

Sources of Historical Legal Records

The Historic Records of the Judicial Function of the UK Parliament

Abstract: This article by Caroline Shenton, Clerk of the Records at the Parliamentary Archives, describes the rich legacy of records relating to the judicial function of the House of Lords from the sixteenth century to 2009, when the new Supreme Court was established.

Keywords: House of Lords; legal history; law reports

Introduction

The move of the Law Lords to the new Supreme Court of the United Kingdom was reported in the 2009 issue of *Legal Information Management*¹. The transfer of the House of Lords' Judicial Function to the new court not only effected the separation of the legislature from the judiciary at its highest level in the UK; it also left behind a significant legacy of records in the Parliamentary Archives relating to that function from the sixteenth century to 2009. The records of the Supreme Court will in future be transferred to the National Archives at Kew, but records earlier than 2009 will remain in the Parliamentary Archives. Now is therefore a good time to provide an overview of them.

The Parliamentary Archives holds over three million records of both Houses of Parliament back to 1497. They comprise all original Acts of Parliament from that year onwards, bills, journals and minutes of proceedings in each chamber, papers laid before Parliament or deposited in its libraries, Hansards, the official transcripts of debates, private bill maps and plans, committee reports and evidence, administrative and ceremonial records and records relating to the art and architecture of the Houses of Parliament. Parliamentary records are distinct from government records and are not part of the public records system.

The records of Parliament are stored in the Victoria Tower in the Houses of Parliament. The Parliamentary Archives provides an enquiry service, an onsite search room and a copying service, both paper and digital, for users. For more information see www.parliament.uk/archives. All the records listed below can be found on the



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Archives' online catalogue, *Portcullis*, which is available at www.portcullis.parliament.uk. Records are open unless otherwise stated in the catalogue and for closed records, Freedom of Information requests should be submitted.

The judicial function of the House of Lords

Until October 2009, the House of Lords acted as the final court of appeal on points of law for the whole of the United Kingdom in civil and criminal cases, with the exception of criminal cases in Scotland. Its decisions bound all courts below. In its modern form, as established by the Appellate Jurisdiction Act 1876 (36 & 37 Vic c. 66), its work was carried out by twelve salaried Lords of Appeal in Ordinary (or "Law Lords") who were life peers holding Letters Patent from the Crown.

The Judicial Office was the department within the House of Lords' administration which administered the judicial business of the House and provided administrative support for the Law Lords. It supervised the preparation and arrangements for the hearing of appeals and the taxation of judicial costs. It was also responsible for peerage claims which were referred to the Committee for Privileges. These records are not considered here.

Jurisdiction exercised by Parliament dates back to the 13th century. The Lords received many petitions of right and also dealt with other cases where other courts had failed to provide a satisfactory solution. In the middle ages the House of Lords also sometimes exercised an

original jurisdiction; that is, it held authority as a court of first instance in civil and criminal matters and was able to hear original causes. Attempts to revive this practice in the 17th century failed due to opposition from the Commons and the judicature. A limited original jurisdiction continued until 1948, allowing peers charged with treason or felony to be tried by the House of Lords. From the 17th century its power as an appellate court was confirmed. In 1621 a new committee was set up, afterwards known as the Appeal Committee, to which it was possible to refer subsequent complaints against lower courts and which also considered requests for original hearings. After the Restoration, the House also asserted its right to hear appeals from Chancery. The Judicial Office was created in 1854 along with the other administrative offices of the House. Previously the work had been carried out within the Parliament Office of the House of Lords. The 1850 report of the *Select Committee on the Office of the Clerk of the Parliaments etc* refers to the business of the Judicial Department being carried out by a Chief Clerk, three junior clerks, a summoning officer and a keeper of the registers, with three additional part-time assistants. An Official Reporter of cases was not appointed until the 19th century. Prior to that there had been separate reporters covering English and Irish, and Scottish cases. They were paid by the printers for their work and, as there was less revenue gained from Scottish cases, many were not printed. It should be noted that some cases of Scottish origin are referred to as being from “North Britain”.

