

JAMES HUGHES: KENTUCKY'S FIRST NOMINATIVE REPORTER

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JAMES HUGHES. A REPORT OF THE CAUSES DETERMINED BY THE LATE SUPREME COURT FOR THE DISTRICT OF KENTUCKY, AND BY THE COURT OF APPEALS, IN WHICH THE TITLES TO LAND WERE IN DISPUTE. [1785-1801]. (Lexington: Printed by John Bradford, 1803).

The legal system of the new state of Kentucky was birthed in 1792 amidst a thicket of thorny disputes over confused land claims, fuzzy boundaries and unsettled law. Into this wilderness stepped James Hughes, who drafted laws to reform the muddled property laws inherited from Virginia and litigated the myriad land cases that clogged the new commonwealth's courts. While waiting to have his many cases heard in the Kentucky Court of Appeals, he took detailed notes on the cases before him. To these accounts, he added notes for his own arguments and similar notes from his friend George Nicholas, and from these scraps of foolscap, Hughes fashioned the first case reporter for the state of Kentucky, HUGHES REPORTS. The work—not surprisingly—dealt entirely with land law. The finished octavo volume is beautiful; filled with detailed engravings by the artful silversmith who would later design the seal of the commonwealth of Kentucky. Alas, the splendid tome was a financial bust. Like many similar projects financed by subscription, it fell prey to the state's volatile population; pledged buyers had either followed the expanding frontier or experienced a cruel change of fortunes. Nonetheless, it struck a path that would be followed by others.

The career of Kentucky's first law reporter spanned the state's transition from its early existence as a frontier territory of Virginia to that a thriving new commonwealth. Little is known of James Hughes' early life, but his contemporaries report that he was born in England and immigrated to Kentucky in his youth.¹ His date of birth is unknown, but at his death in 1818 he was counted among the generation of George Nicholas (1754-1799) and John Breckinridge (1760-

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¹ *Communicated: Obituary Notice*, KY. GAZETTE, Aug. 28, 1818.

1806).² Referred to as a barrister by his contemporaries, it is possible he that received his legal training in one of London's Inns of Court.³

Hughes spent the large part of his productive life in Lexington. In 1788, he helped organize the Lexington Light Infantry and in 1789 Lieutenant Hughes was promoted to captain and given command.⁴ Although the unit was by mid-century mostly known for its smart uniforms and crisp parade drills (both of which soon wilted in the gunsmoke and gore of the Civil War), back in the 1780s the still potent threat of Shawnee raiders gave the Light Infantry a very real purpose. In 1793 Hughes was elected trustee of the city for the first time; he would be returned four more times and in 1795 served as chairman.⁵ He also represented Fayette County in the Kentucky House of Representatives from 1793 to 1797 and from 1801-1803.⁶

Hughes was active in the city's social and cultural affairs, supporting the building of a public library and encouraging the growth of educational institutions as the city grew from a frontier outpost into the Athens of the West.⁷ Politically, James Hughes embraced the democratic ideals of his friends Nicholas, Breckinridge and John Bradford, publisher of the *KENTUCKY GAZETTE*.⁸ Hughes, Breckinridge and Bradford joined with the brothers Robert and Thomas Todd to found the Democratic Society of Kentucky, which advocated the end of slavery, fought for free navigation of the Mississippi River, and supported the presidential campaign of Thomas Jefferson.⁹

Despite his political and civic activities, it is as one of the state's foremost lawyers and legal scholars that Hughes was best known to his contemporaries. He was one of the leading appellate lawyers of his day. In 1811 Hughes moved to Frankfort where he continued to

² *Id.*

³ *Id.*

⁴ GEORGE WASHINGTON RANCK, *HISTORY OF LEXINGTON, KENTUCKY ITS EARLY ANNALS AND RECENT PROGRESS, INCLUDING BIOGRAPHICAL SKETCHES AND PERSONAL REMINISCENCES OF THE PIONEER SETTLERS, NOTICES OF PROMINENT CITIZENS, ETC., ETC.* (Cincinnati: R. Clarke & Co., 1872) 155-61.

⁵ *KY. GAZETTE*, Jan. 24, 1795; *KY. GAZETTE*, Jan. 9, 1796.

⁶ 1 LEWIS COLLINS, AND RICHARD H. COLLINS, *HISTORY OF KENTUCKY* (Frankfort, Ky: Kentucky Historical Society, 1966) 170.

⁷ He was a supporter of Lexington's first library, *KY. GAZETTE*, FEB. 18, 1812, and a trustee of the Transylvania University, 2 COLLINS, *HISTORY OF KENTUCKY* 511.

⁸ SAMUEL M. WILSON, *THE "KENTUCKY GAZETTE" AND JOHN BRADFORD, ITS FOUNDER* ([Chicago: The Society, 1937).

