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Henry Horwitz

Lloyd Bonfield

New York Law School, lloyd.bonfield@nyls.edu

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THE “LOWER BRANCHES” OF THE LEGAL PROFESSION: A LONDON SOCIETY OF ATTORNEYS AND SOLICITORS OF THE 1730s AND ITS “MOOTS”¹

HENRY HORWITZ AND LLOYD BONFIELD*

I

THE history in the eighteenth century of attorneys and solicitors—those who “practiced the forms or ‘mechanics’ of the law”—was first investigated in depth in Robert Robson’s monograph of 1959.² More recently, and following upon Geoffrey Holmes’s suggestive survey of the lawyers in *Augustan England*, articles by M. Miles and A. Aylett have enlarged our knowledge of the social origins and geographical distribution of attorneys over the century as a whole and offered detailed analyses of attorneys’ business in the West Riding and Cheshire during the latter half of the century.³

By contrast, the attorneys and solicitors of the metropolis, perhaps one third of the national total, have been rather scantied save

* In this collaboration, Bonfield (Professor of Law, Tulane University) has been primarily responsible for the analysis of the “moots” and Horwitz (Professor of History, University of Iowa) for the analysis of the membership and discussion of the place of the society in the development of the legal profession. The authors would like to thank Mr. David Yale for his helpful comments on an earlier version.

¹ We use the term “moot” in a non-technical sense—that is, as the discussion by lawyers of a hypothetical case. As indicated in section III below, the discussions recorded in the minutes of this society do not conform to the formal exercises which occurred in the Inns of Court and Chancery insofar as the minutes do not indicate that each side was argued by an individual in front of a judge appointed for the occasion. For moots in the Inns, see generally Sir Cecil Carr (ed.), *The Pension Book of Clement’s Inn* (Selden Society, vol. 78 [1960]), p. xxvii *et seq.*; Samuel E. Thorne and J. H. Baker (eds.), *Readings and Moots at the Inns of Court in the Fifteenth Century*, vol. 2 (Selden Society, vol. 105 [1990]), p. i *et seq.*

² *The Attorney in Eighteenth-Century England* (Cambridge Studies in English Legal History, Cambridge 1959).

³ Geoffrey Holmes, *Augustan England* (London, 1982); Michael Miles, “The Money Market in the Early Industrial Revolution: the Evidence from West Riding Attorneys c.1750–1800” (1981) 23 *Business History*, 127–146; *idem*, “Eminent Practitioners: The New Visage of Country Attorneys c. 1750–1800” in G. R. Rubin and David Sugarman (eds.), *Law, Economy and Society, 1750–1914: Essays in the History of the English Law* (Abingdon, 1984), pp. 470–503; *idem*, “‘A haven for the privileged’: recruitment into the profession of attorney in England 1709–1792” (1986) 11 *Social History*, 197–210; P. Aylett, “Attorneys and their clients in eighteenth-century Cheshire: 1740–1785” (1986–87) 69 *Bulletin of the John Rylands Library*, 326–58; *idem*, “A Profession in the Marketplace: The Distribution of Attorneys in England and Wales 1730–1800” (1987) 5 *Law and History Review*, 1–30.

for Victor Belcher's informative account of the attorney Robert Andrews—a key figure in the development of the Grosvenor estates from the early 1720s onwards.⁴ On this still ill-studied scene, two landmarks loom large in Robson's monograph, and also in Michael Birk's *Gentlemen of the Law* (1960)—a general history of the lower branch of the legal profession. One is the foundation in the metropolis by 1740 of the Society of Gentlemen Practisers (SGP)—a voluntary body whose hundred or so members in its early years included both attorneys and solicitors.⁵ The other is Parliament's passage in 1729 (2 Geo. II c.23) of the Act "for the better regulation of attorneys and solicitors". This statute is noteworthy for its requirements that all presently-practising attorneys and solicitors be registered by 1 December 1730 in the courts in which they acted and that all subsequent entrants have served an apprenticeship of at least five years. The Act has also been remarked for its coverage of two once distinct sub-branches of the profession—the attorneys, who traditionally specialised in litigation in the courts of law, and the solicitors who, among other activities, acted in causes before Chancery and other courts of equity. Even so, the two groups were not treated altogether even-handedly by Parliament: while attorneys could register under the Act to practise in the courts of equity (and without additional fees), solicitors were not accorded reciprocity in the courts of law.

In turn, the establishment of the SGP and the 1729 statute have often been linked together in accounts of the lower branches of the legal profession. The immediate occasion of the Act was a number of petitions from the Yorkshire Justices of the Peace (petitions came from the bench of all three ridings) complaining of the activities of "the great number" of ill-qualified practitioners who "prosecute trifling actions . . . and defend against suits commenced for just cause". On the one hand, these petitions expressed in identical terms the perennial criticism that inferior members of the profession were a principal cause of the costliness of going to law and of the multitude of suits. The petitioners particularly complained of those "who have not had the regular education of an attorney" and Holmes suggests that it was the solicitors who were probably the chief grievance,

⁴ V. Belcher, "A London Attorney of the Eighteenth Century: Robert Andrews" (1986) 12 *London Journal* 40–50.

⁵ The usual dating of the first known meeting of the Society is 1739. But the secretary was still using, as the editor (Edwin Freshfield) of the printed minutes indicates, old style (Julian) dating—i.e., the first recorded minute of "13 Feb. 1739" should be read as 13 Feb. 1740). See *The Records of the Society of Gentlemen Practisers in the Courts of Law and Equity* (1897), p. 1 (compare date format at pp. 2 (and the editor's note) and ff.). Freshfield's edition has been checked against the original (preserved in the Law Society's Library). Apart from some minor errors in transcription, it should be noted that in its early years "the Society" simply styled itself as "the several practisers in the Courts of Law and Equity".

partly because many did lack formal training but also because the number of solicitors had grown very substantially.⁶ On the other hand, the Act of 1729 was only one element in a broader agitation for reform of legal processes that was mounted in and out of Parliament during the later 1720s and early 1730s—an agitation which encompassed inquiries into the rising fees taken by court officials, proposals for expediting of cases involving small debts, and the enactment in 1731 of a statute stipulating that henceforth the courts of common law must keep their records in English.⁷

As the 1729 Act defined for the future the qualifications of "attorneys" and "solicitors", so the formation of the SGP can be viewed, at least in part, as a response to that legislation by a segment of the metropolitan practisers. In the first place, the SGP declared its primary objective to be "to discountenance . . . all male and unfair practice", and the Society did indeed seek the disqualification of a number of practitioners who had been guilty of abuses. In the second place, the SGP sought to maintain the admission requirements of the 1729 statute. Thus, at a general meeting in early 1743 "it was ordered that all proper and necessary enquiries be made . . . to discover any attornies or solicitors who had been or should be surreptitiously admitted" to practice in the courts. And the SGP also took steps to ward off the attempts of lesser judicial officials such as the clerks of Chancery (who had been explicitly excluded from the registration requirements of the 1729 Act) to register under the Act and thereby qualify to take on two additional apprentices.⁸ In the third place, the founding of the SGP has been read by Holmes and others as a signal of the breaking down of any remaining distinctions between attorneys and solicitors (as defined by the 1729 Act), at least in the metropolis. To be sure, it was not until the re-enactment of the 1729 statute in amended form in 1750 that solicitors were accorded the privilege of practising in the courts of law, but in Holmes's view the "barriers between the two groups had effectively disappeared well before then . . . when the attorneys of London and the adjacent counties formed their professional organisation in or shortly before 1739, it was natural for them to admit their solicitor brethren on perfectly equal terms".⁹

If the SGP's concern with malpractice and its efforts to maintain the restrictions on admission imposed by the 1729 Act can be seen as the predictable emphases of a newly-emergent interest group intent upon self-justification and self-aggrandisement, its activities do seem

⁶ Holmes, *Augustan England*, pp. 153–155.

⁷ C.W. Brooks, "Interpersonal conflict and social tension: civil litigation in England 1640–1830" in A. L. Beier *et al.* (eds.), *The First Modern Society* (Cambridge, 1989), pp. 377–379. Our thanks to the author for making available this important study in draft.

⁸ *Records of the Society*, pp. 1, 9, 11, 13–14, 16.

