

The Challenge of Old Legal Manuscripts in Modern Law Libraries

Abstract: On the few occasions that old manuscripts are encountered in modern practice they may raise problems of reading old handwriting and identifying the place of the document in the legal process. This article by **Barbara Tearle** gives advice on why specialist help is needed and where to obtain it.

Keywords: manuscripts; transcription; Handwritten Text Recognition; Transkribus; precedents

INTRODUCTION

The genesis of this article was a request to the BIALL library community for advice on transcribing old, manuscript, legal documents. This article addresses some of the issues surrounding transcription of the documents and understanding their place in the contemporary legal process.

TYPES OF DOCUMENTS

A brief canvass amongst law librarians established that the few old documents they encountered were likely to focus on property and might date from any time over the last few hundred years. Property should be interpreted widely so that, as well as conveyancing deeds and leases, documents might deal with ecclesiastical responsibilities (e.g. liability for chancel repairs¹), manorial rights and rights of way. In theory, wills were not supposed to deal with title to land, but in practice they often contained provisions that might have affected freeholds, copyholds and also trusts. Occasionally early printed books are also consulted and their typography and language can cause difficulty and require help, in particular, with the language.

The issues that these and other old documents raise are reading the handwriting, translating from Latin or law French and identifying the specific type of document. The customs, terminology and handwriting may differ, not just from jurisdiction to jurisdiction within the British Isles but also regionally and even locally. This article focuses on England, but the issues around reading and understanding these documents, and the solutions to this, are more widely applicable.

HANDWRITING

The principal barrier to identifying the type of document is reading the handwriting. Styles have changed over the centuries, especially the way letters are formed, including diverse shapes for the same letter where it occurs in

different places in a word. This applies in particular to *r* and *s*.

Initial capital letters were often highly stylised. Writing implements also affected the look of the letters and the written word. Unlike a pencil or modern ballpoint pen, quills and steel nibs had to be taken off the paper or parchment to make strokes in a different direction. The overall results from these different written styles and writing materials are that some letters bear little resemblance to their current appearance. This warning applies to formally written ‘fair’ copies and to a greater extent to those written by someone unaccustomed to writing every day.

Like our contractions, such as *isn’t*, previous handwriting styles also employed many contractions and abbreviations. They were different from, and far more numerous than, today. Specially formed letters represented *per*, *par*, *pro*, *prae*. An apostrophe or superscript character was often used in place of *er* and *ur* in many words, e.g. *c’ten* for certain. A superscript line $\overline{\quad}$ above a letter indicated that it should be doubled (especially *m*) or that a letter or letters had been omitted (such as *tenet*, with a line of omission above the second *e*, for tenement).

A more challenging example of contraction is *thappences* (with the second *p* specially formed and lines of omission over *pt* and *n*) for *the appurtenances*. The old letter known as yogh (*ȝ*) and now variously interpreted as *et*, *que*, *us*, *gh* and *gt*, still occurred occasionally as late as the 17th century. A version of the old letter thorn (*þ*) that looks like *y* was used for *th* in *the* and *that* and has given rise to the mistaken transcription of *ye olde shoppe*.

SPELLING

Spelling has only standardised in the form in which we know it in the last couple of hundred years. Before then, standardisation existed but often it was not the same as today. A simple example is words that end in a single *l* today, such as *natural*, which were spelt with a terminal double *ll*.

Surnames and place names were often spelt differently in the same document and their current version may not be easily recognisable. For example, the spellings of Throckmorton and Frogmorton could be interchangeable. The best-known old form of a place name is probably Brighton which was Brighthelmeston and Brighthelmstone as late as the first decade of the 19th century. Less well-known are Stebenheth, the old form for Stepney in London, which remained in use into the 17th century.

DOCUMENT CONDITION

The condition of documents may also be a cause of difficulty. To start with, paper or parchment was not a standard size and often tiny writing was used in order to make full use of a small area. Documents of any size were often rolled, folded, creased, damaged by damp or fire, eaten by pests, or handled so much that they split along fold lines and text rubbed off.

VARIED HANDWRITING

As today, the legibility of people's handwriting varied. A regularly written, clear document of the 16th, 17th or 18th century can be relatively easy to read. However, it is easy to be lulled into a sense of security with ordinary, frequently repeated words and phrases until technical terms or the names of people and places are encountered. Formal documents were written by scribes or notaries who were trained and used a legible hand, but other documents such as wills, manorial court records and court depositions might be in a hurried or less practised hand. As well as badly formed letters, their spelling might be more erratic, recording what the writer heard and reflecting local speech.² At the other extreme, a stylised court hand featuring extensive abbreviations developed. It was used for formal copies of documents and in some common law court records, and was usually in Latin.³

DATES

Dates can be a minefield, until a few basic differences are realised. Before 1752 the year ran from 25 March to 24 March. Thus dates expressed as between 1 January and

