

2004

## Biography: Eyre, Sir James (bap. 1734, d. 1799)

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### Source Publication:

Oxford Dictionary of National Biography. Oxford, UK: Oxford University Press, 2004.

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### Recommended Citation

Hay, Douglas C. "Eyre, Sir James (bap. 1734, d. 1799)." *Oxford Dictionary of National Biography*. Eds. Leslie Stephen, Sidney Lee, and Christine Nicholls. Oxford, UK: Oxford University Press, 2004. Web.

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# Oxford Dictionary of National Biography

**Eyre, Sir James** (*bap.* 1734, *d.* 1799), *judge*

by Douglas Hay

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**Eyre, Sir James** (*bap.* 1734, *d.* 1799), judge, was baptized at Wells, Somerset, on 13 September 1734, the son of the Revd Thomas Eyre (1686/7–1753), of Wells, prebendary of Salisbury from 1733 until his death. He was a scholar of Winchester College in 1747, and matriculated from St John's College, Oxford, on 27 October 1749. He entered Lincoln's Inn, without a degree, on 26 November 1753 and moved to Gray's Inn on 8 November 1755. He was called to the bar on 25 November 1755, under the patronage of Sir Thomas Parker, chief baron of the exchequer; he later was a bencher of Gray's Inn.

Eyre began practice as one of the four counsel for the corporation of London, a position that he purchased on 20 January 1755 for £63, practising in the inferior courts of the City for some years. He was appointed deputy recorder on 17 February 1761, on the recommendation of Sir William Moreton, the recorder, and was himself elected recorder by the court of aldermen in April 1763, on the death of Moreton. He now occupied a highly visible post, with large responsibilities and the right to wear silk. On the bench at the Old Bailey he met the chief justices and almost all the other high-court judges, who took turns in that court. As recorder Eyre pronounced the sentence at the end of the sessions and reported in person to the cabinet and the king on Old Bailey convicts being considered for pardons. His other duties involved him in constitutional controversies, including the rights of the chartered City and of the wider metropolitan electorate. In October 1763 the common council unanimously voted an increase in his salary of £280 over the ancient one of £120. He became one of the counsel for John Wilkes, notably in *Wilkes v. Wood*, in December 1763, in which he attracted attention with an impressive speech against general warrants. Four years later the common council again raised his salary, by another £200.

By the end of the decade, however, Eyre was finding favour with the government, a prerequisite to any higher judicial appointment. In 1769, at government request, he issued a warrant to the sheriffs to hang John Doyle and John Valline (condemned for cutting silk in the loom) near Bethnal Green church, part of the government's attempt to repress riots by the Spitalfields weavers. Eyre, as recorder, had sentenced the men to death without mention of the place of execution, and John Sawbridge and James Townsend, the Wilkesite City sheriffs, strongly resisted the change from Tyburn as an unconstitutional innovation, expanding prerogative powers, and raising the danger of secret executions. They condemned as equally unconstitutional the deployment of troops in Spitalfields to ensure that the executions were carried out. Eyre's power to issue such a warrant was upheld (*Re Doyle and Valline*) but an increasingly Wilkesite common council now opposed him. The following year he decisively joined the government side when he refused to present a remonstrance by the corporation to the king respecting Wilkes's exclusion from parliament. The common council voted by a large majority that he 'be no more advised with, retained or employed in any of the affairs of this Corporation, he being deemed by this Court unworthy of their future trust or confidence' (common council journals, vol. 65). He continued to sit as recorder until October 1772.

Eyre was created serjeant-at-law, knighted, and made a baron of the exchequer on 6 November 1772, ultimately becoming chief baron on 26 January 1787. His first wife, of whom nothing further is known, died on 5 July 1787, and a forthcoming second marriage was announced in *The Times* on 7 April 1788. *The*

*Times* reported persistent rumours in 1787–9 that Eyre might be made lord chancellor of Ireland. In 1789 he prevailed on Gray's Inn, where he had been a bencher, to accommodate the court of exchequer out of term-time, an arrangement that continued well into the nineteenth century. Alexander Wedderburn, first Baron Loughborough, having been made lord chancellor, Eyre followed him in the post of chief justice of common pleas, on 11 February 1793. Before this appointment he had served as chief commissioner of the great seal from 15 June 1792 to 21 January 1793. In civil cases he sometimes opposed innovations by William Murray, first earl of Mansfield, lord chief justice of the king's bench. In *Cocksedge v. Fanshaw* (1776–7, unreported), a case in which corn factors were opposed to the City, Eyre was the only judge hearing the appeal in exchequer chamber not to agree with the initial judgment of Mansfield, who favoured the merchants. In *Matthews v. Lewis and another* (1792) he resisted the trial in common pleas of issues best tried at equity, observing that it was dangerous 'to confound the jurisdictions of the different Courts'. Other judgments include *Nicholson v. Chapman* (1793), where inconvenience to the public was a basis for decision; *Waugh v. Carver, Carver, and Giesler* (1793), in which he imposed the liabilities of partnership on a profit-sharing arrangement to protect its creditors from fraud; and *Bush v. Steinman* (1799), on the liability of an employer for the torts of a contractor.

