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PONTIFICAL INSTITUTE OF MEDIAEVAL STUDIES

RERUM BRITANNICARUM MEDII ÆVI SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

Years XVII. and XVIII.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

Years XVII. and XVIII.

EDITED AND TRANSLATED

BY

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INTRODUCTION.

INTRODUCTION.

The old editions of years 17 and 18 Edw. III.

The various old editions of reports of the year 17 Edward III. have been described in the previous volume of Year Books containing the first three terms of that year. The old editions of reports of the year 18 Edward III. are of like character.

There is an undated edition which may be attributed to John Rastell, and was, therefore, printed not later than the year 1533, and which is precisely similar to his edition of the Year Books of 17 Edward III.[1] Like that, it was originally published by itself, as it contains at the end the statement that "the prisce of thys boke ys xii d. un bounde." The folios of text are numbered i. to lix., and there is a "table" occupying the back of fol. lix. and the front of a fol. lx.

As in the case of the preceding year's reports there are two undated editions which appear to have been printed by Tothill, one in or about the year 1561, and one in or about the year 1584.[2]

There are also two dated editions of this as of the preceding year, those of 1619 and 1679.[3]

The remarks already made on these editions of reports of the seventeenth year of the reign apply in every respect except one to those of the eighteenth. They have all been printed in such a manner that a

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[1] For a description of this edition *see* Y.B., Hil.-Trin., 17 Edw. III., Introd. pp. xii.-xiii.

[2] For a description of the two editions of 17 Edw. III. attributed to Tothill, *see* Y.B., Hil.-Trin., 17 Edw. III., Introd. pp. xiii.-xvi. It is equally applicable to the two editions of 18 Edw. III.

[3] *See* Introd. to Y.B., as above, pp. xvii.-xx.

reference by folio to one is a reference to all. There are errors and imperfections in them all, but that of 1679 again appears to be the worst. There are, however, in the old editions of Michaelmas Term in the 17th year (as in those of Hilary and Easter Terms) some reports for which no manuscript authority now appears to be in existence. Almost all of these seem to have been unknown to Fitzherbert, or disregarded by him, as he makes no mention of them in his *Abridgment*; and most of them are merely different accounts of the cases found in the known manuscripts. There is no reason to doubt that they did at one time exist in contemporary manuscript form, because they are commonly found to agree with the record quite as well as the others. As no edition of the Year Books of 17 Edward III. was published earlier than the first edition of Fitzherbert's *Abridgment*, it follows that the MSS. must have been in existence when he wrote, but that, if he was acquainted with them, he did not see fit to make any use of them.

Transpositions in the present edition where there are two independent reports of the same case, and where different cases have hitherto been confused.

The reports for which no manuscript authority has been found have in this volume been treated in the same manner as in the volume which immediately precedes. The text has been corrected, when possible, by the aid of the parallel reports of which contemporary manuscripts are still in existence, and by the records of the cases. The abbreviations have been extended in accordance with the mode or modes prevailing at the time at which the causes were heard. Where there are two different reports of the same case in the same Term separated by a long interval in the old editions they have been brought together, and no longer appear as different cases. Where different cases have obviously been confused through the carelessness of the editors or printers, transpositions have been made, so as to complete some of the reports, and relieve others of matter which does not belong to them, and is unintelligible until restored to its proper place.

In one instance the transposition may, at first sight, appear to have been somewhat arbitrarily made. A passage standing in the old editions as the conclusion of No. 112 of Michaelmas Term 17 Edward III. (which is in fact a second report of No. 25) has now been transferred to the end of the second report of No. 21, which appears in the old editions as No. 108 (*bis*). It relates to the interval allowed for an adjournment, in cases of *Quare impedit*, by the Statute of Marlborough, c. 12. As No. 25 is a case of *Quare impedit*, and No. 21 is a *Quare incumbravit*, it may, perhaps, be asked why the passage should not be regarded as belonging really to No. 25 rather than to No. 21. The answer is that it is absolutely inconsistent with the pleadings in No. 25. In that case there was no pleading to issue on the facts, and no jury called, or to be called. In No. 21, however, there was an issue, and the county from which the jurors had to be summoned was Cornwall, as the church of Kilkhampton, to which the *Quare incumbravit* has reference, is in that county. Counsel is represented as complaining that the day which had been given, according to the entry of the clerk upon the roll, was at a shorter interval than was allowed by the Act; and to enforce his argument he said "the place from which "the jury will come to try that issue is in the most "foreign county in England." By the expression "most foreign" he, no doubt, meant the county which is the most remote from Westminster, and from his point of view it was not an unapt description of the county which includes the Land's End.

Another objection to the transfer might, perhaps, be raised on the ground that in this passage Counsel is made to mention the Act as if it were applicable to the particular case in which he is engaged, whereas in other places we find a decision that it was not applicable to cases of *Quare incumbravit*. That objection vanishes, however, as soon as the words are carefully

regarded, for Hillary, J. said that a longer time had been given than the longest time allowed by the Statute. Had the case really been one of *Quare impedit* there would have been no power under the Act to extend the time, and it thus becomes manifest, in another way, that the passage does not belong to the *Quare impedit* No. 25, or to any other *Quare impedit*. There is, in fact, no case in the Term to which the passage could belong except the *Quare incumbravit*, and, although the matter is very differently put elsewhere[1] (the Counsel on the other side praying for a shorter instead of a longer interval), the result is precisely the same.

Discovery of reports not printed in the old editions of the Year Books.

Though, however, there are some forms of reports, for which there is now no known manuscript authority, in the old editions of three of the Terms of the seventeenth year of the reign, the position is reversed when we come to the eighteenth year. There we find reports of cases previously unknown. There also we find Fitzherbert making use of forms of reports which have no place in the old printed editions, and neglecting those which the printers of the Year Books gave to the public. Fortunately there is one (though only one) known MS. which contains Fitzherbert's forms, and which, though not contemporary, was written long before Fitzherbert's time.[2] Had this perished with others, we might, indeed, have believed that he was acquainted with some such manuscript authority, but we should have had to take upon trust that which we now know with certainty.

The MSS. used: rapid degeneration after 36 Edw. III.

The MSS. used to settle the text have all been described in previous volumes, viz., the Lincoln's Inn MS., the Harleian MS., No. 741, the Additional MS. in the British Museum numbered 25,184, and the MS.

[1] Y.B., Easter, 17 Edw. III., No. 3, p. 232, and below, Hil., 18 Edw. III., No. 43, pp. 424-426.

[2] *See* below, p. xix.

in the University Library at Cambridge numbered Hh. II. 4, or 1632.

The Harleian volume, however, appears to require some further notice. As already mentioned,[1] it contains one folio (110) of reports of Hilary, 18 Edward III., in a hand approximately contemporaneous, but these end abruptly with case No. 9,[2] which is left unfinished. Reference to this folio is made in the footnotes as "Harl. (No. 1)." At folio 111 commences another set of reports of the same Hilary Term written in a later hand, reference to which is made in the footnotes as "Harl. (No. 2)." The greater part of these are different accounts of cases which are in the other MSS. (including folio 110 of the same Harleian volume) and printed in the old editions, but in several instances they introduce new cases. None of them are to be found in the old editions. Those among them which were used by Fitzherbert for his *Abridgment* were used almost to the exclusion of those found in the old printed Year Books. He could not, however, have taken his notes of them from this particular MS. He must have had before him some earlier copy which has now disappeared, but this at any rate shows the reports in the form upon which he relied.

The Harleian reports are continued in the same hand as far as Michaelmas Term in the 18th year, and the difference between this MS. and those which are more nearly contemporaneous is of some importance in the history of reporting. It must have been written after (probably about a generation after) the commencement of the Act 36 Edward III., c. 15, according to which the pleadings in the Courts were, from and after the following Hilary Term, to be no longer in French but in English. It shows that French was not thoroughly understood by the scribe who copied from some earlier MS. He evidently wrote mechanically

[1] Y.B., Mich., 13—Hil., 14 Edw. III., Introd. pp. xviii.-xix

[2] *See* below, p. 443, note 6.

without comprehending many of the passages. Like the early printers of the Year Books, he sometimes makes two words into one, at others makes one word into two or three. Thus in one instance in which I have silently made the correction in the text, he converts "lestatut" (the Statute) into "lest a t$\bar{\text{o}}$,"[1] under the impression apparently that "lest" was a verb, and had some relation to a tenant. We thus learn that the faults of the earliest prints were, to some extent, at any rate, caused by the faults in the later manuscripts, and that the value of manuscripts which came into existence even a short time after the Act is in no way comparable with that of the contemporary manuscripts of reports of cases of earlier date.

Records compared with the reports.

As usual, I have compared the reports with the records, searching every roll of the *Placita coram Rege* and the *Placita de Banco*, as well as various Assise Rolls, skin by skin, from end to end. I have also made an examination of certain Public Record Office Lists and Calendars in the hope of finding other matters elsewhere. I believe I have identified among the records every case which is susceptible of identification by inspection of the records of each Term, in juxtaposition with the reports of the same Term. It is nevertheless possible and even probable that there may be cases reported as of one Term, when the record might be found in another, not necessarily either the next preceding or the next succeeding. In the absence of any Calendar of the Rolls, and of any Index to them, it is impossible to have any certainty on this point, though in a few instances records have been found and identified in Terms other than those in which the cases have been reported.

Fitzherbert's *Abridgment* compared throughout.

As before, every case which occurs in Fitzherbert's *Abridgment* has been traced and noted. Some, though not all, of the cases in his *Abridgment* have been noted also in the old editions, but many even of those which

[1] p. 429, line 10.

have been so noted in Hilary Term, 18 Edward III., are not in the form in which they were known to him. As already explained the form of report on which he relied for that Term has been found in one MS. only, and is quite different from the form which alone was printed in those editions. The references are now placed in the margin of the report as it was known to and used by him, and not of the report of which he was ignorant or which he did not use.

The *Liber Assisarum* also compared.

The *Liber Assisarum* of this period shows some confusion in the printed editions, many cases which belong to the 18th year of the reign being placed under the head of the 17th, though followed by a substantive heading for the 18th year. It has, however, been carefully compared with the reports of the two Terms included in the present volume, and the cases have, as before, been noted by me in the margin, though they are not shown in the margin of any of the old editions of the Year Books.

A table of references to the folios of the old editions has also been prepared on the principles explained in the last preceding volume.[1]

Variety of matters in the volume: instances.

In this, as in every previous volume of the series, technical points relating to the abatement of writs[2] abound. They were, no doubt, much studied by the lawyers of the time, but their chief interest now lies not so much in the points themselves as in the historical fact that they were once regarded as of great importance. As usual, there are many actions of Replevin, some of which reveal incidentally not a little of the lives of our forefathers, including details of the assessment and collection of taxes.[3] In an action

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[1] Y.B., Hil.—Trin., 17 Edw. III., Introd., p. xxiii.

[2] *See* the Index of Matters.

[3] Hil. 18, No. 39, pp. 612-620.

of Waste[1] we see something of disputes relating to the repair of sea-walls. Wager of Law is not infrequently mentioned.[2] We are told that the law of relief was to be learned in the Exchequer, and what it was in certain cases.[3] Of fines of lands and their various forms there are many instances. Cases relating to Ancient Demesne, and the jurisdiction of Courts of Ancient Demesne are not wanting.[4] We are told a little of the limitation of the jurisdiction of Justices at *Nisi prius*.[5] We are made acquainted with some proceedings in the Court of Hustings in London,[6] and with proceedings in Error thereupon, by Commission, at St. Martin's le Grand, when the Recorder has recorded by word of mouth.[7] The King's Roll, as distinguished from the Roll of the Justices of the Court of Common Pleas, which has been described in another volume,[8] is again brought into notice.[9] We see that the *Secta* or suit, the plaintiff's followers who came to support their friend, and, if necessary, speak for him, in the olden time, had now become a mere form of words in the count or declaration. A proposal made by the defendant's counsel in an action of Debt that the plaintiff's *Secta* should be examined, was promptly negatived by the Court, which ruled that the producing of Suit was a mere formality as well in personal as in real actions.[10] A writ of Formedon in the reverter was held to be good when the gift had been in the curious form to a man and his sister, and the heirs issuing from their two bodies, or as it is expressed in a second report of the same case, to the heirs of their two bodies begotten.[11]

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[1] Mich. 17, No. 72, pp. 336-340.

[2] Hil. 18, No. 12, p. 466; No. 19, p. 512 and p. 518; No. 41, p. 622.

[3] Mich. 17, No. 67, p. 324.

[4] Mich. 17, No. 28, pp. 140-148; No. 89, p. 380; Hil. 18, No. 10, pp. 452-460.

[5] Mich. 17, No. 35, pp. 204-208.

[6] Hil. 18, No. 5, pp. 420-430.

[7] Hil. 18, No. 25, pp. 552-564.

[8] *See* Vol. Y.B., 16 Edw. III., Part 2, Introd. pp. xxv.-xxix.

[9] Hil. 18, No. 4., p. 420.

[10] Mich. 17, No. 14, p. 72.

[11] Mich. 17, No. 24, p. 122 and p. 124.

We see the life led not by the men of one class alone, but by the men of all classes in the Kingdom. The villein, the poor freeman, the attorney, the parson, the great land-owner with his rights of wardship and marriage, the Earl, the Bishop, the Abbot, and the alien Prior, all, as it were, pass in review before us. We catch glimpses of Queen Philippa the King's consort, and of Queen Isabella his mother, and we see Queen Isabella's Sergeant-Butler, William Pitte, pensioned off, and living comfortably in Pershore Abbey as an esquire with his groom, both well clad and well fed.

All classes of society represented.

The death of this butler led to a dispute between the King and the Abbot of Pershore of a kind which was not uncommon in the days of abbeys and corodies. The King maintained that he had a right to a corody in Pershore Abbey, nominated a successor to Pitte, and commanded the Abbot to receive him into the House, and treat him in all respects as Pitte had been treated. The Abbot disregarded the command, and, when action was taken to enforce it, he set up the usual defence that Pitte had been received by courtesy on the King's request, and not because the King had any right of corody in the Abbey. According to an Exchequer roll cited by Fitzherbert,[1] Pershore was one of the Abbeys in which the King had this right, but nevertheless a jury found against it, and the Abbot had judgment in his favour in the King's Bench.

Corodies: laymen in the monasteries: past members of Royal Households.

Though the case does not present any very unusual features, it may be worthy of attention as showing the class to which the persons nominated by the King ordinarily belonged, and the difficulties which sometimes arose in the attempt to provide for his servants. The nominee was one Thomas de Mussendene.[2] The name of Thomas Colley is substituted in the report,[3] possibly because Colley had served in the King's buttery[4] as Pitte had served in Queen Isabella's. This was not, however, the first time that Mussendene

[1] F.N.B., 529.
[2] Appendix, p. 643.
[3] Hil. 18, No. 8, p. 437.
[4] Pat. 19 Edw. III., p. 1, m. 16.

had in vain sought a home in a monastery. In the 14th year of the reign, when he was described as the King's "dilectus valectus," he met with a similar disappointment at Colchester, where the Abbot declined to admit him, and like the Abbot of Pershore, succeeded in keeping him out.[1]

He, no doubt, had served the King, as it may be seen that most other nominees had done, in some capacity in the royal household. We know that Nicholas de la Garderobe had died, not long before, in the Priory of Merton,[2] and that the King nominated another old and faithful servant to take his place there. There it was the King's Wardrobe which supplied the corody-man. In the record printed in the present volume we find it alleged on the King's behalf that in the reign of Henry III., Peter Lewere, who was probably Master or other officer of the King's Ewry, had had a corody in Pershore Abbey. So also it was said had Gilbert le Hauberger, who, no doubt, had charge of the King's coats of mail, in the reign of Edward I., and before him in the same reign Edmund de la Panetrie, the Master or other officer of the King's Pantry. Pitte's immediate predecessor in the reign of Edward III. was, according to the statement made on the King's behalf, "John de Kekynwyche, Fauconer," or the King's Falconer.

From one point of view it is immaterial whether these past members of the household really had corodies in the Abbey or not. They were certainly representatives of the class from which the King's nominees came, whenever he was successful in providing for them in a monastery, and such men must have had an appreciable effect upon the society in which they lived, and upon the general mode of monastic life. They were connoisseurs in all matters relating to the table and to the cellar, and in all the sports of the field. Every monastery appears to have

[1] Y.B., Trin., 14 Edw. III., p. 314, note 1.

[2] Y.B., Mich., 15 Edw. III., p. 347, note 5.

had some esquires of its own, as well as corody-men who were received into the House for various considerations as distinguished from those whom the King could nominate. There was thus a body of laymen living in or frequenting the Religious Houses, which almost certainly took its tone from the officers of the Royal Household who brought with them their recollections of the Court.

Deceit: fraudulent attorney examined in Court, and committed to the Fleet.

A case which throws light at once upon the manners and customs of the time, and upon the practice of the Courts in particular circumstances, is one of Deceit in Michaelmas Term.[1] One William de Frodeswalle, who is described in the report as a poor man, found himself deprived of his two acres of arable land, and one acre of meadow, by force of a writ of seisin in favour of one Richard, son of John Elys. The writ was supposed to be for the execution of a recovery by Elys, on the default of Frodeswalle and his wife and others, in an action brought against them. No such action had in fact ever been brought, and Frodeswalle sued his writ of Deceit against Elys and the Sheriff of the county in which the writ of seisin had been executed, alleging that Elys had caused it to be forged and placed on the Sheriff's files among the King's genuine writs.

Elys, who is described in the report as an attorney, appeared in Court, and was sworn and examined by the Justices. He then confessed that he and one John de Neuton, as the Sheriff's bailiff, had made out a precept in the Sheriff's name, without the Sheriff's knowledge, reciting that he had recovered his seisin in the King's Court, and directing Neuton to give him seisin, in virtue of which he had seisin, and Frodeswalle was turned out.

Upon this the Court gave judgment that Frodeswalle should recover damages assessed by the Justices at ten marks, and that Elys should be committed to the Fleet Prison.

[1] Mich. 17, No. 27, pp. 138-141.

In the following year Elys was released, after having been brought before the Justices, who commanded him to depart from the Court, and forbade him thenceforth to sue any writ or business there for any one. In short, he was deprived of the power of acting as attorney.

The beginning of the Sheriff's Turn in the County of Lancaster and of the Turn in Furness.

The rival jurisdictions of the County Court of the county of Lancaster and the Sheriff's Turn held in Furness have some light thrown upon them by a report and the corresponding record. The matters in dispute take us back to the first origin of two Courts. Certain claims of the Abbot of Furness appear to have been founded in the first instance upon a charter from King Stephen,[1] which was confirmed in subsequent reigns.[2] The successors of the first grantee seem to have believed that they had thus acquired a right to some kind of Turn within their lands of Furness, until the Justices in Eyre visited the County of Lancaster in the 20th year of the reign of Edward I., when the existing Abbot had to answer to a *Quo Waranto*.[3] It was then found by the jury that there had been no Sheriff's Turn in the County of Lancaster at large before the time when Mathew de Redeman was Sheriff in the reign of Henry III., or, as elsewhere expressed, about the 31st year of that reign.[4] The Sheriff then began to hold his Turn twice a year, according to the custom of the realm, throughout the Hundreds and Wapentakes of the County. Then also the Coroner of the County began to hold a Turn in

[1] A charter from Stephen, while he was Count or Earl of Boulogne and Moreton, is printed from an *Inspeximus* of Hen. IV. in Dugdale's *Monasticon*, Vol. V., p. 247.

[2] An *Inspeximus* of the previous charters with confirmation in the year 21 Richard II. is set out in Beck's *Annales Furnesienses* (1844), p. xlviij. And *see* Baines, History of the County Palatine and Duchy of Lancaster (Ed. Harland), Vol. II., p. 630 and p. 632.

[3] Eyre Roll, County of Lancaster, 20 Edw. I. The portion relating to this *Quo Waranto* has been printed in the *Placita de Quo Waranto* published by the Record Commissioners in 1818, pp. 369-371.

[4] Below, p. 223, note 3.

Furness twice a year, issuing his precepts to the Abbot's bailiffs, but in other respects conducting the Turn within the Abbot's liberty as a Sheriff would in the geldable part of the County, and receiving the issues and profits for the King, though without any special warrant. The Abbot's right to have all summonses and attachments made in Furness by his own bailiffs in matters touching the Crown was vindicated, but not his right to the Turn, which was adjudged to be in the King, to be held by the King's Coroners, and so to have been from the time when the Turn commenced.

Grant of the Turn in Furness to the Earl of Lancaster, and by the Earl of Lancaster to the Abbot of Furness.

Edward I. being seised of the Turn granted it to his brother Edmund,[1] Earl of Lancaster, in fee, from whom it descended to Thomas, Earl of Lancaster, as son and heir, and from him, because he died without heir of his body, to Henry, Earl of Lancaster.

Edward III. having previously granted by charter to the Abbot and Convent of Furness that no sheriff, or bailiff, or other officer of the King should enter their lands to effect summonses, distresses, or attachments, or to perform any other official duties, unless by reason of the default of the Abbot and Convent, or their bailiffs or officers, caused Letters Patent to be issued in relation to this Turn itself. In order to put an end to litigation which had arisen in various Courts, he gave a license to Henry, Earl of Lancaster, to grant, and a license to the Abbot and Convent to receive from the Earl (the Statute of Mortmain notwithstanding) the Sheriff's Turn (as it was now called) in Furness, to be held by their bailiffs and officers, so that they might exercise the full jurisdiction of the Turn, and receive all the issues and profits. The Earl made the grant to the Abbot and Convent accordingly, reserving to himself a rent of six shillings and eight pence *per annum* to be paid by them,[2] and the grant was confirmed by the King.[3]

[1] Below, p. 223, note 3.

[2] Below, p. 213, note 5.

[3] Rot. Chart. 10 Edw. III., No. 10 (cited by Harland).

Action of Trespass brought by the Abbot against the Bailiff of the Wapentake of Lonsdale.

Relying upon this title the Abbot of Furness, in Michaelmas Term, 17 Edward III., brought an action of Trespass[1] against Edmund de Neville, bailiff of the Wapentake of Lonsdale, and his two sub-bailiffs. It was recited in the writ that complaint had been made to the King, on behalf of the Abbot and Convent, suggesting that the bailiff and sub-bailiffs had entered the Abbot's lands and fees in Furness, and were daily continuing to enter them, and had effected distresses, and attachments on divers persons there for blood-shed and other offences which had occurred there, and which ought to be presented in the Sheriff's Turn belonging to the Abbot, with the object of compelling those persons to present the matters before the Sheriff in his County Court. The King, it was alleged, had thereupon many times commanded the bailiff and sub-bailiffs that, if the facts were as stated, they should desist from such distresses and attachments for any such purpose, and should not in any way intermeddle in the land of Furness or in the exercise of any offices therein, and should without delay release the distresses and attachments already so made, or signify to the King wherefore they had not obeyed his command previously directed to them, or else appear in the King's Bench to show why they had in contempt omitted to obey his commands so many times sent to them.

The claim to the Serjeanty of the Bailiwick.

The defence of the bailiff, like the complaint of the Abbot, takes us back to the time of Edward I. and his Eyres, and his writs of *Quo Warranto*. One Orme de Kellet then claimed[2] to be the King's bailiff of the Wapentake of Lonsdale, and, in virtue of that office, to effect summonses, distresses, and attachments therein. He alleged that King John, when as yet only Earl of Moreton, had made, and, when King, had confirmed, a grant of the serjeanty of the wapentake to

[1] Mich. 17, No. 37, pp. 212-226.
[2] Eyre Roll, County of Lancaster, 20 Edw. I., printed in the *Placita de Quo Waranto*, fo. 384.

Adam son[1] of Orme de Kellet, in fee. It was, however, objected that John had never been seised of the bailiwick of the wapentake, either while he was King or previously, and so the jury found.[2]

Orme de Kellet then claimed the bailiwick in right of his ancestors from the time of William the Conqueror, but it was urged that this alleged title was inconsistent with that which he had previously set out by charter from King John, and judgment was deferred. An entry, however, in the Red Book of the Exchequer[3] shows that in John's reign one Adam de Kellet (probably the Adam mentioned in the *Quo Waranto*) did hold land in Kellet by serjeanty, and an entry in the *Testa de Nevill* contains the statement that an Orme de Kellet (probably the Orme who was defendant in the *Quo Waranto*) afterwards held of the King *in capite*, "*per seriantiam custodiendi Wapentachium de Lonesdale.*"[4]

The rights claimed by this Orme de Kellet appear to have passed subsequently to the family of Holand. In the 17th year of Edward III. a fine[5] was levied between Robert de Holand, knight, and Elizabeth his wife, plaintiffs, and John Payn, chaplain, deforciant, of the manor of Nether Kellet, with the appurtenances, and (*inter alia*) of the bailiwick of the wapentake of Lonsdale, which manor and bailiwick Edmund de Neville then held for term of his life. This Edmund was, no doubt, the defendant in the action of Trespass brought by the Abbot of Furness.

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[1] Described as "Ada daughter" by Harland (Vol. II., p. 546) and as "Ade filie" in the printed *Placita de Quo Waranto*. The causes of the mistake were probably ignorance of the fact that the dative of Adam is Ade, and the difficulty of distinguishing "o" from "e," "filio" from "filie," in some mediæval writing.

[2] "Et sciendum quod juratores "testantur quod prædictus dominus "J. Rex, dum fuit Rex, seu antea, "nunquam fuit in seisina de præ-"dicta seriantia," &c.

[3] Fo. 125 d (printed M. R. Series, p. 464).

[4] *Testa de Nevill*, as printed by the Record Commissioners, fo. 371 b.

[5] Cited by Harland from the records of the Duchy of Lancaster, Vol. II., p. 598.

The lands of Furness alleged by the Bailiff to be within the Wapentake.

His substantive defence in bar of the action (apart from certain technical exceptions to the writ taken by his sub-bailiffs or himself, and a denial that any prohibition as to levying the distresses, &c., had ever been delivered to him) was to the following effect. The lands of Furness are within the wapentake of Lonsdale, in the fee of which he is bailiff, and he holds the bailiwick as appurtenant to his manor of Kellet, for his life, by demise from Robert son of Robert de Holand to whom the reversion belongs.

Question whether bloodshed should be presented at the Sheriff's Turn belonging to the Abbot or in the County Court.

As to the article touching blood-shed which the Abbot supposes ought to be presented by his own bailiffs at his own Sheriff's Turn, Edmund (with a protestation not admitting that the Abbot has the franchises which he claims) asserts that it ought to be presented by the bailiff of the wapentake, or his officers, at the County Court held before the Sheriff of the County, and so had been presented from time immemorial. One Roger de Burghe and others had fought and drawn blood at Ulverston on Michaelmas day in the 14th year of the reign, and he had presented the article of blood-shed against them at the County Court held before the Sheriff. They did not appear at the County Court to answer the presentment, and he, in accordance with the Sheriff's precept, then distrained them to appear, but he did not distrain them for the purpose of compelling them to present the article at the County Court. He, however, in this way maintained that blood-shed was not one of the articles which should be presented at a Sheriff's Turn, or, at any rate, not at the particular Turn which the Abbot claimed.

The Abbot, in his replication, set out the title already mentioned, and alleged that, after the Turn commenced, and was adjudged to belong to the King, the article of blood-shed had always been presented at the Turn alike in the time of Edmund and Thomas, Earls of Lancaster, and of Henry, Earl of Lancaster, who granted the Turn to him.

The bailiff rejoined that the article of blood-shed had, from time immemorial, been presented by the bailiff of the Wapentake of Lonsdale before the Sheriff in his County Court, and not in the Sheriff's Turn. As tenant for life of the office he prayed aid of the reversioner, Robert, son of Robert de Holand, who, however, did not appear. The *Venire* was consequently awarded on the bailiff's averment, but, after adjournments, the proceedings dropped.

Voucher and Warranty.

Some of the cases in the present volume are of considerable importance in relation to voucher and warranty, and suggest reflections touching the use of the terms "voucher to warranty" and "warrantor" as they have been commonly employed. From the time of Domesday Book downwards (not to look further back) it was the custom of a tenant in danger of losing his lands to call to his protector, liberator, or defender. His call is sometimes indicated by the word *reclamat*, sometimes by *revocat*, sometimes by *vocat*. In the earliest cases we find that he calls upon some person named "*ad tutorem*," "*ad defensorem*," "*ad liberatorem*," "*ad warantum*." In process of time all the other forms died out, and the tenant, when vouching, is always found to make his call "*ad warantum*."

The call of the tenant named in the Original Writ to the "*warantus*" or "garraunt."

In the earliest times the *defensor*, *tutor*, or *liberator* was apparently the lord recognised by the tenant, whether he had become the lord's man by commendation or in any other way. This was simple enough, but matters became much more complicated as soon as a conveyance was made by A. to B. in accordance with which A. was not only bound to warrant the estate conveyed to B., but also A.'s heirs to B.'s heirs, and this complication was increased after estates tail had come into existence under the statute *De donis conditionalibus*. The call had then ceased to imply, if it ever did, that the person called to warrant was of necessity bound in law to do that which he was asked to do. This *warantus* or *garraunt* was, at

the tenant's request, to be summoned to warrant in a particular county, but it would be inexact to describe him as a warrantor at this stage of the proceedings. The call was executed, through the Sheriff, by means of a writ of *Summoneas ad warantizandum*. This might or might not have the effect of bringing the *warantus* or *garraunt* into Court, but, even if it did, it did not as yet make him a warrantor. He might counterplead the warranty, or, in other words, dispute his liability to warrant, and in that case he might still continue to be described as the *garraunt* in the reports until the question of the lien—the question whether he was bound to warrant or not—was determined. If his counterplea was held good he escaped from the warranty altogether, and never became a warrantor at all.

How the vouchee or "*warantus*" became "tenant by his warranty."

On the other hand the vouchee or *warantus* might, on his appearance in Court, warrant, or as the phrase more commonly ran, enter into warranty. If he counterpleaded the warranty, and the decision was given against him, he also had to warrant, or enter into warranty. In either case the technical name by which he was then known was not, in the language of the period, warrantor, but "tenant by his warranty." In a modern sense he might then, perhaps, be called a warrantor, but the expression "tenant by his warranty" meant not only that but something more. The original tenant, against whom the action was brought, went out of Court, and the "tenant by his warranty" took the original tenant's place. The demandant had to count against him, and not against the tenant named in the original writ, and he had to plead, as best he might, against the demandant. If he failed, and the demandant was successful, judgment might be given for the demandant to recover the tenements demanded from the tenant named in the original writ though now out of Court, but for this tenant to recover tenements of equal value from the tenant by his warranty.

It sometimes happened that when the "*warantus*," "*garraunt*," warrant, or vouchee came into Court, and warranted, a dispute arose as to the extent of the warranty—as to whether it covered the whole of the demand or not. The long report No. 65 of Michaelmas Term, 17 Edward III., contains pleadings and arguments in a case of that kind, in which the vouchee continued to be called throughout the "*garraunt.*" In an action of Intrusion touching a manor (excepting one messuage and twelve acres of land) the tenant "*vocavit inde ad warantum Henricum fratrem et heredem "Thomæ nuper Comitis Lancastriæ.*" The vouchee appeared, and in the usual course asked what there was to bind him to warranty. Two deeds executed by Thomas Earl of Lancaster were produced, and Earl Henry then warranted, but excepted from the warranty a park, foreign wood, and knights' fees, which were excepted in the deeds. The exceptions in the deeds were thus different from those in the demandant's writ. The demandant's counsel, after raising some objections, counted in accordance with the original writ against the warrant ("*vers le garraunt*"). The Earl's counsel immediately pleaded in abatement of the count that it was made against him as tenant by his warranty of the whole manor, except what was excepted in the writ, whereas he had warranted only in a different way, and with other exceptions, and less than was demanded. He was tenant by his warranty only of that which he had actually warranted, whatever that might in law be construed to be, and the decision on that point does not appear; but he was undoubtedly the "*garraunt*" in relation to everything demanded against the tenant named in the original writ who had vouched him, and so he is described again and again in the course of the report.

Case in which the "warantus" (the Earl of Lancaster), after warranting, disputed the extent to which he had become tenant by his warranty.

Though "voucher to warranty" has been the phrase commonly used since the time of Coke at least, it appears to have been founded upon a misconception

The use of the terms "voucher to

"warranty" and "warrantor."

which was in all probability caused by an erroneous extension in the printed Year Books or law treatises written in French. "A. vouche a garr. B." is the commonest form in which the fact of the voucher is stated. When "garr." is turned into *garrante* and from that into *garrantie* it is naturally enough translated "warranty," and so we arrive at the form "A. "vouches B. to warranty." But no such form is found in the early French manuscripts, nor is the form "*vocare ad warantiam*" found in the corresponding Latin records. There also the abbreviated word *war.* occurs often enough, but whenever there is an extension the word appears in the accusative as *warantum.* This *warantus* or *garraunt,* as soon as he is vouched, becomes a *vocatus ad warantum,* a *vouche a garraunt,* a person upon whom a call is made as being one to whom the liability of warranting is alleged to attach. It would of course be inconvenient to use this or any other long form of words in translating the word "*garraunt*" wherever it occurs. "Warrantor," as already explained, is not a strictly correct translation. "Vouchee" would be correct as far as it goes, but it does not go quite far enough, because when the "*garraunt*" has come into Court and is arguing the question whether he is bound to warrant or not, he is a vouchee and something more.

"Vouchement de garant" in Normandy.

It seems therefore almost necessary to use the word "warrant" as a translation of *warantus* and *garraunt,* though it has, of course, another meaning. This rendering of the term is not altogether without precedent,[1] and is in harmony not only with the Latin and French of the Courts in England, but also with the French used on the other side of the Channel. In *Le Grand coustumier du pays et duche de Normendie* there is a section

[1] "Warrant" is commonly used as the equivalent of "garraunt" in Nichols's translation of Britton, though the expression "voucher to warranty" occurs there also, as, indeed, in almost every book in which the subject is mentioned.

devoted to the subject of voucher, and it is headed "*De vouchement de garant.*" If confirmation were needed, it would be apparent from this that voucher never was "to warranty" but of the person called the warrant. "Garant," the book tells us, "peut estre "appelle en deux manieres, ou comme defenseur qui "est tenu a garantir le fief, ou comme ainsne du fief "de qui on doibt pleder principalment."[1]

Case in which a tenant vouched himself with the object of saving an estate tail.

In Hilary Term, 18 Edward III., there is a case[2] doubly reported which, while showing how great was the anxiety to preserve an estate tail when once created, is also a curious illustration of the law of warranty. An action of Dower was brought against a tenant in tail. The gift had been made to him by his father, whom he consequently vouched to warrant. The father, however, died, before being brought into Court by process. The Sheriff having made a return to this effect, the tenant in tail vouched himself, with the object, as his counsel stated, of preserving the estate tail. He was his father's heir, independently of the entail, and consequently the reversion, as it is expressed in one of the reports, or the fee simple, as it is expressed in the other, had descended to him.

Had the voucher been allowed, the tenant would, as it were, have divided himself into two. As the tenant named in the original writ he would have gone out of Court. As tenant by his warranty he would have pleaded against the demandant. In the event of a decision in the demandant's favour the demandant would have recovered the particular land in demand against the tenant in tail, but the latter would have recovered over against himself as tenant by warranty. He would then have made over to himself as tenant in tail other lands of equal value with those recovered by the demandant, and so an estate tail would have been preserved.

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[1] *Grand Coustumier* (Rouen, 1539), fo. lxix.

[2] No. 18, pp. 504-510. *See also* Y.B., M. 18 Edw. III., No. 60, where a like voucher was allowed.

Law touching the prerogatives of the Queen Consort.

Though the law concerning the prerogatives of the Queen Consort as recognised by the Judges does not appear to have been different from that of later times, it was not so firmly settled but that Counsel could call it in question. Thus, when Queen Philippa brought a *Quare impedit* against the Abbot of Cirencester, and her title was shown in the declaration, the Abbot's counsel pleaded that she was *covert baron*, and therefore not in a condition to be answered without her husband. He was, however, immediately compelled to answer. In relation to certain exceptions to the writ, it was held that the Queen "is a person of so high "estate that she shall have a writ in all points such "as the King would have." [1]

The "Round Table" of Edw. III. mentioned in one of the MSS. of the Year Books.

It could hardly have been expected that the reporters who lived turmoiled in the Courts of Justice would have introduced among their reports any references to the King's jousts and tourneys, and orders of chivalry at Windsor. In one of the MSS., however, though in one only, it is mentioned, after a notice of the death of Pulteney (one of the countors whose name has frequently appeared), that "the Round Table com-"menced at Windsor on Monday before the Feast of "the Conversion of St. Paul in the 18th year." [2]

So far as the institution of a Round Table by Edward III. is of any importance, this entry in the MS. is of importance, because it serves to fix a date which has been vaguely given elsewhere, and as to which there have been contradictory statements. As the subject was evidently of interest to some of the lawyers of the period, a few words upon it may, perhaps, not be out of place here.

Early stories of Round Tables.

Notwithstanding all the fables which have grown up around the name of King Arthur, there does appear to be a certain *substratum* of fact in the stories relating to the early existence of round tables at which

[1] Hil. 18, No. 6, pp. 430-434. | [2] p. 415, note 1.

distinguished warriors sat. Unless Athenæus[1] invented a description which he attributes to Posidonius, it must be true that before the Christian era the Κελτοί or Gauls did sit at wooden tables, that on certain occasions they did sit in a circle, the most eminent person (ὁ κράτιστος) in the post of honour, that on these occasions the banquet was of an essentially military character, each seated guest having his shield-bearer standing behind him, while the spear-bearers sat in another circle. The resemblance of the Gallic fighting-man and his shield-bearer to the mediæval knight and his squire is, to say the least, a curious coincidence. It does not, of course, follow that a similar practice prevailed in Britain after the Romans had abandoned it, still less that King Arthur instituted an order of Knighthood.

Effect of the stories of King Arthur's Round Table in the 14th century.

There are indications, however, that the stories of King Arthur and his knights had made a deep impression not only in England but elsewhere before the time of the Round Table of Edward III. To look no further back than the year 1328 we find that Roger de Mortimer, Earl of March, induced the King and the Queen Mother Isabella to attend a festival at Wigmore, together with nearly all the noble knights of England, and that he "there held a Round Table for several "days."[2] This seems to have provoked the remark that he was exercising the functions of royalty, from which it may be inferred that the expression "Round "Table" had a quite definite meaning, and that, according to the received opinion, no one but the King ought to preside.

Different accounts of the Round Table of Edw. III. with different dates.

The contemporary chronicler Murimuth gives two different accounts of the proceedings relating to the Round Table of Edward III. According to one the King appointed a tournament at Windsor on the 19th of January, 1343–4 (which was a Monday), and had invitations sent to all the ladies of southern England,

[1] Lib. IV., c. 36.

[2] Avesbury (Rolls Series), p. 284.

and all the city dames of London. On the previous Sunday (erroneously described as xiii., instead of xv. Kal. Feb.) he gave a banquet in the great hall of the castle, which was nearly full of ladies, there being only two males present, both knights from France, and the King himself showed the ladies to their places, the Prince of Wales presiding elsewhere over the banquet given to the men. The jousting continued during the Monday, Tuesday, and Wednesday. On the Thursday (the 22nd of January) the King had a great dinner (*cænam*) in which "suam "rotundam tabulam inchoavit," and there took the oaths of the Earls, Barons, and Knights, whom he wished to be of the Round Table, in accordance with a particular form. He appointed the following Whitsunday for the holding of the next Round Table, and gave directions for the erection of a new building in which it was to be held. This work, however, was abandoned "for certain causes."[1]

In Murimuth's other account[2] the Sunday banquet is stated to have been on the Sunday next after the Feast of the Purification, or in other words on the 8th of February, the Feast of the Purification having been on Monday, the 2nd. He gives some details as to the dancing, which, however, are not material for the date, though they are suggestive of habits of society which might render the well-known account of the origin of the Order of the Garter not quite impossible. The jousts, as in the other account, continued during the following Monday, Tuesday, and Wednesday, in this case the 9th, 10th, and 11th of February. On the Wednesday night, according to this account, the King commanded that no knight or lady should depart, and that they should wait until the morning to know his pleasure. On the Thursday morning, the King in the royal robes, with a velvet

[1] Murimuth (Rolls Series), pp. 155-156.

[2] Murimuth, p. 231.

mantle over all, and with his crown on his head, proceeded to the chapel in the Castle accompanied by the Queen, who was "most nobly adorned," and attended by the earls and barons, and the rest of the lords and ladies. After the celebration of mass, a procession was formed, which was led by the Steward and the Marshal of England, each bearing his wand of office. They were followed by the King carrying his sceptre. Then came the Queen Consort, the Queen Mother, the Prince of Wales, Earls, Barons, Knights, and ladies to the place where they were to stand. There the King made oath that he would, at a certain appointed time, so long as he was able, commence the Round Table in the same manner as Arthur, formerly King of England (*sic*), to wit, to the number of three hundred knights, and would foster and maintain it with all his might, ever increasing the number. A like oath was taken by the Earls of Derby, Salisbury, Warwick, Arundel, Pembroke, and Suffolk, and many barons and knights who were thought worthy of the honour. The ceremony concluded with another banquet, "*potuum* "*affluente copiositate.*"

The true date determined by the MS. of Year Books.

Both accounts thus agree in giving a Sunday as the day of the preliminary banquet, the following Monday, Tuesday, and Wednesday as the days of the jousts, and the Thursday as the day of the actual institution of the Round Table; but the second account dates the whole festival three weeks later than the first. The date given in the MS. of Year Books does not, at first sight, agree in any particular. It assigns the commencement of the Round Table to the Monday before the Feast of the Conversion of St. Paul. This Feast was on the 25th of January, which fell on a Sunday in the year 1343–4, and the previous Monday was the 19th of January. If, however, the commencement of the tournament be regarded as the true commencement of the Round Table, and not simply the ceremony which is said to have occurred on the Thursday, the Year Book date harmonises with that given

in Murimuth's first account. The letters of safe conduct[1] which issued for foreign knights wishing to attend the tournament gave the day as Monday next after the Feast of St. Hilary, which was, equally with the Monday before the Feast of the Conversion of St. Paul, the 19th of January. It seems, therefore, that we may safely rely upon the Year Book date for the beginning of the proceedings by which the Round Table was instituted by Edward III. We may also, perhaps, suspect that the details supplied in Murimuth's second account have little more foundation in fact than has the date. All the doings mentioned by him as happening from the 8th to the 12th of February, 1343–4, might have happened at that or at any other time, but they certainly did not happen then.

I have again the pleasure of offering my best thanks to the Benchers of the Honourable Society of Lincoln's Inn for the loan of their valuable MS. It has been of inestimable service throughout the whole period for which I have been Editor of the Year Books, and is now in process of collation with other MSS. as far as the end of the year 20 Edward III.

The text and translation to be printed in the next volume have been sent to press.

The work on the Glossary has been steadily continued.

L. Owen Pike.

Lincoln's Inn,
26th January, 1903.

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[1] Rot. Lit. Pat. 17 Edw. III., pt. 2. m. 2.

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THE CHANCELLOR, JUSTICES OF THE TWO BENCHES, TREASURER, AND BARONS OF THE EXCHEQUER DURING THE PERIOD OF THE REPORTS.

Chancellor.

Sir Robert de Sadington.

Justices of the Court of King's Bench.

Sir William Scot, Chief Justice.
Sir Robert de Scardeburgh.
Sir Roger de Baukwell.
Sir William Basset.

Justices of the Court of Common Pleas.[1]

Sir John de Stonore, Chief Justice.
Sir William de Shareshulle, or Sharshulle.
Sir Roger Hillary.
Sir John de Shardelowe.
Sir Richard de Kelleshulle, or Kelshulle.
Sir Richard de Wylughby, or Willoughby.[2]

[1] As ascertained from the Feet of Fines of the two Terms.

[2] Appointed 20 Nov. 17 Edw. III. Rot. Lit. Pat., p. 2, m. 10. Willoughby's name appears in the Feet of Fines of Hilary, 18 Edw. III.

Treasurer.

William de Cusance.

Barons of the Exchequer.[1]

Sir William de Stowe.
Sir William de Broclesby.
Sir Gervase de Wilford.

NAMES OF THE "NARRATORES," COUNTORS, OR COUNSEL.[2]

Roger de Blaykeston.
Adam Bret.
Hamo Derworthy.
John de Gaynesford.
Henry Grene.
Thomas de Lincoln.[3]
John Moubray, or de Moubray.
William de Notton.
Richard de la Pole.
John de Pulteney, or Pulteneye, or Pultenay.[4]
Peter de Richemunde.
John de la Rokel, or Rokele, or Rokelle.
Thomas de Seton.
John de Stouford.
Robert de Thorpe.
William de Thorpe.

[1] The office of Chief Baron appears to have remained vacant for some time after Sadington had been made Chancellor.

[2] Mentioned in the *Placita de Banco* as receiving chirographs of Fines.

[3] A Thomas de Nichol is mentioned in Michaelmas Term, 17 Edw. III., R° 582, but this is probably only Thomas de Lincoln in a French form.

[4] Died at the beginning of Hilary Term, as stated in the Additional MS. 25,184.

CORRECTIONS.

Page 56, last line, *for* "it will not be" *read* "you will not."

„ 58, first line, *for* "permissible for you" *read* "fail.'

„ „ „ *dele* the word "not."

„ „ line 6, *for* "will it not be permissible for you" *read* "you will not fail."

„ „ line 7, *for* "?" *substitute* a full stop.

„ 80, line 22, *for* "W." *read* "J."

„ 98, line 24, *for* the full stop *substitute* "?"

„ 122, line 6, *omit* the word "two."

„ 141, note 1, line 2, *for* "presens" *read* "præsens."

„ 225, note, *for* "proficius" *read* "proficuis."

„ 261, margin, *after* "Acompte" *add* "[Fitz., *Exigent*, 12]."

„ 467, margin, *after* "Attachement" *add* [Fitz., *Ley*, 77.]

In the next preceding volume (Hil.-Trin., 17 Edward III.).

Page 644, col. 1., line 4 from bottom, *for* "for" *read* "against."

„ „ „ line 5 from bottom, *for* "for" *read* "against."

MICHAELMAS TERM

IN THE

SEVENTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

MICHAELMAS TERM IN THE SEVENTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

No. 1.

A.D. 1343.

Detinue of a writing, where upon traverse of the detinue, which was found, the plaintiff recovered damages. And note that the writing was burnt, and nevertheless the defendant was distrained to give it up.

(1.) § In Detinue of a writing it was pleaded to the country on a traverse of the detinue, and now it is found by verdict that the charter has been burnt by the defendant.—Shardelowe. The plaintiff is possibly in such a case that he suffers disherison unless he has the charter, because in some actions a party is not entitled to an answer without showing a specialty; or even where he was possibly tenant, and had warranty, and his specialty was lost, his land would be lost without any recovery of the value, and therefore it seems that regard must be had to this, and enquiry made as to the value of the land included in the charter, &c.—But afterwards Shardelowe said that the issue is only on the detinue, which detinue is found, and therefore the Court adjudges that the plaintiff do recover the charter, and damages assessed at one half-mark, and that the defendant be distrained to give up the charter.

DE TERMINO MICHAELIS ANNO REGNI REGIS EDWARDI TERTII POST CONQUESTUM SEPTIMO DECIMO.[1]

No. 1.

A.D. 1343. Detenue descript, ou sur travers de la detenue, qe fut trove, le pleintif recoveri damages. *Et nota* qe lescript est ars, *et tamen* il est destreint del rendre.[3] [Fitz., *Jugement*, 115.]

(1.)[2] § En Detenue descript plede fut a pais sur travers de[4] la detenue, et ore est trove par verdit qe la chartre est ars par le defendant.—Schard. Par cas le pleintif est[5] en tiel cas qil est desherite sil nust la chartre, qar en ascun accion la[6] partie nest pas responable[7] sanz especialte; ou mesqe il fut tenant par cas, et avoit garrauntie, et sa especialte fut perdu, sa terre serreit perdu sanz value, par quei semble qa ceo il covient aver[8] regarde, et enquest[9] de la value de la terre compris[10] deinz la[11] chartre, &c.—Mes puis Schard. dit qe lissue nest forsqe sur la detenue, quele detenue est trove, par quei[12] agarde la Court qe le pleintif recovere la chartre et damages taxes[13] a demi marc, et qe le defendant soit destreint[14] a rendre la chartre.

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[1] The Reports of this Term are from the Harleian MS. No. 741, the Additional MS. in the British Museum numbered 25,184, and the MS. in the University Library at Cambridge Hh. II., 4. In 25,184 and C. are inserted, before the general heading to the Term, the words "Paruyng murrust en la "Vacacion," and after it the words "Sadyntone fust fait Chauncellier."

[2] From Harl., 25,184, and C.

[3] The marginal note, subsequent to the word Detenue, is from 25,184 alone.

[4] 25,184, a. The words travers de are omitted from C.

[5] est is omitted from 25,184.

[6] la is omitted from Harl. and 25,184.

[7] C., resonable.

[8] C., avoir.

[9] 25,184, enquist.

[10] 25,184, comprist.

[11] C., en, instead of deinz la.

[12] C., here and commonly elsewhere, qai.

[13] 25,184, taxeez.

[14] C., distreint.

No. 2.

A.D. 1343. Debt for executors, who recovered damages only for the time subsequent to the testator's death.

(2.) § Executors brought a writ of Debt, and *profert* was made of the testator's acquittance, which was found by verdict to be false.—KELSHULLE to the Jury. To what damages? And sever the damages, that is to say, how much since the testator's death, and how much in case the Court shall award damages for the whole time since the debt was incurred.—And they assessed the one period at ten marks, and the other period at five marks.—SHARDELOWE. It has not been seen that damages have been recovered except since the time at which the action accrued to the party.—*R. Thorpe.* Executors do not recover to their own use, and they shall recover the whole of the damages for the same reason as that for which they recover the debt.—STONORE. The heir will recover the principal in a plea of land, and damages only since his ancestor's death.—*Thorpe.* The case of the heir who recovers his own right is not similar to that of executors who represent the testator's estate.—SHARDELOWE. Certainly, you say what is true.—*Thorpe.* And it is seen every day that a successor recovers on an obligation made to a predecessor, and damages for the whole time. *A fortiori* in this case.—And nevertheless, on account of STONORE's opinion, five marks only were awarded for damages.

No. 2.

A.D. 1343. Dette pur executours, qe recoverirent damages forsqe puis la mort le testatour.[2] [Fitz., *Damage*, 85.]

(2.)[1] § Executours porterent bref[3] de Dette, et acquitaunce fut mys avant del testatour, et trove par verdit faux.—Kels. a Lenqueste. A queux damages? Et severez[4] les damages, saver,[5] puis la mort le testatour, et si[6] Court agardera[7] damages de tut temps puis la dette encorue.—Et assistrent lun[8] temps a x marcs et lautre temps[9] a v marcs.—Schard. Homme nad pas vewe qe damages furent recoverez forsqe puis le temps qe accion luy fut acru.—*R. Thorpe.* Executours recoverent pas a lour oeps demene, et par mesme la resoun qils recoverent la dette ils recoveront tous les damages.—Ston. Le heir recovera le principal en plee de terre, et damages forsqe puis la mort son auncestre.—*Thorpe. Non est simile* de heir qe recovere son dreit demene, et executours qe representent lestat[10] le testatour.—Schard. Certes, vous dites verite.—*Thorpe.* Et homme veit[11] tut le jour qe successour[12] recovere par obligacion fait a predecessour, et damages de tut temps. A plus fort en ceo cas.—*Et tamen, propter opinionem* Ston., v marcs pur damages furent soulement[13] agardes.[14]

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[1] From Harl., 25,184, and C.
[2] The marginal note, except the word Dette, is from 25,184 alone.
[3] bref is omitted from C.
[4] C., severs.
[5] saver is omitted from Harl.
[6] si is omitted from C.
[7] C., ajugera.
[8] C., en.
[9] temps is from Harl. alone.
[10] lestat is omitted from C.
[11] 25,184, voet.
[12] successour is omitted from C.
[13] C., taunsoulement.
[14] C., ajuges.

No. 3.

A.D. 1343. Debt recovered. *Fieri facias* against executors on the plea of one of them. And execution was heretofore awarded of the goods of the deceased. So was the judgment, and nevertheless now, because the COURT

(3.) § A debt, heretofore, as appears above,[1] was demanded against three executors. At the Grand Distress one came, and the others did not. And he traversed the obligation, and the finding was for the plaintiff. Therefore it was then adjudged that the plaintiff should recover against him and the others out of the goods of the deceased. And a *Fieri facias* issued in respect of the goods of the deceased, which is not yet served.—*R. Thorpe.* We pray execution in respect of their own goods: for he who pleaded such manner of plea was, when the issue was found against him, chargeable in respect of his own goods, and consequently they all were.—SHARDELOWE. I grant you that he who pleaded in that way is charged in respect of his own goods, even though he have not any goods of the deceased, but it does not therefore follow that the

[1] Hilary Term No. 58, and Easter Term No. 1.

No. 3.

A.D. 1343. Dette recoveri. *Fieri facias* vers executours sur plee un deux. Et fut agarde autrefoith execucion des biens le mort. Issi fut le jugement, *et tamen* a ore, pur ceo qe COURT

(3.) [1] § Dette autrefoith, *ut patet supra*,[2] demande vers iij executours. A la Graunt Destresse un vint et les autres nient. Et il traversa lobligacion, et trove fut pur le pleintif. Par quei fut agarde[3] adonqes qe le pleintif recoverast vers luy et les autres des[4] biens le mort. [Et *Fieri facias*[5] des biens le mort][6] issit,[7] qore nest pas servy.—*R.*[8] *Thorpe*. Nous prioms execucion de lour biens demene: qar celuy qe pleda tiel manere de plee, quant la mise fut trove countre luy, il fut chargeable[9] de ses biens propres, et, *per consequens*, touz.—SCHARD. Jeo vous graunte qe cely qe pleda par cele voie est charge, coment qil neit pas des biens le mort, de ses propres, mes *ergo* les autres *non sequitur*.—

[1] From Harl., 25,184, and C., but compared with the record, *Placita de Banco*, Mich., 17 Edw. III., R° 532 d. It there appears that a writ of *Fieri facias* issued to the Sheriffs of London, "quod tam de "terris et catallis Martini Roke de "Borstede, executoris testamenti "Ricardi de Borstede, quam de "bonis et catallis quæ fuerunt "ejusdem Ricardi tertio die Maii "anno regni domini Regis nunc "Angliæ quinto-decimo, tam in "manibus prædicti Martini quam "in manibus Ricardi Chaunterel, "capellani, Simonis atte Gate, et "Johannis Olyver coexecutorum "prædicti Martini testamenti præ-"dicti tunc existentibus in balliva, "&c., fieri facerent viginti libras, "et illas haberent hic ad hunc "diem ad reddendum Willelmo de "Claveryng et Margeriæ uxori ejus, "et Katerinæ filiæ ejusdem Mar-"geriæ, quas iidem Willelmus, "Margeria, et Katerina in Curia "hic per considerationem ejusdem "Curiæ, &c., recuperaverunt versus "eos; et etiam quod tam de terris "et catallis prædicti Martini quam "de bonis et catallis quæ fuerunt "prædicti Ricardi de Borstede, "prædictis die et anno, tam in "manibus prædicti Martini quam "in manibus prædictorum coexe-"cutorum tunc existentibus in "balliva, &c., fieri facerent decem "et novem marcas, et illas haberent "hic ad hunc diem ad reddendum "prædictis Willelmo, Margeriæ, et "Katerinæ, de viginti marcis quæ "eis in eadem Curia adjudicatæ "fuerunt pro damnis suis, quæ "habuerunt occasione detentionis "prædicti debiti."

[2] The words *ut patet supra* are omitted from Harl.

[3] C., ajuge fut, instead of fut agarde.

[4] des is omitted from C.

[5] After *facias* there are inserted in 25,184, the words par quei fut agarde.

[6] The words between brackets are omitted from Harl.

[7] 25,184, and C., issint.

[8] *R.* is omitted from 25,184.

[9] C., charge.

No. 3.

A.D. 1343. saw that the judgment should be that he who pleaded should, by the manner in which he pleaded, be charged in respect of his own goods, and the others only in respect of the goods of the testator, execution was awarded as well in respect of the goods of him who pleaded as of the testator's goods in the hands of the executors.

others are.—*R. Thorpe.* I prove to you that they are: for, if they had all appeared, but had not agreed in one answer, they would have lost immediately; and so it is in a *Præcipe quod reddat* brought against two joint tenants.—SHARDELOWE. Where did you learn that law?—HILLARY. That which he says is not law.—SHARDELOWE. Suppose one executor cannot deny the action, will not another be admitted to deny it?—*R. Thorpe.* No, Sir: for then it would follow that if one took one issue, and another another, and it were first found against the one, the plaintiff would recover either the whole or a portion; he would not recover the whole, because the other has pleaded to issue, which is pending, in respect of the same debt, nor a portion, because debt cannot be severed.—SHARDELOWE. Judgment as to the whole will be delayed until enquiry has been had as to the whole, and then the Court will give a good judgment.—*Pultency.* If we cannot have execution in respect of their own goods great mischief follows: for, in that case, where a writ is brought against several executors, one who has nothing will come by covin at the Grand Distress, and the others, who had assets of the goods of the deceased, and sold them, will absent themselves, and so execution will never be had.—SHARDELOWE. I tell you plainly that if they had assets of the goods of the deceased on the day of the purchase of the writ, even though they may have sold them since, they will be charged; and if you waited, before purchasing your writ, until all was sold, that is your own folly.—HILLARY. How can execution be effected otherwise than in accordance with the judgment?—SHARDELOWE. The judgment seems to be extraordinary; but we can well award

No. 3.

A.D. 1343.

R.[2] *Thorpe.* Jeo vous proefe qoil: qar, si touz ussent venuz, sils neussent acordez en un respouns, ils[3] ussent perduz tauntost; et auxi est ceo en un *Præcipe quod reddat* porte vers ij jointenantz.—Schard. Ou avez vous appris cele ley?—Hill. Ceo nest pas ley[4] qil dit.—Schard. Jeo pose qun executour ne poet dedire laccion, ne serra autre[5] resceu a dedire la?—*R. Thorpe.* Noun, Sire[6]: qar donqes ensuera[7] qe si lun prist un issue, et lautre un autre, et trove fut primes[8] countre lun qe le pleintif recoverast ou tut ou porcion; tut nient, qar lautre ad plede en issue de mesme la dette qe pent, ne porcion nient, qar dette ne put estre severe.—Schard. Le jugement de tut demura[9] tanqe tut serra enquis, et donqes fra Court bon jugement.—*Pult.* Si nous ne puissoms aver execucion de lour biens propres, il ensuist graunt meschief: qar donqes, ou bref est porte vers plusours executours, par covyn un qe rien nad vendra a la Graunt Destresse, et les autres sabsenteront[10] qount assetz des biens le mort, et les ount venduz, et issi navera homme ja execucion.—Schard. Jeo vous die bien sils avoient assetz des biens le mort jour de bref[11] purchace, [tut les eient ils vendu puis, ils serrount charges; et si vous attendistes de vostre purchace][12] tanqe tut fut vendu cest[13] vostre folie.—Hill. Coment fra homme execucion forsqe acordaunt al jugement?—Schard. Il semble merveille du[14] jugement; mes nous[15] poms bien doner execucion

vist qe le jugement serreit qe cely qe pleda, par manere de son plee, fut charge de ses propres biens, et les autres forsqe les biens le testatour, execucion fut agarde *tam de bonis* cely qe pleda *quam de bonis testatoris in manibus executorum.*[1] [Fitz., *Executours*, 76.]

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[1] The marginal note, except the word Dette, is from 25,184 alone.

[2] *R.* is omitted from C.

[3] 25,184, qils.

[4] ley is omitted from C.

[5] Harl. and C., lautre.

[6] C., *Non sequitur*, instead of Noun, Sire.

[7] C., ensueroms.

[8] C., puis.

[9] C., demanda.

[10] Harl., sabsentirent; C., absenterent, instead of sabsenteront.

[11] Harl., vostre.

[12] The words between brackets are omitted from Harl., and the words from ils to purchace are repeated in 25,184.

[13] 25,184, ceste fut.

[14] Harl., en.

[15] C., puis; the word is omitted from 25,184.

No. 3.

A.D. 1343. execution in accordance with the effect of the judgment, though it be not in accordance with the exact words, and the party will never have a writ of Error thereupon; now it would be right that the executors should be diversely charged, that is to say, that he who pleaded should be charged in respect of his own goods or of the goods of the deceased without distinction, and the others in respect of the goods of the deceased alone; wherefore *Fieri facias* or *Levari facias* will be granted for a specific amount, as well of the goods, &c., of him who has pleaded, as of the goods, &c., of the deceased found in his hands and in the hands of the other executors.—*Thorpe.* That is right. SHARDELOWE. It is true. And they awarded execution in that manner.[1]—*Herlastone.* Execution is to be effected in two counties; ought he then to have execution of the whole in each county?—SHARDELOWE. Yes; the writs are in the words *et habeas denarios hic*, so that even though each Sheriff sent the whole, he would only have that which is awarded.—And so it was done.—The Sheriffs returned that he who pleaded had nothing, nor had any of the others anything, and that the others had assets on the day of the purchase of the original writ, but that since the writ of execution they had nothing.—Thereupon a

Note as to execution of a debt in divers counties.

[1] For the precise words of the *Fieri facias* see p. 7, note 1.

No. 3.

acordaunt al effect du jugement, tut ne soit ceo pas acordaunt en parole, et de ceo navera partie ja Errour; ore serreit il resoun qe les executours fuissent diversement charges, saver, celuy[1] qe pleda de ses propres biens[2] ou biens le mort *indifferenter*, les autres des[3] biens le mort soulement; par quei homme grauntera *Fieri facias* ou *Levari facias* taunt, *tam de bonis*, &c., de celuy qad plede, *quam de bonis*, &c., le mort en les meins de mesme[4] cely et les autres executours troves.—*Thorpe.* Cest resoun.—SCHARD. Il est verite.—Et agarderent[5] execucion par la manere.—*Herlastone.* Lexecucion est a faire en deux countes; deit il donqes en chescun counte aver execucion del lentier?—SCHAR. Oyl; les brefs sount *et habeas denarios hic*, issi qe, mesqe chescun Vicounte maundast lentier, il navera forsqe ceo qest agarde.[7] —*Et ita factum est.*—Le Vicounte retourna qe celuy qe pleda navoit rien, ne ascun[8] des autres, et qe autres, jour du bref original purchace, avoint assetz, mes puis[9] le bref dexecucion ils navoint rien.[10]—Sur

A.D. 1343.

Nota dexecucion de dette en divers countees.[6]

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[1] celuy is omitted from 25,184.
[2] biens is omitted from C.
[3] des is omitted from C.
[4] mesme is omitted from C.
[5] C., ajugerent.
[6] The marginal note is from 25,184 alone
[7] C., ajuge.
[8] C., ascuns.
[9] C., pur.
[10] The return of the Sheriffs was, according to the roll, " quod " prædictus Martinus nulla habet " terras seu catalla in balliva, &c., " unde aliqui denarii fieri possint; " idem Martinus, et Ricardus " Chaunterel, unus coexecutorum " prædicti Martini testamenti præ- " dicti, nulla habuerunt bona seu " catalla in balliva, &c., a die " receptionis brevis, &c., de bonis " et catallis quæ fuerunt prædicti " Ricardi de Borstede, testatoris, " prædictis die et anno, in manibus eorundem Martini et Ricardi " Chaunterel tunc existentia; præ- " dicti Simon et Johannes coexecu- " tores, &c., habuerunt in manibus " eorum, die et anno supradictis, " bona et catalla quæ fuerunt præ- " dicti Ricardi de Borstede ad " valentiam debiti et damnorum " supradictorum, quæ quidem bona " et catalla prædicti Simon et " Johannes, ante adventum brevis " prædicti administrarunt et elon- " garunt, per quod de eisdem bonis " et catallis quæ fuerunt dicti " defuncti sic administratis et " elongatis executionem modo " facere nequiverunt; et de bonis " et catallis prædictorum Simonis

No. 4.

A.D. 1343. writ came immediately to cause the record to come before the King in Chancery by reason of error, and an *Alias* writ, and a *Pluries* writ *vel causam*, and after a cause had been signified, a writ *Non obstante causa*.—*Pulteney* all the time prayed execution in respect of their own goods against those who had assets on the day on which the original writ was purchased.—Shardelowe. That is right.—Hillary. But our hands are tied, so that we cannot do anything.—*Pulteney*. Yes, you always can as long as the record is in this Court.—Stonore. It is a bad precedent for any judgment of this Court ever to fail to be put in execution.—Hillary. What of that? Our hands are tied, so that we cannot effect any execution, nor will we contrary to the law heretofore practised.—Stonore. We have spoken to the Council respecting this mischief; and go you to the Chancery, and you will have a *Non obstante* writ directing us to effect execution.

Præcipe (4.) § Five parceners brought *Præcipe quod reddat*

No. 4.

quei bref vint tauntost de faire venir le recorde pur errour devant le Roy en Chauncellerie, *sicut*[1] *alias*, et *pluries*, *vel causam*, et, apres la cause signifie, *non obstante causa.*—*Pult.* [tut temps pria execucion de lour biens propres qavoient assetz jour del original attache.—Schar. Cest resoun.—Hill.][2] Mes nos meins sount lies, qe nous ne poms rien faire.—*Pult.* Si poietz touz jours taunqe le recorde est ceinz.—Ston. Cest malveis ensample[3] qe jammes jugement de ceste Court ne serra mys en execucion.—Hill. De ceo quei? Nos meins sount lies qe nous ne poms faire nulle execucion, ne voloms countre ley cea en arere use.—Ston. Nous avoms parle au Counseil de ceo meschief; et ales a la Chauncellerie, et vous averez un bref *non obstante* a nous, de faire execucion.[4] A.D. 1343.

(4.)[5] § Cynk parceners porterent *Præcipe quod reddat* *Præcipe*

" et Johannis propriis absque " expressa et assertiva considera- " tione Curiæ domini Regis execu- " tionem facere non audent, unde " discretionem Curiæ domini Regis " in hoc casu requirunt optimam."

[1] C., si come.

[2] The words between brackets are omitted from C.

[3] Harl., ensaumple.

[4] According to the roll, the King did send his writ close, dated the 20th of November, directing the Justices to cause execution to be had, without delay, of the judgment, " prout de jure et secundum legem " et consuetudinem regni nostri " Angliæ fuerit faciendum," &c.

Then " quia prædicti Vicecomites " modo retornarunt quod prædicti " Simon et Johannes coexecutores, " &c., habuerunt in manibus " eorum, prædictis die et anno, " bona et catalla quæ fuerunt præ- " dicti defuncti ad valentiam debiti " et damnorum supradictorum, quæ " elongarunt, prout patet supra, " præceptum est eisdem Vicecomi- " tibus quod tam de terris et " catallis eorundem Simonis et " Johannis quam de terris et " catallis prædicti Martini, et bonis " et catallis quæ fuerunt prædicti " defuncti prædictis die et anno, " tam in manu ejusdem Martini " quam in manibus prædictorum " Ricardi Chaunterel, Simonis, et " Johannis tunc existentibus in " balliva, &c., fieri faciant præ- " dictas viginti libras, et etiam " prædictas decem et novem " marcas, et eas habeant hic in " Octabis Sancti Hillarii ad red- " dendum prædictis Willelmo, " Margeriæ, et Katerinæ, in forma " prædicta," &c.

[5] From Harl., 25,184, and C.

No. 5.

A.D. 1343. *quod reddat* brought by five, some of whom were non-suited. And note as to the demand for the others.

unum mesuagium. Two of them were non-suited. The other three counted and demanded three parts of the messuage.—*Pulteney.* They demand the whole, save one fourth part; so they have demanded more by count than it is supposed by the writ that they ought to have; judgment of the count.—*Seton.* Divide the messuage into five, and then they ought to have the three parts, and so it is to be understood. And the entry in the roll was *tres partes unius mesuagii divisi in quinque partes.*—SHARSHULLE. Then it is well.

Non compos mentis. The entry was supposed to be by two persons, to whom the ancestor leased. The tenant said that the ancestor leased to him; judgment of the writ.

(5.) § Entry, *dum non fuit non compos mentis*, on the seisin of the ancestor, in respect of tenements into which the tenant has not entry but after the lease which the demandant's ancestor made to A. and B.—*Grene.* We do not admit that your ancestor was of non-sane memory, &c., and we tell you that your ancestor leased to us, and so you might have had a good writ within the degrees; judgment of the writ.—*Pulteney.* You are speaking of another lease which is not supposed by my writ or action, so that this exception could be taken only to the action; but it would otherwise if he would give another writ in respect of the same lease, as by saying that the tenant entered by those same persons to whom I have supposed that my ancestor leased.—HILLARY. Possibly he could not traverse the lease supposed by your writ: for possibly your ancestor leased as you suppose, and afterwards possibly entered and leased to him as, &c.; should he then plead otherwise?—*Pulteney.* Then that would be pleaded to the action.—HILLARY. When you have a good writ against him, he will afterwards plead to your action.

Dum non fuit compos mentis.

§ A writ of Entry *dum non fuit compos mentis* purported "into which the tenant had not entry

No. 5.

unum mesuagium. Les deux furent noun suyz. Les trois counterent et demanderent les iij parties.—*Pult.* Ils demandent tut, saufve une quarte partie; issi ount ils demande plus par count qe nest suppose par bref qils dussent aver; jugement de count.—*Setone.* Severez le mies en v, et donqes deivent eles aver les iij parties, et issi est a entendre. Et en roulle fut entre *tres partes unius mesuagii divisi in quinque partes*.—SCHAR. Donqes est il bien. A.D. 1343. *quod reddat*[1] par v, dount asqunz furent nounsuez. *Et nota* de la demande pur les autres.

(5.)[2] § Entre, *non compos mentis*, de la seisine launcestre, en le quel le tenant nad entre si noun puis le lees qe soun auncestre fist a A. et B.—*Grene.* Nous ne conissoms pas qe vostre auncestre fut de noun seine memoire, &c., et vous dioms qe vostre auncestre lessa a nous, issi purrietz aver bon bref deinz les degrees[4]; jugement du bref.—*Pult.* Vous parletz dautre lees qe nest suppose par mon bref ou accion, issi qe ceo ne put estre pris forsqe al accion; mes autre serreit si de mesme le lees il durreit autre bref, come a dire qil entra par mesmes ceux a queux jay suppose qe mon auncestre lessa.—HILL. Il ne put[5] pas par cas traverser le lees suppose par vostre bref: qar par cas vostre auncestre lessa come vous supposez, et puis par cas entra, et lessa a luy come, &c.; pledereit il donqes autrement?—*Pult.* Ceo serreit plede donqes al accion.—HILL. Quant vous averez bon bref vers luy, apres pledera il a vostre accion. *Non compos mentis.* Lentier suppose par ij, a qi launcestre lessa. I e tenant dit qe launcestre lessa a ly; jugement du bref.[3] [Fitz., *Briefe*, 350.]

§ En[6] un briefe dentre *dum non fuit compos mentis* le briefe voleit en les queux le tenaunt navoit *Dum non fuit compos mentis.*

[1] The words *quod reddat* are omitted from 25,184, but the rest of the marginal note, except the word *Præcipe*, is from that MS. alone.

[2] From Harl., 25,184, and C., until otherwise stated.

[3] The marginal note subsequent to the word *mentis* is from 25,184 alone.

[4] 25,184, grees.

[5] 25,184, pount.

[6] This report of the case appears by itself in the old editions as No.

No. 5.

A.D. 1343. but after the lease which R., the demandant's ancestor, made thereof to B. C."—*Notton.* We make protestation that we do not admit that his ancestor, at the time of the lease, was of non-sane memory; but you see plainly how this writ is taken in the *post*, which writ is not given where a writ could be had within the degrees; wherefore we say that R., his ancestor, leased the tenements to ourselves, so that he could have had a good writ within the degrees; judgment of the writ.—*Pulteney.* You see plainly how our writ and action are taken on a lease which our ancestor made as to B. C., and as to that lease he says nothing, but speaks of another lease which was made to himself, as he supposes, and that matter is not an answer either to the writ or to the action; wherefore judgment, &c.—Sharshulle. On every writ of Entry which supposes a lease, if that lease be the ground of the demandant's action, that lease must be traversed or admitted, and if it be traversed then the plea is to the action; but if the lease which is supposed in the writ makes a degree, if it be not taken for the ground of the action as might be on a writ of Entry *sur disseisin* which is brought in the *cui*, and if the tenant can there show that that lease was made to himself, he falsifies the writ in its entirety; but now, in this case, the lease which is supposed by the writ, &c., is the ground of his action; wherefore, &c.—*Pulteney.* Sir, it seems that what he has alleged could not in any manner be pleaded either to our writ or to the action; but nevertheless, Sir, we are demandants, and will therefore hasten our business; and we tell you that, whereas he says that our ancestor leased to him, &c., since

No. 5.

entre si non puis le lees qe R., auncestre le de- A.D. 1343.
mandant, de ceo ent fist a B. C.—*Nottone.* Nous fesoms protestacion qe nous ne conissoms pas qe son auncestre, al temps del lees, fut de noun sane memorie; mes vous veiez bien coment cest briefe est pris en le *post*, quel briefe nest pas done ou homme puit aver briefe deinz les degres; par quei nous dioms qe R., son auncestre, lessa a nous mesmes les tenements, issint puit il aver ew bon briefe deinz les degres; jugement de briefe.—*Pult.* Vous veiez bien coment nostre briefe et accion est pris dun lees qe nostre auncestre fist taunt come, &c., a B. C., et a cel lees ne parle il riens, mes parle dun autre lees, qe duist aver este fait a luy mesme auxi com il suppose, quel chose nest respouns ne al briefe ne al accion; par quei jugement, &c.—Schar. En chescun briefe dentre, qe suppose lees, si cel lees soit cause daccion le demandant, il covient qe cel lees soit traverse ou graunte, et si soit traverse donqes est ceo al accion; mes si le lees qest suppose en le briefe fait degre, sil ne soit pas pur cause de saccion, auxi come puit estre en briefe dentre sur disseisine qest porte en le *cui*, si le tenaunt purra moustrer la qe cel lees se fist a luy mesme, il fauxe le briefe en lentier; mes ore, en ceo cas, le lees qest suppose par le briefe, &c., est cause de saccion; par quei, &c.—*Pult.*[1] Sire, il semble qe ceo qil ad allegge ne puit en nul manere estre dit ne a nostre briefe ne al accion; mes nequident Sire, nous sumes demandants, par quei nous voloms hastier nostre bosoigne; et vous dioms qe la ou il dit qe nostre auncestre lessa a luy, &c., nous vous dioms qe, puis

95. No MS. of it has been found and there is no reference to it in Fitzherbert's *Abridgment*, but it is obviously an independent report of No. 5.

[1] Old editions Sh. It is counsel for the demandant, and not a judge, who speaks.

No. 6.

A.D. 1343. that lease one F. was seised of the same tenements, and enfeoffed our ancestor, by force whereof he was seised until he leased being of non-sane memory, as, &c.—*Notton*. Then we say that you ought not to have an action, because we say that on a certain day, &c., a fine was levied of the same tenements between your ancestor, on whose seisin, &c., and us, by which fine he acknowledged the same tenements to be our right, as those which we had by his gift, and released and quitclaimed them to us and to our heirs for ever, and bound himself and his heirs to warranty, &c.; wherefore judgment whether, contrary to the fine, you can have an action.—*Pulteney*. We tell you that since the fine F. was seised, and enfeoffed our ancestor, as, &c., by which feoffment he was seised, and leased while of non-sane memory, as, &c.; wherefore, &c.—*Notton*. We have alleged a fine which is of record, and which proves that your ancestor was of sane memory when he divested himself; wherefore, contrary to the fine, you shall not be admitted to say that he was of non-sane memory.—*Pulteney*. We shall not be admitted to say, contrary to the fine, that he was of non-sane memory at the time of the fine, or before; but we have alleged that since the fine he was seised, and leased as our writ supposes.—*Notton* and *Grene* did not dare to abide judgment, but said that at the time of the lease he was of sane memory; ready, &c.—*Pulteney*. You have pleaded the fine in bar, and therefore you shall not now be admitted to traverse our action; judgment, &c.

Assise of (6.) § Assise of Novel Disseisin in respect of rent in

No. 6.

cel lees un F. fut seisi de mesmes les tenements, et enfeffa nostre auncestre, par force de quel il fut seisi tanqe il lessa de non sane memorie, come, &c. —*Nottone.* Donqes dioms nous qe vous ne devez accion aver, car nous dioms qe certein jour, &c., fyn se leva de mesmes les tenements entre vostre auncestre, de qi seisine, &c., et nous, par quel fyn il conust mesmes les tenements estre nostre dreit, come ceux queux nous avoms de son doun, et ceux nous relessa et quiteclama a nous et a nos heirs a touz jours, et obligea luy et ses heirs a la garrauntie, &c.; par quei jugement si encountre la fyn accion poiez aver.—*Pult.* Nous dioms qe puis la fyn F. fut seisi, et enfeffa nostre auncestre, come, &c., par quel feffement il fut seisi, et lessa de noun sane memorie, auxi come, &c.; par quei, &c.—*Nottone.* Nous avoms allegge fyn qest de recorde, qe prove qe vostre auncestre fut de sane memorie quant il soy demist; par quei, encountre la fyn, vous ne serrez pas resceu a dire qil fut de non sane memorie. —*Pult.* A dire qil fut de non sane memorie al temps de la fyn, ou devant, ne serroms pas resceu encountre la fyn; mes nous avoms allegge qe puis la fyn il fut seisi, et lessa come nostre bref suppose.—*Nottone* et *Grene* noserent pas demurer, mes dirent qal temps del lees il fut de sane memorie; prest, &c.—*Pult.* Vous avez plede en barre par la fyn, par quei ore a traverser nostre accion ne serrez resceu; jugement, &c. A.D. 1343.

(6.) [1] § Assise de Novele Disseisine de rente en Assise de

[1] From Harl., 25,184, and C., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 86. It there appears that the Assise was brought at Exeter before Sharshulle and his fellows Justices of Assise in the County of Devon, by Robert de Maundeville against John de Bodiscombe, Richard de Chelfham, Walter Corbyn atte Lode, and thirteen others, in respect of 8*s.* 4*d.* of rent in Godelegh (Goodleigh)-by-Barnstaple.

John and Richard only appeared, but Richard answered for all the

No. 6.

A.D. 1343. Novel Disseisin in respect of rent. A tenant of the land would have abated the writ on the ground of joint tenancy, and was ousted because another who was named was very tenant as mesne, and that was found by the Assise, as well as that a tenant in demesne made a rescue, not knowing the very tenant. And, notwithstanding, the plaintiff recovered.

Devonshire before SHARSHULLE, in which some pleaded to the Assise as those who had nothing, and others took upon themselves the tenancy of the land, and alleged joint tenancy, some by fine, and others by deed. —To this the plaintiff said that one who had pleaded to the Assise was his very tenant, and held the same land of him by the rent in respect of which he was plaintiff, and therefore the law did not put him to answer to their plea: and he demanded judgment whether by reason of such joint tenancy his writ could abate.—

No. 6.

A.D. 1343. Novele Disseisine de rente. Tenant de la terre voet abatre par yointenance le bref, et est ouste pur ceo qautre nome est verreie tenant come mene, et ceo fut trove par Assise, et qun tenant en demene fist rescous, non sachant le verreie tenant. Et, *non obstante*, le pleintif[1] recoveri.[2] [17 Li. Ass. 10; Fitz., *Assise*, 75.]

Devenshire devant Schar., ou ascuns plederent al Assise come ces qe rien navoient, et autres enpristrent[3] tenance de la terre, et allegerent jointenance, par fyn asquns, et autres par fait.—A quei le pleintif dit qe cely qavoit plede al Assise fut soun verrey tenant, et tient de luy mesme la terre par cele rente dount il se pleint, par quei a lour plee ley ne ly[4] met a respoundre; et demanda jugement si par cele jointenance purreit son[5] bref abatre.[6]—

rest as bailiff, and pleaded for all, except one Idonea late wife of Paulinus atte Mille, that they had nothing in the rent or in the tenements put in view from which the rent was supposed to issue, and that they had committed no disseisin against the plaintiff. Upon this issue was joined to the Assise.

For Idonea Richard pleaded in abatement of the writ that one Robert Beaupel, not named in the writ, held one acre of land out of the tenements put in view, but, should the writ be held good, that she committed no disseisin, on which point issue was joined.

John de Bodiscombe pleaded in abatement of the writ that he held one messuage and 32 acres of land, out of the tenements put in view, jointly with his wife Cecilia, who was not named in the writ. He made *profert* of a charter to that effect. He pleaded further that he held one messuage and 4 acres and half a ferling of land, out of the tenements put in view, also jointly with his wife. He made *profert* of a part of a fine to that effect, and again prayed judgment of the writ.

Richard de Chelfham also pleaded joint tenancy with his wife Juliana of two acres of land, out of the tenements put in view, and made *profert* of a charter to that effect. He also prayed judgment of the writ in which his wife was not named.

[1] MS., plee.

[2] The marginal note, subsequent to the word Disseisine, is from 25,184 alone, from which MS., however, the commencing words Assise de are omitted.

[3] 25,184, enporterent.

[4] Harl., moy.

[5] Harl., ceo.

[6] The plaintiff's replication was, according to the roll, "quod per "illud breve suum cassari non "debuit, quia dixit quod prædictus "Walterus Corbyn fuit tenens "suus immediate et tenuit de eo "tenementa in visu posita per "homagium, fidelitatem, et per "prædictum redditum, &c., ... "et idem Walterus et alii in brevi "nominati ipsum de eodem redditu "disseisiverant, unde petiit judi- "cium, ex quo idem Walterus fuit "verus tenens suus et etiam dis- "seisitor in brevi nominatus, si "per allegationem prædictorum "Johannis et aliorum breve suum "cassari deberet," &c.

It then appears on the roll, "quod prædicti Johannes et alii "nihil responderunt. Ideo assisa "considerata fuit capienda."

No. 6.

A.D. 1343. And, because the others did not answer as to this, the Assise was awarded; and it was found by the Assise that he who had pleaded to the Assise held the land of the plaintiff as mesne, and that distress was made by the plaintiff, and that one of the tenants in demesne, not knowing the mesne, effected a rescue.—And Shardelowe adjourned them into the Bench.—*Thorpe.* We pray judgment for the plaintiff.—Shardelowe. It is found that no disseisin was effected by your tenant.—*Thorpe.* That is of no force, because I have named a tenant and a disseisor.—But nevertheless Shardelowe stated as his opinion that neither Assise nor *Præcipe* for rent lies, except against the tenant of the land, &c., or the receiver of the rent, or, at any rate, that the tenant of the land must be named in the writ in case of an Assise.—*Quære.*—But afterwards, having changed his opinion, Shardelowe gave judgment that the plaintiff should recover the rent, and his damages, and that the tenant should be in mercy, &c. *Thorpe.* We pray execution, and judgment in respect

No. 6.

Et pur ceo qe les autres ne respondirent pas a ceo, lassise fut agarde, par quele fut trove qe cely qad plede al Assise come mene tient la terre del pleintif, et qe la destresse fut fait par le pleintif, et un[1] des tenaunts en demene, noun sachaunt le mene, fist le rescous.[2]—Et SCHAR. les ajourna en Baunk.—*Thorpe.* Nous prioms jugement pur le pleintif.—SCHARD. Trove est nulle disseisine estre fait par vostre tenant.—*Thorpe.* Ny ad force, qar jay[3] tenant[4] et disseisour[5] nome.[6]—Sed[7] *tamen* SCHARD. dist pur sa oppinioun qe Assise ne *Præcipe* de rente ne gist forsqe vers tenant de la terre, &c., ou resceivour de la rente, *vel saltem* qe tenant de la terre soit nome el bref en cas dassise.—*Quære.*—*Sed postea, mutata opinione,* il agarda qe le pleintif recoverast, et ses damages, et qe le tenant[8] fut en la mercy, &c.[9]—*Thorpe.* Nous prioms execucion, et A.D. 1343.

[1] 25,184, dune.

[2] The verdict of the Assise was "quod prædictus Walterus fuit "tenens prædicti Roberti ut ille "qui fuit medius inter ipsum "Robertum et prædictum Jo-"hannem de Bodiscombe, qui "quidem Johannes fuit tenens "tenementorum in visu positorum, "unde prædictus redditus pro-"veniebat, et dixerunt quod præ-"dictus Robertus fuit seisitus de "prædicto redditu cum pertinentiis "quousque prædictus redditus ei "per prædictum Walterum sub-"tractus fuit, per quod idem "Robertus cepit quandam dis-"trictionem in tenementis in visu "positis pro arreragiis ejusdem "redditus, quam districtionem "prædictus Johannes de Bodis-"combe vi et armis rescussit. "Et dixerunt quod alii in brevi "nominati illi rescussui non inter-"fuerunt. Recognitores quæsiti "de damnis prædicti Roberti si "disseisina adjudicaretur qui assi-"derunt [*sic*] damna si, &c., ad "sexaginta et quinque solidos."

After an adjournment before the same Justices of Assise at Westminster and another before them at Exeter, there was finally, according to the roll, an adjournment into the Common Bench.

[3] C., yad.

[4] Harl., tenantz.

[5] Harl., disseisours.

[6] Harl., trove.

[7] Harl., Et.

[8] 25,184, pleintif.

[9] According to the roll the judgment was in the following form:—"Et quia, viso et intellecto recordo "prædicto hic misso, videtur "Curiæ hic quod prædictus Ro-"bertus injuste disseisitus est de "redditu prædicto, et quod breve "prædictum in hoc casu non est "cassandum Ideo consideratum est "quod idem Robertus recuperet "inde seisinam suam de prædicto

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A.D. 1343. of those terms for which rent has been incurred while the plea was pending.—Sharshulle. You shall have it willingly.—And so he had.—But this decision was reprobated by Shardelowe who said that, because the plaintiff could distrain for his arrears subsequently incurred, he should not have by judgment that which was incurred while the suit was pending.—And to that effect he gave judgment in the same Term, as appears below.

Judgment.

Note as to arrears incurred while the writ was pending recovered in Assise of Novel Disseisin.

Assise of Novel Disseisin.

§ In an Assise of Novel Disseisin brought against A.,[1] B.,[1] and C.,[1] the plaint was made in respect of certain rent.—A.[1] pleaded to the Assise as tenant of parcel of the tenements put in view, out of which the plaintiff supposed the rent to be issuing. B.[1] said that he held parcel of the same tenements jointly with one G.[1] not named in the writ, and demanded judgment of the writ, and pleaded over to the Assise "and if it be found," &c. C.[1] answered as tenant of another parcel, and said that one E.[1] was tenant of parcel of the tenements, &c., who was not named, and demanded

[1] For the real names *see* p. 19, note 1.

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jugement des termes qe sont encoruz pendaunt le plee.—Schar. Vous averez volunters.—*Et ita habuit.*[1] —*Sed*[2] *hoc reprobatur per* Schard. qe dist, pur ceo qil put[4] destreindre pur ses arrerages encoruz puis, qil navera pas par jugement ceo qest encoru[6] pendaunt la suyte.—*Et ita judicavit eodem Termino, ut patet infra.*[7] A.D. 1343. *Judicium.*[3] *Nota.* Arrerages encoruz pendaunt le bref recoveris en Assise de Novele Disseisine.[5]

§ En[8] un Assise de Novele Disseisine porte vers A., B., et C., la pleinte fut fait de certein rente.—A. pleda al Assise come tenaunt de parcelle des tenements mis en vewe, des queux le pleintif supposa le rente estre issaunt. B. dit qil tient [parcelle de] mesmes les tenements joint ove un G. nient nome en le briefe, et demanda jugement de briefe, et pleda outre al Assise et si trove soit, &c. C. respondi come tenaunt dun autre parcelle, et dit qun E. fut tenaunt de parcelle des tenements, &c., nient nome, et demanda Assise de Novele Disseisine.

" redditu cum pertinentiis per " visum recognitorum Assisæ præ- " dictæ, et damna sua per Assisam " taxata, et sex solidos et unum " denarium de arreragiis prædicti " redditus post diem captionis " Assisæ, &c., et prædictus Jo- " hannes de Bodiscombe capiatur. " Et idem Robertus in misericordia " pro falso clamore suo versus " alios," &c.

[1] By writ of *Elegit* according to the roll, where it appears that John de Bodiscombe subsequently brought a writ of Attaint before the Justices of Assise, to whom the record and process in the Assise of Novel Disseisin were then sent.

[2] Harl., and C., Et.

[3] This marginal note is from 25,184 alone.

[4] Harl., fut.

[5] This marginal note is from 25,184 alone; but there is one to the like effect in Harl.

[6] 25,184, coru.

[7] *infra* is omitted from C. The reference, however, appears to be to the case No. 29 below, in which, as stated, Shardelowe gave a contrary decision.

[8] This report of the case appears by itself in the old editions as No. 94. No MS. of it has been found and there is no reference to it in Fitzherbert's *Abridgment*, but it is clearly an independent report of No. 6, of which the record appears among the *Placita de Banco*, Mich., 17 Edw. III., R° 86.

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A.D. 1343. judgment of the writ, and pleaded over to the Assise, &c.—The plaintiff said that A. who had pleaded to the Assise was tenant of the entirety of the tenements put in view, out of which the rent, &c., and held of him the same tenements by the rent in respect of which the plaintiff, &c., so that the others named, &c., were named only as disseisors; wherefore, &c.—Thereupon the Assise was taken, and it was found by the Assise that A. held of the plaintiff the entirety of the tenements by the rent in respect of which the plaintiff, &c., and that the plaintiff was seised, &c., and, because the rent was in arrear, he came and took a distress in the same tenements for the rent, and A. made a rescue from him; and they said that B. held jointly, as, &c., and that E. was tenant of parcel of the tenements, as, &c.[1] —And upon this the parties were adjourned into the Bench, now at the Quinzaine.—*Grene* came and said: It is found that the plaintiff was seised of the rent in respect of which, &c., until disseised, &c.—*Pulteney.* It is found by verdict that B. has nothing except jointly, &c., and also that E., who is not named, &c., is tenant of parcel, &c., and so your writ is bad; wherefore, &c.—*Grene.* It is found that A. is our tenant of the entirety, &c., and that we were seised until A. effected a rescue from us, and, since we have a tenant in our writ against whom our writ lies, although B. and the others are named, [the writ is good], because they are named only as disseisors.—*Pulteney.* In Assise of Novel Disseisin, where the plaint is in respect of rent, all those who could plead in bar as tenants must be named, &c., or otherwise the writ is not good. Now, Sir, in such Assises, although the tenant of the rent be named, and plead to the Assise, he who is tenant of the land out of which the rent, &c., will be able to plead a

[1] For the verdict of the Assise as it appears on the Roll *see* p. 23, note 2.

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jugement de briefe, et pleda outre al Assise, &c.— A.D. 1343.
Le pleintife dit qe A. qavoit plede al Assise fuit entierement tenaunt des tenements mis en vewe, dount le rente, &c., et tient de luy mesmes les tenements par le rente dount le pleintife, &c., issint qe les autres nomes, &c., ne furent pas nomes mes come disseisours; par quei, &c.—Sur quei lassise fut prise, par quel fut trove qe A. tient del pleintife entierement les tenements par le rente dount le pleintife, &c., et qe le pleintife fut seisi, *et cætera*, et, pur ceo qe le rente fuit arere, il vient, et prist une distresse en mesmes les tenements pur le rente, et A. luy fist rescous; et disoient qe B. tient jointement, auxi come, &c., et qe E. fuit tenaunt de parcelle des tenements, auxi come, &c.—Et sur ceo les parties furent ajournes en Bank, ore a la Quinzaine.[1]—*Grene* vient et dit: Trove est qe le pleintife fuit seisi de le rente dount, &c., tanqe disseisi, &c. —*Pult.* Trove est par verdit qe B. nad riens si non jointement, &c., et auxi qe E. qe nest pas nome, &c., est tenaunt de parcelle, &c., issint est vostre briefe malveis; par quei, &c.—*Grene.* Trove est qe A. est nostre tenaunt de lentierte, &c., et qe nous fumes seisi, &c., tanqe A. nous fist rescous, et de puis qe nous avoms tenaunt en nostre briefe vers qi nostre briefe gist, coment qe B.[2] et les autres sount nomes, &c., car ils ne sount pas nomes mes come disseisours.[3]—*Pult.* En Assise de Novele Disseisine, la ou la pleinte est de rente, il covient qe touz qe purront pleder en barre come tenaunts soient nomes, &c., ou autrement le bref nest pas bon. Ore, Sire, en tieles Assises, mesqe le tenaunt de la rente soit nome, et plede al Assise, cesty qest tenaunt de la terre dount le rente, &c., il purra pleder

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[1] Rastell, Quinzim.
[2] B. is omitted from Rastell.
[3] Rastell, disseisontz.

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A.D. 1343. release in bar. And now it is found in this Assise that B. has a joint estate, &c., in which case he could not have pleaded in bar without his joint feoffee; and. besides, E. who is tenant of parcel of the tenements out of which, &c., is not named, &c.—*Grene.* When in Assise he who is tenant of the land, and he who is tenant of the rent are named, where the plaint is in respect of rent, and he who is tenant of the rent pleads to the Assise, or in bar, &c., the tenant of the land shall not have a plea in bar, nor need he be named except as disseisor, &c.—*Pulteney.* In such a case, if they will both plead a release in bar, the plaintiff will possibly not be compelled to answer except to the plea of the tenant of the rent; but when the tenant of the rent pleads to the Assise, as he did in this case, then if the tenant of the land have a release from the plaintiff, he will plead that release in bar.—*Grene.* I say he will not; neither in the one case nor in the other will the tenant of the land be admitted to plead in bar.—*Seton.* In every Assise, if the writ is to be adjudged good, that person must be named against whom a *Præcipe* would lie to demand the same thing by the same plaintiff. Now a *Præcipe quod reddat* in respect of rent is maintainable only against the tenant of the land out of which, &c., and the receiver of the rent, or against him who is receiver of the rent. Now in this Assise there is no receiver of the rent; wherefore it seems that all the tenants of the land out of which, &c., should be named, &c.—*R. Thorpe.* In case of rent service one would have a *Præcipe quod reddat* and an Assise against a person other than the tenant of the land, where there is no receiver, &c., as in a case where there are lord, mesne, and tenant, and the tenant holds of the mesne by the service of one rose, and

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en barre par relees. Et ore en cest Assise trove est A.D. 1343.
qe B. ad joint estat, &c., en quel cas il ne puit pas aver plede en barre saunz son joint feffe; et, ove ceo, E., qest tenaunt de parcelle des tenements dount, &c., nest pas nome, &c.—*Grene.* Quant en Assise cesty qest tenant de la terre, et cesty qest tenaunt de la rente sount nomes, la ou la pleinte est de rente, et cesty qest tenaunt de la rente plede al Assise, ou en barre, &c., le tenaunt de la terre navera mye plee en barre, ne il covient pas qil soit nome mes come disseisour, &c.—*Pult.* En tiel cas, si lun et lautre voille pleder en barre par relees par cas le pleintif ne serra pas chace forsqe de respoundre al plee le tenaunt de la rente; mes quant le tenaunt de la rente[1] plede al Assise, auxi come il fist en ceo cas, la si le tenaunt de la terre eit relees de le pleintif, il pledra en barre par cel relees.—*Grene.* Jeo die qe non; nen lun cas nen lautre le tenaunt de la terre ne serra pas resceu de pleder en barre.—*Setone.* En chescune Assise, si le briefe deit estre agarde bon, il covient qe cesty soit nome, &c., vers qi un *Præcipe* girreit a demander mesme la chose de mesme le pleintif. Ore un *Præcipe quod reddat* de rente nest pas meintenable si ceo ne soit vers tenaunt de terre dount, &c., et resceiver de la rente, ou vers cesty qest resceiver de la rente. Ore en ceste Assise il nad nul resceiver del rente; par quei il semble qil covendreit qe touz les tenaunts de la terre dount, &c., fuissent nome, &c.—*R. Thorpe.* En cas de rente service homme avereit un *Præcipe quod reddat* et un Assise devers autre qe devers tenaunt de terre, la ou il nad nul resceiver, &c., auxi come en cas ou il y ad seignur, mene, et tenaunt, et le tenaunt tient del mene par le service dun rose, et

[1] The words de la rente are omitted from Rastell.

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A.D. 1343. the mesne over by the service of 20*s*., if the 20*s*. are refused to the lord, he has no other against whom he shall bring his writ to recover the same rent but the mesne, who is his very tenant, because in law there is no other who can be adjudged to be his receiver; wherefore, &c.—SHARDELOWE. Suppose my tenant, who holds of me in demesne by a certain rent, divests himself so that any one is to hold of him and of his wife by a certain rent, if I have to bring an Assise in respect of my rent, and the wife is omitted from my writ, will my writ thereby abate because she is as it were mesne?—*R. Thorpe.* Sir, I say it will not, because in that case the wife has nothing.—*Seton.* What you say is true; in such a case the wife has nothing; but suppose my tenant, who holds of me in that manner, divests himself so that any one is to hold of him and of his heirs by the service of one penny, and afterwards he divests himself of the same penny, reserving to himself the seignory, and takes back an estate in the penny to himself and his wife, if I afterwards have to bring an Assise in respect of the same rent, must his wife be named?—*R. Thorpe.* Sir, I say she need not, because she is not in that case very tenant; but if your tenant, after he has divested himself, so that any one is to hold of himself by certain services, grants the same services to another, and the tenant attorns, and afterwards your tenant repurchases the same services to hold to himself and his wife, and the tenant attorns to them, and they afterwards to you, if, in that case, you have to bring an Assise or other writ in respect of your rent, the wife must be named, because in that case she is your tenant.—*Pulteney.* If this writ be maintained, notwithstanding the joint tenancy which is found, &c., you may recover the rent by agreement between you and A., and charge B.'s tenancy, &c.,

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le mene outre par les services de xx*s*., si les xx*s*. soient denies al seignur, il nad nul autre vers qi il portera son briefe a recoverir mesme le rente forsqe vers le mene, qest son verrey tenaunt, car en ley il nad nul autre qe purra estre ajuge son resceiver; par quei, &c.—SCHARD. Jeo pose qe mon tenaunt, qe tient de moy en demene par certein rente, soi demette[1] a tener de luy et de sa femme par certein rente, si jeo soy a porter un Assise de ma rente, et la femme est entrelesse en mon briefe, abatera mon briefe par taunt, pur ceo qele est auxi come mene?—*R. Thorpe.* Sire, jeo die qe non, car la femme la nad riens.—*Setone.* Vous dites verite; en tiel cas la femme nad riens; mes jeo pose qe mon tenaunt, qe tient de moy par la manere, soy demette[1] a tener de luy et de ses heirs par les services dun dener, et puis il soy demette[1] de mesme le dener, reservaunt a luy la seignurie, et reprent[2] estat del dener a luy et a sa femme, si apres jeo soy a porter lassise de mesme le rente, covient il qe sa femme soit nome?—*R. Thorpe.* Sire, jeo die qe non, car ele nest mye verrey tenaunt la; mes si vostre tenaunt, apres ceo qil ad soy demys a tener de luy mesme par certeyn services, graunte[3] mesmes les services a un autre,[4] et le tenaunt soy attourne, et puis vostre tenaunt repurchace mesmes les services a luy et a sa femme, et le tenaunt attourne a eux, et eux puis a vous, si vous la devez porter lassise ou autre briefe de vostre rente, il coviendreit qe la femme soit nome, car la est ele vostre tenaunt.—*Pult.* Si cest briefe soit meintenu, *non obstante* la jointenaunce qest trove, &c., vous devez recoverir par consent entre vous et A., la rente, et charges la tenaunce B., &c., la ou A.D. 1343.

[1] Old editions, dismitte.
[2] Edition of 1679, prist; earlier editions, reprint.
[3] Old editions, graunta.
[4] Edition of 1679, luy et sa femme, instead of un autre.

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A.D. 1343. while you have possibly released to this same B. and to his joint feoffee, or to E. who is not named, &c., which matter he could not plead now, inasmuch as your writ is not properly framed, and it would be a great mischief, as it seems; wherefore, &c.—*R. Thorpe.* If I were to bring my writ of Customs and Services in respect of the same rent, I should bring it against no other but A., who is my very tenant, and if I recovered against him the tenancy would be charged; so in respect of rent service my writ is always maintained against him who is my very tenant.—*Pulteney.* On a writ of Customs and Services, though you recover against him who is your tenant in service, and you have previously released to him who is tenant in demesne, &c., if you would take a distress for the services by force of the recovery, and make avowry upon him against whom you recover, the tenant of the land will plead your release against you in bar, and, though he is a stranger to your avowry, he will have the said plea, because the release would prove the tenements to be out of your fee; and such a plea lies in the mouth of a stranger, or something equivalent, so that no mischief would ensue from such a recovery; but in this present case, since he who is tenant of the land is named in your writ, and, if you recover, &c., his tenancy will be charged for the rest, whereas you have possibly yourself released, &c., therefore, &c.—On another day Shardelowe said: It is found that you were seised and disseised, wherefore the Court adjudges that you do recover your seisin, and your damages, &c., and that the disseisors be in mercy, and that you be in mercy with regard to the others.—*R. Thorpe.* We pray execution in respect of arrears since the verdict.—*Pulteney.* You can distrain; wherefore, &c.—Sharshulle. Sue execution of both, &c.

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par cas vous avez relesse a mesme cesty B. et a sa jointfeffe, ou a E., qe nest pas nome, &c., quele chose il ne puit mye pleder a ore, par taunt qe vostre briefe nest pas bien conceu, et il serreit un graunt meschief, auxi come il semble; par quei, &c. —*R. Thorpe.* Si jeo fuisse a porter mon briefe de Custumes et Services de mesme le rente, jeo le portera devers nul autre qe devers A., qest mon verrey tenaunt, et si jeo recovera vers luy, la tenaunce serra charge; issint de rente service touz dis mon briefe est meintenu vers cesty qest mon verrey tenaunt.—*Pult.* En briefe de Custumes, &c., mesqe vous recoverez vers cesty qest vostre tenaunt en service, et vous eiez relesse devant a cesty qest tenaunt en demene, &c., si vous voudres,[1] par force de recoverir, prendre distresse pur les services, et faire avowere sur cesty vers qi vous recoverez, le tenaunt de la terre vous pledera en barre par vostre relees, et, coment qil est estraunge a vostre avowere, il avera le dit plee, pur ceo qe le relees provereit les tenements estre hors de vostre fee; et tiel plee gist en bouche destraunge, ou chose qe taunt vaut, issint de tiel recoverir ensuereit nul meschief; mes en ceo cas cy, depuis qe cesty qest tenaunt de terre est nome en vostre briefe, et si vous recoverez, &c., sa tenaunce serra charge a remenaunt, ou par cas vous mesmes avez relesse, &c., par quei, &c.—*Ad alium diem* Schard. Trove est qe vous fustes seisi et disseisi, par quei la Court agarde qe vous recoverez vostre seisine et vostre[2] damage, &c., et les disseisours en la mercye, et vous en la mercye vers les autres.—*R. Thorpe.* Nous prioms execucion de les arrerages puis le verdit.—*Pult.* Vous poiez destreindre; par quei, &c.—Schar. Suez execucion de lun et de lautre, &c. A.D. 1343.

[1] Old editions, voidres.

[2] Oldest editions, vestre.

Nos. 7, 8.

A.D. 1343. *Scire facias* against a tenant who made default. Another prayed to be admitted, and they came to a traverse on the nature of the tenancy of him who made default.

(7.) § A man prayed to be admitted by reason of the tenant's default, and alleged that the tenant held by the curtesy of England of his inheritance.—*Blaykeston.* He, by reason of whose default we pray execution, after the death of her after whose death we demand execution, abated, *absque hoc* that he holds by the curtesy of England; ready, &c.—*Moubray.* Will you say that the tenant has a fee, for the law does not put me to answer as to the abatement attached in his person?—Shardelowe. There are other counterpleas besides saying that the tenant has a fee, and he traverses you to the effect that he does not hold by the curtesy of England; ready, &c.—*Thorpe.* We pray that he who prays to be admitted, and has pleaded to issue, may be able to make an attorney.—Hillary. He will be aided in the Chancery, but not in this Court.

Formedon.

(8.) § Formedon. On the return of the *Petit Cape* against William Vaghan and Joan his wife, the wife was heretofore essoined on the King's service, and they had a day now, and the husband now made default, and the wife was admitted to defend her right. And as to parcel she vouched[1] her sister Margaret, and as to another parcel she vouched herself, and her husband, and her sister Margaret, and showed cause for the voucher in that one Katharine, sister of Joan and Margaret, whose heirs they are,

[1] As to the vouchers and aid-prayer in the record, see p. 37, note 2, and p. 47, note 5.

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(7.) [1] § Un homme pria destre resceu par defaut le tenant, et alleggea qe le tenant tient par la ley Dengleterre de son heritage.—*Blayk.* Celuy par qi defaut nous prioms execucion, apres la mort cele apres qi mort nous demandoms execucion, abatist, sanz ceo qil tient par la ley Dengleterre; prest, &c. —*Moubray.* Voillez dire qe le tenant ad fee, qar al abatement attache en sa persone ley ne me met a respoundre?—Schard. Il y sount autres countreplees qe a dire qe le tenant ad fee, et il vous traverse qil ne tient pas par la ley Dengleterre; prest, &c. —*Thorpe.* Nous prioms qe celuy qe prie destre resceu, et ad plede a issue, qil put faire attourne.—Hill. En la Chauncellerie il serra eide, mes ceinz nient.

A.D. 1343. *Scire facias* vers tenant qe fit defaut. Autre pria destre resceu, et sur la manere de tenaunce cely qe fait defaut sount a travers.[2]

(8.) [3] § Formedoun. Al Petit *Cape* retourne vers William Vaghan[4] et Johane sa femme, la femme fut essone de service le Roi autrefoith, et ount jour ore, et le baroun fist defaut a ore, et la femme est resceu a defendre son dreit.[5] Et quant a parcelle ele voucha Margarete[6] sa soer, et quant a autre voucha luy mesme, et son baroun, et Margarete[6] sa soer, et moustra cause de voucher pur ceo qune K., soer J. et M., qi heirs eles sount,

Formedoun. [Fitz., *Aide*, 136.]

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[1] From Harl., 25,184, and C.

[2] The marginal note, except the words *Scire facias*, is from 25,184 alone.

[3] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich. 17 Edw. III. R° 134. It there appears that a Formedon in the descender was brought by Nicholas de Stodham against William Vaghan, knight, and Joan his wife, in respect of two parts of the manor of Plumburgh (Essex), except 60 acres of land, 23 acres and one rood of pasture, 4 acres, one rood, and one third of a rood of wood, and 16*s.* of rent. Joan was admitted to defend on her husband's default.

The gift, as alleged by the demandant, was made by John de Flore, chaplain, to Thomas de Stodham and Isabel, his wife, in special tail, and the demandant was their son and heir.

[4] Harl., Washan.

[5] The words son dreit are omitted from 25,184.

[6] Harl., Margerie.

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A.D. 1343. enfeoffed her husband and her; and as to the rest she said that John Abel, father of Joan, Katharine, and Margaret, whose heirs, &c., died seised, and after his death they entered, &c. From Katharine, who died without heir of her body, the right to her purparty descended to Joan and Margaret, who made partition between them. And she prayed aid of Margaret, her co-parcener.—*Notton*. We do not admit that John, the common ancestor, died seised, and we tell you that, after the death of John Abel, one K. was seised of the same tenements in her demesne as of fee, and

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enfeffa son baroun et luy; et quant al remenant ele dit qe Johan Abel, pere J., K., et M., qi heirs, &c., murust[1] seisi, apres qi mort eles entrerent, &c. De K., qe murust sanz heir de son corps, descendi a J. et M. le dreit de sa purpartie, qe firent purpartie entre eux. Et pria eide de M., sa parcenere.[2] —*Nottone.* Nous ne conissoms pas qe J., le comune auncestre, murust seisi, et vous dioms qe, apres la mort Johan Abel, un[3] K. fut seisi de mesmes les tenements en son demene come de fee, et murust A.D. 1343.

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[1] Harl., et muruyst.

[2] The following are the entries on the roll touching the aid-prayer and vouchers:—"Dicit quod quidam Johannes Abel fuit seisitus de prædicto manerio cum pertinentiis, exceptis, &c., in dominico suo ut de feodo et jure, et obiit seisitus de eodem, post cujus mortem prædictum manerium cum pertinentiis, exceptis, &c., descendit quibusdam Margaretæ, Katerinæ, et ipsi Johannæ ut filiabus et heredibus, &c., inter quas prædictum manerium cum pertinentiis, exceptis, &c., partitum fuit, ita quod tertia pars ejusdem manerii, exceptis, &c., assignata fuit prædictæ Katerinæ, et alia tertia pars prædictæ Margaretæ, et alia tertia pars ipsi Johannæ, quæ quidem Katerina de proparte sua feoffavit ipsam Johannam, et postea eadem Katerina obiit sine herede de se, et sic dicit quod ipsa tenet unam tertiam partem manerii prædicti in propartem suam cum prædicta Margareta sine qua non potest prædicto Nicholao inde respondere; et petit auxilium de prædicta Margareta," &c.

"Et concessum est ei auxilium per Curiam. Ideo eadem Margareta summoneatur quod sit hic a die Sancti Hillarii in xv dies ad respondendum simul, &c. Et summoneatur in prædicto Comitatu Essexiæ," &c.

"Et quoad unam acram terræ de alia tertia parte versus eam petita vocat inde ad warantum Willelmum Vaghan, chivaler, et Johannam uxorem ejus, et prædictam Margaretam, summonendos in eodem Comitatu Sussexiæ [and so in margin]. Et quoad unam aliam acram terræ de eadem tertia parte vocat ad warantum Margaretam Harang summonendam in Comitatu Dorsetæ. Et quoad totum residuum ejusdem tertiæ partis vocat inde ad warantum Margaretam quæ fuit uxor Walteri Harang summonendam in Comitatu Sussexiæ."

"Ideo eædem Margareta Harang, et Margareta quæ fuit uxor Walteri Harang singillatim summoneantur in prædictis Comitatibus Dorsetæ et Sussexiæ, per auxilium Curiæ, quod sint hic ad præfatum terminum ad warantizandum," &c.

[3] un is omitted from Harl.

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A.D. 1343. died seised, after whose death Joan, who prays aid, and Margaret abated, &c.; judgment whether as heirs of John Abel they ought to have aid.—Sharshulle. Then you do not deny that their ancestor died seised, and that they entered as claiming by way of descent. Why should they not have aid?—*Thorpe.* If I could show their estate to be by purchase, notwithstanding that their ancestor died seised, they would not have aid; for the same reason in this case, inasmuch as I show that, after the death of their ancestor, another died seised, after whose death they entered, and in that case their estate could not be by descent, but by abatement, because the possession of the ancestor is not a cause for giving them aid, if they are not seised by descent. —And, notwithstanding, the Court would, as it seemed, have granted the aid.—Therefore *Notton* said that John Abel and K. purchased, &c., to hold to them and the heirs of K., which K. survived, and, after K.'s death, they abated; judgment whether aid, &c. And as to the voucher of herself and Margaret, her sister, we tell you that they never had anything by feoffment from Katharine, their sister, as they suppose by the cause which they show for the voucher.—*Moubray.* Then we vouch Margaret.—*Notton.* You shall not be admitted to that, for you previously vouched the same person for a cause which we have destroyed, and therefore you shall not now be admitted to vouch the same person for another cause, nor in any other way, nor in any other manner.—Shardelowe. At first the voucher was given only for a cause, because she vouched herself, and that cause was traversable; but now the voucher is general, and that is good as much in respect of Margaret

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seisi, apres qi mort J., qe prie eide, et M. saba- A.D. 1343.
tirent,[1] &c.; jugement si[2] come heirs J. Abel deivent eide aver.—Schar. Donqes vous ne deditez pas qe lour auncestre murust seisi, et eles entrerent en clamaunt par voie de descente. Par quei naverount eles eide?—[*Thorpe.* Si jeo purrai[3] moustrer lour estat estre par purchace, *non obstante* qe lour auncestre murust seisi, il naverount pas eide;][4] par mesme la resoun en ceo cas, desicome jeo moustre apres la mort lour auncestre qe autre murust seisi, apres qi mort ils sount entres, en quel cas lour estat ne put estre par descente, einz par abatement, qar la possessioun launcestre nest pas cause de les doner leide, si eles ne soient seisiz par descente.—Et, *non obstante*, Court voleit, a ceo qe sembloit, aver graunte leide.—Par quei *Nottone* dist qe J. Abel et K. purchacerent, &c., a eux et les heirs K., quele K. survesquist, apres qi mort eles abatirent[5]; jugement si eide, &c. Et, quant a voucher de luy mesme[6] et M. sa soer, nous vous dioms qeles navoient unqes rien del feffement K. lour soer, com eles supposent par lour cause de voucher.—*Moubray.* Donqes vouchoms M.—*Nottone.* A ceo ne serrez resceu, qar devant vous vouchastes mesme cele par cause quele nous avoms destruit, par quei ore de voucher mesme cele[7] par autre cause, ne par autre voie, ne[8] nulle autre manere ne[9] serrez resceu.—Schard. Primes ne fut pas le voucher done forsqe par cause, pur ceo qele voucha luy mesme, quel cause fut traversable; mes ore[10] le voucher est general, quel est bon[11] auxi bien de cele come

[Fitz., *Counterple de Voucher*, 41.]

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[1] 25,184, sabaterount.
[2] si is omitted from 25,184.
[3] Harl., purroi.
[4] The words between brackets are omitted from 25,184.
[5] 25,184, abaterent.
[6] mesme is omitted from Harl.
[7] Harl., cely.
[8] Harl., en.
[9] ne is omitted from Harl.
[10] ore is omitted from 25,184.
[11] bon is omitted from 25,184.

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A.D. 1343. as of a person who is a stranger, unless it be counterpleaded in another way; wherefore answer.—*Moubray.* As to the aid-prayer which is counterpleaded, you see plainly how they claim nothing of the estate of K. which they allege to be joint with our ancestor, so that it does not lie in their mouth to plead her estate, nor do they deny that our ancestor died seised, or that partition was made between us, in which case no parcener ought to answer without another; judgment, &c.—*Notton.* Then is it so?—HILLARY. No, she ought not to try this without her co-parcener: for suppose that their ancestor and K. his wife, as you suppose, had purchased jointly, and to K.'s heirs, and after the death of John Abel they had entered, committing a tort against K., who possibly raised no dispute, and had made partition, would they not have aid against every one other than K. and her heirs, to whom the tort would have been done? as meaning to say that they would.—SHARDELOWE. Certainly not where the ancestor had only a term for life, of which estate nothing could descend to the heirs; they will never have aid by reason of the tort which they committed in entering, and by reason of their partition afterwards.—SHARSHULLE. Aid-prayer between parceners is to such intent that the loss shall be equal for them all, and that no one of them without another ought to jeopard the ancestor's right; now, if they have entered and made partition, it is right that, if loss fall upon one, she should have *pro rata* against her co-parcener who holds by like course, and particularly since the law purports in this case that neither shall try the right which has descended without the other.—*Grene.* On a writ of Intrusion after the death of the same ancestor as is supposed tenant for term of life, if

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destraunge persone, si ceo[1] ne soit countreplede par autre voie; par quei responez.—*Moubray.* Quant al eide prier countreplede, vous veiez bien coment ils ne cleyment rien del estat K. quel ils dient estre joint ove nostre auncestre,[2] issi qe de pleder soun estat en lour bouche ne gist pas, ne ils ne dedient pas qe nostre auncestre murust seisi, ne qe la purpartie se fit entre nous, en quel cas nul parcenere deit respoundre saunz autre; jugement, &c.—*Nottone.* Donqes est il issi?—Hill. Nanyl, il ne deit pas trier cel saunz soñ parcener; qar mettez moi qe lour auncestre ēt K. sa femme, com vous supposez, ussent purchace jointement, et les heirs K., et, apres la mort J. Abel, eles[3] ussent entre, fesaunt tort a K., qe fit[4] nul debat par cas, et[5] ussent fait[6] purpartie, naverount ils eide vers chescun autre qe K. et ses heirs as queux le tort serreit fait? *quasi diceret sic.*—Schard. Noun certes la ou launcestre navoit qe terme de vie, de quel estat rien ne poait descendre en les heirs; jammes par lour tort qil firent en lentre, et par lour departisoun[7] apres naverount ils eide.—Schar. Eide prier entre parceners est a cel entent qe la perde serra owel[8] sur[9] touz, et qe[10] nul saunz autre deit jupartier[11] le dreit launcestre; ore, si eles soient entres, et fait purpartie, il est resoun qe si perde chete sur une, qele eit *pro rata* vers sa[12] parcener qe tient a tiel cours, et nomement desicome ley voet en ceo cas qe nul triera le dreit descendu sanz lautre.—*Grene.* En bref Dentrusioun apres la mort mesme launcestre qest suppose tenant a terme de vie, si[13] ses filles

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[1] 25,184, sil, instead of si ceo.
[2] auncestre is omitted from 25,184.
[3] 25,184, ils.
[4] 25,184, fut.
[5] et is omitted from 25,184.
[6] fait is omitted from Harl.
[7] Harl., departisioun.
[8] 25,184, ouewele.
[9] 25,184, et.
[10] qe is omitted from 25,184.
[11] Harl., juipartier.
[12] 25,184, la.
[13] 25,184, de.

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A.D. 1343. his daughters enter, and make partition, it has been seen that aid has been granted.—SHARDELOWE. That was certainly an error.—*Pulteney.* On a Formedon in the reverter it has been seen that by judgment the sisters of one who was supposed to be tenant in tail, and dead without issue, had aid because they had entered and made partition.—SHARDELOWE. That was not in accordance with law.—HILLARY. But they are in a better case than if K. or her heirs who had the fee jointly with the ancestor were to demand.—SHARDELOWE. Aid is not granted by law in respect of land except for two considerations: one is on the ground of the slenderness or weakness of the estate of the person who prays aid, and then the aid is to the advantage of the person who is prayed in aid, and is out of Court; the other is between parceners, and that is to the advantage of the one who is tenant and who prays because she ought not to lose without having to the proportionate value in relation to her co-parcener. You see then that the cause which gives aid-prayer between parceners is not destroyed.—*W. Thorpe.* If tenant for term of life pray aid, he shall say for what cause; and if he say by reason of a lease made to him by a certain person for term of life, it is sufficient for me to say that he does not hold by that person's lease; and even though he have only a term for life, but by lease from another person, I shall oust him from aid, and also by saying that he has a fee, so that it is always sufficient to destroy the cause for which he would have aid and put me to delay. So in the matter before us.—*R. Thorpe.* In order to have aid in parcenary three things are requisite, that is to say, that the common ancestor had right which could descend, the entry of the heirs, and partition made. Therefore it is sufficient to destroy one of these three: for if I were to say that the common ancestor had nothing, that would be a good answer;

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entrent,[1] et facent purpartie, homme ad vewe leide estre graunte.—Schard. Certes ceo fut errour.—*Pult.* En un[2] Formedoun en *reverti* homme ad vewe qe par jugement les soers celuy qe fut suppose tenant en taille, et mort sanz issue, avoient leide pur ceo qeles furent entres et avoient fait purpartie.—Schard. Ceo ne fut pas par[3] ley.—Hill. Mes ils sount en meillour cas qe si K. ou ses heirs qavoient le fee joint ove launcestre feussent[4] a demander.—Schard. Il ny ad eide graunte en ley de terre forsqe a deux regardes: un est pur tendresse,[5] ou feblesse del estat cely qe prie, et donqes est leide en avantage de cely qest prie, et est hors de Court; autre est entre parceners, qest en avantage de cely[6] qest tenant et prie pur ceo qele ne deit perdre sanz aver value vers sa parcenere come affiert. Veiez[7] donqes qe cause qe doune[8] prier eide entre parceners nest pas destruit.—[*W.*] *Thorpe.* Si tenant a terme de vie prie eide, il dirra par quele cause; et sil die par cause de lees fait a luy par certein persone a terme de vie, il suffit a moy a dire qil ne tient pas de son lees; et tut neit il qe terme de vie, et dautri lees, jeo luy oustera, et auxi a dire qil y[9] ad fee,[10] issi qe touz jours suffit a destruire la cause sur quel il voet aver leide et moy mettre a delaie. *Sic in proposito.—R. Thorpe.* Daver eide en parcenerie iij choses sount requis, saver, qe comune auncestre avoit dreit qe purra descendre, lentre des heirs, et purpartie[11] faite. Donqes a destruire un des membres suffit: qar si jeo deisse[12] qe le comune auncestre navoit rien, ceo serreit bon

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[1] 25,184, entrerent.
[2] un is omitted from Harl.
[3] par is omitted from 25,184.
[4] Harl., fuissent.
[5] 25,184, tendresce.
[6] The words de cely are omitted from 25,184.
[7] Harl., Et veietz.
[8] 25,184, de douner, instead of qe doune.
[9] y is omitted from 25,184.
[10] 25,184, feffe.
[11] Harl., de purpartie.
[12] 25,184, desse.

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A.D. 1343. for the same reason it would be so, were I to admit in him an estate so weak that it could not descend or give inheritance to the heirs, or colour to claim anything by descent: for though of their own tort, or by entry without title, or colour, they may have made a division of the land between them which could not be a partition, but a division as between strangers who were purchasers, that does not give aid, for aid-prayer between parceners is granted principally in order to try the right which was in the ancestor; and, if he had not right, nothing could descend, nor consequently could there be any cause for aid-prayer.—HILLARY. On an Entry *ad terminum qui præteriit*, if the daughters of him who had only a term for life, and to whom the lease was made, are in, and have made partition of the land, shall they not have aid?—SHARDELOWE. That is caused by the writ which will suppose their entry to be by their ancestor, but otherwise not.—Afterwards the voucher of Margaret was counterpleaded on the ground that she never had anything except in common with this same Joan who vouched her.—HILLARY. By what law is this counterplea given?—*W. Thorpe*. By the Common Law: for if two purchased jointly, as has been seen in the case of a husband and his wife, and the wife, having survived, vouched her husband's heir, she has been ousted from the voucher because neither he nor his ancestors had any estate except the joint estate with her who vouched, and she has been ousted by judgment. So in the matter before us, in respect of the estate which the two had in common, neither shall have voucher of the other; and if she were to have voucher by reason of the possession of any of her ancestors higher up, then she ought to have the first voucher, inasmuch as, before this, she and the others who are her co-parceners are in pleading held by the first voucher to be co-heirs.—HILLARY. That first voucher is

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respouns; par mesme la resoun ou jeo conusse[1] A.D. 1343.
estat en luy si feble qe ne put descendre ne doner enheritaunce en les heirs, ne colour a rien clamer par descente: qar de lour tort demene, ou entre saunz title, ou colour, tut eient eles[2] departie entre eux la terre qe ne put estre purpartie, mes departisoun come entre estraunges purchaceours, ceo doune pas eide, qar eide prier entre parceners est principalment graunte de trier le dreit qe fut en launcestre; et, sil navoit pas dreit, rien ne poet[3] descendre, *nec per consequens* nul cause de eide prier.—Hill. En un Entre *ad terminum qui præteriit*, si les filles celuy qe navoit qe terme de vie, et[4] a qi le lees fut fait, soient einz,[5] et departie la terre, naverount ils eide?—Schard. Ceo fait le bref qe supposera lour entre par lour auncestre, mes autrement nient. —Puis le voucher de M. fut countreplede par taunt qele navoit unqes rien forsqe en comune ovesqe mesme cele Johane qe lad vouche.—Hill. Par quel ley est cel countreplee done?—*W. Thorpe.* Par la Comune Ley: qar si deux purchacent jointement, come homme[6] ad vewe de baroun et sa femme, et la femme, qe survesquist, voucha leir son baroun, ele ad este ouste par taunt qe celuy ne ses auncestres navoint autre estat forsqe lestat joint ovesqe cele qe voucha, et par agarde ad este ouste del voucher. *Sic in proposito*, del estat quel les deux avoint en comune, nul navera voucher dautre; et sil eit[7] voucher par cause de possessioun de nul de ses auncestres[8] paramount, donqes covendreit il aver le primer voucher desicome, devant ces houres, luy et les autres ses parceners sount tenus, en pledant par le primer voucher, estre coheirs.—Hill. Cel primer voucher

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[1] 25,184, conise.
[2] eles is omitted from Harl.
[3] Harl., purra.
[4] et is from C. alone.
[5] einz is omitted from Harl.
[6] homme is omitted from 25,184.
[7] Harl., qeit.
[8] Harl., parceners.

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A.D. 1343. waived, and she may now vouch the greatest stranger in the world; besides, could not one parcener enfeoff another, as to whom cause of voucher and of warranty would be given? Certainly she could.—*W. Thorpe.* We put that to your judgment. And, as to the other point which you touch, that they would be able to vouch a stranger, it is so; but, when they vouch the same person as was vouched before, we shall have advantage of their previous admission.—Hillary. Say
Judgment. something else.—And afterwards Hillary, by judgment, gave her the voucher and also the aid, because neither she who was supposed to hold jointly with the ancestor, nor her heirs, raised any dispute as to the estate of the parceners, &c.

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est weyve, et il purra ore voucher le plus estraunge de mounde; ovesqe ceo, ne put une parcenere feffer une autre, de qi cause de voucher et de garrauntie serra done? Certes si put.—[*W.*] *Thorpe*. Ceo mettoms en vostre jugement. Et, al autre point qe vous touchez,[1] qils purrount voucher estraunge, il est issi; mes, quant il vouchent mesme cely qe devant fut vouche, nous averoms avauntage de lour conissaunce a devant.—Hill. Ditez autre chose.—Et puis Hill., par agarde, luy dona le voucher, et auxint leide, pur ceo qe cele qe fut suppose tenir joint ove[3] launcestre ne ses heirs ne mistrent[4] pas debat sur lestat les parceners, &c.[5] A.D. 1343. *Judicium.*[2]

[1] Harl., vouchez.

[2] The marginal note is omitted from Harl.

[3] C., od.

[4] Harl., moustrent; 25,184, mostrerent.

[5] The entries on the roll following those cited above, p. 37, note 2, are the following:—"Et prædictus "Nicholaus, quoad prædictam "acram terræ de qua prædicta "Johanna uxor Willelmi vocavit "ad warantum Willelmum Vaghan, "chivaler, et Johannam uxorem "ejus, et prædictam Margaretam "filiam et unam heredum Johannis "Abel, dicit quod eadem Johanna "uxor Willelmi ad istud vocare ad "warantum admitti non debet, "quia dicit quod ipsa Johanna "quæ modo admissa est ad defen-"sionem juris sui est illa eadem "Johanna quæ vocata est ad war-"antum simul cum prædicto "Willelmo Vaghan viro suo, et "prædicta Margareta filia Jo-"hannis, unde petit judicium si "ipsa ad vocare se ipsam ad war-"antum absque causa speciali "admitti debeat," &c.

"Et prædicta Johanna, quæ ad-"missa est, dicit quod prædicta "Katerina, soror ipsius Johannæ "et prædictæ Margaretæ filiæ "Johannis, cujus heredes ipsæ "sunt, de eadem acra terræ cum "pertinentiis, et de aliis tenemen-"tis, feoffavit ipsam Johannam, et "obligavit se et heredes suos ad "warantiam, &c., et ea de causa "vocat ipsa ad warantum ipsammet, "simul cum prædicto viro suo, et "prædictam Margaretam, ut sorores "et heredes ipsius Katerinæ.

"Et Nicholaus dicit quod, ubi "prædicta Johanna, quæ admissa "est, &c., nititur habere istud "vocare ad warantum, videlicet "de se ipsa, et de prædicta Mar-"gareta participe sua, per hoc quod "ipsa allegat ipsam Katerinam "sororem, &c., de prædicta acra "terræ cum pertinentiis feoffasse "ipsam Johannam, eadem Jo-"hanna nunquam aliquid habuit "in eadem terra de feoffamento "prædictæ Katerinæ." Issue was joined on this, and the record ends with the award of the *Venire*.

No. 9.

A.D. 1343. Dower where one who was vouched as being of full age came and said that he was in wardship, and demanded judgment of the voucher, and thereupon they were at a traverse, and the demandant was delayed.

(9.) § Dower. The tenant vouched. The vouchee came and answered by guardian, and demanded judgment of the voucher, because on the day of the voucher he was in wardship, and is on this day. The tenant said that he was then of full age, and out of the wardship of any one. And it was said that since he had before Justices of record made a guardian at a later time, the tenant should not be admitted to say that he was previously of full age.—And this was the opinion.—Therefore the tenant tendered the averment that he was out of the wardship of any one on the day of the voucher, &c.—And the other side said the contrary.—The demandant prayed seisin by reason of the dispute between the tenant and the vouchee which ought not incidentally to cause delay to her.—But, because the voucher was in the same County, the averment was admitted, and the demandant was delayed until the traverse should be tried.—And they have a day.—And afterwards *Moubray* came and said: The effect of the issue is only whether the vouchee's land was in wardship, or not, at the time of the voucher, and it has been entered that we are at a traverse as to whether the body was in wardship or not, which is nothing to the purpose, and we pray that the entry be amended.—Shardelowe. The guardian will be summoned, if that is the case, and will lose, and will make satisfaction to the value.—*Seton*. We are at issue, and the parties are gone with their day.

Dower.

§ On a writ of Dower the tenant vouched to warrant the heir of the woman's husband, who was to be summoned in the same County, and vouched him as being out of wardship and of full age. The heir comes now upon process, and will answer by guardian.—*Moubray*. Whereas you have vouched us as being of full age, and out of wardship, we tell you that, on the day of your voucher, we and our lands were in the wardship of one A. by reason of our non-

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(9.) [1] § Dower. Le tenant voucha. Le vouche vint et respondi par gardein, et demanda jugement du voucher, qar jour de voucher il fut en garde, et huy ceo jour est. Le tenant dit qil fut adonqes [3] de pleyn age, et hors de chescuny [4] garde. Et fut dit qe puis qe devant Justices de recorde il ad fait gardein de puisne temps qil ne serra pas resceu a dire qe devant il fut de pleyn age.—*Et hæc est opinio.*—Par quei il tendist daverer qe hors de chescuny [4] garde jour du voucher, &c.—*Et alii e contra.* —La demandante pria seisine pur le debat entre le tenant et le vouche, qe ne cherra pas en delaie de luy.—Mes, pur ceo qe le voucher est en mesme le Counte, laverement est resceu, et la demandante delaie tanqe le travers soit trie.—*Et habent diem.*— Et [5] puis vint *Moubray* et dit qe leffecte del issue est soulement le quel sa terre fut en garde ou noun, au temps de voucher, et il est entre qe nous sumes a travers si le corps fut en garde ou noun, qe nest rien a purpos, et prioms qe ceo soit amende.— Schard. Le gardein serra somons en tiel cas, et perdra, et fra la value.—*Setone.* Nous sumes a issu, et les parties sount ales ove lour jour.

A.D. 1343. Dower ou un vouche come de pleyn age qe vynt et dit qil est en garde, et demanda jugement du voucher, et sur ceo sont a travers, et la demandante delaie.[2] [Fitz., *Voucher*, 91.]

§ En [6] briefe de Dower le tenaunt voucha a garraunt leir le baroun la femme, qe serreit somons en mesme le Counte, et luy voucha come hors de garde et de plein age. Leir vient ore par proces, et respoundra par gardein.—*Moubray.* La ou vous avez vouche come de plein age, et hors de garde, nous vous dioms qe, jour de vostre voucher, nous et nos terres fumes en garde un A. par resoun de

Dower.

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[1] From Harl., 25,184, and C., until otherwise stated.

[2] The marginal note, except the word Dower, is from 25,184 alone.

[3] adonqes is omitted from 25,184.

[4] 25,184, chescune.

[5] Et is omitted from Harl.

[6] This report of the case appears by itself as No. 96 in the old editions. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

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A.D. 1343. age; wherefore we demand judgment of this voucher. —*Richemunde.* On the day of our voucher you were of full age, and out of any wardship; ready.—SHARSHULLE. You cannot have the two averments—to say that he was of full age, and also that he was out of any wardship, &c.—*Moubray.* He shall not be admitted to say that we were then of full age, even though he would take issue upon that, because we are here by guardian, and so it is of record that we are still under age.—*Seton.* Although you answer by guardian, that does not prove that you are under age, because it might be that the Court is deceived, &c.; wherefore, &c.—But the opinion was that, because he had allowed the other to answer by guardian, he should not be admitted to say that the vouchee was of full age, contrary to the record; wherefore, &c.—*Richemunde.* We tell you that, on the day of our voucher, you were out of any wardship; ready.—*Moubray.* You must answer as largely as we have taken our exception. Now we have said that we and our lands also were in wardship, &c.; therefore you must say that we and our lands also were out of wardship.—SHARDELOWE. An infant shall not be vouched as being under age, and in wardship, unless he be himself in wardship, for you have never seen, as I believe, a voucher in such a form as: "We vouch such an one whose lands are in the wardship of such an one," without showing first that the body is in wardship; wherefore, &c.—*Moubray.* Sir, on the day of his voucher we were in the wardship of A., as, &c.; ready.—*Richemunde.* Out of any wardship, as we have said; ready.—And so to the country.—*Blaykeston.* Sir, now we pray seisin of the land for the demandant.—HILLARY. He who is vouched is vouched in the

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nostre non age; par quei demandoms jugement de ceo voucher.—*Richem.* Jour de nostre voucher vous fuistes de plein age, et hors de chescune garde; prest.[1]—Schar. Vous ne poiez pas aver les ij, a dire qil fut de plein age, et auxi hors de garde, &c. —*Moubray.* A dire qe nous fumes adonqes de plein age il ne serra mye resceu, mesqe il voleit sur ceo prendre issue, car nous sumes cy par gardein, issint est ceo de recorde qe nous sumes uncore deinz age. —*Setone.* Coment qe vous responez par gardein ceo ne prove pas qe vous estes deinz age, car il puit estre qe la Court est desceu, &c.; par quei, &c.— Mes loppinion[2] fut, pur ceo qil accepta lautre respoundre par gardein, qil ne serra mye resceu a dire qil fut de plein age, encontre le record; par quei, &c.—*Richem.* Nous vous dioms qe jour de nostre voucher qe vous fuistes hors de chescune garde; prest.—*Moubray.* Il covient qe vous respoignez auxi largement come nous avoms done nostre chalange. Ore nous avoms dit qe nous et nos terres auxi fumes en garde, &c.; pur ceo il covient qe vous dites qe nous et nos terres auxi fumes hors de garde.—Scharde. Un enfant ne serra mye vouche come deinz age, et en garde, sil ne soit mesme en garde, car vous navez mye vieu tiel voucher, come jeo crey, nous vouchoms un tiel qi terres sont en la garde un tiel, sanz moustrer primes qe le corps est en garde; par quei, &c.—*Moubray.* Sire, jour de son voucher nous fumes en la garde A., auxi come, &c.; prest.—*Richem.* Hors de chescune garde, auxi come nous avoms dit; prest.—*Et sic ad patriam.* —*Blaik.* Sire, ore prioms seisine de terre pur la demandant.—Hill. Cesty qest vouche est vouche en A.D. 1343.

[1] Earliest editions, prist.

[2] In the margin of the copy of Rastell which is in the British Museum the words "*Opinio Curiæ*" have here been written in the margin, in manuscript; and in the edition of 1679 "*Op. Curiæ*" is printed in the margin.

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A.D. 1343. same County, and as the husband's heir; wherefore we cannot yet know whether she will have judgment against the tenant or against the vouchee, and therefore she must wait until decision has been had on that issue between them.—And thereupon he directed the Clerk to enter the issue between the tenant and the vouchee, and gave *Idem dies* to the demandant.—But it was said that, if the heir had been vouched in a foreign County, the woman would have had judgment against the tenant as soon as the issue between the tenant and the vouchee had been joined.—See the contrary of this judgment, where the heir was vouched while in the wardship of the Abbot of Ramsay in Michaelmas Term in the tenth year of the reign of the present King, where it was adjudged that the woman should recover immediately against the tenant.[1]

Voucher and re-voucher of the same person to whom the vouchee had warranted in respect of a fee simple.

(10.) § *Præcipe* brought against a man and his wife, who vouched to warrant one W., and he warranted them in respect of a fee simple. W., tenant by his warranty, revouched the husband alone to whom and to his wife he had warranted, and he showed cause for the voucher in that the husband enfeoffed him higher up, &c.—*Grene.* He ought not to be admitted to this re-voucher, because he has warranted the same person in respect of a fee simple, and the same law prevails where he has warranted to that person and another as if he had warranted to that person alone.—Shardelowe. That is not so.—But he did not assign any reason.—Therefore the voucher, by judgment, stood.—*Quære.*

Præcipe quod reddat.

§ A writ was brought against a man and his wife, and they vouched to warrant one A., who entered into warranty, and revouched the husband.—*Grene.* You shall not be admitted to this voucher: for you

[1] Y.B., Mich., 10 Edw. III., No. 60.

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mesme le Counte, et come heir le baroun; par quei nous ne pooms saver uncore le quel ele[1] avera jugement vers le tenaunt ou vers le vouche, par quei il covient qele attende tanqe il soit discusse sur cest issue entre eux.—Et sur ceo il comaunda al Clerk dentrer lissu entre le tenaunt et le vouche, et dona *Idem dies* a la demandante.—Mes dit fut qe si leir ust este vouche en forein Counte qe la femme ust eu jugement vers le tenaunt a plustost qe lissu entre le tenaunt et le vouche ust este joint.—*Vide contrarium istius judicii* la ou leir fut vouche en la garde Labbe de Ramsey, *Termino Michaelis anno decimo Regis nunc*, ou fut agarde qe la femme recoverast tauntost vers le tenaunt. A.D. 1343.

(10.)[2] § *Præcipe* porte vers un homme et sa femme, qe voucherent a garraunt un W.,[4] qe les garrauntist de fee simple. W., tenant par sa garrauntie, revoucha le baron soul a qi et sa femme il avoit garraunti, et moustra cause de voucher pur ceo qe le baroun luy feffa de plus haut, &c.—*Grene.* A ceo revoucher ne deit il estre resceu, qar il ad garraunti a mesme cely de fee simple, et mesme la ley y ad quant il ad[5] garraunti a luy et un autre come sil ust garraunti a luy soul.—Schard. *Non est.*—*Sed non assignavit*[6] *causam.*—Par quei le voucher par agarde estut.—*Quære.* Voucher et revoucher de mesme la persone a qi il ad garraunti de fee simple.[3] [Fitz., *Voucher*, 92.]

§ Briefe[7] fut porte vers un homme et sa femme, qe voucherent a garraunt un W., qe entra, et revoucha le baroun.—*Grene.* A cest voucher ne serrez pas *Præcipe quod reddat.*

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[1] Old editions, il.

[2] From Harl., 25,184, and C., until otherwise stated.

[3] The marginal note, except the word Voucher, is from 25,184 alone.

[4] 25,184, A.

[5] 25,184, yad.

[6] 25,184, *affirmavit*.

[7] This report of the case is printed by itself as No. 108 in the old editions. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

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A.D. 1343. have warranted fee simple to this same person whom you vouch, and, inasmuch as you have warranted to him, every warranty which you have against him higher up was extinguished; judgment whether you ought to be admitted to this voucher.—SHARSHULLE. He has not warranted fee simple to the husband alone, but to the husband and his wife, in which case his voucher is saved to him against the husband alone by reason of the warranty higher up; and therefore, if you cannot say anything else, the voucher will stand. —*Grene*. Then we tell you that, whereas he vouches the husband, and shows, as a cause for having the voucher, that the husband alone enfeoffed him, this feoffment was made to him and one John, and the heirs of John; judgment whether to this voucher supposing the feoffment to be made to him alone he ought to be admitted. And we tell you that this John is living.—SHARDELOWE. That will possibly be a good answer in the mouth of the vouchee, when he comes, but you cannot plead warranty between you; and, therefore, let the voucher stand.—*Grene*. Then we tell you that, whereas he vouches the husband in a foreign County, the husband has assets, in respect of which he could be summoned, in the same County in which our writ, &c.—*Rokele*. We have vouched at our peril. —SHARSHULLE. If he has assets, in respect of which he could be summoned, within the same County, it is not right that he should be delayed by a voucher in a foreign County; wherefore it was adjudged that he should be summoned in both Counties, &c.

Jurata utrum by three summonses in which the Jury was taken in

(11.) § *Jurata utrum* by three summonses. All the tenants were essoined on the first day, and afterwards made default, and the Jury was awarded only against one named in one summons, and the Jury was taken at *Nisi prius* as to that one, and

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resceu : car vous avez garraunti[1] fee simple a mesme cesty qe vous vouchez, et par taunt qe vous garrauntistes[2] a luy, chescune garrauntie quel vous avez a plus haut devers luy fut esteinte ; jugement si a cest voucher devez estre resceu.—Schar. Il nad pas garraunti[1] fee simple al baroun soulement, einz a luy et a sa femme, en quel cas son voucher luy est salve devers le baron soul par cause de garrauntie de plus haut ; et pur ceo, si vous ne poiez autre chose dire, le voucher estoiera.—*Grene.* Donqes dioms nous qe la ou il vouche le baron, et moustre pur cause daver le voucher qe le baron sole luy enfeffa, nous vous dioms qe cel feffement soy fist a luy, et a un Johan, et as heirs Johan ; jugement si a cest voucher en supposaunt le feffement estre fait a luy soul deit il estre resceu. Et vous dioms qe cesty Johan est en vie.—Schard. Ceo serra par cas bon respouns en la bouche le vouche quant il vient, mes vous ne poiez pas pleder la garrauntie entre vous ; et pur ceo estoise[3] le voucher.—*Grene.* Donqes vous dioms qe la ou il vouche le baron en forein Counte vous dioms qe le baron ad assetz, dount puit estre somons, en mesme le Counte ou nostre bref, &c.—*Rok.* Nous avoms vouche a nostre peril.—Schar. Sil ad assetz, dount puit estre somons, deinz mesme le Counte, il nest pas resoun qil soit delaie par un voucher en un forein Counte ; par quei fut agarde qil fut somons en lun Counte et lautre, &c. A.D. 1343.

(11.)[4] § Jure *dutrum* par iij somons. Touz les tenantz[5] furent essones al primer jour, et puis firent defaut, et la Jure agarde forsqe vers un nome en un somons, et la Jure pris par *Nisi prius* quant a Jure *dutrum* par iij somons qe la Jure pris en

[1] Old editions, garrante.
[2] Old editions, garrantastes.
[3] Old editions, estoiez, or estoies.
[4] From Harl., 25,184, and C., until otherwise stated.
[5] tenantz is omitted from 25,184.

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A.D. 1343. nothing was done with regard to the rest.—*Thorpe* now prayed judgment on the verdict.—*Pole.* The whole is discontinued, because the action of *Jurata* is one, and discontinuance of parcel affects the whole; and the record which proves that the Jury passed as to parcel is not warranted by the original, if the residue was not severed by plea.—HILLARY. Suppose the demandant had admitted, and said that he would not sue on the two summonses because the tenants were dead, would he not have the Jury against the third? And yet the roll would not make mention of that. No more would it even though the Sheriff returned their death.—And this was denied in both cases by SHARSHULLE, who said that in *Jurata utrum* and in Mort d'Ancestor, where there are divers summonses in the writ, the Jury or the Assise can be taken by parcels, by means of plea and process, having regard to the divers summonses which are in place of divers originals, but the record will make mention of the severance of the plea, because the principal record, which is in the words *Jurata venit recognitura utrum*, &c., must be in accordance with the original, or otherwise is not warranted by the original, and afterwards the severance will be shown by the record.—HILLARY. Suppose that with respect to one summons the parol demurs by Protection, will not the Jury be awarded with respect to the others?—SHARSHULLE. I grant it. But the record would make mention of that.—*Thorpe.* In Assise of Novel Disseisin the Assise can not be taken by parcels, because the original does not suppose divers tenants nor several tenants; but it is otherwise with regard to *Jurata utrum* and Mort d'Ancestor framed for divers summonses; and although there may be divers forms of entering records and enrolments, if you have one effect, it will not be

respect of one, and nothing done in respect of the rest, and, therefore, the whole was, by judgment, discontinued.

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A.D. 1343. dreit dun, et rien fait del remenant, par quei tut, par agarde, fut discontinue.[1] [Fitz., *Discontinuans Divers*, 49.]

cel, et del remenant rien fut fait.—*Thorpe* pria jugement ore sur verdit.—*Pole.* Tout est discontinue, qar la Jure est un, et discontinuaunce[2] de parcelle est a tout; et le recorde qe proeve qe la Jure passa de parcelle nest pas garraunti del original, si le remenant ne fust severe par plee.[3]—Hill. Jeo pose qe le demandant ust conu, et dit qil ne voleit pas suyre en les deux[4] somons, pur ceo qe les tenantz furent mortz, navereit il la Jure vers le tierce? Et si ne freit ja roulle mencion de cel. Nient plus freit il mesqe le Vicounte retourna lour mort.—*Et fuit dedictum in utroque casu* par Schar. qe dit qen Jure *dutrum* et en[5] Mort dauncestre, ou divers somons sount el bref, par plee et proces la Jure ou lassise purra estre pris par parcelles, eiaunt regarde a les divers somons qe sount en lieu de divers originals, mes le recorde fra mencion de la severaunce du plee, qar le principal recorde, qe voet *Jurata venit recognitura utrum*, &c., covient acorder al original, ou autrement ceo nest pas garraunti par loriginal, et puis par le recorde serra la severaunce[6] moustre.—Hill. Jeo pose qe vers un somons la parole demura par Proteccion, ne serra la Jure agarde vers les autres.—Schar. *Concedo.* Mes le recorde freit mencion de cel.—*Thorpe.* En Assise de Novele Disseisine homme ne put prendre lassise par parcelles, pur ceo qe loriginal ne suppose pas divers tenantz ne[7] severals[8]; mes autre est de Jure *dutrum* et Mort dauncestre conceu sur divers somons; et tut soient divers fourmes dentrer de recordes, et[9] denroullementes, si vous eiez[10] un effecte, vous

[1] The marginal note in Harl. is Jure *dutrum*. In 25,184 it begins with the word *Utrum* and all the subsequent words are from that MS. alone.

[2] Harl., la discontinuance.

[3] 25,184, ley.

[4] deux is omitted from 25,184.

[5] 25,184, de.

[6] Harl., variaunce.

[7] ne is omitted from 25,184.

[8] 25,184, several.

[9] et is omitted from 25,184.

[10] Harl., eitz.

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A.D. 1343. permissible for you, by reason of a defect in form, not to adjudge according to the effect; but when each summons by itself is in lieu of an original, and some are discontinued, and another well continued, when possibly, in respect of some, nothing has been done, will it not be permissible for you thereupon to proceed to judgment upon that which has been well continued? —Stonore. The Jury has been taken in respect of a certain quantity of land, which is not in accordance with the original writ; wherefore, tenants, go. Adieu.

Jurata utrum. § John, parson of the church of Burton, brought a writ of *Jurata utrum* against Richard de Hingham and A. his wife, and several others, by divers summonses. On the first day they were all essoined; and afterwards, at the day which they had by the essoin, they all made default; and therefore the Jury was awarded against them by default. And thereupon the plaintiff sued a *Nisi prius* against Richard and his wife alone, and did nothing with respect to the others. The seisin of the plaintiff was found by the Jury. And Baukwell, who was Justice of *Nisi prius*, sent the record into the Bench, and the finding thereon. And thereupon the plaintiff prayed seisin of the land.—*Pole.* The action of *Jurata* is brought against divers tenants, and in respect of a great quantity of land, and the Jury is taken only in relation to one tenant and in respect of a parcel of that which is in demand, and so it is taken without warrant; wherefore, &c.—*W. Thorpe.* There are in the writ divers summonses, and each summons is in law a summons by itself, as in the case of a *Præcipe quod reddat*, where there are divers *Præcipes*, each *Præcipe* is a *Præcipe* by itself, and as it were a writ; and as to one *Præcipe* one can plead to the inquest and sue a *Nisi prius*, and as to the other

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lerretz pas pur defaut de fourme qe vous[1] najug- A.D. 1343.
gerez solonc leffect; mes quant chescun somons est en lieu dun original a per luy, et ascuns soient discontinues, et autre bien continue [ou par cas qe en dreit dascun rien soit fait, vous lerretz pas par taunt qe vous irretz a jugement sur cel qest bien continue?][2]—Ston. La Jure est pris de certein quantite de terre, qe nest acordaunt al bref original, par quei vous, tenantz, aletz a Dieu.[3]

§ Johan,[4] persone del eglise de Burtone, porta briefe de *Jurata utrum* vers Richard de Hingham et A. sa femme, et plusours autres, par divers somons. Al primer jour touz furent essones; et puis, al jour qils avoient pas lessone, touz firent defaut; par quei la Jure fut agarde vers eux par defaut. Et sur ceo le pleintif suy un *Nisi prius* solement vers Richard et sa femme, et fist riens devers les autres. Trove fut par la Jure la seisine le pleintif. Et Baukwelle, qe fut Justice de *Nisi prius*, maunda le recorde en Baunk, et ceo qe fut trove, et sur quei le pleintif pria seisine de terre.—*Pole.* La Jure est porte vers divers tenaunts, et dun graunt quantite de terre, et ele est pris forsqe vers un tenaunt, et de parcelle de ceo qest en demande, issint ele prise sanz garraunt; par quei, &c.—*W. Thorpe.* Ils ount en le briefe divers somons, et chescun somons est en ley un somons a per luy, auxi come un *Præcipe quod reddat*, la ou ils sont divers *Præcipe*, chescun *Præcipe* est *Præcipe* a per luy, et auxi come un briefe; et quant a un *Præcipe* homme puit pleder al enqueste et suer *Nisi prius*, et quant a les autres *Jurata utrum.*

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[1] vous is omitted from Harl.

[2] The words between brackets are omitted from 25,184.

[3] There are added in 25,184, in a later hand, the words *Vide residuum Hillarii* xviij, ou le pleintif recoveri.

[4] This report of the case is printed by itself as No. 100 in the old editions. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment.*

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A.D. 1343. *Præcipes* the process can be discontinued, and directed into another course, as by voucher, or in some other manner; and, if at *Nisi prius* it be found by the inquest that the demandant has right, he will recover that which is in that particular *Præcipe*, whatever may be done with regard to the other *Præcipes*; so it seems here.—*R. Thorpe.* In Assise of Mort d'Ancestor, where there are divers summonses, if one tenant vouch in a foreign County, and the voucher be accepted, the whole shall be sent here into the Bench, and in that case the Assise shall not be taken against the others until the voucher be determined, because neither Assise nor *Jurata utrum* can be taken by parcels.—Hillary. On a writ of *Jurata utrum* brought against divers tenants by divers summonses, if the Jury were here at the bar, and some tenants would vouch, even though the voucher were accepted, we should take the Jury in relation to the others; wherefore, &c.—*R. Thorpe.* Sir, I think not, for we have seen in the King's Bench, before Sir Gilbert le Scrope, that an Assise of Mort d'Ancestor was reversed because in the Assise there were divers summonses, and the Assise was taken in respect of some summonses, and not in respect of others, but put back by plea of the party, &c.—Sharshulle. The record which is sent to us here is in the words *Jurata venit recognitura* whether so many tenements, which R. and A. his wife hold, be frankalmoign, &c., and makes no mention of the other summonses, and so this record cannot in any manner be warranted by this original.—*Herleston.* If a *Jurata utrum* be brought against two or three persons by divers summonses, and one or two of them die, the process is still good against the others; and in such a case, we are not in the habit of making mention in the record, when the Jury is taken, of those who are dead, but only that the Jury came to acknowledge whether the tenements in the other

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Præcipe le proces puit estre discontinue, et mene en autres cours, come par voucher, ou en autre manere; et, si al *Nisi prius* soit trove par lenqueste qe le demandant ad dreit, il recovera ceo qest en cel *Præcipe*, quele chose qe soit fait en dreit des autres *Præcipe*; issint semble icy.—*R. Thorpe.* En Assise de Mort dauncestre, la ou ils sount divers somons, si un tenaunt vouche en forein Counte, et le voucher soit accepte, tout serra maunde cy en Baunk, et la ne serra lassise pris vers les autres tanqe le voucher soit determine, pur ceo qe lassise ne *Jurata utrum* ne purra estre pris par parcelles. —Hill. En briefe de *Jurata utrum* porte vers divers tenants par divers somons et la Jure fut cy a la barre, et ascuns tenaunts voillent voucher, coment qe le voucher fut accepte, nous prendroms la Jure vers les autres; par quei, &c.—*R. Thorpe.* Sire, jeo crey qe non, car nous veisoms en Baunk le Roi, devant Sire Gilbert le Scrope, qun Assise de Mort dauncestre fut reverse pur ceo qen lassise il avoit divers somons, et des ascuns somons lassise fut pris, et des ascuns nemy, einz remys par ple de la partie, &c.—Schar. Le recorde quel nous est mande cy voloit *Jurata venit recognitura* si taunts des tenements, queux R. et A. sa femme teignount, soient fraunkalmoigne, &c., et fait nul mencion de les autres somons, et issint ceste recorde ne puit en nule manere estre garraunti de cest original.[1]—*Herlestone.* Si un *Jurata utrum* soit porte vers ij ou iij par divers somons, et un ou deux devient, uncore le proces est bon vers les autres; et en tiel cas en[2] le recorde quant la Jure serra pris nous ne usoms pas de faire mencion de ceux qe sount morts, mes soulement qe le Jure vient a conustre le quel les tenements en les autres somons A.D. 1343

[1] The word jugement is inserted after original in the old editions.

[2] Old editions, ou.

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A.D. 1343. summonses be frankalmoign or lay fee of those who are living.—Stonore. We have it not of record that the others are dead; wherefore, since the writ purports that the Jury comes to acknowledge whether so many tenements are frankalmoign, &c., and that which is sent to us as the record could not be warranted by this writ, it is therefore adjudged that that which was done before Baukwell in the country is to be as null.—And, because the action of *Jurata* was discontinued in relation to the others, it was adjudged that the whole was discontinued, &c.

