

11-2016

The Relevance of Colonial Appeals to the Privy Council

Mary S. Bilder

Boston College Law School, bilder@bc.edu

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/lspf>

 Part of the [Comparative and Foreign Law Commons](#), and the [Legal History Commons](#)

Recommended Citation

Mary S. Bilder. "The Relevance of Colonial Appeals to the Privy Council." *Texts and Contexts in Legal History: Essays in Honor of Charles Donahue* (2016): 413-428.

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

The Relevance of Colonial Appeals to the Privy Council

Mary Sarah Bilder¹

The famous case of *Perrin v. Blake* may have begun with a hurricane. On 28 August 1722, a terrible hurricane hit Jamaica, almost precisely ten years after an earlier one. Port Royal was destroyed and hundreds of people died, including several hundred enslaved Africans when a slave ship sank in the harbor. Within a year or two, perhaps amidst the disease that followed, William Williams died. He thought his wife might be pregnant. He left a will attempting to provide for that possibility. The words chosen—and a series of later unfortunate events—gave rise to an appeal from Jamaica to the Privy Council. This appeal proved so troubling to English lawyers and judges that it was transferred into the regular English legal system. After decades, on the eve of a hearing in the House of Lords, the appeal was settled in 1777, leaving in its wake centuries of debate over the proper application of the rule in *Shelley's Case*.²

1. Thanks to Jim Oldham for sharing an informative 2002 memo by Avedis H. Se-farian about the Ambler and Eldon manuscripts on *Perrin*; Yvonne Fraser-Clarke, Head of Special Collections, National Library of Jamaica, for assistance with Jamaican materials; Sharon O'Connor for reading various drafts; and to Charlie Donahue for making it all possible.

2. On the 1722 hurricane, see David Longshore, *Encyclopedia of Hurricanes, Ty-phoons, and Cyclones* (New York: Facts on File, 2008), 267–268; Matthew Mulcahy, *Hurricanes and Society in the British Greater Caribbean, 1624–1783* (Baltimore: Johns Hopkins Press, 2008), 121; John Atkins, *Voyage to Guinea, Brazil and the West Indies* (1735; repr. London: Routledge, 2013), 236; Edward Long, *History of Jamaica*, 2 vols. (London: T. Lowndes, 1774), 2.145.

The appeal raises the question of the relationship between appeals to the Privy Council and English law. The question is appropriate in a volume honoring Charlie Donahue. Over the last decade, he found himself in a position analogous to eighteenth-century English legal figures confronted with colonial appeals. Charlie has served as the Literary Director of the Ames Foundation and oversaw the publication of the *Appeals to the Privy Council from the American Colonies: An Annotated Digital Catalogue*.

For the past two centuries, the colonial appeals to the Privy Council fell between the cracks on both sides of the Atlantic. For Americans, the creation of the Supreme Court and the absence of published reports of appeals implied legal discontinuity between “American” (post-1787) law and the pre-1787 British imperial world. For the British, the loss of the Atlantic colonies and the lack of printed precedents in appeals implied legal discontinuity between English common law and the colonial appeals. Elsewhere I have written about the importance of the appeals for colonial American legal history and the history of the development of the global law of the colonial world. Here I want to focus on the importance of the appeals for English legal history.³

This essay follows two narratives: first, an account of Charlie’s work with the Ames Foundation and his increasing involvement with the Privy Council Appeals project; second, a story about the overlooked history of *Perrin* as an appeal to the Privy Council. This essay does not attempt to exhaustively explore the case but to raise a few questions about the ways in which appeals to the Privy Council altered English law and lawyers.