On assize Eyre usually went on the Norfolk circuit, or the western, where he had many relatives. Years after his death he was remembered by John Townsend, the Bow Street runner, for inflicting capital punishment with unremitting severity at one assize on the home circuit. The average ratio of executions to death sentences for all the years and places where he sat at assizes is greater than that of most other judges of the period.

Eyre with other judges sought to expand the law of treason at the end of the century. He sat with Chief Baron Archibald Macdonald on the trials of members of the London Corresponding Society in October 1794, having attended the privy council in May when the prisoners were first questioned. The judges' role there has been defended on the narrow ground that it was magisterial not prosecutorial: to advise the law officers on whether the evidence justified committal and on what charge. Eyre, according to the attorney-general, Sir John Scott, expressed the view that the accused were guilty of treason. When the special commission opened at the Old Bailey in October Eyre began by addressing the grand jury on the dangers of 'a traiterous and detestable conspiracy ... formed for subverting the existing laws and constitution, and for producing the system of anarchy and confusion which have so fatally prevailed in France'. Admitting that the law applicable to the case was unclear (and doing little to clarify it) he suggested that 'men who assemble to procure a Reform in Parliament may involve themselves in the guilt of High Treason'. Overawing parliament could destroy constitution and monarchy, 'that glorious fabric, which it has been the work of ages to erect ... cemented by the best blood of our ancestors' (*The Times*, 3 Oct 1794). The cases, he said, would establish the reach of the law of treason.

Eyre's charge was printed in several versions, widely circulated, and provoked several replies, including a famous one by William Godwin, whose close friend Thomas Holcroft was among those indicted. *Cursory Strictures on the Charge Delivered by Lord Chief Justice Eyre to the Grand Jury October 2, 1794* appeared in the *Morning Chronicle* and as a pamphlet on 21 October, a few days before the trials began. Godwin castigated Eyre's 'many new and extraordinary doctrines on the subject of treason', his 'contemptible' play on words, and his 'sanguinary' conjectures on the probable guilt of the accused, 'worthy of the judicial ministers of Tiberius or Nero'. He accused Eyre of prejudice and ignorance and of inventing a new offence. A defence of Eyre, attributed to Sir Francis Buller, judge of king's bench, appeared in *The Times* on 25 October, calling for Godwin's prosecution. Daniel Isaac Eaton republished

this attack, together with Godwin's *A Reply to an Answer to Cursory Strictures, Supposed to be Wrote by Judge Buller*, of 23 October, which the *Morning Chronicle* refused, fearing prosecution. Eyre reiterated some of his assertions in his summation of the case against Thomas Hardy, and on the whole summed up against him. In the trial of Horne Tooke, however, he allowed the defendant unusual liberties and summed up for an acquittal, although still proposing an expansive definition of treason. In the trials Eyre cautioned Thomas Erskine, counsel for the defence, for (among other issues) asking leading questions during cross-examination, a practice tolerated in king's bench but not in exchequer. Erskine is reported to have challenged the judge to a duel once the trial was over. Hardy, Tooke, and Thelwall were acquitted, and the other charges dropped. Godwin wrote to Eyre privately, praising his conduct of the trials while still objecting to his doctrine of treason, although also apologizing for his own warmth of expression. The only other treason trial that came before Eyre was that of Crossfield in 1796.

After his death, on 6 July 1799, Eyre was celebrated in obituaries principally as a sound judge, not given to citing precedent but learned in the law, and exceptionally astute at instructing juries. He left the proceeds of his estate—which included the lease of a house in Great George Street, Westminster; his seat, Ruscombe House, Berkshire; and the manor and two farms in the parish of Ruscombe, which he had purchased in 1787—as life estates to his wife, Mary, and his two surviving sisters, then to his brother Dr Thomas Eyre (*d.* 1812) BCL, DCL (Oxon.), treasurer and canon residentiary of Wells Cathedral. Eyre was particularly concerned that his trustees should hire a proper person to maintain his timber plantations. He appears to have had no children. He was buried in Ruscombe parish church.

## DOUGLAS HAY

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#### **Likenesses**

L. F. Abbott, oils, 1770, Royal Courts of Justice, London [*see illus.*] · two portraits, 1787–93, Gray's Inn, London · V. Green, mezzotint, pubd 1804 (after L. F. Abbott), BM · L. F. Abbott, oils, Gray's Inn, London · V. Green, mezzotint (after L. F. Abbott) · W. Ridley, stipple (after S. Drummond), BM; repro. in *European Magazine* (1800) · engraving, BM · mezzotint (after R. Dighton), NPG

#### **Wealth at death**

incl. lease on a house in Great George Street, Westminster; Ruscombe House, Berkshire; manor and two farms in the parish of Ruscombe

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Douglas Hay, 'Eyre, Sir James (*bap.* 1734, *d.* 1799)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/9032>, accessed 11 Dec 2015]

Sir James Eyre (*bap.* 1734, *d.* 1799): doi:10.1093/ref:odnb/9032