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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He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed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They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no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.

Year XVIII.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

Year XVIII.

EDITED AND TRANSLATED

BY

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INTRODUCTION.

INTRODUCTION.

Reports printed in the present volume.

The present volume includes reports which have been printed in the old editions of the Year Books, some others which were known to Fitzherbert but which do not appear in any previous edition of the Year Books, and some others again of which no trace is to be found either in the old editions of the Year Books or in Fitzherbert's *Abridgment*.

The old editions of reports of the years 17 and 18 of the reign of Edward III. have been described in the Introductions to the two volumes immediately preceding this in the Rolls edition. Nothing more need be said of them here, as the text of the present volume is founded entirely upon the original MSS.

MSS. collated.

The MSS. which have been collated are the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MS. in the British Museum numbered 25,184, all of which have been described in previous volumes. It is in the Harleian MS. alone that the new matter has been discovered, and though, as already explained,[1] this portion of the MS. is of somewhat later date than other portions, and has many imperfections, it has evidently been copied from one which was contemporary. It can always be rendered intelligible when the corresponding records have been found, and usually in other cases also by the aid of the knowledge which is acquired in the correction of the vicious readings of other MSS. and printed texts.

[1] Y.B. (Rolls edition), Mich. 17 and Hil. 18 Edw. III. Introd. pp. xix-xx.

Records compared: how used to illustrate reports.

As usual I have, wherever possible, compared the reports with the records, and shown the results in the foot-notes, which have been inserted on one definite principle. It has not appeared to me to be sufficient either to state in general terms what is to be found in the record as a whole, or to give the words of the record as a whole in a single note appended to the report. In long cases there may be whole pages of speeches and arguments which are, of course, not represented on the roll at all. But in almost every instance the time comes when the counsel's speech in French has its counterpart in one of the pleadings in Latin in the record. Then and not till then the note is attached, and is, as I think it should be, of the nature of a various reading, and not of editorial comment. The reader can follow the conduct of the case in Court, and see the outcome, at each stage, in the authoritative Latin of the roll, as well as in the French words with which the counsel had to be content. The two agree fairly well, as a rule, but any discrepancies which there may be can easily be detected by a comparison of the particular plea which appears as having been pleaded by counsel with that which the clerks finally entered.

The Plea Rolls of the Court of Common Pleas.

Some explanation may, perhaps, not be out of place here with regard to the words by which the particular rolls are described. The greater part of the reports relate to causes heard in the Court of Common Pleas, and it is therefore in the rolls of that court that a large proportion of the corresponding records has to be sought. There were rolls of more kinds than one, but it is of course among the Plea Rolls that the search has to be made. There were, however, two kinds of Plea Rolls, the Roll of the Justices and the King's Roll, which were made up at different times and for different purposes. The King's Roll does not contain everything that is in the Roll of the Justices, nor is it made up in the same way, but it sometimes

has uses of its own for a modern editor, and the discrepancies between it and the roll of the Justices sometimes form the basis of arguments in the reports.[1]

The principal Plea Roll, that which is called, *par excellence*, "the roll," is the roll of the Justices, of which the proper designation in English is "the Plea "Roll of the Common Bench," or "the Plea Roll of the "Court of Common Pleas." Its earliest title, and that which it bore in the reign of Edward III., was "Placita apud Westmonasterium[2] coram A. [the Chief "Justice of the Court] et sociis suis Justiciariis domini "Regis de Banco."

Custody and care of them: a curious history.

From causes which it is not impossible to ascertain these rolls have undergone many vicissitudes. Different portions of the series have been moved from place to place, and those which were in one place have been known by one name, while those which were in another place were known by another. At a very early period the Exchequer was the place of deposit of rolls which were not required for use in the Common Bench itself. Thus when Stonore succeeded Herle as Chief Justice in the third year of the reign of Edward III., Herle was commanded to deliver into the Exchequer all the rolls which were in his custody, among which would necessarily be included those of most recent date. As, however, they would naturally be required for use in the Bench itself, another writ was sent to the Treasurer and Chamberlains of the Exchequer directing them to re-deliver the rolls to the new Chief Justice.[3] So also when Bealknap was re-appointed Chief Justice by Richard II., after the death of Edward III., it was

[1] For a full account of these rolls, many of which have been wrongly placed among the records of the King's Bench, *see* Y.B., 16 Edw. III., part II., pp. xxv-xxix.

[2] Usually at Westminster, but it might be at any other certain place, as *e.g.* at York, where the Court was in the eleventh year of the reign of Edward III. *See* Y.B., 11 and 12 Edw. III., p. xxviii.

[3] The writ reciting the delivery by the late Chief Justice Herle, and directing the re-delivery to Chief Justice Stonore, is printed at length in the *House of Commons Reports*, Vol. I. (Report relating to the Cottonian Library, &c.) p. 533.

thought necessary to send a writ to him instructing him that he was to retain in the Court those rolls which he had in his custody by commission from the late King.[1]

The earliest rolls sent to the Exchequer, the most recent retained in the Court.

Directions were, however, given, from time to time, for the permanent transfer of the rolls which were not of recent date from the Court of Common Pleas to the Exchequer. As a specimen of these may be mentioned a writ sent by Henry VI. to the Chief Justice directing him to deliver all the rolls of dates between the 29th year of Edward III. and the first of Henry IV.[2] We thus see that the Plea Rolls of the Court of dates down to the end of the reign of Richard II. were in the Exchequer. There could not, however, have been any further removal from the Court of Common Pleas before the reign of Charles II., for in that reign we find that the Plea Rolls of later date than the end of the reign of Richard II. were still in the custody of the Chief Justice, in the Treasury of the Common Bench.

Warrant of Charles II. for removal of the Plea Rolls of dates between Richard II. and Edward VI. to the Exchequer.

A writ for the transference to the Exchequer of rolls of dates between the last year of the reign of Richard II. and the first year of the reign of Edward VI. is dated the 16th of December in the nineteenth year of the reign of Charles II. (A.D. 1667). The Royal Warrant for this writ and the action taken upon it have occasioned much subsequent confusion, though the terms in which it was expressed might, if duly considered, have prevented some of the very curious results which ensued. It is of much importance in many ways, and is in the following words:—

"Charles R.

"Whereas we have received credible "information that *the Plea Rolls of our Court of Common*

[1] This writ was enrolled on the Plea Roll of the Common Bench, Trin., 1 Ric. II., R° 1, and is printed at length in the volume last above-mentioned, p. 534.

[2] The writ is printed at length in the volume last above-mentioned, p. 533.

"*Pleas*, being grown very numerous, do not only begin "to perish for want of convenient room in the Treasury "where they now lie, but *for want of Calendars unto "them are utterly useless to our good subjects*, these are "therefore to authorise you to seal a precept directed "to the Lord Chief Justice of that our Court of Com- "mon Pleas for the speedy delivery of such *Plea Rolls*, "from the end of the reign of King Richard the "Second until the beginning of the reign of King "Edward the Sixth, as are now in your custody in "the said Treasury, unto the Treasurer and Chamber- "lains of the Exchequer, *to be by them kept and fitted "with proper Calendars* as the rest of that kind until "the end of the reign of King Edward the Second are. "And for so doing this shall be your warrant. Given "at our Court at Whitehall, the fifth day of Decem- "ber, 1667." [1]

This warrant was directed to Sir Orlando Bridgeman, who had been appointed Lord Keeper on the previous 30th of August, but was still Chief Justice of the Court of Common Pleas. It was most probably drawn at his suggestion, as he best knew the great value of the rolls.

The writ which was founded upon it, though dated the 16th of December, was in deed directed to Sir Orlando Bridgeman himself as Chief Justice, though he still held also the office of Lord Keeper.

Rolls actually removed only to the end of the reign of Henry VII.

His successor as Chief Justice of the Court of Common Pleas was Sir John Vaughan, who was appointed on the 23rd of May, 1668, but the removal of the rolls does not appear to been effected for more than two years afterwards, when the Clerk or Deputy of the Lords Commissioners of the Treasury, and the Clerks or Deputies of the Chamberlains of the Exchequer acknowledged the receipt from the Keeper of the Records in the Court of Common Pleas of all the

[1] The warrant is printed at length in the volume of *House of Commons Reports* last above-mentioned, p. 534.

records and rolls of that Court between the end of the reign of Richard II. and the beginning of the reign of Henry VIII. This was said to be in pursuance of a writ directed to Sir John Vaughan, C.J.[1]

Thus, although the writ which had been directed to Sir Orlando Bridgeman included the Plea Rolls of the reign of Henry VIII., that which was directed to his successor excluded them; and, as a matter of fact, none of the rolls which were transferred were of later date than the reign of Henry VII., while all those of subsequent dates remained in the Treasury of the Court of Common Pleas. All the Plea Rolls of early date (except a few which were in the Tower of London, and two of the reign of Henry VII., which were left behind in the Common Pleas Treasury by mistake) were thus in the custody of the Exchequer, which eventually used the Chapter House at Westminster as its repository, and there the rolls remained practically in the keeping of the Exchequer until the year 1840.

Inferior officials of the Exchequer wrote the words "*De Banco*" on the earlier Plea Rolls.

For about a hundred and seventy years the Exchequer officials had been altogether out of touch with those of the Court of Common Pleas, except in so far as the latter might have had to make rare searches among the older documents. They had records of other courts in their charge, and some of them (evidently in a very subordinate position) wrote on the backs of some of the Plea Rolls the words "*De Banco*," which may have been of use for ready reference in case of any search, but which were, of course, never intended as a formal or technical description of the rolls. In the year 1800 these earlier Plea Rolls were described by the Keeper of the Records in the Chapter House as "the "Rolls of the Common Pleas," [2] or at any rate included in that description, as they were also in the year 1832.[3]

[1] The indenture, dated the 1st of August, 1670, is printed at length in the volume of *House of Commons Reports* last above-mentioned, p. 533.

[2] *Report of Select Committee of the House of Commons*, 1800, p. 38.

[3] *Report of Commissioners on Public Records*, 1837, App. p. 9.

When, in the year 1840, the records which were in the Chapter House were brought into the custody of the Master of the Rolls in pursuance of the Public Record Office Act, 1838, the list of them which was appended to the warrant was presumably made by the officers who previously had charge of them. Among them are mentioned "the Rolls of the Court of Common Pleas "of the reigns of the Kings Henry 3rd, Edward 1st, "Edward 2nd, Edward 3rd, Richard 2nd, Henry 4th, "Henry 5th, Henry 6th, Edward 4th, and Henry 7th "inclusive, these being called *Placita de Banco Tem-"poribus, &c.*"[1]

As soon as a competent legal authority once again mentioned the rolls by their English title they were, of course, described in proper terms. In 1842 there was a warrant of Lord Langdale, M.R., for the removal of the "Plea Rolls of the Court of Common Pleas from "1 Edward I. to the 24 Henry VII." from the Chapter House to the Carlton Ride (where, as will presently appear, the later Plea Rolls were then stored) and it was stated that a Schedule to the warrant contained those Plea Rolls.[2] The Schedule was not printed at the time, but was published in a Return to the House of Lords in 1878,[3] when it appeared with the heading "*De Banco*," and with such remarks as "the cover "nearly off," "cover partly torn," "edges and ends "injured," "torn and dirty at the bottom." This was obviously the work of some inferior official in the Chapter House, who had been set to examine and report upon the physical condition of the documents.

These rolls were properly described as "Plea Rolls of the Court of Common Pleas" by the Master of the Rolls in 1842, but scheduled as "*De Banco*" by some subordinate.

Thus far we have followed the history of the Plea Rolls of dates no later than the end of the reign of Henry VII. Those of later date (together with the two forgotten rolls of the reign of Henry VII.)

The later rolls beginning 1 Henry VIII. originally preserved in Westminster Hall.

[1] *Second Report of the Deputy Keeper of the Records*, App. I., p. 10.

[2] *Third Report of the Deputy Keeper of the Records*, App. I., p. 8.

[3] H. L. Sess., 1878, No. 211, p. 15.

remained in the Treasury of the Court of Common Pleas, which was, until the year 1830, in Westminster Hall.

Division of them into "Plea Rolls" and "Common Rolls" in the reign of Elizabeth.

Those rolls, until Easter Term in the 25th year of the reign of Elizabeth, included the pleadings in real, personal, and mixed actions, together with deeds enrolled. In that term, however, the old Plea Roll was divided into two, one roll being reserved for pleas of land and common recoveries, together with deeds enrolled, which continued to be called the "Plea Roll,"[1] the other for other actions, which was then called the "Common Roll."[2]

Absence of information touching them from the officers of the Court.

It is extremely difficult, if not impossible, to find any authoritative information with regard to the treatment of these later Plea Rolls except that they remained in the Treasury of the Court. So much we know from the Report to the House of Commons of the year 1732.[3] In the Report to the same House of the year 1800 there is nothing to show that they were in existence. There are returns from various officers of the Court which relate to all kinds of minor documents, but none relating to the Plea Rolls. For all that appears in that report the Plea Rolls might have ended with the earlier series in the Chapter House. So also in the Report of the Commissioners on Public Records made in the year 1837 there is no return from the officers of the Court who had charge of these rolls, though a circular letter of enquiry had been sent to them.[4]

Report of a removal of them from Westminster Hall to "the King's Mews" in 1830.

Some little time before, however (in October, 1830), Sir Nicholas Tindal, then Chief Justice of the Court, had given directions to remove the records of the Court of Common Pleas from Westminster Hall to "the

[1] It might also be called the "Recovery Roll" (the name by which it is now known in the Record Office); and, when there was an exemplification of a common recovery, it was described as being "among the pleas of land enrolled "at Westminster before [A.] and "his fellows our Justices of the "Bench." 2 Com., App. I.

[2] 2 Tidd, *Practice of the Courts of King's Bench and Common Pleas, &c.* (1828), 728.

[3] *Report relating to the Cottonian Library, &c.* p. 528.

[4] *Report of Commissioners on the Public Records*, 1837, App. p. 132.

"King's Mews." Mr. J. Hewlett, whose exact position is not stated, was instructed to superintend the work. He drew up a report, a copy of which was laid before the Board by the Chief Justice; and the Commissioners remarked that it would "be found to contain much of "the information sought."[1] On the 10th of January, 1840, the Masters of the Court of Common Pleas accepted it as sufficient, and referred to it "for more "particular information" than that which they furnished in a return then made.[2]

All the rolls of earlier date than 25 Elizabeth inaccurately called "Common Rolls" in this report.

In this report we find the two rolls of the reign of Henry VII. (Easter 2 Henry VII. and Trinity 23 Henry VII.), which are evidently those left behind in the reign of Charles II., and mentioned in the return from the Chapter House made in 1800,[3] and which would have been known to the attendants there as "*De Banco* "Rolls." Mr. Hewlett, however, included them in the description of "*Communia Placita* or Judgment Rolls,"[4] to which he gave the alternative title of "Common "Rolls," and he carried the latter title back from the 25th year of the reign of Elizabeth, before which it is, as a distinctive name, inapplicable, to the reign of Henry VII.[5]

Removal of the later rolls from the King's Mews to Carlton Ride.

The Plea Rolls beginning with the first year of the reign of Henry VIII. were, shortly after their removal to the "King's Mews," otherwise called the "ancient "Mews at Charing Cross," again removed "to the "Riding School at the late Carlton House,"[6] which also, in its turn, became the Treasury of the Court of Common Pleas.

Continued inaccuracies of description.

When these later records in the repository of Carlton Ride were brought into the custody of the Master of the Rolls on the 10th of July, 1840, the list of them,

[1] *Report of Commissioners on the Public Records*, 1837, App. p. 132.
[2] *First Report of the Deputy Keeper of the Records*, App. p. 44.
[3] *Report of Select Committee of the House of Commons*, 1800, p. 38.
[4] *Report of Commissioners on the Public Records*, 1837, App. p. 132.
[5] *Ib.*, p. 137.
[6] *Report of Record Commissioners*, 1837, p. xi.

presumably drawn up by the officers there in charge, included "Enrolments of Pleas of Land and Deeds "entitled '*Placita Terræ*' from 25 Elizabeth to 1819. "It also included Personal Plea Rolls or *Communia* "*Placita* from the reign of Henry VII. to 1819,"[1] those of the reign of Henry VII. being, there can be but little doubt, the two rolls which formed part of the series known at the Chapter House as "*De Banco* Rolls."

As in the Chapter House so in the Carlton Ride there had grown up the slovenly and mischievous practice of describing documents in the terms of some endorsements of which even the date was not known, and of which the meaning and purpose were not carefully considered. Thus it appears that in the year 1842 the Assistant Keeper then acting under the Public Record Office Act, 1838, described the Plea Rolls of the reign of Henry VIII. under the general head of "Common Rolls." "These rolls," he said, "are endorsed in early times '*Placita Communia*'; "they have been styled 'Personal Plea Rolls,' 'Issue "Rolls,' and 'Judgment Rolls.'" . . . . "Until the 25 "Elizabeth the '*Placita Communia*' are intermingled "with the '*Placita Terræ*.'"[2] He was thus evidently under the impression that the term "*Placita Communia*" could not include pleas of land, and that the famous sentence of Magna Charta "*Communia placita non* "*sequantur curiam nostram*" did not include real actions! There were "Common Rolls" in the reign of Elizabeth, and "*Communia*" meant "Common." Therefore, he seems to have supposed, all rolls of "*Communia Placita*" were "Common Rolls."[3] As Horace said:—

"*Difficile est proprie communia dicere.*"

[1] *Second Report of the Deputy Keeper of the Records*, App. I., p. 12.

[2] *Third Report of the Deputy Keeper of the Records*, App. II., p. 105.

[3] It is, of course, true that matters found, after Hilary Term 25 Elizabeth, only on the "Common Roll," were, at earlier dates, found intermixed with pleas of land on the undivided Plea Roll, but that fact does not afford any warrant for describing the earlier series of Plea Rolls by the technical and distinctive title of "Common Rolls."

All the rolls of the Court placed in the same repository in 1842: confusion of terms.

It was to Carlton Ride that the earlier Plea Rolls were removed in the same year 1842. When the Assistant Keeper of Records there received the records correctly described as "Plea Rolls of the Court of Common "Pleas" in the warrant, and scheduled under the workman's catch-title "*De Banco*," he described them as "Plea or Common Rolls 1 Edw. I. to 24 Hen. VII."[1] thus making the term "Plea Roll" convertible or interchangeable with the term "Common Roll." He elsewhere described them, together with others of dates from 7 Henry III. to 19 Edward II., which were brought from the Tower, simply as "Common Rolls."[2] There was in this way introduced a new cause of confusion. In the General Rules and Orders of the Court of Common Pleas, which were sanctioned by the Justices, a clear distinction was drawn, after the ancient Plea Roll had been divided into two, and the term "Com- "mon Roll" had come into use, between the "Plea "Rolls" and the "Common Rolls," though the latter were sometimes called simply "the Rolls."[3] The one contained pleas of land, the other did not. There was no such thing as a "Common Roll," in the sense of a separate and complete roll used exclusively for pleas other than pleas of land, from the reign of Henry III. to the reign of Henry VII., or before the 25th year of Elizabeth; and the "Plea Roll" including pleas of land continued to be called the "Plea Roll"[4] until common recoveries and most of the real actions were abolished.

The earlier there still kept distinct from the later Plea Rolls.

Still, as the whole of the records of the Court of Common Pleas down to the year 1819 were brought together for a time, it might have been hoped that those which belonged to one and the same series would at last have been properly classified under one head. It was expressly stated in Lord Langdale's

[1] *Fourth Report of the Deputy Keeper of the Records*, p. 14.

[2] *Ib.*, App. I., p. 15.

[3] *Rules and Orders of the Court of Common Pleas*, Mich., 1654, Sec. 7; Easter 5, W. and M. Reg. 2; Easter 34 Car. II., Reg. 3, &c.

[4] 2 Tidd. *Practice*, 728.

warrant that the "Plea Rolls from the commencement "of the reign of Henry VIII." were deposited in the Carlton Ride, and that it was expedient that the earlier rolls from the Chapter House should "be united to" them. Nothing could be plainer or more to the point than the words of the Master of the Rolls; and, had his wishes been carried into effect, much of the mischief which had already been done might have been repaired. This, however, was not to be.

The earlier rolls again separated from the later rolls in 1847, and removed as "Judgment Rolls."

In the year 1847 we have an opportunity of seeing what had been done towards uniting the series of Plea Rolls which had previously been separated by storing in different repositories. From want of space in the Carlton Ride it had again become necessary to remove some of the records, and they were taken to "the "Stone Tower annexed to Westminster Hall." In the Schedule to the warrant for that purpose we find "Common Pleas: Judgment Rolls,"[1] without any details. Further investigation reveals the fact that these "Judgment Rolls" which were removed in pursuance of the warrant were the "*Placita de Banco* "Rolls, 7 Henry III. to 24 Henry VII."[2] We thus see that these unfortunate rolls had remained in the Carlton Ride as distinct from the later Plea Rolls as ever they had been when stored in the Chapter House. They had acquired the additional *alias* of "Judgment "Rolls" (as in a sense, of course, they were), and that was all.

Description of the whole series of Plea Rolls in the earliest Public Record Office Lists.

And now we come to the time when they found a permanent home in the Record Office. They were deposited there at the end of the year 1857,[3] together with the later records from the Carlton Ride. The warrants under which both portions of the series of Plea Rolls were removed appear to have been those

[1] *Ninth Report of the Deputy Keeper of the Records*, App. I., p. 1.

[2] *Ninth Report*, p. 18, and App. I., p. 9.

[3] *Nineteenth Report of the Deputy Keeper of the Records*, p. 9.

dated the 25th of July in the year 1856 "to remove "into the General Repository of Her Majesty's Public "Records . . . . . all and every the records now "in the Branch Record Office, Carlton Ride, and in "the Stone Tower, Westminster Hall."[1] There was thus no specific description of the Plea Rolls in the warrants, but we find them in the "List of Records "of the Court of Common Pleas" deposited in the Record Office, which was probably drawn out in some haste, and under difficulties arising out of the removal from two repositories. They are described as "*Banco*, "*Placita de*," in a continuous series from the reign of Henry III. to the year 10 George IV.[2] In the reign of Henry VIII., however, they are represented as being "*Banco*, *Placita de*, or Judgment Rolls, Common Rolls, "Plea Rolls, Recovery Rolls, *Placita Terræ*, King's "Silver Inrolment, and Deeds Inrolled." They then continue to be described as "*Banco*, *Placita de*, &c.," (the "&c." being no doubt added in order to include all that had been mentioned under the reign of Henry VIII.) to the end.

Those "Plea Rolls" which Charles II. desired to have calendared, still uncalendared, and still described as "*De Banco* Rolls."

In the latest official lists[3] of the Record Office the earlier Plea Rolls re-appear as "*De Banco* Rolls" to the end of the reign of Henry VII. as in the Chapter House, and the "Common Rolls" are made to begin with the reign of Henry VIII. as in Carlton Ride. The two rolls of the reign of Henry VII. (precious as connecting links showing the difference of description in different repositories) which were accidentally left behind in the treasury of the Court in the reign of Charles II., and there acquired the title of "Common Rolls," have been restored to their places in chronological order, but under the Chapter House catch-title of "*De Banco* Rolls," and the wish of Charles II. that the whole series should be

[1] *Return to House of Lords, Sess.* 1878, No. 211, p. 8.

[2] *Nineteenth Report of the Deputy Keeper of the Records*, App. pp. 70-95.

[3] *Public Record Office Lists and Indexes*, No. IV. (1894), pp. 33-38.

"fitted with proper Calendars" still remains unfulfilled."[1]

Difficulty of correctly citing the rolls of Edward III. so that they can be found.

It will thus be seen that the task of any one who wishes to cite the rolls of the reign of Edward III. in such a way that the title will not be incorrect, or incomplete, on the one hand, or unintelligible to the attendants of the Record Office who have to produce them, on the other hand, is not so easy as it might at first sight appear. They are not generally known in that office as being simply what they are, in plain English, "Plea Rolls of the Court of Common Pleas," but as "*De Banco* Rolls." For members of the public who may wish to know what a record is, to which reference is made, something to indicate that it is a Plea Roll is obviously necessary, and something also to indicate the Court. I have, therefore, always quoted them as "*Placita de Banco*," as this appears to have been the name by which they were known to the superior officials of the Chapter House in comparatively early times,[2] and by which, among others, they were known when they first came into the Record Office. The first word (indicating that the rolls contain pleas) and the two last words of the contemporary Latin title (to indicate the Court) are thus retained. "*Placita* "*coram Justiciariis de Banco*" would certainly be better, because the distinction between *coram Rege* and *coram Justiciariis* was of much importance, but, when this explanation has been given, the abbreviated title may, perhaps, be tolerated by reason of the saving of space which it permits.

Rolls of the King's Bench: the "Plea Rolls" and the "Crown Rolls."

Considerations of an analogous nature arise in relation to the Rolls of the Court of King's Bench, but

[1] As to my scheme for a Calendar of these rolls, of which three Terms were nearly completed, *see* Y.B., 16 Edw. III., Part I., p. xvii, and Part II., p. xi, and Y.B., 17 Edw III. (Rolls Edition), pp. xi-xii.

[2] They were so described by Arthur Agard, who lived in the reigns of Elizabeth and James I., and by Thomas Powell, in the year 1631. *See* "*The Repertorie of Records*" edited by Powell in 1631, p. 33, and pp. 133-4.

fortunately the same opportunities of making confusion have not occurred to the same extent, and it was hardly possible that they could occur. The rolls relating to civil matters and those relating to Crown matters, though mechanically held together by stitches before the reign of Queen Anne, were always kept distinct, to a certain extent, by a separate numbering. There was a general heading "*Placita coram domino* "*Rege apud*" [as the case might be]. First in order came the roll of civil pleas, with the name of the Chief Justice of the Court to distinguish it. This was followed by the Crown Roll marked by the word "Rex." At the beginning of the reign of Queen Anne the two rolls were separated, and each had its own separate heading. The roll of the plea or civil side of the Court then came to be distinctively known as the Plea Roll, and the other as the Crown Roll.[1] In citing the rolls of the reign of Edward III. I have, therefore, described the two rolls which have one cover and one general heading as "*Placita coram Rege.*" When it is a roll relating to civil matters I add nothing further. When it is a roll relating to Crown matters I add the word "Rex." These rolls yield records corresponding to the reports in considerable numbers, though not by any means in numbers equal to those found in the Plea Rolls of the Common Bench. They are of the greatest value for the proceedings upon writs of Error.

Method adopted to facilitate the search through the rolls of the two Benches.

The order in which the reports are found in any MS. of Year Books has no relation whatever to the order in which the cases occur on the rolls, and it might be necessary to go through a whole roll of many hundred skins in the search for one particular entry. To meet this difficulty I follow a plan which renders it practically impossible that any record on any roll of any particular

[1] 2 Tidd *Practice*, 728. In the Record Office the rolls are described as "*Coram Rege* Rolls" down to the year 13 William III., and as "Judgment Rolls" and "Crown Rolls" respectively afterwards.

term which relates to a report of that term can be missed. I prepare an abstract of each report including such salient features as I know from experience will aid in the identification, and to that abstract I make an index showing the nature of the action. I then begin the work upon the roll, and carefully examine each entry on the front and on the back of every skin. The first case found is, let us say, one of Formedon. There are several cases of Formedon in the index which refers to the abstract. The abstract shows what are the prominent details of each. It is seen at a glance that some of them cannot possibly be identified with what is on the roll. One, perhaps, seems to agree. If so, reference is made to a full transcript of the report, which is minutely compared with the record, and the question is then usually settled beyond all possibility of doubt, no matter whether the names are stated in the report or not.

In a sense, the preparation of this preliminary abstract and index is labour thrown away, because neither will serve even as a basis for the considered index of matters which is made after the text has been finally settled and translated, and while the volume is passing through the press. It would be quite unnecessary if there were a proper calendar of the rolls, for which it has to serve as a substitute in relation to this particular purpose, but is indispensable in existing circumstances, if the work is to be efficiently and thoroughly done.

The King's Bench Rolls and the Plea Rolls of the Common Bench having been compared in this way, and the records which have been found having been all noted on the abstract, the next process is to see what records are still wanting, and whether there is any probability that they may still be discovered elsewhere. When this unidentified residuum is carefully inspected, it is usually found to fall into three divisions:—(1), cases which, from their nature, or from

the paucity of details which they contain, are not susceptible of identification on any roll; (2), cases which, in ordinary course, ought to be found either in the King's Bench or in the Common Bench, but which may probably be reported in one term, and entered on the roll in another; (3), cases which do not belong to either of those two Courts, but which may possibly be found on the rolls of some other Court. As my abstracts are always far in advance of the settled text, it is sometimes possible to find in one of them a report which agrees with the record of another term, and so to diminish the number of unidentified cases.

And the Assise Rolls.

Sometimes there is a report of one of the actions of Assise which was heard and determined before Justices of Assise, and not removed into the Common Bench *propter difficultatem*. When the county is mentioned it is sometimes possible to find the record among the Assise Rolls, which again are without Calendar or Index for the reign of Edward III. Whenever the county is mentioned I search through the Assise Rolls of the county, and the year, roll by roll and skin by skin again, and sometimes with success.

And the Chancery and Exchequer records.

Sometimes the report is one of a case on the common law side of the Chancery. Here the records are not upon rolls, but were originally in the shape of individual documents upon files, which have now been broken up. It is consequently impossible to make for oneself such an exhaustive search through the records of a particular term as would be analogous to the complete examination of the King's Bench, Common Bench, or Assise Rolls; and all that can be done is to consult the ancient and modern lists. This is often a thankless task, but is not always fruitless, and sometimes leads to important results, as in the discovery of the record of the proceedings relating to the Wells charter.[1]

More rarely there occurs a report of an Exchequer

[1] *See* Y.B., 16 Edw. III., Part I., pp. xxiv-xciv, 108-120.

case, and it then has to be considered on what particular roll of Court of the Exchequer the corresponding matter would probably be found, and search has to be made accordingly, and probably through entire rolls.[1]

Various other rolls and records have now and again to be consulted also in relation to various subsidiary or incidental matters, but it is needless to enlarge on that point.[2] Enough has been said to give some idea of the manner in which cases in the records are identified with cases in the reports, and how they are treated when found.

References to Fitzherbert's *Abridgment* and the *Liber Assisarum*.

As in all previous volumes edited by me every case which occurs in Fitzherbert's *Abridgment* has been traced and noted. Some of them have also been noted in the old editions, but in many instances, as already mentioned, Fitzherbert did not use the report there printed, but the report which is now printed for the first time.

The *Liber Assisarum* has also been compared with the reports, and all the cases which there appear susceptible of identification are mentioned. As stated in the volume immediately preceding this, there is some confusion in the printed editions of the Book of Assises. In every instance in which one of the reports of Easter and Trinity Terms of the 18th year of Edward III. appears there, it is placed under the head of the 17th year. There is, however, no doubt about the real date, because the corresponding cases which have been identified on the rolls belong to the 18th year, and the others occur among reports of cases of which there are records in that year.

[1] Of these there are several, the most important of which, for the purposes of the Year Books, are the Remembrance or *Memoranda* Rolls of the King's and of the Treasurer's Remembrancers, and the Plea Rolls of the Exchequer of Pleas, which last are correctly described in the lists, and not as "*De Scaccario* Rolls," which would, in the Exchequer, be the equivalent of "*De Banco* Rolls" in the Court of Common Pleas.

[2] *See* the *Green Bag*, Vol. XII., pp. 538-542.

A table of references to the folios of the old editions is also placed at the end of this Introduction.

The life and death of the Chancellor known as Robert "Parning."

The death of the Chancellor whom lawyers and biographers have called "Parning" or "Parnyng," or "Parnynge," from the time when printing came into use, was the cause of some litigation, which throws a little new light upon the earlier portion of his career. As he was a tenant *in capite*, his lands were seized into the King's hand, after Inquisitions *post mortem* had been taken and returned.

Different modes of spelling the name.

In these Inquisitions, in the writs by virtue of which they were taken, and most frequently in other public records, the name appears as "Paruynge," though the letter "u" is commonly indistinguishable from the letter "n." Elsewhere, however, in some of the Public Records, in the Year Books, and in Chronicles, where the word is given at length, and not in abbreviated form, the letter "k" is frequently substituted for "g," and in one instance the letter "w" has been substituted for the doubtful "u" or "n." Sometimes also the first syllable appears as "Per," and not as "Par," and we thus have a wide field for conjecture as to the orthography and meaning of the name.

It was, like Plantagenet, that of a cognisance or ornament.

It cannot be derived from any place, for two reasons, either of which is sufficient in itself. So far as is known, there is not, and never was, any place the name of which can be identified with any reading of the name of the Chancellor. Even if such a place could be found, the Chancellor could not have taken his name from it, because in the public records the word "Paruynge" is never preceded by the word "de," as is invariably the case when the name of a person is taken from that of a place. Nor can the word represent any occupation, or any kind of physical peculiarity, because it would then be preceded by the word "le,"

as in the names le Fauconer, le Botiller, le Brun, le Rus. It seems rather to belong to the order of names of which an example is found in Plantagenet, and which indicate the cognisance or ornament worn by a person or family.

The name found in the form "Peruinke" in the "Roll of Battle Abbey."

The natural course then is to ascertain whether the name and the cognisance can be traced back to any earlier period. In the list of those who followed William the Conqueror in his invasion of England which is given by André Duchesne, as from Battle Abbey,[1] occurs the name Peruinke,[2] which is clearly identical with that of the Chancellor. This and other lists commonly known as the "Roll of Battle Abbey" are, no doubt, under suspicion, but, whether a Peruinke did or did not accompany the Conqueror, there is no reason to believe that a non-existent name would have been deliberately inserted in any list, as the person inserting it would have had nothing to gain, and the person wishing to have it inserted would not have gratified his vanity.

It is the French pervenche, the English periwinkle.

The spelling naturally suggests the probable meaning—that of the Latin *perrinca* or *peruinca* (or *vinca perrinca*) the modern French *pervenche*, the English periwinkle. The spelling Pervenke or Peruenke also occurs in one of the manuscripts of Murimuth, a chronicler who was a contemporary of the Chancellor, and who mentions his earlier appointment as Treasurer. Other MSS. give the readings Parvynk or Paruynk, and Parvyng or Paruyng in the same passage.[3] In Michaelmas Term, 16 Edward III., the Chancellor was a party in a writ of Covenant, and in one of the manuscripts of the Year Books he is there described

[1] *Historiæ Normannorum Scriptores Antiqui*, p. 1023. "Cognomina "Nobilium qui Guillelmum Nor- "mannorum Ducem in Angliam "sequuti sunt. Ex tabula Monas- "terii de Bello in Anglia, vulgo "Battail Abbay."

[2] p. 1025 (misprinted 1125).

[3] Murimuth (Rolls Edition), p. 118. The word "de" has slipped in before Pervenke in one MS., but that is certainly a mistake, as it is never found before the name in the records.

as Parwyng or Perwyng.[1] In the reports in the present volume he is several times called Paruynk,[2] and Paruenk, and in one of the authoritative Patent Rolls, too, his name appears as "Pereuenk."[3] It therefore seems clear that his name was not Parning at all, and not improbable that, if it had to be presented in a modern English form, the true equivalent would be Periwinkle.[4] As, however, the name may have been of French rather than of English origin, as the modernising of names may easily be carried to excess, and as the Chancellor has been known as Parning, Parnyng, or Parnynge, since his name first appeared in print, the best course is, perhaps, to adhere to "Parning, C.," whenever he appears as Chancellor, and to give the name as one finds it on other occasions.

The Chancellor was Robert Paruynge, or Paruynk, or Peruinke, the younger.

A case in the present volume[5] shows that there was another Robert Paruynge, who was parson of the church of Hutton-in-the-Forest in Cumberland, and who was used as a medium for settling some of the younger Robert's lands by means of fine *sur don, grant, et render*. It is not certain what relationship there was between the two, but they were, without doubt, members of the same family. When the two are mentioned in the same document the future Chancellor is always called the younger, and the other Robert, when not described as parson, is called the elder.[6]

Robert the elder, parson of Hutton in Cumberland.

The elder Robert appears to have been presented to the church of Hutton in the year 1309, and he may possibly have outlived his distinguished namesake.[7]

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[1] Y.B., Mich., 16 Edw. III., No. 69, p. 513, note 2.

[2] *See* below, pp. 155, 187, 189, 193.

[3] *Rot. Lit. Pat.* 6 Edw. III., p. 1, m. 1, d.

[4] The Duchess of Cleveland has come to the same conclusion with regard to the word "Peruinke," but has not identified the name with that of the Chancellor. *The Battle Abbey Roll*, Vol. III., p. 340.

[5] Below, p. 173, note 5.

[6] Inquisitions *post mortem* (Chancery), 17 Edw. III., No. 48.

[7] Hutchinson, *History of Cumberland*, Vol. I. p. 509.

The Chancellor's early life: acting as attorney.

Nothing is known of the date of the younger Robert's birth, but he must have been of full age on the 21st of July, 1315, when he was appointed to act as attorney, with John de Haveryngton, on behalf of one Walter de Kirkbride.[1] Kirkbride is a name which occurs elsewhere in association with Paruynge's, and after his death, his wife held certain land in dower which was of the inheritance of the heir of Richard de Kirkbride.[2] Paruynge was also appointed attorney, together with John de Haveryngton and Richard de Bollyngges, in another case, in May, 1318.[3] It need not be inferred from this that he belonged to the profession which was known in later times as that of an attorney. He was in each case simply put in the place of the principal for the particular matter in hand, and in each case probably for some special reason. It is true that in the Plea Rolls of the Common Bench the same names occur again and again as those of attorneys in different causes, and that we even find those who have been guilty of dishonourable conduct precluded from acting in that capacity.[4] There is, however, nothing to show that, even in that Court, a party could not nominate any one whom he might please to act for him. He might even nominate his wife.[5]

His associates at Westminster.

The future Chancellor's name again appears in association with that of John de Haveryngton as witness to a deed on the 31st of January, 1320–21 (14 Edward II.). That deed was executed at Westminster, and enrolled in Chancery.[6] He was also a witness, here described as Robert Paruynk, together with Richard

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[1] *Rot. Lit. Claus.* 9 Edw. II., m. 27, d.

[2] Inquis. p. m. (Chancery), 36 Edw. III., second part, No. 20.

[3] *Rot. Lit. Claus.* 11 Edw. II., m. 5, d.

[4] Y.B., Mich., 17 Edw. III. (Rolls Edition), pp. 138-141.

[5] Y.B., Easter, 13 Edw. III., p. 186. There is a passage relating to attorneys and apprentices in *Rot. Parl.* 20 Edw. I. (Vol. I., p. 84) which presents many difficulties, but which need not be discussed here.

[6] *Rot. Lit. Claus.* 14 Edw. II., m. 21, d.

de Kirkbride, to a deed dated London, the 8th of May, 1324, and enrolled in Chancery.[1] In both cases, too, in which he was appointed attorney the matters were in Chancery. We thus catch a glimpse of the future Chancellor making his early acquaintance with Westminster Hall in the interests of his friends and relations in the North, who were, no doubt, acquiring confidence in his skill and learning.

Soon afterwards, while he must still have been an apprentice of the law, we find his name in connexion with lawyers who were to be only a little less distinguished than himself. He was witness to a deed dated at Westminster, in February, 18 Edward II. (1324–5).[2] With him was Sir William de Herle, who was already a Justice of the Common Bench, and who was destined soon to be Chief Justice of that Court, to die a member of the King's Secret Council, and to leave behind him a reputation long remembered after his death. John de Denum, another witness, was a few years afterwards to be one of the King's Serjeants. Yet another of his fellow-witnesses, William de Denum, John's brother, was appointed King's Serjeant in the fifth year of the following reign, and a Baron of the Exchequer one year afterwards. It is thus apparent not only that he had the good opinion of those who were his neighbours in his own county, but also that he was well known as a rising man to the leading members of his profession.

His struggles with poverty.

It is, however, not less plain that "Robert Paruynge the younger" was not in an independent position, but was having a hard struggle to maintain himself at this very time. Some curious details touching this part of his career have come under my notice in searching through the Plea Rolls of the Common Bench for records corresponding with the reports. Among

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[1] *Rot. Lit. Claus.* 17 Edw II., m. 7, d.

[2] *Rot. Lit. Claus.* 18 Edw. II., m. 19, d. Schedule.

the innumerable unreported cases of interest which are there to be found is an action of Annuity brought by the Chancellor's widow, after his death, against John de Haveryngton.[1] This, it may be conjectured, is the John de Haveryngton with whom he had been associated as attorney in the years 1314 and 1318, and the John de Haverynton whose name appears with his as witness to a deed in the fourteenth year of the reign of Edward II.

His annuity of £1. 6*s.* 8*d.*, and one robe of an esquire.

The facts relating to the grant of the annuity were not disputed. John de Haverynton granted it by his deed indented on the Wednesday after the Feast of Easter in the eighteenth year of the reign of Edward II. (A.D. 1325) to Robert Paruynge the younger. It was an "*annuus redditus*" of two marks and of one robe suitable for wear among esquires (*competentis cum armigeris*) for advice and services given and to be given to the grantor and his heirs, during the grantee's life, against all persons, except the King, and those persons with whom he had been dwelling ("*illos cum quibus commoratus fuit*") before the execution of the deed. It was secured upon the manor of Thurnham in Lancashire, with a clause empowering the grantee to distrain for any arrears. One mark was payable at the Feast of Pentecost, the other at the Feast of St. Martin in the Winter (the 11th of November), and the robe at Christmas. It was alleged in the declaration that the annuity of two marks had been duly paid until the Feast of St. Martin, 11 Edward III., and of the robe until Christmas 13 Edward III., when the grantor withdrew them. The widow consequently sued as executrix of her husband's will, for the arrears—eight pounds in money, and four robes of the value of four marks.

The defendant alleged that there were no arrears, because the grantee had distrained during his lifetime in the manor of Thurnham, at every term at which a

[1] *Placita de Banco*, Mich., 19 Edw. III., R° 558.

payment became due, and so had been fully satisfied. The widow, however, maintained that the arrears were owing as she had alleged, and denied that her husband had ever levied any distress for the annuity in the manor or any part of it. Issue was joined thereupon.

The roll does not show what was the verdict, but, as the grant of the annuity was admitted, we can rely upon the facts which it discloses as a part of the earlier life of the Chancellor. It is evident that as late as the year 1325 he was, though in good repute among those who knew him best, not yet free from the anxieties of insufficient means. We are not told who were those kind friends or relations with whom he had been living, but it seems a reasonable inference that he was either not yet married, or, if married, had a home with his wife's kinsfolk. His annuity, even after all allowance has been made for the greater value of money in his time, was very small, and could hardly even be said to have made him "passing rich "on forty pounds a year."

The acceptance of the robe, which must have been such as Haveryngton chose to give him, is a clear indication that every item of expenditure had to be considered by him. It was just what was given to one of the King's nominees to a corody in a religious House. As his position improved, the annuity, of course, became of less importance to him, but it is clear that he took the robe as late as the thirteenth year of the reign of Edward III., at Christmas, 1339. In the following year he became a Justice of the Court of Common Pleas, and if his widow's statement was correct, he did not afterwards receive any portion of the annuity. He could, indeed, hardly have fulfilled the conditions upon which it was granted, after he had been promoted to the Bench. It could hardly have been in contemplation that a Lancashire lord of a manor should, whenever he pleased, command the advice and the services of one of the King's Judges, and still less of a Chancellor.

His rapid rise: knight of the shire, and serjeant-at-law.

After the grant of this annuity, however, the future Chancellor's advancement in reputation, wealth, and position appears to have been rapid. At the end of the year 1325 he was Knight of the Shire for Cumberland.[1] In the third year of the reign of Edward III. (1329) he had married and had become a Serjeant-at-law. His first appearance in the Year Books seems to be, however, not in the character of a serjeant, but in that of a party. An action of Dower was brought against him and Thomas de Hutton, and they both vouched Walter de Kirkbride to warrant. Judgment was given for the demandant to recover against the two tenants, and for them to recover over against the vouchee.[2] It is thus evident that Robert Paruynge the younger had acquired some land which one of the Kirkbrides was bound to warrant.

Married, and purchasing lands.

In the same year we find him and his wife Isabel in possession of messuages, lands, and rent in Botcherby near Carlisle, which, however, the King seized into his hand because they had been aliened without license. There followed a writ of *ad quod damnum* to enquire what loss there would be if the King granted that they might retain the tenements. This they were allowed to do, as appears by an endorsement on the inquisition, on payment of a fine of forty shillings to the King.[3] They also had a pardon for purchasing without license.[4]

Appearance in the reports as counsel.

In Easter Term 3 Edward III. the future Chancellor makes his appearance as counsel in an Assise of Novel Disseisin of rent,[5] which was heard before Justices of Assise, who adjourned the cause before themselves at Westminster, where they consulted Geoffrey le Scrope

[1] Palgrave's *Parliamentary Writs*, Vol. II. Div. 2, p. 336.

[2] Y.B., Hil., 3 Edw. III., No. 21, fo. 7. The report is, as usual, full of misprints, Kirkbride being called Kirkbridge (sometimes Walter and sometimes William), and Paruyng, or Peruyng, being called Poryng.

[3] Inquisitions *ad quod damnum* (Chancery), 3 Edw. III., No. 3.

[4] *Rot. Lit. Pat.* 3 Edw. III., p. 1, m. 10.

[5] Y.B., Easter, 3 Edw. III., No. 4.

(at that time Chief Justice of the King's Bench) and other sages of the law. They did not apparently send the case into the Common Bench *propter difficultatem*, but gave their own decision as to the taking of the Assise. In the following Michaelmas Term "Parn." is pleading before Chief Justice Herle and the other Justices of the Court of Common Pleas in a curious action of Trespass relating to the forcible carrying off of a deed from the Abbot of Croyland. We thus see him fairly started on his career as serjeant-countor with right of audience in the Common Bench.[1]

King's Serjeant: rapidly growing in wealth.

Four years afterwards he was King's Serjeant,[2] and then purchasing the manor of Stainton in Cumberland. In the year 8 Edward III. (1334) he was purchasing the manor and the advowson of the church of Melmerby, as well as the manor of Blackhall.[3] In the following year he was purchasing from Walter de Kirkbride two parts of a third part of the manor of Skelton.[4] Two years afterwards (11 Edward III.) he effected a settlement of all this property by fine. The manor of Botcherby and some other lands near Carlisle were settled upon himself and his wife Isabel, and the heirs of his body, with certain remainders mentioned below.[5] The manor and advowson of Melmerby were settled upon himself for life, with remainder to Margaret wife of John de Weston (otherwise called Margaret de Wigton) in fee tail, and successive remainders as below.[6] His other lands, the manors of Blackhall and Stainton, and his portion of the

[1] Y.B., Mich., 3 Edw. III., No 1, fo. 31.

[2] He is so described in *Rot. Lit. Pat.* 7 Edw. III., p. 2, m. 29. And *see* also *Liberate* Roll, 8 Edw. III., m. 1, cited by Dugdale in his *Origines Juridiciales*, fo. 43.

[3] *Rot. Lit. Pat.* 8 Edw. III., p. 1, m. 21.

[4] *Rot. Lit. Pat.* 9 Edw. III., p. 1, m. 17.

[5] *Rot. Lit. Pat.* 10 Edw. III., p. 1, m. 42 (license). Inq. p. m. (Chancery), 17 Edw. III., No. 48.

[6] *Rot. Lit. Pat.* 11 Edw. III., p. 1, m. 30 (license). Inq. p. m., as above. Below, in the present volume, p. 173, note 5.

manor of Skelton, were settled upon himself in tail, with successive remainders, as in the case of the manors of Botcherby and Melmerby, to Adam son of John Peacock in tail male, to John, Adam's brother, in tail male, to Thomas, John's brother, in tail male, and to his own right heirs.[1]

Grant to him from the Crown of 100 marks *per annum* for life.

On the 24th of April, 1340, he evidently stood high in the King's favour. In addition to other rewards,[2] he had previously obtained a grant of one hundred marks *per annum* in recognition of his good service, and in recompense for the losses which he had suffered through the incursions of the Scots. It had been arranged that he was to have forty marks out of the demesne lands of the Castle of Carlisle, and that the remaining sixty were to be paid to him at the Exchequer.[3] This grant was for his life, or until the King had caused him to be provided, for his life, with land or rent, in a suitable place in England, of the value of one hundred marks *per annum*. He now had granted to him in satisfaction of the hundred marks all the demesne lands of the Castle of Carlisle, with a fishery in the Eden, for his life, but upon condition that, if it should be found that the King had previously been answered as to a greater sum than one hundred marks *per annum* in respect of those lands, the grantee should account for the surplus at the Exchequer.[4]

Justice of the Common Bench, Chief Justice of the King's Bench, and Treasurer within seven months.

On the 23rd of May in the same year, only seven years after becoming a King's Serjeant, he was appointed a Justice of the Court of Common Pleas.[5] He held that office, however, only two months, for on the 24th of the following July he succeeded the acting Chief Justice, Sir Richard Willoughby, (over whom

[1] *Rot. Lit. Pat.* 10 Edw. III., p. 1, m. 42 (license). Inq. p. m. (Chancery), 17 Edw. III., No. 48.

[2] *Rot. Lit. Pat.* 14 Edw. III., p. 2, m. 40.

Rot. Lit. Pat. 12 Edw. III., p. 1, m. 29. *Cf. Rot. Lit. Pat.* 14 Edw. III., p. 1, m. 17.

[4] Letters Patent enrolled on the *Originalia* Roll of the Exchequer 14 Edw. III., R° 11.

[5] *Rot. Lit. Pat.* 14 Edw. III., p. 2, m. 32, and subsequent Feet of Fines.

very serious charges were impending) as Chief Justice of the King's Bench,[1] a position which he was again to abandon for one still higher.

He had, indeed, attracted the King's attention at a time most favourable for himself. On the 30th of November the King suddenly returned to England, after his expedition beyond seas, in great wrath against most of his old ministers and judges, of whom many were dismissed.[2] The newly-appointed Chief Justice had the good fortune to be still young, and had hardly had time to make mistakes while on the Bench, or what might have appeared to be mistakes in the King's eyes. The King, as his contemporary Murimuth said, took the advice of the younger men, and despised that of their elders, and for that reason "Pervenke" became Treasurer in succession to Roger de Northburgh, Bishop of Coventry and Lichfield, who was dismissed. His promotion to that post was on the 15th December, 1340.[3]

Presides as Commissioner of Oyer and Terminer to try Willoughby, the late Chief Justice.

The new Treasurer was almost immediately (on the 12th of January 1340–1) appointed Chief of the Commissioners of Oyer and Terminer to arraign Willoughby, the late acting Chief Justice of the King's Bench, Stonore who, until now removed, had been Chief Justice of the Common Pleas, Shardelowe and Sharshulle who had been Puisne Justices of the same Court, and a number of other persons who had held high offices until their recent arrest and imprisonment.[4] He was thus at the head of a Commission to try those very Justices before whom he had but a few months previously been pleading as a King's Serjeant.

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[1] *Rot. Lit. Claus.* 14 Edw. III., p. 2, m. 55.

[2] *See* Y.B., 14-15 Edw. III., Introd., pp. xxi., *et seq.*

[3] Murimuth, *Continuatio Chronicarum* (Rolls Edition), p. 118. *Rot. Lit. Pat.* 14 Edw. III., p. 3, m. 7. He did not, however, deliver up the records of the Court of King's Bench to Scot, his successor as Chief Justice, before the following 8th of January. *Rot. Lit. Claus* 14 Edw. III., p. 2, m. 8.

[4] *Rot. Lit. Pat.* 14 Edw. III., p. 3, m. 2, d.

The proceedings on the arraignment of Willoughby, when the new Treasurer was presiding, have been reported. The Treasurer addressed the late acting Chief Justice, before reading the Commission, and said that the King, trusting in the highest degree in his loyalty, fidelity, and discretion, had constituted him *locum tenens* in the King's Bench, that he had there perverted the laws and sold them as if they had been oxen or cows, and that this had been made known to the King by the clamour of the people. After the Commission had been read, Willoughby raised a number of technical objections, all of which the Treasurer overruled, and Willoughby in the end threw himself on the King's mercy.[1]

Further grant to him from the Crown of an annuity of £40.

The King's approval of the new Treasurer's conduct was shown a few months afterwards by the grant of an annuity of £40 for so long a time as he should continue to be Treasurer, as well for his steadfastness in the King's service as because he could not otherwise support his position.[2]

Appointed Chancellor.

In the autumn of this year Bourchier, who was the first lay Chancellor, fell, in a storm of unpopularity, and the Treasurer was appointed to the office. He thus passed from the condition of a simple King's Serjeant through those of Puisne Justice of the Common Pleas, Chief Justice of the King's Bench, and Treasurer, to that of Chancellor, in one year, five months and four days, for the Great Seal was delivered to him on the 27th of October, 1341.[3]

His judgment in Chancery in the case of the Wells charter.

Lord Campbell remarked, in his *Lives of the Lord Chancellors*,[4] that he could not "find any trace of "Parnynge's decisions while Chancellor." The Year Books of 16 Edward III. had not been printed at the time when he wrote, and it was consequently hardly

[1] Y.B., Mich., 14 Edw. III., No. 109 (pp. 258-262).
Rot. Lit. Pat. 15 Edw. III., p. 2, m. 18.

[3] *Rot. Lit. Claus.* 15 Edw. III., p. 3, m. 22, d.

[4] 4th Edn., Vol. I., p. 213.

possible for him to become acquainted with the very important case of *Scire facias* for the revocation of a charter granted to the Burgesses of Wells, the hearing of which was commenced in Chancery in Hilary Term in that year, and concluded in the following Michaelmas Term.[1] The Chancellor's remarks appear in the reports, and the terms in which he gave judgment are set out in the corresponding record which was fortunately discovered among some miscellaneous Chancery Rolls.[2]

His love of sport.

Between Hilary and Easter Terms in this year we may discern the new Chancellor in the character of a sportsman, and preparing to act in due season literally in accordance with Shakspeare's later lines :—

> "Under this thick-grown brake we'll shroud ourselves,
> For through this *laund* anon the deer will come,
> And in this *covert* will we make our stand,
> Culling the principal of all the deer."[3]

On the fourth of March, 1341–2, the King granted to him "for the good service which he has previously given, "and which he desists not from giving day by day" the "*landam*," *laund*, or lawn of Braithwaite, and the *covert* of Middlesceugh in the King's Forest of Inglewood. He was to have them, like the demesne lands of Carlisle Castle, for his life. He was to pay a rent of eight marks *per annum* by the hands of the Warden of the Forest, that is to say, six marks which the Justices of the Forests beyond Trent had been in the habit of paying, and two marks as increment. He further had permission to enclose the lawn and covert with a small ditch and a low hedge in accordance with the Assise of the Forest, and to cut down as many dry and leaf-

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[1] Y.B., Hil., 16 Edw. III., No. 38 (pp. 108-120), and Introduction, pp. xxiv-xciv.

[2] Since the publication of the Year Books of 16 Edward III., the record of this case has been placed among the "*Placita in Cancellaria*," in the Public Record Office.

[3] Third part of King Henry the Sixth, Act III., Scene 1.

less trees as might be necessary to effect the enclosure, without molestation from the Justices of Forests or any of the King's officers.[1]

His strenuous character: he sits, while Chancellor, in the Court of King's Bench.

The Chancellor was evidently a man of great activity, taking the keenest interest in everything that he undertook or that in any way related to his office. Thus, when the record of an Assise of Darrein Presentment in the Common Bench had been brought into the Chancery as a preliminary to proceedings in Error in the King's Bench, he did not send it to that Court, as was the more usual course, by writ of *Mittimus*, but went thither in his own person and delivered it with his own hands to Chief Justice Scot, then sitting on the Bench.[2] He was the first trained lawyer who had attained the Chancellorship. He was indefatigable in going from Court to Court whenever it seemed possible that his knowledge or advice could be of service. He seems to have acted upon the principle that whenever a writ had issued from the Chancery, as the warrant for proceedings in another Court, the Chancellor could follow it, and see that it was duly executed. For instance, where the transcript of the note of a fine had been brought into the Chancery by *Certiorari*, and sent thence into the Court of King's Bench by *Mittimus*, the Chancellor sat there, and appears to have given a decision, though the Chief Justice was in Court.[3]

And in the Court of Common Pleas.

He was often to be found in the Court of Common Pleas—a fact which was well known to Sir Edward Coke.[4] He seems to have followed the Original Writs which issued out of the Chancery for the determination of causes in the Common Bench, and to have been

[1] *Originalia* Roll of the Exchequer, 16 Edw. III., R° 8. He had previously obtained a license to enclose the woods of the manor of Blackhall, if not already enclosed. *Rot. Lit. Pat.* 9 Edw. III., p. 2, m. 33.

[2] Y.B., Easter, 17 Edw. III. (Rolls Edition), No. 4, p. 234, and p. 235, note 9.

[3] Y.B., Mich., 16 Edw. III., No. 28, p. 356.

[4] 4 Inst., 79.

specially interested in difficult cases of *Quare impedit*, or cases in which any question of ecclesiastical history was involved. The very next report in the Year Books to that in which the Chancellor is sitting in the King's Bench is one in which he is sitting in the Common Bench, and in which the King is plaintiff against the Abbot of Cirencester with regard to a presentation to a church. On this occasion it does not appear that the Chief Justice of the Court of Common Pleas (Stonore) was present, as the only Justice whose name is mentioned is Sharshulle.

His impartiality even where the King was concerned.

As the Chancellor was high in the King's favour there might possibly arise a suspicion that his presence, when the King was a party, might not be conducive to impartiality. If so, there is an excellent answer in his favour. Judgment was given not for the King but for the Abbot.[1] It is true that this was after the Chancellor's death, but it followed the King's charter, executed *pendente placito*, and granting that the Abbot and Convent might hold the church *in proprios usus*. Any representation, therefore, which may have been made to the King could only have been to the Abbot's advantage, and it is clear that the Chancellor showed no favour to his royal patron.

In a *Quare impedit* in Hilary Term 17 Edward III. also (The King *v.* Hillary), to hear which the Chancellor sat in the Court of Common Pleas with Sharshulle, J., and Shardelowe, J., he never lost sight of the points which told against the King. He stated them deliberately and at considerable length. In that case also judgment was given against the King upon default of the King's Attorney after issue had been joined.[2]

In the following Term (Easter, 17 Edward III.) the Chancellor is again found sitting in the Court of King's Bench, together with Chief Justice Scot, to hear a *Quare non admisit* brought by the King against the

[1] Y.B., Mich., 16 Edw. III., No. 29, pp. 356-360, 361, note 8.

[2] Y.B., Hil., 17 Edw. III. (Rolls Edition), No. 34, pp. 158-182, and 183, note 1.

Archbishop of Canterbury as Guardian of the Spiritualities of the vacant see of Lincoln. A question arose as to whether the Archbishop was the Guardian, and the Chancellor seemed to incline to the opinion that the writ should have been directed against the Guardian of the Spiritualities (whoever that might be) without mentioning the Archbishop by name. Proceedings against the Archbishop were afterwards stayed, and another action of *Quare non admisit* brought against the new Bishop of Lincoln.[1]

In Trinity Term 17 Edward III. (the last in which he sat in any Court) the Chancellor sits in the Common Bench with Stonore, C.J., and Hillary, J., to hear the conclusion of a *Quare impedit* (the King *v.* Fryville) which had been partly heard in the previous Easter Term, and which concerned the King's right to present to a prebend. He spoke more than once at considerable length. In this case the judgment, which, according to the report, was delivered by Stonore, was in the King's favour. The reasons for it were stated by the Chief Justice, and appear upon the roll.[2]

His knowledge of ecclesiastical history.

In this term also the Chancellor sat again in the Court of Common Pleas with Stonore, C.J. (no other Justices of the Court being mentioned in the report), to try another action of *Quare impedit* (the King *v.* the Archbishop of York and the Chapter of York). The question which had to be decided was whether the King had a right to present to the Deanery of York, which fell vacant while the Archbishopric was in the King's hand during the vacancy of the see. The Chancellor spoke at some length, dealing with various points of ecclesiastical history affecting the relations of Deans and Chapters, Abbots and Priors, and their patrons paramount. Judgment was delivered in favour

[1] Y.B., Easter, 17 Edw. III. (Rolls Edition), No. 9, pp. 282-286, and 287, note 14. Introd., pp. xlvii-l.

[2] Y.B., Trin., 17 Edw. III. (Rolls Edition), No. 10, pp. 486-500. And *see* Easter, 17 Edw. III., No. 31, pp. 416-434, and 435, note 11, and Introd. pp. xlii-xliii.

of the King as patron paramount by the Chief Justice, whose opinions were in agreement with those of the Chancellor. The reasons are also fully stated in the judgment as enrolled.[1]

His early and unexpected death.

From all that can be learned of the first lawyer who became Chancellor, it would seem that his rapid advancement was not undeserved, though he may have been exceptionally fortunate in his opportunities. Though he may naturally have excited some jealousy, it does not appear that his intellectual fitness for his post was ever called in question. It is clear that he had studied history as well as law, and that he loved the sports of the field as well as his books and his learning. He died unexpectedly, if not suddenly, while still in the prime of life, in August, 1343.[2]

He left no issue: his widow, his sisters, and his nephew, Adam Peacock.

His wife, Isabel, survived him nearly nineteen years, as she did not die until the Wednesday following Whit Sunday in 1362.[3] He left no surviving issue. His two sisters Joan and Emma were his next heirs. They were both more than forty years old at the time of his death. Joan was married to John Peacock, and Emma was a widow. Most of the Chancellor's land of which he had been sole tenant went, in accordance with the entail, to his nephew Adam, the son of his sister Joan and of John Peacock. The manor of Botcherby and some other lands near Carlisle, which he had held jointly with his wife, also went to Adam on the death of Isabel.[4] Adam was then thirty years of age and upwards, and was still described as Adam son of John Peacock, and as knight. He had, however, after succeeding to the property which came to him as

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[1] Y.B., Trin., 17 Edw. III. (Rolls Edition), pp. 524-540 and 541, note 3. *See* also Introd. pp. l-lvi.

[2] *Inquis.*, p. m. (Chancery), 17 Edw. III., No. 48; Y.B., Mich., 17 Edw. III. (Rolls Edition), p. 3, note 1; *Placita de Banco*, Mich., 19 Edw. III., R° 558.

[3] *Inquis.*, p. m. (Chancery), 36 Edw. III. (Second part), No. 20.

[4] These particulars are from the Inquisitions *post mortem* above cited, which were taken on the death of the Chancellor and on the death of his widow.

entailed immediately after the Chancellor's death, assumed, before Isabel's death, the Chancellor's name, and is described as Adam Paruynge, knight, on the 4th of November, 1358.[1] This fact appears to have misled some of the Chancellor's biographers into the belief that he left issue.[2] It is, however, beyond doubt that he had no descendants.

An infringement of the Statute of Northampton, c. 8.

In one of the actions which followed the Chancellor's death there is a noteworthy illustration of the manner in which the eighth chapter of the Statute of Northampton[3] was sometimes set at nought. The King brought a *Quare impedit*[4] against Margaret de Wigton, claiming a presentation to the church of Melmerby, as having in his hand the lands of "Robert Paruynge," who held of him *in capite*. The defendant pleaded that, in virtue of a certain fine, Robert Paruynge had at the time of his death only an estate for life in the manor of Melmerby, and in the advowson which was appendant to the manor, that she succeeded to an estate tail on his death, that it had been so found by an Escheator's Inquisition, that the King had thereupon commanded the Escheator to deliver to her the manor and advowson, together with the issues received by him since Robert's death, that the Escheator had so delivered the advowson among other lands and tenements, that the King had no right to seize the advowson, and that any seisin which he had must be considered null. The reply on behalf of the King was that the church became void during Robert's life, and

[1] *Originalia* Roll (Exchequer), 32 Edw. III., R° 10, and elsewhere.

[2] It is stated in Foss's *Judges of England*, III. 477, that the Chancellor left "by his wife Isabella, a son named Adam, who succeeded to eight manors in the counties of Cumberland and Northumberland." In the *Dictionary of National Biography* it is stated that "by his wife Isabella. . . he had a son named John."

[3] 2 Edw. III.

[4] Y.B., Easter, 18 Edw. III., No. 39.

was void for six months before the date of the writ directed to the Escheator to deliver the advowson, that the defendant had not denied that the King rightfully had seisin of it by reason of Robert's death, that no mention of the presentation could be inferred from the word "issues" in the writ, and that the presentation could not be included in the word "issues."

Interference of the King, by writ of Privy Seal, in an action of *Quare impedit*.

After the defendant's rejoinder re-affirming the principal points in the plea, there was a long surrejoinder on the King's behalf and *profert* was made of his writ under the Privy Seal. The following is a translation[1] of it:—

"Edward by the grace of God King of England "and of France, and Lord of Ireland, to our Justices "of the Bench greeting. We have heard that, although "a right has accrued to us to present to the church "of Melmerby by reason that Robert Paruynge, who "held of us *in capite*, died seised of the advowson of "the said church, and it was taken into our hand, "among his other lands and tenements, by reason of "his death, and we presented our clerk to the same "church, then void *de jure* and *de facto*, while that "advowson was still in our hand, and with regard "thereto we have sent you other letters to expedite "our right in this behalf, yet nevertheless the said "business is still delayed to the prejudice of ourselves "and contrary to the tenour of our said letters. And "because we desire that the business should be brought "to a good and speedy end in order to save our right, "we command you anew that you do betake yourselves "as near as you can in accordance with the law of "our Kingdom to put our right to present to the said "church in due execution. And we signify to you "that we are informed that our said right is sufficiently "clear, and that our intention is not that by colour "of any command issued from our Chancery to cause "to be delivered to Margaret de Wigton any lands or

[1] For the original French, *see* p. 183, note 2.

"tenements, and the said advowson with the issues, "any prejudice be caused to us with regard to pre- "senting to the said church *hac vice*, as will be in "accordance with right, but that our said presentation "be saved to us, notwithstanding the said livery made "to the said Margaret. Given under our Privy Seal, "at Westminster, the fifth day of July, in the year of "our reign of England the eighteenth, and of France "the fifth."

This was obviously a direct interference with the course of justice. It took away or attempted to take away from the Justices their power to interpret according to law the word "issues," the meaning of which was in dispute, and to settle the question by a declaration of that which was the King's intention at the time when the word was inserted in the writ to the Escheator.

Protest against it.

It is a curious fact that, although the case is doubly reported, the King's writ under the Privy Seal directed to the Justices is mentioned in one only of the reports,[1] and there is no mention of the Statute of Northampton in either. The roll, however, clearly shows that attention was called, on the defendant's behalf, to the contravention of the Act in no measured terms. "The "letters of the Lord the King which John de Clone "(the King's attorney) shows to the Court are altogether "contrary to the laws, statutes, and custom of the "realm, and the Court ought not of right to take any "notice of them."[2]

A subsequent writ, citing the Act.

This protest was, for the moment, efficacious, for the King sent to the Justices his writ close dated only a week after the previous writ under the Privy Seal. He recited in it the words of the eighth chapter of the Statute of Northampton, and then added: "We, willing "that this statute should be inviolably observed in all "and singular its articles, command you that you do "proceed as far as you can with justice in the cause

[1] pp. 180-182. | [2] p. 185, note 2.

" which is before you, by our writ, between us and " Margaret de Wigton, for that the same Margaret do " permit us to present a fit person to the church of " Melmerby which is void, and belongs to our donation, " as is said, any commands to the contrary directed " to you by the Great Seal or the Little Seal notwith- " standing."

Judgment nevertheless given for the King.

It is, of course, impossible to know what may have been the effect of this last missive, following its predecessor so closely, upon the minds of the Judges, or what influence either may have had upon their decision. Judgment, however, was prayed for the King on the ground that the defendant had not denied the allegations made on his behalf, and was given for the King " because it appears to the Court that the matters " above alleged by the aforesaid Margaret are not " sufficient to preclude the King from his presenta- " tion." [1] It would seem from this that, if the letter under the Privy Seal did not affect the result, it was a quite needless infraction of a most important statute.

Appeal of Maihem: its rare occurrence: what it was originally.

A notable report in the present volume, though very brief, is that of an Appeal of Maihem. Instances of this kind of Appeal are rare, and some contradictory statements with regard to it have been made in law-books. In Bracton's time maihem apparently might or might not be treated as a felony, at the option of the injured person. Speaking of appeals in general he says " *nullum appellum nisi fiat mentio de felonia* " *facta.*" [2] He also says in relation to the particular Appeal of Maihem that the words of the person who institutes the appeal are, in certain cases, to include the words " *quod hoc fecit nequiter et in felonia offert* " *disrationare versus eum, sicut homo mahemiatus.*" [3]

[1] p. 187, note 1.
[2] fo. 141.
[3] fo. 144, b.

The first passage, however, seems to mean no more than that where felony is alleged the Appeal is bad in form unless the precise nature of the felony be mentioned. The second must be read by the light of a subsequent passage.

Either Appeal or action of Trespass lay for maihem.

There appears to have been another kind of Appeal which related chiefly to the imprisonment of the appellor by the appellee, but which might include a charge of committing maihem. In this "*agi poterit* "*civiliter licet factum sit criminale, ut si quis dicat,* "*quasi conquerendo de injuria, et sine adjectione felonie,* "*quod talis imprisonavit talem*;" *&c.*[1] It is more clearly shown by Fleta that this applies to maihem in the words "*in istis autem appellis de mahemio, de plaga, et* "*imprisonamento agere licebit conquerenti civiliter, con-* "*querendo de injuria per breve de Transgressione, vel* "*criminaliter.*"[2] The corresponding passages in Britton are to the same effect. "As to maihems we are quite "willing that the persons maimed sue by Appeals of "Felony against such felons."[3] "Appeals of Felony can "also be made in respect of wounds and of the imprison- "ment of free men, and of every outrageous trespass. "But in order to avoid the perilous hazard of battle, "it is better to make the suit by our writs of Trespass "than by Appeals."[4] "When any one has purchased "our writ of Trespass on maihem, or imprisonment, "or in respect of anything carried off or taken by way "of robbery . . . . . let him begin by delivering "his writ to the Sheriff."[5]

Judgment in either case originally that of member for member.

