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FRAUD AND DISHONESTY IN KING'S BENCH AND STAR CHAMBER

Henry Mares*

Abstract: *This article considers various fraud-related misdemeanours in English criminal law. Based on extensive archival research, it discusses a set of prosecutions by the Attorneys-General in seventeenth-century England in Star Chamber and King's Bench in order to understand the use and meaning of the concepts of fraud and dishonesty in the early modern period.*

Introduction

By the start of the seventeenth century, there was a relatively sophisticated body of criminal law dealing with certain aspects of crimes of dishonesty, but, equally and unsurprisingly, other aspects were as yet undeveloped; the picture appears to be one of law that was still in the process of evolving. As Baker writes, at the time '[m]any forms of dishonesty could not be treated as felonious, because they did not include a taking with force and arms';¹ nevertheless, there were many instances where fraudulent or dishonest behaviour without force was dealt with instead as a criminal misdemeanour.

This paper will consider what some of these offences reveal about both the scope and content of fraud and dishonesty in English criminal law. It will begin by considering the varying definitions of the crimes of dishonesty under consideration here such as fraud, covin, and deceit. It will proceed by exploring a subset of these crimes: those prosecuted by the Attorney-General (A-G) in King's Bench and Star Chamber; it will therefore briefly examine the jurisdiction over these offences of Star Chamber and King's Bench and the role of the Attorney-General. As Yale wrote of the equally protean fraud jurisdiction of equity, the 'only way in which the atmosphere of this jurisdiction can be captured is to look at a selection of these cases.'² Consequently, the paper will in its second half consider some illustrative examples: prosecutions by the Attorneys-General for fraudulent conversion as a crime, frauds against justice, and fraudulent coining and trading.³ An examination of these cases brings out some points of interest not only about the substantive law of the time, but also about mental state requirements, and objective and subjective tests for dishonesty, something still of concern for modern lawyers. It also highlights some aspects of criminal procedure in the superior courts of the time, in particular the multiplicity of charging.

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¹ JH Baker, *An Introduction to English Legal History* (4th edn, Butterworths 2002) 534.

² DEC Yale, 'Lord Nottingham's Chancery Cases: volume I' (1954) 73 SS xci.

³ Unreported cases in the King's Bench are cited in the following form: *North A-G v Hudson* (1674) KB 9/930/092, where the Attorney-General is North, the year of the prosecution is 1674, and the information to commence proceedings in King's Bench is now in The National Archives of the United Kingdom (TNA), series KB 9. Unreported cases in the Star Chamber are cited analogously: *Yelverton A-G v Emans* (1618) STAC 8/025/020, with the information to commence proceedings in Star Chamber to be found in TNA, series STAC 8. Other archival materials from TNA referred to in this article are from departments C (Court of Chancery), KB (King's Bench), SP (State Papers), Privy Council (PC), and WARD (Court of Wards and Liveries). All archival sources are from TNA unless stated otherwise.

Definitions and Distinguishing the Terms

The offences of dishonesty were large in number, and thought to be peculiarly difficult to define. The sheer breadth of the ‘so many cunning cosonages, crafty reaches, undermining devices, subtile complots, counterfeit drifts, and fraudulent fetches’ had led Lambarde, in his 1591 treatise *Archeion*, to reason that it was meet and just that authority, too, ‘should strain the line of Justice beyond the ordinary length and wonted measure’⁴ in order to hold offenders to account. Only a few years later, Pulton, in his 1609 treatise *De Pace Regis et Regni*, grouped together ‘deceits, covins, collusions, and frauds’, and likened counting the number of such offences to counting ‘the number of the stars of the element’.⁵ Pulton understandably thus thought it futile to attempt an exhaustive enumeration of them all.

There appears to have been considerable overlap between the offences; moreover, some of them appear to have been used as catch-alls for conduct falling outside other descriptions. The law dictionaries of the time reflect this: while there are no specific entries for fraud in Rastell’s *Termes de la Ley*,⁶ in West’s *Symboleography*,⁷ or Cowell’s *Interpreter*,⁸ there are overlapping entries for ‘deceit’, ‘cosening’, and ‘covin’. West, for example, in the 1597 edition of his *Symboleography*, defined ‘deceit’ as

a subtile wily shift or devise having none other name. Hereunto may be drawn all manner of craft, subtlety, guile, fraud, wiliness, slightness, cunning, covin, collusion, deceit, devise, practise, and offence used to deceive another man by any means which hath none other proper or particular name but offence.⁹

A similar description appears slightly later in Cowell’s *Interpreter* of 1607. Covin, one of the possible elements listed by West in his definition of deceit, was defined by Rastell as ‘a secret assent determined in the hearts of two or more, to the prejudice of any other’,¹⁰ and by Cowell, in much the same terms, as ‘a deceitful assent or agreement’.¹¹ This might in some circumstances result in a conveyance being void;¹² and while it would not usually result in other liability either civilly or criminally, it could also be a crime.

The offence of ‘cosening’, according to West, similarly overlapped with the other offences. It ‘taketh place, if anything be done by guile in, or out of contract, which will not agree with any of the said offences, as if any use collusion or fraud towards the death, or defrauding of

⁴ CH McIlwain and PL Ward (eds), *Archeion, or, Discourse upon the High Courts of Justice in England* by William Lambarde (Harvard UP 1957) 51–52.

⁵ F Pulton, *De Pace Regis et Regni* (Company of Stationers 1609) 67v.

⁶ There is no entry for fraud in any of the following editions: J Rastell, *Exposiciones Terminorum Legum Anglorum* (1525); J Rastell, *The Exposicions of the Terms of the Laws of England* (Richard Tottell 1567), (Richard Tottell 1572), (Richard Tottell 1575); J Rastell, *An Exposition of Certain Difficult and Obscure Words, and Terms of the Laws of England* (Thomas Wight and Bonham Norton 1598); J Rastell, *Les Termes de la Ley: or, Certain difficult and obscure words* (John Streater and others 1667).

⁷ W West, *Symboleographia* (Richard Tothill 1590); W West, *Of Symboleography: The Second Part* (Thomas Wight and Bonham Norton 1597).

⁸ J Cowell, *The Interpreter* (John Legate 1607).

⁹ W West, *Of Symboleography* (1597 edn), Part III, s 68; J Cowell, *The Interpreter* (John Legate 1607), unpaginated. Deceit was also in itself a distinct writ, which is the source of the definition in J Rastell, *Termes de la Ley* (1598 edn) 271–72: ‘Disceit is a writ, sometime original, and sometime judicial ...’.

¹⁰ J Rastell, *Termes de la Ley* (1598 edn) 55.

¹¹ J Cowell, *The Interpreter* (John Legate 1607), unpaginated.

¹² See the example given later in J Comyns, *A Digest of the Laws of England*, vol 2 (Printed by H Woodfall and W Strahan 1764) 460.

another, shifting of counterfeit ware into the place of others, or to exact a greater sum then is due, or a debt which is paid ...'.¹³

The intermingling of the terms for crimes of dishonesty was widespread. Thus Chamberlain in his letters uses both fraud and cousinage to describe the Star Chamber charges against the Lord Treasurer Thomas Howard, Earl of Suffolk, and his wife:

[D]efrauding the King to the value of 140 000 /in jewels, but for that they have a pardon and *quietus est* under the great seal of England Then are they charged with cousinage in the alume business, with misemploying the King's treasure many ways, with abuse in the payments of Ireland, and finally with many extortions, concussions, and foul corruptions in all that passed through their hands ...'.¹⁴

The confusion continues in examples from the cases themselves. Some Star Chamber *pro rege* cases that seem to be examples of fraud, and where the equivalent conduct in King's Bench could be labelled fraud, do not use the word at all in the information setting out the charge. For example, prosecutions for over-dyeing silk to increase its weight at sale attract a charge of fraud in King's Bench;¹⁵ an equivalent Star Chamber information, however, instead alleges that the dyeing is 'deceitful', 'false', and 'corrupt'.¹⁶ Some matters, such as taking the King's timber, are alleged in both courts to be fraudulent.¹⁷ The reasons for such disparities remain unclear.

Another Star Chamber case, which has no obvious equivalent in the King's Bench information cases, does allege fraud as one of a range of wrongs, including duelling and fraudulently using false dice.¹⁸ Indeed, the fact that in this case all of Bacon A-G's interrogatories to witnesses focused on the duelling, and none on the fraud, suggests that the former was accorded more importance than the latter.¹⁹ The fraud was a matter on which Star Chamber could censure the defendants, as the information ends with the usual formula requesting a *sub poena* so that the defendants could be brought to answer the charges detailed in the body of the information. However, the fraud in fact appears to have been mere background to the then pressing matter of duelling.²⁰

It is thus difficult to draw general conclusions from the presence or absence of the specific word 'fraud' in an information. However, at least two distinctions are clearly made between fraud and covin. The first, simple, distinction is that covin, given the element of secret assent, required

¹³ W West, *Symboleography* (1597 edn), Part III, s 68. As with 'deceit' above, a similar description appears slightly later in J Cowell, *The Interpreter* (1607 edn), unpaginated; and see also R Crompton, *Star-Chamber Cases* (Printed by IO for John Grove 1641) 10.

