Comparative Studies
in Continental and Anglo-American Legal History

Vergleichende Untersuchungen zur kontinentaleuropäischen
und anglo-amerikanischen Rechtsgeschichte

Band 5

Judicial Records, Law Reports, and the Growth of Case Law

Edited by

Prof. Dr. John H. Baker

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Herausgegeben von

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Preface

It is commonly supposed that one of the major distinctions between the methodology of the English lawyer and that of his Continental counterpart is that the former works largely from decided cases and the latter from codes and doctrinal literature. This means that the common lawyer reasons from particular instances towards a general principle capable of application to the matter in hand, whereas the Continental lawyer is supposed to reason from general principles towards the particular. Another consequence is that the common lawyer attaches greater significance to forensic decision-making, to the doings and sayings of courts, than do lawyers bred on *doctrine*. Indeed, is it not a maxim of the Civil law that *non exemplis sed legibus iudicandum est?*

Such over-simplifications are, of course, bound to be to some degree false, and this one has an unconvincing sound. Legal principles are hard to grasp in the abstract, and it is as natural for the legal mind to dwell on the application of principles to given situations as it is to attempt formulations of general principle. Moreover, no one who practises in a court can afford to ignore the way the court has acted in the past, or resist the temptation to remind the court when it appears itself to have forgotten. It would be surprising, therefore, if any mature system of law – whether at the level of legal scholarship or of the administration of justice – were able to avoid either the abstraction and refinement of doctrine or some consideration of the way the legal principles have been applied in actual cases.

How far our over-simplification may hold true of the contemporary legal world is a question for others. We may note that the distinction is not one which occurred to Fortescue, comparing English and Continental law in the fifteenth century, or to Fulbecke, comparing common law, Civil law and Canon law in 1601. But it is enough to begin this volume with the observation that as a guide to legal history it is demonstrably misleading. For one thing, English medieval lawyers did have a body of doctrine – in the true sense of received learning, as expounded in law schools – although legal historians have almost forgotten its existence.[1] For another, medieval lawyers on the Continent did make widespread use of decisions in particular cases, even if they were not cases heard in court. The *consilia* written by doctors of

[1] *J. H. Baker,* English Law and the Renaissance, Cambridge Law Journal 44 (1985), at pp. 51 - 53; reprinted in: The Legal Profession and the Common Law (1986), at pp. 466 - 468; The Inns of Court and Legal Doctrine, in: T. M. Charles-Edwards & al. ed., Lawyers and Laymen (1986), 274 - 286.

law were applications of legal principle to particular sets of facts; and collections of such "cases" circulated widely in many European countries: they have been called "academic rather than forensic case-law",[2] the more so since their usefulness did not depend on knowing whether the advice was accepted, but they are justly called "case-law" nonetheless. In addition, the decretals which formed a major part of the Corpus Iuris Canonici may also be considered as case-law: again not decisions of courts, but authoritative guides to principle prompted by the consideration of the particular, examples of the sovereign speaking to single instances. It can hardly be doubted that collections of these kinds of case were sources of law in a true sense; they were studied, glossed and used as authorities. Although case-law in this extended sense has not been the concern of the working party which produced this volume, its existence, indeed its importance both for forensic and academic purposes, prepares the way for our main concern: the extent to which law has been sought and found in decisions reached by courts in real cases.

The learned law did not prohibit recourse to local custom, for no-one supposed that every country in Europe was governed by identical law. Since the courts of each country – or even of parts of a country – sometimes behaved differently, the study of relevant court practice was an essential part of the education of any judge or practitioner. The practice of courts was therefore a source of law on the Continent as in England; and it is a short step from the study of practice as a general abstraction to the study of particular cases disposed of in court, as concrete evidence of such practice. Courts themselves would also wish to preserve consistency in their application of the customs which bound them, by having regard to their own past practice. It could be maintained that this did not infringe the maxim *non exemplis sed legibus,* because the *exempla* were being used not to interpret or contradict *leges* but to provide evidence of unwritten custom. The maxim was cited from time to time, but its force was usually redirected against the use of single instances which erred, by departing from reason or common practice.[3] Certainly its use did not prevent the growing study of cases by professional lawyers. It is widely known that this kind of study was not confined to England even in the middle ages, and that by the sixteenth century there was more law reporting on the Continent than in the home of the common law.[4]

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[2] *Peter Stein,* Civil Law Reports and the case of San Marino, in: Römisches Recht in der europäischen Tradition: Symposion aus Anlaß des 75. Geburtstages von Franz Wieacker (ed. O. Behrends and others, Ebelsbach, 1985), 323 - 338, at p. 323. A major debt is owed to this valuable essay in what follows.