24 March 1604, for example, would today be attributed to 1605.

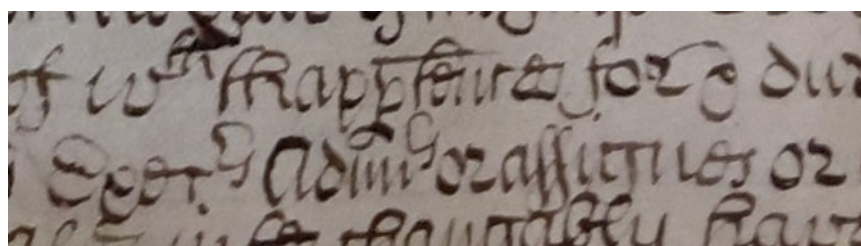
Another pitfall is the use of regnal years to express a date, although the calendar year was often added. The probate inventory of Edward Catherall of Luton was dated *the fiftē day of March AD 1612 and in the yeares of the raigne of our soveraigne Lord James by the grace of god of Englande Scotlande Fraunce & Irelande kinge defender of the faith etc of Englande Fraunce & Ireland the Tenth and of Scotlande the sixe and Fortith* (i.e. 5 March 1613). This example also illustrates the regnal dating used during the reign of James VI and I. These and other dates can be worked out from Cheney's *Handbook of Dates*⁴ or by consulting conversion tables on the internet.

LANGUAGE

Property deeds and wills after about 1500 were in English. Records of manorial courts were often in Latin, although the documents produced in the administration of the manor, such as surveys of land, were usually in English. Glebe terriers (surveys of church lands) were also in English. Records of the common law courts were in Latin, but those of the courts of equity were in English. During the Commonwealth period (1650-1660) all legal records and documents were in English but they reverted to their previous language after the Restoration. Finally, all court records were ordered to be in English from 1733 (1737 for Ireland).⁵ Some documents contain a mixture of Latin and English, such as the questions and answers in church courts in the 16th and 17th centuries which began with an introductory formula in Latin and then recorded answers in English. A few texts are in law French, such as the year books, many of which may be consulted in printed editions, which may overcome the difficulty of typography but not of language.

READING THE WRITING

For anyone who wishes to explore the art of transcribing, there is plenty of help in the form of books and websites. Alphabets showing the formation of letters at different periods and advice on transcribing old documents have



Contraction of the appurtenances on the top line and of Executors Administrators on the second line, followed by assigns with the long s that looks like f, from a property deed of 1697 (Bedfordshire Archives, X86/139). Courtesy of Bedfordshire Archives



An exemplification of a common recovery, written in court hand c. 1701, seen in a museum in Vilnius

existed for decades. Amongst the large number of beginners' and more advanced manuals, a recent book by Mark Forrest on *Reading Early Handwriting 1500–1700*⁶ is particularly useful. It combines summary alphabets, unusual letters, contractions, dates and names with conventions for transcribing and facsimiles and transcriptions of more than 20 documents including several relating to land and courts. Nat Alcock's *Old Title Deeds* contains other illustrative extracts from property deeds.⁷

Help with handwriting can be found on the internet. The National Archives and the National Records of Scotland have online tutorials in palaeography, as do several university libraries. The National Archives site also has medieval Latin courses with Latin word lists and a simplified grammar resource geared to the words most commonly found in medieval and early modern documents.⁸ Its examples of documents are taken from the official records in its own holdings; they are transcribed and translated. The handwriting website of the National Records of Scotland is particularly helpful.⁹ Its alphabets from three different centuries show the change in letter shapes and there are sections on understanding particularly difficult letters. (The formation of most letters was the same in England and Scotland.) The site's great advantage is the large number of Scottish documents that it reproduces for illustration and practice purposes. Cambridge University's 'English Handwriting Online 1500-1700' has examples of the many forms that upper and lower case letters might take in its alphabet section,¹⁰ while the medieval section of the University of Nottingham's Manuscripts and Special Collections webpages have clear examples of letters and abbreviations.¹¹

FINDING OUT MORE ABOUT THE DOCUMENTS

The documents may have originated in a specific context, such as property, probate or court files. If not, despite the seeming barriers to reading them, it is often quite easy to pick out enough words to identify them. There may be several types of documents in each process – sale of land, leases, probate – and many sources that describe them, enabling an understanding to be gained of their place in the sequence of documentation on that subject and their likely content.

Legal literature is not particularly helpful in setting out the detailed content of individual documents at every stage in the process as it usually focusses on the development of the legal doctrine, assuming that readers know (or are not concerned with) the minutiae of wording. Most of the aids that provide information on documentary content have been written for historians and they are clear, concise and helpful.