¹⁴ SP 14/110 f 229 and NE McClure (ed), 'The Letters of John Chamberlain: volume II' (American Philosophical Society 1939) Memoirs XII, pt II, 269; note that the Calendar of State Papers Domestic in its summary of SP 14/110 has conflated 'cousinage' with 'fraud'.

¹⁵ See, for example, *North A-G v Hudson* (1674) KB 9/930/092.

¹⁶ *Coventry A-G v Washington* (1623) STAC 8/030/016. This case will be discussed in more detail below.

¹⁷ See, for example, *Yelverton A-G v Sir Basil Brooke and others* (1620) STAC 8/025/14 and *Palmer A-G v Milner* (1662) KB 9/890/150.

¹⁸ (1614) STAC 8/020/06.

¹⁹ *ibid.*

²⁰ On Bacon's involvement in prosecuting others earlier that year in Star Chamber for duelling, and his famous charge therein, see M Peltonen, *The Duel in Early Modern England: Civility, Politeness, and Honour* (CUP 2003) 88 and B Vickers (ed), *Francis Bacon: The Major Works* (OUP 1996) 304.

at least two wrong-doers, where fraud only required one.²¹ If need be, however, any allegation of covin could be severed from the fraud if wrongly added, as Coke, in his report of *Meriel Tresham's Case* (1612) in the Common Pleas, wrote:

And although of itself, and *ex vi termini*, *covina* ought to be betwixt two; yet when it is coupled with fraud, which may be committed by one only, the Court shall adjudge upon the matter, and not upon the strict etymology of the word; and if the addition of covin be in vain, then the Court ought to adjudge upon the word, *s.* fraud, which may be committed by one ...²²

This procedural flexibility, as described here, is at least an indication of Coke's attitude to the lack of importance of the distinction between fraud and covin, and possibly goes some way towards an explanation of the practice of referring to covin and fraud almost interchangeably.

One other distinction, however, appears to have been drawn more recently between fraud and covin. William Jones, in his volume on the Elizabethan Chancery, cited *Muschamp v Stoakes and others*²³ as an example where 'an executor, in collusion with other persons, could obtain a recovery in the King's Bench which, though covenous, could not be judged fraudulent in law because in the eyes of the Judges there had been a just forfeiture.'²⁴

In 1598, William Lambarde, at that time a Master in Chancery and Deputy Keeper of the Rolls under Egerton,²⁵ gave his opinion in *Muschamp v Stoakes*. Stoakes had been both a debtor and surety for the debts of others; when he died, he left money to pay the debts. His wife, who was both the executrix and one of the defendants, colluded with some of the creditors so that judgments by consent in King's Bench would be had, and the bonds forfeited, and hence the other creditors would not be paid. Lambarde in his report describes the actions both as 'frauds' and 'by covin'; the point in this case seems to have been only one of whether the proof of fraud would be acceptable at common law, and not of any substantive distinction between covin and fraud.²⁶

There are relatively few discussions of the historical meaning of 'fraud' in the modern literature. William Jones describes fraud, at least in equity, as 'something which was essentially reprehensible and yet intrinsically more specialized than everyday concepts of falsehood.'²⁷ David Ibbetson suggests that fraud may be 'loosely described as any means whereby one person dishonestly takes advantage of another to his or her own profit ...'.²⁸ John Beattie gives a few examples of fraud, largely from the eighteenth century, such as pretending to be a servant sent to collect goods, but provides no overall explanation of the contemporary meaning of the concept.²⁹ Thomas Barnes uses the term 'covin' loosely to include forgery, fraud, extortion, counterfeit

²¹ Anon, *A Treatise of Frauds, Covins, and Collusions* (Printed by John Nutt, 1710) 2, J Comyns, *A Digest of the Laws of England*, vol 2 (Printed by H Woodfall and W Strahan 1764) 260.

²² (1612) 9 Co Rep 108a.

²³ C 39/24; particular thanks are due to Neil Slaughter of the National Archives for providing access to this mould-affected record.

²⁴ W Jones, *The Elizabethan Court of Chancery* (Clarendon Press 1967) 413. See also W Jones, 'Early Statutes and Commissions' (1979) 69(3) *Transactions of the American Philosophical Society* 30.

²⁵ JD Alsop, 'Lambarde, William (1536–1601)' *Oxford Dictionary of National Biography*, vol 32 (OUP 2004) 287.

²⁶ Thus Lambarde describes the actions as 'this fraud, which nevertheless will be taken for no fraud at the common law': C 39/24.

²⁷ W Jones, *The Elizabethan Court of Chancery* (Clarendon Press 1967) 422.

²⁸ D Ibbetson, 'Fraud: English Common Law' in SN Katz (ed), *The Oxford International Encyclopedia of Legal History* (OUP 2009) vol 3.

²⁹ JM Beattie, *Crime and the Courts in England 1660-1800* (Princeton UP 1985) 191.

instruments, impersonation, and embezzlement,³⁰ and in his *List and Index* of Star Chamber cases under James I, includes ‘any deceit, cheating, or cozening, other than forgery’ in his classification of fraud.³¹

Fraud itself, as is true of other crimes of dishonesty, remains imprecisely defined in modern law in England and Wales.³² And it is possible, of course, that nothing akin to any present day meaning of the word ‘fraud’ was intended in the early modern period. As Baker notes about fraud in the sixteenth century in the context of the tort of deceit,

it may be that it was used in a morally neutral sense as indicating loss caused by misleading words or conduct rather than deliberate falsehood ... there is nothing in the contemporary sources to suggest that in the many actions on the case in which the allegation was made ... there was any need to prove an intention to deceive.³³

This is something which, as we will see, was still debated in the seventeenth century.³⁴

If Pulton, Lambarde, and the dictionary writers, were representative of the contemporaneous view, we might conclude that it would be anachronistic and misguided to search retrospectively for definitions of the offences in terms more precise than those considered possible or desirable at the time. What emerges from the sources may be, admittedly, both inchoate and imprecise, but it is nevertheless capable of revealing important detail about concepts of fraud in the legal practice and thought of the period.³⁵

Two Meanings of Fraud

The concept of fraud is further complicated by an additional duality. On the one hand, the word ‘fraud’ was used in the early modern period to describe one of the subjective mental state requirements of larceny. On the other hand, the test for at least some kinds of ‘fraud’, outside the context of larceny, was objective. Both of these points can be dealt with in turn.

First, at least as a mental element of larceny, fraud was described as something akin to the absence of a belief in a right to the property taken. Bracton had included fraud as an element of larceny,³⁶ as later did Coke³⁷ and Hale.³⁸ Relying on the medieval *Mirror of Justices*, albeit a source

³⁰ TG Barnes, ‘Introduction’ in W P Baildon (ed), *Les Reportes del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed 1894, The Lawbook Exchange 2008) IX.

³¹ TG Barnes, *List and Index to the Proceedings in Star Chamber for the Reign of James I*, vol 1 (American Bar Foundation 1975) 35.

³² Stephen divided property offences entirely into criminal damage, on the one hand, and ‘fraudulent offences’, which included theft, on the other: J F Stephen, *A History of the Criminal Law of England*, vol 3 (Macmillan 1883) 121. In England and Wales many offences of fraud are now dealt with under the Fraud Act 2006, which relies on the imperfectly defined concept of ‘dishonesty’. See also S Buell, ‘Novel Criminal Fraud’ (2006) 81 NYUL Rev 1971.

³³ JH Baker, *The Oxford History of the Laws of England* vol 6 (OUP 2003) 769.

³⁴ *Coventry SG v Yelverton A-G* (1620) STAC 8/030/05, discussed below.

³⁵ Compare DEC Yale, ‘Lord Nottingham’s Chancery Cases: volume I’ (1954) 73 SS xci.

³⁶ See SE Thorne, *Bracton on the Laws and Customs of England*, vol 2 (Harvard UP 1968) 425; JH Baker, ‘The Reports of Sir John Spelman: Part II’ (1977) 94 SS 323; see also Justinian, *Institutes* 4.1.1, and D 47.2.1.3: Paul, *On the Edict*, book 39.

³⁷ Co Inst III (1644 ed) 108, ch 47.

³⁸ M Hale, *Pleas of the Crown* (Atkyns and Atkyns 1678) 60.

Maitland later thought should be used with ‘some circumspection’,³⁹ Stephen felt able to remark, in the context of the *mens rea* for larceny:

As to what amounts to a fraudulent intention there has never been any difficulty or doubt in English law. The *Mirror* states it as plainly as it ever has been or can be stated. If the alleged offender thinks that he has a right to take the property, either because he believes it to be his own, or because he believes the owner to have consented to his doing so, he does not act feloniously, or, as the author calls it, ‘treacherously.’ This principle, accordingly, has no history.⁴⁰

Thus for Stephen, ‘fraudulent intention’ was so clear that it did not require, and perhaps was not capable of, being traced in the case law. Coke’s definition of larceny had included ‘felonious and fraudulent taking and carrying away’, and his similarly basic explanation of that fraudulent element was only illustrated by the example of someone who obtained another’s horse through a knowingly falsely obtained replevin (an action to regain possession of goods). Such a person, according to Coke, obtained the horse through a fraudulent taking because the replevin ‘was obtained *in fraudem legis*.’⁴¹

This appears to have remained one sense of the word at least until the nineteenth century, for Smith writes:

[T]he absence of any claim of right was a negative element of *animus furandi*, one usually analysed in early works as an illustrative element of ‘fraudulent or wrongful’ takings. Indeed, other than that meaning, ‘fraudulent’ took on no other significance in the nineteenth century.⁴²

It is, however, by no means clear that this meaning is the one to be applied in the context of a misdemeanour of fraud, as opposed to the felony of larceny.

