

DON'T REINVENT THE WHEEL:
THE HISTORY OF FORMS
IN ANGLO-AMERICAN LEGAL LITERATURE

Daniel R. Coquillette Rare Book Room
Boston College Law Library
FALL 2016

stands in
Richardson Meadow late of Melburn
Meadow till it comes to Ebenezer Withams line thence Bound
till it comes to a stake and stone by a Ditch which wars another Division
Bound Between the above said Fuller) From thence to the Bound
First Mentioned

TO HAVE AND TO HOLD the said granted and bargained Premises, with all the Appurtenances, Privileges, and Commodities to the same belonging, or in any wise appertaining to *him* the said *Stephen Richardson his* Heirs and Assigns forever. To *him* and *these* only proper Use, Benefit, and Behoof forever. And *I* the said *Abigail Richardson Do*

to and with *him* the said *Stephen Richardson his* Heirs, Executors, and Administrators, do Covenant, Promise, and Grant lawful Owner of the above-bargained Premises, and *am* lawfully seized and possessed of the same in *own* proper Right, as a good, perfect, and absolute Estate of Inheritance in Fee Simple: And have in *myself* good Right, full Power and lawful Authority, to grant, bargain, sell, convey, and confirm said bargained Premises in Manner as aforesaid: And that *the said Stephen Richardson his*

Heirs and Assigns, shall and may from Time to Time, and at all Times forever hereafter, by Force and Virtue of these Presents, lawfully, peaceably, and quietly Have, Hold, Use, Occupy, Possess, and Enjoy the said demised and bargained Premises, with the Appurtenances, free and clear, and freely and clearly acquitted, exonerated, and discharged of from all and all Manner of former or other Gifts, Grants, Bargains, Sales, Leases, Mortgages, Wills, Entails, Jointures, Dowries, Judgments, Executions, or Incumbrances of what Name or Nature soever, that might in any Measure or Degree obstruct or make Void this present Deed.

Furthermore, *I the said Abigail Richardson* for my selfe Heirs, Executors, Administrators, do Covenant and Engage the above demised Premises to *him* the said *Stephen Richardson his* Heirs and Assigns, against the lawful Claims or Demands of any Person or Persons whatsoever, forever hereafter to Warrant, Secure, and Defend by these Presents.

In Witness whereof *I the said Abigail Richardson* have here unto set My hand and Seal this fourteenth Day July A 1778

Signed Sealed and Delivered
In presence of
William Thomas

Abigail Richardson
her
mark

DON'T REINVENT THE WHEEL:
THE HISTORY OF FORM BOOKS
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LEGAL LITERATURE

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This exhibit was curated by Laurel Davis, Curator of Rare Books.

Many thanks to Daniel R. Coquillette, J. Donald Monan, S.J., University Professor, and all of the folks at the BC Law Library, including: former law library intern Liz Walk, Boston College Class of 2016, for her help in researching the books featured in the exhibit; Lily Olson, Access Services Librarian, for her guidance and advice on the exhibit catalog and webpage; Nick Szydowski, Digital Initiatives & Scholarly Communication Librarian, for his insights on the exhibit webpage and on the safe display of rare materials; and Helen Lacouture, for the many hours of help in the Rare Book Room and many more spent cataloging our wonderful collection.

For a look at our prior exhibits, please visit our Rare Book Room exhibits webpage at <http://www.bc.edu/schools/law/library/specialcollections/rarebook/exhibitions.html>.

DON'T REINVENT THE WHEEL: THE HISTORY OF FORMS IN ANGLO-AMERICAN LEGAL LITERATURE

Form books have been a staple of Anglo-American legal literature since the 12th century. These books, often called books of precedents, offer form or sample documents that help lawyers prepare legal documents. The proliferation of this type of source makes sense. Lawyers spend a great deal of time drafting pleadings, motions, briefs, contracts, articles of incorporation, bylaws--the list goes on. Practitioners want to rely on past documents that have been successful in a litigation or transactional setting; they also have busy schedules and clients who cannot or do not want to pay for unnecessary or duplicative work.