Brief, but highly informative, explanations and examples of property documents are given by Nat Alcock.¹² Meanwhile, the Manuscripts and Special Collections webpages of the University of Nottingham's website have a section on 'Deeds in Depth' with explanations and examples of the property deeds in use in different periods from the 12th century to 1925.¹³ This is particularly important because documentation changed over the centuries as conveyancing procedure changed. Both sources include manorial procedure and documentation. Manorial courts dealt with the administration of the manor which would also include the rights exercised by the lord of the

manor and the tenants. The current situation is set out in HM Land Registry's *Practice guide 22: manors*.¹⁴

'How to' research guides may also be more useful in understanding documentation than standard legal text books. James Derriman's *Chancel Repair Liability: How to Research It* explains the historical context of responsibility for chancel repairs before setting out the process of researching to determine liability.¹⁵ Similarly, practical guides to rights of way under the Countryside and Rights of Way Act 2000 c. 37 may be of more help.¹⁶

Documents were highly formulaic and the use of precedents began early. Books of precedents were published from at least 1505, at first in Latin and then from the mid-1540s in English or English and Latin.¹⁷ They grew in size and coverage, included all the topics that could be expected (leases, mortgages, debt, contracts, wills and codicils) as well as less mainstream ones such as a condition to give evidence against felons at the sessions or a licence to keep an alehouse. It may not, however, be easy to match surviving old documents to early examples.

At first the precedent books were little more than collections of formulations that had been used in specific instances. Later they became more systematic, combining exposition of the law with precedents. A good early example of this treatment is William West's *Symbologiegraphia* which ran for many editions between the 1590s and the 1640s.¹⁸ During the 18th and 19th centuries, the nature of the collections changed. Their emphasis moved from examples of what others had used in particular circumstances to the standard precedents for use that are familiar today.

DEALING WITH THE DOCUMENTS

While it may be fun to try to read these documents, when time and accuracy are essential, a specialist should be consulted. Lists of paid services for transcriptions, research and translations may be found on several websites. The people are variously called record agents, independent researchers or freelancers. The National Archives maintains a register of independent and vetted researchers, many of whom provide transcription services and research into legal records held at The National Archives and elsewhere.¹⁹ The Archives and Records Association lists freelancers working in the whole of the UK and Ireland.²⁰ AGRA, the Association of Genealogists and Researchers in Archives, has a 'Find a Researcher' section which includes people whose specialism is far wider than the name 'genealogist' would imply.²¹

While these organisations are based in England, they include some researchers based in Ireland, Scotland and Wales. More may be found on the websites of The National Records of Scotland,²² the National Library of Wales²³ and the National Library of Ireland.²⁴ Some county record offices also list local researchers. Many of these and other independent researchers have websites from which more information about their areas of expertise may be found.

TEXT RECOGNITION BY AI

One day an app for AI-powered transcription (known as HTR, handwritten text recognition) may be sufficiently reliable to replace human transcription services – but not yet. Efforts to develop such programmes have been underway for some years, including an ambitious international project which originated in 2015 as an EU-funded initiative based at the University of Innsbruck. It now operates under the name Transkribus and has more than 100 participants.²⁵ It is a machine-learning system which uses trained models to read and transcribe print and handwriting in a variety of languages, scripts and periods.

For this article, I tested Transkribus with an early 17th century will which has clear, regular handwriting. I was quite surprised by how well some words were recognised. However, most were horribly mangled, and it was unable to deal with layout, thus further distorting the results.

A technical assessment of Transkribus used for a body of late 17th century French Canadian legal documents has been published by a team based at the Université de Montréal.²⁶ The report describes their methodological approach to using Transkribus. It highlights the issues and problems that arose, including the variability of handwriting and idiosyncrasies of abbreviations and presentation of just one scribe. The authors are enthusiastic, but it is clear that there is a long way to go before the software is useable. So, for the foreseeable future, the human intervention of skilled palaeographers will be essential.

WHAT TO DO WITH YOUR OLD MANUSCRIPTS

The fate of old manuscript documents held in lawyers' files has been a concern for a long time, as many in the past were just thrown out when a general clear-out was being held. While the *Code of Conduct for Solicitors* only refers to safeguarding assets (para. 4.2), which includes 'documents, wills, deeds', detailed advice on dealing with records of historical value is set out by the British Records Association and endorsed by IALS and the Business Archives Council.²⁷ It explains the historical importance of many documents beyond their function as client records and after they no longer have use for the firm or the client. It gives advice on disposing of them appropriately for long term preservation and wider use. It also draws attention to the statutory protection afforded to manorial documents and directs readers to authoritative sources of information.

CONCLUSION

Most legal information professionals are unlikely to encounter early legal documentation in practice, but for those who do the good news is that help in dealing with them is available. Also, their place in the development of current law and practice can be an intriguing diversion from routine work.