Second, at least outside the context of larceny, proof of subjective knowledge or intention was clearly not always required. Even if one sets aside allegations of fraud made mainly with the aim of rhetorical ‘formal abuse of a defendant’,⁴³ a substantive allegation of fraud could be determined by an objective test with no need to show an intent to deceive.

This lack of a need to prove a subjective intention to deceive in some cases of fraud was accepted since at least the particularly influential⁴⁴ 1602 Star Chamber prosecution of *Twyne* by

³⁹ FW Maitland, ‘Introduction’ in WJ Whittaker (ed), ‘The Mirror of Justices’ (1895) 7 SS x.

⁴⁰ JF Stephen, *A History of the Criminal Law of England*, vol 3 (Macmillan 1883) 142.

⁴¹ Co Inst III (1644 ed) 108, ch 47. See M Macnair, ‘Sham: Early Uses and Related and Unrelated Doctrines’ in E Simpson and M Stewart (eds), *Sham Transactions* (OUP 2013) 40–43 and 47–48.

⁴² K Smith, ‘Part One: Criminal Law’ in W Cornish, S Anderson, R Cocks, M Lobban, P Polden and K Smith, *The Oxford History of the Laws of England*, vol 13 (OUP 2010) 382.

⁴³ JH Baker, *The Oxford History of the Laws of England*, vol 6 (OUP 2003) 770.

⁴⁴ For detail see C Willems, ‘Coke, Collusion, and Conveyances: Unearthing the Roots of *Twyne*’s Case’ (2015) 36 JLH 129–51. Although now mainly of interest in the US, the case was still being cited in 1979 by Lord Denning MR in the Court of Appeal in *Midland Bank Trust Co Ltd v Green (No 1)* [1980] Ch 590, 625, [1979] 3 WLR 167. As S Buell, ‘Novel Criminal Fraud’ (2006) 81 NYUL Rev 1971 1998 put it: ‘Rooted in Coke’s seventeenth century analysis, doctrine now holds, to the point of codification, that “badges” establish a debtor’s fraud.’

Coke A-G for a fraudulent conveyance.⁴⁵ A debtor, Pierce, had collusively assigned all of his assets over to Twyne, one of his creditors, to avoid paying the other creditors. Pierce had, in fact, by agreement with Twyne, retained the assets to his own use. Twyne's prosecution was under 13 Eliz c 5, which was designed to prevent and punish fraudulent conveyances.⁴⁶ In Coke's report, Star Chamber set out purely objective factors to be considered in determining whether or not a conveyance had the 'signs and marks', or 'badges', of fraud, at least for the purposes of the statute. These signs were the generality of the gift (which in this case had included all of Pierce's apparel); the continued possession and use by Pierce of the goods; secrecy; the gift being made pending a writ from another creditor; it being made with a trust between Pierce and Twyne; and it including the unusual (and hence suspicious) term that it was done honestly, truly, and *bona fide*.⁴⁷ Holdsworth writes of the objective nature of the test:

How could a fraudulent intent be proved? [The courts] saw of course that it could only be proved by the surrounding circumstances; and accordingly they defined with elaboration circumstances from which fraud could be inferred. It is perhaps due to this elaborate definition that in later cases – in fact right down to the last quarter of the nineteenth century – the courts adopted the practice of inferring fraud as a matter of law from certain facts, whether or not there was any actual intention to deceive.⁴⁸

Despite its later popularity, it remains unclear to what extent, if any, this interpretation of statutory fraud was influential in the contemporary common law field, or indeed outside the field of conveyances, though it is perhaps notable that this is the area of fraud on which Hudson spends the most time.⁴⁹ In any case, the test is one of proof, not of definition; for the latter one needs to turn to other cases, such as the Star Chamber action against Yelverton A-G and the bullion cases discussed below.

Jurisdiction

There has been some uncertainty about the extent of the offence of fraud in King's Bench before the eighteenth century,⁵⁰ but there were many assertions of a Star Chamber jurisdiction

⁴⁵ The case was reported by Coke; the manuscript is British Library (BL) MS Harl 6686 ff 489v–494v and the printed report is at 3 Rep 80v. The printed version is in largely the same terms as the manuscript, apart from a discussion of *Nedham v Beaumont* in the printed version, taken from f 32 of the MS. The printed report, after considering many other cases only tangentially related to Twyne, also contains a concluding statement (at 83v): 'And by the judgment of the whole Court Twyne was convicted of fraud, and he and all the others of riot.' This line is not contained in the manuscript version.

The case is also reported in Moore 638 and by Hawarde in WP Baildon (ed), *Les Reports del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed, 1894) 125. It is discussed in W Hudson, 'A Treatise of the Court of Star Chamber' in F Hargrave (ed), *Collectanea Juridica*, vol 2 (E and R Brooke 1792) 96. For some discussion of the case see C Ross, *Elizabethan Literature and the Law of Fraudulent Conveyance* (Ashgate 2003) 101–11.

⁴⁶ As is clear from Hawarde's report, if not Coke's, the information by the Attorney-General was on the relation of Chamberlain, one of the deputy sheriffs sent with the writ to enforce the debt against Pierce. Ross, *ibid*, relying on Moore but not mentioning Hawarde at all, has it that Chamberlain is another creditor, but there is no evidence for that.

⁴⁷ BL MS Harl 6686 f 490; 3 Rep 80v–81.

⁴⁸ W Holdsworth, *A History of English Law*, vol 4 (Methuen 1924) 481.

⁴⁹ W Hudson, 'A Treatise of the Court of Star Chamber' in F Hargrave (ed), *Collectanea Juridica*, vol 2 (E and R Brooke 1792) 96–97.

⁵⁰ T Hadden, 'The Origin and Development of Conspiracy to Defraud' (1967) 11 AJLH 25, 26.

over fraud, both in statutory matters and otherwise. Lambarde wrote that the ‘extraordinary’ crimes dealt with by Star Chamber do ‘proceed either from fraud, or force, or from them both mixed together.’⁵¹ Coke included fraud among the ‘heinous and extraordinary’ offences dealt with by Star Chamber, as opposed both to ‘ordinary’ offences and also to ‘such offences as may be sufficiently and condignly punished by the proceeding of the Common Laws.’ The latter two were to be dealt with by the ‘ordinary’ courts of justice.⁵² Bacon wrote that Star Chamber ‘discerneth also principally of four kinds of causes; forces, frauds, crimes various of *stellionate*, and the inchoations ...’⁵³ Crimes *stellionate* have been variously described, in the usual circular fashion, as ‘criminal fraud not amounting to any other offence’,⁵⁴ ‘swindling, ... a catch-all for the dishonest’,⁵⁵ and ‘malicious cozenage.’⁵⁶ Barnes writes that crimes of ‘covin and deceit revealed Star Chamber in its most activist and ambitious role. Forgery and fraud were expanded far beyond their statutory limitations, and became a large part of the court’s jurisdiction.’⁵⁷ Barnes included fraud in his list of ‘crimes either largely created and developed by Star Chamber in the exercise of its common-law jurisdiction, [and] ... statutory offences defined and refined by the court.’⁵⁸ Indeed, according to Sayre, the seventeenth century was a high point of pretension to control fraud.⁵⁹ Star Chamber jurisdiction over fraud as a misdemeanour therefore seems to have been widely accepted.

There is some limited anecdotal evidence of a concern that after abolition of Star Chamber there was an initial rise in unpunished fraud,⁶⁰ perhaps merely reflecting the perennial perception of rising crime; Coke himself had remarked in 1601—well before Star Chamber’s abolition—that ‘fraud and deceit abound in these days more than in former times.’⁶¹

For King’s Bench, relatively few informations with allegations of fraud can be found in the indictment files compared to other common substantive misdemeanours in this court, which

⁵¹ CH McIlwain and PL Ward (eds), *Archeion, or, Discourse upon the High Courts of Justice in England* by William Lambarde (Harvard UP 1957) 50.

⁵² Co Inst IV (1644 edn) 63.

⁵³ B Vickers (ed), *Francis Bacon: The History of the Reign of King Henry VII and Selected Works* (CUP 1998) 57. In an undated letter to the King, Bacon wrote that the ‘two natures of crimes, force and fraud’ were the ‘proper objects’ of Star Chamber: J Spedding (ed), *The Letters and the Life of Francis Bacon*, vol 7 (Longmans 1874) 71.

⁵⁴ F Pollock, ‘Expansion of the Common Law, III: The Sword of Justice’ (1904) 4(2) ColumLR 96, 98 fn 2.

⁵⁵ OF Robinson, *The Criminal Law of Ancient Rome* (Johns Hopkins UP 1995) 32.

⁵⁶ A Völkl, ‘Stellionatus’ in H Cancik and H Schneider (eds), *Brill’s New Pauly* (2006). See also JF Stephen, *A History of the Criminal Law of England*, vol 1 (Macmillan 1883) 28: ‘The difficulty of giving an adequate definition of fraud has been felt at all times. One mode of avoiding the difficulty is the invention of a conveniently vague term of abuse like “stellionatus” or “dolus”.’