We thus see three distinct stages in the treatment of the Appeal of Maihem. According to all three writers the offence of committing maihem may be treated as a felony or not, at the option of the injured person. According to Bracton the remedy was in either case by Appeal, and there is no suggestion of a writ of Trespass where no felony is alleged. Accord-

[1] *Bract.*, fo. 145, b.
[2] *Fleta*, 60.
[3] *Britton*, Lib. I., c. 26, § 1.
[4] *Britton*, Lib. I., c. 26, § 2.
[5] Lib. I., c. 27, § 1.

ing to Fleta the proceeding may be by writ of Trespass where there is no felony alleged, but it is nevertheless still called Appeal of Maihem. According to Britton, where no felony is alleged, the remedy is by writ of Trespass, and this is sharply defined as being different from an Appeal. According to Britton, however, when the proceedings for maihem were by writ of Trespass, and the defendant was found guilty, judgment was to be given as it would have been if the proceedings had been by Appeal,[1] wound for wound, imprisonment for imprisonment,[2] or, as Fleta puts it, the loss of member for member.[3] Still, as early as Britton's time, the extreme punishment had ceased to be inflicted. "But in such cases we will that there be "such mitigations that the appellees be sent to prison, "and there remain in irons until satisfaction be made to "the plaintiffs, and that they be afterwards punished "for breach of our peace."[4]

But no felony charged where the action was one of Trespass.

In all respects the proceeding by writ of Trespass was an advantage to the plaintiff and consequently a disadvantage to the defendant, because a conviction was more probable than on an Appeal, which was more easily set aside by technical objections. One very important avenue of escape, that of benefit of clergy, was also closed to the offender by the omission to charge him with felony. There is, indeed, a case on record (not, indeed, strictly of maihem, but of wounding) in which a clergyman had, with the assistance of another, cut off the upper lip of one of his parishioners. When brought into Court they both refused to answer in the absence of their Ordinary, but it was held that

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[1] *Britton*, Lib. I, c. 26, § 3. Bracton says, on the contrary (fo. 145, b.), that where the proceedings in Appeal were of a civil nature "hic non sequitur aliqua "pœna corporalis, sed tantum "pecuniaria, ratione damnorum, "quod secus esset si felonia esset "adjecta." The distinction, however, was of little importance when the *lex talionis* had ceased to be enforced.

[2] Lib. I., c. 26, § 2.

[3] *Fleta*, 59.

[4] *Britton*, Lib. I., c. 26, § 2.

as the act was one of trespass, and not of felony, their status was no protection to them. Judgment was given for each of them to pay £100 (a large sum in the time of Edward I.), and they were committed to prison until they should have satisfied the injured man and the King.[1]

Technical distinction between Appeal of Maihem and Trespass in the reign of Edward III.

The case in the present volume[2] shows that there was still a technical distinction between an Appeal of Maihem and an action of Trespass brought for the same cause. An appellee had been outlawed, and sued to have a charter of pardon in accordance with a recent statute. The Act[3] was to the effect that, if any one against whom a plaintiff had recovered damages had been outlawed, he should not have a charter of pardon of outlawry until the Chancellor had been certified that the plaintiff had been satisfied of his damages. If any one had been outlawed before appearance, he was to have his charter only when the Chancellor was certified that he had surrendered before the Justices of the Court from which the Exigent had issued. It was understood to be implied that upon fulfilment of the conditions the charter could be had by grace of the King. The appellee's contention apparently was that the appellor had nothing to gain except damages, as on a writ of Trespass, and therefore that upon payment of the damages he could have the benefit of the Act.

Judgment in Appeal still in law, though not in practice, that of member for member.

It was, however, pointed out that judgment in Appeal of Maihem, though mitigated by custom, was still, according to the strict rigour of the law, that of loss of member for member, and consequently could not be regarded as identical with a judgment in Trespass, in which, as between the parties, damages only were in question. An appellee, too, differed from a defendant in Trespass in that he could not appoint an attorney, or be allowed at large on bail. Thus the

[1] Pike's *History of Crime in England*, Vol. I., p. 212.

[2] Easter, No. 31, p. 130.

[3] 5 Edw. III., c. 12.

doctrine that an Appeal of Maihem necessarily treated the offence as a felony, as in the days of Britton, was not yet extinct, though no judgment to that effect appears in the report.

Coke's later views on the subject, and Blackstone's.

It was not, indeed, extinct in Coke's time, for in his exposition of the Statute of Gloucester he draws a distinction between an ordinary plea of "mayheming" and "an appeal of mayheme, which being '*felonice* "'*maihemavit*' the defendant should not make an "attorney."[1] He says, however, elsewhere, "this "offence of mayheme is under all felonies deserving "death, and above all inferior offences, so as it may "be truly said of it that it is '*inter crimina majora* "'*minimum, et inter minora maximum.*'"[2] Maihem was thus near the border-line of felony for many generations, sometimes on one side of it, sometimes on the other, but in Blackstone's time it seems to have settled itself firmly on the outside of the line, when the mode of proceeding was by Appeal, though the infliction of various injuries to the person had become felony by statute. He divided Appeals into two classes, the various appeals of felony, and the Appeal of Maihem, thus clearly excluding the Appeal of Maihem from the class of appeals of felony.[3]

An Attaint after verdict in Assise.

There are several points relating to proceedings by Assise of Novel Disseisin and Attaint, which are raised by a case in Trinity Term.[4] One Roger de Burton had arraigned an Assise of Novel Disseisin against

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[1] 2 Inst., 313.

[2] Co. Litt., 127.

[3] 4 Com. 310. In 1 Hawkins, *Pleas of the Crown* (Ed. Leach, 1795) 620 (sec. 3) there occurs the statement "it is to be observed that "all maim is felony." This is true only in the sense that maihem could, at an earlier time, be alleged to have been committed "*felonice*."

[4] No. 20 (p. 328).

Sir Thomas Ughtred, and won his action, in consequence, as Ughtred alleged, of a false oath made by the jurors of the Assise. Ughtred therefore sued a writ of Attaint in the King's Bench.

Distinction between "arraigning" and "taking" an Assise.

The report, although very brief, presents technicalities which require explanation. It is stated that the Assise had been arraigned before Heppescotes, Paruynge, and Fencotes, and afterwards taken before Fencotes and Blaykeston in virtue of a new commission.

The arraigning of the Assise in early times.

The meaning of this is that Burton had by plaint in the Chancery sued a writ of Assise of Novel Disseisin which would have been in the following form[1]:—

"The King to the Sheriff of Yorkshire greeting.
"Roger de Burton has *complained to us* that Thomas
"Ughtred, knight, has tortiously and without judg-
"ment disseised him of his free tenement in
"Thirkleby . . . . And therefore we command you
"that, if the aforesaid Roger shall give you security for
"prosecuting his claim, you cause that tenement to be
"reseized and . . . . to be in peace until a certain
"day of which our beloved and faithful Thomas de
"Heppescotes, Robert Paruynge, and Thomas de Fen-
"cotes shall give you notice. And, in the mean time,
"cause twelve free and lawful men of that neighbour-
"hood to view that tenement, and their names to be
"empanelled. And summon them by good summoners
"that they then be before the aforesaid Thomas de
"Heppescotes, Robert Paruynge, and Thomas de Fen-
"cotes, and those whom we shall have associated with
"them, at a certain place, of which the same Thomas,
"Robert, and Thomas shall give you notice, ready to
"make their verdict thereon known. And put by gage
"and safe pledges the aforesaid Thomas Ughtred, or
"his bailiff, if he shall not himself be found, that he
"be there to hear that verdict. And have there the
"summoners, the names of the pledges, and this
"writ."

[1] *Reg. Brev. Orig.* (1531) 197.

The suing of this writ by plaint, in the time of Edward III. and previously, was in technical legal language the "arraigning" of the Assise.

The patent to Justices to take an Assise arraigned before them.

Immediately following this writ there would have issued Letters Patent to Heppescotes, Paruynge, and Fencotes as follows[1]:—"The King to his beloved and "faithful Thomas de Heppescotes, Robert Paruynge, "and Thomas de Fencotes greeting. Know ye that "we have constituted you our Justices, together with "those whom we shall have associated with you, to "take an Assise of Novel Disseisin which Roger de "Burton has arraigned before you, by our writ, against "Thomas Ughtred, knight, in respect of tenements in "Thirkleby. And therefore we command you that you "take that Assise at a certain day and place which "you shall appoint for that purpose, doing thereon "that which belongs to justice according to the law "and custom of our realm of England, saving to us "the amercements forthcoming thereof. We have also "commanded our Sheriff of Yorkshire that he do "cause that Assise to come before you at a certain "day and place whereof you shall give him notice."

The Latin and French equivalents of the word "arraign."

This patent would, in the original, have afforded an example of the use of the Latin equivalent of that French verb of which one MS. of the report makes the past participle to be *arrame* or *arraine*, or in one place possibly *arranie*, the other *arreyne* or *arene*. The Latin verb is found in the records and elsewhere in at least two forms which may provisionally be said to be *arramare* and *arramiare*, but with regard to which there may sometimes at least be a doubt whether the three strokes for *m* and the four strokes for *mi* may not in fact represent something else.

Meanings which have been assigned to the term.

It has been said that *arraign*, in the sense of arraigning an Assise, comes from a word of which the original form in French was *arramir*, and of which the original form in Latin was *adrhamire* or *adramire*.

[1] *Reg. Brev. Orig.* (1531), 197.

But there is no such word as *adrhamire* or *adramire* in classical Latin, no Latin word *rhamire* or *ramire* to which *ad* could be prefixed, and no root in any language which appears to yield the required signification. Besides those found in other languages,[1] various meanings have been assigned in English to the Latin *adrhamire*, and the French *arramir*, and their later forms, *e.g.*, "to appeal to, claim, demand,"[2] "to institute "or commence,"[3] "to swear,"[4] "to assemble."[5] The last comes nearest to the earlier meaning of the word, and is in accordance with the interpretation given by Loysel,[6] "*rassembler, convoquer, réunir.*" But none of the English renderings show any grasp of the real signification of the term, or any indication of a knowledge that it had a peculiar signification in relation to three particular kinds of writs which it clearly marked off from other writs for commencing actions, or that the meaning which it had in the seventeenth century was not that which it had in the fourteenth.

All kinds of actions could be "brought"; only three kinds could be "arraigned."

Every one who went to law in the King's Courts, in the reign of Edward III. (except in cases in which the procedure was by bill) "brought," "*porta*," "*tulit*" a writ, no matter whether he commenced an Assise, or any other kind of action. "Brought" is a perfectly correct expression when there is no particular reason for insisting on the technical features of the Assise. But though the word "brought" might properly be

[1] Ducange says in his Glossary, s.v. *Arramire*, "*Arramare* idem "videtur quod *adrhamire*: vox "frequens apud Practicos Anglos, "apud quos v.g. *Arramare juratam* "*in assisa*, vel *assisam arramare*, "est profiteri probaturum se jus "suum in assisa."

[2] *New English Dictionary on Historical Principles*, s.v. "Arraign."

[3] Glossary in Nichols's *Britton*, s.v. "Aramer." Mr. Nichols has once used the word "prosecute" as a translation in his text.

[4] Cotgrave's *French-English Dictionary*.

[5] Kelham's *Dictionary of the Norman or old French Language*, and Horwood, in Y.B., 32 and 33 Edw. I., pp. 106 and 108. But Mr. Horwood has elsewhere translated "*arrame*" "brought." Y.B., 21 and 22 Edw. I., p. 605.

[6] *Institutes Coutumières* (1846), II. 407.

applied to an Assise, the word "arraigned" could not be applied to a *Præcipe*. It connoted a technical mode of commencing an action from which the writ of *Præcipe* was entirely different.

The three kinds of writs or actions which were arraigned (*arramatæ*, *arramiatæ*, and possibly *arrannatæ* or *arranatæ*[1]) were the *Assisa*, the *Jurata*, and the *Certificatio Assisæ*. They all had one feature in common which no others had. This is well shown in the ordinary description of Justices of Assise for a particular County:—"*Justiciariis ad omnes Assisas, Juratas, et "Certificationes coram quibuscumque Justiciariis domini "Regis per diversa brevia in comitatu* [*A.*] *arramatas "capiendum.*" The point which all these modes of proceeding had in common, as distinguished from the proceeding by *Præcipe*, was that in each case the Sheriff was required in the original writ to summon a body of jurors. If the plaintiff arraigned an Assise of Novel Disseisin, of Mort d'Ancestor, of Darrein Presentment, or of Nuisance, the Sheriff had to bring together the men who were to constitute the Assise, and who had to view the tenements before anything else could be done. If he arraigned a *Jurata utrum*, or an Attaint, the Sheriff had, under the terms of the original writ, to get together the jury of twelve in the one case, of twenty-four in the other. If some defect in proceedings by Assise, some imperfection for which an Attaint or writ of Error did not lie, was alleged, and the proceeding was by Certificate, the Sheriff again had to bring the same jurors together in virtue of the original writ.

The precise meaning of "arraign" in relation to an action.

To arraign an *Assisa* of any kind, a *Certificatio Assisæ*, or a *Jurata* of any kind was then to set in

[1] The two forms "*arrannare*" and "*arranare*" occur in the edition of *Fleta* published in 1685, the latter at pp. 279 and 280. If "*arranare*" is from good MS. authority it would be conclusive evidence that *arramare* and *arramiare* were not the only forms in use. As, however, will be seen below, the point is of but little practical importance for the argument.

motion the machinery by which a body of jurors was brought together for a certain specified purpose.[1] As soon as the writ issued, if not before, the arraigning was complete, and the Justices who were to "take" the *Assisa*, *Jurata*, or *Certificatio* were informed of the fact that the plaintiff had arraigned it. If, for any reason, the Justices at first named did not take it, and it was afterwards taken before other Justices, it was not said to be arraigned before them, but to have been arraigned before those mentioned in the first patent.

Assises, &c., arraigned before certain Justices and taken before others: example in the present volume.

The case in the present volume affords a good illustration of the practice. The particular assise had been specially arraigned before Heppescotes, Paruynge, and Fencotes, but, as commonly happened, the jurisdiction to take the assise was transferred to Justices empowered to take all the assises arraigned in the same county. The change would have been effected

[1] A writ of Right could properly be described as being "brought," and not as being "arraigned," but the Grand Assise, which might follow after it, affords nevertheless conclusive proof of the sense in which the word "arraign" was used. The writ of Right was, in the first instance, directed to the lord in whose court right was to be done, or in his absence to his bailiffs, but the cause could be removed by proper process. The tenant could, at a certain stage of the proceedings, put himself upon the Grand Assise, instead of having the matter tried, after the old fashion, by battle. It was then for the demandant, and not for the tenant, to purchase a new writ "scilicet de magna assisa coram Justiciariis in eorum adventu "*arramanda*, et per quod sum- "moneantur quatuor milites ad "eligendum duodecim ad facien- "dam assisam illam." In this latter writ it was expressed that the Grand Assise was to make known by its verdict whether the demandant or the tenant had the greater right to the tenements. (*Bract.* 331, b.-332 and *cf. Fleta*, *Lib.* VI., c. 4, and *Britt. Lib.* VI., c. 4, § 14). Unless the cause had already found its way, for any reason, into the Common Bench, the writ which the demandant sued for the election of the Grand Assise issued, as an original writ, from the Chancery. *Reg. Brev. Orig* (1531) fo. 8, and was thus in the nature of the commencement of a new action for determining the right; but it is perfectly clear from Bracton's words that the act of arraigning the Grand Assise was the purchase of a writ by means of which the knights who were to give a verdict on the special point mentioned in the writ were to be brought together.

by another writ or commission[1] directed to Thomas de Heppescotes, Thomas de Fencotes, and Roger de Blaykeston, and mentioning the "Assise of Novel "Disseisin which Roger de Burton has arraigned be- "fore you the aforesaid Thomas de Heppescotes and "Thomas de Fencotes, and our beloved and faithful "Robert Paruynge, by our writ, against Thomas Ughtred, "knight, in respect of tenements in Thirkleby, which "assise remains to be taken before you the aforesaid "Thomas de Heppescotes, Thomas de Fencotes, and "Roger de Blaykeston by virtue of a certain commis- "sion made by us unto you to take all *assisæ*, *juratæ*, "and *certificationes* in the County aforesaid. And "therefore we command you," &c., as in the writ first directed to Heppescotes, Paruynge, and Fencotes.

The Justices assigned to take Assises in the County of York now had to do that which the Justices appointed to take the particular assise had been directed to do—to take the assise at a certain day and place which they and not the other Justices were to appoint, of which time and place they were to give notice to the Sheriff, who was to cause the recognitors of the Assise to come before them. In virtue of a writ of *Si non omnes* the assise was actually taken by Fencotes and Blaykeston in the absence of Heppescotes. So far there was nothing unusual in the proceedings, the assise having been arraigned before the one set of Justices whose functions never came into operation, and taken before another set who were substituted for them.

When, however, the Attaint was sued upon the verdict found by the jurors of the Assise, the record of the Assise had to be brought into the King's Bench, and it was then found that there was a defect in the title or heading which was "*Assisa capta coram Fen-* "*cotes et Rogero de Blaykeston*," the baptismal name of Fencotes being omitted. For this defect Fencotes,

This shows clearly what was the arraigning as distinguished from the taking of an Assise in the reign of Edw. III.

[1] *Reg. Brev. Orig.* (1531) 198.

who was the senior Justice, appears to have been held responsible, and he was called into the King's Bench by writ, and there amended the title. He also brought into the Court the original writ of Assise, and the patent by which the first set of Justices had been constituted, but he omitted to bring the new commission by virtue of which he and Blaykeston had actually taken the Assise. "And, because it seemed to the "Justices of the Court of King's Bench that the record "would not be complete if that commission were not "entered, particularly since the assise was arraigned "before other Justices," Scot, C.J., said that the plaintiff in Attaint must sue a more complete record if he wished to proceed with his action. This was eventually done, and the entry on the King's Bench roll was of an "*Assisa capta apud Eboracum coram "Thoma de Fencotes, et Rogero de Blaykeston, Justici-"ariis domini Regis ad Assisas in Comitatu prædicto "arramatas capiendum assignatis.*" Neither the parties nor the jurors of the assise ever came before the Justices before whom the assise had been arraigned. Their functions ended with the patent directed to them, and their names were used only because an assise had to be arraigned before some specified justices who had to be mentioned, whether they were justices to take the particular assise, justices to take all the assises which had been arraigned in a particular county, or the Justices of the King's Bench or of the Common Bench. We thus see distinctly what it was to arraign an assise, and know that the word "arraign" had no reference to any proceedings in Court, but only to what was done before the parties or the jurors were brought into Court at all.

Arraigning an Assise according to Littleton.

This continued to be the meaning of the word for many generations, as long indeed as the action of assise was one of the commonest remedies. By degrees, however, the form of appointing Justices to try only particular actions of assise died out, and afterwards,

for various reasons, it became more and more unusual to proceed by way of assise at all. There is a passage in Littleton's Tenures written in the reign of Edward IV. which is consistent either with the interpretation given above or with that which Coke appears to have given to it in his commentary. I quote from a manuscript which I believe contains the earliest English version, and which is written in the English of Littleton's time :—

"Also seeke and inquire if a man be disseised, and "he arrayne assise agenst the disseisour, and the "Recognitoures of thassise chalengen for the pleintief, "and the justices of the assise wiln be avised of their "jugement til to the next assise, &c., and of the same "londis the disseisour dieth seised, &c., if the saide "be of assise shalbe in the law for the saide disseisi "a contynual clayme insomoche that no faute was in "hym," &c.[1]

Upon this passage, of which he gives another translation, Coke remarks :—

The word "arraign" was applied in a different manner in later times. Coke's definition.

"To arraign the Assise is to cause the tenant to be "called, to make the plaint, and to set the cause in "such order as the tenant may be enforced to answer "thereunto; and is derived of the French *arraigner*, "which signifieth to order or set in right place. An "arraignment is sometimes called an astitution, of the

[1] MS. Ee. 1. 2 in the Cambridge University Library, fo. 98, b. The MS. is described in the catalogue as being "in a hand of about the "xviith century." This is probably a misprint. Neither the writing nor the English is of the seventeenth century, or of any time near it. "Chalengen for the pleintief" (*i.e.* find in favour of the plaintiff's claim), "wiln," (*i.e.* desire to), "til to" (*i.e.* until) and "londis" (*i.e.* lands) all point to the fifteenth century. The earliest dated translations even of the sixteenth century are without these characteristic indications, and notably without the old subjunctives *chalengen* and *wiln*. Berthelet (1538) has "chaunt." Tottell (1556) "chalenge," Tottell again (1576) "challenge," and again (1586) "challenge," Yetsweirt (1594) "challenge," Wight (1600 and 1604) "challenge." Coke's translation is "chante." Co. Litt. (1628). The MS. is the only one which has the French reading "de "mesmez lez teriez" ("of the "same londis"). Of the other two MSS. one has "endementerez," and one "in le mesne temps."

"verb *astituo* compounded of *ad* and *statuo*, that is, to "place, or set in order one by another. In the same "sense that Littleton here useth it, it is used when "an Appeal is arraigned, both which are arraigned in "French, but entred in Latin. And it is to be "observed that Littleton saith here '*arraigne*[1] *un Assise*,'

[1] This spelling of the word in the printed French text is found in Tottell's edition of 1588, and subsequent editions. Those which are believed to be the earliest have the form "arrayñ." The first of them appears to be that printed by Lettou and Machlinia without date, but commonly assigned to the year 1481 or 1482, the second that printed by Machlinia without date, but assigned to the year 1483, the third that printed at Rouen, by W. le Tailleur for Pynson, which is also without date, and which is mentioned as the first printed edition by Coke in his preface. Though they differ in type and in some of the abbreviations used, they cannot be regarded as independent works. The colophon of the third is, indeed, a copy, *mutatis mutandis*, of the colophon of the second. In the second it is "Ex- "pliciunt Tenores novelli Impressi "per me Wilhelmum de Machlinia "in opulentissima Civitate London- "iarum juxta pontem qui vulgariter "dicitur Flete brigge." In the third it is "Expliciunt Tenores "novelli Impressi per me Wilhel- "mum le Tailleur in opulentissima "civitate rothomagensi juxta "prioratum sancti laudi ad in- "stanciam Richardi Pynson."

Another early edition, still without date, published by Pynson and entitled "Leteltun teners newe "correcte" has the reading arraiñ (fo. xxxv, wrongly printed xxxvij). An edition of Redman's, also without date, has "arreyne" (fo. 31, wrongly printed 13, b). One of the earliest dated editions, published by Redman on the 6th of April, 1528, also has the reading "arreyne."

Of the three MSS. at Cambridge not one has the form "arraigne." That known as Dd. 11. 60 has what might be read either as "arrayma" or as "arraynia," the last *a* being very distinctly written. This MS. can hardly have been the basis of the three earliest printed editions, because they all begin the passage with the words "Item "quære si," and the word *quære* is not in the MS. In relation to this point it is noticeable that a commentator who preceded Coke was of opinion that the *quære* was out of place, and that Littleton was stating definitely what the law was. (*A Commentary on the Tenures of Littleton written prior to the publication of Coke upon Littleton*, Ed. Cary, 1829.)

The Cambridge MS. Mm. 5. 2 (which also omits the *quære*) has only the three letters "arr." to represent the French of "arraign."

The Cambridge MS. Ee. 1. 2, however, has both text and translation written in the same hand. In the text the word might be read as either "arraiñ" or "arraiñ" if it stood alone, but the scribe effectually settles the question by the clearly written word "arrayne" in the translation. We are thus sure of our ground at the time at which Englishmen used *chalengen* and

" and saith not that the tenant is arraigned, and so " of the Appeal, for these are the suits of the subject, " and no man is said to be arraigned but meerly at " the suit of the King upon an Enditement found against " him, or other record wherewith he is charged. And " there the arraignment of the prisoner is to take order " that he appear, and, for the certainty of the person, " to hold up his hand, and to plead a sufficient plea " to the Enditement or other record, whereupon they " which follow for the King may orderly proceed." [1]

Passing by the question whether Coke was mistaken in assigning the same derivation to "arraign" as applied to an accused person and to "arraign" as applied to an assise, we have now to ascertain precisely what was meant by "arraigning the Assise" according to the later use of the term in the seventeenth and eighteenth centuries. That can fortunately be done beyond all possibility of doubt.

Proceedings in actions of Assise in the 17th and 18th centuries.

When the writ of Assise was brought in Term-time the attorney for the plaintiff usually caused a plaint to be stuck up under the seat of the Crier of the Court of Chancery in Westminster Hall, and, if it was brought in the vacation, he caused the plaint to be stuck up at the end of Chancery Lane next Fleet Street in the following form:—

"[County]. A. *arainavit*[2] Assisam novæ disseisinæ versus B. de libero tenemento suo in C."

Here, it will be observed, we have the word *arainavit*, in which there lingers the last trace of the old meaning, and from which it might be inferred that the exhibition of the plaint was, as in the earliest

wiln as the third person plural of the present subjunctive, and used *londis* for lands, at the time, in short, when Littleton wrote.

The spelling adopted in the edition of Littleton by Tomlins (1841) is "arraine." Prof. Wambaugh (1903) omits the French text, and follows Coke's translation.

[1] Co. Litt., 262-3.

[2] The form *arrainavit* or *arainavit* is common in old law-books, as well as *arramavit*, *arraniavit*, and *arrannavit*, but is not a probab Latin combination of letters.

days, the arraigning of the assise, but as we shall presently see it was no longer so understood, and the technical arraigning of the assise had come to mean something which occurred at a far more advanced stage of the proceedings. The writ of Assise had to be delivered to the Sheriff, who, as in previous times, had to make his return with a panel containing the names of the recognitors of the Assise.

At the Assises at which the cause was to be heard, immediately after the Commission had been read, the plaintiff's attorney had to deliver the writ of Assise and the return, and the count or declaration, both engrossed on parchment, and in Latin, to the Clerk of the Court, who had then to call the recognitors mentioned in the panel. The Clerk had next to read the writ and the count in Latin.

The reading of the writ is of course a simple matter, but the reading of the count requires some explanation. It was at an earlier period held, by some persons at any rate, that in an Assise of Novel Disseisin there was no count or declaration "*sed tantum querela.*"[1] In the earliest assises of novel disseisin of which we have any specimens we find the record to be in the form "*Assisa venit recognitura si A. injuste et sine judicio* "*disseisivit B. de libero tenemento suo in C.*" This is immediately followed by the verdict, unless there is some plea against the taking of the assise.[2] Somewhat later we find added after the name of the vill the words "*et unde queritur quod disseisivit eum de*" with a statement of the parcels of land, the rent, the corody, or whatever the particular tenements might be of which the disseisin was alleged. Here we have, if not a count or declaration, something at any rate which is analogous. In the proceedings by Assise in their latest form the whole formula "*Assisa venit recognitura*

[1] *Articuli ad Novas Narrationes* (1561), p. 90.

[2] *See* the *Rotuli Curiæ Regis*, edited by Sir Francis Palgrave, *passim*.

"*si A. injuste et sine judicio disseisivit B. de libero* "*tenemento suo in C. Et unde queritur, &c.,*" is described as the count, which the Clerk of the Court had to read, together with the writ, in Latin, after the recognitors had been called.

The next stage was to call the plaintiff, and then, if he appeared, to call the defendant. If the defendant failed to appear, the plaintiff's counsel said in French "Monseigneur, jeo prie que le Assise soit prise per "default," and the Court so ordered.

The Assise was then arraigned by a set form of words, after the plaintiff had appeared in Court, and the defendant had either appeared or made default.

Then, and not before, the plaintiff's counsel "arraigned the Assise" by reading a copy of the writ in French. Immediately afterwards he read the declaration "in French" of a kind, of which the reporter gives the commencement in the words "Le Assise ven "recognitur si, &c." He then went on to say "Vous "bien entendez, Monseigneur, que A. arraine un Assise "de Novel Disseisin de son franktenement in C. envers "B., et jeo prie que il serra demand."

The defendant having again been called three times, and having failed to appear, the plaintiff's counsel again said "Jeo prie, Monseigneur, que le Assise soit "prise per default," and again the Court so ordered. Thereupon the Clerk of the Court endorsed the panel "*Assisa capiatur per defalt.*" It was then necessary that six of the recognitors should say that they had viewed "the place." The whole twelve were then sworn, witnesses were called, and the recognitors gave their verdict.

If the tenant did not make default, but appeared in Court, his counsel said "We crave oyer of the writ "and return, and time to plead *tam ad breve quam ad* "*narrationem.*" "And," says the reporter, "immedi- "ately the Counsel for the plaintiff *arraigns the Assise*, "as before mentioned, by reading the writ of Assise "in French, and the count also in French, as be- "fore."[1]

[1] Lilly, Rep. 17 39.

The reporter tells how he obtained all this information, which had become somewhat of a mystery when he wrote in the year 1719, from the papers of a "late eminent Clerk and Principal of Clifford's Inn." It is confirmed by the report of a case which occurred in the first year of the reign of William and Mary, and which was an Assise of Novel Disseisin brought in the King's Bench for an office. It begins "*Assisa venit*," &c., "*de officio Marescalli Marescalciæ "domini Regis et Dominæ Reginæ.*" "The Crier made "proclamation, and then called the recognitors between "Thomas Savier, demandant, and William Lenthall, "tenant, who were all at the bar and severally answered "as they were called. Then Mr. Goodwin, of Gray's "Inn, *arraigned the Assise* in French, but the count "being not in parchment upon the record, the recogni- "tors were for this time discharged, and ordered to "appear again the next day. But the Counsel for the "tenant relied on the authority in Calvert's case that "the title ought to be set forth in the count, which was "not done now, and therefore the demandant ought to "be nonsuited." "The next day the jury appeared. "Then the Crier called Thomas Savier, the demandant, "and then the tenants, and afterwards the recognitors; "and, the *Assise being arraigned again*, the demandant "then set forth his title."[1]

A common idea underlying the earlier and later use of the word "arraign."

Thus the Assise, which in the reign of Richard I. and during many subsequent reigns was said to have been arraigned at least as soon as the writ of Assise had issued, was from the beginning of the seventeenth century and possibly somewhat earlier, said to have been arraigned only when one at least of the parties and the recognitors had appeared in Court, and when, after various preliminaries, the plaintiff's counsel had read the writ in French. Yet it is not very difficult to show that there was one common idea underlying the two modes of expression. It was still because the

[1] 3 Mod. 273. *See* also 1 Keb. 3 (Heath v. Paget).

action of assise was radically different from an action brought by *Præcipe quod reddat* that the Assise had to be arraigned. The Assise was arraigned by reading the writ in Court just as in earlier times it was arraigned by suing the writ out of Chancery. In the one case it was required by the writ that recognitors should be summoned and should view the tenements; in the other case it was of the essence of the matter that the writ in virtue of which they were brought into Court should be read in their presence and in the presence of the parties who appeared. The fact that the Sheriff had to bring together a body of jurors before the cause came into Court at all is kept in view as much in the later as in the earlier arraigning of the Assise, and in this we seem to have the key to the meaning of the word from first to last.

Reasons for arraigning the Assise in French after the commencement of the Act 36 Edw. III., c. 15.

The reason for arraigning the assise in French long after English had been substituted for French in pleading in Court is probably to be found in the fact that the language originally used in any application in Chancery was French, though the writ and subsequent enrolments were in Latin. In matters of conscience the French Bill in Chancery long preceded the English Bill, and survived the Act which directed that oral pleadings should be in English. The writ of Assise must have been founded upon some kind of plaint taken into the Chancery on behalf of the plaintiff, and this there can be but little doubt was the *loquela* mentioned in the *Articuli ad Novas Narrationes*, which was in fact embodied in the writ, and may indeed have been the French original of that Latin writ which was directed to the Sheriff. Thus when the writ was read in French in Court it went back to the original mode of commencing the action by suing a writ which required the Sheriff to bring together and empanel the jurors of the Assise.[1]

[1] The expression "to arraign an Appeal" is not, like the expressions "to arraign an Assise" "to arraign a *certificatio*," "to arraign a

The newly coined word "arrame," and its associates.

Of late years there has appeared in print the word "arrame," instead of the historical "arraign." In one publication (extending over many volumes) it does not excite so much surprise as it otherwise might, because it is there associated with many expressions like unto itself. Of it indeed may be said "*Noscitur a sociis.*" Where it is found writs are not usually described by their right names; there are to be found with it the "keeper" (instead of the Guardian) of the Spiritualities, the "keeper" (instead of the guardian) of an heir (whose sanity is not in question), the statement that a man of mature years surrendered himself into wardship (instead of custody) as a prisoner, the description of purchase as "perquisites," of chases as "wild cats," of Courts (*Places*) as Prelates, and so on.

A characteristic specimen of its use.

Of the manner in which the word "arrame" is introduced the following is an example:—"To A.[1] and "his fellow justices appointed to take assizes in the "county of B. Order not to molest C. for the im- "prisonment or for what pertains to the King for

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jurata," one of which the history can be traced back to the days of Bracton, Britton, and Fleta. It seems rather to have been founded on the expression "to arraign an Assise" by a kind of analogy. A set form of words had to be used in every case, and the French words used in Appeals are to be found in Britton (Lib. I., c. 23, &c.) who, though he describes an Appeal as a plaint, does not speak of arraigning it. "Appel est pleynte de "homme fete sur autre . . . . "par motz a ceo ordeyneez," and the words are subsequently set forth. But it was not until after the arrest of the accused that the accuser had to "make his appeal," in those words, by some serjeant, in the appointed form. In later times this was called "arraigning the appeal." In the year 19 Charles II., "Tothill et Yardley fuerent "ore porte al Barr et le feme del "party tue, que ad port le Appeal, "per sa Councel, arraigne le Appeal "vers eux in Francois." (1 Sid. 324, Sampson *v.* Tothill, Yardly, and Claxton in the King's Bench). In the year 34 Charles II. "the "plaintiff sued an appeal for the "murder of her husband" and she was admitted to prosecute by attorney. After the appearance of the defendant "the Appeal was "arraigned in the French tongue." Jones (Sir Thomas) 210 (Warren *v.* Verdon, in the King's Bench).

[1] Letters have been substituted for names in order that at least some space might be saved, without loss of any of the characteristics of the passage.

"not prosecuting a jury of 24 knights that he *arramed* "before D. and his fellows, justices appointed to take "assizes in that county against E., to convict the "jurors of an assize of novel disseisin summoned be- "tween them, and taken before D. and his fellows at "F. concerning common of pasture in G., and for not "prosecuting another jury of 24 knights *arramed* by "him against H. before D. and his fellows to con- "vict the jurors of an assize of novel disseisin "summoned between them and taken before D. and "his fellows at F. concerning common of pasture in "the aforesaid *town*, which juries were adjourned after "D.'s death to be taken before the said A. and his "fellows, before whom it was considered that C. should "be arrested and imprisoned because he did not pro- "secute the aforesaid juries; as the King has pardoned "him the imprisonment and what pertains to him in "this behalf because he was engaged in the King's "service at the time of his non-prosecution aforesaid."

Apart from the use of the newly-coined word "arramed," the meaning of which is not stated, this somewhat lengthy sentence, if intelligible at all, is intelligible only in a sense which the original Latin was never intended to convey. The words *Juratam viginti et quatuor militum ad convincendum juratores Assisæ Novæ Disseisinæ* were merely the technical words to express an action of Attaint, on a verdict in Assise of Novel Disseisin, just as *Jurata utrum* was an action to decide whether a messuage, land, &c., was held in frankalmoign or was a lay fee. The true meaning of the passage can be plainly expressed in very few words. The instrument which was enrolled was simply a writ of *Non molestando* in favour of C. who had not proceeded with (or prosecuted) two several Attaints which he had arraigned upon verdicts in two several Assises of Novel Disseisin touching common of pasture in the vill of G. He had not been expected to prosecute forty-eight knights for any cause

whatever, and was in no danger of any ill consequences because he had not prosecuted them.

A vindication of the true technical term required.

So long as "arrame" was to be seen only in publications brought out on the same responsibility, and before the need had arisen of showing what was meant by the arraigning of an assise at different periods, comment was not required, and might have been out of place. The expression has, however, recently appeared elsewhere, though possibly only as a misprint; and the French word for "arraigned," as applied to an assise, has now occurred in this volume for the first time in the text of the Year Books edited by the present Editor. It has thus become impossible to remain silent, and it has become necessary to vindicate the use of the true technical term.

The correct English term is "arraign," derived from an equivalent French form of the 14th century.

From the time when law books began to be written in English to the time when the actions to which the term was applicable were abolished, no English writer adopted any word but "arraign" in any report, or in any text-book, or in any dictionary.[1] They may have spelt the word in various ways, but never with an *m* and never without an *n*. As is shown by the case in the present volume the forms "areyne" and "arene" were already in use before the pleadings in Court had ceased to be in French; and although

[1] In Cowel's *Law Dictionary* or *Interpreter* (editions of 1701, 1708, and 1727) Spelman's opinion (with which, however, the successive editors of Cowel's *Interpreter* did not agree) is said to have been that the word should be written *Arrame*. But Spelman's *Glossarium Archaiologicum* was written in Latin, and not in English, and he did not there use the word *arrame* at all. He stated the meaning of *Adrhamire*, *Arhamire*, *Arramire*, *Arramare* (the only Latin forms mentioned by him), and of the French *arramir* to be *jurare*, *promittere*, *solemniter profiteri*, *vadari*. He said that the signification of *arramare* as used by Bracton in relation to an assise is "*promittere vel profiteri*," and he did not appear to be aware that other actions could be commenced by arraigning. He thought also that the form *arramare* should be used in relation to the arraigning of a prisoner. It can only be said, therefore, that even if Spelman had introduced "*arrame*" as an English word, which he did not, he would have done so with the object of expelling "*arraign*" from the language altogether.

the form "arrame" may still have been used concurrently it is almost impossible to prove that this is the fact by reason of the extreme difficulty of distinguishing between *in* and *ni* and *m*. Where the letter *m* is printed in the text it must be understood to stand only for three strokes of undetermined value. The spellings "areyne" and "arene" admit of no possibility of mistake, and afford the strongest ground for believing that *araine* is the true reading of the other contemporary MS. In a report not yet published (No. 36 of Easter Term 19 Edward III., continued in the following Trinity Term, No. 6) the form *arreyne* occurs four times in one of the two Cambridge MSS. (Hh. 2. 3). In the other (Hh. 2. 4) the form with the three strokes which might, without sufficient guidance, be read *arrame*, occurs in one place with the rare fourteenth century equivalent for a dot over the *i*. The reading is there, beyond all question, *arraine*.[1]

Tendency of the French language to substitute *n* for *m*.

If it were fully admitted that, after the forms *adrhamire* and *arramir* had died out, the Latin form was always *arramare* or *arramiare*, and that the French form was at first *arramer*, the change of the French form to "arrainer" would not of itself indicate any blunder on the part of the scribes, or afford any ground for writing "arrame" in English. The change was simply one frequently occurring in other words in accordance with the genius and development of the French language, which always had a strong tendency to substitute *n* for the Latin *m*, whether initial, medial, or final. *Habemus* became *avomes*,

[1] In the reign of Henry V. the French used in England was no longer that of the earlier Year Books, but it may be not uninteresting to note that the form of the past participle in one of the statutes was *arrannez* or *arrannes*, as read by the editors of the *Statutes of the Realm*, and in a black-letter book in the Library of the Louvre. Stat. 9 Hen. V. Stat. I., c. 3. *Statutes of the Realm* II. 205. Godefroy, *Dictionaire de l'ancienne langue française* s.v. *Arramer*, *arranner*. It is almost needless to add that the word was correctly translated by the editors of the *Statutes of the Realm* "arraigned."

avoms, and afterwards *avons*[1]; *primum tempus* became *printemps*, *cambiare changer*, *gemere* first *giembre* and then *geindre*, *tremere* first *criembre* and then *craindre*, *commeatum congé*, *simia singe*, *rem rien*, and so on *in infinitum*.

Even in the thirteenth century, and perhaps later, *Roem*[2] was still the French, in Normandy, for the Latin *Rothomagus* or *Rotomagus*, the modern French Rouen, *Quaam*[2] was still the French in Normandy for the Latin *Cadomum* or *Cadomus*, the modern French Caen. The modern French word *daine* (feminine) is another noteworthy instance of a late transformation of *m* into *n*. The Latin word *dama* was used both as a masculine and as a feminine. At the end of the thirteenth century and at the beginning of the fourteenth we find in the Year Books *deym* for the masculine and *deyme* for the feminine.[3] As if to show the marvellous power of interchange which these two letters had, the masculine became in Italian *daino* and the feminine *daina*, while in French the *m* was retained in the masculine *daim*.

In Normandy, indeed, and perhaps in accordance with Norman example in England, there appears to have been a more facile interchange of *m* and *n* than even elsewhere. *Enfant* was commonly written *emfant* in Normandy, or *emfes* for the nominative singular and accusative plural; and *son* (his) was written alternatively with *som* (*suum*).[4] The Latin *campos* became *chans* in the Norman tongue,[5] and so also we find it

[1] The form *avoms* was most common, but *avons*, though rare, had already shown itself in England before the year 1363.

[2] *See passim* the *Établissements et Coutumes, Assises et Arrêts de l'Échiquier de Normandie, au treizième siècle* published by M. Marnier in 1839. M. Tardif, who published the Latin text of the *Établissements et Coutumes* in 1881, has recently (1903) published an amended French text under the title of *Le très ancien Coutumier de Normandie*, which confirms the spelling *Roem* given by M. Marnier. The greater number of instances are however to be found in the *Arrêts de l'Échiquier* printed from a MS. of the thirteenth century.

[3] Y.B. (Middlesex Eyre), 22 Edw. I., p. 529, and Y.B., Easter, 33 Edw. I., p. 489.

[4] *Arrêts de l'Échiquier de Normandie*, as above.

[5] *Arrêts de l'Échiquier de Normandie*, p. 179.

written *chauns* in an English record[1] only to become *champs* in modern French. *Temps* became *tens* in Normandy; and England appears to have reserved the privilege of writing the word in either way.[2]

No warrant for the word "*arrame*" as a derivative from the fourteenth century French of the Courts.

The word "arraign" came into the English language from the French, and came in the form "arrain," "arrayne," or "arraign," from a French form with the *n* which existed in the fourteenth century, and not in the form "arrame," which was never an English word at all. To coin and use the word "arrame," and to be logical at the same time, it would be necessary also to substitute *amt* or *amite* for aunt, *temse* for tense, and *mapkin* for napkin, and to give up counting altogether, and take to computing instead.

Nor in the possibly different derivation of "arraign" used in a different sense.

There is no force in the possible argument, even if the premisses be admitted, that the word "arraign," having one derivation as applied to an accused person, should not, having another derivation, be applied to an assise. The English language would fare but badly if such a principle were adopted, as there are innumerable words in it which, having the same appearance to the eye, and the same sound to the ear, are derived from different sources and used to signify different things. We should have to change the nomenclature of the human body itself from head to foot. We should not dare to speak of a Lowland Scotsman's "lint-white locks" lest some one should ask for a key to them. Our arms, from the shoulder to the wrist, would have to be known by some other name, lest the Peace Society should object to so war-like a description. The calves of our legs would have to be re-named,

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[1] *Placita de Banco*, Easter, 18 Edw. III., R° 331.

[2] Even in classical Latin *m* was a very unstable letter. It was practically lost altogether at the end of words, and was elided together with the vowel preceding it in Latin verse. It disappeared from the middle of words such as coëo and coërceo. It was interchangeable with *n* in some words, as *e.g. dumtaxat* or *duntaxat*, and in the termination *cumque* or *cunque*; and *n* took its place altogether in other words, such as *eundem*, *eandem*, &c.

lest some one should mistake them for the young of a cow, and wish to have a calf-skin hung on "those recreant limbs." We should not be able to call the soles of our feet our own, lest some one should say that the word "sole" ought to be applied only to a single person or thing.

Growing interest in the Year Books: contemplated editions of reigns other than that of Edward III.

While this volume was passing through the press there appeared the first instalment of Year Books of the reign of Edward II., edited by Professor Maitland for the Selden Society. It is indeed a pleasure to know that these old reports are every day attracting more attention, both in England and abroad, and especially in the United States of America. It may be hoped that there will one day be a modern edition of the whole series down to the reign of Henry VIII.[1]

The Selden Society's volume of Year Books of Edward II., with collation of MSS. and references to records and to Fitzherbert's *Abridgment*.

The Editor of the Year Books of the Rolls Series may well give a hearty welcome to his younger brethren of the Selden Society—all the more hearty because he sees that the principles by which he has been guided have in many important respects been adopted by them. The collation of MSS., the comparison with the records and with Fitzherbert's *Abridgment*, even the latest improvement of printing the names of counsel as they are found in the Plea Rolls of the Common Bench, when the "narrator" receives the chirograph of a fine for his client, are all features of the Society's publication.

It is not less gratifying to note that an opinion expressed by the present Editor of the Rolls Series in the year 1885, and confirmed by subsequent experience and study, has also been independently formed by the Editor of the Year Books of the reign of Edward II. "Were these reports official?" he asks, and arrives at a negative conclusion, for reasons similar to those which led to a like conclusion with regard to the

[1] *See* below, p. xci.

reports of the reign of Edward III.[1] Twenty years ago it seemed a little dangerous to fly in the face of accepted tradition, and attribute the origin of the Year Books to private enterprise, and not to the direction of the King or even of the Courts. It is now probable that in relation to these two reigns, at any rate, the older theory will have to be abandoned in view of the new facts which have been brought to light.

But here, as in all human affairs where the promise is brightest, "*surgit amari aliquid.*" Whatever may be the cause, one can only feel deep regret in reading Professor Maitland's announcement that the "work "will soon pass out of the hands that are endeavour- "ing to begin it," and indulge the hope that he may at any rate exercise some supervision over the labours of others.

How the text of the Rolls edition differs from that of the Selden Society.

It may, perhaps, be permissible to hazard a conjecture that, even in the Selden Society's volume which has already appeared, there has been some division of labour, as the practice in the text and translation is not always in agreement with the preaching of Professor Maitland's admirable Introduction. As a general rule, too, the text as printed appears to be simply a transcript from one MS., while the translation which is printed opposite to it appears to be that of a hypothetical text suggested by some of the foot-notes. It thus happens occasionally (whether intentionally or otherwise) that the text of the old edition is much more in accordance with the translation than the new text which is to supersede it.

I have myself worked on an entirely different plan, but it is one which cannot be followed without very great labour. No attempt is made to settle the text which is to be published, much less to translate, until every one of the MSS. has been carefully collated. Then, and not till then, the editor has before him,

[1] *See* Y.B., 12 and 13 Edw. III., Introd. p. xxiii., and *The Green Bag*, Vol. XII. (1900), pp. 533-535.

subject to correction by the record, the whole of the materials upon which his text is to be founded. He sees where one MS. is defective, where another has an obvious mistake, where a third contains the careless repetitions of a scribe, and so on through all the pitfalls of all the MSS. Out of them all, but, as a rule, not from any one of them, it is generally possible to construct a coherent report, every word of which has good manuscript authority. The deficiencies, the mistakes, and the redundancies are mentioned in the foot-notes. In these foot-notes, where the type is smaller and not immediately before the reader's eye, seems to be the proper place for the readings which do not correspond with the translation, and not for the accepted readings which have, perhaps, been discovered at the cost of much toil and time.

An earlier precedent.

There is also, as it happens, an excellent earlier precedent, and that, too, for a French text and an English translation of a law-book. When Mr. Nichols edited Britton he was more fortunate than an editor of Year Books, as he found one MS. which was greatly superior to the rest, and which he felt justified in using as the "basis" of his text. But whenever he discovered a better reading elsewhere he invariably inserted it in the text, and relegated that of the basis-MS. to a foot-note. The consequence is that the text and translation are always in agreement. The reader can see at a glance what is the French warrant for the English version, and need not search among the notes unless he suspects a mistake. Although, therefore, I am always ready to learn (and for an editor of Year Books there always remains something to be learnt), the text of future volumes of the Rolls Series which I may edit will be constructed on the same principles as that of their predecessors.

Question whether old French should be

The publication of the Selden Society's volume has also raised another question which is of some, though considerably less, practical importance—the question

whether the old French of the Year Books should be printed with apostrophes or without, with accents or without, with the cedilla or without.

printed with accents or without.

In all my long study of contemporary MSS. I have never seen an accent, a cedilla, or an apostrophe, or anything which could be described as the equivalent of any one of them. Mr. Nichols also found none of these things in the MSS. which he consulted, but he nevertheless introduced the apostrophe and some accents, and the result, I think, has been to show that consistency and general uniformity of practice are not to be attained except in one way—that of omitting accents and signs which are altogether foreign to the original documents. Modern French is written with accents in accordance with definite rules which are universally accepted; but it is impossible to obtain universal acceptance of rules for placing accents on old French which was always written without them.

No rule for using such accents has been universally adopted.

Mr. Nichols said in a note[1] "in many modern editions "of ancient French authors, all the accents, as now "used, are introduced; in others no accents are added, "but the words are printed as in the original MSS. "The middle course which I have adopted is that "followed by the editor of the magnificent edition of "Joinville's History recently published in the twentieth "volume of the French Recueil des Historiens (folio, "Paris, 1840) and by the editors of the Monumenta "Historica Britannica (fol., London, 1846[2]) in the "French portion of their work." Now, in the first place, it is impossible that "all the accents as now "used" could be applied to the old texts, because the MSS. almost always show fully written the two letters, the omission of one of which is now commonly indicated by a circumflex (*e.g.*, *teste* tête, *prest* prêt, *prestre* prêtre, &c.). But if we pass that by, and regard only the acute and grave accents, the cedilla, and the apostrophe, we shall see how difficult it is

The accents in Nichols's edition of Britton.

[1] p. lvii., note h. | [2] A misprint for 1848.

to lay down rules for the use of these signs and to abide by them when laid down.

The edition of *Joinville* by MM. Daunou and Naudet his model.

Mr. Nichols did not quite conform himself to his first model. In the French work to which he must have referred the system which was followed was by no means identical with that which was adopted in editing Britton. In Joinville's *Histoire de Saint Louis* which was edited by MM. Daunou and Naudet in the *Recueil des historiens des Gaules et de la France*, it is expressly stated in a note (p. 191, note 4) that "nous "n'inséroms point d'apostrophes dans le texte de "Joinville: il n'y en a pas dans le manuscrit Supplé- "ment n° 2016, ni dans celui de Lucques. Mais nous "ajouterons quelques accents, quand ils seront pour "indiquer la prononciation." The accents which they did use were the acute accent on the final *e* (and in the plural *es*) of past participles, and on the final *e* of certain substantives, and the grave accent for the purpose of distinguishing different words spelt in the same way such as *mès* (but, and not my), *dès* (from and after, and not of the). They also commonly accented the *e* in the second person plural of verbs, when followed by *s*, and not by *z*, as *parlès*. They did not, however, put any accent on *la* (there) to distinguish it from *la* (the) nor on *ou* (where) to distinguish it from *ou* (or), nor even on *a* (to), nor on *mere* (mother). They did use the cedilla.

But he did not conform to it.

Mr. Nichols, however, did use the apostrophe, which they expressly declined to use. He did not use the cedilla which they used. He did not put any accent on *mes* (but), nor on the second person plural of verbs. His second model, which was not quite in agreement with his first, went no further than "the occasional "insertion of an apostrophe and of an acute accent."[1]

A different system in M. de Wailly's *Joinville*.

Joinville's *Histoire de Saint Louis* has been re-edited since the days of MM. Daunou and Naudet, and in the edition of M. de Wailly[2] accents have been em-

[1] *Monumenta Historica Britannica*, p. 764, note a.

[2] Jean Sire de Joinville, *Histoire de Saint Louis, &c.* (1874).

ployed on a system different from theirs. He uses all the accents which his predecessors used, he introduces the apostrophe, and he writes *à*, *là*, *où* in cases in which he wishes to distinguish those words from others which he writes *a*, *la*, *ou*.

Leaving out of consideration the question of right or wrong, we might perhaps have indulged a hope that we were now arriving at something like an agreement among scholars that, whether old French was accented or not in the original MSS., they would accent it when they printed it.

Mr. Toynbee's specimens of Britton without accents.

But no. After Mr. Nichols had striven to follow in the footsteps of MM. Daunou and Naudet, and after M. de Wailly had by example, if not in words, protested that they had not done enough, Mr. Paget Toynbee worked on altogether different lines in his *Specimens of Old French*. He even selected a portion of Britton for one of his specimens,[1] and took it from Mr. Nichols's text. But the accents with which Mr. Nichols had clothed Britton's French were taken off by Mr. Toynbee, in whose pages Britton appears without them, naked and not ashamed.

The accents, &c., in the Selden Society's volume.

In the Selden Society's volume accents have been placed on the French words of the text (though not on those which appear only in the notes) on a principle which is described as being that of M. Paul Meyer.[2] As adapted to the Year Books it appears to differ in only one material point from that of MM. Daunou and Naudet—the introduction of the apostrophe, which they did not use.

Reasons why there are none in the Rolls edition.

When I first took up the editorship of the Year Books I was, for a little while, much exercised in mind on this question of accents and other arbitrary

[1] *Specimens of Old French* (1892). Specimen LII., pp. 240-241.

[2] *See* Les contes moralisés de Nicole Bozon, Frère Mineur, publiés pour la première fois d'après les manuscrits de Londres et de Cheltenham par Lucy Toulmin Smith et Paul Meyer (1889).

signs. At that time, however, the first volume of M. Godefroy's *Dictionnaire de l'ancienne langue française* had recently appeared. He said in his preface "Nous "n'employons que l'accent aigu sur les *e* fermés, non "suivis d'un *s* ou d'un *z* à la fin des mots . . . . . "Ce système nous a paru le plus prudent, *eu l'incerti-* "*tude qui règne encore sur cette matière des accents* "*appliqués à l'ancienne langue.*" The diversity of opinions which caused M. Godefroy to use but very few accents seemed to me to be more than a justification for using none at all. It seemed to me then, and still does, that the arguments in favour of the simpler course of printing the words as they are found in the MSS. greatly preponderate. The judges and counsel could read, speak, and accurately pronounce their own language (for French was their language in every-day life) without any of those artificial props which may be necessary to aid the tottering footsteps of modern students. Any one who would thoroughly understand the words of our legal forefathers, as actually spoken, who would throw himself into their life as they lived it, who would appreciate the subtleties of their diction, enjoy all the jokes which they made, and realise the terms on which they were passing their days together, must be able to dispense with all the luxuries of nineteenth or twentieth century typography.

Accent as distinguished from the arbitrary signs for it.

The question of accent, however, is, from another point of view, one which is inextricably associated with the whole history of the French language and of its pronunciation at different periods. But accent must not be confounded with the arbitrary signs for it. Men accented their words long before they learned to write, and an unlettered Frenchman will put his accent where it should be, without a thought of any question of orthography. If he wishes to express the idea of "side-by-side" he will say *côte à côte*, if the idea of "the other side" he will say *l'autre côté*, and if the

idea of "near to" he will say *à côté de*, but it does not follow that he can spell correctly, much less that he would mark his accents as they are marked in a modern dictionary. He would not know, and he would not care, why in the first example there is no accent on the *e* of *côte*, and why in the two last there is one.

A written accent is, at most, only an appeal to the eye, and not to the ear, and every one is absolutely independent of it in conversation. In speaking French one no more thinks of the written accent than one mentally spells every word in speaking English.

Some printed French of the 16th century without accents differs little, in other respects, from that of the 20th.

There was, it is generally said, a tonic accent to all Latin words of more than one syllable from which French is derived, and this accent has in most cases been perpetuated in the derivative. But for many centuries there was no written accent in Latin or in French. Unaccented writing long survived the invention of printing, and not only were the old laws of Normandy printed without accents, but the later French of the time of their publication appeared without accents also. A good example of this occurs in the title page of the *Grand Coutumier* printed without accents, without apostrophe, and without cedilla, in 1539 :—"Nouvellement imprime a Rouen par Nicolas "le roux : pour Francoys regnault libraire jure de "luniversite de Paris : pour Jehan Mallard demourant "a Rouen tenant son ouvroir au portail des libraires "le plus prochain de leglise : et pour Girard Anger "demourant a Caen pres le college du boys." But for the *h* in the word *Jehan*, the *o* instead of *e* in the word *demourant*, the *y* for *i* in *Francoys* and *boys*, and the want of capital letters at the beginning of two proper names, the French is that of the twentieth century just as much as of the sixteenth, and there is no reason to suppose that there was any difference in the pronunciation, except of the word

demourant.[1] The Rouennais of the time, there can hardly be a doubt, pronounced *imprime*, *Francoys*, *jure*, *luniversite*, *pres*, *a*, *leglise*, and *college* just as his descendant pronounces *imprimé*, *François*, *juré*, *l'université*, *près*, *à*, *l'église*, and *collège*.

Objections to the use of the apostrophe.

The old mode of writing is part of the history of the language, and to destroy it is to destroy a part of the history of the human mind. When the Archbishop of York is mentioned in the MSS. of the Year Books it is sometimes as "Le Ercevesqe de Everwyke," but more often as "Lercevesque Deverwyke." When *Lercevesqe* or *Deverwyke* thus appears as one word, the first letter is almost invariably a capital, and the same principle is applied to other words made up of *de* or *le* with the *e* elided and any substantive which would in ordinary circumstances begin with a capital letter. I cannot but think that it would be little short of an atrocity to cut off the head of *Lercevesqe*, and hold it up bleeding as "*l'*," with *Ercevesqe* to follow.[2] It is from this ancient mode of writing that we derive the orthography of many of our modern surnames, such as Dawnay, Devereux, Disney, Danvers, Daubeney, Dawtrey, Deincourt, &c.

On the other side of the Channel also the same practice has survived in the names Langlois, Lévêque, Labbé, Lille,[3] &c.

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[1] This sixteenth century spelling of the word *demourant*, instead of the modern *demeurant* had nothing to do with any survival of a local dialect. The word occurs in the same form in the title-page of the *Chronique et histoire* of Turpin, printed at Paris in 1527.

[2] In the *Orthographia Gallica* (ältester Traktat über französische Aussprache und Orthographie nach vier Handschriften zum ersten Mal herausgegeben von J. Stürzinger, 1884) of which three different versions are printed in parallel columns, *Dengleterre*, *Dyrlaunde* or *Dirlande*, and *Dexcestre* are given as examples of the proper mode of pronouncing and writing the French words for "of England," "of Ireland" and "of Exeter," pp. 9-10.

[3] These names are mentioned in Darmesteter's *Historical French Grammar* (Ed. Hartog), p. 444.

Preparation of a Glossary of the French language as spoken in England before the year 1363.

My work on the Glossary, which is part of the scheme of the Rolls Edition of the Year Books, has been steadily continued *pari passu* with the preparation of the text from the various manuscripts. I hope I may, when it is complete, be justified in entitling it "A Glossary of the French language as spoken in "England before the year 1363," that is to say, before the commencement of the Act 36 Edward III., c. 15, after which time French ceased to be the language spoken in the Courts, except for certain special purposes, and for certain set forms.

The principles on which it will be formed.

An attempt will be made to help the student to understand the words as he will find them written in the original old French manuscripts. No accents will appear in it except upon the French words which may be noticed as the modern equivalents of the old forms, for it would be misleading to insert an accented word in a glossary for students who may be seeking the meaning of an unaccented word which they do not understand. There will be some words in it, the insertion of which may possibly seem needless to those who suppose that when an old French word is identical in appearance with a modern English word it must necessarily have the same meaning.

In modern times our Courts have been troubled with the question "What is a place?" Elsewhere it seems to have been hardly suspected that the proper translation of the old French word *place* can be ascertained only by long familiarity with the records and the reports, and the manner in which it is used in them, still less that it has wholly distinct meanings which are not those of the modern French *place*. To render it in English as "place" would usually be as unscholarlike as to translate the modern French *concours* as "concourse," *déception* as "deception," *parents* as "parents," or *dérider* as "de-"ride." Both in old French and in modern French one of the greatest dangers for an Englishman is the similarity of words in the two languages. The word

"*Place*" will consequently appear in the Glossary with those meanings assigned to it which it undoubtedly bears, and with a brief statement of the reasons why it bears them. So also with some other words which are likely to deceive the understanding through the eye.

Attention will also be given to some remains of the old French declensions, and the use, or, it may be sometimes, the abuse, of them in the language of the Year Books. The conjugations and their varying forms will not be forgotten. When a word belongs to a particular mood, tense, or person of a particular verb, or (it may be) verbs, there will be a reference to the infinitive or infinitives of the verb or verbs, and under that head full information will be given. The Glossary is not being constructed on any preconceived opinion with regard to the French spoken in England in its relation to the French spoken on the continent. This, in one sense, the youngest sister in the family of the *Langue d'oïl* has sometimes been treated with but little indulgence, and fared but little better than Cinderella. The conclusions which have been sometimes drawn do not appear to be always warranted by the premisses, and it is by no means certain that modes of expression attributed to some English-born writer of French are not in some cases those of a Frenchman. It would be premature, however, to enter upon a discussion of this subject at present; that must be reserved until the Glossary itself is published.

Progress made in editing.

The publication of the present volume about a year after that of its predecessor affords some little evidence of the progress which I have been able to make since I resigned my posts at the Record Office. But this progress is less in appearance than in reality. Another and a larger volume than this is already in the press. Most of the MSS., as well as Fitzherbert's *Abridgment*,

have been collated as far as the end of the year 20 Edward III. The work on the records also goes beyond my immediate needs. In short, it may now be said that the rate of advance is practically limited only by the rate at which proofs are received by me from the printers, and that however much it may be limited, the limitation will be from causes which are beyond my control.

I have thus had leisure to consider and mature plans for a new edition of the Year Books which came into existence after the year 1362, which must necessarily be regarded as belonging to a different series from those which preceded them, and the MSS. of which do not possess the same philological or other value. Whether the difficulties of a financial or other kind which have hitherto stood in the way of the scheme suggested will be finally overcome I do not know, but I am convinced that the undertaking is not by any means beyond the bounds of possibility, and that it might be completed in a reasonable time, and within reasonable limits of space.

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 most valuable MS. I am equally grateful to the University of Cambridge, and to Mr. Jenkinson, the Librarian of the University Library, for lending me two precious MSS. Though they do not touch the period included in the present volume, I have collated them with others for future use, and I feel that I ought not to delay my acknowledgment of so great a favour.

L. Owen Pike.

Lincoln's Inn,
30*th March*, 1904.

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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 Richard de Kelleshulle, or Kelshulle.
Sir Richard de Wylughby, or Willoughby.

Treasurer.

William de Edyngton.[2]

Barons of the Exchequer.[3]

Sir William de Stowe.
Sir William de Broclesby.
Sir Gervase de Wilford.
Sir Alan de Asshe.[4]

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

[2] Appointed 10 April, 1344. *Rot. Lit. Pat.* 18 Edw. III, p. 1, m. 22.

[3] William de Everdon was appointed Chief Baron 1 May, 1344, but surrendered the appointment, and it was cancelled. *Rot. Lit. Pat.* 18 Edw. III., p. 1, m. 19.

[4] Appointed 1 May, 1344. *Rot. Lit. Pat.* 18 Edw. III., p. 1, m. 19.

NAMES OF THE "NARRATORES," COUNTORS, OR COUNSEL.[1]

Roger de Blaykeston.
Adam Bret.
Hamo Derworthy.
John de Gaynesford.
Henry Grene, or de Grene, or atte Grene.
Henry de Motelowe, or Mutlow.
John Moubray, or de Moubray.
William de Notton.
Richard de la Pole.
Peter de Richemunde.
John de la Rokel, or Rokele, or Rokelle.
Thomas de Seton.
John de Stouford.
Robert de Thorpe.
William de Thorpe.

CORRECTIONS.

Page 5, line 18 and line 20, *after* WILBY *dele* the full stop.

,, 117, note 9, second column, line 2, *for* "the parson" *read* "Richard."

,, 168, note, column 1, line 23, *for* "Cantuarensis" *read* "Cantuariensi."

[1] Mentioned in the Plea Rolls of the Common Bench as receiving chirographs of Fines. The fact that the counsel mentioned in the reports could be identified with "narratores" mentioned in the rolls was discovered through the minute inspection of the rolls which was necessary for my proposed calendar of them. *See* the Vol. of Y.B., 16 Edw. III., Part 2 (published in 1900), p. xi.

EASTER TERM

IN THE

EIGHTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

Wt. 20766 A

EASTER TERM IN THE EIGHTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

No. 1.

A.D. 1344. Prayer to be admitted.

(1.) § A writ was brought against a husband and his wife, who made default after default.—*Grene.* Although the writ is sued against the husband and the wife, you have here Thomas le Vinter, who tells you that the husband and his wife held for term of their two lives by his lease, the reversion being to him; and he tells you that the husband is dead, and we pray to be admitted to abate the writ.—Willoughby. Do you want to abate the writ before you are admitted? That would be extraordinary.—*Grene.* It must be so: for I cannot be admitted by reason of the default of the person who is dead; and, if I were admitted by reason of his default, I should lose the advantage of this plea afterwards; it is therefore necessary to abate the writ on the admission.—Hillary. You will have the plea after the admission, or else not at all; therefore deliver yourself. — And afterwards *Grene* was

DE TERMINO PASCHÆ ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU DECIMO OCTAVO.[1]

No. 1.

A.D. 1344. Priere destre resceu.[3] [Fitz., *Resceit*, 109.]

(1.)[2] § Brief fut[4] porte vers le baroun et sa femme, qe[5] firent defaut apres defaut.—*Grene.* Coment qe le brief soit suy vers le baroun et la femme, vous avez cy Thomas le Vinter,[6] qe vous dit qe le baroun et sa femme tiendrent a terme[7] de lour ij[8] vies de son lees, la reversion a luy; et vous dit qe le[9] baroun est mort, et prioms destre resceu pur brief abatre.—Wilby. Voillez[10] abatre le bref devant qe vous soiez[11] resceu? Ceo serreit merveille.—*Grene.* Issint covient qe ceo[12] soit: qar par la defaut celuy qest mort ne puys[13] jeo pas estre resceu; et si par sa defaut jeo fusse resceu, jeo perdray lavantage apres de cel[14] plee; par quei sur[15] la resceite il covient abatre[16] le brief.—Hill. Vous averez le plee[17] apres la resceite, ou autrement nient; pur quei[18] deliverez vous.—Et puis *Grene* fut resceu, et pleda[19]

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[1] The reports of this Term are from the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MS. in the British Museum, numbered 25,184.

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

[3] The marginal note is from Harl. In L. it has been partly cut away in binding. In 25,184 the marginal note is not contemporary.

[4] fut is omitted from 25,184.

[5] L., qi.

[6] 25,184, Vyntiner.

[7] Harl., termes.

[8] ij is from Harl. alone.

[9] Harl., la.

[10] L., Voieletz.

[11] Harl., serrez.

[12] L., qe; 25,184, qil, instead of qe ceo.

[13] L., puisse; Harl., puissez.

[14] L., ceo.

[15] sur is omitted from Harl.

[16] abatre is omitted from L.

[17] Harl., les plez, instead of le plee.

[18] The words nient; pur quei are omitted from Harl., and the words pur quei from 25,184.

[19] L., du pleder, instead of et pleda.

No. 2.

A.D. 1344. admitted, and pleaded the same matter in abatement of the writ.—*Gaynesford.* You shall not be admitted to that, because you have been admitted to defend your right by reason of their default.—*Grene.* When praying to be admitted I alleged this matter; and if there were only one tenant for life by my lease, and I prayed to be admitted by reason of his default, and were admitted, I should not afterwards be admitted to say that he was dead, because that would be to prove that I had not the reversion on the day on which I had so affirmed by my prayer to be admitted; but where two persons were my tenants, even though one be dead, still the reversion after the death of the other abides with me, and therefore my plea is not contrary to my prayer on the admission.—Willoughby. A dead person cannot make default, because if the Court be apprised that he is dead, he will not lose land by his default; but in this case you prayed to be admitted by reason of his default, thus acknowledging that he was alive, and that he was in such condition that he could make default. — And, notwithstanding, Willoughby asked the demandant whether the husband was dead, and, because he did not deny the death, abated the writ.—And Willoughby said that a tenant by his warranty would say that the tenant was dead in abatement of the writ. So in the matter before the Court.

Prayer to be admitted.

(2.) § A writ was brought against Adam Broune, who made default after default. Thereupon came Edward Montague and Isabel[1] his wife, and J. Segrave and A.[2] his wife, and said that King Edward the grandfather of the present King gave the tenements demanded to Thomas, Earl Marshal, father of the

[1] Her real name was Alice. | [2] Her real name was Margaret.

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mesme la chose al abatement du brief.—*Gayn.* A ceo ne serrez resceu, qar vous estes resceu par lour defaut a defendre vostre dreit.[1]—*Grene.* En priaunt destre resceu jeo alleggeay[2] ceste chose; et sil ny avoit[3] qun tenant a terme de vie de moun lees, et jeo priasse par sa defaut destre resceu, et fusse resceu, jeo ne serra pas apres resceu a dire qil fut mort, qar ceo serreit a prover qe jeo navoy[4] pas reversion[5] le jour qe[6] jeo avoi afferme par ma priere; mes ou deux furent mes[7] tenaunts, mesqe lun soit[8] mort, unqore la[9] reversion moy demoert apres la mort lautre, par quei mon plee nest pas en contrarie de ma priere sur la resceite.—Wilby. Mort persone ne put pas faire defaut, qar si Court fut appris qil est mort, il ne perdra pas terre par sa defaut; mes ore par sa defaut vous priastes destre resceu, en[10] acceptaunt sa vie, et qil est[11] tiel[12] qe purra faire defaut.—Et, *non obstante*, Wilby. demanda del demandant[13] sil fut mort, et pur ceo qil ne dedit pas sa mort, il abate le brief.—Et Wilby. dit qe tenaunt par sa garrauntie dirreit[14] qe le tenaunt fut mort al abatement du brief. *Sic in proposito.* A.D. 1344.

(2.)[15] § Brief fut[17] porte vers Adam Broune,[18] qe fist defaut apres defaut. Sourvyndrent Edward Montague et Isabele[19] sa femme, et J. Segrave et A. sa femme, et disoint qe le Roy E. laiel dona les tenementz demandez[20] a Thomas Count Mareschalle,[21] Priere destre resceu.[16] [Fitz., *Resceite*, 108.]

[1] L., &c., instead of vostre dreit.
[2] L., alleggeray.
[3] L., si navoit, instead of sil ny avoit.
[4] 25,184, navoit.
[5] Harl., la reversion.
[6] L., de quai.
[7] mes is omitted from Harl.
[8] Harl., fuit.
[9] la is omitted from L.
[10] en is from Harl. alone.
[11] L., qe nest, instead of qil est.
[12] tiel is omitted from Harl.
[13] Harl., tenant.
[14] Harl., dirra.
[15] From L., Harl., and 25,184.
[16] The marginal note is from Harl.
[17] fut is from Harl. alone.
[18] Harl., baroun.
[19] Harl., Is'. Other MSS., I.
[20] demandez is from L. alone.
[21] L., Marchal; Harl., de Mareschalle.

