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FRANCIS BACON'S 'SPEECH ON A CASE OF DEER-STEALING'

The editor of the nineteenth century edition of The Letters and the Life of Francis Bacon included a report of a speech by Bacon concerning illegal hunting in parks.¹ The text was accurately reproduced from a manuscript in the British Library.² That manuscript lacked context and dated the speech simply as given on 23 October. Spedding conjectured that the speech was by Bacon as Attorney-General, prosecuting in the Star Chamber on 23 October 1614, on the basis of instructions sent to Bacon in that year.³ Another report of the speech has been discovered, in a collection of Star Chamber reports in the Folger Shakespeare Library.⁴ The collection is associated with the barrister and law reporter Francis Moore, but it is not clear if he is the author. It is likely that the manuscript used for the nineteenth century printing extracted the speech from this or another larger collection of Star Chamber reports. No other collection of reports has been found to include Bacon's speech, although several do include many of the cases in the Folger manuscript.⁵

¹ 'Speech on a Case of Deer-Stealing', in James Spedding (ed.), The Letters and the Life of Francis Bacon (London, 1869), V, 87-9.

² British Library Harley MS 1576, f.74.

³ 'Speech', p.87.

⁴ Folger Shakespeare Library MS V.a.133, ff.62-4. This manuscript was discovered while undertaking research funded by the British Academy/Leverhulme Trust.

⁵ Eg British Library MS Additional 48061 and British Library MS Harley 1330.

Proceedings in the Star Chamber were conducted in English, but this reporter usually prepared his own summaries and translations of the arguments in law-French. The context for Bacon's speech in the report is in law-French. However, Bacon's speech is reported in English. The reporter explained this change in his practice on the basis that Bacon's speech was an unusually fine example of oratory in the Star Chamber. It is described as 'eloquent and effectual, and therefore I have written it in the words that follow' (Folger MS V.a.133, f.62, my translation). No other speaker in the volume was given such praise or reported in English and the remarks of the other judges in the case were all reported more briefly.

The text of the speech is very close to that printed in the nineteenth century, with two significant differences, both of which make more sense than the printed text. First, the very odd 'I note the privitie case' ('Speech', p.88) is replaced with 'I note the prioritie of the kinges case' (Folger MS V.a.133, f.62v). Second, 'But this is a bravery' ('Speech', p.89) reads 'But this is a brattery' (Folger MS V.a.133, f.63v).

Valuable context to Bacon's speech is provided by the Folger manuscript. Spedding was incorrect in his supposition as to the date of the speech and consequently the identity of one of the parties to the litigation and the capacity in which Bacon spoke. Rather than 1614, the speech was apparently delivered on the 23 October 1616, placing the case in Michaelmas term. It is likely that this is accurate: in the

manuscript the report follows two cases from Trinity term 1616 and is itself followed by more cases from Michaelmas 1616.

Spedding suggested that 'nothing of importance' depended upon the date of the speech. In fact, the changed date has a number of effects. First, the Lord Chamberlain referred to in the case was not the Earl of Somerset, but the Earl of Pembroke.⁶ The case brought by the Lord Chamberlain can then be identified as *Earl of Pembroke v Wykes*, some of the records for which survive in the National Archives, although those records make no reference to Bacon.⁷

Second, the report shows that the later date made a significance difference to Bacon's role in the case. As in the British Library manuscript, Bacon is described in the Folger manuscript as attorney-general, but the Folger manuscript shows that he was not acting as prosecuting counsel in the case. According to the reporter, Bacon instead spoke as a judge after his appointment to the Privy Council on 9 June 1616.⁸ Bacon therefore began to sit as a judge in Star Chamber in the first legal term after he was appointed to the Privy Council. The report also highlights that the speech shows Bacon at the start of his judicial career; according to the reporter, this 'was the first sentence that he gave in this court' (Folger MS V.a.133, f.62). Bacon's unusual

⁶ Suggested 'Speech', p.88 n.1.

⁷ TNA STAC 8/183/42.

⁸ Markku Peltonen, 'Bacon, Francis, Viscount St Alban (1561-1626)' *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, <http://www.oxforddnb.com/view/article/990>.

eloquence in the speech may have been because he sought to make an impression in his first judicial role.

It was not normal for the Attorney-General to be a member of the Council. The manuscript highlights an awkward incongruity in Bacon's roles following his appointment to the Privy Council. As a Privy Counsellor, Bacon could sit as a judge in the Star Chamber. But many cases in Star Chamber were prosecuted by the Attorney-General. This overlap was not to last long. On 7 March 1617, Bacon became the Lord Keeper of the Great Seal and ceased to be Attorney-General.⁹ He was the senior judge in the Star Chamber. Unlike his predecessor and successors, Bacon was unique in having sat as a judge in the Star Chamber before taking up this final role. As the custodian of the Great Seal, Bacon appears further in the neglected manuscript reports of the Star Chamber, but his remarks never receive such detailed attention again. The speech about deer-stealing does appear to have been considered special.

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⁹ Peltonen, 'Bacon, Francis'.