[3] In this modified form the maxim was known in the English courts: 41 Selden Soc. 118.

[4] See *J. P. Dawson,* Oracles of the Law (Michigan, 1968); Rechtssprechungssammlungen, by *M. Ascheri* (Italien), *G. Walter* (Frankreich), *J.-M. Scholz* (Spanien und Portugal), *M. Gehrke* (Deutsches Reich), *U. Wagner* (Niederlande) and *K. Luig*

Taking this as given, the aim of our working party was to examine the phenomenon more closely in selected areas, with comparative questions in mind. The result is not intended to be comprehensive or conclusive.

The contrast between the "record" kept by the court as an official memorial of what it has done, and a "report" of what occurred in court – that is, an account (usually unofficial) of how a case was argued or of what motivated a decision – seems fundamental, and we have had little difficulty in applying the distinction throughout the various jurisdictions we have considered. Our efforts, therefore, have been concentrated on establishing more precisely how much of either kind of source has survived, what is to be found in records and reports respectively, and on how the distinction between the two kinds of memoranda may have affected the nature of case-law in different places and traditions. The relationship between the two kinds of material is most easily established when records and reports of the same cases can be laid side by side. This has been the practice of the better reporters in England since the sixteenth century (when it was begun by Edmund Plowden), and is generally followed by modern editors of English reports. Unfortunately for our purpose, there is only one Continental parallel: in Mme Boulet's valuable edition of the fourteenth-century Parisian reports of Jean le Coq.[5] Nevertheless, several contributors to this volume have shown that there are extant records which would enable similar matches to be made, and have furnished some illustrations.[6]

The practice of making judicial records seems always to precede that of producing reports of cases. Both practices are first found in England, though it is inherently unlikely that either English usage had any direct influence on the Continent: the early common law, perhaps because of this chronological accident, developed as an insular science known only to the relatively small company of initiates who frequented Westminster Hall. The Church, however, followed suit soon afterwards: records of judicial business were made at least by the early thirteenth century, and reports of cases heard in the Rota began to appear in the second quarter of the fourteenth. Here, too, there are indications that English lawyers were in the van. The records of

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(Schottland), in: *H. Coing* (ed.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, II, pt 2 (Munich, 1976), 1113 - 1445; *G. Gorla,* numerous papers conveniently summarised (in collaboration with Dr. *L. Moccia*) in: A Revisiting of the Comparison between Continental Law and English Law, Journal of Legal History 2 (1981), 143 - 156; *J. H. Baker,* Case-Law: Reports and Records, in: Englische und kontinentale Rechtsgeschichte: ein Forschungsprojekt, Comparative Studies in Continental and Anglo-American Legal History 1 (Berlin, 1985), 49 - 55; English Law and the Renaissance, Cambridge Law Journal 44 (1985), 46 - 61, reprinted in: The Legal Profession and the Common Law (1986), 461 - 476.

[5] *M. Boulet,* Quaestiones Johannis Galli (Paris, 1944).

[6] E. g. Dr. Vallone's discovery of the Neapolitan records corresponding to the *decisiones* of d'Afflitto, which was made in the course of preparing his contribution to this volume.

English ecclesiastical courts may be the earliest of their kind.[7] Certainly the earliest known reports of cases in the Rota were kept by English members of the court.[8] These Englishmen were doctors trained at Cambridge, not common lawyers trained in the inns of court, and their reports differ in language and style from the "year books" of the common law. It will probably never be known whether this English connection is more than a coincidence. The most obvious model for the *decisiones rotae* was the *consilium:* in the Rota so much legal learning was available that the auditors took counsel from each other. Whatever the initial inspiration may have been, the Church courts provided a model for other tribunals from this period onwards.

A seemingly independent tradition is represented by the French *parlement* in Paris, which kept records from the middle of the thirteenth century and where reports or notes of cases were being taken by the end of the fourteenth. As was noted in our introductory report, the relationship between report and record is quite different in fourteenth-century France and England, and it seems that the immediate model for the Parisian reports was the academical *quaestio* or disputation. In this respect, however, history may have repeated itself; for it seems possible that the earliest English reports developed from instructional exercises in which the more or less abstract put-case slowly gave way to the real thing.