Debt in respect of arrears due by reason of a lease of land made upon condition that whenever the rent should be in arrear it should be lawful for the lessor to distrain. And the plaintiff showed, in counting his count, that he had entered,

(12.) § Debt was brought by the Prior of Bermondsey against Ferrand Mamoun, counting that he leased to F. and his wife the manor of B.[1] for their lives, yielding to him and his successors 20 marks *per annum*, to be paid, &c., on condition that whenever the rent should be in arrear, after the death of one of the lessees, it should be lawful for the Prior to distrain, and that if the rent should be in arrear for one quarter of a year, it should be lawful for the Prior to enter upon the manor; and he counted that the rent was in arrear, after the death of the wife, for a quarter of a year, and that he therefore entered, and many times afterwards demanded the ten marks which were in arrear, &c.—*Derworthy*. The specialty on which

[1] For the name of the manor *see* p. 63, note 5.

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soient frankalmoigne ou lay fee de ceux qe sount en vie.—Ston. Nous navoms mye de recorde qe les autres sont morts; par quei, del houre qe le briefe voillet qe la Jure veigne a conustre si taunts des tenements sont frankalmoigne, &c., et ceo qe nous est maunde come recorde ne puit mye estre garraunti par cel cest briefe, par quei fut agarde qe ceo qe fut fait devant Bauk. en pais fut auxi come nul.—Et, pur ceo qe la Jure fut discontinue vers les autres, agarde fut qe tout fut discontinue, &c. A.D. 1343.

(12.) [1] § Dette porte par le Prior de Bermondesey vers Feraunt Mamun, countant qil lessa a F. et sa [2] femme le maner de B. a lour vies, rendaunt a luy et a ses successours xx marcs par an, a paier, &c., sur condicion qe quele houre qe la rente fut arrere apres la mort un des lesses qe lirreit au Priour [3] a destreindre, et, si la rente fut arrere par un quarter dun an, qe lirreit au Priour dentrer le maner; et counta qe la rente apres la mort la femme fut arrere par un quarter dun an,[4] par quei il entra, et puis sovent demanda les x marcs qe furent aderere, &c.[5]—*Derworthi.* Lespecialte sur quele il ad

Dette des arrerages dues par cause dun lees dun terre fait sur condicion qe le houre qela rente fut arere lirreit a luy destreindre. Et moustra qil fut entre, en count countant,

[1] From Harl., 25,184, and C., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 238, d. It there appears that the action was brought by the Prior of the monastery of St. Saviour, Bermondsey, against Ferrandus Mamoun, citizen of London.

[2] 25,184, A. sa.

[3] The words au Priour are omitted from 25,184.

[4] The words dun an are omitted from Harl.

[5] The declaration was, according to the record, "quod cum convenisset inter prædictum Priorem et Conventum Monasterii sui prædicti, ex parte una, et prædictum Ferrandum et Margaretam quondam uxorem ejus, ex parte altera . . . . . quod prædicti Prior et Conventus concesserunt et dimiserunt prædictis Ferrando et Margaretæ manerium suum de Leygham in Comitatu prædicto [Surrey] tenendum ad totam vitam utriusque ipsorum Ferrandi et Margaretæ, reddendo inde annuatim viginti marcas ad Festa Sancti Michaelis et Paschæ per æquales portiones, ita videlicet quod si contingeret primum unum ipsorum,

No. 12.

A.D. 1343. and thereupon they were on judgment, inasmuch as he had entered.

he has counted supposes that 14 marks were released while the wife was living, so that nothing was then due but 6 marks, and by the count it is supposed that 20 marks were due while the wife was living; judgment of the count which is not warranted by the specialty.—SHARDELOWE. He demands nothing in respect of that time; wherefore answer.—*Blayketon*. You see plainly how he demands arrears of rent service, and he also supposes that for default of payment he might enter the land, and he has himself shown that he did enter, and so the penalty was incurred; judgment whether an action, &c.—*Derworthy*. You see plainly how he pleads to our action by two peremptory pleas; let him hold to one.—*R. Thorpe*. I have both through your statement, so that the case is not as if I

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et sur ceo sount en jugement desicome il est entre.[1] [Fitz., *Dette*, 6.]

counte suppose qe les xiiij marcs furent relesses vivant la femme, [issint qe rien ne fut dewe adonqes forsqe vj marcs, et par count suppose qe xx marcs furent dewes vivant la femme][2]; jugement de count nient garranti del especialte.—SCHARD. Il demande rien de cel temps; par quei responez.—*Blayk.* Vous veiez bien coment il demande arrerages de rente service, et auxint il suppose qe pur defaut de paiement il duist entrer la terre, et il ad mesme moustre qil est entre, issi la peyne encoru; jugement si accion, &c.[3]—*Derworthi.* Vous veiez bien coment il plede a nostre accion par ij peremptories; se teigne al un.—*R. Thorpe.* Jay lun et lautre de vostre livere, issi qe ceo nest pas en cas com[4] si jeo

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" vivente eorum altero, obire, et " prædictum redditum post aliquem " terminum aretro existere quod " tunc bene liceret prædictis Priori " et Conventui in prædicto manerio " distringere, et districtionem ab- " ducere et fugare, et tanquam " forisfactum retinere in perpetu- " um. Et dicit quod prædicta " Margareta obiit, ... " vivente prædicto Ferrando, et " decem marcæ prædictæ de ter- " mino Sancti Michaelis tunc " proximo sequente post terminum " illum aretro fuerunt, quas præ- " dictus Ferrandus reddere recusa- " vit, et idem Ferrandus omnia " bona sua de manerio prædicto " elongavit, ita quod prædictus " Prior aliquam districtionem pro " prædicto redditu aretro, &c., in- " venire non potuit Idem Prior " manerium prædictum intravit, " et prædictus Ferrandus, licet " sæpius requisitus, &c., prædictas " decem marcas reddere contra- " dixit, et adhuc contradicit. . . . " . . . Et profert hic in Curia " quoddam scriptum indentatum " inter prædictos Priorem et " Ferrandum et Margaretam inde " factum quod præmissa testatur " in forma prædicta."

[1] The marginal note, except the word Dette, is from 25,184 alone.

[2] The words between brackets are omitted from 25,184.

[3] The plea was, according to the roll, " quod prædictus Prior in " narratione prædicta supponit " prædictas decem marcas esse " redditum servitium et liberum " tenementum, de quo quidem " redditu, si aretro fuerit, idem " Prior aliam actionem quam " Debiti haberet, si quam, &c., et " idem Prior cognovit ipsum " intrasse manerium prædictum " pro prædicto redditu aretro exis- " tente, et sic redditum illum fore " extinctum, unde petit judicium " si idem Prior prædictas decem " marcas per breve de Debito " versus eum exigere possit," &c.

[4] 25,184, qe.

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A.D. 1343. were to plead in fact to which you would have a traverse; wherefore judgment.—And the COURT agreed to this—that he would take advantage of divers matters on the declaration, just as on verdict.—*Seton.* You see plainly how the specialty purports that, if the rent should be in arrear for a quarter of a year, it should be lawful for the Prior to distrain, and to hold the distress as forfeit, and nevertheless to enter upon the land, so that by his own deed the advantage is given to have the arrears, or the distress in lieu thereof, and, in addition, entry upon the land; wherefore we demand judgment.—The conclusion is in next Hilary Term in the 18th year.[1]

[1] Y.B., Hil., 18 Edw. III., No. 26.

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pledasse en fait, a quei vous averez travers; par quei jugement.—*Et ad hoc* Curia *concordat*, qil prendra[1] avauntage de divers choses sur la moustraunce[2] si avant come sur verdit.—*Setone.* Vous veiez bien coment lespecialte voet qe si la rente fut arrere par un quarter del an qe[3] lirreit au Priour a destreindre, et la destresse tener come forfait, et nient meins entrer la terre, issi qe par son fait demene lavauntage est done daver les arrerages ou la destresse en lieu de cel, et ovesqe lentre en la terre; par quei nous demandoms jugement.—*Residuum in proximo Hillarii decimo octavo.*[4] A.D. 1343.

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[1] 25,184, aprenda.

[2] 25,184, demoustraunce.

[3] 25,184, qil.

[4] The words in Latin are from Harl. alone. The conclusion of the case is, on the roll, as follows:—"Et Prior dicit quod "exquo prædictus Ferandus per "prædictum scriptum indenta- "tum de dimissione prædicta "factum concessit quod si prædic- "tus redditus aretro fuisset post "aliquem terminum post mortem "unius prædictorum Ferandi seu "Margaretæ, vivente eorum altero, "quod tunc bene liceret prædicto "Priori in manerio illo distringere, "et districtionem tanquam foris- "factum, retinere, &c., et quia "idem Prior districtionem invenire "non potuit pro prædictis decem "marcis de prædicto Termino "Sancti Michaelis aretro existente "levandam, maxime cum prædic- "tus Ferandus omnia bona sua de "manerio prædicto, sicut prædic- "tum est, elongasset, petit judicium "si ipse de prædictis decem marcis "ut de debito, nomine prædicti "redditus aretro existentis, re- "sponderi non debeat."

"Et super hoc dies datus est "partibus prædictis . . . . hic a "die Sancti Hillarii in xv dies de "audiendo inde judicio, &c. Ad "quem diem veniunt partes "prædictæ . . . . et prædictus "Prior petit judicium ut prius, et "prædictum debitum sibi adjudi- "cari," &c.

"Et Ferrandus dicit quod, exquo "prædictus Prior nititur ipsum "onerare de prædicto debito per "factum prædictum, petit quod "idem Prior Curiæ hic ostendat "factum illud," &c.

"Et Prior dicit quod ipse alias "hic protulit scriptum prædictum, "quod præmissa testatur, ut patet, "supra, et quod per ipsum "Ferrandum non fuit dedictum, "immo expresse cognitum, per "quod ipse non habet necesse "factum illud modo ostendere," &c.

"Et quia videtur Curiæ hic quod "prædictus Ferrandus nihil dicit "quin prædicti denarii eidem "Priori occasione prædicta sunt "debiti, nec aliquid dicit seu "allegat quod ipsum Ferrandum "de debito illo exonerat, consider- "atum est quod prædictus Prior

No. 12.

A.D. 1343. Debt. § The Prior of Bermondsey brought a writ of Debt against Ferrand Mamoun, and demanded £10,[1] and counted, by *Seton*, that he had leased to Ferrand and to one Margaret, his wife, certain tenements, yielding 10 marks[1] *per annum* for the whole of their lives, on condition that if one of them should die, and the rent should be in arrear, he might distrain, and that if satisfaction should not be made within the half-year after the distress had been incurred, the distress notwithstanding, he might enter. And he counted that they were seised, and that the wife died, and that the rent was in arrear for the next term afterwards, to wit, in the fifteenth year, &c., for which rent he could not find any distress, and no satisfaction was made to him, as above, and therefore he entered, and he has many times since demanded the £10[1] in arrear, so that by force of the lease he this, &c., to his damage, &c.—*Blaykeston*. Sir, he demands these £10,[1] which, according to his own statement, were freehold, and that cannot be demanded by way of Debt; besides, he has himself proved that entry on the ground of non-payment was reserved, and has said that he entered; thus the rent has ceased by reason of the entry, and so no action is given for it; wherefore judgment, &c.—*Seton*. These are two answers; one that the rent which was freehold could not be demanded, the other that the rent is extinguished by the entry; wherefore we pray that he hold to one.—*R. Thorpe*. We plead nothing but that which we have from yourselves; and by every way by which we can prove, on your own statement, that you cannot have

[1] For the real sums *see* p. 63, note 5.

No. 12.

§ Le[1] Priour de Bermondeseye porta briefe de Dette vers Ferant M., et demanda x*li.*, et counta, par *Setone*, qil avoit lesse a luy et[2] a une Margarete, sa femme, certeins tenements, rendaunt x marcs par an a tout lour vies, sur tiel condicion qe si lun devia, et le rente fut arere, qil puit destreindre, et, si gree ne soit pas fait deinz le demi an apres qe la destresse fuist encorue, et nient le meins, qil puit entrer. Et counta qils furent seisis, et la femme murrust, et qe le rente fut arere le prochein terme apres, saver, lan xv, &c., pur quel rente il ne purreit destresse trover, ne gree a luy fut fait, *ut supra*, et par taunt il entra, ou puis il ad sovent demande les x*li.* arere, issint par force del lees il ceo,[3] &c., a ses damages, &c.—*Blaik.* Sire, il demande ceux x*li.*, qe furent a son dit[4] demene fraunctenement, quel chose ne puit estre demande par voie de Dette; ovesqe ceo, il mesme ad prove qun entre fut reserve par cause de noun paiement, et ad dit qil entra; issint par lentre le rente est cesse, issint de ceo nule accion est done; par quei jugement, &c.—*Setone.* Ceux sount ij respouns: un qe le rente qe fut fraunctenement ne puit estre demande, un autre qe le rente est esteint par lentier; par quei prioms qil soy teigne a lun.—*R. Thorpe.* Nous pledoms riens mes ceo qe nous avoms de vous mesmes; et par tutes les voies qe nous purroms prover de vostre dit demene qe vous ne poiez accion[5] aver, nous

A.D. 1343 Dette.

" recuperet versus illum debitum " prædictum, et damna sua, quæ " taxantur per Justiciarios ad " viginti solidos. Et idem Ferran- " dus in misericordia," &c.

[1] This report of the case is printed by itself as No. 107 in the old editions. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*. The record is among the *Placita de Banco*, Mich., 17 Edw. III., R° 238, d.

[2] The words a luy et are omitted from the edition of 1679.

[3] Edition of 1679, est.

[4] dit is omitted from the edition of 1679.

[5] Rastell, assise.

No. 13.

A.D. 1343. the action, we shall have aid, just as much as on a verdict which had passed between us, where if twenty matters had been found which would aid me, I should aid myself by them all, though it would be otherwise if I had taken an answer on my own initiative, and outside of your count, in which case it would then be necessary that I should hold to one alone.—And afterwards *Seton*, seeing the opinion of the COURT, said: Since the right of retaining a distress for the rent in arrear is proved by the deed, and the distress would be incurred by failure to make satisfaction within the quarter, and, in addition to that, we have the right to enter, this is so given to us by force of the deed; wherefore we demand judgment and pray our damages.—On this they were adjourned to the Morrow of the Purification.[1]

Debt against a Burgess of Newcastle, and because the writ did not contain the words "Burgess of the town" exception was taken to it. The exception was not allowed.

(13.) § John de Denton, Burgess of Newcastle-on-Tyne, brought a writ of Debt on obligation against the Mayor and the Community of Newcastle-on-Tyne. —*Thorpe*. Judgment of the writ which is in the words *Burgensi de Novo Castro*: because a burgess must be burgess of a certain town, and not of a Castle, for if the words were *Burgensi de Sancto Albano* it would not be a good writ.—The exception was not allowed.—Therefore the obligation was denied.—And the case

[1] *See* below, Hil., 18 Edw. III., No. 26.

No. 13.

laveroms[1] auxi bien come sur un verdit qe ust passe[2] entre nous, si xx choses soient troves qe moy eidra, jeo moy eidra par touz, ou il est autre si jeo usse pris respouns de moy mesme, et hors de vostre counte, ou adonqes il covient qe jeo moy teigne a lun solement.—Et puis *Setone, videns opinionem* Curiæ, dit qe del houre qe par le fait est prove retener dune destresse pur le rente arere, et ceo serreit encoru par noun gree faire deinz le quarter, et outre ceo la qe nous pooms entrer, issint ceo done nous est par force del fait; par quei nous demandoms jugement, et prioms nos damages.—*Adjornantur super hoc in Crastino Purificationis.* A.D. 1343.

(13.)[3] § Johan de Dentone, Burgeys de Noefchastel[5] sur Tyne, porta bref de Dette vers Meyre et la Comunalte[6] de Noefchastel sur Tyne par obligacion. —*Thorpe.* Jugement du bref, qe voet *Burgensi de Novo Castro*: qar Burgeys covient estre de certeyn ville, et noun pas de Chastel,[7] qar *Burgensi de Sancto Albano* ne serra pas bon bref.—*Non allocatur.* —Par quei lobligacion fut dedit.[8]—*Et casus fuit, ut* Dette vers Burgeys de Noef Chastel, et pur ceo qe le bref ne voleit pas Burgeys de la ville ceo fut chalenge. *Non allocatur.*[4]

[1] Edition of 1679, averoms.

[2] Edition of 1679, ne ust pas, instead of ust passe.

[3] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 181. It there appears that the action was brought by John de Denton "Burgensi de Novo Castro "super Tynam," against the "Maior et Communitas villæ "Novi Castri super Tynam." The declaration was "quod prædicti "Maior et Communitas . . . . . "per scriptum suum sigillo suo "communi sigillatum concesserunt "se teneri et firmiter obligari ipsi "Johanni in viginti libris ex causa "mutui solvendi eidem Johanni," &c. *Profert* was made of the "scriptum."

[4] The marginal note, except the word Dette, is from 25,184 alone.

[5] 25,184, Noef Chastelle.

[6] Harl., Cominalte.

[7] 25,184, Chastielle.

[8] According to the roll the plea was *Non est factum*, and the "scriptum" remained with Herleston the "Clericus Regis" in the Common Bench pending an adjournment, to whom the King afterwards sent his writ close "quod "prædictum scriptum Johanni "filio et heredi prædicti Johannis "de Dentone liberaret, eo quod

No. 14.

A.D. 1343. was, as it was said, that John de Denton was then Mayor, and had the common seal in his keeping, and made the obligation, &c.

Debt on contract. The defendant prayed, at his peril, that the Suit might be examined.

(14.) § Debt was brought against Master John Warreyn, Canon of the Church of St. Peter, York, in respect of a certain debt, partly on obligation, partly by contract.—*Richemunde.* As to the obligation, we cannot deny it. As to the rest, what have you to show the debt?—*Moubray.* Good Suit.—*Richemunde.* Let his Suit be examined at our peril.—*Moubray.* Do you mean that for your answer?—*Richemunde.* Yes, because you take the Suit, in this case, as to the contract, in lieu of proof of the action.—*Moubray.* Suit is tendered only as part of the form of the count; wherefore judgment, &c.—SHARDELOWE. One has heard that the Suit has been examined in such a case.—But this opinion was afterwards reprobated.—SHARDELOWE. Yes, the Justice himself who examined the Suit for issue saw that he had erred, and condemned his own opinion.—*Gaynesford.* In a plea of land, where Suit is tendered, it is only by way of form; but in a plea which is founded on contracts, which requires witnessing, the Suit is to such a degree capable of giving testimony that without Suit, in case exception be taken to the matter, the party is not entitled to an answer.—SHARDELOWE. Certainly, it is not so; and therefore deliver yourself.—*Richemunde.* Certainly; the defendant owes him no money; ready, &c.

Note that the Suit shall not be examined.

No. 14.

dicebatur, qe Johan de Dentone fust Meyre adonqes, et avoit le comune seal en sa[1] garde, et fist obligacion, &c. A.D. 1343.

(14.)[2] § Dette porte vers Mestre[4] Johan Warreyn, Chanoun del Eglise Seint Pierre, Deverwyke, de certeyn dette, partie[5] par[6] obligacion, partie[7] par contracte.—*Rich.* Quant al obligacion nous ne poms dedire. Quant al remenant quei avez vous[8] de la dette?—*Moubray.* Suyte bone.—*Rich.* Soit sa suyte examine a nostre peril.—[*Moubray.* Voletz ceo pur respouns?—*Rich.* Oyl, qar vous pernetz suyte en ceo cas de contract en lieu de prove daccion.—][9] *Moubray.* Suyte nest tendu,[10] forsqe par fourme de counte; par quei jugement, &c.—Schard. Homme ad oy qe suyte en tiel[11] cas fut examine.—Et cele oppinioun fut apres reprove.—Schard. Oyl, mesme[12] cely Justice qe examina la suyte pur issue vist qil erra, et dampna soppinion demene.—*Gayn.* En plee de terre ceo qomme tend suyte nest forsqe pur fourme; mes en plee qest foundu sur contractes, qe bosoigne tesmoignaunce, la est la suyte si[13] tesmoignable qe saunz suyte, en cas qe la chose soit chalenge, partie nest pas responable.—Schard. Certes nest pas issi; et pur ceo deliverez vous.—[*Rich.* Certes[14]; nul[15] dener luy deit; prest, &c.—*Moubray.*

Dette sur contracte. Le defendant pria qe la suite fut examine a son peril.[3]

Nota qe suyte ne serra examyne.[16]

" prædictus Johannes de Dentone " diem suum clausit extremum, " virtute cujus brevis prædictus " Willelmus de Herlestone, Cleri- " cus, &c., liberavit prædicto Jo- " hanni filio Johannis de Dentone " prædictum scriptum hic in " Curia," &c.

[1] sa is omitted from 25,184.

[2] From Harl., 25,184, and C.

[3] The marginal note, except the word Dette, is from 25,184 alone.

[4] Mestre is omitted from 25,184.

[5] 25,184, parcelle.

[6] par is omitted from 25,184.

[7] partie is omitted from 25,184.

[8] vous is omitted from Harl.

[9] The words between brackets are omitted from 25,184.

[10] 25,184, tendire.

[11] Harl., cel.

[12] 25,184, mees.

[13] si is omitted from 25,184.

[14] Certes is from C. alone.

[15] C., nulle.

[16] The marginal note is from Harl. alone.

No. 15.

A.D. 1343. —*Moubray.* You shall not get to that, because you have tendered another issue as to the whole, &c.—*Richemunde.* You said that the first was not an issue, and therefore you give me the advantage of your plea. —And, notwithstanding, KELSHULLE adjudged that the plaintiff should recover the whole debt, and damages assessed by the COURT, &c.—*Moubray.* He is a clerk, against whom we have recovered, and he appeared through compulsion of the Bishop; and therefore we pray a writ of *Fieri facias* to the Bishop.—And, notwithstanding, a writ issued to the Sheriff.—*Quære.*

Note as to execution.

Fine *sur render* to two persons and the heirs of one of them for the life of the renderor, with remainder, after his death, to others.

(15.) § Humphrey de Bassyngburne grants and renders the tenements included, &c., to A.[1] and B.,[1] for the whole of Humphrey's life, so that after Humphrey's decease the tenements shall remain over,[1] &c.—SHARDELOWE. The fine must be final, and limited in certain persons with whom the land will abide; and suppose the two died during Humphrey's life, who would have the land?—*Thorpe.* The heirs of him who should survive for the time, and we should make

[1] For the real names and for the terms of the fine, as accepted, *see* p. 75, note 4.

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A ceo navendretz pas, qar vous avez tendu autre issue pur tut, &c.][1]—*Rich.* Vous deistes qe le primer ne fut pas issu, par quei de vostre plee vous moy[2] donez lavauntage.—Et, *non obstante*, Kels. agarda qe le pleintif recoverast la dette entier, et damages taxes par la Court, &c.—*Moubray.* Il est clerk, vers qi nous avoms recoveri, et vint par Levesqe; par quei nous prioms bref de *Fieri facias* al Evesqe.—Et, *non obstante*, bref issist a Vicounte. —*Quære.* A.D. 1343.

Nota de execucion.[3]

(15.)[4] § Umfrey[6] Bassingbourne graunte et rend les tenementz contenuz, &c., a A. et B., a tote la vie U., issint qe apres le decees Umfrey[7] les tenementz remeignent outre, &c.—Schard. La fyn covient estre final, et taille en certeines persones a qi la terre demura; et jeo pose qe les ij deviassent, vivant Umfrey,[7] qi avera la terre?—*Thorpe.* Les heirs celuy qe survivereit pur[8] le temps, et nous froms

Finis sur rendre a deux et les heirs lun pur la vie le rendour, issi qe apres son decees remeindreit as autres.[5]

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[1] The words between brackets are omitted from 25,184.

[2] 25,184, ne.

[3] The marginal note is from Harl. alone.

[4] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 490. It there appears that there had been a writ of Covenant in which Master William Bray, parson of the church of Abingdon, and John Walgor of Bytham, chaplain, were plaintiffs, and Humphrey de Bassyngburne, knight, was defendant, in respect of the manor of Abingdon (Northants), the castle of Benyngfelde, one messuage,and 100 acres and a moiety of one virgate of land in Benyngfelde (Benefield). The parties had the *licentia concordandi*; and Letters Patent from the King were produced, in which, in consideration of a fine made with him by Robert de Colville, he gave license to Humphrey de Bassyngburne to enfeoff Bray and Walgor of the tenements mentioned in the writ of Covenant, which were held of the King *in capite*, to hold to them and the heirs of Walgor, and license to Bray and Walgor to give and grant the tenements to Humphrey de Bassyngburne for his life, with remainder to Walter son of Robert de Colville and Margaret daughter of Giles de Bassyngburne, in special tail, with remainder to Robert and his heirs.

[5] The marginal note, except the word *Finis*, is from 25,184 alone.

[6] 25,184, Waryn.

[7] 25,184, W.

[8] Harl., puis.

No. 16.

A.D. 1343. satisfaction to him.—And afterwards he made the render to the two, and the heirs of one of them, for the life of Humphrey, &c.—SHARDELOWE. How can the right, which abides in Humphrey during his life, be limited, after his death, in a person who is a stranger?—*Thorpe*. After this fine has been admitted, he will be completely ousted from the right, and it will be vested in those who are in the remainder.—SHARSHULLE. It is so by fine; but by deed *in pais* it would be otherwise.—SHARDELOWE. Never was such a fine admitted.—And nevertheless SHARSHULLE and the Chirographer agreed with the fine.—And on the morrow *Thorpe* drew the fine in the form that Humphrey grants and renders the tenements, &c., to two chaplains and the heirs of one of them, for the life of Humphrey, yielding to him for his life 200 marks, so that after his decease, &c., they shall remain to Walter son of Robert de Colville, and Margaret daughter of Giles de Bassyngburne, and the heirs of Walter begotten on the body of Margaret, and, if they shall die without heirs begotten on the body of Margaret, the tenements shall remain to the right heirs of Robert de Colville.—And so the fine was admitted with great difficulty on account of STONORE'S opinion.—*Quære* the reason.

Fine. (16.) § John Mousters, knight, grants that certain tenements, which one A. holds for a term of four years by his lease, and which, after the term, are to revert to him and his heirs, shall remain to W. Basset and to B. his wife, and the heirs of their bodies begotten, to hold of John by the service of one rose for the life of W. Basset, and after his decease by the service of 10 marks, and that if they die, &c., the tenements shall return to John and his heirs, &c.

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gree a cel.—Et rendist apres a les deux et les heirs lun pur la vie Umfrey,[1] &c.—SCHARD. Coment put le dreit, qe demora en Umfrey[1] en sa vie, apres sa mort estre taille en estraunge persone?—*Thorpe.* Apres ceste fyn resceu il serra de nette ouste de dreit, et serra vestu en ces en le remeindre.—SCHAR. Il est issi par fyn; mes par fait en pays autre serreit.—SCHARD. Unqes ne fut tiel fyn resceu.—*Et tamen* SCHAR. et le Cirographer[2] sacorderent a la fyn.—Et lendemayn[3] *Thorpe* tret la fyn qe[4] Umfrey[1] graunte et rend[5] les tenementz, &c., a les deux chapeleyns et les heirs lun, pur la vie Umfrey,[1] rendaunt a luy pur sa vie cc marcs, issi qe apres son decees, &c., remeignent a Wauter fitz Robert Colville, et Margarete[6] la[7] fille Giles Bassingbourne, et les heirs Walter engendres del corps Margarete,[6] et, sils[8] devient saunz heir du corps Margarete[6] engendres, remeignent[9] as dreits heirs Robert Colville.—Et issi fut resceu a graunte peyne *propter opinionem* STON.—*Quære causam.* A D. 1343.

(16.)[10] § Johan Mousters,[11] chivaler, graunte qe[12] certeins tenementz, queux un A. tient a terme de iiij auns de son lees, et qe, apres le terme, a luy et ses heirs devereint revertir, remeignent a W. Basset, et a[13] B. sa femme, et les heirs de lour corps[14] engendres, a tener de Johan par les services dune rose pur la vie W. Basset, et apres son decees par les services de x marcs, et sils devient, &c., retournent a Johan et[15] ses heirs, &c. *Finis.*

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[1] MSS. of Y.B., W.
[2] 25,184, Cirograffyr.
[3] 25,184, lendemene.
[4] qe is omitted from Harl.
[5] 25,184, rente.
[6] MSS. of Y.B., Alice.
[7] Harl., sa.
[8] Harl., si eles.
[9] 25,184, remeindre.
[10] From Harl., 25,184, and C.
[11] Harl., Musters.
[12] qe is omitted from 25,184.
[13] Harl., A. et.
[14] Harl., les corps A. et B., instead of lour corps.
[15] The words Johan et are omitted from Harl.

No. 17.

A.D. 1343. Annuity. (17.) § Annuity of eight robes.—*Pole.* Judgment of the writ: for he has not mentioned any certain price of the robes, and in case he recovered, and sued a *Fieri facias*, it would be necessary to know with certainty the value of which execution was to be made. And in a writ of Debt if I demand ten quarters of wheat, in which you are bound to me, the price must be set down with certainty. So in the matter before us.—SHARDELOWE. This case is not like a writ of Debt, for in this case there must be agreement with the specialty, and in the specialty there is possibly no price mentioned.

Annuity. § On a writ of Annuity the plaintiff demanded by writ and count eight robes and £8 which were in arrear to him out of an annual rent of 20*s.* and one robe *per annum*. And he counted that he was seised until eight years before the purchase of the writ.—*Pole.* By your count you have demanded certain robes, which are, as it were, dead chattels, in which case he ought to have mentioned in his count the price of the robes, and that he has not done; wherefore judgment of the count.—HILLARY. Possibly his deed, on which he demands, does not express any certain price of the robes, and his count must be in accordance with the specialty, &c.—*Pole.* Sir, if you are bound to me in certain quarters of corn by a deed, although there is no certain price mentioned in the deed, yet in case I demand the same corn, I must in counting fix a certain price upon the corn; so n this case.—HILLARY. If his deed makes no mention of the price, his count is good enough.—And thereupon the deed was read, and it did not make any mention of the price of the robes; and the deed purported that the defendant had granted to the plaintiff one robe with fur, and 20*s.* *per annum pro consilio impenso et impendendo.*—*Pole.* By the writ and by

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(17.)[1] § Annuite de viij robes.—*Pole.* Jugement du bref: qar il nad pas mys certein prise des robes, et en cas qil recoverast, et siwist[2] *Fieri facias*, il covendreit saver de quel prise en certein faire execucion. Et en bref de Dette si jeo demande x quarters de furment, en queux vous moy estes oblige, il covient assoumer[3] le prise en certein. *Sic in proposito.*—Schard. Ceo nest pas semblable a Dette, qar en ceo cas il covient acorder al especialte, et en lespecialte par cas nad pas prise. A.D. 1343. Annuite. [Fitz., *Briefe*, 351.]

§ En[4] briefe dannuite le pleintif demanda par briefe et count viij robes et viij*li.* qe arere luy furent dun annuel rente de xx*s.* et un robe par an. Et counta qil fut seisi tanqe a viij anz avant le briefe purchace.—*Pole.* Par vostre count vous avez demande certeines robes, qe sount auxi come chateux mortes, en quel cas il coviendreit qil ust mis en son count la prise de les robes, et ceo nad pas fait; pur quei jugement de count.—Hill. Par cas son fait, par quel il demande, ne voet nul certein prise des robes, et il covient qe son count acorde al especialte, &c.—*Pole.* Sire, si vous soietz oblige a moy en certeins quarteres de blee par un fait, coment qe en le fait il nad nul certein prise, uncore moy covient en cas qe jeo demande mesme le blee qe en countant jeo mette certein prise sur le blee; auxi en ceo cas.—Hill. Si son fait ne parle mye de prise, son count est assetz bon.—Et sur ceo le fait fut lieu, et ne parle mye de prise des robes; et le fait voleit qe le defendant avoit graunte al pleintif un robe *cum furrura*, et xx*s.* par an *pro consilio impenso et impendendo.*—*Pole.* Par le briefe et Annuite.

[1] From Harl., 25,184, and C., until otherwise stated.

[2] Harl., suesit.

[3] Harl., assumer.

[4] This report of the case is printed by itself in the old editions as No. 104. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

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A.D. 1343. the count he demanded certain arrears of an annuity of one robe and of 20*s.* *per annum*, whereas the deed that he has produced here speaks of an annuity of one robe with fur, and so this writ is not warranted by the specialty, &c.—*Notton*. The fur is parcel of the robe; wherefore we could not in the Chancery have any other writ.—HILLARY. It would be right that your writ should be in accordance with the specialty; wherefore we desire to know from the Clerks of the Chancery whether you can have another writ or not.

Audita Querela. (18.) § A recognisance on statute merchant for £40 was made by one J. to Robert de Hollewelle, upon which he sued execution. J. sued in Chancery, and made his suggestion that he had made satisfaction, and that the statute had been delivered to him in lieu of acquittance, and he produced it in Chancery, and thereupon had *Audita Querela*.—And upon this there was a judicial writ to the Sheriffs of London to cause J. to come, who had been taken and imprisoned in Newgate for the cause above-said, and a *Supersedeas* of execution.—Robert Hollewelle sued by Petition in Parliament, including a statement that W. had forged a false statute to delay him in having execution, and the Bill was endorsed and sent to the Justices in the Bench by writ directing that, after examination of the then Mayor and Clerk, and after having called the parties, *facerent justitiæ complementum*, &c. Upon this a writ was sent to cause Andrew Aubrey, then Mayor, and the Clerk to come, and also J. to answer as to the deceit. Andrew, then Mayor, and the Clerk came, and were examined, and said that the recognisance upon which Robert Hollewelle sued execution was good and lawful, and that they knew nothing about the other. And J. was examined, and said that 40 marks clear

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par count il demanda certeins arrerages dun annuite dun robe et de xx*s.* par an, ou le fait qil ad mys avant cy parle dun annuite dun robe ov un furrure, issint cest briefe nient garraunti despecialte, &c.—*Nott.* La furrure si est parcelle de la robe; par quei en la Chauncellerie nous ne pooms autre briefe aver.—Hill. Il serreit resoun qe vostre briefe soit acordaunt a lespecialte; par quei nous voloms saver de les clerkes de la Chauncellerie si vous poiez aver autre briefe ou nemy. A.D. 1343.

(18.)[1] § Reconissaunce sur estatut marchaunt de xl*li.* fut fait a Robert de Hollewelle par un J., hors de quel il sywist[2] execucion. J. siwist[2] en Chauncellerie, et fist sa suggestion qil avoit fait gree, et qe lestatut luy fut livere en lieu dacquitaunce, quel il moustra en Chauncellerie, et avoit sur ceo *Audita Querela.*—Et hors de ceo avoit bref de jugement a Vicountes de Loundres de faire J. vener, qe fut pris et enprisone en Neugate par la cause susdite, et *Supersedeas* dexecucion.—Robert Holwelle siwist[2] par Peticion en Parlement, compernant qe J. avoit forge un faux estatut pur luy delaier dexecucion, quel bille fut endosse et maunde par bref as Justices en[3] Baunk *quod examinato*[4] *Maiore tunc et Clerico, et, vocatis partibus, facerent justitiæ complementum,* &c., sur quei bref fut maunde de faire venir Andreu Aubrey, adonqes Mayre, et le Clerk, [et auxi J. de respoundre de la desceite. Andreu, adonqes Meyre, et le Clerk][5] vindrent, et furent examines, et disoient qe la reconissaunce sur quel Robert Hollewelle siwit[2] execucion fut bone et leal, et de lautre savoient ils rien. Et J. fut examine, et dit qe xl marcs furent dues de[6] clere, en *Audita Querela.* [Fitz., *Audita Querela,* 22.]

[1] From Harl., 25,184, and C.
[2] Harl., suyt.
[3] Harl., du.
[4] Harl., *examinata.*
[5] The words between brackets are omitted from 25,184.
[6] 25,184, des.

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A.D. 1343. were owing, as security for which the statute was made, but that nothing was paid. Afterwards J. was put to answer as to the deceit.—*Pole.* We tell you that J. did not counterfeit any false statute; ready, &c.—SHARDELOWE. That is not an answer: for if another person counterfeited it, and you have used it to delay his execution, the deceit is still in you.—*Pole.* Our statute is good and lawful, and not counterfeited; ready, &c.—STONORE. And if this statute which you have is good, and the other which Robert Hollewelle has is good also, there are then two debts; will he not therefore have execution on his good statute? Therefore it is not sufficient, in order to prevent this execution, which is the principal cause of this suit, to prove the statute which J. produces to be good, unless you can prove that the statute which Robert produces, in order to have execution, is false.—*Pole.* We are brought, at his suit, to answer as to a deceit which is surmised against us; therefore it is sufficient for us to traverse it, and of this we tender averment, which averment he refuses; judgment.—*Thorpe.* Our suit and your suit on your *Audita Querela* are interwoven, so that one issue will be made on the whole business, that is to say, whether we shall have execution and shall convict you of deceit and of the prevention of our execution, or you shall prevent us from having execution and shall convict us of falsely suing execution on the statute, so that the substance and the principal matter is whether we shall have execution or not; therefore if this is to be tried by averment it must be on a matter which could prevent our execution, that is to say, whether our statute was good or not. But we are in a different case: for statutes are of record, and they cannot be denied, but will be proved by those who made them and those who bear record of them, who by process are examined;

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seurte de quel le statut fait, mes rien ne fut paie. A.D. 1343
Puis J. fut mys a respoundre de la desceite.—*Pole.* Nous vous dioms qe J. countrefit nul faux estatut; prest, &c.—SCHARD. Ceo nest pas respouns: qar si autre le countrefit, et vous lavez use en delaye de sa execucion, unqore la desceite est en vous.—*Pole.* Nostre[1] estatut est bon et leal, et noun pas countrefait; prest, &c.—STON. Et si cel estatut qe vous avez est bon, et lautre qe Robert Hollewelle ad est bon auxi, donqes sount ils deux dettes; navera il donqes execucion[2] sur son bon estatut? Par quei ceo ne suffit pas, en destourbaunce de ceste execucion, qest principal cause de ceste suyte, a prover lestatut quel J. moustre[3] estre bon, si vous ne provez qe lestatut qe Robert moustre pur aver execucion soit faux.—*Pole.* Nous sumes mene a sa suyte de respoundre a un desceite quel nous est surmys; par quei a traverser cel nous suffit, et ceo tendoms daverer, quel averement il refuse; jugement. —*Thorpe.* Nostre suyte et vostre suyte sur vostre *Audita Querela* sount entrelesses, issint qun issue se fra sur tute la bosoigne, saver, lequel nous averoms execucion, et atteindre[4] vous de la desceite et la destourbaunce de nostre execucion, ou qe vous nous destourberez dexecucion, et nous attendrez de la faux suyte dexecucion sur lestatut, issint qe le gros et le principal est lequel nous averoms execucion ou noun; par quei si ceo serra trie par averement ceo covendreit estre sur chose qe purreit destourber nostre execucion, saver, lequel nostre estatut fut bon ou noun. Mes nous sumes en autre cas: qar les estatuts sount de recorde, qe ne pount estre dedites, mes serrount proves par ces qe les firent, et qe portent recorde, les queux par proces sount examines;

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[1] 25,184, Vostre.
[2] execucion is from C. alone.
[3] 25,184, moustra.
[4] Harl., attendre.

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A.D. 1343. therefore on that examination we pray judgment at the peril which appertains to it.—*Pole.* We are brought to answer at your suit, so that we shall not, according to any law, be damaged, without answer, by any examination to which we have not consented; and, inasmuch as we have answered, and tendered an averment, which averment they refuse, judgment, &c., and particularly since Andrew Aubrey who has been examined cannot now record inasmuch as he is not now Mayor.—STONORE. The record relating to his time remains with him.—*Pole.* It does not, because no one but the Mayor shall make a certificate, so that the rolls remain with his successor.—STONORE. When a Justice is removed, do not the records afterwards remain with him? as meaning to say that they do.—*Pole.* But, when a Justice is removed, he will record only by his mouth, but the rolls may be of record. And, Sir, it is extraordinary that witnesses could make issue in a plea, when the parties have not in that plea consented to such trial by witnesses, for in Dower, where trial by witnesses lies, they shall bring their witnesses on both sides, and that shall be on issue joined by the parties; but, in this case, I am a party, and I have elected another issue, and if you give judgment in my case on such proof by witnesses you damage me without allowing me an answer.—*Thorpe.* When one loses by default, and he brings a writ of Deceit, the pernors, viewers, and summoners shall be examined without any plea of the party, and on their examination the Court will give judgment, because they can best know the truth. So in the matter before us.—SHARDELOWE. It is so, because the deceit is made in a Court of record; but in respect of deceit made in *pais*, out of Court, it seems that averment lies.—*Pulteney.* Mayor and Clerk do not record except in making the recognisance, and with that which remains in possession of the party, that is to say, the obligation, they have nothing to do after it

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par quei sur cel examinement a peril qappent, nous prioms[1] jugement.—*Pole.* Nous sumes mene en respouns a vostre suyte, issint qe par nul ley serroms dampne, sanz respouns, par nul examinement en quel nous sumes pas assentuz; et desicom nous avoms respondu, et tendu un averement, quel averement ils refusent, jugement, &c., et nomement quant Andreu Aubray qest examine ne poet pas recorder ore desicome il nest pas Meire a ore.—Ston. De son temps le recorde demoert vers luy.—*Pole.* Noun fait, qar autre qe Meire ne fra certificacioun, issint qe les roulles demurent vers soun successour.—Ston. Quant un Justice est remue, ne demurent pas apres les recordes vers luy? *quasi diceret sic.*—*Pole.* Mes, quant un Justice est remue, il recordera mes par sa bouche, mes ses roulles poiant[2] estre de recorde. Et, Sire, il est merveille qe proves purreint faire issue du plee en quel prove parties par plee ne sount pas assentuz, qar en Dowere, ou prove gist, ils proverount dun part et dautre, et ceo serra sur mise des parties; mes en ceo cas jeo suy partie, et ay eslieu[3] autre issue, et si vous moy jugez[4] par tiel prove vous moy dampnez sanz respouns.—*Thorpe.* Quant homme perde par defaut, et il porte bref de Desceite, les pernours, veours, et[5] somonours serrount examines sanz plee de partie, et sur lour examinement Court fra jugement, pur ceo qils pount meuth saver la verite. *Sic in proposito.*—Schard. Il est issi, pur ceo qe la desceite est fait en Court de recorde; mes de desceite fait en pais, hors de Court, il semble qe averement gist.—*Pult.* Meire et Clerk ne sount pas de recorde forsqe en fesant la reconissaunce, mes de ceo qe demoert vers la partie, saver lobligacion, nount ils quei faire apres ceo qil A.D. 1343.

[1] 25,184, demandoms.
[2] Harl., poaint.
[3] Harl., eslue.
[4] 25,184, ajuggez.
[5] et is omitted from Harl.

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A.D. 1343. is made, but their record remains always in their roll, in order that a certificate may be had; and, at most, as matters yet stand, they cannot record anything further than that they made a statute, but they can never record that they did not make any statute. —STONORE. You are agreed that one statute is good, and the other false; then, since they have recorded that one is good, the other must be held to be false; and who can better know the truth as to that which they did than themselves? Now we have from them that the statute of Robert, who sued execution, is good, and also, by admission of the party, that the money is not paid, and also that he did not deliver up the statute. What then can we adjudge, &c.?—*Pulteney.* Andrew Aubrey, who was not Mayor at the time of the examination, does not bear record, but all that he shall now say is only testimony, nor is it otherwise with respect to the Clerk; and, as to the examination of the party himself, it was without warrant. But if any forgery of a statute was done, it must have been done out of Court, and that could not be recorded by any one, but only tried by averment, &c. And suppose they were dead, how could this be tried except by averment?—SHARSHULLE. Then it would be different; but the award of Parliament is that "having called before us and examined those before whom," &c.; therefore we must make execution of this award; and, besides, the statutes and the King's seal are of record; how then can one try by averment a matter of record, of which the country cannot have any knowledge? And even though Andrew be not now Mayor, the recognisance was made before him, and the award of Parliament purports that he is to be examined, and also the Clerk who must have written the recognisance with his hand, as to whether this is to be considered a statute, &c.; and the party

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est fait, mes lour recorde demoert tut en lour roulle pur aver certificacioun; et a meuth[1] qe purra estre uncore ne pount ils recorder autre chose forsqils firent lestatut, mes recorder qils firent nul estatut ne pount ils jammes.—Ston. Vous estes a un qe lun estatut est bon, et lautre faux; donqes quant ils ount recorde lun estre bon, il covient tener lautre faux; et qi purra saver meuth la verite de ceo qils firent qeux mesmes? Ore nous avoms deux qe lestatut Robert, qe siwist[2] execucion, est bon, et[3] auxi de la conissaunce de partie qe les deners ne sount pas paies, et auxi qil luy livera pas lestatut. Quei poms nous donqes ajuger, &c.?—*Pult.* Andreu Aubrey[4] qe ne fut pas Meyre al temps del examinement, ne porte pas recorde, mes quant qil dirra a ore nest qe[5] tesmoignaunce, ne de Clerk nient plus; et ceo qe la partie mesme fut examine fut sanz garraunt. Mes si nul forger destatut fut fait, ceo covendreit estre fait hors de Court, et qe ne put estre recorde par nul homme, mes par averement, &c., trie. Et jeo pose qils furent mortz, coment serreit ceo trie[6] forsqe par averement?—Schar. Donqes serreit autre; mes lagarde du Parlement voet ore qe appelles devant nous ces devant queux, &c., et examinez, &c.; par quei de cel agarde nous covient faire execucion; et, estre ceo, les estatuts et le seal le Roi est de recorde; coment purra homme donqes trier chose de recorde par averement dount pays ne poet aver conissaunce? Et tut ne soit Andreu a ore Meire, devant luy la conissaunce fut fait, et lagarde du Parlement voet qil soit examine, et auxi le Clerk qe le duist aver escript de sa meyn, si ceo duist estre estatut, &c.; et la partie A.D. 1343.

[1] 25,184, meyns.
[2] Harl., suyt.
[3] et is omitted from Harl.
[4] 25,184, Aubray.
[5] Harl., pas.
[6] The words ceo trie are omitted from Harl.

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A.D. 1343. has been examined, to which fact we have regard, and we have nothing else to do or to adjudge but to adjudge execution of the statute, for we cannot give judgment as to the counterfeiting of the statute in this Court.—And KELSHULLE awarded execution.[1]

Waste. (19.) § *Pulteney.* Exception is taken to the writ of Waste brought by the husband and his wife on the ground that the waste could not be to the disherison of the wife, who has only a term for life, and that by way of remainder; and on this exception the cause had been long pending.—*Thorpe.* The writ seems to us to be bad for those in the remainder, and also for the wife who has only a term for life.—SHARSHULLE. The exception is to the action, and it seems to us that, when a remainder is limited by fine, the right is vested immediately; but it would be otherwise if the remainder were limited by deed in *pais*; therefore it seems to us that the writ is good.

Assise of Novel Disseisin. (20.) § Novel Disseisin between John Triple, plaintiff, and M.[2] late wife of Richard Hakeney of London, defendant, in respect of tenements in the geldable. The array of the panel was challenged on the ground that the Sheriff of Middlesex who had arrayed the panel was a procurer and maintainer, &c.; whereupon, one of the panel, being examined, said that the Sheriff did not procure, and said further that he

[1] For a report of the same or of a similar case. *see* Y.B., Mich., 18 Edw. III., No. 22.

[2] For the real names *see* p. 89, note 5.

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est examine, a quei nous avoms regarde, et nous navoms autre chose a[1] faire forsqe dajuger execucion del estatut, ou[2] de ajuger, qar del countrefaire del estatut nous poms pas faire jugement en ceste place.[3] —Et Kels. agarda execucion. A.D. 1343.

(19.)[4] § *Pult.* Le bref de Wast pur le baroun et sa femme est chalange pur ceo qe ceo ne put estre a la desheritaunce la femme, qe nad qe terme de vie, et ceo par voie de remeindre; et sur ceo chalange ad pendu longement.—*Thorpe.* Nous semble bref malveis pur ces en le remeindre, et auxint pur la femme qe nad qe terme de vie.—Schar. La chalange est al accion, et il nous semble qe quant le remeindre est taille par fyn qe le dreit est tauntost vestu; mes autre serreit sil fut taille par fait en pays; par quei nous semble le bref bon. Wast.

(20.)[5] § Novele Disseisine entre Johan Triple, pleintif, et M. qe fut la femme Richard Hakeney de Loundres, defendant, des tenements en gildable. Larray du panel fut chalange pur ceo qe le Vicounte de Middelsexe qad arraye le panel est procurour et meintenour, &c.; sur quei un del panel examine dit qe le Vicounte ne procura pas, et dit outre Assise de Novele Disseisine. [17 Li. Ass., 11; Fitz., *Challenge* 13.]

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[1] a is omitted from 25,184.

[2] ou is omitted from 25,184.

[3] In Harl. the word Jugement is here inserted, in a later hand, in the margin.

[4] From Harl., 25,184, and C.

[5] From Harl., 25,184, and C., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich. 17 Edw. III., R° 237. It there appears that the Assise was brought by John Triple of London, fishmonger, and Katherine his wife, against Alice late wife of Richard de Hakeneye, and several others, in respect of a moiety of one acre of land in Stebbenhethe (Stepney, Middlesex).

The defendants all answered by bailiff, who, for all except Alice, denied the disseisin, and issue was joined upon the traverse. For Alice, as tenant of the land, he pleaded that William, parson of the church of St. Mary atte Hulle (at Hill) enfeoffed her and her late husband of the land in fee, and that she had entered without effecting any disseisin on the plaintiffs. Issue was joined on this plea to the Assise.

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A.D. 1343. came through the Bailiff of the Queen's Liberty of B., who has full return, &c., who made summons and view to him and to some others named in the panel; and also some others were required to state through whom they came, and they said that they came through divers bailiffs of divers liberties.—*Thorpe.* The array has been found false in part, and the array is one whole, so that a mistake in part extends to the whole; judgment whether you will take the assise on such an array.—*Pole.* The array, so far as the challenge of the party is concerned, is tried and found good; and that which you may find beyond relates only to the challenge and complaint of the lord of the Liberty, as to which a party cannot complain, and even were it the fact that as to some there was a fault in the array, if you had a sufficiency of others who had come by good process, you would take the Assise; and you will find a sufficiency of others in the panel, who came by good process.—*Stouford.* When the array is bad as to one person in the panel, and it is so found, that extends to the whole; besides, when the array is made by the Bailiff of a Liberty, and the Sheriff returns it as from himself, in case I have my challenge to the array made by the Bailiff of the Liberty, I shall lose it through the fault of the Sheriff, and that is not right.—KELSHULLE. The Sheriff must be amerced for the bad array, and he cannot be amerced for parcel while the array stands as to the rest; wherefore let the Sheriff be in mercy, and

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qil vint par baillif de la fraunchise la Reigne[1] de B., qad plein retourn, &c., qe a luy et asquns autres nomes en le panel fit la somons et la vewe; et auxint autres furent opposes par qi ils vindrent, et disoient qe par divers baillifs des divers fraunchises.[2]—*Thorpe.* Larray est trove faux en partie, quel array est un, issi qe la misprisioun[3] en parcelle sestent a tut; jugement si sur tiel array voillez lassise prendre.—*Pole.* Larray, quant a chalange de partie, est trie pur bon; et ceo qe vous troverez outre nest forsqe en chalange et pleinte de seignur de la fraunchise, de quei partie ne se put pleindre, et tut fut ceo qe quant as asquns il y avoit defaut en larray, si vous ussez assetz des autres qe fuissent[4] venuz par bon proces, vous prendrez lassise; et vous troverez assetz des autres en panel, qe vint par bon proces.—*Stou.* Quant larray est malveys quant a un el panel, et ceo soit trove, ceo sestent a tut; ovesqe ceo, quant larray est fait par le baillif de fraunchise, [et le Vicounte le retourne come de luy mesme, en cas qe jeo eusse mon chalange a larray fait par le baillif de fraunchise][5] jeo le perdrey par la defaut de Vicounte, et ceo nest pas resoun.—Kels. Il covient qe le Vicounte soit amercie pur le malveys array, et il ne put pas estre amercie pur parcelle, et larray ester del remenant; par quei le Vicounte soit en la mercy, et A.D. 1343.

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[1] 25,184, Roigne.

[2] The challenge was, according to the roll, as follows:—"Super hoc "prædicta Alicia calumniat araia- "mentum istius panelli, quia dicit "quod plures recognitores istius "Assisæ sunt de libertate Philippæ "Reginæ Angliæ per ballivum "ejusdem libertatis summoniti, et "in returno Vicecomitis non fit "mentio quod fecit returnum "eidem ballivo, sed de facto suo "proprio respondit, cum tamen "executio inde tam de summoni- "tione recognitorum quam de visu "habendo de libero tenemento, &c., "facta fuit per ballivum prædictum "prout per triatores, &c., comper- "tum est."

[3] Harl., mespressioun.

[4] 25,184, puissent.

[5] The words between brackets are omitted from 25,184.

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A.D. 1343. sue you a new array.—And afterwards he sued a new array impanelled from the Geldable, and another from the Liberty by indenture, because the Liberty extended into the Hundred.—And this reason was endorsed, and the Assise passed.

Assise of Novel Disseisin.

§ John Triple and A.[1] his wife brought an Assise of Novel Disseisin against A.[1] in respect of tenements in C.,[1] in which the parties had pleaded to the Assise. And the Assise came, and the array of the panel was challenged on the ground that the array was made by the device of one who was a maintainer, and also that the Sheriff was a maintainer, and this was tried by the persons in the same panel, because it was in the Bench. And the challenge was found to be false. Thereupon it was alleged that several were from other Hundreds. And they brought a writ directing the Justices to take the Assise by those who were nearest, &c. Thereupon it was asked of one from what Hundred he was, and how he came; and he

[1] For the real names see p. 89, note 5.

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siwez[1] novel array.—Et puis siwist[2] novel array et enpanelle[3] del gildable, et autre de la fraunchise par endenture, pur ceo qe la fraunchise sestendi en le Hundred.[4]—Et cele cause fut endosse, et lassise passa. A.D. 1343.

§ Johan[5] Triple et A. sa femme porterent un Assise de Novele Disseisine vers A. des tenements en C., ou plede fut al Assise. Et lassise vient, et larray de panelle fut chalange pur ceo[6] qe larray fut fait al devise un qe fut maintenour, et auxi qe le Vicounte fut maintenour, et ceo trie par gentz de mesme la panelle, *quia fuit in Banco*. Et fut trove la chalange faux. Sur quei allegge fut qe plusours furent des autres Hundreds. Et porterent briefe qe les Justices duissent prendre lassise par les plus proscheins, &c. Sur quei fut demande de un de quel Hundred il fut, et coment il vient; et il Assise de Novele Disseisine.

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[1] Harl., suez.

[2] Harl., suyt.

[3] Harl., en panel.

[4] After the challenge, as cited above, p. 91, note 2, the record continues thus:—"Ideo idem Vice-"comes, scilicet Johannes de Pel-"ham, in misericordia. Et affora-"tur per Justiciarios ad unam "marcam. Et istud panellum "omnino deleatur ad præsens. "Et Vicecomes de novo summoneat "xij, &c., de visneto prædicto quod "sint hic in Crastino Animarum "ad recognoscendum, &c. Et "partes habent eundem diem, &c. "Ad quem diem veniunt tam "prædicti Johannes Triple et "Katerina quam ballivus aliorum, "&c. Et similiter recognitores "veniunt de consensu prædictorum "Johannis Triple et Katerinæ et "ballivi electi, qui dicunt super "sacramentum suum quod præ-"dicti Johannes Triple et Katerina "fuerunt seisiti de prædicta terra "in visu posita ut de libero tene-"mento quousque prædicti Alicia "[and certain of the other defend-"ants] ipsos inde disseisiverunt, "ad damnum ipsorum Johannis "Triple et Katerinæ viginti "librarum, et quod alii in brevi "nominati non interfuerunt dis-"seisinæ." Judgment was given accordingly.

[5] This report of the case is printed by itself, as No. 106 in the old editions. No MS. of it has been found, and there is no mention of it in Fitzherbert's *Abridgment*. There is however a reference to it in the printed *Liber Assisarum*. The name Johan is printed Jenyn or Jenin in the old editions.

[6] The old editions here and elsewhere *eo*, instead of pur ceo.

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A.D. 1343. said that he was from another Hundred, and that he came through the Bailiff of the Liberty of the Queen, who had the return of writs. And another said that he came, and that he had made the view, through the Bailiff of the Liberty of the Abbot of Westminster.—*Thorpe.* You have found that this array is made by the Bailiff of the Liberty of which the Sheriff has made no mention; so the array is null.—*Pulteney.* The tenements are in the geldable, and the array was made by the Sheriff, as it ought to be, and by no other; so you ought to take the Assise.—*Pole.* If wrong be done to the lord of the Liberty, or to any one else, let him have his recovery; but in this case he cannot by way of challenge stop the taking of the Assise.—*Pole.* There is a sufficiency of others from the geldable, who came through the Sheriff.—*R. Thorpe.* The array is found bad in part, and therefore in its entirety.—*W. Thorpe.* The array is found to have been made without any proper officer, because the Bailiff made it without warrant.—*Stouford.* If it had been made by virtue of a warrant to the Bailiff, then I ought to have had my challenge as to the Bailiff, and that I cannot have now.—And afterwards KELSHULLE said: Sue a new array.—But at first one of the jurors was challenged because he was not summoned within the fifteen days.—And this exception was not allowed, because this was in the Bench, &c.

Quare incumbrarit. (21.) § A *Quare incumbrarit* was brought against the Bishop of Exeter by Theobald de Greneville, &c., for that he encumbered the church, &c., pending the plea. And the plaintiff counted that he delivered to the Bishop a Prohibition *Ne admittat*, and afterwards recovered, &c., and presented his clerk to the Bishop, and the Bishop encumbered the church with one N., while the plea was pending, contrary to the law and custom of the realm, and to the damage of the plaintiff, &c.—*Gaynesford.* This count includes what is of the nature

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dit qil fut dautre Hundred, et qil vient par le baillif de la franchise la Roigne, qad retourne de briefes. Et un autre dit qil vient, et avoit fait la vewe, par le baillif de la franchise Labbe de Westmestre.—*Thorpe.* Vous avez trove qe cest array est fait par baillif de la franchise de quei le Vicounte ad fait nul mencion; issint larray nul.—*Pult.* Les tenements sont en gildable, et larray fait par le Vicounte, come il deit estre, et par nul autre; issint vous devez lassise prendre.—*Pole.* Si tort soit fait al seignur de franchise, ou a nul autre, eit il son recoverir; mes en ceo cas par voie de chalange il ne puit pas arester la prise del Assise.—*Pole.* Ils sont autres assetz gildable, et qe sont venus par le Vicounte.—[*R.*] *Thorpe.* Larray est trove malveis en partie, et par taunt en tout.—*W. Thorpe.* Trove est larray fait sanz ministre, pur ceo qe le baillif ceo fist sanz garraunt.—*Stouf.* Sil ust [este] fait par garraunt al baillif, donqes jeo duisse aver mon chalange a le baillif, et ceo ne puis jeo aver ore.—Et puis Kels. Suez novel array.—Mes primes un des jurours fut chalange pur ceo qil ne fut pas somons de xv jours.—*Et non allocatur, quia hoc fuit in Banco,* &c. A.D. 1343.

(21.) [1] § *Quare incumbravit* vers Levesqe Dexcestre porte par Thebaud de Greneville, &c., de ceo qil encombra leglise, &c., pendaunt le plee. Et counta coment il luy livera Prohibicion *Ne admittat*, et puis recoveri, &c., et luy presenta son clerk, et Levesqe encombra leglise dun N.[2] pendaunt, encountre la ley et custume de Realme, et damage del pleintif, &c. —*Gayn.* Cest count comprent la nature de *Quare* *Quare incumbravit.* [Fitz., *Quare incumbravit*, 1.]

[1] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 179.

[2] Thomas Crosse, according to the record. *See* p. 97, note 5.

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A.D. 1343. both of a *Quare incumbravit* and of a *Quare non admisit*, for he has counted how, pending the writ, the Bishop encumbered the church, and how he afterwards recovered, and then presented his clerk to the Bishop, &c., whom the Bishop refused, and it is of the nature of a *Quare non admisit* when one counts of a refusal of clerks presented.—Sharshulle. Without a judgment *Quare incumbravit* does not lie.—Hillary. That is true; answer; the count in this case is good.—*Derworthy* demanded oyer of the record.—Hillary. You are not a party, but an officer, and you have not executed the King's command, and the writ is an original writ issued from the Chancery.—*Thorpe*. So is Attaint an original writ, and lies against the third or fourth feoffee, and yet he will have oyer; so also in this case, since the suit is taken upon a record.—Hillary. You

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incumbravit et *Quare non admisit*, car il ad counte coment,* pendaunt bref, Levesqe encombra leglise, et puis il recoveri, et puis presenta a luy son clerk, &c., quel il refusa, qest nature de *Quare non admisit* quant homme counte de refuser de clerkes presentes. —Schar. Saunz[1] jugement *Quare*[2] *incumbravit* ne gist pas.[3]—Hill. Cest verite; responez; le count la[4] est bon.[5]—*Derworthi* demanda oy del recorde.—Hill. Vous nestes pas partie, mes ministre,[6] qe navez pas execut le maundement le Roi, et le bref est un original issu de Chauncellerie.—*Thorpe.* Auxi est Atteint original, et gist vers le tierce ou quart feffe, et si avera il oy; auxi en ceo cas del houre qe la suite est pris hors de recorde.—Hill. Vous A.D. 1343. [Fitz., *Moustrans de Faits, Fines, et Records*, 169.]

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[1] saunz is omitted from Harl., and 25,184.

[2] Harl., de *Quare.*

[3] pas is omitted from Harl.

[4] la is omitted from Harl.

[5] The declaration was, according to the record, "quod, cum ecclesia "de Kilkhamptone vacasset . . . . . "quo tempore contentio mota fuit "inter ipsum Theobaldum et "Johannem de Ralegh et Amiam "super præsentationem ad eandem, "ita quod idem Theobaldus tulisset "quandam Assisam Ultimæ Præ- "sentationis versus præfatos Jo- "hannem et Amiam de ecclesia "prædicta, ... pendente qua "Assisa idem Theobaldus . . . . . "apud Chuddele, in præsentia "Walteri de Kirkham, Roberti de "Kirkham, et Johannis de Chud- "desleigh, et aliorum, liberavit "eidem Episcopo breve domini "Regis de Prohibitione, &c., ne "ipse aliquem ad ecclesiam illam "admitteret, pendente inter eos "Assisa prædicta, et . . . . . "idem Theobaldus per judicium "Curiæ recuperavit præsenta- "tionem suam ad ecclesiam præ- "dictam, et habuit breve præfato "Episcopo, loci illius Diocesano, "quod . . . . . ad præsentationem "ipsius Theobaldi ad ecclesiam "prædictam idoneam personam "admitteret, quod quidem breve "eidem Episcopo liberatum fuit "per quendam Walterum de Mer- "tone apud Chuddeleghe, ... "et ipse Theobaldus, eodem die, "in præsentia Walteri de Kirkham, "Hamonis de Wanforde, et aliorum, "præfato Episcopo præsentasset "quendam Walterum de Mertone "clericum suum, ipsum rogando "ut præfatum Walterum ad "ecclesiam prædictam admitteret, "idem Episcopus, ipsum Walterum "ad ecclesiam illam admittere "omnino rescusans, eandem eccle- "siam infra tempus semestre "de quodam Thoma Crosse incum- "bravit, contra legem et consuetu- "dinem," &c.

[6] 25,184, moustrez.

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A.D. 1343. shall not have oyer; answer.—*Thorpe.* There is no such record in this Court; judgment whether in this place the law puts us to answer.—Sharshulle. *Quare incumbravit* is a common plea, and is not pleadable, except at the King's suit, in any other Court but this; and if the record be in the Treasury, or in another place, still the party will rightly have this suit.—*Thorpe.* He will sue in the King's Bench if the record be there, or he ought to have it *sub pede sigilli* if it be in the Treasury, or else wait until the record comes, as in case of avowry, or Annuity taken upon a fine, &c.—Hillary. The cases are not similar.—*Moubray.* Since he does not deny that there is such a record, nor that the writ came to him, nor that he has encumbered the church, we pray that it be adjudged that he disencumber the church, and pray our damages.—*Stouford.* If the Court so sees it, we will answer sufficiently.—Sharshulle. *Quare incumbravit* is pleadable nowhere except in this Court, nor is *Quare impedit,* unless it be for the King.—*Thorpe.* Suppose that by reason of error in process in *Quare impedit* the matter be reversed in the King's Bench, they will proceed with the plea. And will there not afterwards be a *Quare incumbravit* brought there. And the reason is that the record is there, &c.—*Grene.* On a *Quare deforciat,* if the party who is tenant demand oyer of the first record, he shall not have it; but if he will maintain his first recovery in accordance with the nature of the first writ, the Court will not hold the plea unless they have the record; no more can you hold plea on this *Quare incumbravit,* which is taken upon a recovery, unless you have the record.—Hillary. The cases are not alike, for in the one case the plea will be held upon the

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naverez pas loy; responez.—*Thorpe.* Il ny ad nul tiel recorde ceinz; jugement si en ceste place ley nous mette a respoundre.—SCHAR. *Quare incumbravit* est comune plee, et nest pas empledable, sil ne fut a la suite le Roi, en nulle autre place forsqe ceinz; et si le recorde soit en Tresorie, ou en autre place, uncore partie avera par resoun ceste suite.—*Thorpe.* Il suera[1] en Baunk le Roi, si le recorde soit la, ou sil soit en Tresorie il le duist aver *sub pede sigilli*, ou autrement attendre tanqe le recorde vendra, come en cas davowere, ou dannuite pris hors dun fyn, &c.—HILL. *Non est simile.—Moubray.* Puis qil ne dedit pas qil y ad tiel recorde, ne qe bref a luy[2] vint, ne qil ad[3] encombre leglise, nous prioms qe agarde soit qil desencombre leglise, et nos damages.—*Stouf.* Si Court veit, nous dirroms assetz.—SCHAR. *Quare incumbravit* nest nulle part pledable forsqe ceinz, ne *Quare impedit*, sil ne soit pur le Roi.—*Thorpe.* Jeo pose qe par cause derrour en proces en *Quare impedit* la chose soit reverse devant le Roi, ils tendrount avant le plee. Et ne serra pas apres[4] *Quare incumbravit* porte illoeqes? Et la resoun est pur ceo qe le recorde est la, &c. —*Grene.*[5] En un *Quare deforciat*, si la partie tenant demande oy del primer recorde, il navera pas; mes sil voille meintener son primer recoverir solonc la nature du primer bref, Court ne tendra pas le plee sils neient le[6] recorde; nient plus poetz vous tener plee sur ceo *Quare incumbravit* qest pris hors dun recoverir, si vous neiez cel recorde.—HILL. *Non est simile*, car en lun̄ cas homme tendra plee sur le A.D. 1343.

[1] 25,184, siwera.
[2] 25,184, ne luy
[3] 25,184, nad.
[4] Harl., appres.
[5] In the old editions this continuation of the case, beginning with the word *Grene*, is placed after No. 33 and numbered 34. There is in Harl. the marginal note "*Quare incumbravit.* Greneville," in C. *Residuum* del *Quare incumbravit*, which words are in 25,184 preceded by the word Greneville.
[6] le is from 25,184 alone.

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A.D. 1343. first writ and record, but not so in this case; wherefore answer.—*Pulteney.* Judgment of the count, for he has counted that the Bishop encumbered the church, and has not shown any certain act by which the Bishop encumbered, that is to say, that he admitted any clerk on the presentation of another person, or made institution and induction on his own collation, without which act this cannot be said to be encumbrance.—*Moubray.* You shall not be admitted to that, for you affirmed the count, inasmuch as you demanded oyer of the record.—The Court agreed to this, and said further that the exception was of no force.—*Pulteney.* Judgment of the writ, for he has counted that he recovered on Assise of Darrein Presentment, in which case it is in accordance with the form of the writ to make special mention of the Assise; but if he had recovered on *Quare impedit*, the writ would then be as this is.—Hillary. We adjudge the writ good, because there is sufficient intendment.—And afterwards exception was taken to the writ inasmuch as the words of the writ were *pendente placito de ecclesia prædicta*, and it did not express *de presentatione ecclesiæ*, &c.; and afterwards because the writ had not the words *pendente placito prædicto*, so that it is not supposed by the writ to have been while the same plea was pending; and afterwards because the writ did not contain the words *infra tempus semestre incumbravit*.—These exceptions were not allowed.—*Pulteney.* We say that this writ was purchased within the period of six months, within which period the Bishop had power to disencumber the church and admit the plaintiff's presentee, so that he could not make his plaint within that time; judgment of the writ.—Hillary. If the Bishop encumbered within two days after the writ reached him,

Note here that, by demanding oyer of the record, he has passed by exception to the count, but not to the writ.

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primer bref et recorde, et en ceo cas nient; par quei responez.—*Pult.* Jugement de counte, car il ad counte qil encombra leglise et nad pas moustre certeyn fait coment il lencombra, saver, qil resceust asqun clerk a autri presentement, ou par sa collacion demene fist institucion et induccion, saunz quel fait ceo ne poet estre dit encombraunce.—*Moubray.* A ceo ne serrez resceu, qar vous avez afferme le counte par taunt qe vous demandastes oy del recorde. —*Ad quod* Curia[2] *consensit,* et dit outre qe lexcepcion fut de nulle value.—*Pult.* Jugement du bref, qar il ad counte qil recoveri sur Assise de Derreyn Presentement, en quel cas fourme du bref est de faire mencion en especial del Assise; mes sil ust recoveri sur *Quare impedit,* donqes serreit le bref tiel come ceo[3] cy est.—Hill. Nous agardoms le bref bon, qar il y ad assetz dentent.—Et puis le bref fut chalange en taunt qe le bref voleit *pendente placito de*[4] *ecclesia prædicta,* et ne dit pas *de*[5] *præsentatione ecclesiæ,* &c.; et puis de ceo qe le bref ne voleit pas *pendente placito prædicto,* issi qe par bref ceo nest pas suppose pendaunt mesme le plee; puis de ceo qe le bref ne voleit pas *infra tempus semestre incumbravit.—Non allocatur.—Pult.* Nous dioms qe ceo bref fut purchace deinz le temps de vj mois, deinz quel temps Levesqe poait aver desencombre leglise, et resceu le presente le pleintif, issi qe deinz le temps il ne se put pleindre; jugement du bref.[6]—Hill. Si Levesqe encombra deinz les ij jours apres ceo[7] qe le bref luy vint, tauntost

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Nota hic qe par demander oy del recorde il ad passe de excepcion a counte, *sed* noun pas a bref *Vide hoc.*[1]

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[1] The marginal note is from 25,184 alone, but there is in Harl. the similar note "*Nota* qapres ceo qe partie ad demande oi de recorde il navendra apres de pleder al abatement de counte."

[2] 25,184, Hill.

[3] ceo is omitted from 25,184.

[4] Harl., *in.*

[5] *de* is omitted from Harl.

[6] In 25,184 are inserted here the words qar nous vous dioms qe le recorde est suy en Bank le Roi, et errours assignes.

[7] ceo is omitted from Harl.

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A.D. 1343. this action was given immediately; wherefore answer. —*Pulteney.* Again, judgment of the writ, for we tell you that the record is sued into the King's Bench, and errors are assigned, and this writ has been purchased pending that suit of Error, &c.—HILLARY. Give a better answer.—*Pulteney.* Then we do not understand that, pending that suit, you will put us to answer, for neither by this writ nor by writ of *Quare non admisit* is it sued against the Ordinary except as an officer to do execution, and that he neither ought nor is able to do until it has been decided to whom the patronage belongs. And the judgment will possibly be reversed, and he who now sues will be excluded from the patronage; therefore it will be contrary to reason that, pending the suit of Error on which, in a manner, the decision as to the patronage depends, this plaintiff should have this suit.—SHARDELOWE. To a *Quare non admisit*, which would be taken on what appears in the roll, your exception would be effective, but not to this writ, which is an original writ. And if you could so escape, you would go quit. And possibly the judgment will be affirmed hereafter, or possibly is so now, of which fact we cannot be apprised. —*R. Thorpe.* We understand that this writ lies only in two cases: one when the church is not litigious, and the Bishop encumbers within the limited time; the other when there is a dispute by plea upon the patronage, and one of the parties recovers, when this writ serves for him who recovers after decision given as to the patronage; and since this question is now pending in judgment, while that suit is pending, it is contrary to reason to give him suit upon a judgment which will possibly be annulled.—*W. Thorpe, ad idem.* In case of Attaint at common law

Note that, at common law,

it was a cause for staying proceedings that execution had not been had of the damages; and it is still

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fut cest accion[1] done; par quei responez.—*Pult.* Uncore jugement du bref, qar nous vous dioms qe le recorde est suy en Baunk le Roy, et errours assignes, et ceo bref est purchace pendaunt cele suyte derrour, &c.—Hill. Responez[2] mellour.—*Pult.* Donqes nentendoms pas qe pendaunte cele suyte nous voillez mettre a respoundre, qar ceste suyte par ceo bref, ne par bref de *Quare non admisit* nest pas suy vers Ordiner,[3] forsqe come ministre de faire execucion, et ceo ne deit ne ne put taunqe discus soit a qi le patronage est. Et par cas le jugement serra reverse, et cesty qe suyt ore serra forclos del patronage; donqes serra ceo countre resoun, pendaunte la suyte derrour sur quei discussion del patronage est en manere, qe cestuy avereit[4] la suite.—Schard. A un *Quare non admisit*, qe serreit pris hors de roulle, vostre chalange liereit, mes a ceo bref, qest original, pas.[5] Et si vous puissez issi estourtre,[6] vous irres quites. Et par cas le jugement apres serra afferme, ou par cas est ore, de quei nous ne pooms estre appris.—*R.*[7] *Thorpe.* Nous entendoms qe ceo bref ne gist qen deux cas: un quant leglise nest pas litigiouse, et Levesqe lencombre[8] deinz le temps; lautre quant debat est sur le patronage par plee, et lun recovere, pur luy qe recovere ceo bref seert[9] apres la discussion fait del patronage; et del houre qe ceo pent en jugement ore, pendaunt la suyte, cest countre resoun de doner a luy suite dun jugement qe par cas serra anienti.—[*W.*] *Thorpe, ad idem.* En cas datteinte a la comune ley ceo fut cause de surseer, pur ceo qe execucion ne put pas fait des damages; et unqore

A.D. 1343.

Nota, a la comune ley, en

[1] 25,184, testacion, instead of cest accion.
[2] Harl., respondes.
[3] Harl., Ordeigner.
[4] Harl., ceo ny avereit, instead of cestuy avereit.
[5] pas is omitted from 25,184.
[6] 25,184, estourtere.
[7] *R.* is from C. alone.
[8] 25,184, and C., le noumbre.
[9] C., soit.

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A.D. 1343. on a writ of Attaint, it was a good answer to say that execution of damages had not been had. But it is not so now. But it is now a good answer to say that execution has not been had of the principal matter.

a plea to say that execution has not been had of the principal matter, because it is not restrained by Statute[1]; for the same reason, in this case, inasmuch as the principal matter has not been decided, you cannot proceed.—Hillary. Has not the judgment been given by reason of which the writ lies?—*Pulteney.* We do not admit that the church became void at the time at which they have counted that it did, and we tell you that John de Ralegh and Amy his wife presented to us Thomas Crosse, their clerk, to whom we granted letters of enquiry on a certain day, &c., and it was found by inquest that they were very patrons, and the other circumstances thereto appertaining, and we waited to make institution of him until the Feast of St. Peter next following, at which time, by compulsion of the law of Holy Church, we made institution of him, *absque hoc* that any Prohibition reached us, or that any presentation of your clerk was previously delivered to us, by which we could have had notice, &c. And we tell you that his presentee never afterwards sued nor yet sues to us to have letters of enquiry, as is the course; and we do not understand that you can assign tort in our person.—*Moubray.* We

[1] 1 Edw. III., St. 1, c. 6.

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un bref datteinte, il fut bone respons a dire qe execucion de damages ne fut pas fait. *Sed non sic modo.* *Sed* il est bone respons a ore a dire qe execucion de principal nest pas fait.[4]

est plee a dire qe execucion nest[1] pas fait del principal, car ceo nest pas restreint par statut; par mesme[2] la resoun en ceo cas, desicome le principal nest pas discus,[3] vous ne poiez aler avant.—Hill. Nest pas le jugement rendu, par quei le bref gist? —*Pult.* Nous ne conissoms pas qe leglise se voida au temps qils ount counte, et vous dioms qe Johan Raly et Amye sa femme nous presenterent Thomas Crosse, lour clerk, a qi nous grauntames lettre denquest, certein jour, &c., et par enquest fust trove qils furent verreys patrouns, et les autres circumstances qe appendent, et nous attendimes[5] de luy faire institucion tanqe a la Feste Seint Piere proschein ensuant, a quel temps, par cohercion de la ley de Seint Eglise, nous luy fimes[6] institucion, sanz ceo qe nulle Prohibicion[7] nous vint, ou qe nulle presentement de vostre clerk nous estoit adevant livere par quei qe nous puissoms aver eu notice, &c. Et vous dioms qe son presente unqes[8] puis ne[9] uncore ne suist[10] a nous daver lettre denquest, come appent; et nous[11] nentendoms pas qe tort en nostre persone puissez assigner.[12]—*Moubray.* Nous

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[1] 25,184, ne fut.

[2] 25,184, meisme.

[3] 25,184, discue.

[4] The marginal note is from 25,184 alone.

[5] 25,184, and C., entendoms.

[6] Harl., feimes.

[7] 25,184, prohibucion.

[8] 25,184, and C., un.

[9] ne is omitted from 25,184, and C.

[10] Harl., nensuit, instead of ne suist.

[11] nous is omitted from Harl.

[12] The Bishop's plea after the protestation was, according to the record :—" quod die Lunæ proximo " post Festum omnium Sanctorum, " anno regni domini Regis nunc " sextodecimo, præfati Johannes et " Amia, asserentes dictam eccle- " siam tunc esse vacantem, et quod " ad ipsos tunc pertinuit præsen- " tare ad eandem, eidem Episcopo, " ut loci illius Diocesano, dictum " Thomam Crosse ad ecclesiam " illam præsentarunt, supplicando, " caritatis intuitu, ut ipsum " Thomam ad eandem admitteret " et canonice institueret in eadem, " qui quidem Episcopus, ad in- " stantem requisitionem præfati " Thomæ, debitam inquisitionem " super vacatione ecclesiæ prædictæ, " jure præsentantis, et aliis articulis " consuetis, prout moris est in hac

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A.D. 1343. delivered the Prohibition to him, as above; ready, &c. —And the other side said the contrary.

Quare incumbravit. § Theobald de Greneville brought a *Quare incumbravit* against the Bishop of Exeter, and counted how he had brought an Assise of Darrein Presentment, in respect of the same advowson, against certain persons, pending which Assise, he brought a writ to the Bishop directing the Bishop not to admit a presentee to the same church until it had been decided to whom the presentation belonged; and he said that he afterwards recovered by the Assise, and had a writ to the Bishop, contrary to which the Bishop had encumbered the church, &c.—*R. Thorpe.* Sir, you see plainly how this writ is founded on a record, on which Theobald supposes that he recovered; wherefore we demand oyer of that

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luy liverames Prohibicion *ut supra*; prest, &c.—*Et alii e contra.*[1] A.D. 1343.

§ Thebaud[2] de Grenevile porta un *Quare incumbravit* vers Levesqe de Excestre, et counta coment il avoit porte un Assise de Darrein Presentement de mesme lavowesoun vers certeines persones, pendaunt quel Assise, il porta briefe al Evesqe qil ne resceivereit presente a mesme leglise tanqe il fuit discus a qi le presentement appendereit; et dit qe apres il recoveri par Assise, et avoit briefe al Evesqe, encountre quei Levesqe avoit encombre leglise, &c.—*R. Thorpe.* Sire, vous veiez bien coment cest briefe est foundu sur un recorde, sur quel Thebaud suppose qil recoveri; par quei nous demandoms oy de cel re- *Quare incumbravit.*

" parte, prout de jure canonico tene-
" batur, in plena loci Capitulo, fieri
" fecit, per quam inquisitionem
" compertum fuit quod prædicti Jo-
" hannes et Amia veri patroni ejus-
" dem ecclesiæ extiterunt et in pos-
" sessione præsentandi, &c., et quod
" ad ipsos ad eandem præsentare
" spectabat, et quod dicta ecclesia
" ad tunc non fuit litigiosa, &c.,
" per quod idem Thomas, virtute
" articulorum per inquisitionem
" prædictam compertorum, versus
" ipsum Episcopum in tantum
" prosequebatur quod ipse Episco-
" pus die Sabbati in Festo Sancti
" Petri in Cathedra anno regni
" domini Regis nunc decimo septi-
" mo per compulsionem ecclesias-
" ticam præfatum Thomam in
" ecclesia prædicta instituit, et ei
" literas inductionis inde fecit,
" absque hoc quod idem Theobaldus
" ante institutionem illam eidem
" Thomæ sic factam præfatum
" Walterum de Mertone ipsi Epis-
" copo præsentaverat ad eandem,
" seu aliqua Prohibitio domini
" Regis eidem Episcopo ne aliquem
" ad ecclesiam illam admitteret,
" pendente inter partes prædictas
" Assisa prædicta, ex parte prædicti
" Theobaldi liberata fuit, prout
" idem Theobaldus superius in
" narratione sua supponit. Et hoc
" paratus est verificare, unde petit
" judicium," &c.

[1] At *Nisi prius* (after some adjournments) " cum juratores venis-
" sent ad veredictum suum dicen-
" dum, prædictus Theobaldus so-
" lemniter exactus fuit, et non
" venit."

Judgment was therefore given for the Bishop.

[2] This report of the case is printed by itself in the old editions as No. 108 (*bis*). No MS. of it has been found, and there is no extract from it in Fitzherbert's *Abridgment*, though a reference is given in the edition of 1565 to the folio of the old editions of Year Books on which it is printed. As to the record *see* p. 95, note 1.

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A.D. 1343. record.—*Moubray.* This writ does not issue out of a record, but is an original writ by itself, and is purchased against you as against an officer, because you would not execute the King's command; wherefore judgment whether you ought to have oyer.—*R. Thorpe.* It is possible that there is no such record as Theobald supposes by this writ, in which case you have abated this writ; or, even though there was such a record as this writ supposes, it may be that this writ was purchased before judgment was rendered on this same record, and for that reason it may be abated, and as to this we cannot have any exception if we have not oyer of the record; wherefore, &c.—Hillary. You are a stranger to the record itself, so that, even if there is any defect in the record itself, you cannot plead it; wherefore it seems that you ought not to have oyer of the record.—And he was ousted from the oyer.—*R. Thorpe.* Then we tell you that there is no such record in this Court as is supposed by the writ; and we do not understand that you will proceed, &c. —*Moubray.* You see plainly how he does not deny that there was such a record, nor does he allege any other place in which that record is now, and, because he does not deny that he has encumbered the church, we demand judgment, and pray our damages.—*W. Thorpe.* This writ ought always to be brought where the first record is: for suppose the King recovers a presentation, by a *Quare impedit,* in the King's Bench, if the Bishop encumbers the church, the *Quare incumbravit* will be brought in the King's Bench; wherefore also it seems that it should be here; and since you have not any record in this Court upon which this writ can be founded, we demand judgment, &c.—Hillary. The King can bring his *Quare impedit* in whatsoever Court he pleases; but another and a common person must bring his writ in this Court; therefore, since this presentation was recovered between parties other than the King, we understand that it

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corde.—*Moubray.* Cest briefe nest pas issu hors de recorde, einz est un original a par luy, et purchace devers vous, come devers ministre, pur ceo qe vous ne voudrez pas faire le comaundement le Roi; par quei jugement si vous devez le oy aver.—*R. Thorpe.* Poet estre qil ad nul tiel recorde come Thebaud suppose par cest briefe, en quel cas vous avez abatu cest briefe; ou, mesqe il avoit tiel recorde, come cest briefe suppose, puit estre qe cest briefe fut purchace avant le jugement rendu sur mesme le recorde, par quel cause il puit estre abatu, et a quei nous ne pooms aver chalange si nous neioms oy de cel recorde; par quei, &c.—Hill. Vous estes estraunge a mesme le recorde, issint qe mesqe il ad defaut en mesme le recorde, vous ne poies pas a ceo pleder; par quei il semble qe vous ne devez oy de recorde aver.—Et fut ouste de ceo.—*R. Thorpe.* Donqes vous dioms qil nad tiel recorde ceinz come est suppose par le briefe, et nentendoms pas qe vous voillez plus avant aler, &c.—*Moubray.* Vous veiez bien coment il ne dedit pas qe tiel recorde il avoit, ne il allegge nul autre lieu ou cel recorde est a ore, et, pur ceo qil ne dedit pas qil ad encombre leglise, nous demandoms jugement, et prioms nos damages. —*W. Thorpe.* Cest briefe touz dis deit estre porte la ou le primer recorde est: qar jeo pose qe le Roi recovere un presentement, par un *Quare impedit*, en Bank le Roi, si Levesqe encombre leglise, le *Quare incumbravit* serra porte en Bank le Roi; par quei auxi semble qil serreit cy; et del houre qe vous navez nul recorde ceinz dount cest briefe purra estre foundu, nous demandoms jugement, &c.—Hill. Le Roi purra porter son *Quare impedit* en quele place qe luy plest; mes autre comune persone covient porter son briefe en cest place; donqes, quant cest presentement fut recoveri entre autres parties qe le Roi, nous A.D. 1343.

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A.D. 1343. was recovered before us. And it may be that the record has been removed into a higher Court for certain causes, in which case we cannot abate this writ, even though we have not the record, because the party cannot have his writ elsewhere; and therefore answer.—*R. Thorpe.* We demand judgment of the writ: for his writ purports that we have been attached to answer since there was a plea pending in respect of the church of Kilkhampton, whereas there was no writ pending in respect of the church of Kilkhampton, but in respect of the advowson, in which case the words of his writ should be *de placito de advocatione ecclesiæ*; judgment of the writ.—HILLARY. You have pleaded higher, inasmuch as you pleaded that we have no record before us, and also at first demanded oyer of the record; wherefore it seems that to this plea of a lower nature you cannot be admitted.—*W. Thorpe.* That which we pleaded before was to the jurisdiction, to the effect that you have no warrant to hold the plea, because you have no record, and it is the natural thing to plead first to the jurisdiction, and afterwards to the writ and to the count; wherefore, &c.—And afterwards they were in the end ousted from this exception, because it was adjudged to be of no force. —*R. Thorpe.* Again, Sir, judgment of the writ, for his writ recites that he recovered the presentation before the Justices of the Bench, but it does not mention in what place he recovered, that is to say, whether at Westminster or at York; wherefore we demand judgment of the writ.—*Richemunde.* On a writ which has issued wholly out of a record, such as a *Scire facias* or the like, the writ ought to make mention where the recovery was had; but this is an original writ, which can declare only before what Justices the recovery was had; and that which our writ does not declare we have shown by count; wherefore our writ is sufficiently good.—Therefore they were ousted from that exception.—*R. Thorpe.* Again, judg-

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entendoms qe ceo fut recoveri devant nous. Et puit estre qe le recorde soit remue en place plus haut pur certeines causes, en quel cas nous ne pooms pas abatre cest briefe, tout neioms pas le recorde, qar la partie ne puit pas aver son briefe aillours; et pur ceo responez.—*R. Thorpe.* Nous demandoms jugement de briefe: qar son briefe voet qe nous soioms attaches de respoundre puis qe come il avoit plee pendaunt del eglise de Kilkamtone, la ou il navoit nul briefe pendaunt del eglise de K., einz davowesoun, en quel cas son briefe serreit *de placito de advocatione ecclesiæ*; jugement de briefe.—Hill. Vous avez plede plus haut, en taunt qe vous pledastes qe navoms pas recorde devant nous, et auxi primes demandastes oy de recorde; par quei il semble qe a cest plee plus bas vous ne poiez avener.—*W. Thorpe.* Ceo qe nous pledames devant fut a la jurisdiccion, qe vous navez pas garraunt de tener le plee, pur ceo qe vous navez pas recorde, et naturelle chose est primes de pleder a la jurisdiccion, et puis al briefe et al count; par quei, &c.—Et puis a derreyn ils furent oustes de cel chalange, pur ceo qil fut ajuge de nul value.—*R. Thorpe.* Uncore, Sire, jugement de briefe, car son briefe recite qil recoveri le presentement devant Justices de Bank, mes il ne fait pas mencion en quel lieu il recoveri, saver, ou a Westmestre ou Everwyke; par quei nous demandoms jugement de briefe.—*Richem.* En un briefe qest issu tout hors de recorde, come un *Scire facias, vel similia*, le briefe deit faire mencion ou[1] recoverir[2] se fist; mes ceo est un original, qe ne poet declarer forsqe devant queux Justices soy fist; et ceo qe nostre briefe ne declare pas nous avoms moustre par count; par quei nostre briefe est assez bon.—Par quei ils furent oustes de cel chalange.—*R. Thorpe.* Uncore A.D. 1343

[1] The earliest editions, en.

[2] All the old editions, recorde.

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A.D. 1343. ment of the writ, for the writ does not mention whether the Bishop encumbered the church within the six months or afterwards; wherefore, &c.—HILLARY. If the Bishop presented only after the six months, the church is not encumbered, but we must understand by the words of his writ that the presentation of which he complains was made within the six months, and, if your case be other, you will be able to plead it by way of answer; and therefore say something else.—*R. Thorpe.* Then we say that this writ bears date within the six months after the time at which he supposes by his count that the church became void, so the Bishop might have duly executed the King's command after this writ was purchased; and we demand judgment of this writ, which ought not to have been purchased until the six months were passed.—And this exception was not allowed.—SHARSHULLE said that it was lawful for him to bring his writ at whatever time he had recovered the advowson, if the Bishop had encumbered the church.—*R. Thorpe.* Sir, we tell you that the record on which he supposes that he has recovered is removed into the King's Bench to be reversed by reason of errors, on which the plea is pending there for decision; therefore we demand judgment of this writ, which is purchased pending the plea there.—*Moubray.* Since he does not deny that we recovered, in this Court, the same advowson, so that the plea on which our writ is founded is finished, and since he does not deny that he has encumbered the church, we demand judgment.—*R. Thorpe.* This writ lies only in two cases, that is to say, when the church of which the presentation belongs to me becomes void, and the Bishop encumbers the church, where no other person raises a dispute against me concerning the advowson, immediately after the encumbrance is made, I shall have this writ against him; but in case the church is litigious, and the Bishop encumbers, &c., I must wait for this writ until

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jugement de briefe, qar le briefe ne fait pas mencion le quel Levesqe encombra leglise deinz les vj mois ou apres; par quei, &c.—Hill. Si Levesqe presenta forsqe apres les vj mois, nest pas leglise encombre, mes nous devoms entendre par les paroles de son briefe qe le presentement de quel il se pleint fut fait deinz les vj mois, et, si vostre cas soit autre, vous le purrez pleder par voie de respouns; et pur ceo dites outre.—*R. Thorpe.* Donqes dioms qe cest briefe porte date deinz les vj mois apres le temps qil suppose par son count qe leglise se voida, issint puit Levesqe duement aver fait le comaundement le Roi apres cest briefe purchace; et demandoms jugement de cest briefe, qe ne duit[1] pas aver este purchace tanqe les vj mois fussent passes.—*Et non allocatur.*—Schar. dit qil list a luy de porter son briefe a quel houre il eit recoveri lavowesoun, si Levesqe eit encombre leglise.—*R. Thorpe.* Sire, nous vous dioms qe le recorde sur quel il suppose qil ad recoveri est remue en Baunk le Roi pur estre reverse par cause des errours, sur quei le plee est pendaunt la discus; par quei nous demandoms jugement de cest briefe, qest purchace pendaunt le plee illoeqes.—*Moubray.* Del houre qil ne dedit pas qe nous ne recoverames ceinz mesme lavowesoun, issint qe le plee sur quel nostre briefe est foundu est fini, et del houre qil ne dedit mye qil nad encombre leglise, nous demandoms jugement.—*R. Thorpe.* Cest briefe ne gist forsqe en ij cas, saver,[2] quant leglise se voida dount le presentement attient a moy, et Levesqe encombre leglise, la ou nul autre met debat devers moy del avowesoun, maintenant apres lencombraunce fait, jeo avera cest briefe devers luy; mes en cas qe leglise est litigious, et Levesqe encombra, &c., moy covient attendre de cest briefe A.D. 1343.

[1] Edition of 1679, puit.

[2] Earliest editions, setassavoier, or cetassavoier.

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A.D. 1343. the plea be determined between us respecting the advowson; and the reason is that before the plea is finished no one can know who shall have the presentation. And now, Sir, it seems that there is such a reason here when the plaint is pending in the King's Bench on the same advowson, for before that plea is finished one cannot know who shall have the presentation; wherefore it seems to us that this writ cannot be maintained before that plea is decided any more than it would be if there were a plea pending in this Court touching the same advowson.—HILLARY. How shall we be certified when the plea is decided?—*Grene.* Sir, the party will cause you to be certified. And, Sir, there is no mischief to him, even though this suit be delayed until the plea be decided there; for, if the judgment be affirmed by them, even though it be ten years after this time, still he will have this presentation from the time when the judgment was rendered here for him within the six months, because no time will run in this case, when the Bishop is made a party, against one who has a judgment for himself within the six months, and it would be inconvenient to put the Bishop to answer to him now, when possibly the judgment on which he founds this suit may be reversed on the plea which is now pending; wherefore, &c.—But afterwards he was ousted from this exception.—*Pulteney.* We make protestation that we do not admit that the church became void in the manner in which they have said that it did; but we tell you that John de Ralegh and Amy his wife presented one Thomas Crosse, their clerk, to the same church, to whom we granted our letters to enquire as to the voidance of the church, and whether the church was litigious, as belongs to us to do by law of Holy Church, and on the record of those letters we made induction for him, *absque hoc* that any Prohibition was ever delivered by you to bind ourselves, and *absque hoc* that ever before that time Theobald presented any

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tanqe le plee soit termine entre nous del avowesoun; A.D. 1343. et la cause est pur ceo qe avant le plee fini nul homme puit saver qi avera le presentement. Et ore, Sire, il semble qil ad tiele cause cy quant la pleinte est pendaunte en Bank le Roi sur mesme lavowesoun, qar avant cel plee fini homme ne puit saver qi avera le presentement; par quei nous semble qe cest briefe ne purra pas estre meintenu avant cel plee discus nient plus qil ne serreit sil avoit plee pendaunt ceinz de mesme lavowesoun.—Hill. Coment serroms nous certifie quant le plee serra discus?—*Grene.* Sire, la partie vous ferra certifier. Et, Sire, il ny ad nul meschief a luy, mesqe ceste suyte soit delaie tanqe le plee soit discus la; car, si le jugement soit afferme par eux, mesqe soit x anz apres cest temps, uncore il avera cel presentement depuis qe le jugement fut rendu cy pur luy deinz les vj mois, pur ceo qe nul temps ne serra en cest cas, quant Levesqe est fait partie, devers cesty qe ad un jugement pur luy deinz les vj mois, et il serreit inconvenient de mettre Levesqe a ore a respoundre a luy, la ou par cas le jugement sur quel il founde ceste suyte purra estre reverse sur le plee qest ore pendaunt; par quei, &c.—Mes puis il fut ouste de cel excepcion.—*Pult.* Nous fesoms protestacion qe nous ne conissoms pas qe leglise se voida en la manere come ils ount dit; mes vous dioms qe Johan Raley et Amye sa femme presenterent un lour clerk, Thomas Crosse,[1] a mesme leglise, a qi nous grauntames nos lettres denquere de la voidaunce de leglise, et si leglise fut litigious, come attient a nous a faire par ley de Seynt Eglise, et sur le recorde de ceux lettres nous luy fesoms induccion, saunz ceo qe Prohibicion a nous unqes fut livere par vous de lier nous mesmes, ou saunz ceo qe unqes avant cel

[1] The name is here given in full in accordance with the other report of the case and with the record.

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A.D. 1343. parson to us, and so the Bishop knew nothing of the dispute as to the same church; ready, &c.—*Seton.* This plea is double: for as to that which you say that Theobald did not present before the presentation made by John and Amy, and before you had performed induction to their presentee, that is a plea which cannot excuse your tort, because Theobald could not present before judgment was rendered in the Assise of Darrein Presentment, inasmuch as it could not be known before that time to whom the presentation belonged.—SHARSHULLE agreed to this.—And as to that which you say that no Prohibition was delivered to you, as we have counted, we did deliver the Prohibition to him, as we have supposed in counting; ready, &c.—And the other side said the contrary.—And this issue was admitted.—*R. Thorpe.* Sir, the clerks have entered in the roll that a day is given to us on the Quinzaine of St. Martin; and we pleaded to issue three days after the Feast of St. Martin, so that there is not a fortnight between the day on which we pleaded to issue and the Quinzaine of St. Martin, so that a shorter time is given than is given by the Statute,[1] and yet the place from which the jury will come to try that issue is in the most foreign County of England; therefore we pray a more distant day, and that the roll be amended.—HILLARY. We cannot give any other day than that which is entered on the roll, and, besides, the writ by which you came into Court was returned on the Quinzaine of St. Michael, and from that day you have a fortnight or three weeks, in accordance with the Statute,[1] by adjournment. And now you have, with regard to that, a longer time than the Statute[1] gives; therefore you cannot complain, and therefore that exception is not allowable.[2]

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[1] 52 Hen. III. (Marlb.), c. 12.

[2] In relation to this case *see ante*, Y.B. Hil., 17 Edw. III., No. 12, and Easter, Nos. 3 and 4, and *post*, Hil. 18, No. 44.

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temps Thebaud presenta a nous nul persone, issint Levesqe ne savoit riens del debat de mesme leglise; prest, &c.—*Setone.* Cest plee est double: qar quant a ceo qe vous dites qe Thebaud ne presenta pas avant le presentement fait par Johan et Amye, et avant ceo qe vous ussez fait induccion a lour presente, cest un plee qe ne purra pas excuser vostre tort, qar Thebaud ne puit presenter avant le jugement rendu en Assise de Darrein Presentement, pur ceo qe homme ne puit pas saver devant cel temps a qi le presentement appendreit.—Et a ceo acorda SCHAR.—Et quant a ceo qe vous dites qe nul Prohibicion vous fut livere auxi come nous avoms counte, nous luy liverames la Prohibicion, auxi come nous supposames en countant; prest, &c.—*Et alii e contra.*—Et cest issue fut resceu.—*R. Thorpe.* Sire, les clerks ount entre en roulle qe jour est done a nous a la xv de Seynt Martin; et nous pledames a issue les iij jours apres le Feste de Seynt Martin, issint nest il un xv entre le jour qe nous pledames a issue et la xv de Seynt Martin, issint est plus court jour done qe lestatut ne doune,[1] et uncore le lieu dount pays vendra de trier cest issue en le plus forein Counte Dengleterre; par quei nous prioms a plus longe jour, et qe le roulle soit amende.—HILL. Nous ne pooms pas doner autre jour qe nest entre en roulle, et, ove ceo, le briefe par quel vous venistes en Court fut retourne a xv de Seint Michel, et de cel jour vous avez une xv ou iij semaignes solonc lestatut par ajournement. Et ore vous avez a tiel regarde greindre jour qe lestatut ne doune; par quei vous ne poiez pas pleindre, et par taunt ceo chalange nient allowable. A.D. 1343.

[1] The report ends abruptly here in the old editions with the addition of the words *Quære plus.* The conclusion has in the old editions evidently been wrongly placed at the end of No. 112 (the second report of No. 25 in this volume) and is now restored to its proper place.

Nos. 22, 23.

A.D. 1343. Dower.

(22.) § Dower in Sussex. It was alleged that the husband was living at St. Alban's in the County of Hertford. And that this was so an averment was tendered to the country. And, notwithstanding, they were put to the trial by witnesses, and a day was given for the trial.

Ravishment of Ward against several persons.

(23.) § Ravishment of Ward against several persons.[1] One pleaded as bailiff of one J.,[1] of which J.[1] the infant's ancestor held by priority of feoffment, &c., as

[1] For the names *see* p. 119, note 4.

Nos. 22, 23.

(22.) [1] § Dowere en Sussexe. La vie le baroun fut allegge en Seint Alban en le Counte de Hertforde.[2] Et ceo fut tendu daverer par pays. Et, *non obstante*, ils furent mys a la prove, [et jour done sur le prove].[3] A.D. 1343. Dowere. [Fitz., *Triall*, 55.]

(23.) [4] § Ravissement de Garde vers plusours. Un pleda come baillif un J., de quel J. launcestre lenfant tient par priorite, &c., come regardaunt al Ravissement de Garde vers plusours.[5]

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[1] From Harl., 25,184, and C.

[2] 25,184, Herforde.

[3] The words between brackets are omitted from Harl.

[4] From Harl., 25,184, and C. The record appears to be that which is among the *Placita de Banco*, Mich., 17 Edw. III., R° 72, d. It there appears that an action was brought by Michael de Wath against Robert de Boseville, John son of Thomas de Westhalle, and Robert his brother, and John son of Thomas le Bakester of Wombwell, for carrying off Matilda daughter and heiress of John Bynethegate of Wentworth. It was stated in the declaration that William Bynethegate, Matilda's grandfather, held of John Flemyng, knight, as of his manor of Wath (Yorkshire), two parts of one bovate of land in Brampton-by-Wath, by certain specified services, "qui quidem Johannes Flemyng "manerium prædictum cum per-"tinentiis concessit præfato "Michaeli ad terminum vitæ ipsius "Michaelis et per tres annos post "mortem ipsius Michaelis, virtute "cujus concessionis præfatus Wil-"lelmus attornavit se præfato "Michaeli de servitiis prædictis, "qui quidem Willelmus obiit, post "cujus mortem quidam Robertus "intravit in prædictis tenementis "ut filius ejus, et heres, et attor-"navit se prædicto Michaeli de "servitiis prædictis, qui quidem "Robertus obiit sine herede de "corpore suo exeunte, post cujus "mortem intravit quidam Johannes "Bynethegate pater prædictæ Ma-"tilldis, ut frater et heres, &c., et "attornavit se præfato Michaeli de "servitiis prædictis."

The plea on behalf of Robert de Boseville was "quod Johannes "Bynethegate, pater prædictæ "Matilldis, et antecessores sui "tenuerunt de quodam Roberto de "Neville de Horneby in servitiis "quatuor bovatas terræ cum per-"tinentiis in Thorpe juxta Wynt-"worthe," by certain specified services as appurtenant to the manor of Brorelay "et de ante-"cessoribus suis per antiquius "feoffamentum quam idem Jo-"hannes tenuit de prædicto Mi-"chaele seu de illis vel antecessori-"bus suis quorum statum idem "Michaelis habet." The other defendants pleaded that they came in his aid, and all that they were not guilty of trespass. Issue was joined thereon.

[5] The words vers plusours are from Harl. alone.

No. 23 *bis*.

A.D. 1343. regardant to the manor of B.,[1] &c., wherefore he seized the infant for the benefit of his lord. And the others said that they came to aid him; judgment whether tort, &c. And issue was taken on the priority of feoffment.

Wardship. (23 *bis*.) § *Pole*. He has, on this writ of Right, pleaded another person's right which does not lie in the mouth of him who claims nothing; and, even though he could plead as to the right, it would not be an answer to say that the infant's ancestor held of another, without traversing to the effect that he did not hold of us.—Stonore. You say what is true, if it were the right of any other person but the King.—Shardhulle. If it were the fact, as the defendant supposes, that he has nothing, he could have abated the writ on the ground of non-tenure; but as he did not do that, but passed over, pleading to the action by a plea as to the right, he has lost the advantage of abating the writ by non-tenure.—*Thorpe*. At one time, before Bereford and Hengham, a writ of Ejectment from Wardship, and a writ of Ravishment of Ward were abated by non-tenure, like a writ of Right of Wardship; and then one could, and one still can, in such writs, which sound more in personalty than this writ of Right does, justify ejectment and ravishment in right of another person, as keeper of the fee or bailiff of another person; for the same reason every one of the King's lieges can seize in the King's right, and avow on a writ of Right of Wardship And, Sir, my answer includes in it a disclaimer as

[1] Brorelay (or Brierley) according to the record. *See* p. 119, note 4.

No. 23 *bis*.

maner de B., &c., par quei il seisist lenfant al oeps son seignur. Et les autres disoient qils viendrent en eide de luy; jugement si tort, &c. Et sur la priorite lissu fut pris. A.D. 1343.

(23 *bis*.) [1] § *Pole*. Il ad plede autri dreit, en ceo bref de Dreit, qe ne gist pas en sa bouche qe rien ne cleyme; et, tut purreit il pleder en dreit, ceo ne serreit pas respouns a dire qe launcestre lenfant tient dautre sanz traverser qil ne tient pas de nous. —Ston. Vous dites verite sil fut dautri dreit qe de Roi.—Schar. Sil fut come le defendant suppose qil nad rien, il put par nountenure aver abatu le bref; mes quant il ne[3] fist pas, mes passa outre, pledaunt al accion par plee en dreit, il ad perdu lavauntage du bref abatre par nountenure.—*Thorpe*. En asqun temps, devant Bereforde et Hengham,[4] homme abatist bref Dengettement, et bref de Ravissement de Garde par nountenue, come bref de Dreit de Garde; et adonqes put, et uncore put homme en tiels brefs, qe sounent plus en la personalte qe ceo bref de Dreit ne fait, justifier engettement[5] et ravisement en autri dreit, come feoder ou baillif dautre persone; par mesme la resoun chesqun lige[6] homme le Roi put en dreit le Roi seisir, et avower en bref de Dreit de Garde. Et, Sire, mon respouns enclost en luy un desclamer en moy mesme, ovesqe ceo, de- Garde.[2]

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[1] From Harl., 25,184, and C. In the old editions this case is printed as part of that which immediately precedes. It is, however, clearly a distinct case in the MSS., and its subject is a writ of Right of Wardship, and not of Ravishment of Ward. It has been numbered 23 (*bis*) in order that the numbering of the subsequent reports of the Term may not be disarranged.

[2] In Harl. are added (but in a later hand) the words *Vide principium supra Michaelis xiij°*. The report is, in fact, probably part of No. 64 of Mich., 13 Edw. III.

[3] ne is omitted from Harl.

[4] Harl., Ingham.

[5] Harl., engettre.

[6] 25,184, leige.

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A.D. 1343. to myself, destroying, in addition, the plaintiff's right; and since he has abode judgment with me on my plea, the matter must be held to be such as I have pleaded it.—To this the COURT agreed.

Formedon in the Reverter on a gift made to a man and to his sister by express words, and to the heirs issuing from their two bodies. Look well below.[1]

(24.) § Formedon on a gift made to a man and his sister, and the heirs issuing from their two bodies, of land which ought to revert because each of the donees died without heir of his or her body.—*Richemunde.* Judgment of the writ: for first it supposes the land to be given to the two in common and the heirs of their bodies, and by the conclusion several limitations are supposed, that is to say by the words *quia uterque*, &c., because those would be the proper words if each of them had a several right by remainder after the death of the other; so this writ is repugnant.—HILLARY. By such a gift each had an inheritance in tail, so that each of their issues would have an inheritance; therefore this limitation is different from that which there would be if land were given to a man and his wife and the heirs of their two bodies begotten, in which case only he would have an inheritance who was issue of the two.—SHARSHULLE. If those who are in the descent were to demand the land there would be a great dispute on such a limitation, which, as some understand the matter, is impossible; but now you are not in that case, because there is no doubt but that, whatever estate the donees had by the form of the gift, when they have both died without heir of their bodies, the land will revert.—*Thorpe.* One has heard it said that when land was given to two females and the heirs of their bodies, &c., the husband of her who died first by

[1] In addition to the second report of this case printed next below, there is apparently a third report in Michaelmas Term, 18 Edw. III. (No. 34).

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struaunt le dreit le pleintif; et quant il est demuré en jugement ovesqe moy sur mon plee, il covient tener la matere tiel com jeo lay[1] plede.—*Ad quod* CURIA *consensit.* A.D. 1343.

(24.)[2] § Forme de doun[4] fait a un homme et sa soere, et les heirs de lour corps issauntes, et[5] les queux revertir deyvent pur ceo qe lun et lautre des dones murust[6] sanz heir de son corps.—*Richem.* Jugement du bref: qar primes suppose la terre estre done a les deux en comune et les heirs de lour corps, et par la conclusion est suppose severals tailles, saver, par cele parole *quia*[7] *uterque*, &c., qar ceo serreit propre parole si chesqun avoit several dreit par remeindre apres autri mort; issi est ceo bref repugnant.—HILL. Par tiel doun chescun fut enherite par la taille, issi qe chesqun de lour issues serreit enherite; par quei ceste taille est autre qe si terre fut done a un homme et sa femme et les heirs de lour deux corps engendres, en quel cas nul ne serreit enherite forsqe celuy qe fut issue entre eux deux.—SCHAR. Si ces[8] en la descente fuissent a demander il y serra graunt debat sur tiel[9] taille, quel est impossible al entent dasqun gent; mes ore vous estes hors de cel cas, qar nest pas doute, queconqe[10] estat qe les dones avoient par fourme de doun qe quant ils sount mortz sanz heir de lour corps, et chesqun deux, qe la terre ne revertira.—*Thorpe.* Homme ad oy parler qe quant terre fut done a deux femeles et les heirs de lour corps, &c., qe[11] le baroun celuy qe murust primes par

Formedoun en le reverter dun doun fait a un homme et a sa soer par expresse paroles, et a lez heirs de lour ij corps issauntz. *Vide bene inferius.*[3] [Fitz., *Taile*, 15.]

[1] 25,184, lui.

[2] From Harl., 25,184, and C., until otherwise stated.

[3] The marginal note, except the word Formedoun, is from 25,184 alone.

[4] 25,184, Formedoun.

[5] et is omitted from 25,184.

[6] Harl., muruyst.

[7] *quia* is omitted from Harl.

[8] Harl., ses.

[9] Harl., cel.

[10] Harl., quelunqe.

[11] 25,184, et.

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A.D. 1343. judgment held by the curtesy of England during the life of the other.—SHARDELOWE, *ad idem*. It has certainly been seen, on such a gift, that the issue of one has recovered by Formedon during the life of the other.—*R. Thorpe*. If the law were that such a limitation is impossible because issue between those two cannot have an inheritance (and otherwise possibly the limitation would be void because the issues of the two could not severally have an inheritance unless the right were several in their ancestors, and it is not so where there is such a gift), then by such a gift they could have only a term for life, and in respect of such a gift an Entry *ad terminum qui præteriit* would serve, and not this writ.—HILLARY. Answer; this writ is good.

Formedon in the Reverter.

§ In a writ of Formedon in the Reverter brought against Roger de Arderne the demandant supposed the gift to have been made to a man and his sister and to the heirs of their two bodies begotten, and he supposed, because they had died without heir of their bodies begotten, that the tenements ought to revert to him as to the heir of the donor.—*Richemunde*. Sir, you see plainly how they demand by reason of a gift made to a man and to his sister and to the heirs of their two bodies begotten, whereas it cannot be understood, according to law, that they could have an heir begotten between them; so he demands by reason of a gift which could not exist consistently with law; wherefore judgment of the writ.—SHARSHULLE. In case a gift is made to a husband and to his wife and to the heirs of their two bodies begotten, it must be an intendment of law that the gift is to be so understood that the land will abide with an heir who shall be begotten between them; but in case the gift is made to two men and to the heirs of their two bodies

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agarde tient par la ley Dengleterre, vivaunt lautre. A.D. 1343.
—Schard. *ad idem.* Homme ad bien vewe, sur tiel doun, qe lissue del un ad recoveri par Fourmedoun, vivaunt lautre.—*R. Thorpe.* Si la ley fut qe tiel taille fut impossible pur ceo qe issue entre eux deux ne put estre enherite, et autrement par cas la taille serreit voide pur ceo qe les issues de deux ne purront[1] severalment[2] estre enherites si le dreit ne fut several en les auncestres, et ceo nest ceo[3] pas par tiel doun,[4] donqes navoient ils par tiel doun forsqe terme de vie, de quel doun Entre *ad terminum qui præteriit* servireit, et noun pas cestui.—Hill. Responez; ceo bref est bon.

§ En[5] briefe de Formedoun en le Reverter porte devers Roger Darderne il supposa le doun estre fait a un homme et sa soer et as heirs de lour deux corps engendres, et supposa, par ceo qils furent mort sanz heir de lour corps engendre, qe les tenements duissent reverter a luy come al heir le donour.—*Richem.* Sire, vous veiez bien coment ils demandent par cause dun doun fait a un homme et a sa soer et a les heirs de lour deux corps engendres, ou il nest pas entendable par la ley qils poient aver un heir entre eux engendre; issint il demande par cause dun doun qe ne puit pas estre ove la ley; par quei jugement de briefe.—Schar. En cas qun doun est fait al baroun et a sa femme et as heirs de lour deux corps engendres, la ley deit entendre qe le doun est de tiel entendement qe la terre demurra a un heir qe serra engendre entre eux; mes en cas qe le doun est fait a deux hommes et as heirs de lour deux corps engendres, cel doun

Formedoun en Reverter.

[1] Harl., pount.
[2] Harl., severablement.
[3] ceo is omitted from 25,184.
[4] doun is omitted from Harl.
[5] This report of the case is printed by itself in the old editions as No. 116. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment.*

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A.D. 1343. begotten, that gift is of such intendment that the land shall abide to the heirs of the body of one and to the heirs of the body of the other; so ought this gift to be understood; wherefore, &c.—*R. Thorpe.* Sir, when a gift is made to a man and to his sister, and to the heirs of their two bodies begotten, the gift, because they cannot have an heir begotten between them, cannot take effect in the person of their heir, and consequently they have no estate except for term of life, in which case the donor would, after their decease, have a writ of Entry *ad terminum qui præteriit*, and consequently this writ will abate.—SHARSHULLE. I know well that, while those are living to whom the tenements were given in such a manner, their estate will be in common in tail; but possibly there might be a dispute as to what estate would abide in the persons of their heirs after their decease.—And afterwards he waived this exception, and vouched one A., son and heir of one W., who was under age, and prayed that the parol might demur.—*Grene.* He is of full age; ready; and we pray a writ to cause him to come, &c.—*Richemunde.* You shall not be admitted to that: for see here the infant who is vouched, and he is under age; and we pray that you will view him, and judge by inspection.—*Grene.* The infant has not a day; and therefore regard cannot be had to his presence.—Notwithstanding this, because the demandant acknowledged that it was the same infant that was vouched, he was adjudged to be under age by inspection; and therefore the parol demurred until his full age by judgment.

Continuation of the *Quare impedit* for the King against the Abbot of Rufford.

(25.) § *Stouford*, for the King. It has been pleaded that the Abbot of Clervaux was seised of the patronage of the vicarage, and presented, &c., and they do not allege anything else, except that the Abbot of Clervaux was seised to his own use, before the Statute,[1] of a

[1] 7 Edw. I. (*De viris religiosis*).

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est de tiel entendement qe la terre demurra as heirs de corps lun et as heirs de corps lautre; issint deit cest doun estre entendu; par quei, &c.—*R. Thorpe.* Sire, quant un doun est fait a un homme, et a sa soer, et as heirs de lour deux corps engendres, pur ceo qils ne poient aver un heir entre eux engendre, le doun ne puit pas prendre [effect] en la persone de lour heir, et *per consequens* ils nount estat qe a terme de vie, en quel cas le donour, apres lour decees, avereit un briefe dentre *ad terminum qui præteriit*, et *per consequens* ceo briefe abatera.—Schar. Jeo say bien qe, vivant eux a quex les tenements furent dones en tiel manere, lour estat serra en comune en la taille; mes par cas il serreit a disputer quel estat demorust en la persone lour heirs apres lour decees.—Et puis il weyva cest excepcion, et voucha un A., fitz et heir un W., qe fut deinz age, et pria qe la parole demurra.—*Grene.* Il est de plein age; prest; et prioms bref de luy faire vener, &c.—*Richem.* A cella naviendrez pas: car veiez cy lenfant qest vouche, et est deinz age; et prioms qe vous luy voillez veier, et ajugger par inspeccion.—*Grene.* Lenfant nad pas jour; par quei homme ne puit pas aver regarde a sa presence.—*Hoc non obstante*, pur ceo qe le demandant conust qe ceo fut mesme lenfant qe fut vouche, il fut agarde deinz age par inspeccion; par quei la parole demura tanqe a son age par agarde. A.D. 1343.

(25.) [1] § *Stouf.*, pur le Roi. Est plede qe Labbe de Clervaux fut seisi del avowere de la vikare, et presenta, &c., et ils nalleggent autre chose mes qe Labbe de Clervaux fut seisi en propre oeps, devant

Residuum del *Quare impedit* pur le Roi [2] vers Labbe de Ruforde. [Fitz., *Graunte*, 57.]

[1] From Harl., 25,184, and C., until otherwise stated. The report is in continuation of Y.B. Trin., 16 Edw. III., No. 68, where the record (*Placita de Banco*, Trin., 16 Edw. III., R° 342) is cited.

[2] The words pur le Roi are omitted from Harl.

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A.D. 1343. moiety of the church, and let this church, with all the appurtenances, to perpetual farm to the predecessor of the Abbot of Rufford, paying to him a certain rent by the year, to hold to the Abbot of Rufford and his successors, by which lease the patronage of the vicarage, which is in gross by itself, and not appendant to the other advowson of the parsonage, could not pass, because one patronage could not be appendant to another.—*R. Thorpe.* When an Abbot holds a church to his own use, he is parson and patron; therefore if a vicarage be made by composition between the Ordinary and him, and by license from the King, and a certain portion be set apart as the vicar's portion, the patronage thereof naturally belongs to him as to parson, unless by another composition it be ordained that the presentation shall belong to the Ordinary, for when the portion which the vicar is to take is a loss to the parson, it is right that the patronage of that portion should remain to him in lieu of that which is lost; therefore, when he who was parson granted the church with all the appurtenances to perpetual farm, the patronage of his vicarage, which before he had as parson, could not remain with him, so that the right passed to our predecessor, and we have shown that it was afterwards continued in possession by presentation. —*W. Thorpe.* There is no doubt that, when a vicarage is first made, there commences a new patronage of that vicarage, and, as it were, one in gross, and not appendant to the advowson of the parsonage, and that patronage is, of common right, in him who was previously patron of the entirety, unless it be transferred to another by a special deed and composition; therefore by grant of the advowson of the church the patronage of the vicarage will not pass in such a case unless special mention of it be made.—*Blaykeston, ad idem.* Suppose the Abbot who held the church to his own use, and had the patronage of the vicarage, had

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lestatut, de la moite del[1] eglise, et lessa a perpetuel ferme[2] cele eglise, ove touz les appurtenaunces, al predecessour Labbe de R.[3] rendaunt a luy certeyn par an, a tener a luy et ses successours, par quel lees lavowere de la vikare, qest un gros a per luy, et noun[4] appendaunt al autre avowesoun de la personage, ne put passer, pur ceo qe avowere ne put pas estre appendaunt a autre.—*R. Thorpe.* Quant un Abbe tient une eglise en propre oeps, il est persone et patroun; donqes si vikare soit par composicion entre Ordiner[5] et luy, et conge du Roi fait, et certein porcion jettu a la porcion le viker, lavowere de cel naturelement appent a luy com a persone, si par autre composicion ne soit ordeigne le presentement al Ordiner, qar quant la porcion qe le viker prendra descrescera de la persone, cest resoun qe lavowere de cele porcion luy demoerge en lieu de cel descrescere; donqes, quant il qe fut persone graunta leglise ove touz les appurtenaunces a perpetuel ferme, lavowere de sa vikare, quel devant il avoit come persone, ne luy put demurer, issi qe le dreit passa en nostre predecessour, et puis lavoms moustre continue en possession par presentement.—[*W.*] *Thorpe.* Nest pas doute, quant vikare est primes fait, la comence de cele vikare novel avowere, et come un gros, et noun pas appendaunt al avowesoun del personage, et cel avowere de comune dreit est en celuy qe fut patroun devant del entier, sil ne soit par especial fait et composicion translate en autre; par quei par graunt davowesoun deglise ne passera pas en tiel cas lavowere de la vikare si mencion especial de ceo ne fut fait.—*Blaik., ad idem.* Jeo pose qe Labbe qe tient en propre oeps leglise, et avoit lavowere de la vikare, sil ust A.D. 1343

[1] 25,184, de cesty.
[2] MSS. of Y.B., fourme. Harl and 25,184, B.
[3] Harl., nemie.
[4] Harl., nemie.
[5] Harl., Ordeigner.

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A.D. 1343. let the church to farm for a term of years, or for life, would he not himself present to the vicarage, notwithstanding his lease? And for the same reason he will present though the church be let to fee farm.—*Pulteney.* Suppose the advowson of the church were demanded by writ of Right against the Abbot of Clervaux, and deraigned, so that the appropriation were defeated, would not the vicarage be defeated? Therefore it seems that the patronage of the vicarage is parcel of the rest.—SHARDELOWE. That causes the demandant to recover in virtue of a higher right; but suppose that a vicarage be made of a church, which is of my patronage, by a composition, as is permissible, and afterwards usurpation be made upon me in the presentation to the parsonage and the vicarage also, so that I am put to my writ of Right, and I bring a writ of Right in respect of the advowson of the church, &c., do you think I shall recover the advowson of the vicarage? It is certain that I shall not.—To this the COURT agreed, and said that in such a case it would be necessary to bring another writ in respect of the advowson of the vicarage.—*Grene.* I do not lay any stress on the question whether the advowson of the vicarage belonged to the Abbot of Clervaux as parson or as patron; but, whether it was one or the other, it was because he had the two estates in him that when he let the church, with all the rights and appurtenances, no right of patronage could remain with him.—And some were of opinion that, of common right, the patronage of the vicarage would remain in the parson, and some that it would remain in the patron of the church.—*Moubray.* When any thing has been aliened or let by obscure words before time of memory, it will be understood to have passed in accordance with subsequent usage. Now we have said that, since the making of the lease to fee farm of the church to the Abbot of Rufford, he and his successors have presented, so that, as the matter has been put

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lesse a ferme leglise a terme daunz, ou a terme de vie, ne presentereit il mesme a la vikare, *non obstante* son lees? Et par mesme la resoun, tut leglise a fee ferme lesse.—*Pult.* Jeo pose qe lavowesoun del eglise par bref de Dreit fut demande vers Labbe de Clervaux, et desrene, issi qe lappropriacion fut defait, ne serreit la vikare defait? Donqes semble qe lavowere de la vikare est parcelle de remenant. —Schard. Ceo fait qe le demandant recovere de plus haut dreit; mes mettez qe dun eglise qest de mavowere vikarie par composicion soit fait, com il est suffrable, et puis purprise soit fait sur moy del presentement a la parsonage et vikare auxi, issi[1] qe suy mys a mon bref de Dreit, et jeo porte bref de Dreit del avowesoun del eglise, &c., quidez vous qe jeo recoveray lavowesoun de la vikare? *Constat quod non.—Ad quod* Curia *consensit*, et disoient qil covient en tiel cas porter autre[2] bref de lavowesoun de la vikarie.—*Grene.* Jeo ne charge pas le quel lavowesoun de la vikare fut al Abbe de Clervaux com persone ou com patroun; mes, fut ceo un ou autre, pur ceo qil avoit les deux estatz a luy fut ceo par quei quant il lessa leglise ove touz les dreits et appurtenaunces, nul dreit de patronage ne luy put demorer.—Et asquns furent en opinion qe de comune dreit avowere de la vikarie demureit en la persone, et asquns qe ceo demureit en le patroun del eglise. —*Moubray.* Quant chose devant temps de memoire fut aliene par paroles obscures, ou lesse, solonc ceo qe chose ad estee use puis homme entendra qe la chose passa. Ore avoms dit qe puis le lees fait a fee ferme del eglise al Abbe de Rufforde qil et ses successours ount presente, issi qe solonc ceo qe la A.D. 1343.

[1] Harl., ici.

[2] 25,184, autiel.

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A D. 1343. in operation since the lease, so you will understand that it passed.—HILLARY. Then possibly you will aid yourself by usurpation.

Quare impedit. § The King brought a *Quare impedit* against the Abbot of Rufford, and counted that it belonged to him to present to the vicarage of a moiety of the church of Rotherham by reason of the temporalities of the Abbot of Clervaux being in his hand on account of the war between him and the French; and he counted that one who was predecessor of the Abbot of Rufford, as general procurator of the Abbot of Clervaux, presented to the same vicarage a certain person, who, on his presentation, was admitted, &c., as in right of the Abbot of Clervaux, and also counted of several presentations which the predecessor of the Abbot of Rufford had made to the same vicarage, as general procurator of the Abbot of Clervaux, and so he said that it belonged to him to present.—*R. Thorpe.* Sir, we say that it is quite true that one A., our predecessor, presented to the same vicarage as general procurator of the Abbot of Clervaux, but we tell you that, since that presentation, one R., Abbot of Clervaux, with the assent of his Convent, granted by the deed which is here the advowson of a moiety of the church of Rotherham, to which the advowson of this vicarage is appendant, to one B., our predecessor, to hold to him and his successors for ever. And we tell you that afterwards the vicarage became vacant, whereupon one John, our predecessor, presented to the same vicarage, as in his own right, one G., who, on his presentation, &c. And he counted of other presentations which his predecessors had made in their own right. And he said that so it belonged to him to present. And we do not understand, he said, that the King can assign

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chose ad este mys en oevre puis le lees vous entendrez qele passa.—Hill. Donqes vous voletz par cas eider par purprise. A.D. 1343.

§ Le[1] Roi porta *Quare impedit* vers Labbe de Rufforde, et counta qe a luy appent a presenter a la vicarie de la moite de leglise de Roderham par cause de les temporaltes Labbe de Clervaux en sa mayn esteaunts pur la guerre entre luy et ceux de France; et counta qe un qe fut predecessour Labbe de Rufforde, come general procuratour Labbe de Clervaux, presenta a mesme la vicarie certeine persone, qe a son presentement, fut resceu, &c., come en dreit Labbe de Clervaux, et auxi counta de plusours presentements queux le predecessour Labbe de Rufforde avoit fait a mesme la vicarie, come general procuratour Labbe de Clervaux, issint il dit qe a luy appent a presenter.—*R. Thorpe.* Sire, nous dioms qe bien est verite qun A., nostre predecessour, presenta a mesme la vicarie come general procuratour Labbe de Clervaux, mes vous dioms qe, puis cel presentement, un R. Abbe de Clervaux, par assent de son Covent, par le fait qe cy est, graunta lavowesoun de la moite de leglise de Roderham, a quei lavowesoun de cest vicarie est appendaunt, a un B., nostre predecessour, a luy et a ses successours a touz jours. Et vous dioms qe puis la vicarie se voida, par quei un Johan, nostre predecessour, presenta a mesme la vicarie, come en son dreit demene, un G., qe a son presentement, &c. Et counta des autres presentements, queux ses predecessours avoient fait en lour dreit demene. Et dit qe issint appent a luy a presenter. Et nentendoms pas qe le Roi puit *Quare impedit.*

[1] This report of the case appears by itself in the old editions as No. 112. No MS. of it has been found, and there is no extract from it in Fitzherbert's *Abridgment*, though there is apparently a reference to it (*Graunte*, 57), as pl. 113, fo. 76 "en liver a large." It really begins on fo. 75 b. of the old editions.

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A.D. 1343. tort in the person of the Abbot of Rufford.—And the deed was read, and it purported that the Abbot of Clervaux had granted to the Abbot of Rufford a moiety of the advowson of the church of Rotherham *cum omnibus pertinentiis suis, et suis juribus.—W. Thorpe.* Sir, you see plainly how he has admitted that at one time the Abbot of Clervaux had the advowson of the same vicarage, and that their predecessors presented to the same vicarage only as in right of the Abbot of Clervaux, &c., and the deed of which he made *profert* in order to prove the right to the vicarage to be in their person speaks only of the advowson of a moiety of the church, whereas the advowson of the vicarage could not pass without express words, and so they have not disproved the King's right; wherefore we demand judgment for the King, and pray a writ to the Bishop.—*R. Thorpe.* I say that when a church is appropriated, and a portion of the patronage is assigned out of it to the vicar, that vicarage is always regardant to the entirety out of which that portion was taken, just as much as dower is regardant to the entirety out of which it has been assigned; wherefore, since we have said that the vicarage was appendant to a moiety of the advowson of the church which was granted to us with the appurtenances, for the reason aforesaid, which fact you do not deny, and since you do not deny that this advowson was granted to us with the appurtenances, we demand judgment, &c.—*W. Thorpe.* That the advowson of the vicarage cannot be appendant to the advowson of the church I will prove to you, for suppose that, after the church was appropriated, one portion of the parsonage was assigned to the vicarage, and that a writ of Right were brought against him who had the advowson of the church, and that this advowson were recovered, the advowson of the vicarage

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tort en sa persone assigner.—Et le fait fut lieu, qe voleit qe Labbe de Clervaux avoit graunte al Abbe de Rufforde la moite de lavowesoun del eglise de Roderham, *cum omnibus pertinentiis suis, et suis juribus.* *W. Thorpe.* Sire, vous veiez bien coment il ad conu qe ascun temps Labbe de Clervaux avoit lavowesoun de mesme la vicarie, et qe lour predecessours presenterent[1] a mesme la vicarie forsqe come en dreit Labbe de Clervaux, &c., et le fait quel il mist avaunt de prover le dreit de la vicarie en lour persone parle tantsoulement de lavowesoun de la moite del eglise, ou qe lavowesoun de la vicarie ne puit passer saunz expresse paroles, issint nount ils pas desprove le dreit le Roi; par quei nous demandoms jugement pur le Roi, et prioms bref al Evesqe.—*R. Thorpe.* Jeo dis qe quant une eglise est approprie, et un porcion del patronage est assigne hors al vicar, qe celle vicare est sa regardeaunt touz dis a lentier dount cel porcion fut prise, auxi avaunt come est un dowre regardaunt a lentier dount ele fut assigne; par quei del houre qe nous avoms dit qe la vicarie fut appendaunt a la moite de lavowesoun del eglise quel a nous fut graunte ove les appurtenaunces, *causa prædicta*, et quele chose vous ne dedites pas, et ceo vous ne dedites qe cel avowesoun ne nous fut graunte ove les appurtenaunces, par quei nous demandoms jugement, &c.[2]—*W. Thorpe.* Qe lavowesoun de la vicarie ne puit pas estre appendaunt a lavowesoun del eglise jeo vous provera, car jeo pose qe apres ceo qe leglise fut approprie qune porcion del personage fut assigne a la vicare, et qe le bref de Dreit fut porte devers celuy qe ust lavowesoun del eglise, et qe cele avowesoun fut recoveri, uncore demurrust lavowesoun de A.D. 1343.

[1] Rastell omits presenterent.

[2] For the pleadings up to this point compare the report Trin., 16 Edw. III., No. 68, and the matters there cited from the record.

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A.D. 1343. would still remain with him who had it before; wherefore, since the advowson of the vicarage does not remain with him who had the advowson of the church by way of recovery, *a multo fortiori* it cannot remain with you who claim an estate by purchase, unless you have express words in your deed as to the vicarage.—*Grene.* Sir, it is no wonder, in the case which you have put, that though one recovers the advowson of the church he has not the advowson of the vicarage, for he has recovered on a right higher than that of the vicarage; but it is not so here. But suppose that after the church was appropriated, and the vicarage made, the appropriation had been defeated, then I say that the vicarage would be defeated, and consequently the vicarage is appendant to the advowson of the church out of which it was drawn.—SHARDELOWE. I tell you that the appropriation may be defeated and yet the vicarage will remain, &c.

Deceit. (26.) § Heretofore[1] one R.[2] brought an Assise in the country, and, while his writ of Assise was pending, his adversary, in order to deprive him of the Assise which was of a lower nature, caused a writ of a higher nature to be sued in his name, and caused one to answer for him as his attorney. And R. showed the deceit, and disavowed the suit. And, because he was well known, the record was cancelled, as appears above in last [Hilary] Term, and thereupon R. sued a writ of Deceit including his matter.—*Pole.* This is a judicial writ, which takes its course from a record, and the writ includes in itself matter to the effect that there is no record, for there is no record after it has been cancelled; judgment of the writ.—*Pulteney.* When a

[1] *See* Y. B., Hil., 17 Edw. III., No. 43.

[2] Richard de Audele, according to the previous report.

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la vicarie a celuy qe ceo avoit devant; par quei, A.D. 1343.
del houre qe lavowesoun de la vicarie ne demoert a luy qe avoit lavowesoun del eglise par voie de recoverir, *a multo fortiori* il ne puit pas demorer a vous qe clamez estat par purchace, si vous ne ussez expres paroles en vostre fait de la vicarie.—*Grene.* Sire, il nest pas merveille, en le cas qe vous avez mis, mesqe cesty qe recovere lavowesoun de leglise neit pas lavowesoun, car il ad recoveri dun dreit eisne qe la vicarie ne fut; *sed non est sic hic.* Mes jeo pose qe apres ceo qe leglise fut approprie, et[1] la vicarie faite, qe lappropriacion ust este defaite, jeo die qe la vicarie serreit defaite, et *per consequens* la vicarie est appendaunte a lavowesoun del eglise hors de quele fut trete.—SCHARD. Jeo die a vous qe homme poet defaire lappropriacion, et uncore la vicarie demurra, &c.[2]

(26.)[3] § Autrefoith un R. porta Assise en pays, Desceite.
et, pendaunt son bref Dassise, son adverssare,[4] pur luy toller[5] Lassise de plus bas nature, fist un bref de plus haut nature estre suy en son noun, et fist un respoundre[6] pur luy come son attourne. Et R. moustra le desceite, et desavowa la suite. Et, pur ceo qil fut bien conu, le recorde fut chauncelle, *ut patet supra, Termino ultimo*, sur quei R. siwist[7] bref de Desceite compernant sa matere.—*Pole.* Ceo bref est judiciel,[8] qe prent cours de recorde, et le bref en luy mesme comprent nature qil ny ad nul recorde, qar quant il est chauncelle il ny ad pas recorde; jugement du bref.—*Pult.* Quant partie

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[1] Rastell, a.

[2] The passage added at the end of this report in the old editions is obviously the conclusion of No. 108 (the second report of No. 21 in this volume) and is now restored to its proper place.

[3] From Harl., 25,184, and C.

[4] 25,184, adverser.

[5] Harl., tollir.

[6] Harl., respouns.

[7] Harl., suyt.

[8] Harl., judicial.

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A.D. 1343. party reverses a judgment, or otherwise by an action of Deceit has it made null and of no effect, then such a suit cannot be maintained upon that record, because by such suing of Error or of Deceit he supposes himself to be a party; but the same cause which defeated the record by which this writ is warranted proves that we were not a party, and that our action now maintains.—STONORE, *ad idem*. The record does not maintain this writ, but he makes his plaint in respect of a deceit committed in this Court.—Afterwards they came to terms.

Deceit. (27.) § Deceit was sued for a poor man against an attorney, supposing that the Sheriff and he, between them, caused a writ of seisin to be put on the files of

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reverse jugement, ou autrement par Desceite le ad nul et a nient, la hors de cel recorde ne put tiel suite estre meintenue, pur ceo qe par tiel suite Derrour ou Desceite il luy suppose estre partie; mes mesme la cause qe defit de recorde de quei ceo bref est garranti prove qe nous[1] fumes pas partie, et ceo meintient ore nostre accion.—Ston., *ad idem.* Le recorde ne meintient pas ceo bref, mes fait sa pleinte de la desceite fait en ceste Court.—Puis ils acorderent. A.D. 1343.

(27.)[2] § Desceite fut suy pur un povers[3] homme vers un attourne, supposaunt qe entre le Vicounte et luy ils firent mettre un bref de seisine en filaz Desceite. [Fitz., *Disceit*, 39.]

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[1] 25,184, si nous.

[2] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edward III., R° 433. It there appears that the action was brought by William de Frodeswalle against Richard son of William Elys of Yeivley and John de Oxon, late Sheriff of the County of Derby. According to the roll, the writ was in the form "cum "idem Willelmus, a tempore quo "idem Rex gubernacula regni sui "suscepit, seu antea, de aliquibus "tenementis suis in villa de Sher- "leye in Banco Regis [*sic*] per "aliquem nusquam implacitatus "fuisset, prædictus Ricardus, simul "cum prædicto Johanne, legi et "consuetudini regni Regis Angliæ "ac Curiæ ipsius Regis illudere, et "ipsum Willelmum de quibusdam "tenementis suis in villa prædicta "subdole exhereditare machinans, "quoddam breve de judicio sub "testimonio dilecti et fidelis Regis "Willelmi de Shareshulle conti- "nens præfatum Ricardum duas "acras terræ et unam acram prati "cum pertinentiis in eadem villa "versus prædictum Willelmum, et "Emmam uxorem ejus, et quos- "dam alios, per defaltam, coram "Justiciariis Regis in Banco præ- "dicto anno regni ipsius Regis "duodecimo recuperasse, et eidem "tunc Vicecomiti quod ipse præ- "fato Ricardo plenam seisinam "tenementorum illorum habere "faceret per Regem præceptum ex- "tititisse, quanquam aliquod breve "originale, seu placitum, vel "processus inde inter partes "prædictas a tempore prædicto "in Banco prædicto minime pen- "debat, fabricari et in fillaciis "ipsius tunc Vicecomitis inter bre- "via Regis poni fecit, cujus quidem "brevis colore de terra et prato "prædictis amotus et seisina inde "præfato Ricardo extitit liberata, "in deceptionem Curiæ Regis præ- "dictæ ac legis et consuetudinus "prædictarum illusionem manifes- "tam, necnon grave damnum "ipsius Willelmi."

[3] C., pours.

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A.D. 1343. the Sheriff's writs, and by means of that writ ousted him from his land, supposing that the same attorney had recovered against the present plaintiff, whereas there never was any record or recovery, to the deceit of the Court, and to his damage. And upon this he produced to the Court a writ comprising his matter. And the attorney, being examined, confessed that there was no record, and no loss of an action; but he said that a bailiff and he, between them, forged a precept, supposing that there was a judicial writ, whereas there was no such writ. Therefore the plaintiff recovered damages assessed by the Court at 10 marks, and he was by judgment committed to prison according to the Statute.[1]

Replevin. (28.) § *Thorpe.* The place in which the taking is supposed and the vill are parcel of the manor of

[1] 3 Edw. I. (Westm. 1), c. 29.

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des brefs le Vicounte, et par cel bref luy ousterent A.D. 1343.
de sa terre, supposaunt qe mesme lattourne avoit recoveri vers celuy qore se pleint, ou unqes recorde ne recoverir y avoit, en desceite de la Court, et ses damages. Et sur ceo il mist avant bref a la Court, compernant sa matere. Et lattourne examine conust qil ny avoit recorde ne perde; mes il dit qe entre un baillif et luy ils forgerent un precepte supposaunt qil y avoit bref de jugement, ou il y avoit nul bref.[1] Par quei le pleintif recoveri damages taxes par la Court a x marcs, et il fut agarde par estatut a la prisone.[2]

(28.)[3] § *Thorpe.* Le lieu en quel la prise est suppose et la ville est parcelle du maner de Cokham,[4] *Replegiari.* [Fitz., *Auncien Demesne*, 14.]

[1] According to the roll "Ricardus, "presens in Curia Regis hic, per "Justiciarios super præmissis "juratus, et examinatus, cognovit "quod ipse et quidam Johannes de "Neutone, ut ballivus Vicecomitis "Comitatus prædicti, fecerunt "quoddam præceptum, nomine "ipsius Vicecomitis, ipso Vice-"comite nesciente, eidem Johanni "de Neutone ut ballivo directum, "continens ipsum Ricardum seisi-"nam de prædictis tenementis in "Curia Regis recuperasse, et ipsum "Johannem de Neutone, ut balli-"vum, nomine ipsius Vicecomitis, "liberandi seisinam eidem Ricardo "de prædictis tenementis potesta-"tem habuisse, cujus quidem præ-"cepti fabricatione idem Johannes "de Neutone, ut ballivus, &c., "seisinam eidem Ricardo de præ-"dictis tenementis liberavit, per "quod idem Ricardus ipsum Wil-"lelmum de prædictis tenementis "amovit."

[2] The judgment, according to the roll was, "Quia idem Ricardus hic "expresse cognovit prædictum præ-"ceptum fabricatum fuisse in "deceptionem Curiæ Regis, et dam-"num ipsius Willelmi, &c., con-"sideratum est quod prædictus "Willelmus recuperet versus eum "damna sua, quæ taxantur per "Justiciarios ad decem marcas, et "quod idem Ricardus committatur "Gaolæ de Flete ibidem commora-"turus per formam Statuti," &c.

The plaintiff had execution by *Elegit.*

"Postea, die Jovis in Octabis "Sancti Martini anno regni domini "Regis nunc decimo octavo, venit "prædictus Ricardus a Gaola præ-"dicta, et injunctum est ei et in-"hibitum per Justiciarios quod de "cætero a Curia hic recedat, et "quod non amittatur [for admitta-"tur?] ad sequendum aliquod "breve seu negotium pro aliquo "hic, &c. Et deliberatur a Gaola "prædicta." &c.

[3] From Harl., 25,184, and C., until otherwise stated.

[4] C., Cocham.

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A.D. 1343. Cookham, which is the King's Ancient Demesne, and that manor our Lord the King has given to our Lady the Queen; judgment whether the Court will take cognisance of the plea.—*Richemunde.* He will still be able to traverse the taking, and until the plea be brought into realty by avowry this is not a plea.—*Thorpe.* By common intendment the plea can be brought into realty; and, if I were to avow, I should not afterwards be admitted to take exception to the jurisdiction which I had previously accepted by my avowry, and so my exception afterwards would be to the abatement of my avowry.—SHARDELOWE. And, if you did not take the beasts, then the plea is entirely personal, and this Court will take cognisance of it; and if you were to abate the plaint by your exception in this Court, you would abate the plaint in the Court of Ancient Demesne by a traverse on the taking, and would oust this Court from jurisdiction without cause.—*Notton.* It is possible, in a plea of Trespass against the peace, to bring it into realty by justification, yet, nevertheless, if a writ of Trespass be brought in this Court in respect of a trespass committed in Ancient Demesne, his Court will take cognisance.—KELSHULLE. The cases are not like: for those having a Court of Ancient Demesne ought not to take cognisance of matters done against the peace, but of the taking of beasts they can.—*Pulteney.* If a lord of Ancient Demesne be disseised of rent issuing from ancient demesne, he will have an Assise in this Court. Why then cannot a tenant have a suit against him on the taking of beasts? —*Thorpe.* Then we are at one that it is so.—*Notton.* We tell you that the place is parcel of certain land which was waste, and in the hand of King Edward, the grandfather of the present King, who gave it by acres at a certain rent by the year; so it is frank fee.—*Thorpe.* Your plea is double: one the King's

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qest auncien demene le Roi,[1] qel maner nostre Seignur le Roi ad done a Madame la Reigne[2]; jugement si la Court voille conustre.—*Richem.* Il purra uncore traverser la prise, et tanqe par avowere le plee soit mene[3] en realte[4] ceo nest pas plee.—*Thorpe.* De comune entent le plee put estre mene[3] en realte[5]; et, si jeo avowasse, apres jeo ne serra pas resceu de chalanger[6] jurisdiccion quel jeo usse devant accepte par mavowere, et si serra mon chalange apres al abatement de mavowere.—SCHARD. Et, si vous ne preistes pas, donqes est le plee tut personele, de quei ceste Court conustra; et si vous abatissez la pleinte par vostre excepcion ceinz, vous abaterez la pleinte en launcien demene par travers sur la prise, et ousteres ceste Court de jurisdiccion sanz cause.—*Nottone.* Il est possible en plee de Trespas countre la pees par justificacion de le mener[7] en la realte,[5] nepurquant, si bref de Trespas soit porte ceinz de trespas fait en auncien demene, ceste Court conustra.—KELS. *Non est simile*: qar ces dauncien demene ne deivent pas conustre de chose encountre la pees,[8] mes de prise des avers ils pount. —*Pult.* Si le seignur dauncien demene soit disseisi de la rente issaunt del auncien demene il avera Assise ceinz. Par quei ne put pas le tenant donqes devers luy aver sa suyte par prise[9] des avers?—*Thorpe.* Donqes sumes a un qil est issi.—*Nottone.* Nous vous dioms qe le lieu est parcelle de certein terre qe fut wast, et en la meyn le Roi E., aiel, le quel dona le par acres rendaunt certein par an; issi est ceo frank fee.—*Thorpe.* Vostre plee est double: A.D. 1343.

[1] The words le Roi are omitted from C.
[2] C., Roigne.
[3] C., mesne.
[4] 25,184, and C., roialte.
[5] C., roialte.
[6] Harl.,chaunger;25,184,changer.
[7] Harl., del maner; 25,184, de maner, instead of de le mener.
[8] fait is inserted after pees in Harl.
[9] Harl., prises.

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A.D. 1343. seisin, which makes it frank fee, as you understand it; the other the feoffment; therefore hold to one.—*Pulteney.* The King's seisin would not alone prove it to be frank fee; but, when the King divests himself by charter, that makes it frank fee.—SHARDELOWE. A divesting by the King makes it frank fee, and that is the effect.—And note that, after this matter, in an Assise before SHARDELOWE in the country, the tenant alleged that the land put in view was parcel of the manor of B., which is Ancient Demesne, and said that he did not understand that the Court would take cognisance. And because the plaintiff alleged that it was waste approved by the King, and that so, through the King's possession, it had become frank fee, SHARDELOWE awarded the Assise. And afterwards WILLOUGHBY reversed this, and took for his judgment that the King's possession rather affirmed than disaffirmed it to be Ancient Demesne, unless he had divested himself thereof.—*Notton* alleged, as above, that the King was seised, and leased the land to the Templars at his will, and afterwards gave it to the Earl of Salisbury in fee, whose estate the plaintiff had by the King's license; so it was frank fee.—*Pulteney.* That is a different cause; wherefore you shall not be admitted to that.—HILLARY. He may say all that he can say to prove it frank fee.—*Pulteney.* Then you see plainly that he does not show any deed of the King, &c.—SHARDELOWE. The deed showing the divesting ought not to be in his possession; besides, the King's possession since time of memory is a sufficient reason to prove it frank fee, because the King could not be sokeman to himself.—*Pulteney.* Then take that as the reason.—SHARDELOWE. Whether that was base tenure or otherwise, if the King divested himself and made a feoffment, it has become frank fee.

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un la seisine le Roi qe le fait frank fee a vostre entent; autre le[1] feffement; par quei preignez[2] a lun.—*Pult.* La seisine le Roi ne le provereit pas frank fee a per luy; mes quant le Roi se demist par chartre, ceo le fait[3] frank fee.[4]—SCHARD. La demise le Roi le fait frank fee,[5] et cest leffect.—*Et nota* puis[6] ceste matere, qen un Assise devant SCHARD. en pais, le tenant alleggea qe la terre mys en vewe fut parcelle del maner de B., qest auncien demene, et nentendist pas qe Court voleit conustre. Et pur ceo qe le pleintif[7] alleggea qe ceo fut wast approwe par le Roi, et[8] issi par la possession le Roi devenu frank fee, SCHARD. agarda lassise. Et puis WILBY. le reversa, et prist pur jugement qe la possession le Roi plustost lafferma auncien demene qe desafferma sil nel[9] ust demys.—*Nottone* alleggea, *ut supra*, qe le Roi fut seisi, et le lessa as Templers a sa volunte, et puis le dona al Counte de Sarum en fee, qi estat, par conge du Roi, le pleintif ad; issi frank fee.—*Pult.* Cest autre cause; par quei vous navendrez pas.—HILL. Il dirra quant qil savera dire a prover le frank fee.—*Pult.* Donqes vous veiez bien qil ne moustre pas fait du Roi, &c.—SCHARD. Le fait de la demise ne deit pas demurer vers[10] luy; ovesqe ceo, la possession le Roi puis temps de memoire[11] est suffisaunte cause del prover fraunc fee, qar le Roi ne put estre sokman a luy mesme. —*Pult.* Preignez cella donqes pur cause.—SCHARD. Fut ceo bas tenure ou autre, si le Roi se demist, et fist feffement, cest devenu fraunc fee.

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[1] 25,184, par le.
[2] C., preigne.
[3] C., est, instead of le fait.
[4] fee is omitted from C.
[5] In C. are added the words a ceste laffect.
[6] C., pur.
[7] Harl., tenant.
[8] et is from Harl. alone.
[9] C., ne se.
[10] Harl., devers.
[11] C., demore, instead of de memoire.

No. 28.

A.D. 1343. Replevin. § In a Replevin brought by William Trussel against John Jourden *W. Thorpe* said that the place in which the taking, &c., was parcel of the manor of B., which was Ancient Demesne, and we do not understand, he said, that the Court will take cognisance.—*Pulteney.* This is, in its nature, a writ of Trespass, and founded on a personal matter, which writ ought to abate, even though the place were, &c.—*W. Thorpe.* Though this may be a writ of Trespass according to common intendment, it will be brought into the realty by you on an avowry, and in case we were to make avowry we shall never afterwards have this exception, because he will take issue on the cause of my avowry; therefore, if we have not this exception now, you will take cognisance of this which is Ancient Demesne, and in a plea which will be accounted a real plea in law.—Sharshulle. I say that you will have this exception after your avowry is made, because at the conclusion of your avowry you will avow the taking as in parcel of the tenements, &c., and in a place which is Ancient Demesne; and then he will be put to answer whether it is Ancient Demesne or not, because the plea will be at such time in the realty; but before avowry made the plea is always in the personalty, and at that time you cannot have this exception.—*W. Thorpe.* If I make avowry in the manner you say, the plaintiff will say that I have taken his beasts of my own wrong, and not for such cause as I have supposed in avowing, and so would be at issue with me, and could oust me from the exception; wherefore, &c.—*Notton.* Sir, we tell you that in the time of King Edward, the grandfather of the present King, this land, whereof the place, &c., was in his hand as waste of the same manor of B., and, having been approved by him after that time, he leased it to certain tenants to hold of him by a certain rent, and the avowant had their estate, and so it was frank fee, &c.—*Grene.* That plea

No. 28.

§ En[1] un *Replegiari* porte par William Trussel vers Johan Jourden *W. Thorpe* dit qe le lieu ou la prise, &c., fut parcelle del maner de B., qe fut Auncien Demene, et nentendoms pas qe la Court voille conustre.—*Pult.* Ceo est un bref de Trespas en sa nature, et foundu sur un personel fait, quel bref duist abatre tout fut le lieu, &c.—*W. Thorpe.* Coment qe ceo soit un bref de Trespas de comune entente, il serra mene en la realte par vous davowere, et en cas qe nous fesoms avowere, jammes apres naveroms cel chalange, car il prendra issue sur la cause de mavowere; donqes, si nous neioms cel chalange a ore, vous conustrez de ceo qest Auncien Demene, et en plee qe serra acompte plee real en ley.—Schar. Jeo dis qapres vostre avowre fait vous averez cest chalange, car en la fine de vostre avowere issint avouerez[2] vous la prise come en parcelle des tenements, &c., et en lieu qest Auncien Demene; et donqes serra il mys de respoundre sil soit Auncien Demene ou nemye, pur ceo qe le plee serra a tiel temps en la realte; mes avant avowere fait le plee est touz dis en la personalte, a quel temps vous ne poiez cest chalange aver.—*W. Thorpe.* Si jeo face avowere par la manere come vous dites, le pleintif dirra qe jay pris ses bestes de ma tort demene, et nemye par tiel cause come jeo suppose en avowant, et issint serroit a issue ove moy, et moy oustereit del chalange; par quei, &c.—*Nottone.* Sire, nous vous dioms qen temps le Roi E. laiel cest terre dount le lieu, &c., fut en sa mayn come wast de mesme le maner de B., et puis cel temps par luy approwe il lessa as certeins tenaunts a tener de luy par certein rente, lestat de queux lavowant avoit, et issint fut il frank fee, &c.—*Grene.* Ceo plee

A.D. 1343. *Repiegiari.*

[1] This report of the case is printed by itself in the old editions as No. 110. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

[2] Editions after Rastell's, moves.

No. 29.

A.D. 1343. is double: one is that the King was seised of this land and approved it from waste since time of memory; the other is that he enfeoffed of the same approved land certain persons whose estate they have; according to what they say, one of these two pleas will prove the land to be frank fee of itself, and these pleas require several issues; wherefore we do not understand that he can be admitted to these two pleas jointly.—*Notton* held to the plea that the King enfeoffed those whose estate he had, and waived the rest of his answer.—*Grene*. You see plainly how their object is to prove the tenements to be frank fee through the King's gift, and in proof of that gift they show nothing; wherefore we demand judgment, &c., because the King's gift falls under the description of a record, which cannot be averred.—And afterwards *Notton* said that the tenements were in the King's hand, &c., and that he leased the same tenements to others to hold at his will, and so the same tenements descended to the present King, who enfeoffed W. Montague of the same tenements, &c.; and so the tenements are frank fee; ready, &c.—And the other side said on the contrary that they are Ancient Demesne; ready.

Novel Disseisine.

(29.) § Novel Disseisin was brought before SHARDELOWE in the country, and the plaint was for 20*s*. of rent. And it was found by verdict that the plaintiff had leased parcel of the land put in view for term of life, at a rent to be paid to him of 10*s*., and the rest at a rent of other 10*s*., and that the rent for the whole was in arrear, and that he distrained in one parcel and that a rescue was effected.—And SHARDELOWE adjourned them because he was in doubt whether one Assise could serve in respect of divers rents, and he caused the damages to be severed.—And now it was adjudged that the plaintiff should recover the 10*s*.

No. 29.

est double: un est qe le Roi fut seisi de cest terre et approwa de wast puis temps de memorie; un autre est qil enfeffa de mesme la terre approwe certeines persones lestat de queux ils ount; a ceo qils diont, lun de ceux deux plees provera la terre estre frank fee a per luy, et les queux plees demandent severals issues; par quei nentendoms pas qe a ceux ij plees jointement put il avener.—*Nottone* soy tient a ceo qe le Roi enfeffa ceux qi estat il avoit, et weiva le remenant de son respouns.—*Grene.* Vous veiez bien coment ils sount a prover les tenements frank fee par doun le Roi, et de cel doun ils ne moustrent riens; par quei nous demandoms jugement, &c., car doun le Roi chiet en recorde qe ne poet pas estre avere.—Et puis *Nottone* di qe les tenements furent en la mayn le Roi, &c., le quel mesmes les tenements lessa a autres a tener a sa volunte, issint mesmes les tenements descendirent al Roi qore est, le quel de mesmes les tenements enfeffa W. Montague, &c.; et issint sont les tenements frank fee; prest, &c.—*Et alii e contra* qe Auncien Demene; prest.[1] A.D. 1343.

