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Biography: Ashhurst, Sir William Henry (1725–1807)

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Ashhurst, Sir William Henry (1725–1807), judge, was born on 25 January 1725 at Ashhurst, near Wigan, Lancashire, the third son of Thomas Henry Ashhurst (d. 1744), vice-chancellor of the duchy of Lancaster and recorder of Liverpool and Wigan, who held the Lancashire manors of Dalton, Upholland, and Skelmersdale, and his wife Diana (d. 1786); she was the daughter of Sir Richard Allin, baronet, of Somerleyton, Suffolk, and his wife, Frances Ashurst, and thereby the granddaughter of Sir Henry Ashurst, first baronet (1645–1711). Henry's father was a younger son of Henry Ashurst of Dalton; William Henry's parents were therefore distant cousins. Diana Allin was heiress to Sir Henry Ashurst's estates at Waterstock and Emmington, Oxfordshire, which Ashurst inherited in 1788; his older brother Henry sold the Lancashire estates in 1751.

Ashurst was educated at Charterhouse School, and entered the Inner Temple on 19 January 1750. Until he was called to the bar, on 8 February 1754, he worked as a special pleader ‘under the bar’—an invaluable preparation for a barrister, as it made him known to the attorney. (His student Francis Buller, later an eminent judge, would work for Ashurst in the same role from 1765 to 1772.) He practised at the bar for the next sixteen years. He was appointed auditor of the duchy of Lancaster and was counsel for the commissioners of excise and many other clients. In the first half of 1770, the year in which he became a judge, he made 11 appearances on the crown side and 121 on the plea side of king's bench, probably more than any other barrister in that court. His income was commensurably great.

Ashurst was created serjeant-at-law, knighted, and appointed a puisne justice of king's bench on 25 June 1770. On 21 April 1772 he married Grace (bap. 1752, d. 1807), daughter of Robert Whalley MD, of Oxford; they had four sons, one of whom—Henry John (bap. 1780)—died young, and a daughter. He was a commissioner of the great seal, from 9 April 1783 to 23 December 1783 and from 15 June 1792 to 28 January 1793, while the position of lord chancellor was vacant. He kept chambers in Serjeants' Inn, and in the 1780s had his residence in Spring Garden Road. On assize he usually took the western circuit in his early years, sometimes the home, and eventually almost always the Norfolk circuit. The proportion of capital convicts left for execution at those assizes was higher than that for most other judges of the later eighteenth century, although he did request a pardon for two children under fifteen sentenced to death in 1775. He was one of the judges (Sir William Blackstone was another) who supported the employment of convicts at Trinity House in 1776, when transportation to America was interrupted, and he helped William Eden with his prison bill, passed in 1778. His judgments include R v. Pasmore (1789), on remedies against corporate bodies; Roe v. Quartley (1787), on contingent remainders; Goodtitle v. Otway (1797), on the need for certainty and predictability in the law of property; Russell v. the Men of Devon (1788), on public convenience as a principle of law; Mead v. Young (1790), on forgery; R v. Wells (1786); and R v. Judd (1788), on the reach of the Black Act (9 Geo I c.22).

Ashurst did not play a prominent role in state trials. He tried John Binns, acquitted of sedition at Warwick assizes in August 1797, but otherwise assisted at only a few trials in king's bench. He lived in the shadow of William Murray, first earl of Mansfield and lord chief justice (whom he revered), and an early biographer referred to his 'passive indolence and inertness' (Wynne, 8). An anonymous correspondent of
John Reeves called him in 1792 ‘a time-serving pimp’ (BL, Add. MS 16923, fol. 4; in Dinwiddy, 204). He typically accounted for fewer than a tenth of reported judgments, in the majority of reported cases giving no opinion whatsoever. He became slightly more active when Mansfield absented himself from the court in his last years. After 1787 he often delivered sentences in state trials and other criminal cases as senior puisne justice in king’s bench, although in the opinion of Isaac Espinasse he was greatly helped by Buller, who managed the administrative work usually undertaken by the senior judge. He also shared the views of Mansfield’s successor as chief justice, Lloyd Kenyon, first Baron Kenyon, on the criminality of forestalling, regrating, and engrossing (to Edmund Burke’s horror); on the growing evils of combinations; and on the dangers of irreligion and immorality.

Ashhurst’s charges to Middlesex grand juries were frequently reported in the press, perhaps because they were somewhat idiosyncratic; they may also have reflected the low-church tradition in his own family. He inveighed against crimes against religion and morality, duelling, and conspiracies to raise wages, as well as the more common misdemeanours. He complained that the judges were delayed in getting to Westminster Hall by the coachmakers of Long Acre, who plied their trade in public space. He devoted all of one charge to the crime of gambling, alleging that it ruined more families than drink. His most famous charge was given on 19 November 1792, when he excoriated what he termed the absurd and pernicious critics of the British constitution: seditious reformers ‘with dark and gloomy hearts’ who wished to inflict on Britain the miseries of republican France (The Times, 20 Nov 1792). The charge was reprinted and widely distributed by the Constitutional Association. This defence of ‘virtual representation’ in parliament—of the common law and of monarchy—was attacked in an undistinguished contemporary pamphlet by one Hughes (Justice to a Judge) and in a very distinguished critique of the common law. The latter, Jeremy Bentham’s Truth versus Ashhurst, was not published, on Samuel Romilly’s advice, until many years later. In his Rationale of Judicial Evidence Bentham also quoted Ashhurst (among others) in convicting the judiciary of complacent acceptance of the irrational rules of evidence in the common law. Isaac Espinasse found Ashhurst without the ‘bearing to command respect … His manner was confused and embarrassed, and he seemed to shrink from the eye of every one who approached him’ (Espinasse, 223). However, despite his apparent ‘apathy and inattention’ and the monotony of his hurried delivery, his judgments were always correct, and, from his apparent inattention to the arguments, surprised by their accuracy. He stated the points of the case with brevity and precision, and they displayed no want of learning or discrimination (ibid., 224).

Ashurst retired from king’s bench on 3 June 1799, and died on 5 November 1807 at his estate at Waterstock. He was buried on 12 November in Waterstock, where a memorial tablet was set up in the church. His eldest son, William Henry Ashhurst (1778–1846), who inherited the bulk of the estate, was high sheriff of Oxfordshire from 1810 to 1811, and member of parliament for the county from 1815 to 1830. The younger surviving sons, James Henry (bap. 1782) and Thomas Henry (bap. 1784), received bequests of £3000 each from their father’s will. The daughter, Grace (bap. 1774), who had married George Dorrien in 1796, did not receive a bequest but was named heir to the estate should her brothers die without natural heirs. James Henry, captain of the 11th regiment of native infantry and deputy paymaster to the Nagpoor subsidiary force, died at Husingabad, India, aged thirty-six, in 1817. The Waterstock estate remained in the family into the twentieth century.

DOUGLAS HAY

Sources

BL, letters to Lord Hardwicke, Add. MSS 35616–35624, passim

Likenesses

J. Jones, stipple engraving, pubd 1796 (after J. Plott), BM, NPG · J. Jones, stipple engraving, pubd 1819 (after J. Plott), NPG [see illus.] · J. Jones, engraving (after J. Plott; as justice of king’s bench, 1770)

Wealth at death

includes Waterstock and Emmington (Oxfordshire) estate; bequests of £3000 to each of his two younger sons