⁹ Holmes, *Augustan England*, p. 120.

to differentiate the membership's interests from the increasing emphasis on non-litigious business discerned by Robson and subsequent students of provincial attorneys.¹⁰ Nor do the matters canvassed at the SGP's meetings altogether match with Belcher's observation, in his account of Robert Andrews, that even for London attorneys litigation was no longer their "most important activity".¹¹ But the fact that the business of the central courts had been on the decline for close to four decades before the passage of the 1729 Act may help to explain not only the lesser legal practitioners' apparent acquiescence in its adoption (in 1707 no less than 1,169 signatures were gathered for a petition to the Treasury on behalf of attorneys threatened with prosecution for non-payment of stamp duties but not a single petition from practitioners was received by the Commons against the projected legislation) but also the SGP's formation and continuing zeal to protect the preserves of its members.¹²

II

While the extent of the London attorneys' and solicitors' involvement in, and dependence upon, litigation cannot be established from a review of the SGP's activities (not least because the Society enrolled only a small minority of metropolitan practitioners), neither can it be assumed that Andrews' concentration on conveyancing, drafting, advising, and business management was typical. How the SPG fits into the larger universe of metropolitan practisers is also open to question, but both the pre-history of the SGP and the concerns of at least a number of other metropolitan practisers in the 1730s may be illuminated by the examination of the membership, interests, and careers of a hitherto unknown society of London practisers of the 1730s.

The minutes of this "club", which survive only in truncated form, are among the Osborn collection (Osborn Ms. c327) in the Beinecke Library of Yale University.¹³ They record some 56 meetings held weekly, save for the long summer vacations, between 24 April 1734 and 12 November 1735. Thus, they antedate by several years the beginning of the extant records of the SGP. Even so, the society

¹⁰ Robson, *op.cit.* *supra* note 2, p. 59 and *passim*. See also Miles, "Eminent Practitioners", esp. pp. 473-474.

¹¹ Belcher, "A London Attorney", p. 41.

¹² Brooks, "Interpersonal Conflict", pp. 357-399, gives a thorough account of trends in litigation and their causes in the period. For the petition of 1707, see Holmes, *Augustan England*, p. 155.

¹³ We gratefully acknowledge the Beinecke Library's permission to cite the manuscript and to reprint portions of it in Appendix II. Its existence is noted in *Readings and Moots in the Inns of Court in the Fifteenth Century* (*supra*, note 1) at p. 1xxvi, note 409. The manuscript was acquired for the Osborn collection from Sotheby's in 1972, but efforts to establish the provenance of the document beyond the dealer from whom Sotheby's purchased it have not yielded any results.

whose gatherings they memorialise may well have had its precursors. After all, *The Spectator* of 7 May 1712 gives a satirical account of an earlier and not dissimilar group—“a Set of Men who call Themselves the Lawyers Club”, whose members, “consist[ed] only of Attorneys”, and who discussed legal causes of interest at their weekly gatherings, while considering how best to gouge their clients.¹⁴

Although the group described in *The Spectator* may have been a creation of the author, it is noteworthy that the members of the club whose meetings are minuted in Osborn Ms. c327 also devoted their principal attention to arguing cases—cases cast in hypothetical form. Unlike the earlier group, however, this club’s membership was not confined to attorneys, or at least to attorneys in the pre-1729 sense of the lesser practitioners in the courts of law. All told, the 24 individuals who figure in the document as past or present members were registered as attorneys under the terms of the 1729 Act, but at the same time virtually all of them were also registered as solicitors under the provision of the Act which accorded qualified attorneys free entry to the courts of equity as well.

As the dual qualifications of the members of this body look forward to the SGP’s inclusion of solicitors together with attorneys, so there are other possible links between the club and the SGP. Although Osborn Ms. c327 records meetings only in 1734 and 1735, it also contains entries that indicate that this club was longer-lived. In its present form, the manuscript begins at page 9 in the midst of a list of orders or rules; the first entry is styled “item 20” and the last, running over to the top of page 11, is “item 24”¹⁵ There follows a list of 21 signatures (some with designations such as “President” or “Treasurer”); 10 of these are crossed out (and several of these are not easy to decipher). Pages 12–14 are given over to a series of individual orders; these bear dates from 19 June 1734 to 21 December 1737 and are signed by the presiding member at the meetings at which they were made. Then on pages 15–16 are entered the minutes of the first recorded meeting, that of 24 April 1734, followed by another series of orders apparently adopted at that meeting, including one which refers to three men “heretofore members of this Society who now” reside “in the Country” (who are to be treated as having thereby forfeited their voting rights but who will be welcome to attend meetings on those occasions when they are in town). It is,

¹⁴ *The Spectator* no. 372, Wednesday, May 7, 1712, reprinted in *The Spectator*, ed. Donald F. Bond (Oxford, 1965), III, p. 402. For informal debating and study societies formed by aspirants to the Bar in the early eighteenth century, see *Readings and Moots at the Inns of Court in the Fifteenth Century* (*supra*, note 1), p. 1xxvi; David Lemmings, *Gentlemen and Barristers The Inns of Court and The English Bar 1680–1730* (Oxford, 1990), pp. 107–108.

¹⁵ “Items” 20–25 are reproduced in Appendix II, together with a selection of the supplementary orders.

then, on the evidence of these orders that we may conclude that this club had been operating before 24 April 1734 and that it continued to convene at least until late December 1737.

In analysing the membership of the club, we have included not only those who attended the 1734–35 meetings minuted in the manuscript but also those who may be presumed to have attended any meetings of this group. Thus, our list of 24 members is composed of the 21 signatories to the rules and the three individuals “heretofore members” mentioned in the order of 24 April 1734. Of these 24, 18 actually are recorded as attending meetings minuted in the manuscript; four more signed the membership list on page 11 and, we deduce, attended meetings subsequent to the last recorded in the manuscript (the names of three of these four are included in or attached to the various supplementary orders on pages 12–14); and two were only members prior to 24 April 1734 and did not attend any of the minuted meetings as visitors. (For these and other details about the 24 members discussed in succeeding paragraphs, see Appendix I.)

As the club’s existence as late as December 1737 and the abrupt beginning of the extant minutes of the SGP in February 1740 raises the possibility of a direct connection between the two groups, so the surviving rules of the club, which chiefly concern qualifications for membership, strengthen this possibility. Granted, the provision of “item 22” that members “must be of some profession immediately relating to the law” does not much narrow the field of inquiry. But “item 23” is both specific and suggestive in excluding from the club’s ranks any who “belongs to any of the Offices of the Courts of Equity or the Court of the Pleas of the Exchequer”. Here, we appear to have a very clear link between the exclusion of judicial office-holders from the 1729 registration provisions and the SGP’s later efforts to keep the clerks of the courts of equity from enrolment under those provisions.

We can also detect a significant, though limited, overlap in membership between the club and the SGP. Of the 24 members of the club, four can be identified with reasonable confidence among the over 100 individuals who figure in the records of the SGP during its early decades; moreover, the brief listings of attendants at SGP general meetings open up the possibility that another three club members may also have been members of the SGP.¹⁶ To be sure, the activities of the two societies were quite different. Nonetheless, it may be worthwhile to pursue a little further the question of the identity of the members of the club which met weekly in term at the

¹⁶ See Appendix I: definite, numbers 7, 9, 16, 23; possible, 17, 20, 22.

Falcon in Fetter Lane and subsequently at the Apple Tree Tavern in Cursitors Alley.

In the first place, the members, though admitted as solicitors in the courts of equity (principally Chancery) after the 1729 Act, initially qualified as attorneys. Of the 22 who can be definitely identified in the registration lists kept by the various courts after 1729, all but seven first qualified or enrolled themselves in the Court of Common Pleas, with at least six of the remaining enrolling first in the Court of King's Bench.¹⁷ In the second place, it appears that 13 of the 22 were already in practice by the deadline of 1 December 1730 for registration under the 1729 Act.¹⁸ In turn, the dates of enrolment for the remaining nine members, ranging from early 1731 to early 1736, suggest that this was a group of relatively young men—a hypothesis strengthened by biographical information gleaned from a number of sources, principally the apprenticeship registers kept under the statute of 1710 and the probate records of the Prerogative Court of Canterbury. Apprenticeship indentures for five of the 22 have been found: all were made within the span of years from 1724 to 1730.¹⁹ In addition, dates of death for nine of the 22 (including three for whom we have found apprenticeship indentures) have been established: the earliest comes in the late 1730s (with his mother being made administratrix of his property), but the remaining eight all lived into the mid-1760s with the longest-lived surviving into the 1790s.²⁰ To judge, then, from their dates either of death or apprenticeship, at least seven of the 13 members who registered before 1 Dec. 1730 were recent entrants to practice, while we may presume that all nine who registered thereafter were newcomers—*i.e.*, that at least 16 of the 22 began practising contemporaneously with or in the years immediately after the passage of the registration Act.