⁵⁷ TG Barnes, ‘William Hudson’ in AD Boyer (ed), *Shaping the Common Law from Glanvill to Hale, 1188-1688: Essays* by Thomas Garden Barnes (Stanford UP 2008) 160–61.

⁵⁸ *ibid* 159.

⁵⁹ FB Sayre, ‘Criminal Conspiracy’ (1922) 35 HarvLR 393, 420–21.

⁶⁰ P Warwick, *Memoirs of The Reign of King Charles the First* (Longman 1813) 192 quotes an anonymous source (but one of ‘great quality’) to the effect that ‘Hales J’ had said at assizes that ‘since the pulling down of that Court [Star Chamber], there had bin in few years more perjuries and frauds unpunished, than there had bin in an hundred years before.’ See also HEI Philips, ‘The Last Years of the Court of Star Chamber 1630-41’ (1939) 21 Transactions of the Royal Historical Society, Fourth Series 103, 131. B Shapiro, ‘Sir Francis Bacon and the Mid-Seventeenth Century Movement for Law Reform’ (1980) 24 AJLH 331, 342 equates Warwick’s ‘Hales J’ with Sir Matthew Hale.

⁶¹ In his report of *Twyne’s Case* in Star Chamber: BL MS Harl 6686 f 492; 3 Rep 80v, 82; discussed above. For some even earlier examples of cheats and frauds see A Ryrie, *The Sorcerer’s Tale: Faith and Fraud in Tudor England* (OUP 2008) 65.

in some cases number in the many hundreds.⁶² Nevertheless, the importance of the fraud jurisdiction at common law even well before the abolition of Star Chamber in 1641: when the statute 21 Jac c 4 put restrictions on the prosecution of certain misdemeanours by information in King's Bench, in section 5 it explicitly left certain frauds unaffected. The fraud jurisdiction's importance is also indicated by the existence of several fraud cases in King's Bench before 1641.⁶³

Indeed, even more widely, in the Exchequer in *Noy A-G v Waltham* (1631), a customs fraud case, the argument was that the king should proceed civilly, not criminally, but the reply of Noy A-G was that 'without doubt the King can proceed criminally, because each deceit and cozenage of the King is an offence punishable at the common law.'⁶⁴ Of course, Equity also dealt with fraud.⁶⁵

The Role of the Attorney-General

Two minor points are worth comment in this context. First, the Attorney-General on occasion played a notable role in a pre-trial investigative aspect. For example, Heath A-G was involved in pre-trial investigations, and reported to the Privy Council, in allegations of fraud in the production of illegitimate farthings,⁶⁶ and Hobart A-G similarly was involved in pre-trial dealing with silk dyeing fraud cases.⁶⁷

Second, although prosecution by the Attorney-General is the main focus of this chapter, the role of the Solicitor-General is also important. Thus when Attorney-General Yelverton was himself prosecuted in Star Chamber, an information against him was brought by the Solicitor-General, Thomas Coventry,⁶⁸ who was soon to be Attorney-General as a consequence.⁶⁹ Peltonen writes that 'Bacon, in autumn 1620, prosecuted attorney-general Sir Henry Yelverton in star chamber',⁷⁰ but as manuscript reports of the case make clear, argument for the Crown was by Sir Randall Crewe, King's Serjeant, and Coventry SG; Bacon, as Lord Chancellor, presided.⁷¹ Similarly, dealing with the almost contemporaneous Star Chamber fraud trial of Thomas Howard, Earl of Suffolk, in 1620,⁷² Croft writes of 'Sir Francis Bacon, prosecuting',⁷³ but once again it was actually Coventry SG who was in charge; as Chamberlain wrote: 'The attorney's pain is spared in this cause, and the solicitor had the drawing of the bill and the managing of the whole business.'⁷⁴

⁶² H Mares, 'Criminal Informations of the Attorneys-General in the Seventeenth Century' in M Dyson and D Ibbetson (eds) *Law and Legal Process: Substantive Law and Procedure in English Legal History* (CUP 2013) 167.

⁶³ Including *Coke A-G v Goring* (1599) KB 9/701/004, discussed below.

⁶⁴ WH Bryson, 'Cases Concerning Equity and the Courts of Equity 1550-1660: volume II' (2001) 118 SS 616.

⁶⁵ DEC Yale, 'Lord Nottingham's Chancery Cases: volume I' (1954) 73 SS xci; and *Muschamp v Stoakes*, discussed above n 25.

⁶⁶ See *Heath A-G v Taylor and Stephenson* (1631), discussed below.

⁶⁷ See SP 15/39, 504, dated 22 January 1608, discussed below.

⁶⁸ *Coventry SG v Yelverton A-G* (1620) STAC 8/030/05; discussed below.

⁶⁹ SR Gardiner, rev LA Knafla, 'Yelverton, Sir Henry (1566-1630)' *Oxford Dictionary of National Biography* (OUP 2004) vol 60, 788.

⁷⁰ M Peltonen, 'Bacon, Francis, Viscount St Alban (1561-1626)' *Oxford Dictionary of National Biography* (OUP 2004) vol 3, 123.

⁷¹ See BL MS Harl. 6055 f1. Bacon clearly was active in the matter as Lord Chancellor, but did not prosecute the matter himself.

⁷² SP 14/110; discussed above at fn 14.

⁷³ P Croft, 'Howard, Thomas, first earl of Suffolk (1561-1626)' *Oxford Dictionary of National Biography* (OUP 2004) vol 28, 436.

⁷⁴ NE McClure (ed), 'The Letters of John Chamberlain: Volume II' (1939) American Philosophical Society: Memoirs XII, pt II 199.

Fraudulent Conversion

Having discussed definitions and jurisdiction, let us turn to specific examples of fraud cases. At least one of these, the unreported prosecution of Sir George Goring, provides a rare example of a misdemeanour case in King's Bench that does not rely on an allegation of a breach of statute, use of force *vi et armis*, or breach of the peace.

A fraudulent retention and use of money was alleged in the Middlesex 1599 King's Bench information against Goring signed by Attorney-General Coke.⁷⁵ Goring's father, Sir George Goring the elder, had been Receiver-General of the Court of Wards and Liveries under Elizabeth I. As had at least one of his predecessors as Receiver-General,⁷⁶ the elder Goring appears to have retained some of the Court's funds for his own use, including perhaps for the building of his house.⁷⁷ On the elder Goring's death in 1594, his heir, Sir George Goring the younger, came to a detailed settlement with the Council of the Court of Wards and Liveries to pay part of the elder Goring's debt amounting to almost £20,000; this involved much of the younger Goring's inherited land being 'extended', that is, taken over, to pay the Crown.⁷⁸ It appears that the younger Goring, who failed in his own attempt to purchase the Receivership for himself,⁷⁹ may have fallen behind on his payments, as an information was issued against him in 1599 for retaining and converting £12,000 to his use.

The information by Coke was couched in much the same terms as a civil action of trover and conversion, with a fictional allegation that the money had accidentally been lost, and had come into the hands of Goring, who through wicked and fraudulent machinations (the standard phrase in some civil actions upon the case) had converted it to his own use.⁸⁰ From the initial controlment roll entry, with its annotation of *po. se*,⁸¹ and the Rex roll⁸² recording the issue of a *venire facias ad respondendum*, it seems that Goring, represented by his attorney Edward Willan, pleaded not guilty, and that the case was destined for trial.⁸³ However, the final controlment roll entry from

⁷⁵ *Coke A-G v Goring* (1599) KB 9/701/004. On Goring generally, see JE Mousley, 'Goring, George II (d.1602), of Ovingdean and Danny Park, Suss.', in PW Hasler (ed), *The History of Parliament: the House of Commons 1558-1603* (HMSO 1981).

⁷⁶ For the earlier Receiver-General, John Beaumont, who eventually confessed his guilt in Star Chamber, see: NG Jones, 'Beaumont, John (d. in or after 1556)' *Oxford Dictionary of National Biography* (OUP 2004) vol 4, 665.

⁷⁷ On the elder Goring see generally JE Mousley, 'Goring, George I (aft.1522-94), of Ovingdean, Lewes; later of Danny Park, Suss.', in PW Hasler (ed), *The History of Parliament: the House of Commons 1558-1603* (HMSO 1981), which indicates that he died on 28 March 1594. On his delinquency as receiver-general, see HE Bell, *An Introduction to the History and Records of the Court of Wards and Liveries* (CUP 1953) 37; J Hurstfield, 'Lord Burghley as Master of the Court of Wards, 1561-98' (1949) 31 *Transactions of the Royal Historical Society* 95, 113, fn 3. On the use of funds for the house, see FS Memegalos, *George Goring (1608-1657): Caroline Courtier and Royalist General* (Ashgate 2007) 6.

⁷⁸ This is set out at length in the entry and decree books of the Court of Wards: WARD 9/108, ff 509v-510v, and a draft appears in SP 12/253 f 11. Goring wrote of the extension to Sir Robert Cecil: *Calendar of the Manuscripts of the Most Hon. the Marquis of Salisbury, Preserved at Hatfield House, Hertfordshire*: vol 4: 1590-1594, [1154] (6 April 1594) and [1170] (13 April 1594).

⁷⁹ B Donagan, 'Goring, George, first earl of Norwich (1585-1663)' *Oxford Dictionary of National Biography* (OUP 2004) vol 22, 998.

