ON USING THE ENGLISH REPORTS AS A SOURCE FOR ECCLESIASTICAL LAW: A CAUTIONARY TALE

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'One swallow does not a summer make' – so goes the old adage – and the object of this note is not to assert that reported cases are unreliable evidence. Its aim is to suggest that research must still extend beyond the printed evidence even for that period in history when collections of reported cases start to become freely available.

This cautionary tale concerns *'Cox's Case (1700)'* 1 Peere Williams, 32-3 24 English Reports 282, which was a declaration in prohibition, heard before Sir Nathan Wright, the Lord Keeper, on 21st November 1700. John Cox kept a grammar school in Chumleigh, Devon, without the bishop's licence to do so. Proceedings against him in the bishop's court of audience were stayed by a prohibition granted by the Lord Chancellor, Lord Somers, on 14th December 1699.

Peere Williams reported that, in giving judgement, the Lord Keeper said: "I always was, and am still of opinion, that the keeping of school is by the old laws of England of ecclesiastical cognisance and therefore let the order for prohibition be discharged. Whereupon I moved that this libel was for teaching school **generally**, without showing what school; and court christian could not have jurisdiction of writing schools, reading schools, dancing schools, etc. To which the Lord Keeper assented, and thereupon granted a prohibition as to the teaching of all schools, excepting grammar schools, which be thought to be of ecclesiastical cognisance."

It has been assumed that Peere Williams reported correctly. Phillimore cites the case as evidence of the curtailment of church control over schoolmasters.[1] Another lawyer, J.F.G. de Montmorency, argued that the judgement in "Cox's Case" took away all ecclesiastical jurisdiction over strictly elementary education although he conceded that the decision "was a matter for extreme surprise".[2] De Montmorency's explanation was accepted by Professor J.W. Adamson in his writing on the history of education, and the books of both are still recommended reading for students of the history of education in this country.[3]

It is perfectly clear both from the act book of the Bishop of Exeter's court of audience, from Bishop Trelawny's surviving correspondence, from the pages of the Act Book of the consistory court, and from the evidence of the Subscription Books for those taking out licences, that the Lord Keeper granted a consultation. The prohibition in Cox's case was taken off, the prosecution was resumed, and the Bishop continued to exercise control over schoolmasters both of reading and writing schools as well as of grammar schools.[4] De Montmorency was right to have been suspicious, and it looks as if Peere Williams reported incorrectly!

As far as its content is concerned, *Cox's Case* is irrelevant for any of the Society's Working Parties today. However, if it is felt desirable to found a renewed study on as sound a base as possible, then Cox's Case becomes a cautionary tale on the need to go beyond the library shelf when studying past judgements involving ecclesiastical law.

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1. PHILLIMORE, Sir Robert, *Ecclesiastical Law of the Church of England*, 2nd edn., (London, 1895), p.1620.
2. De MONTMORENCY, J.F.G., *State Intervention in English Education*, (Cambridge, 1902), pp.172-175.
3. CURTIS, S.J., *History of Education* (London, 1968), pp.730-731.
4. Devon Record Office, C.C. Act Book 757; Trelawny to Francis Cooke jr., 27th December 1700; C.C. Act Book 828; 151-153 Subscription Books.