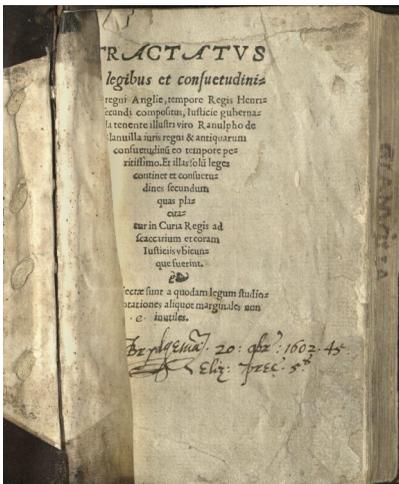
This combination--the ubiquity of drafting in legal work, the power of precedent, and the need for efficiency in terms of time and/or money--led to the proliferation of form books. This began with manuscripts of the Glanville treatise (see the first glass cabinet, labeled Cabinet II) and continued, with no signs of abating, into today's corpus of legal literature.

While many form books in print format may now be cancelled in libraries and law offices due to space and budgetary constraints, digital forms have burgeoned (think of Westlaw's FormFinder; annotated forms on Practical Law and Lexis Practice Advisor; and many others, both free and subscription). Instead of rewriting or retyping a form provided in a print book, the digital versions allow for quick editing and customization. This exhibit looks at the forerunners of these in-demand electronic sources and examines the long tradition in our legal literature of providing forms for lawyers' drafting tasks.

GLANVILLE

The earliest collections of forms, which indeed were among the earliest category of legal literature, were compilations of precedents of writs. Writs were brief writings (hence “writ” or the Latin “breve” for brief or short) through which actions could be initiated in the royal courts. They had to be very precisely chosen and worded, so forms were incredibly valuable.

Tractatus de Legibus et Consuetudinibus regni Angliae (Treatise on the Laws and Customs of the Kingdom of England), attributed to Ranulph de Glanville, Chief Justice under Henry II, circulated in manuscript from the time it was written at the end of the 12th century. The treatise essentially is a procedural manual and form book, with over eighty model writs and commentary to guide practitioners in the King’s Courts.



Ranulph de Glanville, *Tractatus de Legibus et Consuetudinibus regni Angliae*. London, [1554?].

Though undated, this appears to be the first printed edition of Glanville’s work, which had circulated in manuscript for centuries prior to being printed by Richard Tottel. Our copy features an early and perhaps even original binding—note the cords laced through the boards and the use of binder’s waste for endpapers.

Gift of Daniel R. Coquillette

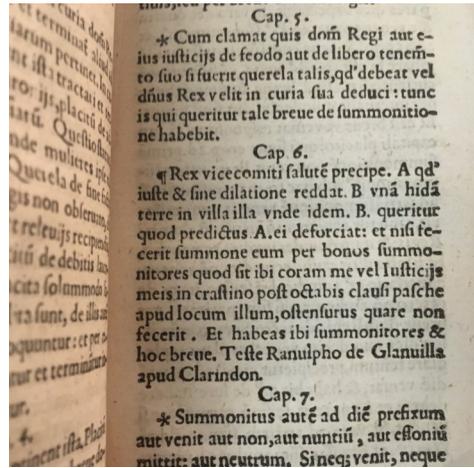
Ranulph de Glanville, *Tractatus de Legibus et Consuetudinibus Regni Angliae*. London, [1604].

Printed by Thomas Wight, this early printed edition of Glanville is open to the first writ in the book (labeled “Cap. 6”).

Gift of Daniel R. Coquillette

Ranulph de Glanville, translated by John Beames. *A Translation of Glanville*. London, 1812.

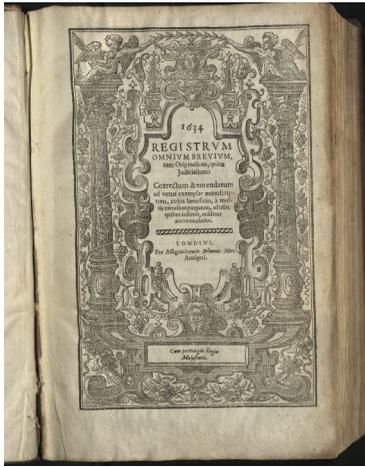
The translation illustrates that the writ was a kind of hybrid between a summons and a complaint: “The King to the Sheriff, Health. Command *A.* that, without delay, he render to *B.* one Hyde of Land, in such a Vill, of which the said *B.* complains, that the aforesaid *A.* hath deforced him; and, unless he does so, summon him by good summoners, that he be there, before me, or my Justices...to show wherefore he has failed; and have there the Summoners and this Writ. Witness Ranulph de Glanville, at Clarendon.”