⁸⁰ That this was standard form see: JH Baker, *The Oxford History of the Laws of England* (OUP 2003) vol 6, 769.

⁸¹ *Ponit se*, or 'he puts himself', ie on trial by jury. The entry is in KB 29/236.

⁸² This *venire facias* writ was to summon the defendant to appear; the entry is in KB 27/1358/1.

⁸³ The King's Bench rule book is at KB 21/2.

Michaelmas ends inconclusively with a note of Goring's outlawry being proclaimed in Easter term of 2 Jac I (1604) after another *venire facias* was issued.⁸⁴

There is, from Trinity term of 42 Eliz (1600), a report by Coke in his notebooks of a case involving George Goring and the extension of his land—its seizure for his debts—by the Crown.⁸⁵ That report, produced after the information had been written but before the outlawry, turns not on the fraudulent conversion but largely on construction of the recent statute 39 Eliz c 7, which dealt with the Crown's ability to sell debtors' lands to pay debts to the Crown. Perhaps one interest for Coke in reporting the case, apart from having pending litigation against Goring in King's Bench, was that the statute 39 Eliz c 7 had been drafted by Coke himself in his capacity as Attorney-General.⁸⁶

The venue of this reported litigation is unclear, though given that Coke reports the presence of Sir William Periam, Lord Chief Baron of the Exchequer, it is unlikely to have been a regular King's Bench criminal trial. It may rather have been some interlocutory or related matter, which is included in the notebook among other cases of debt to the Crown. Possibly it may have been a matter collateral to the information against Goring, and intended to put pressure on him.

The Goring King's Bench information is of interest because fraudulent conversion had an uncertain past as a crime.⁸⁷ Indeed, later writers wrote—without reference to Goring—that fraudulent conversion had never been a crime at common law.⁸⁸ For example, Stephen wrote:

[T]he cases in the Year-books, though indistinct and to some extent contradictory, all depend upon the principle explicitly stated in the *Mirror*, and recognised to a certain extent by Glanville, that a fraudulent taking is essential to larceny, and that a fraudulent conversion subsequent upon an innocent taking is merely a civil wrong.⁸⁹

The dichotomy implicit in Stephen's analysis, that of fraudulent conversion either being larceny—and hence a felony—on the one hand, or 'merely a civil wrong' on the other, seems to leave out room for its classification as a misdemeanour.

Nonetheless, Goring's prosecution by information in the King's Bench was unreported, and consequently has left little mark in the literature. Similar cases were later prosecuted on slightly different grounds in King's Bench. For example, when the deputy clerk of the City of London, John Lee, decided not to remit to the Exchequer all of the relevant recognisances for appearances lodged with him, but rather to keep some of them, he was prosecuted in King's Bench by Attorney-General Palmer in 1677, but not for fraudulent conversion: instead, the allegation was that he had retained the sums under colour of his office, and intended to deceive and defraud the King.⁹⁰ And similarly, when Sir Basil Brooke and others were prosecuted in Star Chamber by Attorney-General

⁸⁴ KB 29/237.

⁸⁵ In BL MS Harl 6686 ff 403v–404.

⁸⁶ Though there is no Commons journal for the period, the details are in BL Stowe MS 362 ff 13–14, and AF Pollard, 'Hayward Townshend's Journals' (1934) 12(4) Bulletin of the Institute for Historical Research 16–17.

⁸⁷ JH Baker, 'The Reports of Sir John Spelman: Part II' (1977) 94 SS 319.

⁸⁸ JWC Turner, *Kenny's Outlines of Criminal Law* (16th edn, CUP 1952) 268; RM Jackson, 'Common Law Misdemeanours' (1937) 6 CLJ 193, 199. A helpful summary of the law of conversion is provided by S Douglas, 'The Nature of Conversion' (2009) 68 CLJ 198.

⁸⁹ JF Stephen, *A History of the Criminal Law of England*, vol 3 (Macmillan 1883) 144.

⁹⁰ *Palmer A-G v Lee* (1677) KB 9/906/247 and 248: (19 Chas II Hil, 1677/8). See J Tremaine, *Placita Corone* (Printed by E and R Nutt and R Gosling 1723) 247–48, where the information is also printed.

Yelverton in 1620 for harvesting the better trees in the Forest of Dean, the allegation included a taking and converting, as well as defrauding the King.⁹¹

Frauds against Justice

The loose category of offences against justice, sometimes through abuse of official position, contains several significant fraud cases.⁹² For example, in 1604 Sir Edward Coke prosecuted Sir John Hele in Star Chamber,⁹³ in a great case that took four days to hear. While the information itself is lost, the case is reported in Hawarde⁹⁴ and has been discussed more recently by Cockburn.⁹⁵ This case is of interest not only for the machinations within early Stuart legal politics that Cockburn explored, but also because the offence alleged was one that was apparently widely perpetrated.

Hele had a debtor, Lord Cobham, who became enmeshed in plots to overthrow James I and replace him with Arabella Stuart.⁹⁶ When it became clear that Cobham would be attainted of treason, the forfeiture to the Crown of his goods also became apparent, and hence the unlikelihood of Hele recovering on his debt. With that in mind, and because it was then out of term time, Hele asked his attorney, William King, to antedate the writs to commence proceedings for recovery of the debt in order to make it appear as if they had been lodged in term time.

There was some division among the judges on whether that was permissible; Popham, then Chief Justice of the King's Bench, voted to acquit Hele and King entirely, and to 'allow the usages of antedating process, for some things the law commands and others the law tolerates ...'.⁹⁷ Other judges disagreed, and ultimately Hele was censured by the Star Chamber, fined, and briefly imprisoned. It is in the nature of Star Chamber judgment, with each judge providing his own reasons and conclusions as he saw fit, that it can be difficult to discern a single decisive reason behind the outcome. Indeed, Lord Cecil's vote to 'aquit Hele of fraud, corruption and practice, but fine him for the misdemeanour £1000',⁹⁸ sadly merely begs the question of what misdemeanour remained in distinction to the 'fraud, corruption and practice'.

Another significant example of a fraud against justice came a few years later. In 1619 Sir Henry Yelverton, appointed Attorney-General in 1617, was issued a warrant by James I to draft a new patent for the City of London.⁹⁹ The patent drafted by Yelverton, and consequently passed

⁹¹ Yelverton A-G v Sir Basil Brooke and others (1620) STAC 8/025/14.

⁹² There are, of course, other examples of offences against justice that do *not* allege fraud: the Star Chamber prosecution in *Fleming SG v Smith* (1597) in WP Baildon (ed), *Les Reports del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed 1894) 89 for changing a legal record; the prosecution in Star Chamber for the production of 'unlawful' and 'corrupt' sureties in *Hobart A-G v Warner* (1611) STAC 8/010/17; and the false pleading King's Bench case of *Noy A-G v Barnes* (1632) KB 9/799/261. Barnes was separately prosecuted by information for perjury as well in (1640) KB 9/817/197.

⁹³ *Coke A-G v Hele* (1604) STAC 8/009/04.

⁹⁴ WP Baildon (ed), *Les Reports del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed 1894) 171.

⁹⁵ JS Cockburn, 'The Spoils of Law: the trial of Sir John Hele, 1604' in DJ Guth and JW McKenna (eds), *Tudor Rule and Revolution: essays for G R Elton from his American friends* (CUP 1982) 309.

⁹⁶ M Nicholls, 'Brooke, Henry, eleventh Baron Cobham (1564–1619), conspirator' *Oxford Dictionary of National Biography* (OUP 2004) vol 7, 893.

⁹⁷ WP Baildon (ed), *Les Reports del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed 1894) 175.

⁹⁸ WP Baildon (ed), *Les Reports del Cases in Camera Stellata 1593 to 1609, from the original MS of John Hawarde* (Privately printed 1894) 175.

⁹⁹ An account of the background is given in PE Kopperman, *Sir Robert Heath 1575-1649: Window on an Age* (Royal Historical Society 1989) 35–37; a brief account is also given in SR Gardiner, rev LA

under the Great Seal, was broader than the warrant allowed. In June 1620, the Council recommended that Yelverton be prosecuted in Star Chamber ‘as delinquent’,¹⁰⁰ and the report of this prosecution gives rise to a quite sophisticated discussion of objective and subjective standards for proof.

As it was put in the information, the charge was that Yelverton ‘very fraudulently, deceitfully, unlawfully, and corruptly did ... draw a great and ample book [the patent] from your majesty to the said city utterly different from and in many material points exceeding much your majesty’s gracious purpose and intention’.¹⁰¹

Also prosecuted in the same information were the Recorder of London, Robert Heath (another future Attorney-General), and the Lord Mayor. Sitting in judgment were, among the other eminences, three past Attornies-General: Edward Coke, at the time a former Chief Justice of King’s Bench; Henry Hobart, Chief Justice of the Court of Common Pleas; and the Lord Chancellor, Francis Bacon.