The records listed below are arranged as follows: series title, date range, series reference, extent and a general description. The final tranche of records which were transferred to the Parliamentary Archives in the summer of 2009 prior to the move to the Supreme Court are due to be reviewed and catalogued by March 2011.

Major judicial record series

Petition and Appeals

16th century – 2009
HL/PO/JO/10

The originating “petition and appeal” for a case are generally to be found in the series known as the “main papers”; that is, the records laid on a daily basis before the House of Lords.

Printed Appeal Cases

1702–2007
HL/PO/JU/4
2,488 volumes

This series contains both the appellant’s and the respondent’s case, opinions and some writs of error,



Figure 1: The Victoria Tower, the purpose-built archive repository of the Houses of Parliament, celebrated its 150th anniversary in 2010

evidence and judgments, depending on date. In addition to the appellant’s and respondent’s cases, there is printed evidence, where presented, and opinions. Early cases include the points of appeal and those proofs which had been offered in the courts below, with documentary references on which arguments were to be offered. Standing Order 89 (1698) ordered that prints of the Cases of Appellants and Respondents should be signed by counsel. Verbatim transcripts of proceedings in lower courts were included from the mid-19th century. Standing Order 194 (1813) ordered that proofs and documents be printed as appendices to cases. From the 20th century onwards documents which were previously bound with the “Main Papers” (HL/PO/JO/10) can be found with the case in HL/PO/JU/4/3. Many 17th and 18th century appeals relate to family disputes over the descent of property. In support of their cases, appellants often described marriage settlements, details of inheritance and family relationships in great detail. Appeal cases containing sensitive personal information are closed for 100 years. Printed Appeal Cases for 2008 and 2009 have been received by the Parliamentary Archives and are currently being bound.



Figure 2: Original Acts of Parliament from 1497 onwards, in the Victoria Tower

Manuscript and Printed Opinions and Judgments

1839–2009

281 volumes

HL/PO/JU/18

The judgment is a brief statement giving the Law Lords' verdict, while the opinion is a much more detailed

explanation of the Law Lords' ruling and comprises a full statement, written by each law lord who heard the case, explaining their findings and so giving a comprehensive argument supporting the ruling. Modern opinions may be found via www.parliament.uk from 14 November 1996. For each case the title is given in brief, ie not enumerating every appellant and respondent and is followed by a clerk's transcript of the opinions delivered by each of the law lords

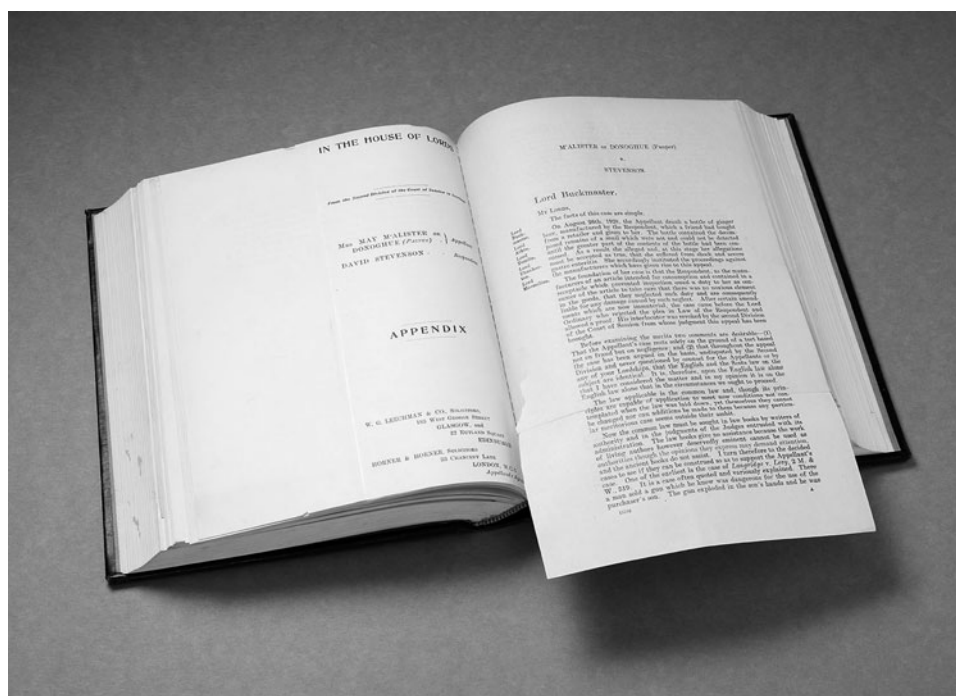


Figure 3: A famous Appeal Case, “the snail in a bottle of ginger beer”: *Donoghue v Stevenson*. House of Lords Appeal Case, 1932. Parliamentary Archives, HL/PO/JU/4/3/873