CABINET III

COLLECTIONS OF WRITS

Lawyers or litigants would go to Chancery (at the time, this was the King’s Secretariat and not the court of equity that we think of now) and purchase the appropriate writ from the clerks, complete with official royal seals. The king’s official, in the form of the local sheriff, would then serve the writ on the other party. Collections of these Chancery writs circulated in manuscript from at least 1227.



***Registrum Omnium Brevium.* London, 1634.**

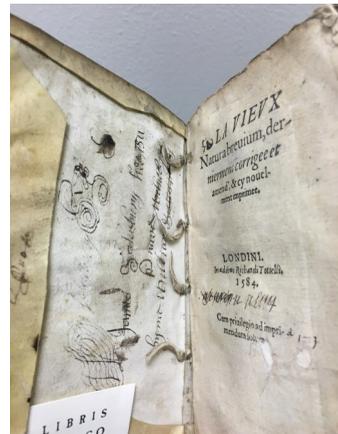
First printed in 1531 by William Rastell, the *Registrum Omnium Brevium* (“The Register of All Writs”) had already been circulating in manuscript for centuries. This beautiful 1634 edition contains hundreds of Chancery writs, which would have originated a lawsuit, and some judicial writs, which generally were issued by the courts of law during litigation and after judgment. Our collection also includes a 1553 Rastell printing.

Gift of Daniel R. Coquillette

***La Vieux Natura Breuium...*London, 1584.**

Natura Breuium was a selection of writs from the *Registrum Omnium Brevium*, supplied with commentary. This title had existed in manuscript form long before it was first printed. This early printed edition has a limp vellum binding.

Gift of Daniel R. Coquillette



***La Nouvelle Natura Breuium...*London, 1553 [1560].**

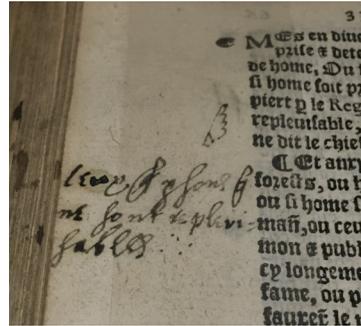
When English judge and scholar Anthony Fitzherbert published his own *Natura Breuium* in 1534, his became known as the “new” or “nouvelle” natura breuium, and the original one became “old” or “vieux”. Fitzherbert added notes on recent developments in the law and included references to cases digested in his *Graunde Abridgement*.

Gift of Daniel R. Coquillette

*La Novel Natura Brevium ...*London, 1616.

Another edition of Fitzherbert's *New Natura Brevium*, this copy from 1616 is annotated throughout, often with manicules (little hands with fingers pointing at the text that was of interest to the reader).

Gift of Daniel R. Coquillette



CABINET IV

*Thesaurus Brevium, or a Collection of Approved Forms of Writs, and Pleadings to those Writs...*London, 1687.

Books on forms of writs proliferated for centuries. The medieval writ system survived largely intact in England until Parliament enacted the Judicature Act of 1873. At that point, the plaintiff no longer had to navigate the complex and technical process of choosing the correct form of action and instead simply had to state facts giving rise to a cause of action. A similar transformation occurred in the U.S. when the Federal Rules of Civil Procedure were adopted in 1938.

Gift of Daniel R. Coquillette

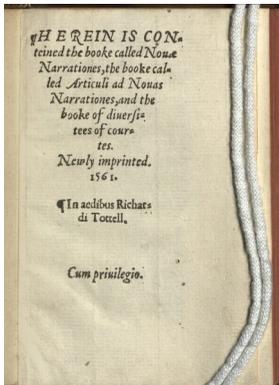
*The New Natura Brevium of the Most Reverent Judge Mr. Anthony Fitzherbert...*London, 1755.