THE COLONIAL APPEALS CATALOGUE

For much of Charlie’s career, he served in the multiple roles of English legal historian, property professor, and Literary Director of the Ames Foundation. When Charlie became Literary Director of the Ames Foundation, he stepped into quite large shoes. The Foundation had been established in 1910 by friends of James Barr Ames. The stated mission was “for the purpose of

3. Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard University Press, 2004); Sharon Hamby O’Connor and Mary Sarah Bilder, “Appeals to the Privy Council before American Independence: An Annotated Digital Catalogue,” *Law Library Journal* 104, no. 1 (2012), 83–97.

continuing the advancement of legal knowledge and aiding the improvement of the law.” The Foundation had interpreted that mission by focusing on English legal history publications. Under the guidance of John Henry Beale, T. F. T. Plucknett, and Samuel E. Thorne, the Foundation ensured that the previously unpublished Yearbooks of Richard II appeared. Under Charlie’s leadership, the Foundation continued this tradition with the print publication of a variety of unpublished legal manuscripts from the thirteenth to fifteenth centuries, the digital publication of significant early legal manuscripts in the collection of Harvard Law Library, as well as supporting David Seipp’s Yearbook Abridgement database.⁴

Nonetheless, at the outset of the twenty-first century, Charlie agreed to step beyond the boundaries of traditional early English legal history and support a project about law on the other side of the Atlantic and several centuries beyond the focus of his scholarly interests. The goal was to make accessible materials related to important appellate cases that helped define American colonial constitutional law and the larger constitutional law of the British Empire—to create a modern bibliography of the Appeals to the Privy Council from the American colonies with extant records. Charlie later noted that the project was “at once quite far from what we have traditionally done but also quite closely related to it.” He emphasized, it “has been quite a trip for the undersigned.”⁵

By this fortuity, relatively late in Charlie’s remarkable career as an English legal historian, he became a collaborator on the Appeals to the Privy Council from the American Colonies—and, in coming years, the Caribbean and Canada. Charlie was an enthusiastic, albeit occasionally exasperated, Literary Director. The Appeals project challenged the assumptions and approaches of traditional English legal history.

The British Privy Council heard appeals from the 13 colonies that became the United States and from the other colonies in Canada and the Caribbean. Over 700 cases were appealed from various American jurisdictions: Barbados; Bermuda, Connecticut, Dominica, Georgia, Jamaica, the

4. Ames Foundation Publication Series Brochure, W. S. Hein & Co.; Ames Foundation, <http://amesfoundation.law.harvard.edu/>.

5. *Appeals to the Privy Council from the American Colonies: An Annotated Digital Catalogue*, ed. Sharon Hamby O’Connor, Mary Sarah Bilder, and Charles Donahue Jr. (William S. Hein & Co., 2015), v–vi.

Leeward Islands, the lower counties on the Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Nova Scotia, Pennsylvania, Quebec, Rhode Island, St. Vincent, and Virginia. For two centuries, the records lay scattered in repositories on both sides of the Atlantic. Nearly one-third of these cases came from the thirteen colonies that became the United States.⁶

As an initial matter, the Appeals project presented an opportunity for the Ames Foundation to move beyond the conventional print approach to publication of original legal records. The gold standard for publication of primary source legal materials long had been an elegant hardbound print volume in which manuscripts were typeset, scholarly annotations provided context, detailed footnotes pointed researchers to additional primary resources, and a lengthy introduction by the editor explained the significance of the source. Often a facsimile of portions of the manuscript was included. Since the late nineteenth century, the Selden Society embodied this approach with distinctive navy blue bindings and gold lettering. The Ames Foundation had followed in the Selden Society's footsteps.

The Foundation's volumes comprised part of the invaluable tradition of documentary editions, catalogues, and bibliography. The strength of these older print resources arose from their clearly defined scope, the meticulous care of presentation, and the compilation and annotation of information without intermingling historical interpretation. The best of these volumes illuminated inaccessible primary sources. This publishing tradition countered the bias inevitable in histories that relied predominantly or exclusively on contemporaneously printed sources. The Ames Foundation and the Selden Society supported scholarship for which there was no obvious commercial market. Behind these volumes stood a remarkable belief in the importance of a scholarly community over time. The hours expended as a Literary Director overseeing and supporting projects and years spent as an editor laboriously preparing a volume were all worthy endeavors because at some time—perhaps long after the lifetime of those involved—these volumes would help others understand and write secondary scholarship about the past.

6. Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* (1950; repr. New York: Octagon Publishing, 1965), 667–671. I have excluded vice-admiralty cases.