The stream of reporting which spread across Europe in the fifteenth and sixteenth centuries also began in France, with Jean Corsier's ecclesiastical decisions from Toulouse (1390s) and Guy Pape's decisions of the *parlement* of Dauphiné (1440s to 1480s). Both clearly owed a debt to the *decisiones rotae,* and indeed Pape acknowledged that he had taken them as his model.[9] By the end of the century, Pape's own work had acquired a similar reputation, a reputation not confined to France. The first Italian reporter, Matteo d'Afflitto, a member of the royal council in Naples in the 1490s, followed in the same tradition; and his reports show that previous decisions were being cited in court. After France and Naples, the practice of reporting spread northwards to the royal courts of the low countries, Germany and Scotland. Over 400 printed collections have previously been listed,[10] and in our volume

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[7] The records of the court of Canterbury may be among the oldest records kept by a court itself. Record-keeping did not follow automatically from record-making, as the practice of the Rota itself shows. But it would rash to generalise ahead of Professor Donahue's group.

[8] See *J. H. Baker,* Dr Thomas Fastolf and the History of Law Reporting, Cambridge Law Journal 45 (1986), 84 - 96. Fastolf's *decisiones* date from 1336 - 37; and there are some unpublished rotal reports from the 1350s by Simon of Sudbury. Both men were protégés of William Bateman, bishop of Norwich, founder of Trinity Hall, Cambridge, and a leading figure at Avignon under Pope John XXII. Bateman (d. 1355) left a collection of rotal *decisiones* to Trinity Hall, but it is not there now.

[9] Guido Papa, Decisiones Grationopolitane (Grenoble, 1490), preface („. . . et duxi in scriptis redigendum prout infra per modum questionum, ritum decisionum rote curie Romane insequendo . . .").

there are particular studies of Malines and the Reichskammergericht, and also Sicily. Although all these reporters may be seen as following each other, and contributing to what could soon be described as a *ius commune,* the determining factor in the spread of such reports seems to have been the creation of superior courts with professional, legally trained judges. There was usually no point in reporting the decisions of mere laymen, whether judges or jurors, if they embodied no jurisprudence which could guide future decisions or augment legal scholarship. In a juridical world which gave the last word to laymen, the interest of lawyers necessarily focused on the intermediate stages of litigation in which lawyers played a part: be it on the advice *(consilium)* given to the lay judges, or (as in England) on the careful formulation by the lawyers of the question for the lay tribunal. But the growth of learned royal councils[11] in the Renaissance period enabled a fusion of doctoral and royal authority which gave a new force to judicial decisions. The decisions of such councils carried weight not merely because of the personal authority of the doctors who made them, but also because the doctors spoke for the sovereign whom they collectively represented.[12]

It could be said that this development in very general terms reproduced the experience of England and France, inasmuch as those countries had possessed strong central courts at an earlier date. However, certain differences in character and procedure between these conciliar tribunals and the English common-law courts explains one of the major differences between the English reports and those of the *ius commune.* The common law retained until the last century a rigid separation between the finding of facts (by the jury) and the application of law to the facts. The jury found the facts in summary form,[13] and the corresponding formulations of law therefore related to relatively simple factual situations rather than the facts at large, which were not recorded. In the continental courts, on the other hand, the ascertainment of facts belonged to the judges and was generally accomplished by building up a dossier of written material, often in great detail. The process of deciding cases under this system encouraged either a concentration on procedural issues (leaving the substantive questions alone), or the statement of general principles which were not so "tied to the facts" as in the common-law tradition.[14] The English counterparts of these courts were the Chancery and Star

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[10] Coing (ed.), Handbuch, II, pt 2, 1113 - 1445.

[11] Taking this as the generic name for collegiate courts in the manner of the papal Rota.

[12] In addition to the remarks in the present volume, see also *Baker,* English Law and the Renaissance, in: The Legal Profession and the Common Law, at pp. 468 - 471; and *Stein,* Civil Law Reports, at pp. 323 - 326.

[13] Even a special verdict – rare before the 1550s – did not contain anything like the detail commonly written down under the Romano-canonical procedure.

[14] See further *Stein,* Civil Law Reports, at pp. 326 - 331, for a very clear statement and explanation of the differences.