(29.)[2] § Novele Disseisine fut porte devant Schard. en pays, et la pleinte de xx*s.* de rente. Et trove fut par verdit qe le pleintif avoit lesse parcelle de la terre mys[4] en vewe a terme de vie, rendaunt a luy x*s.*,[5] et le remenant rendaunt autres x*s.*,[5] et qe la rente de tut fut arrere, et qil destreint en lun parcelle, et le[6] rescous fut fait.—Et Schard. les ajourna pur ceo qil fut en awere[7] si de divers rentes un Assise purreit servir, et il fist severer les damages. —Et ore fut agarde[8] qe le pleintif recoverast les x*s.* Novele Disseisine.[3] [Fitz., *Assise*, 76.]

[1] Earliest editions, prist.

[2] From Harl., 25,184, and C., until otherwise stated.

[3] The marginal note is omitted from 25,184, in which MS. the report itself is written in the margin.

[4] C., mes mis.

[5] Harl., south.

[6] le is omitted from C.

[7] C., aueure.

[8] C., ajuge.

No. 29.

A.D. 1343. issuing from the parcel in which the distress was made.—But note that the plaintiff could not have judgment in respect of a term for which the rent had become due after the Assise had passed.—See the contrary above, as to arrears.[1]

Assise of Novel Disseisin.

§ In an Assise of Novel Disseisin which was brought before SHARDELOWE and his fellow Justices a verdict was found to the effect that one Alice was seised of certain land, and that she leased the land to a man for term of life at a rent of 5*s.* *per annum*, and granted to him by the same deed the herbage of a wood which he had for term of his life, at a rent for the herbage of 6*s.* *per annum*, and that afterwards Alice granted both the rents to Amy, daughter of R. Flamoke, and that the tenant attorned, and that afterwards the 11*s.* were in arrear, and, because Amy could not find any distress in the wood, she took a distress in the land, of which distress a rescue was effected from her; she therefore brought the Assise for the whole 11*s.*—*Grene.* Sir, it is found by this Assise that the plaintiff was seised and disseised; wherefore we demand judgment, and pray seisin of the rent, and our damages.—SHARDELOWE. But it is found that your plaint is made in respect of both rents, and so in respect of several rents, and several places, whereas rescue effected in one place cannot be a cause of disseisin of the rent which is to be taken from another place; wherefore it seems that this is a sufficient reason for abating your plaint.—But, notwithstanding this, it was adjudged that the plaintiff should recover the 5*s.* issuing from the land in which the rescue was effected; and in respect of the 6*s.* she was in mercy for her false plaint, because she did not show any ground to establish a disseisin in that parcel, but the amercement was pardoned because she was under age; and it was adjudged that

[1] No. 6, p. 24, and p. 32.

No. 29.

issauntz de la parcelle ou la destresse fut fait.—*Sed* A.D. 1343.
nota qil ne put aver jugement dun terme qe fut encoru[1] puis Lassise passa.—*Vide contrarium supra*, des arrerages.[2]

§ En[3] Assise de Novele Disseisine qe fut porte devant Schard. et ses compaignons tiel verdit fut trove qe une Alice fut seisi de certein terre, quele lessa la terre a un homme a terme de vie, rendaunt v*s.* par an, et graunta a luy par mesme le fait larbage dun bois qil avoit a terme de sa vie, rendaunt pur larbage vj*s.* par an, et puis Alice graunta ambideux les rentes a Amye qe fut la fille R. Flamoke, et le tenaunt sattourna, et puis les xj*s.* furent arere, et, pur ceo qe Amye puit nul destresse trover en le bois, ele prist en la terre, de quel rescous luy fut fait; par quei ele porta lassise de touz les xj*s.*—*Grene.* Sire, trove est par ceste Assise qe le pleintif fut seisi et disseisi; par quei demandoms jugement, et prioms seisine del rente, et nos damages.—Schard. Mes trove est qe vostre pleinte est fait des ambideux rentes, issint de severals rentes, et severals lieus, ou rescous fait en un lieu ne poet estre cause de disseisine de le rente qe serra pris de lautre lieu; par quei il semble qe ceo est suffisaunt cause dabatre vostre pleinte.—*Sed, hoc non obstante*, fut agarde qe la pleintif recoverast les v*s.* issants de la terre en quel rescous fut fait, et en dreit de les vj*s.* ele fut en la mercy pur sa faux pleinte, pur ceo qele navoit pas cause de disseisine en cele parcelle, mes lamerciement fut perdone, pur ceo qele fut deinz age, et qe les disseisours

Assise de Novele Disseisine.

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[1] C., encwiru.

[2] For the last sentence there is substituted in C. the following:—*Et sic nota bona. Vide et Quære.*

[3] This report of the case is printed by itself as No. 111 in the old editions No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

Nos. 30, 31.

A.D. 1343. the disseisors should be taken for the rescue committed, because that was disseisin with force and arms.—See as to this Hilary Term in the 15th[1] year in relation to amercement on a writ of Dower.

Novel Disseisin.

(30.) § Novel Disseisin against an infant under age. —*Gaynesford.* We tell you that our father and we purchased the land to us two and our heirs, and, after the death of our father, the plaintiff abated, and we ousted him; judgment whether Assise, &c.—*Pulteney.* His admission shows no colour to make any claim against us; wherefore we pray the Assise.—And he had it.—But SHARSHULLE said that, if he who pleaded in bar had been of full age, he would have adjudged that to be a bar. And he said this after full deliberation.

Assise of Novel Disseisin brought against three persons, one of whom said that he was another's villein, and demanded judgment of the writ; the others were put to answer, as appears in the plea. And afterwards the writ abated. Observe and Quære because this is not law according to the opinion of some.

(31.) § Assise was brought against four persons before SHARSHULLE. One said that he was the villein of another, and demanded judgment of the writ. The plaintiff said that this defendant did not take upon himself any tenancy, and that it was possible that he had nothing, but that the others were tenants; and he demanded judgment whether the law put him to answer. And the other three were put to answer, and they said that they, together with the fourth who had alleged the villenage, recovered the same tenements against the plaintiff; judgment whether Assise, &c. The plaintiff said that they did not answer as to any certain tenancy either jointly with the fourth or as held by themselves, and demanded judgment.—And thereupon they were adjourned to Westminster, and there SHARSHULLE abated the whole writ. And the reason was that he understood by the exception alleging villenage that the tenancy was in common among the three and the villein's lord, and that, even though the three and the lord were tenants by divers titles, it

[1] The reference may, perhaps, be intended to be to Y.B., Hil., 16 Edw. III., No. 20.

Nos. 30, 31.

fussent pris pur le rescous fait, car ceo fut disseisine ove force et armes.—*Vide de hoc Hilarii xv*, en bref de Dowere, en dreit de lamerciement. A.D. 1343.

(30.) [1] § Novele Disseisine vers enfaunt deinz age.—*Gayn.* Nous vous dioms qe nostre pere et nous purchaceames la terre a nous deux et nos heirs, et, apres la mort nostre pere, il abatist, et nous luy reoustames; jugement si Assise, &c.—*Pult.* Il conust nul colour de clamer a nous; par quei nous prioms Assise.—*Et habet.*—Mes Schar. dist, sil ust este de plein age qe pleda en barre, qil ust[2] ajuge cella pur barre. *Et hoc dixit bona deliberatione.* Novele Disseisine. [Fitz., *Colour*, 46.]

(31.) [3] § Assise fut porte vers iiij devant Schar. Un dist qil fut autri vilein, et demanda jugement du bref. Le pleintif dist qil nenprist nulle tenaunce, et possible est qil nad rien, mes qe les autres furent tenaunts; et demanda jugement si ley luy mist a respoundre. Et les autres iij furent mis a respoundre, qe disoient qe eux, ensemblement ove le quart qad allegge le villenage,[5] recoverirent mesmes les tenements vers le pleintif; jugement si Assise, &c. Le pleintif dist qil respondirent pas de certein tenaunce joint ove le quart, ne a per eux, et demanda jugement.—Et sur ceo furent ajournes a Westmestre, et la Schar. abatist tut le bref. Et la cause fut pur ceo qil entendist[6] la tenaunce en comune de les iij et le[7] seignur le vilein[8] par lallegacion del excepcion de villenage,[5] et, tut fuissent les iij et le seignur tenaunts par divers titles, Assise de Novele Disseisine porte vers iij, et lun dit qil fut altri vilein, et demanda jugement de bref; les autres mys a respount *ut patet in placito.* Et puis le bref abati. *Vide et quære, quia non est lex secundum opinionem.*[4] [17 Li. Ass. 16.]

[1] From Harl., C., and 25,184.
[2] ust is omitted from 25,184.
[3] From Harl., 25,184 and C., until otherwise stated.
[4] The marginal note subsequent to the word Disseisine is from 25,184 alone.
[5] 25,184, vileynage.
[6] 25,184, attendit.
[7] Harl., del, instead of et le.
[8] 25,184, vyleyn.

No. 31.

A.D. 1343. seemed to him, by reason of the tenancy being in common and not severed, that the non-naming of the lord abated the whole writ.—*Quære*, for some thought that the writ ought not to have abated except as to a fourth part.

Assise of Novel Disseisin.

§ Robert de Wilton and D. his wife brought an Assise of Novel Disseisin before Sharshulle and his fellow Justices, &c., against Simon, John, and William, and complained that they were disseised of their freehold in Wootton, and put in view the manor of Wootton with the appurtenances. And as to William, he said that he was the villein of one Richard H., and demanded judgment of the writ. And, as to John and Simon, they said that heretofore they two, together with William, who had alleged that he was a villein, brought an Assise of Novel Disseisin against Robert and D., the present plaintiffs, and put in view the same tenements; process was continued on the same Assise until they had judgment to recover; and they demanded judgment whether there ought to be Assise upon Assise. And Robert and D. said they made protestation that they did not admit that William who alleged the villenage had anything in the tenancy, but they said that, long before Simon and John had anything in these tenements, they were seised until disseised by those named in the writ, and they demanded judgment, and prayed the Assise.—*Grene*, for the tenants, demanded judgment, since the plaintiffs did not deny that they three recovered in common, and therefore the tenancy would in law be understood to be as much in the person of William as in their persons, unless the plaintiff alleged the contrary by express words, and that he did not do; therefore they demand judgment, and pray that the writ do abate by

No. 31.

luy sembla, pur la tenaunce en comune et nient severe, qe le nient nomer du seignur abatist tut le bref.—*Quære*, qar ascuns entendirent qe le bref ne duist aver abatu forsqe de la quarte partie. A.D. 1343.

§ Robert[1] de Wiltone et D. sa femme porterent une Assise de Novele Disseisine devant Schar. et ses compaignouns, &c., devers Simon, Johan, et William, et se pleindrent destre disseisis de lour franktenement en Wottone, et mistrent en vewe le maner de Wottone ove les appurtenaunces. Et quant a William, il dit qil fut vilein un Richard H., et demanda jugement de briefe. Et quant a Johan et Simon, ils disoient qe autrefoitz eux deux, ensemble ove W., qe ad luy allegge vilein, porterent un Assise de Novele Disseisine vers Robert et D., qe ore se pleignent, et mistrent en vewe mesmes les tenements; proces continue en mesme Lassise tanqe ils ount jugement de recoverir; et demanderent jugement si Assise sur Assise deit estre. Et Robert et D. disoient qils fesoient[2] protestacion qils ne conissoient pas qe William qe alleggea le villenage navoit riens en la tenaunce, mes ils disoient qe, longe temps devant ceo qe Simon et Johan riens avoient en ceux tenements, eux furent seisis tanqe par eux nomes en le bref disseisis, et demanderent jugement, et prierent Lassise.—*Grene*, pur les tenaunts, demanda jugement, del houre qils ne dediont pas qe ceux iij recoverirent[3] en comune, par quei la tenaunce par ley serreit entendu auxi avaunt en la persone William come en lour persones, si issint ne fut qe le pleintif desaffermast expressement par parole, et ceo ne fist il pas; par quei ils demandent jugement, et prient qe le Assise de Novele Disseisine.

[1] This report of the case is printed by itself in the old editions as No. 119. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*. There is, however, a reference to it by folio, as printed in the old editions, in the printed *Liber Assisarum*.

[2] Old editions, fesant.

[3] recoverirent is omitted in all the editions after Rastell's.

No. 32.

A.D. 1343. reason of the villenage attached in the person of William.—And, because the plaintiff did not expressly disprove tenancy in the person of William, wherefore it would be an intendment of law that he was tenant by force of the recovery, unless other matter were shown, and William by his own acknowledgment had made himself the villein of Richard H., the writ was by judgment abated in its entirety against him and all the others.

Assise of Novel Disseisin in which there was pleaded in

(32.) § Alice late wife of Richard Darcy brought an Assise of Novel Disseisin against John Inge, knight, and one A.,[1] and others,[1] before SHARSHULLE, in the country.—A.[1] took the tenancy upon herself, and, in

[1] For the real names, &c., *see* p. 157, note 1.

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briefe abate par cause de la villenage attache en la persone William.—Et pur ceo qe le pleintif ne desprova pas la tenaunce en la persone William expressement, par quei la ley entendreit qil fut tenaunt par force del recoverir, si autre matere ne fut moustre, le quel il soy avoit fait le vilein un Richard H. par sa conissaunce, par quei par agarde le bref fut abatu entierement vers luy et touz les autres. A.D. 1343.

(32.) [1] § Alice qe fut la femme Richard Darcy porta Assise de Novele Disseisine vers Johan Inge, chivaler, et un A., et autres, devant Schar. en pays. —A enprist tenaunce, et par fyn par quel mesme Assise de Novele Disseisine ou plede fut en

[1] From Harl., 25,184, and C., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 264. It there appears that the Assise was brought by Alice late wife of Richard Darcy against John Inge, knight, Matilda late wife of William Casse, and several others, at Oxford, before William de Shareshulle and others, Justices of Assise for the County of Oxford, in respect of one messuage, two carucates of land, 20 acres of meadow, 20 acres of wood, 200 acres of pasture and 8 marks and 4*d.* of rent in Stanlake (Standlake, Oxon).

The others, except John and Matilda, having by bailiff pleaded No Disseisin, upon which issue was joined, Matilda pleaded "quod "tenementa in visu posita fuerunt "manerium de Stanlake. Et "dixit quod alias in Curia domini "Regis . . . . . levavit quidam "finis, ... inter ipsam Matilldem "et Willelmum Casse tunc virum "ipsius Matilldis, et Nicholaum "filium eorundem Willelmi et "Matilldis, querentes, et prædictam "Aliciam, deforciantem, de manerio prædicto, et de advocatione "quartæ partis ecclesiæ ejusdem "manerii, unde placitum Conventionis summonitum fuit inter eos, "per quem finem prædicta "Alicia concessit prædictis Willelmo et Matilldi, et Nicholao, "manerium prædictum cum pertinentiis, et advocationem prædictam, et illa eis reddidit habenda "et tenenda eisdem Willelmo, "Matilldi, et Nicholao, tota vita "ipsorum Willelmi, Matilldis, et "Nicholai, et, post decessum "ipsorum Willelmi, Matilldis, et "Nicholai, eadem manerium et "advocatio cum pertinentiis integre reverterentur prædictæ "Aliciæ et heredibus suis, &c., et "sic dixit quod ipsa tenuit manerium illud conjunctim cum prædicto Nicholao, virtute finis prædicti, et tenuit die impetrationis "brevis, qui quidem Nicholaus non "nominabatur in brevi, unde petiit "judicium de brevi. Et protulit "ibidem partem finis prædicti quæ "hoc idem testabatur," &c.

No. 32.

A.D. 1343. bar a fine *sur render* made by the plaintiff to one whose estate the defendant had, &c. To this the plaintiff said that, at that time she was covert of one T.,[1] and that she was ready, &c. And the defendant abode judgment as to whether she should be admitted to this plea,

abatement of the writ, alleged joint tenancy by virtue of a fine by which this same Alice, the plaintiff, rendered to her and others, and she produced a part of the fine.—John Inge said that, although A. answered as tenant, he was tenant of the freehold by virtue of a conveyance from this same A. who answered as tenant, and he pleaded the same fine in bar of the Assise, as A.'s assignee, and produced a transcript of the fine *sub pede sigilli*.—Alice said that at the time of the levying of the fine, and before, and since, she was covert of one W.,[1] and said that W. her husband and she continued their seisin during the whole of W.'s[1] life, and she, after his death, until disseised by those named, &c.; and she demanded judgment whether to this fine levied as by a feme sole, when she was covert, &c., as above, the law put her to answer, or whether thereby she should be barred from the Assise.—John

[1] For the real name, &c., *see* p. 159, note 9.

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cele Alice pleintif rendist a luy et autres, allegea[2] jointenaunce al abatement du bref, et moustra partie de la fyn.—Johan Inge dit, coment qe A. respondi come tenante, il fut tenaunt de frauncte-nement[3] du lees mesme[4] cele A. qe respondi come tenaunt, et pleda par mesme la fyn en barre dassise, come assigne A., et moustra *sub pede sigilli* transescript de la fyn.[5]—Alice dit qe al temps de la fyn leve, et avant, et puis, ele fut covert [dun W., et dit qe W. son baroun et luy continuerent tote la vie W., lour seisine, et ele, apres sa mort, tanqe disseisi par ceux nomes, &c.; et demanda][6] jugement si a cele fyn leve par femme[7] sole quant ele fut covert, &c., *ut supra*,[8] ley luy mist a respoundre, ou si par taunt ele serreit forclos dassise.[9]—Johan

A.D. 1343. barre par un fyn sur rendre fait par le pleintif a un qi estat il avoit, &c., a qi la pleintif [dit] qe a temps ele fut coverte de un T.; prest fut, &c. Et la defend-ante[1] demura en jugement si ele aven-dreit, de

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[1] MS., bref.

[2] Harl., et alleggea.

[3] The words de frauncte-nement are omitted from 25,184.

[4] 25,184, qe mesme.

[5] The plea on behalf of John Inge was, according to the roll, "quod "qualitercunque prædicta Matilldis "allegavit prædictam conjunctam "tenenciam, supponendo ipsam "fuisse tenentem, ipse fuit tenens "manerii prædicti, videlicet de "statu ipsius Matilldis, et dixit "quod prædicta Alicia Assisam "versus eum habere non debuit, "quia dixit quod prædictus finis "inter prædictos Willelmum, Ma-"tilldem, et Nicholaum, querentes, "et prædictam Aliciam deforcian-"tem levavit de manerio prædicto, "prout per prædictam Matilldem "superius allegatum fuit, unde "petiit judicium si prædicta Alicia "contra finem prædictum, ad "quem ipsamet fuit pars, Assisam "versus ipsum habentem statum "ipsius Matilldis Assisam habere "deberet. Et protulit ibidem sub "pede sigilli transcriptum pedis "finis prædicti quod præmissa "testabatur," &c.

[6] The words between brackets are omitted from 25,184.

[7] 25,184, fyne.

[8] The words *ut supra* are omitted from Harl.

[9] Alice's replication, according to the roll, was "quod prædicta "Matilldis ad allegandum prædic-"tam conjunctam tenanciam ad-"mitti non debuit, quia dixit quod "eadem Matilldis nihil habuit "adtunc in eodem manerio, sed "prædictus Johannes Inge tunc "fuit tenens ut de libero tenemento, "..... et hoc parata est verifi-"care per Assisam, &c. Et quoad "placitum prædicti Johannes Inge "eadem Alicia dixit quod cum "idem Johannes allegavit finem "prædictum ad præcludendum "ipsam ab Assisa, &c., diu ante "levationem finis prædicti, et tem-"pore levationis ejusdem, et post,

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A.D. 1343. Inge demanded judgment, inasmuch as she did not deny that she was the same person that was party to the fine, who, as sole, rendered in a Court of record, which render was accepted, and stood in force, whether she should be admitted to say that she was then covert.—Thereupon SHARSHULLE adjourned them into the Bench.—*Thorpe*. There is no doubt but that,

since she is now such a person as was supposed to have been admitted [to levy the fine]. And thereupon they were adjourned. And note that, if her husband and she had been parties, they would have had the plea, and the execution would have been a disseisin.

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Inge[2] demanda jugement, desicome ele ne dedist qele nest mesme la persone qe fut partie a la fyn, la quele come sole en Court de recorde rendi, quel rendre[3] fut accepte, et esta en sa force, si a dire[4] qele adonqes fut covert serra resceu.—Sur quei SCHAR. les ajourna en Baunk.[5]—*Thorpe*. Nest pas doute qe, puis qele est a ore tele come ele suppose accepte, &c. *Et super hoc adjournantur.* *Et nota hoc* qe [si] son baroun et ly eussent este parti il eussent eu le plee, et lexecucion serreit disseisine.[1] [17 Li. Ass., 17.]

" ipsa fuit cooperta de quodam " Jordano Goldyng, tunc viro suo, " per quod intelligi non potuit " quod ipsa fuit pars finis prædicti, " immo potius quod alia persona " fuit pars, &c., maxime cum uxor " viro cooperta cognominari debet " per nomen viri sui, unde petiit " judicium si ipsa ad prædictum " finem necesse habuit respondere, " seu per finem prædictum ab " Assisa præcludi debuit &c. Et " petiit quod procederetur ad " captionem Assisæ," &c.

[1] The marginal note subsequent to the words Novele Disseisine is from 25,184 alone.

[2] Harl., Ingham.

[3] 25,184, respons.

[4] 25,184, dedire.

[5] After Alice's replication the entry in the roll is as follows :—

" Et Johannes dixit quod ex quo " prædicta Alicia non dedixit præ- " dictum finem levasse in forma " prædicta, nec quod ipsa fuit " eadem Alicia quæ fuit pars finis " prædicti pro eo quod ipsa non " allegavit ipsam fuisse aliam per- " sonam, unde petiit judicium si " ipsa ad verificationem quam " prætendebat in adnullationem " finis prædicti admitti deberet," &c.

" Et Alicia dixit quod cum præ- " dictus Johannes non dedixit " ipsam fuisse coopertam de præ- " dicto viro suo tempore levationis " finis prædicti, et ante, et post, in " quo casu de jure intelligendum " non fuit quod ipsa aliquem finem " absque viro suo levare potuit, " unde petiit judicium, ut prius, si " ipsa necesse habuit respondere. " Et petiit quod procederetur ad " captionem Assisæ."

" Et super hoc dies datus fuit " tam prædictæ Aliciæ quam præ- " dictis Johanni, Matilldi, et ballivo " coram eisdem Justiciariis apud " Westmonasterium. . . . . .

" Ad quem diem venerunt tam " prædicta Alicia . . . . quam " prædicti Johannes Inge et Ma- " tilldis . . . . . et eadem Alicia " dixit, ut prius, quod diu ante " levationem finis prædicti, et " tempore levationis ejusdem, et " post, ipsa fuit cooperta de præ- " dicto Jordano tunc viro suo, et " dixit quod, postquam ipsa et " prædictus Jordanus, vir suus, de " tenementis prædictis, colore finis " prædicti, injuste amoti fuerunt, " iidem Jordanus et Alicia statim " in tenementis illis intraverunt, " et seisinam suam in eisdem tota " vita ipsius Jordani continuarunt, " et etiam ipsa Alicia post mortem " ipsius Jordani seisinam suam " continuavit, quousque prædictus " Johannes Inge et alii in brevi " nominati ipsam inde injuste, &c., " disseisiverunt. Et hoc prætende- " bat veriñcare, et petiit judicium, " ut prius, si ipsa, virtute finis per " prædictum Johannem Inge alle- " gati, ex quo ipsa tempore leva-

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non obstante tiel fyn, W., son baroun, et luy, sils ussent este oustes par force de cel rendre ils ussent eu Assise; et ceo qe fut disseisine a son baroun et luy par la mort le baroun nest pas purge; ovesqe ceo, a un *Scire facias* porte vers eux deux ensemble ussent destourbe execucion, et par cel averement anienti la fyn; par mesme la resoun la femme a ore.—*Pult.* Si le baroun fut en vie, et la femme come sole ust rendu par fyn, eux deux averount bien laverement en voidaunce de la fyn. Et la cause est qe quant qe serra adonqes plede serra ple le baroun, qe serra estraunge a la fyn, et de ley ne serreit pas desherite pas fyn leve par sa femme. *Non sic in proposito*, ou ele est[1] sole partie.—*R. Thorpe.* Cest tut cler qe fyn leve par femme covert, saunz son baroun, est voide et nulle, et le dreit la femme salve, *non obstante*; donqes fait a veer par quele voie jeo dise par autre manere A.D. 1343.

" tionis ejusdem, et ante, et post, " de prædicto Jordano extitit co- " operta, ab Assisa præcludi " deberet. Et petiit quod pro- " cederetur ad captionem Assisæ," &c.

" Et Johannes dixit, ut prius, " quod ex quo prædicta Alicia non " dedixit ipsam fuisse illam eandem " personam quæ fuit pars finis " prædicti, et per finem illum pro- " batur ipsam ut mulierem solam " finem illum levasse, et tanquam " solam in Curia domini Regis ad " finem illum levandum accepta- " tam fuisse, et illud quod eadem " Alicia ulterius allegavit, videlicet " quod ipsa et prædictus Jordanus " fuerunt seisiti post prædictum " finem tota vita ipsius Jordani, et " etiam eadem Alicia post mortem " ejusdem Jordani seisita fuit " quousque, &c., illa allegatio " omnino impertinens fuit isti " placito, quia quamvis ipsa ad " illam respondere vellet et præ- " tendere verificare contrarium, " illa verificatio non foret admit- " tenda nec faceret exitum placiti " prædicti, unde petiit judicium si " prædicta Alicia contra finem præ- " dictum, ad quem ipsamet fuit " pars ad verificationem quam " prætendebat admitti seu Assisam " versus eum habere deberet," &c.

" Et super hoc dies datus fuit " tam prædictæ Aliciæ quam præ- " dictis Johanni, Matilldi, et ballivo " hic ad hunc diem scilicet die " Lunæ in Vigilia Apostolorum " Simonis et Judæ de audiendo " judicio suo super placito præ- " dicto."

[1] 25,184, fut.

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A.D. 1343. than by such an averment, because Error does not lie, nor Deceit, nor a writ of Right, for by the like reason for which she would be barred by the fine in Assise she would be barred on a writ of Right.—*Grene.* If an infant under age render land by fine, during his non-age he can avoid the fine, because by inspection the Court can adjudge the fine void; but, suppose that a dispute arises when he is of full age, he will never avoid it by averment; and the reason is that he is in such a condition as he himself supposed himself to be when he rendered by fine; and so also with respect to a *feme covert*, if she render, as sole, by fine, or, as sole, be party to a judgment where she herself pleaded as sole, she shall never be admitted to avoid the fine or the judgment when she becomes sole, because she pleads as being, and she is in such condition as she supposed herself to be when she previously pleaded, or was party to the fine.—*Notton.* If this averment were to be admitted, a fine would never be of any value against a woman so that she could not defeat it by averment; and for the same reason for which the Court would admit this averment, an issue would be admitted as to whether she was of full age or of sane memory.—Stonore. How is this? The plaintiff does not name herself by her writ as the wife of W. of whom she says she was then covert.—*R. Thorpe.* No, Sir, the writ would have been better in that form, but she takes her name from her first husband.

Assise of Novel Disseisin. § Alice late wife of Richard Darcy brought an Assise of Novel Disseisin against Maud Casse, John

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[qe par tiel averement, car Errour ne git pas, ne Desceit, ne bref de Dreit pas, car par autiel resoun qele serra barre par fyn en Assise serra ele barre][1] a bref de Dreit.—*Grene.* Si enfant deinz age par fyn rende terre, duraunt son noun age il put voider la fyn, car par inspeccion Court put ajuger la fyn voide; mes, mettez qe le debat sourde quant il est de plein age, jammes ne le voidra il par averement; et la resoun est pur ceo qil est de autiel condicion come il mesme[2] soy supposa quant il rendi[3] par fyn; et auxint de femme covert, si ele rende come sole par fyn, ou come sole soit partie a un jugement ou[4] ele mesme pleda[5] come sole, james ne serra resceu de voider la fyn ne le jugement quant ele est sole, pur ceo qele plede, et ele est de autiel condicion come ele soy[6] supposa estre quant ele pleda ou[7] fut partie a la fyn.—*Nottone.* Si cest averement fut resceu, jammes serra fyn de value countre femme qele ne la defreit[8] par averement; et par mesme la resoun qe Court resceivereit cest averement si resceivereit homme issue si ele fut de plein age ou de seyn memoire.—Ston. Coment est il? Le pleintif se nome pas par son bref femme W. de qi ele se dit estre adonqes covert.—*R. Thorpe.* Noun, Sire, le bref uste este mellour en cel fourme, mes ele prent son noun de son primer baroun. A.D. 1343.

§ Alice[9] qe fut la femme Richard Darcy porta une Assise de Novele Disseisine vers Maud Casse, Assise de Novele Disseisine.

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[1] The words between brackets are omitted from 25,184.

[2] 25,184, meismes.

[3] 25,184, renda.

[4] ou is omitted from 25,184.

[5] Harl., plede.

[6] 25,184, soit.

[7] 25,184, ne.

[8] 25,184, destreint.

[9] This report of the case is printed by itself in the old editions as No. 117. No MS. of it has been found, and there is no reference to it either in the *Liber Assisarum* or in Fitzherbert's *Abridgment*. For the record *see* p. 157, note 1, &c. Elyn is substituted for Alice in the old editions.

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A.D. 1343. Inge, and several others, before SHARSHULLE and his fellow Justices. And, as to Maud, she said that Alice, the present plaintiff, by a fine levied, rendered the tenements now put in view to her and to others for term of their lives, with two of whom she said that she held jointly[1] by force of the same fine, which two were not named in the writ; and she demanded judgment of the writ. And, as to John Inge, he said that, although Maud pleaded as joint tenant, Maud had nothing, but he was tenant of the tenements put in view; and he said that there ought not to be an Assise, because, he said, this same Alice, the plaintiff, rendered by fine the same tenements to one Maud Casse, whose estate he had, and he demanded judgment whether contrary to that render made in a Court of record she ought to have the Assise. And he made *profert* of the fine *sub pede sigilli*. And Alice said, as to Maud, that she had nothing in the tenancy at that time, but that John Inge was tenant, and that she was ready to aver by Assise. And, as to John, she said that at the time at which the fine was levied, which he pleaded in bar, and before, and since, she was covert of one William[2] her husband, so that the fine was null in law, and she demanded judgment whether she ought by that fine to be barred of the Assise. And John demanded judgment, since she levied the fine as a *feme sole* in a Court of record, whether it would lie in her mouth to say that she was covert, contradicting that which she had previously affirmed.—And thereupon they were adjourned into the Bench by reason of difficulty.—*W. Thorpe.* Sir, see the proof that we shall be admitted to say that she was covert at the time at which the fine was levied: for suppose that William[2] her husband, and Alice had brought an Assise after the fine which they plead in bar was levied, and

[1] As to the alleged joint tenancy, *see* p. 157, note 1.

[2] As to the name, *see* p. 159, note 9.

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Johan Inge,[1] et plusours autres devant Schar. et ses compaignouns. A.D. 1343. Et quant a Maude, ele dit qe Alice, qe ore se pleint, par fyn leve rendi les tenements ore mys en vewe a luy et as autres a terme de lour vies ove queux deux ele dit qe ele tient joint par force de mesme la fyn, les queux ne furent pas nomes en le briefe; et demanda jugement de briefe. Et quant a Johan Inge,[1] il dit qe, coment qe Maude plede come jointenaunte,[2] Maude navoit riens, einz il fut tenaunt des tenements mis en vewe; et dit qe Assise ne deit estre, car il dit qe mesme cesty Alice, qe se pleint, par fyn rendi mesmes les tenements a une Maude Casse, qi estat il avoit, et demanda jugement si encountre cel rendre fait en Court de recorde duist ele Lassise aver. Et mist avaunt la fyn *sub pede sigilli*. Et Alice dit qe quant a Maude ele navoit riens en la tenaunce quant a cel foitz, einz Johan Inge[1] fut tenaunt, et ceo fut ele prest daverer par Assise. Et quant a J. ele dit qe a temps de la fyn leve, par quel il plede en barre, et avaunt la fyn, et puis la fyn, ele fut covert dun William son baron, issint la fyn nul en ley, et demanda jugement si par cel fyn duist ele del Assise estre barre. Et Johan demanda jugement, del houre qele leva la fyn come femme soule, et ceo en Court de recorde, si en sa bouche girreit a dire qele fut coverte en desaffermaunt ceo qele avoit autrefoitz afferme.—Et sur ceo ils furent ajournes en Bank pur difficulte.—*W. Thorpe*. Sire, qe nous serroms resceu a dire qe la femme fut covert al temps de la fyn leve veiez la profe: car jeo pose qe William son baron et Alice ussent porte Assise apres la fyn leve par quel ils pledent en

[1] Old editions, Jus.

[2] The words il dit qe are here repeated in Rastell.

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A.D. 1343. you had pleaded the fine against them in bar, as you have now pleaded against us, the husband would have had the answer which we give, that is to say, that Alice was covert at the time at which the fine was levied, for which reason the right of the wife ought not to be lost through the death of her husband, since she has the same right now as she had during the life of her husband, and consequently she will have the same answer.—*Grene.* Even though your husband would have the answer which you have given it would be no great wonder, because he is a stranger to the fine; but no law permits you to say that you were covert where you were yourself a party, and affirmed that you were sole.—*R. Thorpe.* If we be not now admitted to this plea, we shall suffer disherison for ever, whereas we were covert at the time, &c., for we cannot have a writ of Right because that which would oust us from this Assise would oust us from a writ of Right; so we cannot have any recovery unless this plea be maintained.—*Notton.* If this averment be admitted, all the fines in England will be avoided by averment, because, for the same reason for which she would have this answer, if such a fine were pleaded against me in bar, I should be admitted to say that, at the time at which the fine was levied, I was professed in a Religious Order, and should put that in averment; and in like manner I should defeat all fines by averment, and that the law does not permit, &c.—*Grene, ad idem.* I say that, since you levied the fine as a *feme sole*, and are now in the same condition as you suppose that you were at the time at which the fine was levied, it never lies in your mouth to avoid the fine on the ground that you were covert, &c., as, for instance, suppose a son levies a fine of tenements which his father holds, if execution were sued upon the fine against the father, it is clear that the father will escape execution by saying that at the time of the fine, &c., his son had nothing, but he was

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barre, et vous ussez plede la fyn vers eux en barre, A.D. 1343.
come vous avez ore plede vers nous, le baron ust eu le respouns quel nous donoms,[1] saver, qe Alice fut coverte al temps de la fyn leve, par quei le dreit la femme ne deit pas perir par la mort de son baron, depuis qele ad mesme le dreit a ore qele avoit en la vie son baron, et, *per consequens*, ele avera mesme le respouns.—*Grene.* Mesqe vostre baron avereit le respouns quel vous avez done il ne serreit pas merveille, car il est estraunge a la fyn; mes vous a dire qe vous fuistes covert la ou vous mesmes fuistes partie, et affermastes qe vous fuistes soule, nul ley ne suffre pas.—*R. Thorpe.* Si nous ne soioms ore resceu a ceo plee nous serroms desherite a touz jours, la ou nous fumes covert a temps, &c., car briefe de Dreit ne pooms aver, pur ceo qe ceo qe nous oustereit de cest Assise nous oustereit de briefe de Dreit; issint nul recoverir ne pooms aver si cest plee ne soit mayntenu.—*Nottone.* Si cest averement soit resceu, homme voidra toutes les fyns Dengleterre par averement, car par mesme la resoun qele avereit cel respouns, si un tiel fyn fut plede vers moy en barre, jeo serra resceu a dire qe al temps de la fyn leve jeo fu profes en Ordre de Religioun, et ceo mettra en averement; et en tiel manere jeo defera toutes fyns par averement, quele chose la ley ne suffre pas, &c.—*Grene, ad idem.* Jeo die quant vous levastes la fyn come femme soul, estes ore en tiel plite come vous supposez qe vous fuistes a temps de la fyn leve, jammes ne gist en vostre bouche de voider la fyn par taunt qe vous fuistes covert, &c., come en cas, jeo pose, qe le fitz leve un fyn des tenements qe son pere tient, si execucion fut sue vers le pere hors de la fyn, il est clere qe le pere soy estortera dexecucion a dire qal temps de la fyn, &c., son fitz rien navoit, mes

[1] Edition of 1679, devons.

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A.D. 1343. himself seised, &c.; but if the father die, and his son enter, and execution be sued against the son, he will never have such an answer as his father would have had, because he is now in such a condition as he supposed by the fine when he supposed that he was seised at the time when the fine was levied, and also because such an answer would tend to defeat that which he previously affirmed in a Court of record. And, besides, suppose that the fine of an infant under age were admitted, I say that, during his non-age, he can have his suit to reverse the fine, because his non-age can be tried by inspection; but if he waits until his full age before bringing that suit, that suit is taken away from him, because he is in such a condition as he supposed by the fine, and in that case he cannot contradict what he has previously affirmed; no more in this case, &c.

Scire facias, against four persons, to have execution on a fine, supposing that the fourth was sole tenant of a fourth part. And he thought to have

(33.) § A. *Scire facias* was sued against Thomas Wake of Lydell, and three others, to have execution on a fine, for Constance, late wife of Henry Vavasour. And it supposed that the three held three parts, and Thomas the fourth part severally. Exception was taken to the writ because there was not in each garnishment by itself a *cum pertinentiis*, as in Mort d'Ancestor there would be in each summons a *cum pertinentiis*.—The exception was not allowed.—*Moubray*. Judgment of

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il fut seisi, &c.; mes si le pere devie, et son fitz entre, et execucion soit sue vers luy, il navera pas tiel respouns come son pere avereit, pur ceo qil est ore en tiel plite come il supposa par la fyn qil fut seisi al temps de la fyn leve, et auxi pur ceo qe cel respouns serreit a defaire chose qil autrefoitz afferma en Court de recorde. Et, ove ceo, jeo pose qune fyn fut resceu dun enfant deinz age, jeo dis qe durant son nonage il puit aver sa suyte de reverser la fyn, pur ceo qe son nonage purra estre trie par inspeccion; mes, sil attend de cel suyte tanqe a son plein age, la suyte luy est tolle, pur ceo qil est en tiel plite come il supposa par la fyn, en quel cas il ne purra pas contrarier chose qe il adevant ad afferme; nient plus icy, &c. A.D. 1343.

(33.) [1] § *Scire facias* suy vers Thomas Wake de Lydel, et autres iij, daver execucion hors dun fyn, pur C.,[2] qe fut la femme H. Vavasour. Et supposa qe les iij tindrent les iij parties, et Thomas severalment la quarte partie. Le bref fut chalenge pur ceo qil ny ad[3] pas en chesqun garnissement a per luy un *cum pertinentiis*, com serreit en Mort daun-cestre en chesqun sumons serreit un *cum pertinentiis*. —*Non allocatur.*—*Moubray.* Jugement du bref, qe

Scire facias daver execucion hors dun fyn vers iiij, supposant qe la quart fut soul tenant de la quarte partie. Et il voleit

[1] From Harl., 25,184, and C., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 268. It there appears that the *Scire facias* was brought by Constance late wife of Henry le Vavasour against John de Brynkhille, Ralph de Rydeforde, and Robert de Yerdeburghe, in respect of three parts of a third part of the manor of Cockerington (Lincolnshire), and against Thomas Wake, of Lydell, in respect of a fourth part of the same third part. Constance prayed execution of a fine in which Henry had acknowledged the manor of Stubbus Waldyng (Yorks), and a third part of the manor of Cockerington to be the right of Roger de Frystone, chaplain, and he granted and rendered them to Henry and Constance and the heirs of Henry. For the abatement of a previous writ of *Scire facias* on the same fine *see* Y.B., Trin., 17 Edw. III., No. 47.

[2] MSS. of Y.B., M.

[3] 25,184, navoit, instead of ny ad.

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A.D. 1343. abated the writ on the ground that the three and a stranger granted his estate to the fourth person so named in the writ, and the tenements were not distinguished by bounds. And afterwards the writ was adjudged good.

the writ, which supposes the tenancy to be several: for we tell you that the three named in one garnishment purchased jointly with one W. the same tenements, and W. enfeoffed Thomas Wake of his estate, to hold in common; so they hold in common.—*Notton.* You show that the writ by several garnishments is good, because they hold by several titles, and Thomas would have a several answer as to his portion; and, if it were in a *Præcipe*, he would have a voucher in respect of his estate.—*Thorpe.* Then is it so?—*Notton.* Be it as it may; and it has been seen that a writ brought in common in such a case has been abated.—SHARSHULLE. That was in respect of a mill, which is not severable except through the taking of profits, and in that case the profits were severed, so that no other severance could be made; but, in this case, though they hold by divers titles, and take in common the profits of a thing which can be severed by bounds, it is right that the writ should lie in common until the severance of the freehold be effected.—*Pulteney.* If the writ brought in common in respect of the mill, which could not be severed by reason of divers titles, was abated, *a fortiori* this writ, if it were brought in common in respect of a thing which is severable, would be abatable.—SHARSHULLE. The contrary conclusion follows.—SHARDELOWE. One has heard that two parceners entered on a manor by reason of descent, and made partition, and the manor was demanded against them by two *Præcipes*; and they took exception to the writ on the ground that they held a mill and an advowson in common; and, notwithstanding, the writ was adjudged good.—*Pole.* When two parceners who have several rights hold in common, and one alienes her purparty, as she could by reason of the several right, there possibly a several writ lies; but if one of

Observe here as to this first, and further as to the second point, where it is said that if an inheritance descends to two persons and one has issue, and dies, a writ in the *post* will be maintained

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suppose la tenance several: qar nous vous[2] dioms qe les iij nomes en lun garnissement ensemble ove un W. purchacerent jointement mesmes les[3] tenements, et W. feffa de son estat Thomas Wake, a tener a comune; issint tenent il en comune.—*Nottone.* Vous moustrez qe le bref par several garnissement est bon, car ils tenent par severals titles, et Thomas de sa porcion several respouns avereit; et, sil fut en un *Præcipe*, il avereit voucher de son estat.—*Thorpe.* Donqes est il issi?—*Nottone.* Soit come estre poet; et homme ad vewe le bref porte[4] en comune en tiel cas estre abatu.—SCHAR. Ceo fut dun molyn, qe nest pas severable forsqe par prise des profits, et la furent les profits severes, issi qe autre severance ne poet estre fait; mes en ceo cas, tut tenent ils par divers titles, et pernount les profits en comune de chose qest severable par boundes, il est resoun qe le bref gise en comune tanqe la severaunce du franctenement soit fait.—*Pult.* Si le bref porte en comune du molyn, qe ne put estre severe pur les divers titles fut abatu, a plus fort ceo bref qe fut porte en comune de chose severable serreit abatable.—SCHAR.[5] *Sequitur e contrario.*—SCHARD. Homme ad oy qe deux parceners[6] entrerent par descente en un maner, et firent purpartie, et par deux *Præcipe* le maner fut demande vers eux; et ils chalangerent le bref pur ceo qils tiendrent[7] un molyn et lavoesoun en comune; et, *non obstante*, le bref fut agarde bon.—*Pole.* Quant deux parceners tenent en comune qe ount several dreit, et lune aliene sa purpartie, com ele put pur le several dreit, la gist par cas several bref; mes si un des

A.D. 1343. aver abatu le bref en tant qe les iij et un estrange granta son estat al quart nome en bref issi, et nient severe par bondes. Et puis le bref agarde bon.[1]

Vide hic ad istud primum et ultra ad secundum, ubi dicitur qe si heritage descend a ij et la une a issu, et devie, bref devers eux en le *post* serra meyntenu. Et puis parle fut qe un tiel fut tenant, saunz ceo qe ces qe furent

[1] The marginal note, except the words *Scire facias*, is from 25,184 alone.
[2] vous is omitted from C.
[3] Harl., ceux.
[4] 25,184, estre porte.
[5] C., SCHARD.
[6] Harl., parceneris.
[7] Harl., tiendreint.

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A.D. 1343. two joint tenants alienes that which belongs to him to a stranger, those two hold in common and by one right, and the *jus accrescendi* holds good between them. —This, however, was altogether denied.—Shardelowe. If two hold jointly, and one aliene a moiety, and they hold in common, and be disseised, what recovery will you give to the one and the issue of the other?—*Thorpe.* To the one an Assise in respect of a moiety, and to the heir of the other a writ of Entry.—Shardelowe. Then they would hold by different titles, and if they were tenants, and a writ had to be brought against them, would it not be necessary to bring divers writs in respect of divers entries?—*Thorpe.* No, but an Entry in the *post*, and it is so between one parcener and the issue of another, and, though they hold by divers degrees, still the writ will lie against them.—Hillary. In that case what they have is by descent; it is otherwise in this case.—Stonore. If the four were out of possession, would not they have one Assise? as meaning to say that they would.—Afterwards Sharshulle adjudged the writ to be good.—*Moubray.* We tell you that William Vavasour, at the time at which the fine was levied, was seised, *absque hoc* that Henry Vavasour or Roger who were parties to the fine had anything; judgment whether execution, &c.—*Pulteney.* You see plainly how he does not claim anything of William's estate, and the fine is good between the parties and every other person, save only him who was then seised, and he does not say that he has that person's estate; judgment whether such an answer lies in his mouth.—*Moubray.* And we pray judgment inasmuch as he does not deny that William was seised at the time at which the fine was

against the two tenants. And afterwards it was said that such an one was tenant, *absque hoc* that those who were parties had anything. And this was no plea unless the defendants said that they had his estate. And afterwards they did say so. And to this it was pleaded that the person whom they supposed to be tenant at the time, &c., had nothing, &c. On this they abode judgment, because the plaintiff

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jointenaunts aliene ceo qe a luy affiert a estraunge, ceux deux tenent en comune et en un dreit, et *jus accrescendi* se tient entre eux.—*Quod fuit dedictum omnino.*—Schard. Si deux qe tenent jointement, et lun aliene la moite, et ils tenent en comune, et soient disseisiz, quel recoverir durrez vous a lun et lissue de lautre?—*Thorpe.* Al un Lassise de la moite, et al heir lautre bref Dentre.—Schard. Donqes tiendreint ils par divers titles, et sils fuissent tenants, et bref fut a porter vers eux, ne coviendreit pas porter divers brefs pur les divers entres? —*Thorpe.* Noun, mes Entre en le *post*, et issint est il entre parceners[1] la une, et lissue de lautre, et[2] tut tenent ils par divers degres, unqore un bref girra[3] vers eux.—Hill. La ount ils par un descente[4]; autre est icy.—Ston. Si les iiij fuissent hors, naverount eux un Assise? *quasi diceret sic.*— Puis Schar. agarda le bref bon.—*Moubray.* Nous vous dioms qe W. Vavasour, al temps de la fyn leve, fut seisi, saunz ceo qe H. Vavasour[5] ou R. qe furent parties a la fyn rien y avoint; jugement si execucion, &c.[6]—*Pult.* Vous veiez bien coment il ne cleyme rien del estat W., et la fyn est bon entre les parties et chescun autre, sauf celuy soulement qe adonqes fut seisi, et il se dist[7] pas aver son estat; jugement si tiel respouns en sa bouche gise.[8]—*Moubray.* Et nous jugement, desicome il ne dedit pas qe W. ne fut seisi al temps de la fyn leve,

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parties rien avoient. *Et non placitum* sil ne diount qil avoit son estat. Et puis il dit; a qi fut plede qe celi qil suppose estre tenant au temps,&c., navoit rien &c. A qi lautre demura en jugement depuis qil

[Fitz., *Replicacion, Rejoinder*, 61.]

[1] Harl., parceneris.
[2] et is omitted from Harl.
[3] 25,184, girreit.
[4] 25,184, deceite.
[5] Harl., Wavasour.
[6] The plea, according to the roll, was "quod prædicta Constancia "non debet inde executionem "habere, &c., quia dicunt quod "tempore levationis finis prædicti "nec prædictus Henricus et Con- "stancia, nec prædictus Rogerus, "quos supponit fuisse partes præ- "dicti finis, aliquid habuerunt in "prædicta tertia parte manerii de "Cokryngtone prædicti, sed quidam "Willelmus le Vavasour tunc fuit "tenens de eadem. Et hoc parati "sunt verificare, unde petunt judi- "cium."
[7] 25,184, dust.
[8] 25,184, ygise.

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A.D. 1343. levied, and so the fine was void; judgment whether execution, &c.—SHARSHULLE. Prove that this answer would lie in your mouth, you being a stranger.—And afterwards *Moubray* said that William Vavasour, whose estate he had, was seised at the time of the levying of the fine, and that none of the parties were.—*Pulteney.* We take your records to witness that at first, when they pleaded in abatement of the writ, they said that Henry Vavasour enfeoffed the three, and one enfeoffed Thomas Wake of his portion, which Henry, whose estate they said they had, was party to the fine; and, inasmuch as such a plea in avoidance of the fine would not lie in the mouth of Henry, whose estate they have claimed in a court of record, judgment whether this plea lies in their mouth.—HILLARY. This plea in abatement of the writ is not of record, nor entered on the roll, nor did the parties abide judgment thereon; wherefore you shall not have it recorded by us.—*Pulteney.* You see plainly that the cause for which they would have a plea in avoidance is that they say that another was seised, to wit, William Vavasour, and, without saying that, they shall not be admitted to avoid a fine which was good between the parties; and we tell you that William, at the time at which the fine was levied, had nothing; ready, &c.—*Thorpe.* He does not maintain that the person who rendered was seised, and we are a stranger who are not ousted by any law from annulling the fine by averment: for at common law party and privy would have the averment that the person who rendered had nothing; and now privies are restrained, but not strangers.—*Pulteney.* If a fine be levied between Thorpe and me in respect of a manor

did not maintain that those who were parties to the fine were seised, and because the plaintiff refused their averment. And the plaintiff abode judgment on her plea, as above. And at last execution was awarded because the plaintiff's averment was refused.

Observe here that a plea in abatement of the writ, to wit, where the party did not abide judgment thereon, is not to be entered on the roll, nor recorded by a Justice, so as to oust one from a plea to the action, as appears here.

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issi la fyn voide; jugement si execucion, &c.— A.D. 1343.
Schar. Provez qe cel respouns girreit en vostre bouche qestes estraunge.—Et puis *Moubray* dit qe W. Vavasour,[2] qi estat il ad, al temps de la fyn leve fut seisi, et nulle des parties.—*Pult.* Nous pernoms vos recordes qe primes,[3] quant ils plederent al abatement du bref, ils disoient qe Henre Vavasour enfeffa les iij, et un[4] feffa de sa porcion[5] Thomas Wake, quel Henre, qi estat ils se disoient aver, fut[6] partie a la fyn; et desicome en la bouche H., qi estat en Court de recorde ils ount clame, tiel plee en voidaunce de la fyn ne girreit pas, jugement si en lour bouche cel plee gise.[7]—Hill. Cel plee al abatement du bref nest pas de recorde, ne entre en roulle, ne parties sur ceo ne demurent pas; par quei vous laverez pas recorde de nous.—*Pult.* Vous veiez bien coment la cause pur quei ils averount plee en voidaunce est par taunt qils diount qe autre fut seisi, saver, W. Vavasour,[2] et saunz ceo dire ils ne serrount pas resceu de voider fyn qe fut bone entre les parties; et vous dioms qe W., al temps de la fyn leve, navoit rien; prest, &c.[8]—*Thorpe.* Il ne meintient pas qe cely qe rendist fut seisi, et nous sumes estraunge, qe par nulle ley sumes ouste danienter la fyn par averement: qar a comune ley partie et prive avereit averement qe cely qe rendist navoit rien; et ore prives sount restreintz, mes estraunge pas.—*Pult.* Si fyn se leve entre Thorpe et moy dun maner dount jeo su tut

ne meintent pas [qe] ceux qe furent parties a la fyn furent seisi, et depuis qil refusa &c., et lautre sur son plee, *ut supra.* Et aderien pur ceo qe lavere-ment fut refuse execucion agarde.[1]

Vide hic qe plee en abatement du bref, saver, qe la partie ne demura pas, ne serra a entrer en roulle, ne recorder par Justice, issi qil le oustra de plee al accion, *ut patet hic.*[1]

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[1] The marginal notes are from 25,184 alone.
[2] Harl., Wavasour.
[3] 25,184, purount.
[4] Harl., W.
[5] 25,184, purpartie.
[6] 25,184, fait.
[7] 25,184, ygise.
[8] This appears in the record as follows "Et Constancia dicit quod "prædicto die levationis finis præ- "dicti prædictus Willelmus nihil "habuit in prædicta tertia parte "manerii prædicti, sicut prædicti "Johannes et alii superius sup- "ponunt. Et hoc parata est "[*parati sunt* in the roll] verificare, "unde petit judicium," &c.

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[1] 27 Edw. I., St. I., c. 1 (*De finibus levatis*).

[2] *See* 2 Inst., 522.

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temps seisi, et jeo conusse le maner estre le dreit Thorpe com ceo qil ad de mon doun, et il moy rend[1] arrere le maner a terme de ma vie, la reversion salve a luy et ses heirs, nest pas doute qe apres la fyn jeo ney qe terme de vie, et, si mon heir entre apres ma mort, vers luy Thorpe par la fyn avera execucion; donqes, quant tiel fyn, *non obstante* qe cely qe rendi ne fut pas seisi, entre les parties, et ces qe pount de ley faire estat[2] et demettre de la terre, est bone, par mesme la resoun entre estraunges, abatours ou purchaceours qe entrent,[3] del estat ces entre queux la fyn fut leve.—Schard. En vostre cas il est executorie[4] tiele fyn,[5] et ceo par lestatut, qar ceo fut le meschief a la comune ley qe quant cele fyn se leva, quant la conissaunce de dreit fut fait a cely qe rien navoit unqes devant, et cely rendist arrere al autre qe tut temps fut seisi, qe mesme cely ou leir de cely, qe fut partie et fist la conissaunce, fut resceu daverer qil mesme fut tut temps seisi, par quei cella fust restreint entre prives par statut, mes entre estraunges cest a la comune ley.—*Grene.* Quant fyn est leve entre parties, nul homme, prive ne estraunge, serra resceu a voider la fyn par nul averement sil ne soit cely qe moustrer purra[6] qil mesme, ou asqun qi estat il ad fut seisi a mesme le temps, qar si fyn se leve entre vous et moy de certein terre, et la verite soit tiele qe nul de nous qe sumes partie rien y avoms, et jeo rend la terre a vous, puis jeo purchace, vers moy et mes heirs la fyn est executorie, et vers chesqun autre qe cleyme de mon A.D. 1343.

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[1] Harl., rente.
[2] estat is omitted from 25,184.
[3] 25,184, entreint.
[4] 25,184, execut.
[5] The words tiele fyn are omitted from Harl.
[6] Harl., le purra.

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estat, par quei la noun seisine des parties ne put faire issue; mes sur la seisine destraunge qe adonqes est seisi et qe cleyme del dreit qil avoit al temps de la fyn leve, ceo fra lissue; et unqore nount ils pas plede qe nul des parties fut seisi [mes celuy qe rendist ne fut pas seisi, qe nest pas a purpos.—*Moubray.* Nous avoms dit qe ne lun ne lautre des parties fut seisi,][1] mes autre, et ceo tendoms daverer, quel averement vous refusez; et ceo qe nous parloms dautri seisine nest forsqe de bien estre.—*Pult.* Issi nentendoms pas vostre plee.—SCHAR. Donqes tendez vous daverer qe W. Vavasour[2] fut seisi pur issue[3] de plee?—*Moubray.* Sire, nanyl; mes nous tendoms daverer qe nul[4] des parties a la fyn fut seisi al temps qele fut leve, et cest nostre plee, quel averement ils refusent[5]; et outre dioms qe W. Vavasour[2] fut seisi, qi seisine ne put faire issue, [car sa seisine ou noun seisine ne prove la fyn ne bone ne malveys].[6]—*Pult.* [Et nous dioms qe W. Vavasour[2]][6] qi[7] seisine est soulement cause pur quei vous averez cel plee en voidaunce de la fyn, ne[8] fut pas seisi, prest, &c., quel averement vous refusez; jugement.[9]—*Thorpe.* Et nous jugement desicome nous tendoms daverer qe nul des parties rien y avoit, issi la fyn voide, et ceo tendoms daverer, quel averement vous refusez, et demandoms jugement si execucion devez aver.—*Et sic ad judicium.*—*Pult.* A.D. 1343.

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[1] The words betweeen brackets are omitted from Harl.

[2] Harl., Wavasour.

[3] 25,184, lissu.

[4] Harl, nulles.

[5] According to the record "Johan- " nes et alii dicunt quod ipsi præ- " tendunt verificare quod die " levationis finis prædicti prædictus " Willelmus le Vavasour fuit tenens " de prædicta tertia parte manerii, ' ita quod prædicti Henricus, Con- " stancia, et Rogerus adtunc nihil " habuerunt in eisdem [*sic*], quam " quidem verificationem prædicta " Constancia non admittit, unde " petunt judicium," &c.

[6] The words between brackets are omitted from 25,184.

[7] 25,184, Sa.

[8] 25,184, qe ne.

[9] jugement is omitted from Harl. According to the record "Con- " stancia dic quod ex quo præ-

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A.D. 1343. matter see here that the non-seisin of the parties will not make an issue, but the issue will be on the seisin of a third person: for if one of the parties, to wit, he who made the acknowledgment, was seised the whole time, so that he who rendered had nothing in the tenements, still the fine was good and executory; and I cannot have the averment in general terms that one of the parties was seised without determining with certainty which; and I cannot aver the seisin of him who rendered because that would be false; and if I were to say that he who acknowledged was seised the whole time, then I should avoid the fine by my own acknowledgment, though the fact, if it were so alleged against me, would not prejudice me; therefore it must be that the issue must be made on the seisin of the third person, which is the reason for the avoidance.—*Thorpe.* At common law the averment which we give would be good in avoidance of the fine, and we are a stranger who are not restrained; and whereas he says that if any one of the parties was seised the fine will be good, therefore, on the other hand, if no one of the parties was seised the fine is void; and that we have offered to aver, and that will be held by the Court as not denied, since the averment is refused. And I say that if this fine was levied as *Pulteney* says, to wit, where the conusor who received back by render was seised the whole time, that ought to be

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Pur prover la matere veiez cy qe la noun seisine des parties ne fra pas issue, mes lissue serra sur la seisine la terce persone: car si un des parties, saver, cely qe fist la conissaunce, fut tut temps seisi, issi qe cely qe rendist rien y avoit, unqore fut la fyn bone et executori; et jeo ne[1] puisse generalment aver averement qe asqun des parties fut seisi, saunz determiner en certein qi; et jeo ne puisse averer la seisine cely qe rendist, qar ceo serreit faux; et si jeo deisse qe cely qe conust[2] fut tut temps seisi, donqes voidra jeo la fyn de ma conissaunce, quele chose, mesqe ceo fust issi allegge countre moy, ne moy grevereit pas; donqes covient ceo qe issue se face[3] sur la seisine la terce persone, qest cause de la voidaunce.—*Thorpe.* A la comune ley laverement qe nous donoms serreit bon en voidaunce de la fyn, et nous sumes estraunge qe ne[4] sumes restreint[5]; et la ou il dit qe si asqun des parties fut seisi la fyn serra bone, *ergo*, arrere-mein si nulle des parties fut seisi la fyn est[6] voide; et ceo avoms nous[7] tendu daverer, quele chose serra tenu com nient dedit de Court,[8] desicome laverement[9] est refuse. Et jeo dis qe si cele[10] fyn se leva come *Pult.* parle, saver, ou le conissour et qe resceit par le rendre est tut temps seisi, ceo dust A.D. 1343.

" dicti Johannes et alii superius " prætendunt verificare quod die " levationis finis prædicti præfatus " Willelmus fuit tenens de prædicta " tertia parte, &c., quæ quidem " verificatio est ad excludendum " ipsam de executione finis prædicti, " et contra quod ipsa parata est " verificare quod die levationis " prædicti finis idem Willelmus " nihil habuit in eadem tertia " parte, &c., quam verificationem " ipsi omnino recusant, unde petit " judicium et executionem," &c.

[1] ne is omitted from 25,184.

[2] Harl., a qi le rendre se fra, instead of qe conust.

[3] Harl., fra.

[4] 25,184, nous.

[5] 25,184, destreint.

[6] Harl., serreit.

[7] nous is omitted from Harl.

[8] The words de Court are omitted from Harl.

[9] laverement is omitted from 25,184.

[10] Harl., tel.

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A.D. 1343. pleaded, and on his seisin a good issue would be made: for even though he to whom the acknowledgment is made be not seised in fact, he is seised in law by the words of the acknowledgment, so that he can render, and the render is executory. And for the same reason that on such matter the fine would be good and executory the party would, in maintenance of the fine, have issue on the seisin; but, when no one of the parties is seised, it is impossible that the fine should be good against a person who is a stranger; but as against a privy, who is restrained from denying a matter supposed by the fine, it is otherwise.—SHARSHULLE. I understand the Statute to mean (and so I have heard the sages of the law say) that neither parties nor heirs of parties shall have any averment contrary to the fine in order to avoid it, nor a stranger any more, except on special matter: for whosoever is found tenant after the fine is understood to be tenant of the estate of one of the parties to the fine, and to him an averment in avoidance of the fine is no more rightly given than to the party himself; therefore the special matter, which would give him the averment, would be on the ground that himself, or some other person, whose estate he has, was seised; therefore that affirmative, that is to say the seisin of another person, would be a more natural issue than the negative on the non-seisin of the parties.—*Grene, ad idem,* said, as above in the plea, that, even though no one of the parties was seised, the fine is good against any other person but him who was seised at the time, or any who claimed the estate of him who was seised; and although it is said that at common law such averments were given before this time, still it is said that the practice in law was that no averment should be taken in avoidance of a fine (and it is supposed by the Statute *De finibus* that

The Statute *De finibus* is well explained by SHARSHULLE, where he says, in fact, that a more natural issue will be given by matter which sounds in the affirmative than on negative words.

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estre plede, et sur sa seisine ceo freit bone issue : A.D. 1343.
qar tut ne soit pas cely a qi la conissaunce est fait seisi en fait, en ley il est seisi par la parole de conissaunce, si qil put rendre, et le rendre executori. Et par mesme la resoun com sur tiele matere la fyn serreit bone et executori par mesme la resoun partie avereit, en meintenaunce de la fyn, issue sur la seisine ; mes quant nulle des parties est seisi impossible est qe la fyn serreit bone vers estraunge persone ; mes vers prive qest restreint a dedire chose suppose par la fyn il est autre.—SCHAR. Jeo entenk lestatut, et come jay oy les sages dire, qe les parties ne heirs des parties naverount nul averement en contrarie de la fyn pur la voider, ne estraunge nient le plus, sil ne fut sur especiale matere : qar qi qest trove tenaunt apres la fyn est entendu tenant[1] del estat asqune des parties a la fyn, a qi par resoun averement pur[2] voider la fyn nest plus done qe a la partie mesme ; donqes la matere especial qe luy durreit laverement serreit pur taunt qe luy[3] mesme, ou asqun autre, qi estat il ad, fut seisi ; donqes cel affirmatif, saver, dautri seisine, serreit plus naturel issue qe la negatif sour la noun seisine des parties.—*Grene, ad idem, dixit, ut supra in placito,* qe tut ne fut nulle des parties seisi qe la fyn est bone vers chesqun autre qe cely qe adonqes fut seisi, ou asqun autre qe cleime lestat cely qe fut seisi ; et coment qe homme parle qe a la comune ley tieux averements furent dones devant cel temps, unqore dit[5] homme qe la ley fut use qe nul averement fut pris en voidaunce de fyn, et cest suppose par statut *de finibus* qe tieux averements furent

Statutum bene exponitur De Finibus per dictum SHARSHULLE, *ubi in facto dicit* qe homme donera plus naturel issue par le matere qe soune en laffirmatif qe sour la parole negatif.[4]

[1] tenant is omitted from Harl.
[2] Harl., par.
Harl., qil, instead of qe luy.
[4] This marginal note is from Harl. alone.
[5] 25,184, deit.

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A.D. 1343. such averments had been admitted contrary to the law hitherto in use, &c.), and no more shall it yet be taken without cause, and upon the cause there is a good traverse.—SHARSHULLE and STONORE. We have indeed heard it stated that it is as you say.—*Thorpe.* By the manner of our plea it must be held as not denied that no one of the parties was seised.—HILLARY. No, not before the Court adjudges that your averment is admissible.—SHARSHULLE. You have on both sides tendered an averment, and each of you refuses the averment of the other; therefore it is for us to decide which of your averments is admissible, and to hold, as against him who has refused an averment which is admissible by law, that which has been tendered and refused as not denied.—*Grene.* We make protestation that we do not admit that which he offered to aver, to wit, that no one of the parties was seised, because the issue that one of the parties was seised would not constitute a good issue, without determining with certainty which of them; and I could not aver that he who made the acknowledgment was seised the whole time because then by my own acknowledgment the fine would not be executory, and nevertheless, on such matter, although it should be alleged against me, the fine would be good; nor could I have averment on the possession of him who rendered because possibly he never had anything; therefore the issue must be had on the possession of the third person in whom possession is attached in avoidance of the fine, so that this averment is more in accordance with law than one on the possession of one of the parties, which could not make an issue nor avoid the fine.—*R. Thorpe.* If he who made the acknowledgment was seised the whole time, that could well be pleaded in law, as above.—*W. Thorpe, ad idem.* Privies are restrained from any averment (such as saying that he who made the acknowledgment was seised the whole time) in avoidance of fines, and yet issue in tail will

Note here that a privy to a fine shall be restrained from

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resceu *contra legem hactenus usitatam*, &c., ne[1] nient plus serra unqore sanz cause, et sur la cause est bon travers.—Schar. et Ston. Nous avoms bien oy[2] dire qil est com vous parletz.—*Thorpe*. Par manere de nostre plee covient tener nient dedit qe nulle des parties fut seisi.—Hill. Nanyl,[3] noun pas devant qe Court agarde qe vostre averement soit acceptable.—Schar. Vous avez[4] dune part et dautre tendu averement, et chesqun de vous refuse autri averement; donqes est ceo a nous dajugger qi de vos averements soit acceptable, et cely qad refuse laverement resceivable par la ley tener a nient dedit sur luy chose tendu et refuse.—*Grene*. Nous fesom protestacion qe nous ne conissoms pas ceo qil tendist daverer, saver, qe nulle des parties fut seisi, qar cel issue qe asqune des parties fut seisi ne freit pas issu sanz determiner en certein qi; et jeo ne purroy averer qe cely qe fist la conissaunce fut seisi tut temps, qar donqes de ma conissaunce la fyn ne serra pas executori, et nepurquant sur tiel matere, mesqe ceo fut allegge countre moy, la fyn serreit bone, ne sur la possession cely qe rendi, qar par cas il navoit unqes rien; donqes coviendreit il aver lissue sur la possession la terce persone, en qi la possessioun en voidaunce de la fyn est attache, issint qe cel averement est plus acordaunt a la ley qe sur la possessioun un des parties qe ne purreit pas faire issue ne voider la fyn.—*R. Thorpe*. Si cely qe fist la conissaunce fut tut temps seisi, ceo purreit[5] bien estre plede en ley, *ut supra*.—[*W.*] *Thorpe*, *ad idem*. Prives sont restreintz dasqun averement, com a dire qe cely qe fist la conissaunce fut tut temps seisi, en voidaunce des fyns, et unqore issue

A.D. 1343.

Nota hic qe prive a un fyn serra restreint a

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[1] 25,184, et.

[2] Harl., oy bien, instead of bien oy.

[3] Harl., Nanille.

[4] Harl., avietz.

[5] 25,184, ne purreit.

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A.D. 1343. have an averment on the continuance.—Sharshulle. avoiding it inasmuch as himself and all, &c.; and yet issue in tail shall avoid execution by continuity of estate. Yes, where there is not an acknowledgment of right but a render by his ancestor, there he can by continuance bar the person who sues to have execution, but not otherwise.—*Thorpe*. Both in one case and in the other he shall have the averment, and also, even though the fine be levied by my ancestor on render and acknowledgment of right, I who am heir shall say that I was seised, *absque hoc* that any one of the parties had any thing; *a multo fortiori* a stranger who is not restrained by Statute shall have an averment on the non-seisin of the parties.—*Grene*. It is true that the heir will have such a plea, but the issue in avoidance of the fine will be made on his own possession, and not on that of the parties. So in the case before us.—Kelshulle. When the avoidance of a judgment is concerned will not a stranger have on a *Scire facias* an averment to the effect that he who was supposed tenant by the original Writ never had anything, in order to avoid the judgment? as meaning to say that he would. And just as well here.—*Pole*. I do not think that he would in that case have such an averment without saying that another was seised, but nevertheless issue will not be made on the seisin of a stranger; nor will it be here.—Stonore awarded execution by reason of the refusing of the averment.

Judgment.

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en taille avera averement sur la continuaunce.—Schar. Oyl, la ou il nad pas conissaunce de dreit, mes rendre de son auncestre, la put il par la continuance forclore cely qe suyt daver[2] dexecucion, et autrement nient.—*Thorpe.* En lun et lautre cas il avera laverement, et auxi, tut soit la fyn leve[3] par moun auncestre sur rendre et conissaunce de dreit, jeo qe su heir dirray qe jeo fu[4] seisi sanz ceo qe nulle des parties rien y avoit; a plus fort estraunge qe nest pas restreint[5] par statut avera averement sur la noun seisine des parties.—*Grene.* Il est verite qe heir avera tiel plee, mes lissu en voidaunce de la fyn se fra sur sa possession demene, et noun pas des parties, &c. *Sic in proposito.*—Kels. En voidaunce dun jugement navera estraunge a un *Scire facias* averement a dire qe cely qe fut suppose tenant al original navoit unqes rien, pur voider le jugement? *quasi diceret sic.* Et auxi bien icy.—*Pole.* Jeo crey pas qil y avereit tiel averement sanz dire qe autre fut seisi, mes nepurquant issue ne se fra pas sur la seisine lestraunge; *neque*[6] *hic.*—Ston. agarda execucion pur laverement refuse.[8]

A.D. 1343. voider en tant qil mesme et touz, &c.; et auxi issu en la taille voidera execucion par continuete destat, &c.[1]

Judicium.[7]

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[1] This marginal note is from 25 184 alone.

[2] daver is omitted from 25,184.

[3] leve is omitted from Harl.

[4] 25,184, su.

[5] 25,184, destreint.

[6] Harl., mesqe.

[7] This marginal note, which is in 25,184 and C., is omitted from Harl.

[8] According to the roll the judgment was as follows:—"Et, quia "videtur Curiæ hic quod verifi- "catio quam prædicti Johannes et "alii superius prætendunt, vide- "licet quod prædictus Willelmus "le Vavasour, die levationis finis "prædicti, fuit tenens de prædicta "tertia parte manerii prædicti, si "post prætensionem sic factam "verificatio illa manuteneretur, "faceret finem in placito isto, cujus "contrarium prædicta Constancia "offert se verificare, &c., et quam "verificationem sic superius præ- "tensam iidem Johannes et alii "omnino recusant, consideratum "est quod eadem Constancia "habeat inde executionem, et "iidem Johannes et alii in miseri- "cordia."

Afterwards "Dominus Rex man- "davit per breve suum J. de "Stonore Justiciario quod mitteret "recordum et processum prædicta "in Cancellariam. Et mittuntur "per Adam de Lymberghe," &c.

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A.D. 1343. *Scire facias.*

§ Constance late wife of Henry Vavasour sued a *Scire facias* to have execution upon a fine which was levied on a render of a third part of the manor of P.,[1] and caused three to be warned as tenants of three parts of that third part, and also caused Thomas Wake to be warned as tenant of the fourth part of the same third part.—*R. Thorpe.* Sir, we demand judgment of this writ, for whereas she caused Thomas Wake to be warned as tenant of the fourth part, the words *cum pertinentiis* are required in that clause, without which words she does not affirm the tenancy of the fourth part to be entirely in his person; wherefore judgment of the writ.—*Notton.*[2] In the commencement of the writ it is supposed that they shall be warned to show whether they can say anything why I shall not have execution of a third part of the manor of P.[1] with the appurtenances; wherefore, since these words *cum pertinentiis* are inserted in the commencement of the writ, there is no need to insert them afterwards, as in the case of a Mort d'Ancestor it shall be put in the commencement of my writ that it shall be made known by the Assise whether my ancestor died seised of so much land with the appurtenances, but afterwards, when my writ has the words *Summoneas* such an one who *tantum tenet*, those words *cum pertinentiis* shall never be inserted in that clause, and therefore in like manner it seems shall the course be in this writ of *Scire facias.*—And at last the writ was adjudged good.—*R. Thorpe.* Again, judgment of the writ, for you see plainly how this writ has issued on a suggestion of a party, and we tell you that, when this writ was granted, she made her suggestion that the three who are now warned were tenants of three parts of that part together with John Dreue, and that

[1] For the name and the facts *see* p. 171, note 1.

[2] The name is here given as *Momb.* in the old editions, but elsewhere throughout both reports *Moubray* speaks as counsel for the defendants.

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§ Custauns[1] qe fut la femme Henry Vavasour suist un *Scire facias* daver execucion hors dun fyn qe se leva sur rendre de la tierce partie del maner de P., et fist garnir iij come tenaunts de les iij parties de cel tierce partie, et auxi il fist garnir T. Wake come tenaunt de la quart partie[2] de mesme cel tierce partie.—*R. Thorpe.* Sire, nous demandoms jugement de cest briefe, car, la ou il fist garnir T. Wake come tenaunt de la quarte partie, il faut en cel clause cest parole *cum pertinentiis*, sanz quele parole[3] ele nafferme pas la tenaunce entierment de la quarte partie en sa persone; par quei jugement de briefe.—*Nottone.* En le comencement de briefe est suppose qils serront garnis sils sachent riens dire pur quei jeo navera pas execucion de la tierce partie del maner de P. ove les appurtenaunces; par quei, del houre qe ceste parole *cum pertinentiis* est mise en le comencement du briefe, il ne bosoigne pas de mettre apres, come en cas dun Mort dauncestre en le comencement de mon briefe serra mis qil soit reconu par Assise si mon auncestre murrust seisi de taunt de terre ove les appurtenaunces, mes apres quant mon briefe voet *Summoneas* tiel qe *tantum tenet*, jammes ne serra cel parole *cum pertinentiis* mis en cel clause, par quei en tiele manere il semble qil serra en ceo briefe de *Scire facias*.—Et a darreyn le briefe fur agarde bon.—*R. Thorpe.* Uncore jugement de briefe, car vous veiez bien coment cest briefe issu dun suggestion de partie, et vous dioms quant cest briefe fut graunte ele fist sa suggestion qe les iij qe ore sont garnis, ensemble ove Johan Dreue furent tenaunts de les iij parties de cel partie, et ceo

A.D. 1343. *Scire facias.*

[1] This report of the case is printed by itself in the old editions as No. 115. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*. The record is among the *Placita de Banco*, Mich., 17 Edw. III., R° 268. *See* p. 171, *et seq.*

[2] partie is omitted from the edition of 1679.

[3] Rastell, parol quel, instead of quele parole.

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A.D. 1343. you will find of record, because her suggestion was entered, and so this writ is not in accordance with her suggestion; wherefore judgment of the writ.—SHARSHULLE. If her suggestion is false, and her writ good, we will not abate the writ, even though it be not in accordance with the suggestion. And, therefore, answer. —*R. Thorpe.* Sir, we tell you that one G. was seised of the whole of a third part of the manor of P., of which execution is now sued, and gave the same third part to the three who are now warned as tenants of the three parts, &c., and to one John Dreue, to hold in common, &c., with the three others, &c., which John enfeoffed one Thomas Wake of his portion to hold in common with the three; so the three who are now warned say that they hold in common with Thomas Wake, who is not named; wherefore they demand judgment of the writ. And, as to Thomas Wake, he says that he holds the fourth part, &c., in common with the three in the same manner. And the reason is, as above.—*Notton.* Sir, even though their estate were such as they say, still we understand that the law would adjudge their estate to be several, since it is by several title; wherefore, since they do not say anything else against us, we demand judgment, and pray execution.—*R. Thorpe.* You see plainly how they do not deny that the three, together with John Dreue, held in common without making any severance, nor that John enfeoffed Thomas, to hold in common, as above, nor do they deny that we hold in common this day, without any one knowing his particular portion; wherefore our tenancy cannot by any law be adjudged to be other than in common; judgment.—*Grene.* It has been seen that, in a case such as there is here, several writs have been maintained against the tenants, although they took the profits in common, because their estate was by severalty; and I have seen before yourselves that, because a *Præcipe quod reddat* was brought, in respect

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vous troverez de recorde, car sa suggestion fut entre, issint cest briefe desacordaunt a sa suggestion; par quei jugement de briefe.—SCHAR. Si sa suggestion est faux, et son briefe bon, nous ne voloms pas abatre le briefe, mesqe il soit desacordaunt a la suggestion. Et, pur ceo, responez.—*R. Thorpe.* Sire, nous vous dioms qe un G. fut seisi de la iij partie del maner de P. entierment, de quei execucion est ore suy, et mesme la iij partie dona a les iij qe ore sont garnis come tenaunts de les iij parties, &c., et a un Johan Dreue, a tener en comune, *et cetera*, ove les autres iij, &c., le quel Johan de sa porcion enfeffa un Thomas Wake a tener en comune ove les iij; issint diount les iij qe ore sont garnis qils tiegnent en comune ove Thomas Wake, le quel nest par nome; par quei ils demandent jugement de briefe. Et, quant a Thomas Wake, il dit qil tient la quart partie, &c., en comune ove les iij en mesme la manere. *Et causa ut supra.—Nottone.* Sire, mesqe lour estat fut tiel come ils diount, uncore nous entendoms qe la ley ajuggereit lour estat several, del houre qe ceo est par several title; par quei, pur ceo qe autre chose ne diount devers nous, nous demandoms jugement, et prioms execucion.—*R. Thorpe.* Vous veiez bien coment ils ne dediount pas qe les iij, ensemble ove Johan Dreue, ne tiendrent en comune sanz severaunce faire, ne qe Johan enfeffa Thomas, a tener en comune, *ut supra*, ne ils ne dediount pas qe nous tenoms en comune huy ceo jour, sanz ceo qe nul sciet sa partie; par quei nostre tenance par nul ley ne poet estre ajuge autre qe en comune; jugement.—*Grene.* Homme ad vew qe en tiel cas come cy est severals briefes ount estes mayntenu devers les tenaunts, coment qils pristrent les profits en comune, pur ceo qe lour estat fut par severalte; et jeo veie devant vous mesmes qe, pur ceo qe un *Præcipe quod reddat* fut porte dun molyn devers A.D. 1343

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A.D. 1343 of a mill, against such tenants in common, where their estate was by several titles, the writ was abated by judgment, notwithstanding that no one knew which was his several portion; wherefore it seems that this writ which is framed against them in severalty is good.—SHARSHULLE. The cases are not similar where a writ is brought in respect of a mill, and where a writ is brought in respect of land, because, when two hold a mill, they cannot in any manner sever it, except by the taking of profits, and therefore, when their estate is by several titles, the law must adjudge it to be in common; so here.—*Pole, ad idem.* As to the point on which they said it has been seen that several writs have been maintained against those who were tenants by several titles, although they took the profits in common, that was in a case in which one parcener enfeoffed a stranger to hold in common with her co-parcener, in which case several *Præcipes* will be maintained against them, because parceners have a several right; but it has not been seen, that, where two purchased jointly, and the fee and the right were to them in common without severance, although one of them enfeoffed a stranger to hold in common with his co-feoffee, and they took the profits in common, several writs have been maintained against them.—*Grene.* If their tenancy is to be supposed in common by this writ, then Thomas must have the three parts if he survives the three who are named in this writ, and they on the other hand his portion [if they survive him]; and that cannot be.—And HILLARY agreed to this.—*Pole.* I think he will have the whole by surviver.—*Grene.* I will prove to you that it cannot be so: for, let us suppose that John Dreue had given this fourth part to Thomas in fee tail, then, if Thomas would have the three parts by surviver, he must hold them in such a manner as he holds the fourth part, and for the

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tielx tenants en comune, ou lour estat fut par severals titles, le briefe fut abatu par agarde, *non obstante* qe nul sciet sa several porcion; par quei il semble qe cest briefe qe est conceu vers eux en severalte est bon.—Schar. Ils ne sount pas semblables la ou le briefe est porte de molyn et la ou briefe est porte de[1] terre, car quant ij teignent un molyn ils ne poont en nul manere severer, forsqe par la prise des profits, par quei, quant lour estat est par severals titles, il covient qe la ley ajugge en comune; issint icy.—*Pole, ad idem.* De ceo sur quei ils ount dit qe homme ad viewe severals brefs mayntenus devers céux qe furent tenaunts par severals titles, coment qils pristrent les profits en comune, ceo fut en cas qe un parcener enfeffa un estraunge a tener en comune ove son parcener, en quel cas severals *Præcipe* serrount mayntenus devers eux, pur ceo qe parceners ount several dreit; mes homme nad pas view qe la ou ij purchacent jointement, et le fee et le dreit est a eux en comune sanz severaunce, mesqe lun enfeffa un estraunge a tener en comune ove son feffe, queux preignent les profits en comune, qe severals briefes ount este mayntenus vers eux.—*Grene.* Si lour tenance serra suppose en comune par cest briefe, donqes coviendra qe Thomas ust les iij parties sil survesquist les iij queux sount nomes en cest briefe, et eux areremayn de sa porcion; et ceo ne puit estre.—Et a ceo acorda Hill. —*Pole.*[2] Jeo crey qil avera lentier par le surviver.—*Grene.* Qe ceo ne puit estre jeo vous provera: car mettoms qe Johan Dreue ust done cel quart partie a Thomas en fee taille, donqes, si Thomas par le surviver avereit les iij parties, il les coviendreit tener en autiel nature come il tient la quarte, par resoun A.D. 1343.

[1] The words molyn et la ou briefe est porte de are omitted from the edition of 1679.

[2] *Pole* is omitted from Rastell.

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A.D. 1343. reason for which he holds it, and that cannot be; and so, on the other hand, if the three are to have this fourth part by surviver, they must hold it in such a manner as Thomas holds it, and that they cannot do, because the gift does not extend to them. And, besides, to avoid mischief, their tenancy must be adjudged several, for suppose John Dreue leased the tenements to Thomas for term of his life, and a *Præcipe quod reddat* were brought against Thomas, and against the other three in common, Thomas would be ousted from his warranty as against his feoffor, because he would have to agree, in his answer, with the other three, who had not any ground of warranty against the feoffor; and in case Thomas made default, John Dreue could not be admitted by reason of his default, and therefore there is greater reason to maintain several writs against them, and so save the warranty to the tenant, and also the reversion in case any be reserved, than to give a writ against them in common, by which the warranty would be taken away, and another would suffer disherison in respect of the reversion.—And at last the writ was adjudged good.—*R. Thorpe.* Then we tell you that, whereas she sues execution upon a fine levied on render between certain persons, no one of them was party to the fine at the time at which the fine was levied, nor had anything in the same tenements, but one William Vavasour was seised at that same time; and we demand judgment whether she ought to have execution of that fine.—*Moubray.* Sir, you see plainly how they do not show that they have the estate of this William whom they allege to have been seised at the time of the levying of the fine; wherefore we do not understand that we have any need to answer to this plea coming from his mouth.—*R. Thorpe.* Since you do not deny William's seisin at the time, &c., this fine is on that ground, not executory, wherefore we demand judgment, &c. And afterwards he waived that exception, and said

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de quel il le tient, et ceo ne puit estre; et auxi areremayn, si les trois par le surviver averont cel quart, il les coviendreit la tener en tiele nature come Thomas la tient, et ceo ne poient ils faire, car le doun ne sestend pas a eux. Et, ove ceo, pur salver le meschief, il covient qe lour tenaunce soit ajuge several, car jeo pose qe Johan Dreue lessa les tenements a Thomas a terme de sa vie, et un *Præcipe quod reddat* fut porte vers Thomas et vers les autres iij en comune, Thomas serreit ouste de sa garrauntie vers son feffour, pur ceo qil luy coviendreit acorder ove les autres iij en respouns, les queux navoient pas cause de garrauntie vers son feffour; et en ceo cas qe Thomas fist defaut, Johan Dreue ne puit pas estre resceu par sa defaut, donqes greindre resoun est de mayntener severals briefes vers eux, et salver la garrauntie al tenaunt, et auxi la reversion en cas qe nul soit reserve, qe de doner un briefe devers eux en comune, par quel la garrauntie serreit tollet, et autre desherite de la reversion.—Et a darreyn le briefe fut agarde bon.—*R. Thorpe.* Donqes vous dioms qe la ou ele sue execucion hors dune fyn leve sur rendre entre certeines persones qe nul de eux qe fut partie a la fyn al temps de la fyn leve, navoit riens en mesmes les tenements, einz un W. Vavasour a mesme le temps fut seisi; et demandoms jugement si hors de cele fyn execucion deit ele aver.—*Moubray.* Sire, vous veiez bien coment ils ne moustrent pas qils ont estat cesty William qe ils diount estre seisi al temps de la fyn leve; pur quei nentendoms pas qe a cel plee de sa bouche[1] eioms mestre a respoundre.—*R. Thorpe.* Del houre qe vous ne dedites pas la seisine William al temps, &c., par taunt cel fyn nest pas executorie, pur quei nous demandoms jugement, &c. Et puis il weyva cest chalange, et dit A.D. 1343.

[1] Old editions, son voucher, instead of sa bouche.

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A.D. 1343. that this William, whom they alleged to have been seised at the time at which the fine was levied, had not anything: ready, &c.—*R. Thorpe.* That is not an answer: for, even though it were the fact that this William had not anything, still that does not prove that any one who was party to the fine was seised; wherefore you must maintain the seisin of those who were parties to the fine if you wish to prove it to be executory, and that you have not done; wherefore, &c.—HILLARY. That which you pleaded at first, that no one of those who were parties to the fine had anything, would not have been a plea if you had not attached the seisin to some person who was not a party to the fine; therefore it seems that the seisin which you attached to the person of William was the effect of your plea, and to that seisin he ought to have a traverse.—*Stouford.* If it be the fact that no one of those who were parties to the fine was seised, &c., even though it were the fact that this William had nothing, still the fine is not executory, because a fine which was not good at the time at which it was levied cannot be executory; wherefore, if she wishes to have execution, she must maintain the seisin of those who were parties to the fine.—*Grene.* Sir, a fine which is not good at the time at which it is levied may be executory by reason of something which has occurred since, as, for instance, in case I were to acknowledge certain tenements to be your right as those which you have of my gift, for which acknowledgment you render back to me the land, &c., and the truth were that neither you nor I have anything in the same land, if you afterwards purchase the same land, the fine is executory as against you, and yet it was not good when it was levied. And, besides, suppose I were willing to say that he who rendered, &c., by the fine upon which we sue execution, was ancestor of this same William whom you allege to have been seised at the time at which the fine was

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qe cesty William qe ils disoient qe fut seisi al temps de la fyn leve navoit riens; prest, &c.—*R. Thorpe.* Ceo nest pas respouns: car, mesqe issint fut qe cesty William navoit riens, uncore ceo ne prove pas qe nul qe fut partie a la fyn fut seisi; par quei vous covient mayntener la seisine ceux qe furent parties a la fyn si vous le voillez prover estre executorie, et ceo ne fistes pas; par quei, &c. —Hill. Ceo qe vous pledastes primes qe nul de ceux qe furent parties a la fyn navoient riens ceo ne ust pas este plee si vous nussez attache la seisine en ascune persone qe ne fut pas partie a la fyn; donqes il semble qe la seisine quel vous attachastes en la persone William fut leffecte de vostre plee, a quel seisine il covient qil eit la traverse.—*Stouf.* Si issint soit qe nul de ceux qe furent parties a la fyn ne furent pas seisis, &c., mesqe issint fut qe celuy William navoit riens, uncore la fyn nest pas executorie, car fyn qe nest pas bone al temps qil fut leve ne puit pas estre executorie; par quei, si ele voet aver execucion, il luy covient mayntener la seisine ceux qe furent parties a la fyn. —*Grene.* Sire, fyn qe nest pas bone al temps qil est leve puit estre executorie par chose venu puis, come en cas qe jeo conusse certeins tenements estre vostre dreit come ceux qe vous avez de mon doun, pur quele conissaunce vous moy rendez areremayn la terre, &c., et la verite est qe vous ne jeo navoms rienz en mesme la terre, si vous apres purchacez mesme la terre, la fyn est executorie vers vous, et uncore ele ne fut pas bone quant ele fut leve. Et, ove ceo, jeo pose qe jeo voille dire qe cesty qe rendi, &c., par la fyn hors de quele nous suioms execucion, fut auncestre mesme cesty William qe vous dites estre seisi al temps de la fyn leve, jeo vous A.D. 1343.

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A.D. 1343. levied, I should thereby oust you from this plea, because it would not lie in the mouth of this William, &c., to avoid the fine to which his ancestor was party for such a cause, and consequently not in your mouth who claim estate through him. Therefore, since I shall have such a plea, which lies in law, to oust you from the cause for which you seek to avoid the fine, it seems that by the same law we shall have a plea to defeat the same cause by a plea which lies in fact.—*Pulteney.* Sir, the law is such that when both parties to a fine are seised at the time at which the fine is levied, in such a case the fine is good and executory; and, Sir, suppose I were willing to say that the person who rendered was seised at the time, or that the person to whom the render was made was seised, &c., and he would traverse the seisin of one of them in whose person I affirmed the tenancy, that would not be an issue in this plea: for even though one who was party to the fine was not seised, yet if the other was seised it is quite sufficient; therefore, since the seisin of one of those who were parties to the fine when traversed cannot make an issue in this plea, we must have an issue on the collateral matter which you have added, on the seisin of William the maintenance of whose seisin you waive; therefore judgment.—*R. Thorpe.* It is true that, when either the one or the other who was party to the fine was seised at the time at which the fine was levied, the fine is executory; and that is because, even though the person who rendered by the fine had nothing, still when the other previously acknowledged in the same fine that the tenements included in the writ were his right as those which he had of the conusor's gift, &c., although he then had nothing, the freehold is by that acknowledgment immediately vested in his person, so that if the tenant would avoid the fine for the reason that the person who rendered had nothing, I should plead

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oustera par taunt de cel plee, car il ne girreit pas A.D. 1343.
en la bouche cesty William, &c., a voider la fyn a quele soun auncestre fut partie par tiel cause, et *per consequens* nemye en vostre bouche qe clamez estat par my luy. Donqes, quant jeo avera tiel plee, qe[1] chiet en ley, de vous ouster de la cause par quel vous estes davoider la fyn, il semble qe par mesme la ley nous averoms plee a defere mesme la cause par plee qe chiet en fait.—*Pult.* Sire, la ley est tiel qe quant lun et lautre qe fut partie a la fyn soit seisi al temps qe la fyn soit leve qe en tiel cas la fyn est bone et executorie; et, Sire, jeo pose qe jeo voille dire qe cesty qe rendi fut seisi al temps, ou qe cesty a qi le rendre fut fait fut seisi, &c., et il voleit traverser la seisine lun de eux en qi persone jeo affermasse la tenaunce, ceo ne serreit pas issu en ceo plee: car mesqe lun qe fut partie al fyn ne fut pas seisi, si lautre fut seisi assez suffist; donqes, quant la seisine traverse dascun de eux qe fut partie a la fyn ne puit pas faire issue de cest plee, il covient qe nous eioms issu sur la matere quel vous avez ajoint[2] de cost,[3] sur la seisine William qi seisine vous weivez de mayntener; pur quei jugement.—*R. Thorpe.* Il est verite qe quant lun ou lautre qe fuit partie al fyn fut seisi a temps de la fyn leve qe la fyn est executorie; et ceo est pur ceo qe, mesqe cesty qe rendi par la fyn nad riens, uncore quant lautre primes en mesme la fyn conust les tenements contenus en le briefe estre son dreit come ceux qil ad de son doun, &c., mesqe il navoit donqes riens, le franktenement mayntenant par cel conissaunce est vestu en sa persone, issint qe si le tenaunt voleit voider la fyn par cause qe celuy qe rendi navoit riens, jeo pledra

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[1] qe is omitted from the edition of 1679.

[2] Earliest editions, aionxt.

[3] Editions after Rastell's, cest.

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A.D. 1343. with him in law that the freehold had vested in his person because the plaintiff acknowledged the tenements, &c., to be his right as those which he had of the conusor's gift, and so for such a cause I should maintain the fine, as for instance, suppose a writ to be brought against a tenant, and he acknowledges himself to be my villein, and that he holds the same tenements of me in villenage, by that acknowledgment the freehold is immediately vested in my person, if I will accept it, without any other entry; wherefore in like manner shall it be in the case of a fine.—SHARSHULLE. It is clear law that neither those who were parties to the fine nor their heirs will avoid the fine by such an averment as you have now tendered, because the words of the Statute[1] *De finibus* are *quod nec partes nec eorum heredes ad hujusmodi exceptiones pro finibus evacuandis nullo modo admittantur*; and thereby all averments in avoidance of fines are taken away from those who were parties to the fines and from their heirs. And it is clear law that no one shall avoid a fine by saying that neither party to the fine was seised at the time, &c., without saying more, for the law always supposes that the person against whom the *Scire facias* is sued is heir of the person who was party to the fine, or else that he has an estate through that person, and for those persons such an averment is not given; wherefore he who would avoid a fine by such an averment must show that he has the estate of one who was not party to the fine, and who was seised at the same time at which, &c., and there lies the strength of his plea, and to that the other party must have a traverse.—*Grene.* Sir, still those who are heirs of parties will have an averment to avoid fines in certain cases, for, if a fine levied by my ancestor be pleaded against me in bar, I shall well have the averment that at the time at which the fine was levied

[1] 27 Edw. I., St. I., c. 1 (*De finibus levatis*).

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ove luy en ley qe le franktenement soy vesti en sa persone par taunt qe le pleintif conust les tenements, &c., estre son dreit come ceux qil avoit de son doun, et issint par tiel cause jeo mayntendra la fyn, come en cas jeo pose qe briefe soit porte vers un tenant, et il soy conust estre mon vilein, et qil tient mesmes les tenements de moy en villenage, mayntenant par cele conissaunce le franktenement est vestu en ma persone, si jeo le voille accepter, saunz autre entre; par quei en tiele manere serra il de fyn.—Schar. Il est clere ley qe ceux qe furent parties a la fyn ne lour heirs ne voidrount[1] pas la fyn par tiel averement come vous avez ore tendu, car lestatut *De finibus* voet *quod nec partes nec eorum heredes ad hujusmodi exceptiones pro finibus evacuandis nullo modo admittantur*; et par taunt touz averements de voider fyns sount tolles de eux qe furent parties a les fyns ou de lour heirs. Et il est clere ley qe nul homme ne voidra pas fyn et dire qe ne lun ne lautre qe fut partie a la fyn, ne fut pas seisi al temps, &c., sanz dire plus, car la ley suppose touz dis qe celuy vers qi le *Scire facias* est sue est heir a celuy qe fut partie a la fyn, ou autrement qil ad estat par luy, pur queux tiel averement nest pas done; pur quei celuy qe voet voider un fyn par tiel averement covient moustrer qil ad estat un qe ne fut partie a la fyn, et qe fut seisi a mesme le temps a quel, &c., qe est le force de son plee, il covient qe lautre partie eit traverse.—*Grene.* Sire, uncore ceux qe sont heirs des parties averount averement de voider fyns en cas, car, si fyn leve par mon auncestre soit plede vers moy en barre, javera bien laverement qe al temps de fyn leve qe lun ne A.D. 1343.

[1] Old editions, voidrent.

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A.D. 1343. neither of the parties to the fine had anything, but that I was myself seised at the same time; and if the other will maintain the fine, it is sufficient for him to aver that I had nothing, without maintaining the seisin of those who were parties to the fine; so here. —Stonore. It seems to us that the averment which she has tendered is admissible, and that averment he has refused; wherefore sue execution.

Cui in vita, where the tenant had not the advantage of pleading in abatement of this writ by reason of a recovery in an action tried, in respect of the same demand, by another. See the plea, and *Quære* the reason.

(35.) § *Moubray* showed how a *Cui in vita* was brought against his client, and process was continued until it was pleaded to the inquest, and the inquest was taken at *Nisi prius*, and passed for the demandant, and they have a day now; and, pending that *Cui in vita*, another has brought a Formedon against the same person against whom the *Cui in vita* was brought, and has recovered by action tried, and had execution before the inquest was taken, so that this last writ of *Cui in vita* is abated; judgment of the writ.—*Richemunde.* You have not a day, nor shall you be called; wherefore you shall not be heard to say anything.—Hillary. Did you not accept yourself to be tenant when the inquest passed subsequently?—*Moubray.* I alleged the fact then, at *Nisi prius*, when the Justices would not listen to me, nor enter my statement in their record; and, Sir, in this present Term you abated a writ by reason of a like exception.—Hillary. You say what is true, when the allegation was made in good time; but you have out-stayed your time for the exception; wherefore the Court adjudges that the demandant do recover against you, &c.—*Quære*, because previously in this Term a Formedon was abated on the ground that, while the writ was pending, another had recovered against the tenant on a verdict of an Assise. And it seems that the reason assigned by Hillary that the exception was not taken at *Nisi prius* is not good, because by law,

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lautre qe fut partie a la fyn navoit riens, mes jeo mesme fu seisi a mesme le temps; et si lautre voille mayntener la fyn il luy suffist daverer qe jeo navoy riens, sanz mayntener la seisine ceux qe furent parties a la fyn; issint icy.—Ston. Il semble a nous qe laverement qil ad tendu est resceivable, quel averement il ad refuse; par quei suez execucion. A.D. 1343.

(35.) [1] § *Moubray* moustra coment *Cui in vita* fut porte vers son client, et proces continue taunqe plede fut al enquest, et par *Nisi prius* lenquest pris, et passa[3] pur le demandant, et ount jour a ore; pendaunt quel *Cui in vita* un autre ad porte un Formedoun vers mesme celuy vers qi le *Cui in vita* fut porte, et ad recoveri par accion trie, et avoit execucion avant lenquest pris, issint ceo darrein bref de *Cui in vita* abatu; jugement de bref.—*Richem.* Vous navez pas jour, ne ne serrez demande; par quei vous ne[4] serrez escote a rien dire.—Hill. Navez accepte vous meismes come tenaunt quant lenquest passa de puisne temps?—*Moubray.* Jeo[5] alleggay adonqes al *Nisi prius*, qe les Justices ne moy voillent[6] escoter, ne entrer mon dit en son recorde; et, Sire, ore en ceo terme vous abatistes un bref par autiel chalange.—Hill. Vous dites verite, quant il fut allegge par temps; mes vous avez sursis vostre temps del chalange; par quei agarde la Court qe le demandant recovere vers vous, &c.—*Quære*, qar en ceo terme adevant un Formedoun fut abatu pur ceo qe, pendaunt le bref, un autre avoit recoveri vers le tenant sur verdit Dassise. Et il semble qe la resoun Hill., de ceo qe ceo ne fut pas chalange al *Nisi prius* nest pas bon, qar de ley, a ceo qe

Cui in vita, ou il navoit pas lavantage du pleder al abatement de cel bref par cause de son recoverir par accion trie de mesme la demande par un altre. *Vide placitum, et quære causam.*[2] [Fitz., *Briefe*, 352.]

[1] No. 34 of the old editions has been transferred to the end of No. 21, of which it is a continuation. This case is from Harl., 25,184, and C., until otherwise stated. In C. it is made a continuation of No. 34.

[2] The marginal note, except the words *Cui in vita*, is from 25,184 alone.

[3] 25,184, tailla.

[4] ne is omitted from Harl.

[5] Harl., Ne.

[6] 25,184, voleit.

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A.D. 1343. as it seems, the Justices of *Nisi prius* ought not to have listened to it.—*Quære.*—But SHARDELOWE took another reason for the judgment, in that the tenant who had previously lost was not put to any mischief because she could only lose once, and the other who had previously recovered could have an Assise. And if this be the reason, then the first judgment was bad.—Therefore *Quære.*

Formedon. § One John brought a writ of Formedon against one W., who came and traversed the gift; whereupon a day was given to take the inquest at *Nisi prius* before BASSET and his fellows, &c.; and on the day the inquest was taken and by it the gift was found. And thereupon they were adjourned into the Bench to hear their judgment.—*Moubray.* Sir, we say that one K. brought a writ of Entry *sur cui in vita* against us in respect of his mother's seisin, and demanded the same tenements, on which writ we traversed his action, and that was found by verdict of the inquest, upon which he recovered; so we have lost the freehold by action tried; judgment of the writ.—*Richemunde.* Sir, since he heretofore traversed our action, which has been now found by inquest, you have in this case power to render judgment without calling the parties, and therefore we do not understand that he can be admitted to this plea; wherefore judgment, and we pray seisin of the land.—HILLARY, *ad idem.* You ought to have taken exception before BASSET, when he was at *Nisi prius*, to that to which you now take exception; but, because you did not do so, you affirmed that you were tenant at that time; wherefore you shall not have the exception now, &c.—*Moubray.* We did take the exception then, and he said that he had no power except to take the inquest, and for that reason he

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semble, les Justices ne dust[1] pas aver escote.—*Quære.* —Mes SCHARD. prist autre cause del jugement, pur ceo qe le tenaunt qe avoit devant perdu ne fut pas a meschief pur ceo qele ne pout perdre forsqe une foith, et lautre qad recoveri adevant put aver Assise. Et si ceo soit cause, donqes fut le primer jugement malveis.—*Quære ergo.* A.D. 1343.

§ Un[2] Johan porta un briefe de Fourmedoun vers un W., qe vient, et traversa le doun; sur quei jour fut done de prendre lenquest par *Nisi prius* en pais devant BASSET et ses compaignouns, &c.; a quel jour lenquest fut pris, par quel trove fut le doun. Et sur ceo furent ajournes en Banke doier lour jugement.—*Moubray.* Sire, nous dioms qe un K. porta briefe Dentre *sur. cui in vita* vers nous de la seisine sa mere, et demanda mesmes les tenements, a quel bref nous traversames saccion, quel fut trove par verdit denquest, par quei il recoveri; issint avoms nous perdu le franktenement par accion trie; jugement de bref.—*Richem.* Sire, del houre qe il autrefoitz traversa nostre accion, quel est ore trove par enquest, en quel cas vous avez power de rendre jugement sanz demander les parties, et par tant nentendoms pas qe a cel plee put il avener; par quei jugement, et prioms seisine de terre.—HILL., *ad idem.* Ceo qe vous chalangez ore vous duissez aver chalange devant BASSET, quant il fut al *Nisi prius*; mes, pur ceo qe vous ne fistes pas, vous affermastes qe vous fuistes tenant a cel foitz; pur quei vous naverez pas a ore, &c.—*Moubray.* Nous le chalangeames adonqes, et il dit qil navoit power forsqe de prendre lenquest, et pur cel cause il Formedoun.

[1] Harl., duist. It would seem that the verb should have been in the plural, or the nominative case in the singular.

[2] This report of the case is printed by itself in the old editions as No. 118. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment.*

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A.D. 1343. would not enter our exception in the roll, and, therefore, it seems to us that we shall have it now.—SHARSHULLE. It is no mischief to you even though the demandant recover, because you cannot lose the land more than once, and that you suppose that you have done; and in case he who recovered against you should be ousted by this judgment, he will bring an Assise, and then will be tried the title to find which of them has the better right.—And therefore it was adjudged that the demandant should recover his seisin, &c.

Dower, where the demandant and her second husband lost the same land through a non-denial.

(36.) § Dower, of the endowment of Philip, the demandant's husband.—*Thorpe.* We tell you that we brought against William, her then husband, and her, a writ of Formedon, and demanded on a gift made to P.,[1] our father, &c.; to which writ they appeared, and pleaded as tenants, and we recovered through their non-denial; judgment, inasmuch as she answered as joint tenant with her husband to that writ, by which we recovered, &c., as above, whether she ought to be answered as to this writ of Dower.—*Gaynesford.* We tell you that P.,[1] to whom he supposes the gift to have been made was that same P. on whose endowment we demand, and whose seisin he has admitted by his plee; and we tell you, as our writ and action suppose, that this was after the marriage, and we demand nothing on the ground of our own seisin, but of our husband's estate, whose estate he does not

[1] As to the real names, &c., *see* p. 209, note 1.

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ne voleit pas entrer en le roulle nostre chalange, et pur ceo nous semble qe nous laveroms a ore.—Schar. Il est nul meschief a vous mesqe le demandant recovere, car vous ne poiez pas perdre la terre forsqe un foitz, et ceo supposez vous qe vous avez fait; et en cas qe celuy qe recoveri vers vous soit ouste par cest jugement, il portera Lassise, et donqes serra le title le quel de eux ad meilliour dreit.—Et pur ceo agarde fut qe le demandant recoverast sa seisine, &c. A.D. 1343.

(36.) [1] § Dowere del dowement P. baroun la demandante.—*Thorpe.* Nous vous[3] dioms qe nous portames vers W. son baroun adonqes, et luy,[4] bref de Fourme de doun, et demandames[5] dun doun fait a P., nostre pere, &c.; a quel bref ils apparurent, et plederent com tenants, et nous recoverimes par lour nient dedire; jugement, desicome ele respondit come joint tenant ov son baroun a cel bref, par quel nous recoverimes, &c., *ut supra*, si a ceo bref de Dowere deive[6] estre respondu.—*Gayn.*[7] Nous vous dioms qe P., a qi il suppose le doun estre fait fut mesme cely P. de qi dowement nous demandoms, qi seisine par son plee il ad conu; et vous dioms, com nostre bref suppose, et accion, qe ceo fut puis[8] les esposailles, et nous demandoms rien de nostre seisine demene, mes del estat nostre baroun, qi estat

Dowere, ou la demandante et soun seconde baroun perderunt mesme la terre par nient dedire.[2]

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[1] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 322. It there appears that the action was brought by Thomas Barthelmeu, and Beatrice his wife, against John son of Richard Pecocke, of Stanwell, in respect of a third part of one messuage, 16 acres of land, and one water-mill in Stanwell (Middlesex) as dower of the endowment of Philip Pecocke, Beatrice's former husband.

[2] The marginal note, except the word Dowere, is from 25,184 alone.

[3] vous is omitted from 25,184.

[4] 25,184, lun.

[5] 25,184, demandoms.

[6] 25,184, deive par son plee.

[7] 25,184, *Grene*.

[8] puis is omitted from 25,184.

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A.D. 1343. disprove—no more by judgment delivered against ourselves than against the greatest stranger in the world —and, since he does not allege any right higher up, and he shows that what was pleaded was only the plea of William our husband, judgment, and we pray our dower.—*R. Thorpe, ad idem.* An alleged recovery against the woman herself is not to the purpose when she demands out of the estate of her husband by writ of Dower.—*W. Thorpe.* Then it is so; and we tell you further that the woman who is demandant was solely seised, years and days, of the same land whereof, &c., in her demesne as of fee, and so continued after the death of Philip, her first husband, on whose seisin, &c., until she took William to husband, against whom and herself the recovery was had; judgment, inasmuch as she was seised of the entirety, and lost that estate, whether she ought to have an action of Dower higher up.—*Gaynesford.* It was a new husband; besides, he does not show that she claimed, or did anything towards his disherison, so that it could be adjudged a forfeiture of his estate, but confessed the action, and that claim of tenancy and plea were the acts of William her husband, &c.—*W. Thorpe.* Then it is so.—*Gaynesford.* We will imparl.

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il desprove pas,[1] nient plus par jugement taille vers nous mesmes come vers le plus estraunge du mounde, desicome il nallegge pas dreit de plus haut, et il moustre qe ceo qe fut plede ne fut forsqe plee W., nostre baroun, jugement, et prioms nostre dowere.—*R. Thorpe, ad idem.* Recoverir allegge vers la femme mesme nest pas a purpos quant ele demande del estat son baroun par bref de Dowere.—[*W.*] *Thorpe.* Donqes est il issi; et vous dioms outre qe la femme demandante fut seisi aunz et jours sole de mesme la terre dount, &c., en son demene com de fee, et continua apres la mort P. son primer baroun, de qi seisine, &c., tanqe ele prist W. en[2] baroun, vers qi et mesme cely le[3] recoverir se fist; jugement, desicome ele fut seisi del entier, et cel estat perdit, si accion de Dowere plus haut deive aver.—*Gayn.* Cest novel[4] baroun; ovesqe ceo, il ne moustre pas qele clama ne fist rien en desheritaunce de luy, issi qe ceo[5] purreit estre ajuge forfeture de son estat, mes conissat[6] saccion, quel clamer de tenaunce et plee fut le fait W. son baroun, &c.—[*W.*] *Thorpe.* Donqes il[7] est issi.—*Gayn.* Nous enparleroms.[8] A.D. 1343.

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[1] 25,184, a desprove, instead of desprove pas.

[2] 25,184, en soun.

[3] le is omitted from 25,184.

[4] Harl., novelle.

[5] Harl., ceo qe.

[6] 25,184, conissaunt.

[7] il is omitted from Harl.

[8] The plea and subsequent proceedings were, according to the roll, the following:—"Johannes "....dicit quod prædicti Thomas "et Beatrix non debent inde dotem "ipsius Beatricis habere, quia "dicit quod prædicta Beatrix, post "mortem prædicti Philippi, de "cujus dotatione, &c., fuit sola "seisita de integro prædictorum "tenementorum cum pertinentiis, "unde, &c., in dominico suo ut de "feodo et jure, quousque nupsit se "Willelmo le Chaundeler de Stanewelle, versus quos Willelmum et "Beatricem idem Johannes tulit "quoddam breve de Forma donationis, et petiit prædicta tenementa, "unde &c., supponendo per breve "illud quod quædam Matilldis "Gossalin de Stanes, senior, dedit "tenementa illa quibusdem Ricardo Pecoke et Margeriæ uxori "ejus, et heredibus quos idem Ricardus de corpore ipsius Margeriæ "procrearet, et quæ post mortem "prædictorum Ricardi et Margeriæ "et Philippi filii et heredis eorun-

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A.D. 1343. Trespass, where one justified his act, and the others pleaded in abatement of the writ, and their plea was not admitted, and no more here

(37.) § The Abbot of Furness brought a writ of Trespass against Edmund de Neville, Bailiff of Lonsdale, and his two sub-bailiffs, reciting in his writ that no officer should meddle in his land of Furness, except only his own Bailiffs, and he recited further that the defendants had exercised compulsion upon his people to make presentation to the County Court of bloodshed; and by the writ it was declared how he had obtained this franchise.—Exception was taken to the writ on the ground that the Abbot claimed the

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A.D. 1343. Trespas, ou un justifia son fait, et les autres plederent en abatement du bref, et nient resceu, et nient plus

(37.) [1] § Labbe de Furneux [2] porta bref [3] de Trespas vers Edmond de Neville, Baillif de Lonesdale, et ses deux southbaillifs, reherceaunt par son bref qe nul ministre se mellereit deinz sa terre de Furneux [2] si ses Baillifs noun, et rehercea outre coment les defendants avoint fait compulsion a ses gentz de presenter a Counte de saunk espandu; et par bref fut desclare [4] coment il avient a cest fraunchise.[5]— Le bref fut chalange de ceo qe Labbe clama la

" dem Ricardi et Margeriæ, quem " idem Ricardus de prædicta Mar- " geria procreavit, præfato Johanni " fratri et heredi prædicti Philippi " descendere debent per formam " donationis prædictæ, &c., quod " quidem breve de Forma donationis " retornatum fuit coram Johanne " de Stonore et sociis suis Justicia- " riis hic in Octabis Sancti Mi- " chaelis anno regni domini Regis " nunc Angliæ quinto-decimo, ad " quem diem iidem Willelmus et " Beatrix venerunt in Curia hic, et " dixerunt quod ipsi non potuerunt " dedicere actionem suam prout per " idem breve de Forma donationis " supponebatur; per quod ipse per " judicium Curiæ domini Regis " recuperavit versus eos tenementa " illa cum pertinentiis, et inde " habuit executionem, unde petit " judicium si prædicti Thomas et " Beatrix dotem ipsius Beatricis in " hoc casu habere debeant," &c.

" Et Thomas et Beatrix non " possunt dedicere quin prædicta " Beatrix post mortem prædicti " Philippi quondam viri sui, dum " sola fuit, fuit seisita de integro " prædictorum tenementorum, nec " quin prædictus Johannes recupe- " ravit versus ipsam Beatricem et " prædictum Willelmum le Chaun- " deler tunc virum suum prædicta " tenementa cum pertinentiis, " unde," &c.

Judgment was accordingly given for the tenant.

[1] From Harl., 25,184, and C., but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III, R° 197. It there appears that the action was brought by the Abbot of Furness against Edmund de Neville, bailiff of the Wapentake of Lonsdale, and his sub-bailiffs, Roger de Burgh the elder, and Roger de Burgh the younger.

[2] 25,184, Forneaux.

[3] The words porta bref are omitted from 25,184.

[4] Harl., desclarre.

[5] According to the roll the defendants were attached to answer " quare cum dominus Henricus " quondam Rex Angliæ, proavus " domini Regis nunc, per diversas " chartas suas concessisset tunc " Abbati de Fourneys quod Vice- " comites seu Ballivi sui de terra " de Fourneys se son intromitterent, " et quod Placita Coronæ, cum " emergerent, per Coronatores ipsius " proavi Regis et ballivum ipsius " Abbatis loci prædicti attachiaren- " tur, et coram eodem proavo Regis " et Justiciariis suis placitarentur, " postmodumque in loquela quæ " fuit in Curia domini Edwardi

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A.D. 1343. franchise, as was supposed by the writ, by divers and contrariant titles; afterwards on the ground that the writ was not brought in any vill, and it was shown that the land of F. extends into several vills, which were named.—*Thorpe.* Ready that it does not.—*Moubray.* That negative includes two meanings: either

than in a Replevin. Therefore they pleaded Not Guilty, and the other justified as bailiff. He had aid of his principal, &c.

" nuper Regis Angliæ, avi domini " Regis nunc, coram Hugone de " Cressyngham et sociis suis Justi- " ciariis ipsius avi, &c., anno regni " sui vicesimo, Itinerantibus in " Comitatu prædicto, per breve " suum inter ipsum avum, &c., et " tunc Abbatem de Fourneys, de eo " quod idem Abbas ostenderet quo " waranto clamavit summonitiones " et attachiamenta facere per balli- " vum suum in Fourneys, quæ ad " coronam et dignitatem dicti avi, " &c., pertinebant, consideratum " fuisset quod idem Abbas quoad " libertates illas iret sine die, ac " dominus Rex nunc postmodum, " pro majori securitate nunc " Abbatis loci illius in hac parte, " per chartam suam concesserit " eidem Abbati et Conventui ejus- " dem loci quod nullus Vicecomes " aut alius Ballivus seu minister " Regis vel heredum suorum terras " et feoda ipsorum Abbatis et Con- " ventus de Fourneys ingrediatur " ad summonitiones, districtiones, " attachiamenta, seu aliqua alia " officia quæcunque in eisdem " facienda, seu exercenda, nisi in " defectum ipsorum Abbatis et " Conventus et successorum suo- " rum, ac ballivorum et ministrorum " suorum, subsequenterque, pro " diversis placitis quæ inter Henri- " cum Comitem Lancastriæ et " præfatum Abbatem super Turno " Vicecomitis in Fourneys tenendo " in diversis Curiis Regis nunc diu " pendebant sedandis et finaliter " terminandis, per literas suas " patentes concesserit idem Rex, et " licentiam dederit pro se et heredi- " bus suis, quantum in ipso est, " præfato Henrico quod ipse dictum " Turnum Vicecomitis in Fourneys, " cum omnibus ad hujusmodi Turn- " um pertinentibus præfatis Abbati " et Conventui dare posset, et " assignare, Habendum et tenen- " dum sibi et successoribus suis in " perpetuum, Reddendo inde eidem " Henrico et heredibus suis per " annum sex solidos et octo " denarios, et eisdem Abbati et " Conventui quod ipsi dictum " Turnum Vicecomitis a præfato " Henrico recipere et tenere possint " sibi et successoribus suis in per- " petuum similiter licentiam dederit " specialem, Ita quod iidem Abbas " et Conventus et successores sui " Turnum illum per ballivos et " ministros suos tenere, et exitus " et proficua inde provenientia ad " opus eorundem Abbatis et Con- " ventus et successorum suorum " percipere, et omnia alia quæ ad " hujusmodi Turnum pertinent " facere possint et exercere, Statuto " de terris et tenementis ad manum " mortuam non ponendis edito non " obstante, prout in chartis et " literis prædictis plenius contine- " tur, Ac idem Henricus Comes " dictum Turnum Vicecomitis in

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fraunchise, come suppose est par bref, par divers titles et contrariaunts; puis de ceo qe le bref nest pas porte en ville, et moustra qe la terre de F. sestent en plusours villes, et les noma.—*Thorpe.* Prest qe noun.—*Moubray.* Cel negatif enclost deux

A.D. 1343. icy qen *Replegiari. Ideo* il plederent nient coupable, et lautre justifia cum baillif. Avoit eide de son meistre, &c.[1]

" Fourneys præfatis Abbati et Con-
" ventui, virtute concessionis et
" licentiæ Regis prædictarum, jam
" diu est, dederit et concesserit,
" ut accepit Rex, Jamque idem
" Rex ad prosecutionem ipsorum
" Abbatis et Conventus sibi sugger-
" entium præfatum Edmundum et
" subballivos suos prædictos terras
" et feoda ipsius Abbatis in Four-
" neys ingressos fuisse, et ea indies
" ingredi non desistere, ac hujus-
" modi districtiones, summoniti-
" ones et attachiamenta super
" diversos homines ibidem pro
" sanguinis effusione et aliis quæ
" infra dictam terram de Fourneys
" emerserunt, et quæ per ballivos
" et ministros ipsius Abbatis fieri,
" et ad Turnum Vicecomitis, quem
" idem Abbas, virtute præmissorum,
" ibidem habet et tenet, pertinent,
" et in eodem Turno et non alibi
" præsentari debent, fecisse, ipsos
" homines ad ea quæ infra dictam
" terram de Fourneys emerserunt
" coram prædicto Vicecomite in
" Comitatu suo præsentanda com-
" pellendo, eisdem Edmundo,
" Rogero, et Rogero pluries man-
" daverit Rex quod, si ita esset,
" tunc, ab hujusmodi districtionibus
" et attachiamentis in terra præ-
" dicta ac compulsionibus prædictis
" præmissa occasione extunc faci-
" endis desistentes, se de prædicta
" terra de Fourneys sive de aliqui-
" bus officiis inibi exercendis nul-
" latenus intromitterent, contra
" tenorem chartarum, literarum, et
" allocationis prædictarum, et quod
" districtiones et attachiamenta
" per ipsos super homines prædictos
" sic facta sine dilatione relaxari
" facerent, vel causam Regi signifi-
" carent quare mandato suo alias
" inde sibi directo parere noluer-
" unt vel non debuerunt, seu quod
" essent coram ipso Rege in Octabis
" Sanctæ Trinitatis anno regni sui
" quinto-decimo ubicunque tunc
" esset in Anglia, ostensuri quare
" mandatis Regis prædictis totiens
" sibi inde directis parere contemp-
" serunt, et quod breve Regis sibi
" inde directum tunc haberent
" ibidem, Iidem Edmundus, Roger-
" us, et Rogerus, spretis mandatis
" Regis prædictis, ab hujusmodi
" districtionibus, summonitionibus,
" et attachiamentis in terra præ-
" dicta, ac compulsionibus prædictis
" præmissa occasione faciendis
" desistere, vel saltem causam
" quare id facere noluerunt vel non
" debuerunt Regi significare, seu
" coram ipso Rege ad diem illum
" venire, aut breve Regis sibi inde
" directum retornare, non curarunt,
" in Regis ac mandatorum suorum
" prædictorum contemptum mani-
" festum, et prædicti Abbatis dam-
" num non modicum."

The declaration was in accordance with the writ, the names of the persons who had been distrained &c., (including that of Roger de Burghe) being mentioned.

[1] The marginal note, except the word Trespas, is from 25,184 alone.

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A.D. 1343. that none of the land of F. is in any vill, or that part is in a vill, and not the whole; and therefore let him hold to one certain issue. Besides, it is for the plaintiff to aver his writ in the affirmative, as his writ supposes.—*Grene, ad idem.* He must say that the place where the trespass was effected is out of any vill, and maintain his writ for that special cause.—Stonore. Ought not his writ to be in accordance with the King's charter upon which he claims the franchise? And in the charter there is no vill named.—*Moubray.* We tell you that the place in which the distress was made is in Ulverston; judgment of the writ.—And the two sub-bailiffs held to that plea in abatement of the writ.—And, for Edmund, *Moubray* said that the person who is Bailiff of Lonsdale ought to present that article to the County Court, and process shall be made out of the County Court, and such has been the custom from time whereof there is no memory. And we tell you as to A. and B., whom he supposes to have been distrained, that each of them drew blood from the other, wherefore Edmund, as Bailiff, presented this to the County Court, and afterwards a precept issued to Edmund to distrain them to answer as to this trespass, and so he made that distress upon them by warrant, and not to cause them to present the article of bloodshed to the County Court, as you surmise against us; judgment whether you can assign tort in our person. —*Thorpe.* As to those who have pleaded in abatement

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entents: ou pur ceo qe rien de la terre de F. est en ville, ou pur ceo qe partie est en ville, et noun pas tut; et pur ceo se teigne a asqun certein issue. Ovesqe ceo, al pleintif est daverer son bref par affirmatif com son bref suppose.—*Grene, ad idem.* Il luy covient dire qe le lieu ou le trespas se fist est hors de ville, et par cele cause especial meintener le bref.—Ston. Ne deit son bref acorder a la chartre le Roi sur quel il cleyme la fraunchise? Et en la chartre nest nulle ville nomee.—*Moubray.* Nous vous dioms qe le lieu ou la destresse fust[1] fait est en[2] Ulverstone; jugement du bref.—Et sur ceo plee al abatement du bref se tiendrent les deux south-baillifs.[3]—Et, pur Edmond, *Moubray* dit qe cely qest baillif de Lonesdale deit presenter a Counte cel article,[4] et hors de Counte proces se fra, et[5] issint ad este use de temps dount memoire[6] nest. Et vous dioms qe A. et B., queux il suppose estre destreintz, chescun treit saunk dautre, par quei[7] Edmond, come baillif, le presenta a Counte, et puis issit precepte a E. de les destreindre a respoundre de cel trespas, et issi par garraunt fist il cel destresse sur eux, et noun pas[8] a presenter larticle de saunk espaundu a Counte com vous nous surmettez; jugement si tort en nostre persone puissez assigner.[9]—*Thorpe.* Quant a ces qount plede al abate- A.D. 1343.

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[1] fust is omitted from 25,184.

[2] en is omitted from 25,184.

[3] The plea of the sub-bailiffs was, according to the roll, "Rogerus et "Rogerus dicunt quod, ubi præ- "dictus Abbas supponit prædictam "trangressionem fieri in Fourneys, "et non determinat in qua villa, "&c., prædictus locus in quo "prædicta districtio facta fuit "est in villa de Ulverestone, "et sic breve suum concepisse "potuit in villa de Ulverestone, "unde petunt judicium de brevi "quod concipitur extra quam- "cunque villam," &c.

[4] article is omitted from 25,184.

[5] et is omitted from 25,184.

[6] Harl., memorie.

[7] quei is omitted from 25,184.

[8] pas is omitted from 25,184.

[9] The plea of Edmund de Neville, the bailiff, was, according to the roll, "quod nulla prohibitio ei "inde venit, nec unquam ei liberata "fuit, prout prædictus Abbas ei

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A.D. 1343. of the writ, who are only sub-bailiffs of Edmund, who has avowed the act, we pray to be discharged, because in a Replevin brought against several, if some plead in abatement of the writ, and others avow for themselves and those who have pleaded in abatement of the writ, I have no need at all to plead to those who pleaded in abatement of my writ, but by law I shall be discharged in respect of their plea. So in the

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ment du bref, qe sount forsqe south-baillifs Edmond, qad avowe le fait, nous prioms estre descharge, qar en *Replegiari* porte vers plusours, si asquns pledent al abatement du bref, et autres avowent pur eux et les autres qount plede al abatement du bref, ja ney jeo mester de pleder a ces qe plederent al abatement de mon[1] bref, mes par ley jeo serray descharge de lour A.D. 1243.

" imponit. Et hoc paratus est " verificare, unde petit judicium, " &c. Et ubi prædictus Abbas in " brevi suo prædicto supponit ipsum " habere Turnum Vicecomitis infra " terram suam de Fourneys, ad " quem Turnum articulus de san- " guinis effusione per ballivos suos " proprios, et non per alios, nec " alibi, de hominibus de Fourneys " præsentari debet, et ad quem " Turnum attachiamenta et dis- " trictiones pro sanguinis effusione " sunt spectantia, Idem Edmundus, " protestando quod ipse non cog- " noscit præfatum Abbatem habere " tales libertates quales ipse supe- " rius asserit, dicit quod terræ de " Fourneys sunt infra Wapentach- " ium de Lonesdale, quod est in " feodo unde ipse Edmundus est " ballivus et quam ballivam ipse " habet tanquam pertinentem ad " manerium suum de Kellet, quod " quidem manerium, et prædictam " ballivam ipse tenet ad terminum " vitæ suæ, ex dimissione Roberti " filii Roberti de Holande, ad quem " reversio inde post mortem ipsius " Edmundi spectat. Et dicit quod " articulus de sanguinis effusione " infra ballivam prædictam acci- " dens præsentari debet ad Comita- " tum tentum coram Vicecomite " ejusdem Comitatus per ballivum " Wapentachii prædicti vel ejus " ministros, et in forma illa a " tempore quo non extat memoria " articulus ille extitit præsentatus; " et quia prædicti Rogerus et alii " adinvicem pugnarunt et san- " guinem inter se hinc inde tract- " averunt apud Ulverestone die " Sancti Michaelis Archangeli anno " regni domini Regis nunc quarto- " decimo, ipse Edmundus præsen- " tavit articulum prædictum de " sanguinis effusione super dictos " Rogerum et alios ad prædictum " Comitatum coram Vicecomite " tentum. Et quia iidem Rogerus " de Burghe et alii postmodum non " venerunt ad Comitatum coram " Vicecomite, ad respondendum ad " præsentationem prædictam, prout " eis per mandatum Vicecomitis " præceptum fuit, ipse Edmundus, " ut ballivus, &c., per præceptum " Vicecomitis ei inde factum dis- " trinxit præfatos Rogerum de " Burghe et alios, videlicet quem- " libet eorum per unum affrum, " essendi coram præfato Vicecomite " ad Comitatum, &c., ad respon- " dendum de articulo prædicto super " eos superius præsentato, unde " petit judicium si prædictus Abbas " ratione districtionis prædictæ in " forma prædicta factæ, actionem " transgressionis versus eum habere " debeat," &c.

[1] 25,184, du, instead of de mon.

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A.D. 1343. matter before us.—*Moubray.* This is a writ of Trespass on which each one answers for himself, and no one can answer for another; wherefore we shall have the plea.—SHARDELOWE. You can have any plea, as, for instance, Not Guilty; and so you can in Replevin, even though the avowry may have been made by one for another, as possibly to deny the taking; and as to the sub-bailiffs they are abiding judgment whether they can plead in abatement of the writ.—STONORE. It would be strange if you were admitted to plead in abatement of the writ.—*Thorpe.* As to Edmund, his answer amounts only to a traverse of that which we have surmised against him—that he distrained our tenants, as above; ready, &c., that he did.—*Moubray.* I have acknowledged the distress in a particular manner; wherefore you shall not have a general averment. And my plea must be entered in order to save my answer another time, for otherwise the Court would hold it not denied by me that you had such a franchise. —*Thorpe.* You have acknowledged that you entered our liberty, and that is expressly contrary to the point of our franchise; and we tell you that before the time of King Henry there never was a Sheriff's Turn in the County of Lancaster, so that the articles of the Turn were previously presented in the County Court, and King Henry first caused a Turn to exist, and after

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plee. *Sic in proposito.*[1]—*Moubray.* Cest un bref de Trespas ou chescun respound a per luy, et nul poet respoundre pur autre; par quei nous[2] averoms le plee.—SCHARD. Asqun plee[3] poietz vous aver com de rien coupable; auxi purrez vous en *Replegiari*, tut fust lavowere fait par un pur un autre, a dedire[4] par cas la prise; et quant a eux sount en jugement sils pount pleder al abatement du bref.[5]—STON. Il serreit merveille si vous fuissez resceu de pleder al abatement du bref.—*Thorpe.* Quant a Edmond,[6] son respouns namont[7] forsqe a travers de ceo qe nous luy avoms surmys, qil destreigni[8] nos tenaunts, *ut supra*; prest, &c., qe si.[9]—*Moubray.* Jay[10] conu la destrésse par manere; par quei vous naverez pas averement general. Et il covient qe mon plee soit entre pur sauver autrefoith mon respouns, qar autrement Court tendreit a nient dedit de moy qe vous eussez tiel fraunchise.—*Thorpe.* Vous avez conu qe vous entrastes nostre fraunchise, quele chose est expressement[11] countre point de nostre fraunchise; et vous dioms qe devant temps le Roi Henre unqes ne fut Tourn de Vicounte en le Counte de Launcastre, issi qe devant les articles de Tourn furent presentes en Counte, et le Roi Henre fist primes Tourn estre, et

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[1] The replication to the plea of the sub-bailiffs was, according to the roll, "ipsi sunt sub-ballivi "prædicti Edmundi Wapentachii "prædicti, qui quidem Edmundus "nihil superius placitavit in cassa- "tionem brevis supradicti, sed "idem breve per placitum suum "prædictum omnino affirmavit, et "factum quod idem Abbas ei "imponit per se et ministros suos "fieri advocavit, per quod in ore "ipsorum sub-ballivorum ejusdem "Edmundi non jacet aliquod "placitum ad cassandum breve "suum prædictum. Et si, &c., "paratus est," &c.

[2] nous is omitted from 25,184.

[3] plee is omitted from 25,184.

[4] C., dire.

[5] The case ends here in C., in which MS. there are no more reports of this Term.

[6] The words a Edmond are from Harl. alone.

[7] Harl., navoit.

[8] Harl., destreigni pas.

[9] Harl., cy.

[10] Jay is omitted from 25,184.

[11] 25, 184, pressement.

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A.D. 1343. that time they were in it as of common right. Therefore the presentments of that article have been made to the Turn, which Turn we have, as we have shown, and we demand judgment, and pray our damages.—*Moubray.* Judgment of your writ, because it supposes

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puis[1] ceo temps en cea com comune[2] dreit. Donqes les presentements de cel article ount este fait a Tourn, quel Tourn nous avoms, com nous avoms moustre, et demandoms jugement, et prioms nos damages.[3]—*Moubray.* Jugement de vostre bref, qar A.D. 1343.

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[1] Harl., pur.

[2] comune is omitted from 25,184.

[3] The replication to the plea of the bailiff was, according to the roll, "Quoad hoc quod idem Edmundus "protestationem fecit ipsum non "cognoscere præfatum Abbatem "habere tales libertates quales "idem Abbas superius per breve "suum supponit, dicit quod idem "Edmundus non dedicit ipsum "habere libertates illas, nec dedici "possunt ex quo eædem libertates "sibi et Conventui suo et successo-"ribus suis concessæ fuerunt et "allocatæ in forma prædicta per "chartas et allocationes prædictas "et quæ sunt de recordo, &c. Et "prædictus Edmundus expresse "cognovit quod ipse intravit præ-"dictas terras præfati Abbatis in "Fourneys ibidem attachiamenta "et districtiones faciendo, contra "chartas, et allocationes, et pro-"hibitiones domini Regis supra-"dictas, unde petit judicium, &c. "Et quoad hoc quod idem Edmund-"us supponit ipsum fore ballivum "Wapentachii de Lonesdale in "feodo, &c., idem Abbas non "cognoscit quod idem Edmundus "est ballivus Wapentachii præ-"dicti in feodo, nec quod terræ de "Fourneys sunt infra ballivam "prædictam. Sed quoad hoc quod "idem Edmundus supponit quod "prædictus articulus de sanguinis "effusione præsentari debet in "Comitatu coram Vicecomite, &c., "per ballivos Wapentachii præ-"dicti, aut per ministros suos, et "sic præsentatus extitit a tempore "quo non extat memoria, Idem "Abbas dicit quod tempore domini "Henrici Regis proavi domini "Regis nunc, circiter annum trice-"simum primum, incepit Turnus "Vicecomitis in Comitatu prædicto "teneri per Hundreda et Wapen-"tachia in Comitatu prædicto, ante "quod tempus nullus Turnus Vice-"comitis tentus fuit in eodem "Comitatu, quo tempore articulus "de sanguinis effusione præsenta-"tus fuit in eodem Comitatu "secundum legem communem. Et "post mortem ejusdem Henrici "Regis tempore E. Regis avi, &c., "coram Hugone de Cressingham "et sociis suis Justiciariis ipsius "Regis avi, &c., Itinerantibus, "apud Lancastriam Turnus ille "adjudicatus fuit ipso domino Regi "tenendus infra terram de Four-"neys per Coronatores ipsius Regis "et ballivos ipsius Abbatis, et idem "Rex de Turno illo in forma præ-"dicta seisitus fuit quo tempore "articulus ille de sanguinis effusi-"one præsentatus fuit ad Turnum "Vicecomitis modo supradicto, qui "quidem Edwardus Rex, &c., "Turnum prædictum concessit Ed-"mundo fratri suo, tenendum sibi "et heredibus suis in perpetuum, "quo tempore articulus ille de "sanguinis effusione præsentatus "fuit ad Turnum Vicecomitis in "forma supradicta. Et de ipso "Edmundo descendit Turnus præ-

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A.D. 1343. you to have the presentment of that article appendant to your Turn, and, according to your own statement, it could not be appendant to a Turn which commenced since the time of memory, for appendancy can only be from all time.—*Thorpe.* Then is it the fact that it is since the time of King Henry that the practice has commenced of presenting this in the Turn?—*Moubray.* That this article from all time, as well before the time of King Henry as since, has been presented to the County Court, and not to the Turn, as you have said,

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vous suppose daver. le presentement de cel article appendaunt a vostre Tourn, et, de vostre dit demene, ceo ne put estre appendaunt al Tourn qe commencea puis temps de memoire,[1] car appendaunce ne put estre forsqe de tut temps.—*Thorpe.* Donqes est il issi qe puis le[2] temps le Roi Henre [qe puis fut comence qe ceo ad este presente en Tourn?—*Moubray.* Qe cele article de tut temps, si avant avant le temps le Roi Henre][3] come puis, ad este presente a Counte et noun pas a Tourn, come vous avez dit, prest, &c.[4] A.D. 1343.

" dictus Thomæ ut filio et heredi, " tempore cujus prædictus articulus " de sanguinis effusione præsenta- " tus fuit ad Turnum Vicecomitis " modo supradicto. Et de ipso " Thoma, quia obiit sine herede de " se, descendit Turnus prædictus " cuidam Henrico ut fratri et " heredi, tempore cujus præfatus " articulus præsentatus fuit ad " Turnum Vicecomitis in forma " prænotata, Qui quidem Henricus " postmodum Turnum Vicecomitis " prædictum in terris de Fourneys " cum pertinentiis, licentia domini " Regis super hoc obtenta, dedit et " concessit ipsi Abbati tenendum " per ballivos et ministros suos, " sibi et successoribus suis in per- " petuum, cum omnibus proficius " inde provenientibus, per quod " donum idem Abbas Turnum præ- " dictum tenuit in terris suis " prædictis, ad quem Turnum " articulus de sanguinis effusione " præsentatus fuit, et idem Abbas " commodum inde percepit quous- " que prædictus Edmundus et alii " prædictas compulsiones in præ- " dictis terris fecerunt. Et hoc " paratus est verificare, unde petit " judicium," &c.

[1] Harl., memorie.

[2] le is omitted from 25,184.

[3] The words between brackets are from Harl. alone.

[4] The bailiff's rejoinder was, according to the roll, "quod præ- " dictus articulus de sanguinis " effusione a tempore quo non extat " memoria præsentatus extitit per " ballivum wapentachii de Lones- " dale, qui pro tempore fuerit, " coram Vicecomite in Comitatu " suo, et non in Turno Vicecomitis " in forma qua prædictus Abbas " superius asserit. Et hoc paratus " est verificare," &c.

This is followed by the aid-prayer:—" quam quidem verifica- " tionem ipse Edmundus sine præ- " fato Roberto filio Roberti de " Holand, ad quem reversio ballivæ " prædictæ post mortem ipsius " Edmundi spectat, expectare non " potest. Et petit auxilium de " ipso Roberto filio Roberti. Ideo " ipse summoneatur quod sit hic a " die Sancti Hillarii in xv dies ad " respondendum simul," &c.

The prayee in aid failed to appear, the bailiff had therefore to answer without him, and the *Venire* was awarded on the averment which he had tendered. Several adjournments follow, but nothing further.

Nos. 38, 39.

A.D. 1343. ready, &c.—*Thorpe.* Presented to the Turn, as we have said; ready, &c.—And the other side said the contrary.—*Moubray.* This issue affects the right, and we have only a term for life in the office of Bailiff by lease from R. Holand, and we pray aid of him.—And he has it.

Scire facias to have execution of a recovery which was given against the defendant's predecessor. And he had aid of the King. And the predecessor himself also had aid on the first writ. And see.

(38.) § *Scire facias* on a recovery on a writ of Annuity brought by an Abbot against a Dean by a judgment given against the Dean's predecessor; and the Dean came, and showed that he held the deanery by the King's collation, and that he found the deanery discharged, and he prayed aid by the King, &c.—*R. Thorpe.* You ought not to have aid, because your predecessor had aid of the King on the writ of Annuity, and the King gave his command to proceed, &c., and afterwards, on another occasion, his command to proceed to judgment. And, since he had aid in the principal plea, judgment whether you ought to have aid as to this execution. Besides, you cannot say that you found the deanery discharged, because the judgment charged it in fact and in law.—SHARSHULLE. He is not the same person that was party to the judgment, and at a more recent time the King might have matter which would discharge; and therefore, will you say anything else to oust him from the aid?—And he had the aid.

Formedon

(39.) § Formedon, by three *Præcipes*, in respect of

Nos. 38, 39.

—*Thorpe.* Presente a Tourn, come nous avoms dit; prest, &c.—*Et alii e contra.*—*Moubray.* Cest issue est[1] en dreit, et nous navoms en la baillie forsqe terme de vie du lees R. Holand, et prioms eide de luy.—*Et habet.* A.D. 1343.

(38.)[2] § *Scire facias* hors[4] dun recoverir[5] sur bref Dannuite porte par un Abbe vers un Dean dun jugement. taille vers le predecessour le Dean, qe vint et moustra qil tient la[6] deane de la collacion le Roi, et qil trova la deane descharge, et pria eide du Roi, &c.—*R. Thorpe.* Eide ne devez aver,[7] qar en le bref Dannuite vostre predecessour avoit eide du Roi, et le Roi comaunda daler avant, &c., et apres autrefoith comaunda daler[8] a jugement. Et desicome il avoit[9] eide[10] en le principal plee, jugement si a ceste execucion devez eide aver. Ovesqe ceo, vous ne poietz pas dire qe vous trovastes la deane descharge, qar le jugement le[11] chargea[12] en fait et ley.—Schar. Il nest pas mesme la persone qe fut partie al jugement, et de puysne temps le Roi put aver chose qe deschargera; par quei voletz autre chose dire de luy oster[13] del eide?—*Et habuit auxilium.*[14] *Scire facias* daver execucion dun recoverir qe ceo [se] tailla vers son predecessour. Et avoit eide du Roi. Et auxi mesme predecessour avoit eide en le primer bref. *Et vide.*[3] [Fitz., *Ayde de Roy*, 63.]

(39.)[15] § Formedoun, par iij *Præcipe*, de rente.— Descendre

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[1] est is from Harl. alone.

[2] From Harl., and 25,184.

[3] The marginal note, except the words *Scire facias*, is from 25,184 alone.

[4] hors is omitted from 25,184.

[5] 25,184, reconissaunce.

[6] 25,184, de.

[7] aver is omitted from 25,184.

[8] daler is omitted from 25,184.

[9] 25,184, navoit.

[10] eide is omitted from 25,184.

[11] 25,184, se.

[12] 25,184, chargera.

[13] 25,184, oustir.

[14] The words *Et habuit auxilium* are from Harl. alone.

[15] From Harl., and 25,184. The record seems to be that found among the *Placita de Banco*, Mich., 17 Edw. III., R° 179 d. It there appears that an action of Formedon in the descender was brought by Alexander de Coleshulle, the elder, against John atte Northdene, the elder, and Nicholaa, his wife, in respect of 6*d.* of rent, against John atte Northdene the younger, in

No. 39.

A.D. 1343. in the descender in respect of rent, where, in abatement of the writ, seisin of parcel of the land was alleged to be in the demandant. And note in this plea the plea to the action as to a portion. And it was rent service. And afterwards an agreement was made.

rent.—*Gaynesford*, as to one *Præcipe*, alleged joint tenancy of the land out of which, &c., and, as to another *Præcipe*, said that the demandant was himself seised of parcel of the land; judgment of the writ. And, as to the third *Præcipe*, he alleged non-tenure of the land in general terms.—*Pulteney*. As to the joint tenancy we tell you that he is the taker of the rent; judgment whether such an exception lies in his mouth. As to the second point, that we are ourselves seised of parcel, &c., that trenches on our action as to parcel, and does not affect the writ. And, since he does not answer as to the rest, judgment; and we pray seisin. As to the third point, he alleges non-tenure of something other than that which is in demand; judgment whether the law puts me to answer. And he said further that his demand was in respect of rent service. —*Grene*. As to the *Præcipe* touching which I have alleged that the demandant is himself seised of parcel, my plea is not to the action by saying that he is himself seised any more than if a stranger were seised of parcel; and, though I do not give him [another] writ, no more should I do so if I were to allege non-tenure in general terms, and yet that would be to the writ.—Sharshulle. There is no doubt but that this is to the action.—*Thorpe*. Suppose that he is seised

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A.D. 1343. de rente, ou seisine de parcelle de la terre fut allegge en la demandante en abatement du bref. *Et nota placitum isto placito* al accion pur la porcion. Et ce fut rente service. Et puis *pax tractatur*.[1] [Fitz., *Briefe*, 353.]

Gayn., a un *Præcipe*, alleggea jointenaunce de la terre dount, &c., et, a un autre *Præcipe*, dit qe le demandant fut mesme seisi de parcelle de la terre; jugement du bref. Et, quant al tierce, alleggea general nountenure de la terre.—*Pult.* Quant a la jointenaunce nous vous dioms qil est pernour de la rente; jugement si tiel excepcion en sa bouche gise. Quant al seconde, qe dit qe nous mesmes sumes seisis de parcelle, &c., ceo trenche a nostre accion de la parcelle, et noun pas al bref. Et, desicome il ne respound pas del remenant, jugement; et prioms seisine. Quant al tierce, il allegge nountenure dautre chose qe nest en demande; jugement si ley moy mette a respoundre. Et il dit outre qe sa demande fut de rente service.—*Grene.* Al *Præcipe* qe jay allegge qe le demandant mesme est seisi de parcelle, mon plee nest pas al accion plus a dire qil mesme est seisi qe si estraunge fut seisi de la parcelle; et, tout ne doune jeo pas bref a luy, nient plus ne fra jeo si jeo alleggeasse nountenure general, et *tamen* ceo serreit au bref.—Schar. Il nest pas doute qe ceo nest al accion.—*Thorpe.* Jeo pose qil ne

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respect of 12*d.* of rent, and against Alexander de Coleshulle, the younger, in respect of 14*d.* of rent, all in Hugendene (Hughenden, Bucks) alleged to have been given by Alexander son of Alexander de Hamdene, knight, to Henry de Coleshulle in frank marriage with his sister Mabel, whose elder son and heir the demandant was.

The plea in abatement of the writ on behalf of John atte Northdene, the elder, and his wife, was that the tenements out of which the rent demanded against them issued were 5½ acres of wood, whereof they held 4 acres jointly with Matilda, John's mother.

The plea in abatement of the writ on behalf of John atte Northdene, the younger, was that the tenements out of which the rent demanded against him was supposed to issue were 20 acres of wood, whereof John atte Northdene, the elder, and Nicholaa his wife, and the before-mentioned Matilda held 8 acres.

The demandant traversed these pleas in his replication, and issue was joined thereon.

[1] The marginal note is from 25,184 alone, that in Harl. being Fourme de doun.

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A.D. 1343. of parcel of the land for term of life only, so that the inheritance of the rent abides with him; then this plea could be only to the writ, because in that case the rent could not be parcel, since the possession of the demesne is lower than the right to the rent; therefore, if there were no other possession in the land than a term for life, he could not have a plea to the action to extinguish the parcel. Consequently he will have the plea to the writ.—SHARSHULLE. It is not law that there will not be apportionment for the time as well where he is seised for term of life as where he is seised of the fee.—*Grene.* Suppose in case of land you bring a writ against me; if I allege that since your writ was purchased you have entered upon parcel, although you cannot have a writ against yourself, still it is a plea not to the action, but to the abatement of the writ in its entirety; so also here. Besides, suppose I would not answer as to the rest, what judgment would you give—one as to parcel or one as to the whole of the rent?—SHARDELOWE. Try it: for understand clearly that we hold the plea to be to the action, and therefore discharge yourself as to the portion, if you will; and the case is not like that of which you speak supposing the demandant to have entered after the purchase of his writ, in which case it would be to the abatement of the writ in its entirety; wherefore answer. —*Grene.* As to that of which he is seised, judgment whether he can have an action; and, as to the rest, the supposed donor did not give.—*Pulteney* imparled.

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soit seisi de la parcelle de la terre forsqe a terme de vie, issi qe lenheritaunce de la rente luy demoert; donqes ne put ceo[1] estre forsqe au bref, qar en cel cas la rente ne serra pas parcelle, quant la possession del demene est plus bas qe la dreit de la rente; par quei, sil y avoit nulle autre possession en la terre forsqe a terme de vie, il purra pas aver plee al accion pur esteindre la parcelle. *Per consequens* il avera le plee au bref.—SCHAR. Ceo nest pas ley qil ne serra apporcione pur le[2] temps auxi bien ou il est seisi a terme de vie com de fee.—*Grene.* Jeo pose qen cas de terre vous portez bref vers moy; si jeo allegge qe[3] puis vostre bref[4] purchace vous estes entre en parcelle, tut ne poietz aver bref vers vous mesmes, unqore ceo nest pas al accion, mes[5] al[6] abatement du bref tut[7]; auxi bien icy. Ovesqe ceo, jeo pose qe jeo ne voudra pas respoundre del remenant, quel jugement durrez vous, le quel de parcelle ou de tut le rente?—SCHARD. Assayez[8]: qar entendetz[9] bien qe nous tenoms le plee al accion, et pur ceo deschargez vous de la porcion, si vous voletz; et ceo nest pas semblable a ceo qe vous parlez si le demandant fut entre puis son bref purchace, qe ceo[10] serreit al[6] abatement de tut le bref; par quei responez.—*Grene.* Quant a ceo dount il est seisi, jugement si accion put il aver; et quant al remenant il ne dona pas. —*Pult.* enparla.[11] A.D. 1343.

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[1] ceo is omitted from 25,184.
[2] 25,184, del instead of pur le.
[3] qe is omitted from 25,184.
[4] bref is omitted from 25,184.
[5] mes is omitted from 25,184.
[6] Harl., en.
[7] Harl., pur le bref, instead of du bref tut.
[8] Harl., Assaietz.
[9] 25,184, attendes.
[10] ceo is from Harl. alone.
[11] The plea on behalf of Alexander de Coleshulle, the younger, was "quod redditus versus eum petitus "non est nisi duodecim denaratæ "redditus tantum; et tenementa "unde supponit redditum pro- "venire sunt decem acræ terræ et "duæ acræ bosci; et dicit quod "prædictus Alexander qui nunc "petit, &c., tenet octo acras et "dimidiam et unam rodam terræ,

Nos. 40, 41.

A.D. 1343. Fine.

(40.) § A husband and his wife grant, and release, and quit claim as much as they have of the right of the wife for the life of the wife to William, &c.; and the husband and the wife will warrant for the life of the wife; and for that release and warranty William grants to the husband and his wife, for the life of the wife, four marks *per annum* and twenty-four cart-loads of billets to be taken from the same tenements, and that, whenever the rent and the billets shall be in arrear, it shall be lawful for the husband and his wife, during the life of the wife, to distrain, and that, after the death of the wife, the rent shall cease. And this fine was admitted.

Cessavit.

(41.) § The Prior of Plympton brought a *Cessavit* against his tenant, who pleaded that the tenements were open to distress, &c. It was found, at *Nisi prius*, that they were not so open, and that the rent of 12*d.* was in arrear for two years before the purchase of the writ, and the suit of court, to wit, to come twice a year, &c., was in arrear for one year. And, in the Bench, the tenant appeared, and tendered the arrears of the rent, and

Nos. 40, 41.

(40.) [1] § Le baroun et sa femme grauntount, et[2] relessount,[3] et quiteclamount quant qils ount du dreit la femme pur la vie la femme a William, &c.; et[2] le baroun et la femme garraunterount a[4] la vie la femme; et pur cel relees et garrauntie W. graunte al baroun et sa femme, pur la vie la femme, iiij marcs par an et vynt iiij charettes de buche a prendre de mesmes les tenements, et quele houre qe la rente et buche soient arrere qe lise al baroun et sa femme [pur la vie la femme][5] a destreindre, et apres la mort la femme qe la rente cesse. Et cest fyn fut resceu.[6] A.D. 1343. *Finis.*

(41.) [7] § Le Priour de Plymtone[8] porta *Cessavit*[9] vers son tenant, qe pleda overture,[10] &c. Trove fut qe nient overt[11] par *Nisi prius*, et qe la rente de xij*d.* par ij aunz avant[12] le bref purchace, et la suyte, saver, a venir par an ij foith, &c., par un an fut arrere.[13] Et en Baunk le tenaunt[14] vint, et tendist les arrerages de la rente, et damages.—Schar. *Cessavit.* [Fitz., *Cessavit*, 19; *Suerte*, 1.]

" unam acram et dimidiam et " unam rodam bosci de tenementis " illis, unde petit judicium si de " parcella redditus prædicti ad " illam quantitatem tenemento- " rum unde prædictus Alexander " petens, &c., est tenens actionem " versus eum habere debeat. Et " quoad residuum ejusdem reddi- " tus, &c., dicit quod prædictus " Alexander filius Alexandri non " dedit residuum illud sicut præ- " dictus Alexander per breve suum " supponit."

The demandant replied " quod " sunt ibi quatuordecim denaratæ " redditus, sicut ipse per breve suum " supponit, et quod ipse non tenet " aliqua tenementa unde redditus " ille provenit." Issue was joined on this; and the award of the *Venire*, but nothing further appears on the roll.

[1] From Harl., and 25,184. In the latter MS. the report runs on as if part of the preceding case.

[2] et is omitted from 25,184.

[3] 25,184, lessent.

[4] Harl., pur.

[5] The words between brackets are from Harl. alone.

[6] 25,184, arere.

[7] From Harl., and 25,184.

[8] 25,184, Plumtone.

[9] Harl., le *Cessavit*.

[10] 25,184, coverture.

[11] There is an erasure in 25,184, and the word is indistinct.

[12] 25,184, devant.

[13] MSS., rent arrere.

[14] Harl., R.

No. 42.

A.D. 1343. *Cessavit* where openness to distress was alleged, and the reverse was found at *Nisi prius*, and that the tenant had ceased paying rent for two years, and suit of Court for one year, and he tendered the arrears of rent and upon compulsion) of the suit also, because the writ lies in respect thereof. And observe, on account of the security.

damages.—SHARSHULLE. How do you tender? For, understand clearly that, if the land be saved by tender, he will never afterwards be able to avow for any arrears incurred previously.—*Pulteney.* He tenders three shillings for the rent in arrear up to the present time, and damages according to your discretion; and as to the suit there is no need to tender, because *Cessavit* does not lie for it.—SHARSHULLE. In God's name! Will you not then tender for the suit? And be certain that *Cessavit* does lie for suit in arrear.—To this SHARDELOWE and the COURT agreed.—*Richemunde*, seeing the opinion of the COURT, tendered 6*d.* for two non-appearances, which had been found to have already occurred, and damages assessed by the COURT at 6*d.*—SHARDELOWE. What security will you find?—*Richemunde.* We have other land in the same vill, which we will charge there, &c.—HILLARY. We cannot know that.—*Richemunde.* Ask the demandant as to that.—HILLARY. No, because, even though you were both agreed, we should not charge other land with the rent, since the demandant is a person in Religion.—*Richemunde.* Ready to give security as the COURT shall adjudge.—SHARSHULLE. The COURT adjudges that you hold your land quit by reason of your tender, and that you be in mercy; and for security we adjudge that, in case, in time to come, it may be decided, in this Court, that you again cease for two years, the land shall be liable as to the rest, so that you do not again have the benefit of the Statute[1] by tender, &c.

Ravishment of Ward.

(42.) § Note that on a writ of Ravishment of Ward they were at a traverse on the ravishment. It was

[1] 6 Edw. I. (Glouc.), c. 4.

No. 42.