In the twenty-first century, the new digital age raised the possibility that this endeavor would be abandoned. An increasing number of historical websites uploaded images of primary sources from archives. Digitization radically altered the economics of scholarship. A scholar could now sit in her office anywhere in theory in the world and see the images. Travel funds did not have to be obtained; the conflicts of family and job obligations were minimized. And the images of entire primary documents—not a single facsimile—reminded scholars to think about manuscript culture. Yet this digitization was often bereft of accompanying information—now often referred to as metadata. One could see the primary source but not come any closer to understanding it.

In the first decade of the twenty-first century, Charlie, Sharon O'Connor, and I found ourselves trying to chart a path through this new frontier of electronic publishing and digital humanities. We wanted to combine the best of the print publication tradition with the image accessibility of new media. In the end, the project became a new genre of historical website, what we call an “annotated digital catalogue.” At the core, the catalogue is a simple list of colonial appeals to the Privy Council (the “catalogue”). The list is extensively annotated to create multiple entry points for researchers and to refer to related documents and information. The digital format permits flexibility in access and direct viewing of documents, the vast majority of which are in England or scattered across the United States. The catalogue provides links to original documents for these appeals available in England and the United States. Most significantly, as of 2015, it includes images of surviving briefs filed in 54 appeals. These briefs—known as “printed cases”—provide the reasons for the appeals. The reasons reveal the principles underlying colonial constitutional law and eighteenth-century British common and statutory law.⁷

At every turn, Charlie insisted on honoring both the experience of working in the archives and the precise editing tradition of the print volumes. We thus paid to have photographed many blank verso sides of printed cases. We even discussed—but ultimately abandoned as impractical—including measurements and possible watermarks. In overseeing our

7. The conceptual framework for the catalogue was discussed in O'Connor and Bilder, “Appeals.”

preparation of the editorial metadata, Charlie focused on the smallest nuances. We debated was it more appropriate to use the term “not extant” or “not found” to describe the absence of printed cases. We spent hours discussing where to list cases that were not “true appeals.” Charlie was highly particular about the style. We went back and forth, seemingly endlessly, over whether en-dashes should be followed by spaces; whether vessels should be set in italics. He was vigilant on behalf of the small budget of the Ames Foundation. Historical societies and libraries found themselves negotiating reduced rates and favors to allow us to create the entire original database for under \$10,000. In advocating for reasonable digital fees, Charlie also set an important precedent in ensuring that digitization for scholarly projects be considered part of a long tradition in aid by non-profit primary source repositories to researchers, as opposed to an opportunity to raise revenue.

Charlie gradually found himself pulled into the world of the colonial Appeals. At the moment, there are no digital publishers akin to print publishers. In the past, the Literary Director could send the completed manuscript off to professional publishers to produce. But no such analogy existed. Charlie thus decided to become the technical creator of the website and database. He spent the Christmas vacation of 2010 creating and coding the first version of the database. Over the next five years, Charlie became the “techie” for the site. He agreed to a dual access approach to give the user the best of modern and traditional research tools. The site was built to encourage a wide variety of possible entry points. The home page has a standard search engine. Two additional contents lists arrange the appeals by colony and by year. Furthermore, a series of “useful lists” were created (e.g., appeals about vessels; appeals with printed cases, a list of counsel). When hyperlinks did not work, Charlie fixed them. When fonts were hard to read, Charlie fixed them. To ensure that the site could be navigated, Charlie wrote detailed instructions and supported the addition of a special memorandum for students and enthusiasts, which offers advice on how to use the Catalogue for developing a course paper or for advancing research in the field.

As Charlie was pulled deeper and deeper into the project, his natural curiosity and knowledge of English law drew him inexorably to the substance of the appeals. For example, in certain cases, one of the parties was given a peculiarly suspicious name: Thomas Turf or William Thrustout.

(Charlie particularly liked the Virginia lawyers' use of Thrustout.) Charlie wanted to ensure that the names of the cases make evident that the person was a likely fictional person. As he wrote to us, "The Ames Foundation is not going to publish something, even on the web, that is likely to provoke the wrong kind of smiles from those who know something about English legal history." As we worried about whether to list as a participant a fictional party, Charlie wrote, "A note allows us to express doubts, or to distinguish between a fictitious person and a fictitious lease and to express our degree of certainty about the fiction." This insistence was the deep strength of Charlie's work as historian and editor.