This lovely edition of the *New Natura Brevium* includes further commentary and “[a]nnotations larger and fuller” from Matthew Hale, who served as Lord Chief Justice of the King’s Bench. The advertisement opposite the title page illustrates the multitude of form books available to practitioners. Five of the nine books listed either are form books (*Accomplished Conveyancer* and *A Collection of English Precedents*) or their descriptions indicate the inclusion of forms.

Gift of Frank Williams Oliver

COUNTING OR PLEADING

After those containing writs, the next major category of form book involved the subsequent step of litigation: counting or pleading, where the plaintiff stated his demand or complaint (called a count or declaration). This crucial phase of litigation consisted of a complicated, back-and-forth exchange between the parties' lawyers, as they tried to crystallize the specific issue at hand. Once the determinative issue was clear, it was put to the judge or jury for a decision. As with the choice and wording of writs, it was essential for counters (also known as narratores) or pleaders to be precise in the way they spoke (or wrote, once the age of written pleadings came along in the 15th century); otherwise, a small error during this intricate interchange could cost a client the case.

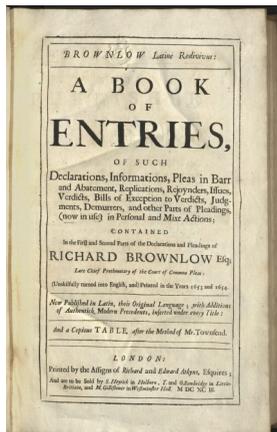


Herein is Contained the Booke called Novae Narrationes...London, 1561.

First printed around 1515 but in manuscript long before, the *Novae Narrationes* (or “new counts”, here bound with two other titles) consists of precedents or forms of pleading, which provided a script of sorts for counters or pleaders as they pleaded cases in the Royal Courts.

BOOKS OF ENTRIES

Taken from entries on the rolls (the parchment rolls that became the official record of a suit), books of entries succeeded the *Novae Narrationes* and provided precedents or forms of pleading that guided lawyers as they maneuvered through



Richard Brownlow, *A Book of Entries*. London, 1693.

This collection of entries stemmed from the manuscripts of the great chief clerk of the Court of Common Pleas, Richard Brownlow. It provided pleaders with annotated precedents of pleadings, alphabetically arranged according to the writ, e.g., abatement, covenant, debt, trespass.

Gift of Daniel R. Coquillette

CABINET VI

TRANSACTIONAL FORMS: CONVEYANCING

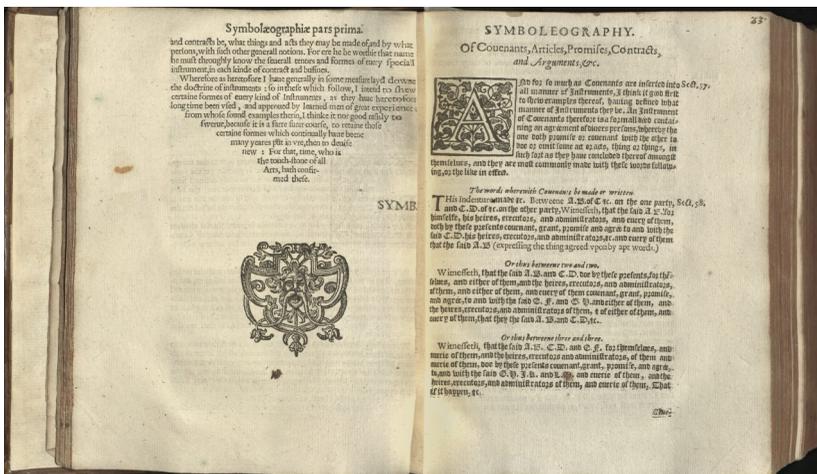
Form books were not limited to world of litigation. Precedents were also desired by lawyers drafting all sorts of transactional documents, including bills of sale, powers of attorney, letters of license (agreements between creditors and debtors), partnership agreements, and more. The most common subject of these transactional form books was conveyancing, or the transfer of an interest in real property. Just like lawyers today, lawyers five hundred years ago needed forms for deeds, leases, covenants, and more.

Thomas Phayer (also Phayre or Phaer), *A Book of Presidents*...London, 1641.