As a substantial majority of the club's membership were relatively junior practitioners, so at least some were linked by common origins in the counties of the north and north-west. Of the 10 identifiable individuals who attended the first recorded meeting of 24 April 1734 (and who supplied all the attenders at the next seven meetings as well), at least five are known either to have originated in the counties of Cumberland, Lancashire and Cheshire, or to have settled into

¹⁷ Whether Lucas's registration in King's Bench preceded his registration in Chancery is unclear from the record, though given the terms of the 1729 statute it seems very likely his registration in King's Bench came first. See Appendix I numbers 2 and 6 for the two unidentifiable members and the difficulties in disentangling the five or more John Browns and the two John Bakers.

¹⁸ Appendix I: numbers 4, 7, 8, 9, 10, 13, 14, 15, 19, 20, 21, 22, 23. However, none of the 13 took advantage of the Act's provision allowing attorneys to register without payment of stamp tax if they did so in the brief interval between the passage of the Act (14 May) and 1 June 1729.

¹⁹ Appendix I: numbers 5, 8, 13, 18, 22.

²⁰ Appendix I: numbers 4, 5, 7, 8, 13, 14, 16, 19, 24.

practice there.²¹ Furthermore, four of the other 12 identifiable members originated in the northern counties.²² By contrast, we have been able to identify only one of the members as a possible Londoner in origin.²³

Whatever the birthplaces of those who joined the club, most seem to have spent their working lives in the metropolis. All told, 10 of the 22 can definitely be traced as practitioners in the central courts beyond the mid-1730s, four of these as late as the 1770s.²⁴ By contrast, only four can definitely be traced as practising in the provinces.²⁵ And of the remaining eight, at least four seem likely also to have been based in London.²⁶ At the same time, we ought to avoid making too hard-and-fast a distinction between metropolitan and provincial practitioners. Those of the club's members who figure in the records of King's Bench and Common Pleas as practisers beyond the mid-1730s seem to have specialised to a degree in cases from particular regions; for instance, Thomas Strickland, who originated in Westmorland, seems to have derived a good deal of business from his native and other northern counties, though he is also recorded as the attorney for cases emanating from Middlesex and Berkshire as well as from Herefordshire and several of the Welsh counties. Again, several London-based men had other strong links in the provinces as well. Thus, George Boughey, who was apprenticed in 1730 without specification of parentage or place of origin to a London attorney, qualified as a practiser in Common Pleas in 1736 as of the "Inner Temple", and described himself in his will of 1788 as of the Inner Temple, not only specialised in litigation for Staffordshire and adjacent counties but also instructed his executors to bury him in Audley, Staffordshire, where he held land inherited from his father. Similarly, William Lucas, another London-based practitioner, described himself in his will of 1773 as of the Middle Temple *and* of Preston, Lancashire. His was a rather unusual story in that in mid-career, after being admitted to the Inner Temple in 1744, he was called to the Bar and acquired a series of posts in the judicial administration of the Duchy of Lancaster. In turn, he instructed his executors (his brother Henry and two men who actually performed

²¹ Appendix I: 8, 14, 15, 16, 23. For the north-western gentry clients of the London-based but Cheshire-born Nicholas Kent (no. 14), see note 82 below.

²² Appendix I: 1, 10, 13, 22. Moreover, two others (numbers 5 and 21) of the 22 had strong Staffordshire links.

²³ Appendix I: number 24 (by residence of mother).

²⁴ Both the King's Bench indexes and those of Common Pleas have been searched for the mid-1730s, the mid-1740s, the mid-1750s, the mid-1760s, and the mid-1770s: P[ublic] R[ecord] O[ffice]. Ind. 1/9632 and ff., CP 36/4 and ff.. None of these men figures in the comparable indexes for Chancery litigation: PRO, Ind. 1/7425, 7464, 7515, 20315 and ff. For the ten, see Appendix I: numbers 4, 5, 7, 8, 9, 13, 14, 17, 19, 22.

²⁵ Appendix I: numbers 1, 12, 15, 21.

²⁶ Appendix I: numbers 16, 20, 23, 24.

the duties of his posts in the Duchy administration) that he be buried in the parish church of Garstang, Lancashire—close by the graves of his parents and his deceased wife.

III

While the line between provincial and metropolitan practitioners was not always clear-cut, examination of the proceedings of the club does indicate that what brought the members together was more than sociability, perhaps fostered by geographical ties. For the business of the club, at least the business recorded in the minutes, did not vary significantly over these 56 meetings. At each and every meeting but that of 2 July 1735 (when the president had neglected to make the usual preparations), the members present "argued" a hypothetical case that had been distributed to them at the previous meeting. The only other deviations from this routine came on two occasions when the members prolonged over a second meeting the discussion of a single hypothetical.²⁷

In toto, then, the manuscript contains an abstract of 53 hypothetical cases mooted by the club's members, with but little variation in the format of the record. The entry for each meeting is dated. A statement of the hypothetical case to be discussed is set out. A question is posed, the members in attendance (no less than five and often double that number) are enumerated, and the resolution of the question—be it unanimous or by the majority—is noted.²⁸ Unfortunately, the minutes do not state the reasoning that underlay the members' resolutions. However, in slightly less than half the cases, authority for the position adopted is given.²⁹ And in two other cases, the dissenters formulated protests spelling out the grounds of their disagreement.³⁰

The recitation in the manuscript of the case to be mooted differs to a degree from meeting to meeting in the extent of detail given. Most often, the case is set out in the form of a hypothetical—a form recognisable to a modern law student. The cases discussed at the first recorded meeting may serve as an illustration:³¹

A is barely Tenant for Life, Remr. to B in Fee. A demises his estate to C for one year under the rent of £100 payable at Michas. & Lady day by equal portions. C by virtue of said

²⁷ Appendix III: 46 and 51.

²⁸ The largest number of members recorded in attendance at a given meeting was 14; the average was just under nine, with a tendency for attendance to decline in 1735 as compared to 1734.

²⁹ See Appendix III.

³⁰ Appendix III: 4 and 6.

³¹ Appendix III: 1.

demise enters, and paid A £50 for the rent due at Michas., but A dying on the 23rd March last two Days before the other £50 became due C refused to pay the same to B or the extors. of A
Q. How and by whom can the last £50 be recovered

In the succeeding hypotheticals, the parties are also indicated by letters rather than by name, although one specifically asks whether a prohibition will lie against the Archdeacon of Richmond (Yorkshire).³² Place names, too, are rarely given. This lack of specificity renders it very difficult to link these hypotheticals with reported cases or with cases of the day in which the members may have been involved.

Towards the end of the manuscript, the recitation of the cases becomes terser. For example, the penultimate case simply reads:³³

Non-assumpsit within 6 years before suing out orig. Repl. Deft. promised within before suing out orig. Scilt. et evidence of a promise within 6 years before plita. of record
Q: if necessary to have an orig.?

Or the barely legible last recorded case:³⁴

Debt on a stale bond by an Exr. Deft. pleaded paymt. at day. Evidence of a receipt of testors. own hand on back of bond for part of interest within 20 years.
Q: If good evidence?

Despite the increasing brevity with which the questions were stated, pointers to the sources of the hypotheticals are provided by the citations of case authority entered for 21 of the 50 resolved cases.³⁵ Tracking of these citations demonstrates that a number of the hypotheticals were taken almost verbatim from case reports.³⁶ Thus, the hypothetical discussed on 11 June 1735, dealing with the liability of a carrier who was robbed of a box entrusted to him, states that the carrier had been advised by the owner that it contained "Books and Tobacco when in fact there was £100 in money" and the question posed is whether the carrier was liable for the loss of the money or "those particulars only that A [the bailor] acquainted him with"?³⁷ These exact particulars, down to the books and tobacco, came before King's Bench in *Kenrig v. Eggleston*.³⁸ Similarly, the hypothetical considered on 20 November 1734 was derived from a reference made

³² Appendix III: 40.

³³ Appendix III: 52.

³⁴ Appendix III: 53.

³⁵ For cases containing such citations, see Appendix III.

³⁶ Appendix III: 26, (derived from *Booth v. Booth* [1704] 1 Salk. 322); 36 (from *Acton v. Eels* [1697] 2 Salk. 662); 42 (from *Kenrig v. Eggleston* [1648] Aleyn 92; and 49 (from *Lord Rockingham et al. v. Oxenden et al.* [1711] 2 Salk 579).

³⁷ Appendix III: 42.