⁹ JOAN WELLS COWARD, *KENTUCKY IN THE NEW REPUBLIC: THE PROCESS OF CONSTITUTION MAKING* (Lexington: University Press of Kentucky, 1979) 188, 121. See also *KY. GAZETTE*, Nov. 2, 1793, *KY. GAZETTE*, Nov. 7, 1793.

apply his considerable forensic skills in the state capitol.¹⁰ He was an expert in the law of property and was especially adept at navigating the tangle of land titles that the Kentucky inherited from its time as territory of Virginia.

The Old Dominion's colonial and republican governors had dispensed willy-nilly land patents on the Kentucky frontier to veterans of the French and Indian and Revolutionary Wars. The patents did not convey land itself but only the right to enter, survey and record claims to land. If any of these steps were faulty, the title was not perfected. This, along with poor surveying and some chicanery by some land speculators, left the Kentucky territory's land titles in a mess of overlapping claims. The resulting chaos filled the new state's courts with lawsuits.¹¹ As a legislator, Hughes was able to rewrite Kentucky's land laws to alleviate some of the problems, but most of the damage had been done.¹² He would spend many hours arguing the land claims of his clients before the Court of Appeals, Kentucky's first court of last resort. He was not blind to the advantages his vast knowledge gave him in the "great game" of land speculation and soon acquired land holdings around the state.¹³

Beloved and respected in his time, James Hughes would nonetheless be unknown in ours but for his single volume of law reports, which inaugurated case law reporting in the commonwealth of Kentucky. Covering the years 1785-1801, the reports recount judicial decisions of the numerous land cases that clogged Kentucky court dockets before and after statehood. In many of the cases Hughes was also engaged as an advocate; in others he made good use of the time that lawyers of his day spent lingering in courtroom listening to colleagues argue their cases while they waited for their own matters to come before the court.

In his preface, Hughes notes that the work "was undertaken by Thomas Todd and the author jointly," and knowing the work was going to be expensive, the two men agreed to "join in the expense and risk" of the project, which was to be partially funded by subscrip-

¹⁰ KY. GAZETTE, Oct. 15, 1811.

¹¹ WILLARD ROUSE JILLSON, OLD KENTUCKY ENTRIES AND DEEDS; A COMPLETE INDEX TO ALL OF THE EARLIEST LAND ENTRIES, MILITARY WARRANTS, DEEDS, AND WILLS OF THE COMMONWEALTH OF KENTUCKY (Baltimore: Genealogical Pub. Co., 1969) 1-9.

¹² *Communicated: Obituary Notice*, KY. GAZETTE, Aug. 28, 1818.

¹³ A survey of Willard Rose Jillson's OLD KENTUCKY ENTRIES AND DEEDS (see supra) and THE KENTUCKY LAND GRANTS; A SYSTEMATIC INDEX TO ALL OF THE LAND GRANTS RECORDED IN THE STATE LAND OFFICE AT FRANKFORT, KENTUCKY, 1782-1924 (Baltimore: Genealogical Pub. Co., 1971) finds Hughes name widely represented.

tion.¹⁴ A “different arrangement” was later made and, with Todd’s assent, Hughes published the work at his own risk.¹⁵ As Todd and Hughes appear to have remained friends, it is possible that Todd’s elevation in 1801 to the Court of Appeals caused him to withdraw. Todd was later named chief justice of that court in 1806 and in 1807 was appointed by President Thomas Jefferson to the United States Supreme Court.¹⁶ Or perhaps Todd was a shrewder investor; in the introduction to his law reports, Martin D. Hardin says Hughes lost money on the book, something that discouraged the publication of law reports for nearly a decade.¹⁷

The volume by Hughes was 236 pages, exclusive of front matter, and contained 41 plats masterfully engraved by Lexington silversmith and engraver David Humphreys.¹⁸ In 1792, Humphreys had been paid twelve pounds sterling by the state legislature to create a state seal with the vague instruction that it show “two friends embracing, with the name of the state over their heads and around about the following motto: United we stand, divided we fall.”¹⁹ His version depicted two men in formal dress; only later did one of the men take on the frontier garb and coonskin cap now found on the state seal and flag.²⁰ Today, Humphreys silver work is as highly regarded as his engraving.²¹

The reports were printed by Hughes’ close friend, John Bradford. Bradford was the pioneer printer of the state. Anticipating that the new state would need a state printer, the intrepid entrepreneur had bought a press in Pittsburgh and carried it by raft down the Ohio and overland from Maysville to Lexington over the buffalo trace that

¹⁴ Preface, JAMES HUGHES. A REPORT OF THE CAUSES DETERMINED BY THE LATE SUPREME COURT FOR THE DISTRICT OF KENTUCKY, AND BY THE COURT OF APPEALS, IN WHICH THE TITLES TO LAND WERE IN DISPUTE [1785-1801] (Lexington: Printed by John Bradford, 1803).

¹⁵ *Id.*

¹⁶ Woodford L. Gardner, Jr. *Kentucky Justices on the U. S. Supreme Court*, REG. OF THE KY. HIST. SOC’Y 70 (1972): 121-142.