Chamber, which followed an Anglicised version of the Romano-canonical procedure and collected facts in writing. In those courts a body of case-law was much slower to develop, and regular reporting did not begin until the late sixteenth century. Even in more recent times, general principles or maxims have been more influential in equity cases than rigid precedent. The earliest collections of Chancery cases, moreover, were not reports in the proper sense but collections of dicta[15] or notes taken from the records of the court.[16] Here, as might be expected, is perhaps the strongest parallel between the English and certain of the Continental traditions. Another difference, though not universal, was that the continental councils did not at first always give public reasons for their decisions.[17] This explains why so many of these conciliar reports were made by judicial members of the council concerned: often no one else was in a position to do so. In such cases the "report" might perform the function of supplying a reason which was not made public, or the arguments which preceded the decision, or at least – a third kind of function – of systematising the body of unmotivated decisions.

There is also, perhaps, a parallel – albeit equally loose – between the earlier procedures which in one way or another shut out law-making by trained lawyers. In England the existence of the jury, the twelve good men and true whose decision on anything but a question of pure law was final and yet inscrutable, delayed rational development in many branches of the law, sometimes for centuries. The twelve *buoni huomini* of the Sienese Mercanzia behaved rather like an English jury; they had a similar power to apply equity rather than law, and their decisions enjoyed a similar finality without responsibility to give reasons. But the hope of keeping lawyers out of that system failed in the fifteenth and sixteenth centuries: the informal oral procedure became written and technical, merchant-judges and merchant-litigants alike sought the advice of doctors of law, and by such professional legal influences the unwritten usages of merchants became assimilated to the *ius commune*. A similar result occurred in England, though at a rather later date, and in a different way: by shifting the relative responsibilities of court and jury.[18]

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[15] E. g. the series kept by Richard Powle (1581 - 1600), register of the Chancery, in Bodl. Lib. MS. Rawlinson C. 647; and the anonymous series (1596 - 1603) in Cambridge Univ. Lib. MS. Gg. 2. 31, ff. 437 - 480v. (There are, however, stray Chancery and Star Chamber cases, in usual common-law style, in the year books and later reports.).

[16] E. g. the printed Chancery collection (1558 - 1601) by George Cary, the unprinted Chancery collection of similar date by William Penniman (Harvard Law School MS. 1035.2) and the unprinted Court of Wards collection (1553 - 78) by John Hare. In each case, the compiler was an officer of the court.

[17] One practical reason for this was to ensure finality: a judgment for which incorrect reasons had been given might be treated as a nullity, without the need for an appeal.

With the twelve or so *schöffen* of Lübeck and Magdeburg we are in very different juridical territory. Their name was once common throughout Europe[19] – in the form of *scabini* and *échevins* – but etymology can confuse comparative studies, and the particular development of this office in Lower Saxony represented a distinct tradition. The *schöffen* were laymen only in the sense that they were not usually trained lawyers: they were or became experts, appointed for life, and indeed their expertise brought them questions from far afield. Their function was the reverse of that of the jury, in that it was to declare the law as it applied to the problems submitted to them; and their authoritative declarations, or *sprüchen,* were written in the town register-books for future reference. Nevertheless, they did not give detailed reasons for their statements, and it required a special form of literature to render them usable as a body of principle: as Professor Dawson remarked in this context, "ingenious solutions in particular cases do not add up to a body of law unless someone can be found to do the adding".[20] The systematised collections of questions and answers *(Spruchsammlungen),* which we cannot easily identify with "reports", therefore constitute a special form of case-law without exact parallel in western Europe.

Travelling further eastwards to Moscow, we find that (by the sixteenth century) records were kept of Russian judicial decisions, and there is some evidence that the judgments contained in them reflected consistent customary law. The records seem to have been fuller in some respects than the English plea rolls, but there is no evidence that anyone was found "to do the adding": and so, in the absence of any systematisation of the mass of single instances, or of reliance on precedent, we should be slow to identify a "case-law" tradition in medieval Russia. In the new world, on the other hand, the eighteenth-century courts – after a century of lay domination[21] – came under the influence of men trained in the inns of court, who acknowledged an intellectual allegiance to the common-law tradition and copied the English system closely. Reports of cases, on the English pattern, have flowed steadily in America from the time of George II to the present.

In fairness to my fellow contributors, and out of deference to a complex subject which we have begun to explore from many angles, I have not ventured on an introduction to, or even an outline of, the varied material which follows. Let each chapter speak for itself.

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[18] See *J. H. Baker,* The Law Merchant and the Common Law before 1700, reprinted in: The Legal Profession and the Common Law (1986), 341 - 368. The way may have been prepared by the use of expert juries: see *James C. Oldham,* The Origins of the Special Jury (1983), 50 Univ. Chicago Law Rev. 137 - 221.