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A.D. 1344. wives, whose heirs they are, and the heirs of his body begotten, saving the reversion to himself and his heirs, &c., which Thomas, by license from our Lord the present King, leased the same tenements to Adam who now makes default, for term of his life, saving the reversion to himself and the heirs of his body begotten, and, for default of issue, to the King and his heirs, and they prayed to be admitted, and, because I. the wife of Edward is under age, we pray that the parol do demur, &c.—*Gaynesford.* They show that the tenant is their deforceor, and that they have an action, and therefore admission is not given, and particularly when they are covert, so that this prayer would have the effect of ousting them from their action by means of the prayer of their husbands, and that is a thing which you ought not to permit. And I say that by law one cannot lease for term of life, and save the reversion to himself in fee tail.—Willoughby. You say what is true in an ordinary case; but this lease was made by license from the King, and by it the right is saved in the King for default of issue in tail. —*Gaynesford.* The King's license is immaterial.— Stonore. Where is the King's license?—*Thorpe.* The tenant has it; and it is properly his to have; and in an ordinary case the King does not give in tail, nor for term of life, nor does he give license to another person to give land holden of himself, except to hold

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pere les femmes, qi[1] heirs eles[2] sount, et les heirs A.D. 1344
de son corps engendres, salvaunt[3] la reversion a lui et ses heirs, &c., quel Thomas,[4] par conge nostre seignur[5] le Roy qore est, lessa mesmes[6] les tenements a Adam qore fait defaut, a terme de sa vie,[7] salvant[8] la reversion a lui et a les heirs de son corps engendrez,[9] et pur defaut dissue au Roy et ses heirs, et priount[10] destre resceu, et, pur ceo qe I. la femme Edward est deinz age prioms qe la parole demoerge, &c.—*Gayn.* Eles moustrent qe le tenant est lour deforceour,[11] et qeles ount accion, par quei la resceit nest pas done, et nomement quant eles sount covertes, issint qe cest priere[12] serreit de les ouster de lour accion par la priere lour barouns, quele chose vous ne devez suffrer.[13] Et[14] jeo dise[15] de ley homme ne put pas lesser a terme de vie, et salver[16] la reversion a luy en fee taille.—Wilby. En comune cas vous ditez verite; mes cel lees fut fait par conge du Roy, par quel dreit est sauve[17] en le Roy pur defaut dissue en la taille.—*Gayn.* Le conge le Roi [ne toude ne doune. —Ston. Ou est le conge le[18] Roy?—*Thorpe*].[19] Le tenant lad; et attient a lui daver le; et en comune cas le[20] Roi ne doune pas en taille ne a terme de vie, ne doune conge a autre[21] de doner terre tenue de luy forqe a tener de lui mesme; mes

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[1] 25,184, et qi.
[2] 25,184, ils.
[3] L., and Harl., savant.
[4] Thomas is omitted from L.
[5] seignur is omitted from L.
[6] mesmes is omitted from Harl.
[7] The words a terme de sa vie are omitted from L.
[8] Harl., savant; 25,184, saunz.
[9] engendrez is from Harl. alone.
[10] Harl., prient.
[11] 25,184, forceour.
[12] priere is omitted from L.
[13] L., soefrere.
[14] Et is omitted from Harl.
[15] The words jeo dise are omitted from 25,184, and the word dise from L.
[16] Harl., savant; 25,184, sauver.
[17] L., salve.
[18] 25,184, du.
[19] The words between brackets are omitted from L.
[20] L., ne.
[21] The words a autre are omitted from L.

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A.D. 1344. of himself; but, since he has given license in another manner in this case, the land must be holden in accordance with the manner in which he gives it, &c. Besides, that which we say as to a reversion in fee tail is by way of protestation in order to save ourselves an action touching the fee tail; and if the tenant were to vouch us, or to pray us in aid, we should warrant him, or join in aid, saving to ourselves our action. So in the matter before us.—*Gaynesford.* It is impossible that they can be admitted, by reason of the default of the tenant, by judgment affirming the tenant's estate, and that they can afterwards have an action.—KELSHULLE. Why should not they be admitted just as much as their father?—*Gaynesford.* Their father would not have an action contrary to his own lease.—*Stouford.* Nothing of that which we say as to the fee tail is much to the purpose with regard to the admission: for by reason of the reversion in us, whether in fee tail or in fee simple, we are in a condition to be admitted.—And afterwards the husbands and their wives made attorneys by bill, except I. wife of Edward, who made a guardian. And this is a thing which was not wont to be done without a writ from the Chancery.—*Quære.*—And afterwards the COURT admitted them by judgment, and the parol was without day by reason of non-age, &c.—SHARSHULLE and WILLOUGHBY said that an heir is entitled to be admitted to defend just as much by reason of a reversion saved in fee tail, as of one saved in fee simple.

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quant il ad done conge par autre manere en ceo [cas, solonc ceo][1] qil doune[2] il covient estre tenu, &c. Ovesqe ceo, ceo[3] qe nous parloms de reversion en fee taille[4] est pur protestacion[5] pur salver a nous accion par la taille; et si le tenaunt nous vouchast, ou nous[6] priast en eide, nous luy garrauntroms, ou joindroms en eyde, sauvant[7] a nous accion. *Sic in proposito.—Gayn.* Il est impossible qeles[8] soient[9] resceu par defaut du tenaunt par agarde en affermaunt lestat[10] le tenant, et qe[11] apres eles averount accion.—KELS. Pur quei ne serront eles resceu si bien come lour[12] pere?—*Gayn.* Lour pere navereit pas[13] accion countre son lees[14] demene.—*Stouf.* De ceo qe nous parloms de la taille nest pas molt a purpos de la resceit: qar par[15] la reversion en nous de taille,[16] ou[17] de fee simple,[18] nous sumes resceivable.—Et puis les barouns et les femmes firent par bille attournes, forpris I. femme E. qe fist gardein. Et ceste chose saunz brief[19] de Chauncellerie ne soleit pas estre fait.—*Quære.*—Et puis par agarde COURT les resceut, et la parole saunz jour par[20] nounage, &c.—SCHAR. et WILBY.[21] disoient qe si[22] avant est heir resceivable par cause de reversion sauve[23] de fee taille, come de fee simple. A.D. 1344.

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[1] The words between brackets are omitted from L.
[2] 25,184, ad done.
[3] ceo is from 25,184 alone.
[4] The words en fee taille are omitted from Harl.
[5] 25,184, ceo qe.
[6] nous is from L. alone.
[7] L., savant.
[8] L., qils.
[9] Harl., serroit.
[10] L., lestatut.
[11] Harl., and 25,184, a qi, instead of et qe.
[12] Harl., and 25,184, le.
[13] pas is from Harl. alone.
[14] Harl., fait.
[15] par is from L. alone.
[16] Harl., la taille.
[17] L., et.
[18] simple is omitted from L.
[19] brief is omitted from L.
[20] 25,184, et.
[21] 25,184, HILL.
[22] Harl., auxi.
[23] L., salve; 25,184, saufve.

Nos. 3, 4.

A.D. 1344. Fine. (3.) § Note that on a writ of Dower brought by a husband and his wife, where the tenant by his warranty was a party, a fine on release was levied between him and the demandants, to the effect that the demandants released all that they had in right of the wife to the tenant by his warranty. And this fine was admitted.

Scire facias. (4.) § *Scire facias* upon a fine, to have execution.—*Notton.* The person against whom the writ is brought is Richard Lacer's villein, and holds of him in villenage; judgment of the writ.—*Grene.* Tenant of the freehold; ready, &c.—*Notton.* The averment does not lie against the exception of villenage.—*Grene.* You would say well, supposing you had taken the disability of blood for plea, and had stopped there; but you are abiding the issue of the plea that you hold in villenage, which is only a non-tenure of the freehold,

Nos. 3, 4.

(3.) [1] § *Nota* qen brief de Dowere porte par le baroun et sa femme, ou le tenant[3] par sa garrauntie fut partie, entre luy et les demandantz fyn se leva sur relees, si qe les demandants relesserent[4] quant qils avoint de dreit la femme al tenant par sa garrauntie. Et resceu. A.D. 1344. *Finis.*[2] [Fitz., *Fynes*, 112.]

(4.) [5] § *Scire facias* hors dun fyn pur avoir execucion.—*Nottone.* Celui vers qi le brief est porte est le vilein Richard Lacer,[6] et tient en vilenage de luy; jugement de brief.—*Grene.* Tenant du fraunctenement; prest, &c.—*Nottone.* Laverement ne gist pas countre lexcepcion de[7] vilenage.—*Grene.* Vous deissez bien si vous eussez pris la noun ablete du saunk pur plee, et la eussez respose; mes vous demurez en issue de plee qe[8] vous tenez[9] en vilenage, qe nest forqe un nountenure de fraunctenement, *Scire facias.*

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[1] From Harl., and 25,184. The case is omitted from L.

[2] The marginal note in Harl. is *Nota*: Dowere.

[3] 25,184, secunde tenant.

[4] Harl., lesserent.

[5] From L. (in which MS., however, the report appears in Hilary Term next preceding), Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 84. It there appears that a fine was levied in the year 18 Edward II., between Humphrey de Waldene, plaintiff, and John de Wydytone and Alexander de Grantesdene, deforciants, of the manors of Matchyngge (Matching) and Elsenham (Essex), and tenements in various other places in Essex, which were settled on Humphrey in tail with successive remainders to his son [*sic*] Humphrey in tail, and Humphrey's brother Alexander in tail, to Adam the last-named Alexander's brother in tail, and to the right heirs of Humphrey de Waldene. It was alleged by Humphrey, son of Humphrey, that Humphrey de Waldene had died without heir of his body, and that William Baltryp the elder had entered upon ten acres of land included in the tenements, and the *Scire facias* issued against him.

Upon the appearance of the parties William pleaded "quod "ipse est nativus cujusdam Ricardi "Lacer et prædictas decem acras "terræ de eodem Ricardo tenet in "villenagio."

Judgment was therefore given "quod prædictus Humfridus filius "Humfridi nihil capiat per breve "suum."

[6] L., Lastere de L.; Harl., Lacy.

[7] 25,184, en.

[8] 25,184, et.

[9] Harl., teniez.

Nos. 5. 6.

A.D. 1344. against which allegation the averment is given.—Sharshulle. We will not change the usual law. And, therefore, villein, Adieu.

Scire facias. (5.) § *Scire facias* for the King, against the Abbot of Bec Hellouin, on a recovery on a *Quare impedit.*—Exception was taken that the writ was not served, because the words of the return were only *Scire feci Abbati de B., essendi secundum tenorem brevis*, and it did not say where or what to do.—And, notwithstanding, they were put to answer over by judgment.—And afterwards exception was taken to the writ, because in the writ there was wanting the clause "*et quia volumus ea quæ in Curia nostra rite acta sunt debitæ executioni demandari.*"—*Thorpe.* That clause is not of the substance, and the rest will suffice.—Hillary. Will you say anything else?—*Pole.* The writ purports that the King recovered *coram Justiciariis*, and does not determine before what Justices, nor in what place; so it is without certainty.—*Thorpe.* It is understood to be before Justices of the Common Bench.—Sharshulle to the defendant. Adieu, as to this writ.[1]

Deceit. (6.) § Deceit by *Venire facias* was sued by Gilbert

[1] *See* further below, No. 38.

countre quel allegeance laverement est done.—Schar. Nous ne voloms pas chaunger la ley use. Et pur ceo alez a Dieu vous vileyn.[1] A.D. 1344.

(5.)[2] § *Scire facias* pur le Roy vers Labbe de Bec[3] Heluyn[4] hors dun recoverir[5] sur un *Quare impedit.*—Fut chalenge qe le brief nest[6] pas servy, pur ceo qil ne voleit forqe[7] *Scire feci Abbati de B.*[8] *essendi secundum tenorem brevis*, et ne dit pas ou, ne a quei faire.—Et, *non*[9] *obstante*, ils[10] furent mys outre par agarde.—Et puis le brief est chalenge pur ceo qen le brief y faillist[11] la clause *et quia volumus ea quæ in Curia nostra*[12] *rite acta sunt debitæ executioni demandari.—Thorpe.* Cel[13] clause nest pas de substaunce, et le remenant purra suffire.—Hill. Volez autre chose dire?—*Pole.* Le brief voet qe le Roy recoveri *coram Justiciariis*, et ne determine pas devant queux Justices, nen quel lieu; issint en noun certein.—*Thorpe.* Cest entendu devant Justices du Baunk.—Schar. al defendant. Alez a Dieu a ceo brief. *Scire facias.* [Fitz., *Retourn del Vicounte*, 83; *Briefe* 356.]

(6.)[14] § Desceite par *Venire facias* fut suy par Desceite. [Fitz., *Respond*, 17.]

[1] According to the roll "Super "hoc prædictus Humfridus filius "Humfridi petit breve ad præ- "muniendum prædictos Ricardum "et Willelmum quod sint hic "ostensuri in forma prædicta, "et ei conceditur. Ideo præ- "ceptum est Vicecomiti quod per "probos, &c., scire faciat prædictis "Ricardo et Willelmo quod sint "hic in Crastino Sancti Johannis "Baptistæ ostensuri si quid, &c., "quare prædictæ decem acræ terræ, "cum pertinentiis, post mortem "prædicti Humfridi de Waldene "præfato Humfrido filio Humfridi "remanere non debeant."

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

[3] 25,184, Berk.

[4] Heluyn is omitted from L. and Harl.

[5] L., record; Harl., reconisaunce.

[6] Harl., ne fut.

[7] forqe is omitted from Harl.

[8] 25,184, Berkherwyn.

[9] The words Et, *non* are omitted from L.

[10] ils is from Harl. alone.

[11] Harl., ly faut, instead of y faillist.

[12] *nostra* is omitted from Harl.

[13] Harl., cest.

[14] From L., Harl., and 25,184. There is a record of the case among the *Placita de Banco*, Easter, 18 Edw. III., on R° 31 d, and another on R° 72. The first has not been formally vacated and relates, no

No. 6.

A.D. 1344 Colley against William de Melbourne, knight, who had by a Protection put the parol in a Formedon without day, supposing by the King's Protection that he was beyond sea in the King's service, whereas [at that time, and] before, and afterwards, he was continually in England in such a place, in such a county, tortiously and in contempt of the King, and contrary to the law and custom of the realm, and in deceit of the King's Court, and disherison of the party, and to his damage, &c.—The defendant came by *Capias*, and had oyer of the writ.—And afterwards the plaintiff counted against him on a like writ for that a Protection was produced

No. 6.

Gilbert Colley vers William de Melbourne,[1] chivaler, A.D. 1344. qavoit par Proteccion mys la parole en un[2] Forme de doun saunz jour, supposaunt par[3] la Proteccion le Roy qil fut dela la miere[4] en le service le Roy, la ou avant et apres il fut continuelment en Engleterre en tiel lieu en tiel counte, a tort et en despit du Roy, et countre la ley et custume du Roialme, et en[5] desceite de la Court[6] le Roy, et desheritisoun[7] de la partie, et a ses damages, &c.—Le defendant vint par *Capias* et avoit oy du brief.—Et puis le pleintif counta vers luy en autiel brief de ceo qe Proteccion fut mys avant pur mesme le[8] defendant,

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doubt, to the first writ mentioned in the report, but the second is the longer, and the writ therein is, no doubt, that upon which, according to the report, the plaintiff counted.

According to it "Willelmus de "Melleburne, chivaler . . . . . "attachiatus fuit ad respondendum "tam domino Regi quam Gilberto "de Colleye de placito quare cum "idem Gilbertus nuper in Curia "Regis hic per breve Regis "implacitasset prædictum Willel-"mum et Margeriam uxorem ejus "de manerio de Essherewateryille, "cum pertinentiis, idem Willel-"mus, Curiæ Regis ac legi et "consuetudini regni Regis Angliæ "illudendo, et prosecutionem ipsius "Gilberti in hac parte prorogare "machinando, quasdam literas "Regis de Protectione continentes "ipsum Willelmum in obsequium "Regis per præceptum suum, cum "dilecto et fideli Regis Willelmo de "Bohun Comite Herefordiæ ad "partes transmarinas profecturum "fuisse, et sic quietum esse de "omnibus placitis et querelis, "exceptis placitis de Dote unde "nihil habet, et Quare impedit, et "Assisis novæ disseisinæ et ultimæ "præsentationis, et Attinctis, coram "Justiciariis hic ad certum diem, "partibus prædictis in eadem "loquela per præfatos Justiciarios, "datum, coram eisdem Justiciariis "nostris, porrigi fecit, ipso Willelmo "tunc, ante, et post, in Anglia "continue commorante, per quod "loquela illa coram præfatis "Justiciariis sine die remansit, in "Regis contemptum manifestum, "et deceptionem Curiæ Regis "prædictæ ac legis et consuetudinis "prædictarum illusionem mani-"festam, necnon ipsius Gilberti "dispendium non modicum et "exheredationis periculum mani-"festum."

[1] Harl., Milbourne.

[2] Harl., &c., dun, instead of en un.

[3] L., qe.

[4] Harl., a aler, instead of dela la miere.

[5] en is from Harl. alone.

[6] 25,184, contracte.

[7] L., desherytaunce.

[8] The words mesme le are from L. alone.

No. 6.

A.D. 1344. for the same defendant, in the same plea of Formedon, and at the time of the plea.—*Grene* defended and had oyer of the writ.—And *Pole* said that the law did not put him to answer to this last writ, because heretofore a Distress issued returnable now, which has not been served, in which case, even though we did not appear, the Court could not record a default against us, but only enter by roll *postea*; wherefore we do not understand that you will put us to answer.—SHARSHULLE. You have answered, and defended, and have had oyer of the writ, and you are in Court, and have a day by roll.—*Pole*. We have appeared by *Capias* to another writ, and we have not a day by roll but by the Grand Distress, which is not served. And we demand judgment whether we shall be put to answer.—SHARSHULLE. Have you not *gratis* entered upon answering this writ, and had oyer of the writ? And the plaintiff demands judgment against you as against one not defended. Consider, therefore, whether you will answer or not, at

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en mesme le plee de Fourme de doun et au[1] temps de plee.[2]—*Grene* defendi, et avoit oy du brief.—Et *Pole* dit qa ceo derreyn brief ley luy[3] mist pas a respoundre, qar autrefoitz Destresse issit retournable a ore, qe nest pas servy, en quel[4] cas, tut ne venissoms[5] pas, Court ne poet pas[6] defaut recorder sur nous, mes entrer par roule *postea*; par quei nentendoms pas qe vous nous volez mettre a respoundre.—Schar. Vous avez respondu et defendu, et avez oy du brief, et vous estes en Court, et avez jour par roule.—*Pole*. Nous sumes venuz par *Capias* a autre brief, et par roule navoms pas jour, mes par la Graunt Destresse, qe nest pas servy. Et demandoms jugement [si nous serroms mys de respoundre].[7]—Schar. Nestes vous de gree entre a ceo brief en respouns, et avez oy du brief? Et le pleintif demanda jugement de vous come de[8] noun defendu. Veiez donqes si vous volez[9] respoundre ou noun, a A.D. 1344.

[1] L., autre.

[2] According to the roll, the declaration was "quod cum ipse "nuper, &c., per breve Regis "implacitasset prædictum Willel- "mum, &c., de manerio, &c., quod "quidem breve fuit returnabile hic "a die Paschæ in unum mensem "anno regni domini Regis nunc "quartodecimo, et, continuato "inde processu usque a die Paschæ "in unum mensem anno regni "domini Regis nunc sextodecimo, "quod prædictus Willelmus, Curiæ "Regis, &c., illudendo, et prosecu- "tionem ipsius Gilberti, &c., "prorogare machinando, quasdam "literas Regis de protectione conti- "nentes ipsum Willelmum in "obsequium Regis, &c., cum dilecto "et fideli Regis, &c., ad partes "transmarinas tunc profecturum "fuisse, et sic ipsum Willelmum "a vicesimo octavo die Aprilis anno "regni Regis nunc sextodecimo "usque festum Sancti Michaelis "tunc proxime sequens quietum "esse de omnibus placitis, &c., "porrigi fecit, ipso Willelmo tunc, "ante, et post, apud Essherewater- "ville in Comitatu Surreiæ commo- "rante, [in vico de Fridaystrete, "Londoniarum, in the first re- "cord] per quod loquela illa tunc "sine die remansit, in Regis "contemptum, &c., nec non ipsius "Gilberti damnum mille librarum. "Et inde producit sectam," &c.

[3] Harl., ne ly.

[4] quel is omitted from L.

[5] L., venimes; 25,184, venis semes.

[6] pas is from L. alone.

[7] The words between brackets are omitted from L.

[8] de is from Harl. alone.

[9] L., voiellietz; Harl., voilletz.

No. 6.

A.D. 1344 your peril.—*Pole* said, as to the first writ, that the Protection was *quia profecturus est*, &c., and said that he was ready, and was going towards the parts beyond sea, and that sickness seized him at such a place, &c., so that he could not travel nor ride, and that before that time the Protection was allowed; judgment whether by reason of this staying in England, which was by reason of sickness, you can convict us of deceit.—And note that on the morrow this same Gilbert, when in the Formedon the jury was charged on a release denied, was nonsuited when the jury came back to state their verdict.—*Grene.* This is the third writ that he has sued, and he has given much labour to the Court and the country, wherefore we pray that the jury be charged for the King's profit on his amercement.—Willoughby. Willingly.—And Willoughby charged them as to how much he could bear, &c.—And they assessed him at 40*s*.—Therefore this amercement was entered on the roll.—*Thorpe.* As to that which he alleges that he was going towards the parts beyond sea, in order to excuse himself from the deceit, and that sickness overtook him, we will aver that he remained continually at Esher,[1] as we suppose by our count; ready, &c.—*Grene.* That he was sick at Widcombe[1] while

[1] *See* p. 17, note 2, and p. 19, note 13.

No. 6.

vostre peril.—*Pole*, quant al primer brief, dit qe la Proteccion fut *quia profecturus est*, &c., et dit qil fut prest, et fut[1] en alaunt vers les parties de dela, et maladie luy prist a tiel lieu, &c., si qil ne poait[2] aler ne chivauchier,[3] devant quel temps la Proteccion fut alowe; jugement si par cele[4] demure en Engleterre, qe fut par cause de maladie, nous[5] puissetz de desceite atteyndre.[6]—*Et nota* qe lendemeyn mesme celui Gilbert al Fourme de doun, quant enquest sur un relees dedit fut charge, quant lenquest revynt pur dire lour verdit,[7] il fut nounsuy.—*Grene*. Cest le terce brief qil ad suy, et molt ad travaille la Court et pays, par quei nous prioms qe pays soit charge pur profit le Roy sur[8] son amerciement. —Wilby. Volunters.—Et les[9] chargea .com bien il purra porter, &c.—Et ils lui assistrent a xl[10] *s.*—Par quei cel amerciement fut entre en roule.—*Thorpe*. Quant a ceo qil allegge qil fut en alaunt vers les parties de[11] dela, pur lui[12] excuser de la desceite, et qe maladie lui survint, nous voloms averer qil demura continuelment a E., come nous supposoms par nostre counte; prest, &c.[13]—*Grene*. Qil fut en

A.D. 1344.

[Fitz., *Amercement*, 15.]

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[1] The words et fut are omitted from Harl.

[2] L., poiat; Harl., puit.

[3] L., chevacher; Harl., chivacher.

[4] Harl., tiel.

[5] L., vous; 25,184, me.

[6] The plea was, according to the roll, "quod [per] prædictas "literas domini Regis de Pro- "tectione, &c., ei concessas ipse "arripuit iter suum versus partes "transmarinas, et cum pervenisset "apud Wydecombe in Comitatu "Somersetiæ incepit ibidem tali "infirmitate gravari quod ipse "ulterius itinerare non potuit, sed "ibidem infirmabatur usque ad "præfatum Festum Sancti Mi- "chaelis anno regni domini Regis "nunc sextodecimo. Et hoc para- "tus est verificare, unde peti "judicium," &c.

[7] verdit is omitted from L.

[8] L., et sur.

[9] L., le; 25,184, lui.

[10] 25,184, lx.

[11] de is omitted from Harl.

[12] Harl., ly; the word is omitted from L.

[13] The replication, upon which issue was joined, was, according to the roll, "quod prædictus Willel- "mus continue morabatur in "Anglia a tempore quo prædictæ "literæ de Protectione ei concessæ "fuerunt usque præfatum Festum

No. 6.

A.D. 1344. going towards the sea; ready, &c.—*Thorpe.* Our dispute is now none other than from what county the jury shall come, whether from the place in which we have counted that he was staying, or from the place in which he alleges that he was sick. Now the fact is that the staying in England came from us, and is parcel of our declaration, and therefore the jury shall come from that place.—*Grene.* A tenant, at the *Petit Cape*, to save his default alleges imprisonment at a certain place; the demandant says that he was at large in another place; the inquest shall be taken where the imprisonment is alleged. So, in the case before us, where sickness is alleged.—*Thorpe.* Where you allege, as a parallel case, imprisonment, there the issue came from the tenant, to whom the demandant would be put to answer; but in this case the staying in a certain place came from us, and that puts you to answer; and that which you say as to sickness in travelling is only a traverse to us; wherefore the issue shall be enquired where we allege the staying, just as much as in the other case where the imprisonment is alleged.—*Pole.* It would not be an issue to say that we did not stay continually at Esher, as you have counted; but we must show that we went, &c., or else show cause why we could not go, so that the reason for which we could not go, which came from us, will make the issue, so that it will be tried there.—

No. 6.

alaunt vers la meer malade[1] a W.[2]; prest, &c.— A.D. 1344.
Thorpe. Nostre debat est[3] ore nul autre[4] mes de quel counte pays vendra, lequel del lieu ou nous avoms counte qil fut demurant, ou del lieu ou il allegge qil fut malade.[1] Ore est il issi qe le demure[5] vint de nous, et est parcelle de nostre demoustraunce,[6] par quei de cel lieu pays vendra.—*Grene.* Tenant, al petit *Cape*, allegge emprisonement, pur salver[7] sa[8] defaut, en certein lieu; le demandant dit qe a large en autre lieu; lenquest serra pris ou lemprisonement est[9] allegge. *Sic in proposito*, ou la maladie est allegge.—*Thorpe.* La ou vous alleggez, pur[10] ensaumple, lenprisonement, et lissu vint del tenant, a qi le demandant serra mys de respoundre; et en ceo cas la demure[5] en certein lieu vint de nous,[11] qe vous mette[12] a respoundre; et ceo qe vous parlez de maladie en chiminaunt nest forqe[13] travers a nous; par quei ou nous alleggeoms la demure[5] serra lissue enquis si avant come en lautre cas ou lenprisonement est allegge.—*Pole.* Il ne serreit pas issue a dire qe nous ne demurames pas continuelment a E., come vous avez counte; mes covendreit moustrer qe nous alames, &c., ou autrement moustrer cause pur quei nous ne poiames[14] aler, issi qe la cause pur quei nous ne poiames[15] aler, qe vint de nous, fra lissu, issi qe illoeqes serra[16] trie.—

" Sancti Michaelis, videlicet apud " Essherewaterville [in Friday- " strete, Londoniarum, in the first " record] prout ipse superius dixit, " absque hoc quod idem Willelmus " detentus fuit infirmitate apud " Wydecombe sicut idem Willel- " mus dicit. Et hoc petit quod " inquiratur per patriam."

[1] L., maladez; 25,184, malades.
[2] Harl., A.; 25,184, D.
[3] Harl., nest.
[4] The words nul autre are omitted from Harl.
[5] 25,184, demoere.
[6] L., moustrance.
[7] Harl., and 25,184, saver.
[8] sa is from Harl. alone.
[9] Harl., soit.
[10] L., qe par.
[11] 25,184, vous.
[12] Harl., mettes.
[13] L., pas.
[14] L., poames; Harl., poms.
[15] L., poeames; Harl., pooms.
[16] L., seo serra.

Nos. 7, 8.

A.D. 1344. Hillary. You are at a traverse, and we will consider where this shall be tried.—And the *Venire facias* was awarded where the sickness was alleged.

Debt. (7.) § Debt. The plaintiff counted that one A., on a certain day, in a certain year, and at a certain place, bought of him ten great beasts for ten marks to be paid on a certain day in the presence of W. against whom this writ is brought, who undertook that, if A. did not pay on the day, &c., he would pay, and in respect of that payment became the principal debtor, and that on that day A. did not pay, and is not sufficient to pay; wherefore many times since he has come and demanded the money of W., who did not pay, and still will not pay, &c.—Sharshulle, to the plaintiff. Do you not produce any specialty to show the covenant?—*Pole.* We shall have something to say as to that.

Assise of Novel Disseisin. (8.) § Novel Disseisin against two persons.—*Riche-*

Nos. 7, 8.

HILL. Vous estes a travers, et nous aviseroms ou ceo serra enquis.—Et *Venire facias* fut agarde ou la maladie fut allegge.[1] A.D. 1344.

(7.)[2] § Dette. Le pleintif counta qun A., certein jour, an,[3] et lieu, achata de luy[4] x grosses bestes pur x marcz a paier a un[5] certein jour en la presence W.[6] vers qi ceo[7] bref est porte, qe empriste[8] qe[9] si A. ne paiast[10] a jour, &c., qil paiast, et de cel paye devynt principal dettour, a qel jour A. ne paia pas, ne nest pas suffisaunt a paier[11]; par quei sovent puis il est[12] venuz et demande de[13] W.,[14] qe ne paia pas, ne unqore ne voet, &c.—SCHAR., al pleintif. Moustrez vous rien del covenant especial?—*Pole*. Nous parleroms a ceo. Dette.

(8.)[15] § Novele Disseisine vers ij.—*Richem*. Lun Assise de[16] Novele Disseisine. [17 Li. Ass., 18.]

[1] The *Venire* was, according to the roll, directed to the Sheriff of Somerset to cause a jury to come "de visneto de Wydecombe." Melleburne was held to mainprise. There were several adjournments, but nothing further appears on the roll.

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

[3] 25,184, certeyn an.

[4] The words de luy are omitted from Harl.

[5] un is from Harl. alone.

[6] L., B.

[7] Harl., cest.

[8] 25,184, qenqist, instead of qe empriste.

[9] qe is omitted from Harl.

[10] 25,184, poiat.

[11] The words a paier are omitted from L.

[12] Harl., ad.

[13] Harl., a.

[14] L., and 25,184, B.

[15] From L., Harl., and 25,184. The record appears to be that found among the *Placita de Banco*, Easter, 18 Edw. III., R° 48. It there appears that the Assise was brought by John Croiser and Avice his wife against Isabel late wife of John de Barnevyle, and John her son, and John Bartelot and Katharine his wife, in respect of two messuages, 29 acres of land, one acre of meadow, two acres of wood, and 4*s*. of rent in Harewe (Harrow, Middlesex).

"Et Johannes filius Isabellæ "venit. Et alii non veniunt, sed "idem Johannes respondet pro "prædictis Johanne Bartelot et "Katerina tanquam eorum balli-"vus. Et pro eis dicit quod ipsi "nullam eis fecerunt injuriam seu "disseisinam." Issue was joined on this to the Assise.

"Et Isabella fuit attachiata per "Ricardum Sexteyn et Johannem "de Barnevyle. Ideo ipsi in "misericordia."

[16] The words Assise de are omitted from Harl., and 25,184.

No. 8.

A D. 1344. *munde.* One makes default, and you have here the other, who tells you that the one who makes default has only a term for life by lease from himself, and prays to be admitted [to defend his right].—And he imparled, and afterwards came back, and pleaded in bar on the ground that the ancestor of the woman who is plaintiff enfeoffed the tenant's ancestor with warranty.—*Notton.* We do not admit that the deed was executed at the time stated, and we tell you that this same person, our ancestor, died seised in his demesne as of fee, and that after his death we entered as daughter and heir, and were seised until disseised by the defendant. And we pray the Assise.—*Richemunde.* Inasmuch as you make a title of later date you admit the bar; and

No. 8.

fait[1] defaut, et vous avez cy lautre, qe vous dit qe celuy qe fait[1] defaut nad qe terme de vie de son lees, et prie destre resceu.[2]—Et emparla, et puis revient, et pleda en barre par taunt qe launcestre la femme pleintif feffa[3] launcestre le tenant ove garrauntie.[4]—*Nottone.* Nous ne conisoms[5] pas qe la fait[1] se fit[6] a tiel[7] temps, et vous dioms qe mesme celuy nostre auncestre morust seisi en son demene come de fee, apres qi mort nous entrames come fille et heir, et seisi fumes tanqe par lui disseisi. Et prioms Lassise.[8]—*Richem.* Par taunt qe vous faites[9] title de puisne temps vous conisez le barre; A.D. 1344.

[1] L., and 25,184, fet.

[2] According to the roll, "Super "hoc prædictus Johannes filius "Isabellæ dicit quod prædicta Isa- "bella tenet prædicta tenementa "ad terminum vitæ suæ ex dimis- "sione ejusdem Johannis, et quod "reversio inde post mortem præ- "fatæ Isabellæ ad ipsum spectat. "Et petit quod ipse per defaltam "præfatæ Isabellæ admittatur ad "defensionem juris sui in hac "parte. Et admittitur," &c.

[3] Harl., enfeffa.

[4] According to the roll, "Idem "Johannes dicit quod Assisa inde "inter eos fieri non debet, &c., "dicit enim quod quidam Rogerus "atte Halle, pater prædictæ Aviciæ, "cujus heres ipsa est, per chartam "suam dedit et concessit cuidam "Johanni de Barnevile patri ipsius "Johannis, cujus heres ipse est, "prædicta tenementa, cum perti- "nentiis, tenenda sibi et heredibus "suis in perpetuum, et obligavit se "et heredes suos ad warantizan- "dum, &c. Et profert hic prædic- "tam chartam sub nomine prædicti "Rogeri quæ hoc testatur, &c. Et "dicit quod si ipse ab aliquo ex- "traneo esset inde implacitatus, "prædicta Avicia, ut heres prædicti "Rogeri, teneretur ei prædicta "tenementa warantizare, unde "petit judicium si contra factum "prædictum Assisam inde versus "eum habere debeat," &c.

[5] L., conussoms.

[6] Harl., fist.

[7] L., tyl.

[8] According to the roll, "Johannes "et Avicia, non cognoscendo præ- "dictam chartam factam fuisse "tempore quo per eandem sup- "ponitur, dicunt quod prædictus "Rogerus, pater ipsius Aviciæ, "obiit seisitus de prædictis tene- "mentis, cum pertinentiis, in "dominico suo ut de feodo, post "cujus mortem ipsa Avicia, ut filia "et heres præfati Rogeri, simul "cum ipso Johanne viro suo, in- "travit in eisdem, et inde seisiti "fuerunt ut de libero tenemento, "&c., quousque prædicti Isabella "et alii in brevi nominati ipsos "inde disseisiverunt. Et hoc petunt "quod inquiratur per Assisam. Et "Johannes filius Isabellæ similiter. "Ideo capiatur Assisa."

[9] L., fetez; 25,184, feistes.

No. 8.

A.D. 1344. since you do not show how your ancestor became seised at a later time, judgment whether you shall be admitted to say that he died seised.—Willoughby. He has not admitted the deed. Let the Assise come.—And Kelshulle, with the assent of his fellow-justices, charged the Assise as to whether the plaintiff's ancestor died seised as of fee, and whether after his death she entered as daughter, and was seised, &c. And in case, said Kelshulle, you find that the ancestor did not die seised, do not enquire as to anything further.—And note that Sharshulle's practice is, in such a case, when the title is not traversed, to take the Assise at large.—And Willoughby said that the Assise, in such a case, is to be taken only on the title, and the seisin and disseisin on such title; but in case the title is traversed, and the title is found, enquiry shall not be made as to the disseisin.—And by verdict the plaintiff's title was found as well as the seisin and disseisin.—Therefore the plaintiff recovered.

No. 8.

et del houre qe vous ne moustrez pas coment vostre auncestre avynt de puisne temps, jugement si vous serrez resceu a dire qil morust seisi.—Wilby. Il nad pas conu le fait.[1] Viegne[2] Lassise.—Et Kels., par assent de ses compaignouns, chargea Lassise si launcestre le pleintif murust seisi come de fee, et si ele apres sa mort entra come fille, et seisi fut, &c. Et, en cas qe vous trovez qe launcestre ne morust pas seisi, enquerrez[3] nient[4] plus.—Et *nota* qe Schar. use en tiel cas, quant le title nest pas traverse, de prendre Lassise a large.—Et Wilby dit qe Lassise en tiel cas nest pas a prendre forqe sur le title, et la seisine, et disseisine sur tiel title; mes en cas qe le title est[5] traverse, et le title soit[6] trove, homme [nenquerra pas de la disseisine.—Et par verdit fut trove le title la pleintif, et la seisine, et disseisine].[7]—Par quei[8] ele recoveri.[9] A.D. 1344.

[1] L., and 25,184, fet.
[2] L., Veigne.
[3] L., enquerritez.
[4] nient is omitted from L.
[5] L., nest pas.
[6] 25,184, serreit.
[7] The words between brackets are omitted from L.
[8] Harl., Et *per consequens*, instead of Par quei.
[9] According to the roll, "Recog- "nitores de consensu prædictorum "Johannis Croiser, Aviciæ, Johan- "nis filii Isabellæ, et ballivi, electi "dicunt super sacramentum suum "quod prædictus Rogerus atte "Halle, pater prædictæ Aviciæ, "cujus heres ipsa est, obiit seisitus "de prædictis tenementis in visu "positis, cum pertinentiis, in do- "minico suo ut de feodo, post cujus "mortem præfata Avicia, simul "cum prædicto viro suo, intravit in "eisdem ut filia et heres ejusdem "Rogeri, et inde seisiti fuerunt ut "de libero tenemento, quousque "prædicti Isabella et Johannes "filius ejus ipsos inde injuste dis- "seisiverunt, ad damnum ipsorum "Johannis Croiser et Aviciæ quad- "raginta et duorum solidorum, et "quod prædicti Johannes Bartelot "et Katerina non interfuerunt dis- "seisinæ prædictæ.

"Ideo consideratum est quod "prædictus Johannes Croiser et "Avicia recuperent inde seisinam "suam per visum recognitorum, "&c., et damna sua prædicta. Et "prædicti Isabella et Johannes "filius ejus in misericordia, &c. "Et Johannes Croiser et Avicia in "misericordia pro falso clamore "versus alios," &c.

No. 9.

A.D. 1344. *Quare impedit* for the Queen.

(9.) § Philippa Queen of England brought a *Quare impedit* against the Abbot of Cirencester, and took as her title that King Henry III. presented A.,[1] after whose death the church[1] is now void.[2] And he made the descent of the advowson to the present King, who granted it to the Queen for term of her life; so it belongs to her. And he tendered suit, &c.—*Pole.* We tell you that the church was full and provided of one B., and was so of our own patronage, six months before the purchase of the writ; judgment of the writ. —*Thorpe.* Do you mean, then, that a possessory writ does not lie?—Willoughby. He does not plead in that manner.—Sharshulle. No, he does not allege a last presentation in abatement of the possessory writ. —*Thorpe.* If his exception holds good, there would not be any action except a writ of Right.—And afterwards *Thorpe* demanded judgment because the defendant is a man in Religion, and does not show a title in himself, and the Queen claims only a term for life, &c.,

[1] As to the names *see* p. 29, notes 1 and 6.

[2] For a previous action of *Quare impedit* brought by Queen Philippa in respect of a presentation to the same church of Binfield *see* Y.B., Hil., 18 Edw. III., No. 6.

No. 9.

A.D. 1344. *Quare impedit* pur la Reigne.[2] [Fitz., *Quare impedit.* 47.]

(9.)[1] § Phelipe[3] Reigne Dengleterre porta *Quare impedit* vers Labbe de Cirencestre, et prist son title qe le Roy H. presenta A., apres qi mort leglise[4] est[5] ore voide. Et fit la descente au Roi qore est del avowesoun, quel graunta a la Reigne pur terme de sa vie; issint appent a luy. Et tendist suyte, &c.[6]—*Pole.* Nous vous dioms qe leglise[4] fut plein et conseille[7] dun B., et fut[8] par vj mois avant le brief purchace, de nostre avowere demene; jugement du brief.—*Thorpe.* Donqes entendez vous[9] qe brief de possession ne gist pas?—Wilby. Il ne plede pas par la manere.—Schar. Noun,[10] il nallegge pas darreyn presentement al abatement du brief de possession.—*Thorpe.* Si sa excepcion tient bien,[11] nulle accion serreit forqe brief de Dreit.—Et puis *Thorpe* demanda jugement, desicome il est homme de Religion, et ne moustre pas title en lui, &c., et la Reigne cleyme qe terme de vie,[12] &c., et ceo en le

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[1] From L., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 33. It there appears that the action was brought by Philippa Queen of England against the Abbot of Cirencester in respect of a presentation to the church of Benetfeld (Binfield, Berks).

[2] The words pur la Reigne are from L. alone.

[3] L., Phelipp.

[4] 25,184, lesglise.

[5] est is omitted from 25,184.

[6] According to the record, the declaration was, "quod dominus "Henricus quondam Rex Angliæ, "proavus domini Regis nunc, fuit "seisitus de manerio de Cokham, "cum pertinentiis, ad quod advo- "catio ecclesiæ prædictæ pertinet, "qui ad eandem præsentavit quen- "dam Hugonem de Hales, clericum "suum, qui ad presentationem "suam fuit admissus et institutus, "tempore pacis, tempore ejusdem "Henrici Regis, &c., post cujus "mortem prædicta ecclesia modo "vacat." The descent is then traced from Henry III. to Edw. III., "qui quidem dominus Rex nunc "manerium prædictum, cum perti- "nentiis, simul cum advocatione "ecclesiæ prædictæ, concessit ipsi "Reginæ tenendum ad totam vitam "suam, et ea ratione ad ipsam "Reginam pertinet ad prædictam "ecclesiam præsentare . . . . . "Et inde producit sectam."

[7] L., conseile.

[8] 25,184, est.

[9] 25,184, entendoms nous, instead of entendez vous.

[10] Noun is omitted from L.

[11] 25,184, lieu.

[12] The words de vie are omitted from L.

Nos. 10, 11.

A.D. 1344. and that in right of the King, against whom, by reason of his Prerogative, such an exception is not binding, and the Queen is a person who is exempt in the same way as the King. Judgment, said *Thorpe*, and we pray a writ to the Bishop.—*Pole.* Prerogative extends only to the person of the King himself; and as to what you say that she holds in right of the King, the King will be aided in that respect, when he has come into the reversion.—And afterwards they were at issue on the presentation alleged to have been made by King Henry.

Note: Formedon. (10.) § Note that in a Formedon in the reverter in which the demandant demanded as heir, the tenant alleged that he was born out of wedlock. And because this is a writ affecting the right he did not dare to abide judgment, but said that the demandant was fully bastard.

Dower. (11.) § Dower of a third part of a manor.—*Grene* alleged non-tenure of twenty acres of land, parcel of the manor.—*Richemunde.* Answer as to the rest.—*Grene.* When the demand is for a third part of a manor, non-tenure of a part of the manor will abate the whole writ.—Willoughby. This is a writ of Dower in which the demand is not included in the writ, wherefore you will not abate the writ by special

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dreit le Roy, vers qi par[1] sa Prerogative tiele excepcion ne se lye pas, et la Reigne est persone exempte come le[2] Roi. Jugement, et prioms brief al Evesqe.—*Pole.* Prerogative sestent forqe a la persone le Roi mesme; et de ceo qe vous parlez qele tient en le dreit le Roi, de[3] ceo serra le Roi eide quant il serra einz en la reversion.—Et puis furent a issue sur le presentement le Roi H.[4] A.D. 1344.

(10.)[5] § *Nota* qen Fourme de doun en le *reverti* ou le demandant demanda come heir, le tenant alleggea qil nasquit hors de les[7] esposailles. Et pur ceo qe cest un brief de dreit il nosa demurer, mes dit qe pleinement bastarde. *Nota*: Fourmedoun.[6]

(11.)[5] § Dowere de la terce partie dun maner.[8]—*Grene* alleggea nountenure de xx[9] acres de terre, parcelle du maner.—*Richem.*[10] Responez del remenant.—*Grene.* Quant la demande est de la terce partie dun maner, nountenure de la parcelle du maner abatra tut le brief.—Wilby. Cest un brief de Dowere, ou la demande nest pas compris deinz le brief, par quei nient plus en ceo[11] brief[12] qen Assise[13] Dowere.

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[1] 25,184, apres.

[2] le is omitted from L.

[3] L., et de.

[4] The words le Roi H. are omitted from L. In the roll the plea follows the declaration, and is "Non cog- "noscendo quod prædictus Hugo "de Hales fuit admissus et institu- "tus in ecclesia prædicta tempore "prædicti Regis Henrici, &c., dicit "quod idem Hugo fuit admissus et "institutus in eadem ecclesia ad "præsentationem cujusdam Hugo- "nis de Bamptone tunc Abbatis de "Cirencestre prædecessoris, &c., et "non ad præsentationem prædicti "domini Henrici Regis, sicut præ- "dicta Regina versus eum narra- "vit." Issue was joined upon this. The Queen afterwards failed to appear. "Et fuit querens. Ideo "consideratum est quod prædictus "Abbas recuperet versus eam præ- "sentationem suam ad ecclesiam "prædictam, et habeat breve Epis- "copo Sarum, loci Diocesano," &c.

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

[6] Fourmedoun is from 25,184 alone.

[7] 25,184, des, instead of de les.

[8] 25,184, manoir.

[9] Harl., x.

[10] Harl., *R. Thorpe.*

[11] Harl., cest.

[12] brief is omitted from L.

[13] L., and 25,184, cas.

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A.D. 1344. non-tenure any more in the case of this writ than in that of an Assise of Novel Disseisin; therefore answer. —*Grene* traversed the action, &c.

Præcipe quod reddat: Admission.

(12.) § A writ was brought against John Gareyn, clerk, who made default after default.—*Richemunde.* You have here Thomasine and John her husband, who have come before judgment rendered, and pray, &c., and tell you that a fine was levied between one Alice and one Roger, by which fine Alice acknowledged the tenements to be the right of Roger, &c., and Roger rendered back to Alice for her life, remainder after her death to John Gareyn, against whom the writ is now brought, for his life, remainder after his death to Thomasine, who prays, &c., and the heirs of her body, &c., and saved the reversion afterwards to Roger and his right heirs, and this Alice rendered her estate to John Gareyn who now makes default, and Thomasine prays to be admitted.—*Notton.* In the fine there is less rent than in our demand, wherefore we pray seisin of the surplus. And also our demand is in one vill, and the fine was levied of tenements in two vills, so that, if we grant that the tenements included in the fine were the same, we shall abate our writ.—Willoughby. As to the rent, ten shillings and five shillings cannot be understood to be one and the same thing; but if the fine was levied of certain tenements, supposing

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de[1] Novele Disseisine abatres le brief par especial nountenure; par quei responez. — *Grene* traversa laccion, &c. A.D. 1344.

(12.)[2] § Brief fut porte vers Johan Gareyn,[4] clerc,[5] qe fit defaut apres defaut.—*Rich.*[6] Vous avez cy Thomasyne[7] et Johan son baroun, qe sount venuz avant jugement rendu, et prient,[8] &c., et vous dient qe fyn se leva entre une Alice et un Roger, par quel fyn[9] Alice conust[10] les tenementz estre le dreit Roger, &c., et Roger rendist arere a Alice a sa vie, apres son decees le remeyndre[11] a Johan Gareyn vers qi le brief est[12] porte ore,[13] pur sa vie, apres son decees le remeindre a Thomasyne, qe prie, &c., et les heirs de son corps, &c., et puis salva[14] la reversion a R. et ses dreits heirs, la quele Alice rendist son estat a Johan Gareyn qore fait[15] defaut, et prie destre resceu.—*Nottone.* En la fyn il[16] y ad meyns de rente qen nostre demande, pur quei del[17] surplus nous prioms seisine. Et auxi nostre demande est en un ville, et la fyn se leva des tenementz en ij villes, issi qe si nous grauntoms qe ces[18] fussent[19] mesmes les tenements compris deinz la fyn, nous abateroms nostre brief.—Wilby. Quant a la rente, xs.[20] et vs. ne pount[21] estre entendu tut un; mes si la fyn se lèva de certeinz tenementz, supposaunt

Præcipe quod reddat: Resceite.[3] [Fitz., *Receit*, 107.]

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[1] de is omitted from 25,184.

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

[3] Resceite is from 25,184 alone, from which MS. the words *Præcipe quod reddat* are omitted. In L. are the words Priere d[estre resceu] partly cut away in binding.

[4] Harl., Gayn.

[5] clerc is omitted from Harl.

[6] Harl., *R. Thorpe.*

[7] L., Typh.

[8] The words rendu, et prient are from Harl. alone.

[9] fyn is from Harl. alone.

[10] L., conussast.

[11] L., reversion.

[12] est is omitted from L.

[13] ore is from L. alone.

[14] Harl., pur salver, instead of puis salva.

[15] 25,184, qorest, instead of qore fait.

[16] il is from Harl. alone.

[17] Harl., and 25,184, de.

[18] L., ceux.

[19] fussent is omitted from L.

[20] Harl., de xs.

[21] Harl., puit.

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A.D. 1344 them to be in two vills, whereas possibly the tenements were in one vill only, or possibly one was a hamlet of the other, still the fine is good; wherefore, &c.—*Notton*. By the date of the fine it is proved that the fine was levied while our writ was pending; therefore we do not understand that he will put us to answer him by any fine which was levied while our suit was pending. And we pray seisin.—*Richemunde*. We tell you that, when the writ was brought, John Gareyn had nothing, but Alice was tenant, so that the purchase by the fine and Alice's render made the writ good which at first was bad; and by the same fine the right was limited in us, and, if we be not admitted, we shall be ousted from that right, which is not reasonable.—Sharshulle. It has not been heard that any one has been admitted by reason of a reversion except where the reversion was in him on the day of the purchase of the writ, or where he came to the reversion, while the writ was pending, by purchase from one who had it.—Willoughby. Suppose Alice, whom he supposes to have been tenant on the day of the purchase of the writ, had limited by the fine an estate to the others, and not to J. Gareyn against whom the writ is now brought, by reason of a recovery against John who had nothing, and execution effected thereupon, the others would have had an Assise. And the reason is that Alice, against whom no suit is made, could lawfully make an estate to the others; and for the same reason, when she limited an estate to this same person

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en ij villes, ou par cas les tenementz furent en un ville soulement, ou par cas lun fut hamel del autre, unqore la fyn est bon; par quei, &c.—*Nottone.* Par la date de la fyn est prove qe la fyn se leva pendaunt nostre brief; par quei nous[1] nentendoms pas qe par nul fyn qe fut[2] leve[3] pendant nostre suyte nous[4] mettra il a luy[5] respoundre. Et prioms seisine. —*Rich.* Nous vous dioms quant le brief fut porte, Johan[6] Garein [navoit rien, mes Alice fut tenant, issint qe le purchace par la fine et le rendre Alice fist le brief bon][7] qe primes fut malveys[8]; et par mesme la fyn fut le dreit taille en nous, de[9] quel dreit, si nous ne soioms resceu, nous serroms ouste, qe nest pas resoun.—Schar. Homme nad pas oy qomme ad[10] este resceu par cause de reversion [mes ou la reversion][11] fut[12] en ly jour de brief purchace, ou qil avynt[13] a la reversion par purchace, pendaunt le brief, de cely qe lavoit.—Wilby. Jeo pose qe Alice, qil suppose qil fut tenant jour de brief purchace, ust taille par la fyn estat as autres, et noun pas a J. Gareyn[14] vers qi le brief est ore[15] porte, par le recoverir vers Johan qe rien navoit, et execucion sur cel[16] fait, les autres ussent eu lassise. Et la cause est[17] pur ceo qe Alice, vers qi nul suyte est fait, puit[18] de ley faire estat as autres; et par mesme la resoun, quant ele tailla estat a A.D. 1344.

[1] nous is from Harl. alone.
[2] The words qe fut are from Harl. alone.
[3] The words qe fut leve are omitted from L.
[4] Harl., ley nous.
[5] The words il a luy are omitted from Harl.
[6] L., vers Johan.
[7] The words between brackets are omitted from L. and 25,184.
[8] There are here inserted in L. the words *eo quod* Johan navoit rien, &c., einz un Alice fut tenant, et puys la fyn se leva, &c.
[9] Harl., en.
[10] L., qad, instead of qomme ad.
[11] The words between brackets are omitted from 25,184.
[12] fut is omitted from L.
[13] Harl., vint.
[14] Gareyn is omitted from L.
[15] ore is from Harl. alone.
[16] Harl., tiel.
[17] est is omitted from L.
[18] L., pout; 25,184, poait.

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A.D. 1344. against whom the writ is brought, the remainder being to others, the right in the others will be saved; and consequently by reason of that right limited in them on such a purchase permissible by law they will be in a condition to be admitted; but it would be otherwise if John Gareyn had been tenant on the day of the purchase of the writ, and the fine had been levied while the writ was pending, in which case every purchase and conveyance while the writ was pending would be defeasible by the recovery.—*Notton.* This John, who purchased while the writ was pending, even though the matter were as alleged, which we do not admit, is ousted from saying anything which could tend to the abatement of the writ, to wit, that he was not tenant on the day of the purchase of the writ, and consequently also every one who has by the fine a right which is dependent on the same fine.—Sharshulle. The plea is not now to the abatement of the writ, for on that fact the writ is good against John Gareyn.—*Blayketon.* By the matter shown Thomasine had only a fee tail by way of remainder while the writ was pending, and possibly will never have anything, and therefore on that ground she is not entitled to be admitted.—Willoughby. That is abiding judgment on another point.—*Grene* went back to the first exception, and said:—The person praying to be admitted is a stranger, and has lost the advantage of affirming a right in herself by the fine levied while my writ was pending, as much as the tenant himself who purchased. And suppose John Gareyn against whom my writ is brought, whereas possibly he had nothing on the day of the purchase of the writ, had purchased jointly with another while my writ was pending, would he be admitted by reason of that joint tenancy to abate my writ? I say that he would not, for I myself pleaded in a

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mesme cely vers qi le brief est porte, le remeyndre as autres, le droit en les autres serra[1] salve; et *per consequens* par cel droit en eux taille sur tiel purchace suffrable par la ley ils serrount resceivables; mes autre serreit si Johan Gareyn ust este tenant jour de brief purchace, et la fyn ust[2] este leve pendaunt le brief, en quel cas chescun purchace et demise pendaunt le brief par le recoverir serreit defesable.—*Nottone.* Cely Johan, qe purchacea pendaunt le brief, tut fut la matere tiel, come nous ne[3] conisoms[4] pas, est ouste a dire rien qe purra estre al abatement du brief, saver, qil ne fut pas tenant jour de brief purchace, et *per consequens* chescun qad dreit par la fyn qest dependaunt[5] de mesme la fyn.—SCHAR. Le plee ore[6] nest pas al abatre du brief, qar sur cel fait le brief est bon vers Johan Gareyn.—*Blaik.* Par la matere moustre Thomasyne nad forqe fee taille par voie de remeindre pendaunt le brief, et par cas jammes navera rien, par quei par cel resoun ele[7] nest pas resceyvable.—WILBY. Cest autre demure.[8]—*Grene* resorti a la primer excepcion, et dit qe celuy qe prie est estraunge, et ad perdu lavauntage daffermer dreit en luy par la fyn leve pendaunt mon[9] brief si avant come le tenant mesme[10] qe purchacea. Et jeo pose[11] qe Johan Gareyn, vers qi mon[12] brief est porte, la[13] par cas ou il[14] navoit rien jour de brief purchace, mes pendaunt mon brief ust purchace joint ovesqe autre, serreit il resceu par cel jointenaunce dabatre mon brief? Jeo die qe noun, qar jeo pleday[15] en[16] autiel[17]

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[1] L., serreit.
[2] ust is omitted from L.
[3] ne is from L. alone.
[4] L., conussoms.
[5] L., pendaunt.
[6] ore is omitted from L.
[7] L., il.
[8] 25,184, demoere.
[9] L., nostre.
[10] mesme is omitted from L.
[11] pose is omitted from L.
[12] Harl., le.
[13] la is omitted from L.
[14] L., sil.
[15] L., and 25,184, pleda.
[16] en is from L. alone.
[17] L., tiel.

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A D. 1344 like case, and could not abate the writ.—Willoughby. He might well abate the writ on such matter; and therefore answer whether John Gareyn was tenant on the day of the purchase of the writ.—*Grene.* Still, Sir, you see plainly how he supposes that the land was rendered to Alice for her life, the remainder being to John Gareyn, by whose default and by Alice's render made to John, he supposes John to be tenant, in which case, even though John died while Alice was living, those who pray would not have the land while Alice was living, but the heirs of John Gareyn would have it; so, on such matter, the land is not to remain to them on John's death, and therefore they are no more entitled to be admitted than if a writ had been purchased against Alice, and Alice, without making any conveyance, had continued her estate.—*Moubray.* If Alice had continued her estate and her right of freehold, and a writ had been brought against her, on her default those who pray would not be admitted, because the immediate remainder of freehold would be to another; but in this case, when a right of freehold was limited to John after the death of Alice, that gave a warrant to Alice to render to John without any livery of seisin, and John was, after the render, in his own right by virtue of the fine, and not at all in virtue of Alice's estate, so that, in this case, if John died while Alice was living, the land would remain to those who pray.—Willoughby. Will you say anything else to oust them from admission?—*Grene.* John was tenant on the day of the purchase of the

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cas mesme, et ne[1] poay[2] abatre le brief.—Wilby. Il abatereit bien le brief sur tiel matere; et pur ceo responez si Johan Gareyn fut tenant jour de brief purchace.—*Grene.* Unqore, Sire, vous veiez bien coment il suppose qe la terre fut rendu a Alice a sa vie, le remeindre[3] a Johan Gareyn, par qi defaut et par le rendre Alice fait a J., suppose J. estre tenant, en quel cas, tut morust J., vivant Alice, ceux [qe prient[4] averount pas la terre, vivant Alice, mes les heirs J. Gareyn; issint, sur tiel matere, la terre par la mort J.[5] nest pas a remeindre a eux, par quei ils][6] ne sount nient plus resceivables come si[7] brief fut purchace vers Alice, et Alice saunz demyse ust[8] continue[9] son estat.—[*Moubray.* Si Alice ust continue son estat et son dreit de fraunktenement[10]],[11] et brief fut[12] porte vers lui, par sa defaut ceux qe prient[4] ne serrount[13] pas resceu, pur ceo qe le remeindre immediate[14] serreit a[15] autre de fraunctenement; mes en ceo cas, quant un dreit de fraunctenement fut taille a Johan apres la mort Alice, ceo dona garraunt a Alice de rendre a Johan tut saunz livere de seisine, et Johan, apres le rendre, fut en son dreit demene par la fyn, et nul rien de[16] lestat Alice, issint[17] qen ceo cas, si[18] J. fut mort, vivant Alice, la terre remeyndreit[19] a ceux qe prient.[4]—Wilby. Volez autre chose dire de les ouster de la resceite?—*Grene.* Johan fut tenant jour de brief A.D. 1344.

[1] ne is omitted from 25,184.
[2] L., poy; 25,184, poyai.
[3] L., et a rendre, instead of le remeindre.
[4] 25,184, priount.
[5] J. is omitted from L.
[6] The words between brackets are omitted from Harl.
[7] L., le.
[8] L., est.
[9] 25,184, contenu.
[10] The words et son dreit de fraunktenement are from Harl. alone.
[11] The words between brackets are omitted from L.
[12] fut is omitted from Harl.
[13] L., serretz.
[14] L., en mediate.
[15] a is omitted from L.
[16] Harl., par.
[17] Harl., et issi.
[18] si is omitted from Harl.
[19] Harl., remeint.

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A.D. 1344. writ; ready, &c.—And the other side said the contrary. —And note that she who prayed to be admitted was in a condition to be admitted according to the opinion of the Court, notwithstanding that she had only a fee tail by remainder.—And they say that a previous judgment to the contrary effect in the fifth year was not law. Reygmadoyn's case.

Waste. (13.) § Richard de Stapeldone heretofore brought a writ of Waste in three vills, as appears above, upon which it was pleaded that one, which was supposed to be a vill, was a hamlet of another vill named in the writ, and thereupon they were at issue on the whole writ. And it was found at *Nisi prius*, before Stouford, that each was a vill of itself.[1] And he enquired over of the waste, and it was found that waste had been committed in two of the vills, that is to say, in such a house, and in such a house, &c. (the value of each being stated with certainty), which had been wasted and destroyed for want of roofing, and also in a wood (of the value of so much) to so much damage. And the point was touched by Sharshulle that enquiry ought to have been made as to damages touching the tenements wasted in the third vill, which waste shall, according to the plea, be held as not denied, even though the reverse was found, because that enquiry which was made as to waste was not warranted by statute or by common law: for by common law enquiry could be made as to waste only where the waste was traversed by plea, and by statute[2] enquiry could be

[1] The action was, as appears in the record, brought by Richard de Stapeldone against Robert Corun, in respect of waste in Stapeldon, Milton, Cookbury, and Wyke (Devon), and the jury found that Cookbury was a vill of itself, and not a hamlet of Milton.

[2] 13 Edw. I. (Westm. 2, c. 14).

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purchace; prest, &c.—*Et alii e contra.*—*Et nota* qe celuy qe pria fut resceivable par oppinion de COURT, *non obstante* qil nad qe fee taille par remeindre.—*Et dicunt* qe ceo[1] qe[2] fut[3] autrefoitz ajuge le revers, *anno quinto* fut autre qe ley. Reygmadoyn.[4] A.D. 1344.

(13.)[5] § Richard[6] de Stapeldone[7] autrefoitz porta brief de Wast en iij[8] villes, *ut patet supra*,[9] ou plede fut qe un qe fut suppose ville fut hamel dun autre nome el[10] brief, et sur ceo furent a issue sur tut le brief. Et par *Nisi prius*, devant STOUF., fut trove qe chescun fut ville a per luy. Et il enquist outre del wast, et trove fut qe wast fut fait en les[11] ij villes, saver, en tiel mesoun, et en tiel mesoun, &c., pris de chescun en certein, qe furent gastez[12] et destruytes[13] pur[14] defaut de coverture, et auxint en boys, pris, &c., de taunt, a damage[15] de taunt.[16] Et fut touche par SCHAR. qe les damages de tenements gastez en la terce ville, quel wast par plee, [tut] fut le revers trove, serra tenu[17] nient dedit, dust aver [este enquis, qar ceo qe fut enquis de wast ne fut pas garraunti par statut ne comune ley: qar par comune ley][18] ne fut pas[19] enquis de wast mes ou le wast par plee fut traverse, ne par statut ne serra Wast.

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[1] 25,184, ceux.

[2] qe is omitted from Harl.

[3] 25,184, furent.

[4] The words fut autre qe ley. Reygmadoyn are omitted from Harl. The name Reygmadoyn appears as Repinghale in the case to which reference is made in Y.B., Mich., 5 Edw. III., No. 101.

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

[6] L., and Harl., Johan; 25,184, R.

[7] L., Sutton.

[8] Harl., iiij, which is in accordance with the record.

[9] In Mich., 17 Edw. III. *See* No. 51 of that Term, p. 255 (Rolls Edition).

[10] Harl., en le.

[11] les is omitted from Harl.

[12] L., degastes.

[13] L., destruetes; 25,184, destrus

[14] L., par.

[15] L., des damages, instead of a damage.

[16] The words a damage de taunt are omitted from Harl.

[17] tenu is omitted from Harl.

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

[19] Harl., ad este, instead of ne fut pas.

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A.D. 1344. made only by reason of the default of the tenant.—Willoughby said that it had been necessary to enquire as to the waste.—*Grene*. Whatever the law may be, we agree to accept judgment in accordance with the verdict. — Sharshulle. Then we are discharged.—Willoughby. The Court adjudges that the plaintiff do recover the place wasted, and his damages assessed at treble, &c., which amount to so much, and that the plaintiff be in mercy for his false plaint in the third vill, in which no waste is found.—*Grene* prayed execution in the lands which the defendant had on the day on which the plea was pleaded.—Stonore. You shall in the first place have execution in general terms, of that which he has; and, if the Sheriff returns that he has nothing, you shall then have execution in the lands which he had on the day on which the inquest was taken, and you shall not have anything more.—And note that *Moubray*, in order to delay judgment, touched firstly the point that it had not been found that the tenants committed the waste (and there was no charge from the Court as to that, by whomsoever the waste was committed), and also that in the houses waste was not found, but want of roofing.—And Hillary said that the verdict was that for want of roofing they were wasted and destroyed, and that we understand to mean fully that they were wasted.—And by some the point was touched that defect in roofing, even though the timber remained standing, should be adjudged waste.—And note that a writ of Waste was brought in Barton, above, on which there was a traverse on the ground that there was no Barton without addition,

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pas enquis mes par defaut del tenant.—Wilby. dit qil covenist[1] aver enquis del wast.—*Grene.* Coment qe la ley soit, nous agreoms[2] daver jugement solonc[3] verdit.—Schar. Donqes sumes descharge.—Wilby. Si agarde la Court qe le pleintif recovere le lieu waste,[4] et ses damages a treble taxez, &c., qamount a taunt, et le pleintif en la mercye pur sa faux pleinte en la terce ville,[5] ou nul est[6] trove.—*Grene* pria execucion en les terres qil avoit jour qe le plee fut plede.—Ston. Vous averez execucion primes generalment de ceo qil ad; et,[7] si le[8] Vicounte retourne qil nad rien, vous averez execucion donqes des terres qil avoit jour de lenquest pris, et plus naverez pas. —*Et nota* qe *Moubray* toucha,[9] pur delaier le jugement, primes qe ceo nest pas trove qe les tenants firent le wast, [et ceo nest pas charge de la Court, par qiconqe le wast fut fait, et auxi qe en[10] mesouns][11] ne fut pas trove wast mes[12] defaut de coverture.—Et[13] Hill. dit qe le verdit fut qe pur defaut de coverture eles sount wastez[14] et destruitz,[15] et ceo[16] entendoms qils sount pleynement wastes.— Et[17] fut touche par asquns qe defaut de coverture, tut fut le meryn[18] esteaunt, serra ajuge wast.—*Et*[19] *nota* qe brief de Wast fut porte en Bartone[20] *supra*[21] ou travers y fut pur ceo[22] qil ny avoit nul B. saunz A.D. 1344.

[1] Harl., covynt.
[2] Harl., greoms.
[3] L., sur.
[4] L., de wast; Harl., gaste.
[5] Harl., terre, instead of terce ville.
[6] Harl., nest.
[7] et is omitted from Harl.
[8] le is omitted from L.
[9] MSS., voucha.
[10] en is omitted from 25,184.
[11] The words between brackets are omitted from L.
[12] L., ne.
[13] Et is omitted from Harl.
[14] L., gastes.
[15] L., destructez; 25,184, destrus.
[16] ceo is omitted from L.
[17] Et is omitted from L.
[18] L., merenin.
[19] *Et* is omitted from Harl., in which MS. this part of the report is treated as a separate case with the words "*Nota* de Wast" in the margin.
[20] L., B., Harl., W.
[21] Y.B., Easter, 13 Edw. III., No. 39, p. 251.
[22] The words pur ceo are from Harl. alone.

No. 14.

A.D. 1344. and the writ was found good by inquest taken before INGE, and he did not enquire over of the waste, and the COURT sent back to enquire again, so that although the writ be found good, the land is not to be lost if waste be not found.

Traverse of an Office by Petition.

(14.) § Note that direction was given by writ to enquire of what lands John Haket died seised in the County of Wilts. An inquisition was returned to the effect that he died seised of no lands in the said County. Then, afterwards, on a suggestion made by the King, direction was given to enquire whether he died seised of certain tenements in the same County, and it was certified that he died seised, and that his son was a lunatic. Therefore the King seized the tenements, whereupon a woman, who said she had been enfeoffed by John the ancestor, sued by Petition to the King, and the Petition, endorsed to the effect that right should be done, was sent into the King's Bench, and there she offered to aver her Petition, against the Office which was in the King's favour. And thereupon a writ was sent to proceed to the taking of the verdict. And afterwards the matter was delayed there by letter under the Privy Seal, and thereupon a writ of *Procedendo* was prayed in the Chancery.—*Thorpe.* By law, she shall not be heard to traverse this Office until that which is contained in her Petition be found by Inquest of Office; and inasmuch as an Inquest of Office has been in the King's favour, and the reverse has not been found by any Inquest of Office at her suit, you ought not to grant

No. 14.

adjeccion, et par enquest pris devant Inge trove fut le brief bon, et il nenquist pas outre de wast, Court remanda autrefoitz denquere, issi qe, tut fut le brief trove[1] bon, la terre nest pas a perdre, si wast ne soit trove. A.D. 1344.

(14.)[2] § *Nota* qe maunde fut par brief[4] denquere de queles terres Johan Haket murust seisi en le Countee de Wiltes. Enquest retourne qil murust seisi de nulles terres en le dit[5] Countee. Puis apres, sur suggestion fait par[6] le Roy, maunde fut denquere[7] sil murust seisi de certeinz tenementz en mesme le Countee, qe certifia[8] qil murust seisi, et qe son fitz sote; par quei le Roy seisist, sur quei une femme qe se dit estre feffe par J., launcestre, suyst par[9] Peticion al Roi, et la peticion endosse qe dreit se freit fut maunde en Baunk le Roy, et illoeqes[10] ele tendist daverer sa peticion countre loffice qe servy al Roy. Et sur ceo brief fut maunde daler avant a la prise del enquest. Et puis fut targe[11] illoeqes[12] par lettre de la targe, et sur ceo en Chauncellerie fut prie brief de *Procedendo*.— *Thorpe*. Par ley, avant qe par office soit trove[13] ceo[14] qest compris deinz sa peticion ele ne serra pas[15] escote[16] a cel office traverser; et desicome Office ad servy au Roy, et par nul Office a sa suyte le revers est trove, vous ne devez nul brief graunter

Travers a un Office par Peticion.[3]

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[1] trove is omitted from L.

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

[3] The marginal note is from Harl. In 25,184 it is Office de terre. In L. there has been a note, mostly cut away in binding, which has included the word Comission.

[4] The words par brief are omitted from L.

[5] dit is from Harl. alone.

[6] Harl., au.

[7] denquere is omitted from Harl.

[8] L., and Harl., certefia.

[9] par is omitted from L.

[10] illoeqes is omitted from Harl.

[11] 25,184, charge.

[12] illoeqes is omitted from 25,184.

[13] trove is omitted from 25,184.

[14] ceo is omitted from Harl.