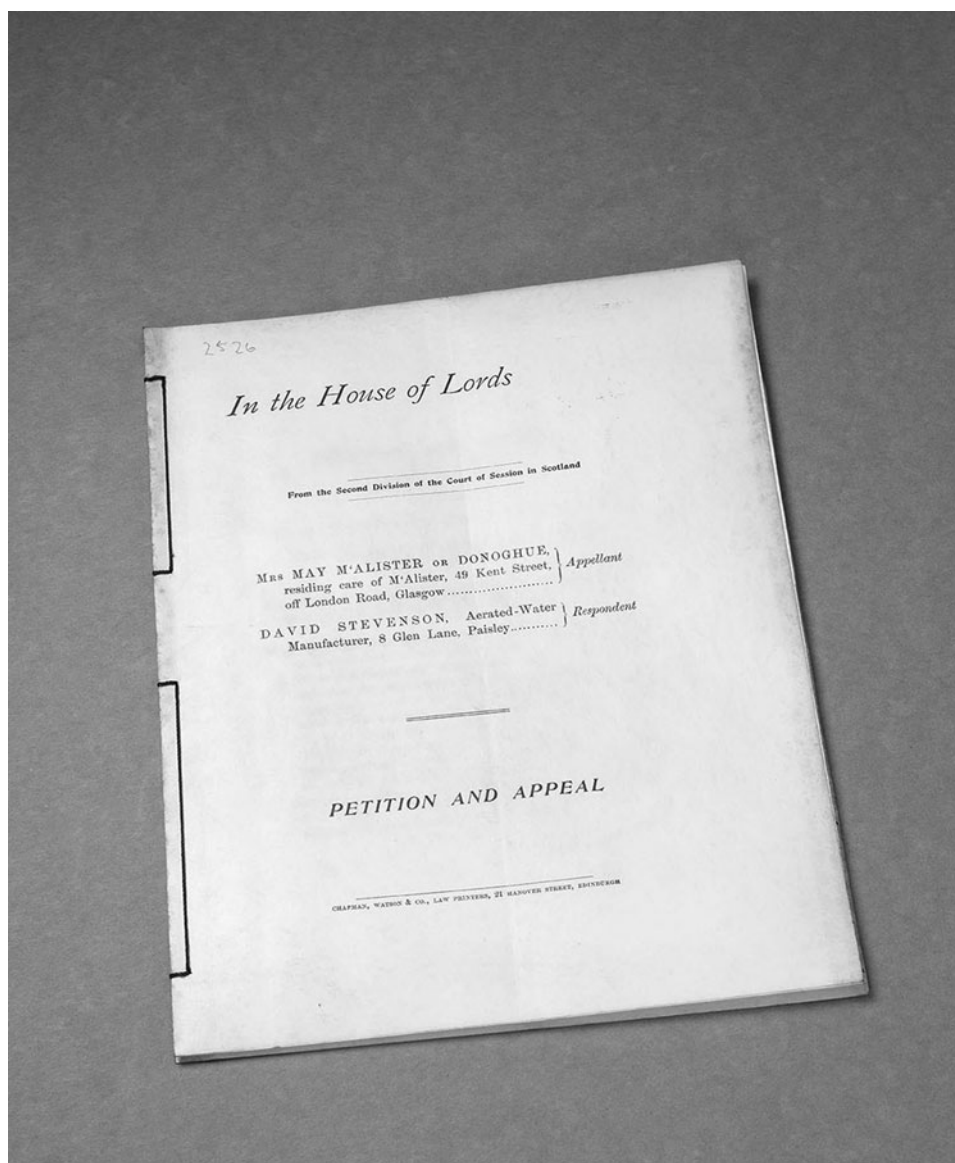


Figure 4: *Petition and Appeal of Donoghue v Stevenson, 26 Feb 1931. Parliamentary Archives*