Coment tendes vous? Car, entendez bien, si la terre soit saufve[2] par tendre, jammes avowera il apres pur nulles arerages encoruz adevant.—*Pult.* Il tend[3] iij*s.* pur la rente arrere tanqe ore, et damages solonc vos discrecions[4]; et quant a la suyte ne bosoigne pas tendre, car de ceo ne gist pas *Cessavit.*[5] —Schar. De par Deux! Donqes ne voilletz pas tendre pur la suyte? Et soiez certein qe *Cessavit*[5] gist pur suyte arrere.—*Ad quod* Schard. et Curia *consenserunt.*—*Richem., videns opinionem* Curiæ, tendist[6] vj*d.* pur deux nounvenues qe furent troves aderere, et damages taxes par la Court a vj*d.*—Schard. Quele soerte volez trover?—*Richem.* Nous avoms autre terre en mesme la ville, quele[7] la[8] nous voloms charger, &c.—Hill. Ceo ne poms pas saver. —*Richem.* Demandez pur ceo del demandant.—Hill. Nanyl,[9] qar, tut fussez vous dun assent, nous chargeroms[10] pas[11] autre terre de la rente, qar le demandant est homme de Religioun.—*Richem.* Prest a faire soerte come la Court agardera.—Schar. La[12] Court agarde qe vous tiengnez[13] quites vostre terre par my vostre tendre, et soiez en la mercye; et pur soerte nous agardoms en cas qen temps a venir soit discus en ceste Court qe[14] mes cessetz, &c., par ij aunz qe[15] la terre soit encoru[16] au remenant, issi qe mes neiez benefice destatut par tendre, &c.

A.D. 1343. *Cessavit* ou overture fut allegge, et le revers trove par *Nisi prius*, et qil avoit cesse de la rente par ij anz, et de la suyte j an, et il entendi les arrerages de la rente et auxi de la suyte par chas, qar de ceo bref git. *Et vide propter securitatem.*[1]

(42.)[17] § *Nota* qen bref de Ravisement de Garde ils furent a travers sur le ravisement. Trove fut

Ravisement de Garde.[18] [Fitz., *Jugement*, 116.]

[1] This marginal note is from 25,184 alone.
[2] Harl., salve.
[3] Harl., tient.
[4] Harl., decressiouns.
[5] Harl., le *Cessavit.*
[6] Harl., tendi.
[7] quele is omitted from 25,184.
[8] la is omitted from Harl.
[9] Harl., Nanille.
[10] Harl., chargeoms.
[11] 25,184, qe.
[12] La is omitted from 25,184.
[13] Harl., tenetz.
[14] Harl., qi.
[15] 25,184, et.
[16] 25,184, coru.
[17] From Harl., and 25,184, until otherwise stated.
[18] The words de Garde are from Harl. alone.

No. 42.

A.D. 1343. found that the infant had been ravished away, and that he was unmarried. And it was adjudged, notwithstanding, that the plaintiff should recover the value of the marriage, and damages, &c., and that the defendant should be taken.

Ravishment of Ward.

§ Humphrey de Bassingbourne brought his writ of Ravishment of Ward against Nicholas le Archere, and they pleaded to issue, and the finding was for the plaintiff. And the Inquest said that the infant was unmarried, and they assessed the value of the marriage at ten marks, and the damages for the trespass at 60*s*., whereupon the verdict was returned into the Bench.—Thereupon *R. Thorpe* came to the bar, and showed this matter, and prayed, for the plaintiff, ten marks as for the marriage, and the 60*s*. for the trespass.—*Grene*. The Statute[1] which gives the writ of Ravishment of Ward does not give damages, nor the value of the marriage, except in case the infant is married; wherefore, since in this case it is found that the infant is unmarried, it seems that you ought not to have damages nor the value of the marriage, but only the body of the infant.—Sharshulle. This is a writ of Trespass, and in every writ of Trespass, where the plaintiff's action is found, he will recover damages; wherefore, though the Statute, which gives the writ of Ravishment in this case, does not say expressly that the plaintiff shall recover damages, nevertheless, by the very fact that it gives the writ, it does by intendment give damages to the plaintiff if the action be in accordance with the truth, because it would be vain to have such a writ if one could not on the same writ recover damages.—*Grene*. The writ serves to recover the body of the infant in case he

[1] 20 Hen. III. (Merton), c. 6.

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lenfaunt ravi, et qil est desmarie. Et agarde fut, *non obstante*, qe le pleintif recoverast la value de mariage, et damages, &c., et le defendant pris. A.D. 1343.

§ Umfrey[1] de Bassingbourne[2] porta son briefe de Ravissement de Garde vers Nichole le Archere, et ils plederent a issu, lequel fut trove pur le pleintif. Et lenquest dit qe lenfant fut desmarie, et taxerent la value del mariage a x marcs, et les damages pur le trespas a lx*s.*,[3] sur quei le verdit fut retourne en Baunk.—Sur quei *R. Thorpe* vient al barre, et moustra cest chose, et pria pur le pleintif x marcs auxi come pur le mariage, et les lx*s.*[3] pur le trespas.—*Grene.* Lestatut qe doune briefe de Ravissement de Garde ne doune mye damages, ne la value del mariage, mes en cas qe lenfant est marie; pur quei, depuis qe en ceo cas trove est qe lenfant est desmarie, il semble qe vous ne devez aver damages, ne la value del mariage, mes soulement le corps lenfant.—Schar. Ceo est un briefe de Trespas, et en chescun bref de Trespas, la ou laccion le pleintif est trove, il recovera damages; par quei, depuis qe lestatut qe doune briefe de Ravissement en ceo cas, coment qe lestatut ne parle mye expressement qe le pleintif recovera damages, jalemeins[4] *eo ipso* qil doune le bref par entente cy[5] doune il damages al pleintif si saccion soit veritable, car il serreit en vein daver tiel briefe si homme sur mesme le bref ne recovera pas damages.—*Grene.* Le briefe sert a recoverir le corps lenfant en cas qil fut desmarie, Ravissement de Garde.

[1] This report of the case is printed by itself in the old editions as No 103. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*. It is, however, in this form, seen to be a continuation of Y.B., Mich., 16 Edw. III., No. 35 (Bassingbourne *v.* Archer), the record of which is *Placita de Banco*, Mich., 16 Edw. III., R° 303 d.

[2] Old editions, Wass.

[3] Old editions, xl. The correction is in accordance with the record.

[4] Old editions, jademeins.

[5] cy is omitted from the edition of 1679.

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A.D. 1343. should be unmarried, and, if he should be married, to recover the value of the marriage. And, Sir, upon a like writ at York, where Elyn was plaintiff, and it was found that the infant was married, she could recover only the value of the marriage.

Formedon in the Descender.

(43.) § Formedon on a gift made to T. the father, and claiming that after the father's death, and that of W., his son and heir, &c., the tenements ought to descend to K. and to M., as to sisters and heirs.—*Blaykeston.* We tell you (not acknowledging the form of the gift) that, after T.'s death, J., our father, who was W.'s elder, entered as son and heir, and held, and died seised, and that after his death we are in possession, as son and heir; judgment whether you can demand anything against us.—*R. Thorpe.* That plea is double: for if we plead to estrange your person by way of bastardy of blood, you will rely on our non-denial of the possession; and if we plead to the possession you will say that we have not denied privity; wherefore, hold to one.—Sharshulle. The plea is pursuant; and when he pleads as to the right on the privity of blood, the possession is not to be charged.—*R. Thorpe.* Then we tell you that this is not a plea, unless he make himself more privy and nearer to W., our father, who was seised, because this writ is in lieu of a Mort d'Ancestor at common law, in which case it would be necessary to speak only of the ancestor who was last seised, and on his possession whosoever may be nearest to him will have an action.—Hillary. It is not so in a case of Formedon, because from that it would follow that you would recover against him, and that he would afterwards recover against you by virtue of the same form of gift, which could not be; but he

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et, sil soit marie, a recoverir la value del mariage. A.D. 1343.
Et, Sire, en tiel briefe a Everwyke, ou Elyn fut pleintif, et trove fut qe lenfant fut marie, et il ne puit recoverir forsqe la value del mariage, &c.

(43.) [1] § Forme de doun dun doun [3] fait a T. pere, et qe apres la mort le pere, et W., fitz et heir, &c., a K. et a M., com a soers et heirs, descendre deit. —*Blaik.* Nous vous dioms, nient conissaunt la fourme, qe [4] apres la mort T., J., nostre pere, eigne de W., entra come fitz et heir, [et tient, et moruyst seisi, apres qi mort nous sumes einz, com fitz et heir] [5]; jugement si vers nous puissez rien demander. —*R. Thorpe.* Ceo plee est double: qar si nous pledoms en estraungeaunt vostre persone par bastardie du saunk, vous relierez sur nostre nient dedit la possession; et si nous pledoms a la possession, vous [6] dirrez qe nous avoms pas dedit la privete; par quei tenez al un.—Schar. Le plee est pursuaunt; et, quant il plede en dreit sur la privete du saunk, la possession nest pas a charger.—*R. Thorpe.* Donqes vous dioms qe ceo nest pas plee, sil ne se face plus prive et proschein a W., nostre pere, qe seisi fut, qar cest bref est en lieu de Mort dauncestre a la comune ley, en quel cas il ne [7] bosoignereit pas [8] parler forsqe del auncestre qe darrein fut seisi, et de sa possession qi qe soit plus proschein a luy avera accion.—Hill. Il nest pas issi dun Forme de doun, qar de ceo ensuereit qe vous recoverez [9] vers [10] luy, et apres il recovera vers vous de mesme la fourme, qe ne put estre; mes

Fourme de doun en descendre [2]

[1] From Harl., and 25,184.
[2] The marginal note is from Harl. In 25,184 it is *Nota*.
[3] The words dun doun are omitted from 25,184.
[4] 25,184, et qe.
[5] The words between brackets are omitted from 25,184.
[6] vous is omitted from 25,184.
[7] 25,184, ne le.
[8] pas is omitted from 25,184.
[9] Harl., respoundretz.
[10] 25,184, devers.

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A.D. 1343. who is nearest to the donee shall gain the inheritance without having regard to subsequent possession, or shall retain it if he be in possession.—*R. Thorpe.* He shall not be admitted to this plea to make us a stranger, &c., because it is after view, and so he has affirmed the descent, and his plea now is contrary to that which he has previously affirmed.—*Gaynesford.* This plea is to the action, wherefore we shall well be admitted, because we do not give our plea to the descent. Besides, if we were a stranger, we could say, after view, that one who was omitted in the descent had enfeoffed us, or released his right. Why shall we not have the same advantage, when we are ourselves a party, of saying that this right rests in us? —*Thorpe.* Feoffment or release of an ancestor does not extend to falsifying the descent, as this plea does; and you shall not be admitted to allege bastardy in us now, and so that will be to the action.—*Gaynesford.* Cannot the tenant in a writ of Aiel say, after view, Not the next heir?—*Grene.* After view you can plead in bar the warranty of any ancestor who has been omitted in counting, or say that he forfeited, so adding some collateral matter: but simply to allege some contradictory matter which would disprove the descent that was previously affirmed you shall not be admitted. —And Hillary was on the point of giving judgment for the demandant, but Stonore would not allow it.— Willoughby. He pleads as to the right in order to bar, and not as to the descent.—*Thorpe.* After view on a writ of Right will the tenant be admitted to join the mise on the release of my ancestor who has been omitted in the descent? as meaning to say that he will not.—Stonore. Will you oust him from his land

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celuy qest plus proschein au done serra enherite saunz aver regarde a la possession puis, ou retendra sil soit en possession.—*R. Thorpe.* A ceo[1] plee ne serra il resceu de nous estraunger, &c., qar cest apres la vewe, et issi ad il afferme la descente, et son plee a ore est a contrarie de ceo qe devant ad[2] afferme.—*Gayn.* Ceo plee est al accion, par quei nous serroms bien resceu, qar nous donoms pas nostre plee a la descente. Ovesqe ceo, si nous fuissoms estraunge, nous puissoms[3] dire, apres la vewe,[4] qe cely qe fut entrelesse en la descente nous avoit feffe, ou relesse son dreit. Pur quei naveroms[5] pas mesme[6] lavauntage, quant nous sumes mesmes partie, a dire qe ceo dreit repose en nous?—*Thorpe.* Feffement ou relees dauncestre nest pas a fauxer la descente, com ceo plee est; et bastardie ne serrez[7] pas resceu dallegger en nous a ore, et si serra ceo al accion.—*Gayn.* Ne put tenaunt en bref Daiel, apres la vewe, dire nient plus proschein heir?—*Grene.* Apres la vewe vous avez plee en barre par garrauntie dasqun auncestre qest entrelesse en countaunt, ou a dire qil forfit, issi joinant[8] asqun de cost[9]; mes a per luy a[10] contrarier chose qe desprovereit la descente qe devant fut afferme navendrez vous[11] pas.—Et[12] Hill. fut en point daver rendu jugement pur le demandant, *sed* Ston. *noluit permittere.*—Wilby. Il plede en dreit pur barrer, et noun pas a la descente.—*Thorpe.* Apres vewe en bref de Dreit serra le tenant resceu de joindre la mise sur le relees mon auncestre qest entrelesse en la descente? *quasi diceret non.*—Ston. Le voillez A.D. 1343.

[1] 25,184, tiel.
[2] Harl., est.
[3] Harl., purroms.
[4] The words la vewe are omitted from Harl.
[5] 25,184, nous naveroms.
[6] mesme is omitted from Harl.
[7] Harl., serreit.
[8] 25,184, yointera.
[9] Harl., a ceo, instead of de cost.
[10] Harl., de.
[11] vous is omitted from Harl.
[12] Et is omitted from 25,184.

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A.D. 1343. and from his answer because he has demanded view? —*Thorpe*. If it appears to you that he can be admitted to this, we are ready to answer.—Stonore. Yes, that
Bastardy. is so, certainly.—*Thorpe*. We tell you that whereas he says that his father entered as elder son and heir, after whose death he is in possession, we tell you that his father was born before the marriage, and so was a bastard; ready, &c.—*Blaykeston*. You shall not be admitted to that, because his father entered as son and heir, and held, and died seised; judgment whether you shall be admitted to make an objection to him after his death.—They were adjourned.—*Quære*; for it seems that omission to make any objection is not a plea against issue in tail, unless negligence can be surmised in the issue, to the effect that he might in his own time have made the objection, and did not.

Debt. (44.) § *R. Thorpe* showed how on a writ of Debt on an obligation which was denied the issue had been found for the plaintiff, and it was adjudged that the plaintiff should recover, &c., and that the defendant should be taken for having denied his deed. And now, said *Thorpe*, he has made his fine to the King, and is on the point of being liberated, and satisfaction is not yet made to the party, and therefore we pray that his body remain in prison.—Stonore. You know well that when a plaintiff sues execution by *Elegit* or *Fieri facias*, the defendant can then by law make a fine; and

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vous ouster de sa terre et son respouns pur ceo qil ad demande la vewe?—*Thorpe.* Sil vous semble qil avendra, prest a respoundre.—Ston. Oyl, ceo est[1] certein.[2]—*Thorpe.*[3] Nous vous dioms qe la ou il dit qe son pere entra com fitz et heir eigne, apres qi mort il est einz, nous vous dioms qe son pere nasquit[5] avant les esposailles, et issi bastarde; prest, &c.—*Blaik.* A ceo ne serrez resceu, qar son pere entra come fitz et heir ent, et tient, et morust seisi; jugement si a reclamer luy apres sa mort serrez resceu.—*Adjornantur.*[6]—*Quære*: qar semble[7] qe nient reclamer nest pas[8] plee countre issue en taille, si homme ne purra surmettre neggligence[9] en lissue qil put aver en son temps reclame, et ne fist pas. A.D. 1343. Bastarde.[4]

(44.)[10] § *R. Thorpe* moustra coment en bref de Dette sur obligacion dedit, et lissue trove pur le pleintif, fut agarde qe le pleintif recoverast, &c., et qe le defendant pur dedire de son fait fut pris. Et ore ad il fait sa fyn au Roi, et est en point destre deliverez, et gre uncore nest pas fait a la partie, par quei nous prioms qe son corps demoerge.[12]—Ston.[13] Vous savez bien quant pleintif suye[14] execucion par *Lelegit*[15] ou *Fieri facias* donqes le defendant par ley Dette.[11]

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[1] 25,184, Oyol, soyez, instead of Oyl, ceo est.

[2] In the old editions are inserted here the words "*Vide plus, folio,*" without any number.

[3] This portion of the report is printed by itself in the old editions as No. 88, with the marginal note "*Casus pauperis.*" The Harleian MS., however, shows by cross-references that it is in fact a part of No. 43.

[4] The marginal note is from 25,184, Harl. having only the reference above mentioned.

[5] 25,184, fut nee.

[6] *Adjornantur* is omitted from Harl.

[7] Harl., sembloit.

[8] pas is omitted from 25,184.

[9] Harl., necligens.

[10] From Harl., and 25,184, until otherwise stated.

[11] The marginal note is from Harl. In 25,184 it is *Nota*, but in a later hand.

[12] Harl., demurge.

[13] Harl., *Setone.*

[14] Harl., swe.

[15] 25,184, *Elegit.*

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A.D. 1343. you have sued execution.—*Thorpe.* Never, Sir.—*Grene.* It is of record that you prayed execution, and that a writ of execution has issued for you, and even though it has not been sued, still for a debt the defendant shall not remain in prison until satisfaction be made to the plaintiff; but in a case of trespass he would.—*Pole.* When he has been taken, as he is in our case, he shall remain in custody equally in the one case and in the other.

Debt. § On a writ of Debt, where the obligation had been denied and the finding had been against the defendant, and he had therefore been committed to prison, he now came, and prayed that he might make a fine.—*Seton.* We pray that he be not admitted to do so until the plaintiff be satisfied as to his damages.—Hillary. We find that you have sued execution of damages, whereas, when the party has sued an *Elegit* or a *Fieri facias*, it is not right that the body should remain in prison.—*Grene.* Though it may be law in case of a writ of Trespass, and where disseisin with force is found, that the body shall remain until, &c., it is not law on a writ of Debt.—*Seton.* Yes, it is; and now we have not sued any execution, and you will not find any entered.—Hillary. We recorded that you demanded execution.

Scire facias on Debt. The Sheriff returned "*Clericus est.*" Therefore (45.) § Note that on a *Scire facias* sued against a parson on a judgment of recovery against himself on a writ of Debt the Sheriff returned "*Clericus est,*" &c. And without any other process execution was awarded. And on a writ of Trespass or of Account, if the Sheriff return, on the first day, "*Clericus est,*" a *Capias* is

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put faire fyn; et vous avez suy execucion.—*Thorpe.* Sire, unqes.—*Grene.* Il est de recorde qe[1] vous priastes execucion, et qe bref est issu pur vous dexecucion, et tut ne[2] fut ceo pas[3] suy, unqore pur dette le defendant ne[2] demura pas tanqe gre[4] soit fait au pleintif; mes en cas de trespas il freit.—*Pole.* Quant[5] il serra[6] pris, come il est en nostre cas, owelment demura il en garde[7] en lun et lautre cas. A.D. 1343.

§ En[8] un briefe de Dette, la ou obligacion fut dedit, quel fut trove encontre le defendant, par quei il fut agarde al prisone, et ore vient, et il pria qil puit faire fyn.—*Setone.* Nous prioms qil ne soit[9] pas resceu tanqe le pleintif soit servi de ses damages.—Hill. Nous trovoms qe vous avez sue execucion des damages, ou quant qe partie ad suy *Elegit*, ou par *Fieri facias*, il nest pas resoun qe le corps demurge.—*Grene.* Tout soit ceo ley en briefe de Trespas, et la ou disseisine est trove ove force, qe le corps demura tanqe, &c., ceo nest pas ley en briefe de Dette.—*Setone.* Si est; et ore nous suomes nul execucion, ne vous troveres nul entre.—Hill. Nous recordoms qe vous demandastes execucion. Dette.

(45.)[10] § *Nota* qen un *Scire facias* suy vers une persone hors dun recoverir taille vers luy mesme en bref de Dette le Vicounte retourna *Clericus est*, &c. Et[11] saunz autre proces execucion fut agarde. Et en bref de Trespas ou Dacompte si le Vicounte retourne,[12] al primer jour, quod *Clericus est*, *Capias*[13] *Scire facias* de Dette. Le Vicounte retourna *quod clericus est. Ideo*

[1] 25,184, et.
[2] ne is omitted from 25,184.
[3] 25,184, point.
[4] gre is omitted from 25,184.
[5] Quant is omitted from Harl.
[6] Harl., est.
[7] Harl., la garde.
[8] This report of the case is printed by itself in the old editions as No. 105. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*.
[9] Old editions, serroit.
[10] From Harl., and 25,184.
[11] Et is omitted from Harl.
[12] Harl., retourna.
[13] Harl., *Cape*.

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A.D. 1343. execution was awarded. But it is otherwise in respect of Trespass and Account.

awarded, and this process is in both cases a mischief for the clerk. But note that, in the first instance, the Sheriff is commanded to do execution, and then, because the Sheriff has no power, the Ordinary.

Quare impedit for the King against one person, and against him and another by another writ. And the first one named in the first writ could not deny the action. Therefore Counsel for the King prayed a writ to the Bishop, and did not have it, but was put to answer against the other who was named in

(46.) § The King brought a *Quare impedit* against John Chaumberleyn, who appeared, and confessed the action; wherefore a writ to the Bishop was awarded for the King.—*R. Thorpe.* We pray that no writ issue yet, because the King has brought another writ in respect of the same church against this same John and John Busshe, who is ready to plead to the King; and, since the King might be stopped by John Busshe's plea, it would not be right that execution should be awarded. —*W. Thorpe.* If both had been named in this writ your reasoning would hold; but now John Busshe is a stranger to this original.—*R. Thorpe.* There is no difference, for the reason is that, if both had been named as parties to this writ, by reason of judgment given against one execution would not be had against him, because the other who is named as defendant might bar the plaintiff from an action; and there is

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est agarde, quele[2] proces en lun et lautre cas est meschief pur le[3] clerk. *Sed nota* qe primes execucion est comaunde au Vicounte de faire, et par noun power[4] de luy al Ordiner.[5]

A.D. 1343. execucion agarde. *Sed aliud est* de Trespas et Dacompte.[1]

(46.)[6] § Le Roi porta *Quare impedit* vers Johan Chaumberleyn, qe vint, et ne poait dedire; par quei bref fut agarde al Evesqe pur le Roi.—*R. Thorpe.* Nous prioms qe nul bref isse uncore,[7] qar le Roi ad porte de mesme leglise autre bref vers mesme cesty Johan et Johan Busshe,[8] qe prest est a pleder au Roi; et, desicome par le plee Johan Busshe[8] le Roi purreit estre arestu, ne serreit pas resoun qe execucion fut agarde.—[*W.*] *Thorpe.* Si touz deux fuissent nomes en ceo bref vostre resoun liereit; mes ore Johan Busshe[8] est estraunge a ceste[9] original.—*R. Thorpe.* Ceo nest pas diversite, qar la cause est si touz deux fuissent nomes parties a ceo bref par quei par jugement taille vers lun execucion vers luy ne se freit pas, pur ceo qe lautre qest nome defendant purreit forclore le pleintif daccion;

Quare impedit pur le Roy vers un, et vers cely et vers un altre [par] un altre bref. Et le primer en le primer bref ne pout dedire. *Ideo* il pria bref al Evesqe, *et non habuit*, enz mys a respoundre vers lautre nome en le

[1] The words de Dette are omitted from 25,184, but all the subsequent words of the marginal note are from that MS. alone.

[2] 25,184, Le.

[3] le is omitted from 25,184.

[4] 25,184, poair.

[5] Harl., Ordeigner.

[6] From Harl., and 25,184. There is an entry in the *Placita de Banco*, Mich., 17 Edw. III., R° 335, in which there is the award of the writ to the Bishop for the King, but there is an erasure at the end which takes out a part of the award, and a note in the margin "Vacat hic, quia plenius alibi." This action was brought by the King against John Chaumberleyn, knight, alone, in respect of a presentation to the church of Merston (Marston, Lincolnshire).

On R° 361, d, it appears that an action was brought by the King against John Busshe of Hagham, knight, alone, in respect of a presentation to the same church; and on R° 426, d, the action against John Chaumberleyn re-appears, with Chaumberleyn's confession of the action, and the award of the writ to the Bishop in full.

[7] uncore is omitted from Harl.

[8] Harl., Bussey; 25,184, Buscy.

[9] Harl., cely.

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A.D. 1343. the same reason here, although there are different writs, because by this non-denial the plea as to this church between the King and John Chaumberleyn is determined with respect to all writs.—SHARDELOWE. There is a difference between two original writs and one in this case.—SHARSHULLE said that, because there were different original writs, the King would clearly have a writ to the Bishop.—HILLARY said that he would not.—*R. Thorpe.* If the King were another person, who brought different writs against one and the same person, and the writs were of the same date, all the writs would abate; and, if they were of different dates, those which were of later date would abate. And the reason is that I shall not be put to answer to different original writs in respect of the same matter; and though I may not be able to abate the King's writs, still I shall have in the issue of the plea the same advantage against him as I should have against another person.—*W. Thorpe* counted against John Busshe, and claimed by reason of the non-age of the heir of J. Chaumberleyn, &c., and of the advowson not having been sued out of his hand; and he counted how the ancestor presented, &c.—*Grene.* We do not admit that

the second writ by HILLARY. And this was contrary to the opinion of SHARSHULLE. And see, &c. And note that if two writs be purchased against one person in respect of the same land, both will abate, &c.

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et mesme la resoun est cy, tut soient[2] ils divers brefs, car par ceo nient dedire le plee est termine de ceste eglise entre le Roi et Johan C. a touz les brefs.—Schard. Il yad[3] diversite entre deux originals et une[4] en le cas.—Schar. dit qe de clere, pur ceo qils furent divers originals qe le Roi avereit bref al Evesqe.—Hill. dit qe noun.—*R. Thorpe.* Si le Roi fut autre persone, qe portast divers brefs vers une mesme persone, et les brefs fuissent dun date, touz les brefs abatereint; et, sils feussent[5] de divers dates, ces qe furent de puisne date abatereint. Et la cause est pur ceo qe jeo ne serrey mys a respoundre a divers originals dune mesme chose; et tut ne puisse jeo abatre les brefs le Roi, unqore javeroy en issu du plee mesme lavauntage vers luy qe jeo averay vers autre persone.—[*W.*] *Thorpe* counta vers Johan Busshe, et clama par noun age leir J. Chaumberleyn, &c., et lavoesoun nient suy hors de sa mayn; et counta coment launcestre presenta, &c.[6]—*Grene.* Nous ne conissoms pas qe

A.D. 1343. ij bref par Hill. *Et hoc contra opinionem* Schar. *Et vide, &c. Et nota* si ij brefs soient purchacez vers un de une terre lun et lautre abate-rount, &c.[1] [Fitz., *Briefe al Evesque*, 18.]

[1] The marginal note, except the words *Quare impedit*, is from 25,184 alone.

[2] 25,184, soiez.

[3] 25,184, nad, instead of yad.

[4] 25,184, lun

[5] Harl., furent.

[6] The declaration in both actions was, according to the records, "quod quidam Stephanus Chaumberleyn fuit seisitus de advocatione ecclesiæ prædictæ, tempore pacis, tempore H. Regis proavi domini Regis nunc, et ad eandem præsentavit quendam Milonem le Clerk clericum suum, qui ad præsentationem suam fuit admissus et institutus . . . . . Et de ipso Stephano descendit advocatio prædicta cuidam Henrico ut filio et heredi, &c., et de ipso Henrico descendit eadem advocatio cuidam Roberto ut filio et heredi, et de ipso Roberto descendit advocatio illa cuidam Johanni, ut filio et heredi, &c., qui fuit infra ætatem, &c. Et quia idem Robertus tenuit medietatem manerii de Drax de domino E. Rege patre domini Regis nunc in capite, ut de jure coronæ suæ, idem Rex, pater, &c., seisivit in manum suam advocationem prædictam, simul cum aliis terris et tenementis, feodis, et advocationibus quæ fuerunt prædicti Roberti die quo obiit, ratione minoris ætatis prædicti Johannis. Et quia prædictus Johannes non est secutus dictam advocationem extra manus dicti Regis patris, &c., nec extra manus domini

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A.D. 1343. the ancestor presented, &c., but we tell you that what the King supposes to be a church is a chapel of the church of S.,[1] which is of our patronage, and which church is full of our presentee; judgment, &c. But he did not dare to abide judgment on this, because, if a presentation had been made to it as to a church, that would change the matter. Therefore he traversed to the effect that the presentee had not been admitted on the presentation, &c.

Trespass. (47.) § Trespass in respect of two cows and one bull.—*Gaynesford*, as to the two cows avowed the taking on the plaintiff as on his very tenant in accordance with the Statute,[2] and said also that the deliverance was made in the County Court; judgment whether tort in his person, &c. And as to the bull he said that he took other beasts for rent in arrear, and this bull was returned to him in lieu of the other beasts by the plaintiff's delivery.—*Pulteney*. As to the bull we will maintain that you took it against the peace, &c. And as to the cows the plea is double: one the justification, the other which goes to the abatement of the writ on the ground that replevin was made; wherefore let him

[1] As to the name and the facts, *see* p. 251, note 1.

[2] 52 Hen. III. (Marlb.), c. 15.

No. 47.

launcestre presenta, &c., mes vous dioms qe ceo qe le Roi suppose estre eglise est chapelle del eglise de S., qest de nostre patronage, quel eglise est pleyn de nostre presente; jugement, &c. Mes sur ceo il nosa demurer, qar, si presentement eust este fait a cel come a eglise, ceo changereit la matere. Par quei il traversa qe nient resceu al presentement, &c.[1] A.D. 1343

(47.)[2] § Trespas de deux vaches et un tor.—*Gayn.* Quant a les deux vaches avowa la prise sur le pleintif come sur verrei[3] tenant par statut, et dit auxint qe la deliveraunce[4] fut fait en Counte; jugement si tort en sa persone, &c. Et quant a tor il dist qil prist autres bestes pur rente arrere, et cest tor luy fut[5] retourne en lieu des autres bestes de la livere le pleintif.—*Pult.* Quant au tor nous voloms meintener qe vous[6] le pristes countre la pees, &c. Et quant a les vaches le plee est double: un la justificacion, un autre qe va al abatement du bref pur ceo qe la replevyn fut fait; par quei se Trespas.

" Regis nunc, eadem advocatio in " manu ipsius domini Regis nunc " existit. Et, sic advocatione præ- " dicta in manu ejusdem domini " Regis nunc adhuc existente, " dicta ecclesia vacavit post mortem " prædicti Milonis, et ita ad domi- " num Regem pertinet ad prædic- " tam ecclesiam præsentare."

[1] The plea on behalf of Busshe was, according to the roll, " quod, " ubi dominus Rex in narratione " sua prædicta supponit prædictum " Milonem le Clerk fuisse admissum " et institutum in ecclesia de Mer- " stone prædicta ad præsentationem " prædicti Stephani, &c., ipse pro- " testatur quod ipse non cognoscit " quod ecclesia de Merstone est " ecclesia per se, immo capella " annexa ecclesiæ de Hagham. Et " dicit quod idem Milo non fuit ad- " missus et institutus in eadem " ecclesia de Merstone ad præsenta- " tionem præfati Stephani, sicut " dominus Rex supponit. Et hoc " paratus est verificare," &c.

After an adjournment there was a replication on behalf of the King " quod prædictus Milo fuit ad- " missus, et institutus in ecclesia " prædicta ad præsentationem " prædicti Stephani, sicut ipse " superius asserit." Issue was joined upon this, and the *Venire* awarded.

[2] From Harl., and 25,184.

[3] 25,184, terre.

[4] 25,184, liveraunce.

[5] fut is omitted from Harl.

[6] vous is omitted from Harl.

Nos. 48–50.

A.D. 1343. hold to one.—*Gaynesford* held to the justification.—*Pulteney*. You took them of your own wrong, without any such cause; ready, &c.—And the other side said the contrary.

Formedon. (48.) § A Formedon was brought against the parson of Witchingham, who said that he found his church seised, and prayed aid of the patron and Ordinary.—*Rokele*. You ought not to have aid, because your estate is by abatement after the death of one E.—*Pole*. That E. was our predecessor, and you name us as parson; judgment, and we pray aid.—*Rokele*. E., your predecessor, purchased to hold to him and his heirs, so that you did not find your church seised, but are an abator. And, inasmuch as the cause for which you would have aid, to wit, that you found your church seised, is destroyed by my plea, judgment.—Shardelowe. Will you put him to plead the estate of his predecessor? You will not do so; therefore let him have the aid.—But this was contrary to the common opinion.

Dower. (49.) § Dower. On the Grand *Cape* the tenant appeared. The demandant released the default, and the tenant by leave rendered, &c. The demandant prayed damages because her husband died seised.—*Thorpe*. We were in the country the whole time ready to render dower; but you claimed the entirety, and there has been no default in Court on our part, because we will deny the summons by our law.—And they are at the averment on the tender in the country.

Waste. (50.) § Waste. After the Grand Distress a writ of Enquiry of Waste was sent to the Sheriff, and he returned it "*tarde*." The plaintiff prayed an *Alias* writ.—*Derworthy*. The defendant never knew anything at all about this, and you see by the writ that those who

Nos. 48–50.

teigne al un.—*Gayn.* se tient a la justificacion.— *Pult.*[1] Vous les pristes de vostre tort demene saunz tiele cause; prest, &c.—*Et alii e contra.* A.D. 1343.

(48.)[2] § Formedoun fut porte vers la persone de Wychingham,[3] qe dit qil trova sa eglise seisi, et pria eide de patroun et Ordiner.[4]—*Rokele.* Eide ne devez aver, car vostre estat est par abatement apres la mort un E.—*Pole.* Celuy E. fut nostre predecessour, et vous nous nomez persone[5]; jugement, et prioms eide.—*Rokele.* E., vostre predecessour, purchacea a luy et ses heirs, issi qe vous[6] ne trovastes[7] pas vostre eglise seisi, mes estes abatour. Et, desicome la cause pur quei vous avereitz eide, saver, qe vous trovastes vostre eglise seisi, est destruit par mon plee, jugement.—Schard. Luy voillez mettre a pleder lestat son predecessour? Noun ferrez; par quei eit leide.—*Sed fuit contra communem opinionem.* Formedoun. [Fitz., *Aide*, 137.]

(49.)[8] § Dowere. Al graunt *Cape* le tenant vint. La demandante relessa le defaut, et le tenant par conge rendist, &c. La demandante pria damages pur ceo qe son baroun morust seisi.—*Thorpe.* Nous fumes en pays tout temps prest a[9] rendre dowere; mes vous clamastes lentier, et en Court ny ad pas defaut en nous, pur ceo qe nous voloms defendre la somons par nostre ley.—Et sount al averement sur le tendre en pays. Dowere.

(50.)[2] § Wast. A la graunt destresse maunde fut a Vicounte denquere, qe retourna *tarde.* Le pleintif pria *sicut alias.*—*Derworth.* Le defendant ne savoit unqes rien de tut, et vous veiez par le bref qe ces Wast. [Fitz., *Disceit*, 40.]

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[1] *Pult.* is omitted from 25,184.
[2] From Harl., and 25,184.
[3] 25,184, Wynchyngham.
[4] Harl., Ordeigner.
[5] Harl., persone persone.
[6] vous is omitted from 25,184.
[7] 25,184, trovez.
[8] From Harl., and 25,184.
[9] 25,184, de.

No. 51.

A.D. 1343. bring the writ have only a term for life in remainder, and also that the tenant has a higher estate than a term for life, &c.—HILLARY. You have not a day in Court; wherefore you cannot say anything, and if there be any deceit, you will have a writ of Deceit.—*Notton.* Not where the land is lost by the finding of an inquest.—SHARDELOWE. Yes, you will have one, because the default is the cause of the loss.—*Pulteney.* Why more here than in an Assise?

Waste. (51.) § Waste brought in A., B., and C.[1]—*Seton.* A.[2] is a hamlet of B.[2]; judgment of the writ. And we tell you that C. is neither a vill nor a hamlet.—And he was put by the COURT to hold to one.—*Moubray.* If we hold to one, at another time, though the other defect may be in the second writ, we shall not abate it.—SHARDELOWE. Yes, you will, by making protestation now.—And he did so.—And he held to the point that A.[2] is a hamlet of B.[2]—*Notton.* It is not a hamlet of B.; ready, &c.—And the other side said the contrary.

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[1] As to these names, &c., *see* p. 255, note 2.

[2] As to these names *see* p. 255, note 6.

No. 51.

qe portent le bref nount qe terme de vie par re- A.D. 1343.
meindre, et auxi le tenant ad plus haut estat qe terme de vie, &c.—Hill. Vous navez pas jour en Court; par quei vous poietz rien dire, et, si desceit soit fait, vous averez bref de Desceit.—*Nottone.* Noun pas ou la terre est[1] perdu par enquest.—Schard. Si averez, qar la defaut est cause de la perde.—*Pult.* Pur quei plus icy qen Assise?

(51.)[2] § Wast porte en A., B., et C.—*Setone.* A. Wast.
est hamel de B.; jugement du bref. Et vous dioms qe C. nest pas ville ne hamel.—Et par Court est mys de prendre al un.—*Moubray.* Si nous pernoms al un, autrefoith, mesqe lautre defaut soit en le seconde bref, nous labateroms[3] pas.—Schard. Si ferrez[4] par protestacion a ore.—*Et ita fecit.*—Et se[5] prist a ceo qe A. est hamel de B.[6]—*Nottone.* Ceo nest pas[7] hamel de B.; prest, &c.[8]—*Et alii e contra.*

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[1] est is omitted from 25,184.

[2] From Harl., and 25,184, but corrected by the record *Placita de Banco*, Mich., 17 Edw. III., R° 298. It there appears that the action was brought by Richard de Stapeldone, knight, against Robert Corun and Joan his wife, in respect of waste in tenements held by the defendants, as Joan's dower, of the plaintiff's inheritance in Stapeldon, Milton, Cokebury (Cookbury), and Wyke (Devon).

[3] 25,184, nabatroms.

[4] Harl., fretz.

[5] 25,184, ceo.

[6] According to the roll the defendants, after having prayed and had oyer of the writ, pleaded as follows—"Non cognoscendo quod "Stapeldone et Wike sint villæ, "nec quod Wyke sit hamelettum "alterius villæ quam de Miltone, "dicunt quod, cum prædictus "Ricardus supponit, per breve "suum prædictum, vastum factum "fuisse in Stapeldone, Miltone, "Cokebury, et Wyke, Cokebury est "hamelettum de Miltone, et hoc "parati sunt verificare," &c.

[7] pas is omitted from 25,184.

[8] The replication, according to the roll, was "quod prædicti "Robertus et Johanna per hoc "breve suum cassare non debent "in hac parte, dicit enim quod "Cokebury non est hamelettum de "Miltone." Issue was joined upon this.

The jury found, at *Nisi prius*, "quod Cokebury est villa de se, et "non hamelettum de Miltone." They also found the particulars of the waste committed.

Nos. 52, 53.

A.D. 1343. Dower. (52.) § Dower. The tenant vouched the husband's heir, who was in wardship. The guardian, tenant by his warranty, said that the demandant withheld the heir from him, whereas his land was holden in chivalry, and, if she would render the heir, he was ready, and always had been, to render dower.—*Derworthy.* Such a plea does not lie in the mouth of any other person than one who could at all times since we were dowable have rendered; and you could never render before now, so by law, if the fact were such as you allege, you were always put to your action by writ of Wardship, and not to have the advantage of such an answer, for the withholding of dower was that of another person, and not yours, and it was always for another to have rendered, and not for you.—Sharshulle. He can render now; why cannot he now have the answer?—*Thorpe, ad idem.* We are the person against whom she will recover, and the tenant will hold in peace, and we could always by law have made satisfaction in respect of that which we hold, because by law she shall be served as to her dower out of that which we hold, so that the answer is given to us in lieu of reprisal.—And it appears to the Court that the guardian, tenant by his warranty, shall have such an answer.—*Derworthy.* She has not eloigned the infant; ready, &c.—And the other side said the contrary.

Cui in vita. (53.) § Note that in a *Cui in vita* one was vouched as being of full age, and he appeared, and demanded judgment of the voucher because he was under age.—Shardelowe. This is not in Dower, and therefore deliver yourself.—*Richemunde.* What has he to bind

Nos. 52, 53.

(52.) [1] § Dowere. Le tenant voucha leir le baroun en garde. Le[2] gardein par sa garrauntie dist qe la demandante luy detint[3] leir,[4] ou sa terre est tenu en chivalrie, et, si ele voille rendre leir, il est prest, et tut temps fut, de rendre dowere.—*Derworthi.* Tiel plee ne gist pas en bouche dautre forsqe de cely qe tut temps puis qe nous fumes dowable put aver rendu[5]; et vous ne poiastes unqes devant ore rendre, issi de ley, si le fait fut tel come vous alleggez, vous fuistes tut temps mys a vostre accion par bref de Garde, et noun pas aver avauntage par tel respouns, qar fust autri detenu, et noun pas la vostre, et a[6] autre fut tut temps daver rendu, et noun pas a vous.—Schar. Ore put il rendre; pur quey ne put il ore aver le respouns?—*Thorpe, ad idem.*[7] Nous sumes cely vers qi ele recovera, et le tenant tiendra en pees, et tout temps poames de ley aver fait gree de ceo qe nous tenoms, pur ceo qe par ley ele serra servy de son dowere de ceo qe nous tenoms, issi qe a nous[8] en lieu de withernam[9] le[10] respouns est done.—*Et videtur* Curiæ qe le gardein, tenaunt[11] par sa garrauntie, avera tel respouns.—*Derworthi.*[12] Ele nad pas esloygne lenfaunt: prest; &c.—*Et alii e contra.* A.D. 1343. Dowere. [Fitz., *Voucher*, 93.]

(53.) [13] § *Nota* qen un[14] *Cui in vita* un[15] fut vouche come de plein age, qe vint, et demanda jugement du voucher pur ceo qil est deinz age.—Schard. Ceo nest pas en Dowere, et pur ceo deliverez vous.—*Richem.* Quei ad il de nous lier?— *Cui in vita.* [Fitz., *Age*, 49.]

[1] From Harl., and 25,184.
[2] 25,184, de.
[3] 25,184, deyvent.
[4] 25,184, lier.
[5] rendu is omitted from 25,184.
[6] a is omitted from 25,184.
[7] The words *ad idem* are omitted from 25,184.
[8] 25,184, avoms, instead of a nous.
[9] 25,184, wynchernam.
[10] 25,184, de.
[11] tenaunt is omitted from 25,184.
[12] Harl., Hill.
[13] From Harl., and 25,184.
[14] The words *Nota* qen un are omitted from 25,184.
[15] un is omitted from 25,184.

No. 54.

A.D. 1343. us?—*Profert* was made of his father's deed.—And because the vouchee is still under age, and he is not the husband's heir, and so not in the case of the Statute,[1] the parol will demur.

Præcipe quod reddat.

(54.) § A tenant vouched herself, and her sister, and the issue of a third sister, because their common ancestor enfeoffed her. And the voucher was counter-pleaded on the ground that she whom the tenant alleged to be her sister was a bastard, for which reason she could not be heir.—*Gaynesford.* Still if she be seised as heir she shall be vouched.—*Pulteney.* She cannot be understood to be seised when others are in possession who have right and are seised.—Hillary. You say that which you would like to be the fact. The bastard will by her entry be seised as much as the others, and this voucher is not yet shown to be in any respect false with regard to the others; wherefore see whether you will say anything else.—*Pulteney.* We tell you that both of those who are vouched with the tenant are bastards.—*Pole.* It is not a plea, where an heir is vouched, to say that he is a bastard, because, even though he were a bastard, he would be charged by reason of his possession.—*Pulteney.* It may be that in the case you put it is so, because in that case the voucher is general, and without special cause, but in this case you cannot vouch yourself and the others without special cause, to which cause it is right that we should have a traverse; and the statement that the others cannot be heirs, as above, destroys the cause of the voucher.—*Gaynesford.* It does not, because the feoffment is the cause of the voucher, and if some of those who are vouched are bastards, while some are possibly muliers, is the voucher then made false? Or suppose them all to be bastards, and to have entered, and to have made partition of the inheritance, will not

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[1] 13 Edw. I. (Westm. 2), c. 40.

No. 54.

Le fait son pere fut mys avant.—Et pur ceo qe le vouche est unqore deinz age, et il nest pas heir le baroun, *et sic* noun pas en cas destatut, la parole demura. A.D. 1343.

(54.)[1] § Un tenant voucha luy mesme, et sa soere, et lissue de la tierce soere, pur ceo qe lour comune auncestre la enfeffa. Et le voucher fut countreplede pur ceo qe cele qele dit estre sa soere est[3] bastarde, pur quei ele ne put heir estre.—*Gayn.* Et si ele soit seisi come heir ele serra vouche.—*Pult.* Ele ne put estre entendu seisi quant autres sount einz qount dreit et sount seisi.—Hill. Vous[4] ditez talent.[5] La bastarde par son entre serra si avant seisi come les autres, et ceo voucher nest de rien unqore faux vers les autres; par quei veiez si vous voillez autre chose dire.—*Pult.* Nous vous dioms qe lun et lautre qe sount vouches ove la tenante[6] sount bastardes.—*Pole.* Ceo nest pas plee, la ou un homme vouche un heir, a dire qil est bastarde, qar, tout fut il bastarde, par sa possession il serreit[7] charge.—*Pult.* Put estre en vostre cas qil est issi, qar le voucher en vostre cas est general, et sanz cause, mes en ceo cas ne poiez voucher vous mesmes et les autres sanz cause, a quel cause resoun est qe nous eioms traverse; mes a dire qe les autres ne pount estre heirs, *ut supra*, ceo destruit la cause du voucher.—*Gayn.* Noun fait pas, car le feffement est cause du voucher, et si ces qe sount vouches asquns sount bastardes, par cas asquns sount muliers,[8] est le voucher fauxe donqes? Ou posez qe touz soient bastardes, et soient entres et departirent[9] leritage, ne

Præcipe quod reddat.[2] [Fitz., *Bastardy*, 32; *Triall*, 56; *Voucher*, 1.]

[1] From Harl., and 25,184.

[2] The marginal note appears to be in a somewhat later hand in both MSS.

[3] 25,184, ele est.

[4] 25,184, Si.

[5] 25,184, tallent.

[6] Harl., tenauntz.

[7] 25,184, serra.

[8] Harl., mulures.

[9] 25,184, departie.

Nos. 55, 56.

A.D. 1343. that possession charge them? as meaning to say that it would. Or suppose an inquest were taken between us, and it were found that they are muliers, for which reason the voucher stood, and they came and pleaded the same exception to escape from warranting as heirs, then two inquests would be taken, and one in opposition to the other. And since the plea here is naturally to counterplead the warranty, and not the voucher, judgment whether such a plea lies in the demandant's mouth.—SHARSHULLE. Then you refuse the averment; and if you refuse it, and it be admissible, see in what a plight you are (as meaning to say: you will lose the land).—HILLARY. He tells you that you and all the others are bastards, and you are seeking to have a delay by reason of the non-age of one of the heirs; wherefore it would be contrary to what is right if he had not the counterplea; and if the fact were that they had entered as heirs you could say so.—*Gaynesford.* They are muliers; ready, &c.—And the other side said the contrary.—And the COURT was in doubt where this matter should be tried, whether by inquest or by Court Christian, because bastardy is alleged in the tenant.—*Pulteney.* She is vouched as a stranger; wherefore, on that understanding, she is not a party to the plea.—HILLARY by judgment directed that the averment should be entered.

Account. (55.) § Note that on a writ of Account brought against a guardian in socage a *Capias*, *alias*, and *pluries* issued.—*Gaynesford* now prayed the Exigent.—SHARDELOWE. You never saw that against a guardian.—*Gaynesford.* Why not, just as well as the *Capias*?—SHARDELOWE. Because the Exigent is given by Statute[1] against receivers.

Formedon in the Descender. (56.) § Descender. *Moubray.* You see how the

[1] 13 Edw. I. (Westm. 2.), c. 11.

Nos. 55, 56.

les[1] chargera pas cele[2] possession? *quasi diceret sic.* A.D. 1343. Ou posez qe enqest fust pris entre nous, et trove fut qe muliers,[3] par quei le voucher estut, et ils vindrent et plederent mesme lexcepcion destourtre com heirs a garrauntir, donqes serrount deux enquestes pris, et lun contrariaunt a lautre. Et desicome ceo plee est[4] naturelement de countrepleder la garrauntie, et noun pas le voucher, jugement si en la bouch le demandant tel plee gise.—Schar. Donqes refusez laverement; et si vous le refusez, et il soit resceivable, veiez en quel plite vous estes, *quasi diceret* vous perdrez la terre.—Hill. Il vous dit qe vous et touz les autres sount bastardes, et vous estes daver un delay par noun age dun des heirs; par quei ceo serreit countre resoun sil nust le countreplee; et si le fait fut tel qils fuissent entres come heirs vous le poiez dire.—*Gayn.* Ils sount muliers[3]; prest, &c.—*Et alii e contra.*—Et Court fut en awere ou ceste chose serra trie, ou par enquest ou par Court Chrestiene,[5] pur ceo qe la bastardie est allegge en la tenante.—*Pult.* Ele est vouche come estraunge; par quei a cel entent ele nest pas partie au plee.[6]—Hill. par agarde comaunda dentrer laverement.

(55.)[7] § *Nota* qen bref Dacompte porte vers gar- Acompte. dein en socage *Capias*[8] issit, *sicut alias, sicut pluries. Gayn.* pria ore Lexigende.—Schard. Ceo ne veistes vous unqes vers gardein.—*Gayn.* Pur quei nient auxi bien[9] come le *Capias*?—Schard. Pur ceo qe Lexigende est done par statut vers resceivours.

(56.)[7] § Descendre. *Moubray.* Vous veiez coment Descendre. [Fitz., *Age*, 8.]

[1] 25,184, la.
[2] 25,184, de sa.
[3] Harl., mulures.
[4] est is omitted from Harl.
[5] Harl., Cristiene.
[6] The words au plee are omitted from Harl.
[7] From Harl., and 25,184.
[8] Harl., *Cape.*
[9] bien is omitted from 25,184.

Nos. 57. 58.

A.D. 1343. demandant is under age; judgment, if he do not say that his ancestor died seised so that this action may be in the nature of an Assise of Mort d'Ancestor, whether he ought to be admitted.—HILLARY. Be sure that he will be admitted unless you show some deed of his ancestor's to try which he could not be a party.

Præcipe quod reddat.

(57.) § Note that the tenant in a *Præcipe quod reddat* alleged against the demandant, who demanded as heir, that he was a bastard, and the demandant replied that he was mulier. There was a certificate to this effect, and at the Resummons the tenant made default.—HILLARY awarded seisin of the land, and not the *Cape*, because he said that, even had it been that he appeared, he would not have had any answer, because the action is tried, and the Resummons serves only for him to hear his judgment.—See the contrary above.

(58.) § The King purchased of J. Meriet ten acres of meadow near Winchester, which were held of the Bishop of Winchester; and the King, through covin previously arranged, gave them to the Carmelite Brethren to dwell there; and against them the Bishop sued out of the Chancery a *Scire facias* (reciting how this purchase was a fraud for the purpose of depriving him of his seignory, and also of depriving the King of the advantage of the seignory in time of vacancy [of the Bishopric]) to show cause why the King's charter should not be revoked, and the tenements reseized into the King's hand. And thereupon he had a writ under the Targe, together with a bill including the matter, directed to the Chancellor. And the writ purported that the Prior of the Carmelites, with two

Nos. 57, 58.

le demandant est deinz age; jugement, sil ne die qe son auncestre morust seisi issi qe cest accion soit en nature Dassise de Mort dauncestre, sil deive[1] estre resceu.—Hill. Soiez certein qil serra resceu, si vous ne moustrez asqun fait de son auncestre a quel il ne purra estre partie a trier. A.D. 1343.

(57.)[2] § *Nota* qe le tenant en *Præcipe quod reddat* alleggea countre le demandant, qe demanda come heir, qil est bastarde, et replie fut qe muliere.[4] [Issint fut il certifie, et][5] a la Resomons le tenant fit defaut.—Hill. agarda seisine de terre, et noun pas le[6] *Cape*, qar il dit qe, tut fut il qil venist, il avera nul respouns, qar laccion est trie, et la[7] Resomons ne seert forsqe doier[8] son jugement.—*Vide contrarium supra.* *Præcipe quod reddat.*[3] [Fitz., *Jugement*, 117.]

(58.)[2] § Le Roi purchacea pres de Wyncestre x[9] acres de pree de J. Meriet, queux furent tenuz del Evesqe de Wyncestre; et le Roi, par covyn taille[10] adevant, les dona as Freres de Carme pur enhabiter illoeqes, vers queux Levesqe hors de Chauncellerie suyst un *Scire facias*, reherceaunt coment cel purchace fut fraude pur luy tollir sa seignurie, et auxi au Roi lavauntage de seignurie en temps de voidaunce, pur quei la chartre le Roi ne[11] devereit[12] estre repelle, et les tenements reseisis en la mein le Roi. Et sur ceo avoit bref south la targe, ove une[13] bille compernant la matere, direct au Chauncellier. Et le bref voleit qe le Priour de Carmes [Fitz., *Peticion*, 21.].

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[1] Harl., ne deive.
[2] From Harl., and 25,184.
[3] The marginal note is from Harl. In 25,184 it is *Nota*.
[4] Harl., mulure.
[5] The words between brackets are omitted from 25,184.
[6] 25,184, de.
[7] la is omitted from 25,184.
[8] 25,184, doner.
[9] 25,184, certeins.
[10] 25,184, tailli.
[11] ne is omitted from 25,184.
[12] 25,184, deivereit.
[13] une is omitted from Harl.

No. 59.

A.D. 1343. Brethren, should be warned, but did not determine of what place he was Prior, or Provincial, or any thing else, and exception was taken thereon. Afterwards the Brethren made default.—*R. Thorpe.* We will move you on behalf of the Brethren. You see plainly how it is supposed by this suit that the King shall be restrained from purchasing in his own realm; besides, no one but the King himself can judge as to the manner of his purchase.—SADINGTON, Chancellor. The King has sent us the Bishop's petition, &c.; wherefore we adjudge that the land be seized into the King's hand, and the charter revoked.—*W. Thorpe.* The Brethren shall be distrained to give up the charter, &c.

Scire facias.

(59.) § The King commanded certain persons, during the vacancy of the Archbishopric of York, to visit the Magdalen Hospital at Ripon, and to certify into Chancery what they had found. And they found a defect and certified it into Chancery. The King made collation to John Smale, who sued, on the King's behalf, a *Scire facias* against John Bridlington the incumbent, &c., to show whether he could say anything wherefore he ought not to be ousted, and the Hospital delivered to John Smale. And John Bridlington appeared.—*Pole.* Judgment of the writ because this writ is contrariant: for first it supposes that, inasmuch as the King has made donation, the Hospital was vacant, and afterwards, inasmuch as it was visited and John Bridlington was warned to show why he should not be ousted, it supposes that the Hospital is still full, and so repugnant. And this writ is not warranted by any record, because it cannot be warranted by the collation, nor by the

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ov deux Freres fuissent[1] garnis, et ne determina[2] pas de[3] quel lieu Priour, ne Provincial, ne autre, qe fut chalaunge. Puis les Freres firent defaut.—*R. Thorpe.* Nous vous moveroms[4] pur les Freres. Vous veiez bien[5] coment[6] par ceste suyte est suppose qe le Roy serra restreint[7] de purchacer en sa terre demene; ovesqe ceo, nul homme put juger forsqe le Roi mesme[8] de la manere de son purchace. —Sad., Chauncelier. Le Roi nous ad maunde la peticion Levesqe, &c.; par quei nous agardoms qe la terre soit seisi en la mein le Roi, et la chartre repelle.—[*W.*] *Thorpe.* Les Freres serrount destreint[9] de rendre la chartre, &c. A.D. 1343.

(59.)[10] § Le Roi maunda as certeins gentz, vacaunt[11] Lercevesche[12] Deverwyke, de visiter lospital de la Maudeleyn de Ripoun, et certifier en Chauncellerie de ceo qils avoient trove, qe troverent defaut et certifierent en Chauncellerie. Le Roi fist collacion a Johan Smale, qe suyst, pur le Roi, *Scire facias*[13] vers Johan Bridlingtone *incumbenti*, &c., sil savoit rien dire pur quei il ne deit estre ouste, et lospital livere a Johan Smale, qe vint.—*Pole.* Jugement du bref, car ceo bref est contrariaunt: qar primes suppose il qe par taunt qe le Roi ad done qe lospital est voide, et apres, par taunt qe ceo fut[14] visite,[15] et il garni pur quei il ne serra ouste, suppose il qe cest plein unqore, issi repugnant. Et ceo bref est garraunti de nul recorde, qar de la collacion ne put ceo estre garraunti, ne del enquest, *Scire facias.*

[1] 25,184, furent.
[2] 25,184, termina.
[3] de is omitted from 25,184.
[4] 25,184, nomeroms.
[5] The words Vous veiez bien are omitted from 25,184.
[6] 25,184, qe.
[7] 25,184, destreint.
[8] mesme is omitted from Harl.
[9] Harl., restreint.
[10] From Harl., and 25,184.
[11] 25,184, vachaunt.
[12] 25,184, Lercevesqe.
[13] The words *Scire facias* are omitted from 25,184.
[14] 25,184, est.
[15] 25,184, usue.

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A.D. 1343 Inquisition, since no judgment is yet rendered.—SHARSHULLE. As soon as defect was found in you, the Hospital by right commenced to be void, so that it was a cause for the King to make collation, as in the case of a church where a parson may by right be deprived, and so by right, though not in fact, the church is void, the very patron shall present, and his presentee shall by law sue for the deprival of the other, and, when the latter shall be deprived by law of Holy Church, the presentation made when the church was full in fact shall hold good. So in the matter before us. And, as some persons understand, if the patron shall not present within the period of six months, the church is void by right, although it may be full in fact, because by lapse of time the right has devolved upon the Ordinary.—*R. Thorpe.* Certainly not; it is not for him to know, or to present, before the deprival, or before the deprival be notified to him by the Ordinary, in the case of a presentation to a church which is spiritual, so that time does not run against him except after the deprival and notification; but as to a Hospital, which is temporal, when the King is apprised that it is vacant by right, he shall make donation to it, because otherwise it will follow, in this case, that the right which the King had at the time at which the defects were found will be lost, inasmuch as he has made restitution of the temporalities to the Archbishop, who is very patron, and that the Archbishop will make donation, which cannot be.

Quare impedit. (60.) § The King brought a *Quare impedit* against

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qar nul jugement est unqore rendu.—Schar. A plus tost qe defaut fut trove en vous, de dreit ceo comencea destre voide, issi qe ceo fut cause au Roi de faire collacion, come en cas dune eglise, ou persone est privable de dreit, issi de dreit,[1] et noun pas[2] de fait, leglise est voide,[3] le verray patroun presentera, et son presente de ley suera a la privacion lautre, et, quant il serra[4] prive par ley de Seint Eglise, le presentement fait quant leglise fut plein de fait tendra lieu. *Sic in proposito.* Et, al entent dascuns gentz, si le patroun ne presentera deinz le temps de vj moys qe leglise est voide de dreit, tut soit ele pleine de fait,[5] qar par temps passe le dreit est devolut al Ordiner.—*R. Thorpe.* Nanil certes; il nad pas a conustre, ne[6] de presenter, avant la privacion, et qe la privacion par Ordiner luy soit notifie, en cas de presentement deglise qest espirituel, issi qe temps ne luy court forsqe[7] apres la privacion et notificacion; mes de Hospital, qest temporel, quant le Roi est apris qe cest voide de dreit, il le durra, qar autrement ensuera, en ceo cas, desicom[8] le Roi adonqes quant les defautes furent trovez qe[9] le dreit quel il avoit adonqes serra perdu, desicom il ad fait restitucion al Ercevesqe, qest verrey patroun, de ses temporaltes, et[10] qil le durreit, qe ne put estre. A.D. 1343.

(60.)[11] § Le Roi porta *Quare impedit* vers Labbe *Quare impedit.* [Fitz., *Quare impedit*, 149.]

[1] The words de dreit are omitted from Harl., and mesqe has been inserted in a later hand.

[2] The words et noun pas are omitted from Harl.

[3] Harl., pleyne, on an erasure and in a later hand.

[4] serra is omitted from 25,184.

[5] fait is omitted from 25,184.

[6] Harl., mes.

[7] 25,184, forpris.

[8] 25,184, issi desicom.

[9] qe is omitted from 25,184.

[10] et is omitted from 25,184.

[11] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 324, d. It there appears that the action was brought by the King against the Abbot of Sautre in respect of a presentation to the church of Fen Drayton (Cambs.).

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A.D. 1343. the Abbot of Sautre, in respect of the church of Fen Drayton, by reason of the lands, possessions, fees, and advowsons of his enemies of France being in his hand, counting that the fees and advowsons of the Abbot of Bon Repos were seized into the King's hand because he was adhering to them. And he counted that one Aufred heretofore Abbot of Bon Repos was seised of the advowson as of fee, &c., and that he appointed the then Abbot of Sautre his general procurator to present to all the churches of his patronage in England, and that the Abbot of Sautre, as procurator of the Abbot of Bon Repos, presented Walter,[1] who, on this presentation was admitted, and by reason of whose death the church is now void, &c.; thus the King is seised, and it belongs to him to present. And he made *profert* of the Bishop's certificate, *sub pede sigilli*, that the Abbot of Sautre presented, on the last occasion, and twice before, as procurator.—*Pulteney.*

[1] As to the name *see* p. 269, note 2.

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de Sautre de leglise de Fendraytone, par resoun des terres, possessions, fees, et avowesouns de ses enemys de Fraunce en sa meyn esteauntz, countaunt qe les fees et avoesouns del Abbe de Bon Respos furent seisiz en la mein le Roi par resoun qil est de lour aherdaunce. Et counta qe un Aufred jadis Abbe de Bon Respos fut seisi del avoesoun com de fee, &c., le quel establist Labbe de Sautre, qe adonqes fut, son general procuratour de presenter a totes les eglises de son patronage en Engleterre, le quel Abbe de Sautre, com procuratour Labbe de Bon Respos presenta W., qe a cel presentement fut resceu, par qi mort leglise est ore voide, &c.; issi est le Roi seisi, et a luy appent a presenter. Et mist avant certificacioun de Evesqe, *sub pede sigilli*, qe Labbe de Sautre presenta a la darein foith com[1] procuratour, et deux foith devant.[2]—*Pult.* Vous A.D. 1343.

[1] com is omitted from 25,184.

[2] The declaration was, according to the record, "quod quidam "Aufredus, Abbas de Bona Requie, "fuit seisitus de advocatione "ecclesiæ prædictæ, ut de jure "ecclesiæ suæ de Bona Requie, "tempore pacis, tempore domini "Edwardi Regis patris domini "Regis nunc, qui quidem Abbas, "eo quod commoratus fuit in parti-"bus transmarinis, constituit Abba-"tem de Sautre generalem pro-"curatorem suum ad præsentan-"dum ad omnes ecclesias de "patronatu ejusdem Abbatis de "Bona Requie in Anglia existentes, "et ad donationem ejusdem "Abbatis de Bona Requie spec-"tantes, seu spectandas, nomine "procuratorio et in jure Abbatis "de Bona Requie præsentandas "eo quod ejusdem ordinis exsti-"terant, et Abbathia de Sautre de "filiatione ejusdem domus de Bona "Requie exstitit, qui quidem Abbas "de Sautre, ut procurator, et "nomine procuratorio, et in jure "ejusdem Abbatis de Bona Requie, "præsentavit ad eandem ecclesiam "quendam Walterum filium Ger-"vasii de Dodyngtone, clericum "suum, qui ad præsentationem "suam fuit admissus et institutus, ". . . . . ac pro eo quod idem "Abbas de Bona Requie est de "potestate Philippi de Valesiis "adversarii domini Regis nunc, "inter cæteras terras et possessiones "ejusdem Abbatis de Bona Requie, "idem dominus Rex nunc seisivit "in manum suam advocationem "ecclesiæ prædictæ, et, advocatione "sic in manu domini Regis exist-"ente, prædicta ecclesia vacavit "per mortem dicti Walteri, &c., "et sic ad ipsum dominum Regem "pertinet ad prædictam ecclesiam "præsentare."

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A.D. 1343. You see plainly how the King takes his title in right of the Abbot of Bon Repos, and does not affirm any possession in him so that it could be understood that the Abbot of Sautre could have presented in his right, unless the possession of the Abbot of Bon Repos was affirmed higher up; judgment of the count.—*Thorpe.* That is to the action.—SHARDELOWE. If his procurator presented, that presentation was in his right; wherefore, &c.—*Pulteney.* Then he ought to have counted that the Abbot of Bon Repos himself presented.—SHARDELOWE. Answer.—*Pulteney.* We do not admit that the Abbot of Bon Repos was seised of the advowson, and we tell you that neither the Abbot of Sautre nor any of his predecessors ever were procurators of the Abbot of Bon Repos; ready to verify, if this can make an issue. And we tell you that the Abbot of Sautre presented Walter, through whose death the church, &c., as in right of his church of Sautre, and we do not understand that the King will be answered; and further, to declare the right of his church of Sautre, he tells you that, before him, one of his predecessors presented one J.[1] in right of the church of Sautre, and before him another was presented in right of the Abbot of Sautre.—*Thorpe.* He does not deny

[1] For the name, *see* p. 271, note 6.

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veiez bien coment le Roi prent son title en le dreit Labbe de Bon Respos, et nafferme nulle possessioun en luy issi qil purra estre entendu qe Labbe de Sautre put aver presente en soun dreit,[1] si la possession Labbe de Bon Respos ne fut afferme de plus haut; jugement de count.—*Thorpe.* Cest al accion.—SCHARD. Si son procuratour presenta, ceo presentement fut[2] en son dreit; par quei, &c.—*Pult.* Donqes dust il aver counte qe Labbe de Bon Respos mesme presenta.—SCHARD. Responez.—*Pult.* Nous ne conissoms pas qe Labbe de Bon Respos fut seisi del avoesoun, et vous dioms qe Labbe de Sautre[3] ne nul de ses predecessours unqes furent procuratours Labbe de Bon Respos; prest daverer, si ceo purra faire issue. Et vous dioms qe Labbe de Sautre presenta W., par qi mort leglise, &c., come en le dreit sa eglise de Sautre, et nentendoms pas qe le Roi voille[4] estre respondu; et outre, pur desclarrer[5] le dreit de sa eglise de Sautre, vous dit qe devant luy un son predecessour presenta un J. en le dreit del eglise de Sautre, et devant luy un autre fut presente en le dreit del Abbe de Sautre.[6]—*Thorpe.* Il A.D. 1343.

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[1] The words en soun dreit are omitted from 25,184.

[2] fut is omitted from 25,184.

[3] The words de Sautre are omitted from Harl.

[4] 25,184, voet.

[5] 25,184, desclarier.

[6] The Abbot's plea was, according to the record, "non cognoscendo "quod prædictus Aufredus, quon- "dam Abbas de Bona Requie, fuit "seisitus de advocatione ecclesiæ "prædictæ, nec quod ipse Abbas "de Sautre nunc unquam extitit "procurator præfati Abbatis de "Bona Requie, dicit quod ipse "Abbas de Sautre fuit seisitus "de advocatione ejusdem ecclesiæ "de Fendraytone ut de jure ecclesiæ "suæ beatæ Mariæ de Sautre, et "ad eandem præsentavit præfatum "Walterum filium Gervasii, cleri- "cum suum, in jure ecclesiæ suæ "beatæ Mariæ de Sautre prædictæ, "et non in jure ecclesiæ Abbatis de "Bona Requie prædictæ, sicut "dominus Rex ei imponit, qui ad "præsentationem suam fuit ad- "missus et institutus, &c. Et "hoc paratus est verificare, &c. "Et ad possessionem ecclesiæ suæ "beatæ Mariæ de Sautre prædictæ "ulterius declarandam in hac "parte dicit quod quidem Ricardus "quondam Abbas de Sautre, præ- "decessor suus, fuit seisitus de

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A.D. 1343. that the Abbot of Bon Repos was seised of the advowson, nor that the Abbot of Sautre presented as procurator, which fact affirms the right and the possession of the Abbot of Bon Repos; and the question whether he was procurator or not cannot make an issue, because, if he was never procurator, and he presented as procurator of the Abbot of Bon Repos, even though the right had been in him before, by that manner of presentation he put himself out of possession, and made the possession to be in the person as whose procurator he presented. Besides, the King commanded the Escheator to seize all the lands, fees, and advowsons, &c., which belonged to the Abbot of Bon Repos, and to certify him in the Chancery as to what was done, and the Escheator certified, among other matters, that he had seized the advowson of Fen Drayton. Thus the King is seised. And see here the record, *sub pede sigilli*. And we pray a writ to the Bishop.—

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ne dedit pas qe Labbe de Bon Respos fut seisi del avowesoun, ne qe Labbe de Sautre ne presenta come procuratour, quele chose afferme le dreit et la possession Labbe de Bon Respos; et lequel il fut procuratour ou noun ceo ne poet pas faire issue, qar sil ne fut unqes procuratour, et il presenta come son procuratour, tut ust le dreit este en luy adevant, par cele manere de presenter il se mist[1] hors de possession, et le fist[1] en cely come qi procuratour il presenta. Ovesqe ceo, le Roi maunda al Eschetour[2] de seisir totes les terres, fees, et avoesouns, &c., qe furent del Abbe de Bon Respos, et de luy certifier son fait en Chauncellerie, qe certifia, entre autres, qil avoit seisi lavoesoun de Fendrayton; issi est le Roi seisi. Et veiez cy le recorde, *sub pede sigilli*. Et prioms bref al Evesqe.[3]— A.D. 1343.

" advocatione ecclesiæ de Fendray-
" tone prædictæ, et in jure ecclesiæ
" suæ beatæ Mariæ de Sautre præ-
" dictæ præsentavit ad eandem
" quendam Philippum de Lacy,
" clericum suum, qui ad præsenta-
" tionem suum fuit admissus et
" institutus tempore pacis, tempore
" E. avi domini Regis nunc; et
" ante ipsum quidam Laurentius
" quondam Abbas de Sautre, præ-
" decessor suus, fuit seisitus de
" eadem advocatione ecclesiæ de
" Fendraytone, et in jure prædictæ
" ecclesiæ suæ de Sautre præsenta-
" vit ad eandem quendam Johan-
" nem de Creyk, clericum suum,
" qui ad præsentationem suam fuit
" admissus et institutus tempore
" pacis, tempore H. Regis proavi
" domini Regis nunc; et ea ratione
" ad ipsum Abbatem de Sautre, et
" non ad dominum Regem, pertinet
" ad prædictam ecclesiam præsen-
" tare."

[1] 25,184, fit.

[2] 25,184, Escheskir.

[3] In the roll the following are the entries immediately after the plea:—

" Et super hoc dominus Rex
" misit hic, per breve suum clausum,
" quandam certificationem domini
" Simonis Episcopi Eliensis, sub
" pede sigilli Regis, quæ testatur
" quod, tempore Johannis de
" Ketene, Episcopi Eliensis, Abbas
" de Sautre, procurator Abbatis et
" Conventus de Bona Requie, præ-
" sentavit, nomine procuratorio
" eorundem Abbatis de Bona
" Requie et Conventus, Johannem
" de Creke, clericum suum, qui ad
" præsentationem suam fuit ad-
" missus et institutus, &c., et etiam
" tempore Johannis de Hothum,
" nuper Episcopi, &c., prædeces-
" soris, &c., Abbas de Sautre qui
" tunc fuit, ut procurator Abbatis
" de Bona Requie, ad dictam
" ecclesiam, nomine procuratorio
" prædicti Abbatis de Bona Requie,

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A.D. 1343. *R. Thorpe.* As to what you say respecting the seizure by the King by Office executed by the Escheator, the record does not prove that he was specially commanded to seize this advowson, but generally to seize fees and advowsons which belonged to the Abbot of Bon Repos; and even though he did seize by express words something which did not, at the time, belong to the Abbot of Bon Repos, and of which the Abbot of Sautre was in possession, that does not oust him from his possession.—SHARSHULLE. You speak well as to that point, and therefore it is not right that you should be charged in that respect; but deliver yourself on the point that you presented as procurator of the Abbot

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R. Thorpe. De ceo qe vous parlez de seisine le Roi par office fait par Leschetour, le recorde prove pas[1] qe comaunde fust[2] especialement de seisir cele avoesoun, mes generalment de seisir fees et avoesouns qe furent al Abbe de Bon Respos; et tut seisist il par parole adonqes chose qe ne fut pas al Abbe de Bon Respos, mes Labbe de Sautre fust possessione, ceo luy ouste pas de sa possession.—SCHAR. Vous parlez bien a ceo point, et pur ceo nest pas resoun qe vous soiez charge de cel; mes deliverez vous de cella qe vous presentastes com procuratour Labbe A.D. 1343.

" veri ejusdem patroni, præsentavit " ad eandem quendam Walterum de " Dodyngtone, filium Gervasii de " Dodyngtone, clericum suum, qui " ad præsentationem suam fuit " admissus et institutus," &c.

" Mandavit etiam idem dominus " Rex hic, per breve suum clausum, " quandam aliam certificationem, " in eodem brevi inclusam, per " Escaetorem domini Regis nunc " inde per præceptum domini Regis " factam, et in Cancellaria Regis " retornatam, quæ testatur quod " idem Escaetor cepit et seisivit in " manum domini Regis advoca- " tionem ecclesiæ de Fendraytone " prædictæ, ad quam Abbas de " Sautre, procurator Abbatis de " Bona Requie ultimo præsentavit " quendam Walterum de Dodyng- " tone, clericum suum," &c.

" Et Johannes [de Clone] qui " sequitur, &c., dicit quod prædic- " tus Abbas de Sautre non dedicit " quin prædictus Abbas de Bona " Requie fuit seisitus de advoca- " tione ecclesiæ prædictæ, nec " dedicit placitando pro placito in " hac parte quin ipse extitit pro- " curator præfati Abbatis de Bona " Requie, nec quin ipse, ut procura- " tor ejusdem Abbatis de Bona " Requie, et nomine procuratorio, " præsentavit ad ecclesiam præ- " dictam præfatum Walterum, qui " ad præsentationem suam nomine " procuratorio sic factam fuit ad- " missus et institutus, &c., quæ " quidem præsentatio in possessione " præfati Abbatis de Bona Requie " censeri debet, ratione cujus pos- " sessionis ipse dominus Rex sumit " titulum suum in hac parte, nec " dedicere potest quin dominus " Rex nunc seisitus est de advoca- " tione prædicta, nec aliquid aliud " dicere ad excludendum dominum " Regem de præsentatione sua præ- " dicta nisi quod ipse prætendit " verificare quod ipse præsentavit " ad eandem præfatum Walterum " in jure ecclesiæ suæ beatæ Mariæ " de Sautre, et non in jure prædicti " Abbatis de Bona Requie, quæ " quidem verificatio contra præ- " missa, quæ per ipsum Abbatem " de Sautre superius, ut præ- " mittitur, non sunt dedicta, non " est admittenda, unde petit " judicium pro domino Rege, et " breve Episcopo," &c.

[1] pas is omitted from 25,184.

[2] fust is omitted from 25,184.

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A.D. 1343. of Bon Repos, which proves that the Abbot of Bon Repos was in possession.—*R. Thorpe.* If the Abbot of Sautre was seised of the advowson in his own right, as we are ready to maintain, and he presented as procurator of the Abbot of Bon Repos, which we do not admit, that would not prove any right or possession in the Abbot of Bon Repos, for suppose, in the case of an infant under age, that his guardian presents to a church as his guardian, he will never, when of full age, take a title from that presentation, unless he shows a higher right and possession in himself, so that it could be understood that this presentation was in his right, but it will rather be adjudged an usurpation by the guardian if he has no right, and if the guardian has right as in his own right, that presentation made by him as by guardian will not change his first right or possession. So in the case before us. —Hillary. Then is it so?—*R. Thorpe.* Suppose the King brings a *Quare impedit* against the Abbot of Bon Repos, and takes his title by reason of the Abbey of Sautre being in his hand, and of the Abbot of Sautre having presented, &c., and the Abbot of Bon Repos alleges that the Abbot of Sautre presented only as his procurator, and does not affirm any higher right in himself whereby it could be understood that the Abbot of Sautre presented as his procurator, will not the King have a writ to the Bishop? Therefore, on the other hand, this cannot be a title for him, &c.—Sharshulle and *W. Thorpe* denied this.—*Grene.* It is more reasonable to take issue on the substance, and the principal matter, than on an incident, and what is accessory; but the question whether the Abbot of Sautre presented in right of his church of Sautre or in right of the Abbot of Bon Repos is the substance; that will make a natural issue, and not the question

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de bon Respos, qe prove qe Labbe de Bon Respos fut en possession.—*R. Thorpe.* Si Labbe de Sautre fut seisi del avoesoun en son dreit[1] demene, come nous sumes prest a meintener, et il ust presente com procuratour Labbe de Bon Respos, com nous ne conissoms pas, ceo provereit nul dreit en Labbe de Bon Respos, ne possession, car mettez qun enfaunt deinz age son gardein presente a une eglise come son gardein, jammes a son plein age ne prendra il title de cel presentement, sil ne moustre plus haut dreit et possession en luy, issi qe ceo purreit estre entendu qe cel presentement fut en son dreit, mes plus toust serra ajuge une purprise par le gardein sil nad pas dreit, et si le gardein ad dreit come en son dreit demene, cel presentement fait par luy come par gardein[2] ne chaungera pas son primer dreit ne[3] possession. *Sic in proposito.*—Hill. Donqes est il issi?—*R. Thorpe.* Jeo pose qe le Roi porte *Quare impedit* vers Labbe de Bon Respos, et prist son title par cause de labbeye de Sautre en sa meyn, quel Abbe de Sautre[4] presenta, &c., et Labbe de Bon Respos allegge qe Labbe de Sautre ne presenta forsqe com son procuratour, et nafferme nul dreit en luy de plus haut, par quei il purra estre entendu qil presenta com son procuratour, navera le Roi[5] bref al Evesqe? *Ergo*, areremein ceo ne put estre title pur luy, &c.—Schar. et [*W.*] *Thorpe negaverunt illud.*—*Grene.* Il est plus de resoun de prendre issue sur le gros, et le principal, qe sur un incident et accessorie; mes le quel Labbe de Sautre presenta en le dreit sa eglise de Sautre ou en le dreit Labbe de Bon Respos cest le gros; ceo fra naturel issue, et noun pas lequel il A.D. 1343.

[1] dreit is omitted from Harl.
[2] gardein is omitted from 25,184.
[3] 25,184, de.
[4] The words de Sautre are omitted from Harl.
[5] The words le Roi are omitted from 25,184.

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A.D. 1343. whether he presented as procurator or not, which is not of the substance, but Procurator may possibly have been a name by which he described himself.—Shars-hulle. It is not a surname, but a name of office, like attorney; and if you presented as my procurator, or attorney, to a church which is of your own right, are you not out of possession? as meaning to say that it is so.—*R. Thorpe.* As to that we are abiding judgment.—*Pulteney.* Neither the effect nor the issue of the plea is upon any other point but whether the last presentation, which is admitted to have been made by us, was in right of our church of Sautre or in right of the church of Bon Repos, for that which the King has counted—that we presented as procurator of the Abbot of Bon Repos—is not and cannot be by law to any other intendment than that we presented in right of the Abbot of Bon Repos, which we have traversed to the effect that it was not in his right but in our own right, so that we have destroyed the substance of his title by this answer, on which we are abiding judgment.—*R. Thorpe, ad idem.* Presentation made by ourselves as procurator can only be in continuation of the right and possession where it was before, and that we show to be in ourselves; judgment.—*W. Thorpe.* There is no stress to be laid on the question who had the right before, but, since you do not deny that he presented as procurator of the Abbot of Bon Repos, which presentation puts him in possession, judgment. —And thereupon Kelshulle awarded a writ to the Bishop for the King.

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presenta com procuratour ou noun, quel nest pas de la[1] substaunce, mes fut un noun par quel il se noma par cas.—Schar. Ceo nest pas surnoun, mes noun doffice, com attourne; et si vous presentastes come mon[2] procuratour, ou attourne, a une eglise qest de vostre dreit demene, nestes vous hors de possession? *quasi diceret sic.—R. Thorpe.* De ceo sumes en jugement.—*Pult.* Leffecte ne lissue de plee nest sur autre point mes lequel[3] le derrein presentement, quel est conu estre fait par nous, fut en le dreit de nostre eglise de Sautre ou en le dreit del eglise de Bon Respos, qar ceo qe le Roi ad counte qe nous[4] presentames comè procuratour Labbe de Bon Respos nest a autre entente, ne ne put par ley estre, mes qe nous presentames en le dreit Labbe de Bon Respos, qele chose[5] nous avoms traverse qe nient en son dreit mes en nostre dreit[6] demene, issi qe le gros de son title par cel respouns avoms destruit, sur quei nous sumes en jugement.—*R. Thorpe, ad idem.* Presentement fait par nous mesmes com procuratour ne put estre mes continuaunt le dreit et possession ou il fut devant, et ceo moustroms en nous mesmes; jugement.—[*W.*] *Thorpe.* Qi avoit dreit devant nest pas a charger, mes, desicom vous ne deditez pas qil ne presenta com procuratour Labbe de Bon Respos, quel presentement luy mette en possession, jugement.—Et sur ceo Kels. pur le Roi agarda bref al Evesqe.[7] A.D. 1343.

[1] 25,184, sa.
[2] mon is omitted from Harl.
[3] 25,184, quel.
[4] nous is omitted from Harl.
[5] chose is omitted from 25,184.
[6] dreit is omitted from 25,184.
[7] Judgment, according to the roll, was given in the following form:—"Et quia videtur Curiæ "hic quod ea quæ per prædictum "Abbatem superius sunt allegata, "et quæ prætendit verificare, &c., "non sunt contraria actioni Regis "in hac parte, per quod verificatio "illa non est admittenda in hac "parte, consideratum est quod "dominus Rex recuperet præsen-"tationem suam ad ecclesiam "prædictam, et habeat breve "Episcopo Eliensi, loci illius "Diocesano, quod, non obstante "reclamatione prædicti Abbatis,

No. 61.

A.D. 1343 Remainder.

(61.) § *R. Thorpe* came with one Thomas de Shulton to the bar, and showed that (whereas certain land was limited to one B.[1] for term of his life, with remainder, after B.'s[1] death, to others, and to this same Thomas and the heirs of Thomas's body begotten, and that by fine) by agreement between one A.[1] demandant, and the aforesaid B., tenant for term of life, a *Præcipe in capite* was sued against the aforesaid B. and this same Thomas, supposing Thomas to be joint tenant with B., and they caused another person to answer by attorney for him as joint tenant with B. Process was continued until, after the mise joined, they made default, whereupon final judgment was rendered to the disherison of Thomas, and this is still within the year. And he prayed, for Thomas, that his exception might be entered, so that the judgment might not bar him in time to come.—Stonore. It shall be so, if you will sue to prove the deceit.—*Thorpe.* He will make a bill, and prosecute it.—And the exception to the judgment was entered on the roll.—*Thorpe.* We pray a *Venire facias* against those who effected the deceit.—Sharshulle. Which do you intend—to defeat the judgment and revest the estate in yourself, or are you suing only for damages ?—*Thorpe.* We intend to prove the deceit, and revest the freehold and the right. —Sharshulle. It is not right that the tenant for term of life, who is a partner in the deceit, should have again the freehold, but only you and the others in remainder on account of the forfeiture, &c. And, therefore, it is necessary to sue an *Audita Querela* out

[1] For the real names *see* p. 283, note 4.

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(61.)[1] § *R. Thorpe* vint ove un T.[3] Shultone[4] á la barre, et moustra qe par la ou certein terre fut taille a un B. a terme de sa[5] vie, le remeindre apres le descees B. as autres, et mesme cely T.[3] et les heirs du corps T.[3] engendrez, et ceo par fyn, par consence[6] entre un A. demandaunt, et lavantdit B., tenant a terme de vie, *Præcipe in capite* fut suy vers lavandit B. et mesme cely T.,[3] supposaunt T.[3] estre jointenaunt ove B., et firent un autre respoundre par attourne pur luy come jointenaunt ove B. Proces continue tanqe, apres la mise joint, ils firent defaut, sur quei jugement final fut rendu pur desheriter T.,[3] et cest unqore deinz lan. Et pur T. pria qe son chalenge fut entre, issi qe le jugement ne luy barre pas en temps a vener.—Ston. Auxi serra si vous volez suire[7] de atteindre la desceite. —*Thorpe.* Il fra bille, et la suiera.—Et la chalenge sur le jugement est entre en roulle.—*Thorpe.* Nous prioms *Venire facias* vers ces qe firent la desceite.— Schar. Le quel biez vous,[8] a defaire le jugement et revestir[9] le dreit en vous,[10] ou vous suez soulement pur damages?—*Thorpe.* Nous bioms datteindre la desceite, et revestir[9] le fraunk tenement et le dreit.—Schar. Il nest pas resoun qe le tenant a terme de vie, qest parcenere a la desceite, reeit le fraunk tenement, mes vous et les autres en le remeindre pur la forfeture, &c. Et donqes covient suir *Audita Querela* hors de la Chauncellerie sur le

A.D. 1343. Remeindre.[2]

" ad præsentationem domini Regis " ad prædictam ecclesiam idoneam " personam admittat."

[1] From Harl , and 25,184, until otherwise stated.

[2] The marginal note is from Harl., there being nothing in a contemporary hand in the margin of 25,184.

[3] MSS. of Y.B., J.

[4] Harl., Shiluyntone; 25,184, Shilmingtone. The name in the text is from the record cited below.

[5] sa is from Harl. alone.

[6] 25,184, concense.

[7] suire is omitted from Harl.

[8] vous is omitted from Harl.

[9] Harl., revestier.

[10] The words en vous are omitted from 25,184.

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A.D. 1343. of the Chancery on the case, as well for making restitution of the freehold, as for establishing the deceit.—Therefore he sued a writ of *Audita Querela* in that form.—And the Earl of Warwick, who said that he was lord of the same land, sued an *Audita Querela* directed to the Justices on the ground that the *Præcipe in capite* was brought in order to deprive him of his court. And at his suit, by force of this writ, an inquest of office was taken in the Bench to enquire who committed the deceit, &c.

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cas *tam super*[1] *restitutionem liberi tenementi faciendam*,[2] *quam deceptionem faciendam*.[3]—Par quei il suyt tel bref de *Audita Querela*.—Et le Counte de Warrewike, qe se dit estre seignur de mesme la terre, suyt un *Audita Querela* a les Justices de ceo qe *Præcipe in capite* fut porte pur tollir luy sa court. Et a sa suyte, par force de cel bref, enquest fut pris doffice en Baunk denquere queux firent la desceite, &c.[4] A.D. 1343.

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[1] 25,184, *supra*.

[2] *faciendam* is omitted from 25,184.

[3] 25,184, *capienda*.

[4] Among the *Placita de Banco*, Mich., 17 Edw. III., R° 586, d, appears a writ of *Audita Querela* reciting as follows:—"Monstravit "nobis dilectus et fidelis noster "Thomas de Bello Campo, Comes "Warrewikiæ quod, cum manerium "de Countassethorpe, in Comitatu "Leycestriæ, immediate de ipso "Comite et antecessoribus suis, a "tempore quo non extat memoria, "teneretur, Hugo de Lodbroke, "persona ecclesiæ de Blaby qui "manerium illud ad terminum "vitæ suæ de Thoma de Shultone "et quibusdam aliis, ad quos "dictum manerium per finem in "Curia domini E. nuper Regis "Angliæ patris nostri levatum "remanere deberet, tenuit, et "Johannes de Lodbroke, et Thomas "le Vynter, collusione inter ipsos "Hugonem, et Johannem, et "Thomam le Vynter habita, "præfatum Comitem de dominio "suo in hac parte excludere "machinantes, suggerentesque in "Cancellaria nostra manerium "prædictum de nobis teneri in "capite, cum, ut dicitur, non "tenetur, et quoddam breve "nostrum quod dicitur *Præcipe in* "*capite* sub nomine prædicti "Johannis versus prædictos Hugo- "nem et Thomam de Shultone, "ipso Thoma de Shultone hoc "penitus ignorante, fraudulenter "contra formam Magnæ Chartæ "de libertatibus Angliæ, in qua "continetur quod breve quod "vocatur *Præcipe in capite* non "fiat alicui de aliquo libero tene- "mento unde liber homo perdat "curiam suam, impetrarunt coram "vobis ad certam diem diu est "præteritum retornabile placitan- "dum, et quendam ignotum, sub "nomine Ricardi de Swanwelle, "attornatum pro prædictis Hugone "et Thoma de Shultone in placito "prædicto absque scitu et voluntate "ipsius Thomæ de Shultone ad- "mitti, et ipsum ignotum ut "attornatum prædictorum Hugonis "et Thomæ de Shultone coram "vobis comparere, et pro eisdem in "dicto placito respondere procu- "rarunt, et sic idem Johannes, "per hujusmodi callidam machina- "tionem et procurationem prædic- "torum Hugonis, Johannis, et "Thomæ le Vynter, per processum "coram vobis in hac parte factum "recuperavit, cujus recuperationis "prætextu iidem Hugo, Johannes, "et Thomas le Vynter prædictum "Comitem a dominio suo prædicto "excludere intendunt, in nostri et

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A.D. 1343. Deceit. § *R. Thorpe* showed at the bar that one Thomas de Shulton held certain tenements for term of his life, with remainder to one W.[1] and the heirs of his body begotten, and if he should die without heir, &c., that then the tenements should remain to one R.,[1] &c. And he said that one B.[1] brought a writ of Right against Thomas and against W. who was next in the remainder, to which writ one came and answered as attorney for those two, and described himself by a name[1] such as there never was *in rerum natura*, and joined the mise in their name, and afterwards made default, for which reason final judgment was rendered against those two, so that Thomas (he said) was ousted from the freehold, and W. from the remainder, and therefore he prayed for them a writ of Deceit.—Shardelowe. Which is your intention—to recover the

[1] As to this *see* p. 283, note 4.

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§ *R.*[1] *Thorpe* moustra al barre qe un Thomas Shultone[2] tient certeins tenements a terme de sa vie, le remeindre a un W. et a ses heirs de son corps engendres, et sil deviast saunz heir, &c., qe donqes les tenements remeindreint a un R., &c. Et dit coment un B. porta un briefe de Dreit devers Thomas, et devers W. qe fut proschein en le remeindre, a quel briefe un vient et respondi come attourne pur eux deux, et soy noma par un noun qe unqes ne fut tiel *in rerum natura*, et joint la mise en lour noun, et apres fist defaut, par quei jugement final fut rendu devers eux deux, issint il dit qe Thomas fut ouste de fraunc tenement, et W. del remeindre, par quei pur eux il pria un briefe de Desceite.—SCHARD. Le quel est vostre entente, A.D. 1343. Desceite.

" Curiæ nostræ deceptionem, et " prædicti Comitis grave damnum " et exheredationem manifestam." Then it appears " super hoc " venit prædictus Comes in Curia " hic, et dicit quod prædictus " Johannes de Lodbroke . . . . " tulit quoddam breve Regis quod " dicitur *Præcipe in capite* versus " prædictos Hugonem et Thomam " de manerio prædicto, ad quod " breve iidem Hugo et Thomas per " prædictum Ricardum de Swan- " welle ut attornatum suum com- " paruerunt, et machinatione et " procuratione, &c., posuerunt se " hinc inde in magnam assisam " Regis, et petierunt recognitionem " fieri utrum ipsi majus jus habuer- " unt tenendo prædictum manerium " sicut illud tenuerunt an prædictus " Johannes, &c. Et super hoc " petiit licentiam inde loquendi, et " habuit. Et postmodum iidem " Hugo et Thomas non revenerunt, " per quod consideratum fuit quod " idem Johannes recuperaret inde " seisinam suam, tenendam sibi et " heredibus suis quietam de præ- " dictis Hugone et Thoma, et " heredibus suis, in perpetuum, et " sic ad defraudandum et excluden- " dum ipsum Comitem de dominio " suo supradicto. Et petiit brevia " Vicecomitibus Leycestriæ et War- " rewikiæ, ad venire faciendum eos " super præmissis responsuros, et " ulterius facturos, &c. Et ei " concedunter retornabilia hic in " Octabis Sancti Hillarii," &c.

Several continuances follow.

[1] This report of the case is printed by itself in the old editions as No. 113. No MS. of it has been found, and there is no reference to it in Fitzherbert's *Abridgment*. The record is among the *Placita de Banco*, Mich. 17 Edw. III., R° 586, d.

[2] Old editions, Sheld. The name in the text is from the record. As shown, however, in the other report and in the record, it was not Shulton who was the tenant for life.

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A.D. 1343. land in case the deceit should be proved, or only damages?—*W. Thorpe.* Our intention is, in case the deceit should be proved, to replace the freehold in the person of Thomas, and the inheritance of fee tail in the person of W.—SHARDELOWE. Then you must sue a writ to us out of the Chancery including all your matter, so that we may have warrant by that writ to enquire as to this deceit, because a freehold cannot be recovered by a writ issuing out of this Court, but it is necessary to sue an original; but in case you had only to recover damages by your writ, we might possibly grant you a writ out of this Court without any *Audita Querela*; but it is otherwise in this case, where you are seeking to get back the freehold.—Therefore he sued an *Audita Querela*, as above.

Entry *sur disseisin.*

(62.) § Entry *sur disseisin*, founded on the disseisin of their father, for three heirs male, by the custom of Gavelkind.—*Gaynesford.* Their uncle, whose heirs they are, enfeoffed us with warranty by this deed; judgment whether an action, &c.—*Blaykeston.* You see plainly how this answer is used as an answer at common law, which is binding only in the blood, and he does not show that, contrary to common right, the two younger brothers can be heirs; judgment whether the law puts us to answer to this deed.—*Gaynesford.* You

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de recoverir la terre en cas qe le desceite est trove, ou forsqe solement damages?—*W. Thorpe.* Nostre entente est qen cas qe la desceite soit trove qe nous remettroms le fraunctenement en la persone Thomas, et lenheritaunce de fee taille en la persone W.—SCHARD. Donqes vous covient suere un briefe a nous hors de la Chauncellerie compernaunt tout vostre matere, et qe nous par cel briefe eioms garraunt denquerer de cest desceite, car fraunctenement ne poet pas estre recoveri par un briefe qe issist hors de cest place einz covient suere un original; mes en cas qe vous ne ussez a recoverir forsqe solement damage par vostre briefe par cas nous vous grantoms le bref hors de ceinz tout saunz *Audita Querela*; *sed secus hic*, la ou vous estes de reaver le franctenement.—Par quei il suit un *Audita Querela*, *ut supra.* A.D. 1343.

(62.) [1] § Entre sur disseisine[3] de la disseisine[4] le pere, pur iij heirs madles, par usage de Gavelkynd.[5] —*Gayn.* Lour uncle, qi heirs ils sount, par ceo fait nous feffa ove garrauntie; jugement si accion, &c.— *Blaik.* Vous veiez bien coment ceo respouns est use com respouns a la comune ley, qe lie forsqe en le saunk, et il moustre pas countre comune dreit qe les deux puisnes puissent estre heirs; jugement si a ceo fait ley nous mette a respoundre.— Entre sur la disseisine.[2] [Fitz., *Garraunte*, 22.]

[1] From Harl. and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 390, d. It there appears that the action was brought by Peter le Wyse, Adam le Wyse, and Guy le Wyse against Peter le Hunte of Longeleghe, in respect of one messuage and 15 acres of land in Longeleghe-by-Ledes (Langley-by-Leeds, Kent), alleging that Peter le Hunte tortiously disseised their father John le Wyse, whose heirs they are. According to the count, "De ipso Johanne pro eo quod "tenementa prædicta sunt partibilia inter heredes masculos "secundum consuetudinem de "Gavelkynde, descendit jus, &c., "istis Petro, Adæ, et Guidoni ut "filiis et heredibus."

[2] The words sur la disseisine are omitted from Harl.

[3] 25,184, la disseisine.

[4] Harl., seisine.

[5] Harl., gavilkynd.

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A.D. 1343. demand this land as heirs, out of common right; and you shall be barred on the same ground on which you demand.—SHARSHULLE. If they had made their demand through the uncle, your reasoning might well hold good; but they demand through another ancestor, so that this warranty is binding only in the blood on one who is heir of common right. And although the land be partible, that does not prove what is to your purpose, because you know well that heirs male are not charged with warranty except by reason of their possession, and you do not allege such a cause.—SHARDELOWE. Would they warrant to you this land, if you were impleaded by another person and they did not hold partible land through him?—*Gaynesford.* Yes, certainly, by reason of the condition of the land, which is partible, they will warrant me in the case which you put.—SHARSHULLE. He says what is true.—But afterwards *Gaynesford* would not abide judgment, but used the warranty against the eldest, and, as to the other two, traversed the disseisin.—*Blaykeston.* You shall not be admitted to that, because you have abode judgment on another plea to the action.—*Gaynesford.* It was said to me by the COURT that I should consider, and thereupon I imparled, and certainly I might well

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Gayn. Vous demandez ceste terre come heirs hors de comune dreit; et par mesme la resoun qe vous demandez serrez vous barre.—SCHAR. Sils demandassent par my luncle, vostre resoun liereit bien; mes ils demandent dautre auncestre, issi qe ceste garrauntie ne lie forsqe en le saunk qest heir de comune dreit. Et coment qe la terre soit departable, ceo ne prove pas vostre purpos, qar vous savez bien qe heirs madles ne sount pas charges de garrauntie sil ne soit par cause de lour possession, et tel cause nalleggez vous pas.—SCHARD. Vous garrantereint il ceste terre, si vous fussetz[1] plede dautre sils ne tenissent[2] par luy terre departable.—*Gayn.* Oyl, certes, par la condicion de la terre, qest departable, ils me[3] garraunterount en vostre cas.—SCHAR. Il dit verite.—Mes puis *Gayn.* ne voleit demurer, mes usa la garrauntie countre leigne, et quant as autres deux traversa la disseisine.[4]—*Blaik.* Vous navendrez pas, car vous estes demure sur autre plee al accion.—*Gayn.* Dit moy fut par COURT qe jeo moy avisasse, sur quei jeo enparlay,[5] et certes jeo A.D. 1343.

[1] fussetz is omitted from 25,184.

[2] 25,184, tenisent.

[3] 25,184, ne.

[4] The plea, acccording to the record, was "quod prædictus Petrus "le Wyse nihil juris clamare "potest in tenementis prædictis, "quia dicit quod quidam Robertus "le Wyse, avunculus ipsius Petri "le Wyse, cujus heres ipse est, per "chartam suam dedit, concessit et "charta illa confirmavit ipsi Petro "le Hunte et cuidam Gunnoræ "matri ipsius Roberti le Wyse "prædicta tenementa cum perti-"nentiis per nomen totius tene-"menti quod habuit in parochia de "Longeleghe, habenda et tenenda "eisdem Petro et Gunnoræ et "heredibus Petri, et obligavit se et "heredes suos ad warantiam, &c. "[*Profert* made of the charter.] "Unde dicit quod si ipse de aliquo "extraneo de prædictis tenementis "implacitaretur, prædictus, Petrus "le Wyse, ut consanguinens et "heres prædicti Roberti teneretur "ei tenementa illa warantizare, et "unde petit judicium si prædictus "Petrus le Wyse contra chartam "prædictam actionem versus eum "habere debeat. Et quoad præ-"dictos Adam et Guidonem idem "Petrus le Hunte dicit quod ipse "non disseisivit prædictum Johan-"nem le Wyse patrem eorundem "Adæ et Guidonis prout iidem Adam "et Guido per breve suum suppo-"nunt." Issue was joined on this.

[5] Harl., enparla.

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A.D. 1343. have dared to abide judgment in law on the first point, but I do not, because I find clearer matter upon examination.—SHARDELOWE. He is in a particular case.—*Blaykeston*, as to the two, maintained the disseisin, and as to the eldest he said that the deed ought not to harm him, because the same person whom he supposed to have made the deed had entered into Religion, and professed, long before, and he put this with certainty.

Præcipe. (63.) § A writ was brought against a man and his wife, and a third person. When the Petit *Cape* was returnable the husband did not appear. The wife appeared and prayed to be admitted, and said that her husband was dead. And the third person answered by guardian, and demanded judgment of the writ because the husband was dead.—*Grene.* A woman is admitted to defend her right as a feme covert, and she cannot say that her husband is dead, contrary to her admission; and the other is a stranger, who cannot allege that; wherefore we pray seisin of a moiety as against him.—*Gaynesford.* He has nothing, but the woman prays to be admitted in respect of the entirety, and says that her husband is dead.—*Grene.* She shall

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osasse bien demurer en ley sur le primer point, mes pur ceo qe jeo trove plus clere[1] matere par examinement.—SCHARD. Il est en[2] un cas.—*Blaik.*, quant a les deux, meintint la disseisine, et quant al eigne il dit qe le fait ne luy deit nuire, car mesme cely[3] qil suppose qe fist le fait fut entre en Religioun, et profes,[4] longe temps devant, et mist en certein.[5] A.D. 1343.

(63.)[6] § Bref fut porte vers un homme et sa femme, et le terce. Al petit *Cape* retournable le baroun ne vint pas. La femme vint et pria destre resceu, et dit qe son baroun fut mort. Et le terce respondi par gardein, et demanda jugement du bref pur ceo qe le baroun fut mort.—*Grene.* La femme est resceu a defendre son dreit come femme covert, quel ne[7] put dire qe son baroun est[8] mort en contrarie de sa resceite; et lautre est estraunge, qe ne put cella allegger; par quei de[9] la moite vers luy nous prioms seisine.—*Gayn.* Il nad rienz, mes la femme prie destre resceu del entier, et dist qe son baroun est mort.—*Grene.* A ceo ne serra ele resceu, *Præcipe.*

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[1] 25,184, clier.

[2] en is omitted from Harl.

[3] cely is omitted from 25,184.

[4] Harl., profees.

[5] The replication, according to the record, was "Petrus le Wyse, "protestando quod non cognoscit "chartam prædictam factam fuisse "eo tempore quo prædictus Petrus "le Hunte superius allegat, &c. "dicit quod ipse virtute chartæ "illius ab actione sua præcludi non "debet, quia dicit quod tempore "confectionis ejusdem chartæ præ- "dictus Robertus avunculus, &c., "fuit professus in ordine religionis "videlicet Conversus in Abbathia "de Boxle in prædicto Comitatu "Kanciæ. Et hoc paratus est "verificare, unde petit judicium," &c.

There was a rejoinder by Peter le Hunte "quod tempore con- "fectionis chartæ prædictæ præ- "dictus Robertus fuit homo "secularis, et non professus in "ordine religionis, sicut prædictus "Petrus le Wyse superius allega- "vit."

Issue was joined on this, and the *Venire* awarded.

[6] From Harl., and 25,184.

[7] ne is from Harl. alone.

[8] Harl., fust.

[9] 25,184, par.

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A.D. 1343. not be admitted to that, because her husband, and she, and the other, previously pleaded as joint tenants. —Shardelowe. What of that? The plea was accepted from her husband, and it is right that, if the husband be dead, the writ should abate.—*Grene.* She shall not allege that, after she has been admitted, unless she say that her husband died after she was admitted.— Afterwards a *Non pros.* was entered by direction of Kelshulle.—*Quære* as to this matter, because some said that the woman ought to have seisin if judgment was given, and others that there ought to be a writ of Deceit, &c.

Entry. (64.) § Entry *sur disseisin* against one who had entered by the disseisor.—*Gaynesford.* The person against whom the writ is brought is tenant by the curtesy of England in right of the same person by whom his entry is supposed, the reversion being to J., son and heir of our wife; and because he is under age we pray that the parol do demur.—*Pulteney.* The Statute[1] purports that a parol shall not demur by reason of the non-age of heirs on the one side or on the other; and, if he were tenant, the parol would not demur, and, if he were admitted by reason of the default of the person against whom the writ is brought, he would not have his age.—Hillary denied this, and said that he would not be in the case of the Statute, if the writ were brought against him as tenant; wherefore he would have adjudged that the parol should demur.—But *Pulteney,* seeing this, said that he was of full age.—*Quære* as to this matter, because it is extraordinary.

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[1] 3 Edw. I. (Westm. 1.), c. 47.

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car son baroun, et luy, et lautre, devant ces[1] hures, ount plede com jointenants.—Schard. De ceo quei? Ceo[2] fut accepte de son baroun, et il est resoun qe si son baroun soit mort qe le[3] bref abate.—*Grene.* Ele[4] nalleggera pas, apres sa resceite, ceo la, si ele ne die qe son baroun murust puys[5] sa resceite.—*Postea non pros* par Kels.—*Quære de ista materia, quia quidam dixerunt* qe la femme avera la seisine si le jugement se fist, *et aliqui quod breve Deceptionis*, &c. A.D. 1343.

(64.)[6] § Entre sur disseisine vers cely qe fut entre par le disseisour.—*Gayn.* Cely vers qi le bref est porte est tenant par curtesie[7] Dengleterre en le dreit mesme cely par qi son entre est suppose, la reversion regardaunt a J., fitz et heir nostre femme; et pur ceo qil est deinz age prioms qe la parole demurge.—*Pult.* Lestatut voet qe par noun age des heirs dune part et dautre la parole ne demura pas; et, sil fut tenaunt, la parole ne demura pas, et, si par la defaut cely vers qi le bref est porte il fust resceu il navera pas son age.—Hill. *negavit*, et dit qil nest pas en cas destatut si le bref fut[8] porte vers luy come vers[9] tenant; par quei il voleit aver agarde qe la parole demureit.—*Sed Pult., videns illud*, dit qil fut de plein age.—*Quære de ista materia, quia mirum.* Entre. [Fitz., *Age*, 9.]

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[1] MSS., ses.
[2] Ceo is omitted from Harl.
[3] Harl., son.
[4] 25,184, Il.
[5] Harl., apres.
[6] From Harl., and 25,184.
[7] Harl., curtasi.
[8] 25,184, ne fut.
[9] vers is from Harl. alone.

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A.D. 1343. Intrusion. (65.) § Robert Ferrars brought a writ of Intrusion in respect of the manor of Yoxall, except one messuage and twelve acres of land, against Maud, late wife of R. Holand, and she vouched to warrant H., brother and heir of Thomas, heretofore Earl of Lancaster, who was to be summoned in the County of Lancaster, whereas the demand was in the County of Stafford. On the *Summoneas ad warantizandum* the vouchee made default, wherefore the *Cape* was awarded, and entered on the roll; but the writ did not issue. And a writ of Extent issued to the Sheriff of Staffordshire, and on the day given no writ was returned. It was therefore entered on the roll that "*neuter prædictorum Vicecomitum misit hic breve.*" Therefore an *alias Cape ad valentiam* was entered, and an *alias* Extent, &c., and on the day given "*neuter Vicecomitum misit breve.*" Therefore a *pluries Cape ad valentiam*, and a *pluries* writ of Extent, and *Sequatur suo periculo* were thereupon entered on the roll.—*Moubray* recited the process, and said this was the first writ which had issued to take to the value of the land, and upon this *Sequatur suo periculo* had been entered, which was contrary to common law, and so the whole was discontinued.—*Richemunde.* On

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(65.) [1] § Robert Ferrars [2] porta bref de Intrusion del maner de Yoxhale, forpris un mies, xij acres de terre, vers Maude qe fut la femme R. Holand, qe voucha a garraunt H., frere et heir Thomas nadgairs [3] Count de Launcastre, qe serra somons en le Counte de Launcastre, ou la demande est en le Counte de Stafford. Al *Summoneas ad warantizandum* le vouche fist defaut, par quei le *Cape* fut agarde, et entre en roulle; mes bref ne issit pas. Et bref destent [4] issit a Vicounte de Stafforde, a quel jour nul bref fut retourne. Par quei en roulle fut entre *quod* [5] *neuter prædictorum Vicecomitum misit hic breve.* Par quei *Sicut alias Cape ad valentiam* fut entre, et [6] *Sicut alias* Extente,[7] &c., a quel jour *neuter Vicecomitum misit breve.* Par quei *Cape ad valentiam* [8] *sicut pluries*, et bref Dextente *sicut pluries*,[9] et *Sequatur suo periculo* fut entre en roulle sur cele.—*Moubray* rehercea le proces, et dit coment ceo fut le primer bref qe issit de prendre a la value de la terre, et sur ceo fut entre *Sequatur suo periculo* qest countre comune [10] ley, issit est tut discontinue.—*Richem.* A.D. 1343. Intrusion.

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[1] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 481. It there appears that the action was brought by Robert de Ferrars against Matilda late wife of Robert de Holand, in respect of the manor of Yoxhale (Yoxall, Staffordshire), except one messuage and 12 acres of land, which manor was extended at 75*l.* 9*s.* 9*d.* per annum. It was alleged that the tenant had not entry but by Thomas late Earl of Lancaster, to whom Edmund late Earl of Lancaster demised the manor, after having intruded thereon upon the death of Margaret late wife of William de Ferrars who held it in dower of the gift (*dono*) of her late husband, the great grandfather of the demandant, whose heir he is.

[2] Harl., Ferrers; 25,184, Freres.

[3] Harl., nadgers.

[4] Harl., dextent.

[5] *quod* is omitted from Harl.

[6] The words *ad valentiam* fut entre, et are omitted from 25,184.

[7] 25,184, *pluries* et bref dextente *sicut pluries*, instead of *alias* Extente.

[8] The words *ad valentiam* are omitted from Harl.

[9] After *pluries* there are added, in Harl., the words a quel jour *neuter Vicecomitum misit breve*, par quei *Cape ad valentiam sicut pluries.*

[10] comune is from Harl. alone.

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A.D. 1343. behalf of whom do you say that? If you are speaking for the tenant, it is not for him to allege it, as he has not duly sued against his warrant; besides, the parties have a day by the roll, wherefore there is no discontinuance.—*Pole.* It is contrary to law that any *Cape ad valentiam* should issue into another County before the return of the Extent, so that whatever was entered on the roll respecting a *Cape ad valentiam* before the return of the Extent was unwarranted, and not in accordance with law.—STONORE. You are trying to compel delays contrary to reason.—And it was said by the COURT and the *Clerks* that it could not be otherwise.—STONORE. Where is the vouchee?—*Pole.* He is here, and asks what you have to bind him.—*Moubray.* Thomas, your brother, whose heir, &c., enfeoffed us together with our husband and the heirs of our bodies, &c., of the manor, except a park, and foreign wood, and the advowson, and knights' fees, until he or his heirs of his body should have provided us elsewhere to the value. And by another deed he gave us the advowson, and granted the services of the tenants, &c., with warranty, &c.; so will we bind him.

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Pur qi parlez vous cella? Si vous parlez pur le tenant, ceo nest pas a luy dallegger quel nad pas duement suy vers son garraunt; ovesqe ceo, parties ount jour par roulle, par quei discontinuaunce nad pas.—*Pole.* Il est countre ley qe nul *Cape ad valentiam* issereit en autre Counte avant Lextente retourne, issi qe quant qe fut entre en roulle de[1] *Cape ad valentiam* devant Lextent retourne fut desgarraunti, et desacordaunt a la ley.—Ston. Vous[2] volez chacer delayes countre resoun.—Et fut dit par Court et *Clerkes* qil ne purra autrement estre.—Ston. Ou est le vouche?—*Pole.* Il est cy, et demande ceo qe vous avez de luy lier.[3]—*Moubray.* Thomas, vostre frere, qi heir, &c., nous feffa ensemble[4] ove nostre baroun, et les heirs de nos corps, &c., du maner, forpris un park, et forein boys, et lavoesoun, et fees de chivaler,[5] taunqe luy ou[6] ses heirs de son corps nous eussent purvewe aillours a la value. Et par un autre fait il nous dona lavoesoun, et graunta les[7] services des tenantz, &c., ove garrauntie, &c.; issi luy[8] voloms lier.[9]—*Grene.* La A.D. 1343.

[1] Harl., ad.

[2] Vous is from Harl. alone.

[3] The previous default of the vouchee, and process thereon are not repeated in the roll of this term, where it only appears that the tenant "alias vocavit inde ad "warantum Henricum fratrem et "heredem Thomæ nuper Comitis "Lancastrie qui modo venit per "summonitionem ei factam in "Comitatu Lancastriæ . . . . . "et petit quod prædicta Matilldis "ostendat ei per quod ei warantiz-"are debeat," &c.

[4] Harl., ensemblement.

[5] 25,184, chivalerie.

[6] Harl., et.

[7] Harl., qe les.

[8] luy is from Harl. alone.

[9] According to the roll "Matilldis "dicit quod prædictus Thomas "nuper Comes, &c., cujus heres "prædictus Henricus est, per "quoddam scriptum suum dedit, "concessit, et confirmavit præfato "Roberto de Holande quondam "viro suo et ipsi Matilldi maneri-"um prædictum cum pertinentiis, "simul cum aliis terris et tenemen-"tis, salvis sibi et heredibus suis "feodis militum, et advocationibus "ecclesiarum, &c., et etiam parco "de Rouleghe, et forinseco bosco "infra wardam de Joxhale, tenen-"dum sibi et heredibus de corpori-"bus suis exeuntibus, &c. Et "profert hic prædictum scriptum." The deed, with warranty, which is in French, is set out at length. It

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A.D. 1343. —*Grene.* Whereas he would bind us by his deeds, we tell you that we are ourselves tenants of the park, and foreign wood of the same manor, and certain fees, and as to rest, except the exception, we will warrant her as those who have nothing by descent of inheritance, &c., saving to ourselves our action by Formedon on a gift made to Edmond our father by King Henry, and, as to that, let him count against us. —*Gaynesford.* He has not warranted in respect of any certain portion, so that we cannot know in respect of what he has warranted—whether in respect of part, or of the whole; wherefore we pray seisin.—*Grene.* And, inasmuch as we have warranted, and you say nothing against us, judgment how we are to leave the Court.—*Gaynesford.* Inasmuch as she who is tenant has fully admitted that she is tenant of our demand, if there be

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ou il nous voet lier par ses faits, nous vous dioms qe de park et de forein bois de mesme le maner, et certeinz feez, nous mesmes sumes tenantz, et quant al remenant, forprise la forprise, nous luy garraunteroms[1] come ceux qe navoms rien par descente de heritage,[2] &c., salve a nous nostre accion par Forme de doun dun doun fait a Edmond nostre pere par le Roi H., et quant a cella count devers nous.[3]—*Gayn.* Il nad garraunti de nulle certein porcion, issi qe nous ne puissoms[4] saver de quei il ad garraunti, de partie ou tut; par quei nous prioms seisine.—*Grene.* Et,[5] desicom nous avoms garraunti, et vous ne[6] ditez[7] rien vers nous, jugement coment nous devoms departir.—*Gayn.* Desicome cele qest tenante ad accepte[8] pleinement qele est tenante de A.D. 1343.

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there appears that the gift was "a "touz jours cy la qe nous ou nos "heirs de nostre corps lealment "engendres aions fet renables "eschaunges en lieus covenables a "la verroie value."

By the second deed, with warranty, also in French, and also set out at length "idem Thomas per "chartam suam dedit, concessit, et "confirmavit præfato Roberto et "ipsi Matilldi homagium et servitia "Roberti le Rodman et heredum "suorum, qui de eo tenuit certa "tenementa in prædicta villa, "simul cum advocatione ecclesiæ "de Joxhale, cum communa pas-"turæ cum omnibus averiis, &c., "ubique, &c., in foresta sua de "Nedwode, exceptis parcis suis, "totis temporibus anni."

[1] Harl., grantoms.

[2] Harl., deritage, instead of de heritage.

[3] According to the roll, Henry said "quod ipse habet actionem "petendi prædictum manerium, "exceptis prædictis parco, forinseco "bosco, et aliquibus feodis militum, "in eodem manerio, per breve de "Forma donationis, &c., de quibus "parco, bosco, et feodis militum "ipse Henricus est modo tenens, "&c. Et quoad prædictum mane-"rium in prædictis scripto et "charta contentum, exceptis præ-"dictis parco, forinseco bosco, "et feodis militum in eodem "manerio, quæ in prædictis scripto "et charta excipiuntur, et unde "idem Henricus est tenens, &c., non "acceptando prædictam extentam "rite fore factam, &c., tanquam "heres prædicti Thomæ sanguine "nihil habens per descensum "hereditarium in feodo simplici de "eodem Thoma, salva sibi actione "sua prædicta, ei warantizat," &c.

[4] Harl., poms.

[5] Et is omitted from Harl.

[6] ne is from Harl. alone.

[7] Harl., deditez.

[8] 25,184, exepte.

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A.D. 1343 any part of our demand in respect of which she is not warranted, we shall have the advantage against her of having seisin, and as to the rest, in respect of which she is warranted, we shall be ready to count; but we must first know in respect of what she is warranted, and in respect of what she is not, so that we may be able to count with certainty.—Stonore. By your subtlety you will abate your own writ.—*Derworthy*, for the tenant, said that the tenements put in view were the same tenements as those in respect of which she was warranted, and she holds those same tenements by the description of a manor, so that she is warranted in respect of that which she holds.—*Gaynesford*. It is necessary to know whether the tenant is warranted in respect of our demand or not, and not in respect of that which she holds, inasmuch as she accepts our demand, because otherwise we cannot know in respect of what or of how much to count against him.—Stonore. And if she could have abated your writ by non-tenure, and would not, but preferred to vouch to warrant, accepting your writ, and she is warranted in respect of her tenancy, what default is there in her who is tenant? And, therefore, see whether you will count, for we understand that she is warranted in respect of her tenancy.—*Richemunde* counted against the warrant in accordance with the original writ.—*Grene*. You see plainly how he has counted against us as tenant by our warranty in respect of the whole, except the exception in the original writ, and in place of the warranty thereof we have excepted a park, and the foreign wood of the

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nostre demande, sil y eit[1] asqune parcelle de nostre demande de quei ele nest[2] pas[3] garrauntie, nous soms[4] al avauntage vers luy daver seisine, et del remenant dount ele est[5] garrauntie, prest serroms a counter[6]; mes primes covient saver de quei ele est garrauntie, et de quei nient, issi qe nous puissoms counter en certein.—Ston. Vous volez par vostre sotilte[7] abatre vostre bref.—*Derworthi*, pur la tenante, dit qe les tenementz mys en vewe furent mesmes les tenements de les queux ele est garrauntie, et mesmes les tenements tient ele par non de maner, issi qele est garrauntie de ceo qele tient.—*Gayn.* Il covient saver si le tenant soit garraunti de nostre demande ou noun, et noun pas de ceo qele tient, desicome ele accepte nostre demande, qar autrement ne poms saver de[8] quei ne de combien counter vers luy.—Ston. Et si ele poait par nountenue aver abatu vostre bref, et ne voleit pas, mes voucher a garraunt, acceptant vostre bref, et est garrauntie de sa tenance, quel defaut ad il en cely qest tenant? Et pur ceo veiez si vous voletz counter, car nous entendoms qele est garrauntie de sa tenance.—*Richem.* counta vers le garraunt acordaunt al bref original.[9] —*Grene.* Vous veiez bien coment il ad counte vers nous com tenant par nostre garrauntie del entier, forprise la forprise en loriginal, et en lieu de la[10] garrauntie si[11] ad il forpris un park, et forein boys A.D. 1343

[1] Harl., ad.
[2] 25,184, nad.
[3] 25,184, rien.
[4] Harl., sumes.
[5] est is omitted from Harl.
[6] 25,184, accompter, instead of a counter.
[7] sotelte.
[8] Harl., a.
[9] According to the roll, there was added in the count "quod prædictus Willelmus proavus, &c., "fuit seisitus in dominico suo ut "de feodo et jure . . . . . Et "de ipso Willelmo descendit jus, "&c., cuidam Roberto ut filio et "heredi, &c., et de ipso Roberto ". . . . . cuidam Johanni ut "filio et heredi, et de ipso Johanni ". . . . . isti Johanni qui nunc "petit," &c.
[10] la is from Harl. alone.
[11] 25,184, sil.

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de maner, qamount a mille acres de boys, et auxi[1] lx[2] south de rente, et auxint[3] iiij[4] fees de chivaler, les queux nous navoms pas garraunti, issi ad il counte devers nous com deforceour de plus qe nous navoms garraunti; jugement du count.[5]—Et fut touche outre qe si le count fust meintenu, et le demandant recoverast vers le tenant, et il a la value qil recoverast plus en[6] value qe la porcion dount il fut garraunti.—*Gayn.* Nous pernoms vos[7] recordes qe unqes ne fut parle[8] devant[9] de certein nombre des acres de boys, ne de rente, mes soulement de parke, et foreyn boys, et[10] fees de chivaller,[11] qe fut en noun certein, issi qe pur le demandant, sur lentrer en la garrauntie par[12] la manere, nous priames seisine del remenant vers la tenant, et fumes oppose de quei nous priames seisine, et adonqes nous ne savames, ne ne poames saver, pur ceo qe ceo fut[13] en noun certein; par quei la tenante dist qele de sa tenance avoit vouche, et par cele manere fut garrauntie, et issi fut entendu de Court et partie, saver, lentier du maner, forprise la forprise en loriginal, A.D. 1343.

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[1] auxi is from Harl. alone.

[2] MSS. of Y.B. xl. The number is from the record.

auxint is from Harl. alone.

[4] Harl., iij.

[5] The plea was, according to the roll, "quod prædictus Robertus, "per breve suum, et narrationem "suam prædictam, petit versus "eum ut tenentem per warantiam "suam, prædictum manerium cum "pertinentiis, exceptis uno mesua-"gio et duodecim acris terræ in "eodem manerio, ubi ipse Henricus "warantizat præfatæ Matilldi "manerium prædictum, exceptis "prædicto parco, et forinseco "bosco, qui continent in se mille "acras bosci, et feodis militum, "quæ sunt quatuor feoda, &c., et "sexaginta solidatas redditus in "Horcrosse, quæ sunt servitia "eorundem feodorum, de quibus "quidem parco, bosco, et feodis "militum idem Henricus est modo "tenens, ut supradictum est; et "sic petit versus eum plus quam "ipse præfatæ Matilldi warantizat, "unde petit judicium," &c.

[6] 25,184, a la.

[7] vos is from Harl. alone.

[8] 25,184, pas.

[9] 25,184, demandant.

[10] et is from Harl. alone.

[11] The words de chivaller are from Harl. alone.

[12] 25,184, de.

[13] Harl., qe fust.

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A.D. 1343. with our demand, so that there was no fault on our part when we counted. But if there ought to be any dispute about the warranty, it should rightly be between the tenant and the vouchee, and between them issue would be taken whether the warranty extended to less than the demand; but when they have agreed, and the warrant has warranted, he shall never be admitted to say that he has warranted less than the demand.—Stonore. He was bound by certain deeds, according to which deeds there is an exception different from the exception which is made in your writ; wherefore, when he entered into warranty in accordance with the deeds and not with the demand contained in the original writ, you cannot say that he has warranted the whole of the demand, but you could have demanded your judgment against the tenant in respect of the parcel in respect of which she had not warranty as is supposed by her voucher, but you did not abide judgment on that.—*Richemunde.* Tenant by his warranty

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acordaunt a nostre[1] demande, issi qil ny avoit pas defaut en nous quant nous countames. Mes si debat y devereit estre sur la garrauntie, ceo serreit de resoun entre le tenant et le vouche, et entre eux lissue se prendreit si la garrauntie sestendist a[2] meins qe la demande ne fut; mes quant ils furent dun acorde, et le garraunt ad garraunti, jammes ne serra il resceu a dire qil ad[3] garraunti[4] meins[5] qe la demande.[6]—Ston. Il fut lie par certeinz faitz[7] par[8] queux faitz[7] autre forprise qe nest deinz vostre bref est forprise; par quei quant il entra acordaunt a les faitz,[7] et noun pas a la demande compris deinz loriginal, vous ne poietz pas dire qil al garraunti tut la demande, mes vous puissez aver demande vostre jugement vers la tenante de la parcelle de quei ele navoit pas garrauntie come suppose est[9] par son voucher, mes sur ceo ne demurastes pas jugement.[10]—*Richem.* Tenant par sa garrauntie ne A.D. 1343.

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[1] Harl., al, instead of a notre.
[2] Harl., au.
[3] Harl., y ad.
[4] garraunti is from Harl. alone.
[5] Harl., de meins.
[6] According to the roll "Robertus "dicit quod, quando prædictus "Henricus intravit in warantiam "prædictam, non excepit in certo "aliquam quantitatem de qua non "warantizavit prædictæ Matilldi, "nominando id quod excepit per "numerum acrarum, nec feodorum "militum, nec aliquam quantita-"tem redditus, de qua quantitate, "si in certo excepta fuisset, ipse "seisinam suam versus prædictam "Matilldem petivisse potuisset, "nec etiam aliqua controversia "erat inter ipsum et prædictam "Matilldem de warantia prædicta "eo quod prædicta Matilldis ex-"presse dixit in Curia quod ipsa "de tota tenencia sua warantizata "fuit, et idem Henricus de nulla "parcella manerii prædicti per "judicium Curiæ recessit quietus "de warantia, nec petiit se de "aliqua parcella ejusdem tenenciæ "prædictæ Matilldis quietum re-"cedere, nec etiam prædicta Matill-"dis pro aliqua parcella ei non "warantizata amerciata fuit, per "quod aliud intelligi non potest in "jure nisi quod idem Henricus "warantizavit præfatæ Matilld "eadem tenementa quæ idem "Robertus versus eam per breve "suum petiit, unde petit judicium "si idem Henricus narrationem "suam in hoc casu cassare possit,' &c.
[7] Harl., fees.
[8] Harl., en.
[9] Harl., fut.
[10] jugement is from Harl. alone.

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A.D. 1343. cannot abate a writ on the ground of non-tenure, for, if I demand ten acres of land against a tenant, who appears and says that what I demand as ten acres is only five acres, and vouches in respect thereof, and the warrant enters into warranty without dispute, he warrants the whole of my demand, be it more or less. So in the matter before us.—*Pole.* The writ was never worth anything.—And this he said, because there was no exception made of the wood, and the rent, &c.—*Thorpe.* The tenant has gone out of Court, and no judgment can be rendered against her now in respect of any parcel; and he has counted against us in a manner not in accordance with that in which we have warranted; judgment how we ought to leave the Court.—*Grene.* When there is a dispute between tenant and vouchee, the demandant shall not, according to law, count against the warrant until this dispute between them has been settled, so that he may be able to count with certainty against the warrant, and pray seisin against the tenant of the parcel in respect of which he is not warranted. But we take your records to witness that there was no dispute between them but that the tenant was fully warranted, and as to that they were agreed between them, and therefore it was said to us that we should count, or else we should lose our writ, so that there was no fault on our part. And, inasmuch as he does not answer to our count, we pray seisin.—Willoughby. The demandant ought always to know and to acknowledge that which he demands, and it is for him to acknowledge in respect of what the tenant is warranted, and of what he is not; and neither the tenant nor the warrant is bound to give a good count to the demandant, but he shall himself count at his peril. And now, in this case, there is no doubt that the tenant is not entirely warranted as to the demand, for this was excepted by the vouchee when he entered into

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put par nountenue bref abatre, car si jeo demande x acres de terre vers un tenant, qe vient et dit qe ceo qe jeo demande com x acres ne sount qe v acres, et de ceo vouche, et le garraunt entre sanz debat, il garraunte lentier de ma demande, soit ceo plus ou meins. *Sic in proposito.*—*Pole.* Le bref ne valust unqes rien.—*Et hoc dixit* pur ceo qil ny avoit[1] pas forprise fait du boys, et la rente, &c.—*Thorpe.* La tenante est departie hors de Court, vers qi nul jugement put estre rendu a ore de nulle parcelle; et il ad counte vers nous desacordaunt a la manere qe[2] nous avoms garraunti; jugement coment nous devoms departir.[3]—*Grene.* Quant debat est entre le tenant et le vouche, le demandant ne counterà pas par ley vers le garraunt tanqe cel debat entre eux soit discus, issi qen certein il purra counter vers le garraunt, et de la parcelle dount le tenant nest pas garraunti prier seisine vers luy. Mes nous[4] pernoms vos recordes qe entre eux nul debat y fut qe la tenante pleinement ne fut garrauntie, et de ceo furent ils[5] a un entre eux, par quey dist nous fut qe nous countassoms,[6] ou nous perdroms nostre bref, issi qen nous defaut ne fut pas. Et, desicome il respount pas a nostre counte, nous prioms seisine.—Wilby. Le demandant deit touz jours saver et conustre ceo qil demande, et a luy est a conustre de quei le tenant est garraunti, et de quei noun; et ne[7] le tenant ne le garraunt ne sount tenuz de doner bon count al demandant, mes il mesme countera a son peril. Et ore, en ceo cas, nest pas doute qe le tenant nest pas garrauntie entierment de la demande, qar ceo fut forprise par le vouche quant il entra, et auxi, com A.D. 1343.

[1] Harl., navoit, instead of ny avoit.
[2] qe is from Harl. alone.
[3] 25,184, departier.
[4] nous is from Harl. alone.
[5] ils is from Harl. alone.
[6] 25,184, countames.
[7] ne is from Harl. alone.

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A.D. 1343. warranty, and also, as the deeds by which he is bound purport, he shall not warrant the whole. And that the demandant naturally ought to know, and although as between the tenant and the vouchee it was not rendered certain by number of acres, the demandant, whose duty it is to know and to acknowledge, &c., ought to have made the exception with certainty; and, when he did not do so, it was his fault, because, if he had of himself made the exception with certainty by number of acres, though he had it not by statement from the tenant or the vouchee, the count would have been good.—*Richemunde.* When the vouchee appears, and asks what the tenant has to bind him to warranty, and the tenant possibly has no lien except as to parcel, and the vouchee raises the objection that he has no lien as to the whole, and does not abide judgment on that objection, and does not demand his judgment to pass quit as regards the tenant in respect of the parcel, but before that judgment is given, waives his objection, and warrants, I say that the demandant shall count against him in respect of the entirety. So in the case before us.—Willoughby. Your reasoning holds good when no specialty is shown as to the lien, but when a specialty is shown, as there was in this case, and he warrants by force of the specialty, it cannot in any manner be understood that he warrants more largely than the specialty purports. And as to what you say—that the vouchee ought to have demanded his judgment to pass quit in respect of the parcel as to which the tenant had no lien against him, it would have been more to the demandant's advantage to have taken seisin against the tenant. And see what would follow if the plea were continued with respect to the entirety—that the Court would then hold plea as to parcel without warrant, and the execution of their judgment would possibly be a

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les faits[1] par queux il est lie purportent, il gar- A.D. 1343.
rauntira pas lentier. Et ceo· deit le demandant naturelement saver, et tut ne fust[2] il pas entre le tenant et le vouche mys en certein par nombre[3] des acres, le demandant, a qi il attient de saver et conustre, &c., le duist aver en certein forprise; et quant il ne fist pas ceo, fuit sa defaut, qar si de luy mesme il ust fait un forprise en certein par nombre des acres, tut navoit[4] il[5] pas ceo de la livere le tenant ne le vouche, le count ust este bon.—*Richem.* Quant le vouche vient, et demande ceo qe le tenant ad de luy lier a la garrauntie, et le tenant par cas nad pas lien forsqe de parcelle, et le vouche le chalange qil nad pas lien del entier, et sur cel chalange ne demurt pas, ne demande pas son jugement de passer quites devers le[6] tenant[7] de la parcelle, mes, devant qe cel jugement se face, weyve son chalange, et garraunte, jeo die qe le demandant countera devers luy de lentier.—*Sic in proposito.*—Wilby. Vostre resoun tient lieu quant nul especialte est moustre del lien, mes quant especialte est moustre, come fut en ceo cas, et il[8] garraunte par force del especialte, en nulle manere put estre entendu qil garraunte plus largement qe lespecialte ne purport. Et de ceo qe vous parlez qe le vouche duist aver demande son jugement de passer[9] quites de la parcelle dount le tenant navoit pas lien vers luy, il serreit plus en avantage del demandant daver prise seisine vers le tenant. Et veiez ceo qensuereit si le plee fust continue del entier, qe Court donqes tendreit plee de la parcelle saunz garraunt, et lexecucion de lour jugement par

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[1] Harl., fees.
[2] fust is from Harl. alone.
[3] 25,184, mon bref.
[4] Harl., ny avoit.
[5] il is from Harl. alone.
[6] Harl., les.
[7] Harl., tenantz.
[8] 25,184, sil.
[9] 25,184, passier.

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A.D. 1343 disseisin.—*Gaynesford.* We could never with certainty pray judgment as to anything against the tenant, because it was never made certain of what she was warranted, but she said that it was of as much as was put in view, and that she was warranted as to her tenancy, and of that we take the record of the Court to witness. And when she vouched as to the entirety of our demand, admitting herself to be tenant of the entirety as we demanded it, and they were agreed between them that she was warranted as to the entirety of her tenancy, it follows therefrom that he has warranted the entirety of our demand, and she is out of Court as one who is warranted as to the entirety. Consequently the count is good.—*Thorpe.* We were bound by two deeds. Suppose we had, as to one, admitted the deed and the warranty, and as to the other deed had counterpleaded the warranty in law, the demandant certainly ought not by law to have counted until it had been settled whether we ought to warrant or not, nor ought he any more to have done so in this case until it had been determined between the tenant and us, so that he could have had a count in due form. But since he has counted against us in respect of the entirety, whereas by law he ought to have heard his judgment as to parcel against the tenant, because that was not warranted, the count is faulty.—*Gaynesford.* According to your contention I have counted before my time; therefore I must count anew.—Stonore. It is right that this count should stand unless you can give a better one; but if he had excepted a park, and foreign wood, would such an exception be good in law?—*Grene.* He ought to have excepted it by the description of a

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cas serreit disseisine.—*Gayn.* Nous ne poames unqés en certein prier jugement de rien vers la tenant, qar unqes ne fut[1] ceo mys en certein de quei ele fut pas garrauntie, mes ele dist de[2] quant qe[3] fut mys en vewe, et de sa tenance ele fut garrauntie, et de ceo pernoms recorde de Court. Et quant ele voucha del entier de nostre demande, acceptant luy estre tenant del entier come nous demandames, et del entier de sa tenance furent ils a un entre eux qele fut garrauntie, donqes de ceo ensuit qil ad[4] garraunti lentier de nostre demande, et com cele qest garrauntie del entier est hors de Court. *Per consequens* le count bon.—*Thorpe.* Nous fumes lie par deux faits. Quant al un jeo pose qe nous ussoms conu le fait et garrantie, et quant al autre fait qe nous ussoms countreplede la garrauntie en ley, ja ne duist le demandant par ley counter tanqe discus fut quel nous duissoms garrauntir ou noun,[5] ne nient plus duist il en ceo cas aver fait tanqe ceo ust este entre le tenant[6] et nous mys en certein, si qil put aver eu count fourmel. Mes quant il ad counte vers nous del entier, la ou par ley il duist aver oi[7] son jugement de parcelle vers le tenant, pur ceo qe ceo ne fut pas garraunti, le count est vicious.—*Gayn.* A vostre entent jay counte[8] devant[9] mon temps; par quei il covient recounter. —Ston. Il est resoun qe ceo count estoise si vous ne sachez doner meillour; mes sil ust forpris un park, et forein[10] boys, serreit tiele forprise bone[11] de ley?—*Grene.* Il le duist aver forpris par certein A.D. 1343.

[1] The words ne fut are from Harl. alone.
[2] 25,184, de quei.
[3] Harl., quanqe, instead of quant qe.
[4] ad is from Harl. alone.
[5] The words ou noun are from Harl. alone.
[6] The words le tenant are omitted from Harl.
[7] Harl., eu.
[8] 25,184, continue.
[9] Harl., avant.
[10] Harl., foreins.
[11] Harl., lien.

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A.D. 1343. certain number of acres, and to have demanded judgment of that against the tenant at his peril.—*Gaynesford.* With respect to that parcel you were never adjudged to be quit of warranty, and you were vouched with respect to the entirety; wherefore we could not have any other count than one as to the entirety.—Afterwards Stonore, with the assent of his Fellow Justices, recorded that, before the count was counted, the Earl of Lancaster, when he warranted, excepted only a park, foreign wood, and some knights' fees, without determining any certain number of acres, certain quantity of knights' fees, or the 60 shillings of rent.—*Grene.* And even though it was so, still it is certain that we did not warrant the entirety of the demand in relation to the tenant, wherefore, if exception was not made by the count of that in respect of which we did not warrant, the count will never be maintained. And you clearly record that we did not warrant the park, foreign wood, or certain fees, which are understood to be parcel of the demand; and inasmuch as he has counted against us, and has not by plea taken the advantage against the tenant who failed to have her warranty in respect of that parcel, his count is bad. And as to that which he says that the tenant by his warranty ought to have determined with certainty of what he might be discharged, and thereupon to have prayed judgment to be discharged, it was not for him to pray to be discharged of anything in respect of which he was never charged: because, although he was vouched with respect to the entirety, when he appeared and asked the tenant what the tenant had

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nombre des acres, et de cel a son peril aver demande jugement vers le tenant.—*Gayn.* De cele parcelle ne fuistes unqes par agarde quites de la garrauntie, et del entier vous estoiez vouche; par quei autre count nous[1] ne poames[2] aver forsqe del entier.—Puis Ston., del assent de ses compaignouns, recorda qe, devant le count counte, le Counte de Lancastre, quant il garrauntist,[3] forprist forsqe un[4] parke, foreyn boys, et asquns fees de chivaler, saunz determiner[5] en certein noumbre des acres, certein[6] quantite des fees de chivaler, ou les lx[7] south de rente.—*Grene.* Et tut fust il issi, unqore est il certein qe nous ne garrauntimes[8] pas lentier de la demande vers le tenant, par quei si[9] forprise ne fut fait par count de ceo dount nous ne garrauntimes pas, jammes ne serra le count meintenu. Et vous recordez bien qe nous ne garrauntimes[10] pas le parke, forein boys, ne[11] certeinz fees, queux sount entenduz parcelle de la demande; et de ceo qil ad counte vers nous, et noun pas par[12] plee pris avantage vers la tenante qe faillist de cele parcelle de sa garrauntie, si est son count malveys. Et[13] a ceo qil parle[14] qe le tenant par sa garrauntie duist aver determine[15] en certein de quei il fut deschargeable, et sur ceo aver prie jugement daver este descharge, [ceo ne fust pas a luy daver prie destre descharge][16] de chose dount unqes ne fut charge: qar, tut fust il vouche de lentier, quant il vint et demanda del tenant ceo qil avoit de luy A.D. 1343.

[1] nous is omitted from Harl.
[2] Harl., poms.
[3] garrauntist is omitted from 25,184.
[4] un is from Harl. alone.
[5] 25,184, terminer.
[6] 25,184, de certeyn.
[7] MSS. of Y.B., xl.
[8] 25,184, garrauntoms.
[9] si is omitted from Harl.
[10] Harl., garrauntoms.
[11] 25,184, en.
[12] Harl., pur.
[13] Et is omitted from Harl.
[14] 25,184, parle parole.
[15] 25,184, termine.
[16] The words between brackets are omitted from 25,184.

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A.D. 1343. to bind him, and the tenant showed the deeds to bind him, those deeds were the original cause for which he was bound to warrant, and since in those deeds there was a certain exception relating to a parcel of the demand, and he did not warrant in respect of that exception, but only in respect of that which was included in his ancestor's deeds, it is certain that he did not warrant the entirety, and that it was not for him to pray judgment to be discharged of that in respect of which he was not charged. And suppose the vouchee had said with certainty that the exception was of a thousand acres, and the tenant had said that it was only of a hundred acres, and the demandant had said it was a thousand acres, whom would the Court believe? I say it would believe the demandant, and no one else, and consequently it was the demandant's fault that he did not determine this with certainty.—Stonore. We will not, nor is it right that we should abate his count, except on the ground of mischief which would befal the Earl of Lancaster if the count were maintained. But now the mischief is so great that the count cannot be maintained, because, if the count be adjudged good, then if the warrant plead with the demandant, and the demandant recover, there is no doubt that he will recover against the tenant according to the purport of his writ, and the tenant to the value against the Earl, and the Earl will lose that parcel of which he is tenant, and which he has not warranted, without being aided by Assise or by any other remedy in law; and nevertheless he would recompense the tenant to the value, because, inasmuch as he would make himself party to the demandant as tenant by his warranty, he would have accepted the person against whom the writ is brought as tenant.—Shardelowe. There will never be more recovered against the tenant than that whereof he is tenant, and beyond that you will not recompense to the value; consequently

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lier, et il moustra les faits de luy lier, ceux[1] faits A.D. 1343.
furent loriginal par quel il fut tenuz a garrauntir, et quant en ceux faits il y avoit certein forprise qe fut parcelle de la demande, et de cele forprise il ne garraunti pas, mes soulement de ceo qe fut compris deinz les faits son auncestre, *certum est* qil ne garraunti pas lentier, ne a luy ne fut ceo pas de[2] prier jugement destre descharge de ceo dount il ne fut pas charge. Et mettes qe le vouche ust dit en certein qe la forprise fut de[3] mille acres, et le tenant ust dit qe ceo ne fut forsqe c acres, et le demandant ust dit qe ceo fut mille acres, a qi creireit[4] la Court? Jeo die qal demandant, et a nul autre, et *per consequens* ceo fut la defaut le demandant qe nel mist pas en certein.—Ston.[5] Nous ne voudroms pas, ne il nest pas resoun qe nous abateroms son count, sil ne fut pur meschief qavendreit al Counte de Launcastre si le count fut meintenu. Mes ore est le meschief si graunt[6] qe le count ne poet estre meintenu, qar si le count soit ajuge bon, donqes si le garraunt plede ove le demandant et il recovere, nest pas doute qil recovera[7] vers le tenant solonc ceo qe son bref voet, et il a la value vers le Count, et le Count perdra cele parcelle dount il est tenaunt, et qele il nad pas garrauntie, saunz estre eide par Assise ou par[8] autre voie de ley; et ja le meyns freit a la value al tenant, [qar en taunt com il se freit partie al demandant come tenant][9] par sa garrauntie, il accepta cely vers qi le bref est porte tenant.—Schard. Vers le tenant ne[10] serra jammes plus[11] recovery forsqe ceo dount il est tenant, et plus ne ferrez en value;

[1] 25,184, ses.
[2] Harl., a.
[3] de is omitted from Harl.
[4] Harl., crerreit.
[5] MSS., *Stouf.*
[6] 25,184, graund.
[7] Harl., ne recovera.
[8] par is omitted from Harl.
[9] The words between brackets are omitted from 25,184.
[10] ne is omitted from Harl.
[11] plus is from Harl. alone.

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A.D. 1343. there is no mischief.—*Stouford.* That cannot be, because, if we accept the count, we accept the tenant against whom the writ is brought as being fully tenant of the demand, except the exception in the writ, so that we shall accept her as being tenant of the parcel of which we are ourselves tenant, and by that acceptance we shall lose it, which would be a mischief.—Sharshulle. We do not yet know whether the wood, park, rent, or fees, which are excepted in the deeds, are parcel of the manor or not, &c.—*Stouford.* Since the deeds purport a feoffment of the manor, except a certain exception, you can never understand the exception which is expressed in the deeds to be other than parcel of the manor unless it were so pleaded, and they do not deny that, and therefore it is understood to be parcel, and it cannot be otherwise by law.—Shardelowe. If I demand a manor against you, whereas you hold only a moiety, and afterwards I recover against you, I shall recover against you only the moiety, although the words of the judgment relate to the entirety. So in the matter before us. Therefore there is no mischief, even though the count stand.—*Pole.* In an ordinary case, where there is no voucher, it is as you say; but if I bring a writ against you in respect of a manor, when you hold only a moiety, and you vouch W. Thorpe, who holds the other moiety, as to the entirety, and he enters into warranty, and warrants the entirety, accepting you as being tenant of the demand in its entirety, and pleads, and loses, he has, by his acceptance, lost the tenancy whereof he was himself tenant, and nevertheless will have to recompense to the value, which will be a mischief, and the cause is his own acceptance; and so also it is in this case.—Shardelowe. Your protestation which you made as to the exception when you entered into

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per consequens ceo nest pas meschief.—*Stouf.* Ceo ne put estre, qar, si nous acceptoms le count, nous acceptoms le tenant vers qi le bref est porte estre pleinement tenant de la demande, forprise[1] [la forprise en le bref, issint qe nous luy accepteroms estre tenaunt de la parcelle dount nous mesmes sumes tenantz et par cele accepter le perdroms, qe serreit][2] meschief.—SCHAR. Nous ne savoms unqore si le boys, parke, la rente, ou les fees qe sount forpris en les fetes[3] soient parcelle del maner, ou noun, &c.—*Stouf.* Quant les fetes purportent feffement del maner, forprise certein forprise, vous ne poetz jammes entendre la forprise qest mote en les fetes autre qe parcelle du maner, si ceo ne fut plede, et[4] ils ne dedient pas cella, par quei ceo est entendu parcelle, et autrement par ley ne poet ceo estre.—SCHARD. Si jeo demande vers vous un maner, la ou vous tenez forsqe la moyte, et puis jeo recovere vers vous, [jeo ne recoveray pas vers vous,][2] tut soient les paroles del jugement del entier, forsqe la moyte. *Sic in proposito.* Par quei ceo nest pas meschief mesqe le counte estoise.—*Pole.* En comune cas il est com vous parlez, la ou il y ad pas de voucher; mes si jeo porte bref vers vous dun maner, ou vous tenez forsqe la moyte, et vous vouches del entier W. Thorpe, qe tient lautre moyte, et il entre, et garraunte lentier, acceptant vous estre[5] tenant de la demande entierement, et plede, et perde, il ad perdu, par son accepter, [la tenaunce dount il mesme fut tenant, et ja le meins fra value, qe serra meschief, et cest son accepter][2] demene; et auxi est en ceo cas.—SCHARD. Vostre protestacion qe vous fetes[6] de la forprise[7] quant vous entrastes en gar- A.D. 1343.

[1] 25,184, forqe.
[2] The words between brackets are omitted from 25,184.
[3] 25,184, feez.
[4] Harl., ne.
[5] estre is omitted from 25,184.
[6] 25,184, facez.
[7] 25,184, purprise.

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A.D. 1343. warranty will save you from mischief.—*Stouford.* Never, because the plea will be contrary to the protestation if the count be maintained.—SHARSHULLE. When the tenant has accepted the writ as good, and has vouched in respect of his tenancy, and there is no dispute between him and the warrant, but they are agreed that the subject of demand, which the tenant holds, is warranted, then it seems that the demandant will count against the warrant as he would against the tenant, that is to say, in accordance with the writ.—*Richemunde, ad idem.* If I bring a writ against you in respect of a manor, and you say that another person holds a wood, park, &c., and so on, without certainty, you will never abate my writ on the ground of such non-tenure, because the exception is uncertain; no more in this case, when you have entered into warranty, although you did make an exception, but did not define it with certainty by any certain quantity, so that on your statement I might have had a good exception in my count, shall you ever abate my count.—WILLOUGHBY. Tenant in demesne has to give a good writ before he can abate that which has been framed against him; but tenant by his warranty has not to do so.—STONORE. We shall not abate this count unless we see that he could have counted better.—And they were adjourned.

Cui in vita. (66.) § A woman counted as to her own seisin.—*Richemunde.* Heretofore she brought an Assise of Novel Disseisin against us in respect of the same tenements, by which Assise it was found that she was never seised; judgment whether she can have an action by this writ touching her own possession.—

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rauntie vous salvera de meschief.—*Stouf.* Jammes, qar le plee [serra contrarie a la protestacion si le count fust meintenu.—Schar. Quant le tenant ad accepte le bref bon, et de sa tenance ad vouche, et][1] entre luy et le garraunt il ny ad pas debat, mes sount a[2] un qe la demande qe le tenant tient est garrauntie, donqes semble qil countereit vers luy come il freit vers le tenant, saver, acordaunt au bref.—*Richem., ad idem.* Si jeo porte bref vers vous dun maner, et vous ditez qautre tient un boys, parke, &c., et issi en noun certein, jammes par tiele nountenue abaterez mon bref, pur ceo qe la forprise est en noun certein; ne nient plus en ceo cas, quant vous estes entre en garrauntie, tut faites vous forprise et nel meistez[3] pas en certein par certein quantite, issi qe de vostre livere en moun count[4] jeo poay aver eu[5] bone forprise, jammes nabaterez mon count.—Wilby. Tenant en demene est a doner[6] bon bref avant qil abatera cel qest conceu[7] vers luy; mes issi ne fra pas tenant par sa garrauntie.—Ston. Nous abateroms pas ceo count si[8] nous ne[9] veioms qil put[10] meux[11] aver counte. —*Et adjornantur.*[12] A.D. 1343.

(66.)[13] § Un femme counta de sa seisine demene. —*Richem.* Autrefoith ele porta Assise de Novele Disseisine de mesmes les tenements vers nous, par quel fut trove qele ne fut unqes seisi; jugement si a ceo bref de sa possessioun demene accion puisse *Cui in vita.*

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[1] The words between brackets are omitted from 25,184.
[2] 25,184, en.
[3] Harl., mettetz.
[4] 25,184, compte.
[5] eu is omitted from Harl.
[6] doner is from Harl. alone.
[7] 25,184, consu.
[8] 25,184, qe si.
[9] ne is from Harl. alone.
[10] Harl., qils pount, instead of qil put.
[11] Harl., meuth.
[12] Harl., ad jour. There were several adjournments, but nothing further appears on the roll.
[13] From Harl., and 25,184.

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A.D. 1343. *Gaynesford.* Do you mean that to be your answer?—And *Richemunde* would not abide judgment, but traversed her title.—*Quære* as to this matter.

Avowry. (67.) [1] § Avowry was made on John Sturmy for relief after the death of Robert, his father. The plaintiff prayed in aid John upon whom the avowry was made, as tenant for term of life by John's lease, and the prayee came, and joined himself, and said that Robert his father enfeoffed him; judgment whether for relief, &c.—And both of them said this, as was necessary.—*Thorpe.* He does not allege the feoffment, whereby he became our tenant, to have been in fee simple, nor does he allege anything else which would give us notice of this feoffment, such as his own attornment, &c. And he has admitted that he is his ancestor's heir, wherefore we pray the Return.—*Seton.* I have alleged the feoffment to have been made to me in fee simple, and continuance of that estate until I leased to the tenant for term of life. And, since you do not deny the feoffment, judgment.—*Thorpe.* And we pray judgment, since you do not show that you ever attorned, or tendered services to us, so that by law there was any other tenant than your ancestor during his life, nor that our avowry was given on any other person; and you are tenant after his death, and that, as regards us, could only be adjudged to be by descent, and we pray the Return.—*Seton.* At common law, if the ancestor enfeoffed his son, he was ousted from wardship; but that is restrained by Statute[2]; but

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[1] This report appears to be in continuation of Hil., 17 Edw. III., No. 30 (Wynnyton *v.* Hullampton), the record being *Placita de Banco*, Hil., 17 Edw. III., R° 152, d.

[2] 52 Hen. III. (Marlb.), c. 6.

No. 67.

aver.—*Gain.* Ceo voillez pur respouns?—Et[1] *Richem.* ne voleit demurer, mes traversa son title.—*Quære de ista materia.* A.D. 1343.

(67.)[2] § Avowere fut fait sur[4] Johan Sturmy[5] pur releif[6] apres la mort Robert, son pere. Le pleintif pria en eide Johan sur qi lavowere fut[7] fait, com[8] tenant a terme de vie de son lees, qe vint, et se joint, et dit qe Robert son pere luy feffa; jugement si pur releif,[6] &c.—Et ceo disoient lun et lautre, *ut oportet.*—*Thorpe.* Il nallegge pas le feffement de fee simple, par quel il devynt nostre tenant, ne[9] nallegge autre chose qe nous durreit notice de cel feffement, com attournement de luy mesme, &c. Et il ad conu qil est heir soun auncestre, par quei nous prioms Retourn.—*Setone.* Jay allegge le feffement estre fait a moy de fee simple, et continuaunce de cel estat tanqe jeo lessa al tenant a terme de vie.[10] Et, desicome vous ne dedites pas le feffement, jugement.—*Thorpe.* Et nous jugement, desicome vous ne moustrez pas qe vous unqes attournastes, ne a nous services[11] tendistes issi qe de ley autre tenant qe vostre auncestre en sa vie, ne sur autre ne fut nostre[12] avowere done; et vous estes tenant apres sa mort, qe vers nous ne put estre ajuge forsqe par descente, et prioms Retourne.[13]—*Setone.* A la comune ley, si launcestre feffa son fitz, il fut ouste de garde; mes ceo est restreint par statut; mes[14] Avowere.[3] [Fitz., *Relief*, 3.]

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[1] Et is omitted from Harl.
[2] From Harl., and 25,184.
[3] Harl., Awouuere.
[4] 25,184, vers.
[5] 25,184, Somery.
[6] Harl., releef.
[7] Harl., est.
[8] 25,184, son.
[9] ne is from Harl. alone.
[10] This was so according to the roll.
[11] Harl., vos services unqes, instead of a nous services.
[12] 25,184, autre.
[13] This replication is practically in accordance with that which appears on the roll.
[14] 25,184, et.

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A.D. 1343. as to relief, it is at common law.—KELSHULLE. Ought the lord to have had, after the feoffment, escheat on the ground of a felony committed by his ancestor.—*Thorpe.* What of that? Neither an action of *Cessavit* nor an action of Escheat is like an avowry, but a relief is a profit of seignory, and ought properly to be taken before homage or any other service is received. And since, in this case, he did not become my tenant by his own attornment and by my acceptance during the life of the ancestor, I therefore was not in law at any time estranged from his ancestor for the purposes of an avowry, and therefore it seems that he is now to be adjudged my tenant by descent as to an avowry for relief, because if I were to avow upon him for homage or any other service as heir of his ancestor, he would not compel me to act as if I avowed on a stranger who was purchaser, nor consequently will he oust me from an avowry for any thing or profit which arises out of services.—*Seton.* In respect of homage, or services which might be due of right, and which are not charged specially upon the heir, whether the avowry were made in one way or the other, it would not abate if made upon him as heir; but in respect of a matter which is not so due, the law is otherwise unless he is in by descent, and a relief is given to the lord from the heir who is of full age in lieu of wardship which there would be if he were under age; but wardship was not given by common law in this case, nor consequently is relief given, as relief is at common law, and not governed by statute. And I say that in the life-time of my ancestor he would have had escheat from me and not from my ancestor; consequently then I am very tenant. And as to that

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quant a releif[1] cest a la comune ley.[2]—Kels. Duist le seignur aver eu eschete par la felonie soun auncestre apres le feffement?—*Thorpe.* De ceo quei? Accion de *Cessavit* ne[3] Deschete nest par semblable a avowere, mes relief[1] est profit de seignurie, et proprement deit estre pris avant qe hommage ou nul autre[4] service serra resceu. Et quant, en ceo cas, par attournement de luy en la vie launcestre il ne devynt pas mon tenant par accepcion de moy, par quei de ley jeo fu a nul temps estraunge de soun auncestre par voie davowere, donqes semble il qil est[5] ajuger ore mon tenant par descente quant a avowere pur relief,[1] car si jeo avowasse sur luy pur homage, ou autre service, come heir son auncestre, [il ne moy chascera pas, &c.],[6] come sur estraunge purchaceour, *nec per consequens*, il moy oustera pas davowere pur chose ou[7] profit qest ensourdant[8] des services.—*Setone.* De homage ou services qe fuissent dues de dreit, et qe ne serra pas encharge del heir, fust[9] lavowere fait par une manere ou par[10] autre, lavowere abatera pas fait sur luy come heir; mes de chose qe nest pas due, sil ne fut einz par descente la ley est autre, et relief[1] est done al seignur del heir de plein age en lieu de garde[11] si leir fut deinz age; mes garde[12] par[13] comune ley ne fut pas done en ceo cas, *nec per consequens* relief[1] a ore, qest a la comune ley nient restreint par statut. Et jeo die qe de moy, vivant moun auncestre, il ust eu eschete, et noun pas de moun auncestre; *per consequens* jeo suy verroy tenant adonqes. Et a[14] A.D. 1343.