³⁸ [1648] Aleyn 92.

in a Chancery case reported by Vernon to an earlier case in that court decided by Nottingham.³⁹

One hypothetical was of more recent vintage, thereby giving us some measure of the members' familiarity with cases not yet in print. The hypothetical for 27 November 1734 deals with the admissibility of parole statements of a testator who had left his wife a legacy and made her his executrix but had not disposed of the rest of his personal property.⁴⁰ Here, the minutes make reference to *Hatton v. Hatton*, a case decided by the Master of the Rolls the previous year, with the citation being simply to term and court.⁴¹

Coke's *Institutes* appears to be the source of two other hypotheticals.⁴² One of these (that for 20 August 1735) deals with the performance under a bond:⁴³

A is bound by £20 to deliver a horse by a stated date; on the day stipulated for performance B accepts £10 in full satisfaction: is the condition fulfilled, or may B bring an action on the bond?

Coke uses this very hypothetical to make the point that where there is a condition to do a collateral act an accord will not preclude the obligee from bringing an action for the forfeiture.

As consideration of the sources of the hypotheticals argued by the members of the club illustrates their familiarity with the printed reports and other authorities, as well as their knowledge of recent litigation, so a survey of the questions raised by the hypotheticals should shed some light on the kinds of legal issues these London practitioners found it useful or interesting to discuss. Table I, then, sets out the subject matter of the 53 hypotheticals or mooted cases.

The assumptions underlying the categorisations employed in constructing Table I may be briefly spelled out. In the first place, it should be noted that there are 74, not 53, entries for subject-matter. This reflects our sense that 18 of the hypotheticals appear to be susceptible to inclusion under more than one of the categories employed. For example, the hypothetical for 24 April 1734, quoted above, has been read as raising two issues.⁴⁴ One is a matter of procedure (*i.e.*, having to do either with choice of forum, process of the court, or execution of judgment): "How" can the rent of £50 be recovered when a landlord dies before the rent is due? The other is a matter of the substantive law of leaseholds: "By whom" may the rent be collected?

³⁹ Appendix III, 16, is derived from *Robinson v. Bell* [1690] 2 Vern. 147 at 148.

⁴⁰ Appendix III, 17.

⁴¹ "Hill. 6th Geo 2d".

⁴² Appendix III: 34 from *Co. Litt.*, 207; 50 from *Co. Litt.*, 212.

⁴³ Appendix III: 50.

⁴⁴ Appendix III: 1.

TABLE I: Subject-matter of Hypotheticals (n = 74)

A. Procedure (Proc)	25 (33%)
B. Property (Prop)	31 (42%)
real property (R)	10
leasehold (L)	5
personal (P)	6
mortgage (M)	2
probate (Pr)	6
tithe (T)	2
C. Commercial Relations (Comm)	16 (22%)
contract (C)	4
debt/bond (D/B)	8
miscellaneous (Misc)	4
D. Ecclesiastical (Eccles)	2 (3%)

In the second place, we have divided substantive issues of law into two broad categories—those dealing with property (in turn, broken down into six sub-categories) and those dealing with commercial relations (three sub-categories). On this logic, property issues constitute roughly two thirds (31 of 49) of the substantive matters raised by the hypotheticals. In total (but leaving aside the two ecclesiastical issues), procedural questions constitute slightly more than one third of the matters (24 of 71) we have identified, property questions nearly another four ninths (31 of 71), and commercial questions the remaining three ninths (16 of 71).⁴⁵

While the subject-matter of the hypotheticals clearly indicates that the members of the club were concerned with more than the “mechanics” of practice in the courts, we should bear in mind that at least some of the substantive matters raised would be of interest to conveyancers as well as to practitioners in the courts.⁴⁶ In addition to the two hypotheticals focusing on mortgages, ten others involve family settlements.⁴⁷ In general, these hypotheticals are concerned with who takes under the terms of a given settlement (whose provisions are set out in the recitation) under specified circumstances. Arguably, the discussion of these matters was as likely to have been directed towards improving draftsmanship as towards prevailing in litigation. Again, the five hypotheticals focusing on the probate of testaments might also betoken a concern with drafting.⁴⁸ At the least, we ought to bear in mind that the distinction between litigation and other legal activities should not be too sharply drawn.

⁴⁵ See Appendix III.

⁴⁶ Contemporary manuals for the “mechanics” of the law abound. See, for example, Giles Jacob, *The Compleat Attorney's Practice in English, in the courts of King's Bench and Common-Pleas* (2 vols., 2nd edn. 1740; *idem.*, *the Compleat Chancery-Practiser* (2 vols., 1730).

⁴⁷ Appendix III: 2, 6, 7, 12, 15, 18, 19, 20, 45 and 46.

⁴⁸ Appendix III: 11, 16, 17, 40, 41.

As the hypotheticals combine matters of substance and procedure, so they also include both questions of law and equitable issues. The members of our club may have enrolled first in the courts of law but most also enrolled in the Court of Chancery, and their interest in equitable remedies comes through clearly in the hypotheticals. Referring back to the entries in Table I, we may observe that the Court of Chancery's jurisdiction in this period encompassed both probate matters and mortgage disputes; then, too, controversies over family settlements often had to be settled by the Lord Chancellor and his colleagues.

In turn, the members' invocation of legal authority likewise suggests that they travelled in a legal realm in which traditional distinctions between law and equity, and between the litigation of legal and equitable issues, were disappearing. And since the mooted hypotheticals were often derived from reported cases, a survey of the forums in which the cases cited had been decided should reflect much the same range of interests as do the hypotheticals.

Table II, then, furnishes a summary of the frequency with which cases were cited in the minutes while Table III provides a breakdown of the venues from which these citations derived.⁴⁹

TABLE II: Use of Authority in Resolved Hypotheticals (n = 50, excluding three unresolved cases)

Moots citing authority	22
Moots not citing authority	28

Altogether, authority was cited for close to one half of the hypotheticals resolved by the members. Most often (13 instances), the citation was to a single case in the printed reports, sometimes the one from which the hypothetical was derived. In eight moots, however, two or more reported cases were cited.⁵⁰ But even where a cited case had been printed in more than one report, the practice (save in a single instance) was to cite only one report.⁵¹

In turn, as Table III indicates, the 31 cases cited were decided in

TABLE III: Venues of Cited Authority (n = 31)

King's Bench	19
Common Pleas	3
Chancery	8
House of Lords	1

four different venues, with Chancery providing just over a quarter.

⁴⁹ See Appendix III.

⁵⁰ *Ibid.* In the one instance in which a non-judicial authority was cited, the reference was to *Co. Litt* (Appendix III, 34).

⁵¹ *Ibid.*

What is perhaps surprising, given that the majority of these attorneys had registered to practise in the Court of Common Pleas, is that the number of cases drawn from King's Bench far outstrips the total drawn from Common Pleas. No obvious explanation for this seeming discrepancy is available, but two points are worth suggesting. First, although only seven of the 22 identifiable members enrolled in King's Bench, no less than 14 of them can be traced as practising in that court.⁵² We should not assume, then, that the court of law in which an attorney registered was the only one in which he would practice. And second, it may well be relevant that, in general, seventeenth and early eighteenth century cases from Common Pleas were less fully reported than those from King's Bench.

Turning from the body of citations to the four very recent cases cited (in three separate moots), two were from King's Bench,⁵³ one from Chancery,⁵⁴ and one a case on appeal in the House of Lords.⁵⁵ In three of the four instances, the manuscript refers to them by case name, court and term but the other reference is vaguer—"ye Court of B R having determined it so ye last day of Hillary Term 1734 [-5]".⁵⁶

As with the citations to older cases, these four citations to quite recent cases also concern a variety of issues. In one of the moots citing a recent King's Bench case, two older cases are also cited. The hypothetical in question therein raised a rather technical issue in property law: whether a widow can receive her dower from estates settled on her husband for life, remainder to his first and succeeding sons in tail.⁵⁷ The recent case is that of *Hooker v. Hooker*, which came to King's Bench from Chancery for an opinion of the judges. The case was argued before King's Bench on three separate occasions before it was finally resolved in the widow's favour.⁵⁸ The other recent King's Bench case was not referred to by name and has not been located in any printed report. The dispute was over process: whether it is permissible to retake a person who was arrested by process from an inferior court of record and who then escaped out of that jurisdiction without an escape warrant from the Chief Justice of King's Bench.

⁵² See Appendix I.

⁵³ *Hooker v. Hooker* and an unnamed case; Appendix III, 18 and 27. Both are referred to by court and term. The former is reported in [1733] 2 Barn. 379; the latter, despite a search of the plea rolls, has not been found.

⁵⁴ *Hatton v. Hatton*. In the manuscript, the reference is simply by term: Hill. 6 Geo. II (1733). It was subsequently noted in 2 Eq. Cas. Abr. 444.