Before we knew it, Charlie begun to puzzle his way through ejectment cases. Charlie discovered that some of the colonial cases followed the English form in which there was often a fictional lease and lessee. But far more (thirty-seven cases) did not use the fiction at all. He began to imagine how the "colonial action in trespass and ejectment worked." Charlie drew on records that I had for two cases from Rhode Island and then journeyed to the Massachusetts State Archives to investigate the colonial case files for two others. The results of his research appear in a note on the website and in the printed volume, "Additional Research in Ejectment Cases." By the time Charlie had completed his investigation, he had also decided that efforts must be undertaken to attempt to have the colonial court records made digitally available.

Charlie only slowly accepted credit for his significant involvement in the Appeals project. He agreed that his name could be listed as "with the assistance of" in the print edition of the Appeals catalogue. Eventually, Charlie agreed that he had become a full co-author. In 2015, the American Association of Law Libraries awarded all three co-authors its important Joseph L. Andrews Legal Literature award to the *Appeals to the Privy Council from the American Colonies: An Annotated Digital Catalogue*.

THE PLANTATION CASE

In the journey from benevolent Literary Director to co-author, Charlie traveled the path that English lawyers and judges also traveled in participating in colonial appeals. Because the records of appeals were not easily accessible and because the appeals fell literally between modern legal ju-

risdictions, English legal historians have overlooked their importance and influence to leading English lawyers and judges. *Perrin v. Blake*, originally known as “The Plantation Case,” raises these questions. It is particularly appropriate in this essay as it involves the Rule in *Shelley’s Case*, a matter Charlie addressed in some depth in his property casebook.⁸

Nothing about the facts of *Perrin* foretold its future as a case that “divided the profession of law into bitter factions for many years.” William Williams owned a large plantation in the English plantations, specifically, Dean’s Valley, in Westmoreland, Jamaica. It was a “sugar works” and of sufficient wealth that the English lawyers described Williams as “possessed of a very large personal Estate” and “considerable real Estates.” The plantation was 2862 acres. From the late eighteenth to early nineteenth centuries, Westmoreland was the location of “some sixty sugar estates” with “10,000 slaves in the 1760s.”⁹

Williams was married to Mary Williams and had three daughters and a son. He made a will on March 13, 1722. According to the later legal documents, he died on February 3, 1723. Williams’ will was complicated. Lord Mansfield later would imply that the testator had written the will and “unwarily and ignorantly used” the words. The pervasive legal terminology and formality of the will, however, suggests that it was drafted by someone

8. Charles Donahue, Jr., Thomas E. Kauper, and Peter W. Martin, *Property: An Introduction to the Concept and the Institution* (St. Paul: West Publishing Co., 1974), 558–559. For a summary of *Perrin* and relevant sources, see James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004), 356–363. *Plantation Case*, *The Biographical History of Sir William Blackstone* (London, 1782), vii n.§. The most succinct summary appears in the notes to “An Argument by Mr. Justice Blackstone,” *A Collection of Tracts Relative to the Law of England*, ed. Francis Hargrave (London: T. Wright, 1787), 489–490.

9. *Divided*: J. Campbell, *The Lives of the Chief Justices of England*, 3 vols. (London: John Murray, 1849–1857), 2.430. The facts throughout have been drawn from the three printed cases: *Norwood Witter, Esq. and Others v. John Doe, the Lessee of John Sharpe...* (Respondent’s Case; William Murray and Alexander Hume-Campbell) (21 Nov. 1752) (Law Library of Congress); *John Doe v. Hannah Blake* (1765) (Appellant’s Case; Charles Yorke and William de Grey); *William Perrin and Thomas Vaughan... v. Hannah Blake* (1765) (Respondent’s Case; Fletcher Norton and Alexander Wedderburn) (British Library Add. MS 36219, fol. 236). The appellant’s case in the 1752 appeal has not yet been located. *Some sixty*: Richard Dunn, *A Tale of Two Plantations: Slave Life and Labor in Jamaica and Virginia* (Cambridge, Mass.: Harvard University Press, 2014), 7.

with either some legal knowledge or access to an English form book for estates and property.¹⁰

At the time of Williams' death, his young son, John, was about six. In succeeding years, one daughter died and the two elder daughters came of age and married. Bonella married Norwood Witter. Hannah married Benjamin Blake. John grew up and traveled to England for his education. There he met and became engaged to Sarah Knight. They married apparently sometime in late 1739.