[19] Even in England. For the general history, see *F. Estey,* The Scabini and the Local Courts, Speculum 26 (1951), 119; *J. P. Dawson,* Lay Judges (1960), pp. 35 - 39.

[20] *Dawson,* Oracles of the Law, p. 174.

[21] Records survive from this period, but not reports.

Finally, I wish to thank Herrn Herwig Unnerstall (University of Tübingen) for the great pains he has taken in preparing this book for the press; without his assistance my task would have been a great deal more burdensome.

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Inhaltsverzeichnis

J. H. BAKER

Records, Reports and the Origins of Case-Law in England

I. The Sources

Although the common law of England began to achieve a distinct identity before the English courts started to keep records, dependence on precedent seems always to have been one of its features. The common law described by Glanvill in the 1180s was conceived of chiefly in terms of remedies, and those remedies (enshrined in the "writs" which commenced actions) were the results of decisions which were rigidly adhered to. Whether such decisions to introduce new remedies should be considered judicial or legislative, or even administrative, is a question ahead of the time to which it relates. But there seems to have been an understanding, at least by Glanvill's time, that once a form of remedy was established it was not easily to be changed. The Chancery would not generally issue writs in new forms; the courts would not generally accept them if they did. Although there was some scope for innovation, particularly through actions on the case, the importance of precedent in the writ system was a feature of English law until the nineteenth century. But it is a very rudimentary kind of precedent. The writs were necessary preliminaries to judicial proceedings, and as such provided a framework for legal analysis, but they did not themselves contain propositions of law or indicate in detail what kinds of case fell within their scope.

For the next stage it was necessary to keep records of the decisions of the central courts. The development occurred at an early stage in English legal history, and contributed as much as any other single factor to its distinctive character. If not exactly a by-product of sheep-farming, the common law owed much to sheep. Over a million of them, during six centuries, gave their skins to make the "record" – the continuous parchment memory of the proceedings and judgments in the central courts. To this day it is a remarkably good memory, with few losses and relatively slight deterioration through age.

1. The Plea Rolls

The rolls of the central courts of common law are now generally known to historians as "plea rolls".[1] They commenced in 1194, and the innovation can

[1] At one time this expression was more usually reserved for the rolls recording pleadings, as opposed to mesne process. But "plea" here also means "case" (as in

probably be attributed to Hubert Walter, the chief justiciar, who shortly afterwards introduced enrolment in the Chancery.[2] From then until the use of parchment rolls was discontinued in the reign of Queen Victoria, over 10,000 bundles of plea rolls were produced by the clerks of the central courts.[3] These contain the record of all business formally transacted in those courts; and, although undoubtedly not all litigious activities were enrolled, the roll had a status not enjoyed by other forms of memoranda such as dockets[4] and paper books. The roll was the only legally acceptable evidence of what was transacted in court, and for that purpose was conclusive.[5]

Unlike the Chancery rolls, which were sewn end to end, the plea rolls were always bound up in the Exchequer fashion with thongs or ropes passing through the head of each membrane. Term by term the rolls were thus made into bundles of membranes piled on top of each other, and numbered. The number of rolls in each bundle varies from a very small number – in double figures – to over 700.[6] The principal purpose of the record was to establish what had been decided, so that the decision might be final: what later lawyers would call estoppel by judgment or *res judicata*. Like minutes of meetings at the present day, they were concerned to record the outcome of proceedings rather than the discussions and reasons which explain how the result was arrived at.[7] The use of Latin – maintained until 1732 – helped to preserve the terse formulism of the common-law rolls. At first the entries were very brief indeed, but the classical form of entry as settled in the thir-

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Placita de Banco). It is also common nowadays to use the word "roll" for the whole bundle of rolls for a particular term. The expression "court rolls" is now usually reserved for the rolls of seignorial and local courts.

[2] See *M. T. Clanchy,* From Memory to Written Record (1979), pp. 74, 122 - 123.

[3] For summary lists, see Guide to the Contents of the Public Record Office, Vol. I (1963), pp. 94 (Exchequer), 117 - 118, 122 (King's Bench), 137, 138 (Common Pleas). Similar rolls were kept of the proceedings before itinerant justices: ibid., pp. 123 - 126; *D. Crook,* Records of the General Eyre (1982).