First published in 1543, Phayer's book of precedents (often spelled "presidents") was the first collection of modern conveyancing forms. It went through many editions before being supplanted in the late 17th century by Orlando Bridgman's *Conveyances*. The precedents typically are provided first in Latin and then English. Our copy belonged to British judge and scholar Frederick Pollock.

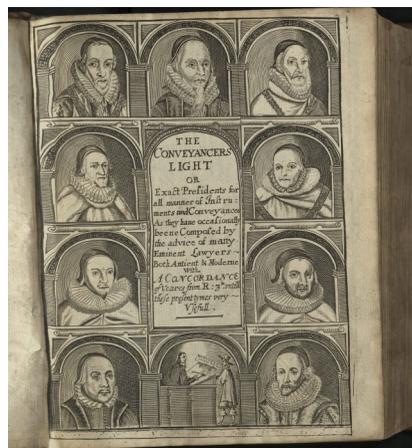
William West, *The First Part of Symboleography*...London, 1632.

Symboleography is the art of drafting legal instruments. First published in 1590, West's voluminous work was the first major collection of legal forms, covering conveyancing, equity, merchants' affairs, and more. This is the beginning of the section on covenants, beginning with a brief description and some basic forms, before moving into more specific examples.

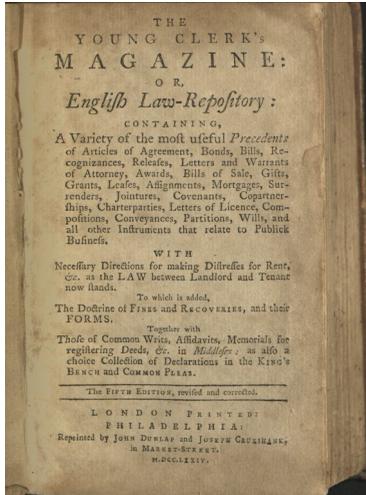


***The Compleat Clerk, Containing the Best Forms of all sorts of Presidents, for Conveyances & Assurances*...London, 1683.**

Another collection of transactional forms, this work also focused mainly on conveyancing. This is the half-title page (using the alternate title *Conveyancers Light*), which features copper engravings of "eminent lawyers", including one at work on a drafting project.



EARLY AMERICAN FORM BOOKS



Before the Revolution, lawyers in the American colonies were reliant on forms from reprinted English books, such as *The Young Clerk's Magazine* (Philadelphia, 1774). A few titles, such as Burn's *Justice of the Peace*, included forms that were somewhat adapted for colonial use, but these were rare. As demand grew and American law came into its own, domestic sources arose to fill the void. The most important early American compilation was *American Precedents of Declarations*, two editions of which are featured in this exhibit.

[Joseph Story], *American Precedents of Declarations*...Boston, 1802.

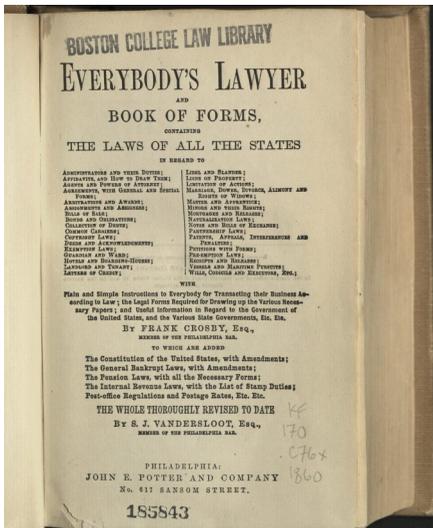
This anonymous collection of litigation forms has long been attributed to Joseph Story, savior of Harvard Law School and U.S. Supreme Court Justice. Most of the precedents came from the collection of preeminent American lawyer and SJC Chief Justice, Theophilus Parsons. In the preface, the anonymous compiler and editor notes the insufficiency of English sources, in which “useful matter lies buried amid heaps of antiquated learning and superfluous detail.”

John Anthon, *American Precedents of Declarations*...New York, 1810.

Anthon, a New York lawyer, published this updated and enlarged second edition of Story's original work, noting the “rapid sale of the first impression.”

Frank Crosby, Esq., *Everybody's Lawyer and Book of Forms*. Philadelphia, 1860.