Solicitor-General Coventry alleged that Yelverton had been deceitful: ‘Deceitful it was. The King sure was deceived. Now the question is by whom? Where breach of trust is, there is deceit.’ And while Coventry conceded that Yelverton had not been guilty of ‘sordid corruption of reward’, he charged him with violating ‘the duty of his place’, apparently ‘such a corruption, as is punishable in this court’.¹⁰²

Yelverton for his part admitted that he had drafted the charter in wider terms than his warrant allowed, but his counsel, Serjeant Richardson, argued that this was through ‘error of his judgment, negligence, and credulity’ and not through fraud or corruption.¹⁰³ This then raised the question of what constituted fraud or corruption as distinct from error and negligence, a topic that of all the judges only Coke dealt with substantively.¹⁰⁴ As he put it:

Mr Attorney confesses upon the matter, that he hath drawn a patent without warrant, but he hath not done it wilfully, nor corruptly. So he confesses all the verbs, but denies the adverbs fraudulently, deceitfully, and corruptly. This is enough for the King. He hath not denied that he did it unlawfully contrary to the trust imposed in him.

... Now he confesses the fact, but denies the corruption, he confesses the error, but it crept in not herded by consent, then he relates to his thoughts, he never

Knafla, ‘Yelverton, Sir Henry (1566–1630)’ *Oxford Dictionary of National Biography* (OUP 2004) vol 60, 788. A contemporary account is in JO Halliwell (ed), *The Autobiography and Correspondence of Sir Simonds D’Ewes*, vol 1 (Richard Bentley 1845) 155–56.

¹⁰⁰ J Spedding (ed), *The Letters and the Life of Francis Bacon*, vol 7 (Longmans 1874) 98–99.

¹⁰¹ Coventry SG v Yelverton A-G (1620) STAC 8/030/05.

¹⁰² BL MS Harl 6055 f 6. BL MS Stowe 423 ff 51–69 also has an account of the trial, but with less detail; see also BL MS Stowe 159 f 28, and Folger Shakespeare Library MS V.a.622 f 10.

¹⁰³ BL MS Harl. 6055 f 7. As Serjeant Moore, also counsel for Yelverton, put it (f 7v): ‘The charge is greivous, of deceit in preparing a book beyond the limits of his warrant, whereby the King was deceived of profit and prerogative He confesses the error and submits to mercy, but denies the fraud.’ See also to the same effect Yelverton’s answer and submission in writing to the information in STAC 8/030/05/2.

¹⁰⁴ Indeed in his original manuscript notes on the matter, Bacon deals more with the issue of misprision than fraud: ‘And herein I note the wisdom of the law of England, which termeth the highest contempts and excesses of Authority Misprisions, which (if you take the sound and derivation of the words, is but mistaken but if you take the use and acception of the word) it is high and heinous contempts, and usurpations of Authority, whereof the reason I take to be, and the name excellently imposed, for that maine mistaking, it is ever joined with contempt, for he that reveres will not easily mistake, but he that slights, and thinks of the greatness of his place more than of the duty of his place will soon committ Misprisions’; see Lambeth Palace Library MS 936, art 133.

thought ill in his heart: why? He puts this trial only upon God, for who else can judge the heart. And, if this may go for current, to excuse faults with the thought of the heart, we shall never have offence proved.¹⁰⁵

This appears to cast doubt on any subjective test for fraud and corruption. But perhaps Coke was not pressing this to its conclusion, for ultimately he concluded that it was unnecessary to determine that matter:

I think the charge had been good enough if they had left out all those adverbs which Mr Attorney denies: if the charge had been that he offended without warrant and contrary to his trust, it had been sufficient. He advisedly passed the book under his hand, beyond his warrant, this is deceitful in itself. He brake his trust, and yet he denies the deceit: this is strange to me ... I sentence him that these things were done advisedly, deceitfully, and unlawfully, against the King.¹⁰⁶

Coke appears to be saying that Yelverton could be deceitful if he ‘advisedly passed the book’, even if he was not aware that it was beyond the scope of his warrant. Thus in concluding that Yelverton was deceitful, but not that he was fraudulent or corrupt, Coke may be treating deceit as an offence not requiring a mental element of dishonesty, and perhaps implicitly drawing a distinction between deceit and fraud.

Farthings and Trade Tokens

Fraud was also one of the nominal bases for sets of informations against the production of trade ‘tokens’ filed by Attorney-General Finch in 1670 and 1671¹⁰⁷ and by Attorney-General North in 1674.¹⁰⁸ Because of the shortage of lower denomination coin after the death of Charles I, it had become the practice of many retailers to provide change for transactions in the form of copper or brass tokens issued in their own name, which circulated in the vicinity of their business.¹⁰⁹ The Privy Council had instructed the Attorney-General about this in 1666 in the following form:

Whereas it is become the common practice of very many retayling tradesmen in and about the City of London to take upon them the boldness to make or coyne or cause to be made or coyned their owne farthings or halfe-pence, & give them in exchange for His Ma^{ties} lawful coyne of silver; upon due consideration whereof, & for timely redresse not onely of the inconveniences aforesaid, but for punishment of all such persons who have adventured to coyne, stampe, or utter, or have caused to be coyned, stamped, or uttered any such farthings, halfe pence, or other sorts of coyne (not allowed by the Lawes), His Ma^{tie} by & with the advice

¹⁰⁵ BL MS Harl 6055 f 15v. On the use of presumptions for proof of fraud, compare MRT Macnair, *The Law of Proof in Early Modern Equity* (Duncker & Humblot 1999) 273–75.

¹⁰⁶ BL MS Harl 6055 f 15v-17.

¹⁰⁷ (1670) KB 9/917/509 to 520 are all Finch A-G coining informations from Hertfordshire, apart from 518 which is from Epping in Essex; (1671) KB 9/918/002, 003, 004 and 290 are Finch A-G coining informations from London and Middlesex.

¹⁰⁸ (1674) KB 9/928/093 and (1674) KB 9/929/100, 118 and 119.

¹⁰⁹ See generally GC Williamson, *Trade Tokens issued in the Seventeenth Century in England, Wales, and Ireland by Corporations, Merchants, Tradesmen etc* (Elliot Stock 1889); for the historical background see M Dickinson, *Seventeenth Century Tokens of the British Isles and their Values* (Seaby 1986) 1–15.

of his most Hon^{ble} Privy Counsell, did this day order and direct, that Mr Attorney General do cause diligent enquiry to be made of all such persons of what faculty or condicion soever, who had made, or coyned, or caused to be made or coyned any sorts of moneys of what mettall soever (silver onely excepted) as halfe pence, farthings, & vended, or caused them be exchanged or vended for such value, & to consider of the lawes of this Nation, & cause due prosecution of the penaltyes upon breach of the same against the persons who have offended.¹¹⁰

These instructions were reinforced by further encouragements from the Privy Council in 1668,¹¹¹ which noted the lack of prosecutions so far, and in August 1670, which noted some prosecutions by indictment.¹¹² Finch subsequently laid eleven Hertfordshire informations in Michaelmas term of 1670 and four London and Middlesex informations in Easter term of 1671, directed against those issuing these tokens. These informations are in a similar form to the indictments used against manufacturers of tokens, with the substitution of the Attorney-General for the grand jury, and the omission of the *vi et armis* clause in the information.¹¹³ The offence was falsely and fraudulently manufacturing and uttering brass and copper pieces, with certain letters and other marks and signs unknown to the Attorney-General, to be used as half-pence in change. It was not expressed to be against the form of any statute or proclamation, but was to the bad example of others and *contra pacem*.¹¹⁴

Thus, for example, Thomas Armitage, yeoman, was one of the 33 defendants alleged by Finch A-G in one of the 1671 informations to have produced tokens,¹¹⁵ and indeed some of his tokens survive.¹¹⁶ About half of those named in that single information are known from other sources to have produced such tokens, and are listed in Williamson's register of trade tokens. Of two other informations from 1671, thirteen of the thirty-two defendants are listed in the Williamson register to have been making trade tokens, and the safe assumption may be that many more were indeed involved in that practice.¹¹⁷

Producing such tokens was not, in any modern sense, deception or fraud. While it clearly was a matter of some importance to the Privy Council, the tokens were not counterfeit money as they did not purport to be issued by the Mint itself. Therefore, and to the extent that the practice was well-known, any element of what might be thought to be dishonesty was lacking. Of course, coining proper, not merely of tokens, was, according to Malcolm Gaskill, both 'an offence which the authorities treated with the utmost seriousness ... [and] something which the population at large regarded as no crime at all'.¹¹⁸ This made it a prime candidate for the process by way of

¹¹⁰ PC 2/59 24–25; see also EGH Kempson, 'Indictments for the coining of tokens in seventeenth-century Wiltshire' (1973) *British Numismatics Journal* 126, 127, who provides an outline of the Privy Council instructions.

¹¹¹ PC 2/61 143.

¹¹² PC 2/62 264.

¹¹³ See EGH Kempson, 'Indictments for the coining of tokens in seventeenth-century Wiltshire' (1973) *British Numismatics Journal* 126, 128, for the form of the indictment.

¹¹⁴ For example, *Finch A-G v Athy* (1671) KB 9/918/290. The claim of fraud was in the indictment form as well.

¹¹⁵ *Finch A-G v Athy* (1671) KB 9/918/290.

¹¹⁶ For example the token in the Fitzwilliam Museum, Cambridge, CM.QC.2568-R.

¹¹⁷ GC Williamson, *Trade Tokens issued in the Seventeenth Century in England, Wales, and Ireland by Corporations, Merchants, Tradesmen etc* (Elliot Stock 1889).

