. 5.

<sup>33</sup> *Ragland v. Wildgoose*, Savile 11, 15, 123 English Reports 984, 986 (Exchequer 1580); *Williams v. Griffin*, PRO E 126/2, fol. 176v. (1619).

tunately the first cases which allowed this fiction do not appear to have been reported. The fictive jurisdiction was asserted at the beginning of each bill by adding after the plaintiff's name the following phrase: '... debtor and accountant to his majesty as by the records of this honorable court and otherwise it doth and may appear.'<sup>34</sup> An examination of the files of the bills of complaint discloses that this formula of jurisdiction, which had been used occasionally during the latter years of Charles I's reign, became general after 1649 when most equity bills identify the plaintiff as a Crown debtor,<sup>35</sup> using this strict formula. Moreover, in many bills the formula appears as an interlinear addition. The evidence of the records thus points with some precision to the year 1649 for the introduction of the wider jurisdiction based on this fictitious and non-traversable allegation of indebtedness to the Crown.<sup>36</sup> The first references to the fictitious basis of the Exchequer equity jurisdiction appear in Matthew Hale's treatise of August 1665, 'Considerations Touching the Amendment or Alteration of the Lawes,'<sup>37</sup> and *The Compleat Solicitor* (1666), page 389.

At the beginning of the Tudor period, therefore, the judicial jurisdiction of the court of Exchequer was limited to common law matters that affected the revenue of the Crown. By the end of the Tudor period the court had acquired an equity jurisdiction, and therefore was the only high court of justice in England to administer both general civil common law and equitable remedies. In 1649 the Exchequer extended its common law and equitable jurisdictions to all parties; at this point the court of Exchequer came of age as a full-fledged high court of general jurisdiction. Thus, although the courts of Common Pleas, Chancery, and King's Bench had developed earlier, the court of Exchequer ultimately embraced a lesser quantity but a greater scope of judicial action.

<sup>34</sup> David B. Fowler, *The Practice of the Court of Exchequer upon Proceedings in Equity* (2 vols., London, 1795), 1, 29; Anon., *The Compleat Solicitor* (1666), 389; William Bohun, *The Practising Attorney; or, Lawyer's Office* (London, 1724), 292; Anon., *The Compleat Clerk in Court* (1726), 149; Samuel Turner, *An Epitome of the Practice on the Equity Side of the Court of Exchequer* (London, 1806), 2.

<sup>35</sup> Or a debtor to the Commonwealth.

<sup>36</sup> This fits with the tentative conclusions in regard to the Exchequer common law fiction in Wurzel, 'The origin and development of *quo minus*,' 39, 61, 64. Furthermore no reported cases have been found after 1649 which challenge the general jurisdiction of the court. It is submitted that the Exchequer extended all of its jurisdictions to all litigants at the same time, 1649.

<sup>37</sup> In Francis Hargrave (ed.), *A Collection of Tracts Relative to the Law of England* (Dublin, for E. Lynch, etc., 1787), 278; the date is given in BL, MS Harleian 711, fol. 187v.