⁵⁵ *Littlebury v. Buckley*. No trace of this case has been found.

⁵⁶ Appendix III: 27.

⁵⁷ Appendix III: 18.

⁵⁸ Mich. 6 Geo. 2, [1732] 2 Barn. 201; Hill. 6 Geo. 2, [1732] 2 Barn. 232; Hill. 7 Geo. 2, [1733] 2 Barn. 379.

The two other recent cases were both cited in the hypothetical discussed above concerning the admissibility of parol evidence to prove that the testator who left his wife a legacy and made her his executrix intended her to have the residue of his personal estate in her own right or as a trustee for his heirs. The manuscript entry reads:⁵⁹

Resolved by a Majority that Parole Evidence will be admitted It was allowed by ye Ma. of ye Rolls in Hill. 6 Geo. 2d in *Hatton v Hatton* & his Decree afterwards affirmed by King, Chancellor on an appeal—It was allowed also in ye Case of *Littlebury & Buckley* in ye House of Lords.

Two other hypotheticals also illustrate the members' selection of issues for discussion that were of current interest. The first, the initial hypothetical recorded in the club's minutes for the meeting of 24 April 1734 (and set out in full above), deals with the issue of whether rent can be collected by either the executor or the heir of the lessor (a life tenant who let for a term but dies before the expiration of the term and before the time due for payment) if the tenant quits immediately after the landlord's death.⁶⁰ The second, argued at the meeting of 13 August 1735, concerns a closely-related issue—whether the executor of a lessor or his heir was entitled to the rent if the lessor died "about noon" on the date due for tendering the quarterly rent.⁶¹ Although only older cases were cited on these two occasions,⁶² the timeliness of these hypotheticals is suggested by the passage in 1738 of a statute that provided:⁶³

where any tenant for life shall happen to die before or on the day which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of or from the under-tenant . . . if such tenant die on the day on which the same was made payable the whole, or if before such day then a proportion of such rent, according to the time such tenant for life lived [shall be paid to the executor].

While the citations in the minutes provide evidence as to the members' knowledge of legal authority and of current litigation, the club's records do not provide much direct evidence as to the extent or tenor of the moots. To be sure, on 15 December 1736 the members

⁵⁹ 4 December 1734.

⁶⁰ Appendix III: 1.

⁶¹ Appendix III: 49.

⁶² In the former, *William Clun's Case* [1613] 10 Co. Rep. 127a. In the latter, *Lord Rockingham et al. v. Oxenden et al.* [1711] 2 Salk 579; *Dupa v. Mayo* [1645] 1 Wm. Saund. 275.

⁶³ 11 Geo. 2 c. 19, sec. 15.

agreed to a supplementary order stating that the presiding officer⁶⁴

might take an account of each person who shall speak or whisper in the Club during the Debate of the Question . . . and after the argument is over such person or persons so offending shall pay two pence for each Interruption.

While this order might be variously interpreted either as an indicator of a serious lack of attention or as a measure of the seriousness with which the members took their debates, the fact that so many of the hypotheticals provoked argument and debate speaks to the latter reading.⁶⁵ As Table IV indicates, while ten of the hypotheticals were resolved unanimously, 32 of the 53 provoked disagreement, signalled by the scribe's notation that the eventual resolution was only by a majority.⁶⁶

TABLE IV: Decisions on Hypotheticals (n = 53)

Resolved unanimously	10
Resolved by majority	32
Simply "resolved"	8
No resolution stated	3

Moreover, in two instances, the dissenters registered protests to the resolution reached by the majority, and these protests detail the arguments of the minority.⁶⁷ Thus, they provide the best evidence we have of the doctrinal competence of the membership of the club and of the intellectual quality of its debates.

The first of the two protests was occasioned by discussion of a procedural issue: whether in an action for defamation the defendant waives the Statute of Limitations if, instead of raising the statute, he pleads not guilty. The majority took the view that the defendant could not raise the matter of "time" after issue was joined by the defendant's plea of not guilty.

The protesters offered three arguments against the majority's resolution. The first was that the statute "has in Express Words taken away the Plts. Cause of Action". On this point, they cited *Saunders v. Edwards*.⁶⁸ But though that case does hold that the statute is a bar to a cause of action in defamation, the defendant in *Saunders* had pleaded the statute and then the plaintiff had demurred. So, the procedural question posed by the hypothetical was not in dispute in *Saunders*.

⁶⁴ See Appendix II.

⁶⁵ For attendance figures, see note 28 above.

⁶⁶ See Appendix III.

⁶⁷ Appendix III: 4 and 6.

⁶⁸ [1663] 1 Sid. 95.

The second point raised by the protestors was that the case on which the majority was relying had been

Adjudged in the infancy of the statute & since that time the more modern resolutions appear to have been contrary particularly the case in Salk: 278.

The case invoked from Salkeld by the dissenters was an action in debt for rent.⁶⁹ The defendant had pleaded *nil debit* and, as in the mooted hypothetical, proceeded to give the Statute of Limitations in evidence.⁷⁰ Chief Justice Holt had held that the statute might be given in evidence after the plea of *nil debit* "for the statute has made it no debt at the time of the plea, the words of which are in the present tense". But it was also noted that in assumpsit the statute could not be given in evidence for it "speaks of a past time, and relates to the time of making the promise".

We may ask, then, which side should have prevailed in the club's debate, given Holt's analysis in *Saunders*. A reading of the Statute of Limitations suggests that the protestors' position is the better one, for the articulation of the period of limitation for the action of defamation comes in the same section and is made in the same words as that with respect to debt for rent.

The protestors' final ground for dissent was not precedent but rather the kind of policy argument law students are often asked to formulate when precedent fails. They contended that the plaintiff should be required to come ready to argue that his cause of action was within the statute: after all, he was required to do so in actions of ejectment and trover, and to require him to do so in debt for rent puts him under no greater "inconvenience". This is certainly the case, but then the same logic might be applied to the plaintiff in assumpsit although Holt in *Saunders* had specifically distinguished that action from the action of debt for rent.

The second hypothetical which provoked a dissent involves greater complexities. The facts were as follows. A is entitled to £1000 due on a mortgage; prior to marriage, a settlement is executed giving her the power to dispose of Blackacre by deed or will notwithstanding her coverture; then by deed she grants Blackacre together with all her personal estate to her husband; the husband dies leaving his personal estate to B and C. So, the question posed is, who is entitled to the money due on the mortgage—A or B and C? The majority held for A, the widow, but without citing authority.

In response, the protestors raised four points. The first is technical and appears to be rather weak. A feme covert can dispose of property

⁶⁹ *Anonymous*, [1690] 1 Salk. 278.

⁷⁰ 21 Jac. I, c. 15.

with the consent of her husband, and such a disposition amounts to no more than a joint transfer by them. Thus far the reasoning is not problematic. If, however, the property in question is a chose in action, then the wife's transfer to the husband would be ineffective and so it would survive to her (which is correct). The protestors acknowledged that the mortgage was a chose in action but asserted that the property had been altered (to what is not said) by the wife's transfer. For this rather dubious assertion, no authority is cited.

The protestors' second point was more straightforward, yet not altogether persuasive. The husband might have disposed of the transferred mortgage during his lifetime but might not have done so because he believed that the deed enabled him to do so by will (which, *arguendo*, may be the case). However, the wife's transfer appears to have been gratuitous, and a reliance argument would be more compelling had there been consideration.

Having offered these two technical arguments, the protestors shifted to another tack and here they seem to be on firmer ground. Citing *Blois v. The Viscountess of Hereford*,⁷¹ they noted that since A had an adequate marriage settlement she ought not to be able to keep her personal fortune as well. In *Blois*, the Lord Keeper had had to determine whether the marriage portion of the wife (an heiress) included her personal property; the marriage settlement specifically mentioned only her real property. But although the Lord Keeper had decided to treat her personal property as part of her portion, the applicability of *Blois* to the hypothetical is at best debatable since there is some question whether the principle of that case applies to choses in action, the property in dispute in the hypothetical, unless the jointure is out of proportion to the portion—a point not included in the hypothetical.

The final point offered in support of their view by the protestors is somewhat obscure. As entered in the minutes, it reads: "Because the present Sollrs opinion is Directly agst the sd Resolution". Presumably, the reference is to the then Solicitor General Dudley Ryder, but it is not clear when and under what circumstances he had adopted the position attributed to him (or how the members had become acquainted with his views).⁷²

However serious the debates on the two occasions for which protests were entered and however sophisticated the analyses offered by the protestors, we cannot be sure that the discussion of the other hypotheticals was of comparable quality. Yet, there are a few other indicators in the manuscript of the seriousness with which the

⁷¹ [1705] 2 Vern. 501.