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[1] Harl., releef.
[2] ley is omitted from 25,184.
[3] Harl., et.
[4] autre is from Harl. alone.
[5] est is omitted from 25,184.
[6] The words between brackets are omitted from 25,184.
[7] Harl., et.
[8] 25,184, incident.
[9] fust is omitted from 25,184.
[10] par is omitted from Harl.
[11] Harl., gardes.
[12] garde is omitted from Harl.
[13] 25,184, de.
[14] Harl., de.

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A.D. 1343. which he says that he could not have knowledge except by tender [of services], &c., was he not ousted by common law from wardship, notwithstanding that the heir when enfeoffed did not attorn to him? And that proves that the intendment of law was that the lord ought to be cognisant of the feoffment.—*R. Thorpe.* In the Exchequer, where we learn the law of relief, it is the common custom, if land be given to a man for term of his life, with remainder to his right heirs, or if land be limited to the right heirs of such an one, still in both cases, although he does not take by descent, he shall pay a relief to the King. Besides, before the Statute of *Quia emptores*,[1] even though my tenant aliened in fee simple, no law compelled me to accept the feoffment; then my avowry was good upon my former tenant and upon his heirs, and I should avow upon the heirs for a relief, notwithstanding the conveyance. Now this law is not changed by statute, except where a tender of services is made by the feoffee, and that is not alleged in this case, and therefore it is at common law. Besides, this case of avowry is not like an action of Escheat, or *Cessavit*, which is to deraign the demesne, for if my very tenant be disseised, I shall have escheat from the disseisor by reason of felony, and not from my very tenant, even though he commit felony; and nevertheless my avowry on my very tenant will be always good, and I shall have wardship and relief from the heir of both, if I will.—Stonore. If the heir were under age he would have wardship; why then should he not have relief when the heir is of full age?—Shardelowe and Hillary said that they did not know; and therefore they were adjourned.

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[1] 18 Edw. I., St. 1.

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ceo qil dit qil ne put[1] pas[2] aver conissaunce sil ne fut par teindre,[3] &c., ne fust il pas ouste par comune ley de garde, *non obstante* qe le heir feffe ne fut pas attourne a luy? Et ceo prove qe la ley voleit qe le seignur duist estre conissaunt del feffement.—*R.*[4] *Thorpe.* En Lescheker, ou nous appernoms la ley de relief,[5] il est comune usage, si terre soit done a un homme a terme de sa vie, le remeindre a ses dreits heirs, ou si terre soit taille as dreits heirs un tiel, unqore, en lun cas et lautre, coment qil nad pas par descente, il relevera au Roi. Estre ceo, avant lestatut *Quia emptores terrarum*, mesqe mon tenaunt alienast en fee simple, nulle ley ne moy chacea[6] daccepter le feffement; donqes fuit mavowere bon sur mon auncien tenant et ses heirs, et sur les heirs, *non obstante* la demise, javoweray pur relief.[5] Ore par statut nest cele ley chaunge mes ou tendre des services est fait par le feffe, et ceo nest pas allegge en ceo cas, par quei cest a la comune ley. Ovesqe ceo, ceo[7] cas davowere[8] nest pas semblable a accion Deschete et *Cessavit*, qe sount a derener[9] le demene, car si moun verroy tenaunt soit disseisi, del disseisour javera par felonie eschete, et noun pas de moun verroy tenant, tut face il felonie; et ja le meins mavowere serra touz jours bon sur mon verroy tenant, et javera garde et relief[5] del heir lun et lautre, si jeo voille.—Ston. Si[10] leir fut deinz age il avera garde; pur quei navera il relief[5] quant il est de plein age?—Schard.[11] et Hill. disoient qils ne savoient; par quei *adjornantur.*[12] A.D. 1343.

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[1] Harl., poait.
[2] pas is from Harl. alone.
[3] Harl., tendre.
[4] *R.* is from Harl. alone.
[5] Harl., releef.
[6] Harl., chaceast.
[7] 25,184, en.
[8] 25,184, dawere.
[9] Harl., dereigner.
[10] Si is omitted from 25,184.
[11] Harl., *Rich.*
[12] After the replication the pleading on behalf of the plaintiff was, according to the roll, that the

Nos. 68, 68 *bis.*

A.D. 1343. Process on Voucher.

(68.) § A writ was brought against a tenant, who vouched in another County. Process was made against the warrant as if the demand had been in the same County in which the *Summoneas ad warantizandum* issued, without making any mention that the demand was in another County, whereas, according to law, the roll ought to have made mention that the demand was in another County. Process was continued until it was returned to the *Sequatur suo periculo* that the vouchee was dead.—*Moubray* recited, as above, and said that the whole of the process made was unwarranted by law.—SHARSHULLE. The voucher was good, and we will amend the roll.—And so he did on account of the mischief of the delay; and therefore the tenant revouched.

Quare impedit.

(68 *bis.*) § *Quare impedit* for the Chapter of Lincoln against the Dean[1] of the church of Our Lady of Lincoln and one J.,[2] in respect of the chantry at the altar of St. Peter in the same church. And they counted that they were seised of the advowson, and made collation and induction of one who was their clerk, through whose death the chantry is vacant, &c.—*Pulteney.*

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[1] For the opinion of Chancellor Parning touching an action brought by a Chapter against the Dean *see* Y.B., Trin., 17 Edw. III., No. 17 (Rolls edition, p. 538).

[2] As to the names *see* p. 327, note 5.

Nos. 68, 68 *bis*.

(68.) [1] § Bref fut porte vers tenant,[2] qe voucha en autre Counte. Proces fut fait vers[3] le garraunt auxi com la demande ust este en mesme le Counte ou le *Summoneas ad warantizandum* issit, saunz faire mencion qe la demande fut en autre Counte, ou par ley roulle duist aver fait mencion qe la demande fut en autre Counte. Proces continue tanqe le *Sequatur suo periculo* retourne qe le vouche est mort.—*Moubray* rehercea, *ut supra*, et dit qe tut le proces fait fuit[4] desgarraunti par ley.—Schar. Le voucher fut bon, et le roulle nous voloms amender. —*Et ita fecit* pur meschief del delay; par quei le tenant revoucha. A.D. 1343. Proces sur Voucher. [Fitz., *Amendement*, 55.]

(68 *bis*.)[5] § *Quare impedit* pur le Chapitre de Nichole vers le Dean del eglise de Nostre Dame de Nichole et un J., de la chaunterie al autiere Seint Piere en mesme leglise. Et counterent qils furent seisiz del avowesoun, et firent collacion et induccion[6] dun lour clerk, par qi mort la chaunterie est voide, &c.[7]—*Pult.* *Quare impedit.*

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defendant did not deny the feoffment or the demise, that it was ordained by the Statute [of *Quia emptores*] that when any tenant of any lord should have enfeoffed another in fee the feoffee became tenant of the chief lord, and since Robert, who was the defendant's tenant, divested himself, during his life, by feoffment, and did not die the defendant's tenant, judgment was prayed whether in this case the defendant could avow a distress for a relief. Nothing more follows on the roll, except adjournments.

[1] From Harl., and 25,184.

[2] The words vers tenant are from Harl. alone.

[3] 25,184, sur.

[4] Harl., fust fait, instead of fait fuit.

[5] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 508. It there appears that the action was brought by the Chapter of the Church of St. Mary, Lincoln, against the Dean of the same church, Master John de Notyngham, and Richard de Pulham, in respect of a presentation to the chantry at the altar of St. Peter in the same church.

[6] 25,184, enduccion.

[7] According to the record the declaration was "quod ipsum "Capitulum fuit seisitum de ad- "vocatione Cantariæ prædictæ ". . . . tempore Edwardi Regis, "patris domini Regis nunc, et ad "eandem Cantariam præsentavit "quendam Magistrum Willelmum

No. 68 *bis*.

A.D. 1343. They have counted as to a collation, and their writ purports a presentation; judgment.—This exception was not allowed.—*Pulteney*. As to J.,[1] he tells you that he is chaplain of the same altar, and claims nothing in the patronage; judgment whether the writ lies against him. As to the Dean, he tells you that the chantry was full, by his own collation, six months before the purchase of the writ, of this same J. who is named; judgment of the writ.—*Grene*. You have heard how the Dean has alleged plenarty by his own patronage, whereas, of common right, the right of the church, and whatever appertains to it belongs to the Chapter, and the Bishop who is their supreme head, so that he cannot, except in some special way, have patronage in the church either of a chantry or of any other benefice; and he does not show any title in himself to this patronage; judgment whether such an answer lies in his mouth.—Shardelowe. He pleads to your possessory writ, in which case he shall not show how he has a right in the patronage.—*Thorpe*. I believe that by usurpation a man of Holy Church can be in possession of patronage, but when it comes to this that the matter has to be put in a plea, and he has to claim, he shall not be admitted to say that

[1] As to the pleas of the several defendants *see* p. 329, note 1.

No. 68 *bis*.

Ils ount counte de collacion, et lour bref voet pre- A.D. 1343.
sentement; jugement.—*Non allocatur.*—*Pult.* Quant a J., il vous dit qil est chapelleyn de mesme lautiere, et rien ne cleyme en lavowere; jugement si le bref vers luy gise. Quant al Dean, il vous dit qe la chaunterie fut plein, de sa collacion demene, vj moys avant le bref purchace, de mesme cely J. qest nome; jugement du bref.[1]—*Grene.* Vous avez entendu coment le Dean ad allegge plenerte de savowere demene, ou, de comune dreit, le dreit del eglise, et quant qe appent, est al Chapitre, et Levesqe[2] qest lour Soverein, issi qil ne put sanz especial voye aver avowere en leglise ne de chaunterie ne dautre benefice; et il ne moustre pas title de luy en[3] cest avowere; jugement si tiel respouns en sa bouche gise.—Schard. Il plede a vostre bref de possession, en quel cas il moustra pas[4] coment il ad dreit en lavowere.—*Thorpe.* Jeo crey qe par purprise homme de Seint Eglise put estre possessione dun avowere, mes quant il vient qe la chose vendra en plee, et il est a clamer, il ne serra pas resceu

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" de Baiocis, clericum suum, qui " ad præsentationem suam fuit " admissus et inductus . . . . " tempore ejusdem Regis patris, " &c., per cujus mortem prædicta " Cantaria modo vacat, et ea " ratione pertinet ad ipsum Capi- " tulum ad Cantariam prædictam " ad præsens præsentare, prædicti " Decanus et alii ipsum injuste " impediunt."

[1] The following were, according to the record, the pleas for the several defendants: — " Ricardus " dicit quod ipse est custos Can- " tariæ prædictæ ex collatione " prædicti Decani, &c., unde petit " judicium si ad hoc breve re- " spondere debeat, &c.

" Johannes dicit quod ipse nihil " habet in advocatione Cantariæ " prædictæ nec aliquod impedimen- " tum eidem Capitulo fecit." (Issue was joined on this.)

" Decanus dicit quod Cantaria " prædicta non est vacans, immo " est plena et consulta de prædicto " Ricardo ex collatione ipsius " Decani, et fuit die impetrationis " brevis prædicti, et per sex menses " ante eundem diem, et hoc " paratus est verificare ubi et " quando, unde petit judicium de " brevi," &c.

[2] The words et Levesqe are omitted from 25,184.

[3] Harl., en lieu de, instead of de luy en.

[4] pas is omitted from 25,184.

No. 68 *bis*.

A.D. 1343. he is seised, without showing a title.—Willoughby. The Court does not by the manner of his plea understand his possession to be by usurpation, and it is otherwise than if he claimed the thing to hold to his own use as something amortised, which could not be without a title.—*Thorpe*. We understand that, if you adjudge that he shall have this answer, he is in possession, and we are put to a writ of Right, which would be contrary to reason where there is usurpation by a man of Holy Church.—Shardelowe. Answer.—*Grene*. We tell you that the chantry was vacant on the day on which the writ was purchased; ready, &c. —To this *Pulteney* said: full, &c.—And the issue was sent to the Bishop.—*Quære* touching this matter, whether it was necessary to say vacant on the day on which the writ was purchased, for it seems to be sufficient to say that the writ was purchased within six months after the vacancy.

No. 68 *bis*.

a dire qil est seisi, saunz title.—Wilby. Court nentent pas sa possession par la manere de son plee par purprise, et il est autre qe sil clama la chose[1] a tener en propre oeps come chose amorti, qe ne purreit estre saunz title.—*Thorpe.* Nous entendoms qe si vous ajugez qil avera ceo respouns qil est en possession, et nous mys a bref de Dreit, qe serreit countre resoun par purprise de homme de Seint Eglise.—Schard. Responez.—*Grene.* Nous vous dioms qe voide jour de bref purchace; prest, &c.,[2] ou[3] *Pult.* plein, &c.—*Et mandatur Episcopo.*—*Quære de ista materia* sil bosoigna aver dit voide jour du bref purchace, qar il semble qil suffit a dire qe le bref fut purchace deinz les vj mois apres la voidaunce.[4] A.D. 1343.

[1] The words la chose are omitted from 25,184.

[2] The replication was, according to the record, "quod die impetrationis brevis . . . . . prædicta Cantaria fuit vacans, et non plena et consulta de prædicto Ricardo, prout prædicti Decanus et Ricardus superius allegarunt. Et hoc parati sunt verificare, ubi, et quando," &c.

[3] ou is omitted from Harl.

[4] The conclusion of the case was, according to the roll, as follows:—"Et, quia hujusmodi causæ cognitio ad forum spectat ecclesiasticum, mandatum est Episcopo Lincolniensi quod, convocatis coram eo convocandis, diligenter inquirat si prædicta Cantaria sit vacans necne, et, si non sit vacans, tunc de quo, et ad cujus præsentationem, et a quo tempore plena fuerit, et quid inde fecerit constare faciat Justiciariis hic in Crastino Purificationis beatæ Mariæ, per literas suas patentes," &c.

"Et quoad hoc quod prædictus Johannes superius allegavit quod ipse non impedivit ipsum Capitulum præsentare ad Cantariam prædictam, prout ipsum per breve suum supponit, et hoc petit quod inquiratur per patriam, et Johannes similiter, ideo præceptum est Vicecomiti quod venire faciat . . . . . hic xii. &c., per quos," &c. . . . .

"Ad quem Crastinum prædictus Episcopus misit hic literas suas patentes, quæ testantur quod, convocatis coram eo convocandis in hac parte, reique veritate super præmissis diligenter inquisita, compertum est quod prædicta Cantaria nunc est plena et consulta de prædicto Ricardo ad collationem Vicarii generalis prædicti Decani ab eo in hac parte potestatem habentis, et incepit esse plena de eodem Ricardo octavo die Martii anno Domini Millesimo trescentesimo quadragesimo primo.

"Ideo consideratum est quod

No. 69.

A.D. 1343. *Secta ad molendinum.*

(69.) § The Prior of Watton brought a writ of *Secta ad molendinum* in the words *quod faciant sectam*, &c., against the Abbot of Meaux, and others.—*Pulteney.* The land put in view, whereof, &c., is out of his fee, &c.; judgment whether without title he can charge our freehold.—*Moubray.* That is not a plea: for if I say within my fee, that will not make an issue.—*Grene.* You will no more rightly charge my soil with suit to a mill than with rent, without a title; and with respect to suit to a mill it may as well be suit service and suit as in gross as in the case of rent.—*Seton.* With respect to common as in gross a title shall be shown in a *Quod permittat*, but never with respect to common appendant. Now we claim this suit to the mill as appendant to our mill, of which we are seised, and therefore we are not in the case of rent charge, nor of other charges which are to be claimed as in gross.—Shardelowe. You say what is true; whoever shall be seised of a mill shall possibly have the suit, and if the plaintiff has no title, that will come by way of answer.—Hillary. Answer.—*Pulteney.* What have you

No. 69.

A.D. 1343. Suyte de Molyn. [Fitz., *Hors de son fee*, 22.]

(69.)[1] § Le Priour de Wattone porta bref de Suyte de Molyn, *quod faciant sectam*, &c., vers Labbe de Meaux, &c.—*Pult.* La terre mys en vewe, dount, &c., est hors de son fee, &c.; jugement si saunz title puisse nostre fraunc tenement charger.—*Moubray.* Ceo nest pas ple: car si jeo die deinz mon fee, ceo ne fra[2] pas issue.—*Grene.* Nient plus par resoun chargerez mon soil de suyte du[3] molyn qe[4] de rente, saunz title; et auxi bien put estre suite service et suite[5] com gros de suite au molyn com de rente.—*Setone.* De comune[6] com gros en *Quòd permittat* homme moustra title, mes de comune appendaunt jammes. Ore ceste[7] suyte au molyn nous le clamoms come appendaunt a nostre molyn dount nous sumes seisi, par quei nous ne sumes pas en cas de rente charge, ne dautres charges qe sount a clamer com un gros.—Schard. Vous dites verite; qi qe serra seisi de molyn par cas avera la suyte, et[8] si le pleintif nad pas title, ceo vendra par respouns.—Hill. Responez.—*Pult.* Quei avez

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" prædictum Capitulum nihil ca-
" piat per breve suum, sed sit in
" misericordia pro falso clameo
" suo, &c. Et Decanus inde sine
" die."

[1] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 586. It there appears that the action was brought by the Prior of Watton against the Abbot of Meaux and nine others, in respect of suit to the Prior's mill in Skyren (Yorkshire). The declaration was "quod
" cum prædictus Abbas molere debet
" et solet omnia blada crescentia in
" sexaginta et septem bovatis terræ
" ejusdem Abbatis in Skyren,
" videlicet, frumentum, hordeum,
" siliginem, avenas, fabas, et pisas,
" ad vicesimum vas, de quibus
" sectis idem Prior seisitus fuit per
" manus prædictorum Abbatis
" [&c.], ... prædicti Abbas
" et alii sectas illas ei subtraxer-
" unt."

[2] 25,184, serra.

[3] Harl., a.

[4] 25,184, et.

[5] The words service et suite are omitted from 25,184.

[6] 25,184, Demende, instead of De comune.

[7] 25,184, en ceste.

[8] et is from Harl. alone.

No. 70.

A.D. 1343. to prove the suit?—*Seton*. From time whereof memory is not we and our predecessors have been seised.—*Notton*. Ready, &c., that they have not.

Secta ad molendinum.

(70.) § *Secta ad molendinum* in the *debet et solet*. After view the tenant asked what the Prior of Watton, who was demandant, had to prove the suit.—*Pulteney*. What have you to prove the suit?—*Seton*. We and our predecessors have been seised from all time.—*Pulteney*. We have only a term for life by lease from the Abbot of Meaux, without whom we cannot be a party to try this title in the right, and we pray aid of

No. 70.

de la[1] suyte[2]?—*Setone.* De temps dount memoire[3] nest nous et nos predecessours seisi.[4]—*Nottone.* Prest, &c., qe noun.[5] A.D. 1343

(70.)[6] § Suyte de Molyn en[8] *debet et solet.* Apres la vewe le tenant demanda ceo qe le Priour de Wattone, qe fut demandant, avoit de la suyte.—*Pult.* Quei avez de suyte[9]?—*Setone.* Seisi, nous et nos predecessours de tut temps.—*Pult.* Nous navoms qe terme de vie du lees Labbe de Meaux, saunz qi nous ne poms estre partie de trier ceo title en dreit, et prioms eide de luy.[10]—*Setone.* Nous avoms

Suyte de Molyn.[7] [Fitz., *Counterplee de Ayde*, 3.]

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[1] Harl., sa.

[2] According to the record, "Abbas et alii . . . . . petunt quod "prædictus Prior ostendat Curiæ "hic quid specialitatis habeat de "prædicta secta."

[3] Harl., memorie.

[4] According to the record, "Prior "dicit quod ipse et omnes prædecessores sui Priores loci prædicti "fuerunt seisiti de prædicta secta "ut de jure ecclesiæ suæ prædictæ, "a tempore quo non extat memoria."

[5] According to the record, "Abbas, quoad prædictam terram "quam ipse tenet, et unde prædictus Prior exigit sectam, &c., bene "defendit quod idem Prior non "fuit seisitus de secta illa per "manus ipsius Abbatis, sicut idem "Prior versus cum narravit." Issue was joined upon this between the Prior and the Abbot.

Seven of the other defendants said as to certain of the lands held by them "quod prædictus Prior et "prædecessores sui non fuerunt "seisiti de prædicta secta a tempore quo non extat memoria, sicut "prædictus Prior superius supponit." Issue was also joined upon this. The jury found in favour of the Prior on this issue, and he had judgment to recover his suit.

[6] From Harl., and 25,184. The report is properly a portion of that which immediately precedes, and is so in 25,184. The particular defendant, William de Pokethorpe, was one of the nine mentioned with the Abbot of Meaux in the record. According to the declaration, he "molere debet quæcumque blada "crescentia in tribus bovatis terræ "ipsius Willelmi in eadem villa "[Skyren], ad vicesimum vas."

[7] The marginal note is from Harl. alone.

[8] en is from Harl. alone.

[9] The passage from Apres to suyte appears, according to the record, to be a repetition of what was said on behalf of all the defendants.

[10] The aid-prayer appears in the following form in the record:—"Willelmus de Pokethorpe, quoad "unam bovatam terræ de prædicta "terra, quam ipse tenet, et unde, "&c., dicit quod ipse tenet illam "bovatam terræ ad terminum

Nos. 71, 72.

A.D. 1343 him.—*Seton*. We have been seised by your own hand, and it is your own withdrawal of suit; wherefore aid is not grantable.—And, nevertheless, because the matter has to be tried as to the right, the aid was granted by judgment.

Cognisance. (71.) § Cognisance was made by the bailiff of William de la Zouche for a relief from his tenant, as for services regardant to the honour of Totnes Castle.—*Derworthy*. We tell you that he has nothing in the Castle, but divested himself long ago; judgment, &c.—Sharshulle. He does not make cognisance for any service to be rendered at the Castle such as castle-ward, watch, or repair of the Castle, and even though it be the fact that he has divested himself of the castle, the honour, and the services remain to him, &c.—*Derworthy*. Then he would have a different cognisance.—And this plea on this exception has been long pending.

Waste. (72.) § Two brothers, to wit, Thomas de Grey and

Nos. 71, 72.

este seisi par my vostre mayn demene,[1] et cest de vostre sustrere[2] demene; par quei eide nest pas grauntable.—*Et tamen*, pur ceo qe la chose est a trier en dreit, leide est graunte par agarde.[3] A.D. 1343

(71.)[4] § Conissaunce fut fait par[5] le baillif W. de la Zouche[6] pur relief[7] son tenant, com des services regardauntz al honour du Chastel[8] de Todenhis.[9]—*Derworthi.* Nous vous dioms qil nad rien en le Chastel,[8] mes soy ad demys longe temps passe; jugement, &c.—Schar. Il ne fait pas conissaunce pur nulle service[10] a faire al[11] Chastel,[8] come garde[12] de Chastel,[8] veilley,[13] ou reparailler de Chastel,[8] et, tut soit qil se[14] ad il demys du Chastel,[8] lonour, et les services luy demurent, &c.—*Derworthi.* Donqes avereit il autre conissaunce.—Et ceo plee sur[15] ceo chalange ad pendu longement. Conissaunce.

(72.)[16] § Deux freres, saver, T.[18] Grey, et J.[19] son Wast.[17]

" vitæ suæ ex dimissione Abbatis " de Melsa, ad quem reversio inde, " post mortem ipsius Willelmi, " spectat, sine quo non potest " præfato Priori inde respondere. " Et petit auxilium de ipso Abbate."

[1] demene is from Harl. alone.

[2] 25,184, suffrere.

[3] According to the record " Et " Prior non potest hoc dedicere. " Ideo ipse [Abbas] summoneatur " quod sit hic a die Sancti Hillarii " in quindecim dies, per Justici- " arios, ad respondendum simul," &c.

Pokethorpe subsequently made default, and the Prior recovered the suit against him thereon in respect of the one bovate of land.

[4] From Harl., and 25,184.

[5] Harl., pur.

[6] Harl., Souche.

[7] Harl., releef.

[8] 25,184, Chastiel.

[9] Harl., Thodenheys.

[10] Harl., suite.

[11] Harl., el.

[12] 25,184, gardeyn; the word is omitted from Harl.

[13] 25,184, voilles.

[14] Harl., soy, instead of soit qil se.

[15] 25,184, qe.

[16] From Harl., and 25,184, but corrected by the record *Placita de Banco*, Mich., 17 Edw. III., R° 561. It there appears that the action was brought by Thomas de Grey, knight, and John his brother, against Margery late wife of William de Grey.

[17] The marginal note is from Harl. In 25,184 it is Deux Freres.

[18] Harl., W.; 25,184, J.

[19] 25,184, W.

No. 72.

A.D. 1343. John his brother brought a writ of Waste against a woman who held, of their inheritance, in dower, and they supposed by their count that the tenements were partible, &c. And they counted of waste committed in houses, lands, and a marsh, and they counted that the marsh was adjoining the sea, and that for defence of the said marsh there was a wall, which she herself and all the tenants of the land are bound to keep up, and have kept up, and that she had dug one perch in that wall, and also that through her default whereby the wall was not kept up, the sea had entered the said marsh, and had carried away to the extent of 20 acres to the depth of one foot, and that the rest of the marsh was overflowed, &c.—*Moubray.* Judgment of the count, because it does not suppose that the woman holds the wall in dower.—This exception was not allowed.—*Moubray.* Again, judgment of the count, because they have supposed that the woman holds of

No. 72.

frere porterent bref de Wast vers une femme qe tient de lour heritage en dowere, et supposerent par count pur ceo qe les tenements sount departables, &c. Et counterent de wast fait en mesouns, terres, et mareys, et counterent qe le mareys fut joignant[1] a la mere,[2] et pur defens del dit mareys il y avoit une vale, quel mesme ceste et touz les terre tenantz sount tenus de sustener, et ount sustenue,[3] la ad ele fowe une perche de cele vale,[4] et auxi par defaut qe la[5] vale[6] nest pas sustenue, la mere[2] est entre le dit mareys, et ad emporte a la mountenaunce de xx[7] acres del profoundour dun pee, et le remenant del mareys est surunde, &c.[8]—*Moubray.* Jugement[9] de count de ceo qil ne suppose pas[10] qe la femme tient la vale[6] en dowere.—*Non allocatur.* —*Moubray.* Unqore jugement du counte qar ils ount suppose qe la femme tient de lour heritage qe[11] A.D. 1343.

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[1] 25,184, yoignant.

[2] Harl., mier.

[3] 25,184, sustenuz.

[4] Harl., wale.

[5] The words defaut qe la are omitted from Harl.

[6] 25,184, wale.

[7] MSS. of Y.B., xxiiij.

[8] The declaration, so far as it related to matters in the report, was, according to the record, "quod "cum prædicta Margeria tenet "sexaginta acras terræ, centum et "quaterviginti acras marisci, tres "acras bosci, et quinque acras "gardini, et medietatem unius "mesuagii, cum pertinentiis, in "Chistelet in dotem, de hereditate "prædictorum Thomæ et Johannes, "eo quod prædicta tenementa sunt "de tenura de Gavelkynde et "partibilia inter heredes masculos, "eadem Margeria fecit vastum, "venditionem, et destructionem de "tenementis prædictis, videlicet "fodiendo in tribus acris terræ, et "puteos faciendo, et marleam inde "vendendo ad valentiam viginti "solidorum, et etiam fodiendo in "una wallia circa prædictum "mariscum juxta mare ad salvati-"onem marisci illius, et ad defensi-"onem aquæ maritimæ, dudum "constructa, ad quantitatem unius "rodæ, per quod, et pro defectu "custodiæ illius walliæ, quam "eadem Margeria facere tenetur, "aqua maritima mariscum illum "est ingressa, ita quod per fluxus "et refluxus illius aquæ maritimæ "solum de viginti acris illius "marisci ad profunditatem unius "pedis est asportatum, et totum "residuum marisci de aqua illa "superundatum," &c.

[9] Jugement is omitted from Harl.

[10] The words qil ne suppose pas are omitted from 25,184.

[11] Harl., et.

No. 72.

A.D. 1343. their inheritance, they being males, which is contrary to common right, and they do not affirm their count by any special reason in themselves by descent, as by counting that the woman holds by endowment of their ancestor, whose heirs they are, &c.: for it is possible that their ancestor had nothing, and that they are purchasers.—SHARSHULLE. In that case they would have a different writ; but by this writ and count we understand that they are the heirs of the woman's husband, and there could not be any other writ or count in such a case.—*Moubray.* We tell you that there are several marshes, and as to them all, except one, that no waste has been committed; ready, &c. And as to that one we tell you that there is a wall by which that marsh is enclosed towards the sea, and as to digging in that wall we traverse it; and whereas he supposes that the sea entered from want of keeping it up, we tell you that the sea is so rough that it has washed away the soil and undermined the wall by tempest, so that no one could prevent it, so that the soil of the marsh has not been carried away through our default; judgment whether tort in our person, &c., &c.—Upon this they were at issue—whether it was from want of keeping up the wall, or not.

No. 72.

sount madles, qest countre comune dreit, et ils nafferment pas par cause en eux par descente, com a counter qe la femme tient del dowement lour auncestre, qi heirs ils sount, &c.: qar il est possible qe lour auncestre navoit rien, mes qils sount purchaceours.—SCHAR. Donqes averount ils autre bref; mes par ceo bref[1] et counte entendoms qils sount heirs le baroun la femme, et autre counte ne bref ne[2] serra en tiel cas.—*Moubray.* Nous vous dioms qils y[3] sount plusours mareys, et quant a touz, sauf un, nul wast fait; prest, &c. Et quant a cel nous vous dioms qil y ad un wale de quei cel mareys est enclos vers la mere,[4] et quant al fowere en le wale il le traversa; et la ou il suppose qe par defaut de garde qe la mere[5] entra, nous vous dioms qe la mere[5] est si reude[6] qe par tempest ad delave le soil et susmyne[7] le wale,[8] issi qe nul homme le put defendre [issint qe ceo nest pas emporte en defaut][9] de nous; jugement si tort en nostre persone, &c.[10]—Sur quei ils sount a issue le quel par defaut de garde ou noun, &c.[11] A.D. 1343.

[1] The words mes par ceo bref are omitted from 25,184.

[2] ne is from Harl. alone.

[3] y is omitted from Harl.

[4] Harl., mier.

[5] Harl., mier; 25,184, muere.

[6] Harl., redde.

[7] Harl., surmyn.

[8] Harl., vale.

[9] The words between brackets are omitted from 25,184.

[10] The plea, so far as it related to the marsh and wall, was, according to the record, "quod ipsa non "fodit in terra, neque wallia "prædicta, sed dicit quod præ- "dictus Willelmus, quondam vir "suus, tempore suo construxit "prædictam walliam, unde, &c., "ad salvationem cujusdam marisci "unde ipsa tenet medietatem in "dotem, &c., et etiam ad salvationem alterius medietatis marisci "quam prædicti Thomas et Jo- "hannes tenent, et de qua quidem "wallia iidem Thomas et Johannes "tenent unam medietatem, et ipsa "Margeria aliam medietatem in "dotem, &c., et de qua wallia "tam ex parte ipsorum Thomæ et "Johannis quam ex parte ipsius "Margeriæ per duritiam fluxuum "maris solum ubi wallia constructa "fuit est asportatum et submina- "tum, per quod magna pars walliæ "tam ipsorum Thomæ et Johannis "quam ipsius Margeriæ per forti- "tudinem fluxuum aquæ mari- "timæ est prostrata, et quædam "pars marisci continens dimidiam "acram, &c., vastatur, et non pro "defectu ipsius Margeriæ," &c.

[11] According to the record there was the following replication, upon

Nos. 73, 74.

A.D. 1343. Formedon in the remainder.

(73.) § Remainder after the death of a man and his wife, to whom the land had been given in tail. And *profert* was made of a specialty, which purported that the land was given in frank-marriage, with remainder over.—*Gaynesford.* Judgment of the writ which is not in accordance with the specialty put forward in maintenance of the gift.—Hillary. You know well that the reversion, where there is a gift in frank-marriage, is, of common right, always to the donor, so that if he had supposed the gift to be in frank-marriage, he would never have a writ to suppose a remainder over; wherefore this writ is better in the particular case than that which you give.—*Gaynesford.* When land is given in frank-marriage have not the donees an estate to them and the heirs of their bodies just as much as in any other common gift in tail?—Shardelowe. Yes, they have; but you never saw a writ supposing a remainder after a gift made in frank-marriage.—*Moubray.* A gift in frank-marriage may become of less value, and another gift in tail of such a nature will not do so; wherefore the gifts are different.—Hillary. Answer; the writ is good enough.

Dower.

(74.) § Dower which the wife of Peter de Veel

Nos. 73, 74.

(73.) [1] § Remeindre apres lé decees [2] un homme et sa femme, as queux la terre fut done en taille. Et especialte fut mys avant, qe voleit qe la terre fut done en fraunk mariage, le remeindre outre.—*Gayn.* Jugement du bref qest desacordaunt al especialte qest mys avant en meintenance du doun.—Hill. Vous savez bien qe de fraunk mariage la reversion est touz jours de comune dreit au donour, issi qe, sil ust suppose le doun en fraunk mariage, jammes avera il bref a supposer remeindre [3] outre; par quei ceo bref est meillour en le cas qe cel qe vous donez. —*Gayn.* Quant terre est done [4] en fraunk mariage nount les dones estat a eux et les heirs de lour corps si avant come en autre comune [5] taille?—Schard. Si ount; mes unqes ne veistez bref a supposer remeindre apres doun fait en fraunk mariage. —*Moubray.* Doun en fraunk mariage put estre enpury,[6] et si ne serra pas autre taille en sa nature; par quei les douns sount divers.—Hill. Responez; le bref est assez bon. A.D. 1343. Remeindre. [Fitz., *Taile*, 2.]

(74.) [7] § Dowere qe la femme Piers Veel porta vers Dowere. [Fitz., *Voucher*, 112.]

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which issue was joined:—"Et "Thomas et Johannes dicunt quod "prædicta Margeria fecit vastum, "venditionem, et destructionem, "fodiendo in prædicta terra et "wallia prædicta, per quod, et pro "ejus defectu, mariscum prædictum "est vastatum et superundatum."

Nothing appears on the roll after the award of the *Venire*.

[1] From Harl., and 25,184.

[2] Harl., la mort, instead of le decees.

[3] Harl., le remeindre.

[4] done is from Harl. alone.

[5] 25,184, counte.

[6] Harl., empury.

[7] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 475. It there appears that the action was brought by Katherine late wife of Peter de Veel against Joan late wife of Henry de Veel, in respect of a third part of the manors of Hunterford-by-Kingswood and Oldbury-by-Thornbury (Gloucestershire). The tenant vouched Peter son and heir of Peter who was under age, and whose body and a part of whose lands were in the wardship of Bartholomew de Burghwas, and other parts of whose lands were in the wardship respectively of Philippa, Queen of England, Hugh de Audele, Earl of Gloucester, Margaret de Mulys, Thomas de

No. 74.

A.D. 1343. brought against the wife of Peter's son, who vouched to warrant the heir, whose lands were in the wardship of the King, the Queen, the Earl of Gloucester, and several others.[1]—*Pulteney*. Since the demandant demands dower higher up against the son's wife, voucher does not lie, because she shall not be warranted in such a case, nor shall she by law have to the value. —Hillary. Is the tenant tenant in dower lower down?—To this no answer was given.—*Pulteney* waived the point, and said that the King, A., and B., in whose wardship the heir is vouched, have nothing in the wardship by reason of his non-age; judgment of the voucher.—*Grene*. Do you expect to try between you the possession of the King? as meaning to say that they could not. And, as to the others, it is not a counterplea to say that they have nothing: for if I vouch guardians, and others with them, that is nothing to the demandant.—Hillary. You say what is true.—*Pulteney*. It would be a mischief.—*Pulteney*. As to H. le Despenser, whom he vouches in the Welshry, we tell you that he has assets in the County of Gloucester, and we pray that he be summoned there, and let the voucher stand. And as to the King, we will sue to him. And we pray process against the others.—Sharshulle. It would be in vain to make process against the others until the King had signified his pleasure.—*Pulteney*. Each one will have a several answer.—Sharshulle. We will consider.—Afterwards it was ordered that process should be made against the others. And in the meantime suit is to be made to the King.

[1] *See* p. 343, note 7.

No. 74.

la femme le fitz P., qe voucha a garraunt leir, qi terres sount en la garde le Roi, la Reigne, le Counte de Gloucestre, et plusours autres.—*Pult.* Quant la demandant demande dowere de plus haut vers la femme le fitz, voucher ne gist pas, qar ele ne serra pas garrauntie en tiel cas, ne ele de ley navera pas en value.—Hill. Est la tenant[1] tenant en dowere de plus bas?—*Ad quod non est*[2] *responsum.*—*Pult.* weyva, et dist qe le Roi,[3] A., et B., en qi garde leir est vouche, nount rien en la garde par nounage de luy; jugement de voucher.—*Grene.* Quidez vous de trier entre vous la possession le Roi? *quasi diceret non.* Et quant as autres ceo nest pas countreplee a dire qils nount rien[4]: qar si jeo vouche gardeins, et autres ovesqe, ceo nest rien al demandant.—Hill. Vous dites verite.—*Pult.* Ceo serreit meschief.—*Pult.* Quant a H. le Despenser, qil vouche en la Galescherie, nous vous dioms qil ad assetz el Counte de Gloucestre, et prioms qil soit somons illoeqes, et estoise le voucher.[5] Et quant au Roi nous sueroms.[6] Et prioms proces vers les autres. —Schar. Ceo serreit en veyn de faire proces vers les autres tanqe le Roi avoit maunde sa volunte.[7]—*Pult.* Chesqun avera several respouns.—Schar. Nous aviseroms.—Puis proces fut comaunde[8] de faire vers[9] les autres. *Et interim sequendum est*[10] *vers le Roi.*[11] A.D. 1343.

Berkeleye, Hugh le Despenser, and Hugh de Courteneye, Earl of Devon.

[1] tenant is from Harl. alone.

[2] Harl., *fuit.*

[3] The words le Roi are from Harl. alone.

[4] 25,184, pas.

[5] All that appears on the roll with regard to the place of summons is:—"qui quidem Bartholo-" mæus, Comes Gloucestriæ, Mar-" gareta, Thomas, Hugo le Des-" penser, et Comes Devoniæ sum-" moneantur in prædicto Comitatu " [Gloucestriæ] et Comitatibus " Wiltesciræ, Somersetiæ et De-" voniæ."

[6] 25,184, ensueroms.

[7] The roll, "et interim loquen-" dum est cum domino Rege."

[8] Harl., maunde.

[9] vers is from Harl. alone.

[10] *est* is from Harl. alone.

[11] The King's writ *de procedendo* reciting the above proceedings was

No. 75.

A.D. 1343. Formedon in the Reverter.

(75.) § Formedoun in the reverter. A release of the ancestor, with warranty, was pleaded in bar, where a manor was included in the release, whereof the tenant said that the tenements demanded were parcel.—*Moubray.* The release purports that our ancestor released his right in the manor to William,[1] which William had by sale from his ancestor; and we tell you that the person who sold to William was seised of several tenements in the same vill, and long previously gave the manor, which we demand, in fee tail,

[1] For the names, &c., *see* p. 347, note 4.

No. 75.

(75.) [1] § Forme doun[3] *reverti*. Relees del auncestre ove garrauntie fut plede en barre, ou maner fut compris deinz le relees, dount le tenant dit qe les tenements demandes sount parcelle.[4]—*Moubray*. Le relees voet qe nostre auncestre relessa son dreit en le maner a W., quel [William avoit de la vent soun auncestre; et vous dioms qe cely qe vendist a W. fut seisi de plusours tenements en mesme la ville, et longe temps avant dona le maner, quel][5] nous

A.D. 1343. Formedoun en *Reverti*.[2]

sent to the Justices at the instance of the demandant who had alleged "se ulterius in placito prædicto, "nobis inconsultis respondere non "debere, quo prætextu vos in "negotio prædicto hactenus pro-"cedere distulistis." Though, however, the Justices were to proceed it was only "ita quod ad judicium "in eodem negotio prædicto "reddendo, nobis inconsultis, nul-"latenus procedatis."

Nothing further appears, except adjournments.

[1] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 447. It there appears that the action was brought by John de Malghum and Emma his wife against Oliver de Serleby, in respect of two messuages, two carucates of land, 20 acres of meadow, 40 acres of wood, and 40*s*. of rent in Harthill (Yorkshire). The gift was made by John Buke, Emma's grandfather, to John son of John Buke and Elena his wife in special tail, and she claimed the reversion on the death of the donees without heirs of their bodies.

[2] The words en *Reverti* are from Harl. alone. In 25,184 the word Formedoun is preceded by "Oliver Wystede."

[3] The words Forme doun are omitted from Harl.

[4] The plea was, according to the record, "quod manerium de Hert-"hille, cum pertinentiis, unde "prædicta tenementa nunc petita "sunt parcella, &c., fuit in seisina "Hugonis de Serleby, et Leticiæ "uxoris ejus, avi prædicti Oliveri, "cujus heres ipse est, et dicit quod "Johannes de Buke, miles, proavus "prædictæ Emmæ, cujus heres "ipsa est, per scriptum suum re-"misit et quietum clamavit præ-"dictis Hugoni et Leticiæ heredi-"bus et assignatis suis totum jus "et clameum quod habuit seu "quoquo modo vel titulo in poste-"rum habere poterit in manerio "de Herthille cum suis pertinentiis "universis, quod quidem vendidit "Olivero de Wysete, prout charta "sua sibi inde facta testatur, ita "quod nec ipse, nec heredes sui, "nec assignati, nec aliquis nomine "suo, seu pro ipso, in prædicto "manerio cum suis pertinentiis "universis aliquid juris vel clamii "de cætero exigere vel vendicare "poterint in perpetuum. (*Profert* "of the charter.) Et petit judicium "si prædicti Johannes et Emma "actionem versus ipsum habere "debeant," &c.

[5] The words between brackets are omitted from 25,184.

No. 75.

A.D. 1343. saving the reversion, and afterwards gave the rest by the description of a manor to William, so that at the time of the gift he had nothing in the subject of our demand except the reversion, wherefore this release could not extend to those tenements, which did not pass by the gift made to William, and so they are not included in this deed; judgment, inasmuch as this deed is restricted by express words, and extends only to that which passed by the gift made to William, whether he shall be barred by this deed, &c.—*Pulteney.* Then you admit the deed.—SHARDELOWE. Who was

No. 75.

demandoms, en fee taille, salvant la reversion, et puis[1] dona par noun du maner le remenant a W., issi qe al temps du doun il navoit rien en nostre demande forsqe reversion, par quei cel relees ne se put estendre a ceux tenementz, qe ne passerent pas[2] par my le doun fait a W., et issi ne sount ils pas compris deinz ceo[3] fait; jugement, desicom ceo fait est restreint par paroule, et sestent forsqe a ceo qe passa par le doun fait a W., si par ceo fait serra barre, &c.—*Pult.*[4] Donqes conisetz le fait. A.D. 1343.

[1] puis is from Harl. alone.

[2] Harl., passerent, instead of ne passerent pas.

[3] 25,184, son.

[4] For the words si par ceo fait serra barre, &c.—*Pult.* there are substituted in 25,184 the words et issi ne sount il pas compris deinz ceo. The replication was, according to the record, "(non cognoscendo aliquo tempore fuisse manerium de Herthille) quod idem Johannes Buke proavus, &c., fuit seisitus de diversis terris et tenementis in Herthille, et inde tenementa nunc petita dedit prædictis Johanni filio Johannis et Elenæ et heredibus de corporibus eorundem Johannis filii Johannis et Elenæ exeuntibus, et postmodum idem Johannes, Buke residuum tenementorum prædictorum præfato Olivero de Wysete vendidit. Et idem Oliverus de tenementis illis sic sibi venditis prædictos Hugonem et Leticiam feoffavit quo tempore idem Johannes Buke nihil habuit in tenementis nunc petitis, &c, nisi quantam expectationem juris reversionis tenementorum prædictorum cum acciderit, &c. Et in prædicto scripto quietæ clamanciæ per quod idem Oliverus de Serleby nititur præcludere ipsos Johannam et Emmam ab actione, &c., continetur quod prædictus Johannes Buke remisit, &c., totum jus, &c., quod habuit in manerio de Herthille, quod quidem manerium vendidit Olivero de Wysete, et sic idem scriptum restringitur in hoc, et tantummodo habet referre ad prædicta tenementa præfato Olivero de Wysete vendita, scilicet in statu quo fuerunt quando prædictus Johannes Buke illa præfata Olivero de Wysete per nomen manerii vendidit quo tempore idem Oliverus de Wysete nihil habuit in tenementis nunc petitis, et non ad tenementa nunc versus ipsum Oliverum de Serleby petita præfatis Johanni filio Johannis et Elenæ per formam, &c., data diu antequam præfatus Johannes Buke se de aliis tenementis præfato Olivero de Wysete dimisit, ut prædictum est, unde dicunt iidem Johannes et Emma quod prædicta tenementa nunc petita non continentur in prædicto scripto quietæ clamanciæ, et hoc parati sunt verificare, unde petunt judicium si prædictus Oliverus de Serleby per idem scriptum ab actione sua ipsos præcludere debeat," &c.

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A.D. 1343. seised of these tenements at the time of the execution of the deed?—To this no answer was given.—*Pulteney.* And we demand judgment, inasmuch as he has admitted his ancestor's deed, which extinguishes his right, and he does not avoid it except by argument and evidence, whether he shall not be barred.—Afterwards *Moubray* said as before, and so not included; ready, &c.—*Pulteney.* Our first plea is on the roll, wherefore that which has previously been pleaded in law cannot afterwards be changed, and put in issue to the country. —Sharshulle. Then do you refuse the averment?—*Pulteney.* He shall not yet be admitted to the averment, inasmuch as he does not deny that the release of the manor is good, and he does not deny that the tenements demanded are parcel of the manor, wherefore he shall not be admitted to aver, in general terms, that they are not included, without answering as to whether they are parcel or not.—Willoughby. Parcel or not parcel is not a proper issue in this case, for, whether they be parcel or not, the release may be good, and it may be that what you call a manor is not a manor.—*Pulteney.* His ancestor's deed proves that it is a manor.—Sharshulle. Then do you refuse the averment?—*Pulteney.* No, Sir; but we pray that his first plea be taken off the roll, because we do not see what will become of the first plea if this issue be entered.—Sharshulle. It will go to the winds, as does the greatest part of that which you say.—And the averment was entered.

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—Schard. Qi fut seisi de ceux tenements au temps de la confeccion?—*Ad quod non est responsum.*—*Pult.* Et nous jugement, desicom il ad conu le fait soun auncestre, quel esteint soun dreit, et nel voide pas forsqe par argument et evidence, sil ne serra barre. —Puis *Moubray* dit come avant, et issi nient compris; prest, &c.—*Pult.* Nostre primer plee est en roulle,[1] par quei ceo qe devant est plede en ley ne put apres estre chaunge, et mys en issu du pays. —Schar. Donqes refusez laverement?—*Pult.* Al averement ne serra il unqore resceu, desicom il ne dedit pas le relees estre bon du maner, ne il ne dedit pas les tenements demandes estre parcelle du maner, par quei daverer generalment qe nient compris, sanz respoundre[2] sils soient parcelle ou noun, il ne serra pas resceu.—Wilby. Parcelle ou nient parcelle nest pas propre issue en ceo cas, qar quel qils soient parcelle ou noun, le relees put estre bon, et put estre qe ceo nest pas maner quel vous appellez maner.—*Pult.* Le fait son auncestre prove qe cest maner.—Schar. Donqes refusez laverement? —*Pult.* Sire, nanil; mes nous prioms qe son primer plee soit ouste hors de roulle, car nous ne veioms pas ou le primer plee[3] devendra si ceste issue soit entre.—Schar. Il irra a vent, com fait[4] tout le plus dount vous parlez.—Et laverement est entre.[5] A.D. 1343.

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[1] Harl., inroulle, instead of en roulle.

[2] respoundre is from Harl. alone.

[3] plee is from Harl. alone.

[4] fait is from Harl. alone.

[5] After the replication the roll continues thus:—"Et Oliverus "de Serleby dicit quod tenementa "nunc versus ipsum petita fuerunt "in seisina prædicti Johannis "Buke, proavi prædictæ Emmæ, "ut parcella manerii de Herthille, "qui quidem Johannes manerium "illud integre in dominico et "in reversione vendidit præfato "Olivero de Wysete, qui quidem "Oliverus de Wysete fuit seisitus "de tenementis nunc petitis ut "parcella manerii de Herthille, "qui quidem Oliverus de Wysete "manerium illud cum pertinentiis, "&c., dedit prædictis Hugoni de "Serleby et Leticiæ uxori ejus avo "prædicti Oliveri de Serleby, cujus "heres ipse est, in quo quidem "dono tenementa nunc petita, &c.,

Nos. 76, 77.

A.D. 1343. Discontinuance. (76.) § A writ was sued against a tenant for term of life, who prayed aid; wherefore a Summons issued, to which writ the Sheriff returned "*Mandavi ballivo Libertatis, qui nihil inde,*" &c.; and on that day a Protection was allowed for the person who was prayed in aid, and the parol was put without day, and now a Resummons is sued.—*Blaykeston* recited how the parol demurred without cause, because the Protection was not allowable for one who had not a day in Court, and consequently this Resummons is unwarranted, and so the whole is discontinued.—*Richemunde.* He had a day by the roll.—Hillary. He had not, unless he had a day before; and until the Summons was served he had not a day; wherefore, when the Protection was allowed the whole was discontinued, and still is; wherefore, Adieu.

Process. (77.) § A *Præcipe* was brought against a tenant,

Nos. 76, 77.

(76.) [1] § Bref fut suy vers tenant a terme de vie, qe pria eide; par quei Somons issit, a[3] quel bref le Vicounte retourna *Mandavi Ballivo Libertatis, qui nihil inde*,[4] &c.; a quel jour Proteccion fut allowe pur cely qe fut prie, et la parole mys saunz jour, et ore est Resomons suy.—*Blaik.* rehercea coment la parole demura saunz cause,[5] pur ceo qe Proteccion fut pas[6] allowable pur cely qe navoit pas jour en Court, *per consequens* cest Resomons desgarrauntie et issint est tut discontinue.—*Richem.* Il avoit jour par roulle.—Hill. Noun avoit pas, sil neust eu jour adevant; et tanqe la Somons fust servy il navoit pas jour; par quei quant la Proteccion fut allowe tut fut discontinue, et unqore est; par quei ales a Dieu.

A.D. 1343. Discontinuaunce.[2] [Fitz., *Protec-cion*, 67.]

(77.) [1] § *Præcipe* fut porte vers un tenant, qe

Proces.[2] [Fitz., *Sequatur sub suo periculo*, 6.]

" transierunt ut parcella manerii " prædicti, &c., et iidem Hugo et " Leticia seisiti fuerunt de tene- " mentis nunc petitis ut de parcella " manerii prædicti tempore con- " fectionis prædicti scripti quietæ " clamanciæ, &c., unde dicit quod " prædicta tenementa nunc petita " continentur in prædicto scripto " quietæ clamanciæ."

Issue was joined upon this.

The verdict at *Nisi prius* was " quod prædicta Elena quæ fuit " uxor Johannis filii prædicti " Johannis tenuit tenementa nunc " petita nomine dotis et dotatione " prædicti Johannis filii Johannis " quondam viri sui, qui eam, " ex assensu et voluntate præ- " dicti Johannis patris sui, ad " ostium ecclesiæ inde dotavit, qui " quidem Johannes Buke pater " postea residuum dicti manerii " simul cum reversione prædictæ " dotis vendidit prædicto Olivero " de Wysete, per quod eadem " Elena se inde attornavit. Et " postea prædicta Elena obiit, post " cujus mortem prædictus Oliverus " de Wyssete intravit in tenementis " prædictis, et postea tenementa " prædicta cum residuo manerii " prædicti prædictis Olivero et " Leticiæ uxori ejus feoffavit, unde " dicunt præcise quod tenementa " nunc petita continentur in præ- " dicto scripto quietæ clamanciæ " quam prædictus Oliverus de " Seleby profert, prout idem " Oliverus asserit.

" Ideo consideratum est quod " prædicti Johannes et Emma nihil " capiant per breve suum, sed sint " in misericordia pro falso clameo " suo."

[1] From Harl., and 25,184.

[2] The marginal note is omitted from Harl.

[3] a is from Harl. alone.

[4] *inde* is omitted from Harl.

[5] Harl., jour.

[6] pas is omitted from Harl.

No. 78.

A.D. 1343. who vouched. The Summons *ad warantizandum* issued, to which writ the Sheriff returned "*Mandavi ballivo Libertatis, qui nihil inde fecit,*" and therefore a *Non omittas* issued, which writ the Sheriff did not return; afterwards an *Alias* writ issued returnable now, which writ was not served. Therefore *Richemunde* prayed that with the writ which is now to issue the *Sequatur suo periculo* might be entered, inasmuch as the writ which will issue now will be the fourth writ since the voucher, and it was as much the tenant's fault that he did not sue against the Bailiff of the Liberty as against the Sheriff.—HILLARY. You are to have only a *Pluries* writ on this process, because the process commenced in effect with the *Non omittas*; and so you will not have your prayer.

Debt. (78.) § Nicholas Haghman,[1] after the death of his co-executor, brought a writ of Debt against J.[1] on an obligation made to themselves by J.[1] and one A.[1], who is dead, which obligation purported that the executors had sold the goods of the testator for that sum which was demanded. And the writ was in the words "*quod eis detinet,*" without the word *debet*. And because by the defendant's obligation it was supposed that the

[1] As to the names *see* p. 355, notes 3 and 5.

No. 78.

voucha. La Somons *ad warantizandum* issit, a quel bref le Vicounte retourna *Mandavi Ballivo Libertatis, qui nihil inde fecit*, par quei *Non omittas* issit,[1] quel bref le Vicounte ne retourna pas; puis *Sicut alias* retournable a ore, quel bref ne fut pas servy. Par quei *Richem.* pria qa cel bref[2] qest ore a issir qe le *Sequatur suo periculo* soit entre, desicom ceo bref qe istra ore serra le quarte bref puis le voucher, et il fut la defaut le tenant si avant qil ne suyst pas vers le Baillif de la Fraunchise, come vers le Vicounte.—Hill. Vous estes sur ceo proces daver forsqe *Sicut pluries*, car le proces commence en effecte par le *Non omittas*; et issi naverez pas vostre priere. A.D. 1343.

(78.)[3] § Nichol Hawman,[4] apres la mort son co-executour, porta bref de Dette vers J. sur une obligacion fait a eux mesmes par J. et un A., qest mort, quel obligacion voleit [qe les executours avoient venduz les biens le testatour pur cele summe quel fut demande.[5] Et le bref voleit][6] *quod eis detinet*, saunz *debet*. Et pur ceo qe par lobligacion le defendant fut suppose qe le pleintif fut executour,[7] Dette. [Fitz., *Briefe*, 287; *Executours*, 89; *Monstrans de faits, fins, et records*, 63.]

[1] issit is from Harl. alone.

[2] bref is from Harl. alone.

[3] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 518. It there appears that the action was brought by Nicholas Haghman, parson of the church of Swindon, executor of the will of Master Richard Haghman, late parson of the church of Creke, against Alan atte Monte de Stanes "quod reddat ei quinquaginta "marcas quas ei injuste detinet," &c.

[4] Harl., Hauman.

[5] The declaration was, according to the record, "quod cum prædic-"tus Alanus (et quidam Johannes "filius prædicti Nicholai de Haghe "man, qui jam obiit) . . . . per "scriptum suum indentatum con-"cessit se teneri ipsi Nicholao et "cuidam Nicholao de Haghe-"man, qui jam obiit, in præ-"dictis quinquaginta marcis, pro "bladis et fenis infra rectoriam "de Creke existentibus solvendis ". . . . . prædictus Alanus, "licet sæpius requisitus, prædic-"tos denarios ei nondum red-"didit, sed adhuc reddere con-"tradicit."

[6] The words between brackets are omitted from 25,184.

[7] 25,184, suist execucion, instead of fut executour.

No. 78.

A D. 1343. plaintiff was executor, he was not compelled to produce the will.—*Gaynesford.* They have counted on contract and specialty, to which the executors themselves were parties, and not the testator; and so the writ should be in the words "*debet et detinet,*" and this writ has only the word "*detinet,*" and the contract can only be supposed to be that of their testator; judgment of the writ.—SHARDELOWE. The reason why a writ of Debt brought by executors on their testator's contract shall have the word "*detinet*" only is only that the property is supposed to be in the testator; and even though the executors, after the testator's death, sell the goods which belonged to the deceased, and take an obligation in respect thereof, still the goods and the property in the debt which is to be deraigned by that obligation belong to the deceased, and the executors have to account for them in Court Christian.—HILLARY. That may be; but an issue cannot be made on the ground of the property; wherefore, since the action is taken on the contract of the executors themselves, the name which they have of executors is only a surname, and not the substance of the action, and for that reason they are entitled to an answer without producing the will; wherefore the words of the writ should be "*debet et detinet,*" and such is the form of the Chancery.—And so say the Clerks of the Chancery.—And, nevertheless, this writ was adjudged good.—*Gaynesford.* By this deed your co-executor has released to us all manner of actions of Debt; judgment whether contrary to this

No. 78.

il fut pas chace[1] de moustrer testament.—*Gayn.* Ils ount counte sur contract et especialte, a quel les executours mesmes furent partie, et noun pas le testatour; [et issi serreit le bref *debet et detinet*, et ceo bref ne voet forsqe *detinet*, et nest a supposer forsqe le contract lour testatour][2]; jugement de bref. —Schard. La cause pur quei bref[3] de Dette porte[4] par executours de contract lour testatour serra *detinet* soulement nest forsqe pur ceo qe la proprete est suppose en le testatour; et, tut soit ceo qe les executours vendent, apres la mort le testatour, les biens au mort, et de ceo pernent obligacion, unqore les biens et la proprete de la dette qest a derener par cele obligacion est au mort, de quei les executours en Court Christiene sount dacompter.—Hill. Put estre; mes sur la cause[5] de la proprete ne se[6] put issue faire; par quei, quant[7] laccion est pris de contract[8] les executours mesmes, de ceo qils sount nomes executours nest forsqe surnoun, et noun pas gros del accion, et pur ceo sount ils responables saunz testament; par quei le bref serreit *debet et detinet*, et tel est la fourme de la Chauncellarie. —*Et ita dicunt Clerici de Cancellaria.*—Et *tamen* ceo bref fut agarde bon.—*Gayn.* Par ceo fait vostre coexecutour ad relesse a nous totes maneres daccions de Dette; jugement si countre ceo fait, &c.[9]— A.D. 1343

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[1] Harl., chasce.

[2] The words between brackets are omitted from Harl.

[3] 25,184, le bref.

[4] 25,184, fuit porte.

[5] 25,184, comune.

[6] se is from Harl. alone.

[7] quant is from Harl. alone.

[8] Harl., covenant.

[9] The plea was, according to the record, "quod prædictus Nicholaus "qui nunc queritur nihil exigere "potest de prædicto debito quia "dicit quod prædictus Nicholaus "de Hagheman . qui jam obiit "..... per scriptum suum con- "cessit quod ipse Alanus satisfecit "ei de omminodis debitis habitis "inter præfatum Alanum et "dictum testatorem suum, aut "inter ipsum Alanum et prædictum "Nicholaum, et remisit, et relaxa- "vit, et quietumclamavit eidem "Alano omminodas actiones, &c. "Et profert hic prædictum scrip- "tum."

No. 79.

A.D. 1343. deed, &c.—*Thorpe*. We are a stranger to that deed, and cannot have an answer; judgment, &c.—Hillary. Can you not deny it?—*Thorpe*. No, Sir, not unless it were the deed of our testator or our own, or else unless the person of whose deed *profert* is made were party to the plea with us; besides, the deed does not testify any receipt of money. And suppose that, in respect of a debt due to a woman before coverture, her husband's deed, releasing in general terms actions of Debt, and not purporting that he received the money, be produced against the woman after her husband's death, she will not be barred, and the woman will have the traverse that her husband did not receive the money.—Hillary. A release by a husband, which purports a release of every debt due to him and his wife, will be a good bar against the woman, and in like manner this deed purports that your co-executor has released every action of Debt touching the will.—*Thorpe*. He did not make satisfaction for the debt; ready, &c.—Hillary. Answer as to the deed.—*Thorpe*. Not his deed; ready, &c.—*Gaynesford*. You shall not deny it by such words.—Hillary. You are at a good issue.

Annuity. (79.) § The Prior of Bermondsey brought a writ of Annuity against a parson, who prayed aid of the patron and the Ordinary, and they did not appear. And the Prior laid his count by prescription by the hand of

No. 79.

Thorpe. A ceo fait sumes estraunge[1] et ne poms aver respouns; jugement, &c.—Hill. Nel poies dedire?—*Thorpe.* Sire,[2] noun, sil ne fut le[3] fait nostre testatour, ou nostre fait demene, ou autrement qe cely qi fait est mys avant fut partie al plee ovesqe nous; ovesqe ceo, le[4] fait tesmoigne nulle resceite des deners. Et jeo pose qe de dette due a la femme devant la coverture le fait son baroun, [qe relest generalment accions de Dette, et ne voet pas qil resceut les deners, soit mys avant countre la femme apres la mort son baroun][5] la[6] ne serra ele barre, et si avera la femme traverse qe son baroun ne resceut pas les deners.—Hill. Un relees de baroun, qe voet relees de chesqun dette due a luy et sa femme, serra bon barre countre la femme, et issi voet ceo fait qe vostre co-executour[7] ad relesse chesqun accion de Dette touchaunt le testament.—*Thorpe.* Il fist pas gree de la dette; prest, &c.—Hill. Responez au fait.—*Thorpe.* Nient son fait; prest, &c.—*Gayn.* Vous le[8] dedirrez pas[9] par tieles paroles.—Hill. Vous estes a bon issue.[10] A.D. 1343.

(79.)[11] § Le Priour de Bermondesey porta bref Dannuite vers une persone, qe[12] pria eide de patroun et Ordiner,[13] qe ne viendrent pas. Et le Priour lia soun count par prescripcion par la mein la Annuite.

[1] estraunge is from Harl. alone.

[2] Sire is from Harl. alone.

[3] le is omitted from Harl.

[4] The words ovesqe ceo le are from Harl. alone.

[5] The words between brackets are omitted from 25,184.

[6] Harl., ja.

[7] 25,184, executour.

[8] Harl., les.

[9] pas is omitted from 25,184.

[10] The replication, upon which issue was joined, was, according to the record, "quod scriptum "illud non est factum prædicti "Nicholai coexecutoris sui." Adjournments only follow.

[11] From Harl., and 25,184. This appears to be a continuation of the report No. 81 of Mich., 16 Edw. III. (the Prior of Bermondsey *v.* John Darry, parson of the church of Fyfield), the record of which is among the *Placita de Banco* of the same term, R° 595.

[12] Harl., et.

[13] Harl., Ordeigner.

Nos. 80, 81.

A.D. 1343. the parson who was defendant and his predecessors from all time.—*Pulteney.* He has not counted of any seisin by any certain hand to which we could have a traverse, except in respect of seisin by ourselves; and we tell you that he was never seised by our hand; ready, &c.—SHARDELOWE. It is true that you cannot have issue on the seisin by any one in particular with certainty, except on his own possession, which is traversed; but it does not therefore follow that you shall have such a traverse.—And afterwards they were at a traverse on the seisin generally from all time.[1]

Fine. (80.) § *Grene.* The husbands and their wives grant and render all that they have, for the lives of the wives, to Simon Fraunceys and his heirs; and the husbands and the wives warrant for the lives of the wives.—SHARSHULLE, HILLARY, and WILLOUGHBY said that the fine *sur render* shall never be admitted, unless the right be saved in the person who rendered, or divested over to others; but by way of release one may have such a fine. Therefore the fine was refused. And afterwards, on the morrow, it was admitted on release. And, nevertheless, this was contrary to the opinion of WILLOUGHBY, who said that such a fine, in the words "all that they have" is uncertain, because possibly they have no right at all.

Formedon (81.) § A Formedon was sued against Hugh Mortimer, and M. his wife, who prayed aid of W., son and heir of H. Scrope, as tenants in the dower of M. And they prayed that the parol might demur by reason of the non-age of W. The demandant said that W. was of full age. Therefore a *Venire facias* issued to cause him to come to be inspected, and afterwards the Grand

[1] For the precise words in which issue was joined *see* Y. B., Mich., 16 Edw. III., p. 557, note 6.

Nos. 80, 81.

persone qest defendant et ses predecessours de tut temps.—*Pult.* Il nad counte de nulle seisine par certein mein a quel nous purroms aver travers, forsqe a nostre seisine demene; et vous dioms qe unqes seisi par nostre meyn; prest, &c.—SCHARD. Il est verite qe vous ne poietz aver issue sur nully seisine en certein en especial, forsqe a sa possession demene, quel est traverse; mes de ceo nensuyt pas qe vous averez tiel travers.—Et puis sount a travers sur la seisine de tut temps generalment. A.D. 1343.

(80.) [1] § *Grene.*[3] Les barouns et lour femmes grauntent et rendent quant qils ount, pur les vies les femmes, a Symound[4] Fraunceys et ses heirs; et les barouns et les femmes pur les vies les femmes garrauntent.—SCHAR., HILLAR., et WILBY. *dixerunt* qe la fyn sur rendre ne serra jammes resceu, si le dreit ne[5] soit salve en celuy qe rendi, ou despendu outre en[6] autres; mes[7] par voie de relees homme avera tiel fyn. Par quei la fyn fut refuse. Et puis sur relees lendemene fut resceu. *Et tamen*[8] *contra opinionem* WILBY., qe dit qe tiel fyn est en noun certein, *quicquid habent*, qar par cas ils ount nul dreit. *Finis.*[2] [Fitz., *Fynes*, 60.]

(81.) [1] § Fourme doun fut suy vers Hughe Mortimer et M. sa femme, qe prierount eide de W. fitz et heir H. Scrope come tenantz en dower M. Et[9] par noun age W. prierount qe la parole demurast. Le demandant dit qe de plein age. Par quei *Venire facias* issit de luy faire venir destre vewe,[10] et puis la Graunt Destresse retourne ore.— Fourmedoun. [Fitz., *Proses*, 27.]

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[1] From Harl., and 25,184.
[2] The marginal note is omitted from Harl.
[3] *Grene* is omitted from Harl.
[4] Harl., Simond.
[5] ne is from Harl. alone.
[6] Harl., entre, instead of outre en.
[7] mes is omitted from Harl.
[8] Harl., tut.
[9] Et is from Harl. alone.
[10] The words destre vewe are omitted from Harl.

Nos. 82–84.

A.D. 1343. Distress returned now.—*Moubray* said, for the tenants, that W. was of full age, and prayed that he might be summoned in aid.—*Blaykeston*, for the demandant, said that the process should be continued as it had commenced.—HILARY. Yes, it must be so: for, if the Summons issued, he would come in his own person on another day, and possibly would upon inspection be adjudged under age; and then the parol would demur, and that would be an inconsistency, and also he will now lose the issues if he does not appear. Therefore let him be called.—And he did not appear. —Therefore he lost his issues, and an *Alias* Distress was awarded.

Note. (82.) § Note that a writ of seisin upon a judgment was sent to the Sheriff, who returned "*Mandavi Ballivis Libertatis, qui mihi respondent*" that the person against whom the recovery was adjudged had nothing, and was not tenant. Therefore a *Non omittas* was awarded. —And so note that such an answer as to non-tenure does not lie in the mouth either of Sheriff or of Bailiff.

Note. (83.) § Note that in Debt against executors who pleaded *plene administraverunt*, &c., it was found that they had not fully administered on the day on which the writ was purchased. And it was adjudged that the plaintiff should recover without having regard to the question whether they had of the goods of the deceased to the value of the demand.

Admeasurement of Dower. (84.) § Admeasurement of Dower, counting that she held too much in dower, because, whereas the entirety of the inheritance was only two parts of the manor of B., of which two parts a third would be her proportion, she held and had a moiety of the two parts, and so too much.—*Moubray*. Judgment of the count, inasmuch

Nos. 82–84.

Moubray dit, pur les tenantz, qe W. est de plein age, et pria qil fut somons en eide.—*Blaik.*, pur le demandant, dit qe le proces serra continue com il est comence.—Hill. Oyl,[1] il covient issi estre: qar, si la Somons issit, il vendreit en propre persone a autre jour, et par inspeccion serra ajuge par cas deinz age; et[2] donqes demura la parole, et donqes serreit ceo degise chose,[3] et auxi il perdra ore ses issues sil ne veigne. Par quei soit demande.—Et il ne vint pas.—Par quei il perdist ses issues, et Distresse *sicut alias.* A.D. 1343.

(82.)[4] § *Nota* qe bref de seisine[5] hors dun jugement fut maunde au Vicounte, qe retourna *quod Mandavit Ballivis Libertatis, qui mihi respondent* qe cely vers qi le recoverir se fit navoit rien, ne ne fut tenant. Par quei *Non omittas* fut agarde.—*Et sic nota* qe tiel respouns de noun tenue ne gist pas en bouche de Vicounte ne de Baillif. *Nota.* [Fitz., *Retourne del Vicount*, 91.]

(83.)[4] § *Nota* qen Dette vers executours qe plederent qe pleinement administrerent, &c., trove fut qils navoint pas administre pleinement jour du bref purchace. Et fut agarde qe le pleintif recoverast saunz aver regarde sils avoint des biens le mort[6] a la value de la demande. *Nota.* [Fitz., *Garnishe et Garnishement*, 35.]

(84.)[4] § Amesurement de Dowere, countaunt qele tient plus en dowere, qar par la ou lentier del heritage[7] ne[8] fut forsqe les deux parties du maner de B., dount la tierce partie afferreit[9] a luy par la tient ele et ad la moite des deux[10] parties, et issi plus.—*Moubray.* Jugement du counte,[11] de ceo qe Amesurement. [Fitz., *Admesurement*, 5; *View*, 97.]

[1] Oyl is from Harl. alone.
[2] et is from Harl. alone.
[3] 25,184, proces.
[4] From Harl., and 25,184.
[5] 25,184, disseisine.
[6] The words des biens le mort are from Harl. alone.
[7] 25,184, homage.
[8] 25,184, qe.
[9] 25,184, affiert.
[10] 25,184, iij.
[11] 25,184, compte.

No. 85.

A.D. 1343. as the demandant does not count upon whose assignment she holds in dower, as, for instance, by that of his guardian or of himself while he was under age.—This exception was not allowed.—*Moubray* demanded view.—SHARDELOWE. You ought not to be ignorant as to what land you hold in dower; and this action arises out of your own act.—HILLARY ousted him from view by judgment.

Secta ad molendinum.

(85.) § Bartholomew de Fanacourt and Lucy his wife brought a writ in the words "*quod permittat villanos facere sectam ad molendinum*" against B.,[1] counting that tortiously he did not permit his villeins of Tibthorpe to do suit to their mill of Kirkburn. And they counted that in the time of King Henry Peter de Bruys was seised of the manors of Tibthorpe and Kirkburn, at which time the villeins of Tibthorpe did suit to his mill of his manor of Kirkburn, and from all previous time had done so, to wit, by grinding their corn, &c., to the thirteenth vessel, and they laid seisin by the hand of Peter of the suit of certain villeins, and of a certain quantity of land which the villeins held severally. And after the death of Peter the descent was to P. as to son and heir,[2] from whom the descent was to Lucy,[3] and Laderana,[3] and A.[3] and J.[3] as to sisters, &c., between whom partition was made in Chancery, so that to the purparty of Lucy was allotted the manor of Kirkburn, of which the mill is parcel, and to Laderana the manor of Tibthorpe, and the said Lucy was seised. From Lucy the descent was to Robert, and from Robert to Lucy, as to daughter, who

[1] As to the name *see* p. 365, note 3.

[2] This is not so stated in the record. *See* p. 369, note 3.

[3] As to these names *see* p. 369, note 3.

No. 85.

le demandant ne counte pas de qi assignement ele tient en dowere, come de son gardein ou luy mesme[1] tanqil fut deinz age.—*Non allocatur.*—*Moubray* demanda la vewe.—SCHARD. Vous ne devez pas mesconustre quele terre vous tenez en dowere; et cest accion sourd de vostre fait demene.—HILL. luy ousta de la vewe par agarde.[2] A.D. 1343.

(85.)[3] § Barthelmeu[5] Fanacourt et Luce sa femme porterent *quod permittat villanos facere sectam ad molendinum* vers B., countaunt qe a tort ne soeffre ses villeins de Tibthorpe faire suite a lour molyn de Kyrkebroune. Et counta qen temps le Roi H. Piers Bruys fut seisi des maners de Tibthorpe et Kyrkebroune, a quel temps les vileins de T. firent suyte a son molyn de son maner de K.,[6] et de tut temps devant avoint fait, saver, en molaunt lour bles, &c., a xiij[7] vesseille, et lia seisine par my[8] la mayn P., de la suyte de certeins villeins, et de certein quantite de terre qils tiendrent severalment. Et apres la mort P. descendi a P. com a fitz et heir, de qi descendi a Luce, Lauderan,[9] et A., et J., com a soers, &c., entre queux purpartie se fit en Chauncellerie, issi qe a la purpartie Luce fut allote le maner de Kyrkebourne, dount le molyn est parcelle, et a Laderane[9] le maner de Tybthorpe la quele Luce fut seisi. De Luce descendi a Robert, de Robert a Luce, com a fille, qore demande ove Suyte de Molyn.[4]

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[1] The words ou luy mesme are omitted from Harl.

[2] The words par agarde are omitted from Harl.

[3] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 528. It there appears that the action was brought by Bartholomew de Fanacourt and Lucy his wife against "Henricus filius Aucheri," "quod permittat villanos suos de "Tybthorpe facere sectam ad "molendinum ipsorum Bartholo- "mæi et Luciæ de Kirkebrune."

[4] The marginal note is omitted from Harl.

[5] Harl., Bertyn; 25,184, Berton.

[6] MSS. of Y.B., T.

[7] Harl., iiij.

[8] my is omitted from Harl.

[9] 25,184, la dereyne.

No. 85.

A.D. 1343. now demands with her husband, and this Lucy took to husband Robert de Everyngham, which Robert gave the manor of Kirkburn, with the appurtenances, to Henry de Bretville and his heirs. And afterwards a fine was levied, in the time of King Edward, father of the present King, between Henry, of the one part, and Robert and Lucy his wife, of the other part, by which fine Robert and Lucy acknowledged the manor to be the right of Henry, &c., and Henry rendered back to Robert and Lucy and the heirs of their bodies, &c., with remainder, failing issue, to the right heirs of Robert. This Lucy, after the death of Robert, who died without issue, married Bartholomew, &c., during whose possession Adam, cousin[1] and heir of Robert, reciting the estate of Bartholomew and Lucy, confirmed Bartholomew's estate for Bartholomew's life in case he should survive Lucy his wife. And afterwards the descent was made from Laderana to the defendant. And the plaintiffs said that they had been seised until ten years before the purchase of the writ, &c.—*Pulteney.* They have not laid their count through the possession by any one of a fee simple in the time of any certain King, nor in time of peace; judgment of the count.—*Moubray.* Yes, we have, in the possession of Peter, the common ancestor.—*Grene.* Even though you had laid the possession in him, that would be nothing to the purpose, because you claim as a stranger purchasing from Henry de Bretville, in whom you have not laid any possession in the time of any certain King, nor in time of peace; wherefore the count is faulty.—*Seton.* Possession is not much to the purpose, because, since we have shown that the suit was by right first due to Peter, the common ancestor, and he was seised, even though Henry de Bretville, who purchased, and divested himself in our favour, was never seised, if we could snatch a possession, because by right the suit was

[1] He was in fact Robert's brother. *See* p. 369, note 3.

No. 85.

son baroun, la quele Luce prist a baroun Robert de Everyngham, quel Robert dona le maner de K. ove les appurtenaunces, a H.[1] Bretville et ses heirs. Et puis par fyn leve en temps le Roi Edward pere le Roi, &c., fyn se leva entre H.[1] dune part, et R. et Luce sa femme, dautre part, par quel fyn R. et Luce conissoint le maner estre le dreit H.,[1] &c., et H.[1] rendist arrere a R. et L. et les heirs de lour corps, &c., et pur defaut dissue le remeindre as dreits heirs R., la quel Luce apres la mort R., qe murust sanz issue, se lessa esposer a Bartelmeu,[2] &c., en qi possessioun Adam cosyn et heir R., reherceaunt lestat B. et Luce, conferma lestat B. pur la vie B. sil survesqist[3] L. sa femme. Et puis fist la descente de Laderane[4] tanqe al defendant, et dit qils avoint este seisi tanqe x aunz avant le bref purchace, &c.—*Pult.* Ils nount pas lie lour count par possession en nul de fee simple en temps de certein Roi, nen temps de pees; jugement de count. —*Moubray.* Si avoms en la possession P. le comune auncestre.—*Grene.* Tut ussez vous lie possession en luy, ceo[5] ne[6] serra rien[7] a purpos, qar vous clamez[8] com estraunge purchaceour de H.[1] Bretville, en qi vous navez lie nul possession en temps de certein Roi ne de pees; par quei le count est vicious.—*Setone.* La possession nest pas molt a purpos, qar[9] quant nous[10] avoms moustre qe la suyte de dreit fut primes[11] due a P., le comune auncestre, et il seisi, tut ne fut pas H.[1] Bretville, qe purchacea, unqes seisi, et se demist a nous, si nous purroms happer possession pur ceo qe de dreit A.D. 1343.

[1] MSS. of Y.B., W.
[2] MSS. of Y.B., Bertyn.
[3] Harl., survesquit.
[4] 25,184, derane.
[5] ceo is omitted from 25,184.
[6] ne is omitted from Harl.
[7] Harl., pas.
[8] 25,184, esclamez.
[9] qar is omitted from Harl.
[10] nous is omitted from 25,184.
[11] primes is omitted from 25,184.

No. 85.

A.D. 1343. due, that seisin would suffice.—But according to the opinion of the COURT the count was not good, unless it was laid by possession in the time of peace, and of a certain King, and that possession in the person of him from whom they claimed fee simple; wherefore the count was, in that respect, amended.—*Pultency.*

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la suyte fut due, cele seisine suffireit.—*Sed per opinionem* Curiæ le count ne fut pas bon, sil ne fut lie par possession en temps de pees et de certein Roi, et ceo en celuy de[1] qi ils cleiment de fee simple; par quei le count[2] en ceo fut amende.[3]— A.D. 1343.

[1] Harl., en.

[2] 25,184, compt.

[3] The count, as accepted after the amendment, was, according to the record, "quod, cum villani "prædicti Henrici (33 in number, "all of whom are named) tenent "sexaginta et quatuor bovatas "terræ, cum pertinentiis, in Tybe- "thorpe, videlicet quilibet eorum "duas bovatas terræ, in villenagio "de prædicto Henrico, facere debent "et solent sectam ad molendinum "ipsorum Bartholomæi et Luciæ "prædictum, videlicet, molendo "omnia blada crescentia super ter- "ram prædictam, scilicet frumen- "tum, hordeum, fabas, avenas, et "pisas, ad tertium decimum vas, et "unde dicit quod quidam Petrus de "Bruys fuit seisitus de manerio "de Kirkebrune, unde prædictum "molendinum est parcella, et de "manerio de Tybthorpe, unde præ- "dicta tenementa quæ prædicti "villani tenent sunt parcella, et "aliis terris et tenementis, quo "tempore villani ejusdem Petri in "Tybthorpe (7 in number, who are "named) qui terras illas tenuerunt "in villenagio fecerunt sectam ad "molendinum prædictum, et ante "tempus illud omnes villani qui "tenuerunt prædictas terras a tem- "pore quo non extat memoria "fecerunt sectam ad idem molen- "dinum, molendo blada sua super "terras prædictas crescentia ad "tertium decimum vas, &c., qui "quidem Petrus obiit seisitus de "prædictis maneriis et aliis terris "et tenementis in dominico suo ut "de feodo tempore pacis, tempore "Henrici Regis, proavi Regis nunc. "Et de ipso Petro, quia obiit sine "herede de se, descendit tota "hereditas prædicta quibusdam "Agneti, Margaretæ, Luciæ, et "Laderanæ, ut sororibus et heredi- "bus, &c., inter quas partitio inde "facta fuit in Cancellaria dicti "domini Regis, ita quod plura "terræ et tenementa, simul cum "prædicto manerio de Kirkbrune, "et molendinum prædictum cum "secta prædicta, exceptis quatuor- "decim toftis et quatuordecim "bovatis terræ in eodem manerio, "assignata fuerunt proparti præ- "dictæ Luciæ, de qua secta eadem "Lucia fuit seisita per manus vil- "lanorum adhuc tenentium terra- "rum prædictarum in Tybthorpe. ". . . . Et prædictum manerium de "Tybthorpe, simul cum aliis terris "et tenementis, assignatum fuit "prædictæ Laderanæ, et etiam "diversa terræ et tenementa "separatim assignata fuerunt pro- "partibus prædictarum Agnetis et "Margaretæ. Et de prædicta "Lucia descendit propars sua, &c., "cuidam Roberto ut filio et heredi, "et de ipso Roberto descendit "propars illa isti Luciæ ut filiæ et "heredi quæ nunc queritur simul, "&c., quæ quidem Lucia nupsit se "cuidam Roberto de Everyngham, "qui fuerunt seisiti de secta præ- "dicta per manus villanorum tunc "tenentium terrarum prædictarum, "qui quidem Robertus et Lucia

No. 85.

A.D. 1343. Judgment of the count inasmuch as he has counted of several seisins, so that I cannot have a traverse to any one in particular.—This exception was not allowed.—SHARDELOWE said that it was a strong measure to prove that a man could be seised of suit by the hands of his own villeins.—*Pulteney.* Sir, that is true; we will speak of that afterwards.

No. 85.

Pult. Jugement du count, de ceo qil ad counte de plusours seisines, issint qe jeo ne puisse aver travers a nul en certein.—*Non allocatur.*[1]—SCHARD. dit qil est fort a prover qomme purra estre seisi de suite par meins de ses villeins demene.—*Pult.* Sire, cest verite; de ceo parleroms apres.[2] A.D. 1343.

" dederunt et concesserunt dictum " manerium cum molendino de " Kirkebrune prædicto et secta " prædicta cuidem Henrico de " Britville, per quod donum idem " Henricus fuit seisitus de secta " prædicta per manus villanorum " tunc tenentium prædictarum " terrarum, tempore pacis, tempore " Edwardi Regis patris, &c. . . . . " . . . et postmodum, tempore " ejusdem Regis patris domini " Regis nunc levavit quidam finis " inter prædictos Robertum et " Luciam ex parte una et præfatum " Henricum ex parte altera, per " quem finem iidem Robertus et " Lucia recognoverunt prædictum " manerium cum pertinentiis esse " jus ipsius Henrici, et pro illa, " &c., idem Henricus concessit et " reddidit manerium prædictum " cum pertinentiis præfato Roberto " et Luciæ et heredibus de corpori- " bus suis exeuntibus, et si &c., " tunc prædictum manerium cum " pertinentiis remaneret rectis here- " dibus dicti Roberti, qui quidem " Robertus obiit sine herede de cor- " pore suo exeunte, et prædicta Lucia " nupsit se præfato Bartholomæo. " Et postmodum quidam Adam de " Everyngham frater et heres " prædicti Roberti de Everyngham, " per scriptum suum, recitando " qualiter prædicti Bartholomæus " et Lucia, ut in jure ejusdem " Luciæ, tenuerunt manerium de " Kirkebrune prædictum virtute " finis prædicti, concessit et confir- " mavit ipsi Bartholomæo quod " ipse tenere posset manerium " prædictum ad terminum vitæ " suæ si ipse præfatum Luciam " supervixisset. Et de præfata " Laderana descendit propars " sua quibusdam Johannæ et " Sibillæ ut filiabus et heredibus, " &c., inter quas partitio inde fuit " facta ita quod manerium de " Tibthorpe prædictum, simul cum " aliis terris et tenementis, assig- " natum fuit prædictæ Johannæ, " et alia terræ et tenementa " assignata fuerunt proparti præ- " fatæ Sibillæ. Et de prædicta " Johanna descendit propars sua " præfato Henrico filio Aucheri " versus quem, &c. Et de qua " secta prædicti Bartholomæus et " Lucia fuerunt seisiti ut de feodo " et jure ipsius Luciæ in forma " prædicta, tempore pacis, tempore " domini Regis nunc, capiendo " inde expletia ad valentiam, &c., " usque decem annos ante diem " impetrationis brevis sui, scilicet, " tricesimum primum diem Maii " anno regni domini Regis nunc " quartodecimo quod prædicti " villani sectam illam ei substraxer- " unt, et præfatus Henricus sectam " illam ipsis facere villanos præ- " dictos non permissit."

[1] The report ends here in 25,184.

[2] According to the roll, the defendant, after some adjournments pleaded "quod quædam Laderana

No. 85 *bis.*

A.D. 1343. Continuation of the Intrusion above in Michaelmas Term in the 15th year.

(85 *bis.*) § *Thorpe.* When warranty was made to those who had only an estate for the life of Gunnilda,[1] even though that warranty was in fee, it did not enlarge the tenancy of the tenants, but, notwithstanding, the reversion was continued, and that must have descended to the heirs; and as soon as Gunnilda died the tenancy of the tenants began to be by abatement, with respect to which tenancy the warranty never took effect; wherefore the warranty with regard to that abatement was altogether void.—*Grene, ad idem.* If my ancestor leases for a term of years, and I release to the termor with warranty, having regard to me the release is good, and I shall not avoid it during the life of my ancestor; but, after the death of my

[1] Late wife of Maunsel de Tirlington, as shown by the record.

No. 85 *bis*.

(85 *bis*.) [1] § *Thorpe*. Quant la garrauntie fut fait a ces qe navoint estat forsqe pur la vie Gunnelde,[2] tut fut la garrauntie en[3] fee, il nenlargea[4] pas la tenance des tenaunts, mes,[5] *non obstante*, la reversion fut continue, quele coviendreit descendre en les heirs; et a plus toust qe G. murust lour tenance comencea destre par abatement, en quel tenance la garrauntie ne prist unqes[6] effecte; par quei la garrauntie en cel abatement fut tut voide.—*Grene ad idem*. Si moun auncestre lest a terme des aunz, et jeo relesse al termer ove garrauntie, eiaunt regarde a moy le relees est bon, et jeo le voidera pas vivant mon auncestre; mes, apres la mort mon auncestre, qe

A.D. 1343. *Residuum* del Intrusioun *supra Michaelis* xv°.

" de Bruys obiit seisita de prædicto " manerio de Tybthorpe, unde " prædicti Bartholomæus et Lucia " petunt prædictam sectam, &c., " simul cum aliis terris et tene- " mentis, in dominico suo ut de " feodo, quo tempore eadem " Laderana tenuit manerium illud " exoneratum de prædicta secta. " Et de ipsa Laderana descendit " jus &c., quibusdam Sibillæ et " Johannæ, ut filiabus et heredi- " bus, &c., inter quas partitio facta " fuit de omnibus terris et tene- " mentis unde eadem Laderana " obiit seisita in dominico suo ut " de feodo, ita quod prædictum " manerium de Tybthorpe, simul " cum aliis terris et tenementis, " assignatum fuit in propartem " prædictæ Johannæ, in allocati- " onem terrarum et tenementorum " quæ assignata fuerunt in pro- " partem prædictæ Sibillæ. Et de " ipsa Johanna descendit propars " sua isti Henrico, ut filio et heredi, " versus quem, &c. Et de præ- " dicta Sibilla descendit propars " sua cuidam Nicholao ut filio et " heredi, &c. Et de ipso Nicholao " descendit propars illa cuidam " Miloni, ut filio et heredi, &c. " Et ita dicit quod ipse tenet " manerium de Tybthorpe præ- " dictum in propartem &c., simul " cum prædicto Milone, sine quo " non potest præfatis Bartholomæo " et Luciæ inde respondere. Et " petit auxilium de ipso Milone " summonendo in eodem Comitatu " et Comitatibus Hertfordiæ et " Essexiæ, &c. Ideo ipse sum- " moneatur quod sit hic a die " Paschæ in quinque septimanas " ad respondendum simul, si," &c.

[1] From Harl. and 25,184. This report is in the old editions made a part of No. 85. It is, however, the conclusion of the case No. 59 of Mich. 15 (Maunsel *v.* Maunsel) as stated in the MSS. The record is among the *Placita de Banco* of that Term R° 359 d.

[2] Harl., Gunelde.

[3] Harl., de.

[4] Harl., ile ne allegera, instead of il nenlargea.

[5] 25,184, mesqe.

[6] 25,184, pas unqes.

No. 86.

A.D. 1343 ancestor, who died seised at a later time, I shall well avoid it by reason of the title which has accrued to me at a later time through my ancestor, who was in possession at the time of the execution [of the release]. So in the matter before us.—*Pulteney, ad idem.* I hold that there is a difference between the case in which my ancestor has nothing at the time at which the heir releases with warranty and the case in which he is in possession of the reversion when the release is made, because if my ancestor be disseised, and I release after the disseisin with warranty, even though my ancestor dies afterwards, still I shall be barred because both the title and the possession put me back; but where I release with warranty to tenant for term of life when my ancestor is seised of the reversion at the same time, so that he afterward dies seised and in possession of the vested right which is the title for the heir, then I shall never be barred.—SHARSHULLE. Yes, in such a case the heir can enter, but if it be by way of action he is barred, because I can have a right to land, and yet be barred by warranty if I demand it.—*Thorpe.* Entry shall never be maintained in favour of one who is bound to warrant at the time of his entry.—They were adjourned.

Wardship. (86.) § William Trussel brought a writ of Wardship against the Earl of Hereford in respect of the wardship of Joan, daughter and heir of Hugh [de Braybeof], whose wardship belonged to him by reason of the wardship of the lands and the heir of Hugh de St. John, of which heir the aforesaid Hugh [de Braybeof] held his land by knight service, being in his hand.

No. 86.

murust seisi de puisne temps, jeo le voidra bien pur le title qe moi est acru de puisne temps par mon auncestre, qe al temps de la confeccion fut possessione. *Sic in proposito.—Pult., ad idem.* Jeo tenk[1] diversite ou moun auncestre nad rien quant leir relest ove garrauntie et la ou il est possessione de reversion quant le relees est fait, qar si mon auncestre soit disseisi, et jeo relees apres[2] la disseisine ove garrauntie, tut moert mon auncestre puis, uncore jeo serra barre, pur ceo qe title et possession moy fait puys; mes quant jeo relees ove garrauntie au tenaunt a terme de vie, la ou mon auncestre est seisi de la reversion a mesme[3] le temps, issi qil moert seisi et possessione puis del dreit vestu quel est title al heir, la ne serra jeo pas barre.—SCHAR. Oyl, en tiel cas leir put entrer, et sil soit par voie daccion il est barre, qar jeo pusse aver dreit a une terre, et unqore estre barre par garrauntie, si jeo demande.—*Thorpe.* Jammes ne serra entre meintenu pur celuy qest tenuz de garrauntir au temps de son entre.—*Adjornantur.*[4] A.D. 1343.

(86.)[5] § William Trusselle porta bref de Garde vers le Counte de Hereforde de la garde de J. fille[6] et heir H.,[7] qi garde a luy appent par resoun de la garde des terres et leir H. de Seint Johan, de quel heir lavant dit H.[7] sa terre tient par service de chivaler en sa mayn esteaunt. Et counta qe le Garde.

[1] 25,184, tynk.

[2] Harl., puis.

[3] 25,184, meisme.

[4] Harl., ad jour.

[5] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 636, d. It there appears that the action was brought by William Trussel, of Cublesdene, knight, against Humphrey de Bohoun Earl of Hereford, in respect of the wardship of Joan daughter and heir of Hugh de Braybeof claimed on the ground that the wardship of the land and heir of Hugh de St. John, of which heir Hugh de Braybeof held his land by knight service, was in the hand of William Trussel.

[6] MSS. of Y.B., fitz.

[7] MSS. of Y.B., A.

No. 86.

A.D. 1343. And he counted that the King leased the wardship of the lands and the heir of the aforesaid Hugh de St. John, together with fees, advowsons, and all the appurtenances, to this same William, until the lawful age of the heir, so that, if that heir should die under age, the aforesaid William should have the wardship of another heir, &c., and so on, from heir to heir, until one attained lawful age, and he had had the profit of the marriage of one. And he showed how Hugh de St. John held of the King, &c., and so he is seised of the wardship of the lands and the heir of Hugh de St. John; and so the wardship belongs to him.

No. 86.

Roi[1] lessa la garde des terres et leir lavandit H., ove fees, avowesouns, et touz appurtenaunces, a mesme celuy W., tanqe al leal age leir, issint qe si celuy heir[2] deinz age deviast, qe lavantdit W. avereit la garde dautre heir, &c., issi de heir en heir tanqe al leal age dasqun heir qil ust eu le profit du mariage.[3] Et moustra coment H. tient de Roi, &c., et issi est il seisi de la garde des terres et le heir H.; issi appent a luy la garde.[4] A.D. 1343.

[1] Harl., Roi H.

[2] heir is omitted from Harl.

[3] MSS. of Y.B., manor.

[4] The declaration was, according to the roll, "quod cum prædictus "Hugo de Braybeof tenuit de "Edmundo filio et herede prædicti "Hugonis de Sancto Johanne "maneria de Apelhaghe, Broms-"hulle, Draytone, Swarwetone, "Cranebourne, Stratone, et Ethel-"wartone, per homagium, fide-"litatem, et ad scutagium "domini Regis, cum acciderit, "undecim libras, et ad plus plus, "et ad minus minus, ut per servitia "spectantia ad manerium de "Basynge, quod de domino Rege "tenetur in capite, &c., de quibus "servitiis idem Edmundus fuit "seisitus per manus prædicti "Hugonis de Braybeof ut per "manus veri tenentis sui, et obiit "in homagio ipsius Edmundi, et "quia idem Hugo de Sancto "Johanne tenuit de domino Rege "in capite prædictum manerium "de Basynge, cum pertinentiis, per "servitium militare, die quo obiit, "idem dominus Rex seisivit in "manum suam custodiam prædicti "Edmundi, ratione minoris ætatis "ejusdem Edmundi, post mortem "prædicti patris sui, simul cum "manerio de Basynge prædicto et "aliis terris et tenementis, feodis "et advocationibus, de quibus idem "Hugo de Sancto Johanne obiit "seisitus &c., et postmodum idem "dominus Rex nunc per chartam "suam dedit et concessit ipsi "Willelmo custodiam omnium "terrarum et tenementorum quæ "fuerunt prædicti Hugonis de "Sancto Johanne quæ fuerunt in "manu ipsius Regis ratione "minoris ætatis prædicti heredis, "simul cum feodis militum, et "advocationibus ecclesiarum, et "omnibus aliis rebus ad præ-"dictam custodiam spectantibus, "usque ad legitimam ætatem "prædicti heredis, simul cum "maritagio ejusdem heredis, et si "idem heres infra ætatem decess-"erit, herede ejusdem heredis infra "ætatem existente, quod ipse "Willelmus haberet custodiam "ejusdem heredis sic infra ætatem, "&c., usque ad legitimam ætatem, "&c., in forma supradicta, et sic "de herede in heredem, si, &c., "quousque aliquis eorundem here-"dum plenæ ætatis extiterit, et "idem Willelmus proficuum mari-"tagii alicujus heredis obtinuerit. "Et quia idem Willelmus seisitus "est de custodia prædicti Edmundi "filii et heredis prædicti Hugonis "de Sancto Johanne in forma

No. 87.

A.D. 1343. *Scire facias.* (87.) § The wife of Edmond de Passele brought a *Scire facias* against B.[1] upon a recovery of dower given for her against one Adam.[1]—*Notton.* We tell you that Adam, against whom the original writ was brought, had nothing on the day of the purchase of the original writ, nor on the day on which judgment was rendered, so that the judgment is void; judgment whether execution, &c.—*Richemunde.* To that writ of Dower Adam answered as tenant, and pleaded that the lady was never joined in lawful wedlock, and it was found by Bishop's certificate that she was joined, and therefore she recovered against him as against tenant; and we tell you that your estate is by feoffment from this same Adam; judgment, inasmuch as Adam, whose estate you have, would not be admitted to say this, whether such a plea lies in your mouth.—HILLARY. You know well that he is a stranger, who is not ousted from the averment; wherefore will you accept the averment?—*Richemunde.* Adam was seised on the day on which the judgment was rendered; ready, &c.—And the other side said the contrary.—*Quære*, as to

[1] As to the names *see* p. 379, note 1.

No. 87.

(87.) [1] § La femme Edmond Passeleu [2] porta *Scire facias* vers B. hors dun recoverir de dowere taille pur luy vers un Adam.—*Nottone.* Nous vous dioms qe Adam, vers qi le bref original fut porte, navoit rien jour du bref original [3] purchace, ne jour du jugement rendu, issint le jugement voide; jugement si execucion, &c.[4]—*Richem.* A cel bref de Dowere Adam respondi com tenant, et pleda qe la dame ne fut unqes acouple en leal matrimoigne, et par certificacion de Evesqe est trove qele fut acouple,[5] par quei ele recoveri vers luy com vers [6] tenant; et vous dioms qe vostre estat est del feffement mesme celuy Adam; jugement, desicom Adam, qi estat vous avez, ne serreit resceu a cella dire, si en vostre bouche tiel plee gise.[7]—Hill. Vous savez bien qil est estraunge, qe nest pas ouste del averment; par quei voillez [8] laverement?—*Richem.* Adam fut seisi jour du jugement rendu; prest, &c.—*Et alii e contra.*[9]

A.D. 1343. *Scire facias.* [Fitz., *Faux Recovere,* 38.]

" prædicta pertinet ad ipsum " custodia præfatæ Johannæ filiæ " et heredis prædicti Hugonis de " Braybeof, præfatus Comes custo- " diam illam ei injuste deforciat, " unde dicit quod deterioratus est, " et damnum habet, ad valentiam " mille librarum."

Nothing follows but adjournments.

[1] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 656. It there appears that a *Scire facias* was brought by Joan late wife of Edmund de Passele against Robert de Elnestede and Agatha his wife, and Hugh, Robert's son, as tenants of the manor of Cremosham in Pageham (Pagham, Sussex), and against others as tenants of other tenements in Sussex, to have execution of her recovery in Dower against John de Passele.

[2] Harl., Passelewe.

[3] original is from Harl. alone.

[4] This plea was, according to the roll, " quod prædicta Johanna " executionem versus eos de tertia " parte eorundem tenementorum " habere non debet, quia dicunt " quod prædictus Johannes, versus " quem prædicta Johanna recupera- " vit, &c., die impetrationis brevis " sui, non fuit tenens de tenementis " prædictis. Et hoc parati sunt " verificare, et petunt judicium, " &c."

[5] 25,184, acouplee.

[6] vers is from Harl. alone.

[7] Harl., igise.

[8] 25,184, vous volez.

[9] After the plea Joan replied " quod prædictus Johannes, die " impetrationis brevis sui, scilicet,

Nos. 89, 90.

A.D. 1343. this matter, whether he should have an averment in general terms by saying that the person against whom the writ was brought was not seised, without showing that another person was seised, any more in this case than in a case relating to execution upon a fine.—But exception was not taken on this ground in this case.

Recordari [facias loquelam.] (89.) § *Recordari* was sued out of Ancient Demesne, out of Queen Philippa's Court of the High Peak, and the cause was that the tenant claimed to hold the tenements at common law, and said that he and his ancestors had from all time held them at common law, and not as parcel of the manor aforesaid.—*Grene.* There is no manor named in the writ, but the words are "*Accedas ad Curiam Philippæ, &c., de Alto Pecco,*" and it does not mention any manor; and in the clause relating to the cause of removal the writ says "*manerii prædicti,*" whereas no manor is previously named; judgment of the writ.—HILLARY. There is a manor of High Peak; answer.—*Grene.* Will he maintain his cause?—SHARSHULLE. There is no need for him to do so until it be traversed.—*Grene.* Since it is not denied that the manor is Ancient Demesne, it shall not be averred that the parcel is of any other condition except for a special cause.—SHARSHULLE. Shall he mention any other cause than that which his writ purports?—as meaning to say that he shall not.—*Grene.* The tenements are Ancient Demesne, and have always been so, and not frank fee; ready, &c.—And the other side said the contrary.—*Quære.*

Quid juris clamat: Protection allowed. (90.) § Note that on a *Quid juris clamat*, which

Nos. 89, 90.

—*Quære de ista materia* sil avereit plus laverement generalment, en ceo cas, a dire qe cely vers qi le bref fut porte ne fut pas seisi, sanz moustrer qautre fut seisi qen cas dexecucion hors de fyn.—Mes ceo nest pas[1] chalange ycy.[2] A.D. 1343.

(89.)[3] § *Recordari* fut suy hors Dauncien Demene, hors de la Court la Reigne Philippe[4] del Haut Pecce, et la cause fut pur ceo qe le tenant clama tener les tenementz a la comune ley, et luy[5] et ses auncestres de tut temps lavoient tenue a la comune ley, et non pas parcelle du maner avantdit.—*Grene.* Il ny ad nul maner nome el bref, mes *Accedas ad Curiam Philippæ, &c., de Alto Pecco*, et ne parle de nul maner; et en la clause de la cause le bref dit *manerii prædicti*, ou nul maner est avant nome; jugement du bref.—Hill. Cest un maner de Haut Pecce; responez.—*Grene.* Voet il meintener sa cause. —Schar. Il ne bosoigne pas[1] tanqe ceo soit traverse. —*Grene.* Quant le maner nest pas dedit estre Auncien Demene, la parcelle ne serra pas avere dautre condicion forsqe par especial cause.—Schar. Dirra il autre cause qe son bref voet[6]? *quasi diceret non.*—*Grene.* Les tenementz sount Auncien Demene, et tut temps ount este, et noun pas fraunk fee; prest, &c.—*Et alii e contra.*—*Quære.* *Recordari.*

(90.)[7] § *Nota* qen un *Quid juris clamat*, qe Schard. *Quid juris clamat*[8]: Proteccion allowe.[9] [Fitz., *Protec-cion*, 68.]

" vicesimo octavo die Novembris " anno regni domini Regis nunc " primo, fuit tenens de prædictis " tenementis ut de libero tene- " mento," &c.

Issue was joined upon this, and the *Venire* awarded.

[1] pas is from Harl. alone.

[2] ycy is omitted from Harl.

[3] The report numbered 88 in the old editions has been transferred to the end of No. 43, of which it is a part. This case (No. 89) is from Harl., and 25,184.

[4] Harl., Phelip.

[5] The words et luy are from Harl. alone.

[6] Harl., ne voet.

[7] From Harl., and 25,184.

[8] The words *Quid juris clamat* are omitted from Harl.

[9] The words Proteccion allowe are from Harl. alone.

No. 91.

A.D. 1343. Shardelowe sued, a Protection was produced for the defendant and allowed, notwithstanding that this was contrary to the opinion of Shardelowe himself, because he said that a *Quid juris clamat* is not a plea.—But see the like above, in Michaelmas Term in the 14th year.[1]

Note. (91.) § A *Præcipe* was brought in respect of two messuages, two tofts, and six acres of land.—*Pulteney.* That which he demands by the description of such a quantity is only one messuage and four acres of land, in respect of which we vouch A. to warrant, &c.—*W. Thorpe.* Although he says there are only one messuage and four acres of land, &c., we tell you that there is more, that is to say, two messuages, two tofts, and six acres of land, as our demand is, and as to this he does not answer, and therefore we demand judgment, and pray seisin.—*Pole.* We have taken upon us the tenancy of your demand, and have fully vouched in respect of it, be it more or less, so that what you say as to a greater quantity can never fall into discussion between us; but when the vouchee comes, if he can escape from the warranty in respect of a part, you can then take your advantages, and not before.—*W. Thorpe.* And, if my demand be *in rei veritate* for more than you say, is that any reason, if you vouch as to part, and as to part do not, why by such feigning of words I should be put to delay? And there is a possibility that the vouchee may be in agreement with you, and will not discharge himself of any parcel.—*R. Thorpe.* Is it not possible that I am enfeoffed,

[1] Y.B., M. 14 Edw. III., No. 5.

No. 91.

suyst, Proteccion fut mys avant pur le defendant,[1] et allowe, *non obstante* qe ceo fut countre loppinion SCHARD. mesme, qar il dit qe ceo nest pas plee.—*Sed vide simile supra Michaelis xiiij.* A.D. 1343.

(91.)[2] § *Præcipe*[4] fut porte de ij mies,[5] ij toftes, vj acres de terre.—*Pult.* Ceo qil demande par tiel quantite nest qune mies[5] et iiij acres de terre, et de ceo vouchoms a garraunt A., &c.—*W. Thorpe.* Coment qil dit qil ny ad qune mies[5] et iiij acres de terre,[6] &c., nous vous dioms qil y ad plus, saver ij[7] mies, deux toftes, vj[8] acres de terre, come nostre[9] demande est, de quei il ne respound pas, [par quei nous demandoms jugement],[10] et prioms seisine.—*Pole.* Nous avoms enpris tenance de vostre demande, et pleinement de ceo avoms vouche, soit il plus ou meins, issi qe ceo qe vous parletz de plus graunt quantite ne put jammes entre nous[11] chere en debat; mes quant le vouche vendra, sil put estourtre de parcelle de la garrauntie, donqes poietz prendre vos avantages, et devant nient.—[*W.*] *Thorpe.* Et, si ma demande soit *in*[12] *rei veritate* de[13] plus qe vous ne ditez, est ceo resoun, si vous vouchez de partie, et de partie noun,[14] qe par tiel feindre des paroles jeo serray mys a delay? Et si est ceo possibelite qe le vouche serra de vostre assent, et ne se[15] voet pas descharger de nulle parcelle.—[*R.*] *Thorpe.* Ne poet il estre qe jeo su[16] feffe, par un

Nota.[3] [Fitz., *Counterple de Voucher*, 69.]

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[1] 25,184, demandant.

[2] From Harl., and 25,184.

[3] This is the marginal note in Harl. In 25,184, it is *Præcipe quod reddat*, but not in a contemporary hand.

[4] 25,184, Bref.

[5] 25,184, mes.

[6] The words de terre are omitted from Harl.

[7] 25,184, et un, instead of saver ij.

[8] ij in both MSS.

[9] 25,184, le.

[10] The words between brackets are omitted from 25,184.

[11] nous is omitted from Harl.

[12] Harl., de.

[13] de is from Harl. alone.

[14] Harl., nient.

[15] 25,184, de, instead of ne se.

[16] 25,184, feu.

No. 92.

A.D. 1343. by the description of one messuage and four acres of land, of that which you demand as being more? And suppose that issue is taken between us as to the residue, and my voucher stands in respect of that in respect of which I have vouched, and the finding is for me, what will happen from that issue? It will be to no purpose so far as I am concerned, because my voucher was previously good as to the entirety.—*Pulteney, ad idem.* If the case be such as *W. Thorpe* puts, he will have a good counterplea, even though on our part we abridge the demand, because as to parcel he can counterplead the voucher, as by saying, as to one messuage, two tofts, and two acres of land, &c., that the vouchee, &c., never had anything.—*W. Thorpe.* That counterplea could not be made to accord with the manner of your voucher.—And afterwards *W. Thorpe* made such a counterplea as that which *Pulteney* gave.—HILLARY. That is not binding in any way, because he has vouched as to the entirety of your demand, and that voucher you do not counterplead.—Afterwards *W. Thorpe* said *gratis*, as to the whole of the demand, that the vouchee, &c., never had anything.—And with regard to this matter the point was touched that, when any one demands a greater number of acres and the tenant answers in respect of a less number, and pleads a release in bar, the demandant will not have an averment that his demand is of the greater number, but will plead to the release, and as to the rest will say that it is not included.—*Quære* as to this matter.

Waste. (92.) § Waste against a woman and her husband, supposing that they hold for the life of the woman by purchase made to her and her first husband, and the heirs of the first husband, whose heir the plaintiff is.

No. 92.

mies et[1] iiij acres de terre, de[2] ceo qe vous demandez[3] come plus? Et jeo pose qe issue se prent entre nous del remenant, et moun voucher estut[4] de ceo dount[5] jay vouche, et trove fut pur moy, quei avendreit de cel issue? A nul purpos pur moy, qar devant mon voucher fut bon del entier.—*Pult., ad idem.* Si le cas soit tiel come *W. Thorpe* met,[6] il avera bon countreplee, tut abreggeoms nous de nostre part la demande, qar de[7] parcelle il put countrepleder le voucher, come a dire dun mies, deux toftes, deux acres[8] de terre, &c., le vouche, &c., navoit unqes rien.—*W. Thorpe.* Ceo countreplee ne se purreit pas acorder a la manere de vostre voucher.—Et[9] puis *W. Thorpe* dona tiel[10] countreplee come *Pult.* dona.—Hill. Ceo ne lia[11] nient, qar il ad vouche entierement de[12] vostre demande, quel vous countrepledez pas.—Puis *W. Thorpe* dit *gratis* qe quant a tut le vouche, &c., navoit unqes rien.—Et en[13] ceste matere[14] fut touche qe quant homme demande par plus, et le tenant par meins de nombre des acres respount,[15] &c., et[16] plede par relees en barre qe le demandant navera pas averement qe sa demande est de[2] plus, mes pledra al relees, et al remenant dirra qe nient compris.—*Quære de ista materia.* A.D. 1343.

(92.)[17] § Wast vers une femme et son baroun, supposant qils tenent a la vie la femme par purchace fait a luy et son primer baroun, et les heirs le primer baroun, qi heir le pleintif est.—*Grene.* Wast. [Fitz., *Confirmacion*, 9; *Wast*, 109.]

[1] et is omitted from Harl.
[2] de is from Harl. alone.
[3] Harl., maundetz.
[4] 25,184, esteint.
[5] Harl., qe.
[6] Harl., mette.
[7] de is omitted from Harl.
[8] Harl., carues.
[9] Et is omitted from Harl.
[10] 25,184, cel.
[11] Harl., nest, instead of ne lia.
[12] 25,184, en.
[13] en is from Harl. alone.
[14] 25,184, manere.
[15] respount is from Harl. alone.
[16] et is from Harl. alone.
[17] From Harl., and 25,184.

No. 93.

A.D. 1343. —*Grene.* Heretofore this same person brought a Formedon against us, supposing the gift to have been made to his ancestor, as whose heir he now claims, and the heirs of his body, &c.; judgment of this writ which supposes that the ancestor had a fee simple.—But he did not dare to abide judgment on this point, but said that the plaintiff by deed, of which he made *profert*, had confirmed the estate of the husband and his wife against whom, &c., for the life of the wife; judgment of this writ which supposes that the husband has nothing but by reason of the coverture.—Sharshulle. This deed does not prove that he has any other estate than by the coverture.—*Grene.* Suppose the confirmation were to the effect that the husband should hold for his own life, how would the writ be then?—Sharshulle. Then it would be supposed in the writ that the husband and his wife hold for their two lives.—*Grene.* And yet in such a case, during the wife's life, the husband would have only an estate by coverture, because the freehold which is in the woman would not be changed, so that the husband would have only an expectation of a freehold after the death of his wife; and, if the writ would be altered in form on such a matter, for the same reason it should be in this case, because the husband has now a tenancy different from that which he had before the confirmation, that is to say, in his own right.—Shardelowe. We do not see that he could have any other writ in this case, and, therefore, answer.

Formedon. (93.) § William de Notton and Isabel his wife brought a Formedon in the Descender against one W.,[1] upon

[1] As to the name *see* p. 387, note 9.

No. 93.

Autrefoitz porta mesme cestuy[1] Formedoun vers nous, supposaunt le doun estre fait a son auncestre, come qi heir il cleyme a ore, et les heirs de soun corps, &c.; jugement de ceo bref qe suppose ceo qil avoit fee simple.—Mes sur ceo il nosa pas demurer, mes dit qe le pleintif, par fait, quel il met[2] avant, avoit conferme lestat le baroun et sa[3] femme vers queux, &c., a la vie la femme; jugement de ceo bref qe suppose qe le baroun nad qe coverture.—Schar. Ceo fait ne proeve pas qil ad autre estat qe coverture. —*Grene.* Jeo pose qe le confermement fut qe le baroun tendreit a sa vie demene, coment serreit le bref?—Schar. Donqes serreit le bref supposaunt qe le baroun et sa femme tenent a lour ij[4] vies.—*Grene.* Et unqore en tiel cas, vivant la femme, le[5] baroun navereit forsqe coverture, qar le fraunktenement ne serra pas chaunge en la femme, issi qe le baroun navereit forsqe biaunce[6] dun fraunktenement apres la mort sa femme; et si le bref[7] serreit chaunge en fourme sur cel matere par mesme la resoun en ceo cas, qar le baroun ad ore autre tenance qil navoit devant le confermement, saver, en son dreit demene.—Schard. Nous ne veioms[8] pas qil avereit autre bref en le cas, et pur ceo responez. A.D. 1343.

(93.)[9] § W. Nottone et Isabele sa femme porterent Formedoun en descendre vers un W., par qi defaut Formedoun.

[1] Harl., cely.
[2] Harl., mette.
[3] Harl., la.
[4] ij is from Harl. alone.
[5] In 25,184, there are substituted for the words vivant la femme le, the words la femme vivant son.
[6] 25,184, biaunt.
[7] Harl., lestat le baroun, instead of le bref.
[8] 25,184, veioms bien.
[9] From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 17 Edw. III., R° 620 d. It there appears that the action was brought by William de Notton and Isabel his wife against William de Haliburne, clerk, in respect of one messuage in Southwark, which William de Whittokesforde gave to Adam de la Rose and Cecilia his wife in special tail, and which after their death ought to descend to their daughter the demandant Isabel.

No. 93.

A.D. 1343. whose default one J.,[1] by whose lease W.,[1] the tenant, held for term of life, was admitted to defend his right, and vouched W.,[1] through whose default he was admitted, to warrant.—*Grene.* He shall not be admitted to vouch, and to make a party for the purpose of saving the freehold, the person who has lost it by his own default.—This exception was not allowed, but the tenant was thereupon put to show a cause for his voucher. —*Gaynesford.* W.[2] was seised, and enfeoffed A.,[2] to hold to him and his heirs and assigns, and bound, &c., which A. enfeoffed us, &c., and so we, as assignee of A., vouch him.—*Pulteney.* He vouches as assignee, and as to that he shows nothing.—*Gaynesford.* There is no need that we should show anything to you.—Sharshulle. Then you have nothing.—*Gaynesford* made *profert* of the two deeds, and the demandant had law on his side that he might see with certainty whether the other was assignee.

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[1] As to the names *see* p. 389, note 2.

[2] As to the names *see* p. 389, note 4.

No. 93.

un J., de qi lees W.,[1] tenant, tient a terme de vie, fut resceu a defendre son dreit, et voucha W. a garraunt par qi defaut il fut resceu.[2]—*Grene.* De voucher celuy, et luy faire partie a sauver le franktenement, qe par sa defaut lad perdu, il ne serra resceu.—*Non allocatur*, par quei il fut mys de moustrer cause de son voucher.[3]—*Gayn.* W. fut seisi, et feffa A. a luy et ses heirs et ses assignes, et obligea, &c., quel A. nous feffa, &c., issi nous, come assigne A., le vouchoms.—*Pult.* Il vouche come assigne, et de ceo ne moustre rien.—*Gayn.* Il ne bosoigne pas a vous.—SCHAR. Donqes navez rien.—*Gayn.* mist avant les deux faits, et le demandant avoit ley pur veer moun sil fut assigne.[4] A.D. 1343.

[1] Harl., le.

[2] After the tenant's default, according to the roll, "venit "quidam Henricus Sterre, et dicit "quod prædictus Willelmus de "Haliburne tenet prædictum "mesuagium ad terminum vitæ "suæ ex dimissione ipsius Henrici, "et petit quod ipse per defaltam "prædicti Willelmi admittatur ad "defensionem juris sui, &c. Et "admittitur, &c. Et idem Henri-"cus vocat inde ad warantum "Willelmum Baiou de Haliburne "personam ecclesiæ Sancti Georgii "de Suthwerke," &c.

[3] The counterplea, according to the roll, was "quod prædictus "Willelmus Baiou, quem prædictus "Henricus vocat, &c., est eadem "persona versus quem ipse tulit "istud breve, et qui modo fecit "defaltam, per quod ad vocare "ipsum, &c., nisi causam ostendat, "admitti non debet," &c.

[4] The entries on the roll after the counterplea are :—

"Et Henricus dicit quod præ-"dictus Willelmus Baiou, quem, "&c., per nomen Willelmi Baiou "personæ ecclesiæ Sancti Georgii "de Suthwerke, per chartam suam "feoffavit de mesuagio illo quan-"dam Isabellam quæ fuit uxor "Thomæ Servat civis Londonien-"sis, tenendo sibi et heredibus "suis, et obligavit se et heredes "suos ad warantizandum sibi et "assignatis suis. Et profert hic "prædictam chartam quæ hoc "testatur, &c. Quæ quidem Isabella "postmodum per chartam suam "dedit et concessit mesuagium "illud ipsi Henrico et heredibus "suis, &c. Et profert hic præ-"dictam chartam quæ hoc testatur. "Unde ipse Henricus, ut assigna-"tus præfatæ Isabellæ, vocat ad "warantum prædictum Willelmum "Baiou, &c. Habeat eum hic a "die Paschæ in quinque septi-"manas per auxilium Curiæ."

The reports of the year end at this point in both the MSS., and in Harl. there are the words "Explicit Septimus Decimus."

Nos. 97, 98.

A.D. 1343. Detinue. (97.) § Two persons brought a writ of Detinue of a writing against one A., and both counted against him that the writing was delivered as to an impartial hand on certain conditions, &c. A. came and fully admitted that the writing had been delivered to him on the conditions alleged, but said that he did not know whether the conditions had been performed or not, and that he was ready to deliver the writing to whomsoever the Court should adjudge. And because at the time one of those who were parties to the conditions did not appear in his own person, and the conditions could not be pleaded unless both parties appeared in their own persons, a writ therefore issued to warn the one who did not appear returnable now. And now the garnishment was testified, and he did not appear in his own person. And the other appeared in his own person, and prayed that the writing might be delivered to him. And so it was by judgment of the Court.—See as to this Michaelmas Term in the 9th year, and a contrary decision in Michaelmas Term in the second year, when they awarded a *Venire facias* to cause the other to come in his own person on another day.

Wardship. (98.) § A writ of Wardship was brought against Gerard de Braybroke, and against one A. The Grand Distress was returned against G., and served. A. appeared; G. did not.—*Richemunde* counted against A. that this same A., together with G. who did not appear, &c., tortiously deforced him from the wardship.—*R. Thorpe.* You suppose by your writ that A. and G. are deforcers in common in respect of this wardship, wherefore one shall not answer without the other.—*Richemunde.* Since A. is in Court, and has heard our count, and does not deny the words of it, we demand

Nos. 97, 98.

(97.) [1] § Deux porterent briefe de Detenue descript vers un A., et lun et lautre counterent vers luy qe lescript fut baille en owel mayn sur certeine condicion, &c. A. vient et conust bien qe lescript fut livere sur mesmes les condicions, mes le quel les condicions furent parfournis ou nemy il ne savoit, et prest fut a liverer lescript a qi la Court agardereit. Et pur ceo qe adonqes un de eux qe fut partie a les condicions ne fut pas la en propre persone, et les condicions ne poient estre pledes si ambedeux parties ne fuissent en propre persone, par quei [2] bref issit de garnir cesty qe ne vient mye retournable a ore. Et ore fut le garnissement tesmoigne, et il ne vient pas en propre persone. Et lautre vient en propre persone, et pria qe lescript luy fut livere. Et fut par agarde de Court.—*Vide de hoc Michaelis ix, et contrarium Michaelis secundo*, ou ils agarderent un *Venire facias* de faire vener lautre en propre persone a un autre jour. A.D. 1343. Detenue.

(98.) [3] § Un briefe de Garde fut porte vers Gerard de Braybroke, et vers un A. La graunt Distresse fut retourne vers G., et servi. A. vient; G. ne vient pas.—*Richem.* counta vers A. qe mesme cesty A., ove G. qe ne vient pas, &c., a tort luy deforce la garde.—*R. Thorpe.* Vous supposez par vostre bref qe A. et G. sount deforceours de ceste garde en comune, par quei lun ne respoundra pas sanz lautre. —*Richem.* Depuis qe A. est en Court, et ad oy nostre count, et ne defend mye les paroles, nous Garde.

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[1] No. 94 of the old editions is a second report of No. 6, No. 95 a second report of No. 5, and No. 96 a second report of No. 9. They are printed at the end of the first reports of the cases to which they respectively relate at pages 25, 15, and 49.

No MS. of No. 97 has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

[2] par quei is omitted from the edition of 1679.

[3] No MS. of this report has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

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A.D. 1343. judgment.—SHARSHULLE. Your writ is a *Præcipe quod reddat*, wherefore one cannot answer without the other; but if it were in a writ of Ejectment from Wardship, or Ravishment of Ward, which are in their nature like a writ of Trespass, then one could answer without the other.—*R. Thorpe.* Then we pray Proclamation against Gerard.—*Richemunde.* You cannot award Proclamation in this case, since the two are deforcers in common, and one appeared.—HILLARY and the other JUSTICES were minded to award the Proclamation against Gerard, and they looked at the process, and found that in the County in which the original writ was brought the Sheriff had testified that Gerard had nothing, and upon that the plaintiff had testified that he had assets in another County in which the Distress upon Gerard was now returned.—SHARSHULLE. The Statute[1] which gives Proclamation does not give process in any other County than that County in which the original writ was brought; and you have taken your suit in another County, and so the process is at the common law; wherefore you cannot now have Proclamation.—*R. Thorpe.* Sir, the Statute does not say anything more than that, if the deforcer does not appear on the Grand Distress, Proclamation shall then issue against him, so the Statute does not speak more in one County than in another; wherefore, &c.—SHARDELOWE. The Statute does not give process in any other County than that in which the writ is brought, &c.—HILLARY, *ad idem.* If on a writ of Trespass the Sheriff return that the defendant has nothing, and the plaintiff testify that he has assets in another County, and on that testification have a writ, &c., even though the Sheriff of the other County return that the defendant has nothing, the plaintiff shall never have an Exigent in that County, but must always sue a *Capias*, and that was the result of his

[1] 52 Hen. III. (Marlb.), c. 7.

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demandoms jugement.—Schar. Vostre briefe est un *Præcipe quod reddat*, par quei lun ne puit mye respoundre saunz lautre; mes si ceo soit en briefe Dengettement de Garde, ou Ravissement, &c., qe sount en lour nature auxi come briefe de Trespas, la purra lun respoundre saunz lautre.—*R. Thorpe.* Donqes prioms nous la Proclamacion vers Gerard.—*Richem.* Vous ne poiez mye agarder la Proclamacion en ceo cas, depuis qe les deux sount deforceours en comune, et lun vient.—Hill. et les autres Justices furent en oppinion daver agarde la Proclamacion vers Gerard, et ils regarderent le proces, et troverent qen cel Counte ou original fut porte le Vicounte avoit tesmoigne qe Gerard navoit riens, et sur ceo le pleintif avoit tesmoigne qil avoit assetz en autre Counte, en le quel la Distresse fut ore retourne sur Gerard.—Schar. Lestatut qe doune Proclamacion doune nul proces en autre Counte qen cel Counte ou loriginal fut porte; et vous avez pris vostre suyte en autre Counte, issint proces a la comune ley; par quei vous ne poiez pas Proclamacion aver a ore.—*R. Thorpe.* Sire, lestatut ne parle autre rienz mes si le deforceour ne vient pas a la graunt Distresse qadonqes la Proclamacion issera devers luy, issint lestatut parle nient plus en un Counte qen autre; par quei, &c.—Schard. Lestatut ne doune le proces en nul autre Counte forsqe la ou le bref est porte, &c.—Hill., *ad idem.* Si en briefe de Trespas le Vicounte retourne qe le defendant nad rienz, et le pleintif tesmoigne qil ad assetz en autre Counte, et sur le tesmoigne eit briefe, &c., mesqe le Vicounte del autre Counte retourne qe le defendant nad riens, le pleintif navera jammes en cel Counte Lexigende, einz covient tout temps de suyre le *Capias*, et ceo fist A.D. 1343.

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A.D. 1343. testification; so also in this case; wherefore, since you have commenced your suit at common law, so you must prosecute it.—And so he did, by judgment.

Quare impedit. (99.) § In a *Quare impedit* brought against one A., and Alice daughter of John G., A. was essoined on the Summons, and afterwards made default until the Grand Distress; and on the Grand Distress A. appeared, and the plaintiff was essoined, and had a day over, on which day A. was essoined, and the plaintiff appeared, and had a day over, and on that day A. appeared, and said that she had not disturbed, &c.; whereupon the plaintiff, because A. did not claim anything in the advowson, &c., prayed a writ to the Bishop, and had it. And as to her damages, because A. had taken her delays, as above, she said that A. should not be admitted to deny the disturbing, and prayed her damages. —*Derworthy.* We have denied the disturbing, and are ready to aver that we did not disturb, &c.; wherefore will you accept the averment?—*Richemunde.* You have made yourself a disturber by the delays which you have taken.—Hillary. There cannot be said to be a disturbing unless it be before the purchase of the writ. —*Thorpe.* In an Assise of Novel Disseisin, and in a *Quare impedit*, one can make himself a disseisor, or a disturber where he was not a disseisor or a disturber before the purchase of the writ, as in a case in which he counterpleads the plaintiff's action, but through taking delays one shall not be adjudged a disseisor or a disturber.—*W. Thorpe.* On a writ of Debt, and on a writ of Dower, if the person against whom the writ is brought take delay by essoin, or in any other manner, even though he appear afterwards, and, without any other counterplea, confess the action, and say

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sa tesmoigne; auxi en ceo cas; par quei, depuis qe vous avez comence vostre suyte a la comune ley, il covient qe vous le pursues.—*Et sic fecit* par agarde. A.D. 1343.

(99.)[1] § En un *Quare impedit* porte vers un A. et Alice la fille Johan G., a la Somons A. fut essone, et puis fist defaut tanqe al graunt Distresse; et a la graunt Destresse A. vient, et le pleintif fut essone, et avoit jour outre, a quel jour A. fut essone, et le pleintif appiert, et avoit jour outre, a quel jour A. vient et dit qele navoit mye destourbe, &c.; sur quei le pleintif, pur ceo qe A. ne clama riens en lavowesoun, &c., priast[2] briefe al Evesqe, et lavoit. Et quant a ses damages, pur ceo qe A. avoit pris ses delaies, *ut supra*, il dit qe A. ne serreit pas resceu a dedire la destourbaunce, et pria ses damages.—*Derworthi.* Nous avoms dedit la destourbaunce, et sumes prest daverer qe nous ne destourbames pas; par quei voillez laverement?—*Richem.* Par les delaies qe vous avez pris vous avez fait vous mesmes destourbour.—Hill. La destourbaunce ne puit estre dit, si ceo ne fut devant le briefe purchace.—*Thorpe.* En un Assise de Novele Disseisine, et en un *Quare impedit*, un homme soy purra faire disseisour ou destourbour la ou il ne fut pas disseisour, ou, &c.,[3] devant le briefe purchace, auxi come en cas ou il countreplede laccion le pleintif, mes par delaies prendre homme ne serra pas ajuge disseisour ne destourbour.—*W. Thorpe.* En briefe de Dette, et en briefe de[4] Dowere, si cesty vers qi le bref est porte preigne delaie par essone, ou en autre manere, mesqe il veigne apres sanz nul autre countreplee, et conust laccion, et dit qil ad *Quare impedit.*

[1] No MS. of this report has been found, and there is no reference to it in Fitzherbert's *Abridgment*.

[2] Rastell, il priast.

[3] &c. is omitted from the edition of 1679.

[4] The words briefe de are omitted from the edition of 1679.

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A.D. 1343. that he has always been ready to render the debt, or dower, &c., the demandant, even without affirming against him that he has not been ready, &c., will recover damages against him, because the Court is apprised by the delays that he has not been ready; so also in this case.—*Seton.* In this case it is not as it is in a case in which any one says that he has always been ready, because, when any one would escape damages on the ground that he has been always ready, he must appear on the first day, because the writ has always been good against him; but in this case the writ was not good against A. if she was not a disturber before the writ was purchased, &c.; and the delays, &c., might be the act of another person as well as her own act, &c.—Sharshulle. When any one appears and is essoined, that essoin ought not afterwards to be adjudged the act of another person, because he is apprised of the plea, &c.; wherefore, since A. caused herself to be essoined after appearance, it seems that she made herself a disturber.—*Derworthy.* We have tendered the averment that we did not disturb; ready. Wherefore, will he accept the averment?—*Richemunde.* Since you have taken your delays, and particularly after appearance, we demand judgment whether you ought to be admitted to such an averment, and we pray our damages.—And so to judgment.—Hillary said, in this plea, that in any action, although the defendant or the tenant appear on the first day, and confess the action, &c., still on account of the damages the demandant shall be admitted to aver that he has not been always ready.—Shardelowe also said, in this plea, that, in a *Quare impedit*, although the plaintiff has caused himself to be essoined, and although the time may have passed before he recovers his presentation, he will recover damages against the disturber, as the Statute[1] gives them, in case he shall be able to maintain against

[1] 13 Edw. I. (Westm. 2), c. 5 § 3.

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este tout temps prest a rendre la dette et dowere, &c., tout saunz affermer sur luy qil nad mye este prest, &c., le demandant recovera ses damages vers luy, pur ceo qe par les delaies, &c., la COURT est appris qil nad mye este prest; auxi en ceo cas.—*Setone.* Il nest mye en ceo cas come il est en cas ou homme dit qil ad este tout temps prest, car quant homme voudra eschuer damages pur ceo qil ad este tout temps prest, il covient qil veigne al primer jour, pur ceo qe le briefe a tout temps fut bon devers luy; mes en ceo cas le briefe ne fut pas bon devers A. si ele ne fut destourbour devant le briefe purchace, &c.; et les delaies, &c., purront estre autri fait auxi bien come son fait demene, &c. —SCHAR. Quant un homme appiert, et est essone, apres homme ne deit ajugger cel essone autri[1] fait, qar il est appris de plee, &c.; par quei, depuis qe A. soy fist essoner apres apparaunce, il semble qe il soy fist mesme destourbour.—*Derworthi.* Nous avoms tendu daverer qe nous ne destourbames pas; prest. Par quei voet il laverement?—*Richem.* Depuis qe vous avez pris vos delaies, et nomement apres apparaunce, nous demandoms jugement si a tiel averement devez avener, et prioms nos damages.—*Et sic ad judicium.*—HILL. dit, en ceo plee, qen un accion,[2] mesqe le defendant ou le tenaunt veigne au primer jour, et conust laccion, &c., uncore pur les damages le demandant serra resceu daverer qil nad mye este tout temps prest.—SCHARD. dit auxi, en ceo plee, qen un *Quare impedit*, coment qe le pleintif soy fist essoner, mesqe le temps passe avant ceo qil recovere son presentement, il recovera damages vers le destourbour, come lestatut doune, en cas qil purra A.D. 1343.

[1] Old editions, autre or auter.

[2] In the earliest editions there is a blank space where "acc'" is inserted in the edition of 1679.

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A.D. 1343 the defendant by averment, or in any other manner, that the latter has disturbed him; and this he said because some were of opinion that, although the time had passed, so that the Bishop presented, &c., still the plaintiff, inasmuch as he caused himself to be essoined within the period of six months, would recover damages only according to the value of the church for half a year, as if he had recovered the presentation within the time, &c.—The plaintiff counted, as to Alice, that it belonged to her to present for the reason that one R. was seised of the same advowson in the time of a certain King, and presented to the same church one F., his clerk, &c., who, on his presentation, &c., and showed how afterwards her husband purchased the same advowson by fine, and died seised of other lands and tenements, and because he held *in capite* of the King, the King seised the same advowson, and lands, and tenements into his hand, wherefore the plaintiff sued in Chancery for her dower, so that this same advowson and other tenements, &c., were assigned to her to hold in the name of dower, after which assignment the church became void, &c.—*Derworthy.* Sir, we tell you that the advowson of the church, &c., is appendant to a moiety of the manor of K., wherefore, Sir, we do not admit that her husband purchased, &c. And we tell you that this same R., from whom, &c., was seised of the same moiety of the manor, and of the same advowson as appendant, &c., and presented F., &c., which R. held the same moiety of J. G. by knight service. And we tell you that, after R.'s death, because his heir was under age, the King seised the same moiety into his hand, and because he was apprised that R. did not hold of him *in capite* as of his Crown, but as of the Honour of Peverel, he removed his hand from that which was not holden of him, and permitted each lord to have the wardship of that which was holden of him; wherefore this same J. G. seized the same moiety into his hand, as by

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meintener sur luy par averement, ou en autre manere, qil luy ad destourbe; et ceo dit il pur ceo qe ascuns furent en opinion qe, coment qe le temps fut passe, issint qe Levesqe presenta, &c., uncore le pleintif, en taunt qil fist mesme essoner deinz le temps des vj mois, il ne recovera damages mes solonc la value del eglise dun demi an, auxi come sil ust recoveri le presentement deinz le temps, &c. —Le pleintif, quant a Alice, counta qe a luy appent a presenter par la resoun qun R. fut seisi de mesme lavowesoun en temps de certein Roi, et a mesme leglise presenta un F., son clerk, &c., qe a son presentement, &c., et moustra coment puis par fyn son baron purchacea mesme lavowesoun, et des autres terres et tenements morust seisi, et pur ceo qil tient en chefe du Roi, le Roi seisist mesmes lavowesoun, et terres, et tenements en sa mayn, par quei la pleintif suist en la Chauncellerie pur son dowere, issint qe mesme cele avowesoun et autres tenements, &c., la furent assignes a tener en noun de dowere, puis quel assignement leglise se voida, &c.—*Derworthi.* Sire, nous vous dioms qe lavowesoun del eglise, &c., est appendaunt a la moite del maner de K., par quei, Sire, nous ne conissoms pas qe son baron purchacea, &c. Et vous dioms qe mesme cesty R. de qi, &c., ci fut seisi de mesme la moite del maner, et de mesme lavowesoun come appendaunt, &c., et presenta F., &c., le quel R. cy tient mesme la moite de J. G. par service de chivaler. Et vous dioms qe apres la mort R., pur ceo qe son heir fut deinz age, le Roi seisist mesme la moite en sa mayn, et pur ceo qil fut appris qe R. ne tient pas de luy en chief come de sa corone, einz come del Honour de Peverel, il ousta la mayn de ceo qe ne fut pas tenuz de luy, et suffri qe chescun seignur ust la garde de ceo qe fut tenuz de luy; par quei mesme cesty J. G. seisist mesme la moite en sa mayn come par resoun de garde, par A.D. 1343.

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A.D. 1343. reason of wardship, by reason of the non-age of R.'s heir, which J., on his death-bed, devised the wardship of the same moiety, &c., to this same Alice, and so she is seised of the moiety of the manor to which the advowson, &c., and so it belongs to her to present.—*R. Thorpe.* You have not denied that this advowson was assigned to us in the Chancery to hold in the name of dower; wherefore, &c.—*Derworthy.* Your husband was never seised of the advowson, wherefore, as soon as the King had removed his hand, the advowson remained with those who had right to it; wherefore, &c.—HILLARY. If this advowson was there assigned, as, &c., the person who had right ought to have sued in Chancery to defeat that assignment; wherefore, &c.—And the opinion was that, whether the woman had right to have dower of this advowson or not, the assignment would stand in force until it was defeated by suit in Chancery.—And afterwards by agreement Alice said that she could not deny that it belonged to the plaintiff to present, &c.—Therefore the plaintiff will have judgment to recover her damages as well against A. as against Alice, &c.

Formedon. (101.) § One A.[1] brought his writ of Formedon against B.[1] Process was continued on the writ until the Quinzaine.—*Pulteney.* Sir, we tell you that, while this writ was pending, one R.[2] brought an Assise of Novel Disseisin against us in respect of these same

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[1] As to the names *see* p. 401, note 4.

[2] As to the name *see* p. 403, note 1.

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resoun le nonage leir R., le quel J., en son lit murrant, devisa la garde de mesme la moite, &c., a mesme cesty Alice, et issint est ele seisi de la moite del maner a quei lavowesoun, &c., issint appent a luy de presenter.—*R. Thorpe.* Vous navez pas dedit qe cely avowesoun ne fut assigne a nous en la Chauncellerie, a tener en noun de dowere; par quei, &c.—*Derworthi.* Vostre baroun ne fut unqes seisi del avowesoun, par quei, a plus tost qe le Roi avoit ouste sa mayn, lavowesoun demura a eux qe dreit en avoient; par quei, &c.[1]—Hill. Si cel avowesoun la fut assigne come, &c., il coviendreit qe cesty[2] qavoit dreit suist en la Chauncellerie a defaire cel assignement; par quei.—Et opinion fut, le quel qe la femme avoit dreit daver dowere de ceste avowesoun, ou nemy, qe lassignement estoiera en sa force tanqe ceo fut defait par suite en la Chauncellerie.—Et puis par acorde Alice dit qele ne put dedire qil appent al pleintif de presenter, &c.—Pur quei ele avera jugement de recoverir ses damages auxi bien vers A. come vers Alice, &c. A.D. 1343.

(101.)[3] § Un[4] A. porta son briefe de Fourmedoun vers B. Proces continue sur le briefe tanqe al Quinzaine.[5]—*Pult.* Sire, nous vous dioms qe, pendant ceo bref, un R. cy porta Assise de Novele Disseisine vers nous de mesmes ceux tenements, Fourmedoun.

[1] The words par quei, &c., are omitted from the edition of 1679.

[2] The words qe cesty are omitted from the editions subsequent to Rastell's.

[3] No. 100 of the old editions is a second report of No. 11, and is printed at the end of the first report of that case at p. 59.

[4] No MS. of this report (No. 101) has been found, and there is no reference to it in Fitzherbert's *Abridgment*. The record, however, seems to be that found among the *Placita de Banco*, Mich., 17 Edw. III., R° 86 d, where it appears that Robert son of Robert de Eton, by his guardian, brought a writ of Formedon against Robert de Rokle in respect of land in Leghe (Berks) which Robert Bustard gave to Robert de Eton, knight, in frank-marriage with his daughter Joan.

[5] Old editions, quinzim.

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A.D. 1343. tenements, by which Assise it was found that this same R.[1] was seised and disseised, wherefore it was adjudged that she should recover, &c. Thus we have lost the tenements by action tried while this writ was pending; therefore we cannot render his demand; therefore we demand judgment of the writ.—And he was not compelled by the Court to say that R.[1] recovered in respect of a disseisin effected on her before the writ of Formedon was purchased, which was strange. —*Pole*. We tell you that this Assise, of which he now speaks, was brought by agreement between the tenant and this same R.[1] in order to cause us to lose our writ, *absque hoc* that this same R.[1] was ever disseised before our writ was purchased. And we do not understand that by any recovery of which he speaks, which was thus made by agreement, and in a case where the person who recovered had not a title, &c., they can abate our writ.—Sharshulle. You have admitted that the person against whom the writ is brought has lost the tenements by action tried while your writ was

[1] As to the name *see* p. 403, note 1.

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par quel Assise fut trove qe mesme cesty R. fut seisi et disseisi, pur quei agarde fut qil recoverast, &c. Issint nous avoms perdu les tenements par accion trie pendant ceo briefe; par quei nous ne pooms sa demande rendre; pur quei nous demandoms jugement de briefe.[1]—Et il ne fut pas chace par la COURT a dire qe R. recoveri dun disseisine faite a luy devant le briefe de Fourmedoun purchace, *quod mirum fuit.—Pole.* Nous dioms qe cel Assise, de quel il parle cy, fut porte par consent entre le tenaunt et mesme cesty R. pur nous faire perdre nostre briefe, saunz ceo qe mesme cesty R. fut unqes disseisi avant nostre briefe purchace. Et nentendoms pas qe par nul recoverir[2] de quei il parle, qe issint fut fait par consent, et sur la ou cesty qe recoveri navoit mye title, &c., puissent nostre briefe abatre.[3]—SCHAR. Vous avez conu qe cesty vers qi le briefe est porte ad perdu les tenements par accion trie A.D. 1343.

[1] The plea was, according to the roll, "quod quædam Sarra Perle "de Draytone, alias, scilicet . . . ". . coram Willelmo de Shares- "hulle et sociis suis Justiciariis "domini Regis ad Assisas in præ- "dicto Comitatu capiendas assig- "natis, apud Grauntpount juxta "Oxoniam, tulit quoddam breve "Assisæ Novæ Disseisinæ versus "ipsum Robertum de Rokle et "quendam Johannem de Leghe, "et posuit in visu prædicta tene- "menta nunc petita, quæ quidem "Assisa ibidem inter eos capta fuit, "per quam compertum fuit quod "prædicta Sarra disseisita fuit de "tenementis illis, per quod ipsa, "per judicium super veredictum "Assisæ illius redditum, recuper- "avit tenementa illa cum pertinen- "tiis, et inde secuta fuit executi- "onem, et sic dicit quod ipse "virtute judicii prædicti et execu- "tionis ejusdem amisit tenementa "illa, per quod breve istud de jure "cassatum fuit, unde petit judi- "cium de brevi," &c.

[2] Old editions, recorde.

[3] The replication was, according to the roll, "quod per hoc breve "suum cassari non debet, dicit "enim quod prædictum breve "Assisæ arramiatum fuit per con- "sensum et collusionem inter præ- "dictam Sarram et prædictos "Robertum de Rokle et Johannem "de Leghe præhabitam ut per hoc "idem Robertus filius Roberti "amitteret breve suum prædictum, "absque hoc quod prædicta Sarra "unquam de tenementis prædictis "seisita fuit seu disseisita ante "diem impetrationis brevis sui "prædicti."

No. 102.

A.D. 1343. pending; and you do not show that the disseisin on which R.[1] recovered, &c., was while your writ was pending; and it cannot be adjudged a plea to traverse the title on which R.[1] recovered except where any one would allege that recovery in bar of your action; wherefore the Court adjudges that you take nothing by your writ.—*Pole.* Sir, we pray that our plea be entered.—And so it was.—*Quære*, if *Pole* had said that the disseisin, &c., was effected while the writ was pending, whether the others would have been compelled to say that the disseisin was effected before the writ was purchased, &c.

Replevin. (102.) § One A.[2] complained that Hugh de Audele, Earl of Gloucester, and W.[3] tortiously took his beasts. Hugh denied the taking. William[3] made cognisance of the taking as good, &c., as bailiff of Hugh de Audele and Margaret his wife, on the ground that this same A.[4] held of Gilbert de Clare, heretofore Earl of Gloucester, as of his manor of K.,[5] certain tenements in E.,[6] whereof the place, &c., by homage, fealty, and scutage, that is to say where the scutage runs, &c., and by suit to this same Gilbert's court of his manor of K.,[5] from three weeks to three weeks, and

[1] As to the name *see* p. 403, note 1.

[2] John de Warbelton, according to the record.

[3] "Thomas Jonesservant Fromount," according to the record.

[4] John de Warbelton's father John, according to the record.

[5] Bletchingley, according to the record.

[6] The manor of Tandrige, according to the record.

No. 102.

pendant vostre briefe; et vous ne moustrez mye qe la disseisine sur quei R. recoveri, &c., fut pendant vostre briefe; et de traverser le title sur quel R. recoveri ne puit estre ajuge plee, mes en cas ou homme voille allegger cel recoverir[1] en barre de vostre accion; par quei la Court agarde qe vous ne pernes riens par vostre briefe.[2]—*Pole.* Sire, nous prioms qe nostre plee soit entre.—*Et sic fuit.*—*Quære*, si *Pole* ust dit qe la disseisine, &c., fut faite pendant le briefe, si les autres serroient chaces daver dit qe la disseisine fut faite devant le briefe purchace, &c. A.D. 1343.

(102.)[3] § Un A. soy pleint qe H. Daudele, Counte de Gloucestre, et W. a tort pristerent ses avers. Hughe dedit la prise. William conust la prise bone, &c., come baillif Hughe Daudele et M. sa femme, par la resoun qe mesme cesty A. tint de Gilbert de Clare, jadis Counte de Gloucestre, come de son maner de K., certeins tenements en E., dont le lieu, &c., par homage, fealte, et escuage, saver, quant lescuage court, &c., et par suyte a la court mesme cesty G. de son maner de K. de iij semaignes en *Replegiari.*

[1] Rastell, recorde.

[2] The judgment was, according to the roll, "quia prædictus "Robertus filius Roberti non "dedicit recuperare prædictum per "judicium super veredictum "Assisæ prædictæ redditum, et sic "tenementa illa a possessione "prædicti Roberti de Rokle re-"cuperata fuerunt per actionem "triatam, in quo casu videtur "Curiæ hic quod prædictus Ro-"bertus filius Roberti ad hujus-"modi verificationem quam præ-"tendit non est per legem terræ "admittendus, Ideo consideratum "est quod prædictus Robertus de "Rokle eat inde sine die, et "prædictus Robertus filius Roberti "nihil capiat per breve suum, sed "sit in misericordia pro falso "clameo," &c.

[3] No MS. of this report has been found, and there is no reference to it in Fitzherbert's *Abridgment*. It is, however, a continuation, or rather an independent report of Y.B., Easter 15 Edw. III., No. 42, (Warbelton *v.* the Earl of Gloucester and another) by the aid of which it has been corrected. The record is among the *Placita de Banco* of that Term, R° 112.

No. 102.

A.D. 1343. by the services of 2*s.* by the year, to be paid, &c., of which services Gilbert was seised by the hand of this same A.,[1] as, &c. And from Gilbert the same manor, together with other lands and tenements, fees and advowsons, descended to the aforesaid Margaret[2] and one D.,[2] as to daughters and heirs. And because this same Gilbert held of the King *in capite*, the same manor, together with the other lands, &c., all the lands of this same Gilbert, were seized, &c.; wherefore partition was made in the Chancery of the same manor, and of the other lands, &c., between these same Margaret and D., so that, among other lands and tenements, the demesne of the same manor, and the suit of the aforesaid A. due to the same manor of K., and also the aforesaid rent were assigned to the purparty of Margaret in satisfaction for the other lands, &c. which were assigned to the purparty of D. And the knights' fees of the same manor were assigned, among other fees, to the purparty of D.,[3] &c. Margaret married Hugh de Audele, and D.[3] married Hugh le Despenser. And because, on the day of the taking, the suit, and the rent, &c., were in arrear, he made cognisance as bailiff of Hugh [de Audele], which Hugh had denied the taking.—For this reason exception was taken.—And the exception was not allowed.—*R. Thorpe.* Sir, when any one has to make cognisance for suit, and for rent, or for other services, as in right of another person, he must suppose by his cognisance that the tenements where the taking, &c., and which he charges, are of the fee of the person in whose name he makes the cognisance; now W. has by his cognisance expressly admitted that the tenements which he seeks to charge are out of the fee of

[1] John de Warbelton's father John, according to the record.

[2] Margaret, Eleanor, and Elizabeth, according to the other report and the record.

[3] Eleanor, according to the other report and the record.

No. 102.

iij semaignes, et par les services de ij*s*. par an, a paier, &c., des queux services G. fut seisi par my la mayn mesme cesty A., come, &c. Et de Gilbert descendi mesme le maner, ove autres terres et tenements, fees et avowesouns, a levantdite M. et une D., come a filles et heirs. Et, pur ceo qe mesme cesty G. tient du Roi en chef, mesme le maner, ove les autres terres, &c., touz les terres mesme cesty G. furent seisis, &c.; par quei en la Chauncellerie purpartie se fist de mesme le maner, et des autres terres, &c., entre mesmes ceux M. et D., et issint qe, entre autres terres et tenements, le demene de mesme le maner, et la suyte lavauntdit A. due[1] a mesme le maner de K., et auxint lavauntdit rente furent assignes a la purpartie M. en allowance des autres terres, &c. qe furent assignes a la purpartie D. Et les fees de chivaler de mesme le maner furent assignes, entre autres fees, a la purpartie D., &c. M. soy espousa a Hughe Daudele, et D. a Hughe le Despencer. Et pur ceo qe, jcur de la prise,. la suyte, et le rente, &c., furent arrere, si conust il come baillif Hughe, le quel Hughe avoit dedit la prise.—Et par taunt chalenge.—*Et non allocatur.—R. Thorpe.* Sire, quant homme deit faire conissaunce pur suyte, et pur rente, ou pur autres services, auxi come en autri dreit, il covient qil suppose par sa conissaunce qe les tenements ou la prise, &c., et les queux il charge, soient del fee cesty en qi noun il fist la conissaunce; ore ad W. par sa conissaunce expressement conu qe les tenements les queux il est a charger sount hors del fee A.D. 1343.

[1] Edition of 1679, qe.

No. 102.

A.D. 1343. Hugh and Margaret his wife, in whose right, &c.; wherefore we demand judgment, &c.—*Gaynesford.* We have alleged the partition to have been made by matter of record in the Chancery, and that is not denied by you, nor do you deny that the suit and the rent were in arrear just as, &c.; wherefore, &c.—And so to judgment.—This plea was pleaded some time ago, and adjourned until now.—And now *R. Thorpe* came, and demanded judgment on the plea pleaded, and said that, if any one have a manor, and a tenant who holds of him as of the same manor by certain services and by suit to the same manor, and if he grant the services of the same tenant to another, and the tenant attorn, the suit is extinguished, inasmuch as the person who has granted cannot have it because the tenements are, by his grant, out of his fee, and the other cannot have it because he is not seised of the manor to which the suit is due; so in this case, since W. by his cognisance has shown that the knights' fees of the manor of K. were assigned to the purparty of D., and so the tenements where the taking, &c., are out of the fee of Hugh and Margaret, and so no avowry for his suit or for the rent is maintainable for them. Therefore *R. Thorpe* demanded judgment, and said that in a case where two parceners have a tenant who holds of them by rent and by certain other services, even though the parceners make partition of the rent between them, one of them shall never have avowry in respect of the other services which are chargeable, without a cognisance for the other, because in law it could not be called a partition, and if the seignory in its entirety be allotted to the purparty of one, and the rent and the other services such as suit and other such services are allotted to the purparty of the other, she who has not the seignory will not have any avowry.—*W. Thorpe.* In the case in which we are

No. 102.

Hughe et M. sa femme, en qi dreit, &c.; pur quei nous demandoms jugement, &c.—*Gayn.* Nous avoms allegge la purpartie estre fait par chose de recorde en la Chauncellerie, la quele chose nest pas dedit de vous, ne vous ne dedites pas la suyte et le rente ne fuerent arere auxi come, &c.; pur quei, &c.—*Et sic ad judicium.*—Ceo plee fut plede avant ces houres, et ajourne tanqe a ore.—Et ore vient *R. Thorpe*, et demanda jugement sur le plee plede, et dit qe si un homme eit un maner, et un tenaunt qe tient de luy come de mesme le maner par certeins services et par suyte a mesme le maner, sil grante les services de mesme le tenaunt a un autre, et le tenaunt sattourne, la suyte est esteinte, pur ceo qe cesty qe lad[1] graunte ne puit pas ceo aver car les tenements par son graunt sont hors de son fee, ne lautre ne puit laver pur ceo qil nest pas seisi del maner a quei la suyte est due; auxi en ceo cas, depuis qe W. par sa conissaunce avoit moustre qe les fees de chivaler del maner de K. furent assignes a la purpartie D., issint les tenements ou la prise, &c., hors de fee Hughe et M., issint nul avowere pur sa suyte ne pur le rente meintenable pur eux. Par quei[2] il demanda jugement, et dit qen cas qe ij parceners ount un tenaunt qe tient de eux par rente et par certeins autres services, mesqe les parceners entre eux facent purpartie del rente, de les autres services qe sont apportable lun navera jammes avowere sanz conissaunce pur lautre, pur ceo qen ley ceo ne purreit estre dit une purpartie, et si la seignurie entierment soit allote a la purpartie lun, et le rente et les autres services auxi come suyte et autres tiels services sont allotes a la purpartie lautre, cesty qe nad mye la seignurie navera nul avowere.—*W. Thorpe.* En le cas ou nous sumes la purpartie A.D. 1343.

[1] Old editions, quest la, instead of qe lad.

[2] The words Par quei are omitted from the edition of 1679.

No. 114.

A.D. 1343. the partition was effected by matter of record in the Chancery, which cannot be adjudged to be the act of Margaret, and since you do not deny the partition, judgment, &c.

Statute Merchant. (114.) § With regard to a statute merchant the defendant said that he was under age at the time at which the statute was made.—SHARDELOWE. You cannot be admitted to that averment, because it would be to defeat a record, and that is a thing which the law does not permit; but in case you could still be adjudged to be under age by inspection, it has been in such a case that a writ has been granted to defeat the recognisance. But now you plead as a man of full age; wherefore you are not in that case, &c.

No. 114.

fut faite par chose de recorde en la Chauncellerie, qe ne puit estre ajuge le fait M., et depuis qe vous ne dedites pas la purpartie, jugement, &c. A.D. 1343.