Sarah's father attempted to protect her in the marriage. She was the daughter of another wealthy English-Jamaican merchant, James Knight. James Knight had returned to London and was in the process of composing a history of Jamaica. In London, lawyers drafted and negotiated the settlement. John Williams agreed to settle of jointure of 1000 pounds a year on Sarah. In January 1739, a marriage settlement was agreed to. Under the terms of the settlement, Sarah's family were made trustees and the Dean's Valley plantation and sugar works were entailed on the future sons of the marriage. If Sarah survived John, she was to receive an annuity of 1000 pounds sterling paid from the Royal Exchange in four payments. Apparently, John was only twenty years old at the time he executed the articles.¹¹

The will of William Williams was not in England and "it was thought prudent" according to Sarah's later lawyers to insert additional protection for Sarah. As they later would explain, it was not "then known how the

10. The death date of February 3, 1723 was listed in the legal cases. The 1723 death date assumes that references to his death in 3 February 1723 were new style. If it were old-style, then Williams did not die until 3 February 1724. The death date does not match the death date for the William Williams of Dean's Valley. Records of headstone inscriptions for the Dean's Valley Dryworks Estates describe a William Williams who died on November 19, 1723 when Williams was 35 years old. This monument mentions the hurricane and also appears to describe Williams as holding the office of *custos rotulorum*. J. H. Lawrence-Archer, *Monumental Inscriptions: The British West Indies* (London: Chatto and Windus, 1875), 337. For example, as the title page of George Billingshurst, *Arcana Clericalia: Or the Mysteries of Clerkship Explained* (London, 1705) noted, it provided forms for "conveying, limiting and settling estates by deeds, fine, and recoveries, in fee, in tail, for life...." Henry Swinburne's *A brief Treatise of Testaments and Last Wills* (reprinted from 1590 on) provided commonly adapted forms.

11. On James Knight, see Kenneth Morgan, *Materials on the History of Jamaica in the Edward Long Papers* (Wakefield: Microform Academic Publishers, 2006). The underage fact comes from the Appellant's Case (1764).

Right” of John stood and whether he would be able to settle Dean’s Valley as he promised. Thus he also granted to the Knights in trust for her one half of his personal estate in Jamaica and one half of the profits of his “several Plantations, messuages, lands, negroes, stock of cattle, hereditaments” and property. In return, Sarah—as was standard practice—agreed to relinquish her claim to dower.¹²

In February and March 1743, John Williams executed documents necessary in Jamaica to break any entail created by his father’s will. James Knight apparently had lent John Williams money and settled an additional sum on him in his will for carrying out the settlement. As far as Sarah and John were concerned, her sons would inherit the estate and, in the case of John’s death, she would have a jointure. If a son had been born, events might have played out differently. John might have planned to return or, like many English heirs to the sugar plantations, he might have thought to spend the rest of his life in England living off the profits of the highly abusive sugar plantation economy. The value of his estate was later estimated at upwards of 3000 pounds a year.¹³

John Williams died in England on the last day of December 1744. Sarah was left a childless widow. She remained in London, never traveling to Jamaica. Meanwhile, in Jamaica, Bonella and Hannah and their husbands took—or more plausibly remained—in possession of Dean’s Valley.

What followed was decades of litigation by Sarah to attempt to receive her jointure. In 1752, her brother, John Knight, wrote her that he was attempting to acquire by replevin “the Negroes upon Dean’s Valley.” The local court, however, needed an affidavit that the “Negroes are in the Possession of Messrs. Witter & Blake” and Knight was not sure when he could do it. Although he was attempting to send her funds, he worried about her.