⁷² See note 79 below.

members took their debates. One is that on two occasions the decision on the hypothetical was carried over from one meeting to the following one.⁷³ Another, more clear-cut indicator of the extent of debate, interest of the participants, and expertise deployed is provided by the rehearing of a single hypothetical. On 12 March 1735, the members discussed the following issue:⁷⁴

Condition to make obligee a Lease for Life by such a day or pay him £100. Obligee dyed before ye Day
Q: Shall his Exects. have ye £100

On this occasion, the case was resolved (without indication of dissent) by the ten members in attendance, "notwithstanding ye Anonymous Case in 1st Salkeld fo: []". Although the minutes supply no page reference, the case is easy enough to find and does hold for the executor, distinguishing its facts from *Laughter's Case* (as reported by Coke).⁷⁵

Apparently, some of the members were dissatisfied with this resolution, for the hypothetical of 12 March was mooted again on 22 October 1735.⁷⁶ No resolution was reached that evening, and the case was adjourned until the following week. Then on 29 October, with eight members in attendance (including seven who had been present at the first discussion of 12 March), it was "Resolved by a Majority" in favour of the executor. This time, in addition to *Laughter's Case* and the anonymous case in Salkeld, two more cases were cited.⁷⁷ None was precisely in point, yet it may be suggested that many a lawyer has used less persuasive authority in court to support his position than did the majority present at the club on 29 October.

IV

In conclusion, then, we would stress four points. First, we must acknowledge the fortuitousness of the survival (regrettably only in truncated form) of the manuscript recording the existence, membership and activities of this club. Certainly, we cannot be sure that this was the earliest such society of members of the lower branch of the legal profession operating in London; the account in *The Spectator* of an attorney's club meeting weekly in London in 1712 and debating causes speaks, if somewhat less than definitively, to the contrary.

⁷³ Appendix III: 46 and 51.

⁷⁴ Appendix III: 30.

⁷⁵ [1595] 5 Co. Rep. 21b.

⁷⁶ Appendix III: 30 and 51.

⁷⁷ *Rex v. Gall*, [1699] 1 Ld. Raym. 371; *Evans v. Thomas*, [1608] Cro. Jac. 172.

Second, we would emphasise that the club which has been our subject was meeting at an unusually significant time—the interval between the registration Act and the formation of the SGP—a time when formerly distinct groups of legal practisers, attorneys and solicitors, were beginning to coalesce, at least in the metropolis. And this process of coalescence is underlined by the dual qualifications of most of the members of our club and illuminated by the range of hypotheticals they discussed. Third, the increasing competence and self-confidence of at least some members of the lower branches of the profession is evident in the character of the club's debates. Thus, while *The Spectator's* account indicates that when the members of the club it describes encountered a question "of which they have no President, it is noted down by their Clerk . . . [so] that one of them may go the next Day with it to a Counsel",⁷⁸ the members of this club of the mid-1730s—though respectful of precedent—were also ready to interpret and apply for themselves the relevant legal authorities to the hypotheticals under discussion.⁷⁹ Moreover, their self-confidence appears fully justifiable when the evidence allows us to get behind their resolutions and to examine their citations and, on occasion, their arguments.

Finally, we would emphasise the need for further research on the lesser legal practitioners of the metropolis. On the one hand, we have suggested that the SGP's concern with restricting entry to practice in the courts and the club's concentration on the subject-matter of litigation in their deliberations run contrary to Belcher's suggestion, made with respect to Andrews, that litigation formed a declining part of the London attorney's or solicitor's business. Moreover, in the years after their club apparently ceased to meet, at least some of its members built up successful practices, on occasion accompanied by the acquisition of positions in judicial administration.⁸⁰ But by no means all the members can be traced as successful members of their profession and, more generally, it is clear that the business of the central courts continued to lag through the middle decades of the eighteenth century.⁸¹ What is needed, then, is a thorough canvass of the surviving but scattered papers of metropolitan

⁷⁸ As note 15 above.

⁷⁹ Two possible exceptions to this generalisation should be noted. These are the references to non-judicial opinions in the text: the first, the reference to Mr. Solicitor's opinion in the protest of 29 May 1734; the second, in a crossed-out section of the text of the majority's resolution of 5 Feb. 1735, the reference to the opinion of Edward Bootle, a barrister. On one or both occasions, a member (or members) of the Club may have solicited the views of these individuals before coming to the meeting. At the same time, it is worth noting that it was the losing side (the protesters) who invoked Mr. Solicitor's opinion.

⁸⁰ Besides the rather unusual case, discussed above, of William Lucas, other success stories that can be established are those of Boughy, Fothergill, Kent, and Olivant.

⁸¹ Brooks, "Interpersonal Conflict", pp. 363–364.

attorneys and solicitors and a careful tracking of the traces their activities have left in the records of both the central courts and the lesser jurisdictions of the metropolis.⁸² Only when those tasks are completed will we be able to generalise with any degree of confidence.

APPENDIX I: THE MEMBERSHIP OF THE CLUB

Information about the 24 members has been organised under the following categories:

- (1) first meeting of the club attended;
- (2) total number of meetings attended; and whether current member at end of 1737 or name crossed out in listing of club members;
- (3) date(s) when and court(s) in which admitted to practise under the 1729 Act (Common Pleas (CP), Chancery (C), Exchequer (E), King's Bench (KB)), and registration address (from the printed lists for 1729 and 1730 and from the manuscript lists in the PRO for subsequent years);
- (4) recorded in the bill books of King's Bench and/or Common Pleas as an active practitioner (PRO, IND 1/9632ff. and CP36/4 and ff.);
- (5) evidence about apprenticeship, if any (from PRO, IR 1);
- (6) evidence about taking apprentices, if any (PRO, IR 17);
- (7) will or administration (PRO, Prob. 11 or 6);
- (8) additional information, chiefly from the membership listings of the Society of Gentlemen Practisers ('SGP') and directories.

1. Atherton, Jeremiah

- (1) never attended; listed in order of 24/4/34 as one of the three former members now in the country;
- (3) admitted 26/6/31 to CP and 28/6/32 to C, as of Carlisle, Cumberland.

2. Baker, John *unidentifiable*

⁸² We know that one of the club members, the Cheshire-born but London-based Nicholas Kent (who does not figure as an active practitioner in the central courts after 1740 and who did not join the SGP), did act in the 1740s and 1750s for at least two north-western gentry families, the Egertons of Tatton Park and the Leghs of Lyme. Fragments of Kent's correspondence with these clients from his native region survive in the John Rylands University Library: Egerton Mss. 2/1/95-103 (nine letters dating from the early 1740s to the late 1750s); Legh of Lyme Mss. (five letters from the early 1740s to 1750). Kent handled both litigation-related and other matters for the Egertons and Leghs, and Kent's successful practice seems to have been continued in the later 18th century by the firm of Kent and Darlington, some of whose letters also survive in the Legh of Lyme collection. Our attention to the former group of Kent's letters was drawn by Aylett's use of this correspondence in his "Attorneys and Clients", pp. 346-349; however, we read them as indicating a closer professional and personal relationship between Kent and Samuel Egerton over the two decades than Aylett's account would suggest. Our thanks to Dr. Peter McNiven of the Rylands Library for informing us of Kent's letters to Peter Legh of Lyme and for making available copies of the two groups of Kent's letters.

- (1) 24/4/34;
- (2) 50; current member;
- (3) one John Baker, of Barnard's Inn, was admitted to KB on 26/11/30 and subsequently to C on 2/12/30; a second John Baker, of King St., was admitted to CP, on 23/11/33. (It is possible that these are the same John Baker, but it was not usual for an attorney already qualified in one common law court to have to register to practise in another.)

3. Barnett, William

- (1) never attended during the 56 meetings minuted, but did sign two of the club's supplementary orders of 23/2 and 16/3, 1736[-7];
- (2) name crossed out;
- (3) admitted 24/5/34 to KB and 15/6/35 to C, as of Bartlett's Buildings.

4. Beck, Christopher

- (1) 24/4/34;
- (2) 41; current member;
- (3) admitted 4/11/30 to CP, as of Strand Lane, and 22/3/32[-3] to C, as of Barnard's Inn;
- (4) active in both KB and CP up to mid-1750s;
- (7) Prob. 11/980, of Barnard's Inn, gent. (proved 19/9/72);
- (8) one of his two executors was another Club member, Richard Whishaw.