This book is an ancestor of websites such as LegalZoom, which supply legal forms to laypeople. The author provides drafting advice and short forms on a variety of topics, including deeds, wills, patents, and libel and slander. Each section begins with a woodcut illustration, a brief overview of the law, and then moves to sample forms from a variety of jurisdictions.



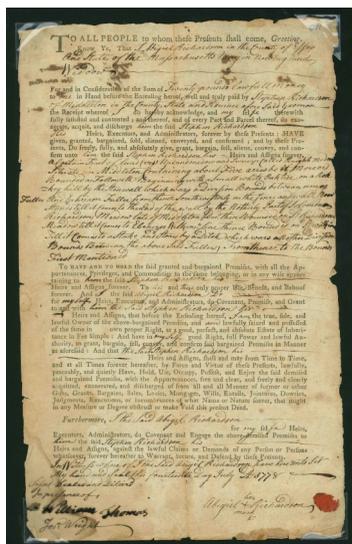
CABINET VIII

PRE-PRINTED LEGAL FORMS

Even with these books of precedents, lawyers and court officials (or their apprentices or scribes) still had to spend onerous amounts of time copying the forms out by hand. The development of pre-printed legal forms (known as “law blanks”) allowed for even greater time savings. The standard language was printed, and the

lawyer merely had to fill in the specifics of the individual case. Booksellers sold these law blanks alongside books of precedents and other law books.

The examples on display in this exhibit all come from our Brooker Collection, a collection of colonial and early American legal documents (largely involving land use but also litigation) donated by Robert E. Brooker III.



#541, *Deed of Land from Abigail Richardson to Stephen Richardson. Middleton, Massachusetts Bay Colony, 1778.*

For twenty pounds, Abigail conveyed about five acres of land to Stephen on July 14, 1778. She signed with an “x” next to the red wax seal.

Most of the pre-printed deeds in our collection begin with these same words: “To all people to whom these Presents shall come, *Greeting.*”

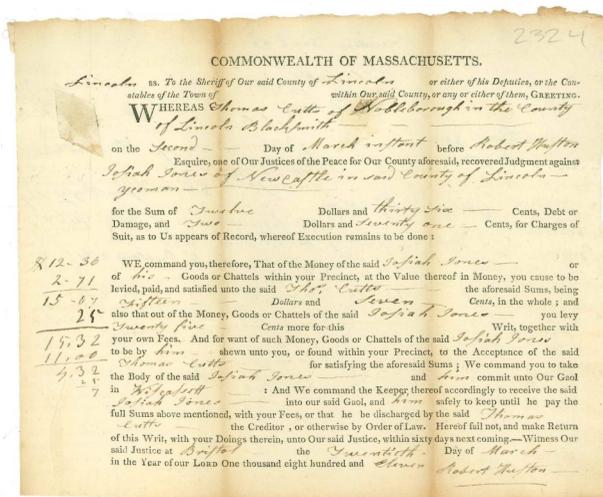
#1290, *Complaint for Theft. Bristol, Massachusetts Bay Colony, 1807.*

It appears that the Justice of the Peace who filled out the form complaint was very used to writing these out by hand—he forgot that the form already included some of the language and had to cross out his writing.



#2324, *Writ of Execution*. Newcastle, Massachusetts Bay Colony, 1811.

Justice of the Peace Robert Huston issued this writ to the sheriff, ordering him to seize the assets of one Josiah Jones, who failed to pay a court judgment. Failing satisfaction of the judgment, the sheriff is commanded to “take the Body...and him commit unto Our Gaol.”