present. There is always a full opinion delivered by the senior judge and then others may deliver an opinion or simply concur. In order to solicit a vote from the House a question is put "That the Order appealed from be reversed/affirmed and the appeal be upheld/dismissed, with/without costs". The opinion of the House is then recorded. The volumes are manuscript up to 1922 and thereafter, typescript. A concise summary of the outcome of cases from 1759-1868 may be found in HL/PO/JU/20-21.

Each page is headed with the title of a case and then contains a brief note of the date on which each stage of the proceedings took place, beginning with the respondent being ordered to enter into recognisance and ending with the interlocutors being affirmed or dismissed, ie the judgment. There are two indexes at the back of each volume, one arranged by cause and the other by appellant v respondent.

Registers of Proceedings in Appeals and Causes in Error

1826–2005
HL/PO/JU/12
29 volumes

Appeal Committee Memoranda

1916–2009
HL/PO/JU/1
55 volumes
These typescript memoranda were addressed by the Judicial Office to the Appeal Committee.

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Judicial Minutes

1896–2009
HL/PO/JU/13
118 volumes

The daily minute records the day's business, comprising of prayers, cases to be heard and peerage claims, if any.

Appeal Committee Minutes

1844–1992
HL/PO/JU/17
87 volumes

Each volume contains a transcript of proceedings before the Appeal Committee, consisting of each case as presented briefly by counsel and any questioning by the Law Lords. It then states whether leave to appeal was granted or refused, or more time was given and on what grounds. The names of lords present and of counsel are given for each case. The volumes are not indexed but are divided into daily proceedings by use of tabs attached to the pages. The Judicial Office stopped transcribing proceedings for every case in 1992. From 1992 onwards, transcriptions were only created if the parties in a case requested it, so they are not consistent from this date onwards.

Appeal Case Copies

20th century
HL/PO/JU/28
9 boxes

Law Lords' briefing material - copies of appeal cases from the 1930s to 1960s. Probably duplicates part of each complete Appeal Case (HL/PO/JU/4/3).

Registers of Draft Judgments

1897–2009
HL/PO/JU/16
10 volumes

Most volumes contain a manuscript register of cases in chronological order. Each case is noted by brief title and an observation whether the case was given "affirmance", "reversal" or "remit". Details follow of dates of sending to the printers, receipt, checking, return and final distribution. Sometimes there is a brief note about the case.

Records of Costs

These have been selected for permanent preservation because of their likely interest to legal and administrative and family historians in the future.

Registers of Costs in Appeals

1907–1933
HL/PO/JU/22
6 volumes

Information about the expenses paid in each case.

Lists of Charges for Parliamentary Agents, Solicitors and Others

HL/PO/JU/23
c1850–1985
1 file

The lists are recorded chronologically.

Forms of Bills of Cost applicable to Judicial Taxations in the House of Lords in Appeals from the Court of Appeal in England and the Court of Session in Scotland

HL/PO/JU/24
1951–1977
6 volumes

The lists are recorded chronologically.

Recognisance Register Books

HL/PO/JU/9
1680–1761
6 volumes

HL/PO/JU/9/5 contains Forms of Recognisance for payment of costs, appearance at the Bar, keeping the peace, and an original Order of Estreat of Recognisance, 1730 and Receipts, 1730 and 1735. The volumes are manuscript.

Recognisances

1920–1936
HL/PO/JU/26
16 rolls

These are the records of acknowledgments and conditions of recognisances. They are signed and sealed by the appellants and are witnessed before Commissioners of Oaths or Scottish Justices of the Peace. The series has been preserved intermittently from 1680, where recognisances may be found with cases in the Main Papers. The series has been preserved continuously from 1920-1936.