¹¹⁸ See M Gaskill, *Crime and Mentalities in Early Modern England* (CUP 2002) 127 and generally 123–99.

information, with its advantages of Crown control and lack of need for a grand jury. Presumably, given the apparent convenience of the trade tokens to the population,¹¹⁹ the same logic explains the choice to proceed by information in these prosecutions.

Counterfeiting of gold and silver had been a statutory treason since medieval times,¹²⁰ but for mere brass and copper coins the offence was a misdemeanour.¹²¹ In contrast to the information or indictment for producing tokens, the indictment for the treason of coining proper was expressed to be for offences against the form of diverse statutes, and for producing pieces similar to good legal current money.¹²² The treason indictments also alleged fraud, however, and it is possible that the presence of this allegation (among the other recited wrongs) in the tokens informations was a vestigial hangover from the treason indictments.

It may also be worth noting some earlier prosecutions by Heath A-G for coining, albeit not explicitly for fraud. Privy Council papers of 1630–31 record that Heath A-G had reported to the Council board that one Taylor had made ‘great quantities of counterfeit and false farthings’, contrary to a proclamation of King Charles.¹²³ Thinking Taylor to deserve ‘condign punishment and to be censured’ in the Star Chamber, the Board required Heath A-G

[f]orthwith to repaire unto the Lord Keeper and the two Lords Chief Justices of the King’s Bench, and Common Pleas, to consult with their Lordships what course in their judgments were fittest to be houlden for a legal proceeding against offenders of so high a nature.¹²⁴

Heath presumably found the answer required, for in Hilary term of 1631 he proceeded *ore tenus* against Taylor and Stephenson in Star Chamber for making ‘farthing tokens’;¹²⁵ in Michaelmas term of the same year he proceeded the same way against Owen ap Richard and John Hammond for making, or assisting in making, farthings, for which ‘contempts and deceits’ they were punished.¹²⁶ These were presumably reproductions of legitimate farthings, of which Frances, Dowager Duchess of Richmond and Lenox and Sir Francis Crane had been granted a monopoly by the proclamation. Why these cases do not appear to allege fraud remains unclear. The situation is further complicated by the oral process adopted by Heath in Star Chamber in these cases, making the record of the prosecution less certain; it is thus difficult to draw any firm conclusions.

The Merchant Strangers Cases

In 1618, 1619, and 1620, five related *pro rege* informations appear in Star Chamber against merchants, many of whom were Dutch, for offences that dealt with the exportation of gold and

¹¹⁹ M Dickinson, *Seventeenth Century Tokens of the British Isles and their Values* (Seaby 1986).

¹²⁰ See M Gaskill, *Crime and Mentalities in Early Modern England* (CUP 2002) 125.

¹²¹ RM Jackson, ‘Common Law Misdemeanours’ (1937) 6 CLJ 193, 197.

¹²² E Coke, *A Book of Entries* (Printed for the Society of Stationers 1614) 360.

¹²³ See ‘A proclamation for the continuing of our farthing tokens of copper, and prohibiting the counterfeiting of them, and the use of all other’ of 1625 in J F Larkin (ed), *Stuart Royal Proclamations, Vol 2: Royal Proclamations of King Charles I 1625–1646* (OUP 1983) No 15.

¹²⁴ PC 2/40 f 297.

¹²⁵ J Rushworth, *Historical Collections: The Second Part*, vol 1 (Printed for M Wotton 1686) app 33–34.

¹²⁶ *ibid.* app 41. The case is also reported in more detail in SR Gardiner (ed), *Reports of Cases in the Courts of Star Chamber and High Commission* (Camden Society 1886) 82, with the defendant reported as ‘Howell’ ap Richard.

silver and the perceived consequent loss of English wealth.¹²⁷ These prosecutions were launched in a time of great concern about the scarcity of money in England,¹²⁸ and the Attorney-General and Solicitor General had reported to the Privy Council on the shortage of silver at the Mint in 1612.¹²⁹ But the historical consensus appears to be that the prosecutions were at least in part politically motivated by an attempt to gain money from wealthy traders to deal with James I's debts.¹³⁰

As well as the surviving informations, there are manuscript reports of the litigation,¹³¹ and some mention of it in contemporary letters, which provide evidence of doubts about the wisdom of the proceedings even at the time.¹³² Some detailed social background to the case is provided by Grell, based on Dutch sources;¹³³ Grell does not, however, deal with the exact legal charges in the informations. Even Barnes described the cases mainly in the context of Hudson's analysis of their procedural irregularities. Hudson was one of the defence counsel,¹³⁴ and, as Barnes points out, the divergence from the usual 'antient course' of the Star Chamber (several defendants were not served properly, the general pardon was denied several defendants, and evidence on one information was used against defendants charged on another¹³⁵) to accommodate the politically motivated charges was a source of not entirely disinterested dismay for Hudson.¹³⁶

The five informations in these cases are complex and lengthy, adding up to over 15,000 words,¹³⁷ with just under 200 defendants named and others to be added later when their names were discovered.¹³⁸ The inter-relatedness and duplication of the informations is demonstrated by some defendants in one information being charged again in another, or appearing in the factual background in another information; thus Richard Emans is mentioned as buying gold from the

¹²⁷ *Yelverton A-G v Coteel* (1618) STAC 8/025/019; *Yelverton A-G v Emans* (1618) STAC 8/025/020; *Yelverton A-G v Soane* (1619) STAC 8/025/021; *Yelverton A-G v Owen* (1618) STAC 8/025/022; *Yelverton A-G v de Munsey* (1620) STAC 8/025/023.

¹²⁸ BE Supple, *Commercial Crisis and Change in England 1600-1642* (CUP 1959) 174, 184. On the commercial crisis of the time see also CP Kindleberger, 'The Economic Crisis of 1619 to 1623' (1991) 51 *JEconHist* 149, 161–62.

¹²⁹ BE Supple, *Commercial Crisis and Change in England 1600-1642* (CUP 1959) 181.

¹³⁰ See TG Barnes, 'Mr Hudson's Star Chamber' in D J Guth and J W McKenna (eds), *Tudor Rule and Revolution: Essays for G R Elton from his American friends* (CUP 1982) 303; V Larmine, 'Vanlore, Sir Peter (c1547-1627)' *Oxford Dictionary of National Biography* (OUP 2004) vol 56, 122.

¹³¹ BL Add MS 12497 ff 9–75; BL Stowe MS 325 ff 92–116.

¹³² NE McClure (ed) 'The Letters of John Chamberlain: volume II' (1939) American Philosophical Society: Memoirs XII, pt II, 245: Letter of 19 June 1619 from John Chamberlain to Sir Dudley Carleton: '[A]ll things considered it is thought the matter might as well have been let alone as now to seek to shut the stable door when the steed is stolen. And I am persuaded the King in his wisdom sees the inconvenience may be more than the benefit as the case stands ...'

¹³³ OP Grell, *Dutch Calvinists in Early Stuart London: The Dutch Church in Austin Friars 1603-1643* (Brill 1989) 153–55.

¹³⁴ Hudson signs answers for several defendants in STAC 8/025/023 and is reported as arguing in Star Chamber for Francis van Aker in BL Add MS 12497 f 14v.

¹³⁵ BL Add MS 12497 ff 9, 35v and 40.

¹³⁶ TG Barnes, 'Mr Hudson's Star Chamber' in D J Guth and J W McKenna (eds), *Tudor Rule and Revolution: Essays for G R Elton from his American friends* (CUP 1982) 302–03.

¹³⁷ *Yelverton A-G v Coteel* (1618) STAC 8/025/019 is over 2800 words; *Yelverton A-G v Emans* (1618) STAC 8/025/020 over 5000, *Yelverton A-G v Soane* (1619) STAC 8/025/021 over 2000, *Yelverton A-G v Owen* (1618) STAC 8/025/022 over 3400 and STAC 8/025/023 over 2000 words.

¹³⁸ Forty-three defendants were named in *Yelverton A-G v Coteel* (1618) STAC 8/025/019; nineteen in *Yelverton A-G v Emans* (1618) STAC 8/025/020, fourteen in *Yelverton A-G v Soane* (1619) STAC 8/025/021, thirty-six in *Yelverton A-G v Owen* (1618) STAC 8/025/022, and eighty-six in *Yelverton A-G v de Munsey* (1620) STAC 8/025/023. The informations in *Coteel*, *Emans*, and *Owen* were expressed also to be against others whose names were as yet unknown and thus to be added later.

defendants in *Yelverton A-G v Coteel* (1618) and *Yelverton A-G v Owen* (1618), and is a defendant in *Yelverton A-G v Emans* (1618) and *Yelverton A-G v Soane* (1619) on charges of selling and transporting gold. It was decided by the judges in Star Chamber that charging of defendants twice was not ‘double vexation’¹³⁹ when one information was on a statutory basis and the later one was on the basis of the common law, even though the common law was the same as the statute. Not only was there a statutory basis, but several proclamations reinforced the laws. The informations referred to these, in particular to the proclamation of 18 May in 1611, which had prohibited choosing heavy coins, melting or converting them to plate, or exporting the gold or silver.¹⁴⁰ After the litigation, in 1622 another proclamation, which referred back to the recent ‘remarkable examples of Justice in his [i.e. the king’s] high Court of Star Chamber,’ reiterated the same point.¹⁴¹

Barnes described the charges in *Yelverton A-G v Coteel* (1618) as ‘subversion of the realm by the exportation of bullion in violation of proclamations prohibiting the same’,¹⁴² although it appears that ‘subversion’ was only formally charged in another of the five informations, *Yelverton A-G v Soane* (1619). In essence, the concern was that, as the price for gold itself was higher than the face value of coins made from gold, profit was being made by the ‘choosing out’, or ‘culling’, and sale of heavy coins for their gold, which was then sent overseas. As at this time the wealth of a nation was identified with its store of gold and silver, this was perceived to be directly prejudicial to the common good.¹⁴³ Further, there were subsidiary allegations of improper crafting of gold plate, and the selling of alloy as pure gold.