(114.) [1] § En un estatut marchaunt le defendant dit qil fut deinz age al temps destatut fait.—SCHARD. A cest averement vous ne poiez pas estre resceu, car ceo serreit a defaire un recorde, quel chose la ley ne suffre pas; mes en cas qe vous purrez uncore estre ajuge deinz age par inspeccion, homme ad vewe en tiel cas qe briefe ad este graunte a defaire la reconissaunce. Mes ore vous pledez come homme de plein age; par quei vous nestes pas en le cas, &c.[2] Statut Marchaunt.

[1] No. 103 of the old editions is a second report of No. 42, No. 104 of No. 17, No. 105 of No. 44, No. 106 of No. 20, No. 107 of No. 12, No. 108 of No. 10, No. 108 (*bis*) or 109 of No. 21, No. 110 of No. 28, No. 111 of No. 29, No. 112 of No. 25, and No. 113 of No. 61. They are printed at the end of the first reports of the cases to which they respectively relate at pages 237, 79, 245, 93, 69, 53, 107, 147, 151, 133, and 285.

No MS. of No. 114 has been found, and there is no reference to it in Fitzherbert's *Abridgment*, but the case appears to be that which is reported in known MSS. as No. 16 of Hil., 18 Edw. III. The record of it, however, seems to be that which is found among the *Placita de Banco*, Mich., 17 Edw. III., R° 268 d. The obligor in the statute merchant was John Pade, son and heir of John Pade, and the obligee John de Langacre, the elder. The obligor obtained an *Audita Querela* on the ground that a writ of execution had issued against him in respect of a statute merchant made while he was under age.

On the appearance of the parties "Johannes filius Johannis dicit "quod prædicto die recognitionis "prædicti debiti ipse fuit infra "ætatem. Et hoc paratus est "verificare, &c., Unde petit judi- "cium si ipse, virtute recognitionis "prædictæ, de prædicto debito "onerari debeat," &c.

There was then an adjournment, and when the parties again appeared the Court gave judgment as follows:—

"Quia videtur CURIÆ quod "verificatio prædicta quam præ- "dictus Johannes filius Johannis "prætendit in adnullationem re- "cognitionis prædictæ, quæ de "recordo est, in hoc casu non est "admittenda, consideratum est "quod prædictus Johannes de "Langacre habeat inde execu- "tionem, &c. Et idem Johannes "filius Johannis in misericordia, "quia contraplacitavit executi- "onem prædictam. Ideo habeat "inde breve per Statutum," &c.

[2] No. 115 of the old editions is a second report of No 33, No. 116 of No. 24, No. 117 of No. 32, No. 118 of No. 35, and No. 119 of No. 31. They are printed at the end of the first reports of the cases to which they respectively relate at pages 191, 125, 165, 207, and 155.

HILARY TERM

IN THE

EIGHTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

HILARY TERM IN THE EIGHTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

No. 1.

A.D. 1343-4.

Quare impedit.

(1.) § A *Quare impedit* was brought, in respect of a Hospital, for the King, who counted by *Thorpe* that one J.[1] was seised of the advowson as appendant to the manor of Esher, and presented his clerk,[1] who was admitted and instituted by the Bishop, &c. And *Thorpe* counted further that the King, in a certain year, seized the manor, with fees and advowsons, into his hand, for certain reasons, and so it remained in his hand until a certain time when, upon payment of a fine, it was sued out; and during the time when the manor was in the King's hand the Hospital became vacant through the death of the presentee, &c.; and so it belongs to him to present, &c.—And upon non-denial the King had a writ to the Bishop.

[1] As to the names *see* p. 415, notes 1 and 2.

DE TERMINO SANCTI HILLARII ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU DECIMO OCTAVO.[1]

No. 1.

A.D. 1343-4
Quare impedit.

(1.)[2] § *Quare impedit* dun Hospital pur le Roi, qe counta par *Thorpe* qun J. fut seisi del avowesoun come appendaunt al maner[3] de E.,[4] et presenta son clerk, qe fut resceu et institut de Evesqe, &c. Et counta outre qe le Roi, certein an, seisist[5] le maner, ove fees et avowesouns, en sa mayn, par certeinz enchesouns, et issint en sa mayn demura tanqe a certein temps qe, par[6] fyn faire, ceo fut suy hors; et en temps quant le maner fut en la mayn le Roi Lospital se voida par mort le presente, &c.; issint appent a luy a presenter, &c.[7]—Et sur nient dedire le Roi ad bref al Evesqe.[8]

[1] The reports of this Term are from the Lincoln's Inn MS , the Harleian MS. No 741 (containing two independent sets of reports as far as the middle of No. 9), and the "Additional" MS. in the British Museum numbered 25,184. In 25,184, the general heading is preceded by the words "In principio "Termini Pulteneye moriebatur, "quem Deus absolvat." It is followed by the words "La Rountable "comencee a Wyndesore Die Lunæ "proximo ante Festum Conver- "sionis Sancti Pauli decimo octavo. "—Hill."

[2] From L., Harl. (No. 1), and 25,184, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 35. It there appears that the action was brought by the King against William de Milbourne, in respect of a presentation to the Hospital of St. Mary Magdalene, of Sandon (Sandown, Surrey).

[3] L., manoir.

[4] MSS. of Y.B., B.

[5] L., seisi.

[6] par is omitted from Harl.

[7] The declaration was, according to the record, "quod quidam "Willelmus de Milbourne fuit "seisitus de manerio de Esshere "Wateville, ad quod advocatio "Hospitalis prædicti pertinet, qui "ad illud præsentavit quendam "Johannem Brounchild, clericum "suum, qui ad præsentationem "suam fuit admissus et institutus, "tempore pacis, tempore domini "Regis nunc. Et postmodum "idem manerium seisitum fuit in "manum ipsius Regis nunc, qui- "busdam certis de causis, quo "tempore prædictum Hospitale "vacavit per resignationem præ- "dicti Johannis Brounchild, "manerio prædicto in manu ejus- "dem Regis adhuc sic existente, "et ea ratione ad ipsum dominum "Regem pertinet ad prædictum "Hospitale præsentare."

[8] The defendant, according to the record, confessed the King's

No. 2.

A.D. 1343-4.

Jurata utrum.

(2.) § *Jurata utrum* in respect of rent. The person against whom the writ was brought answered as tenant of the land, and vouched. And the voucher was counterpleaded on the ground that it is at variance with the action on this writ which supposes the demand to be frank-almoign, and if the voucher were permitted, it would be to suppose that the demand is the tenant's lay fee.—This exception was not allowed.—Therefore the voucher was counterpleaded on the ground that the tenant is tenant of the land, and the demand is for rent service, in which case voucher does not lie.—Willoughby. Do you understand that to be a counterplea?—*Grene.* Yes, Sir.—Willoughby. Certainly it is not.—Sharshulle. In some cases it is, and in other cases it is not.—And the voucher stood.—But note that the demandant held simply to that which was no counterplea, that is to say that it was rent service.—Therefore *Quære.*

Jurata utrum.

§ A *Jurata utrum*, which was returned, was brought by one to ascertain whether tenements were frank-almoign appendant to the Chantry at the altar of Our Lady, &c., or lay fee of the other party, and by the writ the plaintiff demanded one carucate of land and 10*s.* of rent against a woman.—*Gaynesford* took exception to the writ on the ground that the Statute[1] gives such a writ for the Warden of a Chantry in a church, but not in relation to a chapel.—And this exception was not allowed.—*Gaynesford.* We hold the land and the rent for the term of our life by lease from one J., the reversion being to one H. and to G., sons and heirs of this same J., because the tenements are partible; for such cause we vouch them, &c., as above.—*Grene.* The cause which you have shown for having the voucher is contrary to our writ, for by our

[1] 14 Edw. III., St. 1, c. 17.

No. 2.

A.D. 1343-4. Jure de *utrum*.

(2.) [1] § Jure de *utrum* de rente. Celuy vers qi le bref est porte respondi come tenant de la terre, et voucha. Et [2] fut countreplede par taunt qe cest a contrarie del accion en ceo bref, qe suppose la demande estre frank almoigne,[3] et, si le voucher fut suffert, serra a supposer qe ceo fut lay fee le tenaunt.—*Non allocatur.*—Par quei [4] le voucher fut countreplede pur ceo qil est tenaunt de la terre, et la demande est [5] de rente service, en quel cas voucher ne gist pas.—Wilby. Entendes vous qe ceo soit countreplee.—*Grene.* Sire, oyl.—Wilby. Certes noun est.—Schar. En ascun cas il est, en ascun cas nient.—Et le voucher estut.—*Sed nota* qe le demandant se tient pur sur noun countreplee qe ceo fut rente service.—*Quære ergo.*

Jure de *utrum*. [Fitz., *Briefe*, 354; *Voucher*, 2.]

§ Jure [6] de *utrum* fuit porte par un, qe retourne fuit, le qel les tenementz furent fraunk almoigne appendaunt a la Chaunterie al autier de nostre Dame, &c., ou lay fee lautre, et par le brief il demanda une carue de terre et xs. de rente vers une femme.—*Gayn.* challengea le brief qar statut doune tiel bref pur gardein de Chaunterie en un eglise, et noun pas pur une chapelle.—*Et non allocatur.*—*Gayn.* Nous tenons la terre et la rente a terme de nostre vie du lees un J., la revercion a un H. et G. fitz et heirs mesme cesty J., pur ceo qe les tenementz sount departables, &c.; par tiel cause nous vouchoms, &c., *ut supra.*—*Grene.* La cause qe vous avez moustre daver le voucher est encountre nostre brief,

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right to present on the particular occasion, "salvo jure suo præsentandi ad idem Hospitale in aliis vacationibus, cum accederint."

[1] From L., Harl. (No. 1) and 25,184, until otherwise stated.

[2] L., quel.

[3] All the MSS. of Y.B., fee.

[4] L., qoi.

[5] 25,184, fut.

[6] This report of the case is from Harl. No. 2 alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

Nos. 3, 4.

A.D. 1343-4. writ we suppose the tenements to be held at common law.—Willoughby. They may, nevertheless, be partible between males, as they are in fees in Rutland and in Nottinghamshire, and, therefore, will you say something else?—*Grene.* We say that those whom she vouches are the sons of her husband, so that, if the writ had been brought against her husband and her, she would not have had the voucher as against her husband without showing a cause, and therefore no more can she vouch the heirs without showing a cause.—And this exception was not allowed.—*Grene.* Again they ought not to be admitted to such a voucher in respect of the rent, because that which we demand against them is rent service, in respect of which she cannot vouch, &c.—Hillary. She vouches as tenant of the rent, and therefore the voucher is permissible enough, even though it be in respect of rent service; wherefore let the voucher stand; but it would have been otherwise if she had vouched as tenant of the land and receiver of the rent, in which case she would not have had the voucher.

Fine. (3.) § Land was rendered by fine to a man and his wife and the heirs male of the husband's body begotten, so that, if the husband die without heir male of his body begotten, after the death of the husband and his wife, the tenements remain to the right heirs of the husband.—And the fine was admitted, &c., as above.

Dower. (4.) § Dower. Discontinuance in the process was alleged, inasmuch as a common day had been given as in any common plea, and another day is limited in Dower by Statute,[1] and so the plea was without day.

[1] 51 Hen. III., St. 3, otherwise *incerti temporis* (*Dies communes de Dote*).

Nos. 3, 4.

qar par nostre brief nous supposoms les tenementz estre tenuz a la comune ley.—Wilby.[1] Unqore ils pount estre departables entre madles come deinz le fee de Rithelonde et Notingehame, &c., et pur ceo volez autre chose dire?—*Grene.* Nous dioms qe ceux qil vouche sount les fitz soun baroun, issi qe, si le briefe eust estre porte vers soun baroun et ly, ele neust pas eu le voucher vers soun baroun saunz cause moustrer, par quei nient plus puit ele voucher les heirs saunz cause, &c.—*Et non allocatur.—Grene.* Unqore il ne deyvent a tiel voucher estre resceu en dreit de la rente, qar ceo qe nous demandoms vers eux est rente service, de qel il ne puit pas voucher, &c.—Hill. Il vouche come tenant de la rente, par quei le voucher est assetz suffrable mesqe ceo soit de rente service; par quei estoise le voucher; mes *secus esset* sil eust vouche come tenant de la terre et resceivour de la rente, en qel cas il nust[2] pas eu le voucher. A.D. 1343-4.

(3.)[3] § Terre par fyn fut rendu a un homme et sa femme et les heirs madles du corps le baroun engendrez, issint qe si le baroun devie saunz heir madle de son corps engendre qapres le decees le baroun et sa femme qe les tenements remeignent[4] as dreits heirs le baroun.—*Et recipitur*, &c., *ut supra.*[5] Fyn.

(4.)[3] § Dowere. En le proces discontinuaunce fut allegge, par taunt qe comune jour fut done come[6] en autre comune plee, et par statut est limite autre jour en Dowere, et issint saunz jour.—*Et nota* qe Dowere.

[1] The word Wilby is omitted from the MS., but is required in order to make sense, and has been supplied on the authority of Fitzherbert, who must have seen some other MS.

[2] MS., nest.

[3] From L., Harl. (No. 1) and 25,184.

[4] L., remaignent.

[5] The words, &c., *ut supra* are omitted from 25,184.

[6] come is from 25,184 alone.

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A.D. 1343-4. —And note that the King's Roll[1] has the words "*et hoc precc petentis,*" but in the Roll of the Justices[1] a day is given as in Dower, by virtue of which prefixion they have a day now.—And it was said by the COURT to the party that if the Roll of the Justices had been in accordance with the King's Roll, it would have been a discontinuance.—*Quære.*—SHARSHULLE. We will not so lightly discontinue an action of Dower, and we find good process in the Roll of the Justices, and therefore we must give them a day over.

Voucher: *Præcipe quod reddat* in the Hustings of London.

(5.) § A writ was brought in the Hustings of London against Geoffrey Pokoke and Joan his wife, who vouched a foreigner to warrant, wherefore the record was sued into the Bench. There the vouchee appeared, and asked what they had to bind him to warrant. And the tenants went, by leave, to seek their counsel. And one day afterwards they were solemnly called, and they did not appear. And on the morrow the wife proffered herself, and prayed to be admitted.—*Richemunde.* Your default, and that of your husband, in contempt of the Court, were recorded yesterday, at which time the wife did not appear; wherefore the Court cannot do anything but send back the record, and, in that case, no judgment affecting the loss of the land can be given in this Court; wherefore she cannot be admitted.—KELSHULLE. If she did not pray to be admitted, would not the land be lost in this Court?—*Richemunde.* No, Sir, you have no power by the Statute[2] to render judgment in this Court except on the warranty.—KELSHULLE. What you say is wrong; judgment shall be given in this Court as to the land. —HILLARY. Even though judgment shall not be given in this Court as to the land, at least that which shall be done in this Court will be a cause of the loss of

[1] For a description of the King's Roll, and of the Roll of the Justices, *see* Y.B., 16 Edw. III. Part 2, Introd. pp. xxv-xxix.

[2] 6 Edw. I. (Gloucester), c. 12.

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le roulle le Roi est tiel *et hoc prece petentis*, mes en le roulle des[1] Justices jour de dowere est done, par quel prefixioun ils ount jour a ore.—Et fut parle par COURT a partie qe si roulle des Justices fut acordaunt al roulle le Roi qe ceo ust este discontinuaunce.—*Quære.*—SCHAR. Nous ne voloms pas si legerment[2] discontinuer un Dowere, et nous trovoms bon proces en roulle des Justices, par quei il covient de les doner jour outre. A.D. 1343-4

(5.)[3] § Brief fut porte en le Hustenges[5] de Loundres vers Geffrey Pokoke[6] et Johane sa femme, qe voucherent forein a garrant, par quei[7] le recorde fut suy en Baunk, ou le vouche vint, et demanda ceo qil avoit de luy lier. Et tenantz alerent,[8] par conge, de quere lour counseil. Et puis un jour solempnement furent demandez, et ne vindrent[9] pas. Et lendemeyn la femme se profri, et pria destre resceu.—*Richem.* Vostre defaut, et de vostre baroun, en despit de la Court, est[10] hier[11] recorde, a quel temps ele ne vint pas; par quei Court ne put autre chose faire mes remaunder le recorde, et en ceo cas en ceste Court nulle jugement se put faire sur perde de la terre; par quei ele nest pas resceivable. —KELS. Si ele ne priast destre resceu, ne serra terre perdu ceinz?—*Richem.* Noun Sire, vous navez pas poier[12] par statut de rendre jugement ceinz forsqe sur la garrauntie.—KELS. Vous ditez mal; le jugement ceinz serra rendu de la terre.—HILLAR. Tut ne serra pas le jugement rendu ceinz de la terre, al meyns ceo qe serra fait ceinz serra cause

Voucher: *Præcipe quod reddat* [en] le Hustenges, Loundres.[4]

[1] Harl., del; 25,184, de la.
[2] Harl., and 25,184, largement.
[3] From L., Harl. (No. 1), and 25,184, until otherwise stated.
[4] The words of the marginal note after Voucher are from L. alone, and the word Voucher from the other two MSS. alone.
[5] 25,184, Hustynghe.
[6] 25,184, Pekoke.
[7] L., qoi.
[8] L., alerunt.
[9] L., vendrerent.
[10] Harl., fust.
[11] Harl., heir.
[12] L., power; Harl., poer.

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A.D. 1343-4. the land elsewhere; wherefore she is capable of being admitted, and we admit her.—*Gaynesford.* On behalf of the wife who is admitted we vouch the same person that was vouched at first, &c.—*Richemunde.* You shall not be admitted to that voucher in this Court, because you cannot hold plea in this Court except on the first voucher.—*W. Thorpe, ad idem.* Suppose the tenant who vouches had not appeared, but made default, for which reason the *Cape* was to be awarded, you ought not to make process on the default in this Court, but to send back the parol, because your power and that which you ought to do in the case is limited by the Statute, that is to say, to send it back to the Hustings when the warranty is settled.—*R. Thorpe.* On default made here the Court will never make any other process than this.—*W. Thorpe.* This Court cannot do anything else but record the default, and that the wife proffered herself to be admitted.—Kelshulle. Suppose the tenants were warranted, and the warrant vouched over a foreigner in this Court, would not that voucher be allowed, and settled in this Court.—*R. Thorpe.* I think it would; but if the warrant pleaded in chief to the action, he would not be heard in this Court.—*Stouford.* No more than he will be able to plead in chief in this Court, will this Court hold plea on any other voucher than that to which they are held by the Statute.—Kelshulle. It would be hard, and a great delay to the demandant, if they were to go back to the Hustings, and there vouch a foreigner, and afterwards return into this Court on the same cause.—Sharshulle. You speak as if the lady could not be admitted, but we have admitted her; and if she were still to be admitted she would be admitted; but say something further on the question whether we shall allow the new voucher in this Court.—*Moubray.* Suppose she did vouch now in this Court; she would

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de la perde aillours; par quei ele est resceivable, et nous la resceivoms.—*Gayn.* Pur la femme qest resceu vouchoms come primes estoit vouche mesme la persone, &c.—*Richem.* A ceo voucher ceinz ne serrez[1] pas resceu, qar vous ne poietz en ceste Court tener plee forsqe sur le primer voucher.—*W. Thorpe, ad idem.* Jeo pose qe le tenant qe vouche nust pas apparu, mes fait defaut, par quei *Cape* fut dagarder, vous ne dussetz pas ceinz faire proces sur la defaut, mes remaunder la parole, qar vostre poair[2] est limite par statut, et ceo qe vous devetz faire en le cas, saver, quant la garrauntie est discus, remaunder al Hustenges.—*R.*[3] *Thorpe.* De defaut faite ceinz ne fra jammes Court autre proces forsqe ceste.—[*W.*] *Thorpe.* Ceste Court ne put faire autre chose forsqe recorder[4] la defaut, et qe la femme[5] se profri destre resceu.—Kels. Jeo pose qe les tenantz fuissent garrauntiz, et le garraunt vouchast outre un forein ceinz, ne serra cel voucher suffert et discus en ceste Court?—*R. Thorpe.* Jeo quide qoil; mes si le garraunt[6] pledast en chief al accion, il ne serra pas escote ceinz.—*Stouf.* Nient plus qil purra pleder en chief ceinz, nient plus tendra cest Court plee sur autre voucher qe cel sur quel ils sount tenuz par statut.—Kels. Ceo serreit fort, et graunt delay al demandant de retourner, et voucher illoeqes forein, et puis retourner sur mesme la cause ceinz.[7]—Schar. Vous parlez auxi come la dame ne fust pas resceivable, et nous lavoms resceu; [et si ele fust unqore a resceivere ele serreit resceu][8]; mes parletz outre si nous suffroms le novel voucher en cest Court.—*Moubray.* Jeo pose qele vouchast ore

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[1] L., serra.
[2] L. and Harl., power.
[3] *R.* is omitted from L. and Harl.
[4] 25,184, remander.
[5] femme is omitted from 25,184.
[6] 25,184, tenant.
[7] ceinz is omitted from L.
[8] The words between brackets are omitted from 25,184.

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A.D. 1343-4. afterwards go back to the Hustings, and would revouch anew, so that her voucher now, which will not be of record there, will be of no effect.—Stonore to *Richemunde*. For whom are you speaking?—*Richemunde*. For the demandant.—*Gaynesford*. And the wife who prays agrees with you, and prays that it be recorded that she proffered herself in this Court, &c., and prays further that adjournment be made into the Hustings. —Sharshulle. You are acting wisely, for this is to the delay of the demandant. And afterwards Hillary said: We have admitted the wife to defend her right, and because we cannot further hold the plea in this Court, we will record what has been done, and will give a day to the parties in the Hustings.—And so it was done, and so the matter was ended.—*Quære* whether by law the wife should be admitted in this case before she had appeared in the Hustings.—And note that the roll mentions that she was admitted and vouched.—And afterwards this was reprobated by Willoughby, as to the admission, and also as to the voucher; but she was admitted by others, and though it may be otherwise than right, it can only be redressed by writ of Error, because it is entered on the roll.

Dower. § Thomas de B. and Alice his wife brought their writ of Dower in the Hustings of London against G. de P. and Alice his wife, who vouched a foreigner to warrant, wherefore they adjourned the parties into the Bench on a certain day, on which day the tenant sued a writ to cause his warrant to come into the Bench on a certain day according to the Statute.[1] The vouchee came and asked what they had to bind him, whereupon the tenants prayed leave to seek their counsel. And they were afterwards called, and they

[1] 6 Edw. I. (Gloucester), c. 12.

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ceinz; apres ele retournereit[1] en le Hustenges, et revouchereit de novel, issint qe son voucher a ore, qe ne serra pas de recorde illoeqes, serra de nul effecte.—Ston. a *Richem.* Pur qi parlez vous?—*Richem.* Pur le demandant.—*Gayn.* Et la femme qe prie sacorde ove vous, et prie qe ceo soit recorde coment ele sa profert[2] ceinz, &c., et prie outre qe lajournement se face en le Hustenges.—Schar. Vous fetez[3] sagement, qar cest en delay del demandant.—Et puis Hill. dit: Nous avoms resceu la femme a defendre son dreit, et pur ceo qe nous ne poms ceinz plus avant plee tenir, nous recordroms ceo qest fait, et durroms jour as parties en le Hustenges.—*Et ita fit, et sic terminatur negotium.*—*Quære* si de ley la femme serreit en ceo cas resceu devant qele venist en le Hustenges.—*Et nota* qe le roulle fait mencion qele est[4] resceu et voucha.—Et puis par Wilby. ceo fut reprove quant a la resceit, et auxi quant a voucher; mes par autres est resceu, tut soit il autre qe bien, ceo covient estre redresse par Errour, *quia intratur in rotulo.* A.D. 1343-4.

§ Thomas[5] de B. et Alice sa femme porterent lour bref de Dower en le Hustynges de Londres vers G. de P. et Alice sa femme, les queux vouche-rent un forein a garraunt, par quei ils ajournerent les parties en Baunk a certein jour, a quel jour le tenant suist bref de faire venier soun garrant en Baunk *secundum statutum* a certein jour. Le vouche vint et demanda ceo qil avoit de ly lier, &c., sur quei les tenantz prierent conge de quere lour conseil. Et puis furent demandez, et ne vindrent pas, par Dower. [Fitz., *Resceit*, 106.]

[1] MSS. recovereit.
[2] L. profrist.
[3] 25,184, feistez.
[4] est is omitted from L. and Harl.
[5] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1343-4. did not appear, wherefore the Court, on their default, took time to consider until the morrow what was to be done on this default because the parol was pending in the Hustings of London.—The vouchee prayed to be discharged from the warranty, and the demandant prayed her dower.—Alice came, and prayed to be admitted by reason of the default of G., her husband, &c.—*Richemunde.* Your husband's default was recorded yesterday, wherefore, since you did not appear at that time, you have out-stayed your time, and therefore you cannot now be admitted.—Hillary. A default made yesterday and a default made to-day are all one, since the Court took time for consideration on such default until to-day; therefore see whether you will say anything else.—*Richemunde.* Sir, you see plainly how process is made before you, on this voucher, by benefit of the Statute, which purports that, after the plea on the warranty is determined, you send the parol into the Hustings in which the original writ is brought; and since the warranty is now determined by the default which G. has made (because thereby the vouchee is discharged from the warranty) you have no warrant to hold the plea further, nor to do anything else but record the default, and send the parol back into the Hustings, and therefore you have no power to admit her.—Shardelowe. When land is to be lost through her husband's default in this Court, she ought more naturally to be admitted here, where the default was made, than elsewhere.—*W. Thorpe.* Though default has been made in this Court, you have no warrant to render judgment on the default in this Court, for suppose, when the parol had remained at rest in the Hustings by reason of the foreign voucher, that on the day which the parties had had in the Bench on the question of warranty, the tenant who vouched had made default, you could not have awarded a *Petit Cape* on the default, nor could you have done anything else,

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quei sur la defaut la Court prist avisement tanqe alendemeyn quei fuit affaire sur cel defaut pur ceo qe la parole fuit pendant en Hustenges de Londres. —Le vouche pria destre assoutz de la garrantie, et la demandante pria son dower.—Sourvint A., et par la defaut G. soun baroun pria estre resceu, &c.— *Richem.* La defaut vostre baroun fuit recorde eer, par quei, del houre qa cel temps vous ne venistez pas, vous sursistez vostre temps, et par tant vous ne poiez ore estre resceu.—Hill. La defaut fait eer et la defaut fait huy est tut un, quant la Court prist avisement sur tiel defaut tanqe huy; par quei veiez si vous voles autre chose dire.—*Rich.* Sire, vous veiez bien coment le proces est fait sur cest vouche devant vous par benefice de statut, qel voet qe apres le plee termine sur la garrauntie qe vous mandez la parole en le Hustenges en le qele le brief original est porte; et del houre qe la garrauntie est ore termine par defaut qe G. ad fait, qar par tant le vouche est assoutz de la garrauntie, vous navetz nulle garraunt de tener pluis avant le plee, ne faire autre chose mes recorder la defaut, et remander la parole en le Hustenges, et par tant avetz nulle poair de la resceiver.—Schard. Qant la terre est a perdre par defaut soun baroun en cest Court, ele deit donqes pluis naturelment estre resceu si, ou la defaut est fait, qe aillours.—*W. Thorpe.* Coment qe defaut est fait en cest Court, vous navetz nulle garraunt de rendre le jugement sur la defaut en ceste Court, qar jeo pos qe quant la parole fuit demure en pees en le Hustenges pur le forein voucher, qel jour qe les parties ussent eu en Bank sur la garrauntie, qe le tenant qe voucha eust fait defaut, vous ne poiez pas avoir agarde un petit *Cape* sur la defaut, nautre rienz avoir fait forqe A.D. 1343-4.

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A.D. 1343-4. except record the default, and upon that have adjourned the parties into the Hustings; wherefore *a multo fortiori* you cannot now do anything else, because on that default the land may now be lost even more than it would be in the other case which I have put; and suppose also that a stranger came now, in the case in which we are, and prayed to be admitted by reason of the default of G. and A., on the ground that they held for term of their lives, the reversion being to him, you have not power to hold plea on the question of admission, because the statute, by virtue of which this process is brought into this Court, does not give you any warrant to do this; wherefore no more can you hold plea on the second voucher. —Kelshulle. Whereas you say that we have not power in this Court to do anything after the question of warranty has been determined, if the foreigner vouches over, you say wrongly, for suppose the vouchee entered into warranty, and vouched another foreigner to warrant, should we not make process again on that voucher, for we cannot send the parol back into the Hustings, because they could not hold plea on the second voucher?—*W. Thorpe.* I tell you that by law you shall not admit the second voucher, because the statute purports that, when a foreigner is vouched, and the vouchee comes into the Bench by process, and enters into warranty, the Court shall immediately tell him to go into the City and warrant, and then another foreigner may be vouched in the City, and the parol shall be sent again into this Court by such process as it previously was by reason of the first voucher, and before the parol is removed again into the Hustings you cannot make any process on the second voucher, and no more can this woman be admitted.—Hillary. On the ground that the default, on which land is to be lost, is made in this Court, she shall be admitted in this Court, and therefore we do admit her; but, because the Statute does not give us warrant to hold

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avoir recorde la defaut, et sur ceo avoir ajourne les parties en le Hustenges; par quei a molt fort vous ne poiez autre chose faire, qar sur cel defaut ore terre est a perdre pluis qe nest en lautre cas ou jeo suy mys; et auxi jeo pose qun estraunge vensit ore en le cas ou nous sumes, et priast destre resceu par defaut G. et A., pur ceo qils tindrent a terme de lour vies, la revercion a luy, vous navetz pas poair tenier le plee sur la resceite, qar a ceo faire lestatut, par qel cest proses est mene ceinz, ne vous doune pas garraunt; par quei nient pluis poiez vous tenier le plee sur le secund voucher.—Kel. La ou vous ditez qe nous navoms poair ceinz de rienz faire apres la garrauntie determine, si le forein vouche, vous ditez mal, qar jeo pose qe le vouche entrast en la garrauntie, et vouchast un autre forein a garraunt, ne ferroms pas proses unqore sur cel voucher, qar nous ne poms pas remander la parole en le Hustenges, pur ceo qe eux ne poount pas tenier le plee sur le secund voucher?—*W. Thorpe.* Jeo vous die qe de ley vous ne resceiverez pas le secund voucher, qar lestatut voet qe, quant un forein est vouche, le vouche vint en Bank par proses, et entre en la garrauntie, meytenant la Court dirra a luy qil aile en la Citee et garraunte, &c., et donqes en la Citee soit vouche autre forein, la parole serra remis ceinz par autiel proces come il fuit a devant par le primer voucher, avant la parole remue en le Hustenges, vous ne poiez nul proces faire sur le secunde voucher, nient pluis puit ceste femme estre resceu.—Hill. Sur ceo qe la defaut est fait en cest Court, sur qel la terre est a perdre, ele serra resceu en cest Court, et pur ceo nous la reseivoms; mes, pur ceo qe lestatut ne nous doune pas garraunt

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any plea touching the woman after her admission, the Court adjudges that the parol be remanded into the Hustings, &c., and let it be seen, &c.

Quare impedit.

(6.) § Philippa Queen of England brought a *Quare impedit* against the Abbot of Cirencester, who did not appear at the Grand Distress, and against one A.[1] And she counted that King Henry was seised of the manor of B.,[2] to which the advowson is appendant, and presented. And she made the descent to the present King. And he gave the manor with the advowson to Philippa for the whole of her life, after which gift the church became void through the death of King Henry's presentee, and so she is seised of the manor to which the advowson is appendant, and so it belongs to her to present.—*R. Thorpe* defended, &c., and denied the damage, and said that he did not understand that he would be put to answer, because this is a suit taken according to common law, and she who is plaintiff is covert baron, and is not in a condition to be answered without her husband.—Hillary. Answer.—And he said by judgment that this was fitting.

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[1] As to the name *see* p. 431, note 1.

[2] As to the name *see* p. 431, note 4.

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de tenier nulle plee de la femme apres la resceite, si agarde la COURT qe la parole soit remaunde en le Hustenges, &c., *et videatur.* A.D. 1343-4.

(6.)[1] § Phelip Reigne[2] Dengleterre porta *Quare impedit* vers Labbe de Cirrcestre, qe ne vint pas a la Graunt Destresse, et un A. Et counta qe le Roi Henre fut seisi du maner de B., a quel lavoesoun est appendaunt, et presenta. Et fit la descente au Roi qore est. Et dona le maner ove lavoesoun a Phelip pur tote sa vie, puis quel doun leglise se voida par la mort le presente par le Roi Henre, et issint est ele seisi du maner a quei lavoesoun est appendaunt[3] et issint appent a luy a presenter.[4]—*R. Thorpe* defendi, &c., et les damages, et dit qil nentendi pas qil[5] serra mys de respoundre, qar cest une suyte pris par comune ley, et ele est coverte de baroun qest[6] pleintif, qe nest pas responable[7] saunz son baroun.—HILL. Responez.—*Et hoc dixit* *Quare impedit.* [Fitz., *Quare impedit*, 47.]

[1] From L., Harl. (No. 1), and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 69 d. It there appears that the action was brought by Philippa, Queen of England, against Walter de Aunesford, chaplain, in order that he, together with the Abbot (*simul cum Abbate*) of Cirencester, might permit her to present to the church of Benetfelde (Binfield, Berks).

[2] L., Reygne ; 25,184, Regne.

[3] L., pendaunt.

[4] The declaration was, according to the record, "quod dominus H. "quondam Rex Angliæ, proavus "domini Regis nunc, fuit seisitus "de manerio de Cokham, cum "pertinentiis, ad quod advocatio "ecclesiæ prædictæ pertinet, qui "ad eandem præsentavit quendam "Hugonem de Hales, ... "post cujus mortem eadem ecclesia "modo vacat. Et de ipso H. "Rege descendit prædictum mane-"rium ad quod, &c., Edwardo "Regi, ut filio et heredi, &c., et de "ipso Edwardo Rege, ... "Edwardo Regi, ut filio et heredi, "et de ipso Edwardo Rege . . . . "domino Edwardo Regi nunc, ut "filio et heredi, qui quidem "dominus Rex nunc manerium "prædictum, cum pertinentiis, "simul cum advocatione ecclesiæ "prædictæ, concessit ipsi Reginæ "tenendum ad totam vitam suam, "et ea ratione ad prædictam "Reginam pertinet ad prædictam "ecclesiam præsentare."

[5] 25,184, qil ne.

[6] 25,184, et est.

[7] 25,184, resceyvable.

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A.D. 1343-4. —And afterwards exception was taken to the form of the writ on the ground that the words "*unde queritur*" were wanting in it, and also because the words "*ut dicitur*" were in the writ not put before the clause of the writ "*unde prædicti A. et B. eam injuste impediunt*," but after it.—*W. Thorpe.* Those words "*unde queritur*" are not inserted in the writ when the writ is taken at suit of the King or of the Queen, who have not to find surety to prosecute their suit.—*R. Thorpe.* The Queen has tendered suit by her count, and also she claims to recover damages like any common person, and therefore the writ should contain the words "*unde queritur.*"—SHARSHULLE adjudged the writ to be good. —Afterwards exception was taken to the writ on the ground that the Queen took her suit like any common person of the people, and the writ was not affirmed by suit and surety.—This exception was not allowed.—Therefore the defendant alleged plenarty of himself as parson imparsonee of the patronage of the Abbot of Langonet, and said that he claimed nothing in the patronage.—*W. Thorpe.* The allegation of plenarty does not lie in his mouth; wherefore we pray a writ to the Bishop.—WILLOUGHBY. The judgment shall be entered, but as against him you shall not have a writ to the Bishop.—And so it was done.[1]—*Quære* whether time runs against the Queen.

Quare impedit. § The Queen brought her *Quare impedit* against

[1] *See* Y.B., Easter, 18 Edw. III., No. 9.

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convenire par agarde.—Et puis fut la fourme du bref chalange de ceo qe *unde queritur* y[1] faillist, et auxi il avoit pas *ut dicitur* mys el[2] bref avant la clause de bref *unde prædicti A., et B. eam injuste impediunt* mes apres.—[*W.*] *Thorpe.* Cele parole *unde queritur* nest pas mys el[2] bref quant le bref est pris a la suyte le Roi ou la Reigne, qe ne troverount pas soerte de suyre.—*R. Thorpe.* La Reigne ad tendu suyte par son counte, et auxint ele est a recoverir damages come autre comune persone,[3] pur quey[4] le bref serreit *unde queritur.*—Schar. agarda le bref bon.—Puis le bref est chalange de ceo qe la Reigne prent[5] sa suyte come comune persone du poeple, et le bref nest pas afferme par suyte et soerte.—*Non allocatur.*—Par quei[4] le defendant alleggea plenerte de luy mesme come persone enpersone del patronage Labbe de Langnet, et dit qil clama rien en le patronage.[6]—[*W.*] *Thorpe.* Plenerte ne gist pas en sa bouche; par quei nous prioms bref al Evesqe.—Wilby. Le jugement serra entre, mes vers luy vous[7] naverez pas bref.—*Et ita factum est.*[8]—*Quære* si temps courge a la Reigne. A.D. 1343-4.

§ La[9] Roigne porta soun *Quare impedit* vers *Quare impedit.* [Fitz., *Briefe*, 355.]

[1] L., i; 25,184, luy.

[2] L., en le.

[3] 25,184, persone du poeple.

[4] L., qoi.

[5] L., pernet.

[6] The plea was, according to the record, that of Walter de Aunesford, and he "dicit quod ipse est "persona ecclesiæ prædictæ ad "præsentationem Abbatis de Cyren- "cestria, et impersonata extitit in "eadem per sexdecim annos ante "diem impetrationis brevis . . . . ". . . et dicit quod ipse nihil "aliud clamat in præsentatione "ecclesiæ," &c.

[7] L., and Harl., mes vous.

[8] The judgment was, according to the roll, "quod prædicta Regina re- "cuperet præsentationem suam ad "ecclesiam prædictam. Et habeat "breve Episcopo Sarum quod, "non obstante reclamatione præ- "dicti Walteri, ad præsentationem "prædictæ Reginæ ad prædictam "ecclesiam idoneam personam "admittat. Et idem Walterus "in misericordia, &c. Sed cesset "inde executio quousque prædictus "Abbas placitaverit," &c.

[9] This report of the case is from Harl. (No. 2) alone, and has not

No. 7.

A.D. 1343-4. several persons.—*R. Thorpe* took exception to the writ because the words "*et nisi fecerit*," &c., were omitted from it.—*W. Thorpe.* The Queen shall not be amerced for non-suit, nor because she has not found pledges to prosecute her suit; therefore this clause should not be in the writ; and because she is a person of so high estate she shall have a writ in all points such as the King would have; wherefore, &c.—And for this reason the writ was adjudged good.—And afterwards one who appeared pleaded that he was parson of the same church, and was so, years and days before the purchase of the writ, by presentation from a person other than those named in the writ, and [said counsel] we do not understand that such a writ lies against him.—*William Thorpe.* Since he does not claim anything in the advowson, and does not deny that he has disturbed us, we demand judgment.—HILLARY. You shall have judgment on this plea, but you shall not have a writ to the Bishop until the others have pleaded, &c.[1]

Dower. (7.) § Dower. Never joined in lawful matrimony was the issue taken, upon which the Bishop certified that the demandant had been lawfully joined. The tenant made default. Seisin was awarded, because the action had been tried, and not a *Cape*, as is previously found above.

Dower. § On a writ of Dower the tenant pleaded that the demandant had never been joined [in matrimony], whereupon the question was sent to the Bishop, who testified that she had been joined, &c. The tenant was called, and made default. And seisin of the land was awarded, and not the *Petit Cape*.

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[1] *See* Y.B., Easter, 18 Edw. III., No. 9.

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plusours. — *R. Thorpe* challengea le brief, qar ceo fuit entrelesse *et nisi fecerit*, &c.—*W. Thorpe*. Il ne serra pas amercie pur sa noun suite, ne pur ceo qele ne trova pas plegges de prosuire; par quei cel clause ne serra pas en le brief; et pur ceo qele est persone excellent ele avera brief en toutz pointz come le Roy avera; par quei, &c.—Et par tiel cause fuit brief agarde boun.—Et puis un qe vint il pleda qil fuit persone de mesme leglise, et fuit, aunz et jours devant le brief purchace, des presentements un autre qe fuit nome en mesme le brief, et nentendoms pas qe tiel brief gise vers luy.—*Will. Thorpe*. Del houre qil ne cleyme pas rienz en lavoesoun, et ne [de]dit pas qil nous ad destourbe, demandoms jugement.—Hill. Vous haverez jugement sur ceo plee, mes vous naverez pas brief al Evesqe tanqe les autres ount pledez, &c. A.D. 1343-4.

(7.)[1] § Dowere. Unqes couple[2] en leal matrimoigne fut pur issue, sur quei Levesqe certifia qe lealment acouple.[3] Le tenaunt fit[4] defaut. Seisine fut agarde, pur ceo qe laccion fut trie, et noun pas *Cape*, *prout*[5] *prius invenitur*[6] *supra*. Dowere.

§ En[7] brief de Dower le tenant pleda qe le demandant ne fuit unqes acouple,[8] sur quei mande fuit al Evesqe, qe tesmoigna qe fuit acouple, &c. Le tenant fuit demande, et fist defaute. Et seisine de terre fuit agarde, et noun pas peti *Cape*. Dower. [Fitz., *Jugement*, 118.]

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been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, under the head *Briefe*.

[1] From L., and 25,184, until otherwise stated.

[2] 25,184, acomply.

[3] 25,184, acomplie.

[4] L., fet.

[5] *prout* is omitted from L.

[6] L., *nec inveniatur*.

[7] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[8] MS., a comple.

No. 8.

A.D. 1343-4. Contempt.

(8.) § The King commanded the Abbot of Pershore to admit Thomas Colley, his yeoman, to sustenance, as others had been admitted on the King's command in the same Abbey, by an *Alias* writ, *vel causam*.—The Abbot returned his cause to the effect that he held quit in pure frank-almoign by deed and confirmation of Kings, and also that the person who was previously admitted into the Abbey was so admitted on the prayer of Queen Isabella.—Thereupon a writ issued commanding the Abbot to come into the Chancery with his deeds and confirmations to show his reason wherefore he should not be charged; and it was also commanded by another writ that he should be warned to be in the Chancery to show cause.—And now he is warned, and he appeared by *R. Thorpe*, and demanded oyer of the record upon which the *Scire facias* issued.—*W. Thorpe*. Your own answer, which is of record in this Court, together with the King's grant, which is of record, can warrant this writ.—*R. Thorpe*. The King's grant cannot be a cause for which a *Scire facias* shall be warranted, nor can our answer to the *Alias* writ warrant this writ, any more than a *Scire facias* lies with respect to a Sheriff or other officer if he makes an insufficient return.—Shardelowe. Such a writ would lie in respect of a return touching his own person.—*R. Thorpe*. You see plainly how this writ is taken on a contempt committed against the King and his command, which is a suit given by common law, and which cannot be put in execution by reason of any

No. 8.

A.D. 1343-4. Con-tempte.

(8.) [1] § Le Roi maunda al Abbe de Pershore qil resceust [2] Thomas Colley,[3] son vadlet,[4] a sustenaunce, come autres avoient este resceu [5] al maundement le Roi [6] en mesme Labbey, *sicut alias vel causam.*—Labbe retourna sa cause qil tient quites en pure et fraunk almoigne par fait et confermement des Roys, et auxint qe cely qe devant fut resceu en Labbey ceo fut a la priere la Reigne Isabele.—Sur [7] quei bref issit qil venist en Chauncellerie ove ses faits [8] et confermementz de [9] moustrer sa resoun par quei il ne serra pas charge; et auxi fut comaunde par autre bref de luy garnir destre en la Chauncellerie de moustrer sa resoun.—Et ore il est garni, et vint par *R. Thorpe*, et demanda oy del recorde dount le *Scire facias* issit.—[*W.*] *Thorpe.* Vostre respouns demene, qest ceinz de recorde ensemblement ove le graunt le Roi est de recorde, qe pount garrauntir ceo bref.—*R. Thorpe.* Le graunt le [10] Roi ne put estre cause pur quei *Scire facias* serra garraunti, ne [11] nostre respouns al *Sicut alias* ne put ceo bref garrauntir, nient plus qe de Vicounte ou autre ministre sil face retourn nient suffisaunt *Scire facias* ne gist pas.—Schard. De retourn touchaunt sa persone demene tiel bref girreit.—*R. Thorpe.* Vous veiez bien coment ceo bref est pris sur contempte fait al Roi et son comaundement, qest suyte par comune ley done, et qe par defaut ne purra estre mys

[1] From L., Harl. (No. 1), and 25,184. The case which, according to the report, came to an end in the Chancery without any decision, but was pending in the King's Bench, may probably be identified with that which appears among the *Placita coram Rege*, Hil. 18 Edw. III., "Rex," R° 11, the record of which is printed in the Appendix

[2] Harl., and 25,184, resceut.

[3] L., Colly; 25,184, Colleye.

[4] L., valet.

[5] resceu is omitted from Harl.

[6] Harl., le Roi resceuz; 25,184, ses progenitours, instead of le Roi.

[7] 25,184, par.

[8] L., fetes; 25,184, feetz.

[9] L., and 25,184, et.

[10] The words graunt le are omitted from 25,184.

[11] 25,184, de.

No. 8.

A.D. 1343-4. default, in which case a *Venire facias* and Distress would lie, and not a *Scire facias*, and that is pleadable in another Court; judgment whether you will take cognisance in this Court.—*W. Thorpe.* This suit is taken for the King, who ought to be answered in what Court he may please.—*R. Thorpe.* The King can possibly have a writ of Right, but it does not therefore follow that he shall sue in this Court; and in ordinary course the like pleas of contempt are pleadable in the Common Bench, or in the King's Bench.—*W. Thorpe.* If the King grants anything, cannot a *Scire facias* be sued in this Court for one to answer wherefore his grant should not be put in execution? —*R. Thorpe.* The King has not granted anything in this case, for he supposes that the Abbot has to grant. —*W. Thorpe.* But in effect it is in the King's right: for if I grant you a corody for your horse, or servant, to whom does the freehold belong? as meaning to say to the person to whom he granted. So in the matter before us.—*R. Thorpe.* Besides, we tell you that a writ came to us to certify our cause, and to be before the King *ubicunque*, &c., which writ, with our cause, is returned into the King's Bench, and so we have a day there[1]; wherefore you ought not to take cognisance in this Court, and this we say to move you that we ought not to answer in this Court.—*Stouford.* Do you think to oust the King from his suit in this Court by reason of the plea pending in another Court in respect of the same matter, which you do not allege to be settled? —*Pole.* No, not in case you ought to have cognisance in this Court; but we tell you this to move you that the plea may be held in another Court; but our plea is that you will not hold plea in this Court in respect of this plea pleadable in another Court, and not in this; and, if you adjudge that you will, we are ready

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See the record in the Appendix below.

No. 8.

en execucion, en quel cas *Venire facias* et Distresse girreit, et noun pas garnissement, et ceo pledable en autre place; [jugement] si ceinz voillez conustre. —[*W.*] *Thorpe.* Ceste suyte est pris pur le Roi, qe deit estre respondu en qele place qe luy plerra.—*R. Thorpe.* Le Roi put aver bref de Dreit en cas, mes de ceo nensuit par qil suera en ceste place; et de comune cours tiels plees de contempte sount pledables en Comune Baunk, ou en Baunk le Roi. —[*W.*] *Thorpe.* Si le Roi graunte une chose, ne put garnissement estre suy ceinz de respoundre pur quei son graunt ne serra mys en execucion?—*R. Thorpe.* Le Roi ad graunte rien en ceo cas, qar il suppose qe Labbe dust graunter.—[*W.*] *Thorpe.* Mes[1] en effecte cest en dreit le Roi: qar si jeo vous graunte un corodie pur vostre chival,[2] ou[3] garson,[4] a qi est le fraunc tenement? *quasi diceret* a celui a qi il graunta. *Sic in proposito.*—*R. Thorpe.* Ovesqe ceo, vous dioms qe bref nous vint de certifier nostre cause, et destre devant[5] le Roi *ubicunque*, &c., quel, ov nostre cause, est retourne en Baunk le Roi, et issint avoms jour illoeqes; par quei vous ne devetz conustre ceinz, et ceo dioms pur vous mover[6] qe nous ne devoms ceinz respoundre.—*Stouf.* Quidez vous douster le Roi de sa suyte ceinz pur le plee pendaunt en autre place de mesme la chose, quel[7] vous nalleggez pas estre discus?—*Pole.* Nanil, en cas qe[8] vous duissez ceinz conustre; mes, pur vous mover[6] qe le plee serra en autre place tenu si le[9] dioms nous; mes nostre plee est qe ceinz[10] de cele plee pledable en autre place, et noun pas ceinz, vous ne voillez plee tener; et si vous agardez, A.D. 1343-4.

[1] 25,184, Mais.
[2] The words pur vostre chival are omitted from L. and Harl.
[3] L., et.
[4] L., garcion; Harl., garesone.
[5] Harl., tenant.
[6] 25,184, nomer.
[7] L. and Harl., et.
[8] Harl., ou.
[9] L., lui.
[10] ceinz is omitted from Harl.

No. 9.

A.D. 1343-4.

to answer.—Sadington. Then will you not answer without a judgment on the point?—*R. Thorpe.* No, Sir, we will speak in the affirmative—that if you so adjudge we will answer; but the negative—that we will not answer without a judgment—you will never have from us.—Afterwards they came to terms, &c.[1]

Entry *in consimili casu.*

(9.) § A husband and his wife brought a writ of Entry *in consimili casu*, supposing that the tenant for term of life held by lease from the wife's ancestor, and that the land ought to revert to the husband and his wife after an alienation made in fee.—*Pole.* Judgment of the writ, which purports that the land ought to revert to the husband as well as to the wife, whereas he has shown that it is all in right of the wife, and the husband is named only by reason of the coverture, and the word *reverti* relates entirely to the right, so that the word *reverti* is false as applied to the husband, who has no right, and possibly never will have any.—*Derworthy.* In a writ of *Cessavit*, and of Escheat, and of Formedon in the reverter, when land is demanded in right of the wife by her husband and her, the form

[1] In the King's Bench judgment was given for the Abbot, according to the record.

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prest sumes a respoundre.—Sad. Dounqes ne voletz pas saunz agarde respoundre?—*R. Thorpe.* Nanil, Sire, nous parleroms en laffirmatif si vous agardez nous respoundroms, mes le negatif qe nous voloms pas respoundre saunz agarde[1] ceo naverez pas de nous.—*Postea concordati sunt*, &c. A.D. 1343-4.

(9.)[2] § Le baroun et sa femme porterent bref dentre *in consimili casu*, supposaunt qe le tenant a terme de vie tient du lees launcestre la femme, et qe, apres lalienacion faite en fee, au baroun et sa femme revertier deit.—*Pole.* Jugement du bref qe voet qe la terre deit revertier si avant au baroun com a la femme, ou il ad moustre qe cest tut en dreit la femme, et le[3] baroun nest pas nome forsqe par resoun de coverture, et la parole de *reverti* est tut en le dreit, issint qe la parole de *reverti* est faux en le[3] baroun, qe nul dreit ad, ne jammes navera par cas.—*Der. Cessarit*, et bref Deschete, et Formedoun en *reverti*,[4] ou terre serra demande el dreit la femme par son baroun et luy, la fourme Entre *in consimili casu.*

[1] agarde is omitted from 25,184.

[2] From L., Harl. (No. 1), and 25,184, until otherwise stated. The case appears to be that found among the *Placita de Banco*, Hil., 18 Edw. III., R° 128. An action was brought by Thomas Sybeling, of London, and Thomasia his wife, and Gilbert de Rollecote and Silvestra his wife, against Thomas de Mussendene and Isabel his wife, and John Sergeaunt, in respect of one messuage, one toft, 200 acres of land, 17 acres of meadow, and 6 acres of pasture, in Swanbourne (Bucks) "quæ clamant "esse jus ipsarum Thomasiæ et "Silvestræ, et in quæ iidem "Thomas de Mussendene, Isabella, "et Johannes non habent in- "gressum nisi per Edmundum "Godard, cui Ricardus filius "Edmundi Godard de Swane- "bourne, frater prædictarum "Thomasiæ et Silvestræ, cujus "heredes ipsæ sunt, illa dimisit ad "vitam ipsius Edmundi, et quæ, "post dimissionem per ipsum "Edmundum præfatis Thomæ de "Mussendene et Isabellæ et Jo- "hanni inde factam in feodo, ad "præfatos Thomam Sybelyng, "Thomasiam, Gilbertum, et "Silvestram reverti debent per "formam Statuti in consimili casu "proviso," &c.

[3] L., la.

[4] The words en *reverti* are omitted from L.

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is "*ad ipsos reverti debet.*"—*Pole.* This writ, which supposes first "*jus et hereditatem*" of the wife, and afterwards "*reverti debet*" to the husband and his wife, is contrariant: for first it is supposed to be entirely in right of the wife, and afterwards in their common right. And suppose he recovers by this writ, and the wife dies without issue, what would the husband have after the death of the wife?—*Grene.* Recovery in right of the wife is supposed by the title "*jus et hereditatem suam*"; and the clause "*reverti debet*" is in accordance, because the land cannot revert to the wife while she is covert unless it reverts to the husband.—Sharshulle. If husband and wife render by fine to any one for term of his life, the reversion being to them and the heirs of the husband, and the tenant alienes in fee, then the reversion will be supposed to be saved in them both by the words of the writ, but it is otherwise where her ancestor has aliened.—Kelshulle. It is all one with respect to the writ as to that word "*reverti.*"—*Pole.* Why more as to the word "*reverti*" than as to the word "*descendere*"? And it seems that the cases are on an equality: for, as descent shall be in the blood, so shall the reversion be in those only in whom the right was before.—*Derworthy.* And even though in Formedon in the reverter the reversion should be supposed to be in the wife alone, where the gift was made by her ancestor, it is different from what it would be in *Cessarit*, Escheat, or Entry *in consimili casu*, where the action arises solely from the act of the tenant.—*R. Thorpe.* In all these actions the land is always revertible by reason of the original right, which is entirely in the wife alone when she demands on the estate of her ancestor; and we saw that the writ for William Carbonelle and his wife was

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est tiel *ad ipsos reverti debet.—Pole.*[1] Cesty bref, qe suppose primes *jus et hereditatem* la femme, et puis *reverti debet* au baroun et sa femme est contrariaunt: qar primes est suppose tut en dreit la femme, et puis en lour comune dreit. Et jeo pose[2] qil recovere par cest bref, et la femme deviast saunz issue, quei avereit le baroun apres la mort la femme? —*Grene.* Le recoverir en le dreit la femme est suppose par le title *jus et hereditatem suam*; et la clause de *reverti debet* est acordaunt, qar ceo ne put revertir a la femme quant ele est coverte sil ne reverte au baroun.—Schar. Si le baroun et sa femme rendent par fyn a un a terme de vie, la reversioun a eux et les heirs le baroun, et le tenant alienast en fee, donqes serreit la reversioun suppose sauf en eux deux par parole du bref; mes autre est quant son[3] auncestre alienast.—Kels. Tut est un quant au bref en cele parole de *reverti.—Pole.* Pur quei plus en *reverti* qen *descendere*? Et il semble qe cest owel: qar auxi com descente[4] serra en le saunk auxi serra reversioun en eux soulement ou le dreit fut avant.—*Der.* Et mesqe en Fourme de doun en *reverti* serra suppose la reversioun soulement en la femme,[5] ou le doun se fist par son auncestre, cest autre qen *Cessavit*, Eschete,[6] Entre *in consimili casu*, ou laccion sourde du fait del tenant soulement.—*R. Thorpe.* Touz jours en touz les accions la terre est revertible par cause de primer dreit, quel est tut en la femme soulement quant ele demande del estat son auncestre; et nous veymes[7] qe le bref pur William Carbonelle[8] et sa femme fut

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[1] *Pole* is omitted from 25,184.
[2] pose is omitted from L.
[3] 25,184, femme ou son.
[4] descente is omitted from L. and Harl.
[5] 25,184, persone.
[6] L., Enchete. Harl. No. 1 ends abruptly at this point at the foot of a folio, where, however, there are the catchwords "Entre *in consimili* "*casu*," showing that the MS. was once continued.
[7] L, veioms.
[8] 25,184, Cabornel.

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A.D. 1343-4. abated in a like case.[1]—Hillary. What writ was that? —*R. Thorpe.* A *Scire facias.*—*Grene.* No wonder: for the writ must be in accordance with the fine, and the words are "*juxta formam finis prædicti,*" and by the form of the fine nothing was limited in the husband. Not so here.—Willoughby. How can a woman who is covert have a reversion without her husband?—Shardelowe. You never saw, when a wife demanded with her husband, that the reversion was supposed to be in the wife alone by the words of the writ.—*Thorpe* denied this.—Afterwards the writ was adjudged good. —*R. Thorpe.* They demand as their right descended through the wife's ancestor, and it is a writ affecting the right, and the husband is under age; judgment whether during his non-age they ought to answer as to this writ affecting the right.—*Derworthy.* We demand as the right of the wife, who is of full age; and this is an action which has accrued through the act of the tenant, and which is given immediately thereupon by the Statute,[2] for if he were delayed until his full age he would possibly be barred by the warranty of the person who aliened.—Willoughby. Suppose *profert* were made of the deed of the wife's ancestor, could the husband and wife answer to that?—*Derworthy.* Possibly not, Sir, if such a deed were alleged; but it is not as yet.—*R. Thorpe.* This is a writ as to which they are not to be answered according to any law.—*Derworthy.* By the same law according to which they might have entered, notwithstanding the non-age, &c., they ought to have the action.—Stonore. Why did you not enter?—*Derworthy.* Because I could not, and so the action is given.—Willoughby. This action arises out of the tortious act of the tenant, in which action, even though he demanded in his own right, he would not

[1] Y.B., Easter, 6 Edw. III., No. 67.

[2] 13 Edw. I. (Westm. 2), c. 24.

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abatu en le cas.—Hill. En quel bref fut cella?— *R. Thorpe.* En un *Scire facias.*—*Grene.* Nient merveille: qar le bref covendreit acorder a la fyn, qe voet *juxta formam finis prædicti*, et par forme de la fyn rien fut taille en le baroun. *Non sic hic.*—Wilby. Coment put femme qest coverte aver reversioun saunz son baroun?—Schard. Unqes ne veistes qe par parole du bref qe la reversion serreit suppose[1] soulement en la femme quant ele demande ove son baroun.—*Thorpe dedixit.*—*Postea breve fuit consideratum bonum.*—*R. Thorpe.* Ils demandent come lour dreit descent par launcestre la femme, et cest un bref de dreit, et le baroun est deinz age[2]; jugement si duraunt son noun age a ceo bref de dreit[3] deivent estre respondu.—*Der.* Nous demandoms come le dreit la femme, qest de plein age; et cest un accion qest acru de fait le tenant, et quel freschement est done par statut, qar sil prist delay tanqe a son age par la garrauntie[4] celuy qe aliena par cas il serra barre.—Wilby. Jeo pose qe fet launcestre la femme fut mys avant, purreit le baroun et sa femme respoundre a cel?—*Der.* Sire, par cas nanil, si tiel fet fut allegge; mes ceo nest pas uncore.—*R.*[5] *Thorpe.* Ceo est un bref a quel par nul ley ils ne sount responable.[6]—*Der.* Par mesme la ley qils poaint[7] aver entre, *non obstante* le noun age, &c., si deyvent ils[8] aver accion.—Ston. Pur quey[9] nussez vous entre?—*Der.* Pur ceo qe jeo ne[10] poiay[11] pas, si est laccion done.—Wilby. Cest accion sourde du fet le tenant de son tort, a quel accion, mesqil demanda en son dreit demene, il ne

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[1] suppose is omitted from L.

[2] age is omitted from L.

[3] The words de dreit are from L. alone.

[4] 25,184, le graunt, instead of la garrauntie.

[5] *R.* is omitted from L.

[6] 25,184, resceivable.

[7] L., poant.

[8] L., sil deivent, instead of si deyvent ils.

[9] L., qai.

[10] L., nore.

[11] L., poya.

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A.D. 1343-4. by reason of his non-age be put to delay: therefore answer.—*R. Thorpe.* This writ is given immediately after the alienation, so that, according to the intent of the Statute, which is *stricti juris*, neither the action nor the writ is given except against that person himself to whom the alienation is made, and this writ is in the *per* and *cui*; judgment of the writ, for in an action of *Quare dejoriat* which is given by Statute [1] for tenant for term of life the writ, as some understand it, is given only against the person who recovered; and if by alienation the land be in the hand of another person, it is the fault of the party that he did not make use of his action in time, and bring the writ against the recoveror while he was tenant. So in the matter before us.—SHARSHULLE. It is not law in the like case which you put, for within this year the writ has been seen to be maintained against a stranger who vouched the person that recovered; therefore answer.

Entry. § Entry *in consimili casu* brought by a man and his wife, in respect of tenements into which the tenants had not entry but by one A.[2] to whom one M.[2] leased, which A. held them for term of life by lease from the the wife's ancestor. The writ purported that the tenements ought to revert to the husband and to the wife, whereas it is proved by a previous part of the same

[1] 13 Edw. I. (Westm. 2), c. 4.

[2] As to the names *see* p. 441, note 2.

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serra pas par nounage mys a delay; par quei responez.—*R. Thorpe.* Cestuy bref est done freschement apres lalienacion, issint qe, par entent destatut, qest *stricti juris*, laccion ne le bref nest done forsqe vers mesme la persone a qi lalienacion est fait,[1] et cest bref est en le *per et cui*; jugement du bref, car en accion de *Quare deforciat* qest done par statut pur[2] tenant a terme de vie le bref al entente dasquns nest done forsqe vers celuy qe recoveri; et, si par alienacion ceo soit en autri meyn, cest sa[3] defaut qil[4] nust use saccion par temps, et porte le bref vers luy quant il fut tenaunt. *Sic in proposito.* —Schar. Ceo nest pas ley en vostre semblaunce, qar deinz[5] cest an homme ad vewe[6] le bref mayntenu vers estraunge qad vouche celuy qe recoveri; par quei responez.[7]

§ Entre[8] *in consimili casu* porte par un homme et sa femme, en les queux ils navoint entre si noun par un A. a qi un M. lessa, qe ceux tint a terme de vie par le lees launcestre la femme. Le brief voleit qe les tenementz dussent revertir al baroun et a la femme, la oue par mesme le brief devant Entre.

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[1] L., se fit, instead of est fait.

[2] L., a.

[3] L., la.

[4] L., qe.

[5] deinz is omitted from 25,184.

[6] The words ad vewe are omitted from 25,184.

[7] According to the record the tenants pleaded "quod prædictus "Ricardus non dimisit prædicta "tenementa, cum pertinentiis, præ- "dicto Edmundo ad vitam ipsius "Edmundi, sicut iidem Thomas "Sybelyng, et Thomasia, et Gil- "bertus et Silvestra superius per "breve suum supponunt, immo "prædicto Edmundo in feodo "simplici," &c.

Issue was joined on this. The jury found at *Nisi prius* "quod "Ricardus infra nominatus dimisit "tenementa infra contenta Ed- "mundo Godard ad terminum vitæ "suæ tantum, et non in feodo "simplici."

Judgment was accordingly given for the demandants to recover seisin.

[8] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1343-4. writ that the tenements were leased by the wife's ancestor, and therefore the tenements ought to revert to the wife alone; judgment, &c.—*Derworthy.* Since the wife is covert, nothing can revert to the wife which will not revert to the husband; therefore our writ is good.—*R. Thorpe.* If one has to bring a writ of Formedon on a gift made by the wife's ancestor, or a writ of Escheat, or a writ of *Cessavit*, in respect of tenements which are of the wife's right, or a *Scire facias* on a fine to which the wife's ancestor was a party, the writ will always say that they ought to revert to the wife, and, if it say to the husband and the wife, &c., the writ will abate, as appears in Easter Term in the 6th year[1] in a *Scire facias*; so also in this case.—SHARDELOWE, *ad idem.* Though the husband will have the tenements for the wife's life, if they be recovered, &c., by reason of the coverture, nevertheless the right is in the wife alone; now that word "*reverti*" ought to be regarded as a word touching the right, and therefore that word ought to limit to the wife alone rather than to the husband and wife jointly, &c.—But afterwards the writ was adjudged good; and therefore the tenant pleaded over that the husband was under age, and demanded judgment whether as to this writ, which purports that the tenements ought of right to revert to the husband as well as to the wife, he ought to be answered during his non-age.—*Blaykeston.* We demand these tenements as in right of our wife by reason of a forfeiture which the tenant caused by alienation in our time, whereas, if we were put to wait until our full age, his alienation with warranty would possibly bar us, because he is our wife's ancestor[2]; wherefore, &c.—The COURT adjudged that he was capable of being answered while under age.—And afterwards the tenant vouched Michael, by whom the

[1] See Y.B., Easter, 6 Edw. III., No. 67.

[2] As to the relationships *see* p. 441, note 2.

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est prove qe les tenementz furent lessez par launcestre la femme, et par taunt[1] les tenementz devereint revertir a la femme solement; jugement, &c.—*Der.* Del houre qe la femme est coverte, rienz puit revertir a la femme qe ne revertira al baroun; par taunt nostre brief bon.—*R. Thorpe.* Sil fuit a porter brief de Fourme de doun [de doun] fait par launcestre la femme, ou brief Deschete, ou brief de *Cessavit*, des tenementz queux sount de dreit la femme, ou en un *Scire facias* hors dun fyne a qel launcestre la femme fuit partie, le brief tut diz dirra qe a la femme revertir deit, et sil die al baroun et la femme, &c., le brief sabatera, *ut patet Paschæ vj°* en un *Scire facias*; auxi ycy, &c.—Schard., *ad idem.* Coment qe la baroun avera les tenementz pur la vie la femme, sil soient recoveris, &c., par cause de coverture, ne pur quant le dreit est soulement a la femme; ore cest parole *reverti* deit estre un parole en le dreit, par quei cest parole pluis toust deit tailler a la femme soulement qal baroun et a la femme jointement, &c.—Mes puis le brief agarde bone; par quey le tenant dit outre qe le baroun fuit deinz age, et demanda jugement si a cest brief qe voet qe les tenementz deyvent de droit auxi avant revertir al baroun come a la femme, durant soun nonage, deit il estre respondu.—*Blaik.* Nous demandoms ceux tenementz come de dreit nostre femme par cause dun forfaiture qe le tenant fist par alienacion en nostre temps, ou, si nous fuissoms mys dattendre tanqe a nostre age, par cas salienacion ove garrauntie nous barrereit, pur ceo qele est auncestre a nostre femme; par quei, &c.—La Court ly agarda responable deinz age.—Et puis il voucha Michel,

A.D. 1343-4.

[Fitz., *Age*, 10.]

[1] MS., tenant.

No. 9 *bis*.

A.D. 1343-4. conveyance to him was supposed to have been made.[1] —*Grene*. You see plainly how his entry is supposed to be by one A.,[1] to whom M.[1] leased; so he vouches a person other than the person by whom his entry is supposed, which voucher cannot be permitted on this writ unless he vouches as assignee, and he does not show such cause in his voucher, and therefore he ought not to be admitted to this simple voucher.—And this was not allowed.[2]

Fine. (9 *bis*.) § Fine, whereby it was granted that certain land which J. held for the life of W., who held it, of the inheritance of the conusor, by the curtesy of England, and which, after the death of W., ought to revert to the conusor and his heirs, should remain, &c.—Shardelowe. In this case no one else can be tenant to the conusor but the tenant by the curtesy of England, nor does a writ of Waste lie against any one else; wherefore the reversion from him and from no one else should be granted, and therefore this fine is not admissible.—*Richemunde*. Nothing would vest through his attornment.—Hillary. That is no mischief, because the right is vested by the fine without attornment.

Fine. § *Richemunde* came to the bar and would have drawn a fine in this form:—Thomas, son of William de M., acknowledges the tenements to be the right of A. as those which he has of Thomas's gift, and grants that certain tenements which one A. holds for the term of the life of W. de M. by lease from W., which W. holds the same tenements by the curtesy of England, of the inheritance of this same Thomas, and which after the death of W. ought to revert to him, shall remain to B.—Hillary. You shall not have the fine making mention of the estate of the person to whom the tenant by the curtesy has leased his estate.—

[1] As to the names *see* p. 441, note 2.

[2] For the conclusion of the case *see* p. 447, note 7.

No. 9 *bis*.

par qi le lees fuit suppose.—*Grene*. Vous veiez bien coment soun entre est suppose par un A., a qi M. lessa; issint il vouche autre qe celuy par qi son entre est suppose, qel voucher ne puit estre suffert en cest brief sil ne vouche com assigne, et tiel cause ne moustre pas en soun voucher, par quei a cel voucher simple ne deit il estre resceu.—*Et hoc non allocatur*. A.D. 1343-4.

(9 *bis*.)[1] § *Finis*, par quele certeine terre fut graunte quele J. tient a la vie W., qe ceo tient, del heritage le conissour, par la ley Dengleterre, et qe, apres le decees W., a luy et ses heirs devereit revertir, remeigne, &c.—Schard. En ceo cas nul autre poet estre tenant al conissour forsqe le tenant par la ley Dengleterre, ne vers autre ne gist pas bref de Wast; par quei la reversioun de luy et de nul autre serreit graunte, par quey[2] cele fyn nest pas[3] resceivable.—*Richem*. Par son attournement rien ne vestereit.—Hill. Ceo nest pas meschief, qar par la fyn saunz attournement le dreit est vestu. *Finis*.

§ *Rich*.[4] vint a la barre, et voudra avoir trest un pees en cest forme:—Thomas le fitz W. de M. conust les tenementz estre le dreit A. come ceux qil ad de soun doun, et graunte qe certeinz tenementz qun A. tient a terme de vie W. de M. de soun lees, le qel W. mesmes les tenementz tient par ley Dengleterre deritage mesme cesty T., et les queux apres le decees W. a luy dussent revertir, remeignent a B.—Hill. Vous naveretz pas la fyn fesaunt mencion del estat cesti a qi le tenant par la cortesy ad Fyn. [Fitz., *Fynes*, 44.]

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[1] From L., and 25,184, until otherwise stated.

[2] L., qai.

[3] 25,184, poynt.

[4] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1343-4. *Richemunde.* Sir, it must be so, because otherwise I cannot have a *Quid juris clamat* against him, and the tenant by the curtesy cannot attorn because he has nothing.—Sharshulle. You are put into the inheritance immediately after the fine, even without attornment; and I tell you for certain that where tenant by the curtesy or tenant in dower lease their estate, the fine shall still be levied on their tenancy just as if they had not leased, &c., for they cannot properly defeat their estate, because a stranger cannot hold either in dower or by the curtesy of England, and a writ of Waste will be brought against such tenants, even though the waste be committed by the persons to whom they have leased their estate; wherefore so also it shall be where a fine is levied.—*Blaykeston.* I must make mention of his estate, because otherwise, if hereafter he alienes in fee, I cannot have a writ of Entry *in consimili casu* against him, since if he be not named in the fine, I shall not have attornment from him, and at the same time a writ of Entry *in consimili casu* will not be maintainable.—Hillary. But if he alienes in fee, you can enter, and if you are then ousted, you can have an Assise. And I tell you plainly that you shall not have the fine with such words.—Sir, as to like matter, Michaelmas Term in the 9th year.—But I think it would be otherwise in the case of any other tenant for term of life, as appears in Easter Term in the 6th year.—And afterwards the fine was levied without making any mention of A.'s estate.

Recordari. (10.) § *Recordari* out of a Court of Ancient Demesne

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lesse soun estat.—*Rich.* Sire, si covient, qar autrement jeo ne puisse avoir le *Quid juris clamat* vers luy, ne le tenant par la curtaisie ne puit attournier pur ce qil nad rienz.—Schar. Auxi vous estez enherite meintenant apres la fyn tout saunz attournement; et jeo vous die en certein qe la ou tenant par la curtesie ou tenant en dower lessent lour estat, unqore la fyn serra leve sur lour tenance auxi come ils nussent pas lessez, &c., qar eux ne puissent pas proprement defaire lour estat, pur ceo qun estraunge ne puit pas tenier en dower ne par la ley Dengleterre, et brief de Waste serra porte vers tieux tenants tut soit le waste fait par ceux as queux ils ount lesse lour estat; par quei auxi serra il de fine leve.—*Blayk.* Il covient qe jeo face mencion de soun estat, qar autrement, sil aliene en fee apres cel temps, jeo ne poy pas avoir brief dentre *in consimili casu* vers luy, qar sil ne soit nome en la fine jeo navera pas attournement de luy, saunz, &c., qe bref Dentre *in consimili casu* soit meintenable.—Hill. Mes sil aliene en fee vous poiez entrer, et, si vous soiez ouste, avoir Lassise. Et jeo vous die bien qe naverez pas la fine sur tiels paroles.—*Vide de tali materia Michaelis ix°.—Sed credo quod secus est* dautre tenant a terme de vie, *ut patet Paschæ vj°.*—Et puis la fine fuit leve saunz faire mencion de soun estat, &c. A.D. 1343-4.

(10.) [1] § *Recordari* hors daunciene demene par *Recordari.*

[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 416. It there appears that the writ of *Recordari facias loquelam* was directed to the Sheriff of the County of Oxford, commanding that he should go "ad Curiam Regis de Coumbe et "in plena Curia illa recordari "faceret loquelam quæ est in "eadem Curia per parvum breve "Regis de Recto inter Willelmum "filium Johannis Stocke petentem "et Willelmum Mundene tenentem, "de sex acris terræ et duabus acris "prati, cum pertinentiis, et re- "cordum illud haberet hic ad hunc "diem, ... et partibus eundem "diem prefigeret, quod nunc essent "hic, ... et quod haberet . . . . "breve domini Regis prædictum, et "aliud breve, &c., quia prædictus "Willelmus Mundene clamat

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A.D. 1343-4. because the tenant claimed to hold at common law.—William, son of John Stocke, was demandant in the little writ of Right.—The Sheriff returned that he went to the Court, and that the suitors would not make a record, nor deliver the writ to him, but he returned further that he had given a day to the parties.—*Gaynesford*, for the tenant, now proffers himself, and is ready to maintain the cause [of removal] if the Court will permit it without having the record; and, if not, he prays process further to distrain the suitors. —And the demandant was called, and did not appear, and *Gaynesford* therefore demanded judgment on his non-suit.—Willoughby. That cannot be on a writ which we have not here.—*Thorpe*. No, Sir, you cannot render any judgment in this Court on the little writ, nor do anything else, except try the cause [of removal].—Stonore. How shall we try that without an answer, and without the party?—*Thorpe*. No, you can direct process against him to bring him in to answer.—Sharshulle. If the writ were here, and the cause [for removal] were maintained as good in this Court, should we not abate the writ? as meaning to say that they would. And that we cannot do if the

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cause qe le tenant clama tener a la comune ley.— William fitz Johan Stoke fut demandant al petit bref de Dreit.—Le Viscounte retourna qil ala a la Court, et les suyters[1] ne voleint[2] pas faire recorde ne liverer a luy le bref, mes retourna outre qil ad done jour as parties.—*Gayn.*, pur le tenant ore se profre, et prest est de mayntener la cause, si Court le poet suffrir[3] saunz avoir plus del recorde; et, si noun, il pria proces outre a destreindre les suyters. —Et le demandant fut demande, et ne vint pas, par quei *Gayn.* demanda[4] jugement de sa nounsuyte. —Wilby. Ceo ne poet estre sur bref qe nous navoms pas icy.—*Thorpe.* Noun, Sire, vous poez rendre nul jugement ceinz sur le petit bref, ne autre chose faire forsqe trier la cause.—Ston. Coment le trieroms sanz respouns, et sanz partie.—*Thorpe.* Nanil, vous poez faire proces vers luy de luy mener en[5] respouns.—Schar. Si le bref [fut cy, et la cause fut mayntenu pur bon ceinz, nabateroms pas le bref? *quasi diceret sic.* Et ceo ne poms pas si le bref][6] A.D. 1343-4.

" tenere prædicta tenementa per " communem legem " in virtue of two fines, one before Justices in Eyre, and one in the Common Bench, in the reign of Henry III., " propter quod loquela illa in " Curia Regis de Coumbe per breve " Regis prædictum deduci non " debet secundum legem et con- " suetudinem regni nostri Angliæ. " Et modo venit prædictus Wil- " lelmus de Mundene in propria " persona sua, et prædictus Wil- " lelmus filius Johannis non venit. " Et Vicecomes modo mandat " quod, assumptis secum quatuor " discretis, &c., in propria persona " sua accessit ad Curiam præ- " dictam ad recordari faciendum " loquelam de qua in brevi Regis " fit mentio, secundum tenorem " ejusdem brevis, et injunxit secta- " toribus et ballivo qui tenuit " placita ejusdem Curiæ quod sibi " liberarent recordum loquelæ inter " partes prædictas, et etiam aliud " parvum breve domini Regis per " quod tenuerunt placitum præ- " dictum, qui quidem sectatores et " ballivus dictum recordum et " breve prædictum prædicto Vice- " comiti liberare noluerunt. Tamen " idem Vicecomes præfixit partibus " prædictis diem quod essent hic " ad hunc diem, &c., in loquela " prædicta prout justum fuerit " processuræ."

[1] L., suytes.

[2] 25,184, voleyent.

[3] L., suffrer.

[4] L., pria.

[5] en is omitted from L.

[6] The words between brackets are omitted from 25,184.

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A.D. 1343-4. writ be not here. Besides, the words of the writ of *Recordari* are "*et habeas ibi hoc breve, et aliud breve*"; wherefore we have not a complete record.—*Thorpe.* You will never hold plea on the other writ, because the parties are without day as to that writ until the cause [of removal] has been decided; wherefore it is a delay without reason to cause the other writ to come. —Sharshulle. After judgment has been rendered to abate the writ in a court of Ancient Demesne, the parol is in this Court by the *Recordari*; we can reverse that judgment, and revive the writ; and shall we not hold the plea in this Court on the little writ? —*Thorpe.* That is true in a case of False Judgment, because the record will come here to that effect; but in this case the parol is removed only to know with certainty whether the tenements be frank fee or ancient demesne, so that this question and nothing else shall be tried. If the little writ were in this Court, even though you found that the land was ancient demesne, you would not send back the writ.—Sharshulle. Certainly we should.—*Pole.* There is no record in the Court of Ancient Demesne except the writ which is there, and which would serve no purpose even if it were here.—Willoughby. As yet we do not know whether there is any writ or not.—And afterwards Sharshulle, by common consent of the Court, said to *Gaynesford*:—We enter on the record that the person who is demandant does not now appear. And sue you the Grand Distress, to wit, against the Bailiff to deliver the writ to the Sheriff, and against the suitors to appear here, and make the record.

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ne[1] fut cy. Ovesqe ceó, le *Recordari* voet *et habeas ibi hoc breve, et aliud breve*; par quei nous navoms pas plein recorde.—*Thorpe.* Vous tendrez jammes plee sur lautre bref, qar parties sount saunz jour a cel bref tanqe la cause soit discus; pur quei il est delaye saunz cause de faire venir lautre bref.[2]—Schar. Apres jugement rendu al abatement du bref en aunciene demene, par *Recordari* la parole est ceinz[3]; nous reverseroms le jugement, et resuscitoms[4] le bref; et[5] ne tendroms le plee ceinz sur le petit bref?—*Thorpe.* Cest verite en cas de Faux Jugement, qar le recorde vendra cy a cel effecte; mes en ceo cas la parole est remue fors de veer[6] moun sil soit fraunk fee ou daunciene demene, issint qe cella, et nul autre chose serra trie. Si[7] le petit bref fut ceinz, tut trovassetz[8] vous qe[9] la terre fut[10] aunciene demene, [vous remaunderetz pas le bref.—Schar. Certes si froms.—*Pole.* Il y ad nul recorde en launciene demene][11] forsqe le bref qest la, qe servereit de nient mesqil fut cy.—Wilby. Uncore ne savoms pas sil y eit bref ou noun.—Et puis Schar., *ex communi assensu* Curiæ, dist a *Gayn.*:—Nous entroms en le recorde qil qest demandant ne vient pas a ore. Et sues[12] le Grant Destresse, saver, vers le baillif, de liverer le bref a Vicounte, et vers les suytours[13] de venir cy et fere le recorde.[14]

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[1] ne is omitted from L.
[2] bref is omitted from 25,184.
[3] 25,184, tenuz.
[4] L., ressusitoms.
[5] et is omitted from L.
[6] L., vere.
[7] L., et.
[8] 25,184, croiassez.
[9] qe is omitted from 25,184.
[10] fut is omitted from 25,184.
[11] The words between brackets are omitted from 25,184.
[12] L., sueyt.
[13] L., altres.
[14] Immediately following the Sheriff's return on the roll is the following entry:—"Ideo præcep-
"tum est Vicecomiti quod dis-
"tringat omnes sectatores Curiæ
"prædictæ per omnes terras, &c.,
"et quod de exitibus, &c., et quod
"habeat corpora eorum hic a die
"Sanctæ Trinitatis in xv dies ad
"faciendum recordum prædictum,
"et etiam quod distringat præ-
"dictum ballivum per omnes

No. 10.

A.D. 1343-4. Little Writ of Right.

§ Note that *Gaynesford* (when he came to the bar and showed how a little writ of Right was brought against a tenant in a Court of Ancient Demesne, upon which he sued the *Recordari* to the Sheriff to bring the record of the parol into the Bench, because he claimed the tenements at common law for a certain cause, &c.) said, on the day given, that the suitors would not record the parol, but that the Sheriff had returned that he gave the parties a day in the Bench now, this day, and therefore he prayed that the demandant might be called to answer as to the cause, &c.—And the demandant was called, and did not appear; wherefore *Gaynesford* prayed judgment on the non-suit.—Hillary. We have not here the original writ, wherefore we cannot render judgment on the non-suit, and therefore you must sue a writ to distrain the suitors to record, &c.—*R. Thorpe.* On a writ of False Judgment brought in respect of a judgment which has been rendered in a Court of Ancient Demene you must have the original writ, because, if that judgment be reversed by you, you will hold the plea further by virtue of the same original writ until the end; but now you will not hold any plea on the original, but will only determine the question of the cause of removal, that is to say, whether the land be ancient demesne or frank fee, and therefore there is no need to have the original, and on that ground we pray judgment.—Sharshulle. Although we shall not do anything except try the cause of removal, still if it be found before us that the land is frank fee, we shall abate the writ for ever, and that we cannot do if we have not the original, and, therefore, sue you a writ to distrain the suitors to record.—The contrary of this

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A.D. 1343-4. Petit Briefe de Droit. [Fitz., *Nonsuit*, 20.]

§ *Nota*[1] qe *Gayn.* dit, quant il vint a la barre et moustra coment un petit brief de dreit fut porte vers luy en un auncien demene, ou il suit le *Recordari* al Vicounte de recorder la parole en Bank, pur ceo qil clama les tenementz a la comune ley par certein cause, &c., a qel jour il dit qe les suters ne voleint pas recorder la parole, mes le Vicounte dit qil dona jour a les parties en Bank ore a cest jour, par quei il pria qe le demandant fuit demande de respoundre a la cause, &c.—Et il fuit demande, et ne vint pas; par quei *Gayn.* pria jugement sur la noun suite.—Hill. Nous navoms icy loriginal, par quei nous ne poms jugement rendre sur la noun suyte, et pur ceo il vous covynt suier brief [de] destreindre les suters de recorder, &c.—*R. Thorpe.* En brief de Faux Jugement porte dun jugement qe fuit rendu en auncien demene, la vous covynet il avoir le brief original, qar si cel jugement soit reverse par vous, vous tendrez outre le plee par mesme le brief original taunqe la fine; mes ore vous tendrez nulle plee sur original, mes soulement determinez la cause del remuement, saver, le qel ceo soit aunciene demene ou fraunke fee, par quei il ne busoigne pas davoir loriginal, et par taunt nous prioms jugement. —Schar. Coment qe nous froms rienz forqe trieroms la cause del[2] remuement, unqore si trove soit devant nous[3] qe la terre est fraunke fee, nous abatroms le brief a touz jours, qel chose nous ne poms pas faire si nous neyoms loriginal, et pur ceo suiez brief a destreindre les suters de recorder.—*Contrarium istius*

" terras, &c., et quod de exitibus, " &c., ad liberandum prædicto " Vicecomiti parvum breve domini " Regis prædictum, ita quod idem " Vicecomes habere possit hic " breve illud ad eundem ter- " minum," &c.

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[2] MS., et.

[3] MS., vous.

No. 11.

A.D. 1343-4. appears in Hilary Term in the 8th year.[1]—And note that *Moubray* said, that, even though they had the original, they could not have rendered judgment on the ground of his non-suit; but, because the demandant did not appear to answer as to the cause of removal, they would let the writ lie *inter dormientia*, and so the suit would be held as nought in the court of Ancient Demesne, and it would thus be extinguished, because that court could not proceed in the plea without direction from the Justices, &c.—And afterwards it was said to *Gaynesford*, that he should have a writ to distrain the suitors.—But see Trinity Term in the 19th year, where they rendered judgment on the non-suit in a like case, &c.

Rescous. (11.) § Rescous was sued for the lord[2] of Merton, who has View of Frank Pledge, as is recited by the writ, by prescription. And the writ purported further that, whereas he wished to attach, by his bailiffs, A.,[2] B.,[2] and C.,[2] for hue and cry levied against the peace, "*ad respondendum in curia prædicta secundum legem, et consuetudinem curiæ prædictæ*," the defendants *præfatos A., B., et C. rescusserunt.—R. Thorpe.*

[1] *See* Y.B., Hil., 8 Edw. III., No. 18.

[2] As to the names *see* p. 461, notes 3 and 11.

No. 11.

Hillarii viij°.—Et nota per Moubray qe dit, mesqe ils eussent loriginal, ils ne puissent pas aver rendu le jugement pur sa noun suyte; mes pur ceo qil ne vensit pas de respoundre a la cause ils suffrireint le brief giser *inter dormientia*, issi serra la suite a nient tenuz en la court[1] daunciene demene, il serroit par tant amorti, qar eux ne pount pas aler avant en le plee tanqils ussent mandement dez Justices, &c.—Et puis fuit dit a *G.*, qil out brief a destreindre les suters.—*Sed vide*[2] *Trinitatis xix*, ou ils rendirent sur la noun suite jugement en tiel cas, &c. A.D. 1343-4.

(11.)[3] § Rescous suy pur le seignur de Mertone qad vewe de fraunk plegge, com est reherce par le bref, par[4] prescripcion. Et le bref voleit [outre come il voleit][5] par ses baillifs attacher A., B., et C., pur huteys[6] et crie[7] leve encountre la pees, *ad*[8] *respondendum in curia prædicta secundum legem, et consuetudinem curiæ*[9] *prædictæ*,[10] les defendants *præfatos A., B., et C. rescusserunt.*[11]—*R. Thorpe.* Juge- Rescous. [Fitz., *Rescous*, 19.]

[1] MS., laycourt, instead of la court.

[2] MS., *unde*.

[3] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 104. It there appears that the action was brought by the Prior of Merton (Surrey) against Thomas atte Quarrer.

[4] 25,184, et.

[5] The words between brackets are omitted from L.

[6] 25,184, hutese.

[7] L., cry.

[8] L., *et ad*.

[9] 25,184, &c., instead of *curiæ*.

[10] 25,184, *prædicti*.

[11] It appears in the roll that the defendant was attached to answer "quare, cum idem Prior "habeat, ipseque et prædecessores "sui a tempore quo memoria non "existit habere consueverunt, apud "manerium suum de Mertone, "visum franci plegii de omnibus "tenentibus infra manerium præ- "dictum et procinctum ejusdem "residentibus, cum omnibus liber- "tatibus ad hujusmodi visum spec- "tantibus, et cognitiones placito- "rum hutesii et effusionis sanguinis "ibidem emergentium, ac Willel- "mus de Guldeforde, ballivus "ipsius Prioris manerii prædicti, "Rogerum Ramesheved, Isabellam "Sadeler, et Hillarium Lavonder "pro quodam hutesio per eosdem "ibidem levato ad respondendum "inde secundum legem et consue- "tudinem regni Regis Angliæ in "Curiæ prædicta attachiare voluis-

No. 11.

A.D. 1343-4. Judgment of the writ, which is in the words "*ad respondendum in prædicta curia*," whereas no court is previously mentioned.—*Seton.* View of Frank Pledge is previously mentioned in the writ, and that View is a court.—Therefore the exception was not allowed.—*R. Thorpe.* Judgment of the writ, which has the word "*rescusserunt*," &c., while by the writ it is not supposed that there is anything in fact with respect to which rescue can be supposed, but only the intention of a man—that he intended to attach—for this is not properly a rescue, but a hindering of something which a man was to have done, as in case of a taking of beasts, if the writ were in the words "*capere voluisset*," and not "*cepisset, rescussit*," the writ would be worthless.—*Seton.* If a Sheriff or a Bailiff come to make attachment or distress, and be prevented, that is a rescue in its nature, and the word of the writ will be "*rescussit.*"—*R. Thorpe.* Certainly it will not; another writ of Trespass will be founded on the disturbance, and not on the rescue.—HILLARY abated the writ.

Rescous. § The Prior of Merton brought his writ of Rescous against several persons for that, whereas he and all his predecessors since time of memory had had View of Frank Pledge, and cognisance of all matters which append thereto, to wit, cry levied, and blood shed, &c., and (his writ purported further that) whereas he would have attached one H.,[1] by one T.[1] his servant, to answer in the same View as to blood which he had

[1] As to the names *see* p. 461, note 11.

No. 11.

ment de bref, qe voet *ad respondendum in prædicta*[1] *curia*, ou nul court est nome devant.—*Setone.* Vewe de Fraunke plegge est nome devant el bref, quel vewe est Court.—*Ideo non allocatur.*—*R. Thorpe.* Jugement de bref, qe voet *rescusserunt*, &c., et par bref est suppose nule chose mys en fet de quei rescous put estre suppose, mes soulement volunte de homme, qil voleit aver attache, qe nest pas propre-ment rescous, mes une destourbaunce de chose qomme dust aver fait, come en cas de prise davers, si le bref voleit *capere voluisset*, et noun pas *cepisset*, *rescussit*, le bref ne vaudreit rien.[2]—*Setone.* Si Vicounte ou Baillif veigne de faire attachement ou destresse, et soit destourbe, cest un rescous en sa nature, et les paroles de bref serrount[3] *rescussit.*—*R. Thorpe.* Nanil, certes, ne serra pas; autre bref de Trespas [serra] foundu sur la destourbaunce, et noun pas sur le rescous.—Hill. abata le bref.[4] A.D. 1343-4.

§ Le[5] Priour de Mertone porta soun brief de Rescous vers plusours de ceo qe, come ly et toutz ses predecessours puis temps de memorie avoint eu view de Fraunke plegge, et conisaunce dez toutz choses qe a ceo appendent, saver, crie leve, et saunk espaundu, &c., et outre soun brief voleit qe come il voleit avoir attache un H. par un T. soun servant de respoundre en mesme la view du saunk qil avoit Rescus.

" set, prædictus Thomas, simul " cum Johanne filio Alani le Couper, " prædictos Rogerum, Isabellam, et " Hillarium, vi et armis, rescussit," &c.

[1] L., *præfata.*

[2] The successful plea in abatement of the writ was, according to the record, " eo quod in prædicto " brevi inseritur quod prædictus " ballivus prædictos Rogerum, Isa- " bellam, et Hillarium attachiare " voluisset, de qua quidem inten- " tione rescussus adjudicari non " potest."

[3] serrount is omitted from L.

[4] According to the roll, " per quod " consideratum est quod prædictus " Thomas eat inde sine die."

[5] This report of the case is from Harl. (No. 2) alone. It has neither been printed in the old editions nor used by Fitzherbert for his *Abridgment.*

No. 11.

A.D. 1343-4. shed, &c., the said H.[1] and others, &c., rescued him, &c.—*R. Thorpe.* Judgment of this writ, for this writ ought to be founded on some word relating to an act, &c., but this writ has not supposed any attachment to have been made, but it supposes that he intended to have attached the other, so that this writ does not contain any cause of action, because his writ is in the words *attachiare voluisset*, wherefore we demand judgment of the writ. But with regard to a writ relating to a rescue effected upon a taking of beasts, he will have a good writ by supposing that whereas by such an one his servant "*cepit et imparcare voluisset*," &c., because the intention to put in the pound is found by the preceding taking, but in this case he has no act which can prove his intention, and therefore there is no act supposed by which this writ can be maintained; wherefore, &c.—*Gaynesford.* If he came and intended to have attached any one and was prevented, is not that a reason why on such matter he should have a writ of Trespass because the other prevented him from executing his office? But he cannot have a writ of Rescous. And one has seen it adjudged in this Court that one had a writ of Trespass for that one prevented people from coming to his market who wished to have come, and the writ abated because the intention of another person cannot be found; wherefore no more can it in this case.—HILLARY, *ad idem.* If your servant came to him and said to him in words that he attached him, he was thereby immediately attached according to law, so that on such matter you could have a writ supposing that he had attached, and supposing your servant did not make the attachment by words, that is no reason why you should have a writ of Rescous; wherefore the COURT adjudges that you do take nothing, &c.

[1] As to the name *see* p. 461, note 11.

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A.D. 1343-4.

espandu, &c., le dit H. et autres, &c., ly rescouserent, &c.—*R. Thorpe.* Jugement de cest brief, qar cest brief covent estre fundu sur ascun parole en fait, &c., mes cest brief ad suppose nulle attachement estre fait, eins suppose qil voleit ly avoir attache, issint cest brief comprent nul accion, qar soun brief voet *attachiare voluisset*, par quoi nous demandoms jugement de brief. Mes en un brief de rescous fait sur prise des avers il avera boun brief a supposer *quod cum* par un tiel son servant *cepit et imparcare voluisset*, &c., qar la volunte de lenparker est trove par la prise precedent, mes issi nad il nulle fait qe puit prover sa volunte, et par tant nul fait suppose par qel ceo brief[1] puit estre meyntenu; par quei, &c.—*Gayn.* Sil vint et ly voleit avoir attache et fuit destourbe, nest il pas resoun qe sur cel matere qil avereit brief de Trespas de ceo qil ly destourba affaire soun office? Mes brief de Rescous ne puit ile avoir. Et homme ad vew ceinz ajugge qe homme avoit brief de Trespas de ceo qil destourba gentz de vener a sa marche qe voleint avoir venu, et le brief sabati pur ceo qe autri volunte ne puit estre trove; par quei nient plus icy. —Hill., *ad idem.* Si vostre servant vint a luy et ly dit par parole qil attacha, meyntenant en ley il fuit attache par taunt, issint qe sur tiele matere vous purrez avoir brief supposant qil avoit attache, et en cas qe vostre servant ne fist pas lattachement par parole, il nest pas resoun qe vous eiez brief de Rescous; par quei la Court agarde qe vous ne preignez rien, &c.

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[1] MS., fait.

Nos. 12, 13.

A.D. 1343-4. Attachment.

(12.) § John Kyng brought an Attachment on Prohibition.—*Richemunde.* There are several John Kyngs in the County; and it is not determined with certainty, by the writ, to whom we have to answer; judgment of the writ.—*Grene.* To the person who is named, and who proffers himself.—Sharshulle. He is plaintiff, and, therefore, answer.—*Seton.* The defendant has not sued any plea contrary to the Prohibition; ready, &c., by his law.—*Grene.* You shall not have wager of law, because it is supposed that you have sued a writ of Trespass against the peace, in respect of which wager of law does not lie.—*Richemunde.* We do not tender wager of law in respect of anything but a suit which is surmised against us as contrary to the Prohibition. —Hillary. Take the averment, if you will, for you shall not have wager of law in this case.

Note.

(13.) § Note that one who prayed to be admitted, by reason of the default of his tenant for term of life,

Nos. 12, 13.

A.D. 1343-4. Attachement.

(12.) [1] § Johan Kyng [2] porta Attachement sur la [3] Prohibicion.[4]—*Richem.*[5] Il ysount divers Johans Kyng [2] el Counte; et par bref nest pas determine en certein a qi nous respondroms; jugement du bref.—*Grene.* A celui qest nome, et qe se profre.[6]—Schar. Il est pleintif, et, pur ceo, responez.—*Setone.* Il ad [7] suy nul plee countre la Prohibicion [4]; prest, &c., par sa [8] ley.—*Grene.* La ley naverez pas, qar il est suppose qe vous avez suy brief [9] de Trespas countre la pees, de quei [10] la ley [11] ne gist pas.—*Richem.* Nous tendoms par la ley de rienz mes dun suyte quele nous est surmys countre la Prohibicion.[4]—Hill. Pernez laverement, si vous voillez, qar vous naverez pas la ley en ceo cas.[12]

Nota.

(13.) [13] § *Nota* qe celuy qe pria par defaut son tenant a terme de vie destre resceu dist qe les

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[1] From L., and 25,184, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 59. It there appears that William de Stoke was attached at the suit of John Kyng, of London, whose complaint was "quod prædictus Wil-" lelmus secutus fuit placitum in " Curia Christianitatis, videlicet " fecit summoneri ipsum Johannem " essendi coram Officiali Episcopi " Londoniensis in ecclesia Sancti " Pauli Londoniarum . . . . . ad " respondendum eidem Willelmo " de placito quare ipsum verberavit, " vulneravit, male tractavit, et im-" prisonavit, et, licet idem Johan-" nes . . . . . in Warda de Chepe " in parochia Sancti Laurentii, in " præsentia Willelmi atte Market, " et Johannis Latonier, et aliorum, " porrexisset ei regiam prohibi-" tionem ne placitum illud ulterius " in Curia Christianitatis sequere-" tur, idem Willelmus, spreta pro-" hibitione prædicta, nihilominus " . . . . . secutus fuit idem " placitum in eadem Curia Chris-" tianitatis."

[2] L., Inge.

[3] la is omitted from L.

[4] 25,184, Prohibucion.

[5] L., *Thorpe.*

[6] L., profert.

[7] L., yad.

[8] L., la.

[9] brief is omitted from 25,184.

[10] L., qai.

[11] 25,184, layement.

[12] According to the roll, issue was joined to the country "quod ipse " non secutus fuit placitum præ-" dictum in Curia Christianitatis " contra prohibitionem Regis." Nothing further appears, except adjournments.

[13] From L., and 25,184, until otherwise stated.

No. 14.

A.D. 1343-4. said that the tenements were in another vill. But the *Petit Cape* had not been served.—*Quære* as to this matter.

Præcipe quod reddat. § A *Præcipe quod reddat* in respect of tenements in A. was brought against a tenant who made default after default. One C. appeared, and prayed, by *Gaynesford*, to be admitted, &c., and said that the tenements were in the vill of B., and demanded judgment of this bad writ in which the vill was misnamed.—*Derworthy.* You cannot plead in abatement of the writ, because you are not yet a party to us.—HILLARY. You plead in vain, for the Grand *Cape* is not served because the original writ is brought in respect of tenements in A., and the Grand *Cape* which issued speaks of tenements in B.; and though this writ is served, it is not warranted by the original, and for that reason no *Cape* which has issued on the original is served, and therefore you cannot be admitted, because the process is discontinued.—And so observe that the Court, in virtue of its office, discontinued the process, without exception taken by a party.

Rescous. (14.) § The Earl of Lancaster brought a writ of Rescous in respect of a distress made within his fee, for services in arrear, that is to say, in respect of certain beasts rescued, and of chattels, to wit, wheat, barley, &c., carried off. And he counted that he had distrained for a relief from his tenant, and that the

No. 14.

tenements furent en autre ville. Mes le petit *Cape* ne fut pas servi.—*Quære de ista materia.* A.D. 1343-4.

§ *Præcipe*[1] *quod reddat* porte vers un tenant, de tenementz en A., qe fit defaut apres defaut. Survint un C., et par *Gayn.* pria destre resceu, &c., et dit qe lez tenementz furent en la ville de B., et demanda jugement de ceo mauveys brief en qel la ville est mesnome.—*Der.* Vous ne poiez pas pleder en abatement du brief, qar vous nestez pas unqore partie a nous.—Hill. Vous pledez en veyn, qar le graunt *Cape* nest pas servi pur ceo qe le brief original est porte de tenementz en A., et le graunt *Cape* qe issit parle de tenementz en B.; et, coment qe cest brief est servy, ceo nest pas garraunti del original, et par tant nulle *Cape* qest issu del original est servy, et pur ceo vous ne poiez estre resceu, qar le proses est discontinue.—*Et sic vide* qe la Court doffice discontinua le proces, saunz chalenge de partie. *Præcipe quod reddat.* [Fitz., *Office del Court*, 15.]

(14.)[2] § Le Count de Launcastre porta bref de Rescous de destresse fait deinz[3] son fee, pur services arrere, des asquns avers[4] rescous, [et des chateux, saver, furment, orge, &c., emporte].[5] Et counta coment il avoit destreint pur relief son tenant, et Rescous.

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[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[2] From L., and 25,184, until otherwise stated. This appears to be the case found among the *Placita de Banco*, Hil., 18 Edw. III., R° 143. Henry, Earl of Lancaster, brought his action against Joan, late wife of Walter de Holewelle, and others, alleging that, whereas "in feodo suo, ... pro consue- "tudinibus et servitiis sibi debitis, ". . . . . quædam averia et catalla "capi fecisset," the defendants "averia illa vi et armis rescusse- "runt, et catalla prædicta abstule- "runt."

[3] L., en.

[4] avers is omitted from L.

[5] The words between brackets are omitted from L.

No. 14.

A.D. 1343-4. defendants rescued the beasts, and carried off the goods.—*Rokele.* Judgment of the writ. He has counted in respect of goods carried off, which he took in the name of distress, whereas by the law and custom of the Realm one cannot distrain for service in arrear by chattels, but only by beasts, for, if land lies fallow, a *Cessavit* lies.—HILLARY. The land is open to distress as long as the lord can find distress of chattels; and as long as he can find chattels a *Cessavit* does not lie. —*Quære.*—WILLOUGHBY. The plea is to the action; and, if the defendant will avow the rescue for such a cause, that is a good plea on which to give judgment; and he does not plead otherwise.—*Blaykeston.* Can the lord, for his services in arrear, cut the corn, or when it is cut take it on the field when it is in shocks, or after it has been ground? No more can he when it is housed in barn.—WILLOUGHBY. Then, avow the rescue for such a cause.—*Gaynesford.* No; his writ is bad, as it includes rescue of beasts, in respect of which an action [of Recous] is given, and also rescue of goods carried off, in respect of which that action is not given; wherefore we demand judgment of his bad writ.

Rescous. § One A. brought a writ of Rescous for that he had distrained by the defendant's beasts, and also corn, for rent in arrear, and he counted that the said corn and the said beasts had been rescued.—*Gaynesford.* In this writ is included matter which does not fall under the head of rescue, to wit, corn; judgment of the writ.—*Pole.* That is tantamount to saying that we cannot have an action in respect of the corn. Do you mean that for your answer?

No. 14.

les defendantz rescustrent[1] les avers, et emporterent les biens.—*Rokel.* Jugement du brief.[2] Il ad counte des biens emportes, queux il prist en noun destresse, ou par ley et custume de Roialme[3] homme ne put pas destreindre pur service arrere par chateux forsqe par avers, qar, si terre gist freche,[4] *Cessavit* gist.—Hill. La terre est overte taunt[5] come le seignur purra trover destresse des chateux; et taunt come il trovera des chateux ne gist pas *Cessavit.*—*Quære.*—Wilby. Le plee est al accion; et, si le defendant voille avower le rescous par tiel cause, cest bon plee sur quei ajuger; et autrement ne plede il pas.—*Blaik.* Poet le seignour, pur ses services arrere, sier les blees,[6] ou quant ils sount siez les prendre en le champ quant ils sount tasses, ou moliones[7]? Nient plus ne put il quant ils sount herberges en graunge. —Wilby. Avowez donqes le rescous par tiele cause. —*Gayn.* Nanil; son[8] bref est malveys, qe comprent rescous des avers, de quei accion est done, et auxint rescous[9] des biens emportes, de quei accion nest pas done; par quei nous demandoms jugement de son malveys bref.[10] A.D. 1343-4.

§ Un[11] A. porta brief de Rescus de ceo qil avoit destreint par sees avers, et auxi dez bleez, pur rente arrere, et counta qe les ditz bleez et les ditz avers rescous ount.—*Gayn.* En cest brief est compris matere qe ne chiet pas en rescous, saver, blees; jugement de brief.—*Pole.* Taunt amounte qe de ceo nous ne poms accion avoir. Volez ceo pur respouns? Rescus.

[1] L., rescusserunt.
[2] 25,184, qar, instead of du brief.
[3] L., roilme.
[4] L., frechement.
[5] L., tanqe.
[6] L., bleds.
[7] L., molienes.
[8] 25,184, le.
[9] rescous is omitted from 25,184.
[10] The writ must have been held to be good, because, in the end the tenants pleaded Not Guilty, and issue was joined upon their plea.
[11] This report of the case is from Harl. (No. 2) alone. It has not been printed in the old editions of the Year Books, nor used by Fitzherbert for his *Abridgment*.

No. 15.

A.D. 1343-4. —*Gaynesford.* I plead that your writ is bad, because it includes matters which are contrary, to wit, matter which includes rescue, that is to say, of beasts, and other matter, viz., corn, which cannot be called distress.—Willoughby. If it be so, then you have matter on which to avow the rescue; but then you cannot abate the writ for what falls under the head of justification.—*Blaykeston.* One may take corn with carts, that is to say the beasts in the cart with the corn; but corn growing, or in shocks, cannot be taken by reason of distress; therefore, if the writ includes such matter which cannot be maintained, the party certainly need not justify the rescue.—And afterwards he was told to put his exception by way of answer.—*Gaynesford.* As to the rescue of the beasts, Not Guilty. And as to the corn we say that, being in shocks, it was housed in a barn, and there locked up by the plaintiff's bailiff, and he affixed his seal, *absque hoc* that any other distress was made; ready, &c.—*W. Thorpe.* He does not answer as to the rescue of the corn, either as to the manner of the trespass, or by way of justification; so he does not answer at all; judgment, &c.—Kelshulle. If you affixed your seal on his door, and he took it off, what wrong did he do? as meaning to say none.—And afterwards *Gaynesford* pleaded Not Guilty.

Re-summons. (15.) § The Abbot of Croyland brought a writ of

No. 15.

—*Gayn.* Jeo plede qe vostre brief est malveis, *eo* qil comprent materes qe sount contraries, saver, matere qe comprent rescous, saver, de bestes, et dautre matere des blez qe ne puit estre dit destresse. —Wilby. Si issi soit, vous avetz matere adounqes davowere le rescous; donqes pur ceo [qe] chiet en justificacion vous ne poietz pas abatre le brief.— *Blayk.* Bleez ove charretz homme puit prendre, saver, les bestes en la charette ove les bleez; mes les blees cressauntz ou entassez ne pount estre pris par cause [de] destresse; donqes si le brief comprent tiel matere qe nest pas meyntenable, ja ne covynt qe la partie justifie rescous.—Et puis dit ly fuist qil mist soun challenge par voie de respouns.—*Gayn.* Quant al rescous des avers de rien coupable. Et quant as blees nous dioms qils furent tasses en graunge, et [par] le baillif le[1] pleintif enserez, et il plaunta soun seal, saunz ceo qautre destresse fuit fait; prest, &c.—*W. Thorpe.* Al rescous des bleez il ne respond pas, ne par manere de trespas ne par voie de justificacion; issint ne respond il nient; jugement, &c.—Kels. Si vous plaunstez vostre seal sur soun hus, et il ouste, qel tort fist il? *quasi diceret* nient.—Et puis *Gayn.* pleda de rienz coupable. A.D. 1343-4.

(15.)[2] § Labbe de Croiland[4] porta bref de Garde Resomons.[3]

[1] MS., se.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 151, d. It there appears that whereas "Ranulphus "de Veer in Curia Regis hic sum- "monitus esset ad respondendum "Abbati de Croylande de placito "quod redderet ei custodiam terræ "et heredis Edmundi de Veer de "Magna Adyngtone quæ ad ipsum "Abbatem pertinet eo quod præ- "dictus Edmundus terram suam "de eo tenuit per servitium "militare, idem Ranulphus, pen- "dente inter eos placito prædicto, "obiit, prout ex insinuatione præ- "dicti Abbatis accepit dominus "Rex," the Sheriff of the County of Northampton was directed to summon John son and heir of Ranulf "ad respondendum præ- "dicto Abbati, juxta formam "Statuti de communi concilio "regni Angliæ inde provisi, de "placito prædicto."

[3] L., Garde.

[4] L., Croylond.

No. 15.

A.D. 1343-4. Wardship, in respect of body and lands, against Ranulf de Veer, pending which writ Ranulph died after issue had been joined, and therefore the Abbot sued a Resummons against Ranulf's son and heir John, according to the Statute.[1]—*Grene.* Action by Resummons is given by the statute, which purports that, if the plaintiff die while the writ is pending, the parol is to be resummoned at the suit of the heir, if the ancestor claimed in right of his own fee, but, if by purchase, at the suit of the executors; and the subsequent words of the statute are "*eodem modo si moriatur pars defendens antequam placitum terminetur . . . . . procedatur inter querentem, vel ejus heredes, seu executores, et executores defendentis, vel ejus heredem, si executores non sufficiant quoad satisfactionem de valore maritagii,*"[2] by which it is to be understood that Resummons always lies against the defendant's executors; judgment of this writ against the heir.—*Thorpe.* He does not deny that he is heir, and that he is seised of the wardship, and against him, and no other, can our recovery be maintained, and he does not answer to our action; judgment, because it is otherwise in this case than in a Resummons on Ravishment of Ward, where nothing is to be recovered but damages in lieu of the principal; but in this case our object is to recover the wardship, which cannot be recovered against any one but him who is seised.—*Grene.* The statute never gives the writ against the heir except for insufficiency of the executors, and that you do not allege. —*R. Thorpe.* You do not as yet allege that there are any executors against whom the writ would lie, nor do you allege sufficiency in them; therefore you plead nothing.—Willoughby, *ad idem.* Can he recover the wardship against a person other than him who is seised of it? And suppose a stranger were seised,

[1] 13 Edw. I. (Westm. 2), c. 35.

[2] These words are from the statute itself, which is not correctly quoted in the original report.

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de corps et terres vers Randolf[1] Veer, pendaunt quel bref R. murust apres enqueste joint, par quei Labbe par statut suist[2] resomons vers J. fitz et heir R.—*Grene.* Accion[3] par Resomons et done par statut, qe voet qe, si le pleintif, pendaunt le bref, moert,[4] la parole soit resomons a la suyte leir, si launcestre le clama de son propre fee, et, si par[5] purchace, a la suyte les executours; et donqes voet il apres *eodem modo si defendens moriatur ante placitum terminatum procedatur inter querentem et heredes vel executores defendentis, si executores non sufficiant ad valorem, &c., satisfaciendum,* par queles paroles est entendu qe la Resomons gist touz jours vers les executours le defendant; jugement de ceo bref vers leir.—*Thorpe.* Il ne dedit pas qil est heir, et qil est seisi de la garde, vers qi, et nul autre, nostre recoverir ne put estre meyntenu, et a nostre accion ne respond pas; jugement, qar il est autre en ceo qen Resomons de Ravisement de Garde, ou rien serra recoveri forsqe damages[6] en lieu de[7] principal; mes en ceo cas nous sumes a recoverir la garde, qe ne put estre recoveri vers autre qe celui qest seisi.—*Grene.* Statut doune le bref jammes vers leir mes pur noun suffisauntie[8] des executours, et ceo nalleggetz pas.—*R. Thorpe.* Vous nalleggetz unqore nuls executours vers queux bref[9] girreit, ne[10] nalleggez suffisauntie[8] en eux; par quei vous pledez rien.—Wilby., *ad idem.* Put il recoverir la garde vers autre qe celuy qest seisi? Et jeo pose qe estraunge

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[1] L., Rondolf.
[2] L., suyt.
[3] Accion is omitted from L.
[4] L., moret.
[5] The words si par are omitted from 25,184.
[6] L., de damages.
[7] de is omitted from L.
[8] L., suffisance.
[9] 25,184, le bref ne.
[10] ne is omitted from 25,184.

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A.D. 1343-4. would a Resummons lie against him? as meaning to say that it would not, but only a writ of Wardship. And if you are to be discharged by reason of the sufficiency of the executors, you ought to plead that. —*Grene.* The Resummons lies against the heir or the executours, without regard to the question whether he be seised of the wardship: for, since the original writ was good against the deceased, as a deforcer, on the day of the purchase of that original, to whomsoever a demise was made subsequently, the Resummons, which is in continuation of the first suit, and founded on the same original writ, shall be brought against his heir or executors; wherefore it is reasonable that the Resummons should lie first against the executors, and, in default of them, against the heir, or else that it should be brought against both in case the executors should be sufficient as to part, and as to part not.—SHARSHULLE. He will never have a writ against the heir and the executors in common; and if you compel him first to bring a writ against the executors who have nothing, or are not sufficient, then, after judgment has been given against the executors, he will never have an action against the heir; wherefore he must first consider, before purchasing his writ, against whom he will attain his purpose; and so he has done for anything that we have heard from you; and therefore deliver yourself.—*Grene.* Then we tell you that he made A., B., and C. his executors, who had, on the day of the Resummons, and have assets to make satisfaction out of the goods of the deceased; and this writ is not given against the heir except by reason of the insufficiency of the executors; judgment of the writ.—*R. Thorpe.* Then you do not deny that you are a deforcer and the person seised of the wardship, against whom, and no other, our recovery is given by this writ by which we seek to recover the principal;

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fut seisi, girreit Resomons vers luy? *quasi diceret non*, forsqe bref de Garde. Et si par suffisauntie[1] des executours vous duissez estre descharge, ceo duissez vous pleder.—*Grene.* La Resomons gist vers leir ou les executours, saunz avoir regarde qil soit seisi de la garde: qar, quant loriginal fut bon vers celuy qest mort, come deforceour, jour del original, a qi qe demise est fait puis, la Resomons, qest continuaunt[2] la primere suyte, et sur mesme loriginal bref, serra porte vers son heir ou executours; par qai[3] il est resoun qe la Resomons igise primes vers les executours, et en defaute deux vers leir, ou autrement qit fut porte vers touz[4] deux en cas qe les executours suffisent[5] en partie, et en partie nient. —Schar. Il navera jammes bref vers leir et executours en comune; et si vous lui chacez[6] primes de porter bref vers les executours qe nount rien, ou ne sount pas suffisauntz, donqes, apres le jugement taille countre les executours, navera il jammes accion vers leir; par quei il luy covient primes aviser, avant son purchase, vers qi il avereit son purpos; et si ad il fait pur rien qe nous avoms entendu de vous; et pur ceo deliverez vous.—*Grene.* Donqes vous dioms nous qil fit ses executours A., B., et C. les queux avoient et ount assetz de faire gree des[7] biens le mort jour de la Resomons; et ceo bref nest done vers leir forsqe par nounsuffisauntie[8] des executours; jugement de bref.—*R. Thorpe.* Donqes ne deditez vous pas qe vous estez deforceour, et seisi de la garde, vers qi, et[9] nul autre, nostre recoverir par ceo bref, par quel nous sumes a recoverir le principal,

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[1] L., suffisance.
[2] 25,184, continuance.
[3] 25,184, de qi, instead of par qai
[4] L., ceux.
[5] L., suffissent.
[6] L., chasses.
[7] L., assez de les, instead of gree des.
[8] L., suffisaunce.
[9] et is omitted from L.

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A.D. 1343-4. therefore we demand judgment, because it is otherwise in respect of this writ than in respect of a Resummons on Ravishment of Ward, where nothing will be recovered except damages for which the executors will be charged out of the goods of the deceased; but to this action, in which my object is to recover the principal, the person who is seised will answer.—Hillary. Suppose the heir be seised of the wardship, and be not sufficient to make satisfaction for damages, and the executors have assets of the goods of the deceased to make satisfaction as to the whole, against whom will the writ lie? as meaning to say against the executors, because he will not recover the principal against the heir, and the damages, at another time, against the executors.—*R. Thorpe.* The statute is made to the intent that by the Resummons the plaintiff may attain his purpose, that is to say, recover the wardship; and that he cannot do against the executors when the heir is seised. And as to the statement that the statute does not give the Resummons against the heir except for insufficiency of the executors, I say that no one is sufficient to be a party to that judgment by which the principal is to be recovered except the person who is seised of the wardship, particularly when heir or executors are seised.—*Grene.* To this writ of Resummons the exception of non-tenure does not lie, because the first tenancy, as it was when the original writ was brought, maintains the writ: for suppose the testator had devised the wardship to another, who became seised, still the devise would not be a reason why the Resummons should not be good against his heir or executors; wherefore the writ of Resummons lies against the heir or the executors without having regard to the question who may be seised; but it never lies by statute against the heir except for insufficiency of the executors; now

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est done; pur quei nous demandoms jugement, qar il est autre en ceo bref qen Resomons de Ravisement, ou rien serra recoveri forsqe damages de quei les executours serrount chargez des biens le mort; mes a cest accion, ou jeo suy[1] a recoverir le principal, celuy qest seisi respoundra.—Hill. Jeo pose qe leir soit[2] seisi de la garde, et ne soit pas suffisaunte de faire gree des damages, et les executours ount assetz des biens le mort de fere gree de tut, vers qi girra le bref? *quasi diceret* vers les executors, [qar il ne recovera pas le principal vers leir, et les damages autrefoith vers les executours].[3] —*R. Thorpe.* Statut est fait al entente qe la par la Resomons le pleintif attendra a son purpos, saver, de recoverir la garde; et ceo ne[4] poet il vers les executours quant leir est seisi. Et de[5] ceo qe homme[6] parle qe statut ne doune pas la Resomons vers leir forqe par nounsuffisauntie des executours jeo die qe nul est suffisaunt' destre partie a ceo jugement ou le principal est a recoverir forqe celuy qest seisi de la garde, nomement quant heir ou executours sount seisiz.—*Grene.* A ceo bref de Resomons ne gist pas excepcion de nontenue, pur ceo qe la primere tenaunce,[7] quant le bref original fut porte, meyntient le bref: qar mettez qe le testatour ust devise la garde a autre, qe fut seisi, uncore sa devise ne serra pas cause pur qai la Resomons ne serreit pas[8] bon vers son heir[9] ou executours; par quei saunz aver regarde qi[10] soit seisi le bref de Resomons gist vers leir ou executours[11]; mes jammes par statut gist il[12] vers leir forqe pur nounsuffisauntie

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[1] L., su.
[2] soit is omitted from L.
[3] The words between brackets are omitted from L.
[4] ne is omitted from L.
[5] de is omitted from 25,184.
[6] L., qome, instead of qe homme.
[7] L., tenant.
[8] pas is omitted from 25,184.
[9] 25,184, leir, instead of son heir.
[10] 25,184, qil.
[11] 25,184, le executour.
[12] il is omitted from L.

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A.D. 1343-4. we have alleged sufficiency in the executors; judgment of this writ brought against the heir.—*Moubray, ad idem.* When the wardship has been vested in possession in the testator it could never descend to the heir, but would remain to the executors as a chattel, in respect of which, if they were ousted by the testator's heir, a Ravishment of Ward would lie for them against the heir; therefore it would not be right that he should be charged in relation to the executors by a Ravishment of Ward, and also by the Resummons in relation to you.—Hillary, *ad idem.* Suppose the heir, the wardship of whom is demanded, were now of full age, in which case an action of Wardship would not be given by common law, the Resummons would still lie. Against whom then would you give the writ?—*R. Thorpe.* In that case the writ would lie against the heir, who could try the question of the fee.—Willoughby. By statute a writ is sometimes given against a person who is not seised, as in case an Abbot alienes something given to his House for certain alms and puture for the poor, the writ lies, notwithstanding, against the Abbot, by statute.[1] And in this case the statute does not give the writ against the heir except by reason of the insufficiency of the executors, wherefore, whether the heir is in possession of the wardship or not, if the executors are sufficient, the writ lies against the executors; therefore is it so?—*Thorpe.* The statute gives the writ for the plaintiff's heirs or his executors, when he dies pending his suit, that is to say, for the heirs if the right was belonging to his own fee, and for the executors if it was by purchase; in the same manner the statute purports that it is to be maintained against the defendant's heirs or executors, if he claims as of his own fee against the heir, if by purchase against the executors; now

[1] 13 Edw. I. (Westm. 2), c. 41.

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des executours; ore avoms allegge suffisauntie en les executours; jugement de ceo[1] bref porte vers leir.—*Moubray, ad idem.* Quant le[2] garde fut vestu en possessioun en le testatour jammes ne pout il descendre en leir, mes demurreit as executours come chatel, de[3] quel, sils furent oustez par leir le testatour,[4] Ravisement de Garde girreit pur eux vers leir; donqes ne serra pas resoun qil serra charge vers les executours par Ravisement, et auxi par la Resomons vers vous.—Hill., *ad idem.* Jeo pose qe leir, qi garde est demande, fust de plein age a ore, en quel cas par comune ley accion de Garde ne serra pas done, uncore la Resomons girreit. Vers qi donqes durrez le bref?—*R. Thorpe.* La girreit le bref vers leir qe purreit trier le fee.—Wilby. Par statut est done bref a la foith vers celuy qe nest pas seisi, come en cas ou Abbe aliene chose done a sa mesoun[5] pur certeyne almoigne et puture des povers,[6] le bref, *non obstante,* gist vers Labbe par statut. Et en ceo[7] cas statut ne doune pas le bref[8] vers leir forqe par nounsuffisauntie des executours, par quei, eit leir en la garde ou noun, si les executours soient suffisauntz, vers les executours[9] gist le bref; par quei est il[10] issint?—*Thorpe.* Statut doune le bref pur les heirs le pleintif ou ses executours, quant il devie pendaunt sa suyte, saver, les[11] heirs sil fut de son propre fee, et pur les executours sil fut de son purchase; par mesme la manere voet lestatut qil soit meyntenu vers les heirs ou executours del defendaunt, sil clama de son propre fee vers leir, si par purchase vers les executours; ore

[1] ceo is omitted from 25,184.
[2] L., cest.
[3] L., le.
[4] The words par leir le testatour are omitted from 25,184.
[5] 25,184, meisoun.
[6] L., poudres.
[7] ceo is omitted from 25,184.
[8] The words le bref are omitted from L.
[9] L., eux, instead of les executours.
[10] 25,184, il est, instead of est il.
[11] L., ses.

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A.D. 1343-4. he has not by his exception alleged any matter by reason of which the Resummons would lie against the heir, that is to say, that the testator had the right as belonging to his own fee, and therefore it would lie against the executors.—Willoughby. When a plaintiff makes use of the action and dies pending his suit, it can be known by his declaration whether he claimed by purchase or as belonging to his own fee; but it is not so in the case of the defendant who has not to claim in respect of his tenancy.—*W. Thorpe.* But the Resummons lies for the plaintiff's heir or executors according to the case which in fact exists, even though the plaintiff never counted; therefore there is no difference.—*R. Thorpe.* The statute, as to Resummons for heir or executor of the plaintiff, cannot be understood to apply to a writ of Wardship, but only to a writ of Ravishment of Ward, or one of Ejectment from Wardship, for executors can never have an action in respect of wardship in action; wherefore the words *eodem modo* must refer, with regard to Resummons on a writ of Wardship, to the defendant's heir, and not to the executors, and particularly when the heir is seised, because in this action no one is sufficient to be a party to a judgment except the person who is seised; but the statute is to be understood to apply in Ravishment or Ejectment, in which everything will be turned into damages.—*Grene.* No one can reasonably prove that the statute is to be understood as applying to the defendant in the way you say it does, for wardship vested in possession is always a chattel, which will accrue to the executors, and will never descend upon the heir, against whom no writ of Resummons lies except for insufficiency of the executors.—Willoughby to *Thorpe.* Answer.—*Thorpe.* We tell you that the executors are not sufficient, with regard to the goods of the deceased, and were not on the day on which the Resummons was attached; judgment.—*Grene.* They had assets after the testator's death, and, if you have outstayed the time

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nad il allegge par sa excepcion tiel matere pur quei la Resomons girreit vers leir, saver, qe le testatour lavoit de son propre fee,[1] par quei il girreit vers les executours.—Wilby. Quant pleintif use accion et devie pendaunt sa suyte, par sa mostraunce purra homme saver sil clama par purchas ou de son propre fee; mes il nest issi[2] de par le defendant qe ne deit clamer en sa tenaunce.—[*W.*] *Thorpe.* Mes la Resomons gist pur leir ou executour de pleintif solonc le cas qest en fait, tut ne counta unqes[3] le pleintif; par quei ceo nest pas diversite.—*R. Thorpe.* Lestatut, quant a Resomons pur heir ou executour de pleintif, ne put estre entendu en bref de Garde, forqe en Ravisement ou Engettement, qar de garde en accion executours ne pount jammes aver accion; par quey le *eodem modo* deit referrer, en Resomons en bref de Garde, al heir le defendant, et noun pas as executours, et nomement quant leir est seisi, qar a cel accion nul est suffisaunt destre partie a jugement forqe celuy qest seisi; mes en Ravisement ou en Engettement, ou tut tornera[4] en damages, statut est a entendre.—*Grene.* Nul homme provera par resoun qe statut est a entendre de[5] par le defendant come vous parlez, qar touz jours garde vestu en possessioun est chatel, qe acrestera as executours, et jammes descendra[6] en heir, vers qi nul bref de Resomons gist forqe par nounsuffisauntie des executours. —Wilby. a *Thorpe.* Responez.—*Thorpe.* Nous vous dioms qe les executours ne sount pas suffisaunts des biens le mort, ne furent jour de la Resomons attache; jugement.—*Grene.* Ils avoient assetz puis la mort le testatour, et si vous avez[7] sursis le

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[1] 25,184, par purchase, instead of de son propre fee.
[2] L., ycy.
[3] L., onqes.
[4] L., trovera.
[5] de is omitted from L.
[6] descendra is omitted from L.
[7] L., eitz.

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A.D. 1343-4. for the purchase of your writ when you might have recovered your value against them, that will not serve your turn to our damage and charge.—*Gaynesford.* One cannot have a Resummons except in Term-time, when the Court is sitting; and what if the testator had died in time of vacation, and the executors then had assets, and had administered before I could have had a Resummons? Should I thereby be ousted from an action?—*Grene.* Then aid yourself by such matter. —Willoughby. If you had given your exception on such matter, that the executors had assets after the testator's death, you would not have had the plea if you had not said also since the Resummons.—*Grene.* I think the reverse, and you will understand my plea to mean at all times at which the executors are chargeable, and that is since the testator's death.— Willoughby. Then is it as they say?—*Grene.* My plea, when I say that they are sufficient with the goods of the deceased, will refer to a time further up than that at which the plea is pleaded, for you fully allow that it will refer to the time at which this Resummons was brought, because as to that time the law charges him; for the same reason it will be understood to relate to all times since the death of the testator, because they are chargeable with respect to all that time; and if he outstayed his time, for that outstaying he will suffer himself, and not cast the charge on us by his delay.—Shardelowe. And what if the testator died in time of vacation, when they could not have a Resummons?—*Grene.* That does not change the law, for if they were sufficient one day or one hour after the testator's death, that

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temps de vostre purchase quant vous peusetz avoir recoveri vostre value devers eux, ceo vous tournera[1] pas en damage et charge de nous.[2]—*Gayn.* Homme ne put aver Resomons forqe en temps de Terme qe la place est seaunt; et quei si le testatour en temps de vacacion ust devie, et adonqes les executours avoient assetz, et avoient administre avant qe jeo poay aver eu Resomons? Serra jeo par taunt ouste daccion?—*Grene.* Aidez vous sur tiele matere.—Wilby. Si vous eussez done vostre chalaunge sur tiel matere qe les executours avoient assetz puis la mort le testatour, si vous nussez dit puis la Resomons pris, ja nussez eu le plee.—*Grene.* Jeo quide qe[3] le revers, et a cele entente entendrez[4] vous mon plee de[5] chescun temps qe les executours sount chargeables, et cest puis la mort le testatour.—Wilby. Donqes est il auxi come[6] ils diount.[7]—*Grene.* Mon plee, quant jeo die qils sount suffisauntz des biens le mort, referra a plus haut[8] qe au temps qe le plee est plede, qar vous grauntez bien qil referra au temps quant ceste Resomons fut porte, pur ceo qe de cel temps ley lui charge; par mesme la resoun serra il entendu de chescun temps puis la mort le testatour, qar de tut cel temps sount ils[9] chargeables; et sil sursist son temps, de son[10] surseer il la compera mesme, et noun pas gettre la charge par son surseere[11] sur nous.—Schard. Et quei sil morust en temps de vacacion, quant ils ne poaint[12] aver Resomons?—*Grene.* Ceo ne chaunge pas la ley, qar si un jour ou une houre puis la mort le testatour ils furent suffisauntes, ceo lour

A.D. 1343-4.

[1] L., trovera.
[2] L., vous.
[3] qe is omitted from 25,184.
[4] L., entendez.
[5] L., en.
[6] L., coment, instead of auxi come.
[7] L., dient.
[8] L., haust.
[9] 25,184, dount ils sount, instead of sount ils.
[10] son is omitted from L.
[11] 25,184, sursis.
[12] L., poeunt.

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A.D. 1343-4. charges them at every time, because if they were once seised of the wardship, and have divested themselves, that does not alter the matter.—Willoughby. If you had pleaded in abatement of the writ on such matter, on the ground that they were sufficient after the testator's death, then there would have been that matter to dispute, but you have pleaded specially, and he has traversed as largely as you have taken your plea; wherefore, will you accept the averment?—*Grene.* Then we tell you, as to the wardship of the body, that neither his ancestor nor the person against whom the writ is brought ever had anything; judgment of the writ; and, as to the land, the infant's ancestor did not hold of the plaintiff by knight service; ready, &c.—*R. Thorpe.* That plea is double: one is non-tenure as to the wardship of the body; the other is a traverse of the action to the effect that the ancestor did not hold of us, which relates as well to the wardship of the body as to the wardship of the land, inasmuch as we demand the wardship of the body only by reason of the tenancy of this same land whereof we demand the wardship by this writ.—Hillary. Do you want to put him to answer, as tenant, to your writ, in bar of the action, when he is not tenant?

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charge de chescun temps, qar[1] sils furent seisiz de la garde une foitz, et se eyent[2] demys, ceo ne chaunge pas la matere.—Wilby. Si vous eussez plede al abatement de bref sur cel[3] matere, pur ceo qils furent suffisauntes puis la mort le testatour, donqes serreit ceste matere a disputer,[4] mes vous avez plede en especial, et il vous ad traverse auxi largement come vous preistes vostre plee; par quey voillez[5] laverement?—*Grene.* Donqes vous dioms, quant a la garde du corps, son auncestre ne celuy vers qi le bref est porte navoient unqes rien; jugement du bref; et, quant a la terre, launcestre lenfaunt ne tient pas du pleintif par service de chivaler; prest, &c.[6]—*R. Thorpe.* Ceste plee est double: une est a la nountenue quant a la garde du corps; autre est a travers del accion qe launcestre ne tient pas de nous, qe refiert si bien a la garde du corps come a la garde de la terre, desicome nous demandoms la garde du corps forqe par cause de la tenaunce mesme ceste terre dount[7] nous demandoms par ceo bref la garde.—Hill. Luy voillez vous mettre a[8] respoundre, come tenant, a vostre bref, en barre daccion, ou il nest pas tenant? A.D. 1343-4.

[1] qar is omitted from L.

[2] L., soient, instead of se eyent.

[3] L., tiel.

[4] 25,184, desputer.

[5] L., voielletz.

[6] The plea which appears in the record is "quo ad custodiam corporis prædicti heredis dicit quod ipse non debet prædicto Abbati ad hoc breve de Resummonitione respondere, quia dicit quod prædictus Ranulphus, pater suus, non habuit custodiam corporis prædicti heredis die impetrationis prædicti brevis de Custodia, nec ipse Johannes die impetrationis prædicti brevis de Resummonitione aliquid habuit in custodia corporis ejusdem heredis. Et hoc paratus est verificare, et unde petit judicium, &c. Et quo ad custodiam prædictorum tenementorum dicit quod prædictus Abbas nihil juris clamare potest in custodia illa, quia dicit quod prædictus Edmundus non tenuit tenementa illa de prædicto Abbate per servitium militare, sicut idem Abbas per breve suum supponit. Et hoc paratus est verificare, et unde petit judicium."

[7] dount is omitted from L.

[8] L., de.

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A.D. 1343-4. That would be against reason.—*Thorpe*. It is reasonable; and therefore let him take his plea at his peril. And suppose he says truly that the ancestor did not hold of us, we shall, by that plea which he pleads in respect of the land, be barred as much in relation to the wardship of the body as to that of the land: for suppose the issue were taken on the non-tenure, and the finding were in our favour on the tenancy that he is tenant with regard to the wardship of the body, and with regard to the land that the ancestor did not hold of us, should we not be barred as to the whole by that last issue found against us, for otherwise it would follow that we should recover where we have no right, by a matter which would be tried, and that could not be?—Sharshulle. It is the fact that you would recover on such a plea though you had no right. And suppose the wardship of the body were demanded by one *Præcipe* against one person, and the land against another, would they not have those two answers? For the same reason one person alone against whom the writ was brought will have them.—*Grene*. Suppose he said that we had released as to the body, and that, as to the lands, the ancestor did not hold of us, would he have those two different answers?—Willoughby and Sharshulle said that he would.—Willoughby. Will you accept the averment?—*R. Thorpe*. You are speaking out of the ordinary terms of law; the averment is not yet tendered, because it would come from us.—Stonore. Then is it so?—*R. Thorpe*. Your ruling is good.—And then *Thorpe* maintained both.

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A.D. 1343-4.

Ceo serreit contre resoun.—*Thorpe.* Il est resoun; et pur ceo preigne son plee a son peril. Et mettes[1] qil die verite qe launcestre ne[2] tient pas de nous, si bien serroms nous[3] barre, par ceo plee qil plede quant a la terre, de la garde du corps come de la terre: qar posez qe lissue fut pris sur la nountenue, et sur la tenance[4] trove serra pur nous qil serra tenaunt quant a la garde du corps, et quant a la terre qe launcestre ne tient pas de nous, ne serroms pas barre par cele derreyn[5] issue trove countre nous de tut, ou autrement ensuereit qe nous recoveroms ou nous navoms pas dreit, par chose qe serreit trie, qe ne poet estre?—Schar. Il est issint qe recoverez sur tiel plee tut neussez vous pas[6] dreit. Et[7] mettez qe la garde du corps par un *Præcipe* fust demande vers un, et vers autre la terre, naverount ils ceux deux respouns? [Par mesmes le resone avoira un soule vers qi le bref fust porte.—*Grene.* Jeo pose qe il deist qe nous usoms relesse quant al corps, et quant as terres launcestre ne tient pas de nous, avera il ceux deux divers respouns?][8]—Wilby. et Schar. disoint qoil.—Wilby. Voillez[9] laverement?—*R. Thorpe.* Vous parlez hors des termes de ley; laverement unqore nest pas tendu, qar ceo vendra de nous.—Ston. Donqes est il[10] issint?—*R. Thorpe.* Vous reulez bien.—Et puis *Thorpe* meintient lun et lautre.[11]

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[1] L., mette.
[2] L., le.
[3] nous is omitted from 25,184.
[4] L., le tenant, instead of la tenance.
[5] L., drein.
[6] pas is omitted from L.
[7] Et is omitted from 25,184.
[8] The words between brackets are omitted from 25,184.
[9] L., Voletz.
[10] 25,184, il est, instead of est il.
[11] There was a replication for the Abbot "quod die impetrationis "prædicti brevis de Custodia ". . . . . prædictus Ranulphus "fuit tenens de custodia corporis "prædicti heredis, et similiter "prædictus Johannes die impetra- "tionis prædicti brevis de Resum- "monitione . . . . . et etiam "quod prædictus Edmundus tenuit "de eo prædicta tenementa per "servitium militare, sicut ipse per

No. 15.

A.D. 1343-4. Wardship.

§ The Abbot of Croyland brought his writ of Wardship against one H.,[1] who died, pending the writ, wherefore he sued a Resummons according to the Statute[2] against one W.[1] as against the heir of H.—And W. said by *Gaynesford* :—We demand judgment of the writ, because this suit is given by the statute in case the defendant dies while the writ is pending, and that against the defendant's executor, or against his heir in case the executors are not sufficient to make satisfaction for the damages, so that the cause for which the writ shall be brought against the heirs is limited by the statute, that is to say, by reason of the insufficiency of the executors, and this cause he does not include in his writ so that it could be maintained against the heir, wherefore, &c., judgment of this writ.—*R. Thorpe.* In a writ of Ravishment of Ward the statute limits the cause of the writ as you say, but in a writ of Wardship it says otherwise, for the statute says that on a common writ of Wardship the parol shall be resummoned against the heirs or against the executors of the defendant at the election of the plaintiff.—And therefore see the statute as to this.—And the reason of the difference is that on a writ of Ravishment of Ward the recovery will fall entirely under the head of damages, and for that reason the writ shall be brought against the defendant's executors if they be sufficient, and not against the heir, because execution in respect of damages for the deforcement which the testator committed in his life ought properly to be out of the goods of the testator which the executors have; but on a writ of Right of Wardship the wardship will be recovered as well as the damages, and therefore

[1] As to the names *see* p. 473, note 2.

[2] 13 Edw. I. (West. 2), c. 35.

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A.D. 1343-4. Garde. [Fitz., *Garde*, 110.]

§ Labbe[1] de Croulande porta soun brief de Garde vers un H., qe murust, pendant le brief, par quei il suyst un Resomons solonc lestatut vers un W. com vers heir H.—Et dit par *Gayn*: Nous demandoms jugement de brief, qar cest suite est done par statut en cas qe le defendant devie pendant le bref, et ceo vers executour le defendant, ou vers soun heir en cas ou les executours ne sount pas sufficiants de faire gre pur les damages, issint qe la cause par quei le brief serra porte vers les heirs est limite par lestatut, saver, par la nounsufficiauntie des executours, qel cause il ne comprent pas en son brief qe purra estre meyntenu vers leir, par quei, &c., jugement de cest brief.—*R. Thorpe.* En brief de Ravisement de Garde lestatut limite la cause del brief come vous parles, mes en brief de Garde parle autrement, qar lestatut dit qen comune brief de Garde la parole serra resomons vers les heirs ou vers les executours le defendant par eleccion le pleintif.—*Et ideo vide Statutum de hoc.*—Et la cause de diversite est pur ceo qen brief de Ravisement de Garde le rescoverir cherra tut en damages, et par tiel cause le brief serra porte vers les executours le defendant sils soient sufficiaunts, et nyent vers leir, pur ceo qe execucion de damages deit proprement estre de bienz le testatour qeux lez executours [ount] pur la deforcer qil fist en sa vie, &c.; mes en brief de Droit de Garde la garde serra rescoveri auxi bien come damages, et pur ceo il covynt qe

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" breve suum supponit." Issue was joined upon this and the *Venire* awarded. Some adjournments only follow on the roll. In 25,184 the following words are added at the end of the report:—" *Grene.* Certes vous tendrez le " plee sur loriginal, et ceo voet " lestatut." They appear to belong to some other case—perhaps No. 5 above.

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1343-4. the Resummons on a writ of Wardship must be sued against the person who is in possession of the wardship, and against whom the wardship can be recovered; and some people will say that it is a good plea to allege non-tenure on this Resummons, and therefore the writ ought to be brought against the person who is in occupation of the wardship; and you do not disclaim the wardship, nor affirm the possession of it to be in the executors, so that I could have a writ against them; judgment whether our writ be not sufficiently good.—*Grene*. I know well that it is not a plea to allege non-tenure on this writ of Resummons, for if your ancestor was seised of the wardship after our original writ was purchased against him, you will by reason of that tenancy maintain your writ against his heir, or against his executors, even though another has the wardship, because no demise that his ancestor could make after our writ was purchased against him would change the nature of our suit; wherefore, &c.—Willoughby. Still, that which you have pleaded could not in any manner be in abatement of his writ, unless you say that your ancestor has certain executors, who are sufficient, &c., and so put him to take his suit against them, &c.—*Grene* said *gratis* that the person against whom the original writ was brought had executors, to wit, one G. and one R., who were sufficient, &c.; judgment as before.—*R. Thorpe*. Still that is not a plea unless you say that they are tenants of the wardship, and that you have nothing, and that possibly will be a good plea, because we have seen it adjudged in this Court that when the heir disclaimed the wardship on a like Resummons sued against him, the writ abated for that cause.—Michaelmas Term in the seventh year agrees. See there a like plea.[1]—And therefore it follows that the Resummons should be sued against

[1] Y.B., Mich., 7 Edw. III., No. 18.

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le Resomons de brief de Garde soit suy vers cely qest possessione de la garde, et vers qi la garde puit estre recoveri; et asquns gentz voilent dire qil est boun plee dalleger nountenure en cest Resomons, et par taunt le brief doit estre porte vers cely qe occupa la garde; et vous ne desclamez pas en la garde, ne affermez la possessioun en les executours, issint qe jeo poai avoir brief vers ceux; jugement si nostre brief ne soit assetz boun.—*Grene.* Jeo say bien qe ceo nest pas plee dalleger nountenure en cest brief de Resomons, qar si vostre auncestre fuit seisi de la garde puis nostre brief original purchace vers luy, par cause de cel tenance vous meintyndrez vostre brief vers soun heir, ou vers ses executours, mesqe autre ad la garde, pur ceo qe nulle demis qe soun auncestre puit faire puis nostre brief purchace vers ly ne chaungera pas la nature de nostre suite; par quei, &c.—Wylby. Unqore, ceo qe vous avetz plede ne puit en nul manere estre en abatement de soun brief, si vous ne diez qe vostre auncestre ad certeinz executours, queux sount sufficiaunts, &c., issint li mettre de prendre sa suite vers eux, &c.—*Grene* de gree dit qe cely vers qi le brief original fuit porte avoit executours, saver, un G. et un R., les queux furent sufficiaunts, &c.; jugement *ut prius.*—*R. Thorpe.* Unqore nest pas ceo plee, si vous ne diez queux sount tenantz de la garde, et qe vous navetz rienz, et ceo par cas serra boun plee, qar nous avoms view ceinz ajugge qa tiel Resomons suy vers leir il desclama en la garde, et par tiel cause le bref sabata.—*De hoc concordat Michaelis vij. Vide ibi simile placitum.*—Et par taunt ensuyt qe la Resomons serra suy vers cely qe

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A.D. 1343-4. the person who is in occupation of the wardship, and therefore you plead nothing if you do not disclaim the wardship.—*Moubray.* Since your writ was brought against one who was the Abbot's tenant, after his death, a chattel of that kind remained with his executors, and if the heir entered upon the executors they would have a writ of Ejectment from Wardship against him; therefore it would be contrary to reason to put the heir to answer to this writ and be charged towards you with damages if you recover, and also to charge him with damages, at another time, towards the executors when they are attached; wherefore it seems to me that this writ will abate, and you will be put to sue against the executors, and recover your damages against them out of the goods of the testator, who was the first occupant of the wardship, and they will be put to sue against the heir to recover their damages against him; wherefore, &c.—*Pole.* If this Resummons abates, we can have only an original writ against the executors, because the statute gives a Resummons against the heirs or against the executors of the defendant, but in case we elect to take our suit against one of them it is clear that we shall not be able to prosecute that suit, and then go back, and take a new Resummons against the other of them, because at the commencement we must elect our suit at our peril; wherefore it seems that it would be unreasonable to abate this writ when he does not disclaim the wardship.—Stonore agreed to this.—*R. Thorpe.* Suppose that, after the defendant's death, the heir occupies the wardship, shall I not have a Resummons against him? as meaning to say that he would.—*Grene.* I say that you will not, because in that case a Resummons will be sued against the executors.—And to this the Court agreed.—Willoughby. He has said that the testator has executors who are sufficient, and so he puts you to take your suit against them just as the statute

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occupa la garde, et par taunt vous ne pledez rienz si vous ne desclamez pas en la garde.—*Moubray.* Quant vostre brief fut porte vers un qe fuit tenant un A., par quei, apres sa mort, tiel chatel demurt a ses executours, et si leir entrast sur lez executours eux avereint brief Dengettement de Garde vers luy; donqes serroit il contre resoun de mettre leir a respondre a cest brief et estre charge devers vous de damages si vous recoverez, et auxi bien ly charger de damages vers lez executours autre foitz quant ils sont attaches; par quei me semble qe ceo brief abatera, et vous serrez mys de suire vers les executours, et recoverir voz damages vers eux de bienz le testatour, qe fuit primer occupatour, et eux suire vers leir a recoverir les damages vers luy; par quei, &c.—*Pole.* Si ceo Resomons sabatera, nous ne poms avoir vers les executours forqe un brief original, qar lestatut done un Resomons vers lez heirs ou vers les executours le defendant, mes en cas qe nous elisoms nostre seute vers lun de ceux il est clere qe nous ne purroms pas seure cel suite, et resortir, et prendre un novel Resomons vers lautre deux, qar al comencent nous eliseroms nostre suite a nostre peril; par quei dabatre cest brief la ou il descleyme pas en la garde il semble qil serroit encontre resoun.—*Ad hoc concordat* Ston. —*R. Thorpe.* Jeo pose qapres la mort le defendant leir loccupa la garde, naverai jeo pas un Resomons vers ly? *quasi diceret sic.*—*Grene.* Jeo die qe nanil, qar en ce cas un Resomons serra suy vers les executours.—Et a ceo la Court [acorda].—Wylby. Il ad dit qil a executours qe sount sufficiaunts, issint vous mette il de prendre vostre suite vers eux auxi

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A.D. 1343-4. directs; wherefore you must answer to that.—*R. Thorpe.* I do not know what he calls sufficient to render to us the wardship and our damages—whether that they are tenants of the wardship, or that they are sufficient to render us our damages alone.—Willoughby. The statute says that they are to be sufficient "*ad satisfaciendum de valore maritagii*," for the recovery of the damages, and that is sufficient for you, and therefore we must listen to his plea.—*Thorpe.* The executors are not sufficient, and were not on the day of the Resummons, &c.; ready, &c.—*Grene.* That is not a plea unless you say that they were not sufficient at any time after the death of their testator, immediately after whose death suit was given to you against them, and, even though you delayed to sue until they had sold the goods, that ought not to charge the heir.—*Gaynesford.* But their Resummons could be sued only out of the rolls; now it may be that the testator died during the vacation, when the Court was not open, and that the executors sold, &c.; in such a case I ought to have my suit against the heir, because the executors were not sufficient on the day on which the Resummons was sued; wherefore, &c.—*Notton.* Sir, in the case which you have put, I say that you will have the Resummons against the executors, even though another be in possession of the wardship; then it appears that the suit is always continued; therefore they will be charged with the testator's goods which they had after his death, since at every time the suit is in law adjudged to be continued against them.—And afterwards *Grene* waived his exception, and said:—As to the wardship of the body, his ancestor, as against whose heir the plaintiff has sued this Resummons, never had anything, and we demand judgment of the writ. And as to the wardship of the land, *Grene* said that the infant's father did not hold of the plaintiff by knight service; ready, &c. Judgment

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avant come lestatut parle; par quei il vous covient a ceo respondre.—*R. Thorpe.* Jeo ne say quei il appel sufficiaunts de nous rendre la garde et noz damages, ou par taunt qils sount tenauntz de la garde, ou qils sount sufficiaunts de nous rendre nos damages soulement.—Wylby. Lestatut parle qils soient sufficiaunts *ad satisfaciendum de ralore maritagii*, a recoverir les damages, et ceo suffit a vous, et en taunt devoms nous attendre de soun plee.—*Thorpe.* Les executours ne sount pas sufficiaunts, prest, &c., ne furent jour de Resomons suy, &c.—*Grene.* Ceo nest plee si vous ne diez qils ne furent pas sufficiaunts nul temps puis la mort lour testatour, apres qi mort seute immediate vous fuit done vers eux, et, mesqes vous surcistez de suire tanqils ussent venduz les biens, ceo ne deit pas charger leir.—*Gayn.* Mes lour Resomons ne puit pas estre suy forqe hors de roules; ore puit estre qe le testatour devia en vacacion, saunz[1] ceo qe la place fuit overt, et les executours eussent venduz, &c.; il coviendreit qen tiel cas jeo use ma suyte vers leir par cause qe les executours ne furent pas sufficiaunts jour de la Resomons suy; par quei, &c.—*Nottone.*[2] Sire, en le cas qe vous avetz mys, jeo die qe vous averetz la Resomons vers les executours, tout soit autre possessione de la garde; donqes piert il qe la suyte est tut diz continue; par taunt ils serrount charges de bienz le testatour qils avoynt puis sa mort, del houre qa chescun temps la seute en ley est ajugge vers eux continue.—Et puis *Grene* weyva sa excepcion et dit: Quant a la garde de corps, soun auncestre, come devers qi heir il ad suy cest Resomons, il navoit unqe rien, et demandoms jugement de brief. Et, quant a la garde de la terre il dit qe pere lenfant ne tient pas de luy par service de chivaler;

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[1] MS., einz.

[2] MS., Wylby. et *Nottone*, et *Gayn.*

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whether in respect of this land he can have an action. —*R. Thorpe.* This plea which you have pleaded as to the land is to our action in its entirety, because by reason of this land we demand the wardship of the body, and if it be found that this land is not held of us, he will be quit as to this writ in its entirety, and therefore we pray to be discharged as to the first plea. —Willoughby. If he pleads his plea as to the land, he affirms against himself that he was tenant of the wardship of the body, so that, if it were found that the land was held of you, you would recover the wardship of the body, whereas he has now alleged non-tenure of it, and therefore he shall have both pleas.—*Pole.* If I recover the wardship of the body in the case which you have put, he may impute it to his own folly in joining a false issue.—*R. Thorpe.* If I am put to answer to both, it will possibly be found that the tenements are not held of me, and will be found that he is tenant of the wardship of the body, and so I shall recover the wardship of the body by reason of tenements not held of us.—Sharshulle. That is no wonder, nor inconvenient in law, because you would do the like if you brought actions against different persons, that is to say, against one as tenant of the wardship of the body, and against another as tenant of the land.—*Stouford.* In that case it is no wonder, because in that case one person could not have recovery of the whole.—*R. Thorpe.* There is no doubt but that, if a writ of Wardship be brought against me in respect of the body and the lands, it is a good answer for me to say that the ancestor did not hold of the plaintiff by knight service, and in that case I shall not be put to answer as to the wardship of the body. If the issue be found in my favour, it serves me as to the whole.—*Grene.* If you traverse the tenancy of the lands demanded you must answer further, because the wardship of the body may be

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prest, &c. Jugement si de cel terre accion puit il avoir.—*R. Thorpe.* Cest plee qe vous avetz plede de la terre est a nostre accion de tut, qar par cause de cel terre nous demandoms la garde du corps, et si trove soit qe cele terre nest pas tenu de nous, il serra quitez a tut cel brief, par quei del primer plee nous prioms estre descharge.—Wylby. Sil plede son plee de la terre, dounqes il affermat sur luy qil fuit tenaunt de la garde du corps, issint qe sil fuit trove qe la terre fuit tenu de vous, vous recoverez la garde du corps la ou il ad ore allegge nountenure de ceo, par quei il avera ambedeux.—*Pole.* Si jeo recovere la garde du corps en le cas qe vous avetz mys, il puit reter a sa folie demene qil joynt un faux issue.—*R. Thorpe.* Si jeo soy mys a respondre a ambedeux, trove serra par cas qe les tenementz ne sount pas tenuz de moy, et trove serra qil est tenant de la garde du corps, issint recoverai jeo la garde du corps par resoun de tenementz nient tenuz de nous.—Schar. Ceo nest pas merveille, nenconvenient en ley, qar auxi freez vous si vous portastes devers divers persones, saver, [vers un] com tenant du corps, et vers lautre com tenant de terre.—*Stoff.* La nest il pas merveille, qar un persone en cel cas ne puit avoir recoverir a tut.—*R. Thorpe.* Il nest pas doute qe si brief de Garde soit porte vers moy de corps et de terrez qil est bon respouns a moy a dire qil ne tient pas de ly par service de chivaler, et la ne serray jeo mys a respondre a la garde du corps. Si lissue soit trove pur moy il moy sert a tut.—*Grene.* Si vous traverses la tenance des terres demandez il vous covynt respondre outre, qar la garde du corps puit A.D. 1343-4.

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A.D. 1343-4. demanded by reason of other lands.—*Thorpe.* Then I shall be admitted to traverse the tenancy, and also to say that he has released the wardship of the body, which cannot be.—Willoughby. It can well enough; will you accept the averment or not?—*R. Thorpe.* The averment will come from me in this case, and not from him.—*Grene.* I pray that it be recorded that you have not denied that which I have surmised against you.—*R. Thorpe.* Tenant of the wardship of the body, and the tenements held of us, as above; ready, &c.—And the other side said the contrary.[1]—The contrary of this in Michaelmas Term in the 14th year.[2]

Audita Querela. (16.) § Note that one against whom execution had been sued on a statute merchant sued an *Audita Querela* supposing that he was under age at the time of the making of the statute. And the words of the writ were "*si per inspectionem, vel alio modo legitimo, vobis constare poterit, tunc ad enervationem recognitionis et restitutionem damnorum, &c., procedatis.*" And on behalf of him who sued the *Audita Querela* the averment was tendered that he was under age at the time of the making of the statute. But now he is of full age.—Hillary, with the common consent [of the Court]. Because you (for the obligor) tender an averment in defeasance of the statute which is of record, which averment is not admissible, therefore do you (for the obligee) sue execution for the other.

Quare impedit. (17.) § Henry Hillary brought a *Quare impedit* against the Abbot of Langonet in respect of the church of

[1] As to the issue actually joined *see* p. 489, note 11.

[2] Y.B., Mich., 14 Edw. III., No. 30.

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estre demande par cause dautres terres.—*Thorpe.* Dounqes serray jeo resceu a traverser la tenance, et auxi qil ad relesse la garde du corps, qe ne puit estre.—Wylby. Assetz bien; voletz laverer ou noun? —*R. Thorpe.* Laverement vendra de moy en cas et ne mye de ly.—*Grene.* Jeo prie recorde qe vous ne deditez pas [ceo] qe vous ay sourmys.—*R. Thorpe.* Tenant de la garde du corps, et lez tenementz tenuz de nous, *ut supra*; prest, &c.—*Et alii e contra.* —*Contrarium hujus Michaelis xiiij.* A.D. 1343-4.