¹⁷ Preface, MARTIN D. HARDIN. REPORTS OF CASES ARGUED AND ADJUDGED IN THE COURT OF APPEALS OF KENTUCKY FROM SPRING TERM 1805 TO SPRING TERM 1808 INCLUSIVE (Frankfort [Ky.]: Printed by Johnston and Pleasants for the author, 1810).

¹⁸ CHARLES RICHARD STAPLES, THE HISTORY OF PIONEER LEXINGTON (KENTUCKY) 1779-1806 (Lexington, Ky: Transylvania Press, 1939) 63.

¹⁹ “An Act to Provide a Seal for this Commonwealth,” 1792 KY. ACTS. Ch. 37 (Dec. 20, 1792).

²⁰ *Kentucky Can’t Make Up Its Mind What the State Seal Should Show*, COURIER-JOURNAL (Louisville, Ky.), August 28, 1952.

²¹ NOBLE W. HIATT, AND LUCY F. HIATT. THE SILVERSMITHS OF KENTUCKY; TOGETHER WITH WATCHMAKERS AND JEWELERS, 1785-1850 (Louisville, Ky: Standard Print. Co., 1954).

would later become the Maysville Turnpike.²² Bradford thus received the contract to print the acts and journals of the new state legislature when it began work in 1792, published the leading newspaper, the KENTUCKY GAZETTE, as well many early law books, including the first collection of statutes.²³

Few will see the elegance of the original work, which counts as among the rarest of law books. Most libraries carrying KENTUCKY REPORTS have the 1869 “century edition” by Cincinnati publisher Robert Clarke & Company. Hughes’ work, numbered as 1 KY., was re-set by Clarke in a more uniform typeface and the plats re-engraved to fit a smaller, but more standard, 22 x 14 cm page size (compared with the 20 x 25 cm original). The reconfiguration dramatically changed the pagination and the Clarke volume ballooned to 458 pages.²⁴

Hughes’ first volume of cases would be his last. No doubt he decided that the practice of law, land speculation--even a game of vingt-et-un with his friend Henry Clay--was a better gamble than law publishing.²⁵ After a successful career, Hughes died in 1818 and was mourned by his contemporaries.²⁶ But he will be forever remembered for the beautiful, squarish volume that started case law reporting in Kentucky, HUGHES REPORTS.

²² DOUGLAS C. MCMURTRIE. JOHN BRADFORD, PIONEER PRINTER OF KENTUCKY; AN ACCOUNT OF HOW PUBLIC NECESSITY AFFECTED THE CAREER OF A KENTUCKIAN WHO, WITHOUT PREVIOUS EXPERIENCE IN PRINTING, BROUGHT THE FIRST PRESS TO LEXINGTON DURING 1787 AND THERE ESTABLISHED THE KENTUCKY GAZETTE (Springfield, Ill: Priv. Print, 1931) See also JILLSON WILLARD ROUSE. THE FIRST PRINTING IN KENTUCKY; SOME ACCOUNT OF THOMAS PARVIN AND JOHN BRADFORD AND THE ESTABLISHMENT OF THE KENTUCKY GAZETTE IN LEXINGTON IN THE YEAR 1787, WITH A BIBLIOGRAPHY OF SEVENTY TITLES. (Louisville, Ky: C.T. Dearing Print. Co., 1936).

²³ Early legal works by Bradford include: JOHN BRADFORD, THE GENERAL INSTRUCTOR, OR, THE OFFICE, DUTY, AND AUTHORITY OF JUSTICES OF THE PEACE, SHERIFFS, CORONERS AND CONSTABLES, IN THE STATE OF KENTUCKY (Lexington [Ky.]: Printed by John Bradford on Main Street, 1800) and LAWS OF KENTUCKY COMPREHENDING THOSE OF A GENERAL NATURE NOW IN FORCE AND WHICH HAVE BEEN ACTED ON BY THE LEGISLATURE THEREOF : TOGETHER WITH A COPIOUS INDEX AND A LIST OF LOCAL OR PRIVATE ACTS, WITH THE DATES OF THE SESSIONS AT WHICH THEY WERE PASSED (Lexington [Ky.]: Printed by John Bradford, 1799-1817). .See also G. GLENN CLIFT. JOHN BRADFORD, "THE CAXTON OF KENTUCKY" A BIBLIOGRAPHY. ([NEW YORK]: AMERICAN NOTES & QUERIES, 1975).

²⁴ DECISIONS OF THE COURT OF APPEALS OF THE STATE OF KENTUCKY. Cincinnati: Robert Clarke & Co., 1869.

²⁵ Vingt-et-un was an early version of the card game we today call blackjack. Henry Clay was a notoriously proficient card player, so this would be a risky venture. See STEVEN LUBET, LAWYERS' POKER: 52 LESSONS THAT LAWYERS CAN LEARN FROM CARD PLAYERS (New York: Oxford University Press, 2006) 213-15.

²⁶ The Lexington bar passed a resolution in tribute to Hughes’ memory that resolved that the legal community would “for one month wear black crepe on the left arm.” *The Late Mr. Hughes*, Ky. Gazette, Aug. 28, 1818.