5. Boughey, George

- (1) 24/4/34;
- (2) 42; current member;
- (3) admitted 23/1/35[-6] to CP and 12/2/35[-6] to C. of Inner Temple;
- (4) active in both KB and CP up to mid-1760s;
- (5) apprenticed, no parentage listed, to Richard Banister of the Inner Temple, gent., for a premium of £168-8 in 1730;
- (6) took apprentices in 1752 (£157-10) and 1753 (£155);
- (7) Prob. 11/1162, of the Inner Temple, esq. refers to land in Staffordshire inherited from his father (proved 21/2/88);
- (8) listed in Browne's Law Lists of 1777, 1778, and 1782 as of Tanfield Court, Inner Temple.

6. Brown, John *unidentifiable*

- (1) 24/4/34;
- (2) 21; name crossed out;
- (3) between 1730-37, five John Browns were admitted to CP or KB.

7. Croft or Crofts, William

- (1) 24/4/34;
- (2) 8; name crossed out;

- (3) admitted 27/11/30 to CP and 2/12/30 to C, of Symonds Inn;
- (4) active in both KB and CP up to mid-1760s;
- (6) took two apprentices in 1737, for premiums of £40 and £180, respectively, as of Chancery Lane;
- (7) Prob. 6/146, of St. Martin's in the Field (admin. by widow, 3/71);
- (8) a Mr. Crofts was a member of the SGP in the late 1740s and early 1750s; William Crofts was listed as one of 250 "eminent attorneys" in the metropolis in Mortimer's *Universal Directory* (1763) as of St. Martin's Lane.

8. Davison, Jacob

- (1) 24/4/34;
- (2) 36; name crossed out;
- (3) admitted 18/11/30 to KB and 3/12/30 to C, of Bartlett's Buildings;
- (4) active in KB and CP up to mid-1750s;
- (5) apprenticed, as son of Isa of Twedale, Cumberland, to Thomas Dobinson of Carlisle for 49 pounds in 1724;
- (6) took, in partnership with Joseph Stanwix, two apprentices, each for £250, in 1747, as of Bartlett's Buildings;
- (7) Prob. 6/141, of St. Andrews Holborn (admin. to brother Monkhouse D., 8/66);
- (8) Press notices of his death in 2/65 as of Bedford Row, esq.

9. Fothergill, Henry

- (1) 12/7/35;
- (2) 4; current member;
- (3) admitted 16/7/30 to CP and 25/2/31[-2] to C, of Gray's Inn;
- (4) active, though only in CP (see his office) at least until the mid-1770s; acquired position of Secondary to the first Prothonotary in the late 1730s or early 1740s;
- (6) took apprentice in 1756 for £50, as of Bedford Row;
- (7) Prob. 11/1255, of Bedford Row, gent. (proved 13/2/95);
- (8) among the early members of the SPG in which he continued to be active until months before his death; listed in Mortimer's *Universal Directory* (1763); listed in Browne's Law Lists of 1777, 1778, and 1782 of King's Bench Walk, the Temple, and of Bedford Row.

10. Gibson, Edmund

- (1) 26/6/34; but a member before this date as indicated by an order of 24/4/34 referring to him as then in the country;
- (2) 14; name crossed out (twice)
- (3) 19/6/30 to CP and 23/6/30 to C, of Workington, Cumberland, gent.;
- (4) may have been active in KB and CP up to mid-1760s.

11. Glover, Richard

- (1) 24/4/34;
- (2) 45; name crossed out;
- (3) 12/2/34[-5] to CP and 28/11/35 to C, of Hatton Garden;
- (4) Practising in KB in the mid-1730s.

12. Harrison, Daniel

- (1) never attended; listed in the order of 24/4/34 as one of three former members now residing in the country;
- (3) 25/1/32[-3] to CP, as of Gray's Inn.

13. Hollis, John

- (1) 14/5/35;
- (2) 17; current member;
- (3) 30/6/30 to CP and 27/2/30[-1] to C, of Portugal St.;
- (4) active in KB (earlier in CP) up to mid-1760s;
- (5) apprenticed, no parentage given, to Ralph Porter of Harbrough, Yorkshire, for £50 in 1724;
- (6) took apprentices in 1737, 1740, and 1745 for £81, £180, and £150 respectively, of St. Andrews Holborn;
- (7) Prob. 6/147, widower, of St. Andrews Holborn (admin. by brother William, 2/71).

14. Kent, Nicholas

- (1) 24/4/34;
- (2) 45; current member;
- (3) 20/7/30 to KB and 2/12/30 to C, of Clifford's Inn;
- (4) active in KB and CP up to mid-1760s;
- (7) Prob. 11/1065, of Clifford's Inn, gent., but presently residing at Braunshott, Hampshire; states birthplace to be Coppenhall, Cheshire (proved 2/5/80).

15. Leckonby, Thomas

- (1) 24/4/34;
- (2) 26; name crossed out;
- (3) 30/11/30 to CP, of the Inner Temple; 19/6/46 to C, formerly of the Inner Temple but now of Lancaster;
- (4) active in KB in mid-1730s;
- (6) took apprentice in 1744 for £48, as of Lancaster.

16. Lucas, William

- (1) 24/4/34;
- (2) 33; current member;
- (3) attorney of KB but date of admission unknown; 19/5/35 to C, of the Middle Temple;
- (4) active in KB in the mid-1730s;
- (7) Prob. 11/993, of the Middle Temple and of Preston, Lancs., esq. (proved 13/12/73);

(8) a member of the SGP, at least from the mid-1740s; resigned from practice as attorney before KB and solicitor in C in 1753 after he had been called to the Bar in the Middle Temple in Feb. 1753 (admitted—as 2nd son of Thomas L., of Garstang, Lancs., gent. dec'd—11/44).

17. Maddock or Maddocks, Richard

- (1) 24/4/34;
 - (2) 27; name crossed out twice and re-entered; current member;
 - (3) 23/11/34 to KB and 12/2/34[-5] to C, of the Middle Temple;
 - (4) active in KB and CP up to mid-1760s;
 - (8) a Mr. Maddock a member of the SGP in the early 1740s.
- Richard Maddocks became Clerk of the Assize for the western circuit in the late 1740s or early 1750s, and held the post up to the mid-1760s. He also was named as a Bankruptcy Commissioner in the late 1750s and early 1760s.

18. Nurse, Henry

- (1) never attended but order of 16 March 1736[-7] states: "that Mr. Nurse be not struck out from being a member of this Society provided he attend the next club night";
- (2) name crossed out;
- (3) 9/2/30[-1] to CP and 28/11/34 to C, of Clifford's Inn;
- (5) no parentage, apprenticed for £150 to Charles Goodman, attorney of KB, in 1724.

19. Olivant, Thomas

- (1) never recorded as attending but signed an order of 22/12/36;
- (2) current member;
- (3) 26/11/30 to KB and 28/6/32 to C, of Mayor's Court [City of London];
- (4) active in KB up to mid-1770s;
- (6) took apprentices in 1737, 1758, 1760, and 1761, for £50, £10-10, £50, and £9-5, respectively, of Barnard's Inn;
- (7) Prob. 11/1035, of Inner Temple, gent., includes a bequest to his "old friend" Henry Fothergill (proved 29/10/74).

20. Pritchard, H[ugh William]

- (1) never recorded as attending;
- (2) current member;
- (3) 20/11/30 to CP as of Staple Inn; 14/7/31 to C as of Barnard's Inn;
- (4) active in KB in mid-1730s;
- (6) took apprentices in 1744 and 1747 for £40 and £81, respectively, as of Barnard's Inn;
- (8) a Mr. Pickard was among the early members of the SPG.

21. Stafford, John

(1) listed in order of 24/4/34 as one of three former members now residing in the country;

(2) 1;

(3) 27/3/29 to CP of St. Benet Fink; 12/7/29 to E of St. Benet Fink; 15/6/30 to C as late of St. Benet Fink but now of Macclesfield;

(6) took apprentices in 1730, 1741, 1747 and 1751 for £69-6, £105, £105 and £105, respectively, of Macclesfield.

22. Strickland, Thomas

(1) 26/6/34;

(2) 40; current member;

(3) 26/11/30 to CP of Hatton Garden; 25/6/35 to C of St. Andrews Holborn;

(4) active in KB and CP up to mid-1750s;

(5) apprenticed, son of Robert of Kirkby, Westmorland, to Thomas Wilson of Kirkby, attorney CP for £45 in 1720;

(6) took apprentices in 1752 for £50, as of Cursitor St., and in 1761 for £50, as of Symonds Inn;

(8) A Mr. Strickland was a member of the SPG in the later 1740s and early 1750s; listed in Mortimer's *Universal Directory* (1763).