Footnotes

- ¹ *Aston Cantlow PCC v Wallbank* [2003] UKHL 37. I am grateful to Guy Holborn for pointing out the case and for commenting on a draft of this article.
- ² In an 18th century manuscript poll book I encountered a name where the final letter of Thomas had been repeated at the beginning of the surname (Thomas Stale instead of Thomas Tale). Perhaps the man had a lisp or a heavy cold when he gave his name so that the two names ran into each other and the scribe just wrote down what he heard.
- ³ I saw such a deed displayed in a specialist design museum in Vilnius. The curators did not know where it originated nor what language it was in. Previous visitors had made wild guesses including High Dutch. The presence of the British royal arms was sufficient to identify the country of origin, but it took me a long time to provide the museum staff with the names of the parties and the property to which it referred.
- ⁴ C R Cheney, *A Handbook of Dates for Students of British History*, new ed. by Michael Jones (CUP 2000).
- ⁵ Proceedings in the Courts of Justice Act 1731 c. 26 for England and the Court of Exchequer in Scotland; Courts in Wales and Chester Act 1732 c. 14; and the Administration of Justice (Language) Act (Ireland) 1737 c. 6 in the Irish Parliament.
- ⁶ Mark Forrest, *Reading Early Handwriting 1500-1700* (British Association for Local History 2019).
- ⁷ N W Alcock, *Old Title Deeds: A Guide for Local and Family Historians* (2nd ed. Phillimore 2001).
- ⁸ <www.nationalarchives.gov.uk/help-with-your-research/reading-old-documents/>.
- ⁹ <www.scottishhandwriting.com/>.
- ¹⁰ <www.english.cam.ac.uk/ceres/ehoc/>.
- ¹¹ <www.nottingham.ac.uk/manuscriptsandspecialcollections/researchguidance/introduction.aspx>.
- ¹² See Chapter 4 'How' in Alcock's *Old Title Deeds*, which describes property documents in detail.
- ¹³ <www.nottingham.ac.uk/manuscriptsandspecialcollections/researchguidance/introduction.aspx>.
- ¹⁴ <www.gov.uk/government/publications/manors/practice-guide-22-manors>.
- ¹⁵ James Derriman, *Chancel Repair Liability: How to Research It* (rev. ed., Wildy, Simmonds and Hill Publishing 2006). A summary of research procedure (but without the helpful historical background) is on The National Archives site, ending with a reference to the effect of the Land Registration Act 2002 <www.nationalarchives.gov.uk/help-with-your-research/research-guides/chancel-repair-liabilities-england-wales/>.
- ¹⁶ For example, Sarah Bucks and Phil Wade, *Rights of Way: Restoring the Record* (2nd ed. Bucks and Wade Publishing 2017). The authors are members of the Open Spaces Society and the British Horse Society and do not appear to be lawyers.
- ¹⁷ *A boke of presidentes exactly written, in maner of a register. Newly corrected, with addicions of dyuers necessarye presidentes mete for all such, as desyre to learne the fourme and maner howe to make all maner of euidences and instrumentes as in the table of this boke more playnely appeareth: with also the begynning and ending of the termes* (London 1559) [353p.] STC 333 (2nd ed.).
- ¹⁸ e.g. William West, *The first part of Symboleographie: which may be termed the art, or description, of instruments and presidents* (London 1647). Section 393 describes bargains and sales and the following sections are precedents.
- ¹⁹ <www.nationalarchives.gov.uk/help-with-your-research/paying-for-research/independent-researchers/>.
- ²⁰ <www.archives.org.uk/freelance-consultancy-directory/>.
- ²¹ <www.agra.org.uk/memberbrowse>.
- ²² <www.nrscotland.gov.uk/research/researching-online/paying-for-research>.
- ²³ <www.library.wales/catalogues-searching/help-to-search/family-history-help/independent-researchers>.
- ²⁴ <www.nli.ie/en/services-commissioning-research.aspx>.
- ²⁵ <<https://readcoop.eu/transkribus/>>.
- ²⁶ Béatrice Couture and others, *The challenges of HTR model training: Feedbacks from the project Donner le goût de l'archive à l'ère numérique* (Université de Montréal 2022). Open access <<https://arxiv.org/ftp/arxiv/papers/2212/2212.11146.pdf>>.
- ²⁷ *Guidance on keeping archives of solicitors and law firms*, September 2021, version 1 <www.britishrecordsassociation.org.uk/wp-content/uploads/2021/11/Keeping-Archives-of-Solicitors-and-Law-Firms-v1-2021.pdf>.

Biography

Barbara Tearle retired as Bodleian Law Librarian in 2003. In retirement she has been engaged in historical research. For almost 15 years she was part of a volunteer group supporting the work of the Oxfordshire *Victoria County History* by transcribing 16th and 17th century probate documents. She has also had a transcription of early 16th century financial accounts published and a book of Bedfordshire probate inventories is due early next year.