Bills of Costs

1839–1999
HL/PO/JU/5
110 files

These are Bills of Costs containing detailed accounts of all of respondent's costs and the date the bill of cost was

served. Bills of Costs are held from both Her Majesty's Court of Appeal and from Her Majesty's Court of Criminal Appeal.

Other record series

These are small, or in some cases, single volume series which provide supplementary information on the administrative history and functioning of the Judicial Office and its predecessors.

Reference Material and Additional Papers

1838–1860
HL/PO/JU/21
4 files

This series contains reference material used by the Judicial Office.

Printed Judgments in Causes

1850–1868
HL/PO/JU/19
2 volumes

The cases are recorded chronologically, with the full title of each case, including all appellants and respondents, then full orders of the House including costs. This series gives a useful and concise summary of the outcome of a case before consulting HL/PO/JU/18 for the full opinions of the Law Lords.

Proceedings of the Appellate Committees

1948–1970
HL/PO/JU/14
3 volumes

The Minutes of Proceedings in Appellate Committee are formal, consisting of lists of lords present; counsel acting, order and time of the speeches; with notes on important procedural points. There are indexes of cases and points of procedure and a list of hearings. Except in connection with procedural matters no record is made of words spoken (see Law Reports for such material).

Progress of Appeals

1922–1976
HL/PO/JU/10
1 volume

Records the case title, from which court it was presented and the date of judgment.

Forms of Appeal, Directions as to Procedure and Standing Orders applicable to Civil Appeals

1926–1977
HL/PO/JU/25
13 volumes

The lists are recorded chronologically.

Registers of Appearances

1877–1983
HL/PO/JU/39 volumes

The registers give the short title of the appeal, the names of respondents and their solicitor or agent and the date. Each volume is indexed by case title.

Appeal Case Record Book

1930–1949
HL/PO/JU/15
1 volume

The cases are recorded alphabetically.

Appeals based on Writs of Error

1713–1827
HL/PO/JU/11
5 volumes

This series contains individual prints of appeals on point of error, bound together in alphabetical order. Most of the cases have the judgment endorsed on the final page of the appeal.

Causes Set Down For Hearing

1921–1955
HL/PO/JU
83 boxes

Each daily minute states briefly the title of the case, the date it was presented, the date set down for hearing, the subject matter and the agents and where reported. Each day is divided into English appeals, civil then criminal, Scottish appeals, cases awaiting judgment and claims of peerage depending. These are the only records where the subject of the case is stated explicitly.

Manuscript Judgments in Causes

1759–1844
HL/PO/JU
205 volumes

The cases are recorded chronologically, with the full title of each case, including all appellants and respondents, then full orders of the House including costs. Each volume has a manuscript index. This series gives a useful and concise summary of the outcome of a case before

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Lonrho Contempt Proceedings

1989

HL/PO/JU/27

8 boxes

Records relating to a contempt of court action the Law Lords brought against Lonrho PLC and *The Observer* newspaper. The case related to Lonrho's efforts to have published a Government report on its unsuccessful bid for the parent company of Harrods in 1981. The Trade and Industry Secretary, Lord Young, refused to publish the report until the police completed an inquiry into the 1985 purchase of the House of Fraser by the Fayed brothers. A leaked copy of the report was published on 30 March 1989 by Lonrho in *The Observer*. The company then sent copies of the newspaper to four of the judges. As a result, the Law Lords ordered the contempt hearing.

Judicial Clerks' Notebooks

1848–1921

HL/PO/JU/6

3 volumes

The notebooks show the daily workings of the Judicial Office.

Registers and Indexes of Causes Set Down For Hearing

1906–1951

HL/PO/JU/7

1 box and 2 volumes

The registers contain cuttings from the daily minute referring to the daily judicial business, with annotations on each case.

Appeal Committee Draft Reports

1900–1981

HL/PO/JU/2

16 volumes

These typed and bound draft reports by the Appeal Committee indicate whether leave to appeal has been granted.

Footnote

¹9(4) 257–261

Biography

Dr Caroline Shenton is Clerk of the Records at the Parliamentary Archives, and is responsible for all archive and records management activity in the UK Parliament. A Registered Archivist, she is also a Fellow of both the Society of Antiquaries and the Royal Historical Society.

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