23. Whishaw, Richard

(1) 24/4/34;

(2) 17;

(3) 22/6/30 to CP and 28/11/32 to C, of Lincoln's Inn;

(6) took apprentices in 1735 for £63, as of Symonds Inn, and in 1744 for £210, as of Tooke's Court;

(8) probably the son and heir of Hugh, gent. of Chester (and, as such, was admitted to the Inner Temple in 1730); he is sometimes referred to as Mr. Whishaw, junior, presumably to distinguish him from his uncle John Whishaw, an extremely successful solicitor (of Cursitor St.). A Richard Whishaw of Tooke's Court (and occasionally as Mr. Whishaw junior) was among the early members of the SPG and continued active in the Society up to the early 1780s; a Richard Whishaw of Staple Inn was listed in Mortimer's *Universal Directory* (1763); a Richard Whishaw is listed in Browne's Law Lists for 1777 and 1778 as of Coney Court, Gray's Inn, and for 1782 as of North St, Red Lion Square.

24. Woodward, Joseph

(1) 30/10/34;

(2) 8; name crossed out;

(3) 5/5/33 to KB and 15/7/33 to C, of Friday St.;

(4) active in KB in the mid-1730s;

(6) took apprentice in 1738 for £157-10, as of St. Christophers;

(7) Prob. 6/115, batchelor, of St. Christopher le Stocks (admin. to his widowed mother Ann, 11/39).

APPENDIX II: RULES AND ORDERS OF THE CLUB

The manuscript begins, *in medias res*, at p. 9 with "item 20" and goes on through "item 25" at p. 11. These "items" or rules are reproduced *in extenso* below in Part A, with spelling, punctuation and capitalisation modernised.

There follows a series of signatures to these rules, some of them (presumably in accordance with item 20) crossed out. There is then, on pp. 12 to 14, a series of dated orders, the first of 19 June 1734 and the last of 21 Dec. 1737. These are entered in different hands and signed by the member then serving as president of the club. There are a total of nineteen such orders; only a selection of the less routine are printed below in Part B of this appendix.

A. Rules 20-25

Item 20. That if any President Treasurer or other member of the said Society shall at any time hereafter refuse to pay any such forfeiture or penalty as he shall hereafter incur by virtue of these presents or any other such subsequent order as aforesaid, then in such case the President for the time being is hereby directed to strike such member's name out of this book. And such member is not to be re-admitted but on payment of such forfeitures and penalties and on payment of two shillings and six pence for his offence and re-admission and making public acknowledgement of his fault.

Item 21. That any person who shall hereafter be desirous to become a member of this Society shall a week before be proposed to the said Society by some member in order for their approbation and the next night, if approved of, to be admitted paying one shilling for such his admittance.

Item 22. That no person may be admitted a member of this Society unless he be of some profession immediately relating to the law.

Item 23. That no person that belongs to any of the offices of the Courts of Equity or the Court of the Pleas of the Exchequer shall be admitted a member of this Society.

Item 24. That the members present at the time and place aforesaid, if five or more, whereof the President for the time being or his Deputy to be one, shall be deemed a Society without any regard to the absent members. And any act or order made by a majority of such present members shall be as valid and effectual as if the same were made by a majority of all the members of this Society. And that if any dispute shall arise relating to the said Society, the same

shall be decided by a majority of votes, the President for the time being in case of an equality on both sides being allowed the casting or determining vote.

Item 25. That if any of the members of the said Society shall at any time hereafter leave the same in order to practise in the country, his name shall be struck out of this book, but nevertheless he shall be liberty at all times when he comes to town to resort to the said Society at pleasure. But he is only to be looked upon as a member with respect to the question and debates and not for the making of any orders or by laws. "Dated the 24th April 1734" [in a different hand]

B. A Selection of Orders

"19 June 1734: Ordered that the number of copies of cases mentioned in the fourth order be extended from five to eight.

Richard Whishaw President"

"2nd June 1736: Ordered that the place of meeting of this Society be changed from the Falcon in Fetter Lane to the Apple Tree Tavern in Cursitors Alley in Chancery Lane, and that the Society do meet at the last mentioned place for the first time on Wednesday night, the 9th instant.

John Baker President"

"15 December 1736: Ordered that the President for the time being shall every club night take an account of each person who shall speak or whisper in the club during the debate of the question save by the member then speaking to the case. And after the argument is over such person or persons so offending shall pay two pence for each interruption provided that any member shall be at liberty to speak he addressing himself to the President first."

[no signature]

"16 March 1736[-7]: Ordered that Mr. Nurse be not struck out from being a member of this Society provided he attend the next club night.

William Barnett President"

"21 December 1737: Ordered that Mr. Treasurer do expend what money he has received for the use of this Society by forfeitures or otherwise on a dinner for the said Society to be had on the 4th day of January next and at the place where the said Society generally meets, and that this club be adjourned to this day three weeks.

John Baker President"

APPENDIX III

This appendix lists the cases by subject matter (Table I), indicates whether or not authority was cited for the position taken by the members (Table II) and the venue thereof (Table III), and the divisions on the decisions taken (Table IV). (See Table I above for abbreviations.)

Case No. & Date	Subject-matter	Authority Cited	Venue	Resolution
1. 24/4/34	Prop(L)-Proc	y	KB	unan
2. 1/5/34	Prop(P)-Proc	y	Ch-CH	maj
3. 8/5/34	Prop(T)	n		unan
4. 15/5/34	Proc	y	KB-KB	maj
5. 22/5/34	Comm(Misc)	n		maj
6. 29/5/34	Prop(M)	y	CH	maj
7. 5/6/34	Prop(R)-Proc	n		maj
8. 12/6/34	Comm	n		maj
9. 19/6/34	Prop(R)	-		unres
10. 26/6/34	Proc	y	KB	maj
11. [3/7/34]	Prop(Pr)-Proc	y	KB	res
12. 23/10/34	Prop(R)	n		maj
13. 30/10/34	Prop(R)-Proc	y	KB-KB	maj
14. 6/11/34	Eccles	n		maj
15. 13/11/34	Prop(R)	n		maj
16. 20/11/34	Proc-Comm(D/B)	y	Ch	maj
	Prop(Pr)			
17. 27/11/34	Prop(Pr)-Prop(P)	y	Ch-HL	maj
18. 4/12/34	Prop(R)	y	KB- KB-KB	maj
19. 11/12/34	Prop(R)	n		maj
20. 18/12/34	Prop(R)	n		maj
21. 8/1/34[-5]	Prop(T)	n		maj
22. 15/1/34[-5]	Proc-Prop(P)	y	Ch	maj
23. 22/1/34[-5]	Proc-Prop(P)	n		unan
	Prop(M)			
24. 29/1/34[-5]	Proc	n		res
25. 5/2/34[-5]	Proc	n		maj
26. 12/2/34[-5]	Proc	y	KB	res
27. 19/2/34[-5]	Proc	y	KB	res
28. 26/2/34[-5]	Proc-Comm(D/B)	y	CP	res
29. 5/3/34[-5]	Prop(R)-Proc	n		unan
30. 12/3/34[-5]	Comm(D/B)	y	CP	res
31. 19/3/34[-5]	Proc	-		unres
32. 26/3/35	Prop(L)	-		unres
33. 2/4/35	Prop(L)	n		maj
34. 9/4/35	Comm(D/B)	y	[Coke]	res
35. 16/4/35	Comm(Misc)	n		res
36. 23/4/35	Proc	y	KB	unan
37. 30/4/35	Proc-Comm(C)	n		maj
38. 7/5/35	Proc-Comm(Misc)	n		unan

Case No. & Date	Subject-matter	Authority Cited	Venue	Resolution
39. 14/5/35	Proc-Comm(C)	n		maj
40. 21/5/35	Proc-Eccles Prop(R)	n		maj
41. 4/6/35	Prop(P)-Prop(Pr)	y	CH	unan
42. 11/6/35	Comm(Misc)	y	KB-KB	maj
43. 18/6/35	Proc	n		unan
44. 25/6/35	Proc	n		maj
45. 9/7/35	Prop(R)	n		unan
46. 16&23/7/35	Prop(R)	n		maj
47. 30/7/35	Comm(D/B)	n		unan
48. 6/8/35	Prop(L)	n		maj
49. 13/8/35	Prop(L)	y	Ch-KB	maj
50. 20/8/35	Comm(D/B)	y	CP	maj
51. 22&29/10/35	Comm(D/B)- Prop(Pr)	y	KB- KB-KB	maj
52. 5/11/35	Proc-Comm(D/B)	n		maj
53. 12/11/35	Comm(D/B)	n		maj