[15] pas is from Harl. alone. L., serra, instead of ne serra pas.

[16] L., escute.

No. 15.

A.D. 1344 any writ to take an averment before she has sued another Inquest of Office.—*Pole.* We have an Inquest of Office in general terms which serves for us, that is to say, that the ancestor died seised of no lands in the County, which is contrary to the Office that is in the King's favour; wherefore that ought in law to avail for us and for any one else who will sue.—*Thorpe.* Your right is not found by that Office, but it is negative, and will not serve for any one, and will no more serve for you than for me:—*Pole.* When direction was given to enquire in general terms whether he died seised of any land, even though our right had been found by that inquest, it would have been without warrant; but, since it was found that he died seised of no land, that serves for every one who can show title of right in himself.—Sadington. We do not so understand; and therefore sue, if you will, an Inquest of Office on your Petition.

Quare impedit. (15.) § The Earl of Lancaster brought a *Quare impedit* against the Sub-prior and the Convent of Trentham, who tortiously impede him in presenting, &c., to the Priory of Trentham, and tortiously for that King Henry III. was seised of Newcastle, to which the advowson of the Priory, &c., is appendant, and by his license the Convent of the same place elected one J.,[1] Canon of the same place, as Prior, and announced their election to the said King, who presented him to the Ordinary, and he, on the King's presentation, was admitted as Prior, &c. This King

[1] For the real name *see* p. 49, note 1.

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de prendre averement avant qele avera[1] suy autre Office.—*Pole.* Nous avoms Office general qe sert pur nous, saver, qe launcestre murust seisi de nulles terres in le Countee, quel est contrarie al Office qe sert al Roy; pur quei ceo nous[2] deit valer par ley, et a chescun autre qe vodra suyre.—*Thorpe.* Par cel Office nest pas trove vostre dreit, mes est negatif[3] qe purra[4] servir a nul homme, ne plus sert[5] a vous qa moy.—*Pole.* Quant fut maunde denquere generalment sil murust seisi de nulle terre, mesqe nostre dreit[6] ust este trove par cel enquest, ceo ust este saunz garraunt; mes, quant il[7] fut trove qil murust seisi de nulle terre, ceo sert a chescun qe purra moustrer title de dreit en luy.[8]—Sad.[9] Ceo nentendoms nous[10] pas; et pur ceo suez Office, si vous volez, sur vostre peticion. A.D. 1344.

(15.)[11] § Le Counte de Lancastre porta *Quare impedit* vers le Suppriour et le[12] Covent de Trentham, qa tort luy destourbent de presenter,[13] &c., a la Priorie de Trentham, et pur ceo a tort qe le Roy H. fut seisi de Neef[14] Chastel, a quei lavowesoun de la Priorie, &c., est appendaunt, et par son conge le Covent de mesme le lieu eslurent un J., Chanoun de mesme le lieu en Priour, et nuncierent lour eleccion au dit Roy, qe luy presenta al Ordiner, qe a son presentement fut resceu en Priour, &c., le *Quare impedit.*

[1] L., eyt.
[2] Harl., vous.
[3] L., un negatif.
[4] purra is omitted from L.
[5] 25,184, ne seert.
[6] dreit is omitted from L.
[7] il is omitted from L.
[8] Harl., ley.
[9] Harl., and 25,184, Schard.
[10] nous is omitted from L.
[11] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 318. There is another record of the same case on R° 37 d, which, however, is vacated, and is not continued beyond the declaration. The action was brought by Henry, Earl of Lancaster, against the Sub-prior and Convent of Trentham, in respect of a presentation to the Priory of Trentham.
[12] le is omitted from L.
[13] presenter is omitted from L.
[14] 24,184, Noest.

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A.D. 1344. Henry gave the said Castle, with fees and advowsons, to his son Edmund in tail, in whose time the Priory became vacant, wherefore, by license from him, they elected, &c., and they presented, &c. From Edmund the descent was to Thomas, in whose time the Priory became vacant, and he presented as above. From Thomas the descent was to Henry as to brother. And now the Priory is vacant, and they impede him, &c.—*Moubray*. They have counted of several

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quel Roy H. dona a Edmond son fits en taille le dit Chastiel, ove fees et avowesouns, en qi temps la Priorie se voida, par quei, par conge de luy, ils eslurent, &c., et ils presenterent, &c. De E. descendi a Thomas en qi temps la Priorie se voida, qe presenta *ut supra*. De Thomas descendi a H. come a frere. Et ore la Priorie et voide, et ils luy destourbent, &c.[1]—*Moubray*. Ils ount counte de plusours A.D. 1344.

[1] The declaration was, according to both enrolments, which are identical in wording, "quod domi- "nus Henricus quondam Rex, "proavus domini Regis nunc, fuit "seisitus de manerio de Novo "Castro subtus Lymam, ad quod "advocatio prædicti Prioratus per- "tinet, in dominico suo ut de feodo "et jure, cujus tempore prædictus "Prioratus vacavit, per quod Sup- "prior et Conventus ejusdem "Prioratus qui tunc fuerunt, "licentia petita ab ipso domino "Rege ad eligendum Priorem suum "et obtenta, elegerunt quendam "fratrem Robertum de Seintpere "Canonicum Prioratus prædicti "in Priorem ejusdem Prioratus, "et ipsum præsentarunt eidem "domino Regi, qui quidem dominus "Rex præsentationem illam accept- "ando ipsum fratrem Robertum "ulterius præsentavit Episcopo "Conventrensi et Lychfeldensi, "loci Diocesano, qui quidem "Episcopus ipsum fratrem Robert- "um, ad præsentationem ipsius "domini Regis, in Priorem Priora- "tus prædicti admisit et installavit. "Et postea idem dominus Rex "manerium prædictum et advoca- "tionem prædictam, simul cum "aliis terris et tenementis, et "advocationibus, dedit cuidam "Edmundo filio suo, habenda et "tenenda eidem Edmundo et "heredibus de corpore suo exeunti- "bus, per quod donum idem "Edmundus fuit inde seisitus, "cujus tempore prædictus Priora- "tus vacavit per mortem prædicti "fratris Roberti, Prioris, &c., per "quod Supprior et Conventus "Prioratus prædicti qui tunc "fuerunt, licentia petita ab ipso "Edmundo ad eligendum Priorem "suum et obtenta, elegerunt quen- "dam fratrem Johannem de "Conynston, Canonicum Prioratus "prædicti, in Priorem ejusdem "Prioratus, et ipsum præsentarunt "præfato Edmundo, qui quidem "Edmundus, præsentationem il- "lam acceptando, ipsum fratrem "Johannem ulterius præsentavit "Episcopo Conventrensi et Lych- "feldensi, loci Diocesano, qui qui- "dem Episcopus ipsum fratrem Jo- "hannem, ad præsentationem ipsius "Edmundi, in Priorem Prioratus "prædicti admisit et installavit, "tempore domini Edwardi Regis "avi domini Regis nunc. Et de "ipso Edmundo descendit mane- "rium prædictum ad quod, &c., "secundum formam, &c., cuidam "Thomæ ut filio et heredi, &c., "qui quidem Thomas tunc fuit "infra ætatem, per quod idem "dominus Edwardus Rex, pro eo "quod prædictus Edmundus tenuit

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A.D. 1344. presentations, and in this action of *Quare impedit* one certain presentation shall be taken for title; judgment of the count.—Willoughby. It is necessary in this case for issue in tail to count of several presentations. —*Moubray.* The entail is not traversable in this case, since he lays the possession in his ancestor by pre-

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presentements, et en ceo *Quare impedit* homme prendra un certein presentement pur title; jugement de counte.—Wilby. Il covient en ceo[1] cas pur issue en taille de counter de plusours presentements.—*Moubray.* La taille nest pas traversable en ceo cas, quant[2] il lie possessioun en son auncestre par pre- A.D. 1344

" de eo prædictum manerium ad " quod, &c., in capite, seisivit " manerium illud et advocationem " illam in manum suam, ratione " minoris ætatis ipsius Thomæ, " quo tempore prædictus Prioratus " vacavit per mortem prædicti " fratris Johannis, Prioris, &c., " per quod Supprior et Conventus " Prioratus prædicti qui tunc " fuerunt, licentia petita ab ipso " domino Edwardo Rege ad eligen- " dum Priorem suum et obtenta, " elegerunt quendam fratrem Ri- " cardum de Lavendene, Canonicum " Prioratus prædicti, in Priorem " ejusdem Prioratus, et ipsum " præsentarunt eidem domino Ed- " wardo Regi, qui quidem dominus " Edwardus Rex, præsentationem " illam acceptando, ipsum fratrem " Ricardum, in jure ipsius Thomæ, " ratione custodiæ, ulterius præ- " sentavit Episcopo Conventrensi " et Lychfeldensi, loci Diocesano, " qui quidem Episcopus ipsum " fratrem Ricardum, ad præsenta- " tionem ipsius domini Edwardi " Regis, in Priorem Prioratus præ- " dicti admissit et installavit. Et " postea, cum idem Thomas ad " plenam ætatem suam pervenit, " idem dominus Edwardus Rex " reddidit ei prædictum manerium " ad quod, &c., simul cum aliis " terris et tenementis suis, tempore " cujus Thomæ prædictus Prioratus " vacavit per mortem prædicti " fratris Ricardi Prioris, &c., per " quod Supprior et Conventus " Prioratus prædicti qui tunc " fuerunt, licentia petita ab ipso " Thoma ad eligendum Priorem " suum et obtenta, elegerunt quen- " dam fratrem Ricardum de Dul- " verne, Canonicum Prioratus præ- " dicti, in Priorem ejusdem Priora- " tus et ipsum præsentarunt præ- " dicto Thomæ, qui quidem Thomas, " præsentationem illam accept- " ando, ipsum fratrem Ricardum " de Dulverne ulterius præsentavit " Episcopo Conventrensi et Lych- " feldensi, loci Diocesano, qui " quidem Episcopus ipsum fratrem " Ricardum, ad præsentationem " ipsius Thomæ, in Priorem Priora- " tus prædicti admisit et installavit, " per cujus mortem prædictus " Prioratus modo vacat. Et de " ipso Thoma, quia obiit sine " herede de se, descendit manerium " prædictum ad quod, &c., se- " cundum formam, &c., isti Hen- " rico qui nunc queritur, ut fratri " et heredi, &c. Et dicit quod " ipse seisitus est de manerio præ- " dicto ad quod, &c., et sic pertinet " ad ipsum Henricum ad prædictum " Prioratum præsentare, prædicti " Supprior et Conventus ipsum " injuste impediunt, unde dicit " quod deterioratus est, et damnum " habet ad valentiam mille libra- " rum. Et inde producit sectam," &c.

[1] ceo is omitted from L.

[2] quant is omitted from L.

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A.D. 1344. sentation.—Sharshulle. Answer; the declaration is better in this way than otherwise.—*Moubray* made *profert* of an exemplification of the King's gift made to his son Edmund, in which mention is not made of advowsons of Priories, and said: they have claimed by gift from the King, and this could not pass by the King's gift unless express mention were made of it, and mention is not made; judgment of the count.—*Pole.* That is to the action; and it is possible that there was another gift; judgment, and we pray a writ to the Bishop.—*Moubray.* Judgment of the count; they have counted that the advowson of the Priory is appendant, which cannot be understood.—*Grene.* You shall not be admitted to that exception; and, even though you could take the exception, it is hardly worth anything, because an advowson of an Abbey or Priory can be appendant just as much as that of any other church. —Kelshulle. Yes, certainly: for there can be made, and there often has been made, an Abbey or Priory out of a church.—*Moubray.* Whereas they have counted that it is appendant to the manor of Newcastle, it is not appendant; ready, &c.; judgment of the count.—*Pole.* That is to the action.—*Moubray.* It is not, for on a writ of this kind you will have a good count as in respect of an advowson in gross.—Sharshulle. You cannot have an issue as to whether it is in gross or appendant, since his ancestor was seised and presented. —*Moubray.* You see plainly how this is a *Quare impedit*, in which, of common right, either the plaintiff or the defendant may equally have a writ to the Bishop; and the Sub-prior and Convent cannot recover, nor have a writ to the Bishop; judgment of the writ.—*Pole.* That is to the action.—Sharshulle. Yes,

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sentement.—Schar. Responez; il vaut plus en cele manere qautrement.—*Moubray* mist avant exemplificacioun de doun le Roi fait a Edmond[1] son fitz, en quel mencion nest pas fet des avowesouns de Priories, et ils ount[2] clame par doun le Roy, et ceo[3] ne put par doun le Roy passer, si expressement[4] mencion ne fut fait,[5] et ceo nest il pas; jugement du counte.—*Pole.* Cest al accion; et put estre qil y[6] avoit autre doun; jugement, et prioms brief al Evesqe.—*Moubray.* Jugement du counte; ils ount counte qe lavowesoun de la Priorie est appendaunt, qe ne put estre entendu.—*Grene.* Vous navendrez pas a cel chalange; mes, tut le purrez vous chalanger, il ne vaut geres, qar avowesoun de Abbey ou Priorie purra auxi bien estre appendaunt come dautre eglise.[7]—Kels. Oyl, certes: qar dun eglise purra homme fere, et sovent ad este fet, Abbey ou Priorie.—*Moubray.* La ou ils ount counte qe cest appendaunt al maner de Noef chastel, ele nest pas appendaunt; prest, &c.; jugement de counte.—*Pole.* Cest al accion.—*Moubray.* Noun est pas, qar come dun gros sur[8] autiel brief vous averez bon counte.—Schar. Vous ne poez aver[9] issue le quel ceo soit gros ou appendaunt, quant son auncestre estoit[10] seisi et presenta.—*Moubray.* Vous veiez bien coment ceo est un *Quare impedit*, ou de comune dreit[11] owelement le pleintif et le defendant deyvent[12] aver brief al Evesqe; et le[13] Suppriour et Covent ne pount pas recoverir, ne aver brief al Evesqe; jugement de brief.—*Pole.* Cest al accion.—Schar. Oyl,[14] A.D. 1344.

[1] L., Esmon.
[2] L., nount pas.
[3] L., si.
[4] L., expresser.
[5] L., fere, instead of ne fut fait.
[6] y is omitted from L.
[7] 25,184, esglise.
[8] sur is omitted from L.
[9] aver is omitted from 25,184.
[10] estoit is omitted from L.
[11] dreit is omitted from L.
[12] L., devyent.
[13] The words et le are omitted from L.
[14] L., Oyel.

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A.D. 1344. certainly, it is to the action; and possibly no other disturber will be found but you.—*Moubray.* We tell you that it is quite true that King Henry presented; and you see plainly how in the King's gift, of an exemplification of which we have made *profert*, no mention is made of advowsons of Abbeys and Priories. And as to the presentation which they have alleged in Edmund, their ancestor, we tell you that he presented, as Guardian of England, in the King's right, the King, the present King's grandfather, being then in Gascony. And as to the presentation of Thomas, their ancestor, we tell you that he usurped to himself the patronage by duress and force, and presented, as the King records here by his patent. (And *Moubray* made *profert* of the patent.) And afterwards the King, recording that it was his own right, reseized the advowson into his own hand, to hold to him and his heirs, and took the Prior's fealty, and pardoned the Prior, on payment of a fine, for committing the trespass, to such effect as the King recorded by his patent, and we demand judgment, inasmuch as the Priory is of the King's patronage, as we show of record, and is in his hand by reason of the seizure aforesaid, whether he can maintain this writ against

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certes, cest al accion; et par cas il ne trovera[1] nul autre destourbour forqe vous.—*Moubray.* Nous vous dioms qe bien est verite qe le Roi H. presenta; et vous veiez bien coment en le doun le Roi, dount nous avoms mys avant[2] exemplificacioun, mencion nest pas fet davowesouns des Abbeys et Priories. Et quant a presentement[3] qils ount allegge en E. lour auncestre, nous vous dioms qil presenta com Gardeyn Dengleterre en le dreit le Roi, adonqes le Roi laiel esteaunt en Gascoigne.[4] Et, quant al presentement Thomas, lour auncestre, nous vous dioms qe par duresce et force il acrocha a luy lavowere, et presenta, come le Roy recorda[5] cy par sa patent. Et la mist avant. Et puis le Roy, recordaunt qe ceo fut son dreit demene, resseisi lavowesoun en sa meyn a tener a[6] luy et ses heirs, et prist la fealte[7] le Priour, et pardona al Priour, par fyn, qe fit le trespas, de cel entendaunce come le Roy recorda par cest patent, et demandoms jugement,[8] desicome la Priorie est del avowere le Roi, come[9] nous moustroms de recorde, et par le seisir avant dit en sa meyn est, si vers nous cesty bref puisse[10] meyntener.[11]— A.D. 1344.

[1] L., trova, instead of ne trovera.
[2] avant is omitted from 25,184.
[3] The words a presentement are omitted from L.
[4] 25,184, Gascoyne.
[5] 25,184, acorde.
[6] L., de.
[7] L. feaute.
[8] jugement is omitted from L.
[9] L., et come.
[10] L., puissetz.
[11] The plea was, according to the record, " Supprior et Conventus, " . . . . . non cognoscendo advo- " cationem Prioratus prædicti ad " prædictum manerium pertinere, " sed protestando se semper velle " verificare contrarium, si ad hoc " admitti possunt, et quo ad hoc " quod prædictus Comes superius " narrando asserit prædictum domi- " num Henricum Regem dedisse " manerium prædictum et advo- " cationem prædictam prædicto " Edmundo proferunt hic breve " domini Regis clausum Justiciariis " suis hic directum in hæc verba " . . . . . Mittimus vobis tenorem " cujusdam chartæ per dominum " Henricum quondam Regem An- " gliæ proavum nostrum Edmundo " filio suo concessæ, et postmodum " per dominum Edwardum quon- " dam Regem Angliæ avum " nostrum confirmatæ præsenti- " bus inclusum, ut, eo inspecto,

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A.D. 1344 us.—*Grene.* You see plainly how they have admitted that Edmund, our ancestor, presented, and, whereas they say he presented as Guardian of England, that cannot be, because that which is the presentation of the Guardian is the presentation of the King, and made in the King's name. And as to their statement that Thomas, our ancestor, snatched the presentation by duress, that is not an avoidance by common law, nor by statute. And they have admitted that we had the last presentation; judgment, and we pray a writ

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" ulteriusin placito pendente coram
" vobis in Banco prædicto inter
" Henricum Comitem Lancastriæ
" et Suppriorem et Conventum de
" Trentham de advocatione ejusdem
' Prioratus consultius procedere
" poteritis, &c. . . . . Misit
" etiam idem dominus Rex nunc
" Justiciariis suis hic tenorem
" confirmationis prædictæ in qua
" tenor chartæ prædicti Henrici
" Regis de donatione prædicta
" continetur in hæc verba . . . . . .
" Inspeximus etiam quandam char-
" tam quam præfatus pater noster
" fecit prædicto fratri nostro in hæc
" verba, Henricus Dei gratia Rex
" Angliæ Archiepiscopis, &c. . . .
" . . . salutem. Sciatis nos
" dedisse, concessisse, et hac charta
" nostra confirmasse Edmundo
" filio nostro carissimo Honorem,
" Comitatum, Castrum, et villam de
" Lancastria . . . . . et Novum
" Castrum subtus Lymam . . . . . .
" habenda et tenenda eidem Ed-
" mundo, et heredibus suis de
" corpore suo legitime procreatis, de
" nobis et heredibus nostris, cum
" feodis militum, advocationibus
" ecclesiarum . . . . . et aliis omni-
" bus ad Honorem, Comitatum,
" Castra [&c.] . . . . pertinenti-
" bus in perpetuum . . . . . .
" Quare volumus et firmiter præci-
" pimus . . . . . quod dominus
" Edmundus et heredes sui præ-
" dicti in perpetuum habeant et
" teneant Honorem, Comitatum,
" Castra, maneria . . . . . .
" cum feodis militum, advocationi-
" bus ecclesiarum . . . . . et
" omnibus aliis ad eadem perti-
" nentibus . . . . . xxx die
" Junii anno regni nostri quinqua-
" gesimo primo . . . . . .
" Et, quia per verba expressa in
" prædicta charta Henrici Regis
" non apparet quod idem dominus
" Henricus dedit prædicto Ed-
" mundo advocationem Prioratus
" prædicti, intendunt semper quod
" advocatio illa remansit penes
" ipsum dominum Henricum Re-
" gem et heredes suos. Et dicunt
" quod idem dominus Rex Henri-
" cus præsentavit ad Prioratum
" prædictum fratrem Robertum de
" Seintpere sicut prædictus Comes
" superius narravit. Et quo ad
" præsentationem quam idem
" Comes in narratione sua asserit
" prædictum Edmundum fecisse ad
" Prioratum prædictum de prædicto
" fratre Johanne de Conyngston
' tempore domini Edwardi Regis

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Grene. Vous veiez bien coment ils ount conu qe E., nostre auncestre, presenta, et, la ou ils diount come Gardein Dengleterre, ceo ne put estre, qar ceo qest presentement le Gardein est le presentement le Roy, et en noun le Roy fet. Et ceo qils parlent qe Thomas, nostre auncestre, happa le presentement par duresce, ceo nest pas voidaunce par comune ley, ne par estatut. Et ils ount conu a nous le darreyn presentement; jugement, et prioms brief al Evesqe. A D. 1344.

" avi, &c., dicunt quod præsentatio " illa eis nocere non debet, dicunt " enim quod idem dominus Ed- " wardus Rex avus, &c., tunc tem- " poris fuit in partibus trans- " marinis, et quod idem Edmundus " tunc fuit Custos Angliæ, et, ut " Custos, in jure Regis præsentavit " ipsum fratrem Johannem, et non " in jure suo proprio. Et, quoad " præsentationem quam prædictus " Comes asserit prædictum domi- " num Edwardum Regem fecisse " ad Prioratum prædictum de præ- " dicto fratre Ricardo de Lavyn- " dene in jure præfati Thomæ tunc " infra ætatem et in custodia sua " existentis, dicunt quod idem " dominus Edwardus Rex præsen- " tavit prædictum fratrem Ri- " cardum in jure suo proprio et " non in jure ipsius Thomæ. Et, " quo ad præsentationem quam " prædictus Comes superius nar- " rando asserit prædictum Thomam " fecisse ad Prioratum prædictum " de prædicto fratre Ricardo de " Dulverne, dicunt quod idem " Thomas tunc Comes Lancastriæ " intulit Suppriori et Conventui " ibidem tantam vim et rigorem " quod ipsi obediverunt ei ut " patrono, et sic præsentarunt ei " prædictum fratrem Ricardum de " Dulverne, qui ipsum ulterius " præsentavit Episcopo, &c., per " quod dominus Edwardus Rex, " pater domini Regis nunc, per- " pendens præsentationem illam " sic factam ei præjudicare, pro " transgressione illa seisivit in " manum suam Prioratum prædic- " tum ac temporalia et possessiones " ejusdem Prioratus, et postea, per " finem quadraginta marcarum, " quem prædictus frater Ricardus, " Prior, &c., fecit cum ipso domino " Rege, idem dominus Rex perdon- " avit ei transgressionem illam, et " cepit fidelitatem suam pro tem- " poralibus Prioratus illius, Volens " et contendens quod advocatio " Prioratus illius ex tunc remaneret " sibi et heredibus suis. Et pro- " ferunt hic literas ipsius domini " Regis patentes quæ hoc testantur." [The letters patent, dated 25 March, 15 Edw. II., are set out at length and are to the effect above stated, but also recite the Prior's prayer " quod cum terræ et tene- " menta quæ fuerunt præfati " Comitis postmodum inimici et " rebellis nostri per forisfacturam " ejusdem ad manus nostras jam " devenerunt tanquam escaeta " nostra velimus cum dicto fratre " Ricardo gratiose agere."] " Et " petunt judicium si ad præsenta- " tionem illam sic usurpatam super " ipsum dominum Regem respon- " dere debeant."

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A.D. 1344. to the Bishop. And as to what they say about the seizing of the Priory into the King's hand, and the reservation of the patronage, it is impossible that the King could by any words reserve the patronage which was abiding in another person.—*Moubray.* We have shown

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Et ceo qils parlent del[1] seisir de la Priorie en la meyn le Roy, et del reserver del avowere, ceo ne put estre qe le Roy purra[2] reserver par parole lavowere qe demura en autre persone.[3]—*Moubray.* A.D. 1344.

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[1] del is omitted from L.

[2] The words qe le Roy purra are omitted from 25,184.

[3] The replication (after an adjournment *prece partium*) was, according to the roll, "quod quo "ad hoc quod prædicti Supprior "et Conventus superius in respon- "sione sua dicunt quod prædicta "advocatio non pertinet ad mane- "rium prædictum, et hoc parati "sunt verificare si ad hoc admitti "possint, non habet necesse res- "pondere pro eo quod iidem Sup- "prior et Conventus postea in "responsione sua [dicunt] quod "dominus Henricus Rex dedit "manerium prædictum per quan- "dam chartam in qua non fit "mentio quod dedit advocationem "Prioratus prædicti, et ita advoca- "tio illa remansit penes ipsum "dominum Regem, et sic accept- "ando prædictam advocationem ad "prædictum manerium in manu "ipsius domini Henrici Regis "pertinere, quod est mire contra- "rium primæ responsioni suæ, et "sic responsio illa contraria in se, "unde petit judicium, &c. Et, quo "ad præsentationem prædicti Ed- "mundi, ubi dicunt in responsione "sua quod præsentatio illa facta "fuit tempore quo idem Edmundus "fuit Custos Angliæ, prædicto "domino Edwardo Rege tunc in "partibus transmarinis existente, "in jure ipsius Regis, &c., dicit "quod hoc non potest intelligi "fieri in jure ipsius domini Regis, "desicut præsentationes ad bene- "ficia de patronatu Regis non sunt "faciendæ in tali casu per Custodes, "&c., immo per ipsum Regem sub "testimonio ipsius Custodis, et sic "cognoverunt prædictum Edmund- "um antecessorem suum esse in "possessione præsentandi, &c., "unde petit judicium, &c. Et, "quo ad præsentationem factam "per prædictum dominum Ed- "wardum Regem avum, &c., dicit "quod ex quo prædicti Supprior et "Conventus superius cognoverunt "prædictum Edmundum Comitem, "antecessorem suum, prædictum "fratrem Johannem ad Prioratum "prædictum præsentasse, et sic "ipsum esse in possessione præ- "sentandi, &c., nec dedicunt præ- "dictum Thomam antecessorem "suum tunc esse infra ætatem, "nec ipsum, nec terras et tene- "menta, feoda et advocationes sua, "ea de causa, in manu ipsius "domini Regis tunc existere, præ- "sentatio illa per ipsum Regem de "præfato Ricardo sic facta potius "censeri debet in jure ipsius "Thomæ quam in jure ipsius "Regis, unde petit judicium, &c. "Et, quo ad præsentationem per "prædictum Thomam antecesso- "rem suum factam, et etiam quo "ad hoc quod per prædictas "literas domini Edwardi Regis "patris, &c., de perdonatione "supponitur quod terræ et tene- "menta, feoda et advocationes "ipsius Thomæ devenerunt in "manus ipsius Regis patris, &c., "ut eschaeta sua per forisfacturam

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A.D. 1344 that the King at one time had the right, and that they have admitted, because they take their title from his gift, and we have shown by the King's gift that this patronage did not pass; therefore the act of presentation by Thomas was only an usurpation on the King's right, in which case by law the King had nothing else to do but to seize his first right, because the King shall not by usurpation be ousted from right or possession, and there is no need that he should avoid a presentation made by usurpation upon him, as another person would do.—Afterwards, in Trinity Term, Willoughby said: You suppose, because in the King's gift of which you speak, and of which you make *profert*, no mention is made of advowsons of Abbeys and Priories, that the patronage did not pass by the King's gift; but you do not prove that, because this advowson might very well pass by another gift afterwards, or at another time. And as to your statement

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Nous avoms moustre qe le Roi a un temps avoit dreit, et ceo ount ils conu, qar ils pernount lour title de son doun, et par le doun le Roi avoms[1] moustre qe ceste avowere ne passa pas; donqes ceo qe Thomas presenta ceo ne fut forqe purprise en le dreit le Roi, en quel cas le Roi par ley navoit autre chose a faire forqe seisir son primer dreit, qar le Roi par purprise ne serra pas[2] ouste de dreit ne possessioun, et[3] ne bosoigne pas[4] qil voide presentement fait sur luy par purprise, come autre persone freit.—*Postea, Termino Trinitatis,* WILBY. Vous supposez par taunt qen le doun le Roi, dount vous parlez, et quel vous mettez avant, pur ceo qe mencion nest[5] pas fait davoesouns des Abbeys et Priories, qe lavowere par le doun le Roi ne passa pas; mes ceo ne[6] provez vous pas, qar cest avowesoun put[7] passer par autre doun apres ou a autre temps molt[8] bien. Et, a ceo qe vous parlez qe purprise sur le A.D. 1344.

" ipsius Thomæ inimici et rebellis, " &c., et quod idem Edwardus Rex " pater, &c., in restitutione tem- " poralium Prioratus prædicti " voluit quod advocatio Prioratus " illius remaneret sibi et heredibus " suis, dicit quod dominus Rex " nunc, post mortem prædicti " Thomæ, restituit ipsi Henrico ut " fratri et heredi ipsius Thomæ " omnia terras et tenementa, feoda " et advocationes, quæ fuerunt præ- " dicti Thomæ tempore obitus sui, " et ex quo prædicti Supprior et " Conventus superius placitando " non dedicunt præsentationem " prædicti Thomæ esse factam per " electionem suam de licentia " ipsius Thomæ per ipsos petita et " obtenta, nec aliquid dicunt ad " præsentationem illam evacu- " andum quod eis valere debet seu " potest nec per legem communem " nec per statutum, sed cognoscunt " ipsum Henricum esse in pos- " sessione advocationis prædictæ " ratione ultimæ præsentationis " prædicti Thomæ antecessoris " sui, et sic pertinet ad prædictum " Henricum ad prædictum Priora- " tum modo præsentare, unde petit " judicium et breve Episcopo, &c., " maxime cum prædicti Supprior et " Conventus nihil clamant in " advocatione Prioratus prædicti, " nec per quod allegant aliquod jus " in personis suis seu alicujus " ulterius cujus statum ipse habent " affirmant, &c."

[1] L., lavoms.

[2] L., serreit, instead of serra pas.

[3] et is omitted from 25,184.

[4] L., puis, instead of ne bosoigne pas.

[5] L., ne fut.

[6] ne is omitted from L.

[7] L., poait.

[8] L., mold.

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A.D. 1344. that usurpation on the King does not oust him from possession, some people understand the reverse: for the King will by usurpation made upon him be put to his writ of Right as well as another person, or else there would be no need for him to bring a writ of Right. And as to your statement that the King was seised by reason of the seizure of the Priory and the reservation made on the restitution, it seems that he was not: for, when the King seized the Priory, he seized nothing but that which was in the Prior, and that was not the advowson, because that which was abiding in the person of the Earl could not by such words be divested out of him. Therefore it seems, inasmuch as you have confessed the last presentation to have been in them, which you have not avoided, that they will have a writ to the Bishop.—*Setone.* I fully grant that the King, if he previously had not right, could not by such words seize the advowson into his hand; but we shewed that he always had the right, and therefore no law put him to any other suit except the seizing of the patronage. And by the reservation he saved the advowson in himself and his heirs, so that the possession of the patronage is in him, and we who are so of his patronage cannot be otherwise than attendant on him.—Stonore. The King is not a party to this plea; and, if he were a party, it would be different.—Sharshulle. Even though the King were a party, he would not prove himself to be in possession by such words of reservation, inasmuch as by Thomas's presentation he was out of possession and put to a writ of Right.—*Moubray.* We clearly understand the reverse.—Stonore. The patent of which

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Roi luy oust[1] pas de possessioun, ascuns gentz[2] entendent le revers: qar le Roi par[3] purprise fet sur luy serra si bien mys a son brief de[4] Dreit come autre persone, ou autrement ne bosoignereit pas qil portast brief de Dreit. Et, a ceo qe vous parlez qe le Roi par le seisir de la Priorie et la reserver fait[5] sur la restitucion le Roi fut seisi, il semble qe noun: qar[6] quant le Roi seisist la Priorie il seisist rien forqe ceo[7] qe fut en le Priour, et ceo ne fut pas lavowesoun, qar ceo qe[8] demura en la persone le Count par tiele parole ne poait[9] estre devestu de luy. Par quei il semble, desicome vous avez conu le darreyn presentement en eux, quel vous navez pas voide, qils averount brief al Evesqe.—*Setone.* Jeo graunte[10] bien qe[11] le Roy, sil[12] nust eu dreit adevant, ne poait par tiel parole seisir lavowesoun en sa meyn; mes nous moustrames qe touz jours il avoit dreit, par quei nul ley lui mist a autre suyte forqe seisir del avowere. Et par le reserver il sauva[13] lavowesoun en luy et ses heirs, issint qen luy est la possessioun de lavowere, et nous qe sumes issi[14] de savowere ne poms forqe estre entendauntz a luy.—Ston. Le Roi nest pas partie a ceo plee; et, sil fut partie,[15] autre serreit. —Schar. Tut fut le Roi partie, il se provereit pas en possessioun par tiel parole de reservacion, desicome par le presentement Thomas il fut hors de possessioun, et mys a brief de Dreit.—*Moubray.* Nous entendoms clerement le revers.—Ston.[16] La patent

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[1] 25,184, ost.
[2] 25,184, gent.
[3] The words Roi par are omitted from L.
[4] de is omitted from L.
[5] fait is omitted from L.
[6] qar is omitted from 25,184.
[7] 25,184, ceste.
[8] qe is omitted from 25,184.
[9] 25,184, poaist.
[10] Et crey, instead of Jeo graunte.
[11] L., si.
[12] sil is omitted from L.
[13] L., clama.
[14] L., ycy.
[15] partie is omitted from L.
[16] 25,184, *Setone.*

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A.D. 1344. you make *profert* supposes that, at the time of the seizure of the Priory by the King, the King was seised of all the lands, fees, and advowsons; you do not at all aid yourself by that seizure through Thomas's forfeiture.—*Setone.* We do aid ourselves by the elder right, and not by the right which accrued to him through the forfeiture.—*Richemunde.* If tenant for term of life aliene in fee, the person to whom the reversion belongs will enter.—HILLARY. How can he enter? He can only wait for the first vacancy, and he will not have any presentation before.—*Richemunde.* He will enter upon the church, and claim the advowson, and thereby he will be seised. So in the case before us.—SHARSHULLE. I have not heard that any one can enter upon an advowson.

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quel vous mettez avant suppose au temps del seisir de la Priorie qe le Roi fut seisi de totes les terres, fees, et avoesouns[1]; par la forfeture Thomas eidez vous rien par cel seisir.—*Setone.* Nous eidoms sur leigne dreit,[2] et noun pas sur dreit qe luy acrust par forfeture.—*Rich.* Si tenant a terme de vie aliene en fee, celui a qi la reversion appent,[3] entrera.—Hill. Coment entrera il? Il ne put forqe gaiter la primere voidaunce, et presentement adevant navera il rien.—*Rich.*[4] Il entrera en leglise, et clamera lavowesoun, et par taunt serra il seisi. *Sic in proposito.*—Schar. Jeo ay pas oy qe homme purra[5] entrer en une avowesoun.[6] A.D. 1344.

[1] L., &c., instead of et avoesouns.

[2] 25,184, del joyndre.

[3] 25,184, append.

[4] L., Schar.

[5] purra is omitted from 25,184.

[6] According to the roll, after several adjournments, the last of which was to the quinzaine of Easter, in the 19th year of the reign, judgment was given as follows: — "Quia prædicti Sup- "prior et Conventus cognoverunt "præsentationem prædicti Ed- "mundi nuper Comitis anteces- "soris, &c., ad Prioratum prædic- "tum, et præsentatio prædicti "domini Edwardi Regis avi, &c., "facta ad Prioratum illum, mere "intelligi debet esse in jure præ- "dicti Thomæ filii Edmundi ex quo "idem Thomas tunc fuit infra "ætatem, et terræ et tenementa, "feoda et advocationes sua, ea de "causa, in manus ipsius domini "Regis tunc extiterunt, et cogno- "verunt præsentationem prædicti "Thomæ ad Prioratum prædictum, "et ad præsentationem illam evacu- "andam nihil aliud dicunt nisi "quod præsentatio illa facta fuit "per vim et rigorem ipsius Thomæ, "quod de jure intelligi non debet "ex quo iidem Prior et Conventus "nihil clamant in advocatione "Prioratus illius, consideratum est "quod prædictus Comes recuperet "versus eos præsentationem suam "ad Prioratum prædictum, et "habeat breve Episcopo. . . . . "Et super hoc prædictus Comes "petit sibi damna adjudicari juxta "formam Statuti, &c. Sed quia "nescitur quantum Prioratus præ- "dictus valet per annum, nec a quo "tempore vacare incepit, præceptum "est Vicecomiti quod per sacra- "mentum proborum et legalium, "&c., diligenter inquirat quantum "Prioratus ille valet in omnibus "exitibus suis secundum verum "valorem ejusdem per annum, et "a quo tempore vacare incepit." The Sheriff returned the Inquisition to the effect that the Priory was worth 229*l.* 10*s.* 1*d. per annum*, and became vacant on the Sunday after St. Michael's Day, in the 17th year. The Court then gave judgment for the Earl to have damages to the value of the Priory for two years.

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A.D. 1344. *Quare impedit.*

§ Henry Earl of Lancaster brought his *Quare impedit* against the Sub-prior and the Convent of Trentham, and counted that tortiously they impeded him in presenting a fit person to the Priory of Trentham, and counted that it belonged to him to present by reason that King Henry III. was seised of the manor of Newcastle-under-Lyme, and of the advowson of the Priory of Trentham as appendant to the same manor, in whose time the Priory became vacant by the death of F., who was Prior of the same Priory, wherefore the Sub-prior and the Convent of the same Priory, by license from the same King Henry, elected one R.[1] to be Prior, and afterwards announced their election to the same King, who presented him to the Bishop, by force of which presentation this R. was admitted Prior, &c., and instituted by the Bishop, &c. And afterwards this same King Henry gave the same manor, and the advowson, as appendant, to Edmund his son, to hold to him and the heirs of his body, &c., by force of which gift Edmund was seised, &c., in whose time the Priory became vacant by the death of R.,[1] wherefore the Sub-prior and the Convent of the same place, by license from this same Edmund, elected one A.[1] to be their Prior, and afterwards announced their election to this same Edmund, who presented A.[1] to the Bishop, by force of which presentation he was admitted and instituted, &c. From Edmund the same manor, and advowson, as appendant, &c., descended to Thomas as to son, &c., which Thomas, after the death of Edmund his father, was under age, wherefore King Edward, son of King Henry, seized this same Thomas and the manor aforesaid into his wardship, during which wardship, &c., the aforesaid Priory became vacant by the death of A.,[1] wherefore the Sub-prior, &c., elected, &c., one B.,[1] and announced the election to the same King

[1] As to the names *see* p. 49, note 1.

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§ Henre[1] Counte de Lancastre porta son *Quare impedit* vers le Subpriour et le Covent de Trentham, et counta qe atort ly destourbent presenter coven- able persone a la Priorie de Trentham, et counta qe a ly appent a presenter par la resoun qe le Roy H. fuit seisi del maner del novel Chastel sus[2] Lyme, et de lavowesoun de la Priorie de Trentham come appendaunt a meisme le manere, en qi temps la Priorie se voida par la mort F., qe fuist Priour de meisme la Priorie, par quei le Suppriour et le Covent de meisme la Priorie, par conge de meisme cesti Roy H. cy eslurent un R. destre le Priour, et puis nuncierent lour eleccion a meisme le Roy, et il ly presenta a Levesqe, par force de qel presentement cesti R. fuist resceu Priour, &c., et institut par Levesqe, &c. Et puis meisme cesti Roy H. cy dona meisme la maner, et lavowesoun, com appendaunt, a Edmund son fitz, a ly et a les heirs de son corps, &c., par force de qel doun Edmund fuit seisi, &c., en qi temps le Priorie se voida par la mort R., pur quei le Sup- priour et le Covent de meisme le lieu, par conge de meisme cesti Edmund cy, eslurent un A. destre lour Priour, et puis nuncierent lour eleccion a meisme cesti Edmund, quel presenta a Levesqe, par force de quel presentement il fuit resceu et institut, &c. De Edmund descendi meisme le maner et lavowe- soun, come appendaunt, &c., a Thomas come a fitz, &c., le quel Thomas, apres la mort Edmund son pier, fuist deinz age, par quei le Roy Edward, fitz le Roy Henre, seisi meisme cesti Thomas et le maner avantdit en sa garde, [duraunt] quele garde, &c., la Priorie avantdite se voida par la mort A., par quey le Suppriour, &c., cy eslurent, &c., un B., et nuncierent eleccion au meisme cesty Roy Edward,

A.D. 1344. *Quare impedit.* [Fitz., *Quare impedit*, 151.]

[1] This report of the case is from Harl. alone, in which MS. it is placed in the following Trinity Term. It has not been printed in the old editions of the Year Books, but it has been used by Fitzherbert for his *Abridgment*, and not the other report.

[2] MS., sur.

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A.D. 1344. Edward, which King Edward, as in right of this same Thomas, presented to the Bishop this same B.,[1] who on his presentation was admitted, &c. And afterwards, when Thomas came to his full age, and the King had restored his inheritance to him, the Priory became vacant by the death of the aforesaid B.,[1] wherefore the Sub-prior, &c., by license from this same Thomas, elected one E.,[1] and when they had announced their election to Thomas he presented E.[1] to the Bishop, by force of which presentation E.[1] was admitted, &c., and through E.'s death the Priory is now vacant. From Thomas, because he died without heir of his body, &c., the same manor, and the advowson, &c., as appendant, descended to this same Henry who is now plaintiff, as to brother, and so he is seised of the manor to which the advowson, &c., and so it belongs to him to present, &c.—*Moubray* took exception to the count on the ground that he supposed by the count that the advowson was appendant to a manor, &c., whereas by common intendment advowsons of Abbeys and of Priories cannot be called appendant, but are in gross.—And to that it was said by the COURT that such advowsons can as well be appendant as advowsons of churches.—Therefore he was put to answer over.—And afterwards he took exception to the declaration on the ground that in the declaration so many presentations were included that they could not know which of them the party took for his title, nor to which they ought to answer.—*Grene*. We claim this presentation as heir in tail by force of the gift, &c., wherefore it is absolutely necessary to show that the donor had a presentation, and also how afterwards the right to present was continued in the blood of our ancestors who were parties to the entail, wherefore, &c.—And to this the JUSTICES agreed.—Therefore *Moubray* said:

[1] As to the names *see* p. 49, note 1.

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le qil Edward, come en le dreit meisme cesti Thomas, A.D. 1344.
presenta meisme cesti B. a Levesqe, qe a son presentement fuit resceu, &c. Et puis quant Thomas vint a son plein age, et le Roy ly avoit rendu son heritage, la Priorie se voida par la mort lavantdit B., par quei le Suppriour, &c., par conge de meisme cesti cy eslurent un E., &c., et quant ils avoient nuncie lour eleccion a Thomas il le presenta a Levesqe, par force de qel il fuit resceu, &c., et par qi mort la Priorie est ore voide. De Thomas, pur ceo qil morust saunz heir de son corps, &c., descendi meisme le maner et lavowesoun, &c., come appendaunt, a meisme cesti Henre qore se pleint, come a frere, et issint est il seisi del maner a qi lavowesoun, &c., issint appent a luy de presenter, &c.—*Moubray* chalengea le count pur ceo qe par le counte il supposa qe lavowesoun fuit appendaunt a maner, &c., ou de comune entent advowesouns de Abeyes et de Priories ne pount mye estre ditez appendaunt, einz un groos.—Et a ceo fuit dit par la Court qe tiels advowesouns pount auxi bien estre appendaunt come advowesouns des eglises.—Par quei il fuit mys [a respoundre] outre.—Et puis il chalengea la demoustraunce pur ceo qen la demoustrance tantz de presentements furent comepris qils ne poient saver qele partie prist pur title, ne a quei ils deussent respoundre.—*Grene.* Nous clamoms cest presentement come heir en la taille par force de doun, &c., par quei il covient a force demoustrer qe le donour avoit un presentement, et auxint coment puis le dreit de presenter fuit continue[1] en le saunk nos auncestres, qe furent parties a la taille, par quei, &c. —Et a ceo acorderent les Justices.—Par quei *Moubray*,

[1] MS., counte.

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A.D. 1344. Sir, we do not admit that the advowson is appendant to the manor, as, &c., but we are ready to maintain that it is not appendant, but in gross by itself, if the Court can see that this can make an issue between us and you. And we tell you, Sir, that King Henry was seised of this advowson as of one in gross, and presented as, &c., and from him the advowson descended to Edward as to son, in whose time the Priory became vacant by the death of R.,[1] who was presented by his father Henry, at which time Earl Edmund, to whom they suppose the gift to have been made, was Guardian of England, because the King was then in parts beyond the sea, and presented, as in the King's right, this same A.,[1] of whom they have spoken, and not as in his own right, and that we are ready to maintain in case that can make an issue between us. And afterwards the Priory became vacant by the death of this same A.,[1] wherefore King Edward, as in his own right, and not in the right of Thomas, presented the aforesaid B.,[1] and that we are ready to maintain in case the Court, &c. And as to the last presentation, which they have affirmed in the person of Thomas, we tell you, Sir, that this presentation was but an usurpation upon the King, by the exercise of power and lordship, and we tell you that afterwards the King, by reason of their election [and presentation] to Thomas, seized into his hand all the temporalities of the same Priory, and afterwards, for a fine of 40 marks which they made with him, he made restitution to them of the same temporalities, reserving to himself the advowson of the same Priory, and so this King was seised of that advowson, and died seised. And from him the advowson, &c., descended to Edward as to son, and from Edward to our lord the King that now is, as to son, and so our lord is seised of that advowson, and

[1] As to the names *see* p. 55, note 11.

No. 15.

Sire, nous ne conisoms pas qe[1] lavowesoun est appendaunt au maner, come, &c., mes prest sumes de meyntener qe ceo nest pas appendaunt, einz un groos par ly, si la Court purra veer qe ceo purra faire issue entre nous et vous. Et vous dioms, Sire, qe le Roy Henre fuist seisi de ceste advowesoun come dune groos, et presenta come, &c., et de luy descendi lavowesoun a Edward come a fitz, en qi temps la Priorie se voida par la mort R. presente par Henre soun pier, a qil temps le Count Edmund, a qi ils supposent le doun, ceo fuit Gardein Dengleterre, pur ceo qe adounqes le Roy fuit en le partie de la le mier, et presenta, come en le dreit le Roy, meisme cesti A. de qi ils ount parle, et ne mye come en son dreit demene, et ceo sumes prest de meyntener en cas qe ceo purra faire issue entre nous. Et puis la Priorie se voida par la mort meisme cesti A., par quei le Roy Edward, come en son dreit demene, et ne mye en le dreit de Thomas, presenta lavantdit B., et ceo sumes prest de meyntener en cas qe la Court, &c. Et quant au dreyn presentement, quel ils ount afferme en la persone de Thomas, nous vous dioms, Sire, qe cel presentement ne fuist forsqe une purprise sur le Roy par power et seignurie, et vous dioms qe puis apres le Roy par cause de lour eleccion a Thomas cy seisi en sa meyn toutz les temporaltes de meisme la Priorie, et puis, par fin de xl marcz qil firent ove ly, il lour fist restitucion de meismes les temporaltes, reservant a ly ladvowesoun de meisme la Priorie, et issint fuit cesti Roy seisi de cele advowesoun, et morust seisi. Et de luy descendi ladvowesoun, &c., a Edward come a fitz, et de Edward a nostre seignour le Roy qi ore est, come a fitz, et issint est nostre seignour seisi de cele advowesoun, et

A.D. 1344

[1] MS., qi.

No. 16.

A.D. 1344. we demand judgment whether an action, &c. And, on the other hand, Sir, see here the charter of King Henry, by which he gave the manor, &c., to Edmund his son, which speaks only of advowsons of churches and not of advowsons of Abbeys or of Priories, wherefore, &c. And, therewith, *Moubray* made *profert* of the charter of King Edward the grandfather, by which he made restitution of the temporalities, &c., and reservation of the advowson, &c.—SHARSHULLE. When Thomas had presented, &c., and his presentee was admitted, &c., he was then seised of that advowson, even though he had not been seised before, wherefore, although the King seized the temporalities, &c., that does not prove that he seized the advowson, because he could not seize that which was in the hand of the Earl; and, when the King has an advowson of his own right, if another who has no right can snatch a presentation, he thereby puts the King out of possession, as much as he would another person of the people, and the King will, in that case, be put to his writ of Right as much as another person would be; wherefore, &c.—And all the other JUSTICES agreed to this, &c.

Account. (16.) § Account was sued for the Abbot of Our Lady of York against A.[1] on the ground that A.[1] was his receiver, and bailiff of his manors of B.,[1] C.,[1] &c., from Michaelmas day in the eleventh year for the five years

[1] As to the names *see* p. 73, note 3.

No. 16.

demandoms jugement si accion, &c. Et dautre part, Sire, veez cy la chartre le Roy Henre, par quel il dona le maner, &c., a Edmund son fitz, la quele parle forsqe des advowesouns des eglises, et ne mye des advowesouns des Abbeies ne de Priories, par quei, &c. Et, ovesqe ceo, il mist avant la chartre le Roy Edward aiel, par quele il fist restitucion de les temporaltez, &c., et reservacion de ladvowesoun, &c.—SCHAR. Quant Thomas avoit presente, &c., et son presente fuit resceu, &c., donqes fuit il seisi de cele advowesoun, coment qil neust mye este seisi devant, par quei, coment qe le Roy seisi les temporaltez, &c., ceo ne prove mye qil seisi ladvowesoun, qar il ne pout mye seisir ceo qe fuit en le mayn le Counte; et quant le Roy ad une advowesoun de son dreit demene, si un autre qi nad mye dreit purra happier un presentement, il mette le Roy la hors de possessioun auxint avant la hors de possessioun come il freit un autre homme de poeple, et le Roy la serra mys a soun brief de Dreit auxi come un[1] autre serra; par quei, &c.—Et a ceo acorderent toutz les autres JUSTICES, &c.[2] A.D. 1344.

(16.)[3] § Acompte suy[4] pur Labbe Nostre Dame Deverwyke vers A., de ceo qil fut son resceivour, et baillif de ses maners de B., C., &c., de la Seint Michel lan xj par v aunz procheyn ensuauntz, &c.[5]— Acompte. [Fitz., *Estoppell*, 220.]

[1] MS., en un.

[2] There is in the MS. a marginal note "Residuum inde Paschæ, "19." The conclusion of the report is in Y.B., Easter, 19 Edw. III., No. 22, not yet published. *See* also Fitzherbert's *Abridgment*, *Quare impedit*, 156. And *see* above p. 65, note 6, for the judgment as entered on the roll.

[3] From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edward III., R° 35. It there appears that the action was brought by the Abbot of St. Mary of York against John de Swynflet, "quod reddat ei rationa- "bilem compotum suum de tem- "pore quo fuit ballivus suus in "Whitegist [*sic*], Redenesse, et "Usseflete, et receptor denariorum "ipsius Abbatis," &c.

[4] suy is omitted from L.

[5] The declaration was, according to the roll, "quod prædictus Jo- "hannes extitit ballivus ipsius

No. 16.

A.D. 1344. next following, &c.—*Setone.* From the Michaelmas day of which he has counted until the Feast of St. Martin next following, not his bailiff, nor his receiver; ready, &c. And from that Feast of St. Martin until the Feast of St. Martin one year afterwards we were his bailiff of the manor of B.,[1] and for that time we have accounted; ready, &c. And for that time we were not his receiver, except as bailiff, whereof we have accounted. And from the Feast of St. Martin aforesaid for the four years next following we were his farmer of the same manors, and see here his deed in witness thereof, by which he leased to us for a term of four years; judgment whether we shall be charged, as bailiff,

[1] As to the name *see* p. 75, note 9. Whitegist is written for Whitegift throughout the enrolment.

No. 16.

Setone. De la Seint Michel qil ad counte tanqe la Seint Martyn procheyn ensuaunt nient son baillif, ne son resceivour; prest, &c. Et de la Seint Martyn tanqe la Seint Martyn en[1] un an apres nous fumes son baillif del maner de B., et de cel temps avoms[2] acompte; prest, &c.[3] Et de cel temps ne[4] fumes pas son resceivour forqe[5] come baillif, de quei nous avoms acompte. Et de la Seint Martyn avantdit par iiij aunz prochein[6] ensuauntz nous fumes son fermer[7] de mesmes les maners, et veiez cy son fait qe le tesmoigne, par quel il nous lessa a terme de iiij aunz; jugement si come baillif de cel temps serroms[8] charges.[9] A.D. 1344.

" Abbatis in maneriis prædictis, et " receptor denariorum ipsius Ab- " batis, a Festo Sancti Michaelis " Archangeli anno regni domini " Regis nunc undecimo per quinque " annos tunc proxime sequentes. " Et per idem tempus habuit curam " et administrationem omnium " bonorum suorum in maneriis " prædictis . . . . Similiter idem " Johannes extitit receptor dena- " riorum ipsius Abbatis de tempore " prædicto, et recepit per tempus " prædictum" several specified sums by the hands of several persons named " ad mercandi- " zandum et proficuum ipsius " Abbatis inde faciendum . . . . . " Et inde producit sectam," &c.

[1] en is omitted from L.

[2] avoms is omitted from Harl.

[3] The words prest, &c., are omitted from Harl.

[4] Harl., nous.

[5] 25,184, tanqe.

[6] L., procheinz; the word is omitted from Harl.

[7] L., fermers.

[8] Harl., serroms nous.

[9] Harl., and 25,184, mys a respoundre. The plea was, according to the roll, " quod a Festo " Sancti Michaelis Archangeli anno " regni domini Regis nunc un- " decimo usque ad Festum Sancti " Martini tunc proxime sequens " ipse non fuit ballivus suus in " prædictis maneriis, nec receptor " denariorum ipsius Abbatis, sicut " idem Abbas superius versus eum " narravit, et hoc paratus est veri- " ficare.

" Et dicit quod a prædicto Festo " Sancti Martini anno Regis nunc " undecimo usque ad idem Festum " Sancti Martini tunc proxime " sequens ipse fuit ballivus suus in " prædictis villis, videlicet de mora " sua de Inclesmore, et tenendi " curias ipsius Abbatis in White- " gist et Redenesse, et proficuum " liberarum curiarum illarum et " redditus liberorum tenentium " suorum in Redenesse et etiam " redditus liberorum tenentium " et nativorum suorum in White- " gist levandi, absque hoc quod idem " Johannes habuit aliquam curam " seu administrationem aliorum " bonorum ipsius Abbatis in præ- " dictis maneriis de anno prædicto, " de quo quidem tempore idem

No. 16.

A.D.1344. for that time.—*Thorpe.* You were our bailiff, *absque hoc* that you were tenant for term of years, by our lease, by this deed; ready, &c.—*Setone.* Since he does not deny this deed which proves that we were a termor, judgment whether to the averment, &c.—*Thorpe.* We will aver that nothing passed by this deed.—*Richemunde.* No livery is needed of a term of years, because the freehold remains in the lessor, wherefore the issue in avoidance of the deed is not

No. 16.

—*Thorpe.* Vous fustez[1] nostre baillif, saunz ceo qe vous fustez tenant a terme daunz de nostre lees par ceo fait; prest, &c.—*Setone.* Del houre qil ne dedit pas[2] ceo fait, qe prove qe nous fumes termer,[3] jugement si al[4] averement, &c.—*Thorpe.* Nous voloms averer qe rien passa par ceo fait.—*Richem.* De terme daunz ne bosoigne[5] pas livere,[6] qar le fraunctenement demoert[7] en le lessour,[8] par quei lissue en voidaunce du fait nest pas resceivable, qar tut A.D. 1344.

" Johannes, die Lunæ proxima ante " Festum Sanctæ Katerinæ Vir- " ginis anno Regis nunc duodecimo, " apud Eboracum, infra Abbathiam " beatæ Mariæ Eboraci, coram " Willelmo de Neutone et Galfrido " de Rudstane, commonachis ejus- " dem Abbatis, et Johanne de " Aldefelde, et Hugone de Grant- " ham, auditoribus compoti ipsius " Johannis per ipsum Abbatem " assignatis, plene computavit. Et " hoc paratus est verificare.

" Et quo ad tres annos tunc " proxime sequentes dicit quod " prædictus Abbas per scriptum " suum indentatum concessit et " dimisit prædicto Johanni mane- " rium suum de Whitegist, cum " pertinentiis, una cum vastis et " mora sua de Inclesmore in White- " gist, Redenesse, et Usflete, simul " cum omnibus servitiis liberorum " tenentium suorum in Redenesse " usque ad terminum quatuor " annorum tunc proxime sequen- " tium, de quibus quatuor annis " prædicti tres anni sunt parcellæ. " Et profert hic partem prædictæ " indenturæ sub nomine prædicti " Abbatis, quæ hoc testatur in " forma prædicta, cujus data est " apud Whitegist in vigilia Sancti " Martini anno regni domini Regis " nunc tertiodecimo. Et petit " judicium si de prædictis tribus " annis tanquam ballivus suus de " prædicto manerio de Whitegist, " Redenesse, et Usflete, contra " factum suum proprium, de " compoto aliquali versus præ- " dictum Abbatem onerari debeat.

" Et quo ad receptionem dena- " riorum ipsius Abbatis per præ- " dictos tres annos dicit quod ipse " non recepit aliquos denarios " ipsius Abbatis nisi de exitibus " prædicti manerii de Whitegist in " forma prædicta sibi dimissi, et de " mora sua de Inclesmore, et " redditu liberorum tenentium " suorum in Redenesse.

" Et petit judicium si ipse tan- " quam ballivus suus seu receptor " denariorum ipsius Abbatis de " tempore prædicto de compoto " aliquo versus prædictum Abba- " tem onerari debeat."

[1] L., futez; 25,184, feustes.

[2] Harl., qe vous navetz pas dedit, instead of qil ne dedit pas.

[3] Harl., fermer.

[4] al is omitted from Harl.

[5] Harl., busoigne.

[6] Harl., liverer.

[7] demoert is omitted from L.

[8] Harl., al feffour, instead of en le lessour. The words come freit de fraunctenement are here inserted in L, and 25,184.

No. 16.

A.D. 1344 admissible, because a termor for years might well enter without any livery.—*Thorpe.* According to your statement, if I lease for a term of 100 years it is not necessary to make livery. The conclusion is false.—Hillary. I bring Entry *ad terminum qui præteriit* against you, and you show my deed of conveyance in fee, shall I have an averment that nothing passed by the deed? as meaning to say that he would not. No more in this case, when you suppose him to have a possession as bailiff, and he shows by your deed that it was as termor, shall you have an averment in avoidance of the deed.—Willoughby, *ad idem.* Suppose you brought a writ of Debt, in respect of your farm, after the term, and he said against you that he was your bailiff, and demanded judgment of your writ, and you produced against him his deed indented, by which he received a term from you, would not he be ousted from the plea by his deed? as meaning to say that he would. So, on the other hand, will you against him.—*Richemunde, ad idem.* If the Abbot brought a writ of Waste against us, we should not be admitted, contrary to our deed indented, to say that we were bailiff.—Sharshulle. As some people understand the matter, it is necessary to have livery of a term; and suppose it were so, still you will not have such a plea in avoidance when your suit makes him bailiff, for it has been seen and heard in Assise that it has been found by verdict that the plaintiff executed a charter of his land to the defendant, and delivered to him the charter, and said to him that he did his utmost, and made no other livery, and the other acted in accordance with his consent and entered, and it was adjudged a good feoffment and not a disseisin. Now in this case you suppose him to have a possession, and that

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saunz livere[1] termer daunz put entrer.—*Thorpe.* A vostre dit, si jeo lesse a terme de c aunz il ne bosoigne[2] pas faire livere. *Consequens falsum.*—Hill. Jeo porte Entre *ad terminum qui præteriit* vers vous, et vous moustrez mon fait del lees de fee, averay jeo averement qe rien ne passa par le fait? *quasi diceret non.* Nient plus en ceo cas, quant vous luy supposes aver un possessioun come baillif, et il moustre[3] par vostre fait qe ceo fut come termer, averez averement en voidaunce du fait.—Wilby., *ad idem.* Jeo pose qe vous portastes brief de Dette, de vostre ferme,[4] apres le terme, et il deist countre vous qil fut vostre baillif, et demanda jugement de vostre brief, et vous moustrastes countre luy son fait endente, par quel il resceust de vous terme, ne serra il par son fait ouste del plee? *quasi diceret sic.* Auxi areremeyn[5] vous vers luy.—*Richem., ad idem.* Si Labbe portast brief de Wast vers nous, nous ne serroms pas resceu, countre nostre fait endente, a dire qe nous fumes baillif.—Schar. Al entente dascuns il bosoigne daver livere de terme; et mettez qil fut issi,[6] unqore naverez pas[7] tiel plee en voidaunce quant vostre suyte luy fait baillif, qar homme ad vewe et[8] oy en Assise qe par verdit fut trove qe le pleintif fist un chartre de sa terre[9] al defendant, et luy livera la chartre, et luy dist qil fist son meuth,[10] et fist nul autre livere, et lautre ala issint par son gree, et entra, et fut ajuge bon feffement et noun pas disseisine. Ore en ceo cas vous luy supposez aver un possessioun, et ceo A.D. 1344.

[1] Harl., liverer.
[2] Harl., busoigne.
[3] L., moustre pas, instead of il moustre.
[4] Harl., vers le fermer, instead of de vostre ferme.
[5] 25,184, ariermayn.
[6] L., cy; Harl., ycy.
[7] Harl., vous.
[8] The words vewe et are from 25,184 alone.
[9] The words de sa terre are omitted from Harl.
[10] Harl., sez motz, instead of son meuth.

No. 16.

A.D. 1344. he shows by your deed to be a term of years, and as in the one case the entry was adjudged [good], by reason of the consent of the person who executed the deed, in accordance with the finding of the Assise, so in this case by reason of your own deed, of which *profert* is made, this must be adjudged to be a term, &c.—*Thorpe*. In the case of Assise which you mention I think that such an entry is not seisin, nor feoffment any more: for the other person who executed the deed, and made no livery, could, in such a case, re-enter.—Sharshulle and Willoughby denied this.—And there was touched in this plea the point that, if the defendant could show that, at any time at which the plaintiff supposed him to be bailiff, he was a termor for years, that would go to the abatement of the whole count, so that he would not be charged with respect to the residue of the time.—And this was said by Willoughby and Sharshulle.—But *W. Thorpe* denied this.—*Quære*, because he said that, with regard to an action of Debt, even though the plaintiff confessed, as to parcel, that he had no action, this confession extends only to the parcel, nor does it extend any further with regard to land in a *Præcipe quod reddat*, &c.—And afterwards, as to the time during which the defendant showed by the deed, &c., that he was a termor, it was adjudged that the plaintiff should take nothing; and as to the residue the averment was admitted on the traverse, &c.

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moustre il par vostre fait estre terme daunz, et auxi come en lun cas lentre fut ajuge par la volunte cely qe fit le fait par[1] ceo qe[2] fut trove par Assise, auxi en ceo[3] cas par vostre fait demene qest moustre covient ajuger ceo estre[4] terme, &c.—*Thorpe.* En le cas qe vous parlez de Lassise jeo quide qe tiel[5] entre nest seisine,[6] ne feffement nient le plus: qar lautre qe fist le fait, et fist nul livere, en tiel[5] cas[7] purra reentrer.—Schar. et Wilby. *negaverunt.*[8]—Et fut touche en ceo plee qe si dascun temps qil luy suppose estre baillif, il purra moustrer qil fut termer daunz qe ceo serreit al abatement de tut le counte, issint qe del remenant de temps il ne serra pas charge.—*Et hoc per* Wilby. et Schar.—*Sed W. Thorpe negavit.*—*Quære*, qar il dit qe de Dette,[9] mesqe le pleintif conust qil nad pas accion de parcelle, cele[10] conusaunce sestent forqe a la parcelle, ne[11] nient plus de terre en *Præcipe quod reddat*,[12] &c.—Et puis, quant al temps qil moustra qil fut termer par le fait, &c., fut agarde qe le pleintif prist rien; et quant al remenant laverement resceu sur le travers,[13] &c.[14] A.D. 1344.

[1] L., pur.
[2] L., qil.
[3] ceo is from Harl. alone.
[4] 25,184, cest, instead of ceo estre.
[5] L., cel.
[6] L., and 25,184, disseisine.
[7] cas is omitted from L.
L., *negant.*
[9] L., en Deute, instead of de Dette.
[10] cele is omitted from Harl.
[11] ne is omitted from L.
[12] The words *quod reddat* are from Harl. alone.
[13] L., temps.
[14] After the plea the roll continues as follows:—"Et Abbas, quo ad hoc "quod prædictus Johannes dicit "quod ipse non fuit ballivus ipsius "Abbatis a prædicto Festo Sancti "Michaelis anno Regis nunc undecimo usque ad Festum Sancti "Martini tunc proxime sequens, "[dicit quod] ipse fuit ballivus "suus per tempus prædictum, et "receptor denariorum ipsius Abbatis, sicut idem Abbas superius "versus eum narravit, et hoc "paratus est verificare, &c.
"Et, quo ad hoc quod prædictus "Johannes dicit quod ipse computavit a prædicto Festo Sancti "Martini anno Regis nunc undecimo usque ad idem Festum "Sancti Martini tunc proxime

Nos. 17, 18.

A.D. 1344. Note: Prayer to be admitted.

(17.) § A writ was brought against a husband and his wife, who pleaded to the inquest in a plea of land, and challenged the inquest at *Nisi prius*. And the husband appeared in his own person, and the wife by attorney. And afterwards the husband would have rendered, but this the Justices could not permit. And afterwards they made default, which was recorded. And afterwards the wife came into the Bench, and prayed to be admitted. And the admission was counter-pleaded on the ground that she had not now a day, and also that she did not pray to be admitted in the country. And, this notwithstanding, she was admitted by judgment, and vouched.

Note well.

(18.) § Note that *Thorpe* stated how Thomas de Askeby

Nos. 17, 18.

(17.) [1] § Brief fut [3] porte vers le baroun et sa femme, qe plederent al enquest en plee de terre, et chalengerent [4] lenquest al *Nisi prius*. Et le baroun fut en propre persone, et la femme par attourne. Et puis le baroun voleit aver rendu, quele chose les Justices ne pount [5] resceivere. Et puis firent defaut, qe fut recorde. Et puis [6] la femme vint en Baunk, et pria destre resceu. Et fut countreplede qele navoit pas jour a ore, et auxi qen pays ele ne pria pas. Et, *non obstante*, par agarde ele fut resceu, et voucha. A.D. 1344. *Nota*: Priere destre resceu.[2]

(18.) [1] § *Nota* qe *Thorpe* dit coment [8] Thomas *Nota bene.*[7] [Fitz., *Voucher*, 4.]

" sequens, ipse non computavit " coram præfatis auditoribus de " anno supradicto, sicut idem " Johannes dicit.

" Et, quo ad hoc quod ipse dicit " quod ipse non fuit ballivus ipsius " Abbatis, nec receptor denariorum " ipsius Abbatis, de uno anno de " prædictis quinque annis, ipse fuit " ballivus ipsius Abbatis et receptor " denariorum ipsius Abbatis in " anno prædicto, sicut ipse superius " versus eum narravit, &c., et hoc " paratus est verificare.

" Et, quo ad hoc quod idem " Johannes dicit quod ipse tenuit " manerium prædictum, cum mem- " bris prædictis, virtute indenturæ " prædictæ, per hoc probando quod " ipse non debet computare de " tempore prædicto, idem Johannes " nihil habuit in manerio prædicto " ex dimissione ipsius Abbatis et " hoc paratus est verificare.

" Et quia idem Abbas non dedicit " quin prædictum scriptum sit " factum ipsius Abbatis, per quod " factum satis liquet Curiæ quod " ipse fuit firmarius ipsius Abbatis, et non ballivus de prædictis tribus annis, consideratum est " quod idem Johannes quo ad hoc " eat inde sine die, et prædictus " Abbas nihil quo ad hoc capiat " per breve suum, sed sit in miseri- " cordia pro falso clamore, &c. Et " quo ad alias parcellas de quibus " idem Johannes superius dixit " quod ipse non fuit ballivus ipsius " Abbatis in prædictis villis, nec " receptor denariorum ipsius Abba- " tis, et similiter quo ad hoc quod " idem Johannes dixit quod ipse " computavit de tempore prædicto, " &c., ideo quo ad hoc præceptum " est Vicecomiti quod venire faciat " hic, &c."

Nothing but one adjournment appears on the roll after the award of the Venire.

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

[2] The marginal note in 25,184 is Brief porte.

[3] fut is from Harl. alone.

[4] 25.184, chalengerount.

[5] Harl., voleint.

[6] puis is from Harl. alone.

[7] *bene* is from L. alone; the words de Resomons are substituted for it in Harl.

[8] 25,184, qe.

No. 18.

A.D. 1344. had warranted to a tenant, and how one A. had warranted to Thomas. And A. tells you (said *Thorpe*) that Thomas, who was tenant by his warranty, and to whom he has warranted, is dead, and A. prays that the demandant be put to sue a Resummons against the tenant, because otherwise the recoveries to the value cannot be of any avail in case the demandant should recover.—*Grene*. That is nothing to you, nor any damage to you; and therefore it does not lie in your mouth.—Willoughby. It is to his damage, because he will have to make over to the value by an erroneous judgment should the demandant recover.—*Grene*. Even though it were so, the judgment would be good enough, because Thomas Askeby and his wife are warranted by the person who is now party, and are out of Court; and if the tenant lose, and recover against Thomas and his wife, and they over, execution against the wife, even though her husband were dead, would be good enough, because she would never have an Assise, and the cause for which he would allege such a matter would not be any mischief, and since the judgments will be good notwithstanding such matter, it seems that the law does not put us to answer to this.—*Thorpe*. The wife's recovery would be of no avail, because her husband is dead; and, if I remain silent now, I shall never afterwards have the advantage; and since the judgments will not be good, and will fall principally to the damage of me who will be the last to make over to the value, it does lie in my mouth more properly than in that of any other person; and, if such judgments were to be made

No. 18.