Of particular interest here are the allegations of fraud that are made in three of the informations.¹⁴⁴ First, in both *Yelverton A-G v Emans* (1618) and *Yelverton A-G v Owen* (1618) the allegation was that coin had been ‘in most unconscionable, corrupt, fraudulent, and deceitful manner’ converted into vessels of gold and silver plate as well as other items of less than the regular fineness. It is noticeable that this is expressed in the informations to have been done ‘with an intent to deceive and defraud the buyer thereof’,¹⁴⁵ thus requiring, at least formally, a subjective *mens rea*. Second, in *Yelverton A-G v Soane* (1619), the allegation was that the defendants had ‘confederated, combined, and practiced ... to the utter subversion and overthrow of the whole commonwealth of this your said realm secretly, fraudulently, and underhand’ to buy and engross gold and silver.

The allegations of fraud, though clearly set out in the informations, appear only to be a garnish on the substantive allegations. Fraud was not a requirement for the conduct to be precluded by proclamation, and the fraudulent nature of the activities does not appear to have

¹³⁹ BL Stowe MS 325 f 93v.

¹⁴⁰ ‘A Proclamation against melting or conveying out of the Kings Dominion’s of Gold or Silver, coined or current in the same’ in JF Larkin and PL Hughes (eds), *Stuart Royal Proclamations, Volume 1: Royal Proclamations of King James I 1603–1625* (OUP 1973) No 117.

¹⁴¹ ‘A Proclamation for restraint of the exportation, waste, and consumption of Coin and Bullion’ in JF Larkin and PL Hughes (eds), *Stuart Royal Proclamations, Vol. 1: Royal Proclamations of King James I 1603–1625* (OUP 1973) No 227.

¹⁴² TG Barnes, ‘Mr Hudson’s Star Chamber’ in DJ Guth and JW McKenna (eds), *Tudor Rule and Revolution: Essays for G R Elton from his American friends* (CUP 1982) 302. In his *List and Index*, Barnes classed these cases under, among other things, ‘R’ for fraud, along with subversion, trade deceit, and acts in contempt of a royal proclamation: TG Barnes, *List and Index to the Proceedings in Star Chamber for the Reign of James I*, vol 2 (American Bar Foundation 1975) 6. But even on Barnes’s expansive description of fraud there was no fraud alleged in the first case against *Coteel*.

¹⁴³ BE Supple, *Commercial Crisis and Change in England 1600–1642* (CUP 1959).

¹⁴⁴ *Yelverton A-G v Emans* (1618) STAC 8/025/020; *Yelverton A-G v Soane* (1619) STAC 8/025/021; *Yelverton A-G v Owen* (1618) STAC 8/025/022.

¹⁴⁵ *Yelverton A-G v Emans* (1618) STAC 8/025/020.

featured in the discussion in Star Chamber, at least as reported. The judges appear to have been content to deal with the actions involved.¹⁴⁶

Trade Frauds

Some mention should be made of the relatively numerous trade frauds prosecuted by information of the Attorney-General, such as frauds arising out of the—at the time vitally important¹⁴⁷—manufacture and trade of fabrics.¹⁴⁸ Silk was sold by weight, and some dyes, especially black ones, if left on the silk for long periods, would increase the weight of the silk so that more than the usual amount could be charged for it. In 1608, this problem led to Fleming CJKB and Hobart A-G jointly reporting from Serjeant's Inn to the Council on how to safeguard silk manufacture, apparently at the request of James I.¹⁴⁹ Fleming and Hobart recommended that recognisances be taken from the dyers to prevent future fraud, and that letters patent be issued for that purpose. A proclamation to this effect was made in 1612, which recounted the problems of 'the great frauds and deceits used in dying of all kinds of silk' and prohibited 'corrupt dyed silk'.¹⁵⁰ But the problem persisted, and in 1623 Coventry A-G proceeded in Star Chamber against Godfrey Washington and almost thirty other defendants for 'false', 'deceitful', and 'corrupt' dyeing of silk with 'slipp', that is, shavings from sharpening blades, in contravention of the 1612 proclamation.¹⁵¹ Two other prosecutions in 1629 and 1630, respectively, by Heath A-G in Star Chamber for dyeing silk with slip, gall, and alderbark, have not left behind informations, but only brief reports in Rushworth, which refer to 'corrupt' dyeing and 'deceit'.¹⁵²

Just a few years later, in the mid 1630s, Bankes A-G prosecuted three dyers in King's Bench for 'fraudulently and deceptively' dyeing wool 'buffins'¹⁵³ and silk with blockwood or logwood, against statutory rules forbidding it.¹⁵⁴ Much later still, North A-G prosecuted John

¹⁴⁶ Something similar seems to have happened in *Heath A-G v The Mayor and Commonality of the City of London* (1631), where the allegation of fraud was not taken up by the judges: see TG Barnes, 'Cropping the Heath: the Fall of a Chief Justice, 1634' (1991) 64 *Historical Research* 331, 341, discussing BL Stowe MS 397 ff 67–188. The information does not survive.

¹⁴⁷ See K Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (Yale UP 2000) 166–67 for background.

¹⁴⁸ Other trade frauds prosecuted include those of the goldsmith John Pargiter, whom Pepys had described as 'the man of the world I most know and believe to be a cheating rogue', R Latham and W Matthews (eds), *The Diary of Samuel Pepys*, vol 2 (G Bells and Sons 1971) 199 (21 October 1661). Eight years later, Pargiter was prosecuted by Palmer A-G in (1669) KB 9/912B/015; the allegation in the information was of fraudulently selling adulterated alloys of silver as sterling, with the additional standard allegation of it being against the King's peace. There is also a King's Bench fraud information of 1674 from North A-G which deals with a statutory offence of mismeasurement of grain for sale: *North A-G v Taylor* (1674) KB 9/930/005.

¹⁴⁹ SP 15/39, 504, 22 January 1608, letter to Sir Thomas Lake: 'According to His Majesty's pleasure, we have considered the best remedy of the great abuse in dyeing black silks'

¹⁵⁰ 'A Proclamation prohibiting the deceitful dying of silk, or bringing in or selling of silk deceitfully dyed' (1612) in JF Larkin and PL Hughes (eds), *Stuart Royal Proclamations, Vol. 1: Royal Proclamations of King James I 1603–1625* (OUP 1973) No 125.

¹⁵¹ *Coventry A-G v Washington* (1623) STAC 8/030/016.

¹⁵² *Heath A-G v Yeomans, Andrews, Wright* (1629) and *Heath A-G v Sampson* (1630) in J Rushworth, *Historical Collections: The Second Part*, vol 1 (Printed for M Wotton 1686) app 25–26, 30–31. The censure of Yeomans *et al* is reported in Trinity College Dublin MS 721 f 54v; my thanks to one of the anonymous referees for pointing this out.

¹⁵³ Defined as 'a coarse cloth in use for the gowns of the middle classes' in the *Oxford English Dictionary* (2nd edn, 1989) vol 2, 625.

¹⁵⁴ *Bankes A-G v Snelson* (1636) KB 9/808/014. Presumably the statutes are 23 Eliz cap 9 (which does not call this 'fraud') and 39 Eliz cap 11 (which does call this 'fraud'). See also M Dalton, *The Country Justice* (Printed for the Society of Stationers 1618) 38.

Hudson, hosier, for fraudulent sale of silk stockings dyed with an excessive quantity of galls, *vi et armis* and against the peace.¹⁵⁵ The inclusion of the element of force is presumably the result of the lack of statutory basis.

Conclusion

It may, of course, be unwise to try to draw any but the most tentative conclusions from cases for which no result is known, such as *Coke A-G v Goring*. In several cases where there was an allegation of fraud, such as in the bullion prosecutions, there is no report of this charge being argued substantively at trial. Why it was nevertheless thought helpful to include such a superfluous allegation, except perhaps to add rhetorical legitimacy, is difficult to determine at this remove.

But the cases considered above, linked by the common thread of fraud, do reveal both some of the pressing concerns of the time, and provide a focussed snapshot of seventeenth-century legal analysis. As can be seen in Coke's comments at the trial of Yelverton, quite intricate discussions of mental state requirements and its evidence unfold; the informations in the bullion cases allege an 'intent to deceive and defraud', implying at least an ostensibly subjective requirement, albeit one that may be, as now, best determined by objective criteria.

Taken as a whole then, these fraud cases, ranging across what was thought to be an almost infinite spectrum of misdemeanours, demonstrate an already complex legal world grappling with the fundamentals of what constitutes a particular crime: the issues of proof and subjective dishonesty that preoccupy modern fraud lawyers were already coming to the fore.

¹⁵⁵ *North A-G v Hudson* (1674) KB 9/930/092.