(16.) [1] § *Nota* qun encountre qi execucion sur estatut merchaunt fut suy suyst *Audita Querela* supposaunt qil fut deinz age au temps de la fesaunce [2] de lestatut. Et le bref voleit [3] *si per inspectionem, vel alio modo legitimo, vobis constare poterit, tunc ad enervationem recognitionis et restitutionem damnorum, &c., procedatis.* Et pur [4] celuy qe suist le [5] *Audita Querela* fut tendu daverer qil fut deinz age au temps de la confeccion. Mes ore il est de plein age.—Hill., *ex communi assensu.* Pur ceo qe vous tendez un averement en defesaunce del estatut quel est de recorde, quel averement nest pas resceivable, par quoy [6] suez execucion pur lautre. *Audita Querela.*

(17.) [7] § Henre Hillary [8] porta *Quare impedit* vers Labbe de Langonet [9] de leglise de Somercotes, *Quare impedit.*

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[1] From L., and 25,184. There is another report of the case above in Michaelmas Term 17 Edw. III. (No. 114) where the record is cited.

[2] L., confeccion.

[3] 25,184, voet.

[4] pur is omitted from 25,184.

[5] le is omitted from 25,184.

[6] L., qai.

[7] From L., and 25,184, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 115. It there appears that the action was brought by Henry Hillary, knight, against the Abbot of Langonet, in order that he together with Thomas Wake of Lydell, and Thomas de Hanlay, parson of the church of Welyngham-by-Benyngworthe (Willingham-by-Benniworth) might permit the plaintiff to present to the church of Somercoates (Lincolnshire).

[8] L., Thomas atte Gate, instead of Henre Hillary.

[9] L., B.; 25,184, Langoit.

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A.D. 1343-4. Somercoates, counting that he was seised of certain land, to which the advowson is appendant, and by a certain title.—*Thorpe* showed by title that the Abbot had a right to the advowson, but that, because he was an alien, the King was seised of his fees and advowsons, &c., and so it now belonged to the King to present. And because the Abbot cannot now raise a dispute, he tells you that he has not disturbed; ready, &c.—Hillary. That is tantamount to saying simply that you have not disturbed, because the rest of what you say—that the King has a right to present—cannot be taken for a plea in your mouth.—*Thorpe*. It must be said in order to save our right another time, when the King removes his hand, because otherwise we and our church shall suffer disherison for our disclaimer on the present occasion.—Willoughby. In God's name that which you say shall be entered in order to save your right, and the plaintiff shall have a writ to the Bishop.—*Moubray*. He shall not be admitted to the averment that he has not disturbed, because he has appeared only on the Grand Distress, and has taken his delays.—Willoughby. As to that we will consider.

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countaunt coment il fut seisi de certeyn terre, et par certeyn title, a qi lavowesoun est appendaunt.[1] —*Thorpe* moustra par title qe Labbe ad dreit a lavowesoun, mes, pur ceo qil est[2] alien, le Roi est seisi de ses fees et avowesouns, &c., issint a ore[3] appent au Roi a presenter. Et, pur ceo qil ne poet a ore mettre debat, il vous dit qil nad pas destourbe; prest, &c.[4]—Hill. Taunt amount qe vous navez pas destourbe, qar le remenant qe vous parlez qe le Roi ad[5] dreit a presenter ne put estre pris pur plee en vostre bouche.—*Thorpe.* Il covient qil soit dit pur nostre dreit autrefoitz sauver, quele houre qe le Roi ouste sa mayn, qar autrement, pur nostre desclamer a ore, nous et nostre eglise serroms desherite.—Wylby. De par Dieux[6] vostre dit pur sauver vostre dreit serra entre, et le pleintif avera bref al Evesqe.—*Moubray.* Il ne serra pas resceu al averement qil nad pas destourbe, qar il est venuz par la graunt Destresse, et ad pris ses delayes.—Wilby. De ceo voloms aviser.[7] A.D. 1345-4.

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[1] The King had previously brought an action against Henry Hillary in respect of a presentation to the same church, and judgment had been given in favour of Hillary, whose declaration in this action is, according to the record, practically identical with his plea in the other. *See* Y.B., Hil., 17 Edw. III., No. 34, pp. 172-174, 175, note 1.

[2] est is omitted from 25,184.

[3] The words a ore are omitted from 25,184.

[4] The Abbot's plea here was, according to the record, practically identical with the King's declaration in the previous action (Y.B., Hil., 17 Edw. III., pp. 158-160 and 170) but with the addition "et sic "dicit quod idem Abbas nihil "clamat, ad præsens, in præsentatione prædicta, nec impedivit "prædictum Henricum præsentare "ad ecclesiam prædictam. Et hoc "paratus est verificare, unde petit "judicium," &c.

[5] 25,184, nad pas.

[6] L., Deux.

[7] According to the roll judgment was given as follows: — "Quia "prædictus Abbas in respondendo "nihil clamat ad præsens in præ-"sentatione prædicta, et contra-"placitavit jus prædicti Henrici, "prout superius patet in recordo, "consideratum est quod idem "Henricus recuperet præsenta-"tionem suam ad ecclesiam præ-"dictam. Et habeat breve Epis-"copo [&c.] Et idem Abbas in "misericordia. Et quia prædictus "Abbas venit per magnam dis-

No. 18.

A.D. 1343-4. Dower.

(18.) § Dower was brought for the wife of Thomas atte Neuns, of London, against William son of William de Roos, who vouched to warrant William Roos. The Sheriff returned that the vouchee was dead; wherefore the tenant, because he was under age, would have alleged joint tenancy with his wife; and he was ousted from this because on a previous day he had vouched; therefore he vouched William son and heir of William Roos.—*Gaynesford.* He is the same person [as this vouchee]; judgment whether he ought to be admitted to this voucher.—*Richemunde.* William our father enfeoffed us to hold to us and the heirs of our body begotten, so that, in order to save the estate tail, which would possibly be extinguished if the voucher were not permitted, we do vouch ourselves.—*Gaynesford.*

No. 18.

A.D. 1343-4. Dowere.

(18.) [1] § Dowere porte pur la femme Thomas atte Neuns,[2] de Loundres, vers William fitz William de Roos, qe voucha a garaunt William Roos. Le Vicounte retourna qil fut mort; par quei le tenant, pur ceo qil fut deinz age, voileit aver allegge jointenaunce ore sa femme; et fut ouste pur ceo qe autre jour devant il avoit vouche; par quei il voucha William fitz et heir William Roos.—*Gayn.* Il est mesme la persone; jugement si a ceo voucher deive estre resceu.—*Richem.*[3] William nostre pere nous feffa a nous et les heirs de nostre corps engendres, issint pur sauver la taille, quel serra esteinte par cas si le voucher ne fut[4] suffert, si vouchoms nous mesmes.[5]

" trictionem, et cepit dilationes in " placito prædicto, et etiam contra- " placitavit jus prædicti Henrici, " ut prædictum est, videtur Curiæ " hic quod ad verificandum quod " ipse non impedivit prædictum " Henricum præsentare non est " admittendus. Ideo præceptum " est Vicecomiti quod per sacra- " mentum proborum, &c., diligenter " inquirat quantum prædicta eccle- " sia valet per annum juxta verum " valorem ejusdem, et si ecclesia " illa sit vacans necne, et a quo " tempore incepit vacare, et inquisi- " tionem quam, &c., scire faciat " hic a die Paschæ in tres septi- " manas sub sigillo, &c., et sigillis," &c.

" Ad quem diem venit prædictus " Henricus per prædictum attorna- " tum suum, et Vicecomes misit " hic inquisitionem, quæ dicit quod " prædicta ecclesia valet per annum " in omnibus exitibus suis, secun- " dum verum valorem ejusdem, " sexaginta et tresdecim marcas, et " quod ecclesia illa incepit vacare " die Lunæ proximo ante Festum " Sanctæ Lucæ Ewangelistæ anno " regni domini Regis nunc sexto- " decimo."

" Et quia per inquisitionem " prædictam compertum est quod " tempus semestre a tempore " vacationis ecclesiæ prædictæ ante " redditionem judicii prædicti el- " apsum fuit, ideo per statutum " consideratum est quod prædictus " Henricus recuperet tam versus " prædictum Abbatem quam versus " prædictum Thomam de Hanlay, " versus quem idem Henricus " similiter recuperavit præsenta- " tionem suam ad eandem eccle- " siam per ejus defaltam, prout " patet termino isto Rotulo ccclix, " damna sua ad duplicem valorem " ejusdem ecclesiæ prout superius " taxatur, videlicet centum et " quadraginta et sex marcas."

The judgment by default against Hanlay does in fact appear on R° 359.

[1] From L., and 25,184, until otherwise stated.

[2] 25,184, Nummes.

[3] *Richem.* is omitted from L.

[4] fut is omitted from L.

[5] mesmes is omitted from L.

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A.D. 1343-4. You admit that everything which descended from your ancestor is in you, so that you, being in the tenancy which you have, could have vouched, as heir, your ancestor higher up, and it is inconvenient that you should be a party to yourself, or recover to the value against yourself.—*Richemunde.* If we held jointly with another, as in truth we do, though we cannot plead it now, we and our joint tenant would have the voucher of ourselves on account of the mischief to our companion; for the same reason now, inasmuch as the estate tail will be extinguished if we do not have the voucher.—Shardelowe. Certainly you can have a voucher over in the estate in which you are by reason of the warranty made to your ancestor, inasmuch as the whole rests in you; wherefore your voucher of yourself would be a delay without reason, and one not recognised by law.—Willoughby. He is only tenant in tail, notwithstanding the reversion which has descended to him; wherefore in the estate in which he is he cannot vouch his father's feoffor; but it could be otherwise if his ancestor had enfeoffed him in fee simple.—Stonore. This is a writ of Dower, upon which the demandant ought not to be delayed without cause; and in case the voucher were allowed, what answer would you have against the demandant after you had been admitted [to plead as tenant] by your warranty, other than you have now?—*Richemunde.* Possibly no other; but then, if she recover, I shall have to the value to hold in accordance with the form of the gift, and then the estate tail will be saved, but it will be extinguished if the voucher be not allowed.—Hillary. We will consider.—Shardelowe. How could he alone recover a fee tail against himself?—And afterwards he was by judgment ousted from the voucher.

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A.D. 1343-4.

—*Gayn.* Vous conissez qe tut est en vous qe descendist de vostre auncestre, issint qe vous en la tenance quel vous avez poez aver vouche, come heir, vostre auncestre paramount, et cest inconvenient qe vous duissez estre partie a[1] vous mesmes, [ou recoverir en value vers vous mesmes].[2]—*Richem.* Si nous tenisoms[3] joint ovesqe autre, com la verite est, tut nel poms a ore pleder, nous et nostre jointenant averoms le voucher de nous mesmes pur le[4] meschief de nostre compaignoun; par mesme la resoun a ore, desicome la taille serra esteinte si nous neioms le voucher.—Schard. Certes vous poez[5] aver le[4] voucher outre en lestat qe vous estez par la garrauntie fet a vostre auncestre, desicome tut respose en vous; par quey il serreit delay saunz cause, et auxi desconuz,[6] en ley.—Wilby. Il nest[7] forqe tenant en taille, *non obstante* la reversion qe luy est descendu; par quei en lestat quel il est il ne poet voucher le feffour son pere; mes autre serreit si son auncestre lui ust feffe de fee simple. —Ston. Cest un bref de Dowere, ou la demandante ne deit estre delaye saunz cause[8]; et, en cas qe le voucher fut suffert, quel respouns averez[9] vous vers la demandante apres ceo qe vous serrez resceu par vostre garrauntie autre qe vous navez ore?—*Richem.* Pur cas nul autre; mes adounqes, si ele recovere, jeo averay a la value a tener par la forme, et adonqes serra la taille sauve, quel serra esteinte si le voucher ne soit suffert.—Hill. Nous aviseroms. —Schard.[10] Coment recovereit il soul fee taille vers lui mesme?—Et puis par agarde il fut ouste del voucher.

[1] L., de.
[2] The words between brackets are omitted from 25,184.
[3] L., tendoms.
[4] le is omitted from L.
[5] L., poietz.
[6] L., desicome.
[7] 25,184, nest pas.
[8] cause is omitted from L.
[9] L., avez.
[10] 25,184, Hill.

No. 18.

A.D. 1343-4. Dower.

§ Joan late wife of R., &c., brought her writ of Dower against R., son of W., who came, and vouched to warrant W. de R. Process was sued, &c., until the vouchee was dead, &c., wherefore *Richemunde* came and said that the tenant had nothing except jointly with Alice his wife, who was not named, &c.; judgment of the writ.—*Grene.* Heretofore you vouched as sole tenant, wherefore you shall not be admitted to allege joint tenancy.—*Richemunde.* We are under age, wherefore we can plead and re-plead to our own advantage.—Willoughby. But, when you vouched, your voucher was admitted, so that was, as it were, a judgment rendered on your plea, and, when judgment is given on your plea, that is as strong against you as against one of full age; wherefore answer.—*Richemunde.* We vouch to warrant Richard son of W. Roos, and pray, &c.—*Grene.* The person whom he vouches is himself, wherefore we demand judgment whether he ought to be admitted to such a voucher without showing a cause.—*Richemunde.* We say that W., whom we vouched at the beginning was our father, whose heir we are, and we tell you that this same W. gave us the land to hold to us, and the heirs of our body begotten, so that, in order to save the estate tail to our issue, we vouch ourself as heir of W., who gave us the land.—*Grene.* Since he shows that he is W.'s heir, and that so the fee simple descended to him, and for that reason he could have warranty from anyone higher up who was bound to warrant his father, we demand judgment whether to this voucher he should be admitted.—*Richemunde.* If we have this voucher we shall make over to ourself other land to the value, which will be saved to our issue in tail; and if we are ousted from this voucher, and lose this land, the estate tail will then be lost for ever; there-

No. 18.

A.D. 1343-4. Dower. [Fitz., *Voucher*, 3.]

§ Johane[1] qe fuit la femme R., &c., porta soun brief de Dowere vers R. le fitz W., qe vint et voucha a garraunt W. de R. Proces suy, &c., qe le vouche fuit mort, &c., par quei *Rich.* vint et dit qil navoit rienz si noun joint ove Alice sa femme nient nome, &c.; jugement de brief.—*Grene.* Autrefoitz vous vouchastes come soul tenant, par quei vous ne serrez pas resceu dallegger joyntenance.—*Richem.* Nous sumes deins age, par quei nous pooms pleder et repleder en nostre avantage.—Wylby. Mes quant vouz vouchastes, vostre voucher fuit resceu, issi fuit auxi come un jugement rendu sur vostre plee, et, quant vostre plee est ajuge, cest auxi fort devers vous come devers homme de plein age; par quei responez.—*Rich.* Nous vouchoms a garraunt Richard le [fitz W.] Roos, et prioms, &c.—*Grene.* Cely qil vouche est ly mesme, par quei, &c., si a tiel voucher saunz cause moustrer deit il estre resceu.—*Richem.*[2] Nous dioms qe W. qe nous vouchames al comencement fuit nostre pere, qi heir, &c., et vous dioms qe mesme cesty W. nous dona la terre a noz, &c., de nostre corps engendrez, issint, pur sauver la taille a nostre issue, nous vouchoms noz mesmes come heir W., qe nous dona la terre.—*Grene.* Del houre qil moustra qil est heir a W., issint le fee simple ly descendi, et par taunt il puit avoir la garrauntie de chescun paramount qe fuit tenuz de garrauntir a soun pere, nous demandoms, &c., si, &c., serroit il resceu.—*Richem.*[2] Si nous eyoms cest voucher, nous ferroms a nous mesmes autre terre a la value, qe serra sauve a nostre issue in la taille; et si nous soioms ouste de ceste voucher, et perdoms ceste terre, adounqes la taille serra perdu a toutz jours;

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[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his Abridgment, and not the other report.

[2] MS., Schar.

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A.D 1343-4. fore, in order to save the estate tail, we ought to have this voucher.—Shardelowe. If I vouch a bastard, and he dies without heir of his body while the suit is pending, you have lost your voucher, because he has no heir who can be bound, &c.; therefore so it must be in this case, since he previously vouched one W., who is dead, and who has no other heir but you, and you cannot have voucher against yourself, and therefore your voucher in this case is lost.—Willoughby. If I vouch a bastard, and he dies without heir of his body, &c., I shall have my voucher at large, or be able to plead in chief; and I think he will possibly have no voucher higher up, as heir to his father, against any one who was bound to warrant his father, for, if he vouches as heir, the other will say that his estate is by purchase in fee tail, so that his estate is less than was the estate of his father for which the warranty was in fee simple, and for that reason will oust him from the warranty. But it would be otherwise if his ancestor had enfeoffed him in fee simple.—But Sharshulle denied this, because, he said, the estate of him who entered into warranty in fee simple has descended to the right heir, and he can elect to claim estate either as purchaser or as heir.—In the end he was ousted from the voucher by judgment, wherefore he said that the woman's husband was never seised so that he could endow her since the marriage; ready, &c.—And the other side said the contrary.

Detinue. (19.) § Detinue was brought by Brian de Thornhill against three executors in respect of a horse of the value of £20. One of them came by the Grand Distress, and the others made default. And the plaintiff counted against the one who appeared to the effect that he delivered the horse to the testator to be redelivered at pleasure, and that it subsequently came into the hands of the executors after the testator's

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par quei, pur sauver la taille, covient qe nous eyoms cest voucher.—Schard.[1] Si jeo vouche un bastarde, et pendant la suite il devie saunz heir de soun corps, vous avetz perdu vostre voucher, qar il nad nulle heir qe puit estre lie, &c.; par quei auxi covient il estre issi, del houre qil voucha autre foitz un W. qe est mort, le quel nad nul autre heir forqe vous, et vers vous mesmes ne poiez avoir le voucher, par quei vostre voucher en cest cas est perdu.—Wylby. Si jeo vouche un bastard, et il devie saunz heir de soun corps, &c., javera moun voucher a large ou pleder en chief; et par cas jeo croi qil avera nul voucher paramount com heir a son pere vers nully qe fuit tenuz a soun pere, qar, sile vouche com heir, lautre dirra qe soun estat est par purchas en fee taille, issint soun estat meindre qe nest lestat soun pere a quei la garrauntie fuit de fee simple, et par tiel cause il ly oustera de la garrauntie. *Sed secus esset* si soun auncestre luy eust enfeffe en fee simple.—*Sed* Schar. *negavit*, qar il dit qe [lestat] cely qi entra en fee simple est descendu al dreit heir, et il puit elire de clamer estat com purchaceour ou com heir.—A[2] drein il fuit ouste del voucher par agarde, par quei il dit qe le baroun la femme ne fuit unqes seisi, &c., puis lesposaille; prest, &c.—*Et alii e contra.* A.D. 1343-4.

(19.)[3] § Detenue par Brian de Thornhulle[4] dun chival, pris de xx*li.*, vers iij executours. Un vynt par la Graunt Destresse, et les autres firent defaut. Et vers celuy qe vynt il counta qil livera le chival al testatour a rebailler a volunte, et puis devynt en mayns des executours apres sa mort.—*Thorpe.* Detenue. [Fitz., *Respond*, 72.]

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[1] MS., *Rich.*

[2] The words *De hoc Paschæ* are inserted before A in the MS.

[3] From L., and 25,184, until otherwise stated.

[4] L., Thornille.

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A.D. 1343-4.

death.—*Thorpe*. Now it has to be seen whether he who appears shall answer without the others, since the Statute[1] makes mention only of a writ of Debt.—Shardelowe. It seems that this is at common law. —And afterwards *Thorpe* demanded judgment, inasmuch as this sounds in the nature of debt, whether they ought to be put to answer without a specialty.—*Grene*. In this action of Detinue you are put to answer as to your own act, which is the detinue, and not as to your testator's contract: for here you will not have a traverse as to his receipt, nor as to the manner how, but only as to your detinue.—Willoughby. He is put to answer as to the manner of the receipt, and also as to the detinue; wherefore it is sufficient to answer as to one.—Shardelowe, *ad idem*. What is the reason that in an action of Debt the executors do not have to answer without a specialty as to a debt due by their testator? It is that their testator could have waged his law, and that answer is denied to them. So in the matter before us.—*Gaynesford*. The testator would not have his wager of law in respect of a bailment which falls so manifestly within the knowledge of the country (but this was denied by the others), but I say that executors cannot know, when they find goods in the possession of their testator, how they came into his possession, whether by purchase, detinue, or in any other manner, if no specialty as to the contract be shown.—*Grene*. Why shall he not answer in this case, just as much as in Detinue of a a writing, without a specialty?—*Gaynesford*. In Detinue of a writing, which writing naturally sounds in the advantage of another person, and not that of the executors, it is no wonder that they should answer without a specialty.—*Moubray*. In case of Debt the executors shall not answer without a specialty, because they shall not answer as to the goods of the deceased,

[1] 9 Edw. III., c. 3.

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Ore fet a veer si cely qe vynt respoundra saunz les autres, del houre qe statut ne fet pas mencion forqe en bref de Dette.—Schard. Il semble qe cest a la comune ley.—Et puis *Thorpe* demanda jugement, desicome ceo soune en nature de dette, si saunz especialte deivent estre mys a respoundre.—*Grene.* A ceste accion de Detenue vous estez mys a respoundre a vostre fait demene, qest la detenue, et noun pas al contracte vostre testatour: qar si sur sa[1] resceite ne a la manere coment vous naverez pas traverse, mes soulement a vostre detenue.—Wilby. Il est mys a respoundre a la manere de la[2] resceite, et auxi a la detenue; par quei a respoundre a un suffit.[3]—Schard., *ad idem.* Quele est la cause en[4] Dette pur quei executours respoundrount pas saunz especialte de dette due par lour testatour? Pur ceo qe lour testatour poait aver fait sa ley, et cel respons faut a eux. *Sic in proposito.*—*Gayn.* Le testatour navera pas sa ley dun baille qe chiet si overtement en pais (*quod negatur ab aliis*), mes jeo die qe executours ne pount saver, quant ils trovent biens en possession de lour testatour, coment il avynt, par achat, detenue, ou en autre manere, si especialte del contracte ne fut moustre.—*Grene.* Pur quei ne respoundra il pas en ceo cas, si avant come en Detenue descript, saunz especialte?—*Gayn.* En Detenue descript, quel escript[5] naturelment soune en avantage dautre persone, et noun pas deux, mesqe il respoundra saunz especialte nest pas mervaille.—*Moubray.* En cas de Dette executours ne respoundrount pas saunz especialte pur ceo qil respoundrount pas de biens le mort, ne serrount chargez saunz

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[1] 25,184, sur la, instead of si sur sa.
[2] L., sa.
[3] L., suffert.
[4] 25,184, de.
[5] L., script.

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A.D. 1343-4. nor be charged without a specialty, but in this case they are not to be charged in respect of the goods of the deceased, but in respect of their own detinue; besides, if we had taken our horse found in their possession, they would never have had an action on the ground of that taking; and, for the same reason, when they detain it, they shall answer to us.—*R. Thorpe.* In case of Debt, when any one counts of a loan without other contract against a person who is party, wager of law lies; but if the plaintiff counts of a sale of goods, or on any other certain contract, wager of law does not lie without answering as to the cause. And in such a case, where the testator himself would be put to answer as to the cause, the executors will possibly answer without a specialty; but we are not in this case.—*Grene.* Neither wager of law nor averment would be given for your testator on the manner of the bailment, but he would answer as to the detinue which is the principal matter of the suit; and so will you do, and even though your testator was never seised, and you have come into possession, you will answer as to the detinue: for, in whatsoever manner you have come into possession, you shall answer as to the detinue.—Willoughby. Then we shall record that you have not any specialty.—Sharshulle to *Thorpe.* He puts you to answer as to your own act; but we adjudge that you do answer without a specialty.—Willoughby to *Thorpe.* Answer.—*Thorpe.* The reason why we are put to answer without a specialty would be that the horse came into our keeping after the death of our testator; and we tell you that after the death of the testator the horse did not come into our keeping; ready, &c.—*Grene.* In what-

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especialte, mes en ceo cas ne sont ils pas a charger des bienz le mort, mes de lour detenue demene; ovesqe ceo, si nous ussoms pris nostre chival trove en lour possession, ja vers nous de cele prise ussent ils eu accion; et par mesme la resoun, quant ils luy detenent,[1] il respoundrount a nous.—*R. Thorpe.* En cas de Dette, quant homme counte daprest saunz autre contracte vers cely qest partie, la ley gist; mes si[2] le pleintif counte de vent des biens, ou sur autre certein contracte, la ley ne gist pas saunz respoundre a la cause. Et en tiel cas, ou le testatour mesme serreit mys de respoundre a la cause, les[3] executours par cas respoundrount saunz[4] especialte; mes nous ne sumes pas en le cas.—*Grene.* Pur vostre testatour ne serreit pas la ley ne averement done sur la manere[5] du baille, mes il respoundreit[6] a la detenue qest principal de la[7] suyte; et auxi ferrez vous, et tut ne fut unqes vostre testatour seisi, et vous soiez avenu, vous respoundrez[6] a la detenue: qar, en quelcunqe manere vous avenistes, vous respoundrez de[8] la detenue.—Wilby. Nous recordroms donqes qe vous navez nul especialte. —Schar. a *Thorpe.* Il vous mette a respoundre a vostre fait demene; mes nous agardoms[9] qe vous responez saunz especialte.—Wilby. a *Thorpe.* Responez.—*Thorpe.*[10] La cause pur quei nous serroms mys de respoundre saunz especialte serreit pur ceo qil[11] devynt en nostre garde apres la mort nostre[12] testatour; [et vous dioms qapres la mort le testatour][13] le chival ne devynt pas en nostre garde; prest, &c.— A.D. 1343-4.

[1] L., detinent.
[2] si is omitted from 25,184.
[3] 25,184, des.
[4] L., par.
[5] 25,184, matere.
[6] L., recovera.
[7] 25,184, sa.
[8] 25,184, a.
[9] L., agarderoms pas.
[10] The words Responez.—*Thorpe* are omitted from 25,184.
[11] L., qils.
[12] 25,184, le.
[13] The words between brackets are omitted from L.

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ever way it came into your possession, whether as executors, or because you took it out of the possession of some one else, or because you found it, if you detain it I shall have an action; wherefore, inasmuch as you do not answer as to the detinue, which is the principal matter of the action, judgment.—*Thorpe.* Then it is the fact that the horse did not come into our keeping, as above.—*Grene.* In God's name, do you intend that to be your answer?—Then *Thorpe* said:—We tell you that the horse did not come into our keeping, nor do we detain any horse, as he counts; ready, &c.—And the other side said the contrary.

Detinue of a horse against executors, and the action was maintained.

§ Michael de W. brought a writ in respect of the detinue of a horse against three persons, as against the executors of one S., to whom he counted that he had delivered the horse to be redelivered at his pleasure. And he counted that after the death of S. the horse came into their possession. Process was continued as far as the Grand Distress, when one appeared, and the others did not appear; wherefore *Richemunde* counted against the one who appeared.—*W. Thorpe* defended, and said that he did not understand that the Court would put him to answer without the others, since at common law no one of them was put to answer without the others, and it had therefore been ordained that on a writ of Debt those only had to answer who appeared at the Grand Distress,[1] and now this is not a writ of Debt; wherefore, &c.—*Richemunde.* At any rate it is in the nature of a writ of Debt, because the words of an essoin which shall be cast on this writ, and also of a warrant of attorney, shall always be "*in placito Debiti*"; and, besides, there is like process on this writ and on a writ of Debt, wherefore it seems

[1] Stat. 9 Edw. III., c. 3.

No. 19.

Grene. Par quel voie il devynt en vostre possession, ou com executours, ou qe[1] vous le[2] pristez dautri possession, ou qe vous lui trovastes, si vous lui[3] detenez jeo averai accion; par quei, desicome a la detenue, qest le principal del accion, vous ne responez pas, jugement.—*Thorpe.* Donqes est il issint[4] qil ne devynt pas en nostre garde, *ut supra.*—*Grene.* De par Dieux,[5] volez ceo pur respouns?—Donqes *Thorpe.* Nous vous[6] dioms qil ne devynt pas en nostre garde, ne nul ne[7] detenoms come il counte; prest, &c.—*Et alii e contra.* A.D. 1343-4.

§ Michel[8] de W. porta brief dun detenue dun chival devers iij, com devers executours un S., a qi il counta qil avoit baille, &c., a rebailler a sa volunte. Et counta qe apres la mort S. le chival vint en lour possession. Proses continue tanqe a la graunt Destresse qun vint et les autres ne vindrent pas; par quei *Rich.* counta vers luy qe vint.—*W. Thorpe* defendi, et dit qil nentendi pas qe la Court ly voleit mettre a respondre saunz les autres, del houre qa la comune ley nul fuit mys a respondre saunz autre, et par taunt cest ordeigne qen brief de Dette soulement ceux qe viengnent a la graunt Destresse [ount] a respondre, et ore ceo cy nest pas brief de Dette; par quei, &c.—*Rich.* A meyns cest en nature de brief de Dette, qar essone en brief qe serra gette, et auxi la garraunt dattourne tut diz dirra *in placito Debiti*; et, ovesqe ceo, autiel proses est en cest brief come en brief de Dette, par quei il Detenue de chival devers executours, et meyntenu.

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[1] L., com.
[2] L., lui.
[3] 25,184, la.
[4] 25,184, icy.
[5] L., Deux.
[6] vous is omitted from 25,184.
[7] L., nous.
[8] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. There are only two lines relating to the case in Fitzherbert's *Abridgment*, for which either report might have served.

No. 19.

A.D. 1343-4. to me that we are in the case of the Statute.[1]—Afterwards Willoughby adjudged that he should answer for the one who appeared.—*W. Thorpe.* Since we are put to answer alone, in the absence of our co-executors, this plea is put in the nature of a plea of Debt, in which plea the executors would not be put to answer without a specialty, wherefore we pray that he show a specialty to prove the bailment.—*Richemunde.* Ready to aver, &c., as in Debt, in which plea the executors shall not be compelled to show one, &c.—*R. Thorpe.* Since they have not one, &c., we demand judgment, &c.—*Richemunde.* We make use of our action for recovery of a bailment which may be the subject of averment to the country without a specialty; wherefore, because you do not answer to our action, we demand judgment.—Sharshulle. The reason why executors shall not be put to answer without a specialty on a writ of Debt is that, if the writ had been brought against the testator, he would have had his wager of law that no money, &c., but when the writ is brought against executors, the law does not permit that they should wage their law, and for that reason they shall not answer without a specialty; but now there is such reason in this case, because, if this writ of Detinue, &c., had been brought against the testator, he would have had his wager of law on the detinue, wherefore his executors shall not answer without a specialty.—*Moubray.* Sir, on a writ of Debt, if the debt be recovered against the executors, execution shall always be made of the testator's goods found in the possession of the executors, in which case it is not right that he should recover without a specialty; but now on this writ we are seeking to recover only a horse; that is our own chattel and not that of the deceased; wherefore, Sir, &c.—Sharshulle. But, if the detinue be found, you will recover damages which

[1] Stat. 9 Edw. III., c. 3.

No. 19.

A.D. 1343-4.

moy semble qe nous sumes en cas de Statut.—Puis Wylby. agarda qil respondreit pur ceoly qe vint.—*W.*[1] *Thorpe.* Del houre qe nous sumes mys de respondre soul, en absence de noz coexecutours, cest plee est mys en nature de Dette, en qel plee les executours ne serrount par mys a respondre saunz especialte, par quei nous prioms qil moustre, &c., qe prove la baille.—*Rich.* Prest daverer, &c., de Dette, en qel plee les executours ne serrount, &c.—*R. Thorpe.* Del houre qils nount pas, &c., nous demandoms jugement, &c.—*Rich.* Nous usoms nostre accion pur recoverir dun baille qel est averable par pays saunz especialte; par quei, pur ceo qe vous ne responez pas a nostre accion, nous demandoms jugement.—Schar. La cause pur quei les executours ne serrount pas mys a respondre saunz especialte en brief de Dette est pur ceo qe, si brief eust este porte vers le testatour, il eust eu sa ley qe nul deners, &c., mes quant le brief est porte vers executours ley ne suffre pas qil face lour ley, et par tiel cause il ne respondrount pas saunz especialte; mes ore autiel cause ad il yci, car [si] cest brief de Detenue, &c., ust este porte vers le testatour, il eust eu sa ley sur la detenue, par quei ses executours ne respondrount pas saunz especialte.—*Moubray.* Sire, en brief de Dette, si la dette soit recoveri vers les executours, execucion serra fait tut diz de bienz le testatour trove en possession des executours, en qel cas il nest pas resoun qil recovere saunz especialte; mes ore en cest brief nous ne sumes pas a recoverir forqe un chival; cest nostre chatel propre, et nyent, &c.; par quei, Sire, &c.—Schar. Mes si la detenue soit trove, vous recoverez damages,

[1] MS., Wylby.

Nos. 20, 21.

A.D. 1343-4. will be levied only of the goods of the deceased; wherefore, &c.—*R. Thorpe.* It would possibly be a good answer to say that the horse never came into the possession of their testator, wherefore it is necessary to show a specialty, &c.—In addition to this, it was said in this plea that if the testator sells the horse, and the executors buy it back, they can, upon this writ, safely traverse the detinue that is supposed, because they are detaining it as their own chattel, and not as the plaintiff's chattel, as is supposed by this writ, &c.—And afterwards it was adjudged by SHARSHULLE, because this action does not arise on obligation, that he should be answered without a specialty.—*W. Thorpe.* Whereas he brings this writ against us as against executor, on the ground that the horse came into our keeping after the testator's death, we say, Sir, that it never came into our power; ready, &c.—*Grene.* Sir, since the cause of our action is the detinue, as to which he does not answer, we demand judgment, &c.—*W. Thorpe* did not dare to abide judgment, but said as above, and so they do not detain the horse; ready, &c.—And the other side said the contrary.

Dower. (20.) § Dower against two, who, at the Grand *Cape* waged law as to non-summons, and have a day now. And one appeared, and the other made default. And he who appeared performed his law, wherefore the writ abated.—But this was strange, because seisin of a moiety was not awarded on the default of the other.

Avowry. (21.) § Avowry, for the heir of the donor, on J.,[1]

[1] As to the names *see* p. 521, note 6.

Nos. 20, 21.

queux serrount levez de bienz soulement, &c.; par quei, &c.—*R. Thorpe.* Par cas il serreit boun respouns a dire qe le chival' unqes ne vint en la possession lour testatour, par quei il covyent moustrer especialte, &c.—Ovesqe ceo, fuit dit en ceo plee qe si le testatour vende le chival, et les executours le rechaterount qil pount, en ceo brief, sauvement traverser la detenue come est suppose, qar ils le detienent come lour chatel propre, et nient come le chatel le pleintif, come est suppose par cest brief, &c.—Et apres fuit agarde par SCHAR.,[1] pur ceo qe cest accion ne sourde pas par obligacion, qil fuit respondu saunz especialte.—*W. Thorpe.* La ou il porte cest brief vers nous com vers executour, pur ceo qe le chatel devynt en nostre garde apres la mort le testatour, Sire, nous dioms qil[2] ne devynt[3] unqes en nostre poair; prest, &c.—*Grene.* Sire, del houre qe la cause de nostre accion est la detenue, a qil il ne respond pas, nous demandoms jugement, &c.—*W. Thorpe* nosa pas demurer, mes [dit] *ut supra*, issint ne detienent ils le chival; prest, &c.—*Et alii e contra.* A.D. 1343-4.

(20.)[4] § Dowere vers ij, qal Graunt *Cape* gagerount la[5] ley de nounsomons, et ount jour a ore. Et lun vynt, et lautre fit defaut. Et cely qe vynt fist sa ley, par quei le bref fut abatu.—*Quod mirum fuit* qar seisine nest pas agarde de la moite sur la defaut lautre, &c. Dowere.

(21.)[6] § Avowere, pur leir le donour, sur J., la Avowere.

[1] MS., SCROPE.
[2] MS., qils.
[3] MS., deyvent.
[4] From L., and 25,184.
[5] 25,184, generalment lour, instead of gagerount la.
[6] From L., and 25,184, until otherwise stated. The record seems to be that found among the *Placita de Banco*, Hil., 18 Edw. III., R° 184 d. It there appears that an action of Replevin was brought by William de Briggate, the younger, against William Bukmongere. The avowry was "quod "quidam Willelmus Bukmongere,

No. 21.

A.D. 1343-4. daughter of the donee in tail, and her husband, for their homage in arrear, because there was issue between them. And there was touched the point that the avowry should in this case be made only for the homage of the husband after issue. To this it was answered that, although the husband alone will, in this case, do homage, this homage will serve for the wife, if she survive.—*Seton.* We do not admit the form of the gift, but we tell you that the land descended to Joan, upon whom, &c., and to Sarah her sister, who is not named in the avowry; judgment.—*Moubray.* You are a stranger to the avowry; judgment whether as to this plea, &c.—*Seton.* Shall not we, who are plaintiff, say that the person upon whom, &c., is dead?—*Moubray.* In that case he will not have any matter for avowry.—HILLARY. A stranger will not have such a plea.—*Seton.* From their ancestor whom they suppose to have been tenant in tail the descent was to John as to son and heir; from John the descent was to Joan and Sarah as to sisters and heirs; and we tell you that Sarah enfeoffed us of her purparty; judgment of this avowry which supposes Joan

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A.D. 1343-4.

fille le done en la taille, et son baroun, pur lour homage arere, pur ceo qil y avoit issue entre eux. Et fut touche qe lavowere en ceo cas serreit soulement fait pur lomage le baroun apres lissue. *Ad quod fuit responsum* qe, tut fra le baroun en ceo cas soulement homage, cel homage servira pur la femme si ele survive.[1]—*Setone.* Nous ne conissoms pas la fourme, mes vous dioms qe la terre descendi a Johane sur qi, &c., et a Sarre sa soer, nient nome en lavowere; jugement.—*Moubray.* Vous estez estraunge a lavowere; jugement si de cel plee, &c. —*Setone.* Ne dirroms pas nous[2] qe sumes pleintif qe cely sur qi, &c., est mort?—*Moubray.* La navera il pas matere davowere.—Hill. Estraunge navera pas tiel plee.—*Setone.* De lour auncestre qils supposent tenant en taille descendi a Johan come a fitz et heir; de Johan descendi a Johane et Sarre come a soers et heirs; et vous dioms qe Sarre nous feffa de sa purpartie; jugement de cest avowere qe

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" avus ipsius Willelmi Bukmongere, cujus heres ipse est, " fuit seisitus de uno mesuagio " et tribus acris terræ et dimidia, " cum pertinentiis, in Hekyngham, " . . . . et tenementa illa " dedit cuidam Simoni le Bukmongere, tenenda sibi et heredibus de corpore suo exeuntibus de " ipso Willelmo et heredibus suis, " per homagium, fidelitatem, [&c.] " de quibus servitiis quidam " Willelmus Bukmongere, pater " ipsius Willelmi, et heres prædicti " Willelmi avi, &c., fuit seisitus " per manus prædicti Simonis ut " per manus veri tenentis sui. De " ipso Willelmo descenderunt præ" dicta servitia cuidam Willelmo " ut filio et heredi, et de ipso " Willelmo . . . . . isti Willelmo " ut filio et heredi, qui nunc " advocat, &c. Et de prædicto " Simone exivit quædam Johanna " ut filia et heres, &c, quæ se " nupsit cuidam Ricardo Coke, et " de qua idem Ricardus suscitavit " prolem, &c. Et quia homagium " eorundem Ricardi et Johannæ, " qui habuerunt exitum inter eos, " &c., et fidelitas et redditus præ" dictus per quindecim annos post " mortem prædicti Simonis ante " diem captionis prædictæ eidem " Willelmo a retro fuerunt, cepit " ipse duos equos et unum bovem " de prædictis averiis pro homagio " prædicto; et etiam pro fidelitate " prædicta cepit ipse alium bovem " de prædictis bobus."

[1] L., survyst.

[2] nous is omitted from L.

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A.D. 1343-4. to be the immediate heir to her father, whereas she is heir to her brother who was last seised.—*Moubray.* You are a stranger, who cannot enjoy such an answer; and if there should be any colour by reason of which you ought to have the answer, it should be by reason of feoffment made to you, so that you were our tenant by the Statute[1]; and that you cannot be in this case where the avowry is made on the issue in tail, because one who purchases from the issue cannot hold by the entail.—*R. Thorpe.* If avowry be made on the mesne, where tenant in demesne is plaintiff, the mesne can join himself to the tenant who is plaintiff, and the two will disclaim; wherefore it would be a mischief, if the avowry were wrongly taken, if the tenant in demesne, even though he might be a stranger to the avowry, could not abate it.—Willoughby. Then, plead such a fact.—*Seton.* We tell you as above; and further, in order to have the plea, and make us privy, we tell you that Sarah enfeoffed us of her purparty, to hold to us and our heirs, and many times in the country, before the taking, we tendered to her our homage; judgment of this avowry.—*Moubray.* Since

[1] 18 Edw. I., St. 1 (*Quia emptores*).

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suppose Johane[1] estre heir immediate a son pere, ou ele est heir a soun frere qe derreyn fut seisi.— *Moubray.* Vous estes estraunge, qe ne poez enjoyer tiel respouns; et si nul colour[2] serreit pur quei vous dussez aver le respons, ceo serreit pur le feffement fait a vous, issint qe vous feussez notre tenant par statut; et ceo ne poez estre en ceo cas ou lavowere est fait sur issue en taille, pur ceo qe purchaceour del issue ne put tener par la taille.— *R. Thorpe.* Si avowere soit fait sur le mene, ou tenant en demene est pleintif, le mene se put joindre al tenaunt qest pleintif, et les ij desclamerount; par quei il serreit meschief, si lavowere fut mespris, si le tenant en demene, tut soit[3] il estraunge al avowere, nel purreit abatre.—Wilby. Pledez donqes tiel fait.— *Setone.* Nous vous dioms *ut supra*; et outre pur aver le plee, et nous[4] fere prive, vous dioms qe Sarre nous feffa de sa purpartie a nous et nos heirs, et sovent en pays, devant la prise, luy tendoms nostre hommage; jugement de ceste avowere.[5]—*Moubray.* A.D. 1343-4.

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[1] Johane is omitted from L.

[2] colour is omitted from L.

[3] L., et.

[4] L., lui.

[5] The plea was, according to the record, "quod, ubi prædictus "Willelmus Bukmongere in ad- "vocare suo prædicto supponit "prædictum Willelmum Buk- "mongere, avum, &c., dedisse "tenementa prædicta præfato "Simoni et heredibus de corpore "suo exeuntibus in feodo talliato, "idem Willelmus, avus, &c., dedit "quinque acras terræ et duas "acras marisci, cum pertinentiis, "in Hekyngham, unde prædicta "mesuagium, tres acræ terræ et "dimidia sunt parcella, præfato "Simoni et heredibus suis in "feodo simplici, qui quidem Simon "obiit seisitus de tenementis illis, "post cujus mortem intravit in "eisdem quidam Johannes, ut "filius et heres ejusdem Simonis. "Et de ipso Johanne, quia obiit "sine herede de se, descenderunt "prædicta tenementa cuidam "Sarræ et præfatæ Johanæ uxori "Ricardi Coke, ut sororibus et "heredibus, &c., super quos, &c. "Et postmodum eadem Sarra de "una acra et una roda terræ, "proparte sua de eisdem tene- "mentis, feoffavit ipsum Willel- "mum de Briggate qui nunc "queritur, &c., tenendis sibi et "heredibus suis de capitalibus "dominis, &c., qui quidem Willel- "mus sæpius obtulit præfato "Willelmo Bukmongere servitia "prædicta, unde petit judicium

No. 21.

A.D. 1343-4. you do not deny the feoffment in fee tail, although this feoffment was made to you as you allege (which we do not admit), that does not so prove that you could become our tenant, because on such a feoffment in tail no other could be tenant but the issue in tail.—*Seton.* We tell you that the gift which you suppose to be made in tail was in fee simple; ready, &c.—And the other side said, on the contrary, that it was in tail, as above.

Replevin. § Richard de B.[1] made his plaint, as to his beasts tortiously taken, against W. de B.[1]—*Moubray* avowed the taking as good for the reason that his grandfather[1] was seised of the same tenements and gave them to one S. de B.[1] in fee tail, to hold of him, &c., by certain services, and laid the seisin of the services in the person of his grandfather, and for those services in arrear he avowed on one J. as on issue in tail.—*Seton.* Whereas he avows on J. as on issue in tail, Sir, we make protestation that we do not admit seisin by his grandfather, nor that he gave as he, &c., but we tell you that he cannot avow on this J., &c., because she has a sister, Sarah by name, who is co-heir with her, &c.; judgment of this avowry.—*Moubray.* Sir, you see

[1] As to the names *see* p. 521, note 6.

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Desicome vous ne dedites[1] pas le feffement en fee taille, et issint coment qe cel feffement fut fait a vous come vous alleggez, quel nous ne conissoms pas, ceo ne prove pas qe vous puissez devener nostre tenant, qar sur tiel feffement en taille autre ne put estre tenant forqe issue en taille.—*Setone.* Nous vous dioms qe le doun qe vous supposez estre done en taille fut en[2] fee simple; prest, &c.—*Et alii e contra* qen taille, *ut supra.*[3] A.D. 1343-4.

§ Richard[4] de B. pleint de ses avers a tort pris vers W. de B.—*Moubray* avowa la prise bon par resoun qe soun aiel fuit seisi de mesmes les tenementz et les dona a un S. de B. en fee taille, a tener de ly, &c., par certeins services, et lia lasseisine des services en la persone soun aiel, et pur ceux services arrere avowe sur un J. com sur issue en la taille.—*Setone.* La ou il avowe sur J. come sur issue en la taille, Sire, nous fesoms protestacion qe nous ne conisoms pas seisine par soun aiel, ne qil dona com il, &c., mes vous dioms qe sur cest J. ne puit il avower, &c., qar ele ad une soer, Sarre par noun, hier ov ly, &c.; jugement de cest avowere.—*Moubray.* Sire, vous veiez bien coment *Replegiari.* [Fitz., *Avowre*, 98.]

" de advocare prædicto, quod " supponit prædictam Johannam " solam fuisse heredem, prædicti " Simonis," &c.

[1] L., dites; 25,184, deistes.

[2] 25,184, done en.

[3] The words *ut supra* are omitted from 25,184. After the plea in the record is a replication, upon which issue was joined:—" quod præ- " dictus Willelmus de Briggate " advocare suum prædictum in hac " parte cassare non debet, quia " dicit quod prædictus Willelmus " Bukmongere, avus, &c., dedit " tenementa prædicta præfato " Simoni et heredibus de corpore " suo exeuntibus in feodo talliato, " prout ipse superius in advocare " suo prædicto supponit et non " eidem Simoni et heredibus suis " in feodo simplici, sicut prædictus " Willelmus de Briggate dicit." The award of the *Venire* and an adjournment follow.

[4] This report of the case is from Harl. (No. 2 alone), and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

No. 22.

A.D. 1343-4. plainly how he is a stranger to this avowry, and in his mouth such a plea does not lie; wherefore, &c.—*Seton.* We shall be admitted to say that the person upon whom you avow is dead, or *covert baron*, and therefore we shall have this plea.—And the Court denied both statements.—And afterwards *Seton* saw that the opinion of the Court was against him, and said that his grandfather gave the tenements to S. to hold to him and his heirs for ever, and said that after his death the tenements descended to Sarah and to J., and said that Sarah enfeoffed him of her purparty to hold of the chief lord of the fee, and said that he had tendered his homage to him, and so was his tenant as to a moiety, and therefore privy to his avowry; judgment for the reason above.—*Moubray.* Still, Sir, you see plainly how he is a stranger, as above, and he does not claim an estate through the person upon whom the avowry is made; wherefore, &c.—But the Court compelled him to answer as to the exception on the ground that the other had made himself privy to him, as above.—*Moubray.* We will aver that our grandfather gave in fee tail, as above; ready, &c.—*Seton.* Since the effect of our plea is to falsify your avowry inasmuch as J. has a sister co-heir with her, and on that point you do not maintain your answer, we therefore demand judgment.—Willoughby. But the plea would not have been allowed by us if you had not assigned privity, &c., wherefore see whether you will maintain, &c.—Therefore *Seton* tendered the averment that the gift was in fee simple; ready, &c.—And the other side said the contrary.

Avowry. (22.) § Avowry was made on the issue in tail[1] by

[1] For the real names of the parties, &c., *see* p. 529, note 2.

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il est estraunge a cest avowere, en qi bouche[1] tiel plee ne gist pas; par quei, &c.—*Setone.* Nous serroms resceu a dire qe cely sur qi vous avowes est mort, ou covert de baroun, ou par taunt nous averoms cel plee.—Et la Court ly denya lun et lautre.—Et puis *Setone* vut loppinioun de Court encountre ly, et dit qe soun aiel dona les tenementz a S. a ly et a ses heirs a toutz jours, et dit qapres sa mort les tenementz descendirent a Sarre et a J., et dit qe Sarre de sa purpartie ly enfeffa a tener de chief seignur de fee, et dit qil ly avoit tendu soun homage, et issint fuit il soun tenant de la moyte, et par taunt prive a sa avowere; jugement *causa ut supra.* —*Moubray.* Sire, unqore vous veiez bien coment il est estraunge *ut supra*, et il ne cleyme mye estat par my cel sur qi lavowere est fait; par quei, &c. —Mes la Court ly chacea de respondre a sa excepcion pur ceo qil se fist prive a ly *ut supra.*— *Moubray.* Nous voloms averer qe nostre aiel dona en fee taille *ut supra*; prest, &c.—*Setone.* Del houre qe leffecte de nostre plee est a fauxer vostre avowere par taunt qe J. ad une soer coheir ove ly, et en cel point ne meyntenez vostre respouns, par quei nous demandoms jugement.—Wylby. Mes le plee nust pas este alowe de nous si vous nussetz assigne privete, &c., par quei veiez si vous voillez meyntener, &c.—Par quei *Setone* tendi daverer qe le doun fuit en fee simple; prest, &c.—*Et alii e contra.* A.D. 1343-4.

(22.)[2] § Avowere fut fait sur lissue en taille par Avowere.

[1] MS., vouche.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 151. It there appears that the action was brought by Nicholas de Weylonde against Ralph Daubeneye and others. Ralph's avowry on behalf of himself and the others was "super "quendam Lucam de la Hoge "verum tenentem suum, quia "dicit quod quidam Radulphus "Daubeneye, avus ipsius Radulphi, "cujus heres ipse est, fuit seisitus "de uno mesuagio et una carucata "terræ in Brode Wyndesore "(Broadwindsor, Dorset) . . . . .

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A.D. 1343-4. W. Weylonde. The plaintiff, who was a stranger to the avowry, prayed aid, as tenant for term of life, of a stranger, by whose lease he held.—*Bret.* The person of whom aid is prayed is a stranger to the avowry; judgment whether he ought to have aid.—Hillary, *ad idem.* What would he who is prayed in aid say, if he were to appear?—*Moubray.* He will possibly show that he is the avowant's tenant, according to the Statute,[1] by the same feoffment of which they speak in the avowry: for he will be able to say that the feoffment was made in fee simple, before the statute, to hold of the donor, and that he is the feoffee's assignee, and has tendered the services, and he will compel the lord to avow upon him.—Willoughby. Then plead that matter if you wish to have the aid.—*Moubray.* We cannot without him.—Hillary. In God's name then you shall not have the aid.—*Moubray.* Out of his fee.—And the other side said the contrary.—*Moubray.* Now we pray aid.—And Hillary and Willoughby by judgment ousted him from the aid.—*Quære.*

[1] 18 Edw. I., St. 1 (*Quia emptores*).

No. 22.

A.D. 1343-4.

W. Weylonde. Le pleintif, qest estraunge al avowere, pria eide, come tenant a terme de vie, dun estraunge, de qi lees il tient.—*Bret.* Il est estraunge al avowere de qi leide est prie; jugement si eide deive aver.—Hill., *ád idem.* Quei dirreit il qest prie, sil venist?—*Moubray.* Par cas il moustra qil est tenant lavowaunt par statut par mesme le feffement dount ils parlent par lavowere: qar il avera[1] a dire qe le feffement fut fait en fee simple, avant statut, a tener del donour, et qil est assigne le feffe, et ad tendu les services, et chacera le seignur[2] davower sur luy.—Wilby. Pledez donqes cele matere, si vous voilez aver leide.—*Moubray.* Nous ne poms saunz lui.—Hill. De par Deux[3] donqes naverez mye leide.—*Moubray.* Hors de son fee.[4]—*Et alii e contra.*—[*Moubray.* Ore prioms eide.][5]—Et Hill. et Wilby. par agarde luy ousterent.—*Quære.*

" qui quidem Radulphus avus, &c., " eadem tenementa, cum pertinen- " tiis, dedit quibusdam Willelmo de " la Hoge et Sarræ de Bathonia, " habenda et tenenda eisdem " Willelmo et Sarræ et heredibus " ipsius Willelmi de corpore ipsius " Sarræ exeuntibus de prædicto " Radulpho avo, &c., et heredibus " suis, per homaguim, fidelitatem " [&c.] de quibus servitiis idem " Radulphus avus, &c., fuit seisitus " per manus prædictorum Willelmi " de la Hoge et Sarræ ut per " manus verorum tenentium " suorum in forma prædicta. Et de " ipso Radulpho avo, &c., descende- " runt servitia prædicta cuidam " Philippo ut filio et heredi, &c., " et de ipso Philippo, quia obiit " sine herede de se, ... " . . . . cuidam Eliæ ut fratri et " heredi, &c., et de ipso Elia isti " Radulpho ut filio et heredi qui " nunc advocat, &c. Et quia " homagium et fidelitas prædicti " Lucæ consanguinei et heredis " prædicti Willelmi de corpore " prædictæ Sarræ procreati, et " etiam prædictus redditus per " triginta annos tempore ejusdem " Radulphi qui nunc advocat ei a " retro fuerunt die captionis præ- " dictæ, pro prædicto homagio cepit " ipse quatuor boves . . . . . et " pro prædicto redditu cepit ipse " alios quatuor boves in prædicto " loco ut in parcella tenementorum " de eo tentorum."

[1] 25,184, navera.

[2] seignur is omitted from L.

[3] The words De par Deux are omitted from L.

[4] According to the record " præ- " dictus locus in quo, &c., est " extra feodum et dominium ipsius " Radulphi." After the joinder of issue there was the award of the *Venire* and an adjournment, but nothing further appears on the roll.

[5] The words between brackets are omitted from 25,184.

No. 23.

A.D. 1343-4. Avowry. § In an avowry the defendant avowed upon a strange person, as upon his tenant, for service in arrear. The plaintiff prayed aid of another stranger, upon whom the avowry was not made, on the ground that the plaintiff held the tenements for term of his life by that stranger's lease.—HILLARY. The person of whom you pray aid is a stranger to the avowry, so that he cannot plead any more than you can.—Therefore HILLARY ousted him from the aid.—*Moubray.* Then we tell you that the tenements are out of your fee, &c.; ready, &c.—And the other side said the contrary.—*Moubray.* Sir, we have now joined issue touching the right, to try which we cannot be a party without the person to whom the reversion, &c., and we pray aid of him.—HILLARY ousted him from the aid by judgment of the COURT, &c.

Annuity. (23.) § Annuity against Ralph, Bishop of Bath and Wells, on a deed of his predecessor confirmed in the Chapter of Wells, and by the Prior and Convent of Bath. And the deed purported that the annuity was to be taken from his chamber at Wells.—*Bret.* Judgment of this writ of Annuity in which a

No. 23.

§ En[1] avowere le defendant avowa sour un estrange persone, come sour soun tenant, pur service arrere. Le pleintif pria eide dun autre estraunge, sour qi lavowere ne fuit pas fait, pur ceo qil tient les tenementz pur terme de sa vie de soun les.—Hill. Il est estraunge al avowere cely de qi vous priez eide, issint ne puit il pleder pluis qe vous ne poiez.—Par quei il ly osta del eide.—*Moubray.* Donqes vous dioms qe les tenementz sount hors de vostre fee, &c.; prest, &c.—*Et alii e contra.*—*Moubray.* Sire, ore avoms joynt un issue en le dreit, a qel nous ne pooms estre partie saunz cely a qi la reversion, &c., et prioms eide de ly.—Hill. ly ousta del eide par agarde de Court, &c. A.D. 1343-4. Avowere. [Fitz., *Aide*, 139.]

(23.)[2] § Annuite vers Rauf, Evesqe de Baaz et Welles, par fet son predecessour conferme en Chapitre de Welles, et par le Priour et Covent de Baaz. Et le fet voleit[3] a prendre de sa chaumbre *apud Welles.*[4]—*Bret.* Jugement de ceo bref Dannuite en Annuite.

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 69. It there appears that the action was brought by Thomas de Heselshawe, clerk, against Ralph, Bishop of Bath and Wells.

[3] L., voileit.

[4] The declaration, according to the record, was "quod quidam "Walterus, nuper Episcopus Batho- "niensis et Wellensis, prædecessor "prædicti Episcopi nunc, apud "Welles . . . . . per scriptum "suum concessit ipsi Thomæ præ- "dictum annuum redditum viginti "marcarum de ipso Episcopo et "successoribus suis quolibet anno, "ad Festa Annunciationis beatæ "Mariæ et Sancti Michaelis, de "camera sua apud Welles, per "æquales portiones, percipiendum. "Et postmodum quidam Johannes "de Godeleghe, Decanus ecclesiæ "Wellensis, et ejusdem loci Capi- "tulum, eodem die, apud Welles, "literas prædicti Episcopi de con- "cessione annui redditus prædicti "recitantes, concessionem et dona- "tionem supradictas in forma "prædicta factas ratas habentes "pariter et acceptas, eas per "literas suas sigillo suo communi "signatas confirmaverunt. Et "etiam quidam Robertus, Prior "Bathoniensis et ejusdem loci

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A.D. 1343-4. certain freehold is charged, in which case Assise would lie.—Shardelowe. Is it not to be taken from his chamber?—*Grene.* To be taken at Wells from his chamber, so that a certain freehold is charged. And suppose that he charges us by this suit, and afterwards the chamber comes into the hand of another person, the plaintiff will recover against him by Assise; therefore he would have two recoveries of one and the same thing *simul et semel.*—Shardelowe. Even though a certain freehold were charged, still it would be at his election to bring an Assise or a writ of Annuity, and after one he would not have the other.—*Bret.* You see plainly how he makes *profert* of the deed of our predecessor, and confirmation of the Chapter, and of the Prior and Convent, for title to the annuity, to try which confirmations we cannot be a party without the Chapter, Prior, and Convent; and we pray aid of them.—*W. Thorpe.* He is himself Supreme Head of the Chapter and of the Priory; wherefore he ought not to have aid of those who are in subjection to him, any more than if land or other freehold were in demand.—*R. Thorpe.* This case is not like one in which freehold would be demanded without title by specialty, because our prayer is for a purpose different from that which it would be in that case.—*W. Thorpe.* Your predecessor's deed is the title which you ought yourselves to try.—*R. Thorpe.* Then take that for

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certeyn ou fraunctenement est charge, en quel cas Assise girreit.—Schard. Nest ceo a prendre de sa chaumbre?—*Grene.* A prendre *apud Welles* de sa chaumbre, issint qe certein fraunctenement est charge. Et mettez qil nous charge par ceste suyte, et puis la chaumbre devynt en autri mayn, vers luy il recovera par Assise; donqes avereit il deux recoverirs dune mesme chose *simul et semel.*—Schard. Tut fut certeyn[1] fraunctenement charge, uncore serreit a sa eslite de porter Assise ou Annuite, et apres lun il avera pas autre.—*Brette.* Vous veez bien coment il mette avant fet nostre predecessour, et confermement de[2] Chapitre, et du Priour et Covent, pur title del annuite, as queux confermements trier nous ne pooms estre partie saunz le Chapitre, Priour, et Covent; et prioms eide de eux.—[*W.*] *Thorpe.* Il mesme est Sovereyn du Chapitre et de la Priorie; par quei de ses[3] sugets[4] ne deit il eide aver, nient plus qe si terre ou autre fraunctenement[5] fut en demande.—*R. Thorpe.* Ceo cas nest pas semblable ou fraunctenement serreit demande saunz title[6] despecialte, qar nostre prier est[7] sur autre purpos qe ne serreit la.—[*W.*] *Thorpe.* Le fet vostre predecessour est le title quel vous devez mesmes trier.—*R. Thorpe.* Pernez cel pur title donqes.—[*W.*] *Thorpe.*

" Conventus eodem die apud " Bathoniam præfatas literas Episcopi recitantes, donationem et " concessionem annui redditus " prædicti in forma supradicta " factas ratas habentes pariter et " acceptas, eas per literas suas " sigillo suo communi signatas " confirmaverunt, de quo quidem " annuo redditu ipse Thomas fuit " seisitus usque tricesimum quar- " tum annum ante diem impetra- " tionis brevis sui, ... quod " prædictus redditus ei a retro et " subtractus fuit, et prædictus " Episcopus nunc annuum redditum " illum ei adhuc reddere contra- " dicit." *Profert* was made of the deeds of the Bishop, of the Dean and Chapter of Wells, and of the Prior and Convent of Bath.

[1] certeyn is omitted from L.

[2] L., de la.

[3] L., ces.

[4] L., suggetes.

[5] L., tenement, instead of autre fraunctenement.

[6] L., titel.

[7] L., nest pas.

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A.D. 1343-4. title.—*W. Thorpe.* And you, who are the Supreme Head, can therefore deny the confirmations, for suppose that the others were to come and acknowledge them, still you would be admitted to deny them, and that you can do now as well as then. And suppose your predecessor were a party, would he have aid? as meaning to say that he would not. And, moreover, the confirmations will be, in a manner, part of the title, that is to say, to strengthen the title.—Willoughby. He would not have aid, because it would be his own deed. Not so here; and it is not right that he should deny the deed of another person without having aid; wherefore let him have the aid.

Annuity. § Thomas de Heselshawe brought his writ of Annuity against the Bishop of Bath and Wells, and made *profert* of a deed of one Walter, predecessor of the present Bishop, who granted him the same annuity, and also a confirmation of the Dean and Chapter, and also a confirmation of the Prior of the same place.—

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Et vous poez, qestes chief, donqes dedire les confermementz, qar mettez qe les autres venissent, et le conissent,[1] uncore vous serrez resceu de les dedire, et ceo poez ore auxi bien com adonqes. Et jeo pose qe vostre predecessour fut partie, avereit il eide? *quasi diceret non.* Et uncore serront les confermementz parcele[2] del[3] title en manere, saver, pur afforcer le title.—Wilby. Il navereit pas eide, qar ceo[4] serreit son fet demene. *Non sic hic*; et il nest pas resoun qil dedit[5] autri fet saunz eide; par quei eit leide.[6]

Annuite. [Fitz., *Aide*, 138; *Annuitie*, 25.]

§ Thomas[7] de Heselshawe[8] porta son brief Dannuite vers Levesqe de [B., et mist avant fait un W. predecessour cesty Evesqe, qe luy][9] graunta mesme lannuite, et auxi confermement del Dean et Chapitre, et auxi confermement du Priour de mesme

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[1] The words et le conissent are omitted from L.

[2] L., par cele ple.

[3] L., de.

[4] ceo is omitted from L.

[5] L., dedi.

[6] The aid-prayer and grant of aid appear on the roll as follows:—
"Episcopus . . . dicit quod ubi "prædictus Thomas nititur ipsum "et ecclesias suas Bathoniensem et "Wellensem onerare de annuo "redditu prædicto, ipse est Episcopus et tenet Episcopatum suum "in jure Decani et Capituli "[ecclesiæ] Sancti Andreæ Wellen-"sis, et Prioris et Conventus eccle-"siæ Sancti Petri Bathoniensis, "unde dicit quod ipse non potest "præfato Thomæ, sine Waltero de "Londoniis, Decano ecclesiæ Sancti "Andreæ prædictæ, et ejusdem loci "Capitulo, et Johanne Priore "Bathoniensi, et ejusdem loci Con-"ventu, inde respondere. Et petit "auxilium de ipsis Decano, Capi-"tulo, Priore, et Conventu, &c.
"Et Thomas non potest hoc "dedicere.
"Ideo ipsi summoneantur quod "sint hic in Octabis Sanctæ "Trinitatis ad respondendum "simul, si," &c.
The plaintiff did not appear on the day given. "Ideo considera-"tum est quod prædictus Episcopus "eat inde sine die."

[7] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*.

[8] MS., Johan de H., instead of Thomas de Heselshawe. *See* p. 533, note 2.

[9] The words between brackets are from Fitzherbert's *Abridgment*, the MS. being defective in this place.

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A.D. 1343-4. *Bret.* Sir, the process is discontinued, because the original writ was brought by T. de Haselshawe, and the process is continued by T. de Heselshawe, written with an "e"; wherefore, &c.—Stonore. It seems that we can amend the process by Statute,[1] for this exception goes to the discontinuance of the process.—*Grene.* If any roll were good you might make the amendment, but now you find that every roll since the purchase of the original is wrongly continued,[2] and so the original is not connected with it, wherefore the writ must be abated.—And afterwards he was put to plead over, and raised the same exception to the specialty, because it was at variance with the original in the same point.—And yet the writ was adjudged to be good, unless the defendant would say that it was a different person, &c.—See as to this Michaelmas Term in the fifth year on a writ of Debt.[3]—And afterwards *Bret* said:—Again judgment of the writ, for the specialty purports that he granted the rent "*ad percipiendum apud cameram suam de Welles*," so that the specialty proves that a certain place is charged with the annuity, and therefore he could have had an Assise according to the Statute[4]; judgment.—*W. Thorpe.* Sir, by this specialty the Bishop bound himself and his successors to pay the annuity, so that by virtue of this obligation, if the Bishop were disseised of this chamber, I should still recover the annuity and the arrears against him, &c.; wherefore judgment whether the writ be not good.—Sharshulle. Even though I grant you an annuity out of certain land, it is at your election, if the rent be withheld from you, to bring an Assise or a writ of Annuity; wherefore answer.—*Derworthy.* Sir, you see plainly how he demands this

[1] 14 Edw. III., St. 1, c. 6.

[2] The name does in fact appear as "Heselshawe" on the roll of the Justices, though in previous cases it is spelled Haselshawe.

[3] Y.B., Mich., 5 Edw. III., No. 85.

[4] 13 Edw. I. (Westm. 2), c. 25.

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le lieu.—*Bret.* Sire, le proces est discontinue, qar le brief original est porte par[1] T. de Haselshawe,[2] et le proces continue[3] par[1] T. de Heselshawe,[4] escriptz par e; par quei, &c.—Ston. Il semble qe nous poms amender le proces par statut, qar cest challenge vaa a la discontinuaunce del proces.—*Grene.* Si ascun roule fuit boun vous le purrez amender, mes ore vous trovez qe chescun rolle puis loriginal purchace est mescontinue,[3] issint loriginal nient attame, par quei il covient abatre le brief.—Et puis il fuit mys a dire outre, et dona mesme le challenge a lespecialte, pur ceo qil fuit variaunt al original en mesme le point.—Et unqore le brief agarde bon, si le defendant ne voleit dire qil fuit autre persone, &c.—*De hoc Michaelis v* en un brief de Dette.—Et puis *Bret.* Unqore jugement de brief, qar lespecialte voet qil graunta la rente *ad percipiendum apud cameram suam de Welles*, issint lespecialte prove certein lieu charge del annuite, et par taunt puit avoir eu Assise par Statut; jugement.—*W. Thorpe.* Sire, par cest especialte Levesqe obligea luy et ses successours a paier lannuite, issint par cel obligacion, [si] Levesqe fuit disseisi de cel chambre, unqore jeo recoveray vers ly lannuite et les arrerages, &c., par quei, &c., si le brief ne soit boun.—Schar. Mesqe jeo vous graunte un annuite de certein terre, il est a vostre eleccion, si la rente vous soit detenue, de porter Lassise ou brief Dannuite; par quei responez. —*Der.* Sire, vous veiez bien coment il demande cest

[1] MS., vers.
[2] MS., Hadelstone.
[3] MS., discontinue.
[4] MS., Hed.

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A.D. 1343-4. annuity in virtue of a deed of the Dean and Chapter, as well as of a deed of our predecessor, wherefore we pray aid of them.—*W. Thorpe.* He is Head of the House, and the Dean and Chapter are in subjection to him; judgment whether he ought to have aid of them.—SHARSHULLE. But his predecessor's deed does not charge him without the deed of the Dean and Chapter, and therefore the issue of this business will be to deny the deed, and that he cannot do without making them parties to this plea by aid-prayer.—*W. Thorpe.* Sir, since he is Head of the House he can deny the deed of the Dean and Chapter, who are subject to him, even without having aid of them.—HILLARY. We are of one mind to grant the aid by reason of the deeds which you have produced in this case, and therefore the aid is granted.—The contrary decision was given in Hilary Term in the sixth year on a *Quo Warranto*,[1] but the cases are different, &c.

Account. (24.) § Account at the suit of William Trussel. The defendant was outlawed; wherefore, after he had obtained a charter of pardon, he sued a *Scire facias* according to the Statute[2] against William Trussel the elder. And the defendant was by mainprise to

[1] Y.B., Hil., 6 Edw. III., No. 28. | [2] 5 Edw. III., c. 12.

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annuite par fait del Dean et del Chapitre, auxi bien come par le fait nostre predecessour, par quei nous prioms eide deux.—*W. Thorpe.* Il est chief de la meson, et le Dean et le Chapitre sount en sa subjeccion; jugement si ayde de ly doit il avoir.—SCHAR. Mes le fait soun predecessour ne luy charge pas saunz le fait le Dean et Chapitre, et dounqes a dedire le fait ceo serra issue de la busoigne, et ceo ne puit il pas saunz lez faire partie a cel plee par eide priere.—*W. Thorpe.* Sire, quant il est chief de la meson, il puit dedire le fait del Dean et del Chapitre, qe sount sez sugettz, tut saunz ayde avoir deux.—HILL. Nous sumes dun acorde de graunter leide par cause des faits si queux vous avetz mys avant, par quei leide est graunte.—*Contrarium Hillarii vj en Quo Warranto, sed diversi sunt casus,* &c. A.D. 1343-4.

(24.) [1] § Acompte a la suyte William Trussel. Le defendant fut utlage; par quei, apres ceo qil avoit chartre de pardoun, il suyst par estatut garnisement vers William Trussel leigne. Et le defendant fut Acompte.

[1] From L., and 25,184, until otherwise stated. In the *Placita de Banco*, Hil., 18 Edw. III., R° 234, it appears that "Præceptum "fuit Vicecomiti [Northamtoniæ] "(cum Willelmus Trussel, senior, "nuper in Curia domini Regis hic "per breve suum implacitasset "Willelmum atte Welle, clericum, "de eo quod idem Willelmus "redderet ei rationabilem compo-"tum suum de tempore quo fuit "receptor denariorum ipsius Wil-"lelmi Trussel, ac idem Willelmus "atte Welle, pro eo quod non venit "in eodem Curia Regis hic præfato "Willelmo Trussel inde secundum "legem et consuetudinem regni "Regis nunc Angliæ responsurus, "in exigendo positus fuisset ad "utlagandum, et ea occasione "postmodum utlagatus, et occa-"sione utlagariæ illius prisonæ "Regis de Flete se reddiderit, Rex "utlagariam illam eidem Willelmo "atte Welle perdonavit, ita tamen "quod staret recto in eadem Curia "Regis si prædictus Willelmus "Trussel versus eum inde loqui "voluisset juxta formam Statuti "Regis in hujusmodi casu provisi. "&c.,) quod per probos et legales "homines de Comitatu suo scire "faceret prædicto Willelmo Trussel "quod esset hic ad hunc diem "..... ad sequendum versus "prædictum Willelmum atte Welle "placitum suum prædictum si "&c."

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A.D. 1343-4. appear now, at his day, and he appeared.—*Pole* counted for William Trussel the elder.—*Grene*. Judgment of the count, because in the Original the name is "William Trussel," and he has counted for "William Trussel the elder."—SHARSHULLE. You have yourself sued this *Scire facias* which is warranted by the roll, and that is the Original of the *Scire facias*, with which it is quite in agreement; therefore see whether you will answer.—*Pole*. Inasmuch as he will not answer, and the charter is conditional, we therefore pray that the charter may lose its force, and that the body be taken.—SHARSHULLE. Take him into custody.—*Thorpe*. He is by mainprise according to the Statute, and that is until the plea be pleaded from one day to another, and until judgment be rendered, wherefore we pray that he may be by the same mainprise.—SHARSHULLE. His mainprise is only to have the body here to-day to answer, and when he has appeared the mainprise is discharged; and so it is when one surrenders or the Exigent has issued; but it is otherwise after plea pleaded, when the defendant finds mainprise; then he shall be by the same mainprise until judgment be rendered.—*R. Thorpe*. I will fully grant that to be the case if this mainprise had been at common law; but look at the statute.—And afterwards, after inspection of the statute,

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par maynprise destre ore, a son jour, qe vynt.[1]— *Pole* counta[2] pur William Trussel leigne.[3]—*Grene.* Jugement de count, qar loriginal est William Trusselle, et il ad counte pur William Trusselle leigne. —Schar. Vous avez mesmes suy cest *Scire facias* qest garraunti de roulle qest original del garnisement, et a quel il est bien acordaunt; par quei veez si vous voletz[4] respoundre.—*Pole.* Desicome il ne voet pas respoundre, et la[5] chartre est condicionelle, par quei nous prioms qe la chartre perde sa force, et qe le corps soit pris.—Schar. Pernez garde de luy.—*Thorpe.* Il est[6] par meynprise par statut, et cest tanqe le plee soit plede de jour en autre tanqe jugement soit[7] rendu, par quei nous prioms qil puisse estre[8] par meisme la[9] meynprise.—Schar. Sa meynprise nest forqe daver le corps cy a ceo jour a respoundre, et quant il est venuz la meinprise est assouth[10]; et issint est il en cas quant homme se rende ou Exigende est issue; mes autre est apres plee plede, quant le defendant trove meynprise; la serra il par mesme la meynprise tanqe jugement soit[7] rendu.—*R. Thorpe.* Jeo grauntera bien si ceo meynprise fut[11] a la comune ley; mes veez lestatut.—*Et postea, viso statuto,* qe parle rien

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[1] The appearance "in crastino "Purificationis beatæ Mariæ" is thus stated in the roll:—"Et modo "veniunt tam prædictus Willelmus "Trussel per Johannem de Soli- "hulle attornatum suum quam "prædictus Willelmus atte Welle "in propria persona sua."

[2] counta is omitted from L.

[3] In the record the declaration commences "idem Willelmus "Trussel dicit," without the word "senior," but as he was described as Willelmus Trussel senior in the *Scire facias*, the word "idem" makes him "Willelmus Trussel senior." The declaration recites the receipt of divers sums of Trussel's money by Atte Welle, through the hands of divers persons, at divers places, "ad mercandizan- "dum et proficuum ipsius Willelmi "faciendum."

[4] L., voiellez.

[5] L., sa.

[6] L., nest.

[7] soit is omitted from L.

[8] estre is omitted from L.

[9] The words meisme la are omitted from L.

[10] L., assuthe.

[11] 25,184, soit.

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A.D. 1343-4. which says nothing about mainprise, Willoughby said: Now you see that mainprise is only by favour.—*Grene.* We pray that he may be by new mainprise.—Willoughby. On what plea ought we to enter it on the roll that he is by mainprise?—Shardelowe. Nothing can be done before plea pleaded.—Willoughby. We will look at the Original, and until then let the body remain in custody.—*Blaykeston*, as to parcel, traversed the receipt in certain Counties, and as to having been receiver in one he acknowledged it, but for a less time than alleged in the count, and said that auditors were previously assigned him by the plaintiff, before whom he accounted, and was found to be in arrear, and he was committed and delivered to Newgate, wherefore he sued an *Ex parte* in the Exchequer. And the plaintiff, having been warned, appeared and produced rolls and tallies by which the defendant accounted as he alleged. And the defendant traversed to the effect that these were not the same rolls and tallies as those by which he accounted, upon which issue was joined between them. Process was continued until W. Trussel, the plaintiff, acknowledged in Court that the defendant had made satisfaction to him; wherefore it was adjudged that he should pass quit. Judgment whether he can have an action in respect of this receiving.

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de maynprise, Wilby. Ore veez vous qe la meynprise nest forqe de grace.—*Grene.*[1] Nous prioms qil puisse[2] estre par novel meynprise.—Wilby. Sur quel plee le duissoms entrer en roulle qil est par meynprise?—Schard. Homme ne le put nient fere avant plee plede.—Wilby. Nous[3] verroms loriginal, et demoerge le corps puis.—*Blaik.*, quant a parcelle, en ascuns Countes traversa la resceite, et quant a ascun resceite il conust la resceite par meyndre temps qil ne counta, et dit qautrefoitz auditours lui furent assignez par le pleintif, devant queux il acompta, et fut en arrere, et fut comaunde et livere a Neugate, par quei il[4] suyst *Ex parte*[5] en Lescheter.[6] Et le pleintif garni vynt, et mist avant roules et tailes[7] par queux il acompta a ces qil suppose. Et le defendant les[8] traversa qils ne furent pas mesmes les roules et tailles par queux il acompta, sur quei issue fut joint autre eux. Proces continue tanqe W. Trusselle, qest pleintif, conusast[9] en la Court qe le defendant avoit fet son gree; par quei par agarde il passa quites. Jugement si de cele resceite accion puisse avoir.[10]

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[Fitz., *Accompt*, 55.]

[1] L., *Gayne.*

[2] L., put.

[3] Nous is omitted from L.

[4] L., et qil, instead of par quei il.

[5] 25,184, *parte talis.*

[6] L., Lencheker.

[7] The words et tailes are omitted from 25,184.

[8] L., le.

[9] L., conissat.

[10] All that appears on the roll after the declaration "in Crastino "Purificationis," &c., is the following plea:—"Quo ad hoc quod præ- "dictus Willelmus Trussel sup- "ponit ipsum Willelmum atte "Welle esse receptorem denari- "orum ipsius Willelmi Trussel, "scilicet de viginti libris apud "Flore in prædicto Comitatu "Northamtoniæ per manus præ- "dicti Roberti, et etiam de "prædictis quindecim libris, sex "solidis, et uno obolo, apud "Laghtone in prædicto Comitatu "Sussexiæ per manus prædicti "Willelmi de Hathelshawe, et de "prædictis quinque libris apud "Estbourne in eodem comitatu "Sussexiæ per manus ejusdem "Willelmi de Hathelshawe, et de "quatuor libris apud Draytone in "eodem Comitatu Sussexiæ per "manus ejusdem Willelmi de Ha- "theishawe, et de quinquaginta et "duobus solidis, quinque denariis, "et uno obolo, apud Heyghyntone

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A.D. 1343-4. Account.

§ William atte Welle was outlawed at the suit of William Trussel on a writ of Account, and he after-

" in eodem Comitatu Sussexiæ, " per manus ejusdem Willelmi de " Hathelshawe, dicit quod ipse " non extitit receptor denariorum " ipsius Willelmi Trussel per " manus prædictorum Roberti et " Willelmi de Hathelshawe per " tempus prædictum sicut idem " Willelmus Trussel versus eum " narravit. Et de hoc ponit se " super patriam." This covers only a portion of the receipts mentioned in the declaration.

On R° 399 of the *Placita de Banco*, it appears that issue was joined on the above plea on the Octaves of the Purification. It also appears that the defendant further pleaded " quo ad hoc quod " idem Willelmus Trussel narrando " dicit quod prædictus Willelmus " atte Welle extitit receptor dena- " riorum ipsius Willelmi Trussel, " scilicet a prædicto Festo Paschæ " anno prædicti domini Regis nunc " duodecimo usque ad prædictum " Festum Sancti Michaelis proximo " sequens, et per idem tempus " supponit ipsum recepisse de " denariis ipsius Willelmi Trussel, " videlicet apud Laghtone in præ- " dicto Comitatu Sussexiæ, quin- " decim libras, et sex solidos, per " manus prædicti Simonis de " Wyleghe, et apud Estbourne in " eodem Comitatu Sussexiæ sex- " decim libras, duodecim solidos, " et sex denarios, per manus præ- " dicti Willelmi le Bedel, idem " Willelmus atte Welle dicit quod " ipse fuit Subescaetor ipsius " Willelmi Trussel in Comitatibus " Surreiæ et Sussexiæ, scilicet a " prædicto Festo Paschæ anno " regni prædicti domini Regis " duodecimo usque quintumdeci- " mum diem Augusti proximo " sequentem, et receptor denari- " orum ipsius Willelmi Trussel " ratione officii sui Subescaetriæ, " et per idem tempus recepit apud " Laghtone per manus prædicti " Simonis de Wyleghe decem libras, " decem solidos, et decem denarios, " et apud Estbourne per manus " prædicti Willelmi le Bedel sex- " decim libras, duos solidos, et duos " denarios. Et, quo ad residuum " denariorum prædictorum quod " prædictus Willelmus Trussel ei " imponit per manus prædictorum " Simonis, et Willelmi le Bedel, " recepisse a prædicto quinto- " decimo die Augusti usque ad " prædictum Festum Sancti Mi- " chaelis proximo sequens, dicit " quod ipse non extitit receptor " denariorum residui illius, prout " prædictus Willelmus Trussel ei " imponit." Upon this also issue was joined.

" Et, quo ad prædictas decem " libras, decem solidos, et decem " denarios, per manus prædicti " Simonis de Wyleghe, et sexdecim " libras, duos solidos, et duos " denarios, per manus prædicti " Willelmi le Bedel perceptos, dicit " quod prædictus Willelmus Trus- " sel ipsum Willelmum atte Welle " de receptione illa onerari [*sic*] non " debet, quia dicit quod quinto- " decimo die Augusti anno prædicti " domini Regis nunc duodecimo, " apud Londonias, in parochia " Sanctæ Katerinæ infra Allegate, " in hospitio ejusdem Willelmi " Trussel, coram Willelmo de

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Acompte. [Fitz., *Mainprise*, 17.]

§ William[1] atte Welle fuit utlage a la suyte T., en brief Dacompte, ou apres il se rendi, et avoit

" Kaythorpe, et Johanne de West-
" broke, auditoribus per ipsum
" Willelmum Trussel assignatis
" ad compotum ipsius Willelmi
" atte Welle audiendum a dicto
" Festo Paschæ anno prædicti
" domini Regis duodecimo usque
" prædictum quintumdecimum
" diem Augusti, &c., de tempore
" quo fuit Subescaetor prædicti
" Willelmi Trussel in prædictis
" Comitatibus Surreiæ et Sussexiæ,
" et receptor denariorum ipsius
" Willelmi Trussel computavit
" de summis prædictis et aliis,
" super quo quidem compoto præ-
" dicti auditores ipsum Willelmum
" atte Welle onerarunt de recepti-
" onibus indebitis, et rationabilem
" compotum suum non allocando,
" per quod iidem auditores pro
" arreragiis suis commiserunt
" ipsum ad gaolam de Neugate.
" Et postea idem Willelmus atte
" Welle, sentiens se indebite
" gravari, tulit quoddam breve
" quod vocatur Ex parte retornabile
" coram Baronibus de Scaccario in
" quindena Sancti Michaelis anno
" prædicti domini Regis tertio-
" decimo, quo die prædictus Willel-
" mus Trussel venit, et protulit
" quosdam rotulos per quos dixit
" prædictum Willelmum atte Welle
" computasse, &c. Et prædictus
" Willelmus atte Welle dixit quod
" per rotulos illos non computavit.
" Et de hoc posuit se super patriam,
" et prædictus Willelmus Trussel
" similiter. Et sic, continuato inde
" processu inter eos usque in
" Crastino Purificationis beatæ
" Mariæ proximo sequente, quo die
" prædictus Willelmus Trussel per
" attornatum suum venit et cogno-
" vit quod satisfactum fuit ei per
" prædictum Willelmum atte Welle
" de compoto suo prædicto, pro
" quo quidem compoto commissus
" fuit prisonæ prædictæ, et quod
" nollet ulterius prosequi versus
" eundem Willelmum atte Welle;
" et petit judicium si de summis
" illis onerari debeat."

To this according to the roll Trussel replied " quod per hoc de
" compoto prædicto exonerari non
" debet in hac parte, quia dicit quod
" idem Willelmus atte Welle
" satisfecit ei de alio tempore quo
" fuit receptor denariorum ipsius
" Willelmi Trussel, scilicet, a Festo
" Sancti Michaelis anno prædicti
" domini Regis undecimo usque ad
" Festum Paschæ proximo sequens,
" super quo compoto idem Willel-
" mus atte Welle arrestatus fuit et
" tulit dictum breve Ex parte, &c.,
" absque hoc quod idem Willelmus
" atte Welle computavit de tempore
" prædicto, scilicet, a Festo Paschæ
" anno regni prædicti domini Regis
" nunc duodecimo usque ad Festum
" Sancti Michaelis proximo sequens,
" sicut prædictus Willelmus Trussel
" superius versus eum narravit."

Issue was joined upon this and the *Venire* awarded.

The defendant then found mainpernors. Nothing further appears except adjournments.

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, as well as the other report.

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A.D. 1343-4. wards surrendered, and had his charter of pardon. And thereupon he sued a *Scire facias* to warn the plaintiff, &c., returnable now. And the parties appeared. And William Trussel counted against the defendant that the latter was his receiver of his monies in divers Counties.—*Notton.* He has counted for W. Trussel, and the name in the first original writ which he brought is Trusselle, wherefore judgment of the variance between the count and the writ.—Sharshulle. He has counted in accordance with your writ, which is your suit, and it does not lie in your mouth to say that your suit is wrongly taken; and your writ is in accordance with the record which ought to warrant the writ. —*Notton.* By statute[1] he counted on his first original writ, and this writ ought still to remain the original, wherefore the count ought to be maintainable and warranted by that writ.—Sharshulle. Sir, on your exception we must look at the original. In the meantime you must remain in custody.—*R. Thorpe.* No, Sir. He has found mainprise to answer, as the statute purports, &c.—Willoughby. He has found mainprise to appear now on his day to answer to the party, wherefore, since he has now appeared, his mainpernors are discharged.—*R. Thorpe.* The mainprise is for the whole of the plea; and it has been adjudged, in a case in which one who sued a *Scire facias* did not appear to answer, that he should lose the benefit of his charter of pardon, and he was held to be outlawed as before obtaining it, because the charter was conditional upon his appearance, &c.; consequently when he is on mainprise, &c., the intention is that this mainprise should serve him for the whole plea.—Sharshulle. That does not follow, because while an original is pending one will find mainprise to appear on his day, and if he then appear the mainprise is discharged; and as soon as he has pleaded he will find mainprise to appear from day to day; so also in this case when

[1] 5 Edw. III., c. 12.

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sa chartre. Et sur ceo suist le *Scire facias* de luy garnir, &c., retournable a ore, ou les parties vindrent. Et William counta devers luy qil fuit soun resceivour de ses deners en divers Countees.—*Nott.* Il a counte pur W. Trussel, et le primer original qil porta voet Trusselle, par quei jugement de la variaunce entre le counte et le brief.—Schar. Il ad counte acordaunt a vostre brief qest vostre suyte, et ne gist pas en vostre bouche a dire qe vostre suyte est mespris; et vostre brief est acordaunt al recorde qe devereit garrauntir le brief.—*Nott.* Par lestatut il counta sur soun primer brief original, et ceo brief deit unqore demurer original, par quei de cel brief il covynt qe le counte soit meyntenable, et garraunti.—Schar. Sire, a vostre challenge il nous covynt veer loriginal. En le meen temps il vous covynt demurer en garde. —*R. Thorpe.* Sire, nanil. Il ad trove meynprise de respondre, come lestatut voet, &c.—Wylby. Il ad trove meynprise de vener ore à soun jour de respondre a la partie, par quei, del houre qil est ore venuz, sez meynpernours sount deliverez.—*R. Thorpe.* Cest meynprise pur tut le plee; et ceo ad este ajuge, en cas qe ceo qe suyst un *Scire facias* ne vint pas de respondre, qil perde benefice de la chartre, et fuit tenuz utlage come devant, de ceo qe la chartre fuit condicionel donqes sil ne vint, &c.; *per consequens* quant il est a meynprise, &c., il voet qe cel meynprise ly sert pur tut le plee.—Schar. *Non sequitur*, qar pendaunt un original homme trovera meynprise destre a soun jour, et sil viegne adounqes la meynprise est delivers; et quant il avera plede il trovera meynprise qil serra de jour en jour, &c.; auxi icy, quant il suyt le *Scire*

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A.D. 1343-4. he sued the *Scire facias* he found mainprise to keep the day given by his writ; therefore if he comes and pleads he will find mainprise anew, and therefore you must be in custody until you have pleaded.—And the roll was read as to his mainprise, and it purported to be until this day.—*R. Thorpe.* Look at the statute and you will find the nature of the mainprise to be different.—*Pole.* According to his own statement he has not taken his suit at common law, nor upon our original, so that the fault is his; wherefore we pray that he be treated as one who is out of the law.—SHARSHULLE. Since this suit is taken in accordance with the record, and you have to count in accordance with that, you can demand judgment on the ground that he makes no answer.—STONORE. Even though the original were in one form, and the record on your suit in another, it would only be necessary to amend the record.—SHARSHULLE. Sir, upon this exception we must look at the original writ, and in the meantime we commit him to custody.—And they prayed mainprise for him until, &c., because he was an officer of Court.[1]—And he could not have it.—And afterwards, on another day he pleaded, and denied the receiving, as to part, and as to part he pleaded that he rendered an account, and that he was charged with the same receiving, and thereupon his body remained in custody. And then he sued an *Ex parte* in the Exchequer where the rolls were then produced, which he said were not the rolls by which he accounted. And upon that they were at issue. And afterwards they came to terms so that one who was William Trussel's attorney appeared and acknowledged that satisfaction had been made to him, wherefore the defendant departed quit; judgment whether he can have an action as to this receiving.—*Pole.* We will imparl.—*Blaykeston.* Now we pray mainprise.—HILLARY. You may

[1] As shown by the record he was a sub-escheator.

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facias il trova[1] meynprise de garder soun jour done par soun brief; donqes sil viegne et plede il[2] trovera meynprise autrefoith, par quei tanqe[3] vous avetz plede il covynt qe vous soiez en garde.—Et le roule de sa meynprise fuit lieu, qe voleit destre a cest jour.—*R. Thorpe.* Regardez lestatut, et vous troverez la nature de la meynprise autre.—*Pole.* Par son dit demene il na pas pris sa suyte a la comune ley na nostre original, issint sa defaut; par quei nous prioms qil soit fait de ly come de ceo qest hors de la ley.—Schar. Del houre qe cel suyte est pris acordaunt al record, et a ceo avetz vous a counter acordaunt, vous poiez demander jugement de ceo qil ne respond rienz.—Ston.[4] Tout fuit loriginal tiel, et le recorde a vostre suite autre, ne serroit forqe damender le, &c.—Schar. Sire, sur cel challenge il nous covynt veer, et en le meen temps nous ly comandoms en la garde.—Et prierent meynprise pur luy taunqe, &c., *eo* qil fuit un compaignoun de Court.—*Et non potuit habere.*—Et puis a un autre jour il pleda, et dedit partie de la resceite, et quant a partie il pleda qil rendist acompte, et qil fuit charge de mesme la resceite, et sur ceo soun corps demura en garde. Et puis il suyt le *Ex parte* en Lescheqer ou adounqes les roules furent mys avant, queux il dit qils ne furent pas les roules par queux il acompta. Et sur ceo furent a issue. Et puis ceo ils soy acorderent issint qun qe fuit attourne W. Trusselle vint et conust qe soun gree fuit fait, par quei il departy quitez; jugement si de cel receite accion puit il avoir, &c.—*Pole.* Nous enparleroms.—*Blayk.* Ore nous prioms meynprise.— A.D. 1343-4.

[1] MS., trovera.
[2] MS., et.
[3] MS., quant.
[4] MS., *Setone.*

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A.D. 1343-4. still, at the end of your plea, have judgment against you to account; wherefore, &c.—Afterwards *Moubray* said:—He has pleaded as to a suit by *Ex parte*, and that upon that writ, as he says, they were at issue on the question whether the rolls were the same, and so it is proved that there was no answer by which one could be apprised whether he then accounted in respect of the same sum of which we now speak; wherefore his plea is not such that to it, &c.—*Blaykeston*. And will you abide judgment upon that?—*Moubray*. You have admitted the receiving as to part, so that the plea which you now plead will be saved to you before the auditors; therefore we pray the Account, though this plea was before the other.—*Blaykeston*. Against a release I shall not be put to account; and now my plea is to the same effect.—*Moubray*. To make an end of the matter we say that we have counted as to receiving from Easter in the 12th year until the Feast of St. Michael, and he has acknowledged that he was our receiver from Easter until the Feast of St. Michael in the 11th year. To this we say that he was our receiver from the Feast of St. Michael in the 11th year until the Feast of Easter next following, and that he did not previously account as to that time and as to the rest of the time in respect of which we have counted; ready, &c.—And the other side said the contrary.

Writ of Right. (25.) § A writ of Right was heretofore brought in the Hustings of London against William Pikerel and K. his wife. The demandant counted, in the nature of a Formedon in the descender, of a gift made to his grandfather, and made the descent to R. his brother. From R., who died without issue, the descent was to the present demandant as brother. The tenants then

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HILL. Unqore sur fyn de vostre plee vous poiez estre ajugge dacompter; par quei, &c.—Puis *Moubray*. Il ad plede dun suite par *lex parte*, ou sur cel brief, a ceo qil dit, ils furent a issu sur ceo qils furent mesmes les roules, et issint est prove qe nulle fuit respouns par quel homme puit estre apris sil adounqes [acompta] de mesme la somme de qel nous parloms ore; par quei soun plee nest pas tiel a quei, &c.—*Blaik*. Et sur ceo volez demurer en jugement?—*Moubray*. Vous avetz conu la resceite[1] en parcelle, issint qe le plee qe vous pledez ore vous serra sauve devant les auditours; par quei nous prioms lacompt, mesqe[2] ceo plee fuit devant lautre. —[*Blaik*.]. Encountre un relees jeo ne serray mye mys dacompter; ore moun plee prove mesme leffecte. —*Moubray*. Pur faire fyn nous dioms qe nous avoms counte[3] de resceites entre la Pasche lan xij tanqe al Fest de Seint Michel, et il ad conu estre nostre receivour de la dit Pasqe tanqe al Fest de Seint Michel lan xj. A ceo dioms nous qil fuit nostre resceivour de la Fest Seint Michel lan xj tanqe al Fest de Pasqe prochein ensuaunt, et a cel temps il nacompta autrefoitz et de temps qe nous avoms ore counte; prest, &c.—*Et alii e contra*.[4] A.D. 1343-4.

(25.)[5] § Brief de Dreit fut autrefoith porte en le Hustenges de Loundres vers William Pikerel[7] et K. sa femme. Le demandant counta, en nature de Formedone en descendre, dun doun fet a son aiel, et fist la descente tanqe a R., son frere. De R., qe murust saunz issue[8] descendi a lui, come a frere, qore Dreit.[6]

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[1] MS., lacompte, instead of la resceite.

[2] MS., mes.

[3] MS., acompte.

[4] As to the form in which issue was really joined *see* p. 545, note 10.

[5] From L., and 25,184, until otherwise stated.

[6] The marginal note is from L. alone.

[7] Pykerelle

[8] L., heir.

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A.D. 1343-4. alleged that R., the demandant's brother, devised the same tenements to K. his wife, who is now the wife of William, against whom the writ is brought, to hold to her and her heirs for ever, and according to the customs of the City, after R.'s death. Because a husband cannot, in the City, devise to his wife a higher estate than a freehold, the wife came and renounced the fee and the right, and prayed execution as to the freehold, whereupon proclamation was made, according to the customs, that whosoever would put forward his claim and his exception against the testator should appear, &c. The demandant appeared in the Hustings and preferred his claim that the will should not be executed, because his brother had only a term for life, which claim remains of record. Therefore judgment was demanded for the tenants whether the demandant ought to be answered as to this writ supposing that his brother was seised in tail, which is contrary to his claim by which he supposes that his brother had only a freehold, which latter claim remains of record. And by judgment, notwithstanding this exception, they were put to answer over. Therefore they alleged the devise of the demandant's brother, as above, by which a reversion is saved to the demandant, by reason of which he is bound to warrant. And they said that he had assets by descent in fee simple in London and Middlesex. And because warranty was not expressly included in the devise, they awarded seisin to the demandant. Thereupon William and his wife sued a writ of Error before Hillary, Sharshulle, Willoughby, and Kelshulle at St. Martin's. And on the garnishment, after the Recorder, with the Mayor, had had their forty days to consider as to the making of the record, the Recorder made the record by word

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demande. Les tenantz adonqes alleggerent coment R., frere le demandant, devisa mesmes les tenementz a K., sa femme, qest ore[1] femme W.,[2] vers qi le bref, &c., a luy et ses heirs a touz jours, et, apres la mort R., solonc les usages de la Cite. Pur ceo qe le baroun, en la Cite, ne put deviser a sa femme plus haut estat qe fraunktenement, la femme vynt, et renuncia le fee et le dreit, et pria execucion de fraunktenement, sur quei proclamacion fet par les usages, qe qi qe vodreit mettre son cleym et son[3] chalenge sur le testatour vendreit, &c. Le demandant vynt[4] en le Hustenges, et mist son cleym qe le testament ne serra pas execut, pur ceo qe son frere navoit qe terme de vie, quel cleym demoert de recorde. Par quei pur les tenantz fut demande jugement si a cestuy bref supposaunt qe son frere fut seisi par taille, qest contrarie a[5] son cleym par quel il suppose qil navoit qe fraunktenement, quel cleym demoert de recorde, il devereit[6] estre respondu. Et par agarde, *non obstante* la chalenge, ils furent mys de respoundre outre. Par quei ils alleggerent la devys le frere le demandant, *ut supra*, par quel reversion est salve en le demandant, par resoun de quel il est tenuz a garrauntir. Et disount qil ad assetz par descente en fee simple en Loundres et Middelsexe. Et, pur ceo qen le devys garrauntie ne fut pas expressement compris, il agarda seisine al demandant.[7] Sur quei W. et sa femme suerunt Errour devant Hill., Schar., Wylby.,[8] et Kels., a Seynt Martin. Et, al garnisement, le Recordour ove le Meire, apres qil avoint eu lour Quarentesme daviser de fere le recorde, A.D. 1343-4.

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[1] 25,184, uncore la.
[2] W. is omitted from L.
[3] son is omitted from L.
[4] vynt is omitted from L.
[5] L., de.
[6] 25,184, deyveit.
[7] The words al demandant are omitted from L.
[8] Wylby. is omitted from 25,184.

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A.D. 1343-4. of mouth according to custom, &c., which record was entered.—*Notton* said, on another day, that the record was not complete.—*Thorpe.* When the Treasurer and Chamberlains [of the Exchequer] send a record by warrant, if the record be imperfect, they shall never amend it of themselves, but in virtue of a writ they can; now in this case the Recorder has, according to the custom, recorded by his mouth at his peril, and that record cannot be disallowed nor varied from that which he has said in any point, and it is entered, and therefore it must be held to be the record without this that there can be anything more or less.—Shars-hulle. Deliver yourself; we find that on which you take the exception in the roll.—*Thorpe* recited the errors, and said that one error was assigned in that they did not put the demandant to answer as to his claim which is of record, which was contrariant to a suit and action of Formedon, in which case they ought to have adjudged, on such an exception not denied, that the demandant should take nothing. And also when the tenant alleged that the demandant, on the devise and the reversion saved, was bound to warrant him, and that the demandant had assets by descent, the Court did not put him to answer whether he had assets by descent or not, in which case on his non-denial the Court ought to have adjudged that he should take nothing. And to prove the first point, suppose tenant in tail renders by fine, and, execution not having been sued, his heir enters, against whom a *Scire facias* is sued, and he does not appear, or does appear and says nothing to delay execution, where he could on such matter prevent execution and does not do so, but execution is awarded, he will never have an action. So in the matter before us, when procla-

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par[1] bouche le Recordour fist le recorde par usage, &c., quel recorde fut entre.—*Nottone* dit, a autre jour, qe le recorde ne fut pas pleyn.—*Thorpe*. Quant Tresorer et Chaumberleyns maundent recorde par garraunt, si le recorde soit trop deminucie,[2] jammes nel amendrount ils deux mesmes, mes par brief ils pount[3]; ore en ceo cas le Recordour par usage de sa bouche ad recorde a son peril, qe ne put estre desalowe[4] ne varie de ceo qil ad dit en nul poynt, et cest entre, par quei il covient tener ceo pur recorde saunz ceo qautre chose[5] plus ou meins purra estre.—Schar. Deliverez vous; nous trovoms ceo qe vous chalangez en roulle.—*Thorpe* rehercea les errours, et dist qe errour est assigne de ceo qils ne mistrent pas le demandant a respoundre a son cleym qest de recorde, quel fut contrariaunt[6] a suyte et accion de Formedoun, en quel cas ils dussent aver agarde, sur tiel chalenge nient dedit, qe le demandant ust pris rien. Et auxi quant le tenaunt alleggea qe le demandant, sur la devys et la reversion salve, luy fut tenuz a garrauntir, et qil avoit assetz par descente, Court luy mist pas a respoundre sil avoit par descente ou noun, en quel cas sur nient dedire Court dust[7] aver agarde qil ust pris rien. Et pur prover le primer poynt jeo pose qe tenant en taille rend par fyn, execucion nient suy, son heir entre, vers qi garnisement est suy, il ne vynt pas, ou vynt et dit rien[8] pur targer execucion, ou il purra sur tiel matere destourber lexecucion et ne fet pas, mes execucion est agarde, jammes navera accion.[9] *Sic in proposito*, quant la proclamacion sur la devys

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[1] L., de.
[2] deminucie is omitted from 25,184.
[3] 25,184, poynt.
[4] L., desavowe.
[5] 25,184, ou autrement, instead of chose.
[6] 25,184, continuant.
[7] dust is omitted from L.
[8] rien is omitted from L.
[9] MSS., execucion.

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A.D. 1343-4. mation on the devise was made, and he was tenant, as he necessarily must have been until execution was had, and he could have made himself a party to prevent execution, and have claimed estate tail as heir, and did not do so, but went further and disclaimed inasmuch as he said that his ancestor had only a term for life, which claim was contrary to an estate tail, he ought never, according to law, to have had an action any more than upon the *Scire facias*, because upon his claim, if he claimed as heir, the Court would have put the woman to plead to him.—*Pole.* That which you say about the claim was merely a supposition, and was not pursued, nor was judgment rendered upon it, nor could we then have been party to the demandant as tenant, because according to the custom the tenements will be in the hand of the City until execution be had upon the devise; and the supposition was not contrary to the form, because it is not inconsistent that at a different time the ancestor held in tail, and, when he died, a term for life; and, moreover, a supposition will not oust one from an action, and particularly when it is not pursued.—*Thorpe.* Your non-suit shall not give you an advantage.—*Seton.* Exception is not to be taken to the form of claim any more than in case of a fine, for it would have been sufficient to have said "I prefer my claim," without saying anything more, in order to save action and right on a future occasion, and the rest, as to the manner how, is without prejudice; and the woman possibly had execution two years afterwards, so that I could not have been a party to her, nor was I named in Court by process to be a party, so that although I did not prevent her from having execution that will not prejudice me.—Sharshulle. Certainly by your claim you expressly supposed the reverse of an estate tail, and claimed by another course, for although you did not say on your claim that your brother held in

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fut fet, [et il fut tenaunt, come covendreit qil fut tanqe execucion fut fet],[1] et soy poait aver fet partie en destourbaunt lexecucion, et aver clame taille come heir, et ne fist pas, mes outrement desclama par tant qil dist qe son auncestre navoit qe terme de vie, quel clamer fut contrarie a la taille, jammes par ley dust il aver eu[2] accion plus qen le *Scire facias*, qar sur son cleym, sil clama come heir, Court ust mys la femme daver plede a luy.—*Pole.* Ceo qe vous parlez de cleym ne fut forqe supposaille, et ne fut pas pursuy, ne jugement sur ceo rendu, ne com tenant a donqes ne poams aver este partie a la demandante, pur ceo qe par[3] usage, tanqe execucion soit fait sur la devise, les tenements serront en la mayn la Cite; et la supposaille ne fut pas contrarie a la fourme, qar a divers temps esta[4] ensemble qe launcestre avoit par taille, et, quant il murust, terme de vie; et supposaille uncore nostera pas homme daccion, et nomement quant ceo nest pas pursuy.—*Thorpe.* Vostre nounsuyte ne vous durra pas avantage.—*Setone.* La fourme de cleym nest pas a chalenger nient plus qen cas de fyne, qar il ust suffi daver dit jeo mette mon cleym, saunz plus, pur salver autrefoit accion et dreit, et le remenant de la manere coment ne greve pas; et par cas la femme avoit[5] deux aunz apres execucion, issint qe jeo ne poai aver este partie a lui, ne ne[6] fu nome en Court par proces destre partie, issint qe tut la destourbay[7] jeo pas dexecucion ceo ne moy grevera pas.—Schar. Certes par vostre cleym vous supposastes expressement le revers de la taille, et clamastes par autre cours, car tut ne deistes vous pas sur vostre cleym qe vostre frere tynt en vostre dreit,

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[1] The words between brackets are omitted from L.
[2] eu is omitted from 25,184.
[3] par is omitted from L.
[4] L., estea.
[5] 25,184, navoit.
[6] ne is omitted from 25,184.
[7] 25,184, destourboi.

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ceo fut entendu issint, qar autrement en veyn mistes vostre[1] cleym par cel manere. Ore parlez a lautre point.—*Thorpe.* Autre errour de ceo qe il ne fut pas mys de[2] respoundre sil avoit assetz par descente, quel fut errour apert, desicome par my la devys reversion fut salve, par quel il come heir fut tenuz a garrauntir.—*Pole.* Jammes ne serra mys de respoundre[3] si jay par descente mes la ou garrauntie est de value, et garrauntie navoit il pas mes par cause de reversion, quele fut a ma volunte si jeo le vodray[4] aver ou nynt, qar en le devys nad pas clause[5] de charger de garrauntie,[6] et par usage auxi fut allegge en le recorde qe le devys ne doune pas garrauntie.—*Nottone, ad idem.*[7] La reversion comencea par le renuncier[8] de dreit la femme, quel ne durra pas a lui avantage de garrauntie.—*Thorpe. Certum*[9] *est* si la femme ust clame fee par le devys, son estat de tut ust este forfet, et tut ust[10] demure en leir par descente; *ergo*, quant ele clama forqe ceo qe poait estre devise, saver, le fraunctenement, le dreit *necessario*, qe ne put estre devise, par descente[11] demura en leir, par quele il fut tenuz a garrauntir. —Schar. Vous dites verite.—Puis Schar. rehercea, et dit qil y avoit[12] errour en lun point par les resouns tochez[13] *supra*, et agarda qe ceux qe perdirent reussent lour seisine et les issues en le mene temps, &c.—Puis Errour est suy de cel errour reverser.

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[1] 25,184, vous.
[2] L., a.
[3] The words de respoundre are omitted from L.
[4] L., vodroi.
[5] L., cause.
[6] The words de garrauntie are omitted from 25,184.
[7] The words *ad idem* are omitted from 25,184.
[8] L., renyncier.
[9] L., certein.
[10] 25,184, ust este.
[11] descente is omitted from L.
[12] L., ad.
[13] 25,184, tochaunz.

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A.D. 1343-4. Formedon.

§ John brought his writ against Alice late wife of Richard P. in the Guild-hall of London in the manner of a Formedon, and counted of a gift made to his ancestor, that is to say, to his grandfather. From the grandfather he made the descent to G., as to son, &c.; from him to Richard as to son and heir; from Richard to the demandant as to brother and heir. And it was pleaded that he ought not to be answered as to such a writ, because the same person through whom he claims was his brother, who was seised of the same tenements, and in his will devised them to this same Alice, his wife, for term of her life, upon which devise, after his death, proclamation was made in the City for any one to appear who could say anything wherefore the will should not be executed, &c.; whereupon, on a certain day this same John appeared, and said that execution ought not to be had on such a devise, because this Richard had nothing except for term of life, and by this writ the demandant claims a fee tail through him, so that this writ supposes the contrary of that which he previously claimed; judgment whether he ought to be answered as to this writ. Notwithstanding this, he was put to answer over, and it was then pleaded that Richard was issue in tail in the second generation, and that alienation by him was not restrained by statute or by common law; judgment. And this was not allowed. And afterwards it was pleaded that this Richard, his brother, whose heir he is, devised the said tenements to his wife for the term of her life, the reversion being to Richard and his heirs, by force of which reversion she said that, if she were impleaded by a stranger, he would be bound to warrant her, and that he had assets by descent in such a place, &c.;

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A.D. 1343-4. Forme-doun. [Fitz., *Garraunte*, 23.]

§ Johan[1] porta soun brief vers [Alice qe fut la femme][2] Richard P.[3] en la Gildhalle de Loundres en la manere dun Fourme de doun, et counta dun doun fait a soun auncestre, saver, a soun aiel. De ly fist la descente a G., com a fits, &c.[4]; de ly a Richard come a fits et heir; de Richard a ly come a frere et heir. Et plede fuit qil ne deit a tiel brief estre respondu, qar mesme cely par qi il cleyme fuit soun frere, le qel fuit seisi de mesmes les tenementz, et en soun testament les devisa a mesme cest Alice sa femme a terme de vie, sur qel devys, apres sa mort, proclamacion fuit fait deins la Citee si nulle savoit rien dire[5] par quei le testament ne serroit execut, &c.; sur quei a certein jour mesme cel Johan vint, et dit qexecucion sur tiel devys ne deit estre fait, qar cely Richard navoit rienz forqe a terme de vie, et par ceo brief il cleyme fee taille par my ly, issint cest brief [suppose] le contrarie de ceo qil cleyma devant; jugement si a cest brief deit il estre respondu. *Hoc non obstante*, il fuit mys a respondre outre, et puis plede fuit qele fuit le secunde issue en la taille, qel alienacion nest pas restreint par statut ne par comune ley; jugement. *Et non allocatur.* Et puis plede fuit qe cely Richard, soun frere, qi heir il est, les ditz tenementz devisa a ly a terme de sa vie, la reversion a luy et a ses heirs, par force de qel reversion ele dit qe si ele fuit enplede dun estraunge, il serroit tenuz de luy garrauntir, et ad assetz par descente en

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[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report. He identifies this case with Y.B., Mich., 13 Edw. III., No. 21.

[2] The words between brackets are not in the MS., but are from Fitzherbert's *Abridgment*.

[3] P. is from Fitzherbert's *Abridgment*.

[4] The words com a fits, &c., are from Fitzherbert's *Abridgment*.

[5] The words rien dire are from Fitzherbert's *Abridgment*.

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A.D. 1343-4. judgment whether he can have an action. To this it was pleaded that, since she did not deny the form, and since no one is bound to warrant by reason of a devise according to the customs of London, she has thus confessed his action, and as to her statement that he has assets by descent, &c., no law puts him to answer, wherefore he demanded judgment and prayed seisin of the land. And then upon this plea it was pleaded to judgment, and it was adjudged that the demandant should recover, &c.—And afterwards she sued a commission to HILLARY, SHARSHULLE, WILLOUGHBY, and KELSHULLE to hear the errors of this record at St. Martin's le Grand; and she sued another writ to the Mayor and Sheriffs to cause the record to come, upon which they had their forty days to make their record.—And afterwards the Recorder recorded by word of mouth, according to their custom.—And afterwards error was assigned in all the points aforesaid.—And the Judges were of opinion that in that Richard was put to answer over, contrary to the first exception, it was an error, and also in that they awarded seisin of the land contrary to the third exception it was an error, and for those two causes the Judges reversed the judgment, and awarded to the party the issues accrued in the meantime since the judgment was rendered, &c.

Continuation. (26.) § STONORE. There is no stress to be laid on the question on which point judgment will be given in this case for the plaintiff.—*Seton.* The deed purports that we shall distrain, and detain the distress as forfeited for non-payment, and nevertheless that we may enter upon the land, so that by reason of non-payment we are supposed in effect to have to the value of the rent, and nevertheless the land, and we have said that you eloigned the distress, wherefore we have

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tiel lieu, &c.; jugement si accion puit il aver. A quei fuit plede del houre qele ne dedit pas la fourme, et par cause de devys solonc les usages de Loundres nulle homme est tenuz de garrauntir, issint ad ele conu saccion, et a ceo qil dit qil avoit assetz par descente, &c., nulle ley ne ly mette a respondre, par quei il demanda jugement, et pria seisine de terre. Et puis sur ceo plee fuit plede en jugement, [et] agarde fuit qe le demandant recoverast, &c.— Et apres il suyst une commission a Hill., Schar., Wylby., et Kels., doier les errours de cel record a Seint Martin le Graunt; et ele suyt autre brief as Maire et Vicountes de faire vener, &c., ou ils avoient lour quarentien de faire lour recorde.—Et puis le Recordour recorda par bouche solonc lour usage.—Et puis assigne fuit errour en toutz les pointz avantditz.—Et fuit avys a eux qe de ceo qe fuit mys outre encountre la primere excepcion qe ceo fuit un errour, et auxi encontre le terce [excepcion] ils agarderent seisine de terre qe ceo fuit errour, et qe par ceux ij causes ils reverserent le jugement, et agarderent a la partie les issues en le meen temps puis le jugement rendu, &c. A.D. 1343-4.

(26.) [1] § Ston. Sur quel point qomme ajugera en ceo cas pur le pleintif nest pas a charger.—*Setone.* Le fet voet qe nous destreindroms, et detendroms la destresse come forfet par nounpayement, et ja le meyns qe nous purroms entrer la terre, issint qe par nounpayement en effecte nous dussoms aver a la value de la rente, et ja le meyns[2] la terre, et avoms dit qe vous eloignastes[3] la destresse, par quei *Residuum.*

[1] From L., and 25,184, until otherwise stated. The report appears to be in continuation of Michaelmas Term, 17 Edw. III., No. 12 (the Prior of Bermondsey *v.* Mamoun, p. 62), the record of which is among the *Placita de Banco* of that Term, R° 238 d.

[2] 25,184, jammes, instead of ja le meyns.

[3] L., enlonguastes.

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A.D. 1343-4. demanded judgment, and again do so.—*R. Thorpe.* The rent was a freehold, which ceased by reason of the entry, and that was through the fault of him who entered, because he might have had an Assise, and if he recovered the arrears his purpose would then be served entirely with regard to the rent, and he would also have the land, which cannot be, because the entry upon the land is given in lieu of the rent, so that he shall not have both.—Hillary. Such is the purport of your deed.—*R. Thorpe.* Where is the deed?—*W. Thorpe.* The deed which was previously produced is, as it were, proved by the record, and that deed is admitted, so that there is no necessity that it should be produced now. Besides, this debt is not like another debt arising on obligation, which obligation would be cancelled by the Court if the plaintiff recovered, because this debt is founded on contract on a lease of land, so that the specialty is shown only in witness of the contract which is now admitted; wherefore there is no necessity that it should be produced.—*R. Thorpe.* Then we take the record to witness that they have not the deed, and we demand judgment, inasmuch as they have not the specialty, which is the proof of their action, how we are to leave the Court.—Willoughby. Then you waive your first plea.—*R. Thorpe.* We demand judgment on the plea pleaded, and also because they have not now the specialty, because that came entirely from themselves.—Sharshulle. You cannot in any manner join these two matters together to put them to judgment, because the Court will possibly adjudge in your favour on one point, and in his favour on the other point, which cannot be.—*R. Thorpe.* I

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nous avoms demande jugement, et uncore fesoms.—*R. Thorpe.* La rente fut fraunctenement, quel cessa par lentre, et ceo fut par la defaut de celuy qe entra, qar il put[1] aver eu Lassise, et sil recoverast les arrerages donqes serreit il[2] servy[3] de la rente enterement, et auxi avereit la terre, qe ne poet estre, qar lentrer est done en la terre en lieu de la rente, issint qil navera pas lun et lautre.—Hill. Tiel est vostre fet.—*R. Thorpe.* Ou est le fet?——[*W. Thorpe.*][4] Le fet[5] est come prove par recorde, qautrefoitz fut mys avant, quel fet est conu, issint qil ne bosoigne pas qil soit ore moustre. Ovesqe ceo, nest pas semblable a autre dette qe sourdreit sur obligacion, quele obligacion serreit dampne par Court si pleintif recoverast, qar ceste dette est foundu sur contracte sur lees de terre, issint qe lespecialte nest[6] moustre forqe en tesmoignaunce del contracte quele est meyntenant conu; par quei il ne bosoigne pas qil soit moustre.—*R. Thorpe.* Donqes pernoms recorde qil nount pas le fet, et demandoms jugement, desicome ils nount pas lespecialte, qest prove de lour accion, coment nous devoms departir.—Wilby. Donqes weivez vostre primer plee.—*R. Thorpe.* Nous demandoms jugement sur le plee plede, et auxi de ceo qil nount pas a ore lespecialte, qar ceo vynt tut[7] deux mesmes.—Schar. Vous ne poez en nulle manere joyndre les deux ensemble de mettre en jugement, qar par cas la Court ajuggera sur lun point pur vous, et sur lautre point pur lui, qe ne[8] poet estre.—*R. Thorpe.* Jeo demande jugement

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[1] 25,184, ils pount, instead of il put.

[2] il is omitted from L.

[3] L., seisi.

[4] The words *W. Thorpe* are omitted from the MSS. and the old editions, but it is clear that the words which follow were said not by *R. Thorpe* but in answer to his question.

[5] L., fee.

[6] L., ne soit pas.

[7] tut is omitted from L.

[8] 25,184, ceo ne.

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A.D. 1343-4. demand judgment on both.—*W. Thorpe.* And we demand judgment because he does not maintain his first plea, but has waived it inasmuch as he now abides judgment on the other point, that is to say, because the specialty is not now produced. And we tell you, since the specialty is admitted, and we are abiding judgment in law on a matter which lies in law and not in fact, that we do not understand that it is necessary to produce the deed, but that, if the Court so wills, we are ready to produce it; and we pray to have the debt and our damages.—And on the morrow SHARSHULLE recited the pleadings, and said that the first plea was waived, and that the parties were abiding judgment whether it was necessary to produce the specialty or not.—*R. Thorpe.* We take your records to witness that we never waived either the one or the other, but we demanded judgment on the plea pleaded, and also on the ground that the specialty, which should, according to law, always be ready in Court for the plaintiff, was not then produced. And I say that, although a party cannot abide judgment on divers pleas which fall under the head of fact, nevertheless, in respect of matters as to which he could have advantage by plea or admission of his adversary, although the matters extend to different effects, he will have the advantage.—SHARSHULLE. That would be extraordinary.—STONORE. So far as you have told us, nothing has been said which extinguishes the debt.—*R. Thorpe.* If I give the land in that manner, and if the rent be in arrear, the tenant has, according to the condition, to pay me £20, and if the rent falls in arrear and the tenant afterwards pays me £20, shall I afterwards have the arrears?—*W. Thorpe.* Yes, against tenants.—STONORE. In the case in which you are he has, by his entry, the land for the rent which is to become due, and not for the arrears; wherefore render to him his debt.

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sur lun[1] et lautre.—[*W.*] *Thorpe.* Et nous jugement desicome il ne meynteynt pas son primer plee, einz lad weive par taunt qil demurt ore sur lautre point, saver, qe lespecialte nest pas a ore moustre. Et vous dioms, desicome lespecialte est conu, et sumes en jugement de ley de chose qe chiet en ley, hors de fet, le quel fet nous entendoms qil ne bosoigne pas moustrer,[2] et, si la Court voet, &c., prest sumes de moustrer; et prioms la dette et nos[3] damages.—Et lendemeyn Schar. rehercea, et dit qe le primer plee fut weyve, et qe les parties furent demures en jugement sil bosoigne de moustrer lespecialte ou nient.—*R. Thorpe.* Nous pernoms voz recordez qe unqes ne weyvames ne lun ne lautre, mes demandames[4] jugement sur [le plee pledee, et auxi qe lespecialte, qe tut temps serra par ley prest en Court pur le pleintif, adonqes][5] ne fut pas moustre. Et jeo die, coment qe partie ne put demurer sur divers plees qe checent[6] en fet, nepurquant de chose dount il purra[7] aver avantage du plee ou conisaunce[8] son[9] adversarye, tut sestendent[10] les choses a divers effectes, il avera lavantage.—Schar. Ceo serreit merveille.—Ston.[11] Quanqe vous avez[12] dit, rien est dit qesteynt la dette.—*R. Thorpe.* Si jeo doune la terre par la manere, et si la rente soit arere, par la condicion le tenant moy paiera xx*li.* la rente est arere le tenant moy paye apres xx*li.* averai jeo apres les arerages?—[*W.*] *Thorpe.* Oil, vers tenantz.—Ston. En le cas ou vous estes il ad terre par son entrer pur la rente qest a vener, et noun pas pur les arerages; par quei rendez sa dette.

[1] 25,184, del un, instead of sur lun.

[2] moustrer is omitted from 25,184.

[3] L., noun.

[4] L., demandoms.

[5] The words between brackets are omitted from L.

[6] 25,184, chiet.

[7] L., poet.

[8] L., conusaunce.

[9] son is omitted from 25,184.

[10] L., sestent.

[11] L., *Setone.*

[12] averetz.

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Note.

§ See the beginning of this plea for the Prior of Bermondsey in Michaelmas Term last past.—And now *R. Thorpe* asked where was the deed of lease which the plaintiff had produced the previous Term in order to maintain the action.—*Pole.* The deed is admitted by you inasmuch as you have been abiding judgment on another point; and besides it has been taken away, and therefore there is no necessity to produce it.—*R. Thorpe.* And since this action is founded on a specialty, in which case it is necessary to have the specialty always ready until judgment be rendered, and now he has it not, we therefore demand judgment, &c.—SHARSHULLE. Then you waive the other point on which you have abode judgment; and, besides, the action is not founded only on an obligation, but on the ground of tenements leased for term of life, yielding a certain rent to the lessor, so that the action is maintainable without a specialty.—*R. Thorpe.* I do not waive my first plea, because I shall have the advantage of both, since both fall under the head of law.—WILLOUGHBY. But if we adjudge that he cannot recover without a specialty, we shall have to adjudge that he take nothing, and in like manner on your behalf, &c. And now his plea against you will be peremptory; wherefore, if you abide judgment, we cannot give judgment on your first plea.—STONORE. We do not see anything that you have said in this plea which ousts him from action in respect of this debt; and therefore the COURT gives judgment that he do recover his debt, and his damages assessed by the Court, also, Sir, and that you be in mercy.

Fine.

(27.) § Reynold acknowledges the tenements to be the right of Nicholas Stukele, and grants that the

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§ *Vide*[1] *principium istius placiti Michaelis ultimo* del Priour de Bermondeseye.—Et ore *R. Thorpe* demanda oue le fait du lees fuit, qe moustra avant lautre terme pur mayntener laccion.—*Pole.* Il est conu de vous en taunt qe vous estez demure en jugement sur autre point; et, ovesqe ceo, il est en exille, par quei il ne busoigne pas de ly mettre avaunt.—*R. Thorpe.* Et del houre qe cel accion est foundu sur especialte, en qel cas il bossoigne del aver tout temps prest tanqe le jugement soit rendu, et ore nel ad pas, par quei nous demandoms jugement, &c.—Schar. Donqes vous weyvez lautre point sur qel vous estes demure en jugement; et, ovesqe ceo, laccion nest pas foundu sur obligacion soul, einz par cause de tenementz lessez pur terme de vie, rendaunt certeinz rente al lessour, issint laccion meyntenable saunz especialte.—*R. Thorpe.* Jeo ne weyve par moun primer plee, qar javerai lavantage de lun et de lautre, qar toutz chesent en ley.—Wylby. Mes si nous agarderoms qil ne recovere saunz especialte, nous agarderoms qil ne preigne rienz, &c., et auxi de vostre part, &c. Et ore il serra a peremptorie devers vous; par quei, si vous demurez, nous ne pooms pas ajuger sur vostre primer plee.—Ston. Nous ne veioms rien qe vous avetz dit en ceo plee qe ly ouste daccion de cest dette; par quei agarde la Court qil recovere sa dette, et ses damages taxis par la Court auxi, Sire, et vous en la mercye. A.D. 1343-4. *Nota.* [Fitz., *Dette*, 6.]

(27.)[2] § Reynaud[3] conust les tenements estre le dreit Nichol Stukele, et graunt qe mesmes les tene- *Finis.*

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It may, however, have been used by Fitzherbert for his *Abridgment*.

[2] From L., and 25,184, until otherwise stated.

[3] L., Reynad.

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A.D. 1343-4. same tenements, which one A. holds for Reynold's life, at a rent of 30*s.* for the first six years, and of £20 after the term of six years, and which after Reynold's death are to revert to Reynold's right heirs, shall remain to N. together with the rent.—*Stouford.* Take out the rent, and take the fine as to the rest.—And afterwards, on good consideration by the Court, the fine was made in that form.

Fine. § *Grene* came to the bar and would have drawn the concord of a fine in this form:—A. acknowledges the tenements included in the writ to be the right of B., and grants that certain tenements which one J. holds of him for the term of A.'s life, paying a rent to him of 40*s.* *per annum* for the first ten years, and of £40 *per annum* after the said ten years are passed, and which after the death of A. are to revert to his heirs, shall remain to B. and his heirs for ever together with the rent aforesaid for the whole of A.'s life.—Sharshulle. We will not admit the fine in respect of the rent, because the writ of Covenant mentions only the tenements, and it is not consistent to mention the rent in the fine, because by the grant of the reversion, and by attornment of the tenant, the rent passes though it may not be expressly mentioned in the fine. —Therefore the fine was admitted, the rent being left out.

Sequatur suo periculo. (28.) § Note that where a Sheriff returns "*Mandavi Ballivo Libertatis, qui nihil inde fecit,*" the demandant cannot, in case of voucher, have a *Sequatur suo*

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ments, queux un A. tient a la vie R. rendaunt, les primers vj aunz xxx[1] *s.*, et, apres le terme de vj aunz, xx*li.*, et qe apres le decees R.[2] as[3] heirs Raynaud[2] devereit revertir, remeignent a N. ensemblement ove la rente.—*Stouff.*[4] Oustes la rente, et pernez la fyn del remenant.—Et puis par bon avys de la Court[5] issint est fait. A.D. 1343-4.

§ *Grene*[6] vint al barre, et voleit avoir tret un pees en ceste fourme, qe A. conust les tenementz contenuz en le brief estre le dreit B., et graunt qe certeinz tenementz, queux un J. tyent de ly a terme de la vie un A., rendaunt a ly pur les primers x aunz xl*s.* par an, et apres les ditz aunz passez rendaunt chescun an xl livers, et les queux apres le decees A. a ses heirs deyvent revertir, remeyndreint a B. et ses heirs a toutz jours ensemblement ove la rente avant dit pur tout la vie A.—Schar. Nous ne voloms pas resceivere la fyn de la rente, qar le brief de Couvenant ne parle forqe des tenementz, et il nestut ja de parler de la rente en la fin, qar par le graunte del revertir, et par attournement de tenant, la rente passa tut ne soit il mote en la fyn.—Par quei la fyn fuit resceu entrelessaunt la rente, &c. Fyn. [Fitz., *Fynes*, 45.]

(28.)[7] § *Nota*, ou Vicounte[9] retourna *Mandavi Ballivo Libertatis, qui nihil inde fecit*, le demandant ne poet aver, en cas[10] de[11] voucher, *Sequatur suo* *Sequatur suo periculo.*[8]

[1] L., xx.

[2] L., Reynald.

[3] 25,184, a les.

[4] L., *Stof.* The name should probably be that of one of the Judges.

[5] The words de la Court are omitted from L.

[6] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[7] From L., and 25,184.

[8] The marginal note is from 25,184 alone. In L. it is *Nota.*

[9] L., Viscount.

[10] 25,184, ceo cas.

[11] de is omitted from 25,184.

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A.D. 1343-4. *periculo*, because there has been no fault in the tenant. Therefore a *Non omittas* issues.

Note. (29.) § Note that, where the *Summoneas ad warantizandum* has not been served, the vouchee is not admitted to warrant. It would be otherwise on the *Sequatur suo periculo*, or on the first day, when he has been vouched.

Note. (30.) § Note that an essoin on the King's service for one who was prayed in aid was quashed.

Scire facias. § On a *Scire facias* the defendant cast an essoin on the King's service, and the essoin was quashed by judgment, because upon such writs no essoin for the purpose of delay, &c., lies.—But see Trinity Term in the fourth year,[1] where such an essoin was allowed in Attaint after appearance, notwithstanding the Statute.[2] —But they say that this statute is not to hold good except in the case of a common essoin.—*Quære.*

Formedon in the reverter. (31.) § Formedon in the reverter on a gift made by the demandant's grandfather.—*Grene*, for Hugh Makerel, the tenant, said :—You cannot demand any-

[1] Y.B., Trin., 4 Edw. III., No. 20. | [2] 3 Edw. I. (Westm. 1) c. 42.

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periculo, pur ceo qil ny avoit pas defaut en le tenant. Par quei *Non omittas* issit. A.D. 1343-4.

(29.) [1] § *Nota* qe le vouche, ou le *Summoneas ad warantizandum* nest pas servy, nest pas resceu de garrauntir. *Secus*[2] *esset* al *Sequatur suo periculo*, ou al primer jour, quant il est vouche. *Nota.*

(30.) [3] § *Nota* essone de service le Roy quasse pur celui qest prie en eide. *Nota.*

§ En[4] un *Scire facias* le defendant fit essone de service le Roy, et lessone quasse par agarde, pur ceo qen tiels briefs nulle essone pur delaier, &c., ne gist.—*Sed vide Trinitatis* iiij ou tiel essone fuit allowe en Atteint apres apparaunce, *non obstante statuto*.—Mes ils dient qe cel estatut nest attendre forqe en comune essone.—*Quære.* *Scire facias.* [Fitz., *Essone*, 168.]

(31.) [5] § *Reverti* dun doun fet par le aiel le demandant.—*Grene*, pur Hughe Makerelle, tenant:—Vous ne poez rien demander, qar nous vous dioms Formedoun[6] *reverti.*

[1] From L., and 25,184.

[2] 25,184, *Cecus*.

[3] From L., and 25,184, until otherwise stated.

[4] This report is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*. It may, perhaps, be doubted whether this is the same case as No. 30 of the old editions.

[5] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 337. It there appears that the action was brought by John son of William de Metheryngham against Hugh Makerel of Leadenham in respect of one messuage, one mill, one carucate of land, and 20 acres of meadow in Long Leadenham (Lincolnshire). According to the count Robert de Metheryngham, the demandant's grandfather, gave the tenements to Thomas Makerel and Avice his wife in special tail, "et, quia prædicti Thomas et "Avicia obierunt sine herede de "corporibus ipsorum Thomæ et "Aviciæ exeunte, revertebatur "jus, &c., prædicto Roberto ut "donatori, &c. Et de ipso Roberto "descendit jus, &c., cuidam Will-"elmo ut filio et heredi, &c., et de "ipso Willelmo . . . . . isti Jo-"hanni qui nunc petit ut filio et "heredi," &c.

[6] Formedoun is omitted from 25,184.

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thing, because we tell you that one A.[1] was seised of the tenements and enfeoffed W.[1] your grandfather, on whose seisin you demand, and K.[1] his wife, to hold to them and to their heirs, which W.[1] gave to the same persons to whom you suppose the gift to have been made in tail (and we tell you that we do not admit the gift to have been made in that manner), against whom K.,[1] after the death of W.[1] her husband, brought a *Cui in vita*; and they vouched this same person who is now demandant, as son and heir of W., and who was then under age, wherefore in accordance with the Statute *Expectet emptor*,[2] &c., it was adjudged that the demandant should recover, and she then by her title claimed the tenements as her right by virtue of the conveyance made to her husband and her, as above; and this K.[1] by virtue of the recovery was seised and enfeoffed P. by this deed, which P. by this deed enfeoffed us; so we have the estate of K.[1] who recovered in that manner, which K. was your grandmother, whose heir you are; judgment whether an action, &c. —And the deeds of feoffment included warranty, which

[1] For the real names *see* p. 577, note 5.

[2] 13 Edw. I. (Westm. 2), c. 40.

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qun A. fut seisi de mesmes les tenements, qe feffa W. vostre aiel, de qi seisine vous demandez, et K. sa femme, a eux et a lour heirs, quel W. dona a mesmes ces qe vous supposez le doun estre fait en taille (et vous dioms qe nous ne conissoms pas le doun estre fait en[1] la manere) vers queux K., apres la mort W. son baroun porta *Cui in vita*; et[2] voucherent mesme celuy qest demandant ore, come fitz et heir W. qe fut deinz age, par quei par estatut *Expectet emptor*, &c., fut agarde qe la demandante recoverast, la quele par son title a donqes clama come son dreit de lees fait a son baroun et lui, *ut supra*; la quele K., par le recoverir fut seisi, et feffa, par ceo[3] fet, P.,[4] quel P., par ceo fait, nous feffa; issint avoms lestat K. qe recoveri par la manere, quel K. fut vostre aiel, qi heir vous estez; jugement si accion, &c.[5]—Et les fetes de feffement A.D. 1343-4.

[1] par.
[2] L., qe.
[3] L., son.
[4] P. is omitted from L.
[5] The plea was, according to the record, " quod prædicta tenementa " in visu posita non sunt nisi " unum mesuagium, unum molen- " dinum, et una carucata terræ " tantum, et dicit quod prædictus " Johannes nihil juris clamare " potest in eisdem, quia dicit quod " quidam Johannes de Oxtone " seisitus fuit de eisdem tenementis " in dominico suo ut de feodo, qui " tenementa illa dedit prædicto " Roberto de Metheryngham et " cuidam Margeriæ . uxori ejus " tenenda sibi et heredibus suis in " perpetuum. Et postea idem " Robertus eadem tenementa alien- " avit. Et dicit quod prædicta " Margeria supervixit ipsum Ro- " bertum, post cujus mortem ipsa " alias in Curia Regis hic . . . . . " . . . . . petiit prædicta tene- " menta versus prædictos Thomam " Makerelle et Aviciam uxorem " ejus, ut jus suum de dono præ- " dicti Johannis de Oxtone, qui " ipsam Margeriam et præfatum " Robertum quondam virum suum " inde feoffavit, et in quæ iidem " Thomas et Avicia non habuerunt " ingressum nisi per prædictum " Robertum quondam virum ipsius " Margeriæ qui illa eis dimisit, cui " ipsa in vita sua contradicere non " potuit, &c. Ad quod breve præ- " dicti Thomas et Avicia venerunt " in eadem Curia Regis et dixerunt " quod tenementa dudum fuerunt " in seisina prædicti Roberti quon- " dam viri, &c., qui tenementa " illa dedit præfatæ Aviciæ filiæ " suæ tenenda sibi et heredibus de " corpore suo exeuntibus, et, si " contingeret quod eadem Avicia " obiisset sine herede de corpore " suo exeunte, tunc tenementa illa,

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A.D. 1343-4. extended to the assigns.—*R. Thorpe.* He pleads in bar a judgment, and also a deed of our ancestor, which includes warranty; to which will he hold?—SHARSHULLE. He concludes on the recovery higher up alone.—*Grene.* We do not waive any part of our plea.—SHARSHULLE. Answer as to the recovery higher up.—*Gaynesford.* We do not admit that K. who recovered was our ancestor; but we tell you that K. had only a term for life; so her recovery cannot operate in defeasance of the entail, except for her life, and now she is dead; so the right is in us; judgment, and we pray seisin. —*Grene.* You shall not be admitted to that, contrary to the recovery and to the matter supposed by your ancestor, which is contradictory to the averment that you tender. And we demand judgment, since this supposition of hers was confirmed by judgment, and

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compristrent garrauntie, [et sestendirent as assignes. —*R. Thorpe.* Il plede par jugement en barre, et auxint par feet nostre auncestre, qe comprent garrauntie][1]; a quel se voet il[2] tener?—SCHAR. Il conclude tut sur le recoverir[3] de[4] plus haut.—*Grene.* Nous weyvoms rien de nostre plee.—SCHAR. Responez[5] al recoverir de plus haut.—*Gayn.* Nous conissoms pas qe K., qe recoveri fut nostre auncestre; mes vous dioms qe K. navoit qe terme de vie; issint son recoverir ne put estre en defessaunce de la taille, forqe pur sa vie, la quel est mort; issint le dreit en nous; jugement, et prioms seisine.—*Grene.* A ceo ne serrez resceu countre le recoverir et chose suppose[6] par vostre auncestre, qest a[7] contrarie del averement qe vous tendez. Et demandoms jugement desicome cele supposaille fut afferme par

" cum pertinentiis, ad heredes " ipsius Roberti quiete reverterentur, et obligasset se et heredes " suos ad warantiam. Et protulerunt in Curia quandam chartam " sub nomine prædicti Roberti " quæ hoc testabatur. Et in forma " illa vocaverunt inde ad warantum " prædictum Johannem filium " Willelmi filii Roberti consanguineum et heredem ejusdem Roberti quondam viri, &c., qui tunc " fuit infra ætatem, per quod ipsi " petierunt quod loquela remaneret " usque ad ætatem, &c. Ad quod " eadem Margeria tunc dixit quod " seisina sua de prædictis tenementis per minorem ætatem " Johannis waranti, &c., retardari " non deberet, dixit enim quod in " Statuto domini Regis edito " continetur quod cum quis alienat " jus uxoris suæ, &c., de cætero " secta mulieris aut ejus heredis " non deferatur post obitum viri " sui per minorem ætatem heredis " qui warantizare debet, sed expectet emptor, qui ignorare non " debet quod jus alienum emit, " usque ad ætatem waranti sui de " warantia sua habenda, per quod " tunc consideratum fuit quod " prædicta Margeria recuperaret " inde seisinam suam versus præ- " dictos Thomam et Aviciam, et " iidem Thomas et Avicia expectarent de warantia sua habenda, " usque ad ætatem prædicti heredis; " unde, ex quo prædicta Margeria, " cujus statum ipse modo habet, " tenementa prædicta recuperavit " per prædictum breve de ingressu " cui ipsa in vita sua contradicere " non potuit, quod quidem breve " est de altiori jure, &c., petit " judicium," &c.

[1] The words between brackets are omitted from 25,184.

[2] 25,184, voil, instead of voet il.

[3] L., resoun.

[4] de is omitted from L.

[5] 25,184, Vous responez.

[6] suppose is omitted from 25,184.

[7] a is omitted from L.

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A.D. 1343-4. she recovered on a title of right, whether you who are her heir shall be admitted to say the contrary, to wit, that she had only a term for life.—*R. Thorpe.* Then you refuse the averment.—*Grene.* Suppose that, though you were demanding through another ancestor, a fine on render, or release, or a recovery were pleaded in bar, still you would answer to that according to law; for the same reason, since your ancestor recovered on a certain title, you shall be put to answer to that.—Hillary. To a fine on release, where there is no warranty, no law puts the heir to answer, where he demands on the seisin of another ancestor; and, therefore, will you accept the averment?—*Grene.* The gift was made to W.[1] and K.[1] his wife, to hold to them and their heirs, by B.,[1] by this deed of which *profert* is made; judgment whether you shall be admitted to aver that the gift was made in any other manner.—Hillary. The deed is only evidence, and you are at a good traverse.—Therefore he said to the Clerk:—Enter the averment.

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[1] For the real names *see* p. 577, note 5.

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A.D. 1343-4.

jugement, et ele recoveri sur[1] title de dreit, si vous qestes heir serrez resceu a dire le contrarie, saver, qele navoit qa terme de vie.—*R. Thorpe.* Donqes refusez laverement.—*Grene.* Tut demandez vous dautre auncestre, jeo pose qe fyn sur rendre, ou relees, ou recoverir fut plede en barre, unqore[2] vous respoundrez a cele par ley; par mesme la resoun, quant vostre auncestre recoveri sur certeyn title, vous serrez a ceo mys de respoundre.—Hill. A fyn sur relees, la ou ny ad pas garrauntie, nulle ley mette leir a respoundre, ou il demande de la seisine dautre auncestre; et pur ceo volez[3] laverement?—*Grene.* Le doun se fist a W. et K. sa femme, a eux et lour heirs par B., par ceo fet quel est mys avant; jugement si daverer le doun par autre manere serrez resceu.—Hill. Le fet est[4] forqe evidence,[5] et vous estez a bon travers.—Par quei il dit al Clerk:—Entrez laverement.[6]

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[1] 25,184, par.

[2] unqore is omitted from 25,184.

[3] L., voieletz.

[4] est is omitted from L.

[5] 25,184, forqendente, instead of forqe evidence.

[6] There are added in the edition of 1679, the words "Et issint "*nota* par Fitzherbert ceo ajugge "nul estoppel." They are however no part of the report, and though the case is identified in all the old editions with that mentioned by Fitzherbert (Estoppell, 219), the report which he used is that which follows below.

The pleadings subsequent to the plea were, according to the record, the following:—"Et Johannes "dicit quod ipse virtute recupera- "tionis prædictæ Margeriæ de "prædictis tenementis per præ- "dictum breve Cui in vita, &c., "ab actione sua præcludi non "debet, quia dicit quod prædictus "Johannes de Oxtone dedit præ- "dicta tenementa prædictis Ro- "berto de Metheryngham et Mar- "geriæ, &c., tenenda et habenda "eisdem Roberto et Margeriæ et "heredibus ipsius Roberti in per- "petuum. Et hoc prætendit veri- "ficare," &c.

"Et Hugo dicit quod prædictus "Johannes de Oxtone dedit præ- "dicta tenementa prædictis Roberto "et Margeriæ habenda et tenenda "ipsis Roberto et Margeriæ et here- "dibus suis in perpetuum. Et pro- "fert hic quandam chartam sub "nomine prædicti Johannis de Ox- "tone quæ testatur quod ipse dedit, "concessit, et charta illa confirma- "vit prædictis Roberto et Margeriæ "et eorum heredibus et assignatis "suis omnes terras et tenementa

No. 31.

A.D. 1343-4. Formedon.

§ John son of William de Metheryngham[1] brought his writ of Formedon in the reverter against one J.,[1] and demanded certain tenements by reason of a gift made by his grandfather to one B.[1] and the heirs of B.'s body begotten, &c.—*Gaynesford.* Sir, we tell you that one W.[1] was seised of these same tenements now demanded, and gave them to the demandant's grandfather, on whose gift the demandant takes this action, and to A.[1] his wife, to hold to them, and their heirs and assigns, &c. And we tell you that because his grandfather gave these same tenements to B. (but we make protestation that we do not admit that the tenements were given in fee tail, &c.), Alice,[1] the grandmother of him who now brings this writ, brought a *Cui in vita* against B.,[1] to whom the tenements were given in tail, which B. vouched this same John who now brings this writ, as heir of his feoffor, and, because John was under age, it was adjudged that Alice[1] should recover immediately, and that B.[1] should wait to have to the value against John until his full age, according to the Statute.[2] And we tell you that Alice, after the recovery, enfeoffed us, and we demand judgment whether in respect of such a gift, which was annulled at the suit of Alice, whose estate we have, you ought to have an action.—*R. Thorpe.* Sir, as to that we tell you that the tenements were given to our grandfather and Alice his wife, and to the heirs of our grandfather, so that Alice's recovery was only of a freehold, and therefore after her death the tenements are revertible

[1] For the real names *see* p. 575, note 5.

[2] 13 Edw. I. (Westm. 2), c. 40.

No. 31.

A.D. 1343-4. Fourme de doun. [Fitz., *Estoppell*, 219.]

§ Johan[1] fitz W. de M. porta soun brief de Forme de doun en le *reverti* vers un J., et demanda certeinz tenementz dun doun fait par soun aiel a un B. et a les heirs de soun [corps] engendres, &c.—*Gayn.* Sire, nous vous dioms qun W. fuit seisi de mesmes lez tenementz ore demandez, et les dona a soun aiel, de qi doun il prent cest accion, et a A. sa femme, a eux, &c., et lour assignes, &c. Et vous dioms qe pur ceo qe soun aiel dona mesmes les tenementz a B. (mes nous fesoms protestacion qe nous ne conisoms pas les tenementz estre donez en fee taille, &c.), Alice, aiel cesty qore porte cest brief, porta un *Cui in vita* vers B., a qel les tenementz furent donez en la taille, le qel B. voucha mesme ceste Johan, qore porte, &c., com heir soun feffour, et pur ceo qe J. fuit deinz age ag[arde fut qe] A. recoverast meyntenant, et B. attendreit davoir a la value vers J. tanqe a soun plein age *secundum statutum*. Et vous dioms qe A., apres la recoverir, nous enfeffa, et demandoms jugement si de tiel doun, qe fuit anyenty a la suite Alice, qi estat nous avoms, devez accion avoir.—*R. Thorpe.* Sire, a ceo nous vous dioms qe les tenementz furent donez a nostre aiel et Alice sa femme, et a les heirs nostre aiel, issint le recoverir Alice ne fuit forqe fraunktenement, et par taunt apres soun decees les tenementz a nous sount revertibles par force del doun,

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" quæ ei descendebant post mortem " cujusdam Petri de Oxtone fratris " sui in villa de Ledenham, quæ " sunt eadem tenementa nunc " petita, tenenda sibi et heredibus " suis, libere et quiete, bene et in " pace, de capitalibus dominis feodi " illius per servitia inde debita et " consueta, et obligavit se et " heredes suos ad warantiam in " forma prædicta," &c.

Issue was joined upon this. The award of the *Venire* and an adjournment follow.

[1] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1343-4. to us by virtue of the gift, and he has himself admitted that Alice is dead, wherefore we demand judgment whether he can on this ground oust us from our action.—*Moubray.* You shall not be admitted to say that Alice's estate was only a freehold, for we tell you that she made a title in her writ so that she claimed the tenements as her right and her inheritance, and on that title she recovered; wherefore you shall not be admitted to say the reverse of that which your ancestor, &c., supposed by her title, and on which she recovered.—Notwithstanding this, the opinion of the Court was that the demandant might well have the averment, notwithstanding the title on which she recovered; and therefore he was by compulsion of the Court put to maintain that the tenements were given to the demandant's grandfather and Alice, and to their heirs, &c.—And the other side said the contrary.

Entry *sur disseisin.* (32.) § Entry *sur disseisin* on the seisin of the demandant's grandfather.[1]—*Gaynesford* showed how the demandant's great-grandfather,[2] as tenant by his warranty, granted, rendered, and released, upon a writ of Right, after battle had been waged between the parties, by agreement between him and one who was then demandant and was the ancestor of the tenant who is now a party. And we demand judgment (said *Gaynesford*), inasmuch as the great-grandfather divested himself in that

[1] It was in fact his great-grandmother. For the names, &c., *see* p. 585, note 2.

[2] It was in fact his great-great-grandfather. For the names, &c., *see* p. 587, note 1.

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et il ad mesme conu qe A. est mort, par quei nous demandoms jugement si par taunt puit il nous de nostre accion ouster.—*Moubray.* A dire qe lestat A. ne fuit forqe fraunktenement vous navendrez pas, qar nous dioms qele fist title en soun brief qele les clama com soun dreit et soun heritage, et sur cel title ele recovera; par quei vous a dire le revers qe vostre auncestre, &c., supposa par soun title, et sur tiel recoveri, vous ne serrez pas resceu.—*Hoc non obstante*, oppinioun de Court fuit qil avereit bien laverement *non obstante* le title sur quei ele recoveri; par quei par chaser [de la Court] il fuit mys de meyntener qe les tenementz furent donez a soun aiel et A., et a lour heirs; prest, &c.—*Et alii e contra.*[1] A.D. 1343-4.

(32.) [2] § Entre sur disseisine de la seisine laiel le demandant.—*Gayn.* moustra coment le besaiel[4] le demandant,[5] come tenant par sa garrauntie, graunta, rendist, et relessa, en un bref de Dreit, apres la bataille gage entre parties,[6] par acorde[7] entre lui et un qe adonqes fut demandaunt et auncestre le tenant qore est partie. Et demandoms jugement, desicome le besaiel se demist par la manere, si a Entre sur disseisine.[3]

[1] For the terms in which issue was joined *see* p. 581, note 7.

[2] From L., and 25,184, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 266 d. It there appears that the action was brought by Roger de Leukenore against Robert de Northwode in respect of the manor of Cateshulle (Surrey) "in quod idem Robertus "non habet ingressum nisi post "disseisinam quam Hamo de "Gattone inde injuste et sine "judicio fecit Aliciæ filiæ Roberti "de Mankeseye proaviæ prædicti "Rogeri, cujus heres ipse est." In the count the descent was made from Alice to Joan, as daughter and heir, from Joan to Thomas as son and heir, and from Thomas to the demandant as son and heir.

[3] The words sur disseisine are from L. alone.

[4] 25,184, beisaiel.

[5] The words le demandant are omitted from L.

[6] The words entre parties are omitted from 25,184.

[7] L, recorde.

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A.D. 1343-4. manner, whether he shall be admitted to say that his grandfather was afterwards seised, unless he shows how.—*Grene.* We have demanded on the seisin of

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dire qe son aiel fut puis seisi, sil ne moustre coment, sil serra resceu.[1]—*Grene.* Nous avoms demande de la seisine nostre auncestre, et avoms[2] A.D. 1343-4.

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[1] The plea was, according to the record, " quod quædam Mabilla de " Gattone fuit seisita de prædicto " manerio, cum pertinentiis, in " dominico suo ut de feodo et jure, " quæ quidem Mabilla se nupsit " cuidam Hamoni de Gattone, de " quibus Hamone et Mabilla exivit " quidam Hamo, ut filius et heres, " &c. Et de ipso Hamone exivit " quidam Robertus ut filius et " heres, &c., qui quidem Hamo " quondam vir Mabillæ postmodum " obiit, &c., post cujus mortem " eadem Mabilla nupsit se cuidam " Thomæ de Balyngham, qui " quidem Thomas prædictum mane- " rium, cum pertinentiis, per " nomen manerii de Kateshulle, " cuidam Roberto de Mankeseye, " per nomen Roberti de Mankeseye, " patri prædictæ Aliciæ, cujus " heres ipsa fuit, et de cujus " seisina prædictus Rogerus sumit " titulum suum, &c., alienavit, qui " quidem Robertus de Mankeseye " de eodem manerio quendam Ra- " dulphum de Mankeseye, fratrem " suum et advunculum prædictæ " Aliciæ, cujus heres ipsa fuit, " feoffavit, qui quidem Thomas de " Balyngham et Mabilla post- " modum obierunt, post quorum " mortem prædictus Robertus de " Gattone coram Johanne de " Neville et sociis suis Justiciariis " H. Regis de Banco hic, anno " ejusdem Regis vicesimo octavo, " tulit quoddam breve de Recto " versus prædictum Radulphum de " Gattone, clamando prædictum " manerium de seisina prædictæ " Mabillæ aviæ suæ, &c., qui " quidem Radulphus venit in eadem " Curia et vocavit inde ad waran- " tum prædictum Robertum de " Mankeseye, qui ei warantavit, " &c. Et postmodum in eadem " Curia, &c., inter prædictum Ro- " bertum de Gattone petentem, et " prædictum Robertum de Manke- " seye per warantiam tenentem, " &c., duellum extitit vadiatum, " &c., et postea inter eundem " Robertum de Gattone petentem " et præfatum Robertum de Manke- " seye per warantiam tenentem, " &c., coram eisdem Justiciariis " hic de eodem manerio, cum " pertinentiis, super illud idem " breve de Recto levavit quidam " finis, per quem finem idem " Robertus de Mankesey, ut tenens " per warantiam, &c., prædictum " manerium cum pertinentiis præ- " fato Roberto de Gattone reddidit " in eadem Curia habendum et " tenendum eidem Roberto de " Gattone et heredibus suis in " perpetuum, et illud eidem Ro- " berto de Gattone remisit et " quietum clamavit de se et heredi- " bus suis in perpetuum, &c. Et " profert hic transcriptum pedis " finis prædicti sub pede sigilli, &c., " qui redditionem, &c., testatur in " forma prædicta, &c., et petit " judicium si prædictus Rogerus " contra præmissa, &c., nisi " titulum qualiter jus in persona " prædictæ Aliciæ post levationem " finis prædicti accrevit [ostendat] " responderi debeat," &c.

[2] L., la avoms.

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A.D. 1343-4. our ancestor, and we have claimed the tenements as our right and our inheritance; so we have a title in our writ; judgment whether we ought to show a title upon such a title.—*Thorpe.* The words "*jus et hereditatem*" do not serve to make a title to your ancestor, but only to convey a right to yourself by descent from him; and in this case you must show a title in your ancestor; for if he were himself to bring an Assise, and such a conveyance by his ancestor were pleaded in bar, he would not have the Assise without showing how he came into possession, nor consequently will his heir have a writ of Entry on a disseisin effected upon him.—*Grene.* An Assise [of Novel Disseisin] is an action relating only to a freehold; but his heir would be admitted to bring a Mort d'Ancestor on his death, notwithstanding such a conveyance alleged in the ancestor, because a recovery against an ancestor does not oust me from saying that another ancestor died seised, and the same right that descends to his heir when he dies seised descends also to the heir when he has been disseised. —*Thorpe.* In a Mort d'Ancestor he shall not be admitted to say that his father died seised, without showing how, contrary to a judgment rendered against his grandfather.—*Grene.* On the contrary, in a Novel Disseisin, if a recovery adjudged against my grandfather be pleaded in bar, I shall be admitted to say that my father afterwards died seised, and that I entered after his death, and was seised until disseised, without showing how my father came into possession; and for the same reason for which I shall have an Assise [of Novel Disseisin] by such a title, on my own seisin I shall also have a Mort d'Ancestor on the seisin of my father.—*Thorpe.* Making a title to yourself is not like making a title to your ancestor.—Shardelowe to *Grene.* Will you say anything else?—*Grene.* We tell you that none of those who were parties to the fine or to the writ had anything, but one W.,[1] who, a long

[1] As to the name *see* p. 591, note 2.