Daskeby[1] avoit garraunti a un tenant a quel Thomas[2] un A. ad garraunti, et A. vous dit qe Thomas, qe fut tenant par sa garrauntie, et a qi il ad garraunti, est mort, et prie qe le demandant soit mys de suire Resomons vers le tenant, qar autrement[3] les[4] recoverirs en[5] value ne pount estre de force en cas qe le demandant recovere.—*Grene.* Ceo nest rien a vous, ne a nul damage de vous; par quei en vostre bouche ne gist ceo pas.—Wilby. Cest en damage de luy, qar il fra en value par jugement erroigne si le demandant recovere.—*Grene.* Tut fut ceo issint, le jugement serreit[6] assetz[7] bon, qar Thomas Askeby[8] et sa femme sount garrauntiz par cely qest ore partie, et sount hors de Court; et si le tenant perde,[9] et recovere vers Thomas et sa femme, et eux outre, lexecucion vers la femme, tut fut son baroun mort, serreit[10] assetz bon, qar ele[11] navereit[12] jammes Assise, et la cause pur quei il allegereit tiel chose ne[13] serreit pas[14] meschief, et de puis qe les jugements serrount bones, *non obstante* tiel[15] matere, il semble qe ley nous mette pas a ceo[16] respoundre.—*Thorpe.* Le recoverir la femme ne[13] serreit de nul value, qar son baroun est mort; et, si jeo teise[17] a ore, jammes navera jeo apres lavauntage; et quant les jugements ne serrount pas bons, et principalment cherrount en mon damage qe darreyn ferroi[18] en value, en ma bouche gist plus proprement qen nully[19]; et si tiels jugements se feissent[20] A.D. 1344.

[1] L., de A.; 25,184, Dascheby.
[2] L., de.
[3] autrement is omitted from Harl.
[4] Harl., de.
[5] Harl., a la.
[6] Harl., fuit.
[7] assetz is omitted from 25,184.
[8] L., A.; 25,184, Ascheby.
[9] 25,184, plede.
[10] Harl., il serroit.
[11] Harl., il.
[12] L., navera.
[13] ne is from Harl. alone.
[14] L., and 25,184, pur.
[15] L., cel.
[16] ceo is omitted from Harl.
[17] Harl., teyse; 25,184, toisse.
[18] L., ferroy; Harl., feray.
[19] 25,184, lun.
[20] Harl., fuissent faitez; 25,184, feussent.

No. 18.

A.D. 1344. through our default, I should never have any remedy by writ of Error.—Sharshulle. Have you vouched over, or pleaded in chief?—*Thorpe.* No, Sir, we have pleaded in chief.—Sharshulle. The mischief is greater for you.—*Pole.* We understand that by law the death of no one, except the death of the tenant, whose death would abate the writ, or of the warrant who is a party, can be alleged.—Willoughby. That is one statement, but you do not set right the mischief.—*Pole.* If we had to sue a Resummons, it would be either that the tenant might revouch, or that he might plead in chief. —Sharshulle. He will make his choice.—*Pole.* If he should be put back to revouch the husband's heir, he would then possibly be put to mischief: for, whereas by his present voucher the lands which the vouchee had on the day on which he was vouched were bound to him to have to the value, by the revoucher he would lose this advantage, because, if the ancestor aliened after he had warranted, and died before judgment had been rendered against him, execution would never be had against his heir in respect of these lands, nor would execution be had in these lands upon a judgment rendered against the heir.—Willoughby. Certainly, what you say is wrong; he would have execution upon a judgment rendered on the revoucher in respect of lands which the ancestor had on the day of the first voucher.—*Grene.* To what purpose would he have this plea? The death of the husband cannot make an issue between him and us.—*Thorpe.* It can do so by reason of the loss of the land; and if I were to remain silent now, I should never afterwards have a writ of Error. —Willoughby, *ad idem.* If he had warranty over, he would have lost it, unless he could allege this matter. —Hillary. You do not deny that the husband is dead; therefore sue a Resummons.

No. 18.

par nostre defaut, ja naveray jeo nulle ayde de[1] brief Derrour.—Schar. Avez vous vouche outre, ou plede en chief?—*Thorpe.* Sire, nanil, nous avoms plede en chief.—Schar. Le meschief est plus graunt pur vous.—*Pole.* Nous entendoms de ley qe nully mort, sil ne fut le mort[2] le tenant, qi mort abatereit le brief, ou de garraunt qest partie, est allegge-able.—Wilby.[3] Cest un dit, mes vous nassoillez[4] pas le meschief.—*Pole.* Si nous duissoms suyre Resomons, ceo serreit ou pur ceo qe le tenant revouchereit, ou qil pledereit en chief.—Schar. Il eslirra.—*Pole.* Sil serra remys[5] de revoucher leir le baroun, par cas donqes serra il a meschief[6]: qar, la ou par son voucher ore les terres queux le vouche avoit jour qil fut vouche furent lies a luy daver en value,[7] par le revoucher il perdreit lavauntage, qar launcestre[8] apres ceo qil avoit garraunti, sil alienast apres, et deviast avant jugement taille vers luy, vers son heir se fra jammes execucion de celes terres, ne par jugement taille vers leir execucion en celes terres ne se freit pas.—Wilby. Certes vous ditez mal; il avereit execucion sur jugement taille en le revoucher des terres qe launcestre avoit jour de primer voucher. —*Grene.* A quel entent avereit il ceo plee? Sa mort ne poet pas faire issu entre luy et nous.[9]—*Thorpe.* Si purra par perde de la terre; et si jeo teise a ore jammes apres[10] naveray jeo Errour.—Wilby., *ad idem.* Sil ust garrauntie outre il leust perdu, sil ne purra ceste chose allegger.—Hill. Vous ne dedites pas qil nest mort; par quei suez Resomons. A.D. 1344.

[1] L., altre, instead of ayde de. For the words ja naveray jeo nulle ayde de, there are substituted in 25,184, the words jeo averay, et nul autre.

[2] The words le mort are from Harl. alone.

[3] Wilby. is omitted from L.

[4] L., nasses; Harl., &c.

[5] Harl., mys.

[6] L., ceo meschief a lui, instead of serra il a meschief.

[7] The words en value are omitted from Harl., and the word en from L.

[8] Harl., le demise.

[9] 25,184, vous.

[10] apres is omitted from Harl.

No. 19.

A.D. 1344. *Quare incumbravit.*

(19.) § *Quare incumbravit* by James de Audele against the Bishop of Exeter, counting how he brought a *Quare impedit* against William Chaumbernoun, against whom he recovered, and, pending his suit, delivered to the Bishop the King's Prohibition, at the Bishop's town-house outside the Bar of the New Temple, London, and that the Bishop encumbered the church, pending the plea, within the six months, &c.—

No. 19.

(19.)[1] § *Quare incumbravit* par Jamys de Audele[2] vers Levesqe Dexcestre, countant coment il porta *Quare impedit* vers W. Chaumbernoun,[3] et recoveri vers luy, et pendant sa suite luy livera[4] la Prohibicion le Roi al hostiel[5] Levesqe hors de la barre del Novel Temple de Loundres, et qil encombra leglise, pendaunt le plee, deinz les vj moys, &c.[6]—*Der.* Il

A.D. 1344. *Quare incumbravit.*

[1] From L., and 25,184, but corrected by the record *Placita de Banco*, Easter, 18 Edw. III., R° 31. It there appears that the action was brought by James de Audeleye against John Bishop of Exeter on the recovery by James of his presentation to the church of "Ilfridecombe" (Ilfracombe, Devon), against William Chaumbernoun by *Quare impedit*.

[2] L., H. de A., instead of Jamys de Audele.

[3] L., de C.; 25,184, Chamberleyn.

[4] L., avera.

[5] L., hostel.

[6] According to the record, the declaration was, "quod, cum præ- "dicta ecclesia vacasset vicesimo "nono die Aprilis anno regni "domini Regis nunc decimo septi- "mo per mortem Johannis de "Lestre, personæ impersonatæ in "eadem, super qua vacatione con- "troversia mota fuit inter prædic- "tum Jacobum et prædictum Wil- "lelmum Chaumbernoun de præ- "sentatione ecclesiæ supradictæ, "et idem Jacobus tulisset quoddam "breve de *Quare impedit* versus "præfatum Willelmum de eadem "ecclesia, quod quidem breve fuit "returnabile hic in Crastino Ascen- "sionis Domini anno regni domini "Regis nunc decimo septimo, et "quinto die Maii eodem anno "Prohibitionem domini Regis ne "ipse Episcopus ad ecclesiam præ- "dictam aliquem admitteret, pen- "dente inter præfatos Jacobum et "Willelmum placito supradicto, "quidam Johannes de Delves ex "parte ipsius Jacobi, supra pontem "extra portam Palatii domini Regis "apud Westmonasterium quæ "vocatur Watergate, in præsentia "Henrici de la Pole, Johannis de "Haukestan, Willelmi de Horwiche, "et aliorum, liberavit, super quo "idem Jacobus die Sanctæ Trini- "tatis eodem anno præsentavit "prædicto Episcopo ad ecclesiam "prædictam quendam Johannem "de Wynstaneswyke, clericum "suum, quam quidem præsenta- "tionem idem Johannes liberavit "præfato Episcopo in hospitio "ejusdem Episcopi in parochia "Sancti Clementis Dachorum extra "barram Novi Templi Londonia- "rum, in præsentia Johannis de "Wetenhulle, Johannis Irisshe, et "aliorum, super quo brevi de "*Quare impedit* processus fuit "continuatus usque in Octabas "Sancti Michaelis tunc proxime "sequentes quod ipse Jacobus "præsentationem suam ad eandem "ecclesiam per judicium Curiæ "super veredictum patriæ hic "redditum recuperavit, et habuit "breve eidem Episcopo quod ipse "præsentatum ejusdem Jacobi "admitteret, quod quidem breve et "præsentatio ipsius Jacobi de præ-

No. 19.

A.D. 1344 *Derworthy.* He has not counted that he or any other person whose estate he had was seised of the advowson by the possession of presentation before his recovery; judgment of the count.—WILLOUGHBY. He has recovered, and that is a title; and, if he had counted that he had presented, would you have a traverse to that? as meaning to say that he would not.—*Thorpe.* Suppose that a man is very patron, and has presented (himself and his ancestors also) to the church, and the church becomes void, and he presents to the Ordinary, and an Inquest of Office finds in his favour, and finds all the circumstances, the Ordinary, even though this be within the period of six months, cannot refuse to admit his presentee if he commits no wrong. Then, if afterwards, within the period of six months, another, who has no right, brings a *Quare impedit* against him, and recovers against him by default or non-denial, and presents, he will charge the Ordinary to admit his presentee by *Quare incumbravit*, and will charge him with damages, whereas he has done nothing but that which he ought to do, and this would not be right; therefore it would be contrary to law that he should be answered as to such a declaration on a *Quare incumbravit*, unless he showed title of right and possession in his own person before the recovery on *Quare*

No. 19.

nad counte qe luy ne nul autre qi estat il[1] avoit fut seisi del avowesoun par possessioun de presentement adevant son recoverir; jugement de counte.—Wilby. Il ad recoveri, et cest title; et sil ust counte[2] qil ust presente, averez vous[3] travers a cel? *quasi diceret non.—Thorpe.* Jeo pose[4] qun homme soit verroy patron, et eit presente, luy et ses auncestres, al eglise,[5] et leglise[6] se voide, et il presente al Ordiner, et enquest Doffice chaunte pur luy, et totes les circumstaunces, Lordiner, tut soit ceo deinz le temps de vj moys, ne luy poet[7] vier de[8] resceivere son[9] presente sil ne face[10] tort. Si apres donqes, deinz les vj moys, un autre qe nul dreit nad, porte *Quare impedit* vers luy, et par defaut ou nient dedire recovere vers[11] luy, et presente, il chargera Lordiner de resceivere[12] son presente par le *Quare incumbravit,* et luy chargera des damages ou il nad rien fet forqe ceo qil deit fere, qe ne serreit pas resoun; par quei il serreit countre ley qil fut respondu a tiel moustraunce sur *Quare incumbravit,* sil ne moustrast title de[13] dreit, et possessioun en sa persone avant le recoverir sur *Quare* A.D. 1344.

" fato Johanne de Wynstanswike
" ad ecclesiam illam facta præfato
" Episcopo liberata fuerunt per
" eundem præsentatum apud Tovy-
" stoke decimo septimo die Octobris
" anno supradicto, in præsentia
" Margaretæ Martyn, Johannis de
" Delves, et Johannis de Asshe,
" idem Episcopus præfatum Jo-
" hannem per ipsum Jacobum præ-
" sentatum admittere noluit, sed,
" pendente prædicto placito in
" Curia hic, ecclesiam illam de
" quodam Johanne de Northwode,
" quarto-decimo die Junii eodem
" anno, infra sex menses post diem
" vacationis ejusdem ecclesiæ, in-
" cumbravit, contra legem, &c."

[1] L., y.

[2] L., viscount instead of ust counte.

[3] vous is from L. alone.

[4] The words Jeo pose are omitted from L.

[5] The words al eglise are from L. alone.

[6] 25,184, lesglise.

[7] L., put.

[8] 25,184, ne.

[9] son is omitted from L.

[10] 25,184, lui face.

[11] L., devers.

[12] The words par assent are here inserted in 25,184.

[13] The words title de are omitted from L.

No. 19.

A.D. 1344. *impedit.*—Willoughby. Plead a fact of that kind, and try what the law is.—And note that Willoughby said that a *Quare incumbravit* lies without a recovery.—*Derworthy.* He has counted that he delivered the Prohibition to the Bishop in his town-house, and he did not determine where, so that a jury could not be caused to come from that place; judgment of the count.—Willoughby. Yes he did—outside the Bar of the New Temple, London.—*Blaykeston.* That cannot be in Devonshire; but he ought to say in such a parish, as the form of the writ is in such a case.—Stonore. It is sufficiently certain.[1]—*Derworthy.* He has first counted how he recovered against William Chaumbernoun, and has afterwards declared that a dispute touching the presentation arose between him and one W. who must be understood to be another person; judgment of the count, because the dispute must have been between him and this same W.—Willoughby. Unless you show that they could have been different persons, we understand that they are one and the same person.—*Thorpe.* No; he ought to show by count that it was one and the same person, for if Richard Willoughby brings a writ of Trespass in the words *quare bona et catalla Ricardi de Wilby, ad valentiam, &c., et in homines et servientes cujusdam Ricardi de Wilby insultum fecit, &c.*, the writ would be faulty, because by the writ this would not be supposed to be one and the same person. So in the matter before us.—And afterwards he passed on.—*Derworthy.*

[1] According to the record the parish in which the Bishop's house was situated was mentioned, viz., that of St. Clement Danes. *See* p. 89, note 6. The Prohibition, however, was alleged to have been delivered to the Bishop on the bridge outside Watergate, Westminster.

No. 19.

impedit.—Wilby. Pledez[1] tiel fet, et assaiez la ley. A.D. 1344.
—*Et nota* qe Wilby. dit qe *Quare incumbravit* gist saunz recoverir.—*Der.* Il ad counte qil lui[2] livera la Prohibicion en son hostiel,[3] et ne determina pas[4] ou, issint qe de cel lieu homme freit[5] venir enquest; jugement du counte.—Wilby. Si ad—hors de la barre de Novel[6] Temple de Loundres.—*Blaik.* Ceo ne poet[7] este en[8] Devenschire[9]; mes il dirra en tiel paroche, come fourme de brief est en tiel cas.—Ston. Cest assetz en certein.—*Der.* Il ad primes counte coment il ad[10] recoveri vers W. Chaumbernoun,[11] et puis ad desclare coment debat del presentement sourdist entre luy et un W.,[12] qest entendu autre persone; jugement de counte, qar il serreit entre lui et mesme celui W.—Wilby. Si vous ne moustrez qils feussent[13] divers persones, nous entendoms qils sount[14] tut[15] une persone.—*Thorpe.* Nanil; il le dust moustrer par counte qe tut fut une mesme persone, qar si Richard Wilby porte[16] brief de Trespas *quare bona et catalla Ricardi*[17] *de Wilby, ad valentiam, &c., et in homines et servientes cujusdam*[18] *Ricardi de Wilby insultum fecit, &c.*, le[19] brief[20] serreit vicious[21] pur ceo qe par brief ceo ne serreit pas suppose tut une mesme[22] persone.—*Sic in proposito.*—Et puis passa.—*Der.* Vous veiez bien

[1] L., pledez vous.
[2] lui is from L. alone.
[3] L., hostel.
[4] 25,184, determina, instead of ne determina pas.
[5] L., ne freit.
[6] L., du, instead of de Novel.
[7] L., put, instead of ne poet.
[8] en is omitted from 25,184.
[9] L., Devenshire.
[10] The words il ad are omitted from L.
[11] L., de C.; 25,184, Chamberleyn.
[12] L., W. de C.
[13] The word feussent is omitted from L.
[14] The words qils sount are omitted from 25,184.
[15] 25,184, tut deux.
[16] 25,184, vous porte.
[17] L., *ipsius Ricardi.*
[18] L., *ipsius*; 25,184, *ejusdem.*
[19] L., et le.
[20] brief is omitted from 25,184.
[21] L., viscouns.
[22] mesme is from L. alone.

No. 19.

A.D. 1344 You see plainly how they have counted that the last parson died on the 24th[1] day of April, and that after his death the dispute on the *Quare impedit* arose, on which they recovered, and the date of this *Quare impedit* is four days before the day on which he supposes the death of the parson; and therefore it is supposed that the *Quare impedit* was brought while the parson was living; thus his count is not warranted by the record; judgment of the count.—Willoughby. The *Quare impedit* is not yet to be pleaded. And suppose that he brought the *Quare impedit* while the parson was living, and the parson died while the writ was pending, and he recovered afterwards, and tendered his presentee to you, and you had encumbered the church, the judgment would be sufficiently good, and this action is given, and so you ought to understand that a *Quare incumbravit* lies as well without a recovery as upon a recovery, for if any one raises a dispute, and the Bishop encumbers the church within the period of six months, the patron will have a *Quare incumbravit* against him. —*Pole.* Even though it were the fact that an action of this kind would be given, still it would be supported by a different count, that is to say, without mention of a recovery.—Hillary. That is true; but this count is good; therefore answer.—*Derworthy.* He has counted that he presented, and has not said that the Bishop refused to admit the presentee; judgment.—Willoughby. You encumbered the church, and therefore you did refuse.—*Derworthy.* The writ does not express before what Justices the recovery was had; judgment of the writ.—Willoughby. Answer.—*Thorpe.* You abated a *Scire facias*, this Term, upon a like exception.[2]—Willoughby. A *Scire facias* must be warranted by a record; not so in this case. Besides, in that case there was wanting a clause "*et quia ea quæ in Curia nostra rite* "*acta sunt*," &c.—*Derworthy.* We do not admit that

[1] The 29th according to the record. *See* p. 89, note 6.

[2] No. 5, p. 12.

No. 19.

coment ils ount counte qe la darreyn persone murust A.D. 1344.
le xxiij jour Dapril, apres qi mort le debat sur le *Quare impedit* surdist, sur quel ils recoverirent, et la date de cel *Quare impedit* est de iiij jours devant le jour qil suppose la mort la persone; et par taunt est suppose qe le *Quare impedit* fut porte vivant la persone; issint son counte nient garraunti del recorde; jugement de counte.—Wilby. Le *Quare impedit* nest pas uncore[1] a pleder. Et jeo pose qe vivant la persone il porte le *Quare impedit*, et pendaunt le brief la persone est[2] devie, et ust recoveri apres, et vous eust tendu son presente, et vous eussez encombre leglise, le jugement serreit assetz bon, et cest accion done, et si devez entendre qe *Quare incumbravit* gist auxi bien saunz recoverir come par recoverir, gar si nul homme mette debat, et[3] Levesqe deinz les vj moys encombre leglise, le patron avera[4] vers luy *Quare incumbravit.—Pole.* Tut fut il issint qe tiel accion serreit done, unqore ceo serreit sur autre counte, saver, saunz mencion de recoverir.—Hill. Cest verite; mes ceo counte est bon; par quei responez.—*Der.* Il ad counte qil presenta, et nad pas dit qe Levesqe le refusa; jugement.—Wilby. Vous encombrastes leglise, par quei vous refusastes. —*Der.* Le brief ne yoet pas devant queux Justices le recoverir se fist; jugement du brief.—Wilby. Responez.—*Thorpe.* Vous abatistes[5] un *Scire facias*, ceo terme, par autiel chalange.—Wilby. *Scire facias* covient estre garraunti de recorde; *non sic hic.* Ovesqe ceo, il failli la une clause *et quia ea quæ*[6] *in Curia nostra rite acta sunt, &c.—Der.* Nous

[1] uncore is omitted from L.
[2] 25,184, ust.
[3] et is from L. alone.
[4] 25,184, navera.
[5] 25,184, abatastez.
[6] *quæ* is omitted from 25,184.

No. 19.

A.D. 1344. a Prohibition or a writ to admit came to us; and we tell you that the church became void a long time before the third[1] day of April as they have supposed, that is to say, on St. Gregory's day; and we tell you that before his recovery the six months had passed, and therefore the Bishop, as Ordinary, provided, *absque hoc* that he encumbered the church within the six months as the plaintiff supposes; ready, &c.—*Grene.* That answer is double: one the vacancy at another time, and the other a traverse of the incumbrance.—*Thorpe.* If I were to remain silent, without giving any other time for the vacancy than that which you suppose, the vacancy at the time which you have counted would be held as not denied by me; and if that which I say is the truth is different, I shall not be concluded by your false count. And yet this could not make an issue, because, at whatever time the vacancy occurred, it is necessary to answer as to the

[1] The twenty-ninth according to the roll. *See* p. 97, note 8.

No. 19.

conissoms[1] pas qe Prohibicion ne brief de Resceivere nous vint; et vous dioms qe leglise se voida longe temps avant[2] le terce jour Dapril qils ount suppose, saver, le jour Seint Gregorie[3]; et vous dioms qe avant son recoverir les[4] vj moys passerent, par quei Levesqe, come Ordiner, purvoust,[5] saunz ceo qil encombrast leglise[6] deinz les vj moys, come il suppose[7]; prest, &c.[8]—*Grene.* Ceo respouns est double: un la voidaunce a autre temps,[9] et autre travers del encombraunce.—*Thorpe.* Si jeo teuisse,[10] saunz doner autre temps de[11] la voidaunce qe vous ne[12] supposez, serra tenu nient dedit de moy la[13] voidaunce au temps qe vous avez counte; et si ma verite soit autre, jeo ne serrai[14] pas par vostre faux counte conclus. Et unqore ceo[15] ne put pas fere issu, qar, a quel temps qe la voidaunce fut, il covient A.D. 1344.

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[1] L., conussoms.
[2] 25,184, devant.
[3] L., George.
[4] les is omitted from 25,184.
[5] 25,184, purvost.
[6] 25,184, lesglise.
[7] 25,184, ils supposent, instead of il suppose.
[8] The plea was, according to the roll, "(non cognoscendo quod "aliqua Prohibitio domini Regis "vel aliqua præsentatio de præ- "fato Johanne de Wynstaneswyke "ad ecclesiam prædictam facta ei "unquam liberata fuerunt) dicit "quod ubi prædictus Jacobus "supponit ecclesiam prædictam "vacasse præfato vicesimo nono "die Aprilis anno regni domini "Regis nunc decimo septimo . . . ". . et ipsum Episcopum ecclesiam "illam infra tempus semestre "incumbrasse, ecclesia illa in- "cepit vacare per mortem ejusdem "Johannis de Lestre ad festum "Sancti Gregorii proximum ante "prædictum vicesimum nonum "diem Aprilis, et per sex menses "proxime sequentes vacans fuit, "per quod jus ordinandi ad eandem, "et etiam conferendi, accrevit ipsi "Episcopo ut Ordinario loci, &c. "Et dicit quod ipse Episcopus cui "jus devolutum fuerat per lapsum "sex mensium in forma prædicta "providit eidem ecclesiæ præfatum "Johannem de Northwode, et ei "fecit inde inductionem, absque "hoc quod ipse ecclesiam illam "incumbravit de eodem Johanne "de Northwode infra tempus "semestre post mortem prædicti "Johannis de Lestre, sicut præ- "dictus Jacobus ei imponit." Issue was joined upon this.
[9] temps is from L. alone.
[10] L., teuses.
[11] 25,184, qe.
[12] ne is from L. alone.
[13] L., de la.
[14] L., serra.
[15] ceo is from L. alone.

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A.D. 1344. incumbrance within the six months, &c.—*Pole*. And if your statement be entered, and we reply only as to the incumbrance, the time which you have given will then be held to be not denied.—Willoughby. Enquiry will not be made as to the time of the vacancy, so that the difference of time which you give between you will be only protestation, and the issue will be on the incumbrance.—Stonore. Yes, certainly, it is possible that both parties are speaking not quite seriously with regard to the time.—Willoughby. Attaint will never be had upon the time of the vacancy, that is to say on such a day or such a day.—*Pole*. He encumbered within the six months after the vacancy; ready, &c.—And the other side said the contrary.

Execution awarded. Note as to Voucher.

(20.) § Note that a tenant vouched, and was warranted, and lost. And the tenant, when execution was made against him, sued to have his value. The Sheriff returned [as to the vouchee] *Mortuus est*, wherefore the tenant sued against the vouchee's heir. The Sheriff returned three times that the heir had nothing in which he could be warned. The tenant who sued prayed execution at his own peril, and it was said that he should not have it until garnishment had been testified, because if he were to have it, that would be notwithstanding his own default in not [further] suing that the heir should be warned. And, notwithstanding, it was adjudged by the Court that he should have execution at his own peril.

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respoundre al encombraunce deinz les vj moys, &c.— *Pole.* Et si vostre dit soit entre, et nous replioms soulement al encombraunce, donqes serra tenu nient dedit le temps qe vous avez done.—Wilby. Homme nenquerra pas de temps de la voidaunce, issint qe ceo qe vous dones entre vous diversite du temps serra forqe protestacion, et lissue serra sur lencombraunce.—Ston. Oyl,[1] certes, il est possible qe lun et lautre gabe del temps.—Wilby. Homme navera jammes Atteynte[2] sur temps de la voidaunce, saver, tiel[3] jour ou tiel[3] jour.—*Pole.* Il encombra deinz les vj moys apres la voidaunce; prest, &c.—*Et alii c contra.*[4] A.D. 1344.

(20.)[5] § *Nota* qun tenant voucha, et[8] fut garraunti, qe perdist. Et le tenant, quant execucion fut fait vers luy, suyst daver sa[9] value. Le Vicounte retourna *Mortuus est*, par quei il suyst vers leir le vouche.[10] Le Vicounte retourna iij foitz qil navoit rien ou estre garny. Celuy qe suyst pria execucion a son peril, et fut dit qil navera pas avant garnisement tesmoigne, qar sil eit cest sa defaut qil[11] nad pas suy qil fut garny. Et, *non obstante*, fut agarde par Court qil avereit execucion a son peril. Execucion agarde.[6] *Nota* de Voucher.[7]

[1] L., Oy.

[2] L., Ateint.

[3] L., cel.

[4] According to the roll, after several adjournments, and a successful challenge of the array of jurors on both sides, it was alleged on behalf of the Bishop, and confessed by James de Audeleye, that, pending the plea, James de Audeleye, on the 22nd of January in the 21st year of the reign, executed a release of all actions to the Bishop and John de Northwode, parson of the church. The deed (in French) is set out at length. Judgment was thereupon given for the Bishop.

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

[6] The words Execucion agarde are from L. alone, in which MS. however, part of the note has been cut away in binding.

[7] The words *Nota* de Voucher are omitted from L., and the word de from Harl.

[8] 25,184, qe.

[9] Harl., a la.

[10] The words le vouche are from Harl. alone.

[11] 25,184, sil.

Nos. 21, 22.

A.D. 1344. Note as to release in *Scire facias.*

(21.) § Note that, in a *Scire facias, profert* was made of a release with respect to parcel, and it was denied. And as to the rest they were at issue on non-tenure. And by the jury the non-tenure was found; and it was found that the release was not the plaintiff's deed. —Hillary. With regard to that parcel in respect of which the deed was denied sue execution, and let the other party be taken; and because the witnesses to the deed have agreed with the jurors the deed shall be cancelled. And as to the rest sue a writ against the tenants.

Replevin.

(22.) § Replevin in respect of two oxen and two cows, the cows in one place, and the oxen in another place, by one count and one writ.—*Bret* made two cognisances for homage in arrear.—*Rokel.* As to one

Nos. 21, 22.

(21.) [1] § *Nota* qe relees en un[3] *Scire facias* fut mys avant en barre[4] a parcelle,[5] et[6] fut dedit. Et sur nountenue del remenant furent a issue. Et par enquest fut trove la nountenue; et fut trove qe ceo ne fut pas son fet.—Hill. Quant a cele[7] parcelle ou le fet fut dedit suez execucion, et lautre soit pris; et[8] pur ceo qe les tesmoignes[9] ount acordez ove lenquest le fet serra dampne. Et del remenant suez[10] brief vers les tenantz. A.D. 1344. *Nota* de relees en *Scire facias*.[2]

(22.) [11] § *Replegiari* de deux boefs, deux vaches, les vaches[12] en un lieu, et les boefs[13] en autre lieu, par un counte et un brief.—*Bret*[14] fist[15] deux conissaunces[16] pur homage[17] arrere.[18]—*Rokel.* Quant al *Replegiari.*

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

[2] Of the marginal note the word *Nota* is from Harl. and 25,184 alone, and the words de relees en are from Harl. alone.

[3] un is omitted from L.

[4] The words en barre are omitted from L.

[5] L., de par celuy, instead of a parcelle.

[6] Harl., qe.

[7] cele is omitted from Harl.

[8] et is omitted from Harl.

[9] L., testemoignez.

[10] L., suytes.

[11] From L., Harl., and 25,184. Two cases seem to have been confused in the report. On the *Placita de Banco*, Easter, 18 Edw. III., R° 350, is a Replevin brought by John Tryvet of Otterhampton, against James son of Nicholas de Audele, and Roger son of James, in which a taking of two oxen is alleged at Puriton, and a taking of two cows at Otterhampton (Somerset). In this case, however, the point of "entire service" did not arise, but issue was joined on the plea, "hors de son fee."

On R° 152, d. is the record of an action brought by William de St. George of Hungrihattele (Hungry Hatley, otherwise Hatley St. George), against Richard "Ballivus Magistri Domus Scholarium de Mertone," of Oxford, in which the taking of one horse at Gamely (Gamlingay? Cambs.) was alleged.

[12] The words les vaches are from L. alone.

[13] Harl., bestes.

[14] L., *Brette.*

[15] L., fet; Harl., fyt.

[16] L., conussances.

[17] L., lomage qad fete.

[18] According to the last-mentioned record "prædictus Willelmus "tenet de præfato Magistro unam "acram terræ, cum pertinentiis, in "eadem villa, quæ vocatur Mulle-"wardes Aker subtus Porteswode, ". . . . . per homagium, fidelita-"tem, et servitium trium denari-"orum per annum," and the cognisance was for these services in arrear.

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A.D. 1344. cognisance, whereas he supposes that we hold one acre of land, &c., by the services of 10 shillings, we hold that acre of land and other land (and he said how much) by homage, &c., and by the services of 10 shillings, as one entire tenancy; judgment of the cognisance, by which it is supposed that the parcel is in gross and by itself.—Willoughby. That can be saved to you by protestation; but since you do not deny that you hold of him, and that the services are in arrear, be the tenancy more or less, which cannot make an issue between you, it seems that you shall not be answered: for that which he calls one acre may possibly be two, but that could not make an issue.—*Richemunde.* It is right that all the tenancy, which is one, should be included in the cognisance, as well as the services, because otherwise it would follow that he would charge me twice, and in different parcels, and for the entirety of the services in each parcel, which would be contrary to reason.—Willoughby. As to the mischief you will be aided by way of protestation.—And, notwithstanding, he who made the cognisance was put to answer whether that land and other land was one entire tenancy or not.—And the plaintiff

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une conisaunce,[1] la ou il suppose qe nous tenoms [une acre[2] de terre, &c., par les services de x*s.*, nous tenoms][3] cele[4] acre[2] de terre[5] et autre terre, et dit come bien, par homage,[6] &c., et par les services de x*s.*, com un entier tenance; jugement de la conisaunce,[1] par quel est suppose la parcelle estre un gros a par luy.[7]—Wilby. Ceo[8] vous purra estre sauve[9] par protestacion; mes quant vous ne deditez[10] pas qe vous ne tenetz de luy, et qe les services sount arrere, soit la tenance plus ou meyns, qe[11] ne fra pas issue entre vous, il semble qe vous serrez pas respondu[12]: qar ceo qil appelle un acre[2] ces[13] sount par cas ij, mes ceo ne put fere issue. —*Rich.* Il est resoun qen la conisaunce[1] tut la tenance, qest un, soit compris si avant come les services, qar autrement ensuereit qil moy chargereit ij foitz, et[14] en divers[15] parcelles, et en chescun parcelle de lentere des services, qe serreit countre resoun.—Wilby. Quant al meschief vous serrez eide par voie de[16] protestacion.—Et, *non obstante*, celuy qe fit la conisaunce[1] fut mys a respoundre si cele terre et autre terre fut un entier tenance ou noun. A.D. 1344.

[1] L., conussaunce.

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

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

[4] Harl., le.

[5] The words de terre are from Harl. alone.

[6] L., carue de terre.

[7] According to the last-mentioned record, the plea was "quod ipse "tenet de prædicto Magistro quin- "que acras terræ, cum pertinentiis, "in prædicta villa, unde prædicta "acra est parcella, per servitia "prædicta, ut per unum integrum "servitium, &c. Et hoc paratus "est verificare, &c., unde petit "judicium de cognitione prædicta," &c.

[8] Harl., il.

[9] L., salve.

[10] L., dites.

[11] Harl., ceo; the word is omitted from 25,184.

[12] L., and 25,184, respondrez pas, instead of serrez pas respondu.

[13] ces is omitted from Harl.

[14] et is omitted from L.

[15] Harl., diverses.

[16] The words voie de are from Harl. alone.

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A.D. 1344. maintained that it was one entire tenancy and held by one entire service; ready, &c.—And the other side said the contrary.

Forfeiture of Marriage.

(23.) § Forfeiture of Marriage brought by John de Holand. And he counted that he tendered to the heir a suitable marriage without disparagement, and the heir declined it, and at his full age refused to make satisfaction for his marriage, tortiously, and contrary to the form of the Statute.[1] And exception was taken

[1] 20 Hen. III. (Merton), cc. 6 and 7.

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—Et il meyntynt qe cest un entier tenance[1] et par un entier service; prest, &c.—*Et alii e contra.*[2] A.D. 1344.

(23.)[3] § Forfeture[5] de Mariage par[6] Johan de[7] Holand. Et[8] counta qil luy tendist covenable mariage saunz desparagement,[9] et il refusa, et a son plein age countredit de faire gree de son mariage, a tort, et countre fourme destatut.[10] Et le brief fut chalenge Forfeture de Mariage.[4] [Fitz., *Accion sur lestatut*, 15.]

[1] L., tenance a par luy.

[2] According to the last-mentioned record there was a replication "quod prædictus Willelmus tenet "de præfato Magistro acram terræ "prædictam per servitia supradicta, "sicut ipse in advocare suo præ- "dicto supponit, absque hoc quod "ipse tenet de eo prædictas quinque "acras terræ, unde supponit præ- "dictam acram fore parcellam, &c., "per unum integrum servitium "sicut idem Willelmus dicit." Upon this issue was joined and the *Venire* awarded.

[3] From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 144, d. It there appears that the action was brought by John de Holand against John son and heir of Lambert atte Brigge, in respect of the marriage of the said heir "eo quod prædictus Lambertus "terram suam de eo tenuit per "servitium militare, ac [cum] "idem Johannes de Holand præ- "fato Johanni filio Lamberti, dum "infra ætatem et in custodia sua "fuit, competens maritagium abs- "que disparagatione, juxta formam "Statuti de communi consilio "regni Regis Angliæ inde pro- "visi, sæpius obtulerit, prædictus "Johannes filius Lamberti, marita- "gium illud renuens, eidem Jo- "hanni de Holand de maritagio "illo satisfacere contradicit, ad "grave damnum, &c., et contra "formam Statuti."

[4] The words de Mariage are omitted from 25,184.

[5] 25,184, forfaiture.

[6] L., pur.

[7] de is from L. alone.

[8] Harl., qe.

[9] 25,184, despariagement.

[10] According to the roll, the declaration was "quod cum mari- "tagium prædicti heredis ad ipsum "Johannem de Holand pertineat eo "quod prædictus Lambertus tenuit "de eo quatuor acras prati, cum "pertinentiis, in Swynesheved, per "homagium, fidelitatem, et ad scu- "tagium domini Regis quadraginta "solidorum, cum acciderit, quad- "raginta denarios, et ad plus plus, "et ad minus minus, et per servi- "tium quatuor denariorum per "annum, et faciendi sectam ad "curiam suam de Stevenynge, de "tribus septimanis in tres septi- "manas, de quibus servitiis quæ- "dam Margareta de Holand avia "prædicti Johannis de Holand, "cujus heres ipse est, fuit seisita "per manus cujusdam Johannis "atte Brygge, avi prædicti Johannis "filii et heredis prædicti Lamberti, "ut per manus veri tenentis sui, "tempore pacis, tempore Edwardi "Regis patris domini Regis nunc, "&c., et de ipsa Margareta de-

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A.D. 1344. to the writ on the ground that in the conclusion it has the words "contrary to the form of the statute," and in the recital it is not supposed that this is forbidden by statute, and also because the penalty in this case is at common law, where the heir marries elsewhere, and it is not counted that he did so, and therefore exception is taken to the writ; besides, it is provided by the statute that the guardian shall hold the land in such a case, and not have this suit.—*Thorpe.* As to the first point, both the writ and the count purport that the plaintiff tendered him a marriage according to the form of the statute; and then afterwards the count purports that he declined it, &c., and refused to make satisfaction, contrary to the form of the statute, and that is pursuant. And as to the exception that it has not been counted that he married elsewhere, that would be to deraign double value, by reason of forfeiture, according to the statute [1]; but we are only in the case of recovering the single value. And as to the third point, that by statute it is provided that the lord shall hold the land, it is possible that his marriage is worth £1,000, and that he has

[1] 20 Hen. III. (Merton), c. 6.

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de ceo qen conclusion il voet countre fourme destatut, A.D. 1344. et en la[1] recitacion nest pas suppose qe ceo soit[2] defendu par estatut, et auxi qe punisement[3] en ceo cas est a la comune ley, par la ou leire se marie par aillours, et ceo nest pas counte qil fist,[4] par quei le brief est chalenge; ovesqe[5] ceo, par estatut est[6] limite qil tendra la terre en tiel[7] cas et noun pas cel[8] suyte.—*Thorpe.* Quant al primer point, et[9] le brief et le[10] counte voet qil luy tendist mariage par fourme destatut; [et donqes voet le counte apres qil refusa, &c., et de gree fere countredit countre[11] fourme destatut],[12] et cest pursuaunt. Et a ceo qest chalenge[13] qil nest pas counte qil se maria aillours, ceo serreit a derener par forfeture double value par statut; mes nous sumes en cas de recoverir[14] sengle value. Et al terce point[15] qe par statut est done qe le seignur tendra la terre, par cas son mariage vaut[16] a mille[17] *li.* et il[18] nad qun [Fitz., *Accion sur lestatut*, 30.]

" scenderunt prædicta servitia cui-
" dam Johanni ut filio et heredi,
" &c., et de ipso Johanne descender-
" unt prædicta servitia isti Johanni
" qui nunc queritur ut filio et heredi,
" &c., idem Johannes de Holand
" præfato Johanni filio Lamberti,
" dum infra ætatem et in custodia
" sua fuit, competens maritagium
" absque disparagatione, videlicet
" de Isabella filia Johannis Bolle,
" die Lunæ proximo post Festum
" Sancti Hillarii, anno regni
" domini Regis nunc undecimo,
" apud Parteney, in præsentia Jo-
" hannis Claymund et Johannis
" Fox, obtulisset, prædictus Jo-
" hannes filius Lamberti, mari-
" tagium illud renuens, eidem
" Johanni de Holand de maritagio
" illo satisfacere contradixit, et
" adhuc contradicit, unde dicit quod
" deterioratus est et damnum habet
" ad valentiam centum librarum.
" Et inde producit sectam," &c.

[1] The words en la are omitted from L.

[2] Harl., cest, instead of ceo soit.

[3] L., les punissement.

[4] 25,184, fut.

[5] Harl., et ovesqe.

[6] L., qil est.

[7] L., cel.

[8] Harl., tiel.

[9] et is from L. alone.

[10] le is omitted from 25,184.

[11] countre is omitted from L.

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

[13] L., chalange; 25,184, chaunge.

[14] recoverir is omitted from Harl.

[15] point is omitted from Harl.

[16] Harl., vault.

[17] L., xx.

[18] il is omitted from L.

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A.D. 1344. but one acre of land, or possibly has no land, but is mesne, and holds by homage and scutage, without anything more, and that could not remain in the hand of the lord, and therefore I say that it is at the election of the lord to retain the heir's land, or to bring a writ of this nature against the heir.—Willoughby. Answer; the writ is good.—*Grene.* Whereas it is supposed that the ancestor held of him four acres of meadow, we tell you that the great-great-grandfather of the plaintiff enfeoffed one J. of two acres before the statute,[1] by this deed, to hold in socage, and also enfeoffed this same J., before the statute,[1] of the other two acres, and of other tenements, before the statute,[1] to hold of him in socage. And this J. enfeoffed our grandfather, in like form, before the statute.[1] And *Grene* made *profert* of a feoffment in witness of his plea, and said:—Judgment whether an action, &c.—*Thorpe.* That plea is treble: one that there are divers tenancies, and not one, as we suppose; a second that the tenements are holden in socage; a third that he has a lord other than us.—*Grene* was put to hold to one certain conclusion, and held to this "and so he was not his tenant."—*Thorpe.* You see plainly how he does not use our ancestor's deeds with a conclusion to put us to answer, but as evidence that he is tenant of another person; we will aver that the ancestor held of us; ready, &c.—*Grene.* Your ancestor's deed proves that our father was the tenant of another person, and by service of a different kind.—*Thorpe.* You are a stranger using these deeds against us, for you suppose that you are the tenant of another person by service

[1] 18 Edw. I. (*Quia emptores*).

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acre de terre, ou par cas ad nulle terre, mes est mene,[1] et tient par homage et escuage, saunz plus, qe ne purra pas demurer en meyn du seignur, par quei jeo die[2] qil est al eleccion le seignur de retener la terre leir,[3] ou porter vers leir,[4] tiel brief.—Wilby. Responez; le brief est bon.—*Grene.* La ou suppose est[5] qil tient de luy iiij acres de pree,[6] nous dioms qe le tresaiel le pleintif feffa de les ij acres[7] avant statut, par ceo fait, un J. a tener en socage, et auxi feffa avant statut mesme celuy J. de les autres ij acres,[8] et autres tenementz, avant statut, a tener de luy en socage, qel J. feffa par autiel forme nostre aiel avant statut; et mist avant feffement tesmoignaunt son plee; jugement si accion, &c.—*Thorpe.* Ceo plee est treble: un qils sount divers tenances, et noun pas un, come nous supposoms; autre qe les tenementz sount tenus en socage; le terce qil ad autre seignur qe nous.—[*Grene* fut mys a tener a un certein conclusion, et se[9] tient a ceo, issi nest il pas soun[10] tenant.—*Thorpe.*][11] Vous veiez bien coment il ne use pas les fetz[12] nostre auncestre en conclusion de nous mettre a respoundre, mes en evidence qil est autri tenant; nous voloms averer qe launcestre tient de nous; prest, &c.—*Grene.* Le fet vostre auncestre prove qe nostre pere fut autri tenant, et par autre manere de service.—*Thorpe.* Vous estes estraunge de user les fetz[12] vers nous, qar vous supposez qe vous estes autri tenant par altre manere de service,[13] A.D. 1344.

[1] L., meen, instead of est mene.
[2] Harl., croi.
[3] leir is omitted from L.
[4] The words vers leir are omitted from Harl.
[5] L., il suppose, instead of suppose est.
[6] L., terre.
[7] The words de les ij acres are from L. alone.
[8] acres is omitted from L.
[9] Harl., and 25,184, ceo.
[10] soun is from Harl. alone.
[11] The words between brackets are omitted from L.
[12] L., fetes; Harl., faitez.
[13] The words par altre manere de service are from L. alone.

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A.D. 1344. of a different kind, and consequently a stranger. But if you would have pleaded as our tenant, accepting it as a fact that we had seignory over you, and had, as privy, pleaded the deed as to the manner of the tenancy, that is to say, that you hold in socage by virtue of this deed executed in favour of the person whose estate you have, it would be otherwise.—*Grene.* It is possible that I cannot by the deed deprive him of the averment that our ancestor held of him, because I cannot aid myself by the deed, as being a stranger, but now his averment is not admissible unless he will say that our ancestor held of him by knight service; and he cannot aver the knight service contrary to the deed of his ancestor, which proves socage.—Sharshulle. You cannot be aided in that way, because since you were previously at a traverse in respect of the tenancy, enquiry cannot be had, on your mise, as to the mode of tenure, nor consequently shall you be aided by a plea in law regarding it.—Willoughby, *ad idem.* Suppose he were to avow upon you on the ground that you hold of him by knight service, and you were to aid yourself by the deed in order to prove the tenancy, would anything else lie in your mouth but a disclaimer? as meaning to say that it would not. So in the matter before us.—*Grene.* Suppose I were to say that our ancestor did not hold of him by knight service, would not enquiry be had as to both.—Sharshulle. Certainly not; only as to the tenancy.—*Quære.* —*Grene.* Our ancestor held of the heirs of Francis, and not of him by knight service.—*Thorpe.* You cannot have both—to prove that you are the tenant of

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et *per consequens* estraunge. Mes si vous voldrez[1] aver plede come nostre tenant, acceptaunt qe nous ussoms seignurie outre vous, et ussez come prive plede par[2] le fait a la manere de la tenaunce, saver, qe vous tenez en socage par ceo fet fait a celuy qi estat vous avez, autre serreit.—*Grene.* Par le fet jeo ne puisse,[3] par cas, [luy toller del averement qe nostre auncestre tient de luy, pur ceo qe jeo ne moy puisse][4] eider,[5] qar jeo[6] su[7] estraunge, mes ore nest son averement resceivable sil ne die qe nostre auncestre tient de luy par service de chivaler; et la chivalrie ne put il averer countre le fet son auncestre, qe le prove socage.—Schar. Vous ne poetz pas estre eide par cele voie, qar quant avant[8] vous estes a travers de la tenance, homme ne poet a vostre myse enquere de la manere de la tenance, *nec per consequens* par plee en[9] ley a cel regard vous ne serrez eide.—Wilby, *ad idem.* Jeo pose qil avowast sur vous pur ceo qe vous tenez de luy par service de chivaler, et vous eidesses[10] par le fet[11] a prover la tenance, girreit il en vostre bouche autre qun desclamer? *quasi diceret non. Sic in proposito.* —*Grene.* Jeo pose qe jeo deise[12] qe nostre[13] auncestre ne tient pas de luy par service de chivaler, nenquerra[14] homme de lun et lautre?—Schar. Noun, certes, forqe de la tenance.—*Quære.*—*Grene.* Nostre auncestre tient des heirs Fraunceys,[15] et noun pas de luy par service de chivaler.—*Thorpe.* Vous naverez pas lun et lautre a prover qe vous estez autri A.D. 1344.

[1] L., vodretz.
[2] Harl., and 25,184, et.
[3] The words jeo ne puisse are from L. alone.
[4] The words between brackets are from L. alone.
[5] Harl., jeo me voille eider.
[6] Harl., coment qe jeo.
[7] Harl., sue; 25,184, suy.
[8] avant is from L. alone.
[9] Harl., et.
[10] Harl., eideses; 25,184, eidisez.
[11] Harl., fait; 25,184, fetz.
[12] Harl., deusse.
[13] 25,184, vostre.
[14] L., enquerra.
[15] Harl., Fraunk.

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A.D. 1344. another, and to traverse the mode of tenure. And I know well that on a writ of Wardship it is a good issue to say that the ancestor did not hold of the plaintiff by knight service, and in that case the tenancy is admitted, and the issue taken on the mode of tenure; and so it can be in this case; if he will admit that he is our tenant he can well have a traverse as to the mode of tenure; but by the issue which he tenders he would have both; and the one is contrary to the other, because the effect of one is to acknowledge the tenancy, and of the other to contradict it.—Willoughby. Deliver yourself; you shall not have both in your issue.—*Grene.* The ancestor did not hold of him by knight service; ready, &c.—Hillary. That you may well have, but then you must take out all the rest of your plea.

Mesne. (24.) § Mesne, where they were at issue "not distrained by his default." It was found by verdict that the tenant of the demesne brought a writ of Mesne against his lord who is now plaintiff in this writ, and process was continued until he recovered damages against him, that is to say, 25 marks; and upon this loss, and upon the default of his superior lord, against whom this writ is now brought, the present plaintiff brought his writ of Mesne. And the point was touched that when the person who was plaintiff in this special case counted in general terms that he was distrained through his lord's default, and did not disclose his matter, as by law he ought to

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tenant, et a traverser la manere de la tenance. Et en brief de Garde jeo say bien qil est bon issu a dire qe launcestre ne tient pas del pleintif par service de chivaler, et la est la tenance conu, et lissu pris sur la manere de la tenance; et auxi purra estre en ceo cas; sil vodra[1] conustre destre nostre tenant il avera bien travers sur la manere de la tenance; mes par cesty issu il voleit aver lun et lautre; et lun est contrarie a lautre, qar[2] lun est a conustre la tenance, et lautre a contrarier.[3]—Wilby. Deliverez vous; vous naveretz pas lun et lautre en vostre issu.—*Grene.* Launcestre[4] ne tient pas de luy par service de chivaler; prest, &c.—Hill. Ceo averetz vous bien, mes donqes covient ouster tut le remenant de vostre plee.[5] A.D. 1344.

(24.)[6] § Mene, ou ils furent a issue nient destreint par sa defaut. Trove fut par verdit qe le tenant del demene porta brief de Mene vers son seignur qest ore pleintif a ceo brief, et proces continue tanqil recoveri damages vers luy, saver, xxv.[8] marcz; et sur cele perde, et[9] en defaut de son seignur paramount, vers qi ceo brief est ore[10] porte, il[11] porte son brief de Mene. Et fut touche quant il qest pleintif counta[12] en ceo cas especial generalment qil fut destreint par sa defaut, et ne[13] descloa pas sa matere, come par ley il dut aver fait, coment Mene.[7] [Fitz., *Mesne*, 35.]

[1] Harl., voudra; 25,184, voldra.
[2] L., per quai.
[3] L., contrarie.
[4] Harl., and 25,184, Lautre.
[5] On the roll, the declaration is immediately followed by the plea: "quod prædictus Lambertus non "tenuit prædictum pratum de præ- "dicto Johanne de Holand per "servitium militare sicut idem "Johannes de Holand per breve "suum prædictum et narrationem "suam supponit."

Issue was joined upon this and the *Venire* awarded, but nothing further appears on the roll.
[6] From L., Harl., and 25,184.
[7] L., Meen. Some other words of a marginal note have been cut in binding.
[8] Harl., xx.
[9] et is omitted from L.
[10] ore is omitted from L.
[11] L., et.
[12] L., and 25,184, replia.
[13] ne is from Harl. alone.

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A.D. 1344. have done, although his count, as was allowed, might be in general terms, he lost the advantage of being aided on such special matter by verdict, as such matter does not properly fall within the verdict of a jury; and also it is understood by the nature of the pleading that the plaintiff was distrained for the services due, as common intendment supposes, and not that he was distrained in order to effect execution of damages recovered against him.—And SHARSHULLE said that if a tenant by his warranty would have a *Warrantia Chartæ*, he must be aided by special matter, and that by means of a plea. So in the case before us.—*Blaykeston.* The tenant in demesne recovered damages against me, not by reason of any wrong that there was on my part in not acquitting of services, but by reason of the mischief that there was to him in that he could not be otherwise aided, and also because I could have my recovery over against my mesne lord, in whom the default was, and cast my damages upon him; now it is found that the whole default was in him, and the writ serves me in this case, and the cause for which I shall recover damages is found by judgment.—And, notwithstanding, by reason of the opinion that he ought in pleading to have disclosed the special matter, and not have taken the general issue, the plaintiff was nonsuited.

Recordari on a writ brought in a Court of Ancient Demesne.

(25.) § *Recordari facias loquelam.—Notton.* We tell you that the lord of the manor was seised and enfeoffed A., whose estate we have, and so the land is frank fee.—*Grene.* The seisin of the lord does not

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qe son counte, come fut graunte,[1] dust estre general, A.D. 1344. il perdist lavantage destre eide sur tiel matere especial par verdit, quele matere proprement ne chiet[2] pas en verdit du pais; et auxint par tiele[3] plee est entendu qe le pleintif fut destreint pur[4] les services duez, come comune entente le suppose, et noun pas qil fut destreint pur execucion faire des damages recoveris[5] vers luy.—Et[6] SCHAR. dit qe, si[7] tenant par sa garrauntie voleit aver Garrauntie de Chartre, il covendreit qe especial matere luy eidast, et ceo par plee. *Sic in proposito.—Blaik.* Le tenant en demene recovera damages[8] vers moy, noun pas pur tort qil y[9] avoit en moy de noun acquitaunce, mes pur le meschief de sa part qil ne put estre[10] autrement eide, et auxi pur ceo qe jeo poay[11] outre aver mon[12] recoverir vers mon mene,[13] en qi la defaut fut, et gettre les damages sur luy; ore[14] est trove qe tut la defaut fut en luy, et le brief en le cas moy seert, et la[15] cause pur quei jeo recoverai damages est trove par jugement.—Et, *non obstante, propter opinionem* qil covendreit par plee aver desclos la matere especial, et noun pas aver pris issu general,[16] le pleintif fut nonsuy.

(25.)[17] § *Recordari.*[19]—*Nottone.* Nous vous[20] dioms qe le seignur du maner fut seisi et feffa A., qi estat nous avoms, issi fraunc fee.—*Grene.* La seisine

Recordari de brief [porte] en auncien demene.[18]

[1] L., garraunti de brief, instead of fut graunte.
[2] L., git; Harl., cheit.
[3] L., and Harl., le.
[4] Harl., and 25,184, par.
[5] Harl., recoverez.
[6] Et is omitted from Harl.
[7] L., si le.
[8] damages is omitted from 25,184.
[9] y is from L. alone.
[10] estre is omitted from L.
[11] L., poy; 25,184, poiay.
[12] 25,184, tut mon.
[13] Harl., moun seignour, instead of mon mene.
[14] ore is omitted from L.
[15] la is omitted from L.
[16] MSS., especial.
[17] From L., Harl., and 25,184.
[18] The words of the marginal note subsequent to *Recordari* are from L. alone.
[19] *Recordari* is omitted from Harl.
[20] vous is omitted from Harl.

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A.D. 1344. prove it to be frank fee, because it might be ancient demesne in his hand, if he did not come to it by escheat or in some other manner by very title, nor does his feoffment prove it, because they may have enfeoffed to hold according to the custom of the manor, in which case it would remain ancient demesne.—Willoughby. Is it not sufficient to say that the lord of the manor was seised and enfeoffed?—*Grene.* Do you recollect an Assise reversed before yourself?—Willoughby. Yes; they took as their cause for proceeding to the Assise that the land was in the King's hand, and so frank fee; and the King's seisin proves rather ancient demesne than frank fee; but it is not so in the case of another lord.

Novel Disseisin. (26.) § Novel Disseisin for a Prior[1] against two persons, that is to say Simon[1] and Robert.[1] Simon said that he was the villein of one A.[2] Robert said that he held jointly with Simon, and said that the Prior is removable. The Prior said that he is elective

[1] For the names *see* p. 117, note 9.

[2] For the real name *see* p. 117, note 11.

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le seignur ne prove pas qe ceo soit fraunc fee, qar en sa mayn purra ceo estre aunciene demene, sil navenist[1] par eschete ou en autre manere par verrei title, ne son[2] feffement nient, qar ils pount aver[3] feffe[4] a tener par les usages del maner, en quel cel cas ceo[5] demoert auncien demene.—Wilby. Nest ceo assetz a dire qe le seignur du maner fut seisi et feffa?—*Grene.* Vous sovient[6] il Dassise reverse devant vous mesmes?—Wilby. Oil; ils pristrent[7] pur cause daler a lassise pur ceo qe la terre fut en la mayn le Roi, et issint fraunc fee; et la seisine le Roi prove plus tost[8] auncien demene qe fraunc fee; mes si nest ceo pas dautre seignour. A.D. 1344.

(26.)[9] § Novele Disseisine pur[10] un Priour vers ij, saver, Simond et Robert. Simond dit qil est vileyn un A.[11] Robert dit qil tient joint ove S., et dit qe le Priour est remuable.[12] Le Priour dit qil est Novele Disseisine. [17 Li. Ass., 19.]

[1] Harl., naveit.

[2] Harl., soit.

[3] aver is from L. alone.

[4] Harl., and 25,184, feffer.

[5] L., and Harl., se.

[6] Harl., and 25,184, survyent.

[7] L., il prist, instead of ils pristrent.

[8] Harl., cest.

[9] From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 331. It there appears that the action was brought, in the first instance, before Justices of Assise in the county of Devon, by Imbert Prior of the church of St. Mary Magdalene, Barnstaple, against Robert Boghe, parson of the church of Horewode (Harwood), and Simon and Richard his brothers, and John Cornissha, in respect of 20 acres of land, and 2 acres of meadow, in Barnstaple. According to the record, John answered as bailiff, and said that he and the parson had nothing in the tenements, and traversed the disseisin. Issue was joined upon this to the Assise.

[10] pur is omitted from L.

[11] According to the record "Simon " dixit quod ipse fuit tenens tene- " mentorum in visu positorum, " et dixit quod ipse fuit villanus " cujusdam Ricardi de Bloyou, qui " quidem Ricardus non nomina- " batur in brevi, unde petiit judi- " cium de brevi, &c."

[12] According to the record, " Ro- " bertus dixit quod ipse tenuit " tenementa in visu posita con- " junctim cum prædicto Simone, " et dixit quod pro eo quod Priora- " tus ecclesiæ beatæ Mariæ Mag- " dalenæ de Barnestaple fuit quæ- " dam cella Abbathiæ Sancti " Martini de Chauns in Civitate

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A.D. 1344. and perpetual. And as to the other point he said that Simon is named in the writ only as a disseisor. The Assise said that the Prior is perpetual, &c., and that his predecessor leased to one J.[1] for his life, and that the present Prior, reciting the lease, confirmed it to J.[1], and Simon, who is A.'s villein, and Robert, against whom, &c., for their lives, and J. is dead, and the Prior ousted Simon and Robert, and they re-entered. And on the verdict judgment of the writ was demanded

[1] For the real name *see* p. 119, note 7.

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electif, et perpetuel, &c. [Et quant al autre, il dit qe S. est nome forqe come disseisour.[1] Lassise dit qe le Priour est perpetuel, &c., et][2] qe son predecessour lessa a un J. pur sa vie, et qe cestuy Priour, recitaunt[3] le[4] lees, conferma a J., et[5] Simond, qest vileyn A.,[6] et Robert, vers queux, &c., pur lour vies, et J. est mort, et le Priour ousta S. et R., et ils reentrerent.[7] Et sur verdit fut demande jugement A.D. 1344.

" Parisiensi, quæ quidem Abbathia " fuit de potestate illorum de " Francia, dominus Rex seisiri " fecit in manum suam omnes " possessiones ad Prioratum præ- " dictum spectantes, occasione " guerræ inter ipsum dominum " Regem et adversarios suos de " Francia motæ, qui quidem domi- " nus Rex ad firmam tradidit præ- " dicto Priori Prioratum prædictum " pro certa firma eidem domino " Regi annuatim solvenda, et sic " dixit quod idem Prior firmarius " domini Regis exstitit, et dixit " quod idem Prior deputatus fuit " per Abbatem suum Abbathiæ " prædictæ, et ammotivus ad " voluntatem ejusdem Abbatis, et, " ex quo prædictus Prior non " ostendebat quod ipse fuit Prior " perpetuus, eo quod non ostendebat " quod ipse fuit a Conventu electus, " nec habuit sigillum commune nec " aliquod hujusmodi quod Priori " perpetuo competisse debuit, in " quo casu nullum liberum tene- " mentum in persona ipsius Prioris " vestire potuit, petiit judicium si " hoc breve seu aliquod aliud breve " ad aliquod liberum tenementum " recuperandum eidem Priori com- " petere potuit, &c."

[1] According to the roll, the Prior's replication was, ("non cognoscendo " quod ipse tenuit Prioratum præ- " dictum de domino Rege pro certa " firma eidem domino Regi annua- " tim solvenda) dixit quod die im- " petrationis brevis sui . . . . . " prædictus Robertus fuit solus " tenens tenementorum in visu pos- " itorum, cum pertinentiis, absque " hoc quod prædictus Simon tunc " aliquid habuit in eisdem, immo " nominabatur in brevi tanquam " coadjutor disseisinæ prædictæ. " Et dixit quod ipse fuit Prior " perpetuus Prioratus prædicti, et a " Conventu ejusdem Prioratus " electus, absque hoc quod ipse " fuit deputatus per Abbatem " Abbathiæ prædictæ, seu ammo- " tivus ad voluntatem ejusdem " Abbatis. Et hoc paratus fuit " verificare. Et petiit quod pro- " cederetur ad captionem Assisæ, " &c."

Robert made no answer and the Assise was taken.

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

[3] Harl., and 25,184, rescitaunt.

[4] Harl., ceo.

[5] et is from Harl. alone.

[6] The words qest vileyn A., are from L. alone.

[7] The verdict of the Assise was, according to the roll, " quod " prædicto die impetrationis brevis, " prædicti Robertus et Simon " tenuerunt conjunctim tenementa

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A.D. 1344. on the ground of the omission of the lord.—*Grene.* The confirmation made to Simon and Robert, who had nothing, is worthless; therefore they held only by abatement, in which case, through Simon's disclaimer, the whole is in Robert.—Willoughby. Through the statement of Simon that he is a villein the freehold is immediately in A.[1] his lord, and the omission to name A.[1] abates the writ.—*Thorpe.* And if he does become tenant through the statement of his villein, it is only of a moiety, and that by a several title; and so the writ is good as to a moiety against the other.—Willoughby.

[1] For the real name *see* p. 117, note 11.

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de brief par lentrelesser le seignur.—*Grene.* Le conferment fet a S. et R., qe rien navoint, est de nulle value; donqes navoient ils forqe par abatre, en quel cas par le desclamer S. tut est en[1] R.—Wilby. Par la parole S. qil est[2] vileyn tantost est le fraunctenement en A. son seignur[3] qi nient nomer abate le brief.—*Thorpe.* Et sil devint tenant par la parole son vileyn, ceo nest forqe de la moite, et ceo par several title; et issint le brief bon de la[4] moite vers lautre.—Wilby. Nul sciet[5] son A.D. 1344.

" in visu posita, prout prædictus " Robertus superius allegavit. " Dixerunt etiam quod prædictus " Prior fuit Prior Prioratus præ- " dicti perpetuus, et a Conventu " suo electus, et non deputatus per " Abbatem Abbathiæ prædictæ, nec " ammotivus ad voluntatem ejus- " dem Abbatis. Et dixerunt quod " quidem [*sic*] Prior ecclesiæ " beatæ Mariæ Magdalenæ de " Barnestaple, prædecessor præ- " dicti Prioris nunc, fuit seisitus " de tenementis prædictis ut de " jure ecclesiæ suæ prædictæ, qui " quidem Prior, prædecessor, &c., " eadem tenementa, cum perti- " nentiis, dimisit quibusdam Ber- " nardo atte Boghe, et Bernardo " filio suo, tenenda ad totam vitam " ipsorum Bernardi et Bernardi, " et postea prædictus Bernardus " filius, &c., et similiter prædictus " Prior prædecessor, &c., obierunt, " post quorum mortem prædictus " Bernardus atte Boghe statum " suum continuavit in tenementis " prædictis, et postea quidam alius " Prior prædecessor, &c., tenementa " prædicta, cum pertinentiis, con- " cessit prædicto Bernardo atte " Boghe et prædictis Roberto et " Simoni, tenenda ad totam vitam " ipsorum Bernardi atte Boghe, " Roberti, et Simonis, et postea " prædictus Bernardus pater, &c., " obiit, post cujus mortem prædic- " tus Prior nunc intravit tenementa " prædicta, et prædicti Robertus et " Simon ipsum inde ammoverunt.

" Recognitores, quæsiti si præ- " dictus Bernardus atte Boghe " statum suum quem habuit per " primam concessionem ei factam " in tenementis prædictis continu- " avit tota vita sua, aut idem " Bernardus se de tenementis illis " deposuit antequam prædicta con- " cessio facta fuit sibi et prædictis " Roberto et Simoni de tenementis " prædictis, dixerunt quod ipse " nunquam se deposuit de tene- " mentis illis, sed primum statum " suum quem habuit in eisdem " continuavit tota vita sua.

" Quæsitum fuit etiam ab eisdem " recognitoribus de damnis præ- " dicti Prioris nunc si disseisina " adjudicaretur, qui assiderunt ea, " si, &c., ad viginti solidos."

[1] en is from L. alone.

[2] Harl., and 25,184, qest, instead of qil est.

[3] The words son seignur are omitted from L.

[4] Harl., lautre.

[5] L., seet; Harl., soit.

No. 27.

A.D. 1344. No one knows his several portion, and therefore they hold in common, because the lord is in the estate of his villein. And one has seen a writ brought against a lord and his villein, and has seen the villein, by permission of his lord, vouch and be warranted, saving to the lord the servitude.—And by judgment Willoughby abated the writ.—Look among the records.

Novel Disseisin. (27.) § Novel Disseisin where a lease had first been made, for a term of years, by a husband, of land which was of his wife's right, and subsequently a confirmation in fee simple as security for the term. And it was found by verdict that this was as security for the term, in such a manner, that is to say, that there had been a verbal agreement that the lessee should have only the term, but of that special covenant no specialty was made. Therefore it was adjudged that this was a feoffment in fee simple.—And nevertheless it was said that it has been seen where a man enfeoffed another in fee simple by charter, with the intention that the feoffee should re-enfeoff him jointly with his wife, and this condition was stated verbally on the livery of seisin, but no specialty thereof

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several, par quei ils tenent en comune, qar le seignur est einz de lestat son vileyn. Et homme ad vewe le brief porte[1] vers le seignur et son vileyn, et le vileyn,[2] par[3] suffraunce[4] le seignur, sauve[5] a luy la servitute, voucher et[6] estre garraunti.—Et par agarde Wilby[7] abatist le brief.—*Quære inter*[8] *recorda.*[9] A.D. 1344.

(27.)[10] § Novele disseisine ou primes lees[11] fut fait a terme daunz, par le baroun, de terre qest du dreit sa femme, et puis conferment en fee simple en soerte del terme. Et par verdit fut trove qe ceo fut en[12] soerte du terme issint, saver,[13] qe par-launce y avoit qil navereit[14] forqe le terme, mes de cel covenant especial nulle especialte fut fet. Par quei fut agarde qe ceo fut feffement de fee simple. —*Et tamen*[15] ceo fut parle qomme ad vewe estre ajuge qe ou homme feffa autre simplement par chartre, et a purpos qil luy refeffereit joint ove sa femme, et cele condicion parle sur la livere de seisine, mes nulle especialte de ceo[16] fut fait, *et* Novele Disseisine. [17 Li. Ass., 20; Fitz., *Assise*, 211.]

[1] porte is omitted from Harl.

[2] The words et le vileyn are from L. alone.

[3] par is omitted from L.

[4] 25,184, suffisaunce.

[5] L., salve.

[6] et is omitted from L.

[7] Wilby is omitted from L.

[8] *inter* is omitted from Harl.

[9] Harl., *recordum*. The word *folio* is added in the MSS. The reference appears to be to some volume of extracts. According to the roll a day was given to the parties to hear their judgment before the same Justices of Assise at Westminster. When they appeared a day was given them to hear their judgment on the verdict before the Justices of the Common Bench. The judgment then given was as follows:—"Quia convictum "est per Assisam prædictam quod "prædicti Robertus et Simon, "prædicto die impetrationis brevis, "&c., tenuerunt conjunctim tene-"menta prædicta, prout idem "Robertus superius allegavit, qui "quidem Simon est villanus "prædicti Ricardi de Bloyou, con-"sideratum est quod prædicti "Robertus et Simon eant inde sine "die, et prædictus Prior nihil "capiat per breve suum, sed sit in "misericordia pro falso clamore, "&c."

[10] From L., Harl., and 25,184.

[11] L., le lees.

[12] en is from L. alone.

[13] saver is omitted from Harl.

[14] L., avereit; 25,184, ni avereit.

[15] L., *cum hoc*.

[16] The words de ceo are omitted from L.

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A.D. 1344. was made, and because the feoffee would not re-enfeoff as above, the other, who enfeoffed him, ousted him, that the ouster was by judgment held good, and not a disseisin.—See the record of this Assise among the records, Robert Dighton plaintiff.

Debt against an executor.

(28.) § Debt against an executor.—*Notton.* We tell you that the person whose executor you suppose us to be died intestate, and so could not have any executors. —*Thorpe.* Will you say that you are not executor?—*Notton.* Our plea proves it in law, and your writ in such a case would lie against the Ordinary.—*Richemunde.* Suppose it were as you allege, and you had received letters of administration from the Ordinary, would not you have to answer?—*Quære.*—Willoughby. Answer whether you be executor or not.—*Notton.* He died intestate, and so we are not executor; ready, &c.—Willoughby. That which you say about being intestate will never come on to the roll.—Therefore they are at the general issue that they are executor; ready, &c. —And the other side said the contrary.

No. 28.

tamen pur ceo qe le feffe ne voleit refeffer *ut supra*, A.D. 1344.
lautre qe luy feffa luy ousta, et louster par agarde ajuge bon, et noun pas[1] disseisine.—*Vide*[2] *recordum istius Assisæ inter recorda*,[3] Robert Dighton[4] pleintif.

(28.)[5] § Dette vers executour.—*Nottone.* Nous vous dioms qe celuy qi executour vous nous supposez estre[7] murust intestat, et issint ne put il[8] executours aver.—*Thorpe.* Volez[9] dire qe vous nestes pas executour?—*Nottone.* Nostre plee le prove en[10] ley, et[11] vostre brief en tiel cas girreit vers Lordiner.—*Richem.* Jeo pose qe issi fut come vous alleggez, et qe vous eussez resceu administracion del Ordiner, ne[12] respoundrez vous[13] pas.[14]—*Quære.*—Wilby. Responez si vous soiez executour ou noun.—*Nottone.* Il murust intestat, et issint ne sumes pas executour; prest, &c.—Wilby. Ceo qe vous parlez de intestat ne vendra[15] jammes en roulle.—Par quei ils sount a issue general qils sount executour; prest, &c.—*Et alii e contra.*[16] Dette vers executour.[6]

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[1] pas is from Harl. alone.