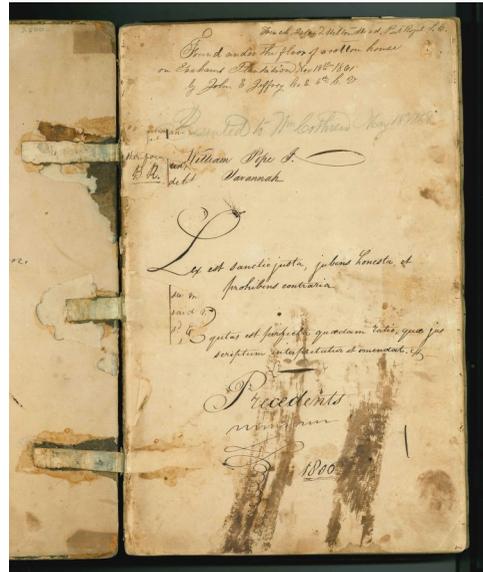
CABINET IX

PERSONAL PRECEDENT BOOKS

In addition to these sources that could be purchased from booksellers, lawyers also kept their own manuscript books of precedents. These can be viewed as forerunners to a modern knowledge management system where lawyers keep the best examples of pleadings, memoranda, briefs, employment agreements, leases, etc.

floorboards of a Hilton Head plantation by a Union soldier in 1861. The soldier, John Jeffrey of the 6th Regiment, Connecticut Infantry, took the book back home and gave it to lawyer William Cothren of Woodbury, CT.

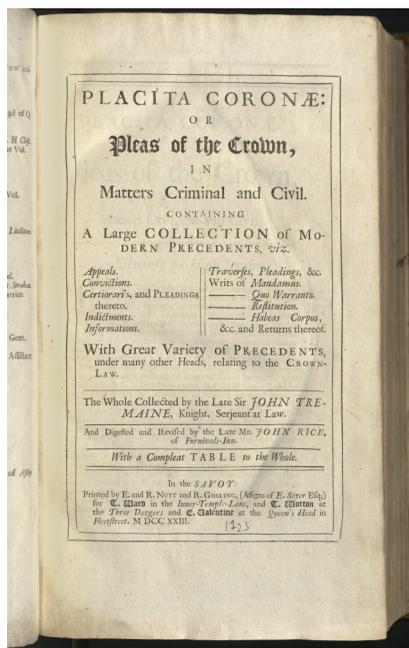
Our best guess for the compiler of this book of precedents is William Pope, Jr. of Savannah, or one of his relatives. There's a Willis (variant of William) Pope listed in the Princeton Archives as a student from 1805 to 1806. Perhaps he was studying at Princeton and apprenticed for a while in a local law office before heading back south? This would explain the Stockton and Paterson forms, as well as the Georgia ones.



CABINET X

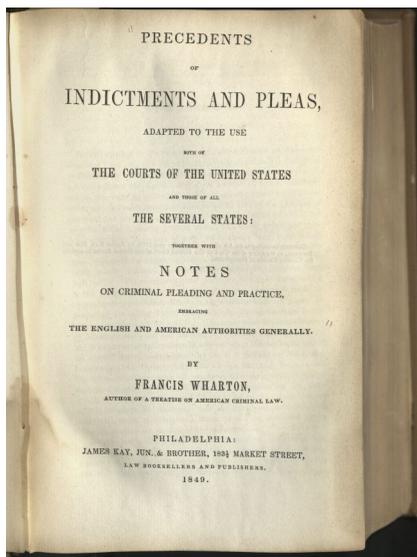
CRIMINAL PRECEDENTS

The divide between civil and criminal proceedings was not always as clear as it now, but, generally speaking, proceedings called Pleas of the Crown dealt with criminal wrongs. In addition to the form books that developed for practitioners in what we would term civil actions, form books also were compiled for the needs of criminal practitioners.



John Tremaine, *Placita Coronae: Or Pleas of the Crown in Matters Criminal and Civil, Containing a Large Collection of Modern Precedents*. London, 1723.

This is one of the earliest collections of precedents of English criminal law. It begins with indictments for high treason and then covers murder, robbery, conspiracy and much more. The forms are pulled from real pleadings taken down in the Year Books and other Reports. Tremaine includes references to where the case was reported and often how it was resolved (e.g., “This case is reported 3d Keble, 197...no Judgment; but the Court seemed inclined to give Judgment for the King”).



Francis Wharton, *Precedents of Indictments and Pleas...* Philadelphia, 1849.

Tremaine was the standard-bearer for English criminal forms, but American practitioners and scholars soon created their own domestic sources. Wharton, author of a famous and still-published treatise on criminal law, compiled this collection of precedents for use in American courts using three sources: those endorsed by the courts; those drafted by eminent pleaders but untested by courts; and those from English precedent books.

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