12. Norwood Witter (Respondent’s Case), 1. On marriage settlements, see, e.g., Barbara English and John Saville, *Strict Settlement: A Guide for Historians* (Hull: University of Hull Press, 1983); A. W. B. Simpson, *A History of the Land Law*, 2nd ed. (Oxford: Clarendon Press, 1986), 204–241; Eileen Spring, *Law, Land, & Family: Aristocratic Inheritance in England, 1300 to 1800* (Chapel Hill: University of North Carolina Press, 1993).

13. For will of James Knight, see James Knight’s will (22 May 1743), PRO. On return to England, see Dunn, *Tale of Two Plantations*, 30; Richard Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624–1813* (New York: W. W. Norton, 1972); Mathew Parker, *The Sugar Barons: Family, Corruption, Empire, and War in the West Indies* (New York: Walker & Co., 2011).

He hoped she would “go into the Country during the summer months.” She should rent a house and he would “pay for it.” He was at great “Trouble & expense” with respect to her affairs in Jamaica and he counseled, “preserve your health for the enjoyment of your fortune.” By 1765, her London lawyers described her as “supported by the Assistance she has received from her own Friends” without which she would have “been reduced to a State of Want.”¹⁴

Over the many cases and appeals, the multiple arguments raised by the lawyers were simplified. For example, for some time, the lawyers puzzled over whether the relevant provision was a joint life estate to John and a supposed posthumous son and therefore all the remainders were dependent on the posthumous son’s birth; they were thus all void. Similarly, the lawyers argued over whether the bargain and sale deed executed in Jamaica was sufficient to bar the entail, although it did not follow the approach required in England.¹⁵

Eventually, Sarah Williams’ effort to obtain her jointure was turned into a case about the meaning of the will and, eventually, the application of the rule in *Shelley’s Case*. When Charles Yorke and William de Grey submitted the printed case for Sarah in 1765 as appellant, the four reasons did not directly raise the rule. The respondent’s case, however, did raise the issue, arguing that William Williams’ will gave John only “an Estate for Life.” The lawyers claimed that it represented the “Intention of the Testator,” although the will was “not framed with much legal Precision.” As John Campbell later explained, the “great question, was whether he took an estate for life or in tail?” If John took a life estate, he could do nothing. If he took an entailed estate, then he could break it and convert it to fee simple, out of which Sarah would have her jointure.¹⁶

The mortality of life in Jamaica took its toll on the suit. In 1751, Bonella died, leaving her husband, Norwood Witter, to pursue the suit on behalf of their son, William Witter. Eventually Benjamin Blake also died, leaving

14. John Knight to Mrs. Sarah Williams (February 1752), Documents Pertaining to Jamaica, 1720–1775 MST 1651, No. 31; *supported*: Appellant’s Case (1765), 8.

15. Appellant’s Case (1765), 2–3 N.B.

16. Respondent’s Case (1765), 5. For a recent careful discussion of the Rule, see David A. Smith, “Was There a Rule in *Shelley’s Case*?” *Journal of Legal History* 30 (2009), 53–70. *Great question*: Campbell, 2.431.

Hannah (Williams) Blake to pursue the suit. In 1765, Norwood Witter died. In London, Sarah Williams survived—and remained a widow.

Perrin is famous because of a contretemps between Mansfield and the other judges. In 1769, Mansfield decided against Sarah Williams obtaining anything from the estate and, as she had waived her dower, anything at all after her marriage. Judge Yates dissented. Mansfield's decision was then overruled in 1772 by William Blackstone and six other judges of the Exchequer Chamber. Only Justice de Grey favored the Mansfield position. As James Oldham notes, it "was among the handful of major defeats for Lord Mansfield." Before the case was heard by the House of Lords, it was settled.¹⁷

Mansfield's role was complicated. When the case arrived at the Committee for hearing Appeals, Lord Mansfield found himself the only "law lord" at the hearing. Francis Hargrave explained that Mansfield "did not chuse, that a question, of so general a tendency in respect to all the landed property in England, should be decided by his single opinion." The lawyers agreed to stay the appeal and obtain a "solemn adjudication" of the issue in Westminster Hall. The parties brought a "feigned action of trespass" with the "benefit of a writ of error to the exchequer chamber, and from then to the house of lords." Mansfield therefore was held responsible for preventing the appeal as a mere Caribbean appeal.¹⁸