[2] L., un.

[3] The word *folio* is added in the MSS. The reference appears to be to some volume of extracts.

[4] L., Digton.

[5] From L., Harl., and 25,184. The record is probably that which is among the *Placita de Banco*, Easter, 18 Edward III., R° 234. An action was brought by William, Abbot of Evesham, against Katharine late wife of William de Pershore, late merchant, of London, as executrix of his will, in respect of 80*l.* alleged to be due to the Abbot by virtue of a bond (*scriptum obligatorium*) executed by the deceased for wool bought of the Abbot.

[6] The words vers executour are from L., in which MS. there are other words of the marginal note which have been cut in binding.

[7] estre is omitted from Harl.

[8] Harl., nulles.

[9] L., voilletz.

[10] Harl., et.

[11] Harl., and 25,184, qar.

[12] ne is from L. alone.

[13] vous is omitted from L.

[14] pas is omitted from 25,184.

[15] L., navendra, instead of ne vendra.

[16] According to the roll Katharine pleaded "quod prædictus Abbas "actionem versus eam de præ- "dicto debito habere non debet, "&c., quia dicit quod ipsa "non est executrix testamenti "prædicti Willelmi de Pershore, "sicut prædictus Abbas per breve

No. 29.

A.D. 1344. Mesne. (29.) § Mesne.—For title to acquittal of services *Grene* said: We are distrained for your homage, and we hold of you by homage and other services, and you are seised of our services.—*Moubray.* You take the seisin for title, and we tell you that we are not seised of your services, nor were by the hand of him from whom you were made purchaser; ready, &c.—And the other side said the contrary.

No. 29.

(29.) [1] § Mene. — Pur title dacquitaunce, *Grene.* Nous sumes destreint pur vostre homage, et nous tenoms de vous par homage et autres services, et vous seisi de nos services.[2]—*Moubray.* Vous pernez la seisine pur title, et vous dioms qe nient seisi de vos services ne par la meyn de cely de qi vous fustes fet[3] purchaceour; prest, &c.[4]—*Et alii e contra.* A.D. 1344. Mene.

" suum supponit. Et hoc parata " est verificare, unde petit judicium, " &c."

The Abbot replied, " quod præ- " dicta Katerina, post mortem " prædicti Willelmi de Pershore, ut " executrix testamenti ipsius Wil- " lelmi, administravit bona et " catalla quæ fuerunt prædicti " Willelmi de Pershore, apud " Evesham et Pershore in eodem " Comitatu." Upon this issue was joined and the *Venire* awarded.

[1] From L., Harl., and 25,184. The record is probably that found among the *Placita de Banco*, Easter, 18 Edw. III., R° 149, d. It there appears that a writ of Mesne was brought by Nicholas de Rolvestone and Katharine his wife, against Gilbert de Neville, for acquittal of the service which Humphrey de Bohun, Earl of Hereford, demanded of them for their freehold in Winterbourne Rolvestone (Rolston, Rollestone, or Rowleston, Wilts).

[2] The declaration was, according to the roll, " quod cum ipsi " teneant unum mesuagium et " undecim virgatas terræ, cum " pertinentiis, in prædicta villa per " feoffamentum Nicholai Lambard " factum ipsis Nicholao de Rolves- " tone et Katerinæ et heredibus de " corporibus ipsorum Nicholai et " Katerinæ exeuntibus, et, si iidem " Nicholas et Katerina, obiant " [*sic*] sine heredibus de corporibus " suis exeuntibus, tunc eadem tene- " menta cum pertinentiis, rectis " heredibus ipsius Nicholai reman- " eant tenenda de prædicto Gilberto " per homagium, fidelitatem, et " servitium duarum marcarum et " unius paris calcarium deaura- " torum pretii sex denariorum, vel " solvendo pro eisdem sex denarios " ad festum Sancti Michaelis " Archangeli pro omni servitio " solvendo, pro quibus servitiis " idem Gilbertus eos acquietare " debet versus quoscumque, præ- " dictus Comes exigit ab eis " homagium, et ad illud faciendum " distringit eos per averia caru- " curum suarum, ita quod, &c., " per quod prædicti Nicholaus et " Katerina sæpius requisiverunt " prædictum Gilbertum quod ipsos " versus prædictum Comitem ac- " quietaret, idem Gilbertus ipsos " nondum acquietavit, sed permit- " tit ipsos pro defectu acquietanciæ " distringi."

[3] L., fetez, instead of fustes fet.

[4] According to the roll, the plea was, " (non cognoscendo quod " prædicti Nicholaus et Katerina " tenent de eo prædicta tenementa " per prædicta servitia tantum) " petit quod ipsi ostendant sibi si " quid specialitatis habeant per " quod ipsum ad acquietanciam " prædictam ligare possint, &c." To this the plaintiff replied " quod " ipsi tenent prædicta tenementa

No. 30.

A.D. 1344. *Scire facias.*

(30.) § Note that on a *Scire facias* in the King's Bench to have execution of a fine, where Sharshulle joined himself *gratis* in aid of the tenant, it was alleged that the tenements were in a vill other than that supposed by the fine. And there was a discussion whether this would be in abatement of the writ, that is to say, for having brought a different writ in a different vill from that in which it might have been brought (on account of variance from the fine) or by reason of non-tenure because the tenements are not included (and according to that intendment execution may be awarded at the demandant's peril)—or otherwise would be in annulment of the fine, which does not lie in the mouth of any one unless he can show that he himself or some other person, whose estate he would claim, had a right at the same time. And the point that it would be in annulment of the fine was touched, because if a fine be levied or judgment rendered in respect of lands in one vill, and execution be effected in another vill, it is a disseisin, and for the same reason one will have a like exception in order to prevent execution. There-

No. 30.

(30.)[1] § *Nota* qen *Scire facias* en Baunk le Roi pur aver execucion dune fyn, ou Schar. se joint *gratis* en eide au tenant, allegge fut qe les tenementz furent en autre ville qe [nest suppose par la fyn. Et fut parle le[3] quel se serreit al abatement du brief, saver, de porter autre brief en lautre ville qe][4] ne put, pur variaunce de la fyn, ou par voie de nountenue qe les tenementz ne sount pas compris, et[5] a cel entent execucion al[6] peril le[7] demandant est agardable, ou autrement qe ceo serreit en anientisment de la fyn, qe ne gist[8] en nully bouche, sil ne purra moustrer qil mesme ou asqun[9] autre, qi estat il voleit clamer, ust dreit a mesme le temps. Et fut touche ceo serreit en anientisment de la[10] fyn, qar si fyn se leve, ou jugement soit rendu des terres en un ville, execucion fet en autre ville est[11] disseisine, et par mesme la resoun pur destourber execucion homme avera tiel challenge. A.D. 1344. *Scire facias.*[2]

" de prædicto Gilberto per præ-
" dicta servitia, prout ipsi superius
" narraverunt, et dicunt quod idem
" Gilbertus seisitus est per manus
" ipsorum Nicholai et Katerinæ de
" prædicto homagio et aliis ser-
" vitiis, et quod ipsi districti sunt
" per prædictum Comitem pro
" homagio eidem Comiti faciendo,
" quod est illud idem servitium de
" quo seisitus est, per quod eos
" acquietare debeat, unde petunt
" judicium, &c." Gilbert rejoined
" quod . . . . . ipse, post
" feoffamentum factum per præ-
" dictum Nicholaum Lambard,
" nunquam fuit seisitus de homagio
" prædictorum Nicholai de Rolves-
" tone et Katerinæ prout ipsi
" supponunt. Et hoc paratus est
" verificare, &c." The plaintiffs
" surrejoined " quod ipsi, post
" prædictum feoffamentum ipsis
" factum per prædictum Nicholaum
" Lambard, se attornaverunt præ-
" dicto Gilberto de prædictis
" homagio et servitiis, et ita
" seisitus est de homagio ipsorum
" Nicholai et Katerinæ." Upon this issue was joined. The award of the *Venire* follows, but nothing further appears on the roll.

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

[2] The marginal note in L. is *Nota*.

[3] Harl., de.

[4] The words between brackets are omitted from L.

[5] et is from L. alone.

[6] Harl., a.

[7] le is from L. alone.

[8] 25,184, gist pas.

[9] asqun is omitted from 25,184.

[10] Harl., and 25,184, del, instead of de la.

[11] L., et; Harl., qest.

Nos. 31, 32.

A.D. 1344. fore the averment was taken as to whether the tenements were in the one vill or the other, but this was *gratis*, and not by rigour of the law.—Therefore *quære*.

Note: Appeal of Maihem.

(31.) § Note that a man was outlawed in an Appeal of Maihem, and sued to have a charter of pardon according to the statute[1] on the ground that this sounds only in Trespass, because the party will only recover damages as in Trespass, and the statute[1] was made in favour of the plaintiff. And the point was touched that in former times, and still according to the rigour of the law, though it is not now the custom, one will in this suit lose member for member, and also the party that is defendant shall be taken by his body on the first day, and cannot make an attorney, nor be held to mainprise, so that this is different from Trespass. And statutes are *stricti juris*.

Quare impedit.

(32.) § A *Quare impedit* was brought for the King against Vitale Testa, and he answered by attorney, whose warrant was in the words Vitale de Testa.—*Thorpe*. His warrant is not in accordance with the original writ, and now at the Grand Distress the defendant does not appear; judgment for the King.—And because there was as much in the warrant and more than in the writ, it was adjudged to be sufficient.—*Quære.*—*Thorpe* counted that it belongs to the King to present to the prebend, &c., because one Simon, heretofore Bishop of Salisbury, was seised of the prebend, and

[1] 5 Edw. III., c. 12.

Nos. 31, 32.

Pur quei laverement fut pris si les tenementz furent en lun ville ou lautre,[1] *sed*[2] *gratis, et non de*[3] *rigore iuris.—Quære ergo.* A.D. 1344.

(31.)[4] § *Nota* qun homme[5] fut utlage en Appel de Maheme,[6] et suyt[7] daver chartre de pardoun par statut pur ceo qe ceo soune forqe en Trespas, qar partie recovera forqe damages come en[8] Trespas, et en favour de pleintif fut statut fet. Et fut touche qen auncien temps, et unqore par reddour de ley, tut ne soit ceo pas use, homme perdra en cele suyte membre pur membre, et auxi la[9] partie defendant serra pris al primer jour par son corps, et ne put fere attourne, ne estre par meinprise, issint qe cest autre qe Trespas. *Et statuta sunt*[10] *stricti juris.* *Nota*: Appelle de Maheme.

(32.)[11] § *Quare impedit* pur le Roy vers Vitale Testa qe respondi par attourne, qe avoit garraunt Vitale de[12] Testa.—*Thorpe.* Son garraunt nest pas acordaunt[13] al original, et ore al Graunt Destresse il ne vint pas; jugement pur le Roy.—Et[14] pur ceo qil y[15] avoit taunt, et plus, en le garraunt qen le brief agarde suffisaunt.[16]—*Quære.*—*Thorpe* counta qal[17] Roi appent a presenter a la provendre,[18] &c., pur[19] ceo qun S.[20] jadys Evesqe de Sarum fut seisi de[21] *Quare impedit.*

[1] Harl., en lautre.
[2] Harl., and 25,184, *et*.
[3] *de* is from L. alone.
[4] From L., Harl., and 25,184.
[5] L., qomme, instead of qun homme.
[6] Harl., Mayn.
[7] Harl., suist.
[8] L., de.
[9] la is from L. alone.
[10] Harl., soit.
[11] From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edward III., R° 258. It there appears that the action was brought by the King against "Vitalis Testa" in respect of a presentation to the prebend of Torleton in the Church of St. Mary, Salisbury.
[12] de is from L. alone.
[13] The words nest pas acordaunt are omitted from L.
[14] Et is from L. alone.
[15] y is from Harl. alone.
[16] Harl., sufficiaunt.
[17] L., qe au.
[18] L., provandre.
[19] L., et; Harl., et pur.
[20] MSS. of Y.B., J.
[21] L., en.

No. 32.

A.D. 1344. gave, &c., whose temporalities, on the death of the Bishop, came into the hand of the King the father of the present King, in whose time the prebend became void. And he made the descent of the presentation to the present King.—*Gaynesford.* He supposes by count that the present Bishop is patron of the prebend, and the Bishop is not named in the writ; and we tell you that Vitale Testa holds the prebend by collation from the Bishop; judgment of the writ.—*Thorpe.* That is to the action.—Willoughby. Yes, according to his intendment the defendant cannot be a disturber. —*Gaynesford.* The prebend was not void while the temporalities were in the King's hand; ready, &c.— And the other side said the contrary.

No. 32.

la provendre,[1] et dona, &c., dount, par la mort A.D. 1344.
Levesqe, les temporaltes devyndrent en la meyn le Roi[2] pere le Roi qore est, en qi temps se voida. Et fist la descente del presentement au Roi qore est.[3]—*Gayn.* Il suppose par counte Levesqe qore est[4] estre patroun de la provendre,[1] qe nest pas[5] nome el[6] brief; et vous dioms qe Vitale[7] Testa[8] tient la provendre[1] par collacion Levesqe[9]; jugement du brief.—*Thorpe.* Cest al accion.—Wilby. Oyl, a sa entent il ne put estre destourbour.—*Gayn.* La provendre[1] ne[10] fut pas[11] voide, esteaunt les temporaltes en le meyn le Roi[12]; prest, &c.[13]—*Et alii c contra.*[14]

[1] L., provandre.

[2] Roi is omitted from L.

[3] According to the roll, the declaration was, "quod quidam "Simon de Gaunt, quondam "Episcopus Sarum fuit seisitus de "advocatione præbendæ prædictæ, "ut de jure ecclesiæ suæ beatæ "Mariæ Sarum, qui præbendam "illam contulit cuidam Willelmo "Testa, clerico suo, et eum instal-"lavit in eadem, tempore pacis, "tempore Edwardi Regis patris "domini Regis nunc. Et post "mortem præfati Simonis de "Gaunt temporalia Episcopatus "prædicti devenerunt in manum "prædicti Edwardi Regis patris, "&c., quo tempore prædicta præ-"benda vacavit post mortem præ-"dicti Willelmi Testa, temporali-"bus in manu ejusdem patris, &c., "sic existentibus, per quod actio "præsentandi ad eandem præ-"bendam accrevit præfato Regi "patri, &c. Et de ipso Edwardo "Rege patre, &c., descendit jus "præsentandi domino Regi nunc, "ut filio et heredi, &c."

[4] est is omitted from L.

[5] pas is omitted from 25,184.

[6] Harl., en; 25,184, en le.

[7] L., Vitaile.

[8] Testa is from 25,184 alone.

[9] Levesqe is from L. alone.

[10] ne is from L. alone.

[11] pas is omitted from L.

[12] The words en le meyn le Roi are from L. alone, the other MSS. substituting, "&c."

[13] The plea was, according to the roll, "quod prædicta præbenda "non fuit vacans tempore quo "temporalia Episcopatus prædicti "fuerunt in manu prædicti Ed-"wardi patris, sicut dominus Rex "supponit." Issue was joined upon this.

[14] It appears further on the roll that, before any verdict passed, the King sent his Letters Patent, dated the 18th of June in the 18th year of his reign, to the bishop of Salisbury in these words:—"Licet, nuper "credentes præbendam de Torle-"tone in ecclesia beatæ Mariæ "Sarum vacasse, et ad nostram "donationem spectasse, eandem "præbendam dilecto clerico nostro "Johanni de Makelesfeld contu-"lissemus, habendam cum suis "juribus et pertinentiis quibus-

No. 33.

A.D. 1344. Error in the King's Bench.

(33.) § A writ of Error was brought in the King's Bench on a judgment given in the Common Bench on a *Præcipe quod reddat*, in which the tenant vouched, and there was a day given on which nothing was done, so that the whole was discontinued, and afterwards they continued the plea between the parties by other adjournments as far as the *Sequatur suo periculo*, and then it was said to the vouchee's attorney that he should sue at his peril, whereas this ought to have been said to the tenant. And these same two points were assigned as errors.—Scot. What is your object

No. 33.

A.D. 1344. Errour en Baunk le Roi.[2]

(33.)[1] § Errour en Baunk le Roi dun jugement taille en Comune Baunk en un[3] *Præcipe quod reddat*, ou le tenant voucha, et un jour y avoit done quant rien fut fait, issi qe tut[4] fut discontinue, et puis ils[5] continuerent le plee entre les parties par autres ajournementz tanqe al *Sequatur suo periculo*, et donqes fut dit al attourne le vouche qil suyst[6] a son peril, la ou il duist aver dit al tenant. Et[7] mesmes ces deux pointz furent assignes pur errour.[8]—Scot. Quel

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" cumque, quia tamen pro certo " sumus informati quod quidam " Vitalis de Testa in pacifica " possessione ejusdem præbendæ " justo titulo et sufficienti existit, et " a longo tempore retroacto extitit, " collationem nostram prædictam " eidem Johanni de præbenda præ- " dicta sic factam tenore præsen- " tium duximus revocandam. Et " hoc vobis et omnibus quorum " interest innotescimus per præ- " sentes." He also sent his writ close to the Justices of the Common Bench directing them " quod ipsi " placito prædicto inter ipsum " dominum Regem et præfatum " Vitalem de præbenda prædicta " coram eis hic supersedeant " omnino, ipsum Vitalem contra " tenorem literarum domini Regis " prædictarum non molestantes in " aliquo sen gravantes."

Judgment was thereupon given for the defendant "salvo jure "Regis."

[1] From L., Harl., and 25,184, but corrected by the record, *Placita coram Rege*, Easter, 18 Edward III., R° 51. It there appears that an action was brought in the Court of Common Pleas by Robert de Holm against William de Oundele and Nicholas Austyn and Anastasia his wife, in respect of a messuage and 23 acres of land, 2 acres of meadow, 3 acres of pasture, and 2 acres of wood in Spaldewyke (Spaldwick, Hunts) in the 14th year of the reign. The tenants vouched John de Aspedene, clerk, to warrant. The record and process of the Court below are, as usual, set out at length in the King's Bench roll, together with the writ of error.

[2] The words en Baunk le Roi are from L. alone.

[3] un is from L. alone.

[4] tut is omitted from Harl.

[5] ils is from L. alone.

[6] L., suyt.

[7] Et is from L. alone.

[8] The assignments of error were, according to the roll, the following:—" Quod diversimode erratum " est in recordo et processu præ- " dictis, eo quod per recordum et " processum prædicta manifeste " patet quod postquam præfati " Willelmus de Oundele, Nicholaus, " et Anastasia tenentes vocaverant " ad warantum Johannem de " Aspedene, clericum, summonen- " dum in Comitatu Huntendoniæ, " et idem Johannes essoniatus " extitit, &c., præceptum fuit Vice- " comiti sicut alias quod summon- " eret prædictum Johannem essendi " apud Westmonasterium ad war-

No. 33.

A.D. 1344. after having reversal of judgment—is it that we should reverse it entirely, or reverse it in part, and proceed to hold the plea on the same original writ?—*Gaynesford.* No, Sir, it must be altogether annulled, because it was not the fault of the Court, but of the party himself.—Scot reversed the judgment, and adjudged that the tenant should have back his land together with the issues.

No. 33.

est vostre entente apres la reverser,[1] le quel nous lui[2] reverseroms [en tut, ou le reverseroms][3] en partie, et tendroms avant le plee sur mesme loriginal[4]? *Gayn.* Sire, nanil; ceo covient estre amorti, qar ceo ne fut pas defaut de la[5] Court, mes de la partie mesme.[6]—Scot[7] reversa le jugement, et agarda qe le tenant reust sa terre, ove les issues.[8] A.D 1344

" antizandum, &c., a die Sancti " Martini in xv dies anno regni " Regis nunc sextodecimo, ubi " idem dies datus fuit partibus " prædictis, et non est compertum " in eisdem recordo et processu " quod partes prædictæ ad eundem " diem comparuerunt, seu quod " aliquid inde ad tunc extitit " factum nisi super quodam " processu inchoato ad Octabas " Sancti Martini tunc proxime " præcedenti [*sic*], quem processum " præfati Justiciarii de Banco " continuaverunt quousque judi- " cium inde redditum fuit. Et sic " præfati Justiciarii in hoc quod " processerunt ad judicium red- " dendum pro petente super " hujusmodi processu erraverunt " omnino.

" Item in eisdem recordo et " processu continetur quod a die " Paschæ in unum mensem anno " regni Regis nunc decimo septimo " dictum fuit attornato prædicti " Johannis de Aspedene, qui " vocatus fuit ad warantum per " prædictos Willelmum, Nicho- " laum et Anastasiam, tenentes, " &c., quod sequeretur suo periculo, " ubi dici debuisset attornato " prædictorum tenentium quod " sequeretur suo periculo, &c. Et " sic in hoc quod præfati Justiciarii " processerunt ad judicium pro " petente, &c., ad proximum diem, " videlicet, a die Sancti Michaelis " in tres septimanas tunc sequente, " et consideraverunt quod prædic- " tus Robertus, petens, &c., re- " cuperaret seisinam suam versus " prædictos Willelmum, Nicho- " laum, et Anastasiam per hoc " quod Vicecomes non misit breve, " &c., ac si dictum esset prius " attornato prædictorum Willelmi, " Nicholai, et Anastasiæ quod " sequeretur, &c., cum non fuit, " immo attornato prædicti Johan- " nis de Aspedene vocati ad " warantum, ut superius patet, " &c., erraverunt omnino, quos " quidem errores prædicti Willel- " mus, Nicholaus, et Anastasia " petunt corrigi et emendari, et " judicium inde redditum tanquam " erronia [*sic*] revocari et adnul- " lari, et justitiam ulterius sibi " fieri, &c."

[1] Harl., reversion.

[2] lui is from L. alone.

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

[4] L., saunz original, instead of sur mesme loriginal.

[5] la is from L. alone.

[6] mesme is omitted from Harl.

[7] 25,184, Schot.

[8] According to the roll, judgment was given in the following form:— " Quia, visis et examinatis recordo " et processu ac judicio inde " reddito prædictis, compertum " est in eisdem quod præfati " Justiciarii de Banco dederunt

No. 34.

A.D. 1344. Note: Voucher.

(34.) § Note that one was vouched, to be summoned in the Counties of Chester and Stafford. And the voucher stood, because he can be summoned in the County of Stafford. It would have been otherwise if he had been vouched in the County of Chester alone.

Voucher granted.

§ Note that a tenant vouched one who was to be summoned in the Counties of Chester and Stafford.—*Notton.* Sir, you see plainly how he has prayed that the vouchee be summoned in one County which is out of the King's jurisdiction, wherefore we demand judgment of this voucher.—*Grene.* We have also vouched him

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(34.) [1] § *Nota* qun fut vouche, qe serra somons en Countees de Cestre et Stafforde. *Et stetit*[3] *vocatio, quia potest summoneri in Comitatu Staffordiæ. Secus esset* sil fut vouche el[4] Counte de Cestre *tantum.* A.D. 1344. *Nota*: Voucher.[2]

§ *Nota*[5] qe le tenant voucha un qe serreit somons en le Countee de Cestre et de Stafforde.—*Nottone.* Sire, vous veiez bien coment il ad prie qe le vouchee soit somons en un Countee qil est hors de la jurisdiccion le Roy, par quei nous demandoms jugement de ceo voucher.—*Grene.* Auxi nous lavoms vouche Voucher graunte. [Fitz., *Voucher*, 5.]

" diem partibus prædictis, et quod " processus super eodem recordo " extitit continuatus usque ad " præfatam quindenam Sancti " Martini anno regni Regis nunc " xvj°, et non est compertum in " eisdem recordo et processu quod " ad eundem diem aliquid super " eodem processu ulterius actum " fuit, et sic processus ille ad tunc " omnino extitit discontinuatus, et " tamen compertum est postea in " eisdem recordo et processu hic, " &c., missis quod præfati Justi- " ciarii de Banco fecerunt pro- " cessum inter partes prædictas de " eisdem tenementis super quodam " processu, &c., qui incipiebat ad " Octabas Sancti Maritini tunc " proxime præcedentes præfatam " quindenam Sancti Martini ac si " processus super brevi originali, " &c., de eisdem tenementis extite- " rat continuatus usque ad easdem " Octabas Sancti Martini, cum " non fuit, prout patet in eisdem " recordo et processu, et quod " iidem Justiciarii de Banco super " eodem processu sic incepto ad " præfatas Octabas Sancti Martini, " absque aliquo waranto, de tene- " mentis prædictis postea pro- " cessum continuaverunt quousque " judicium inde reddiderunt, non " habito respectu ad hoc quod " processus ille sic extitit discon- " tinuatus, per quod videtur Curiæ " quod præfati Justiciarii in hoc " erraverunt. Ideo, ob errorem " illum et alios in dictis recordo et " processu similiter repertos, con- " sideratum est quod judicium inde " redditum tanquam erroneum re- " vocetur, et adnulletur, et pro nullo " habeatur, et quod prædictus [*sic*] " Willelmus, Nicholaus, et Anas- " tasia rehabeant seisinam suam, " videlicet, talem qualem habuerunt " in eisdem ante judicium inde " redditum, ac exitus eorundem " tenementorum medio tempore " perceptos. Et præceptum est " Vicecomiti quod faciat inde " executionem, &c."

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

[2] Voucher is from 25,184 alone.

[3] Harl., *fecit*.

[4] L., en.

[5] This report of the case is from Harl. 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. 1344. in the County of Stafford, which is within the King's power, and in case he be summoned in that County it is quite sufficient, and in case we should not be able to cause the vouchee to come by summons in the Counties aforesaid that is it at our peril, and to your advantage; wherefore, &c.—*Notton.* I have seen, in a case in which the tenant vouched one who was to be summoned in Wales, that the voucher abated because process could not be effected against the vouchee in that place; wherefore, &c.—SHARSHULLE. Also in the case which you have put he was not vouched anywhere else than in Wales, but the case is different here, because he has now prayed that the vouchee be summoned in the County of Stafford, wherefore let the voucher stand.

Admeasurement of Dower.

(35.) § Admeasurement of Dower. View was demanded.—*Grene.* Heretofore you were ousted [from view] by judgment, and you have since taken *Prece partium* twice over.—*Blaykeston.* If we were ousted by judgment, that must be shown by record.—*Grene.* No, Sir; when any one is ousted from view, that will never come upon the roll; and if you are now ousted again, that will not be entered.—HILLARY. Then it is not of record.—*Grene.* You are apprised of the tenancy, for as tenant you have taken *Prece partium.*—*Seton.* It is necessary to admeasure the two parts as well as the third part, and of those two parts we shall have view by law, so that, even though we have affirmed ourselves to be tenant of the third part by *Prece partium*, still, since possibly another or the demandant himself is tenant of the two parts, of which we cannot ourselves

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en le Countee de Stafforde, quel est deinz la poair le Roy, et en cas qil soit somons en le Countee assetz suffit, et en cas qe nous ne pussoms pas faire vener le vouche par la somons en les Countees avantditz cest a nostre peril, et a vostre avantage; par quei, &c.—*Nottone.* Jay vew en cas ou le tenant voucha un qe serroit somons en Gales, et pur ceo qen cel lieu proces ne puit pas estre fet vers le vouche le voucher sabatist; par quei, &c.—SCHAR. Auxi en le cas qe vous avetz mys il fuit vouche nulle part aillours fors en Gales, mes le cas est autre cy, qar il ad prie ore qil soit sumons en le Countee de Stafforde, par quei estoise le voucher. A.D. 1344.

(35.) [1] § Amesurement de [2] Dowere. La vewe fut [3] demande.—*Grene.* Altrefoith par agarde vous [4] fustes [5] ouste, et puis avez pris ij foitz *Prece partium.*—*Blaik.* Si nous fumes [6] ouste par agarde, ceo covient estre moustre par recorde.—*Grene.* Nanil, Sire [7]; quant homme est ouste de vewe, ja ne [8] vendra il en roulle; et si ore de rechief vous soiez ouste, ceo ne serra pas entre.—HILL. Donqes nest ceo pas de recorde.—*Grene.* Vous estez appris de la tenance, qar come tenant vous [4] avez pris *Prece partium.*—*Setone.* Il covient auxi bien amesurer les ij parties [9] come la terce partie, des queux ij parties nous averoms la vewe par ley, issint qe, tut ussoms afferme nous estre tenant de la terce partie par *Prece partium*, unqore, puis qe les ij parties, dount autre par cas, ou le demandant mesme est tenant, de quei [10] nous ne poms mesmes [11] estre appris saunz Amesurement.

[1] From L., and 25,184, until otherwise stated.
[2] 25,184, en.
[3] fut is from L. alone.
[4] vous is from L. alone.
[5] 25,184, feustes.
[6] 25,184, sumes.
[7] Sire is from 25,184 alone.
[8] ne is from 25,184 alone.
[9] The words les ij parties are omitted from L.
[10] 25,184, dount, instead of de quei.
[11] mesmes is from 25,184 alone.

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A.D. 1344. be apprised without view, it is necessary to have view.—*Grene.* Our suit is that what you hold be admeasured, and nothing more, wherefore view is not to be demanded of anything more, nor yet of that, for the reason above; and, besides, you ought not to be ignorant what lands you hold in dower; and that was the reason for which you were heretofore ousted by judgment.—Willoughby. I do not think that she was ousted by judgment, for that would be extraordinary; and now I well know that one cannot know what the third part is unless one knows what the other two parts are; and *Prece partium* in this case is not like *Prece partium* in other common cases.—Sharshulle. You have demanded view, and we grant it to you.—The contrary above in the same case.

Dower. § On a writ of Admeasurement of Dower the tenant demanded view.—*Grene.* Of what do you demand view?—*Moubray.* Of the third part of which it is your object to have admeasurement by this writ, and also of the two other parts, because otherwise we cannot know whether we hold more than the third part which we ought to have by right; wherefore, &c.—*Grene.* And that which you hold over and above the third part we suppose you to hold of your own wrong, and of that you ought not to have view.—Sharshulle. We understand that she has that which she holds by assignment of another person, and therefore it cannot be called her wrong; wherefore will you say anything else?—*Grene.* Still she ought not to have view, because she has taken a *Prece partium* with us since count counted.

Jurata utrum. (36.) § *Jurata utrum.* The Bailiff of the Liberty of

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la vewe, il covendreit aver la vewe.—*Grene.* Nostre suyte est qe ceo qe vous tenetz soit amesure, et nient plus, par quei de nient[1] plus nest vewe a demander, ne de ceo nient, *causa qua supra*; et, ovesqe ceo, vous ne devez mesconustre queles terres vous tenez en dowere; et ceo fut la cause pur quei autrefoith vous fustes[2] ouste par agarde.—Wilby. Jeo ne croy pas qele[3] fut ouste par agarde, qar ceo serreit merveille; et ore[4] jeo say bien qomme ne put saver[5] quei soit la terce partie, si homme ne sache quei sount les ij parties; et *Prece partium* en ceo cas nest pas semblable as altres comunes cas.—Schar. Vous avez demande la vewe, et nous vous la grauntoms.—*Contrarium supra in eodem casu.* A.D. 1344.

§ En[6] un brief de Admesurement [de] Dower le tenant demanda la vewe.—*Grene.* De quei demandez la vewe?—*Moubray.* De la tierce partie qele vous estes de amesurer par cesty brief, et auxi de les ij parties, qar autrement nous ne poms pas saver si nous tenoms pluis qe la tierce partie quel nous dussoms aver de dreit; par quei, &c.—*Grene.* Et ceo qe vous tenez outre la tierce partie nous le supposoms estre de vostre tort demene, de quei vous ne devez la vew · avoir.—Schar. Nous entendoms qele ad ceo qele tient daltri assignement, et par taunt ceo ne puit pas estre dit son tort; par quei voillez autre chose dire?—*Grene.* Unqore ne deit il la vewe avoir, qar puis le counte countee il ad pris un *Prece partium* ov nous. Dower. [Fitz., *View*, 70.]

(36.)[7] § Jure de *Utrum.* Le Baillif de la Fraun- Jure de *Utrum.*

[1] nient is from L. alone.
[2] 25,184, feustes.
[3] L., qil.
[4] ore is from 25,184 alone.
[5] 25,184, sauver.
[6] This report of the case is from Harl. 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, until otherwise stated.

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A.D. 1344. the Prior of Tynemouth demanded cognisance of the plea. —*Blaykeston*, for the tenant, said that the tenements are not within the liberty; ready, &c.—*Grene*, for the demandant. Since there is between the tenant and the bailiff of the liberty a dispute, which falls to the delay of our suit, we pray the Jury.—Willoughby. What will you say on behalf of the demandant as a reason why the bailiff should not have the cognisance? —for between tenant and bailiff one has not seen averment taken, if the demandant was not a party—as meaning to say that the demandant shall not be unreasonably delayed of his suit by issue between them.—*Grene*. I pray the Jury, since the dispute is between them.—Willoughby. It is not right that the bailiff should lose the jurisdiction, if he is speaking the truth; nor is it right that he should have cognisance of the plea where the tenant will maintain that the tenements demanded are not within the liberty.— And the point was touched that, if the bailiff held plea, within the liberty, of tenements out of the liberty, the judgment would be null.—And Hillary said that it is not right that a tenant should plead, against his will, within the liberty, in respect of tenements which are out of the liberty.—Willoughby. It is for the demandant to maintain the jurisdiction of this Court in which he has brought his writ; and he can at his peril say whether the tenements are within the liberty or without, and make himself party to the issue.— Sharshulle. Yes; and therefore can you, Demandant, show any cause why he should not have the cognisance?—*Grene*. We have not to plead anything to him who demands the cognisance, nor have we a

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chise le Priour de T. demanda la conissaunce.— A.D. 1344.
Blaik, pur le tenant, dit qe les tenements ne sount pas deinz la Fraunchise; [prest, &c.—*Grene*, pur le demandant. Del houre qentre le tenant et le baillif de la fraunchise][1] sount[2] a debat, qe chiet en delay de nostre suyte, nous prioms la Jure.—Wilby. Quey volez vous[3] dire pur le demandant pur quei il navera pas la fraunchise? Qar entre le tenant et le baillif nad homme pas vewe averement estre pris, si le demandant ne fut pas partie. *Quasi diceret* le demandant par issue entre eux ne serra pas noun resonablement delaie de sa suyte.—*Grene*. Jeo prie la Jure, del houre qe le debat est entre eux.—Hill. Il nest pas resoun qe si le baillif die verite qil perde jurisdiccion; ne il nest pas resoun qe ou le tenant voet meyntener qe les tenementz demandez ne sount pas deinz la Fraunchise qil eit conisaunce[4] du plee.—Et fut touche qe si le baillif tenist plee deinz la Fraunchise des tenementz hors de la Fraunchise qe le jugement serreit nul.—Et Hill. dit qil nest pas resoun qe le tenant maugre soen[5] plede deinz la fraunchise de tenementz[6] qe sount hors de la fraunchise.—Wilby. Al demandant est ceo a[7] meyntener jurisdiccion de cest Court ou il ad porte soun brief; et il put a soun peril dire si[8] les tenements sount[9] deinz la fraunchise ou dehors, et se faire partie al issu.—Schar. Oyl; et pur ceo vous,[10] demandant, savez rien dire pur quei il navera pas la fraunchise?—*Grene*. Nous navoms rien a pleder a luy qe demande la fraunchise, ne[11] navoms

[1] The words between brackets are omitted from L.
[2] L., pur ceo instead of sount.
[3] L., voilez instead of volez vous.
[4] L., conussaunce.
[5] L., son.
[6] The words de tenementz are omitted from L.
[7] 25,184, de.
[8] L., qe.
[9] L., sount tenuz.
[10] 25,184, qe vous.
[11] ne is omitted from L.

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A.D. 1344. day except as against the tenant; and therefore we will not say anything else, except pray the Jury.—Sharshulle. And, since you say nothing against the cognisance, let the averment stand between the tenant and the bailiff, and you shall have *Idem dies.—Quære.*—Afterwards, on the morrow, Hillary said that the issue between them is not admissible, unless the demandant be party. Therefore it was asked of him whether the tenements were within the liberty or not. And the demandant said that they were within the liberty.—Sharshulle. Now the demandant and the bailiff can take the averment against the tenant, and the demandant on the issue can attain his purpose.—But the point was touched that if the finding be for the bailiff he will not have the cognisance, because the demandant, who is party to the same issue, will have seisin.—And, therefore, the averment stood, as above, between the tenant and the bailiff, and the demandant has *Idem dies.—Quære.*—Some grant the cognisance, notwithstanding the tenant's statement, because he can have an Assise.

Note: *Jurata utrum.*

§ Note that in a *Jurata utrum* the Bailiff of the Liberty of the Prior of Tynemouth came, and said that his lord had cognisance of pleas of all the tenements within the liberty by the King's charter, and said that these tenements were within the liberty, and prayed cognisance of the plea.—To this the tenant said that he ought not to have the cognisance, because the tenements were not within the liberty.—And the Court asked of the demandant what he would say.—*Grene*, for the demandant. I do not say anything, because I understand that by this averment joined between the tenant and the bailiff I shall have seisin of the land, if the issue pass against the tenant.—

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jour[1] forqe al tenant; et pur ceo nous[2] ne voloms autre chose dire, forqe prier la Jure.—Schar. Et de puis qe vous dites rien countre la fraunchise, estoise laverement entre le tenant et le baillif, et vous averez *Idem dies.—Quære.*—Puis lendemeyn Hill. dit qe lissue entre eux nest pas resceivable, si le demandant ne fut partie. Par quei demande fut de luy si les tenementz furent deinz la fraunchise ou noun. Et le demandant dit qils furent deinz la fraunchise.—Schar. Ore pount le demandant et le baillif prendre laverement countre le tenant,[3] et le demandant sur lissue aver son purpos.—Mes fut touche qe si trove soit pur le baillif qil navera pas la fraunchise, qar le demandant, qest partie a mesme lissue, avera seisine.—*Et ideo* laverement, *ut supra*, esta entre le tenant et le baillif, et le demandant ad[4] *Idem dies.—Quære.*—Asquns grauntent la fraunchise, *non obstante dicto tenentis, quia potest habere Assisam.* A.D. 1344.

§ *Nota*[5] qen Jure de *Utrum* vient le Baillif de la Fraunchise Le Prior[6] de Tynemuthe, et dit qe soun seignur avoit conisaunce des pleez de toutz les tenementz deinz la fraunchise par chartre le Roy, et dit qe ceux tenementz furent deinz la fraunchise, et pria conisaunce de plee.—A qi le tenant dit qil ne dust la conisaunce avoir, qar lez tenements ne furent pas deinz la fraunchise.—Et la Court demanda del demandant quei il voleit dire.—*Grene* pur le demandant. Jeo ne die rienz, qar jeo entenke qe par cele averement joint entre le tenant et le baillif jeo avera seisine de terre, si lissue passe countre le *Nota*: Jure de *Utrum*. [Fitz., *Conusans*, 38.]

[1] jour is omitted from L.
[2] nous is omitted from L.
[3] The words le tenant are omitted from L.
[4] ad is omitted from L.
[5] This report of the case is from Harl. 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.
[6] MS., Labbe.

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A.D. 1344. *Seton.* That cannot be in any wise, for the demandant can never recover seisin of land by an issue to which he is not party, but, in case the issue should pass against the tenant, the bailiff will have the cognisance. —And afterwards the issue was admitted between the tenant and the bailiff whether the tenements were within the liberty or not.—*Grene.* Sir, in case the issue should pass against the bailiff, the penalty which he will suffer will be that the cognisance will be forfeited, wherefore, since I am as much delayed by the tenant as by the bailiff, it is right that, if the issue should pass against the tenant, he should have the like penalty of losing his land, just as the bailiff will lose the cognisance for ever if the issue should pass against him.—SHARSHULLE. You can never recover land by the issue joined between the bailiff and the tenant, to which issue you are in no way privy, but, if you wish to recover the land against the tenant in case the issue should pass against him, join yourself with the bailiff in this averment, and you will possibly attain your purpose in that manner, if the issue passes in your favour.—*Grene.* Sir, we tell you willingly that the tenements are within the liberty, as the bailiff says; ready, &c.—SHARSHULLE. But now the COURT will consider whether this issue be admissible, and it seems to us that this issue cannot be admitted from you joined with the bailiff, as it is tendered, because the bailiff's intendment is, if the issue should pass in his favour, to have his cognisance, and on the same verdict your intendment is to have seisin of the land, which two intendments cannot stand together; therefore you and the bailiff cannot join in this averment in common.—*Grene.* Sir, I say that, even though the issue pass for the bailiff, you will still award seisin of the land to the demandant, and with regard to the bailiff you will do nothing but enter on the roll that he claimed his cognisance in this plea, so that his

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tenant.—*Setone.* Ceo ne puist estre en nulle guise, A.D. 1344.
qar le demandant ne puit jammes recoverir seisine de terre par issue a qele il nest pas partie, mes en cas qe lissu passe contre le tenant le baillif avera la fraunchise.—Et apres lissu fuit resceu entre le tenant et le baillif le qel lez tenementz furent deinz la Fraunchise ou ne mye.—*Grene.* Sire, en cas qe lissu passe contre le baille, tiel penance ly avendra qe la fraunchise serra forfet, par quei, quant jeo su auxi avant delaye par le tenant come par le baille, il est resoun qe si lissu passe countre le tenant qil eit tiel penance de perdre sa terre, auxi come le baille perdra la fraunchise a toutz jours si lissu passat contre ly.—Schar. Vous ne poietz jammes recoverir terre par lissue joint entre le baille et le tenant, a quel issue[1] vous nestes de rienz prive, mes si vous voletz recoverir la terre vers le tenant en cas qe lissu passe countre ly, joygnez vous ov le baille en cest averement, et par cas en tiel manere vous attendrez a vostre purpos, si lissu passe pur vous.—*Grene.* Sire, volenters nous vous dioms qe lez tenementz sount deinz la fraunchise, auxi come le baille dit; prest, &c.—Schar. Mes ore voet la Court aviser si cest issu soit resceivable, et il semble a nous qe ceo issu ne puit pas estre resceu de vous joint ove le baille, auxi come il est tendu, qar lentent de baille est, si lissu passe pur ly, qil avera sa fraunchise, et sur mesme le verdit vous entendetz daver seisine de terre, quel deux entendez ne poient ensemble estre; par quei vous et le baille ne poiez en comune cest averement joyndre.—*Grene.* Sire, jeo dye qe mesqe lissu passe pur le baille qe unqore vous agardez seisine de terre al demandant, et del baille vous ne ferrez rienz mes entrer en roulle qe il chalengea sa fraunchise en cest

[1] MS., lissue.

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A.D. 1344. cognisance may be saved to him another time in respect of the same tenements in another plea, as, suppose, in case that after cognisance demanded the tenant would render to the demandant his demand, in such a case you would give judgment on the render, and would not grant the cognisance, but the bailiff's claim would be entered on the roll in order to save his cognisance in respect of the same tenements in another plea.—Willoughby. In the case which you have put as to the render it is true that we should give judgment on the render without allowing the cognisance, because that issue of the plea would not be tried by averment as it would be in the case in which we now are; wherefore the two cases are not alike; and as to that which you say that the claim of the bailiff will be entered on the roll to save the cognisance in another plea in respect of the same tenements, Sir, I say that, even though he had remained at the inn, his cognisance in another plea in respect of the same tenements would still have been saved to him, because at such time it would not be a plea against the bailiff to say that he now suffered this Court to have the cognisance; wherefore, &c.—And to this all the Justices agreed.—Sharshulle. I never saw that a tenant was permitted to counterplead the cognisance, but, in case the demandant would not say anything to the contrary, the cognisance has always been allowed.—*Grene.* Sir, suppose the tenements were without the liberty, and the demandant would agree with the bailiff that he should have the cognisance, what would be done?—Sharshulle. We should allow the cognisance, but the demandant would put himself to such peril that, in case the tenements were without the liberty, even though he recovered within the liberty, yet the tenant would recover by Assise; wherefore, &c.—*W. Thorpe.* That could not be, because, if the cognisance be allowed, and the tenant plead in the liberty, and lose by judgment, and afterwards

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plee, issint qe sa fraunchise soit ly autrefoitz salve des mesmes les tenementz en autre plee, come en cas jeo pose qapres la fraunchise demande le tenant voleit rendre a demandant sa demande, en tiel cas vous dorrez jugement sur le rendre, et ne graunterez pas la fraunchise, mes le chalenge le baille serra entre en roulle pur salver sa fraunchise de mesmes lez tenements en un altre plee.—Wylby. En le cas qe vous avetz mys del rendre il est verite [qe] nous dorroms jugement sur le rendre saunz graunter la fraunchise, qar cel issu de plee ne serra pas trie par averement auxi come il serra en le cas ou nous sumes ore; par quei ils ne sount pas sembl[abl]e; et quant a ceo qe vous parlez qe le chalenge de baille serra entre en roulle pur salver la fraunchise en autre plee de mesmes les tenementz, Sire, jeo dy qe mesqil ust demure a lostiel unqore sa fraunchise en autre plee de mesmes lez tenementz ly serra salve, qar a tiel temps il ne serra pas ple devers le baille a dire qe il suffri a ore cest Court aver la conisaunce; par quei, &c.—Et a ceo acorderent toutz les Justices.—Schar. Ceo ne vy unqes qe le tenant fuit ressu de countrepleder la fraunchise, mes, en cas qe le demandant ne voleit rienz dire, la fraunchise ad este tout temps graunte.—*Grene.* Sire, jeo pose qe les tenementz sount hors de la fraunchise, et le demandant voet estre del assent le baille qil avera sa fraunchise, qi serra fet?—Schar. Nous graunteroms la fraunchise, mes le demandant soy mette a tiel peril qen cas qe les tenementz sount hors de la fraunchise qe mesqe il recovere deinz la fraunchise qe unqore le tenant recovera par Assise; par quei, &c.—*W. Thorpe.* Ceo ne puit estre, qar si la fraunchise soit graunte, et le tenant plede illoeqes, et perde par jugement, et apres il

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A.D. 1344 bring an Assise, I shall plead against him in bar the judgment which was rendered within the liberty. If he then says that the tenements are without the liberty, I shall oust him from that plea on the ground that he pleaded within the liberty, and thereby affirmed the jurisdiction of the Court, &c.—Sharshulle. For that matter, I should hold him to be a foolish pleader if he pleaded to the demandant's action within the liberty, but he would say that he ought not to answer there because the tenements are without the liberty, and upon that he ought to abide judgment, whereupon, if judgment were rendered against him, he would have Assise.—*W. Thorpe.* That plea which you have given him in the liberty to their jurisdiction would not lie in his mouth, because, inasmuch as he has suffered the cognisance to be granted out of this Court, he has thereby affirmed their jurisdiction.—Sharshulle. That affirming will not prejudice him in any way, if the Court will not now admit any plea from the tenant to counterplead the cognisance.—But in the end it was adjudged by all the Justices that the issue joined between the tenant and the bailiff should be admitted, and that an *Idem dies* should be given to the demandant, so that the demandant should not be in any way party to the issue.—*Grene.* This is a bad precedent, because every demandant will be in like manner greatly delayed; wherefore we pray a *Nisi prius* for the demandant.—Hillary. You cannot have that, because the tenant might be essoined on the first day; wherefore, &c.—*Grene.* That could not be, because the bailiff is in no way a party to this plea with regard to the principal matter, wherefore, even though the tenant were essoined as against him, our action ought not thereby to be delayed.—Hillary. But if he were essoined as against you on the first day, nothing would be done in respect of the issue between the tenant and the bailiff, and therefore you shall not now have the *Nisi prius.*

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porte Assise, jeo plederay le jugement vers ly en barre et qe fut rendu deinz la fraunchise. Sil dit qe les tenementz sount hors de la fraunchise, jeo ly hosteray de cel plee par taunt qil pleda en la fraunchise, et en taunt il afferma jurisdiccion de la Court, &c.—Schar. Pur ceo jeo ly tygne fol pledour sil pled al accion le demandant deinz la fraunchise, mes il dirra qe il ne deit illoeqes respondre pur ceo qe les tenementz sount hors de la fraunchise, et sur ceo il deit demurer en jugement, sur qi, si jugement soit rendu countre luy, il avera Lassise.—*W. Thorpe.* Ceo plee qe vous avetz ly done en la fraunchise a lour jurisdiccion ne girra pas en sa bouche, qar en taunt qil ad suffert la fraunchise estre graunte hors de cyeinz en tant il ad afferme lour jurisdiccion.—Schar. Cel affermer ne ly grevera de rienz, si[1] la Court ore ne voet resceivere nulle plee del tenant de countrepleder la fraunchise.—Mes a dereyn fuit agarde par toutz les Justices qe lissu joint entre le tenant et le baille fuit ressu, et un *Idem dies* serreit done al demandant, issint qe le demandant ne serreit de rienz partie al issue.—*Grene.* Ceo est un maveys ensample, qar chescun demandant serra en tiel manere grantement delaie; par quei pur le demandant nous prioms un *Nisi prius*.—Hill. Ceo ne poietz aver, qar le tenant put estre essone a primer jour; par quei, &c.—*Grene.* Ceo ne puit estre, qar le baille nest de rienz partie a ceo plee del principal, par quei, mesqil soit essone vers ly, par taunt ne deit pas nostre accion estre delaie.—Hill. Mes sil soit essone vers vous a primer jour, rienz ne serra fet del issue entre le tenant et le baille, par quei vous naveretz pas le *Nisi prius* a ore. A.D. 1344.

[1] MS., de.

No. 37.

A.D. 1344. *Quare impedit* for the King.

(37.) § The King brought a *Quare impedit* against the Bishop of Carlisle in respect of the church of Skelton, and counted that Robert Paruynk[1] presented, &c., after whose death, because he was the King's tenant, his fees and advowsons were seized, &c., and the church is now void.—*Seton.* We tell you that the church became void in the time of Robert Paruynk,[1] and remained void for six months during his life, and so, by reason of the lapse of time, the presentation accrued to the Bishop, as Ordinary, during the life of Robert; judgment whether the King will be answered. —*Thorpe.* He does not deny that Robert was the

[1] The late Chancellor known in all law books as Parning.

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A.D. 1344. *Quare impedit pro Rege.*[2] [Fitz., *Quare impedit*, 73.]

(37.)[1] § Le Roy porta *Quare impedit* vers Levesqe de Cardoil[3] del eglise de Skeltone,[4] et counta qe Robert Paruynk presenta,[5] &c., apres qi mort, pur ceo qil fut tenant le Roy, fees et avowesouns furent seisiz, &c., et leglise est ore voide.[6]—*Setone.* Nous vous dioms qen temps R. Paruynk leglise[7] se voida, et voide demura par vj moys en sa vie, et [issint par temps passe accrust al Evesqe, come a Ordiner, le presentement en la vie R.; jugement si][8] le Roy voille estre respondu.[9]—*Thorpe.* Il ne dedit pas qe

[1] From L., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 360. It there appears that the action was brought by the King against John Bishop of Carlisle, and John de Kirkeby, clerk, in respect of a presentation to the church of Skelton (Cumberland).

[2] The words *pro Rege* are from L. alone.

[3] 25,184, Kardoille.

[4] 25,184, Steltone.

[5] presenta is omitted from L.

[6] The declaration was, according to the roll, that "Robertus "Paruynge fuit seisitus de advo- "catione ecclesiæ prædictæ ut de "feodo et jure . . . . . qui ad "eandem præsentavit quendam "David de Welloure . . . . . post "cujus resignationem prædicta "ecclesia vacavit, et vacans fuit "quousque prædicta advocatio, "simul cum aliis terris et tene- "mentis quæ fuerunt prædicti "Roberti Paruynge, post mortem "ejusdem Roberti, seisita fuerunt "in manum domini Regis eo quod "idem Robertus advocationem "prædictam ac alia terras et tene- "menta tenuit de domino Rege in "capite die quo obiit, &c., et ea "ratione ad dominum Regem "pertinet ad prædictam ecclesiam "præsentare."

[7] 25,184, lesglise.

[8] For the words between brackets there are substituted in L. the words nentendoms pas qe nostre seignur.

[9] According to the roll, John de Kirkeby claimed nothing in the advowson, alleging that he was, and had been, long before the purchase of the writ, parson imparsonee in the church. The Bishop, not acknowledging that the church was void after the King seized the advowson into his hand, acknowledged the presentation of David, "Sed dicit quod ecclesia "illa incepit vacare per resigna- "tionem prædicti David ad Festum "Purificationis beatæ Mariæ anno "regni domini Regis nunc decimo "septimo, et vacans fuit per sex "menses proxime sequentes, et am- "plius, in vita prædicti Roberti, et "sic ad ipsum Episcopum, tanquam "loci illius Ordinarium, pertinuit "ad ecclesiam illam providere, "per quod ipse Episcopus, jure "sibi devoluto in forma prædicta, "providit ad eandem quendam "Johannem de Kirkeby, clericum "suum, et eum induxit in eandem. "Et petit judicium si dominus

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A.D. 1344. King's tenant, and that the King is seised of the advowson, nor that the church was void after Robert's death; judgment for the King.—*Moubray*, for the Bishop. During the life of Robert the presentation accrued to the Bishop; therefore, since the King claims in right of Robert, he cannot have any greater advantage than Robert would have had.—*Thorpe*. Robert lost by his own laches, and could so lose, but the King ought not to do so, because time does not run against him; therefore, since the King seized, and found the church void, that is sufficient, and the Bishop, inasmuch as he did not present during Robert's life, has outstayed his time.—Stonore awarded a writ to the Bishop for the King.

Scire (38.) § The King brought a *Scire facias*, upon a

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R. fut tenant le Roy, et qe le Roy est seisi del avoesoun, ne qe leglise fut voide apres[1] la mort R.; jugement pur le Roy.[2]—*Moubray*, pur Levesqe.[3] En la vie R. le presentement fut acru al Evesqe; donqes quant le Roy cleyme en le dreit R., il ne put plus davauntage avoir qe R.[4] avereit.—*Thorpe*. R. perdist par sa lachesse, et pout perdre, mes le Roy ne[5] deit pas issi, qar temps ne court pas a luy; donqes quant le Roy seisist, et trova[6] leglise[7] voide, celuy[8] suffist,[9] et Levesqe, par taunt qil ne presenta pas en la vie R., ad sursis son temps.—Ston. agarda brief al Evesqe pur le Roy.[10] A.D. 1344.

(38.)[11] § Le Roy porta *Scire facias* hors dun *Scire*

" Rex actionem istam in hoc casu " versus eum manutenere velit, " &c."

[1] 25,184, puys qe.

[2] The replication, according to the roll, was " quod prædictus " Episcopus non dedicit quin " prædictus Robertus Paruynge " tenuit de domino Rege in capite " advocationem prædictam, nec " quin idem Robertus obiit seisitus " de advocatione illa, nec quin " ecclesia prædicta vacans fuit " postquam dominus Rex seisivit " in manum suam advocationem " prædictam post mortem prædicti " Roberti, unde petit judicium pro " domino Rege, et breve Episcopo, " &c., Et quo ad hoc quod præ- " dictus Johannes de Kirkeby " superius placitavit dicendo quod " idem Ricardus [*sic*] nihil clamat " in advocatione prædicta, nec " aliquid aliud dicit ad excluden- " dum dominum Regem a præ- " sentatione sua prædicta, unde " petit judicium, et breve Episcopo, " &c."

[3] The words pur Levesqe are from L. alone.

[4] 25,184, le Roi.

[5] ne is omitted from L.

[6] 25,184, trovea.

[7] 25,184, lesglise.

[8] L., et ceo luy.

[9] L., suffit.

[10] According to the roll the judgment was " Quia videtur " Curiæ hic quod prædictus Jo- " hannes de Kirkeby nihil allegat " in exclusionem præsentationis " domini Regis ad ecclesiam præ- " dictam in hac parte, nec etiam " prædictus Episcopus dedicit quin " prædictus Robertus tenuit advo- " cationem prædictam de domino " Rege in capite die quo obiit, nec " quin ecclesia prædicta vacans " fuit postquam idem dominus " Rex seisivit in manum suam " advocationem illam post mortem " ejusdem Roberti, consideratum " est quod dominus Rex recuperet " præsentationem suam ad eccle- " siam prædictam, et habeat breve " Episcopo, &c."

[11] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 355. It

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A.D. 1344. *facias* for the King.

judgment rendered for him on a *Quare impedit*, against the Abbot of Bec Hellouin, supposing the judgment to have been rendered against the Abbot's predecessor.—*Grene*. The Abbot is an alien under the power of France, and the Prior of Okebourne[1] is Prior of the House, and abides in England, and, because the Abbot is under the power of France, the King, by reason of the war, seized his lands, fees, and advowsons, &c., and leased them back to the Prior, rendering a certain rent to the King by the year. And we do not understand that, during that lease, the King will be answered as

[1] The site of the Priory of Okebourne was near the village now known as Ogbourne St. George (Wilts).

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jugement rendu pur luy sur un *Quare impedit* vers Labbe de B., supposaunt le[2] jugement estre[3] rendu[4] vers soun predecessour.—*Grene.* Labbe est alien du poair de Fraunce, et le Priour de Okeburne[5] est Priour de la Mesoun,[6] et demoert en Engleterre, et, pur ceo qil est del poair de Fraunce, par cause de[7] la guerre le Roi seisist terres, fees, et avowesouns, &c., et les lessa arere au Priour, rendaunt a luy un certeyn par an. Et nentendoms pas qe duraunt cel lees voille le Roy a ceo brief estre respondu.[8]— A.D. 1344. *facias pro Rege.*[1]

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there appears that the *Scire facias* was brought on a judgment given for the King against the Abbot of Bec Hellouin in the tenth year of the reign in a *Quare impedit* touching a presentation to the church of East Wretham (Norfolk). The Abbot at first pleaded (after having oyer of the record) " quod " licet dominus Rex recuperaverit " præsentationem suam ad eccle- " siam prædictam, prout in recordo " prædicto continetur, tamen idem " dominus Rex per literas suas " patentes statum cujusdam Wil- " lelmi de Braunford ad tunc " possessioni ecclesiæ supradictæ " incumbentis ratificavit, accept- " avit, et approbavit, et mandavit " per breve suum clausum Justici- " ariis hic quod ipsi prædictum " Willelmum in hac parte non " molestarent in aliquo seu grava- " rent Et ex quo idem dominus " Rex executionem super recupera- " tione prædicta tunc non habuit " nec habere voluit, prout per " literas ejusdem domini Regis " supradictas expresse apparebat, " sed statum prædictæ personæ " per literas suas prædictas accept- " avit et ratificavit, petit judicium " si idem dominus Rex executionem " inde modo habere velit, &c." *See* below p. 161, the Abbot's pleadings having been transposed in the report.

To this it was replied, on behalf of the King, that William de Braunford was now dead " et ex " quo dominus Rex alias recuper- " avit præsentationem suam ad " ecclesiam prædictam, et præ- " dictus Abbas non dicit quod " executio inde unquam facta fuit, " nec in prædictis literis domini " Regis aliquid continetur per quod " intelligi potest executionem fieri " de recuperatione prædicta, nec " idem Abbas aliquid allegat quod " præsentationem domini Regis in " hac parte extinguit seu adnullat, " petit judicium pro domino Rege, " et executionem, &c."

There was then an adjournment to the Octaves of Trinity.

[1] The words *pro Rege* are from L. alone.

[2] 25,184, qe le.

[3] 25,184, est.

[4] rendu is omitted from 25,184.

[5] L., O.; 25,184, Holborne.

[6] L., Maisoun.

[7] The words par cause de are omitted from L.

[8] This plea for the Abbot was, according to the roll, " si videatur " Curiæ hic quod prædictum judi-

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A.D. 1344. to this writ.—*W. Thorpe.* Put your plea with certainty, showing whether you will allege non-tenure, or plead on another point.—*Grene.* We understand that, so long as the advowson is thus on lease, we ought not to answer.—Stonore. When the King seized in that manner, that was only in the name of distress, so that when the Abbot or one of his people is restored to possession it is in their original right, and the freehold is in them; therefore the writ is good.—*Grene.* Saving to ourselves the advantage, we tell you that, when the King had recovered the presentation, he then ratified the estate of the parson for his life, commanding the Justices that he should not be molested, as appears by record; thus the King had the effect of a presentation, and thus in a manner the judgment was executed; judgment whether he ought to have execution a second time.—*W. Thorpe.* Your first plea cannot stand together

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[*W.*] *Thorpe.* Mettez vostre plee en certeyn, le quel A.D. 1344.
vous voillez allegger nountenue ou[1] a autre poynt.—*Grene.* Nous entendoms qe duraunt lavowesoun issint en baillaunce[2] qe nous ne devoms respoundre.—Ston. Quant le Roy seisist par[3] la manere, ceo nest qen noun de destresse, issint qe[4] quant[5] Labbe est remys, ou autre des soens, cest en lour primer dreit, et le fraunctenement en eux; par quei le brief est bon.—*Grene.* Salve[6] a nous lavauntage, vous dioms qe quant le Roi[7] avoit recoveri le presentement il ratifia lestat la persone donqes pur sa vie, comaundaunt a les Justices qil ne serra pas[8] empesche,[9] come piert par recorde; issint avoit le Roi leffecte del presentement, et issint par manere le jugement execut; jugement si autrefoith execucion deive[10] aver.[11]—[*W.*] *Thorpe.* Vostre primer plee ne poet estre ovesqe

" cium adhuc sit executorium, non " obstante ratificatione prædicta, " dicit quod postea dominus Rex " nunc seisivit in manum suam " omnia terras et tenementa, feoda " et advocationes prædicti Abbatis " in Anglia, ratione guerræ inter " ipsum dominum Regem et illos " de Francia motæ, et eadem " tenementa feoda et advocationes, " cum pertinentiis, per literas suas " patentes commissit [*sic*] nunc " Priori de Okebourne, common- " acho ejusdem Abbatis, tenenda " eidem Priori quamdiu terræ et " tenementa, feoda et advocationes " prædicta sic in manu domini " Regis contigerit remanere, red- " dendo inde domino Regi per " annum mille marcas, unde dicit " quod ipse non intendit quod " dominus Rex contra literas suas " patentes prædictas prædicto com- " monacho ipsius Abbatis sic factas, " possessionibus prædictis in manu " Regis in forma prædicta existenti- " bus, velit seu debeat in hoc casu " responderi. Et profert hic præ- " dictas literas domini Regis " patentes, quæ prædictam com- " missionem terrarum tenemento- " rum feodorum et advocationum " præfato Priori de Okebourne sic " factam testantur." Upon this there was an adjournment to the Octaves of St Michael.

[1] ou is omitted from L.
[2] L., balaunce.
[3] L., en.
[4] L., et, instead of issint qe.
[5] quant is omitted from 25,184.
[6] 25,184, saufe.
[7] Roi is omitted from L.
[8] 25,184, mye.
[9] 25,184, enpeche.
[10] 25,184, deit.
[11] As shown by the roll the Abbot's pleadings have been transposed in the report. *See* above, p. 157, note 11, and p. 158.

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A.D. 1344. with this last answer; therefore we pray to be discharged as to the first, and we demand judgment since the King had judgment in his favour, which judgment was never executed, but was only put in suspense for a certain time by the King's confirmation; and we pray a writ to the Bishop. — *Grene.*

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ceo[1] darreyn respouns; par quei del primer nous prioms estre descharge, et demandoms jugement de puis qe le Roi avoit jugement pur luy, quel unqes ne fut execut, mes par confermement[2] de Roy soulement fut mys en suspens a certein temps; et prioms brief al Evesqe.[3]— A.D. 1344.

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[1] ceo is omitted from 25,184.

L., conferment.

When the parties appeared on the Octaves of St. Michael, the previous pleadings were recited and on behalf of the King it was said that the Abbot " ad aliud allegandum seu no- " vam responsionem dandam ad- " mitti non debeat, unde petit " judicium pro domino Rege. " Dicit etiam quod licet idem " Abbas ad illam novam responsi- " onem admitti deberet, cum nullo " modo debeat, tamen in literis " ipsius domini Regis, quas profert " hic in Curia, tantum testatur " ipsum dominum Regem omnes " possessiones Prioratus de Oke- " burne una cum feodis militum " et advocationibus ecclesiarum " Priori de Okeburne commisisse " habendas quamdiu dictæ pos- " sessiones, &c., in manu domini " Regis occasione guerræ, &c., " contigerit remanere, faciendo " omnia onera incumbentia modo " quo idem Prior ipsas tenuit " antequam dictæ possessiones ea " de causa captæ fuerunt in manum " domini Regis, et sic per easdem " literas non testatur quod dominus " Rex possessiones seu temporalia " Abbathiæ de Becco Herlewini " commiserat dicto Priori nec " quod possessiones prædicti Prior- " atus dicto Priori ut commonacho " ipsius Abbatis commisisset, " per quod idem Abbas quic- " quam in possessionibus dicti " Prioratus per commissionem " ipsius domini Regis haberet, nec " in eisdem literis continetur quod " idem dominus Rex de jure " præsentationis suæ sibi ratione " judicii prædicti competentis " adtunc instructus fuit seu se " dimiserat, cum a domino Rege, " nisi per verba expressa per quæ " liquere poterit ipsum dominum " Regem de jure suo instructum " fuisse, jus suum, in hac parte, " evelli non debeat, et maxime in " hoc casu cum in eisdem literis " specificatur quod idem Prior " possessiones suas teneat faciendo " omnia onera incumbentia eodem " modo quo idem Prior ipsas " tenuit et fecit antequam dictæ " possessiones occasione prædicta " captæ fuerunt in manu domini " Regis, et sic per easdem literas " probatur intentio domini Regis " non esse dictas possessiones dicti " Prioratus erga ipsum Regem " seu quoscumque alios, durante " guerra prædicta, exonerare, seu " actiones aliquas aut executiones " versus dictum Priorem vel quem- " cunque alium dictas possessiones " tenentes seu occupantes per " aliquos motas retardare seu " respectuare, sed quod idem Prior " et quivis dictas possessiones occu- " pans in omnibus et erga omnes " sint respondentes sicut re- " spondisse debuissent antequam " dominus Rex dictas possessiones " sic in manum suam ceperat Et " etiam, ex quo dictus Abbas in

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A.D. 1344. When the King had recovered the church, even though it was full before, it then began to be void, because his presentee will deraign the church, since time does not run against the King; therefore when the King ratified the parson's estate, the parson had no estate in effect except through the King, and so the judgment was in effect executed.—SHARSHULLE. But when the parson continued his estate, he was in on the presentation of the Abbot or of any other person who presented him, and the King had not taken title for himself in respect of that presentation, but the Abbot had a title in the *Quare impedit*; therefore the judgment was not executed, but was in suspense for a time, and afterwards, in Trinity Term, the King sent to the Justices *sub pede sigilli* the tenor of a record in which he recovered against the Abbot of Thorney in a like case.—*Grene* recited his plea, and relied upon both pleas, that is to say, the King's lease, and the confirmation.—*W. Thorpe.* You shall not have both; and, moreover, non-tenure does not lie in a *Scire facias* taken upon a *Quare impedit*, for the *Scire facias*, as well as the *Quare impedit*, lies against the disturber, and you are a stranger to plead that lease.—SHARSHULLE. He could, in this *Scire facias*, very well plead two peremptory pleas, which fall under the head of law, in order to prevent execution, but if he were to plead several matters which would fall under the head of issue to the country, he would have to hold to one with certainty.—*R. Thorpe.* We also understand that,

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Grene. Quant[1] le Roy avoit recoveri leglise, tut fut ele pleyne devant,[2] donqes comencea destre voide, pur ceo qe son presente[3] derenera[4] leglise, qar temps ne court pas al Roy; donqes quant le Roy ratifia lestat la persone, il avoit nul estat en effecte forqe par le Roi, et issint le jugement en effecte execut. —Schar. Mes quant le persone continua son estat, il fut einz al presentement Labbe ou dautre qe luy presenta, et[5] le Roy ne ust pas pris title [pur luy de cel presentement, mes Labbe ust title][6] en *Quare impedit*; donqes fut pas le[7] jugement execut, mes suspensif pur un temps, et puis le Terme de la Trinite le Roi maunda as Justices tenour dun recorde *sub pede sigilli* ou il recoveri vers Labbe de Thorney[8] en autiel cas.—*Grene* rehercea son plee, et reposa sur lun[9] et lautre plee, saver,[10] le lees le Roy, et le confermement.—[*W.*] *Thorpe.* Vous naverez pas lun et lautre; et unqore nountenue ne gist pas en *Scire facias* pris[11] hors[12] de *Quare impedit*, qar si bien git[13] *Scire facias* vers[14] le destourbour come *Quare impedit*, et vous estraunge de pleder a cel lees.—Schar. Il[15] put en ceo *Scire facias* pleder moult bien[16] deux peremptories qe chesont[17] en ley pur destourber execucion, mes sil pledast plusours choses pays, il se tendra[18] a un en certeyn.—*R.*[19] *Thorpe.* Auxi entendoms nous quant A.D. 1344.

" præsentatione ad ecclesiam in ista
" præsenti vacatione nihil clamat,
" petit judicium et executionem
" pro domino Rege, et breve
" Episcopo, &c."

[1] Quant is omitted from 25,184.
[2] 25,184, avant.
[3] 25,184, clerc.
[4] L., derena.
[5] et is omitted from L.
The words between brackets are omitted from L.
[7] le is omitted from L.
[8] 25,184, T.
[9] 25,184, lui.
[10] 25,184, sur.
[11] L., et pris.
[12] hors is omitted from 25,184.
[13] git is omitted from 25,184.
[14] 25,184, gist vers.
[15] 25,184, Si.
[16] The words moult bien are omitted from L.
[17] L., chient.
[18] 25,184, tendist.
[19] *R.* is omitted from 25,184.