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clame come nostre dreit et nostre heritage; issint avoms title en nostre briefe[1]; jugement si title[2] sur tiel[3] title devoms moustrer.—*Thorpe. Jus et hereditatem* nest pas title a vostre auncestre [mes a conveier dreit en vous mesmes par descente de luy; et en ceo cas il covient qe vous moustrez title en vostre auncestre][4]: qar sil mesme fut a porter Lassise, et tiele demise[5] de soun auncestre fut plede en barre, il navera pas Assise saunz moustrer coment il avynt, *nec, per consequens*, son heir par brief Dentre de disseisine fet a luy.—*Grene.* Assise nest forqe accion de fraunctenement; mes son heir a un Mort dauncestre serreit resceu de sa mort, *non obstante* tiel demise allegge en launcestre, qar recoverir vers un auncestre ne moy ouste pas a dire qautre auncestre morust seisi, et mesme le dreit qe descend en son heir, quant il moert seisi, descend en lui quant il est disseisi.—*Thorpe.* En Mort dauncestre il ne serra pas resceu a dire qe son pere morust seisi, saunz moustrer coment, countre jugement taille vers laiel.—*Grene. Contra*, en Novele Disseisine, si recoverir taille vers mon aiel soit plede en barre, jeo serrai resceu a dire qe puis moun pere morust seisi, apres qi mort jeo entrai, et seisi fuy[6] tanqe disseisi, saunz moustrer coment mon pere avynt; et par mesme la resoun qe[7] jeo averay Assise par tiel title de ma seisine demene si averay jeo Mort dauncestre de la seisine mon pere.—*Thorpe. Non est simile* de fere title a vous mesmes et a vostre auncestre.—Schard. a *Grene.*[8] Volez autre chose dire? —*Grene.* Nous vous dioms qe nul deux qe fut partie a la fyn ne au bref rien navoit, einz un W.

A.D. 1343-4.

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[1] 25,184, dreit.
[2] L., titel.
[3] tiel is omitted from 25,184.
[4] The words between brackets are omitted from 25,184.
[5] 25,184, devys.
[6] L., fut.
[7] L., come.
[8] The words a *Grene* are omitted from 25,184.

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A.D. 1343-4. time previously, enfeoffed our ancestor, on whose seisin we demand, before she was of the age of four years, and she continued her seisin until she was disseised; judgment whether you can bar us of this action by such a fine.—Afterwards the parties took a *Prece partium*.

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qe feffa nostre auncestre longe temps devant, de qi seisine nous demandoms, tanqe[1] ele fut del age de iiij aunz, et issint continua ele tanqe ele fut disseisi; jugement si par tiel fyn nous puissez de ceste accion barrer.[2]—Puis les parties pristrent le *Prece partium*.[3]

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[1] L., tanqe come.

[2] The replication was, according to the record, "quod quidam "Radulphus, filius Willelmi de "Mankeseye, per nomen Radulphi "de Mankeseye, diu ante impetra- "tionem prædicti brevis de Recto, "de eodem manerio, cum perti- "nentiis, prædictam Aliciam ad "tunc infra ætatem quatuor "annorum existentem feoffavit, "quæ quidem Alicia a tempore "illius feoffamenti usque ad tem- "pus levationis prædicti finis, et "tempore levationis ejusdem, et "post finem prædictum levatum, "seisinam suam virtute feoffamenti "prædicti, placito inter partes "prædictas, ut præmittitur, pen- "dente, ipsa Alicia, tempore leva- "tionis prædicti finis, et post "levationem ejusdem, infra æta- "tem existente, quousque præ- "dictus Hamo inde injuste, &c., "ipsam Aliciam, prout ipse per "breve suum supponit, disseisivit, "continuavit; et nec prædictus Ra- "dulphus, nec prædictus Robertus, "pater prædictæ Aliciæ, post feoffa- "mentum ipsi Aliciæ, ut præmitti- "tur factum, aliquid habuerunt in "prædicto manerio, cum pertinen- "tiis, præter redditum tresdecim "librarum in feoffamento prædictæ "Aliciæ facto reservatum, nisi ut "custodes ipsius Aliciæ ratione "nutrituræ ut propinquiores amici "ejusdem Aliciæ, levando inde "exitus et proficua ad opus præ- "dictæ Aliciæ. Et petit judicium "si per finem levatum inter illos "qui nec tempore impetrationis "prædicti brevis de Recto, nec "tempore quo placitum de eodem "manerio pendebat, nec tempore "levationis ejusdem finis, in libero "tenemento prædicti manerii ali- "quid habuerunt nisi ratione "nutrituræ prædictæ Aliciæ, ut "præmittitur, &c., ac toto tempore "prædicto, et ante, et post, libero "tenemento prædicti manerii in "persona prædictæ Aliciæ existente "quousque eadem Alicia, prout in "prædicto brevi supponitur, dis- "seisita fuit, petit judicium si ipse "per finem prædictum ab actione "sua præcludi debeat," &c.

[3] The record "Dies datus est eis "hic in Crastino Sancti Johannis "Baptistæ, prece partium, sine "essonio," &c.

The old editions refer correctly to Y.B., Trin., 18 Edw. III., No. 40, for a continuation of the report.

The conclusion of the case appears upon the roll as follows:— "Ad quem diem veniunt tam præ- "dictus Rogerus quam prædictus "Robertus in propriis personis suis, "et idem Robertus dicit quod præ- "dictus Rogerus nihil juris clamare "potest in prædicto manerio, dicit "enim quod idem Rogerus, per "nomen Rogeri de Leukenore, "Militis, filii et heredis Thomæ de "Leukenore, Militis, per scriptum "suum remisit, relaxavit, et in

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A.D. 1343-4.

Quod permittat.

(33.) § *Quod permittat* in respect of common of pasture on the seisin of the plaintiff's grandfather, of which common the defendant's grandfather disseised him.—*Moubray.* The land to which he claims that the common is appendant is only fifteen acres of land. And, as to nine of them, his grandfather had nothing except a tenancy by the curtesy of England; judgment whether the plaintiff shall be admitted to claim, on his seisin, as heir. And, as to three acres of land, his ancestor never had anything. And, as to the other three acres of land, we tell you that the land put in view, in which he claims that the common is, is our several, *absque hoc* that his ancestor was ever seised of the common as appendant.—*Seton.* By his first plea he supposes that there was common appendant to the nine acres, but that, because our ancestor held the land to which, &c., only by the curtesy of England, we who are heir cannot demand anything; and by the last plea he supposes that it is his several, which is contrariant to his first plea; judgment whether he shall be answered.—Hillary. He has not admitted any appendancy by the manner of his plea; and therefore deliver yourself.—*Seton.* Then we say, as

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A.D. 1343-4. *Quod permittat.*

(33.) [1] § *Quod permittat* de comune de pasture de la seisine laiel, de quele laiel de defendant le [2] disseisist. —*Moubray.* La terre a quele il cleyme la comune estre appendaunt ne sount qe xv acres de terre. Et, quant a noef, son aiel navoit rien forqe tenance par la ley Dengleterre; jugement si de sa seisine come heir serra resceu. Et, quant a iij acres de terre, son auncestre navoit unqes rien. Et, quant as autres iij acres de terre,[3] nous vous dioms qe la terre mys en vewe, en quel il cleyme la comune estre,[4] est nostre several, saunz ceo qe son auncestre fut unqes seisi come appendaunt.—*Setone.* Par son primer plee il suppose qe a les ix acres il y avoit comune appendaunt, mes pur ceo qe nostre auncestre navoit forqe par la curtesie [5] Dengleterre en la terre a quele, &c., nous qe sumes heir ne pooms rien demander; et par le derrein plee suppose il qe cest son [6] several, qest contrariaunt a son primer plee; jugement sil serra respondu.—Hill. Il ad conu nul [7] appendaunce par manere de son plee, et pur ceo deliverez vous.—*Setone.* Donqes nous dioms,

" perpetuum quietum clamavit de " se et heredibus suis ipsi Roberto " de Northwode heredibus et " assignatis suis totum jus et " clameum quod habuit in prædicto " manerio, ita quod nec ipse " Rogerus nec heredes sui in præ- " dicto manerio cum pertinentiis " aliquid juris vel clamei exigere " sen vendicare poterit. Et profert " hic prædictum scriptum quod " præmissa testatur in forma præ- " dicta, et petit judicium si præ- " dictus Rogerus contra factum " suum prædictum aliquam acti- " onem versus eum de prædicto " manerio habere possit, &c.

" Et Rogerus non potest dedicere " quin prædictum scriptum sit " factum suum et quin ipse totum " jus suum quod habuit in præ- " dicto manerio præfato Roberto " remisit et quietum clamavit in " forma prædicta.

" Ideo consideratum est quod " prædictus Robertus eat inde sine " die, et prædictus Rogerus nihil " capiat per breve suum, sed sit " in misericordia pro falso clameo," &c.

[1] From L., and 25,184.

[2] L., lui.

[3] The words de terre are omitted from 25,184.

[4] estre is omitted from 25,184.

[5] L., curteisy.

[6] son is omitted from L.

[7] The words conu nul are omitted from L.

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A.D. 1343-4. to the first part, that our ancestor was seised in his demesne as of fee, and, as to the rest, seised of the common as appendant; ready, &c.—And the other side said the contrary.

Avowry. (34.) § Avowry on the plaintiff on the ground that he held of the Abbot of Ramsey by homage, fealty, and rent, which were in arrear; he avowed for the homage.—*Moubray.* Never seised of the homage; ready, &c.—*Blaykeston.* He does not plead as a privy; judgment whether such an answer lies in his mouth. —*Moubray.* We confess that we hold of you, and say as above.—SHARSHULLE. By what service do you confess that you hold of him?—*Moubray.* By fealty.—HILLARY. Can you hold of him by fealty without rent? as meaning to say that fealty cannot be in gross. —*Moubray.* Yes, Sir, one can very well hold by fealty in lieu of all services.

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quant a primer, qe nostre auncestre fut seisi en son demene come de fee, et, quant al remenant, seisi com appendaunt; prest, &c.—*Et alii e contra.* A.D. 1343-4.

(34.) [1] § Avowere sur le pleintif pur ceo qil tient de lui par homage, fealte,[2] et rente arere; pur le homage il avowa.—*Moubray.* Unqes seisi del homage; prest, &c.—*Blaik.* Il ne plede pas com prive; jugement si tiel respouns en sa bouche gise.—*Moubray.* Nous[3] conisoms[4] tener de vous, et dioms *ut supra.* —Schar. Par quel service conisez[5] vous tener de lui?—*Moubray.* Par fealte.[6]—Hill. Poez vous tener de lui par fealte[7] saunz rente? *quasi diceret* fealte[7] ne poet estre un gros.[8]—*Moubray.* Sire, oil, homme poet tener par fealte moult[9] bien pur touz services.[10] Avowere.

[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 116. It there appears that the action of Replevin was brought by Adam son of Peter de Walsokene against Robert de Dodisthorpe. The defendant, "ut "ballivus Abbatis de Rameseye, "cognoscit prædictam captionem "justam, &c., quia dicit quod "prædictus Adam tenet de ipso "Abbate tresdecim acras terræ, "cum pertinentiis, in Walsokne ". . . . . per homagium, "fidelitatem, et servitium trium "solidorum per annum, ... "de quibus homagio et servitiis "quidam Simon quondam Abbas "de Rameseye, prædecessor præ- "dicti Abbatis, fuit seisitus per "manus Petri de Walsokne, patris "prædicti Adæ, cujus heres ipse "est, ut per manus veri tenentis "sui, ut de jure ecclesiæ suæ "beatæ Mariæ de Rameseye. Et, "quia homagium prædicti Adæ, et "prædictus redditus per decem et "octo annos a retro fuerunt die "captionis prædictæ, pro homagio "ipsius Adæ cognoscit captionem "averiorum prædictorum."

[2] L., feute.

[3] Nous is omitted from L.

[4] L., conussoms.

[5] L., conussez.

[6] L., feaute. According to the record the plea was "quod ipse "tenet terram prædictam de præ- "dicto Abbate per fidelitatem "tantum pro omnibus servitiis, et "non per aliqua alia servitia. Et "dicit quod prædictus Simon "quondam Abbas, &c., nunquam "fuit seisitus de homagio prædicti "Petri patris ipsius Adæ, cujus "heres ipse est, nec aliquis præ- "decessorum suorum. Et hoc "paratus est verificare, unde petit "judicium," &c.

[7] L., feaute.

[8] L., groos.

[9] L., mold.

[10] According to the record there was a replication repeating the substance of the cognisance, and

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A.D. 1343-4. Replevin.

§ Thomas[1] avowed the taking on the plaintiff, as on his very tenant, for homage in arrear, and laid the seisin by the hand of the plaintiff's father. And the plaintiff traversed the seisin of the homage, but was not permitted to do so without first confessing the tenancy, and therefore he said that he held of the avowant by fealty in lieu of all services; and as to the homage he said "never seised"; ready, &c.; and the other said "seised"; ready, &c.—And so to the country, &c.—But he first held to it that one could not hold by fealty without any other service.—But this exception was not allowed.—See as to this Hilary Term in the 9th year,[2] and Hilary Term in the 10th year.—Nevertheless *Quære.*

Statute merchant Suggestion to the Court.

(35.) § *Gaynesford* showed how Bernard de Cestre heretofore sued a *Capias* upon a Certificate on a statute merchant. *Non est inventus* was returned, wherefore execution was awarded to him; and before he had execution he died. And (said *Gaynesford*) you have here the executors who pray execution. And he made *profert* of the will and of the statute.—Stonore. We find that execution has been awarded; how then can we know that your testator did not have execution? And, if he had, it is not right that you should have it a second time; and we cannot simply take your word for it.—*Gaynesford.* Then we pray a *Scire facias* against the ter-tenants.—Willoughby. The first suit is extinguished by the death of your testator, and you must make suit anew.—*Gaynesford.* That cannot be, because we shall not have a second time a *Capias* on

[1] For the names of the parties, &c., *see* p. 595, note 1.

[2] Y.B., Hil., 9 Edw. III., No. 15.

No. 35

A.D. 1343-4. *Replegiari.* [Fitz., *Avowre*, 97.]

§ Thomas[1] avowa la prise sur le pleintif come sur soun verray tenant, pur homage arrere, et lia la seisine par my la mayn soun pere. Et la pleintif traversa la seisine de homage, et ne fuit pas resceu saunz primes conustre la tenance, par quei il dit qe tynt de lavowaunt par feaute pur toutz services; et quant al homage il dit qunqes seisi; prest, &c.; et lautre qe seisi; prest, &c.—*Et sic ad patriam*, &c. --Mes il prist primes a ceo qe homme ne put pas tener par feaute saunz autre service.—*Sed hoc non allocatur.—Vide de hoc Hillarii ix, et Hillarii x, &c.—Quære tamen.*

Statut marchaunt[3]: Sugestion a la Court.[4]

(35.)[2] § *Gayn.* moustra coment[5] Bernard[6] de Cestre autrefoitz suist hors dun Certificacion sur estatut marchaunt *Capias. Non est inventus* fut retourne, par quei execucion lui[7] fut agarde; et devant qil avoit execucion il murust. Et vous avez ycy les executours qe priount execucion. Et mist[8] avant testament et lestatut.—Ston. Nous trovoms execucion agarde; coment poms nous saver donqes qe vostre testatour navoit pas execucion? Et, sil avoit, il nest pas resoun qe vous leiez autrefoitz; et nous ne[9] pooms crere a vous.—*Gayn.* Donqes prioms *Scire facias* vers les terres tenants.—Wilby. La primere suyte est amorti par la mort vostre testatour, et il vous covient fere de[10] novele suyte.—*Gayn.* Ceo ne poet estre, car nous naveroms pas autrefoitz hors

upon it issue was joined. The award of the *Venire* and some adjournments follow.

[1] This report of the case is from Harl. (No 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[2] From L., and 25,184, until otherwise stated.

[3] The words Statut marchaunt are omitted from L.

[4] The words Sugestion a la Court are omitted from 25,184.

[5] coment is omitted from 25,184.

[6] L., Berlaud.

[7] lui is omitted from 25,184.

[8] 25,184, mistrerent.

[9] 25,184, le.

[10] de is omitted from L.

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A.D. 1343-4. the certificate, inasmuch as it is of record before you that execution has been once awarded.—Willoughby. Then sue a writ upon the case to us.

Certificate. § A certificate was sued upon a statute merchant, and before execution was had the plaintiff died, wherefore *Gaynesford* prayed execution for the executors.—Hillary. When the plea is extinguished by the death of a party how can the same process be continued?—*Gaynesford.* We cannot have a new certificate, and therefore process ought to be made on this certificate, and, Justice, you can be apprised that the party had not execution in his life-time, and execution ought on that account not to be lost, wherefore there would be no mischief though execution were now awarded.—Hillary. The utmost that you could show would be cause to have a *Scire facias* for the executors, because their testator might have released, wherefore you must sue a new writ on the certificate.

Note. § *Gaynesford* came to the bar and made his suggestion that one B. de Cestre heretofore sued execution upon a statute merchant, which had been certified in the Chancery, and said that B. died while the suit was pending, wherefore he prayed that the Court would award execution for B.'s executors.—Willoughby. It may be that B. had execution during his life, of which we cannot be apprised, and it would be contrary to what is right to award execution to B.'s executors if

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de la certificacion *Capias*, desicome cest de recorde devant vous qe execucion est une foitz agarde.—Wilby. Suez donqes brief a nous[1] sur le cas. A.D. 1343-4.

§ Un[2] certificacion fuit suy hors dun statut marchaunt, et avant execucion fait le pleintif murust, par quei *Gayn.* pria execucion pur les executours.—Hill. Quant le plee est amorti par mort de partie coment puit proces mesme estre continue?—*Gayn.* Novel certificacion ne poms nous avoir, par quei il covient qe sur ceste certificacion qe homme face proses, et, Justice, vous poiez estre apris qe la partie navoit mye execucion en sa vie, lexecucion par taunt ne deit pas perir, par quei il nest pas meschief mesqe execucion soit agarde.—Hill. A pluis fort qe vous poiez moustrer serroit davoir un *Scire facias* pur les executours, qar lour testatour purroit avoir relesse, par quei il covent suere novel brief hors de certificacion. Certificacion. [Fitz., *Execucion*, 55.]

§ *Gayn.*[3] vint a la barre, et fist sa suggestion coment un B. de Cestre autrefoitz suyit execucion hors dun estatut marchaunt, qe fuit certifie en la Chauncellerie, et dit qe B. devia pendaunt la suyte, par qel il pria qe la Court voleit agarder execucion pur ses executours.—Wylby. Puit estre qe B. avoit execucion en sa vie, de quei nous ne pooms pas estre apris, et il serroit encountre resoun dagarder execucion a les executours B. sil avoit execucion en *Nota.*

[1] L., vous.

[2] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not either of the other reports.

[3] This report of the case is also from Harl. (No. 2) alone, where it occurs by itself at some distance from the other, of which however it is represented as being a continuation, and a reference to which is given as being the *Principium*. It has neither been printed in the old editions of the Year Books nor used by Fitzherbert for his *Abridgment*.

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A.D. 1343-4.

he had execution during his life.—*Gaynesford.* Then we pray a writ to warn the ter-tenants to show whether they can say anything wherefore execution should not be awarded.—WILLOUGHBY. Of that we will consider.

Trespass in respect of goods carried off.

(36.) § Trespass in respect of goods carried off and beasts taken, against the peace.—*Grene* alleged that the defendant heretofore recovered by Assise of Novel Disseisin against the plaintiff seisin, and damages, and that his goods, as to which he complained, were delivered in execution; judgment whether he can assign tort in our person, or have an action for the beasts.—*Derworthy.* You took them of your own wrong, without such a cause; ready, &c.—*Grene.* You shall not

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sa vie.—*Gayn.* Donqes nous prioms brief de garnir les terrez tenantz sils savent riens dire pur quei execucion ne serra pas agarde.—Wylby. Sur ceo aviseroms, &c. A.D. 1343-4.

(36.) [1] § Trespas des biens emportes et avers pris countre la pees.—*Grene* alleggea qe le defendant autrefoitz par Assise de Novele Disseisine recoveri vers le pleintif,[3] &c., et damages, et ses biens dount il se pleint furent liverez[4] en execucion; jugement si tort en nostre[5] persone, &c., ou accion pur les avers.[6]—*Der.* Vous les pristes de vostre tort demene saunz tiel cause; prest, &c.[7]—*Grene.* Al averement Trespas des biens enportez.[2]

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[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 223. It there appears that the action was brought by Richard de Loveny, parson of the church of Neteltone (Somerset) against William de Byngham and John de Wouth.

[2] The words des biens enportez are omitted from L.

[3] The words le pleintif are omitted from L.

[4] L., deliveretz.

[5] L., vostre.

[6] The plea on behalf of the defendant John was, according to the record, Not Guilty. The plea on behalf of the defendant William was "quod ipse alias arramavit Assisam "Novæ Disseisinæ versus præ- "dictum Ricardum, et quosdam "alios, coram Willelmo de Shares- "hulle et sociis suis Justiciariis "domini Regis ad assisas in eodem "Comitatu capiendas assignatis, "de libero tenemento suo in "Estchynnok, per [quam] quidem "Assisam idem Willelmus coram "eisdem Justiciariis recuperavit "inde seisinam suam et damna "sua quæ taxabantur per juratam "ejusdem Assisæ ad decem libras, "per quod præceptum fuit Hugoni "Tyrel, tunc Vicecomiti illius "Comitatus, quod de terris et "catallis prædicti Ricardi et ali- "orum fieri faceret prædictas "decem libras et illa redderet "eidem Willelmo, qui quidem "Vicecomes, prætextu cujusdam "brevis Regis ei inde directi, "liberavit ei bona et catalla præ- "dicta in pretium quadraginta et "septem solidorum de damnis "prædictis, et sic dicit quod ipse "recepit bona et catalla prædicta "de prædicto Vicecomite ratione "executionis judicii prædicti. Et "hoc paratus est verificare, &c., "unde petit judicium si prædictus "Ricardus aliquam transgressi- "onem seu injuriam in persona "ipsius Willelmi in hoc casu, "assignare possit," &c.

[7] The replication upon which issue was joined was, according to the record, "quod prædictus Will- "elmus de injuria sua propria, et "contra pacem Regis, &c., cepit

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A.D. 1343-4. be admitted to that general averment, because the cause as to which I plead is of record.—*Derworthy.* It is not of record that you have the goods by way of execution; wherefore will you accept the averment?—*Grene.* It seems that the averment contrary to the record does not lie.—SHARDELOWE. As you might have taken them of your own wrong, notwithstanding the recovery, how could he aid himself, or how could he plead in any other manner? But your statement shall be entered, and you are at a good issue, &c.

Trespass. § One Thomas[1] made his plaint of his goods tortiously carried off to the value of 20 shillings.—*Grene.* We tell you that heretofore, in a certain year, &c., this same defendant brought an Assise of Novel Disseisin against this same plaintiff, in respect of certain tenements before Sir WILLIAM SHARSHULLE, &c. Process was sued, &c., until the disseisin was found to the damage of the plaintiff [in the Assise] of 40 shillings, wherefore it was adjudged that he should recover his seisin and his damages, &c. And we tell you that the Sheriff put in execution for us his corn, in respect of which he complains, for our damages, though not to such a value as he has counted, but only to the value of our damages, wherefore we demand judgment whether he can have an action in respect of those goods.—*Moubray.* Sir, by his answer he supposes that he had the corn by delivery from the Sheriff, whereas we suppose by our writ that he took them by force, so that his answer is contrary to our writ; and therefore we will aver our writ.—*Grene.* Sir, in case you brought this writ in respect of your

[1] As to the names of the parties *see* p. 601, note 1.

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general ne serrez resceu, qar la cause dount jeo plede est de recorde.—*Derworthi.* Il nest pas de recorde qe vous les avez en lieu dexecucion; par quei volez[1] laverement?—*Grene.* Il semble qe averement ne git pas[2] countre le recorde.—SCHARD. Quant vous les puissez aver pris de vostre tort demene, *non obstante* le recoverir, coment se eidreit il, ou coment pledreit il, par autre manere? Mes vostre dit[3] serra entre, et vous estes a bon issue, &c.[4] A.D. 1343-4.

§ Un[5] Thomas se pleint de ses bienz emportez a tort a la value de xxs.—*Grene.* Nous vous dioms quautre foitz, certein an, &c., mesme cel porta un Assise de Novele Disseisine devers mesme ce qe se pleint de certeinz tenementz devant Sire W., &c. Proses suy, &c., qe la disseisine fuit trove as damages le pleintif de xls., par queux fuit agarde qe recoverast sa seisine et ses damages, &c. Et vous dioms qe le Vicounte nous fist par execucion de ses blez, de queux il se pleint, pur noz damages, mes ne mye a tiel value come il ad counte, mes soulement a la value de noz damages, par quei nous demandoms jugement si de ceux biens accion puit il avoir.—*Moubray.* Sire, par soun respouns il suppose qil avoit les bles par livere de Vicounte, la ou nous supposoms par nostre brief qil lez prist a force, issint soun respouns a contrarie de nostre brief; par quei nous voloms averer nostre brief.—*Grene.* Sire, en cas qe vous portassetz cel brief de voz Trespas. [Fitz., *Issue*, 33.]

" equum prædictum et catalla præ-
" dicta, sicut ipse superius queritur,
" absque hoc quod ipse recepit
" bona et catalla illa de prædicto
" Vicecomite ratione executionis
" judicii prædicti, sicut prædictus
" Willelmus allegat."

[1] L., voiletz.

[2] The words ne git pas are omitted from L.

[3] L., dreit.

[4] Several adjournments follow the award of the *Venire*, but nothing further appears upon the roll.

[5] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions. It appears, however, to have been used by Fitzherbert for his *Abridgment*.

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A.D. 1343-4. beasts tortiously taken, &c., and I were to say that on a previous occasion you had complained against me in respect of the same beasts, when I avowed the taking for a certain cause, on which avowry the Return of the same beasts was awarded to me, and I were to demand judgment whether you ought to have an action in respect of such a taking, you would not have the averment that you took as your writ supposed without answering to our justification; wherefore no more in this case, since we affirm the property to compel you by the record to which you were yourself a party.—*Moubray.* I think that in the case which you have put I should have the averment as above.—Hillary. You could not have the averment in such a case without answering to the justification; no more will you have it here; but you can have an averment in other words, that he took them of his own wrong, and not for such a cause.—*Grene.* Sir, that cannot be, because we have justified the taking by matter of record, wherefore he cannot aver that we took them of our own wrong without showing how.—Hillary. It is not of record that the Sheriff delivered certain corn to you for execution of your damages, nor is it of record that the Sheriff delivered that corn to you in respect of which he complains, wherefore he will have such an averment as I have said.—Therefore *Moubray* tendered the averment that he took them of his own wrong and not for such a cause; ready, &c.—And the other side said the contrary.

Quare impedit. (37.) § *Quare impedit* for the King in the words "*ad vicariam Sancti Hillarii juxta Montem Sancti Michaelis.*"—*Grene.* Judgment of this writ which is brought neither in a vill nor in a hamlet.—*Thorpe.* It is sufficiently certain.—*Grene.* The words "*Sancti Hillarii*" refer only to the name of a Saint.—*Thorpe.* They refer to the name of the vill which is possibly

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averez a tort pris, &c., et jeo deise quautre foitz vous fuistez pleint de mesmes les averes vers moy, ou jeo avowace la prise pur certein cause, sur qel avowere retorn moy fuit agarde de mesmes les bestes, et demandoms jugement si de tiel prise deive accion aver, vous naverez pas laverement qe vous pristes[1] come vostre[2] brief suppose saunz respondre a nostre justificacion; par quei nient pluis, &c., del houre qe nous affermons la proprete de vous chacer par recorde a qel vous fuistez mesmes partie.—*Moubray.* Jeo croy qen le cas qe vous avetz mys javeray laverement *ut supra.*—Hill. Vous naverez pas laverement en tiel cas saunz respondre a la justificacion; nient pluis averetz vous issi; mes vous poietz avoir laverement sur autre paroles qil les prist de soun tort demene, et noun pas par tiel cause.—*Grene.* Sire, ceo ne puit estre, qar nous avoms justifie la prise par chose de record, par quei il ne puit pas averer qe nous les primes de nostre tort demene saunz moustrer coment.—Hill. Il nest pas de recorde qe le Vicounte vous liverast certeins bleez pur execucion de voz damages, ne il nest pas de recorde qe le Vicounte vous liverast ceux blez de queux il se pleint, par quei il avera tiel averement come jay dit.—Par quei *Moubray* tendist laverement qil les prist de soun tort demene, et ne mye par tiel cause; prest, &c.—*Et alii e contra.* A.D. 1343-4.

(37.)[3] § *Quare impedit* pur le Roi *ad vicariam Sancti Hillarii juxta Montem Sancti Michaelis.*—*Grene.* Jugement de ceo brief qest porte ne en ville ne en hamel.—*Thorpe.* Cest assetz en certein.—*Grene. Sancti Hillarii* ne refiert[4] forqe al noun de Seynt.—*Thorpe.* Si fet al noun de la ville qe ad noun Seynt *Quare impedit.*

[1] MS., nous ne primes, instead of vous pristes.
[2] MS., nostre.
[3] From L., and 25,184.
[4] L., refert.

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named St. Hillary.—*Grene.* Then the writ ought to be in the words "*ad vicariam Sancti Hillarii de Sancto Hillario,*" and so it is in the case of St. Edmund's and St. Alban's, where the vills take the names of Saints.—Hillary. Certainly the writ would be better in the form you state.—*Thorpe.* Why is not the writ as good in the words "*ad vicariam Sancti Hillarii*" as if it were to say "*ad vicariam de Sancto Hillario*"?

Quare impedit.

(38.) § *Quare impedit* in the words "*ad ecclesiam de Toft Neutonc.*"—*Grene.* In Toft Newton there are two churches, one that of St. Michael, and the other that of St. Peter and St. Paul, and this writ does not determine with certainty to which church; judgment of the writ.—*Moubray.* Toft Newton is a vill, and Newton is a hamlet of Toft Newton, so that both churches are in Toft Newton; but one church bears the name of Toft Newton, and the other that of Newton, and so they are known as distinguished by the names of the churches of Newton and Toft Newton, and so you are apprised as to which is the church

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Hillare par cas.—*Grene.* Donqes serreit[1] le brief *ad vicariam Sancti Hillarii de Sancto Hillario*, et issint est il de Seynt Edmon,[2] et Seint Alban,[3] ou les villes pernount noun de Seyntz.—Hill. Certes[4] le brief vaudreit plus a la manere qe vous ditez.—*Thorpe.* Pur quei nest le brief auxi[5] bon *ad vicariam Sancti Hillarii* come a dire *ad vicariam de Sancto Hillario*? A.D. 1343-4.

(38.)[6] § *Quare impedit ad ecclesiam de Toft Neutone.* —*Grene.* En Toft Neutone[7] sount deux eglises, lun de Seint Michel, et lautre de Seint Piere et Paule,[8] et ceo brief ne determine pas en certeyn a quel eglise; jugement de brief.[9]—*Moubray.* Toft Neutone est un ville, et Neutone est un hamel de Toft Neutone, issint qe les deux eglises sont en[10] Toft Neutone; mes lun eglise porte noun de Toft Neutone, [et lautre Neutone, et issint sont eles conus diversement par les eglises de Neutone et Toft Neutone],[11] et issint estes apris de quel eglise nous *Quare impedit.*

[1] 25,184, deit.

[2] L., Esmoun.

[3] L., Albon.

[4] Certes is omitted from L.

[5] auxi is omitted from 25,184.

[6] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 324. It there appears that the action was brought by William son of Robert de Hanlay of Gryseby (Girsby) against William son of John de Fulnetby, in order that he, together with Thomas Bishop of Lincoln, and William, Prior of Sixhill, might permit the plaintiff to present "ad ecclesiam de Toftneutone" (Lincolnshire). The declaration is of some length but contains only matters which have no bearing upon the report.

[7] The words "*Grene.* En Toft Neutone" are omitted from L.

[8] L., Pole.

[9] The plea was, according to the record, "quod in villa de Toftneu-" tone, sunt duæ ecclesiæ, quarum " una vocatur ecclesia Sancti " Michaelis, et alia vocatur ecclesia " Apostolorum Petri et Pauli, et " prædictus Willelmus filius Ro-" berti per breve suum prædictum " non determinat in certo ad quam " illarum ecclesiarum ipse clamat " præsentationem suam, unde petit " judicium de brevi," &c.

[10] L., de.

[11] The words between brackets, though found in the old editions, are omitted from the existing MSS. of Year Books. They are, however, in accordance with the record. *See* p. 609, note 1

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A.D. 1343-4. to which we claim the presentation; judgment whether our writ be not sufficiently good.—*Grene.* Now you have admitted that the two churches are in Toft Newton, so that in law no distinction can properly be assigned between the two except by the names of the Saints. And if a writ of Right had to be brought in respect of the church which is in the hamlet, would it not be brought in the vill?—Kelshulle. Possibly it would, because a writ of Right does not lie in a hamlet, but a *Quare impedit* does, and, if he speak the truth, it is sufficiently certain where he demands the presentation.—*Grene.* Since Newton is a hamlet of Toft Newton, it is impossible to prove that the church of Newton could be anywhere but in Toft Newton; and that brings us to our first exception, that is to say, that there are two churches, and that diversity is not assigned.—Kelshulle. Suppose the hamlet were named Kelshulle, and there were in Kelshulle a church known as the church of Kelshulle, and there were in the vill another church known by the name of the vill, would there not be sufficient diversity?—*Grene.* It would be uncertain.—Willoughby. It is sufficiently certain. Answer.—*Thorpe.* Whereas they say that there are a Newton and a Toft Newton, and that one is a hamlet of the other, from which the churches are supposed to take their respective names, and that one is known by the name of the vill, and the other by that of the hamlet, we tell you that it is all Toft Newton, and known by that name, *absque hoc* that there is a Newton, known by that name, other

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clamoms le presentement; jugement si nostre brief ne soit assetz bon.[1]—*Grene.* Ore avez conu qe les deux eglises sount en Toft Neutone, issint qe de ley nul diversite poet proprement estre assigne entre les deux forqe[2] des Seintz. Et si brief de Dreit fut a porter del eglise qest el[3] hamel, ne serra ceo porte en la ville?—[Kels. Si serra par cas, pur ceo qe brief de Dreit ne gist pas en hamel, mes *Quare impedit* fait, et, sil die verite, assetz est il certein ou il demande le presentement.—*Grene.* Quant Neutone est hamelle de Tofte Neutone, il est impossible a prover qe leglise de Neutone purreit estre forqe en Tofte Neutone; et donqes est a nostre primer excepcion, saver, qils y sont ij eglises, et diversite nest pas done, &c.][4]—Kels. Jeo pose qe le hamel avoit a noun Kelsul, et il y avoit en K. eglise[5] conu[6] pur leglise de K., et en la ville est[7] autre eglise[5] conu par noun de la ville, ne serra ceo diversite assetz?—*Grene.* Noun certeyn.[8]—Wilby. Il est assetz en certein. Responez.—*Thorpe.* La ou ils diount qil y ad Neutone et Toft Neutone, et lun hamel del autre, dount les eglises duissent prendre lour nouns, et lun conu par noun de la ville et lautre del hamel, nous vous dioms qe tut est Toft Neutone, et par cel noun conu, saunz ceo qil y ad Neutone conu par tiel noun autre de Toft Neutone;

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[1] The replication was, according to the record, "quod prædictus Will-" elmus filius Johannis breve suum " per hoc cassare non debet, dicit " enim quod in villa de Toftneu-" tone est una ecclesia quæ vocatur " ecclesia de Toftneutone, et in " Neutone qui est hamilettus de " prædicta villa de Toftneutone est " una alia ecclesia quæ vocatur " ecclesia de Neutone per se, et " sic breve suum prædictum satis " in certo sumitur. Et hoc paratus " est verificare, unde petit judi-" cium," &c.

[2] forqe is omitted from 25,184.

[3] L., en.

[4] The words between brackets, though found in the old editions, are omitted from both the existing MSS.

[5] 25,184, esglise.

[6] 25,184, come; the word is omitted from L.

[7] est is omitted from L.

[8] L., certes.

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A.D. 1343-4. than Toft Newton; ready, &c.—Willoughby. You shall not have issue on the names of the vills, but on the names of the churches.—*Thorpe.* Then we tell you that both churches are in Toft Newton, *absque hoc* that either of the churches bears the name of Newton by itself without any addition; ready, &c.—And the other side said the contrary.

Quare impedit. § John[1] brought his *Quare impedit* against W. son of R.,[1] and said that the defendant tortiously hindered him from presenting a fit person to the church of P.[1] —*Grene.* Sir, we tell you that in the vill of T.[1] there are two churches, to wit, one the church of St. Michael, the other the church of St. Peter[1]; this writ does not determine with certainty to which church he claims the presentation; judgment of the writ.—*Moubray.* Sir, we tell you that in the vill of T. there is one church, which we demand by this writ, and we tell you that in the same vill there is a hamlet which is called Heton,[1] in which there is another church called the church of Heton,[1] and so it may be seen that in the vill in which we have brought our writ there are two churches, but our church has one name, and the other has another name, and so our writ is sufficiently certain.—*Grene.* Sir, since he has admitted that in the vill of T.[1] there are different churches, in which case he ought to make determination in his writ by the name of the Saint of the church, as by saying the church of Our Lady of T., &c., and this he has not done, &c., therefore, &c. And, besides, suppose he brought a writ of Right of Advowson against us in like manner as, &c., it would be abated, and therefore this one also.—Hillary. It is no wonder that a

[1] For the real names, &c., *see* p. 607, note 6.

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prest, &c.—Wilby. Vous naverez pas issue sur nouns des villes, mes sur nouns des eglises.—*Thorpe.* Donqes vous dioms qe les ij eglises sont en Toft Neutone, saunz ceo qe ascun[1] des eglises porte noun de Neutone a per lui saunz adjeccion; prest, &c.—*Et alii e contra.*[2] A.D. 1343-4.

§ Johan[3] porta son *Quare impedit* vers W. fitz R., et dit qa tort ly destourbe de presenter covenable persone al eglise de P.—*Grene.* Sire, nous vous dioms qen la ville de T. ils sount deux eglises, saver, un de Seint Michel, lautre de Seint Pier; cest brief de determine pas en certein a qel eglise il cleyme la presentement; jugement du brief.—*Moubray.* Sire, nous vous dioms qen la ville de T. il y ad un eglise qe nous demandoms par cest brief, et vous dioms qen mesme la ville il y ad un hamelle qest appelle Hetone, en qel il y ad autre eglise qest appelle leglise de Hetone, issint deit il veer qen la ville ou nous avoms porte nostre brief ils sount ij eglises, mes il y ad un noun et lautre ad un autre noun, issint nostre brief assetz en certein.—*Grene.* Sire, del houre qil ad conu qen la ville de T. ils sount diverses eglises, en qel cas il covient faire determinacion en soun brief del noun de Seint del eglise, come a dire leglise de nostre Dame de T., &c., et ceo nad il pas fait, &c., par quei, &c. Et, ovesqe ceo, jeo pose qil porte un brief de Dreit davowesoun vers nous en autiel manere com, &c., il serroit abatu, et par taunt cest, &c.—Hill. Il nest *Quare impedit.*

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[1] L., ascuns.

[2] The rejoinder, upon which issue was joined, was, according to the record, "quod in villa de Toftneu-"tone non est aliqua ecclesia quæ "vocatur ecclesia de Neutone per "se, sed ecclesia quæ vocatur "ecclesia de Toftneutone."

Nothing but the award of the *Venire*, and an adjournment, follows on the roll.

[3] This report of the case is from Harl. (No. 2) alone, and has not been printed in the old editions.

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A.D. 1343-4. writ of Right would be abated in such a case, because a writ of Right must always be brought in a vill, so that if the two churches had to be demanded by a writ of Right, it would be necessary to make the demand in a vill and not in a hamlet, and in that way it is necessary to make a certain definition as to each; but this writ can be brought in a hamlet, and therefore, although the names of the churches are different, it is not necessary to make any other distinction in this writ; wherefore, &c.—KELSHULLE. Suppose the hamlet in which one of the churches is had Grene for its name, would not the writ be good if it said the church of Grene, without any other definition, &c.? as meaning to say that it would.—*Grene.* Sir, I say that, if the writ were brought in respect of a church which is in a hamlet, there would be no need to give any definition but by the name of the hamlet, because in the hamlet there is only one church, but if the writ were brought in respect of a church which is in the vill, it would be necessary to define it with certainty by the name of a Saint, because in the vill there are two churches inasmuch as whatever is in the hamlet is in the vill, but not *vice versa,* and therefore we shall have a plea to abate the writ.—Therefore he so had.—But afterwards he tendered the averment that in the vill of T. there was no church but those which were named by the name of the vill; ready, &c.—And the other side tendered the averment that the other church of the same vill was named by the name of the church of the hamlet, so that they had different names; ready, &c.[1]—And the averment was accepted. —*Quære,* &c.

Avowry. (39.) § Avowry, for arrears of a tax of wool granted

[1] For the issue as joined according to the roll *see* p. 611, note 2.

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pas merveille mesqe brief de Dreit serroit abatu en tiel cas, qar brief de Dreit il covient tutdiz estre porte en ville, issint qe [si] lez deux eglises furent demandez par brief de Dreit, il le covendreit demander en ville et ne mye en hamelle, et par taunt il covient mettre certein determinacion en les deux; mees ceo[1] brief puit estre porte en hamelle, par quei, coment qe les nouns de les eglises diversent, il ne covynt pas faire autre declaracion en cest brief; par quei, &c.—Kels. Jeo pose qe le hamelle en qel lun eglise [est] ust a noun Grene, ne serroit le brief boun a dire leglise de G., saunz autre determinacion, &c.? *quasi diceret sic.*—*Grene.* Sire, jeo die qe, si le brief fuit porte del eglise qest en hamel, il ne covynt pas faire determinacion qe par le noun del hamel, qar en la hamel ny ad qune eglise, mes si le brief fuit porte del eglise qest en la ville, il covendreit determiner en certein par le noun de Seint, qar en la ville ils y sount ij eglises pur ceo qe qanqe est en la hamel est en la ville, *sed non e contra*, et par taunt nous averoms plee dabatre le brief.—Par quei *ita habuit.*—Mes puis il tendi daverer qen la ville de T. il ny avoit nulle eglise forqe ceux qe furent nomez par le noun de la ville; prest, &c.—Et lautre tendi daverer qe lautre eglise de mesme la ville fuit nome par noun del eglise de hamel, issint ils avoient divers nouns; prest, &c.—Et laverement, &c., resceu.—*Quære*, &c. A.D. 1343-4.

(39.)[2] § Avowere pur taxe arere de leyn graunte Avowere.

[1] MS., ne.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Hil., 18 Edw. III., R° 214 d. It there appears that the action of Replevin was brought by Roger de Stapilforde of Waddington against Robert de Somerby, Walter Whyte, William de Kyme, and John of the More, all of Mere. The two last mentioned defendants traversed the taking of the beasts, and issue was joined thereon. The avowry was, according to the record, "quod per communitatem totius "Angliæ in Parliamento domini "Regis nuper tento apud West-

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A.D. 1343-4. to the King, by the constables of a vill who had effected the taking in the vill of Mere; and they had no specialty of their warrant, to which exception was taken.—*Blaykeston.* We tell you that in the vill of Waddington we have freehold to which common is appendant in Mere; and we tell you that these beasts are, and were at the time of the taking, levant and couchant in Waddington, and these beasts were taxed for the wool, and assessed in Waddington, and we paid tax for them there; and these beasts came and fed in the common in Mere and went back to Waddington; judgment whether you can avow the distress on these

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au Roi, et par conestables dun ville, qe avoynt fet la prise en la ville de Mere[1]; et ils navoynt pas especialte de lour garraunt, qe fut chalenge.—*Blaik.* Nous vous dioms qen la ville de Wodyngtone si avoms fraunctenement, a qai comune est appendaunt en Mere[1]; et vous dioms qe cestes bestes sount, et furent a temps de la prise, couchauntes et levantes en Wodyngtone, et celes bestes furent taxes pur la leyn, et assiz en W., et pur[2] eux paiames taxe illoeqes; et celes bestes vyndront et pustrent la comune en Mere,[1] et reperirent a W.; jugement si de celes bestes puissez la destresse avower en Mere,[1] A.D. 1343-4.

" monasterium, a die Paschæ in tres " septimanas anno regni sui quinto- " decimo, triginta millia sacce [*sic*] " lanarum per totam Angliam con- " cessi fuerunt eidem domino Regi, " loco nonarum garbarum, vellerum, " et agnorum solvendarum, videlicet " de primo anno viginti millia sacce " [*sic*] lanæ, et in secundo anno " decem millia sacce [*sic*] lanæ, " de quibus viginti millibus saccis " lanæ de primo anno Comitatus " Lincolniæ assessus fuit ad mille " ducentos sexaginta et quinque " saccos et dimidium, quinque " petras, et duodecim libras lanæ. " Et inde quædam pars Comitatus " quæ vocatur Kestevene assessa " fuit ad trescentos quaterviginti " saccos, novem petras, novem " libras lanæ, in quibus partibus " de Kestevene quidam Willelmus " de la Launde et Brianus de " Hesdeby assignati fuerunt asses- " sores et collectores lanarum præ- " dictarum per Commissionem " domini Regis, &c. Et post- " modum apud Lafforde . . . . . " coram præfatis Willelmo et " Briano collectoribus, &c., præ- " dicta villa de Mere assessa fuit " ad viginti et septem petras et " quinque libras lanæ per homines " in partibus illis in primo anno " prædicto. Et postmodum Con- " stabularii et alii probi homines " de eadem villa jurati ad taxan- " dum et levandum de quolibet " homine ejusdem villæ rationa- " bilem portionem, &c., ipsum " contingentem, &c., assiderunt " prædictum Rogerum ad rationa- " bilem portionem suam de lanis " prædictis pro terris ac bonis et " catallis suis quæ habuit in eadem " villa, sicut et ipsi assessi fuerunt " pro terris, bonis, et catallis suis, " quæ habuerunt ibidem. Et quia " prædictus Rogerus assessus fuit " ad duodecim libras lanæ pro " terris ac bonis et catallis suis " quæ habuit in prædicta villa de " Mere, quam quidem lanam sol- " vere recusavit, ipsi Robertus et " Walterus, Constabularii villæ " prædictæ, ad hoc assignati et " jurati in forma prædicta, ceperunt " prædictas oves præfati Rogeri " pro prædicta lana pro qua " assessus fuit."

[1] MSS. of Y.B., Bere.

[2] pur is omitted from L.

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A.D. 1343-4. beasts in Mere, for it is not right that they should be taxed both in the one vill and in the other.—*Thorpe.* If you were taxed and assessed in Mere for this tax, I should take your beasts in the other vill, if your portion were in arrear; and we have said that you were taxed for your lands and chattels in Mere for a certain portion which was in arrear, and that you do not deny; judgment, and we pray the Return.—*Blaykeston.* And you do not deny that you taxed me for the same beasts on a previous occasion in Mere, and took them for that reason; judgment, and we pray our damages.—Sharshulle to *Thorpe.* I tell you clearly that in such a case the beasts will be taxed and assessed where they are levant and couchant, without having regard to the place where they common.—*Thorpe.* A ninth was granted to the King for two years, and that was afterwards changed into wool, so that the wool was to be levied in the same manner as the ninth, that is to say, as well of lands as of chattels, and we tell you that the plaintiff had land and corn growing on land in Mere, for which he was assessed and taxed by ourselves, as well as for other chattels, and for that portion in arrear we made the distress.—

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qar il nest pas resoun qils feussent taxes en lun ville et en lautre.[1]—*Thorpe.* Si vous feussez taxez et assiz en Mere[2] pur cel taxe, jeo prendray[3] vos bestes en lautre ville, si vostre porcion fut arere; et nous avoms dit qe vous feustez taxez pur vos terres et chateux en Mere[2] a certeyn porcion quel fut arere, quele chose vous ne deditez pas; jugement, et prioms Retourn.—*Blaik.* Et vous ne deditez pas qe pur mesmes[4] les bestes autrefoitz vous me taxastes en Mere,[5] et par cele resoun les pristez; jugement, et prioms nos damages.—Schar. a *Thorpe.* Jeo vous die bien qen tiel cas les bestes serrount taxes et assiz oue[6] eles[7] couchent et levent, saunz aver regarde ou eles comunent.—*Thorpe.* La ix^me^ fut graunte al Roi pur ij aunz, et puys fut ceo chaunge[8] en leyn, issint qe la leyn fut a lever com la ix^me^ fut,[9] saver, auxi bien des terres com de chateux, et vous dioms qen Mere[5] le pleintif avoit terre et bleez cressauntz en terre, pur queux il fut assiz et taxe par nous mesmes, et pur autres chateux, et pur cele porcion arere si feimes la destresse.[10]—

[1] Roger's plea was, according to the record, "quod ipse habet "terras et tenementa in villa de "Wadyngtone, ad quæ ipse habet "communam in prædicta villa "de Mere tanquam pertinentem "eisdem tenementis in Wadyng-"tone, per quæ terras et tene-"menta, ac etiam bona et catalla, "et averia sua cubantia et levantia "in Wadyngtone ipse taxatus fuit "in Wadyngtone. Et dicit quod "ipse eadem averia sua, per quæ "taxatus fuit in Wadyngtone, et "quæ fuerunt cubantia et levantia "in Wadyngtone, ipse fugavit "usque villam de Mere ad com-"munam suam ibidem depas-"cendum, unde petit judicium si "prædicti Robertus et alii cap-"tionem prædictam pro taxatione "aliqua in prædicta villa de Mere "super ipsum Rogerum ratione "prædictorum averiorum in villa "de Wadyngtone, ut præmittitur "taxatores justam advocare pos-"sint," &c.

[2] MSS. of Y.B., Bere.

[3] L., perdra.

[4] mesmes is omitted from L.

[5] MSS. of Y.B., B.

[6] L., et.

[7] L., ils.

[8] 25,184, chalenge.

[9] fut is omitted from 25,184.

[10] The replication, according to the record, was ("non cognoscendo "quod prædictus Rogerus habeat "communam in Mere tanquam "pertinentem ad liberum tenemen-

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A.D. 1343-4. *Blaykeston.* We were taxed in Mere for the same beasts that were levant and couchant in Waddington, and for which we were taxed in Waddington; ready, &c.—*Thorpe.* Will you say for the same beasts, and not for your lands and corn growing on your lands in Mere? for otherwise you do not plead to me.—Willoughby to *Blaykeston.* Answer.—*Blaykeston.* We were taxed in Mere for the same beasts, and not for lands and corn growing in Mere; ready, &c.—And the other side said the contrary.

Replevin § A man complained as to his beasts, &c., in the vill of Mere.—*Seton* avowed the taking for the reason that in the 15th year of the present King certain sacks of wool were granted to the King by the Commonalty of the Realm, and each vill was apportioned at a certain sum by the taxors, and afterwards each man was apportioned by his neighbours according to the goods and chattels which he had in the same vill. For 12lbs. he, as one of the taxors, avowed the taking of the same chattels effected within the precincts of

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Blaik. Nous fumes taxez en Mere[1] pur mesmes les bestes qe feurent couchauntes et levantes en W., et pur quels nous fumes taxez en W.; prest, &c.—*Thorpe.* Volez[2] dire pur mesmes les bestes, et noun pas pur vos terres et bleez[3] cressauntz en vos terres en Mere[1]? qar autrement ne pledez vous pas[4] a moi.—Wilby. a *Blaik.* Responez.—*Blaik.* Nous fumes taxez en Mere[1] pur mesmes les bestes, et noun pas pur terres et bleez[3] cressauntz en Mere[1]; prest, &c. —*Et alii e contra.*[5] A.D. 1343-4.

§ Un[6] homme se pleint de ses averez, &c. en la ville de M.—*Setone* avowa la prise par la resoun qe lan xv[7] le Roy qore est certeinz sakez de leyne furent grauntez al Roy par la comunaute, et chescun ville apporcione en un certein par les taxours, et apres chescun homme fuit aporcione par ces veiseines solonc les biens et chateux qils avoient en mesme la ville. Pur xij *li.* il, com un des taxors, avowa la prise de mesmes les chateux fait deinz la purceyint *Replegiari.* [Fitz., *Quinzin*, 7.]

" tum suum in Wadyngtone) quod " die taxationis prædictæ præfatus " Rogerus assessus fuit in villa de " Mere per terras et tenementa sua " in Mere, et per blada super terram " prædictam crescentia, et per alia " bona et catalla, ac alia averia " sua cubantia et levantia in villa " de Mere. Et hoc parati sunt " verificare, unde petunt judicium," &c.

[1] MSS. of Y.B., B.

[2] L., voilletz.

[3] L., bledez.

[4] L., point.

[5] Roger's rejoinder, upon which issue was joined, was, according to the record, " quod ipse taxatus fuit " per averia sua cubantia die " taxationis prædictæ in Wadyng- " tone, per quæ ipse taxatus fuit in " Wadyngtone, et non per aliqua terras et tenementa, bona vel catalla, seu aliqua averia cubantia in prædicta villa de Mere."

Roger failed to appear at *Nisi prius* on the day given, and judgment was given for the defendants to have the Return. Afterwards venit Willelmus de Bytham, ex " parte prædicti Rogeri, et petit " deliberationem prædictorum ave- " riorum, et ei conceditur. Ideo " habeat inde breve per Statutum." Several adjournments follow.

[6] This report of the case is from Harl. (No 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*, and not the other report.

[7] MS., x; Fitz., xiiij.

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A.D. 1343-4. the same vill.—*Blaykeston.* Sir, we tell you that we have common in the same vill of Mere appendant to our freehold in Waddington, and taxed in the same vill of Waddington, and we demand judgment whether by reason of any tax made in respect of such beasts, which were levant and couchant in another vill, and for that reason taxed in another vill, he can avow the taking.—*W. Thorpe.* Sir, we tell you that you were taxed at 12lbs. of wool by reason of corn and other chattels which you have in the vill of Mere, and not by reason of these beasts; ready, &c.—*Blaykeston.* We were taxed by reason of these beasts in respect of which we have made our plaint; ready, &c.—And so to the county.—Observe as to this issue.[1]—And Willoughby said in this plea that, if he was taxed by reason of corn or of other chattels which he had in the vill of Mere, they could by reason of such tax take the beasts which were levant and couchant in another vill when they came within the precincts of the vill in which he was taxed, &c.

Note. (40.) § Note that John de Heyton, against whom execution was sued on a recognisance made in this Court, could not have suit against one who had sued contrary to his own deed by a judicial writ, before he had brought an original writ directed to the Justices on his case.

Recognisance. § *Grene* came to the bar, and said that one John had sued execution on a recognisance made by one William in the same Court, whereas John had granted by a deed indented, of which *Grene* made *profert*, that if William should pay certain money on a certain day

[1] For the precise terms of the issue, according to the roll, *see* p. 619, note 5.

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de mesme la ville.—*Blayk.* Sire, nous vous dioms qe nous avoms comune en mesme la ville de M. appendaunt a nostre fraunctenement en W., et taxez en mesme la ville de W., et demandoms jugement si par cause de nulle taxe fait de tiels bestes, queux furent couchantz et levantz en autre ville, et par taunt en autre ville taxes, puit il la prise avower.—*W. Thorpe.* Sire, nous vous dioms qe vous fuistez taxes a xij*li.* de leyne par cause de bleez et des autres chateux queux vous avetz en la ville de M., et ne mye par cause de ceux bestes; prest, &c.—*Blaik.* Nous fuimes taxes par cause de ceux bestes de queux nous sumes pleint; prest, &c.—*Et sic ad patriam.*—*Vide* de tiel issue.—Et Wilby. dit en ceo plee qe sil fuit taxe par cause de bleez ou des autres chateux queux il avoit en la ville de M., qil puit par cause de tiel taxe prendre les bestez qe furent levantz et cochantz en autre ville quant ils vendrent deinz la purceynt de la ville ou il fuit taxe, &c. A.D. 1343-4.

(40.)[1] § *Nota* qe Johan de Heytone, countre qi execucion fut suy hors dune reconisaunce fait[2] en ceste place, ne put aver suyte vers cely qavoit[3] suy countre son fet demene[4] par bref judiciel, devant ceo qil avoit porte original as Justices sur son cas. *Nota.*

§ *Grene*[5] vint a la barre, et dit qun Johan avoit suy execucion hors dun reconisaunce fait par un W. en mesme la place, la ou J. avoit graunte par un fait endente, qel il mist avant, qe si William pacast certeins deners a certein jour qe la reconisance Reconisaunce. [Fitz., *Scire facias*, 9.]

[1] From L., and 25,184, until otherwise stated.

[2] L., feste.

[3] L., qi avoit, instead of cely qavoit.

[4] demene is omitted from 25,184.

[5] This report, which may or may not be No. 40 in another form, is from Harl. (No. 2) alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*.

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A.D. 1343-4. the recognisance should be held as null; and he said that William had paid, &c., at his day, and in proof thereof he made *profert* of an acquittance; and therefore he prayed a writ to the Sheriff to stay execution, and to cause J. to come to answer wherefore he had sued execution contrary to his own deed. And the Court granted him his prayer.—But it would have been otherwise upon a statute merchant, for in that case it would have been necessary to sue an *Audita Querela* out of the Chancery to the Justices, as appears in Michaelmas Term in the ninth year.

Debt. (41.) § On a writ of Debt the defendant waged his law that he did not owe the plaintiff any money, and thereupon he had a day to perform his law, on which day he made default, wherefore *Richemunde* for the plaintiff prayed his debt and his damages in accordance with his count.—Willoughby. You shall not have your damages except by assessment of the Court.—Therefore he adjudged that the plaintiff should recover his debt, &c., and his damages assessed by the Court at 10 shillings.

Debt. (42.) § John de H. brought his writ of Debt against one Roger, and demanded 5 marks, which Roger owed him by reason of a contract which was made between them at Arundel to the effect that the said John should be his parker at H., and should take 2 marks and 3 shillings per annum for hunting. And he counted that he had been Roger's bailiff for so long a time that 5 marks of his wages were in arrear.—*Richemunde* pleaded to issue that the defendant did not owe the plaintiff any money.—And thereupon the *Venire facias* issued, returnable this day.—And now the jury was called, and appeared.—*Gaynesford.* Sir, we tell you that the County of Sussex is parted and divided into six Rapes, of one of which the person

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serroit tenu pur nulle; et dit qe W. avoit paye, &c., a soun jour, et de ceo il mist avant acquitance, pur quei il pria brief al Vicounte de sursere del execucion, et de faire venir J. a respoundre pur quei il avoit suy execucion contre soun fait demene.—Et la Court luy graunta sa priere.—*Sed secus esset* si ceo ust[1] est este en un statut marchaunt, qar la covendroit avoir suy un *Audita Querela* hors de la Chauncellerie a les Justices, *ut patet Michaelis nono.* A.D. 1343-4.

(41.)[2] § En un brief de Dette le defendant gagea la ley qe nulles deners ne luy deit, et sur ceo avoit jour de faire sa ley, a quel jour il fist defaut, par quei *Rich.* pur le pleintif pria sa dette et ses damages come il avoit counte.—Wylby. Vous naverez pas voz damages forsqe par taxacion de Court.—Par quei il agarda qil recoverast sa dette, &c., et ses damages taxes par la Court a x*s.* Dette. [Fitz., *Damage*, 86.]

(42.)[3] § Johan de H. porta soun brief de Dette vers un Roger, et demanda v marcz, queux luy devoit par cause dun contracte qe se fist entre eux a Arondel se qe le dit J. serroit soun parkere a H., et prendroit ij marcz par an et iij*s.* pur chaucer. Et conta qil avoit este son baillif par tant de temps qe les v marcz de ses gages furent arrere.—*Rich.* pleda a issu qe nul dener ne luy deit, &c.—Et sur ceo le *Venire facias* issit retornable a cest jour. —Et ore lenquest fut demande, qe vint.—*Gayn.* Sire, nous vous dioms qe le Countee de Sussexe est departe et devise en vj[4] Rapes, des queux cely qore Dette.

[1] MS., nust.

[2] From Harl. (No. 2) alone. The case has not been printed in the old editions of the Year Books, but it has been used by Fitzherbert for his *Abridgment*. *See* also Y.B., Mich., 16 Edw. III., No. 83.

[3] This case is from Harl. (No. 2) alone, and has not been printed in the old editions.

[4] MS., v.

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who now brings the writ is bailiff; and we tell you that this panel is composed entirely of people of that Rape of which he is bailiff, and we do not understand that you will take this inquest.—*Notton.* That is not a challenge, unless you say that they have been impanelled by him, because if the Sheriff put these people into the panel, and sent their names, and his bailiff has summoned them, the bailiff of the Rape could not challenge them, nor could he distrain them to say anything other than the truth; wherefore, &c. —*Gaynesford.* We say that these people came through him who now brings this writ; wherefore, &c.—And afterwards the challenge was found to be false.—*Gaynesford.* Still, Sir, you see plainly how he has counted that the cause of the debt was, in its commencement, that he should be Roger's parker of H., which vill is in the Rape of Hastings, and we tell you that these people are of the Rape of Arundel, and not of Hastings; wherefore, &c.—Stonore. The issue is not taken as to whether the plaintiff was the defendant's parker or not, but the issue is on the debt arising from such a cause as he has counted, and that cannot be tried more naturally than by people of that Rape in which the contract was made, and that is the Rape of Arundel from which you say that these people are, &c.—Therefore the inquest was taken, and passed for the plaintiff.

Quare incumbravit.

(43.) A *Quare incumbravit* was brought against the Bishop of Exeter.—*Pole*, for the plaintiff, prayed a day at an interval of a fortnight.—*Stouford.* The Statute of Marlborough[1] is to that effect with regard to days given in a *Quare impedit*, but, Sir, the statute gives a day at so short an interval in a *Quare impedit* in order to expedite the presentation, so that the plea may be tried within the six months, because after the six months the Bishop would have the presentation; but

[1] 52 Hen. III. (Marlb.), c. 12.

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porte le brief est baillif dun de ceux; et vous dioms qe cest panelle est tut fait par gent de cest Rape de qel il est baillif, et nentendoms pas qe vous voillez cest enquest prendre.—*Nott.* Ceo nest pas challenge, si vous ne diez qils sount panelle par luy, qar si le Vicounte mist cestez gent, et maunda les noms, et soun baillif a ces somons, le baillif ne les puit challenger, ne il ne les puit pas destreindre a dire autre qe verite; pur qi, &c.—*Gayn.* Nous dioms qe ceux gentz vindrent par celuy qore porte cest brief; par quei, &c.—Et puis le challenge fuit trove faux.—*Gayn.* Sire, unqore vous veiez bien coment il ad counte qe la cause de la duete comencea par cause qil serroit le parker Roger de H., qel ville est deinz la Rape de H., et vous dioms qe ceux gentz sount de la Rape de A., et nient de H.; par quei, &c.—Ston. Lissue nest pas pris le qe il fuit son parker ou noun, mes lissue est sur la duete par tiel cause come il ad counte, qel ne puit pluis naturelment estre trie qe par gentz de cel Rape ou le contracte se fist, et A. de quel Rape vous ditez qe les gentz sount, &c.—Par quei lenquest fuit pris et passa pur le pleintif. A.D. 1343-4.

(43.) [1] § *Quare incumbravit* fuit porte vers Levesqe Dexcestre.—*Pole*, pur le pleintif, pria jour dune xv^e^. —*Stou.* Statut de Marleburghe voet ceo de jours done en un *Quare impedit*, mes, Sire, Lestatut doune si court jour en un *Quare impedit* pur hastier le presentement, issi qe le plee puit estre trie deinz les vj moys, qar apres les vj moys Levesqe avera *Quare incumbravit* [Fitz., *Jour*, 19.]

[1] From Harl. (No. 2) alone. The report has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*. I may be compared with Y.B., Easter, 17 Edw. III., No. 3, and Mich. 17 Edw. III., No. 21, p. 116.

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A.D. 1343-4. there is no such reason in this case, because, even though six months passed while this plea was pending, the plaintiff would still have his process afterwards, if judgment were rendered in his favour, and the person whom the Bishop has presented would be ousted; wherefore, &c.—*Pole.* That is true; my object is to make the church void by this writ as much as if I were proceeding by *Quare impedit*; wherefore, &c.—Willoughby. You will have only a common day, because you are not in the case of the statute, &c.

Waste. (44.) § On a writ of Waste the defendant pleaded to the inquest, and the *Venire facias* issued, and on the day on which it was returned the defendant made default, whereupon the plaintiff prayed that the inquest might be taken by his default. And the Court would not grant this, but only a writ to distrain him to hear the verdict.

Account. (45.) § A writ of Account was brought against one who was outlawed, and he sued a charter of pardon of outlawry, and had a *Scire facias* against the plaintiff, according to the Statute,[1] and on the day the plaintiff appeared and counted against him as to a receipt of the plaintiff's money, which receipt the other traversed. And thereupon a day was given over to the defendant, without his having found mainprise, through the negligence of the clerk, and on that day he did not appear. And the Court awarded a writ to take his body, and that the inquest should be taken by his default.

Cui in vita. (46.) § In a *Cui in vita* the entry was supposed to have been by the demandant's husband, and the tenant made default after default. One appeared and said that the tenant held for term of life by lease from him, and prayed to be admitted, &c.—*Richemunde.* Your prayer is contrary to our writ, because the ten-

[1] 5 Edw. III., c. 12.

Nos. 44–46.

le presentement; mais tiel cause nad il pas icy, qar mesqe les vj moys passent pendant ceste ple, unqore le pleintif avera son proces apres, si jugement soit rendu pur luy, et cely qe Levesqe ad presente serra ouste; pur quei, &c.—*Pole.* Cest verite; auxi bien su jeo de voider la eglise par cest brief come jeo serray par le *Quare impedit*; par quei, &c.—Wylby. Vous naverez forqe comune jour, qar vous nestis pas en cas destatut, &c. A.D. 1343-4.

(44.) [1] § En un brief de Waste le defendant pleda al enquest, et le *Venire facias* issit, et a jour de qel retourn le defendant fist defaut, sur qel le pleintif pria lenquest par sa defaut. Et la Court ne la voleit graunter, mes soulement brief de luy destreindre doier la jure. Waste. [Fitz., *Enquest*, 3.]

(45.) [1] § Brief Dacompt fuit porte vers un qe fuit utlage, et il suist chartre de pardoun, et avoit un garnisement vers le pleintif *secundum statutum*, a qel jour le pleintif vint et counta devers luy de receite de ses deners, qel receite lautre traversa. Et sur ceo jour fuit done outre al defendant, saunz ceo qil trova meinprise, par negligence du clerk, a qel jour il ne vint pas. Et la Court agarda brief de prendre soun corps, et lenquest par sa defaut agarde. Accompte [Fitz., *Enquest*, 4.]

(46.) [1] § En un *Cui in vita* lentre fuit suppose par le baroun le demandant, et le tenant fist defaut apres defaut. Vint un et dit qe le tenant tient a terme de vie de soun lees, et pria destre resceu, &c.—*Rich.* Vostre priere est a contrarie de nostre *Cui in vita.* [Fitz., *counterplee de Resceit*, 8.]

[1] From Harl. (No. 2) alone. The case has not been printed in the old editions of the Year Books, but has been used by Fitzherbert for his *Abridgment*.

No. 47.

A.D. 1343-4. ant's entry is supposed to be by our husband, and by your prayer you suppose that the entry was by you, &c.—HILLARY. It may be that at one time the tenant entered by your husband, and afterwards divested himself in favour of the person who now prays, &c., and took back an estate to himself for term of life, &c., so that it may be consistent with your writ; wherefore will you say something else?—*Richemunde.* The tenant had a fee; ready, &c.—And the other side said the contrary.—Michaelmas Term in the ninth year, at the end, agrees with this.[1]

Trespass. (47.) § The Prior of Newton brought a writ of Trepass against Oliver de S., and counted that he had tortiously carried off forty loads of lead from a mine.—*Grene.* We say that the place in which this mine is, as to which he complains of digging, is in our freehold, and we tell you that he dug there in our freehold without our consent, and against our will, wherefore we came while he was digging, and took the lead as our own chattel, and we demand judgment whether he can on that ground assign tort in our person, *absque hoc* that we carried off his chattels in any other manner; ready, &c.—*W. Thorpe.* By the first part of your answer you suppose that you are making a justification, and afterwards you are at a traverse of our action, wherefore you must plead to us with certainty. And, Sir, do you not remember a writ of Trespass which was brought in respect of two lasts of herrings, where the defendant confessed to the plaintiff that he had at one time carried them off, but said that at that time they were his, because he had them as wreck of the sea? And that was adjudged a good plea to oust the plaintiff from his action; so in this case, even though the mine was dug in his freehold, as he says, nevertheless through our having the lead in our hands the property in it came to us, in which case he could not

[1] Y.B., Mich., 9 Edw. III., No. 65.

No. 47.

brief, qar lentre le tenant est suppose par nostre baroun, et par vostre priere vous supposez lentre par vous, &c.—Hill. Il puit estre qa un temps il entrast par vostre baroun, et puis ceo demist a cely qore pria, &c., et reprist[1] estat a luy a terme de vie, &c., issint puit il estre ove vostre brief; par quei voilez autre chose dire?—*Rich.* Le tenant avoit fee; prest, &c.—*Et alii e contra.*—*Ad hoc concordat Michaelis nono, &c., in fine.* A.D. 1343-4.

(47.)[2] § Le Priour de Novelle Ville porta brief de Trespas vers Oliver de S., et counta qil avoit emporte xl summages de mine de plumbe atort, &c.—*Grene.* Nous dioms qe le lieu ou cele mine de quei il se pleint qe fuit fowe cy est en nostre fraunke tenement, et vous dioms qil la fowa en nostre fraunke tenement encountre nostre gree et nostre volunte, par quei nous venimes taunt come il fuit en fowant, et le primes come nostre chatel propre, et demandoms jugement sil puit par taunt tort en nostre persone assigner, saunz ceo qe nous emportames en autre manere sez chateux; prest, &c.—*W. Thorpe.* Par la primes de vostre respouns vous supposez faire un justificacion, et apres vous estes a travers de nostre accion, par quei il vous covient pleder a nous en certein. Et, Sire, ne vous sovent il pas dun brief de Trespas qe fuit porte de ij lastis daranks, et le defendant conust lemporter a un temps al pleintif, mes il dit qil fuit a tiel temps le soen par cause qil avoit com de Werk de Meer? Et fuit ajuge bon plee en oustant ly accion; auxi en cest cas, mesqe le mine fuit fowe en soun fraunke tenement, auxi com il dit, ne pur quant par nostre[3] meynovere la proprete de cel devient a nous, en Trespas.

[1] MS., purprist.

[2] From Harl. (No. 2) alone. The case has not been printed in the old editions.

[3] MS., vostre.

A.D. 1343-4. lawfully take it away from us, but would be put to his action.—Willoughby. The cases are not similar.—And afterwards Sharshulle said to *Grene* :—You cannot join issue that you carried away your own goods, because no one makes a plaint as to them, but you must take issue that you did not carry off his goods as he complains.—Afterwards *Grene* was, by compulsion of the Court, put to take the issue which Sharshulle gave him, &c.

Replevin. (48.) § In a Replevin the defendant by his guardian avowed on the ground that his ancestor, whose heir he is, leased certain tenements to the plaintiff to hold by certain services; and for the rent, &c., for two years, &c., he avowed, &c.—*Rokele*. Sir, we fully admit that we hold of him by such rent as he has said, and that it has been in arrear, as above, but, because he is under age, he could not make us an acquittance even though we had paid him *in pais*, and therefore see here the money ready to pay him, &c., and we pray that this payment be entered on the record.—And the avowant was ready to accept the money.—Kelshulle. But in this plea of Replevin, since he has admitted that the taking was rightful, it seems that the Court has nothing else to do but to award the Return to you, because he need not have an acquittance from you for rent service, &c.—But in the end, because the avowant was ready to accept the money, and did accept it, judgment was given that the plaintiff should be amerced for his false plaint, without any award of the Return, &c.

Note. (49.) § Note that, in Trinity Term in the 16th year,[1] two executors brought a writ of Debt, on which one was summoned and severed, and the other prosecuted his suit, when the defendant alleged that the executor

[1] Y.B., Trin., 16 Edw. III., No. 47, of which case this appears to be an independent report.

Nos. 48, 49.

qele cas ele ne puit de ley la toller a nous, mes serroit mys a saccion.—Wylby. Les cas ne sount pas semblables.—Et puis Schar. dit a *Grene*:—Vous ne poiez pas joyndre en issue qe vous emportastez voz bienz demene, qar de ceux nulle homme se pleint, mes vous covynt prendre lissue qe vous nemportastiz ses bienz come il est pleint.—Apres *Grene*, par chacer de Court, fuit mys de prendre lissue qe Schar. ly dona, &c. A.D. 1343-4.

(48.) [1] § En un *Replegiari* le defendant par sa gardein avowa par cause qe soun auncestre, qi heir il est, &c., lessa certeinz tenementz al pleintif a tener par certeinz services; et pur la rente, &c., de ij anz, &c., il avowe, &c.—*Rok.* Sire, nous conisoms bien qe nous tenoms de luy par tiel rente come il ad dit, et qe cest ad este arrere, *ut supra*, mes pur ceo qil est deinz age il ne nous puit pas faire acquitance mesqe nous luy ussoms paye en pays, pur ceo veiez yci les deners prest de payer, &c., et prioms qe cest paye soit entre en recorde.—Et lavowant fuit prest de les resceivere.—Kels. Mes en ceo plee de *Replegiari*, del houre qil ad conu la prise dreiturel, il semble qe la Court nad autre chose affaire forqe de agarder a vous retourn, qar il ne busoigne pas qil eit acquitance de vous pur rente service, &c.—Mes a dreyn, pur ceo qe lavowaunt fuit prest de resceivere les deners, et les resceut, fuit agarde qe le pleintif fuit amercie pur sa faux pleinte, saunz agarder retourn, &c. *Replegiari.* [Fitz., *Retourne des avers*, 16.]

(49.) [2] § *Nota, Trinitatis xvj*, ij executours porterent brief de Dette, ou lun fuit somons et severe, et lautre suyt avant, ou lautre alleggea qe celuy qe *Nota.*

[1] From Harl. (No. 2) alone. The case has not been printed in the old editions of the Year Books, but has been used by Fitzherbert for his *Abridgment*.

[2] From Harl. (No. 2) alone. The case has not been printed in the old editions.

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A.D 1343-4. who was mentioned in the writ and severed was dead; judgment of the writ, &c. And the other executor said that the deceased executor had been severed, and so the action was his alone, &c.—And afterwards the writ was adjudged good.—And in the same way it would be in the case of a writ of Account.

Debt. (50.) § A writ of Debt was brought against two persons, who appeared, and waged their law that they owed no money to the plaintiff. On the day given to perform the law, one made default, and the other performed his law. And it was adjudged that the writ should abate with regard to all the parties.

Trespass. (51.) § On a writ of Trespass the defendant was convicted of having committed the trespass with force and arms, and he was therefore adjudged to prison, and he now prayed that he might pay a fine to the King and that instead of the imprisonment.—*Gaynesford.* We pray that his body may remain in prison until he has made satisfaction for our damages.—Willoughby. You have recovered your damages, and had execution in another way, and therefore his body shall not remain in prison.—And for that reason they accepted the fine, and let him go.

Deceit. (52.) § A man brought, by attorney, a writ of Deceit in respect of a deceit committeed in Court.—Hillary. We shall not allow it for him unless he appears in his own person, &c.

Replevin. (53.) § The Prior of A. was plaintiff, in respect of his beasts tortiously taken, against one W., who avowed, &c., on the ground that the Prior held the same tenements of one Walter by certain services, which Walter granted the same services to this W., by reason of which grant the Prior attorned as to his fealty, and W. avowed for certain services in arrear.—*Grene.* Sir, we tell you that the Prior did not attorn to him; ready, &c.

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fuit nome en le brief fuit mort; jugement de brief, &c. Et lautre dit qil fuit severe, issint cest accion a nous soul, &c.—Et puis le brief agarde bon.—Et en mesme la manere en brief Dacompt. A.D. 1343-4.

(50.) [1] § Brief de Dette porte vers ij, qe vindrent, et gagerent la ley qe nul deners, &c. A qel jour de faire la ley lun fist defaut, et lautre fist la ley. Et agarde fuit qe le brief sabatera vers toutz, &c. Dette.

(51.) [2] § En un brief de Trespas le defendant fuit atteint, &c., a force et armes, par quei agarde fuit a la prison, et il pria ore qil puit faire fyn al Roy et pur lenprisone.—*Gayn.* Nous prioms qe le corps demurge tanqil eit fait gree pur noz damages.—Wylby. Vous recoverez, et vous avetz execucion en autre voie, par quei soun corps demura pas, &c.—Et par tiel cause il resceiverent la fin, et ly lesserunt aler, &c. Trespas. [Fitz., *Execucion* 54.]

(52.) [2] § Un homme porta brief de Desceite par attourne dun deceite fait en Court.—Hill. Nous nel grantroms pas pur luy sil ne vieigne en propre persone, &c. Deceyte. [Fitz., *Disceit*, 41.]

(53.) [1] § Le Priour de A. fuit pleintif, de ses avers a tort pris, vers un W., qe avowa, &c., par cause qe le Priour mesmes les tenementz tynt dun Wautter par certeinz services, le qel W. mesmes les services graunta a cesty W., par quel graunt le Priour attourna de sa feaute, et pur certeins services arrere il avowe.—*Grene.* Sire, nous vous dioms qe le Priour nattourna pas a ly; prest, &c. Mes vous *Replegiari.*

[1] From Harl. (No. 2) alone. The case has not been printed in the old editions.

[2] From Harl. (No 2) alone. The case has not been printed in the old editions of the Year Books, but has been used by Fitzherbert for his *Abridgment*.

Nos. 54, 55.

A.D. 1343-4. But we tell you that Walter, whom he supposes to be his grantor, died seised of the same services, after whose death one R., son and heir of Walter, released all the right which he had in the same services; judgment whether he can maintain this avowry.—*Richemunde.* That plea is double; one is that the Prior did not attorn, the other that Walter's son released; wherefore let him hold to one.—*Grene.* Against you we take the plea that we did not attorn; but we plead the release in order to free ourselves from any claim by inheritance with regard to Walter's heir on any future occasion when he may avow.—See, as to the like matter, Hilary Term in the 10th year.—*R. Thorpe.* He did attorn; ready, &c.

Writ of Account. (54.) § Robert de E. brought his writ of Account against B., whereupon the Sheriff returned that B. was not found, but on the same day B. appeared and prayed that the *Capias* might not issue against him, &c., because he was ready, &c., and prayed that Robert might be called. And the Court caused Robert to be called, and he did not appear, and therefore the Court adjudged that he and his pledges should be in mercy, and this notwithstanding that the defendant had not a day in Court.—The contrary was decided in Michaelmas Term in the 10th year.—But I think they recorded the non-suit for the advantage of the King, as appears in Michaelmas Term in the 15th year.

Trespass. (55.) § The Prior of G. brought his writ of Trespass against Richard de E. and several others, because they distrained him by beasts of his plough, whereas they could have found other sufficient distress, contrary to the Statute.[1] Process was continued until Richard was outlawed. Afterwards he surrendered, and he had a charter of pardon, and sued a *Scire facias*, according

[1] *Incerti Temporis*, or 51 Hen. III., Stat. 4. (*De Districtione Scaccarii.*)

Nos. 54, 55.

dioms qe Wauter, qil suppose estre soun grauntour, murust seisi de mesmes les services, apres qi mort un R., fitz et heir Wauter, relessa tout le dreit qil avoit en mesmes les services; jugement, &c., cest avowere mayntener.—*Rich.* Cest plee est double: un qe le Priour nattourna pas, un autre qe le fitz Wauter relessa; par quei se preigne al un.—*Grene.* Devers vous nous pernoms pur plee qe nous nattournames pas; mes nous pledoms le reles pur nous desheriter vers leir Wauter autre foitz quant il avowera.—*Vide de tali materia Hillarii x°.*—*R. Thorpe.* Il attourna; prest, &c. A.D. 1343-4.

(54.) [1] § Robert de E. porta soun brief Dacompte vers B., ou le Vicounte retourna qe B. ne fuit pas trove, mes a mesme le jour B. vint et pria qe le *Capias* ne issit pas devers luy, &c., par quei il fuit prest, &c., et pria qe R. fuit demande. Et la Court ly fist demander, et il ne vint pas, par quei la Court agarda qe ly et ses plegges en la mercy, et *non obstante* qe le defendant navoit pas jour en Court.—*Contrarium Michaelis x°.*—Mes jeo croy qil recorderent la noun suite pur lavantage du Roy, *ut patet Michaelis xv*, &c. Dacompte.

(55.) [2] § Le Priour de G. porta soun brief de Trespas vers Richard de E. et plusours autres, de ceo qe ly destreindrent par bestes de soun carue, la ou il puit avoir trove autre destresse sufficiaunt, et encountre lestatut. Proses, &c., taunqil fuit utlage. Puis il se rendi, et avoit chartre de pardoun, et suist un *Scire facias secundum*, &c., retournable a Trespas. [Fitz., *Respond*, 16.]

[1] From Harl (No. 2) alone. The case has not been printed in the old editions.

[2] From Harl. (No. 2) alone. The case has not been printed in the old editions of the Year Books, but has been used by Fitzherbert for his *Abridgment*.

No. 55.

A.D. 1343-4. to the Statute,[1] returnable now. But the writ was not returned, but Richard appeared, and prayed that the party might count against him, because the others named in the writ came by the Exigent, and the Prior was ready to count against them, and he therefore prayed that the Prior might count against him jointly with the others. —Hillary. He cannot do that, for you have not a day in Court because the *Scire facias* is not served.—*R. Thorpe.* We have a day on the roll, so that it would be no mischief if he counted against us, since he is here present, and the original writ was never abated by our outlawry, because it was always continued against the others; wherefore, &c.—But afterwards Hillary, with the assent of his fellow-justices, said that Richard must sue a new *Scire facias.*—And he was allowed to be out of custody with the same mainpernors as he had at the beginning.—And the Prior counted against the others alone.—*R. Thorpe* said that the Prior held of some of those named in the writ, as in right of their wives, by certain services, for which services in arrear they took the beasts, in respect of which he makes his plaint, by their bailiffs, because they could not find any other distress; ready, &c. And as to the others they came as their bailiffs. —*W. Thorpe.* By our writ we suppose that they could have found other distress, and inasmuch as you say that you could not have found any other distress, and are so at a traverse of our writ, we pray that this be taken for the issue of the plea, and that the rest of your plea be not entered.—*R. Thorpe.* In case your plea had purported that the Sheriff had made deliverance of your beasts, and we had made such a justification as we have now made, it would be entered in order to ground the award of the Return for us; wherefore also it must be so in this case in order to give us a cause for keeping the beasts until satisfaction be made to us, &c.

[1] 5 Edw. III., c. 12.

No. 55.

ore. Mes le brief ne fuit pas retourne, mes Richard vint et pria qe la partie countast devers ly, qar les autres nomes en le brief vindrent par Lexigende, et vers queux le Priour fuit prest dacompter, par quei il pria qil counta devers luy joynt ove les autres.—Hill. Ceo ne puit il pas faire, qar vous navetz pas jour en Court pur ceo qe le *Scire facias* nest pas servy.—*R. Thorpe.* Nous avoms jour en roulle qil nest pas meschief mesqe il counta devers nous del houre qe est en presence, et loriginal ne fuit unqe abatu par nostre utlagerie, qar il fuit tout temps continue vers les autres; par quei, &c.—Me puis Hill., par assent de ses compaignons, dit qil suyt un novel *Scire facias.*—Et fuit lesse par mesmes les meynpernours qil avoit a comencement.—Et le Priour counta vers les autres soulement.—*R. Thorpe* dit qe le Priour tyent des uns nomes en le brief, come de dreit lour femmes, par certeins services, pur queux services arrere il prist les bestes, par lour baillif, des queux il se pleint, pur ceo qil ne pount avoir autre destresse trove; prest, &c. Et quant a les autres ils vindrent come lour baillifs, &c.—*W. Thorpe.* Par nostre brief nous supposoms qil purroint autre destresse avoir trove, et en taunt qe vous ditez qe vous ne purrez autre destresse avoir trove, et en taunt vous estes a travers de nostre brief [nous prioms] qil serra pris pur issu de plee saunz ceo qe pluis de vostre plee serra entre.—*R. Thorpe.* En cas qe vostre plee ust[1] volu qe le Vicounte ust[1] fait la deliveraunce de voz bestez, et nous ussoms fait tiel justificacion come nous avoms ore fait, il serroit entre pur nous agarder retourn; par quei auxi covynt il issy par cause de nous doner qe nous le pooms restenir tanqe gree nous soit fait, &c. A.D. 1343-4.

[1] MS., est.

No. 56.

A.D. 1343-4. Right.

(56.) § A writ of Right was brought against a man and his wife, and they joined the mise, and afterwards made default, wherefore *Moubray* prayed final judgment against them.—Stonore. This is thrown in for the purpose of ousting the wife from her *Cui in vita*, and so to the disherison of the wife through her husband's default; wherefore we will not give judgment. But keep your days at the Quinzaine of Trinity, and in the meantime we will take pains that some remedy may be ordained in a like case.—The contrary in Easter Term in the 9th year.

No. 56.

A.D. 1343-4. Droit.

(56.) [1] § Brief de Droit fuit porte vers un homme et sa femme, et joyndrent la mise, et apres firent defaut, par quei *Moubray* pria jugement final vers eux.—Ston. Cest jettu pur ouster la femme de *Cui in vita*, par taunt a desheritaunce la femme par la defaut soun baroun; par quei nous ne voloms pas doner jugement. Mes gardez voz jours a la xv la Trinite, et en le meen temps nous mettroms nostre peyne qe remedy serra ordeygne en tiel cas.—*Contrarium anno ix° Termino Paschæ.*[2]

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[1] From Harl. (No. 2) alone. The report has not been printed in the old editions.

[2] A case which in other MSS. appears as No. 4 of the next following Easter Term (a *Scire facias* to have execution of a fine) appears in this Hilary Term in the Lincoln's Inn MS. As, however, the record has been found in Easter Term, the report will be printed there.

APPENDIX.

APPENDIX.

RECORD OF THE CASE No. 8 OF HILARY TERM, 18 EDWARD III., SO FAR AS IT WAS HEARD IN THE KING'S BENCH.

(*Placita coram Rege*, HILARY, 18 EDWARD III., "REX," R°. 11.)

WYGORNIA. Dominus Rex mandavit dilecto sibi in Christo Abbati de Pershore breve suum clausum in hæc verba :— Edwardus Dei gratia Rex Angliæ et Franciæ, et Dominus Hiberniæ, dilecto sibi in Christo Abbati de Pershore salutem. Cum pluries per literas nostras vos rogaverimus quod dilectum nobis Thomam de Mussendene, pro bono et gratuito servitio nobis per ipsum impenso, in Domum vestram prædictam admitteretis, et ei talem sustentationem in eadem Domo vestra, quoad viveret, percipiendam qualem Willelmus Pitte defunctus ad rogatum nostrum habuit in eadem concederetis, literasque vestras patentes de eadem sustentatione sigillo vestro communi signatas mentionem de his quæ de dicta Domo vestra sic percipiet facientes sibi fieri faceretis, vel causam nobis significaretis quare mandato nostro alias vobis inde directo minime paruistis, ac vos, spretis mandatis nostris prædictis, ut accepimus, præmissa facere, vel causam quare ea facere noluistis vel non potuistis nobis significare hactenus non curaveritis, in nostri ac mandatorum nostrorum prædictorum contemptum manifestum, et ipsius Thomæ damnum non modicum et gravamen, de quo miramur quamplurimum et movemur, vos igitur adhuc mandamus quod, ipsum Thomam in Domum vestram prædictam admittentes, ei talem sustentationem de eadem Domo vestra, quoad vixerit, percipiendam qualem prædictus Willelmus sic habuit in eadem concedatis, literasque vestras patentes de eadem sustentatione sigillo vestro communi signatas mentionem de his que de Domo vestra prædicta sic percipiet facientes sibi fieri faciatis juxta tenorem mandatorum nostrorum pluries vobis inde directorum, vel vos præfati Abbas sitis coram nobis in Octabis Sancti Hillarii ubicumque tunc fuerimus in Anglia ostensuri quare mandatis nostris prædictis toties vobis inde directis parere contempsistis. Et habeatis ibi hoc breve. Teste me ipso apud Westmonasterium vij die Decembris anno regni nostri Angliæ

decimo septimo, regni vero nostri Franciæ quarto. Quod quidem breve prædictus Abbas, per Thomam de Thorpe attornatum suum, detulit hic in Curia ad diem supradictum, asserens nunquam aliquod aliud breve ad præmissa faciendum sibi liberatum fuisse, &c., paratusque domino Regi in præmissis respondere, &c. Et super hoc quæsitum a Johanne de Lincolnia, qui sequitur pro domino Rege, siquam habeat informationem pro domino Rege in hac parte, &c., qui dicit quod aliam informationem quam in prædicto brevi superius exprimitur nondum habet, nec informatur, &c., per quod datus est dies præfato Abbati in Octabis Purificationis beatæ Mariæ ubicumque, &c. Et sciendum quod breve prædictum affilatur inter brevia de Norfolcia de Octabis Sancti Hillarii hoc anno, &c. Ad quas Octabas Purificationis coram domino Rege venit prædictus Abbas per attornatum suum prædictum, et quia dominus Rex nondum informatur, &c., dies datus est eis coram domino Rege a die Paschæ in xv dies ubicumque, &c., in eodem statu quo nunc, &c.

Ad quem diem coram domino Rege apud Westmonasterium venit tam prædictus Johannes de Lincolnia, qui sequitur pro domino Rege, quam prædictus Abbas per prædictum attornatum suum.

Et prædictus Johannes, qui sequitur pro domino Rege, dicit quod cum dominus Rex per literas suas prædictum Abbatem pluries rogaverit quod dilectum sibi præfatum Thomam de Mussendene in Domum suam prædictam admitteret, et ei talem sustentationem in eadem Domo, quoad viveret, percipiendam qualem prædictus Willelmus Putte defunctus habuit in eadem concederet, videlicet duas robas de secta armigerorum ipsius Abbatis pro ipso Thoma annuatim percipiendas, et unam robam pro garcione suo de secta garcionum prædicti Abbatis per annum, et pro esculentis et poculentis et omnibus aliis necessariis decem marcas per annum, necnon quandam cameram competentem pro statu suo, quotiens et quando ibidem morari voluerit, ad totam vitam ipsius Thomæ Et quod idem Abbas literas suas patentes de eadem sustentatione sigillo suo communi signatas mentionem de his quæ prædictus Thomas de Domo sua prædicta sic perciperet facientes eidem Thomæ fieri faceret, vel causam Regi significaret quare mandato Regis alias sibi inde directo minime paruit, &c., Quod quidem breve liberatum fuit præfato Abbati apud Pershore duodecimo die Novembris anno regni Regis nunc Angliæ decimo septimo, in præsentia Thomæ de Blithe et Johannis de Bartone, Idem Abbas, spretis mandatis Regis prædictis, ut accepit, præmissa facere, vel causam quare ea facere noluit, vel non potuit, Regi significare hactenus non curavit, in Regis ac mandatorum

suorum prædictorum contemptum mille marcarum, et prædicti Thomæ [damnum] non modicum et gravamen. Et hoc offert verificare pro domino Rege, &c.

Et Abbas, per attornatum suum prædictum, venit et defendit vim et injuriam quando, &c., et quicquid est in contemptu domini Regis, et dicit quod nunquam aliquod aliud breve quam breve prædictum quod superius retornatum est ad præmissa faciendum eidem Abbati liberatum fuit, et hoc prætendit verificare, &c.—Et dictus Johannes qui sequitur similiter, &c.—Dicit etiam ulterius quod ipse tenet Abbathiam suam prædictam in pura et perpetua eleemosyna ex fundatione progenitorum domini Regis, et omnes possessiones suas præter duo feoda militum, videlicet manerium Beoleye Yerdeleye Goldicote et Walcote, quæ Johannes filius Guidonis de Bello Campo, quondam Comitis Warrewikiæ, Hugo de Cokeseye, et Johannes le Blake tenent de ipso Abbate per servitium militare. Et idem Abbas tenet ulterius eadem maneria de domino Rege in capite per eadem servitia, absque hoc quod idem Abbas aut prædecessores sui, ratione fundationis prædictæ, aut etiam ratione maneriorum prædictorum, unquam aliquem servientem Regis, ad mandata sua vel progenitorum suorum, ad aliquam sustentationem in Abbathia prædicta percipiendam admiserint, vel ipse Abbas aut prædecessores sui unquam ad hoc tenebantur. Et hoc paratus est verifi are, &c. Et quo ad hoc quod prædictus Willelmus Pytte, ad rogatum domini Regis nunc, ad hujusmodi sustentationem in Domum prædictam percipiendam admissus fuit, &c., dicit quod idem Willelmus, ad requisitionem domini Regis et dominæ Isabellæ Reginæ Angliæ, matris suæ, ad sustentationem suam fuit admissus in Abbathiam prædictam per viam rogaminis, et non jure ipsius Regis, &c., prout per literas ipsius Regis patentes, quas idem Abbas profert hic in Curia, plenius poterit apparere, quarum tenor sequitur in hæc verba:—Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, et Dux Aquitaniæ, omnibus ad quos præsentes literæ pervenerint salutem. Sciatis quod, cum dilecti nobis in Christo Abbas et Conventus de Pershore ad requisitionem nostram concessissent dilecto nobis Willelmo del Putte, servienti Botillario Isabellæ Reginæ Angliæ, matris nostræ carissimæ, quandam certam sustentationem de dicta Domo sua ad totam vitam suam percipiendam, prout in literis patentibus ipsorum Abbatis et Conventus præfato Willelmo inde confectis plenius continetur, Nos, indemnitati eorundem Abbatis et Conventus, ne, prætextu concessionis prædictæ, eis seu successoribus suis aut Domui eorundem futuris temporibus præjudicetur volentes prospicere in hac parte, volumus et concedimus, pro nobis et heredibus nostris, quod prædicta con-

cessio eorundem Abbatis et Conventus sic ad requisitionem nostram gratiose facta sibi seu successoribus suis aut Domui eorundum alias non cedat in onerationem seu præjudicium, vel futuris temporibus trahatur in consequentiam, nec quod ipsi seu successores sui, prætextu concessionis sustentationis prædictæ, alias de hujusmodi sustentatione per nos vel heredes nostros onerentur. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Wygorniam vij die Januarii anno regni nostri tertio. Per quod non intendit quod dominus Rex velit aut debeat ipsum Abbatem et Domum suam prædictam de aliqua hujusmodi sustentatione invenienda onerare; et petit judicium, &c.

Et quia videtur Curiæ expediens esse quod dominus Rex plenius informetur pro jure suo manutenendo in hac parte, &c., datus est dies tam præfato Johanni de Lincolnia, qui sequitur pro domino Rege, quam præfato Abbati, per attornatum suum prædictum, coram domino Rege a die Sanctæ Trinitatis in xv dies ubicumque, &c., salvis partibus rationibus suis hinc inde dicendis, &c.

Ad quem diem coram Rege apud Westmonasterium venit tam prædictus Johannes, qui sequitur pro domino Rege, quam prædictus Abbas, per attornatum suum prædictum.

Et prædictus Johannes qui sequitur, &c., dicit quod, licet dominus Rex per literas suas prædictas præfatis Abbati et Conventui concesserit quod ipsi aut successores sui, prætextu concessionis sustentationis prædictæ prædicto Willelmo de Pitte sic factæ, per dominum Regem aut heredes suos alias de sustentatione hujusmodi non onerentur, nec quod concessio prædicta cedat eis in onerationem vel præjudicium, vel futuris temporibus trahatur in consequentiam, &c., per hoc tamen dominus Rex a jure suo in hac parte præcludi non debet, dummodo seisinam suam et progenitorum suorum ut in jure suo de hujusmodi corrodio pro servientibus suis in Abbathia prædicta habendo rationabiliter monstrare poterit et approbare de tempore præcedenti, unde dicit quod quidam Robertus Mape, tempore domini Regis H., proavi domini Regis qui nunc est, ad sustentationem suam in Abbathia prædicta habendam, capiendo decem marcas et duas robas pro se ipso, et unam robam pro garcione suo, pro omnibus necessariis, ad mandatum prædicti domini Regis H. fuit admissus, &c.; et post mortem prædicti Roberti Mape quidam Petrus Lewere tempore ejusdem Regis H., ad mandatum ipsius Regis H., consimilem sustentationem habuit in eadem; et quod quidam Willelmus de Ramptone, Edmundus de la Panetrie, et Gilbertus le Hauberger, videlicet, quilibet eorum subsequenter post alium, tempore domini E. dudum Regis Angliæ, avi domini Regis qui nunc est, ad mandata ipsius Regis avi, &c.,

consimilem sustentationem habuerunt in Abbathia prædicta ut in jure Regis, &c.; et quod quidam Philippus Beauveys, Simon de Redynges, et Magister Johannes de la Marche, videlicet quilibet eorum subsequenter post alium, tempore domini E. patris domini Regis qui nunc est, ad mandatum patris, &c., consimilem sustentationem habuerunt, nec non cameram pro statu suo competentem in Abbathia prædicta, ut in jure Regis, &c. Et postea quidam Johannes de Kekynwyche, Fauconer, et Willelmus de Pitte, videlicet alter eorum immediate post alium tempore domini Regis nunc, ad mandata sua, videlicet prædictus Willelmus de Pitte ad hujusmodi sustentationem qualem prædictus Robertus Mape et alii superius nominati in Abbathia prædicta habuerunt, et prædictus Willelmus [*sic*] de Kekynwyche ad talem sustentationem in victu et vestitu et aliis necessariis suis qualem aliquis monchus [*sic*] ejusdem Domus per annum percepit admissi fuerunt in eadem, ut in jure ipsius Regis, &c., per quod non intendit quod prædictus Abbas, prætextu literarum domini Regis prædictarum de indemnitate, erga dominum Regem se excusare possit quin ipse et Domus sua prædicta ad sustentationem sive corrodium prædicta inveniendum debeant onerari, et petit judicium, &c.

Et prædictus Abbas dicit quod prædicti Robertus Mape, Petrus Lewere, Willelmus de Ramptone, Edmundus de la Panetrye, Gilbertus le Hauberger, Philippus Beauveys, Simon de Redynges, Magister Johannes de la Marche, et Johannes de Kekynwyche, vel aliquis eorum, nunquam aliquam sustentationem sive corrodium in Abbathia prædicta ad rogamina vel ad mandata domini Regis nunc aut progenitorum suorum habuerunt, vel admissi fuerunt, prout dominus Rex superius supponit, &c., et hoc paratus est verificare, &c.

Et Johannes, qui sequitur pro domino Rege, dicit quod prædicti Robertus Mape, et alii prænominati sustentationem suam in Abbathia prædicta habuerunt ad mandata domini Regis et progenitorum suorum in forma prædicta, ut prædictum est. Et hoc paratus est verificare pro domino Rege, &c.

Ideo veniat inde Jurata coram domino Rege in Octabis Sancti Michaelis ubicumque, &c.

Postea, continuato inde processu inter dominum Regem et præfatum Abbatem per juratas positas in respectum de die in diem, et de termino in terminum, usque a die Paschæ in xv dies anno regni Regis nunc Angliæ decimo nono, Ad quem diem venit tam prædictus Johannes, qui sequitur pro domino Rege, quam prædictus Abbas, per attornatum suum prædictum. Et Jurata non venit, &c., per quod Jurata ponitur in respectum usque in Crastino Sancti Johannis Baptistæ ubicumque, &c., nisi R. Hillary, unus Justiciariorum de Communi Banco prius

apud Duddeleye die Sabbati in Vigilia Sanctæ Trinitatis venerit. Et pro defectu juratorum, quia nullus, &c., ideo Vicecomes habeat corpora, &c., et Vicecomes apponat sex tam milites quam alios, &c., prout patet per rotulum de eodem termino Paschæ, Rotulo xx, inter placita Regis. Ad quem Crastinum Sancti Johannis Baptistæ venit tam prædictus Johannes, qui sequitur pro domino Rege, quam prædictus Abbas, per attornatum suum prædictum. Et prædictus Rogerus Hillary, coram quo, &c., prædicta jurata capta fuit, per breve domini Regis quod residet in ligula brevium de præceptis de termino Paschæ anno regni Regis nunc decimo nono, protulit hic in Curia recordum veredicti Inquisitionis prædictæ in hæc verba:—Postea die et loco prædictis coram Rogero Hillary, associato sibi Willelmo de Duddeleye per formam Statuti, venit tam quidam Nicholaus de Crickelade, qui sequitur tam pro domino Rege quam pro prædicto Thoma, quam etiam prædictus Abbas in propria persona sua. Et similiter juratores ad hoc triati et jurati veniunt, qui dicunt super sacramentum suum quod prædicti Robertus Mape, Petrus Lewere, Willelmus Putte, vel Johannes de Kekynwiche, vel aliquis eorum sive aliorum, nunquam aliquam sustentationem sive corrodium in Abbathia prædicta ad mandata domini Regis nunc ant progenitorum suorum habuerunt vel admissi fuerunt pro sustentatione illa habenda, prout dominus Rex et prædictus Thomas superius supponunt, sed tantum prædictus Willelmus Putte, et hoc ad rogamina domini Regis nunc et Isabellæ Reginæ Angliæ matris suæ, et non de jure ipsius Regis. Ideo, &c.

Et, quia Curia hic nondum avisatur ad judicium reddendum super veredicto prædicto, datus est dies tam præfato Johanni, qui sequitur pro domino Rege, quam præfato Abbati, per attornatum suum prædictum, coram domino Rege a die Sancti Michaelis in xv dies ubicumque, &c., in eodem statu quo nunc.

Ad quem diem coram domino Rege apud Westmonasterium venit tam prædictus Johannes, qui sequitur pro domino Rege, quam prædictus Abbas, per attornatum suum prædictum.

Et inspecto et examinato veredicto Inquisitionis prædictæ videtur Curiæ hic quod Inquisitio prædicta minus rite et insufficienter capta est, eo quod nulla fit expressa mentio in veredicto prædicto de nominibus aut personis prædictorum Willelmi de Ramptone, Edmundi de la Panetrye, Gilberti Hauberger, Philippi Beauveys, Simonis de Redynges, vel Magistri Johannis de la Marche superius nominatorum, quos dominus Rex in narratione sua supponit ad mandata progenitorum suorum admissos fuisse in Abbathia prædicta, &c., utrum ipsi Willelmus de Ramtone, Edmundus, Philippus, Simon et

Magister Johannes, vel aliquis eorum hujusmodi sustentationem habuerunt vel habuit in Abbathia prædicta ad mandata progenitorum domini Regis vel alio modo, nec ne, nec etiam fit mentio in veredicto prædicto utrum prædictus Abbas culpabilis sit de contemptu prædicto sibi imposito de receptione brevium domini Regis ex causa prædicta sibi directorum, nec ne, et expediens est et necesse quod Curia de præmissis plenius certioretur prius quam ad judicium super veredicto prædicto reddendum procedatur, &c.

Et super hoc, ante judicium inde redditum, venit hic in Curia prædictus Rogerus Hillary coram quo, &c., et recordatur veredictum Juratæ prædictæ coram ipso captum fuisse in hæc verba:—Postea die et loco infra contentis coram Rogero Hillary, associato sibi Willelmo de Duddeleye per formam Statuti, &c., venit tam quidam Nicholaus de Criklade, qui sequitur tam pro domino Rege quam pro prædicto Thoma de Mussendene, quam prædictus Abbas in propria persona sua, et similiter juratores ad hoc triati et jurati, qui dicunt super sacramentum suum quod nec Robertus Mape, Petrus Lewere, tempore domini H. dudum Regis Angliæ proavi domini Regis nunc, nec Willelmus de Ramptone, Edmundus de la Panetrye, Gilbertus le Hauberger tempore domini E. quondam Regis Angliæ avi domini Regis nunc, nec Philippus Beauveys, Simon de Redynges, Magister Johannes de la Marche tempore domini Regis E. nuper Regis Angliæ, patris domini Regis nunc, nec etiam Johannes de Kekynwiche, Fauconer, ad mandatum domini Regis nunc, nec aliquis eorum vel aliorum unquam aliquam sustentationem sive corrodium in Abbathia de Pershore ad mandata domini Regis aut aliquorum progenitorum suorum habuerunt, vel in Abbathia prædicta ad hujusmodi sustentationem inibi habendam unquam admissi fuerunt, prout idem dominus Rex et prædictus Thomas de Mussendene supra nominatus, qui pro ipso domino Rege sequitur [*sic*], supponunt, immo tantummodo Willelmus Putte supra nominatus, et hoc ad specialem rogatum domini Regis nunc et dominæ Isabellæ Reginæ Angliæ, matris suæ, et non in jure ipsius Regis. Et idem Rogerus Hillary ulterius recordatur quod præfixit diem partibus prædictis coram domino Rege ad præfatam quindenam Sancti Michaelis, ubicumque, &c., de audiendo inde judicium suum, &c.

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Process in Aid-prayer, where it has been alleged that the prayee is under age, 360-362.
If, in Replevin, avowry be made upon a stranger, who prays aid of another stranger, the aid will not be granted either before or after issue has been joined on the plea *hors de son fee*, unless some special matter be pleaded, 528-532.
If in Annuity it be alleged that a Bishop has granted the annuity, and that the grant has been confirmed by the Dean and Chapter, or the Prior and Convent, the Bishop's successor may have aid of the Dean and Chapter, or of the Prior and Convent, 534; 537, note 6; 540.

Aid of the King:
Where a Dean has had aid of the King on a writ of annuity, and recovery has been had against him, his successor may again have the aid when a *Scire facias* is brought to have execution of the judgment, 226.

Amendment:
Of roll by Justices, to save delay, 326.
Under the Stat. 14 Edw. III., St. 1, c. 6, 538.

Amercement:
For a false plaint in Assise of Novel Disseisin pardoned when the plaintiff was under age, 150.

Ancient Demesne:
Jurisdiction of Courts of, in relation to realty and personalty, 142, 146.
Court of, cannot take cognisance of matters done against the peace, 142.
If the King divests himself, and makes a feoffment, it becomes frank fee, 144, 148.
Writ of *Recordari facias loquelam*, for removal of cause from a Court of, into the Common Bench, 380.
When the Sheriff returns to a writ of *Recordari facias loquelam*, for removal of a cause from a Court of Ancient Demesne into the Common Bench, that the bailiff and suitors have refused to make the record and to deliver the little writ of Right, but that he has given the parties a day in the Common Bench, and when the demandant fails to appear, the Court will not give judgment on his non-suit, but will award the Grand Distress against the suitors of the Court of Ancient Demesne to make the record, and against the bailiff to deliver the little writ of Right, 452-460; 459, note 14.

Annuity:
If the annuity be claimed from a parson by prescription, and seisin be alleged by his hand and those of his predecessors, he cannot traverse the seisin by his own hand alone, but must traverse the seisin by his own hand and those of all his predecessors, 358-360.
See Abatement of Writs; Aid; Aid of the King.

Assise:
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Attachment on Prohibition:
In respect of an action of Trespass in which one was summoned to appear before the Official of the Bishop of London in St. Paul's Church, 466; 467, note 1.

ATTAINT:
Mode of pleading in, before and after the Statute 1 Edw. III., St. 1, c. 6, 104.

ATTORNEY:
One who has been admitted to defend his right on the default of a tenant may, after issue joined, make an attorney [by writ] in the Chancery, but not [by bill] in the Common Bench, 34.
An attorney who confesses deceit in having forged a writ of seisin is committed to prison in accordance with Westm. 1, c. 29, and upon the expiration of the term of imprisonment is brought into Court and there forbidden to sue thenceforth any writ or any business for any person in that Court, 140; 141, note 2.
See DECEIT.

AUDITA QUERELA:
Is the only remedy where a lord has lost his court, or a remainder-man his estate, through a recovery on a *Præcipe in capite* fraudulently brought, 280-286.
See STATUTE MERCHANT.

AVOWRY:
See REPLEVIN.

B

BARON AND FEME:
If a woman bring an Assise of Novel Disseisin, describing herself as late wife of her first husband, both her first and her second husband being dead, and a fine purporting to be levied by her as *feme sole* while she was covert of her second husband be pleaded in bar, *quære* whether the plea is good, as she is now, as purported in the fine, a *feme sole*, though there is no doubt that while the husband was living the fine would have been invalid, 156-170.

BASTARDY:
Quære whether bastardy can be alleged after view, and *quære* whether it can be alleged by the issue in tail of *mulier puisne* against the issue of *bastard eigne* who has entered and died seised, 242.
When tried in Court Christian, and when not, 260.
Where, in a plea of land, the tenant alleges that the demandant is a bastard, and the Bishop certifies that he is legitimate, and the tenant makes default when there is a Resummons, the demandant has judgment to recover seisin, 262.
See VOUCHER.

C

CESSAVIT:
Tender and security in, under the Statute of Gloucester, c. 4, 232-234.
Lies for suit of court, 232.

CHALLENGE:
If in Assise touching tenements in the geldable the Sheriff return, as his own, a panel including (with others) recognitors belonging to a Liberty which extends into the Hundred, without making any mention of the bailiff of the Liberty who, having the return of writs, has summoned those recognitors and given them view, the array will, upon challenged, be quashed. A writ will then issue to the Sheriff to summon anew twelve recognitors from the geldable, 88-94; 91, note 2; 93, note 4.
If a bailiff of one of the Rapes of Sussex be plaintiff in Debt, and the panel be composed entirely of men of that Rape, there is no good challenge on that account, if the Sheriff has put their names into the panel, and has caused them to be summoned, 622-624.

Challenge—*cont.*
If a contract to pay the wages of a parker in one Rape has been made in another Rape, and the jurors to try an action of Debt are of the latter Rape, there is no good challenge of the array, as they are properly brought from the place in which the contract was made, 624.

Chantry:
Quare impedit in respect of presentation to, 326-330.

Cognisance:
See Replevin.

Colour:
In Assise of Novel Disseisin, 152.

Common Bench:
The King's Clerk in the, delivers to the son of a deceased plaintiff in Debt the obligation on which the action was founded, 71, note 9.

Corody:
The King's command to admit to a corody in an Abbey, and proceedings thereon in Chancery, on the Abbot's refusal, 436-440.
Proceedings thereon in the King's Bench, 643-649.

Council, the:
Consulted by the Chief Justice of the Common Bench touching the execution of a judgment, 12.

County-Court:
Presentment of blood-shed in, when there is no Sheriff's Turn, and *quære* also by prescription, when the Sheriff's Turn has been established only within time of memory, 212, 226.

Cui in vita:
When issue has been joined in the Common Bench, and a verdict has been found for the demandant at *Nisi prius*, the Court will not listen to a plea in abatement of the writ to the effect that, pending the *Cui in vita*, the tenant has lost the land by

Cui in vita—*cont.*
recovery in an action of Formedon, but will give judgment, on the verdict, for the demandant to recover seisin. In like manner where the tenant has lost the land by recovery in an action of *Sur cui in vita*, pending a Formedon, the Court will give judgment for the demandant to recover on a verdict in the latter action, 204-208.
The Statute Westm. 2, c. 40, does not apply to a vouchee under age unless he is the husband's heir, 258.
May be brought on the ground of the wife's seisin, even though it may have been found by a previous Assise of Novel Disseisin that she was not seised, 318-320.
See Receipt; Right.

D

Damages:
In Detinue. *See* Detinue.
In Debt. *See* Debt.

Day:
A day of grace (or day within the time limited by Stat. Marlb., c. 12) is not granted in *Quare incumbravit*, 624-626.

Dean and Chapter:
Relations of, 326-330.

Debt:
If executors bring the action, and the testator's acquittance, of which *profert* has been made, be found to be false, they will recover damages, but only for the time subsequent to the testator's death, and not for the whole time since the debt was incurred, 4.
If a lease be made to a man and his wife for their lives upon condition that, if the rent be in arrear upon the death of either of them, it shall

DEBT—*cont.*
be lawful for the lessor to distrain, and carry off the distress, and detain it as forfeit, and if, after the wife's death, the lessor cannot find anything whereof to levy a distress, because the husband has removed all his goods, an action of Debt will lie, although the lessor may have entered upon the land, and he will recover his debt and damages, 62-70; 67, note 4; 564-570.
In an action of Debt on simple contract (without specialty) the mention of the Suit (or *Secta*) is a mere form. The Suit will not be examined if the defendant pray that it may be, and he will not afterwards be allowed to deny the debt, but judgment will be given against him, 72-74.
When in Debt on obligation the obligation has been denied, and a jury has found for the plaintiff, and the defendant has been imprisoned for the denial, he shall not remain in prison after execution has been sued by *Elegit* or *Fieri facias*, but may make a fine with the King, 242-244.
Execution in, against a clerk, 244, 246.
If the defendant wage his law that he owes the plaintiff nothing, and then make default, the plaintiff will recover, together with his debt, damages not as alleged in his declaration, but as assessed by the Court, 622.
Action of, for arrears of a parker's wages, 622-624.
See ABATEMENT OF WRITS; EXECUTORS.

DEBTOR:
Imprisonment of. *See* DEBT.

DECEIT:
The plaint is made in respect of a deceit committed in Court, and can be maintained although the record has been cancelled, 136-138.

DECEIT—*cont.*
Where the defendant, being an attorney, confesses that he has forged a writ of seisin to oust a man from his land, he is committed to prison in accordance with the Statute Westm. 1, c. 29, and the plaintiff recovers damages, 138-140.
When a writ of *Præcipe in capite* has been fraudulently brought against a tenant for life and a remainderman by collusion between the tenant for life and the demandants, and an unknown person has been procured to answer as attorney for the tenant for life and remainderman without the knowledge of the latter, and judgment has been given for the demandants, a judicial writ of Deceit will be of no avail except for the recovery of damages, and, if the intention is to revest the estates, an *Audita Querela* reciting all the facts must be sued, 280-286.
If any one wishes to bring a writ of Deceit in respect of a deceit committed in Court he must appear in his own person, and not by attorney, 632.

DETINUE:
Where detinue of a charter is found by verdict, judgment is given for the plaintiff to recover it together with damages, and the defendant is distrained to deliver it up, even though he may have burnt it, 2.
When two persons have delivered to a third a writing on certain conditions, and the two bring an action of Detinue against him, and he is willing to deliver the writing to whomsoever the Court may adjudge, and one of the parties to the conditions fails to appear, a *Scire facias* issues to warn that party, failing whose appearance after garnishment, the writing is delivered to the other party who appears in person, 390.

DETINUE—*cont.*
If an action of Detinue be brought against executors in respect of a chattel delivered to the testator, and one of them appears after the Grand Distress, and the others do not, the one who appears must answer alone, as in action of Debt, 510-512; 516-518.
The executors must answer as to the detinue though there be no specialty to show the bailment to the testator, though it is otherwise as to a debt, 512-514; 518-520.

DISCONTINUANCE:
See JURATA UTRUM; PROTECTION.

DISTRESS:
Rescous of, 468-472.

DOWER:
If in an action of Dower the late husband's heir be vouched, and plead by guardian that he is in wardship, and issue be joined thereon, the demandant must wait until the issue be tried before having seisin of the land, unless the voucher be in a foreign county, 48-52.
Trial by witnesses in, where the husband is alleged to be living, 118.
It is a good bar for the tenant to plead that he recovered the tenements out of which dower is demanded by an action of Formedon confessed by the woman and her second husband, 208-210.
Issue as to tender of, 252.
Voucher in. *See* VOUCHER.
Days given in Court in action of, 418-420.
Action of, brought in the Court of Hustings of London, 424.
When the issue is that the demandant has not been lawfully wedded, and the Bishop certifies that she has, and the tenant afterwards makes default, judgment is given for the demandant to have seisin, 434.
See ABATEMENT OF WRITS; SCIRE FACIAS.

E

ENTRY *dum non fuit compos mentis*:
Pleadings on, 14-18.

ENTRY, *in consimili casu*:
Non-age of demandant not pleadable in, 444-446; 448.
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ENTRY, *sur disseisin*:
Brought, in respect of gavelkind lands, by three heirs male alleging the disseisin of the father, 286-290.
Age in, 292.
Brought on the alleged disseisin of an ancestor, where a fine on writ of Right and release by the ancestor's father was pleaded in bar, and the demandant had to reply, showing his title, 584-590.

ERROR:
See LONDON, THE CITY OF.

ESSOIN:
Essoin on the King's service does not lie for prayee in aid, 574.
Essoin does not lie in *Scire facias*, 574.

ESTOPPEL:
If, in a Formedon in the reverter, the demandant claims as heir of his grandfather, the donor, and alleges that the donees in special tail died without heir of their bodies, and the tenant pleads that the tenements had been given to the grandfather and his wife and their heirs, that the grandfather afterwards aliened them, that his wife, upon his death, brought a *Cui in vita* against the donees in special tail, who vouched the demandant in the action of Formedon, and recovered her seisin immediately in accordance with the statute *Expectet emptor*, and that the tenant has her estate, this does not estop the demandant from the

ESTOPPEL—*cont.*
averment that the tenements were given to the grandfather and his wife and the heirs of the grandfather, 574-584.

EXECUTION:
If there are two writs of *Fieri facias* directed to the Sheriffs of two different counties, in execution of the same judgment, execution of the whole amount must be effected in each county, 10.
How effected against clerks in actions of Account, Debt, and Trespass, 244-2 .
When, on a writ of Trespass, a defendant has been convicted of having committed the trespass with force and arms, and thereupon sent to prison, he will be released on payment of a fine to the King, if the plaintiff has had execution, 634.
See EXECUTORS; STATUTE MERCHANT.

EXECUTORS:
Where an action of Debt on obligation was brought against several executors, and one of them only appeared at the return of the Grand Distress, and the plaintiff declared against him under the Statute 9 Edw. III., St. 1, c. 3, and he denied the obligation, and the finding of the jury was against him, a writ of execution issued as well in respect of his lands and chattels as of the goods and chattels of the testator in the hands of any of the executors at the time of the purchase of the writ of Debt. Where it also appeared that the other executors had made away with goods and chattels of the deceased, which had once been in their hands, a writ of execution affecting the lands and chattels of those executors issued, after the Chief Justice of the Common Bench had consulted the Council, 6-12; 13, note 4.
Are not compelled to produce the

EXECUTORS—*cont.*
testator's will when suing on an obligation to themselves in which they are described as executors, 354-356.
If one of two co-executors die, having previously executed a release of all actions of Debt to the obligor in an obligation made to the two, it is no plea in an action of Debt for the survivor to allege that satisfaction has not been made for the debt, but he must answer as to the release, and he may plead *Non est factum*, 356-358.
When in an action of Debt executors plead *plene administraverunt*, and it is found that they had not fully administered on the day of the purchase of the writ, judgment is given for the plaintiff without regard to the question whether they had of the goods of the deceased to the value of the demand, 362.
When an action of Debt is brought by two executors, one of whom is severed and subsequently dies, it continues to be the action of the survivor, and the writ does not abate, 632.
See DEBT; DETINUE; STATUTE MERCHANT.

EX PARTE:
Or *Ex parte talis*, in the Exchequer, 544; 545, note 10; 550; 552.

F

FEALTY:
A tenure may be by fealty alone (without rent) in lieu of all services, 594; 595, note 6; 596.

FINE OF LANDS, &c.
Examples of, 74-76; 75, note 4; 76; 232; 360; 418; 470-472.
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Fine of Lands, &c.—*cont.*
on the death of tenant by the curtesy is to be granted, and the tenant has leased to another for the tenant's life, 450-452.
On writ of Right, after battle waged, and release, 584; 587, note 1.
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Formedon:
Aid and voucher in, 34-46.
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Formedon in the Descender:
Various pleadings in, 226-230; 238-242.
Action of, differs from that of Mort d'Ancestor in that in Mort d'Ancestor the title is derived from the ancestor last seised, whereas in Formedon the inheritance is adjudged to be that of the person nearest to the original donee, without regard to any subsequent possession, 238-240.
May be brought by an infant, and he need not allege that his ancestor died seised, 260-262.
Voucher in, 386-388.
Count as in, upon writ of Right in the Hustings Court of London, 552; 562.

Formedon in the Remainder:
See Abatement of Writs.

Formedon in the Reverter:
On a gift to a man and his sister and the heirs of their two bodies, 122-126.
Where the donor's release to the tenant's ancestors was pleaded in bar, and the demandant alleged that the release did not extend to the particular tenements in demand, issue was joined on the question whether those tenements were included in the deed of release, 346-350; 349, note 4.
See Abatement of Writs; Estoppel.

Frank-marriage:
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G

Gavelkind:
Question whether when there are several heirs male to the same tenements they are all bound to warrant by their ancestor's deed with warranty, or only the eldest, 286-290.
Action of Waste in respect of Gavelkind lands, 336-340; 339, note 8.

H

Hustings:
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I

Infant:
See Age, Prayer of; Formedon in the Descender; Statute Merchant.

Intrusion:
Voucher in, 294-318.
See Warranty.

J

Jurata utrum:
If there be several summonses in the writ against several persons, all of whom make default, and if the verdict of a jury be taken by default against one only at *Nisi prius*, and in respect only of a particular portion of the whole of the tenements mentioned in the writ, the Court

JURATA UTRUM—*cont.*
will not give judgment for the plaintiff on that verdict, because the action of *Jurata* is one, and discontinuance as to parcel affects the whole, and judgment will be given that the whole is discontinued, 54-62.
Voucher in, 416-418.

K

KING, THE:
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L

LONDON, THE CITY OF:
Pleadings following foreign voucher in the Court of Hustings of, and adjournment into the Common Bench, 420-430.
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Proclamation in, when lands have been devised, 554; 562.
Proceedings on writ of Error, after alleged errors in the Hustings of, at St. Martin's le Grand, by Commission, 554-560; 564.
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Recorder of, records by word of mouth, 554; 564.
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M

MAINPRISE:
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MORT D'ANCESTOR:
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N

NISI PRIUS:
Justices of *Nisi prius* cannot entertain any plea in abatement of a writ, when an issue has been joined in the Common Bench, as their power is limited to taking the verdict of the jury, 206.

NOVEL DISSEISIN:
Where rent was recovered by Assise of Novel Disseisin, judgment was given not only for seisin of the rent and for damages, but also for arrears accruing while the action was pending, 24, 32.
The contrary in another case, 150.
If two several rents issuing from two several places be due, and a distress be levied for both in one of those places, and a rescue of the distress be effected, an Assise of Disseisin of rent lies only in respect of the rent issuing from the land on which the distress was levied and the rescue effected, 148-152.
In Assise brought against an infant it is no bar to say that he and his father purchased to them and their heirs, that the plaintiff abated after the father's death, and that the infant ejected him, though it is otherwise when the defendant is of full age, 152.
See ABATEMENT OF WRITS; AMERCEMENT; BARON AND FEME.

O

Office of the Court:
When a *Cape* has issued in respect of tenements in one vill, and is not warranted by the original writ which was brought in respect only of tenements in another vill, the Court, by virtue of its office, without any exception taken by the party, discontinues the process, 468.

Officer of the Court:
Mainprise prayed for, 550.

Oyer:
Of record. *See* Quare incumbravit.

P

Pleading:
See Account; Annuity; Attaint; Cui in vita; Dower; Entry *dum non fuit compos mentis*; Entry *sur disseisin*; Formedon in the Reverter; Quare impedit; Quare incumbravit; Quod permittat; Receipt; Replevin; Scire facias; Secta ad molendinum; Trespass; Voucher; Wardship, Right of; Waste.

Præcipe quod reddat:
Where the action was brought by five parceners in respect of one messuage, and two were non-suited, the other three, in their count, demanded three parts of the messuage, but as this, if unqualified, might mean three quarters, the demand was entered on the roll as three parts of one messuage divided into five parts, 12-14.

Process:
On Voucher, 294-296; 326; 352-354.
On Aid-prayer, 360-362.
In action of Waste, 626.

Proclamation:
See Wardship, Right of.

Prohibition:
See Attachment on Prohibition.

Protection:
Is not allowable for any one who has not a day in Court, and if it be allowed to a prayee in aid upon whom a Summons has not been served, it is a discontinuance, 352.
Allowed to defendant in *Quid juris clamat*, 380-382.

Q

Quare impedit:
Pleadings in, where a presentation to a vicarage was claimed by the King as in right of an alien Abbot whose temporalities were in his hand, and a deed was pleaded by which the Abbot had let the church with all its appurtenances and rights to fee farm before the Statute *De viris religiosis*, 126-136.
If the King bring one action against A. and another action against B. in respect of the same church, and A. confess the action, the King will not have a writ thereon to the Bishop until B. has been heard, 246-250.
Where the King claims the presentation in right of an alien Abbot, whose lands, fees, and advowsons he has seized into his hand, and alleges that an English Abbot against whom he brings the action had previously presented only as procurator of the alien Abbot, and produces a Bishop's certificate to that effect, an averment of the English Abbot that he and his predecessors had been seised of the advowson, and had presented in their own right, will not be admitted, unless the presentation as

QUARE IMPEDIT—*cont.*
procurator be denied, and judgment will be given for the King, 266-278.
Pleadings in, where the action was brought by a Chapter against the Dean, in respect of a chantry, 326-330.
Pleadings in, 394-400.
Damages in, 396; 400.
In respect of a Hospital appendant to a manor seized into the King's hand, where the defendant confessed the action, 414; 415, notes 2, 7, and 8.
A defendant, who has appeared only on the Grand Distress, and has taken his delays, and has counterpleaded the plaintiff's right, cannot be admitted to the averment that he has not disturbed, 500-502; 503, note 7.
If the writ be brought for a presentation to a church described by the name of a vill, and it be pleaded in abatement that there are two churches in that vill distinguished by the names of different Saints, and it be replied that one of the churches is known as that of the vill, and the other as that of a hamlet of the same vill, this statement must be traversed, and issue will be joined upon the traverse, 606-612.
Difference between writ of, and writ of Right of Advowson, 608; 610-612.
See ABATEMENT OF WRITS.

QUARE INCUMBRAVIT:
Pleadings in, 94-116.
Is a common plea, and pleadable only in the Common Bench, except when at the suit of the King, 98; 108.
Lies against the Bishop as soon as he may encumber the church after the writ of Prohibition reaches him, 100-102; 112.
Issue in, 104-106; 116.

QUARE INCUMBRAVIT—*cont.*
Cases in which the action lies, 112-114.
No oyer allowed of record of Assise of Darrein Presentment which preceded it, 96-98; 106-108.
See ABATEMENT OF WRITS; DAY.

QUEEN CONSORT, THE:
Writs brought by, will not abate for the same reasons as those brought by a common person, 430-434.
Is a person of so high estate that she shall have a writ in all points such as the King would have, 434.

QUID JURIS CLAMAT:
Protection allowed to defendant in, 380-382.

QUOD PERMITTAT:
Where it is alleged that the defendant's ancestor disseised the plaintiff's ancestor of common of pasture, and the defendant pleads that the plaintiff's ancestor held a part of the land, to which the common is alleged to be appendant, only by the curtesy of England, and that another part is the defendant's several, the plaintiff must answer to both pleas, 592-594.

R

RAVISHMENT OF WARD:
Issue as to priority of feoffment in, 118-120.
The value of the infant's marriage (though he be unmarried), and damages, recovered in, 234-238.

RECEIPT:
If one be admitted to defend on the default of a tenant whom he alleges to be tenant by the curtesy, the demandant has a good plea that the tenant does not hold by the curtesy, 34.

RECEIPT—*cont.*
A wife cannot be admitted to defend on her husband's default, if her husband be dead, and if he die after her admission and before judgment, the writ abates, 290-292.
When a man and his wife vouched a foreigner in the Court of Hustings of London, and there was consequently an adjournment into the Common Bench, and they made a default in the latter Court, the wife was subsequently admitted to defend her right in that Court, 420-430.
A reversioner may be admitted to defend his right in a *Cui in vita*, though he supposes the entry to have been through himself, while the writ supposes it to have been through the husband, if it can be shown that the two suppositions are not necessarily inconsistent, 626-628.
See ATTORNEY.

RECORDARI FACIAS LOQUELAM:
Writ of, 380; 452-460.
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RECORDER:
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RELIEF:
Avowry for, 320-324.
The law of, as learned in the Exchequer, 324.
Cognisance for, 336.

RENT:
See DEBT; NOVEL DISSEISIN.

REPLEVIN:
Pleadings in, where the place of taking was alleged to be Ancient Demesne, and issue as to the fact, 140-148.
Pleadings in, where the avowry was for a relief, and the tenant for life had aid of the lessor, who alleged that he had been enfeoffed by his father, and that consequently no relief was due from him as heir, 320-324.

REPLEVIN—*cont.*
Cognisance for relief in, 336.
If partition be made in Chancery between parceners, and a manor be allotted to one sister A., and the knight's fees of the manor be allotted to another sister B., *Quære* can A. distrain for rent and service, or is there a good plea of *Hors de son fee*? 404-410.
If the action be brought against A. and B., and A. deny the taking, and issue be joined thereon, B. may nevertheless make cognisance as A.'s bailiff, 406.
If the avowry be for the homage of tenant in tail due to the avowant by reason of a gift in tail made by his ancestor, and the plaintiff allege a feoffment in fee by the ancestor to the supposed donee in tail (after the statute of *Quia emptores*) to hold of the chief lords of the fee, and a feoffment in fee to himself of her purparty by one of the supposed donor's grand-daughters and heirs, the avowant must answer, and, if he maintain the gift in tail, issue will be joined to the country, 520-528.
Where the cognisance was for homage in arrear, the plaintiff was allowed to plead that there had been no seisin of the homage, and that he held by fealty alone, but he had first to confess that he held of the bailiff's principal, 594; 595, note 6; 596.
Where the avowry was for arrears of a tax of wool, and the plaintiff pleaded that the beasts were levant and couchant in a vill in which he had been already taxed (A.), and were taken in another vill in which he had common appendant (B.), and the defendants replied that he was assessed in B. for land, tenements, chattels, and other beasts levant and couchant there, the

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20 Hen. III. (Merton), c. 6, 236.
51 Hen. III., St. 3 (otherwise *incerti temporis*), 418.
51 Hen. III., St. 4 (otherwise *incerti temporis*), 636.
52 Hen. III. (Marlb.), c. 6, 320.
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——— c. 12, 116, 624.
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3 Edw. I. (Westm. 1), c. 29, 140; 141, note 2.
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6 Edw. I. (Glouc.), c. 4, 234.
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7 Edw. I. (*De viris religiosis*), 126.
13 Edw. I. (Westm. 2), c. 2, § 3, 619, note 5.
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13 Edw. I. (Westm. 2), c. 11, 260.
——— c. 24, 441, note 2; 444.
——— c. 25, 538.
——— c. 35, 474, 490.
——— c. 40, 258, 576, 582.
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18 Edw. I., St. 1 (*Quia emptores*), 324, 524, 530.
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5 Edw. III., c. 12, 540, 548, 626, 636.
9 Edw. III., c. 3, 512, 516.
14 Edw. III., St. 1, c. 6, 538.
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20 Hen. III. (Merton), c. 6, 236-238.
3 Edw. I. (Westm. 1), c. 42, 574.
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13 Edw. I. (Westm. 2), c. 11, 260.
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27 Edw. I., St. 1, c. 1 (*De finibus levatis*), 178.

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24. Letters and Papers illustrative of the reigns of Richard III. and Henry VII. Vols. I. and II. *Edited by* James Gardiner, 1861-1863.

The principal contents of the volumes are some diplomatic Papers of Richard III., correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. Letters of Bishop Grosseteste. *Edited by* the Rev. Henry Richards Luard, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The letters of Robert Grosseteste range in date from about 1210 to 1253. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. Descriptive Catalogue of Manuscripts relating to the History of Great Britain and Ireland. Vol. I. (in Two Parts); Anterior to the Norman Invasion. *(Out of print.)* Vol. II.; 1066-1200. Vol. III.; 1200-1327. *By* Sir Thomas Duffus Hardy, D.C.L., Deputy Keeper of the Records. 1862-1871.

27. Royal and other Historical Letters illustrative of the reign of Henry III. Vol. I. 1216-1235. Vol. II. 1236-1272. *Selected and edited by* the Rev. W. W. Shirley, D.D., Regius Professor of Ecclesiastical History, and Canon of Christ Church, Oxford. 1862-1866.

28. Chronica Monasterii S. Albani:—

1. Thomæ Walsingham Historia Anglicana; Vol. I., 1272-1381 Vol. II., 1381-1422.

2. Willelmi Rishanger Chronica et Annales, 1259-1307.

3. Johannis de Trokelowe et Henrici de Blaneforde Chronica et Annales 1259-1296; 1307-1324; 1392-1406.

4. Gesta Abbatum Monasterii S. Albani, a Thoma Walsingham, regnante Ricardo Secundo, ejusdem Ecclesiæ Præcentore, compilata; Vol. I., 793-1290: Vol. II., 1290-1349: Vol. III., 1349-1411.

5. Johannis Amundesham, monachi Monasterii S. Albani, ut videtur, Annales; Vols. I. and II.

6. Registra quorundam Abbatum Monasterii S. Albani, qui Sæculo xv^mo^ floruere; Vol. I., Registrum Abbatiæ Johannis Whethamstede, Abbatis Monasterii Sancti Albani, iterum susceptæ; Roberto Blakeney, capellano, quondam adscriptum: Vol. II., Registra Johannis Whethamstede, Willelmi Albon, et Willelmi Walingforde, Abbatum Monasterii Sancti Albani, cum Appendice continente quasdam epistolas a Johanne Whethamstede conscriptas.

7. Ypodigma Neustriæ a Thoma Walsingham, quondam monacho Monasterii S. Albani, conscriptum.

Edited by Henry Thomas Riley, M.A., Barrister-at-Law. 1863-1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Waisingham, Precentor of St. Albans.

In the 3rd volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I.: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300, by an unknown hand: a short Chronicle, Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the 4th volume is a Chronicle of English History, 1259 to 1296: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blaneforde: a full Chronicle of English History, 1392 to 1406. and an account of the benefactors of St. Albans, written in the early part of the 15th century,

The 5th, 6th, and 7th volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham, with a Continuation.

The 8th and 9th volumes, in continuation of the Annals, contain a Chronicle probably of John Amundesham, a monk of St. Albans.

The 10th and 11th volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Wallingford.

The 12th volume contains a compendious History of England to the reign of Henry V. and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V.

29. Chronicon Abbatiæ Eveshamensis, auctoribus Dominico Priore Eveshamiæ et Thoma de Marleberge Abbate, a fundatione ad annum 1213, una cum continuatione ad annum 1418. *Edited by* the Rev. W. D. Macray, Bodleian Library, Oxford. 1863.

The Chronicle of Evesham illustrates the history of that important monastery from 690 to 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey. Interspersed are many notices of general, personal, and local history.

30. Ricardi de Cirencestria Speculum Historiale de Gestis Regum Angliæ. Vol. I., 447-871. Vol. II., 872-1066. *Edited by* John E. B. Mayor, M.A., Fellow of St. John's College, Cambridge. 1863-1869.

Richard of Cirencester's history is in four books, and gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book ii. c. 3.

31. Year Books of the Reigns of Edward the First and Edward the Third. Years 20-21, 21-22, 30-31, 32-33, and 33-35 Edw. I; and 11-12 Edw. III. *Edited and translated by* Alfred John Horwood, Barrister-at-Law. Years 12-13, 13-14, 14, 14-15, 15, 16, and 17 Edward III. *Edited and translated by* Luke Owen Pike, M.A., Barrister-at-Law. 1863-1901.

32. Narratives of the Expulsion of the English from Normandy, 1449-1450.—Robertus Blondelli de Reductione Normanniæ: Le Recouvrement de Normendie, par Berry, Hérault du Roy: Conferences between the Ambassadors of France and England. *Edited by* the Rev. Joseph Stevenson, M.A. 1863.

33. Historia et Cartularium Monasterii S. Petri Gloucestriæ. Vols. I.-III. *Edited by* W. H. Hart, F.S.A., Membre Correspondant de la Société des Antiquaires de Normandie. 1863-1867.

34. Alexandri Neckam de Naturis Rerum libri duo; with Neckam's Poem, De Laudibus Divinæ Sapientiæ. *Edited by* Thomas Wright, M.A. 1863.

35. Leechdoms, Wortcunning, and Starcraft of Early England; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest. Vols. I.-III. *Collected and edited by* the Rev. T. Oswald Cockayne, M.A. 1864-1866.

36. Annales Monastici.

Vol. I.:—Annales de Margan, 1066-1232; Annales de Theokesberia, 1066-1263; Annales de Burton, 1004-1263.

Vol. II.:—Annales Monasterii de Wintonia, 519-1277; Annales Monasterii de Waverleia, 1-1291.

Vol. III.:—Annales Prioratus de Dunstaplia, 1-1297. Annales Monasterii de Bermundeseia, 1042-1432.

Vol. IV.:—Annales Monasterii de Oseneia, 1016-1347; Chronicon vulgo dictum Chronicon Thomæ Wykes, 1066-1289; Annales Prioratus de Wigornia, 1-1377.

Vol. V.:—Index and Glossary.

Edited by Henry Richards Luards, M.A., Fellow and Assistant Tutor of Trinity College, and Registrary of the University, Cambridge. 1864-1869.

37. Magna Vita S. Hugonis Episcopi Lincolniensis. *Edited by* the Rev. James F. Dimock, M.A., Rector of Barnburgh, Yorkshire. 1864.

38. Chronicles and Memorials of the Reign of Richard the First.

Vol. I.:—Itinerarium Peregrinorum et Gesta Regis Ricardi.

Vol. II.:—Epistolæ Cantuarienses; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199.

Edited by the Rev. William Stubbs, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864-1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London.

The letters in Vol. II., written between 1187 and 1199, had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to found a college of secular canons, a project which gave great umbrage to the monks of Canterbury.

39. Recueil des Croniques et anchiennes Istories de la Grant Bretaigne a present nomme Engleterre, par Jehan de Waurin. Vol. I., Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. *Edited by* William Hardy, F.S.A. 1864-1879. Vol. IV., 1431-1447. Vol. V., 1447-1471. *Edited by* Sir William Hardy, F.S.A., and Edward L. C. P. Hardy, F.S.A. 1884-1891.

40. A Collection of the Chronicles and Ancient Histories of Great Britain, now called England, by John de Waurin. Vol. I., Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. (Translations of the preceding Vols. I., II., and III.) *Edited and translated by* Sir William Hardy, F.S.A., and Edward L. C. P. Hardy, F.S.A. 1864-1891.

41. Polychronicon Ranulphi Higden, with Trevisa's Translation. Vols. I and II. *Edited by* Churchill Babington, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III.-IX. *Edited by* the Rev. Joseph Rawson Lumby, D.D., Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1886.

This chronicle begins with the Creation, and is brought down to the reign of Edward III. The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth.

42. Le Livere de Reis de Brittanie e Le Livere de Reis de Engletere. *Edited by* the Rev. John Glover, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treaties are valuable as careful abstracts of previous historians.

43. Chronica Monasterii de Melsa ab anno 1150 usque ad annum 1406, Vols. I.-III. *Edited by* Edward Augustus Bond, Assistant Keeper of Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

44. Matthæi Parisiensis Historia Anglorum, sive ut vulgo dicitur Historia Minor. Vols. I.,-III. 1067-1253. *Edited by* Sir Frederick Madden, K.H., Keeper of the Manuscript Department of the British Museum. 1866-1869.

45. Liber Monasterii de Hyda: a Chronicle and Chartulary of Hyde Abbey, Winchester, 455-1023. *Edited by* Edward Edwards. 1866.

The "Book of Hyde" is a compilation from much earlier sources, which are usually indicated with considerable care and precision. In many cases, however, the Hyde Chronicler appears to correct, to qualify, or to amplify the statements which, in substance, he adopts.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and mediæval English.

46. Chronicon Scotorum. A Chronicle of Irish Affairs, from the earliest times to 1135; and Supplement, containing the events from 1141 to 1150. *Edited, with Translation, by* William Maunsell Hennessy, M.R.I.A. 1866.

47. The Chronicle of Pierre de Langtoft, in French Verse, from the earliest period to the death of Edward I. Vols. I. and II. *Edited by* Thomas Wright, M.A. 1866-1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire and lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first, is an abridgment of Geoffrey of Monmouth's "Historia Britonum"; in the second, a history of the Anglo-Saxon and Norman kings, to the death of Henry III.; in the third, a history of the reign of Edward I. The anguage is a specimen of the French of Yorkshire.

48. The War of the Gaedhil with the Gaill, or The Invasions of Ireland by the Danes and other Norsemen. *Edited, with a Translation, by* the Rev. James Henthorn Todd, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University of Dublin. 1867.

49. Gesta Regis Henrici Secundi Benedicti Abbatis. Chronicle of the Reigns of Henry II. and Richard I., 1169-1192, known under the name of Benedict of Peterborough. Vols. I. and II. *Edited by* the Rev. William Stubbs, M.A., Regius Professor of Modern History, Oxford, and Lambeth Librarian. 1867.

50. Munimenta Academica, or, Documents illustrative of Academical Life and Studies at Oxford (in Two Parts). *Edited by* the Rev. Henry Anstey, M.A., Vicar of St. Wendron, Cornwall, and late Vice-Principal of St. Mary Hall, Oxford. 1868.

51. Chronica Magistri Rogeri de Houedene. Vols. I.-IV. *Edited by* the Rev. William Stubbs, M.A., Regius Professor of Modern History and Fellow of Oriel College, Oxford. 1868-1871.

The earlier portion, extending from 732 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1169—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little. From 1170 to 1192 is the portion which corresponds to some extent with the Chronicle known under the name of Benedict of Peterborough (*see* No. 49). From 1192 to 1201 may be said to be wholly Hoveden's work.

52. Willelmi Malmesbiriensis Monachi De Gestis Pontificum Anglorum Libri Quinque. *Edited by* N. E. S. A. Hamilton, of the Department of Manuscripts, British Museum. 1870.

53. Historic and Municipal Documents of Ireland, from the Archives of the City of Dublin, &c. 1172-1320. *Edited by* John T. Gilbert, F.S.A., Secretary of the Public Record Office of Ireland. 1870.

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55. Monumenta Juridica. The Black Book of the Admiralty, with Appendices, Vols. I.-IV. *Edited by* Sir Travers Twiss, Q.C., D.C.L. 1871-1876.

This book contains the ancient ordinances and laws relating to the navy.

56. Memorials of the Reign of Henry VI.:—Official Correspondence of Thomas Bekynton, Secretary to Henry VI., and Bishop of Bath and Wells. *Edited by* the Rev. George Williams, B.D., Vicar of Ringwood, late Fellow of King's College, Cambridge. Vols. I. and II. 1872.

57. Matthæi Parisiensis, Monachi Sancti Albani, Chronica Majora. Vol. I. The Creation to A.D. 1066. Vol. II. 1067 to 1216. Vol. III. 1216 to 1239. Vol. IV. 1240 to 1247. Vol. V. 1248 to 1259. Vol. VI. Additamenta. Vol. VII. Index. *Edited by* the Rev. Henry Richards Luard, D.D., Fellow of Trinity College, Registrary of the University, and Vicar of Great St. Mary's, Cambridge. 1872-1884.

58. Memoriale Fratris Walteri de Coventria.—The Historical Collections of Walter of Coventry. Vols. I. and II. *Edited by* the Rev. William Stubbs, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1872-1873.

59. The Anglo-Latin Satirical Poets and Epigrammatists of the Twelfth Century. Vols. I. and II. *Collected and edited by* Thomas Wright, M.A., Corresponding Member of the National Institute of France (Académie des Inscriptions et Belles-Lettres). 1872.

60. Materials for a History of the Reign of Henry VII., from original Documents preserved in the Public Record Office. Vols. I. and II. *Edited by* the Rev. William Campbell, M.A., one of Her Majesty's Inspectors of Schools. 1873-1877.

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63. Memorials of St. Dunstan, Archbishop of Canterbury. *Edited by* the Rev. William Stubbs, M.A., Regius Professor of Modern History and Fellow of Oriel College, Oxford. 1874.

64. Chronicon Angliæ, ab anno domini 1328 usque ad annum 1388, Auctore Monacho Quodam Sancti Albani. *Edited by* Edward Maunde Thompson, Barrister-at-Law, Assistant Keeper of the Manuscripts in the British Museum. 1874.

65. Thómas Saga Erkibyskups. A Life of Archbishop Thomas Becket in Icelandic. Vols. I. and II., *Edited, with English Translation, Notes, and Glossary, by* M. Eirikr Magnusson, M.A., Sub-Librarian, of the University Library, Cambridge. 1875-1884.

66. Radulphi de Coggeshall Chronicon Anglicanum. *Edited by* the Rev. Joseph Stevenson, M.A. 1875.

67. Materials for the History of Thomas Becket, Archbishop of Canterbury. Vols. I.-VI. *Edited by* the Rev. James Craigie Robertson, M.A., Canon of Canterbury. 1875-1883. Vol. VII. *Edited by* Joseph Brigstocke Sheppard, LL.D. 1885.

The first volume contains the life of that celebrated man, and the miracles after his death, by William, a monk of Canterbury. The second, the life by Benedict of Peterborough; John of Salisbury; Alan of Tewkesbury; and Edward Grim. The third, the life by William Fitzstephen; and Herbert of Bosham. The fourth, anonymous lives, Quadrilogus, &c. The fifth, sixth, and seventh, the Epistles, and known letters.

68. Radulfi de Diceto, Decani Lundoniensis, Opera Historica. The Historical Works of Master Ralph de Diceto, Dean of London. Vols. I. and II. *Edited by* the Rev. William Stubbs, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1876.

The Abbreviationes Chronicorum extend to 1147 and the Ymagines Historiarum to 1201.

69. Roll of the Proceedings of the King's Council in Ireland, for a portion of the 16th year of the reign of Richard II. 1392-93. *Edited by* the Rev. James Graves, B.A. 1877.

70. Henrici de Bracton de Legibus et Consuetudinibus Angliæ Libri Quinque in varios tractatus distincti. Vols. I.-VI. *Edited by* Sir Travers Twiss, Q.C., D.C.L. 1878-1883.

71. The Historians of the Church of York, and its Archbishops. Vols. I.-III. *Edited by* the Rev. James Raine, M.A., Canon of York, and Secretary of the Surtees Society. 1879-1894.

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73. Historical Works of Gervase of Canterbury. Vols. I. and II. *Edited by* the Rev. William Stubbs, D.D., Canon Residentiary of St. Paul's, London; Regius Professor of Modern History and Fellow of Oriel College, Oxford, &c. 1879, 1880.

74. Henrici Archidiaconi Huntendunensis Historia Anglorum. The History of the English, by Henry, Archdeacon of Huntingdon, from A.D. 55 to A.D. 1154, in Eight Books. *Edited by* Thomas Arnold, M.A., 1879.

75. The Historical Works of Symeon of Durham. Vols. I. and II. *Edited by* Thomas Arnold, M.A. 1882-1885.

76. Chronicle of the Reigns of Edward I. and Edward II. Vols. I and II. *Edited by* the Rev. William Stubbs, D.D., Canon Residentiary of St. Paul's, London; Regius Professor of Modern History, and Fellow of Oriel College, Oxford, &c 1882-1883.

The first volume of these Chronicles contains the *Annales Londonienses*, and the *Annales Paulini:* the second, I.—*Commendatio Lamentabilis in Transitu magni Regis Edwardi.* II.—*Gesta Edwardi de Carnarvan Auctore Canonico Bridlingtoniensi.* III.—*Monachi cujusdam Malmesberiensis Vita Edwardi II.* IV.—*Vita et Mors Edward II., conscripta a Thoma de la Moore.*

77. Registrum Epistolarum Fratris Johannis Peckham, Archiepiscopi Cantuariensis. Vols. I.-III. *Edited by* Charles Trice Martin, B.A. F.S.A., 1882-1886.

78. Register of S. Osmund. Vols. I. and II. *Edited by* the Rev. W. H. Rich Jones, M.A., F.S.A., Canon of Salisbury, Vicar of Bradford-on-Avon. 1883, 1884.

This Register derives its name from containing the statutes, rules, and orders made or compiled by S. Osmund, to be observed in the Cathedral and diocese of Salisbury.

79. Chartulary of the Abbey of Ramsey. Vols. I.-III. *Edited by* William Henry Hart, F.S.A., and the Rev. Ponsonby Annesley Lyons. 1884-1893.

80. Chartularies of St. Mary's Abbey, Dublin, with the Register of its house at Dunbrody, county of Wexford, and Annals of Ireland, 1162-1370. Vols. I. and II. *Edited by* John Thomas Gilbert, F.S.A., M.R.I.A. 1884, 1885.

81. Eadmeri Historia Novorum in Anglia, et opuscula duo de vita Sancti Anselmi et quibusdam miraculis ejus. *Edited by* the Rev. Martin Rule, M.A. 1884.

82. Chronicles of the Reigns of Stephen, Henry II., and Richard I. Vols. I.-IV. *Edited by* Richard Howlett, Barrister-at-Law. 1884-1889.

Vol. I. contains Books I.-IV. of the *Historia Rerum Anglicarum* of William of Newburgh. Vol. II. contains Book V. of that work, the continuation of the same to A.D. 1298, and the *Draco Normannicus* of Etienne de Rouen.

Vol. III. contains the *Gesta Stephani Regis*, the Chronicle of Richard of Hexham, the *Relatio de Standardo* of St. Aelred of Rievaulx, the poem of Jordan Fantosme, and the Chronicle of Richard of Devizes.

Vol. IV. contains the Chronicle of Robert of Torigni.

83. Chronicle of the Abbey of Ramsey. *Edited by* the Rev. William Dunn Macray, M.A., F.S.A., Rector of Ducklington, Oxon. 1886.

84. Chronica Rogeri de Wendover, sive Flores Historiarum. Vols. I.-III. *Edited by* Henry Gay Hewlett, Keeper of the Records of the Land Revenue. 1886-1889.

This edition gives that portion only of Roger of Wendover's Chronicle which can be accounted an original authority.

85. The Letter Books of the Monastery of Christ Church, Canterbury. Vols. I.-III. *Edited by* Joseph Brigstocke Sheppard, LL.D. 1887-1889.

The Letters printed in these volumes were chiefly written between 1296 and 1333.

86. The Metrical Chronicle of Robert of Gloucester. *Edited by* William Aldis Wright, M.A., Senior Fellow of Trinity College, Cambridge. Parts I. and II., 1887.

The date of the composition of this Chronicle is placed about the year 1300. The writer appears to have been an eye witness of many events of which he describes. The language in which it is written was the dialect of Gloucestershire at that time.

87. Chronicle of Robert of Brunne. *Edited by* Frederick James Furnivall, M.A., Barrister-at-Law. Parts I. and II. 1887.

Robert of Brunne, or Bourne, co. Lincoln, was a member of the Gilbertine Order established at Sempringham. His Chronicle is described by its editor as a work of fiction, a contribution not to English history, but to the history of English.

88. Icelandic Sagas and other Historical Documents relating to the Settlements and Descents of the Northmen on the British Isles. Vol. I. Orkneyinga Saga, and Magnus Saga. Vol. II. Hakonar Saga, and Magnus Saga. *Edited by* Gudbrand Vigfusson, M.A. 1887. Vols. III. and IV. Translations of the above by Sir George Webbe Dasent, D.C.L. 1894.

89. The Tripartite Life of St. Patrick, with other documents relating to that Saint. *Edited by* Whitley Stokes, LL.D., D.C.L., Honorary Fellow of Jesus College, Oxford; and Corresponding Member of the Institute of France. Parts I. and II. 1887.

90. Willelmi monachi Malmesbiriensis de Regum Gestis Anglorum libri V.; et Historiæ, Novellæ, libri III. *Edited by* William Stubbs, D.D., Bishop of Oxford. Vols. I. and II. 1887-1889.

91. Lestorie des Engles solum Geffrei Gaimar. *Edited by* the late Sir Thomas Duffus Hardy, D.C.L., Deputy Keeper of the Records; *continued and translated by* Charles Trice Martin, B.A., F.S.A. Vols. I. and II. 1888-1889.

92. Chronicle of Henry Knighton, Canon of Leicester. Vols. I. and II. *Edited by* the Rev. Joseph Rawson Lumby, D.D., Norrisian Professor of Divinity. 1889-1895.

93. Chronicle of Adam Murimuth, with the Chronicle of Robert of Avesbury. *Edited by* Edward Maunde Thompson, LL.D., F.S.A., Principal Librarian and Secretary of the British Museum. 1889.

94. Register of the Abbey of St. Thomas the Martyr, Dublin. *Edited by* John Thomas Gilbert, F.S.A., M.R.I.A. 1889.

95. Flores Historiarum. *Edited by* the Rev. H. R. Luard, D.D., Fellow of Trinity College and Registrary of the University, Cambridge. Vol. I., The Creation to A.D. 1066. Vol. II. A.D. 1067-1264. Vol. III. A.D. 1265-1326. 1890.

96. Memorials of St. Edmund's Abbey. *Edited by* Thomas Arnold, M.A., Fellow of the Royal University of Ireland. Vols. I.-III. 1890-1896.

97. Charters and Documents, illustrating the History of the Cathedral and City of Sarum, 1100-1300; forming an Appendix to the Register of S. Osmund. *Selected by* the late Rev. W. H. Rich Jones, M.A., F.S.A., *and edited by* the Rev. W. D. Macray, M.A., F.S.A., Rector of Ducklington. 1891.

98. Memoranda de Parliamento, 25 Edward I. 1305. *Edited by* F. W. Maitland, M.A. 1893.

99. The Red Book of the Exchequer. *Edited by* Hubert Hall, F.S.A. of the Public Record Office. Parts I.-III. 1896.

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1896	—	Index to Calendars of Christ Church Deeds 1174-1684, contained in Appendices to 20th, 23rd, and 24th Reports.	[C.8080]	0 5½
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		(1) Corrections to the Addenda to the Dublin Grants Index in Appendix to the 26th Report;		
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1900	—	Index to the Act or Grant Book and Original Wills of the Diocese of Dublin from 1800-1858.	[Cd. 4]	4 7
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		(2) Report on the Books of the Treasury and Accounting Departments in Ireland.		
1902	34	Report of Proceedings and Appendix -	[Cd.1176]	0 2½
		(1) List of Maps presented by Commissioners of Woods and Forests;		
		(2) Report on Register of Irregular Marriages, 1799-1844.		