Mansfield's decision ironically improved Sarah Williams's chances. A 1775 letter from defendant William Blake insisted that the Council had decided that John Williams was merely a tenant for life. It had been thought, however, that "there was something very nice in the Case" and so it was sent over to King's Bench. The subsequent reversal in the Exchequer gave her considerable bargaining power. She offered to settle for 400 pounds sterling per year. As the personal estate was "near Fifty thousand Pounds in Bonds, Mortgages &c," Blake apparently agreed, although he

17. James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004), 356. On *Perrin*, see Francis Hargrave, *Collectanea Juridica*, 2 vols. (London: For E. and R. Brooke, 1791–1792); *A Collection of Tracts Relative to the Law of England*, ed. Francis Hargrave (London, T. Wright, 1787). The 1769 decision was Mansfield, Aston, Willes against Yates.

18. Hargrave, "Mr. Justice Blackstone," 492 n.

then noted that he had “since thought better” of it. The eventual settlement is not presently known.¹⁹

After the decision, controversy developed over Mansfield’s earlier role in the appeal. Charles Fearne accused Mansfield of giving Sarah Williams advice contrary to his later decision. Some advice apparently was given before the 1743 settlement, presumably either to John Williams or to James Knight. In April 1747, while Solicitor General, Mansfield allegedly wrote an opinion that stated the remainder was in tail and he could suffer a recovery. Mansfield declared that he had not offered such an opinion. Fearne insisted that he had.²⁰

Regardless of the opinion that Mansfield gave, the printed case reveals that Mansfield represented Sarah Williams in the 1752 appeal. Intriguingly, William de Grey, the only Exchequer justice to join Mansfield, represented Sarah Williams in the 1765 appeal. Because commentators on *Perrin* judged these appeals to be irrelevant, Mansfield’s rather extensive participation has been overlooked.

In general, modern legal commentators have favored the Mansfield position, taking for granted that the intention of William Williams was not to leave anything beyond a life estate to his son. Contemporary legal commentators tended to favor the entail interpretation, permitting the son to convert the property to fee simple and to provide the widow with a jointure. The contemporaries—more familiar with conveyancing practices such as strict settlement—may have the better instinct about the testator’s likely substantive intent and general conveyancing practices.

19. William Blake to Samuel Wilkinson Gordon, 18 June 1775 (copy), in Documents Pertaining to Jamaica, 1720–1775 MST 1651, No. 32 (described by Ingram as No. 31), National Library of Jamaica (the end of the letter was missing). The settlement was to be structured by investing 6000 pounds sterling.

20. Charles Fearne, *An Essay on the Learning of Contingent Remainders and Executory Devises* (London, W. Stahan and M. Woodfall for P. Uriel, 1772); Charles Fearne, *Copies of Opinions ascribed to Eminent Council on the Will which was the Subject of the case of Perrin v. Blake* (London: W. Strahan and M. Woodfall, 1780). On pre-1743 advice, see Fearne, *Copies*, 10–11 (statement of the case). For Solicitor General’s opinion as copied from Booth’s copy, see *ibid.*, 15. Other opinions included D. Ryder (Attorney General), Bev. Filmer, and James Booth. Filmer and Booth were noted conveyancers. For discussion favoring Mansfield, including the January 1746 Murray opinion for life estate, and suggestion that Booth was influenced by client advice, see John Holliday, *The Life of William, Late Earl of Mansfield* (London: P. Elmsly, 1797), 199–209.