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A.D. 1344. since the King has himself leased the advowson, he shall not, during the lease, have any profit by presenting, and upon that and the confirmation we are abiding judgment. And afterwards the Prior of Okebourne, as the King's farmer, sued by Petition in Parliament to the King, reciting that the church became void after the lease made to him, &c., and prayed that the King would revoke his presentation. And the Petition was endorsed to the effect that, if the vacancy could be shown to the Chancellor's satisfaction to have occurred after the lease made to the Prior, the presentation should be revoked. Thereupon the Chancellor sent to the Ordinary, and the Ordinary certified the time at which the church became void, and that time was after the date of the lease.—Thereupon the point

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le Roi ad mesme lesse lavoesoun nous entendoms qe duraunt le lees il avera nul profit de presenter, et sur cel et le confermement nous sumes en jugement. Et puis le Prior de O., come fermer le Roi suyt par Peticion en Parlement al Roi, reherceaunt qe leglise[1] se voida puis le lees fait a luy, &c., et pria qe le Roi repellereit son presentement. Et fut endosse [qe *si constare poterit Cancellario* la voidaunce estre puis le lees fet al Priour qe le presentement serreit repelle. Sur quei le Chauncelier maunda][2] al[3] Ordiner, et il certifia le temps de la voidaunce, et cel temps[4] fut puis la date de lees.[5]—Sur quei A.D. 1344.

[1] 25,184, lesglise.

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

[3] 25,184, del.

[4] 25,184, jour.

[5] The entry on the roll is as follows:—"Et Abbas dicit quod, "ex quo prædictus Johannes [de "Clone] qui sequitur non dedicit "quin idem dominus Rex dimisit "prædicto Priori de Okebourne "prædictum Prioratum de Oke- "bourne ac omnia terras et tene- "menta feoda et advocationes "ejusdem Prioratus, quæ sunt "eadem terræ et tenementa, feoda "et advocationes quæ nominantur "temporalia Abbatis de Becco "Herlewini in Anglia Et etiam "non dicit quod idem Prior habet "aliqua alia terras seu tenementa, "feoda seu advocationes, &c., "spectantia ad Prioratum illum "nisi tantummodo illa quæ sunt "temporalia Abbatis de Becco "Herlewini in Anglia, et in eisdem "literis domini Regis contenta, et "præfato Priori commonacho, &c., "ut præmittitur, sic concessa, ipse "non intendit quod dominus Rex "velit seu debeat in hoc casu res- "ponderi. Et profert hic in Curia "prædictas literas domini Regis quæ "prædictam concessionem domini "Regis testantur in hæc verbæ." [The letters patent are then set out at length.] "Dicit etiam quod "alias in ultimo Parliamento "domini Regis tento apud West- "monasterium, a die Sancti Trini- "tatis in xv dies anno regni "domini Regis nunc Angliæ decimo "octavo, idem Prior secutus fuit "petitionem suam in Parliamento "prædicto virtute prædictæ com- "missionis domini Regis sibi factæ "versus prædictum dominum "Regem, &c., quod idem dominus "Rex permitteret ei habere præ- "sentationem suam ad ecclesiam "prædictam virtute commissionis "prædictæ, &c., ad quod per "triatores petitionum in eodem "Parliamento per ipsum Regem "et Concilium constitutos ordina- "tum fuit, et super petitione "prædicti Prioris indorsatum, &c., "quod si idem Prior monstrare "posset in Cancellaria domini "Regis per prædictas literas "domini Regis ei inde concessas "quod idem dominus Rex concessit

No. 38.

A.D. 1344. was touched that the time at which the church became void shall not be enquired of by the Ordinary, but only the question of plenarty, and that by mise of the parties; but this matter was only by Office, and there was no plea between the parties.—Willoughby, Sharshulle, and Hillary said that the enquiry could not be had in any other manner.—And, nevertheless, there were some who said that no one could forbid any one whomsoever, who would do so on behalf of the King, to aver the reverse contrary to the certificate, which is only evidence.—And the presentation was revoked by judgment in virtue of that certificate.

" ei prædictum Prioratum de
" Okebourne, cum feodis militum
" et advocationibus ecclesiarum,
" durante guerra inter ipsum
" Regem et illos de Francia, &c.,
" sine aliqua reservatione domino
" Regi sed tantummodo firma
" prædicta, &c., Et etiam quod si
" idem Prior posset ostendere in
" prædicta Cancellaria, &c., quod
" ecclesia prædicta incepit vacare
" post datam literarum domini
" Regis præfato Priori, ut præ-
" mittitur, inde concessarum, quod
" dominus Rex revocaret præsenta-
" tionem suam præfato Ricardo de
" Northwych clerico suo inde
" factam, et quod præsentatio præ-
" dicti Prioris suo staret robore et
" effectu, &c. Et super hoc
" dominus Rex mandavit breve
" suum venerabili in Christo patri
" Johanni Dei gratia Cantuarensis
" Archiepiscopo, totius Angliæ
" Primati, custodi Spiritualitatis
" Episcopatus Norwycensis sede
" vacante, quod ipse super vaca-
" tione ecclesiæ supradictæ per
" mortem Willelmi de Braunford
" nuper rectoris ecclesiæ de
" Estwretham supradictæ in Can-
" cellaria Regis certificaret, et quo
" die incepit vacare, &c., qui
" quidem Archiepiscopus per literas
" suas patentes domino Regi in
" Cancellaria sua certificavit quod
" ecclesia de Estwretham prædicta
" incepit vacare per mortem præ-
" dicti Willelmi de Braunford,
" ultimi rectoris ejusdem, die
" Mercurii proxima ante Festum
" Conversionis Sancti Pauli anno
" Domini millesimo tricentesimo
" [*sic*] quadragesimo tertio, et regni
" domini Regis nunc Angliæ
" decimo septimo, dum Spiritu-
" alitas dictæ Diœcesis Norwi-
" censis in manibus ipsius Archie-
" piscopi extitit custodienda, &c.,
" et prædictæ literæ domini Regis
" patentes præfato Priori de
" custodia terrarum prædictarum
" sibi concessa sunt de data primæ
" diei Decembris anno regni domini
" Regis nunc Angliæ quinto-
" decimo, quod est unus annus et
" amplius ante vacationem ecclesiæ
" prædictæ, petit judicium si idem
" dominus Rex, contra literas suas
" patentes, quæ sunt de data
" antiquiori per unum annum et
" amplius ante vacationem ecclesiæ

No. 38.

fut touche qe temps de voidaunce ne serra pas enquis par Ordiner, mes plenerte soulement, et ceo par mise des parties; mes ceste chose ne fut forqe doffice, et plee ny avoit pas[1] entre parties.—Wilby., Schar., et Hill. disount qe par autre manere ne poet[2] il[3] estre enquis.—*Et tamen quidam dixerunt* qe nul homme viereit qi qe vodra pur le Roi daver[er] le revers[4] contre la certificacion qe nest qe[5] evidence.—Et le presentement fut repelle par agarde par force de cel certificacion.[6] A.D. 1344.

" prædictæ, prout idem Archie-
" piscopus per literas suas patentes
" in Cancellaria domini Regis,
" virtute brevis ipsius Regis quod
" sibi inde venit certificavit, quam
" certificationem, si videatur Curiæ
" fore insufficientem, idem Prior
" paratus est verificare qualiter
" Curia consideraverit, &c., seu
" etiam contra easdem literas
" patentes per quas manifeste
" liquet Curiæ Regem in eisdem
" literis concessisse prædicto Priori
" feoda militum et advocationes
" ecclesiarum in eisdem literis
" contentarum, seu contra con-
" siderationem triatorum petiti-
" onum Parliamenti prædicti, quæ
" est superior Curia domini Regis
" in qua prædicta petitio adhuc
" residet indeterminata, ipsis
" triatoribus non vocatis, velit seu
" debeat in hoc casu responderi,
" &c."

[1] pas is from L. alone.

[2] L., poait.

[3] il is omitted from L.

[4] L., la reversion, instead of le revers.

[5] 25,184, pas.

[6] According to the roll the case ended as follows. There were successive adjournments, the last of which was to Easter Term in the 19th year of the reign, when the parties appeared. The King then sent to the Court his letters patent, dated the 12th of February in that year, reciting that, notwithstanding the plea pending, " tamen
" dilectus clericus noster Ricardus
" de Norwyco, quem ad dictam
" ecclesiam præsentavimus coram
" nobis constitutus asseruit se jus
" quod sibi competit per præsenta-
" tionem prædictam ulterius prose-
" qui nolle, Nos ad requisitionem
" prædicti clerici nostri statum et
" possessionem quos Johannes de
" Broughton clericus habet in
" eadem ecclesia ad præsenta-
" tionem dilecti nobis in Christo
" Prioris de Okebourne, procura-
" toris dicti Abbatis, ratificamus et
" confirmamus, placito prædicto
" non obstante, et præsentationem
" nostram prædictam præfato
" Ricardo sic factam tenore præ-
" sentium duximus revocandam,
" Nolentes quod idem Johannes
" super possessione sua prædicta
" prætextu alicujus juris quod
" nobis competit seu competere
" poterit per nos vel heredes
" nostros seu ministros nostros
" quoscumque occasionetur, mo-

No. 39.

A.D. 1344. *Scire facias* for the King.

§ The King sued a *Scire facias* against the Abbot of Bec Hellouin to have execution upon a judgment which was given for himself in a *Quare impedit* against the same Abbot.—*Grene.* Sir, we tell you that the King granted by his Letter which is here to one W.[1] who was parson of the same church at the time at which the judgment was rendered, that he should hold the church without being troubled or molested, for the term of his life, and thus the judgment was executed, and we do not understand that the King will be answered as to this writ.—*W. Thorpe.* And, Sir, since by this Letter the King did nothing but delay his execution until after the death of the person who was at that time parson, and he has not alleged that this parson is this day living, whereas we say, on behalf of the King, that he is dead, we therefore pray execution for the King.—And thereupon they were adjourned.

Quare impedit.

(39.) § The King brought a *Quare impedit* against Margaret de Wigton, and counted that Robert Paruynge[2] presented, and held of him, and that after Robert's death he seized the advowson, &c., and that

[1] For the name *see* p. 158, note 11.

[2] *See* p. 154, note 1.

No. 39.

§ Le[1] Roy suist un *Scire facias* vers Labbe de Berkerlewyn daver execucion hors dun jugement qe se tailla pur ly mesme en un *Quare impedit* vers mesme Labbe.—*Grene.* Sire, nous vous dioms qe le Roy graunta par sa lettre qe cy est a un W. qe fuit persone de mesme leglise a temps de jugement rendu qe tendreit leglise saunz estre grevee ou molestee pur terme de sa vie, et issint fuit le jugement execut, et nentendoms pas qe le Roy voet a cesty brief estre respoundu.—*W. Thorpe.* Et, Sire, del houre qe par cele letter le Roy ne fit rienz, mes taria sa execucion tanqe apres le deces cely qatiel temps fuit persone, et il nad pas allegge qe cely persone est huy ceo jour en vie, einz pur le Roy nous vous dioms qil est mort, par quei pur le Roy nous prioms execucion.—*Et super hoc adjornantur.*[2] A.D. 1344. *Scire facias pro Rege.*

(39.)[3] § Le Roy porta *Quare impedit* vers Margarete de Wygtone, et counta qe Robert Paruynge presenta, et tient de luy, apres qi[4] mort il seisist lavoesoun, &c., *Quare impedit.*

" lestetur in aliquo, seu gravetur." The King also sent a writ close directed to the Justices of the Common Bench, bearing the same date as the letters patent, and reciting their contents and commanding the Justices " quod " placito prædicto ulterius coram " vobis tenendo supersedeatis juxta " tenorem literarum nostrarum " prædictarum, jure nostro in " omnibus aliis semper salvo, &c."

[1] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books.

[2] There is another report of the case in Y.B., Mich. 18 Edw. III., No. 87.

[3] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 379, d. It there appears that the action was brought by the King against Margaret de Wigton, " quod " ipsa, simul cum Johanne Epis- " copo Karlioli et Rogero de " Crombewelle, permittat ipsum " dominum Regem præsentare " idoneam personam ad ecclesiam " de Melmorby, quæ vacat, et " ad suam spectat donationem " ratione terrarum et tenemen- " torum quæ fuerunt Roberti " Paruynge defuncti, qui de Rege " tenuit in capite, in manu Regis " existentium."

[4] 25,184, sa.

No. 39.

A.D. 1344. so it belongs to him to present.—*Grene.* We tell you that the advowson is appendant to the manor of Melmerby, of which manor, with the appurtenances, a fine was levied by license from the King, &c., by which fine the same manor was rendered to Robert for his life with remainder to Margaret. And we tell you that, after Robert's death, it was found by *Diem clausit extremum* that Robert died seised of such an estate, wherefore the King delivered to Margaret the manor with the advowson, together with the issues. And *Grene* showed a writ in witness, &c., and said Judgment whether the King will be answered.—*W. Thorpe.*

No. 39.

et issint appent a luy a presenter.[1]—*Grene.* Nous vous[2] dioms qe lavoesoun est appendaunt al maner de M.[3] de quel maner, ove les appurtenaunces, par conge le Roy, fyn se leva, &c., par quel mesme le maner fut rendu a R. pur sa vie, et le remeindre a M. Et vous dioms qapres la mort R., par *Diem clausit extremum* ceste chose trove qe R. murust seisi de tiel estat, par quei le Roy livera[4] a Margarete le maner [ove lavoesoun, ensemblement ove les issues. Et moustra brief tesmoignaunt, &c. Jugement si le Roy voielle estre respondu.[5]—[*W.*] *Thorpe.* A.D. 1344.

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[1] The declaration according to the roll was (*mutatis mutandis*) as in No. 37 (p. 155, note 6).

[2] vous is from L. alone.

[3] 25,184, E.

[4] L., liverast.

[5] According to the roll Margaret's plea was as follows:—" non cog- " noscendo prædictam ecclesiam " fore vacantem in vita prædicti " Roberti, dicit quod alias . . . . " . . . levavit quidam finis inter " quendam Robertum Paruynge, " personam ecclesiæ de Hotone et " prædictum Robertum Paruynge " per nomen Roberti Paruynge " junioris, de manerio de Melmorby " ad quod advocatio ecclesiæ " prædictæ pertinet, et de advoca- " tione prædicta, simul cum aliis " terris et tenementis, &c., per " quem finem idem Robertus " Paruynge recognovit prædicta " tenementa et advocationem præ- " dictam esse jus ipsius Roberti " Paruynge, personæ, &c., ut illa " quæ idem Robertus Paruynge " persona &c., habuit de dono " prædicti Roberti Paruynge juni- " oris, et pro illa recognitione, &c., " idem Robertus Paruynge persona, " &c., concessit tenementa, cum " pertinentiis, et advocationem " prædicta præfato Roberto Par- " uynge juniori, et illa ei reddidit, " &c., tenenda tota vita ejusdem " Roberti Paruynge junioris, ita " quod, post decessum ejusdem " Roberti Paruynge junioris, tene- " menta illa cum pertinentiis, et " advocatio prædicta remanerent " præfatæ Margaretæ de Wygetone " adtunc uxori Johannis de " Westone, tenenda sibi et here- " dibus de corpore suo exeunte. Et " dicit quod post mortem prædicti " Roberti Paruynge junioris domi- " nus Rex mandavit breve suum " Escaetori suo in Comitatu Cum- " briæ ad inquirendum de quibus " terris et tenementis, feodis et " advocationibus idem Robertus " obiit seisitus in dominico suo ut " de feodo, &c. Et compertum fuit " per inquisitionem per ipsum " Escaetorem captam quod idem " Robertus tenuit die qua obiit " manerium de Melmorby, cum " pertinentiis, et advocationem " ecclesiæ ejusdem manerii, ad " terminum vitæ suæ, ita quod " post decessum ipsius Roberti " dicta manerium et advocatio " præfatæ Margaretæ et heredibus

No. 39.

A.D. 1344. We tell you that the church became void during the life of Robert, and was so for six months; and you have not denied that the church was void while the advowson was in the King's hand; judgment.—*Grene.* We tell you that the church was not void for six

No. 39.

Nous vous dioms qe][1] leglise se voida en la vie R., et par vj moys; et vous navez pas dedit qe leglise,[2] esteaunt lavoesoun en la meyn le Roi, fut voide; jugement.[3]—*Grene.* Nous vous dioms qe leglise[2] ne A.D. 1344.

de corpore suo exeuntibus " remanerent, quod quidem mane- " rium tenetur de domino Rege in " capite per certa servitia, per " quod idem dominus Rex man- " davit præfato Escaetori suo, per " breve suum, quod ipse dicta " manerium, cum pertinentiis, et " advocationem, una cum exitibus " inde per ipsum perceptis a " tempore mortis prædicti Roberti, " liberaret, Qui quidem Escaetor " virtute mandati domini Regis " prædicti liberavit eidem Mar- " garetæ advocationem prædictam " inter alia terras et tenementa, " &c., et eadem Margareta inde " seisita fuit virtute mandati " domini Regis prædicti. Et " profert hic breve domini Regis " clausum, et tenorem prædicti " brevis præfato Escaetori directi " in eodem brevi clausum, quæ " præmissa testantur, &c., unde " dicit quod prædictus Robertus, " die obitus sui. non habuit alium " statum in advocatione prædicta " nisi ad terminum vitæ suæ, ut " superius compertum est, et sic " seisina domini Regis pro nulla " adjudicatur, per quod ad ipsam " Margaretam pertinet ad eandem " ecclesiam præsentare, maxime " cum dominus Rex in hoc casu " non habuit rationem neque jus " seisire advocationem prædictam " in manum suam, &c., unde petit " judicium si dominus Rex acti- " onem inde versus eam in hac " parte habere debeat, &c."

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

[2] 25,184, lesglise.

[3] According to the roll the replication was " quod dicta ecclesia " vacavit in vita ipsius Roberti, et " vacans fuit videlicet per sex " menses ante datam dicti brevis " eidem Escaetori directi de libera- " tione advocationis prædictæ " eidem Margaretæ sic facienda. " Et ex quo dicta Margareta non " dedicit dictum Robertum dictam " advocationem de domino Rege, ut " de jure coronæ suæ, tenere, nec " ipsam ecclesiam vacantem fuisse " in vita ipsius Roberti, et post " mortem ejusdem Roberti advo- " catione prædicta in manu ipsius " Regis existente, et sic expresse " probatur quod dominus Rex, " ratione prærogativæ suæ, veram " seisinam dictæ advocationis per " mortem ejusdem Roberti de jure " habuerat, et adtunc, eo quod " ipsa ecclesia vacans fuerat, ad " ipsum Regem de jure pertinuerat " præsentare, quod quidem jus " præsentandi in hac parte præ- " textu liberationis prædictæ, licet " cum exitibus, &c., eo quod in " dicta liberatione aliqua mentio " de præsentatione prædicta ali- " qualiter non infertur, nullo modo " ab ipso domino Rege devolvi, nec " in persona ejusdem Margaretæ " conferri debeat, saltem cum " præsentatio prædicta sub nomine " exitus contineri non valeat, unde " petit judicium pro domino Rege, " et breve Episcopo, &c."

No. 39.

A.D. 1344. months during the life of Robert. And we demand judgment since the King has delivered to us the issues, which proves the seisin of the King to be null, because in such a case he ought not to seize; judgment. *W. Thorpe.* You speak contrary to law, for the King has cause to seize in every case after the death of his tenant, and to hold until the person who shall be his tenant shall have performed his services. And though he may have delivered the issues by his courtesy, where he possibly delivered them with such issues as are tangible and annual, according to law, that does not prove that he shall be ousted from a presentation which falls in his time, for if he had presented in his time, and the presentee had been admitted, no wrong would have been done to you; and, if a wardship had fallen in, then the wardship, notwithstanding such general livery of issues, would have remained to the King. And suppose Robert had, during his life, leased to another his estate in the advowson, and the church had become void, during his life, even though the person to whom the lease

No. 39.

fut pas voide par[1] vj moys en la vie R.[2] Et demandoms jugement depuis qe[3] le Roi nous ad livere les[4] issues, quele prove la seisine le Roy nulle, qar[5] en tiel cas il[6] ne dust pas seisir; jugement.[7]—[*W.*] *Thorpe.* Vous dites countre ley, qar le Roy ad cause de seisir en chescun cas apres la mort son tenant, et[8] de tener tanqe celuy qe serra soun tenant avera fet ses servicez.[9] Et tut eit il livere les issues de sa courtesye,[10] ou de[11] ley il les livera par cas ove issues, saver de chose mainable[12] et annuel, ceo[4] ne prove pas qe de presentement qe chiet en son temps qil serra ouste, qar sil ust presente en soun temps, et le presente resceu, nul tort ust este fait a vous; et si garde ust escheu,[13] adonqes par tiel general livere des issues la garde, *non obstante*, eust[14] demure au Roy. Et jeo pose qe R.[15] ust lesse a autre en sa vie son estat del avoesoun, et[8] en sa vie leglise[16] ust este[17] voide, tut ne presenta pas celuy A.D. 1344.

[1] par is omitted from 25,184.

[2] The words en la vie R. are omitted from L.

[3] qe is omitted from L.

[4] L., et.

[5] qar is omitted from 25,184.

[6] il is omitted from L.

[7] According to the roll, after an adjournment to the Octaves of Trinity, the rejoinder on behalf of Margaret was "quod ex quo præ-" dictus Johannes [de Clone] qui " sequitur, &c., non dedicit quin " status quem prædictus Robertus " habuit in manerio et advocatione " prædictis fuit ad terminum vitæ " suæ tantum, nec quin jus " eorundem immediate fuit et " adhuc est in persona præfatæ " Margaretæ, ut prædictum est, " nec quin dominus Rex, post " mortem ejusdem Roberti, ex-" presse liberavit præfatæ Mar-" garetæ manerium et advoca-" tionem prædicta, cum omnibus " exitibus a tempore mortis ejusdem " Roberti perceptis, prout expresse " patet superius per ea quæ sunt " de recordo, &c., quo tempore et " post prædicta ecclesia vacans " fuit et infra tempus semestre, " &c., et quæ parata est verificare " quocunque modo Curia con-" sideraverit, petit judicium et " breve Episcopo, &c."

[8] et is omitted from L.

[9] 25,184, son service, instead of ses servicez.

[10] L., curteisy.

[11] 25,184, qe.

[12] 25,184, meyntenable.

[13] L., eschu.

[14] L., est.

[15] MSS., le Roi.

[16] 25,184, la esglise.

[17] este is omitted from L; 25,184, est, instead of ust este.

No. 39.

A.D. 1344. was made did not present during Robert's life, and you were in, in your remainder, still by reason of the right of presentation which accrued to Robert's assignee during Robert's life he would have the presentation after his death, and not you; so also will it be in this case, and since the right to present accrued to Robert, who was the King's tenant, that right will be the King's rather than yours, as you cannot claim anything from him. And we demand judgment, inasmuch as the presentation was not delivered by express words, whether it does not belong to the King to present.—*R. Thorpe.* It is proved by judgment rendered in the King's Court that the King, though he might have the right to seize, had no cause to have profit, wherefore it is not right that he should have the presentation any more than other issues; and if a husband and his wife hold jointly of the King, and after the husband's death the King seizes, as possibly he has the right to do, the wife will show her charters in the Chancery, and will have a writ to remove his hand and to deliver the issues, and the King will have nothing at all. No more in this case.—Sharshulle. The Escheator could not, in virtue of the writ which came to him to deliver, deliver the presentation, nor anything else but that which he had seized, nor any other issues but those which remained with him, and which he had levied, and in respect of which he had not answered in the Exchequer, and therefore it seems that the presentation remained with the King.—Willoughby. When the King, after the death of his tenant who has died seised in fee, seizes the inheritance, and a church becomes void while the King is seised, and afterwards the King, before he has presented, gives livery of the inheritance and the advowson to the heir, shall not the King have the presentation notwithstanding his livery? So also it seems in this case, that since he was seised at one

No. 39.

a qi le lees fut fet vivant R., et vous feussez[1] einz A.D. 1344.
en vostre remeindre, unqore pur le dreit de presenter qe acrust al assigne R. en sa vie il avereit apres sa mort le presentement, et noun pas vous; auxi serra en ceo cas del houre qe le dreit de[2] presenter acrust a R., qe fut tenant le Roi, plus toust serra ceo dreit a Roy qe vous, qe rien poetz clamer de luy. Et demandoms jugement, desicome la presentement par expresse parole ne fut pas[3] livere, si au Roy ne atteigne a presenter.—*R. Thorpe.* Par jugement rendu en la place[4] le Roi est prove qe le Roi, tut dust il seisir, avoit nul cause daver profit, par quei il nest pas resoun qil eit plus le presentement qautres issues; et si baroun et sa femme tenent[5] jointement du Roi, apres la mort le baroun le Roi seisist, come par cas il deit fere, la femme moustra ses chartres en Chauncellerie, et avera brief douster la meyn et liverer les issues, et le Roi navera[6] nul rien. *Nec hic.* — SCHAR. Leschetour par brief qe luy vint de liverer ne put liverer le presentement, ne autre chose qe ceo qil seisist, ne autres issues forqe ces qe demurent vers[7] luy, et qil avoit leve, dount il navoit pas respondu en Leschekere,[8] par quei il lour semble qe le presentement demura au Roi.—WILBY. Quant le Roi, apres la mort son tenant, qe murust[9] seisi de fee, seisi[10] leritage [et une eglise se voide quant le Roi est seisi, puis le Roi, avant qil presente, livere leritage][11] et lavoesoun al[12] heir, navera pas le Roi le presentement *non obstante* sa livere? Auxi semble en ceo cas, quant il fut seisi a un temps del

[1] L., fuissetz.
[2] L., del.
[3] pas is omitted from 25,184.
[4] 25,184, ple.
[5] 25,184, tiegnent.
[6] 25,184, avera.
[7] 25,184, devers.
[8] 25,184, Leschekir.
[9] L., moert.
[10] The words de fee seisi are omitted from 25,184.
[11] The words between brackets are omitted from L.
[12] L., ad.

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A.D. 1344. time of the advowson, and then had a right to present, even though he may have since delivered the advowson, the presentation which accrued to him before, and which has not been delivered, remains with him.—*Moubray.* In the first case which you put the King has a right to have the issues and profits, but not in our case.—*Pole.* If the King be seised of an advowson, and the church become void, and the King give me the advowson while the church is void, I shall have the presentation; *a fortiori* in this case.—*Notton.* Of anything not tangible and casual, which falls in during the King's time, he will himself have, even though he make livery, the substance with the issues, such as wardships, appearances at Courts Leet and Views [of Frankpledge], and amercements.—Willoughby. If he be seised of the wardship in his own time he will have it, unless he deliver it by express words, and also amercements which may be levied in his time; but, if they are to be levied after that delivery made, he will not have them.—Stonore. At what time was this presentation made by the King—before the livery made or not?—*W. Thorpe.* Before he made the livery, Sir.—And afterwards he alleged over that in the time of Robert Paruynge the church became void, and was void after his death, and that the King presented, and that by reason of lapse of time the Ordinary made collation, whereupon the King took *Quare impedit* against him, and that before he made restitution to Margaret, and so the right to present was in the King, and in no other, because, inasmuch as the time was passed before the livery made to Margaret, she had not any right, and so the livery of which they speak, together with the issues, was rather by grace than by law, and therefore we demand judgment. And *W. Thorpe* made *profert* of a writ under the Privy Seal to the effect that the King's intention was not that his right

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avoesoun, et adonqes avoit dreit a presenter, tut eit il puis livere lavoesoun, le presentement qe luy acrust devant, et quel nest pas livere, luy demurt.—*Moubray.* En vostre primer cas le Roy ad[1] resoun daver les issues, et profitz, mes en nostre[2] cas[3] nient.—*Pole.* Si le Roi soit seisi dun avoesoun, et leglise se voide, et le Roi moy doune lavoesoun, esteaunt leglise voide, jeo averay le presentement; a plus fort en ceo cas.—*Nottone.* De chose nient mainable et casuel, qe eschiet en temps le Roi, il avera mesme, tut livere il, le gros ove les issues, come des gardes, venuz a Letes Courtes et vewes, et amerciementes.—Wilby. Sil soit seisi del garde en son temps il avera le,[4] sil nel livere par expresse parole, et auxi des amerciementz qils soient leves en[5] son temps; mes, sils soient a lever[6] apres cel livere fet,[7] il les avera pas.—Ston. A quel temps se fist cel presentement par le Roy—avant le livere fet ou noun?—[*W.*] *Thorpe.* Sire, avant qil livera.[8]—Et puis il alleggea outre coment en temps R. Paruynge leglise se voida, et apres sa mort fut voide, et le Roi[9] presenta, et Lordiner par temps passe fist collacion, sur quei le Roi prist le *Quare impedit* vers lui, et ceo avant qil fist restitucion a M., et issint fut le dreit en le Roy de presenter, et en nul autre, qar par taunt qe le temps fut passe avant la livere fet a M., ele navoit nul dreit, et si fut la livere dount ils parlent, ove les issues, plus de grace qe de[10] ley, par quei nous demandoms jugement. Et mist avant brief souz[11] la Targe qe lentencion le Roi nest pas qe prejudice soit fait a son dreit par A.D. 1344.

[1] 25,184, avoit.
[2] 25,184, vostre.
[3] cas is omitted from L.
[4] le is omitted from 25,184.
[5] L., de.
[6] L., l . . .; 25,184, livere.
[7] fet is omitted from L.
[8] 25,184, avera.
[9] The words le Roi are omitted from L.
[10] 25,184, le.
[11] L., south.

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A.D. 1344. should be prejudiced by such livery of which they speak, and further that the Justices should proceed to judgment according to right upon his presentation.—

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tiel livere dont ils parlent,[1] et outre qils aloient a jugement solonc resoun par soun presentement.[2]— A.D. 1344.

[1] The words dont ils parlent are omitted from L.

[2] This surrejoinder appears on the roll as follows:—"quod præ- "dicta ecclesia in vita ipsius "Roberti vacavit, et vacans fuit "post mortem ejusdem Roberti, "advocatione prædicta, ut supra- "dictum est, in manu domini "Regis existente, et quod dominus "Rex, ad quem tantum de jure "tunc spectabat præsentare, qui "justam et veram seisinam advo- "cationis prædictæ habuerat, ad "eandem ecclesiam adtunc præ- "sentavit, ac eo quod ipse de præ- "sentatione sua tunc habenda per "eandem Margaretam et alios "impeditus fuerat, breve suum de "*Quare impedit* versus eandem "Margaretam, &c., impetravit, et "hoc diu ante datam dicti brevis "de liberatione ejusdem advoca- "tionis eidem Margaretæ facienda, "super effectum præsentationis suæ "quantum ad ipsum pertinuerat "exequendum prosequebatur, prout "per literas ipsius domini Regis "testatur quas idem Johannes "[de Clone] profert hic in Curia in "hæc verba: Edward par la Grace "de Dieu Roi Dengleterre et de "France, et Seignur Dirlaunde, a "noz Justices du Baunk salutz. "Nous avons entendutz qe tut "soit ce qe droit nous soit acru de "presenter a leglise de Melmorby "par cause qe Robert Paruynge, "qi tint de nous en chief, morust "seisi de lavoeson de la dite "eglise, et ele estoit prise en "nostre meyn entre ses autres "terres et tenementz par resoun "de sa mort, et nous presentames "nostre clerc a meisme leglise "adonqes voide de droit et de fait, "tant come celle avoesoun estoit "issint en nostre main, et a ce "nous vous avons envoiez noz "autres lettres pur nostre droit "hastier en ceste partie, nient- "mains la dite busoigne est "uncore delaie, en prejudice de "nous et contre la tenour de noz "dites lettres. Et pur ce qe nous "desiroms qe la busoigne feust "mise a bone et hastief fin pur "nostre droit sauver, vous man- "doms de rechief qe vous vous "preignez si pres come vous "purrez solume la ley de nostre "Roialme de mettre nostre droit de "presenter a la dite eglise en due "execucion. Et vous signefioms "qe nous sumes enformez qe "nostre dit droit est assez cler, et "qe nostre entencion nest pas qe "par colour de nul mandement "issu de nostre Chauncellerie pur "faire liverer a Margarete de "Wygetone nules terres ou tene- "mentz, et la dite avoeson ovesqe "les issues, prejudice soit fait a "nous de presenter a la dite eglise "a ceste foiz si come resoun "voudra, enz qe nostre dit pre- "sentement nous soit sauve, nient "aresteant la dite livere fete a "dite Margarete. Done souz "nostre prive sèal a Westmestre le "quint jour de Juyl Lan de nostre "regne Dengleterre disoytisme et "de France quint.

"Et sic dicit quod tam per "prosecutionem domini Regis ad "effectum dictæ præsentationis "exequendum quam per literas "suas prædictas expresse probatur

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A.D. 1344. *Grene.* We say that the time had not passed before the livery was made to us, and that we are ready to aver, if it can make an issue; and we demand judgment, as above.—Stonore. The time is now passed,

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Grene. Nous dioms[1] qe le temps ne fut pas passe avant la livere fet a nous, et ceo sumes prest daverer, sil purra fere issue; et demandoms jugement, *ut supra.*[2]—Ston. Le temps est ore passe, A.D. 1344.

" quod intentio domini Regis
" nunquam est seu fuerat quod,
" virtute liberationum terrarum et
" advocationis, velut per verba
" generalia quæ præsentationis
" prædictæ specialem faciant men-
" tionem, per quod dominus Rex
" jure suo præsentandi quodam-
" modo se dimissse debuerat
" aliqualiter non inferunt, etiam
" cum de jure et consuetudine
" regni absque expressa mentione
" de jure ipsi Regi quoquo modo
" devoluto per factum suum
" excludi non debeat, et licet
" cum exitibus quæ potius ex
" gratia ipsius domini Regis quam
" jure communi censeri debeat ac
" etiam quod prædicta præsentatio
" sub nomine exitus maxime in
" manu Escaetoris minime conti-
" neri valeat seu debeat a præsen-
" tatione sua, cujus effectum tunc
" prosequebatur, videlicet ante
" liberationem prædictam, et adhuc
" prosequiter, ut prædictum est,
" aliqualiter exclusus foret, immo
" per easdem literas expresse
" significatur quod, non obstante
" liberatione prædicta eidem Mar-
" garetæ sic facta, præsentatio
" domini Regis prædicta sibi salvari
" debeat et retineri. Dicit etiam
" quod dictus Episcopus, ut loci
" Diocesanus, eo quod tempus
" semestre jam labitur, providit ad
" ecclesiam prædictam quasi jure
" sibi devoluto, et sic dicit quod
" neque tempore quo dominus Rex
" præsentavit, nec ad præsens
" dicta Margareta, ratione illius
" vacationis, aliquem effectum
" præsentationis quoquo modo
" habere debeat, per quod ad
" contradicendum actionem domini
" Regis, qui præsentationem suam
" tempore suo, ut præmittitur,
" adeptus fuerat, dictæ Margaretæ
" in hac parte competere posset,
" unde petit judicium, &c."

[1] dioms is omitted from L.

[2] According to the roll various matters in the preceding pleadings on behalf of Margaret were repeated " et ea parata est verificare quo-
" cunque modo Curia consider-
" averit. Et sic, prædicta Mar-
" gareta in possessione prædictorum
" manerii et advocationis virtute
" liberationis prædictæ infra tem-
" pus semestre existente, jus
" habuit ad eandem præsentare, et
" præsentavit, et literæ domini
" Regis, quas prædictus Johannes
" ostendit Curiæ omnino sunt
" contra jura, statuta, et consuetu-
" dinem regni, ad quas Curia de
" jure considerationem habere non
" debet, unde petit judicium et
" breve Episcopo, &c."

The King then sent to the Justices his writ close dated 12 July, in the 18th year of the reign: — " Cum in Parliamento
" nostro apud Norhamptone nuper
" edito ordinatum sit et concorda-
" tum quod non demandetur per
" magnum sigillum aut parvum
" sigillum ad impediendum aut
" differendum communem justi-
" tiam, et, licet talia mandata
" venerint, non propter hoc Justi-
" ciarii supersedeant de faciendo
" justitiam in aliquo, Nos volentes

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A.D. 1344. so that you cannot in any manner have the presentation; and the King's delivery of the issues was only by grace, and therefore the Court awards that the King do have a writ to the Bishop.—And note that it was said by the Council that the King ought, in such a case, to have the issues, because he had the right to seize, and by law has a right to them until his new tenant has performed the services due to him.

Quare impedit. § The King brought a *Quare impedit* against Margaret de Wigton, the Bishop of Carlisle, and Roger de Crombewelle,[1] and counted that it belonged to him to present for the like cause for which he had counted against the Bishop, as above, on the other writ.[2]—*Grene.* Sir, we tell you that on a certain day, &c., a fine was levied[3] between Robert Paruenk, plaintiff, and this same Margaret against whom the writ is now brought, deforciant, in respect of the manor of Melmerby, to which the advowson is appendant, whereby Margaret acknowledged the manor to be the right of Robert as that which he had of her gift, for which

[1] For the form in which the action was brought, according to the record, *see* p. 171, note 3.

[2] No 37 above (p. 155, note 6). The King *v.* the Bishop of Carlisle.

[3] *See* p. 173, note 5.

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issint poetz vous en nul manere aver le presente- A.D. 1344.
ment; et la livere le Roi des issues ne fut forqe de grace, par quei agarde la Court qe le Roi eit brief al Evesqe.[1]—Et *nota* qe dit fut par le Counseil[2] qe[3] le Roi en tiel cas dust aver les issues, pur ceo qil avoit[4] dreit de seisir, et de ley deit, tanqe son novel tenant luy[5] eit fet ses services.

§ Le[6] Roy porta un *Quare impedit* vers Margarete de Wygtone, Levesqe de Cardoil, et Roger de Croumbewelle, et counta qe a ly appendit a presenter par altiel cause come il counta vers Levesqe, *ut supra*, en lautre brief.—*Grene.* Sire, nous vous dioms qe certein jour, &c., fyn soi leva entre Robert Paruenk, pleintif, et mesme [cele] vers qi le brief est ore porte deforceaunt, de maner de Melmorbracy, a qi lavowesoun est appendaunt, ou M. conust le maner estre le dreit Robert come ceo qil avoit de son doun,

Quare impedit. [Fitz., *Quare impedit*, 150.]

" statutum illud in omnibus et " singulis suis articulis inviola- " biliter observari, vobis mandamus " quod in loquela quæ est coram " vobis per breve nostrum inter " nos et Margaretam de Wyge- " tone de eo quod eadem Margareta " permittat nos præsentare idoneam " personam ad ecclesiam de Mel- " morby quæ vacat et ad nostram " spectat donationem, ut dicitur, " quantum cum justitia poteritis, " procedatis, aliquibus mandatis " vobis per magnum sigillum aut " parvum sigillum in contrarium " directis non obstantibus."

[1] After the writ close there follows on the roll a pleading on the King's behalf " quod ex quo " prædicta Margareta non dedicit " ea quæ per ipsum Johannem " superius pro domino Rege sunt " allegata, petit judicium pro dom- " ino Rege, et breve Episcopo, &c."

Judgment was then given as follows:—" Quia visum est Curiæ " hic quod ea quæ per prædictam " Margaretam superius sunt alle- " gata non sufficiunt ad præcluden- " dum dominum Regem a præ- " sentatione sua in hac parte, " consideratum est quod dominus " Rex recuperet præsentationem " suam ad ecclesiam prædictam, et " habeat breve Episcopo," &c.

[2] L., Counseille.

[3] qe is omitted from 25,184.

[4] L., y avoit.

[5] luy is omitted from 25,184.

[6] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It appears, however, to have been used by Fitzherbert for his *Abridgment*, and not the other report.

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A.D. 1344 acknowledgment Robert granted and rendered the same advowson to Robert Paruenk the younger for term of his life, and limited the remainder to Margaret de Wigton and to the heirs of her body begotten; and we tell you that after the death of Robert the King seized the same manor and advowson, wherefore Margaret sued a writ of *Diem clausit extremum* to the Escheator, before whom it was found that Robert had an estate for term of life only in the manor, and that the remainder was to Margaret according to the purport of the fine, wherefore Margaret sued to the King that he would make restitution to her. And the King sent a writ to the Escheator directing him to remove his hand. And so she tells you that it belongs to her to present. And we do not understand that the King can assign any disturbance in her person. And thereupon *Grene* made *profert* of the writ of *ouster le main* which was sent to the Escheator.—And as to the Bishop and Roger, they made default, &c.—*W. Thorpe.* We make protestation that we do not admit this suit made to the King, of which they speak, nor that Robert had only an estate for term of life in the advowson, but we tell you that, after the possession which they have acknowledged that the King had, the church was void, and remained void until the six months were passed, and before restitution was made to Margaret, so that by that restitution nothing could accrue to Margaret with regard to that presentation because the six months were passed, so that the time was passed within which the very patron could present, and the Ordinary could not present upon the possession of the King, against whom time does not run, and so the presentation belongs to the King. And we demand judgment, and pray a writ to the Bishop.—*Grene.* In answer to that we tell you that the King made restitution to Margaret within the six months, and they have admitted Margaret to be very patron, and therefore we demand

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pur qil conisaunce Robert graunta et rendi mesme lavowesoun a Robert Paruenk le puisnee a terme de sa vie, et tailla le remeindre a Margaret de Wygtone et a les heirs de son corps engendrez; et vous dioms qapres la mort Robert le Roy seisi mesmes le maner et lavowesoun, par quei Margarete suyt un brief *Diem clausit extremum* a Leschetour, devant qi fuit trove qe Robert navoit qa terme de vie en le manere, et qi le remeindre fuit a Margarete solonc la purporte de la fyn, par quei Margarete suy issint au Roy qe il fit restitucion a M. Et maunda brief al Eschetour de hoster la meyn. Et issint vous dit ele qe a ly appent a presenter. Et nentendoms pas qe le Roy puisse destourbaunce en sa persone assigner. Et sur ceo mist avant le brief qe fuit maunde al Eschetour de hoster la meyn.—Et quant al Evesqe et Roger ils firent defaut, &c.—*W. Thorpe.* Nous fesoms protestacion qe nous ne conissoms pas cele suite fait a Roy, de qel ils parlent, ne qe Robert navoit qa terme de vie en lavowesoun, mes vous dioms qe apres la possession quel ils ount conu[1] a Roy leglise fuit voide, et vode demura tantqe les vj moys furent passez, et avant ceo qe restitucion fuit fait a Margarete, issint qe par cele restitucion rienz ne poiet acrestre a Margarete en cel presentement del houre qe le vj moys furent passez, issint le temps passe deinz quei le verrey patron poet presenter, ne le Ordeiner poet pas presenter sur la possession le Roy vers qi le temps ne court pas, et issint attient le presentement a Roy. Et demandoms jugement, et prioms brief al Evesqe.—*Grene.* A ceo vous dioms nous qe le Roy fit restitucion a Margarete deinz les vj moys, et il ount conu M. estre verrey patron, par quei pur[2] M. nous demandoms A.D. 1344.

[1] MS., come. | [2] MS., par.

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A.D. 1344. judgment for Margaret, and pray a writ to the Bishop. —And thereupon they were adjourned to the Octaves of Trinity, on which day *Seton* demanded judgment for Margaret, and prayed a writ to the Bishop, because they had taken for the King no other title than that the manor to which the advowson was appendant was held of the King *in capite*, and that the church became void during the life of Robert, and remained void until after Robert's death, upon which the King seized, which seisin is found to be, as it were, null through Margaret's suit, as you have it by the record before you, by which it is proved that the King made restitution to her of the manor to which the advowson is appendant, and, with that, the advowson also, together with the issues, so that there is no mean time in law between the death of Robert and the entry of Margaret; therefore we demand judgment.—Willoughby. If the King had not reasonable cause to seize the manor, &c., that would be one thing, but now the King had cause to seize it until Margaret had sued it out of his hand, and done homage to the King, just as after the death of tenant by the curtesy of England; and, before that suit had been made, the church was void as is admitted on both sides, and at that time the King had cause to present.—*Richemunde*. After the death of tenant by the curtesy of England the King has possibly a cause for seizing, and the cause is that possibly he who was tenant by the curtesy of England might be the King's tenant in fee by release from the heir, of which matter the King could not be apprised; therefore it is right that he should seize; but in the case in which we are it is proved by matter of record that Robert had only a term for life, the remainder to Margaret, and so the King seized without any cause, and, therefore, since he made restitution of the manor to which, &c., to Margaret, his seisin must be adjudged as null at all times.—*W. Thorpe*. Suppose that,

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jugement, &c., et prioms brief al Evesqe.—*Et super hoc* ils furent ajournez tanqa les viij^{es} de la Trinite, a qil jour *Setone* pur Margarete demanda jugement, et pria brief al Evesqe, qar il nount pris pur title le Roy altre mes qe le maner a qi lavowesoun fuit appendaunt fuit tenuz de Roy en chief, et qe leglise se voida en la vie Robert, et voide demura tanqapres la mort Robert, qe le Roy seisist, qel seisine est trove auxi come nulle par la suite Margarete, come vous avetz par recorde devant vous, par qel est prove qe le Roy ly fist restitucion de maner a qi lavowesoun est appendaunt, et, ove ceo,[1] lavowesoun auxint ove les issuz, issint nul meen temps en ley entre la moriant Robert et lentre Margarete; par quei nous demandoms jugement.—Wylby. Si le Roy navoit pas ewel cause de seiser le maner, &c., ascun chose serreit, mes ore le Roy avoit cause de seisier tanqe Margarete lavoit suy hors de sa mayn, et fait homage al Roy, come apres la mort le tenant par curteisie Dengleterre, avant qel suyte fait leglise fuit voide come est conue dune part et dautre, a qel temps le Roy avoit cause de presenter.—*Richem.* Apres mort de tenant par curtesi Dengleterre le Roy par cas ad cause de seisir, et la cause est pur ceo qe par cas cely qe fuit tenant par la ley Dengleterre puit estre tenant de fee al Roy par reles del heir, de qel chose le Roy ne puit estre apris[2]; par quei il est resoun qil seise; mes en le cas ou nous sumes il est prove par chose de recorde qe R. naveit qa terme de vie, le remeindre a Margarete, issint le Roy seisist saunz nulle cause, et par taunt quant il fit restitucion de maner a qi, &c., a Margarete, sa seisine a chescun temps ajugge come nulle. —[*W.*] *Thorpe.* Jeo pose qe tanqe le Roy fuit seisi

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[1] MS., sa. | [2] MS., a pres.

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A.D. 1344. while the King was seised of the manor in that manner, a wardship had fallen in, and the King had given it to another person, or had retained it, after restitution of the manor had been made, &c., to Margaret, the wardship would have remained with the King, and Margaret would not have had it because it would have been a profit accrued to the King during his possession by very title, and so also it seems to be with regard to the presentation.—But this was denied by all Willoughby's fellow-justices.—Sharshulle. Suppose the King had been seised of the manor to which the advowson is appendant for three years before Margaret made her suit to him, and it had been afterwards found by the Escheator, as it has been found, that Robert had only a term for life, the remainder to Margaret, the King would send his writ to the Escheator directing him to make restitution of the manor with all the issues. And although the Escheator could not make restitution of all the issues because possibly he had paid them into the Exchequer, yet it has been seen that the King, upon suit and petition made to him, has made satisfaction to the party for all the issues received; so in this case if the King had presented during his possession of the manor for such a cause, which has not yet been shown, the King would make restitution of the manor, and would revoke the presentation, because when the King seizes a manor so as to have the issues as his own, the case is not quite the same as when he seizes for another cause until his tenant has performed the services due to him.—*W. Thorpe.* Suppose that Robert Paruenk had leased his estate in the manor to another, and that during Robert's life the church had become void, and had remained void until after Robert's death, the lessee would have had the presentation, and not Margaret to whom the remainder was limited; so it seems that the King will have the presentation in the same

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de maner par la manere une garde escheust, et le Roy lust donee a un autre, ou ust retenuz, apres restitucion fait de maner, &c., a Margarete, la garde est demure devers le Roy, et Margarete ne lust pas ewe pur ceo qe ceo fuit un profist acrewe al Roy durant sa possession pur verrey title, auxint semble il de presentement.—Mes ceo fuit denie a Will. par toutz ceuz compaignons.—Schar. Jeo pose qe le Roy ust estee seisi de maner a qi lavowesoun par iij anz einz ceo qe Margarete ust fait sa suite devers ly, et puis fuit trove par Leschetour, come est trove, qe R. navoit qa terme de vie, le remeindre a Margarete, le Roy maundera son brief al Eschetour qil face restitucion de maner ove toutz les issuz. Et mesqe le Eschetour ne purra faire restitucion dez toutz les issus pur ceo par cas il les ad paie a Lescheqer, homme ad vewe qe le Roy par suite fait devers ly et par peticion ad fait gree a la partie des toutz les issuz resceux; auxi de ceste part si le Roy ust presente durant sa possession de maner par tiel cause, come nest pas unqore mustre, le Roy ferreit restitucion de maner, et repellereit la presentement, qar il nest pas tout un quant le Roy seise une maner daver les issuz a soun demene et quant il seise par autre cause tanqe soun tenant eit fait a ly ces services.—*W. Thorpe.* Jeo pose qe R. Paruenk ust lesse son estat de maner a un autre qen la vie Robert leglise ust voide, et ust demure voide tanqe apres la mort Robert, cely ust ewe le presentement, et noun pas Margarete a qi le remeindre fuit taille; auxint semble il qe Roy lavera A.D. 1344

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A.D. 1344. manner since the church remained void until the King seized it, and that seisin was by very title.—Hillary. Your cases are not alike, for in the case which you put a right accrued to the lessee to have the presentation during Robert's life, and before any right had accrued to Margaret, but in the case in which you are a right had accrued to Margaret immediately after Robert's death, so that, after restitution of the manor had been made to Margaret, the King's seisin shall be adjudged as null, and I do not see any mean time between the death of Robert and the entry of Margaret.—*Stouford.* When the King has seized anything after the death of his tenant, though he afterwards makes restitution of the issues, but only at his pleasure and by his special grace, where he has seized for a true cause, then although the King makes restitution of the manor with the issues or the advowson, still the presentation which previously accrued to him will remain to him.—*R. Thorpe.* The King makes restitution of the thing seized and of all the issues in such a case, for suppose that after the death of a tenant the King seizes in a case in which the tenant's wife held jointly with him at the time of his death, the King, after that is found, will make restitution to the wife of the thing seized and of all the issues received in the mean time; so also in this case.—And afterwards the King had a writ to the Bishop by judgment, &c.

Formedon in the remainder.

(40.) § A man brought his writ of Formedon in the remainder.—*Moubray.* What have you to show the remainder?—*Grene* made *profert* of a deed which proved the gift to have been made in fee tail, with a remainder limited afterwards to the person who now brought the writ.—*Moubray.* The alleged donor did not give by this deed; ready, &c.—*Grene.* Whether he gave by this deed or by another deed is nothing to you;

No. 40.

par mesme la manere de puis leglise demura voide tanqe le Roy ly seisist, et qel seisine fuit par verrey title.—Hill. Voz cases ne sount pas sembleables, qar en le cas qe vous mettez dreit acrust a lautre daver la presentement en la vie Robert, et eins ceo qe nul dreit fut acru a Margarete, mes en le cas ou vous estes immediate apres la mort Robert dreit fuit acru a Margarete, issint qapres restitucion fait a Margarete de maner, la seisine le Roy serra ajugge auxi come nulle, et jeo[1] nulle meene temps entre la mort Robert et lentre Margarete.—*Stouff.* Quant le Roy ad seisi une chose apres la mort son tenant, coment qapres il fait restitucion des issuz, la ou il ad seisi par verrey cause, mes soulement de sa volunte et de especial grace,[2] dounqes coment le Roy fit restitucion de maner ove les issuz ou lavowesoun, unqore le presentement qe ly acru de temps avant ly demura.—*R. Thorpe.* Le Roy fit restitucion de la chose seisi et des toutz les issuz en tiel cas, qar jeo pose qapres la mort un tenant le Roy seise la ou sa femme avoit joint ove ly a temps de soun moriant, le Roy apres cella trove fra restitucion a la femme de la chose seisi et des tout les issuz resueux en la meen temps; auxi pardesa.—Et apres le Roy avoit brief al Evesqe par agarde, &c. A.D. 1344.

(40.)[3] § Un homme porta son brief de Forme de doun en le Remeindre.—*Moubray.* Quei avetz de remeindre?—*Grene* mist avant fait qi prova le doun estre fait en fee taille, et puis le remeindre taille a cely qore porte le brief.—*Moubray.* Il ne dona pas par ceo fait; prest, &c.—*Grene.* Le quel il dona par ceo fait ou par autre fait ceo nest rienz a Forme de doun en le Remeindre. [Fitz., *Issue*, 34.]

[1] There is a space in the MS. between jeo and nulle.

[2] MS., graunte.

[3] From Harl. alone. This report has not been printed in the old editions of the Year Books, but has been very briefly abridged by Fitzherbert.

No. 41.

A.D. 1344. wherefore, since you do not traverse the gift in general terms, we demand judgment, &c.—*Moubray*. Sir, since he will not be able to maintain this action unless he can show a specialty, it seems that I can take my issue on the specialty, as in a case of rent charge I shall be admitted to say that the person did not charge by the deed, &c.—SHARSHULLE. And do we understand you to say that in case he had lost his specialty showing the remainder he would not afterwards have an action on another supposed deed? as meaning to say that he would.—To this all the [other] JUSTICES and Sergeants said that they would never have an action after the specialty had been lost.—But in the end *Moubray* was compelled to say in general terms that the alleged donor did not give as the writ supposed, without making reference to the deed, and upon that they were at issue.—And so observe.

Trespass. (41.) § Richard de Acton brought his writ of Trespass against B. and S. and several others,[1] and counted that on a certain day in the 17th year of the present King, in a certain place, the aforesaid B.[1] and S.,[1] &c., assaulted him, and beat him, and wounded him, &c.—*Moubray*. Sir, we tell you that, on another day in the 17th year, this same Richard came with others in a place other than that which the plaintiff has supposed by his count, and beat the defendants, and drove them to

[1] For the names of the parties *see* p. 197, note 1.

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vous; par quei, del houre qe vous ne traversez le doun generalment, nous demandoms jugement, &c.—*Moubray.* Sire, del houre qil ne purra pas meyntener cest accion sil ne moustrast especialte, il semble qe sur lespecialte jeo prendray mon issue, come en cas de rent charge jeo serray ressu a dire qil ne chargea par le fait, &c.—SCHAR. Et entendoms vous qen cas qil ust perdu soun especialte del remeindre qapres il navereit pas accion sur un autre fet feint? *quasi diceret sic.*—A qi toutz les JUSTICES [et] Sergeauntz disount qil navereint jammes accion apres lespecialte perdu.—Mes a dereyn *Moubray* fuit chacee a dire generalment qil ne dona pas come le brief suppose saunz aver relacion a fait, et sur ceo ils furent a issu.—*Et sic vide.* A.D. 1344.

(41.) [1] § R. de Actone porta soun brief de Trespas vers B. et S. et plusours autres, et counta qe certein jour lan xvij le Roy qorest, en certein lieu, les avaunditz B. et S., &c., ly assailerent, et ly batirent, et navrerent, &c.[2]—*Moubray.* Sire, nous vous dioms qautre jour lan xvij ove mesme cesty Richard et autres viendreint en altre lieu qe le pleintif navoit suppose par counte, et les assailerent, et les enchacerent tant qe a un certein place, et Trespas.

[1] This report has not been printed in the old editions of the Year Books. It is from Harl. alone, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 201. It there appears that the action was brought by Richard de Acton against Ralph le Bret and John his son, and Thomas, John's brother, and eight others.

[2] According to the record, the declaration was that the defendants "die Jovis proxima post "Festum Purificationis beatæ "Mariæ Virginis anno regni "domini Regis nunc Angliæ "decimo septimo apud Haselbere "vi et armis . . . . . "bona et catalla ipsius Ricardi ". . . . . ibidem inventa ceperunt "et asportaverunt, et in homines "et servientes suos . . . . . "ibidem insultum fecerunt, et "ipsos verberaverunt, vulnerave-"runt, et male tractaverunt, per "quod idem Ricardus servitium "eorundem hominum et servien-"tum suorum per magnum tempus ". . . . . amisit."

No. 41.

A.D. 1344. a certain place, and there cornered them so that they could not escape, and, therefore, if they received any injury, it was by reason of their own assault; and we demand judgment whether they can have an action in respect of this, *absque hoc* that there was any trespass committed on another day, in another place, as the plaintiff has supposed by his count; ready, &c.—*Stouford.* As to your justification we have no need to answer, because that refers to another trespass which we have not surmised against you by count, but your answer is tantamount to saying that you are not guilty of the trespass which is surmised against you, wherefore we will maintain our writ to the effect that you are guilty; ready, &c.—*Moubray.* Our justification must necessarily be entered, because on a writ of Trespass it is not a plea to take issue either on the day or on the place, and the Justices ought not to take an inquest and have not power to enquire concerning day or place, but have power only to enquire generally concerning the trespass, of which we shall be found guilty, and therefore we shall be convicted while we have justified our act by law, though on another day, which is a mischief; wherefore, &c.—Willoughby. When the inquest is taken, they will be charged as to whether you committed such a trespass as that of which he complains, on such a day, and in such a year, and at such a place as he has counted, for the Court has no warrant to enquire as to another trespass on another day, because they have no original writ relating to it, and therefore no part of your justification shall be entered, so far as we are concerned.—*Herlastone*, the Clerk. When you have a dispute of this kind concerning the day, you will have an enrolment in the form "*quod tali die, et loco tali*" included in his count "*ei fecit*" no trespass, "*sicut per narrationem suam supponit, &c.*"—And the Justices agreed to this.—Therefore *Moubray* said that he com-

No. 41.

illoeqes les enanglerent issint qils ne purreint eschaper, et en taunt, si nulle mal resustrent, ceo fuit a lour assalt demene; et demandoms jugement si de ceo puissent ils accion aver, saunz ceo qe nulle trespas a altre jour en altre lieu fit auxi come le pleintif ad suppose par counte; prest, &c.—*Stouff.* Quant a vostre justificacion nous navoms pas mestre de respoundre, qar cel refiert a autre trespas qe nous ne vous avoms surmys par counte, mes vostre respouns amount a taunt qe vous nestes pas coupable de trespas qel vous est surmys, par quei nous voloms meyntener nostre brief qe vous estes coupable; prest, &c.—*Moubray.* Il covient a force qe nostre justificacion soit entre, qar en brief de Trespas il nest pas plee de prendre issu sur le jour ne sur le lieu, ne les Justices ne deivent prendre lenquest, ne ount pas power denquere de jour ne de lieu, mes soulement denquere generalment de trespas, de qel nous serroms trove coupable, et en taunt nous serroms atteint la ou nous avoms justifie nostre fait par ley a[1] autre jour qel est[2] un meschief; par quei, &c. — Wilby. Quant lenquest serra pris, ils serrount chargez si vous ly feistez tiel trespas come de qel il est pleint si jour et tiel an, et tiel lieu come il ad countee, qar dautre trespas a lautre jour la Court nad pas garant denquere, pur ceo qe de ceo ils ount nulle original, par quei rienz de vostre justificacion serra entre pur nous.—*Herlastone*, clerk. Quant vous estes a tiel debat sur le jour, vous averez tiel enroulement *quod tali die, et loco tali*, compris en soun counte nulle trespas *ei fecit, sicut per narrationem suam supponit, &c.*—Et a ceo acorderent les Justices.—Par quei *Moubray* dit qil fit nulle A.D. 1344.

[1] MS., et. | [2] MS., qe lest.

Nos. 42, 43.

A.D. 1344. mitted no trespass on such a day and in such a place, as the plaintiff had supposed by count; ready, &c.— And the other side said the contrary.

Voucher granted. (42.) § Note that the tenant vouched one H.— *Gaynesford.* Sir, we tell you that one J., father of this same tenant who now vouches, was seised of these tenements, and of other tenements, and died seised, and after his death the tenements descended to the tenant and to H. who is now vouched, whereupon they entered and made partition between them so that the tenements now demanded were allotted to the purparty of the one who is now tenant in satisfaction for other tenements which were allotted to H.'s purparty, and we demand judgment whether she ought to be admitted to this voucher of her co-parcener without showing a cause.—*Grene.* And, since you do not counterplead the voucher by common law or by statute, we demand judgment, and pray our voucher.—Sharshulle. Suppose the partition had been made as you have said, and H. had released to the one who is now tenant, would not that be a reason why she should have her warranty? as meaning to say that it would. And therefore let the voucher stand.

Debt. (43.) § One J.,[1] procurator of one B.,[1] brought a writ

[1] For the real names *see* p. 201, note 4.

Nos. 42, 43.

trespas a tiel jour et lieu come il avoit suppose par counte; prest, &c.[1]—*Et alii e contra.* A.D. 1344.

(42.)[2] § *Nota* qe le tenant voucha un H.—*Gayn.* Sire, nous vous dioms qe un J., pier mesme cesty tenant qore vouche, fuit seisi de ceux tenementz et dez autres tenements, et murust seisi, apres qi mort les tenementz decendirent al tenant et a H. qest ore vouche, ou eux entrerent et firent la purpartie entre eux issint qe les tenementz ore demandez furent allotes a la purpartie cesty qest ore tenant en allowaunce des autres tenementz qe furent allotes a la purpartie H., et demandoms jugement si a ceo voucher de sa parcenere deit ele estre ressu saunz cause moustrer.—*Grene.* Et de cel houre qe vous ne contrepledez mye le voucher par la comune ley ne par lestatut, nous demandoms jugement, et prioms nostre voucher.—Schar. Jeo pose qe la purpartie fuit fet auxi come vous avetz parle, et qe H. relessa a cesty qore est tenant, nest il pas resoun qele eit[3] sa garrauntie? *quasi diceret sic.* Et pur ceo estoise le voucher. Voucher graunte. [Fitz., *Voucher*, 6.]

(43.)[4] § Un J., procuratour un B., porta un brief Dette.

[1] The plea as entered on the roll was "Radulphus et alii . . . . "defendunt vim et injuriam "quando, &c., et bene defendunt "quod ipsi prædictis die et anno "non fecerunt prædicto Ricardo "de Actone prædictam trans-"gressionem contra pacem sicut "idem Ricardus versus eos narra-"vit." Issue was joined upon this (nothing being said about the place).

[2] From Harl. alone. This report has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment*.

[3] MS., qil il eist, instead of qele eit.

[4] This report has not been printed in the old editions of the Year Books, and does not appear to have been used by Fitzherbert for his *Abridgment*. It is from Harl. alone, but corrected by the record, *Placita de Banco*, Easter, 18 Edw. III., R° 151. It there appears that the action was brought by "Ubertinus de Zanetis de "Placentia," procurator of Otho (Octonis) Sapiti late prebendary of the prebend of Sutton in the church of Chichester against Master Walter Gest of Ideshale in respect of a debt of 140 marks.

No. 43.

A.D. 1344. of Debt against one C.,[1] and counted that on a certain day he leased to C.[1] a prebend, which belonged to B.[1] his principal, to hold for three years, and rendering every year 40 marks. He brought this writ for rent in arrear after the expiration of the term. And thereupon he made *profert* of a deed which proved the lease as above. And the words of the deed were "*reddendo prædicto J. vel magistro suo B. xl. marcas per annum.*"[2] —*Grene.* Judgment of the writ, which purports that the rent is to be paid to him, whereas the deed proves that the debt should be paid to his principal or to him, and so an action is given to his principal in respect of this debt, wherefore we demand judgment of the writ.—*Moubray.* On the lease we cannot have any other writ, or any other action; wherefore that which you have said is to our action, and therefore do

[1] For the real names *see* p. 201, note 4.

[2] *See* p. 203, note 1.

No. 43.

de Dette vers un C., et counta qe certein jour il lessa a C. un provendre qe fuit a B. soun mestre, a tenier par troys anz, et rendaunt chescun an qaraunt marcz. Pur le ferme arere apres le terme il porta cesty brief. Et sur ceo il mist avant fait qe prova le lesse *ut supra.* Et le feit voleit *reddendo prædicto J., vel magistro suo B. xl marcas per annum.*[1]—*Grene.* Jugement de brief, qe voet qe le dette serra paie a ly, la ou le fait prove qe la dette serra paie a son meistre ou a ly, issint accion est done a son meistre de cel dette, par quei nous demandoms jugement de brief.[2]—*Moubray.* Sur le lesse nous ne poms autre brief ne autre accion aver; par quei ceo qe vous avetz dit est a nostre accion, et A.D. 1344.

[1] The declaration was, according to the roll, "quod cum ipse, vice-" simo quarto die Mensis Octobris " anno Domini millesimo tricente-" simo [*sic*] tricesimo quarto, et " regni domini Regis nunc octavo, " apud Londonias in parochiæ " Sanctæ Mariæ Magdalenæ juxta " Oldefisshs trete in warda de Bey-" nard Chastel dimisisset prædicto " Magistro Waltero prædictam " præbendam ad terminum trium " annorum proxime sequentium, " cum omnibus juribus et perti-" nentiis ad ipsam præbendam " qualitercumque spectantibus, " tenendam prædicto Waltero et " executoribus suis et assignatis " suis, a Festo Sancti Michalis " Archangeli anno prædicto usque " ad finem trium annorum proxime " sequentium, Reddendo inde quo-" libet anno, durante termino " prædicto, Octoni Sapiti, vel dicto " procuratori, apud Londonias, " sexaginta et decem marcas, " videlicet ad Festum Paschæ vel " infra quindenam Paschæ viginti " et quatuor marcas, et ad Festum " Sancti Barnabæ Apostoli viginti " et tres marcas, et ad Festum " Sancti Petri ad vincula viginti et " tres marcas, prædictus Magister " Walterus prædictas centum et " quadraginta marcas de duobus " primis annis de prædicto termino, " licet proficua de illis duobus " annis habuisset, et sæpius " requisitus, &c., non reddidit, sed " adhuc reddere contradicit, unde " dicit quod deterioratus est et " damna habet ad valentiam " centum librarum. Et inde pro-" ducit sectam, &c. Et profert " hic in Curia quoddam scriptum " indentatum inter prædictos " Ubertinum et Magistrum Walter-" um confectum et sigillo ipsius " Walteri signatum, quod hoc " testatur in forma prædicta, &c."

[2] The plea was, according to the roll, "quod prædictus Ubertinus " in narratione sua prædicta " supponit prædictos denarios " deberi prædicto Octoni, &c., et " idem Ubertinus eosdem denarios " ut procurator, &c., exigit, unde " petit judicium de brevi, &c."

No. 44.

A.D. 1344. you mean that to be your answer? — Sharshulle. Your writ is not good since an action in respect of the same debt is vested in the person of your principal, and therefore the Court adjudges that you do take Judgment. nothing by your writ.

Formedon. (44.) § Note that one A. brought a writ of Formedon against B. who appeared, and as to a moiety vouched to warrant one K. as son and heir of John de Oxenforde, who was under age, and prayed that the parol might demur until his full age.—*Moubray.* What do you say as to the rest?—*Grene.* I ought not to answer as to the rest, because this writ is an entire writ in itself, which ought to demur in its entirety until the vouchee's full age.—R. Willoughby. Even though the writ be an entire writ in itself, you have severed it by your answer given to the action, because your answer extends only to a moiety, and therefore you must give another plea in respect of the other moiety, or else have judgment as against one who says nothing, &c.—*Grene.* As to the other moiety we vouch to warrant Richard de Rothinges and M. his wife, and one B. and K. his wife, &c.—*Moubray.* As to the first voucher of K. he shall not be admitted, because we tell you that heretofore he prayed aid of John de Oxenforde and C. his wife, supposing by his prayer that he held for term of life by their lease, of whom C. is this day living, and we demand judgment whether he shall be admitted to vouch another, supposing his estate to be by another.—But, notwithstanding this counterplea, the voucher was granted.—*Moubray.* As to the other voucher, he shall not be admitted, because we tell you that heretofore, in this

No. 44.

pur ceo le voilez pur respouns?—Schar. Vostre brief nest pas bon quant accion de mesme la dette est vestu en la persone vostre meistre, et pur ceo agarde la Court qe vous ne preignez rienz par vostre bref.[1] A.D. 1344. *Judicium.*

(44.)[2] § *Nota* qe un A. porta brief de Forme doun vers B. qe vient, et quant a la moite vouche a garraunt un K. come fitz et heir Johan de Oxenforde, qe fut deinz age, et pria qe la parole demurast tauntqa son age.—*Moubray.* Quei ditez vous de remenant?—*Grene.* Jeo ne deyve pas respoundre de remenant, qar cesti brief est un entier en ly mesme, qe deit demurer en tout tauntqal age.—R. Wilby. Mesqe le brief soit un en ly mesme, vous lavez severe par vostre respouns done al accion, qar vostre respouns ne sestent fors a la moite, par quei del autre moite il vous covynt de doner altre plee, ou daver jugement come devers cely qe rienz ne dit, &c.—*Grene.* Quant al autre moite nous vouchoms a garraunt Richard de Rothinges et M. sa femme, et un B. et K. sa femme, &c.—*Moubray.* Quant a primer voucher de K. il ne serra pas ressu, qar nous vous dioms qe autrefoitz il pria ayde de Johan de Oxenforde et C. sa femme, supposant par son prier qil tient a terme de vie de lour lesse, de queux C. est huy ceo jour en plein vie, et demandoms jugement si de voucher autre, en supposaunt son estat estre par autre, serra il ressu.—*Sed, non obstante* cele contreple le voucher fut graunte.—*Moubray.* Quant al autre voucher il ne serra pas ressu, qar nous vous dioms qe autrefoitz en mesme

Fourme doun. [Fitz., *Voucher*, 7.]

[1] According to the roll, "Et "Ubertinus non potest hoc dedi- "cere. Ideo consideratum est "quod prædictus Magister Walter- "us eat inde sine die, et prædictus "Ubertinus nihil capiat per breve "suum, sed sit in misericordia, &c."

[2] From Harl. alone. The report 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. 1344. same plea, he himself prayed aid of those who are now vouched, and the aid was granted, and on the return of the summons they did not appear, wherefore by reason of their non-appearance he was put to answer alone, and we demand judgment whether he shall be admitted to vouch those by reason of the non-appearance of whom he is put to answer alone.—*Pole.* It may be that we have a warranty to claim against a person other than the person to whom the reversion belongs, and since you do not counterplead the voucher by common law or by statute we demand judgment. —Willoughby. His counterplea is warranted by common law, and, since you do not deny his counterplea, we oust you from the voucher.—And afterwards they were at issue on a traverse of the gift. See Easter Term in the 13th year, where a counterplea of aid-prayer, on the ground that the tenant could vouch, was adjudged null.[1] And touching this matter see Michaelmas Term in the third year, on a writ brought in the Hustings of London.[2] And touching this matter expressly see Michaelmas Term in the 18th year at the end.[3]

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[1] Y.B., Easter, 13 Edw. III., No. 42, p. 256.

[2] Y.B., Mich., 3 Edw. III., No. 16, fo. 38.

[3] Y.B., Mich., 18 Edw. III., No. 59 (*ter.*).