[4] These are not much mentioned in earlier sources. In 1484 the court stated plainly that they could not be used to correct the record and that after the term had ended they were defunct: Mich. 2 Ric. III, fo. 11, pl. 24. Cf. Pas. 22 Edw. IV, fo. 3, pl. 12. The King's Bench docket rolls survive from 1390, but there are none from the Common Pleas before 1509: 94 Selden Soc., p. *101.*

[5] This is evident from the earliest reports: e.g., Year Books 20 & 21 Edward I (Rolls Series), p. 407 ("Nota per Huntindone, et verum, quod judicium curiae domini Regis non potest verificari per patriam [i.e. jury] sed per rotulos"); Year Books 4 Edward II, 26 Selden Soc., p. 21, per Bereford C.J. It seems that the idea of record was not at first synonymous with the roll, and could include an oral account: see *S.E. Thorne,* Notes on Courts of Record in England, 40 W. Virginia Law Qly (1934), pp. 347 - 359; reprinted in: Essays in English Legal History (1985), pp. 61 - 73; *Clanchy,* From Memory to Written Record, pp. 56 - 57.

[6] The increase in litigation in the 16th century eventually necessitated dividing the rolls for each term into more than one bundle, though this obvious reform was long postponed and some bundles are gigantic.

[7] For some rare early exceptions, see *J.P. Dawson,* Oracles of the Law (1968), p. 51. For a possibly unique late exception (of 1579), see Co. Entr. 380, 383v; *J.H. Baker,* 28 International & Comparative Law Qly (1979), at p. 142 n. 5.

teenth century was: (i) note of the original writ and of the plaintiff's appearance; (ii) (when the defendant appeared), the plaintiff's count *(narratio)* or declaration of his case, the defendant's plea *(placitum),* the plaintiff's replication, and any subsequent pleadings; (iii) the process for summoning the jury (where appropriate) and the result of the trial; (iv) the judgment; and (v) any final process. In practice the majority of cases did not proceed beyond (i), and only a small minority reached (iv). Cases could be discontinued at any stage, with no reason entered; but we may suppose that the usual explanation is a compromise of the suit, or perhaps in some cases a unilateral failure of hope or means on the part of the plaintiff. Since most entries at stage (i) are of pure common form, the bulk of the plea rolls are taken up with matter of minimal legal interest. Even the fuller entries are strictly limited in content. The pleadings, in English practice, were not legal arguments but formulaic statements of fact on which the party relied. As soon as a material fact was asserted by one party and denied by the other, there was a triable "issue" *(exitus)* and the pleadings were closed. The record of the trial, if there was one, gave only the bare essentials: in the case of trial by jury, for example, it noted the process to summon the jurors, the swearing in of the jury, and the verdict, but not the evidence adduced by the parties or the submissions of counsel.[8] The judgment was merely the formal decision as to whether the plaintiff succeeded,[9] and, if so, what relief he should be given. The judges' reasons and the guiding authorities, if any there were, formed no part of the record.[10]

2. The Year Books

If the particular form of the English plea rolls was unique, the idea of keeping a record certainly was not, and it is therefore in the third development – law reporting – that the particular character of English common law seems most obviously to emerge.

The year books, as the early reports are rather misleadingly called,[11] do seem to have been a peculiarly English phenomenon. They reproduce what

[8] Except in the case of a "demurrer to the evidence", an uncommon procedure not much used before early Tudor times.

[9] Modern English lawyers also use the word "judgment" to mean the judge's speech giving his findings of fact and the legal reasons for his decision.

[10] See 94 Selden Soc., at pp. *159 - 160.*

[11] Only a minority of them are chronologically arranged, and there is no reason to think that the year had any significance as a unit of division. The expression "year books" is not found in use before the 16th century. (See, e.g., A. Fraunce, A Lawiers Logicke (1588), fo. 61v.). The usual medieval name was books of terms (below, nn. 29 - 30). For intermediate forms, see Hil. 14 Hen. VII, fo. 16, pl. 5 ("adjugé souvent fois en ancient ans"); Pas. 27 Hen. VIII, fo. 9, pl. 22, per Pollard ("auncient ans et livers"); J. Rastell, Expositiones terminorum (c. 1525), prol. ("bokys of yerys and termys"); St. German's Doctor and Student, 91 Selden Soc. at p. 68 *(libri qui vocantur anni terminorum),* 69 ("bokes . . . called yeres of termes"); Brit. Lib., MS. Harley 785, fo. 194 ("lez reportes de termes de ans").