Francis Hargrave criticized Mansfield's decision. Hargrave thought it unfortunate that "a lady should not be able to know, whether her jointure was good or not without waiting upwards of thirty years." He declared it was "certainly a misfortune to the lady, whose interests were at stake, that the case took such a turn." What bothered Hargrave was that her case had been interpreted "as a final precedent for explaining a rule of law of general importance: one, about which there has latterly prevailed amongst professional persons an uncommon diversity of sentiments, and by the mode of applying which the titles to all the real property of the country are ever liable to most essentially affected." In brief, Hargrave may have believed the appeal should have been decided simply as a particular appeal.²¹

Why did Mansfield decide that this particular appeal could not be decided without affecting all of English law? What was the relationship between the law and legal principles as argued in the reasons in the printed cases of appeals and as argued in King's Bench, Common Pleas, Exchequer, and the House of Lords? Were there other legal questions raised in appeals that formally or informally were transferred into the regular law courts? How did appeals affect the development of English law? We do not know the answer to any of these questions.

How did arguing the appeals affect Mansfield's legal thought? How did arguing appeals alter the legal thought of the many English lawyers listed on the printed cases? William Murray argued fifteen colonial American cases between 1732 and 1754. Dudley Ryder argued another twelve. Charles Yorke argued twenty-eight between 1753 and 1766. William DeGrey and Charles Pratt similarly appear on the printed cases. These numbers do not include appeals from the Caribbean and Canada—as well as appeals in which there was no extant printed case. The law argued in the appeals was not bound by English common law in the same way as in King's Bench or Common Pleas. Actions developed in the colonies followed different rules than technical English procedural law. Outcomes permitted in the colonies were not always the same as those under English law. When they went on to become judges, did this type of legal argument stay with them? To what

21. Hargrave, "Mr. Justice Blackstone," 493 n.

extent are the appeals from the colonies responsible for the extraordinary development of late eighteenth-century English law?²²

How did the appeals from the colonies alter these lawyers, politicians, and judges' view of the expanding empire? In 1976, K. E. Ingram suggested that the Jamaican appeals were important in understanding the relationship between England and the Caribbean. He found thirty-one printed cases relating to Jamaican appeals in the Hardwicke collection at the British Library. They "illustrate the extremely litigious nature of the Jamaican planter class and the tedious and very slow processes whereby lawsuits were settled." After decades of searching for manuscript sources relating to Jamaica, Ingram emphasized that the dominance of Jamaican plantation papers as part of the estate papers of "one or other titled member of the British landowning class is quite remarkable." A preliminary glance at the appeals from the Caribbean reveals the repeated involvement of slavery. What was the role of the London lawyers and judges in the development of laws relating to slavery? Furthermore, both Sarah Williams and Hannah Blake participated in additional appeals. How did women use the appeals system to obtain property and financial security? How did they interact with the London legal profession and with local attorneys? For example, a note on a copy of the 1757 order of the Committee of Council for hearing Appeals from the plantations stated "Copy made for Mrs. Williams to send to Jamaica" with two printed cases with remarks. How did the English legal system configure wealthy white women's property interests and slavery? How was English law influenced by the economic interests of Caribbean slaveholders?²³

22. Bilder, *Appeals*, 527–532. For an excellent article discussing the appeals to the House of Lords and Scots lawyers, see John Finlay, "Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain," *Journal of Legal History* 34 (2011), 249–277.

23. K. E. Ingram, *Sources of Jamaican History, 1655–1838: A Bibliographic Survey* (Zug: Inter Documentation Co., 1976), 30–31. Manuscripts records in Jamaica include, for example, letter in 1771 from Peter Ramsey to Sarah Williams and Ms. Ann Barrett relating to litigation over the Knight plantation, Molynes. SWIS 679, National Library of Jamaica. Sarah Williams was also involved in James Barclay v. Daniel Munro (25 March 1757), Add. MS 36217 fol. 132, British Library (relating to the estate of John Knight and James Knight; Vere Langford Oliver, *Caribbeana*, 6 vols. (London: Mitchell, Hughes and Clarke, 1910–1919), 6.71. Copy: J. Barclay appeal re the estate of James Knight, MS 492, National Library of Jamaica.

Charlie Donahue's work behind the scenes with the Appeals catalogue will help scholars begin to answer these questions. In coming years, we will finally learn what interested the great eighteenth-century English lawyers about the appeals. It may be some of what interested Charlie—a place where English law was freed slightly from its historical, printed precedential moorings.