No. 44.

cesty plee il mesme pria en eyde de ceux qeux sount ore vouchez, et leide fuit graunte, et a la somons retourne eux ne viendrint pas, par quei par lour nounvenue il fuit mys de respoundre soul, et demandoms jugement sil serra ressu de voucher ceux par nounvenue des qeux il est mys de respoundre soul.—*Pole.* Puit estre qe nous avoms une garrauntie vers autre qe vers cely a qi la revercion appendit, et del houre qe vous ne contrepledez pas le voucher par la comune ley ne par lestatut, nous demandoms jugement.—Wilby. Son contreple est garraunti par la comune ley, et del houre qe vous ne deditz pas son contreplee nous vous hostoms de voucher.—Et puis il furent a issu sur le doun traverse.—*Vide Paschæ xiij°*, ou il fuit ajugge pur nul countreple del heide prier qil purreit voucher. *Et de ista materia Michaelis iij°* en brief porte en Hustenges, London. *Et de ista materia expresse, Michaelis xviij° in fine.* A.D. 1344.

TRINITY TERM

IN THE

EIGHTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

TRINITY TERM IN THE EIGHTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

No. 1.

A.D. 1344. Nuisance. (1.) § A man brought a writ of Nuisance in respect of a house erected to the nuisance of his freehold, and counted that, whereas he had his house, and below his house a piece of ground containing so much in length and so much in breadth, by which the water was wont to flow down from his house, and discharge, &c., the defendant had erected a house adjoining his house and higher than his house, so that the water and the drops of rain could not flow down as they were wont to do, but fell upon the walls of his house, by reason whereof the timber of his house rotted, &c.—*Notton.* First he assigns the nuisance in that the water used to flow down to a certain place, and afterwards he concludes with the erection of a house; judgment of the non-pursuance.—This exception was not allowed.—And he prayed view.—And he had view notwithstanding that it is of his own wrong.

Nuisance § On a writ of Nuisance the plaintiff counted that whereas he had a house in Holborn, outside of which house he had left a piece of land of his own soil containing

DE TERMINO TRINITATIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU DECIMO OCTAVO.[1]

No. 1.

(1.)[2] § Un homme porta brief[4] de Nusaunce[5] dune mesoun leve a nusaunce a soun fraunctenement, et counta qe par[6] la ou il avoit sa mesoun, et par aval sa mesoun avoit un place qe contient taunt en longour et taunt en leeste,[7] par quel leawe[8] soleit descendre de sa mesoun, et deliverer, &c., [la ad le defendant leve un mesoun joynaunt a sa mesoun paramount la sue, si qe leawe][9] et les goutes[10] de la pluvie ne pont descendre come ils soleint, mes chient[11] sur les pares[12] de sa mesoun parount le merym[13] de sa mesoun purreit, &c.—*Nottone.* Primes assigne il lanusaunce la ou leawe[8] soleit descendre a un certein place, et puis conclude de lever dune mesoun; jugement de la noun pursuauntise.[14]—*Non allocatur.*—*Et petiit visum.*—*Et habuit non obstante* qe cest de son tort demene. A.D. 1344. Nusaunce[3]

§ En[15] un brief Danussaunce le pleintif counta qe par la ou il avoit une meison en Holborne, hors de qele meison il avoit lesse une place de terre de Anusaunce [Fitz., *Nusauns*, 1.]

[1] The reports of this Term are from the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MS. in the British Museum numbered 25,184.

[2] From L. and 25.184, until otherwise stated.

[3] L., Anusaunce.

[4] brief is omitted from L.

[5] L., danusaunce, instead of de Nusaunce.

[6] par is omitted from L.

[7] 25,184, lees.

[8] L., lewe.

[9] The words between brackets are omitted from L.

[10] L., gustes.

[11] L., cheient.

[12] L., paraeys.

[13] 25,184, maryn.

[14] L., purswance.

[15] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It appears, however, to have been used by Fitzherbert for the short notices of the case in his *Abridgment.*

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A.D. 1344. so many feet in length and so many in breadth, upon which piece the rain and filth which fell upon his house flowed off, the defendant had erected a house higher than this house so near to this house that the rain descending from the defendant's house descended upon the plaintiff's house, and so to his nuisance, &c.—*Notton*. You have counted that you have a house, and a piece of ground outside the same house, to which piece of ground you have not assigned any nuisance as having been committed; judgment of the count.—Willoughby. That which he has said is only *de bene esse*, but he has shown by his count how you have erected your house so near to his house that the rain which falls on your house descends upon his house, and there the nuisance commences, wherefore, &c.—*Notton*. Again judgment of the count, because when any one has to assign a nuisance he must assign that nuisance as being caused by the handywork of man; now this nuisance which he has assigned is only that of the rain, which comes only by the grace of God, and not by man's handywork, &c.; wherefore, &c.—Sharshulle. This nuisance which affects him by the rain is through your handywork in that you have erected your house so near, &c.; wherefore, &c.—*Notton*. We demand view.—*Richemunde*. It is of your own wrong, wherefore view, &c.—Notwithstanding this, the Court granted him view, &c.

Formedon in the descender.

(2.) § Formedon in the descender in respect of a manor. After view nontenure of the tenements put in view was alleged.—Willoughby put him to plead as to the tenements demanded.—And he did so.—And the demandant tendered the averment that the tenant was tenant in demesne, &c., in service, &c., and in reversion, &c., as fully as the gift was made.

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son soil demeigne qe countient tauntz de pees en longure et tauntz en laeure, sur qel place la pluye et lordure desendaunt sur sa meison descent, la ad le defendant leve un meison plus haut de cel meison cy pres de cel meison qe la pluye descendaunt de la meison le defendant descent sur la meison le pleintif, et issint anusaunce, &c. — *Nottone.* Vous avetz counte qe vous avetz un mees, et une place hors de mesme le mees, a qel place vous avetz assigne nulle anusaunce estre fait; jugement du counte.—Wilby. Ceo qil ad parle ceo est forqe *de bene esse*, mais il ad mustre par soun count coment vous avetz leve vostre meison cy pres de sa meison qe la pluye qe chiet sur vostre meison descent sur sa meison, et la comence il lanusaunce, &c., par quei, &c.—*Nottone.* Unqore jugement du count, qar quant homme deit assigner anusaunce il covynt qil ad assigne cele anusaunce estre par meynovre de homme; ore cele anusaunce qel il ad assigne cest soulement de la pluye, qe vint soulement de la grace Dieu, et ne mye par maynovere, &c.; par quei, &c.—Schar. Cele anusaunce qele il ad de la pluye cest par vostre meynovere de ceo qe vous havetz leve vostre maison cy pres, &c.; par quei, &c.—*Nottone.* Nous demandoms la vewe.—*Rich.* Ceo est de vostre tort demene, par quei la vewe, &c.— *Hoc non obstante* la Court ly graunta la vewe, &c. A.D. 1344. [Fitz., *View*, 71.]

(2.) [1] § Descendre dun maner. Apres la vewe nountenue fut allegge des tenementz mys en vewe. —Wilby. luy mist de pledre a les tenements demandez. — *Et ita fecit.* — Et le demandant tendist daverer qe tenant en demene, &c., en service, &c.,[3] et en reversion, &c., si pleinement come ceo fut done. Descendre.

[1] From L., and 25,184.

[2] 25,184, Desceite. In L. the marginal note has been cut in binding, but the word nountenue still remains.

[3] The words en service, &c., are omitted from L.

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A.D. 1344. Detinue. (3.) § Detinue of writings was brought against the Prior of St. Oswald by one A.,[1] who appeared and rendered the charters in Court.—*Grene.* We wish to see whether they are the same deeds as those which we demand.—*Richemunde.* Though he wishes to surrender the writings, we pray that they be not delivered to A.[1] who is plaintiff, because there is another person, J.[2] by name, who has brought a writ against the same Prior and in respect of the same writings, which J. is tenant of the same tenements as those

[1] *See* p. 215, note 1. | [2] *See* p. 218.

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(3.) [1] § Detenue des escriptz vers le Priour de Seint Oswald par un A., qe vint et rendist les chartres en Court. — *Grene.* Nous voloms veer sils soient mesmes les faits quex nous demandoms. — *Rich.* Coment qil voet rendre les escripts, nous prioms qils ne soient liveres[2] a A.[3] qe se pleint, qar il y ad un autre, J. par noun, qad porte brief vers mesme le Priour et de mesmes les escripts, et quel J. est[4] tenant de mesmes les[5] tenements compris

A.D. 1344. Detenue.

[1] From L., and 25,184, until otherwise stated. Among the *Placita de Banco*, Trin., 18 Edw. III., are two actions of Detinue brought against the Prior of St. Oswald of Nostell. The first (R° 42) was brought by Roger son of Roger de Northalle of Leeds (Yorks) and Joan his wife in respect of "Triginta et unam "chartas, quindecim scripta quietæ "clamanciæ, decem scripta inden- "tata, et quoddam scriptum "obligatorium." According to the declaration in this action, John Tylly grandfather of Joan, whose heir she is, delivered the documents to the Prior on a stated day in the fourteenth year of the reign. The purport of each of them is mentioned. The Prior "non potest "dedicere quin ipse recepit præ- "dictas chartas et scripta . . . . . "et profert hic in Curia prædicta "chartas et scripta, et paratus est "ea prædicto Rogero et Johannæ "hic in Curia reddere, &c. Et "reddidit prædictis Rogero et "Johannæ prædicta chartas et "scripta hic in Curia. Ideo præ- "dictus Prior sit inde quietus, &c. "Nihil de misericordia ipsius "Prioris quia venit primo die de "summonitione, &c."

The second action on the roll (R° 43) was brought by Roger de Northalle, of Leeds, and Matilda his wife in respect of "quinqua- "ginta et duas chartas, et viginti "et quatuor scripta quietæ claman- "ciæ." According to the declaration Robert son of John Tylly, Matilda's former husband, and Matilda, on a stated day in the tenth year of the reign, delivered the documents to one John Tylly of Okewelle. The purport of each of them is then mentioned. The said John Tylly "postea . . . . . "liberavit prædicto Priori præ- "dictas chartas et scripta custo- "dienda et retradenda prædicto "Johanni, prædictus Prior præ- "dictas chartas et scripta prædicto "Johanni in vita sua non reddidit "nec prædictis Rogero et Matilldi "post mortem ipsius Johannis "Tilly." The conclusion of this is the same as that of the other action, the names "Rogero et "Matilldi" being substituted for "Rogero et Johannæ."

The matters relating to interpleader do not appear on the roll in either case.

[2] L., bailles.

[3] L., lautre.

[4] est is omitted from L.

[5] L., des, instead of de mesmes les.

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A.D. 1344 included in the deeds, and J. is ready to count.—*Grene.* By no law can you be a party to delay judgment now, because A. and J. cannot interplead in this case when the defendant is ready to surrender the writings to one of them, but if the Prior had said against us that J. had brought another writ against him, and that he was ready to surrender to whomsoever, &c., and J. had come by *Scire facias*, then he would be a party, but otherwise not so.—Willoughby. And if J.'s writ be of earlier date than yours, is it right that his writ should abate through your recovery?—Hillary. It would not do so; but it would be sufficiently good, for the surrender is at the peril of the defendant, because if J. has right on his side, even though the defendant may have surrendered to another, he will be charged to J. with damages.—Willoughby. Will not the judgment be that he do recover the writings and damages?—Hillary. If the writings be lost, or only delivered to another person, by reason of which J. cannot have them, all will be to the damage of J.; and what are we to do with the writings now? The person who has surrendered them will not have them again.—Stonore. He will have them, even though against his will, until the fourth day, when we shall see what will happen between J. and him.—And afterwards, on the fourth day, the writings were delivered to A.—And nevertheless J. then counted against the Prior that another person, when J. the plaintiff was under age, delivered the writings to one G.,[1] to be redelivered to J. the plaintiff when of full age, which G. died in the Priory of St. Oswald, after whose death the deeds came into the hand of the Prior. And he counted that J. the plaintiff is seised of the lands included in the deeds.—*Notton.* We do not

[1] John Tilly, according to the other report, pp. 220-222.

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deinz les fetes, et J. est prest de counter.—*Grene.* A.D. 1344.
Par nulle ley poez vous estre partie darester[1] le jugement a ore, qar A. et J. ne pount entrepleder en ceo cas quant le defendant est prest a rendre a lun,[2] mes sil ust dit contre nous qe J. ust porte autre brief vers lui,[3] et il fut prest a rendre a qi, &c., et J. ust[4] venuz par garnisement, la serra il partie, et autrement nient.—Wilby. Et si le brief J.[5] soit deigne date qe le vostre, est[6] ceo resoun qe par vostre recoverir qe soun brief abate?—Hill. Noun fra; mes[7] il serreit[6] assetz bon, qar le rendre est a peril le defendant, qar si J. ad resoun pur luy, tut eit[8] le defendant rendu a [autre, il serra charge vers J. des damages.—Wilby. Ne serra lagarde qil recovere les escripts et][9] damages?—Hill. Si les escripts soient perduz, ou soulement liverez a autre, par quei J. ne les puisse aver, tut[10] serra en damage J.; et[11] quei ferroms nous ore des escripts? Celuy qe les ad rendu ne les voet plus avoir.—Ston. Il les avera maugre[12] le soen tanqe al quart jour qe nous verroms ceo qe avendra entre J. et luy.—Et puis al quart jour les escripts furent liverez a A.—Et *tamen* adonqes J. counta vers le Priour coment un autre,[13] quant le pleintif fut deinz age, bailla les escripts a un G., a rebailler a pleintif a son age,[14] quel G. murust en la Priourie de Seint O., apres qi mort les fetes devyndrent en la meyn le Priour. Et counta qe le pleintif est seisi des terres compris deinz les fetes.—[*Nottone.* Nous conusoms pas qil

[1] L., de.
[2] L., un.
[3] The words vers lui are omitted from L.
[4] 25,184, est.
[5] J. is omitted from 25,184.
[6] L., serra.
[7] L., pas.
[8] L., ust.
[9] The words between brackets are omitted from L.
[10] tut is omitted from L.
[11] 25,184, par.
[12] 25,184, maugree.
[13] L., A., instead of un autre.
[14] L., ov son conge, instead of a son age.

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A.D. 1344. admit that he is seised of the lands included in the deeds, and we tell you that G. purchased the same lands to hold to him and his heirs, and died seised, and after his death the tenements descended to J. as to son and heir, to whom we have surrendered part of the writings out of Court, and part he has recovered in Court, *absque hoc* that G. had them by delivery, &c., to deliver to you, &c., as you have counted.—*Moubray.* Since you have acknowledged that we are tenants, it so belongs to us to have the deeds; and you have admitted the detinue; judgment, &c.—*Notton.* And we demand judgment since you do not deny that which we allege, and that is the reverse of your action, &c. —They were adjourned.

Detinue of charters.

§ John de Northalle brought a writ of Detinue of charters and of writings against the Prior of St. Oswald of Nostell, and counted that his ancestor delivered the charters to the Prior to be redelivered at his pleasure, &c., and counted that, after the death of his ancestor, he had many times demanded the charters, and counted what charters they were. The Prior came into Court and said that he could not deny that he had the charters, and produced them to the Court, and said that he was ready to surrender them to the plaintiff. Thereupon another person came, that is to say, John de Metham, and Margaret his wife, and said that he had a writ pending in respect of the same charters against the Prior, and said that he was tenant of the land that the charters affected, and this writ was returnable on the Quinzaine of Trinity, and he was ready to count against the Prior if the writ had been returned, and he prayed that no judgment should be given for the plaintiff to his disadvantage.—*Grene.* Since the Prior cannot deny our action but is ready

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est seisi des terres compris deinz les feetes],[1] et vous dioms qe G. purchacea mesmes les terres a luy et ses heirs, et murust seisi, apres qi mort les tenementz descendirent a J. come fitz et heir, a qi nous avoms les escripts rendu hors de Court, et partie ad il recoveri en la Court, saunz ceo qe G. les avoit de bail,[2] &c., a bailler a vous, come vous avez counte. —*Moubray.* Desicome vous avez conu qe nous sumes tenant, issint attient[3] a nous daver les fetes; et la detenue avez conu; jugement, &c.—*Nottone.* Et nous jugement desicome vous ne dedites pas ceo qe nous alleggeoms, et cest le revers de vostre[4] accion, &c. —*Adjornantur.* A.D. 1344.

§ Johan[5] de Northale porta un brief de Detenue des chartres et des ascriptz vers le Priour de Seint Oswald de Nostelle, et counta qe son auncestre bailla les chartres al Priour a rebailler a sa volunte, &c., et counta qapres la mort son auncestre il avoit sovent demande les chartres, et counta queux chartres ils furent. Le Priour vint en Court, et dist qil ne poet dedire qil aveit les chartres, et les mist avant a la Court, et dist qil fuit prest de rendre les al pleintif. Sur ceo vint un autre, cest assavoir Johan de Metham, et Margarete sa femme, et disoit qil avoit brief pendaunt de mesmes les chartres devers le Priour, et dit qil fuit tenant de la terre qe les chartres toucherent, quel fuit retornable a la quinzaine de la Trinite, et prest de counter vers le Priour si le brief fut retorne, et pria qe nul jugement se feist pur le pleintif en desavantage de ly. —*Grene.* De puis qe le Priour ne puit dedire nostre Detenue des ch[artres]. [Fitz., *Entre-pleder*, 14.]

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

[2] L., du baille, instead of de bail.

[3] 25,184, attieynt.

[4] 25,184, nostre.

[5] This report of the case is from Harl. 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. 1344. to surrender the charters, we pray our judgment and the delivery of the deeds.—Willoughby. If the other's writ be of earlier date than yours is, and he has possibly a right to have the deeds, it is not right to cause you to have delivery of the deeds by agreement between you and the Prior, when the Court is apprised that it can never afterwards cause the other to have the delivery in case his action should be found to be grounded on truth.—*Grene.* The statement as to which of us has right to have the deeds can never be tried on this writ between us who are plaintiffs, as it would be on a writ of Wardship, because this does not lie in any case except where it comes from the plaintiff or from the defendant, and that only in a case in which the deeds were delivered to the defendant upon condition; and then, if he were to say that he did not know whether the conditions had been performed, and if he prayed a writ to cause the other to come to answer as to that, it would be tried between the plaintiffs which of them had right, and in no other case, but now the defendant has confessed our action, in which case it is right that we should have our judgment against him; and even though we recover against him, the other's writ is good, for I never saw a writ of Detinue to be abated by non-tenure, and his recovery will so far as he is concerned fall entirely under the head of damages if his action be found to be grounded on truth, as in case the charters had been burnt.—Notwithstanding this, the judgment was respited until the fourth day when the other's writ was to be returned.—On that day John de Northalle came and said that he had seen the charters, and that they were the same charters that he demanded, and he prayed the delivery of them.—And the Court granted him the delivery.—This J. de Metham and his wife came, and counted against the Prior that one John Tilly purchased certain tenements, of which they were

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accion mes il prest de rendre les chartres, nous prioms nostre jugement et la livere des faitz.— A.D. 1344.
Wilby. Si le brief lautre soit deisne date qe nest le vostre, et il ad par cas resoun davoir les faitz, il nest resoun par counsent entre vous et ly de vous faire avoir la livere des faitz, la ou la Court est apris qe jammes apres ne purrount il faire a ly avoir la livere en cas qe saccioun purra estre trove verrey.—*Grene.* De parler qy de nous ad dreit davoir les faitz ne purra jammes estre trie en cest brief entre nous pleintifs, come serroit en un brief de Garde, qar ceo ne gist en nulle cas mes la ou ceo vint de pleintif ou de le defendant, et ceo en cas soulement ou les faitz ly furent liverez sur condicion; et sil deit qil ne saveit si les condiciones furent parfourniz, et pria brief de faire vener lautre de respoundre a ceo, la serra il trie entre les pleintifs qi deux ad droit, et en nulle autre cas, mes ore le defendant ad conue nostre accion, en qel cas il est resoun qe nous eioms nostre jugement devers ly; et mes qi nous recoveroms devers ly, le brief lautre est bon, qar jeo vy unqes brief de Detenue estre abatu par nountenure, et son recoverir cherra devers ly tut en damages si accion soit trove veritable, come en cas si les chartres fuissent ars.—*Hoc non obstante*, le jugement fuit mys en respit tanqe a quart jour qe le brief lautre soit retourne.—A quel jour Johan de Northalle vint et dist qil avoit vewe les chartres, et dit qils furent mesmes les chartres qeux il demanda, et pria la livere.—Et la Court ly graunta la livere.—Cely J. de Metham et sa femme vindrent, et counterent vers le Priour qun Johan Tilly purchacea certein tenementz, des qeux ils furent seisiz

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A.D. 1344 seised as in right of the wife, from one H., and alleged that John Tilly enfeoffed the wife, while she was sole, of the same tenements, and said that the wife, while she was sole, delivered the same deeds to John Tilly to deliver and redeliver, &c., which John Tilly died in the Priory, wherefore the deeds came into the keeping of the Prior, &c.—*Notton*. Sir, you see plainly how they demand these deeds on the ground that they came into our hand after the death of John Tilly, and they do not make themselves heirs or executors to this John to whom the deeds ought of right to belong, wherefore we demand judgment.—HILLARY. They have said that the wife delivered the deeds to John to keep and to redeliver at her pleasure, so the delivery is the ground of the action: therefore deliver yourself.—*Notton*. He supposes that these deeds concern land of which one H. is supposed to have enfeoffed John Tilly, so they have supposed by count the possession of the deeds to have been to John Tilly as by reason of his own right, and they have not shown how the deeds came out of his hand into the possession of the woman, so that delivery made by the woman to John, as they have counted, cannot be understood according to law, wherefore we demand judgment of the count.—HILLARY. They have said that the woman had them, and made delivery to John, to deliver and to redeliver, and therefore it is nothing to you how she had them.—*Notton*. Sir, we make protestation that we do not admit that John Tilly enfeoffed the woman, and we tell you that John Tilly died seised of the land, and in possession of the deeds, and that after his death the deeds came into our hand, and that we have delivered part of them to his heir *in pais*, and that he recovered part of them against us by judgment in this Court, *absque hoc* that the woman delivered them to John Tilly, as they

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come en le dreit la femme, de un H., et qe Johan Tilly dust avoir enfeffe la femme, tanqele fuit soule, de mesmes les tenementz, et dit qe la femme, tanqele fuit soule, livera mesmes les faitz a Johan Tilly a bailler et rebailler, &c., leqel Johan Tilly morust deinz la Priorie, par quei les faitz devindrent en la garde le Priour, &c.—*Nottone.* Sire, vous veiez bien coment ils demandent ceux faitz pur ceo qil devindrent en nostre meyn apres la mort Johan Tilly ils ne se fount heirs nexecutours a cesty Johan, a qeux les faitz de dreit duissent apurtener, par quei nous demandoms jugement.—Hill. Ils ount dit qe la femme livera les faitz a Johan a garder et a rebailler a sa volunte, issint le baille est cause de saccion, par quei deliverez vous.[1]—*Nottone.* Il suppose qe ceux faitz touchent terre de qele un H. dust avoir enfeffe Johan Tilly, issint ount il suppose par count la possessioun des faitz estre a Johan Tilly come par cause de son dreit demene, et ills nount pas moustre coment ils devyndrent hors de sa meyn en la possessioun la femme, issint qe livere fait par la femme a Johan, come ils ount counte, [ne] put estre entendu par la ley, par quei nous demandoms jugement de counte.—Hill. Ils ount dit qe la femme les avoit et fit livere a Johan a bailler et a rebailler, par quei ceo nest rien a vous coment ele avoit.—*Nottone.* Sire, nous fasoms protestacion qe nous ne conisoms pas qe Johan T. enfeffa la femme, et vous dioms qe Johan Tilly murust seisi de la terre, et possessione des faitz, apres qi mort les faitz devindrent en nostre mayn, ou partie des ces nous avoms livere a son heir en pais, et partie il recoveri devers nous ceinz par jugement, sanz ceo qe la femme ne les livera pas a Johan Tilly come ils A.D. 1344

[1] Some other cases are here interposed in the MS. between this part of the report and the conclusion, but there are cross references which show where the continuation is to be found.

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A.D. 1344. have counted ; ready, &c.—*Richemunde.* You see plainly that he has not denied the feoffment made by John Tilly to the woman, nor that J. and his wife are this day seised of the land, whereas it properly belongs to those who have the land to have the deeds in defence of their tenancy, and the foundation of this action is the detinue, and not the delivery, and because he does not deny the detinue we demand judgment.—*Notton.* And we demand judgment since you took for the cause of this action the delivery of the deeds made to J. by the woman, and we have traversed that cause, and you refuse that averment, wherefore, &c.—*Richemunde.* Although we spoke of the delivery of the deeds, the reason why they belong to us is that we are seised of the land, &c., by John's feoffment, &c.—Sharshulle. Do you suppose that, because you are my assignee of any land, that is a reason for adjudging to you the deeds by which I was enfeoffed of the same land by another? It is not so, but I and my heir ought to have them in order to have our warranty over in case we should be vouched, or possibly to plead in bar, so that possession of the land cannot be adjudged a ground for your action, but only the delivery which he traverses ; wherefore will you accept the averment?—And the opinion of Willoughby and also of the other Justices was that in this case the charters by which John Tilly purchased, &c., would properly belong to the heir of John Tilly, in order to have warranty over, as above, if it had not been the fact that this same John during his life, when he enfeoffed M. had delivered the same charters to M., and she had redelivered the charters to him to be redelivered, &c., as, &c.—Therefore *Moubray*, seeing the opinion of the Court, said : Sir, we have demanded against the Prior certain charters by which J. purchased, &c., and also a quit-claim by which one B. released, &c., all his right that he had in a knight's

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ount counte; prest, &c.—*Rich.* Vous veiez bien coment il nad pas dedist le feffement fait par Johan a la femme, ne qe J. et sa femme sount hue ceo jour seisiz de la terre, ou a eux qount la terre proprement atient davoir les faitz en defence lour tenance, et le foundement de ceste accion est la detenu et noun pas le baille, et de ceo qe ne dedist pas la detenue nous demandoms jugement.—*Nottone.* Et nous jugement depuis qe vous preistez pur cause de ceste accion la livere des faitz fait a J. par la femme, et cele cause avoms traverse, qil averement vous refusez, par quei, &c.—*Rich.* Coment qe nous parlames de livere des faitz, la cause par quei ils apurtiegnent a nous est pur ceo qe nous sumes seisi de la terre, &c., par le feffement Johan, &c.—Schar. Qidez vous, pur ceo qe vous estes mon assigne dune terre, qe ceo soit cause de ajuger a vous les faitz par qeux jeo fu enfeffe de meisme la terre par autre? Noun est, einz jeo et mon heir les devoms avoir pur avoir nostre garrauntie outre en cas qe nous soioms vouche, ou pur pleder en barre en cas, issint qe la possession de la terre ne puit estre ajugge cause de vostre accion, mes soulement le baille qel il traverse; par quei volez laverement? Et oppinion Wilby et auxint de les autres Justices fuit qen ceo cas les chartres par les queles Johan Tilly purchacea, &c., proprement appurtiendreint a leir Johan Tilly pur avoir la garrauntie outre, *ut supra*, si ensi neust este qe meisme cesti J. en sa vie, quant il enfeffa M., eust livere mesme les chartres a M. et ele luy eust rebaille les chartres a rebailler, &c., come, &c. —Par quei *Moubray* vyt oppinion de Court, et dit: Sire, nous avoms demande vers le Priour certeinz chartres par qeles J. purchacea, &c., et auxint une quiteclamaunce par qele un B. relessa, &c., tout son dreit qil il avoit en un fee de chivaler, par que

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[Fitz., *Detenue*, 48.]

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A.D. 1344. fee, wherefore, Sir, since your particularisation is that the charters by which J. purchased, &c., properly belong to J.'s heir in order that he may have warranty over in case we vouch him to warrant, we tell you, as to the charters, that M., while she was sole, delivered the same charters to J. to be redelivered, &c., as, &c.; ready, &c.—And the other side said the contrary.—And as to the writing of quit-claim we have shown that B. by this quit-claim released all his right which he had in a knight's fee, and that does not fall under the head of warranty, but only extinguishes the right of the person who releases, and so this quit-claim belongs to no other than to us, who are tenant of the lands from which the same services were due, in defence of our land; therefore, inasmuch as he does not deny that we are tenants of the same lands by J.'s feoffment, and does not answer anything as to the detinue, we demand judgment, and pray delivery, &c. —*Notton.* And we demand judgment since you have counted that M. delivered the same quit-claim to J. to be redelivered, &c., without which delivery she could not have an action; and you do not show how that delivery was made to J., and we therefore demand judgment.—And so to judgment.—And upon this they were adjourned to Michaelmas Term.

Trespass. (4.) § The Prior of Merton brought a writ of Trespass in the words "*quare quandam vaccam pretii xvjs. Domus et Ecclesiæ suæ de Mertone, tempore Thomæ prædecessoris Prioris nunc, apud, &c., ceperunt et abduxerunt, et alia bona et catalla Domus et Ecclesiæ suæ prædictarum tempore prædicto, &c., asportaverunt et alia*

No. 4.

Sire, depuis qe vostre menuement est qe les chartres par qelles J. purchacea, &c., cy attiegnent proprement al heir J. pur avoir sa garrauntie outre en cas qe nous luy vouchoms a garraunt, nous vous dioms quant a les chartres qe M., taunt come ele fuit sole, livera mesme les chartres a J. a rebailler, &c., come, &c.; prest, &c.—*Et alii e contra.*—Et quant al escript de quiteclamaunce nous avoms moustre qe B. par cele quiteclamaunce relessa tout son dreit qel il avoit en un fee de chivaler, la qele chose ne chiet mye en garrauntie, mes soulement esteint le dreit cesty qi relesse, et issint cele quiteclamaunce attient a nulle autre forqe a nous qe sumes tenant de les terres des qeux meisme les services furent dewes en defens de nostre terre; par quei [pur ceo] qil ne dedit mye qe nous sumes tenantz des meisme les terres par le feffement J., ne a la detenue il respound nient, nous demandoms jugement, et prioms la livere, &c.—*Nottone.* Et nous jugement depuis qe vous avetz counte qe M. livera mesme la quiteclamaunce a J. a rebailler, &c., sanz qele[1] livere ele ne puit avoir accion; et cele livere fait a J. ne moustrez pas, par quei nous demandoms jugement, &c.—*Et sic ad judicium.*—*Et super hoc adjornantur usque ad Terminum Michaelis.* A.D. 1344.

(4.)[2] § Le Priour de Mertone porta brief de Trespas *quare quandam vaccam pretii xvjs. Domus et Ecclesiæ suæ de Mertone, tempore Thomæ prædecessoris Prioris*[3] *nunc, apud, &c., ceperunt et abduxerunt, et alia bona et catalla Domus et Ecclesiæ suæ prædictarum tempore prædicto, &c., asportaverunt, et alia enormia* Trespas.

[1] MS., ceo qe le.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 78. It there appears that the action was brought by the Prior of Merton against "Richard de Wyndesore," of Stanwell, and "Henry de Guldeforde "Richardesservant de Wyndesore."

[3] *Prioris* is omitted from L.

No. 4.

A.D. 1344. *enormia ibidem perpetrarunt, ad grave damnum Prioris nunc, et contra pacem, &c.*"[1]—*Gaynesford.* As to the other goods, excepting the cow, Not Guilty. And as to the cow we tell you that one A.[2] held of us certain tenements by a certain service, and by heriot, that is to say, the best beast which belonged to the deceased, to be given after the death or voidance of each tenant; and after A.'s[2] death he took this cow, which belonged to A.[2] on the day of her death, in the name of heriot, without doing anything against the peace. And afterwards *Gaynesford* added *absque hoc* that he took the cow as the Prior complains; ready, &c. And otherwise he would not have made a good answer.

[1] For the actual words as stated in the record *see* p. 229, note 1.

[2] For the real name *see* p. 229, note 7.

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ibidem perpetrarunt, ad grave damnum Prioris nunc, et A.D. 1344.
contra pacem, &c.[1]—*Gayn.* Quant as autres biens, forpris la vache, de rien coupable. Et quant a la vache nous vous dioms qun[2] A. tient de nous certeinz tenementz par certein service, et par heriete,[3] saver, la meillour beste qe fut a mort, apres la mort ou[4] voidaunce de chesqun tenant; et apres la mort A. il prist cele vache, quel fut a A. jour de sa mort, en noun de[5] heriete,[3] saunz rien fere encountre la pees. Et puys ajousta[6] saunz ceo qil prist la vache come il se pleint; prest, &c.[7] Et autrement nust il pas respoundu.[8]

[1] The words on the roll are "quare vi et armis quandam "vaccam Domus et Ecclesiæ ipsius "Prioris de Mertone, tempore "Thomæ nuper Prioris Domus "prædictæ, prædecessoris prædicti "Prioris, pretii sexdecim solido-"rum, apud Stanewelle inventam, "ceperunt et abduxerunt, et bona "et catalla Domus et Ecclesiæ præ-"dictarum tempore prædicto ad "valentiam quadraginta solidorum "ibidem inventa ceperunt et "asportaverunt, et alia enormia "ibidem perpetrarunt, ad grave "damnum ipsius Prioris, et contra "pacem Regis."

[2] L., quant.

[3] L., herietz.

[4] The words mort ou are omitted from L.

[5] de is omitted from 25,184.

[6] L., ad jousta.

[7] After the plea of "Not Guilty" as to the rest (upon which issue was joined), the defendants pleaded, according to the roll, "quo ad "captionem prædictæ vaccæ, quod "quædam Gunna Gofayre tenuit "de ipso Ricardo quartam partem "unius mesuagii et unius virgatæ "terræ, cum pertinentiis, in Stane-"welle, per homagium, fidelitatem, "et servitium trium denariorum "per annum, et ad scutagium "domini Regis quadraginta solido-"rum, cum acciderit, sex denari-"orum, et ad plus plus, et ad "minus minus, et faciendi sectam "ad curiam ipsius Ricardi in "Stanewelle de tribus septimanis "in tres septimanas, et etiam, post "obitum suum, et, post obitum "cujuslibet tenentis tenementa "prædicta, dandi melius averium "suum nomine herietti, de quibus "servitiis prædictus Ricardus fuit "seisitus per manus prædictæ "Gunnæ ut per manus veri "tenentis sui, et sic dicunt quod "ipsi post mortem prædictæ "Gunnæ ceperunt prædictam "vaccam, quæ fuit vacca ipsius "Gunnæ tempore obitus sui, "nomine herietti ipsius Ricardi, "absque hoc quod ipsi ceperunt "vaccam Domus et Ecclesiæ præ-"dictarum contra pacem Regis, "&c. Et hoc parati sunt verifi-"care, unde petunt judicium, &c."

[8] According to the record the Prior replied "quod prædicti

No. 4.

A.D. 1344. Trespass.

§ The Prior of Merton brought his writ of Trespass against Richard de Wyndesore, and the writ was in the words "*ostensurum quare quandam vaccam Domus et Ecclesiæ suæ de Mertone, pretii, &c., apud M., tempore II. prædecessoris ejusdem Prioris, cepit et abduxit, et bona et catalla ejusdem Domus et Ecclesiæ suæ prædictæ, ad valentiam, &c., tempore ejusdem H. cepit et asportavit, &c.*"[1]—*Richemunde.* He supposes that the property in this cow was in Henry,[2] and therefore the writ ought to have been in the words "*quare quandam vaccam quæ fuit Henrici*[2] *prædecessoris, &c., ipse* [*tempore*] *ejusdem H. cepit, &c.*"; judgment of the writ.—And notwithstanding this the writ was adjudged good according to the Statute.[3]—*Richemunde.* Sir, we tell you that one Gunnilda Gofaire held of this same Richard certain tenements in M.[4] by certain services, and by heriot, that is to say, the taking of the best beast after the death of each tenant who should be in possession of the land on the day of his death, of which service to be taken in that manner this Richard and his ancestors and those whose estate he has have been seised from time whereof memory, &c.; and we tell you that this same cow belonged to G. on the day of her death, wherefore Richard came and took it as the best beast belonging to G., as by reason of heriot, and so he took it as his own cow, and we demand judgment whether tort in his person, &c. And as to the goods, &c., he pleaded Not Guilty.—*Moubray.* We made our plaint touching the cow of our House, &c., and to that you do not answer, either by way of justification, or in any other manner, wherefore, &c.—And *W. Thorpe* afterwards said: So Richard took the

[1] For the actual words as stated in the record *see* p. 229, note 1.

[2] According to the record the predecessor's name was Thomas. *See* p. 229, note 1.

[3] 52 Hen. III. (Marlb.), c. 28.

[4] In Stanwell according to the record. *See* p. 229, note 7.

No. 4.

§ Le[1] Priour de Mertone porta son brief de Trespas vers R. de Wyndesore, et le brief voleit *ostensurum quare quandam vaccam Domus et Ecclesiæ suæ de Mertone, pretii, &c., apud M., tempore H. prædecessoris ejusdem Prioris, cepit et abduxit, et bona et catalla ejusdem Domus et Ecclesiæ suæ prædictæ, ad valentiam, &c., tempore ejusdem H., cepit et asportavit, &c.—Rich.* Il suppose qe la proprete de la vache cy fuit a Henre, par quei le brief deust avoir este *quare quandam vaccam quæ fuit Henrici prædecessoris, &c., ipse* [*tempore*] *ejusdem H. cepit, &c.*; jugement de brief.—*Et, hoc non obstante*, le brief fuit agarde bon par statut.—*Rich.* Sire, nous vous dioms qe une Gunnilde Gofaire cy tynt de mesme cesti R. certeinz tenementz en M. par certeins services, et par heriet, cest assavoir de prendre la meillour beste apres la mort de chescun tenant qe fuit en la terre jour de son moriaunt, de qel service a prendre par la manere cesti R. et ces auncestres, et ceux qi estat, &c., ount este seisiz de temps dount memore, &c.; et vous dioms qe meisme cele vache si fuit a G. jour de son morer, par quei R. vint et la prist come la meillour beste qe fuit a G., come par cause de heriete, et issint la prist il come sa vache propre, et demandoms jugement si tort en sa persone, &c. Et quant a les bienz, &c., il pleda de rien coupable. —*Moubray.* Nous sumes pleint de la vache de nostre maysoun, &c., et a ceo vous ne responez mye, ne par voie de justificacion nen autre manere, par quei, &c.—Et *W. Thorpe* puis dit issint prist R. la vache

A.D. 1344. Trespas. [Fitz., *Briefe*, 359.]

" Ricardus et Henricus ceperunt " vaccam Domus et Ecclesiæ suæ " prædictarum contra pacem, &c., " sicut ipse per breve suum " supponit." Issue was joined upon this. Nothing further appears on the roll but the award of the *Venire*, and some adjournments,

[1] This report of the case is from Harl. 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. 5.

A.D. 1344. cow as his own property, *absque hoc* that he took any cow which belonged to the House, &c., as the Prior, &c.—And so to the country.

View. (5.) § A writ was brought against a husband and his wife. After view the writ abated by reason of the death of the husband, as appeared upon the Sheriff's return, wherefore the demandant sued another writ against the woman, and she demanded view.—*Grene* said that she had heretofore had view, and alleged the process as above.—And, notwithstanding, Willoughby by judgment granted her view, because this is not in the case provided by the statute.[1]

Præcipe quod reddat. § One John Kyriel brought his *Præcipe quod reddat* against a man and his wife, and demanded certain tenements against them. They demanded view, and had it. Afterwards the Court was apprised by the Sheriff's return that the husband was dead, wherefore the writ abated, whereupon the demandant brought another writ, in respect of the same matter, against the woman. Process was sued upon this until the Quinzaine, when she came and demanded view.—*Grene.* You ought not to have view, because heretofore we brought a like writ against you and against such an one, your husband, and we demanded the same tenements against yourself, and on that writ you had view, and that writ was abated after view, and therefore you ought not to have view, &c.—*Richemunde.* How did the writ abate?—*Grene.* That is for you to show to your own advantage.—Willoughby. If you would oust her from view you must show how the writ abated, and that is naturally your business, as you are demandant.—*Grene* showed how the writ abated by

[1] 13 Edw. I. (Westm. 2), c. 48.

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come la sue propre, saunz ceo qil prist nulle vache qe fuit a la maison, &c., come le Priour, &c.—*Et sic ad patriam.* A.D. 1344.

(5.)[1] § Brief porte vers le baroun et sa femme. Apres la vewe le brief abatist par la mort le baroun sur retourn de Vicounte,[2] par quei le demandant suyst autre brief vers la femme, qe demanda la vewe. —*Grene* dit qele avoit autrefoitz la vewe,[3] et alleggea le[4] proces *ut supra.*—Et, *non obstante*, Wilby par agarde luy graunta la vewe, *quia non est in casu statute.* Viewe.

§ Un[5] Johan Kyriel porta son *Præcipe quod reddat* vers un homme et sa femme, et demanda vers eux certeinz tenementz. Ils demanderent la vewe, et lavoient. Puis la Court fuit apris par retourn du Vicounte qe le baroun fuit mort, par quei le brief abatist, sur qi le demandant porta autre brief de mesme la matere vers la femme. Proces suy sur ceo tanqe a la xv^ne^, qele vint et demanda la vewe. —*Grene.* La vewe ne devez avoir, qar autrefoitz nous portames autiel brief vers vous et vers un tiel, vostre baroun, et demandames vers vous mesmes les tenementz, a qel brief vous aviez la vewe, et le qel brief apres la vewe fuit abatu, par quei vous ne devez la vewe, &c.—*Rich.* Coment abatist le brief? —*Grene.* Cest a vous a mustrer en avantage de vous mesmes.—Wilby. Si vous la volez ouster de la vewe il covynt qe vous mustrez [coment] le brief abatist, et ceo attint naturelement a vous qestes demandant.—*Grene* moustra coment le brief abatist *Præcipe quod reddat.*

From L., and 25,184, until otherwise stated.

[2] L., Viscount.

The words la vewe are omitted from L.

L. par.

[5] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books, nor used by Fitzherbert for his *Abridgment.*

No. 6.

A.D. 1344. reason of the death of the husband, as above.—Notwithstanding this, view was granted because this is not in the case provided by the Statute.[1]

Trespass. (6.) § Trespass brought in the form "*de wallia reparanda*," as appears above,[2] in which they were at issue that the defendant and the ter-tenants had not from all time repaired, &c. It was found by inquest that the ter-tenants ought to repair, but the defendant never did so; and it was found further that the walls fell into decay only twice since time of memory, and then they were repaired by the ter-tenants.—*Thorpe.* It is found that by right the ter-tenants ought to do this, and, even though he did not do it, that is because in his time the walls did not fall into decay until now, and so the issue is found in favour of the plaintiff; judgment.—*Pole.* It is found that since time of memory this was never done by the ter-tenants but twice, which special finding does not prove that they ought to do it of right; therefore the Court cannot have regard to this general finding that they ought to do it of right, since the special act, which is admitted as part of the verdict, does not prove it.—*Thorpe.* The issue is found for the plaintiff to the effect that the ter-tenants ought to do it; and that which they say as to the repairs having been made only twice since time of memory is to be understood since the time that they can remember, &c.—Willoughby. What you say is true; and since it is found that they ought to do it of right, the Court adjudges that the plaintiff do recover his damages assessed at 20 shillings, and that the other be in mercy.—*Quære* how he will

[1] 13 Edw. I. (Westm. 2), c. 48.
[2] Y.B., Easter, 16 Edw. III., No. 46 (Bernardestone *v.* Heighlynge).

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par la mort le baroun, *ut supra.*—*Hoc non obstante,* A.D. 1344.
la vewe fuit graunte eo qe ceo nest mye en cas de statut.

(6.) [1] § Trespas forme *de vale*[3] *reparanda, ut patet*[4] *supra,* ou ils furent a issue qe le defendant et les terre tenantz de tut temps navoient pas reparaille, &c. Trove fut par enquest qe les terre[5] tenantz le duissent[6] faire, mes le defendant le fist unqes; et outre[7] fut trove qils descheirent puis temps de memore[8] forqe ij foith, et a donqes furent ils reparailles par les terre[5] tenantz, &c.—*Thorpe.* Trove est qe de dreit les terre[5] tenantz le[9] duissent[6] fere, et, tut ne fist il pas, cest[10] pur ceo qen son temps ils deschierent[11] pas devant ore, et issint la mise trove pur le pleintif; jugement.—*Pole.* Trove est qe puis temps de memore[8] unqes ne fut fet[12] par terre[5] tenantz forqe ij foith, quele chose trove en especial ne prove[13] pas qils le duissent[6] fere de dreit; par quei a cel general qest trove qils le deivent fere de dreit Court ne poet aver regarde, desicome le fet especial, qest resceu come parcelle de verdit, ne prove pas.—*Thorpe.* La mise est trove pur le pleintif qe les terre[5] tenantz le deivent fere; et ceo qils parlent qe puis temps de memore[8] ces ne furent faites[14] forqe ij foith cest a entendre puis le temps qils pount sovenir, &c.—Wilby. Vous dites verite; et puis qe trove est qils le devyent[15] faire de dreit, agarde la Court qe le pleintif recovere ses damages taxes a xx*s.* et lautre en la mercy.—*Quære* coment

Trespas *de vale* [*sic*] *reparanda.*[2]

[1] From L., and 25,184, until otherwise stated.
[2] The marginal note is from L. In 25,184, it is "Forme."
[3] So in L.; 25,184, waste.
[4] *patet* is omitted from 25,184.
[5] 25,184, terres.
[6] 25,184, deussent.
[7] outre is omitted from L.
[8] 25,184, memoire.
[9] L., ne.
[10] L., pur cest.
[11] 25,184, descheireunt.
[12] L., furent fetes, instead of ne fut fet.
[13] L., proeve.
[14] L., fetes.
[15] 25,184, qil le covyent, instead of qils le devyent.

No. 6.

A.D. 1344. be compelled to repair the walls.—And afterwards, on the morrow, *Thorpe* came and prayed that the judgment might be amended inasmuch as it had not been adjudged that the defendants should repair the walls. —Willoughby gave judgment that they should repair the walls, and that they should be distrained to do so, and he caused the roll to be amended.

Trespass. § One A.[1] brought his writ against B.,[1] and counted, in accordance with his writ, that whereas this same B.[1] had in the vill of K.[2] so much land, by reason of which land he, and his ancestors, and all the ter-tenants, from time whereof memory, &c., had made so many perches of the sea-wall in K.,[2] and repaired the same perches, when there was need, towards that part of the sea in such a place, the sea-water in the same place, through a defect in that the sea-wall in that place, through the neglect of this same B.,[1] was not repaired, as, &c., had entered and overflowed the lands and the meadows of the plaintiff adjoining to the same wall, whereby he had lost the profits of the same land, &c., to his damage, &c.—B.[1] appeared, and said, as to this, that he, and his ancestors, and the ter-tenants, &c., had not made and repaired the wall from time whereof memory, &c., as, &c., and of that he tendered averment.—And the others said the reverse. Afterwards it was found by inquest taken at *Nisi prius* that B.,[1] and his ancestors, and the ter-tenants, &c.,

[1] For the real names *see* above p. 234, note 2, and Y.B., Easter, 16 Edw. III., p. 257, note 12.

[2] Great Cotes (Lincolnshire) according to the record.

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il serra chace de les reparailler.—Et puis *Thorpe* lendemeyn vint et pria qe le jugement fut amende en ceo qe nest pas agarde qe les defendants reparaillent les walles.—Wilby agarda qils les reparaillent, et qils soient destreintz a ceo fere, et fist amender le roulle.[1] A.D. 1344.

§ Un[2] A. porta son brief vers B. et counta, acordaunt a son brief, qe come mesme cely B. ad en la ville de K. tant de terre, par resoun de qele terre ly, et ses auncestres, et touz les terres tenantz, de temps dount memore, &c., ount fait tauntz de perchez de la wale de meer en K., et mesmes les perchez reparaile, quant mester fuit, en ceo lewe de la meer en un tiel lieu, la lewe de la meer en mesme le lieu, par defaut de ceo qe la wale de la meer en cel lieu, en defaut mesme cely B., ne fuit pas reparaile, come, &c., est entre et ad surounde les terrez et les prees mesme cely ajoynauntz a mesme la wale, par quei il ad perdu les profitz de mesme la terre, &c., a ces damages, &c.—A quei B. vint et dit qe ly, et ses auncestres, et les terres tenantz, &c., navoint mye fait et reparaile la wale de temps dount memore, &c., auxi come, &c., et ceo tendit daverer.—Et les autres le revers.—Puis fuit trove par enquest pris par le *Nisi prius* qe B., et ses auncestres, et [les] terres tenantz, &c., de temps Trespas. [Fitz., *Jugement*, 119.]

[1] It appears from the record, *Placita de Banco*, Easter, 16 Edw. III., R° 304 (cited Y.B., Easter, 16 Edw. III., p. 259, note 3) that judgment was given for the plaintiff to recover 20*s.* damages against the defendant, and that a writ issued to distrain the defendant to repair and make good four perches of the wall. There appears to have been a subsequent writ of Error, as the record and process were sent into the Chancery by virtue of the King's writ to the Chief Justice of the Common Bench.

[2] This report of the case is from Harl. 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. 7.

A.D. 1344. from time whereof, &c., had made and repaired the wall in that place, as, &c., and that there was a defect in the wall, &c.—The verdict was returned into the Bench now at the Quinzaine.—The plaintiff prayed judgment on the verdict, and it was the fifth day of the Quinzaine.—And it was adjudged that the plaintiff should recover his damages assessed by the jury at 20 shillings, and that the other should be in mercy.—And afterwards, on the morrow, *W. Thorpe* came to the bar, and prayed that the Court would amend their judgment, and that they would award a writ to the Sheriff to distrain B. to repair the wall.—*Pole.* The Court has given judgment between us that you are to recover your damages against us, and that we are to be in mercy, wherefore they cannot now enlarge their judgment.—Willoughby. You are out of Court, and have not a day in Court, and therefore the Court cannot afford you any relief.—And afterwards the Court saw that *W. Thorpe's* prayer was reasonable, and awarded a writ to the Sheriff to distrain B. to repair the wall where the defect was.

Quare impedit. (7.) § The King brought a *Quare impedit* against the Prior of Durham, and Master Edmund de Haukesgarth, and counted that the Prior was seised of the patronage, and that the Pope, in his right, provided one A.,[1] and, while A.[1] was living, the Prior granted to the King the first presentation, on the next voidance, saving to him and his successors the subsequent presentations, and the church is now void by reason of A.'s death.—The Prior could not deny this.—Therefore the King

[1] For the real name *see* p. 239, note 11.

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dount, &c., avoint fait et reparaile la wale en cel lieu, come, &c., et qil y avoit[1] defaut en la wale, &c.—Lenqueste fuit retourne en Baunk ore al xv^ne^.—Le pleintif pria jugement sur verdit, et ceo fuit le quinte jour de la xv^ne^.—Et agarde fuit qil recoverast ses damages taxes par lenquest a xx*s.*, et lautre en la mercy.—Et puis lendemayn *W. Thorpe* vint a la barre, et pria qe la Court voille amender lour jugement, et qils voleint agarder brief a Vicounte a destreindre B. de reparailer la wale.—*Pole.* La Court ad done jugement entre nous qe vous recoverastes voz damages vers nous, et nous en la mercy, par quei ils pount mye ore enlarger lour jugement.—Wilby. Vous estes hors de Court, et navetz mye jour en Court, par quei la Court fra nulle arest pur vous.—Et puis la Court voet qe la priere *W. Thorpe* fut resonable, et agarda brief a Vicounte a destreindre B. de reparailer la wale la ou la defaut fuit. A.D. 1344.

(7.)[2] § Le Roy porta *Quare impedit* vers le Priour de Duresme, et Meistre[3] Edmond[4] de[5] H.,[6] et counta coment le Priour fut seisi de lavoere, et le Pape, en son dreit, purveust[7] un A., et, vivant A., le Priour graunta au Roi le primer presentement a la prochein voidaunce, sauf[8] a luy et ses successours les[9] presentements apres, et par la mort A. leglise[10] est ore voide.[11]—Le Priour ne put dedire.—Par quei le *Quare impedit.*

[1] MS., navoit, instead of y avoit.

[2] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 67, d. It there appears that the action was brought by the King against John, Prior of Durham, and Master Edmund de Haukesgarthe, in respect of a presentation to the prebend of Houedene in the church of St. Peter of Houedene (Howden, Yorks).

[3] L., Mestre.

[4] L., Esmond.

[5] de is omitted from 25,184.

[6] 25,184, Hakeschard.

[7] 25,184, purvost.

[8] 25,184, sauve.

[9] 25,184, la.

[10] 25,184, lesglise.

[11] The declaration was, according to the roll, "quod quidam "Ricardus de Hotone, quondam "Prior loci prædicti, prædecessor

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A.D. 1344. had a writ to the Bishop against him.—And *Richemunde* demanded judgment for Master Edmund because the King did not show anything to prove the Prior's grant.—This was not allowed because the Prior had accepted the fact.—Therefore *Richemunde* said that the Prior did not grant as the King supposed by his declaration.—*Thorpe.* You see plainly how he claims nothing in the patronage but pleads as a disturber, and the person who is very patron has confessed the King's title; judgment whether he shall be admitted

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Roy ad brief al Evesqe vers lui.[1]—Et, pur Meistre[2] Edmond,[3] *Rich.* demanda jugement, depuis qe le Roi ne moustra rien du grant le Priour.—*Non allocatur* desicome le Priour lad accepte.—Par quei il dit qe le Priour ne graunta pas[4] auxi come le Roi suppose par sa moustraunce.[5]—*Thorpe.* Vous veietz bien coment il ne cleyme rien en lavoere mes come destourbour plede, et celuy qest verroy patroun ad conu le title le Roi; jugement si a traverser cel title A.D. 1344.

" &c., fuit seisitus de advocatione " præbendæ prædictæ ut de jure " ecclesiæ suæ Sancti Cuthberti " Dunolmensis, tempore pacis, " tempore Edwardi Regis avi " domini Regis nunc, qui ad " eandem præbendam præsentavit " quendam Rogerum de Clare, " clericum suum, qui ad præsenta- " tionem suam fuit admissus et " installatus in eadem . . . . . " Et postmodum, vacante præ- " benda prædicta post mortem " prædicti Rogeri . . . . . domi- " nus Johannes Papa &c., providit " cuidam Magistro Johanni de " Caldewe, clerico suo, de eadem " præbenda, et eum fecit installari " in eadem, ut in jure ecclesiæ " Sancti Cuthberti prædictæ, tem- " pore pacis, tempore domini Regis " nunc, per cujus mortem prædicta " præbenda modo vacat, &c., " cujus quidem ecclesiæ Sancti " Cuthberti quidam Willelmus de " Contone ad tunc Prior extiterat " Et idem Willelmus de Contone " Prior, præfato Johanne de " Caldewe in possessione ejusdem " præbendæ prætextu provisionis " prædictæ existente, concessit " eidem domino Regi nunc quod " ipse præsentaret ad eandem in " proxima vacatione ejusdem ad- " tunc accidenti, &c., salvo eidem " Priori et successoribus suis jure " suo præsentandi ad eandem post " proximam vacationem supradic- " tam. Et, quia ista est proxima " vacatio post concessionem præ- " dictam ipsi domino Regi per " prædictum Willelmum Priorem, " &c., factam, pertinet ad dominum " Regem ad præsens ad prædictam " præbendam præsentare."

[1] According to the roll the Prior confessed the grant " in forma " qua idem dominus Rex superius " versus eum narravit, sed dicit " quod ipse non impedivit quin " Rex, &c." Issue was joined on this plea.

[2] L., Mestre.

[3] L., Esmound.

[4] 25,184, nad pas grante, instead of ne granta pas.

[5] According to the roll, "Ed- " mundus dicit quod, ubi dominus " Rex supponit præfatum Willel- " mum de Contone, Priorem, &c., " concessisse eidem domino Regi " quod ipse præsentaret ad eandem " præbendam in proxima vacatione " ejusdem a tempore concessionis " prædictæ, idem Willelmus de " Contone, Prior, &c., non concessit " eidem domino Regi quod ipse " præsentaret ad præbendam præ- " dictam in forma qua dominus " Rex superius in narratione sua " dicit. Et hoc paratus est verifi- " care, &c."

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A.D. 1344. to traverse this title; and we pray a writ to the Bishop.—*Richemunde.* Even though the Prior be willing to confess that which is false, it is not right that I should thereby be concluded, for, if that were law, every person might be ousted by covin.—Willoughby. Because you claim nothing in the patronage, and the very patron, who is named, has confessed the King's right, which it does not lie in your mouth to destroy, the Court adjudges that the King do have a writ to the Bishop, and that you be in mercy for the counterplea.

Quare impedit. § Our Lord the King brought his *Quare impedit* against the Prior of Durham, and against Master Edmund de Haukesgarth, and counted that it belonged to him to present to the prebend of Howden in the

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serra il resceu; et prioms brief al Evesqe.[1]—*Richem.* Tut voille le Priour conustre un faux, nest pas resoun par taunt qe jeo[2] soi[3] conclus, qar, si ceo fut ley, chescun persone par covyn serreit[4] ouste.—WILBY. Pur ceo qe vous clamez rien en le patronage, et le verroy patroun, qest nome, ad conu le dreit le Roi, quel ne gist pas en vostre bouche a destruer, agarde la COURT qe le Roi eit[5] brief al Evesqe, et vous pur le countreple en la mercye.[6] A.D. 1344.

§ Nostre[7] seignur le Roy porta son *Quare impedit* devers le Priour [de] Durhem, et devers Meistre Edmund de Haukesgarthe, et counta qe ly appendist a presenter [a] la provendre de H.[8] en leglise de *Quare impedit.* [Fitz., *Encumbent*, 5.]

[1] According to the roll, the replication for the King was, "quod ex quo prædictus Prior "nunc, in quo jus advocationis "præbendæ prædictæ residet, cog- "novit quod prædictus Willelmus "de Contone, Prior, &c., concessit "domino Regi præsentationem "ejusdem præbendæ in forma "superius allegata, et sic idem "Johannes Prior nunc non potest "dedicere titulum domini Regis "hac vice præsentandi ad eandem, "salvo jure ejusdem Prioris alias "ad præbendam prædictam præ- "sentandi, cum vacare contigerit, "ut in jure ecclesiæ suæ Sancti "Cuthberti prædictæ, per quod in "ore prædicti Edmundi non jacet "controplacitare titulum domini "Regis in hac parte ex quo idem "Edmundus nihil clamat in advo- "catione præbendæ prædictæ, nec "aliquid aliud dicit seu allegat "quod dominum Regem a præsen- "tatione sua prædicta hac vice "excludere debet, petit judicium "pro domino Rege, et breve "Episcopo, &c."

[2] jeo is omitted from L.

[3] 25,184, suy.

[4] 25,184, serra.

[5] 25,184, ad.

[6] According to the roll judgment was given in the following form:— "Quia videtur CURIÆ hic quod "prædictus Edmundus nihil dicit "quare judicium pro domino Rege "in hac parte retardari debet, "consideratum est quod dominus "Rex recuperet præsentationem "ad præbendam prædictam, et "habeat breve Archiepiscopo Ebo- "racensi, Angliæ Primati, loci "illius diocesano . . . . . "Et idem Edmundus in miseri- "cordia, &c." The *Venire* was also awarded for the trial of the issue joined.

[7] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It appears, however, to have been used by Fitzherbert, rather than the other report, for his *Abridgment*.

[8] MS., N.

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A.D. 1344. church of Howden, and for the reason that one John de Cointon,[1] predecessor of this Prior, was seised of the same advowson, and presented to the prebend one R.[1] his clerk, who on his presentation was admitted and instituted by the Bishop, which John[1] granted to our Lord the King the first presentation to the same prebend, saving to himself his right of patronage at another time. And he said that the prebend was now void by reason of the death of R.,[1] and so it belonged to the King to present.—The Prior appeared, and said that he could not deny that it belonged to the King to present on this occasion in accordance with the declaration, saving to himself his right of patronage at another time.—Master Edmund appeared, and demanded judgment whether the King would or ought to be answered as to this declaration, without showing a specialty or else matter of record to prove this grant from which he had taken his title to present.—*W. Thorpe.* Sir, you see plainly how he does not claim anything in the advowson, and the person who is very patron has confessed the King's right, wherefore against him who is a disturber, and does not claim anything in the advowson, we shall not be put to show anything which proves the grant, because it is not he who could plead to it even if we were to show it.—Willoughby. Suppose he made *profert* of a specialty for the King which proved the grant made by the Prior, or that the King recorded by his writ, or by his letter, that the Prior had granted him this presentation, would you be admitted to deny it when you do not claim anything in right of patronage? as meaning to say that he would not.—*Richemunde.* Even though we should not have a plea to deny expressly that which the King records, we should have a plea, to plead to the King's title, that he had not a right to recover,

[1] For the real names *see* p. 239, note 11.

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Houdene, et par la resoun qun Johan de Cointone, predecessour cesty Priour, fut seisi de mesme lavowesoun, et presenta a ceo un R. son clerk, qe a son presentement fuit resceu et institut Devesqe, le qel Johan graunta a nostre seignur le Roy le primer presentement a mesme la provendre, salve a ly son dreit de patronage autrefoitz. Et dit qe [par] la mort R. la provendre fuit ore voide, issint appent a Roy a presenter.—Le Priour vint, et dit qil ne poet dedire qe a Roy ne appendist a presenter a ore solonc la demoustraunce, salve a ly autrefoitz son droit de patronage.—Meistre Edmund vint, et demanda jugement si le Roy a cele demoustraunce devoit ou voleit estre respondu, saunz especialte ou autre de recorde moustrer qe prova cel graunte de qil il avoit pris son title de presenter.—*W. Thorpe.* Sire, vous veiez bien coment il ne cleime rien en lavowesoun, et cely qest verrey patron ad conu le dreit le Roy, par quei devers cely qest destourbour, et rienz ne cleime en lavowesoun, nous serroms point mys de mustrer rien qe prove le graunte, qar il nest pas cely qe purra pleder a ceo mesqe nous le mustrasoms.—Wilby. Jeo pose qil meist avant les especialte pur le Roy qe prova la graunte par le Priour, ou qe le Roy recordast par son brief, ou par sa lettre, qe le Priour lavoit graunte cel presentement, serrez ressu a dedire ceo de puis qe vous ne clamez rienx en le dreit [de] patronage? *quasi diceret non.*—*Rich.* Coment qe nous naveroms pas plee a dedire expressement ceo qe le Roy recorde, nous averoms ple de pleder a le title le Roy qil navoit A.D. 1344

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A.D. 1344. or else there would be mischief.—And *Richemunde* was put to answer over, and he said that the Prior did not grant this presentation to the King as the King had supposed by his declaration.—*W. Thorpe.* Since he does not claim anything in the advowson, and the person who is very patron has confessed the King's right, we demand judgment for the King, and pray a writ to the Bishop.—And for the same cause that Willoughby had already mentioned he gave judgment that the King should recover the presentation this time.

Præcipe quod reddat. (8.) § Note. *Præcipe quod reddat* against R. parson of the church of B.—*Derworthy.* R. is not parson of B., and was not on the day on which the writ was purchased; judgment of the writ.—*Grene.* In this case it is only a surname.—And, notwithstanding, Hillary adjudged that he should take nothing by his writ, because he did not deny, &c.

(9.) § A writ was brought against J.,[1] H.,[1] R.,[1] and Alice,[1] as above, and they heretofore appeared. J. disclaimed; Alice said that J., and H. and R., his brothers, purchased the tenements to hold to them and the heirs of J., and J. had leased, for her life, his portion to this Alice, and so she holds by a several title; judgment of the writ. The demandant maintained his writ against her. H. and R. agreed to the writ, and traversed the action. Afterwards Alice made default after default. J. came for the same reason for which Alice had alleged her tenancy, and prayed to be admitted with regard to both the one portion and the other.—*Gaynesford* said that more had been taken by virtue

[1] For the names of the parties *see* p. 247, note 6.

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pas dreit a recoverer, ou autrement serreit meschief. —Et *Richem.* fuit mys de respoundre outre, qe dit qe le Priour ne graunta pas cel presentement au Roy come le Roy avoit suppose par sa demoustraunce. —*W. Thorpe.* Depuis qil ne cleime rienz en lavowesoun, et cely qest verrey patron ad conu le dreit le Roy, nous demandoms jugement pur le Roy, et prioms brief al Evesqe.—Et sur mesme la cause qe Will. avoit dist il agarda qe le Roy recoverast le presentement a cel foitz. A.D. 1344.

(8.)[1] § *Nota. Præcipe quod reddat* vers R.[2] persone del esglise[3] de B.—*Der.* R. nest pas persone de B., ne fut jour de brief [purchace; jugement du brief].[4]—*Grene.* Ceo nest en ceo cas forqe surnoun. —Et, *non obstante*, Hill. agarda qil prist rien par soun brief, *quia*[5] *non dedixit, &c.* *Præcipe quod reddat.*

(9.)[6] § Brief porte vers J., H.,[7] R., et A., *ut supra*, qe vyendrent autrefoith. J. desclama; A. dit qe J., H.,[7] et R., lour freres, purchacerent les tenements a eux et les heirs J., et J. pur sa vie ad lesse sa porcion a ceste Alice, et issint tient ele [par] several title; jugement du brief. Le demandant maintient vers lui son brief. H.[7] et R. acorderent au brief, et traverserent laccion. Puys Alice fist defaut apres defaut. Vynt J. sur mesme la cause qe A. avoit allegge sa tenaunce, et pria destre resceu del un porcion et lautre.—*Gayn.* dit coment plus fut pris

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[1] From L., and 25,184.

[2] R. is omitted from L.

[3] L., *ecclesiæ*, instead of del esglise.

[4] The words between brackets are omitted from L.

[5] 25,184, *et quia*.

[6] From 25,184 alone until otherwise stated. The report is in continuation of Y.B., Easter, 17 Edw. III., No. 13, the record being on the *Placita de Banco* of that term, R° 116. The action was one of Formedon brought by Alice and Agnes daughters of John Gerveys against Alice late wife of William Gerveys, and John and Henry her sons, and Richard le Clerk, of West Farleigh.

[7] MS., W.

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A.D. 1344. of the *Cape* than ought to have been, because the demandant ought not to vary from his writ, which purported that four persons held the subject of his demand; now by reason of the default of one of them he has sued to have a third part taken, and so the whole is discontinued.—Sharshulle. The process is good; and the taking of the land is sufficiently valid, because, after J. had disclaimed against him, his business was only with the other three, who are in law accounted tenants.—*Seton.* We will aver our writ, wherefore he ought not to be admitted contrary to our writ, because the cause of his prayer is pending on the same point that was previously pleaded by Alice to the abatement of the writ.—Kelshulle. You must speak to the cause for his admission, and that is the lease made in the manner that he has alleged to Alice.—*Seton.* She holds nothing by his lease nor by lease from H., as he supposes by the prayer; ready, &c.—And the other side said the contrary.—Sharshulle. You are at a good issue with respect to the admission contrary to the writ, because, if the cause of his prayer be found, the writ will abate.—*Rokel.* We pray for the demandant an inquest against the other two, who have traversed the action.—*Grene.* That you shall not have, because this issue, if found against you as to the admission, will abate the whole writ.—Willoughby. It is so; and therefore enquiry shall first be had of that which will possibly abate the whole writ.—And so it was done.—*Quære,* therefore, since the plea was severed.

§ A writ was brought against four persons. One disclaimed. Another showed how they all purchased jointly, &c., to hold to them and the heirs of the one who disclaimed, who had granted to her an estate for term of her life, so that she was tenant of the fourth part by a several title, and demanded judgment of the writ. And the other two traversed the action, &c. And thereupon the demandant maintained

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par le *Cape* qe ne devereit estre, qar le demandant ne deit pas varier de son brief, qe voet qe les iiij teignent sa demande; ore par defaut un deux ad il suy qe la terce partie est pris, issint tut discontinue. —Schar. Le proces est bon; et la prise de la terre vaunt assez bien, qar, apres ceo qe J. avoit desclame vers lui, il ne bosoigne mes ov les autres iij, qe sont de ley acomptez tenants.—*Setone.* Nous voloms averer nostre brief, par quei en contrarie de nostre brief ne put il estre resceu, qar la cause de sa priere pend sur mesme le poynt qe autrefoitz fut plede par Alice al abatement du brief.—Kels. Il covient qe vous parlez a la cause de sa resceite, et cest le lees fait par la manere qil ad allegge a Alice.—*Setone.* Ele tient rien de son lees ne de lees H. come il suppose par la priere; prest, &c.—*Et alii e contra.*—Schar. Vous estez a bon issu [de] la resceite countre le brief, qar si trove soit la cause de sa priere, le brief abatera.—*Rokel.* Nous prioms pur le demandant lenqueste vers les autres ij, qount traverse laccion.—*Grene.* Ceo naverez pas, qar cest issu trove countre la resceite abatera tut le brief.—Wilby. Il est issi; et pur ceo serra primes enquis ceo qe par cas abatera tut le brief.—*Et ita factum est.*—*Quære ergo*, puys qe le plee fut severe. A.D. 1344.

§ Brief[1] porte vers iiij. Un desclama. Un autre moustra coment eux toux purchacerent jointement, &c., a eux et les heirs celuy qe desclama, qe avoit grante un estat a luy a terme de sa vie, issint fut il tenant de la quart partie par several title, et demanda jugement de brief. Et les altres deux traversount laccion, &c. Et sur ceo le demandant

[1] This report of the case is from L. alone, and has not been printed in the old editions of the Year Books. In that MS. it is placed between No. 26 and No. 27.

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A.D. 1344. his writ to the effect that they held in common. And now, on the day next following, she who alleged tenancy in severalty made default, wherefore the *Petit Cape* issued, returnable, &c., and on the day on which it was returnable she again made default, wherefore the one who had disclaimed showed how the reversion belonged to him, as above, and prayed to be admitted. And, because his prayer was in abatement of the writ inasmuch as he supposed the tenancy to be by a several title on his prayer, the demandant replied that he was tenant in common, though he was not party to him, &c. And afterwards he prayed an inquest against the two who had pleaded, &c. And the Justices would not allow that the inquest should be taken on a plea to the action before an inquest had been taken as to whether they were tenants in common or not, because, if the tenancy by several title should be found, that would abate the whole writ.

Præcipe quod reddat.

§ A writ was brought against Alice late wife of John Gerveys,[1] Henry,[1] William,[1] and John,[1] sons of this same Alice. J. said that he had nothing, &c. Alice said that on a certain day a fine[2] was levied of the same lands between J. her husband, and H., W., and J., her sons, to one R., by which fine R. granted and rendered the same tenements to J., H., W., and J., and to the heirs of J. the son. Afterwards J. the son, after the death of his father, leased his portion of the same tenements to this same A. for term of her life, and so she said that she held a part of the land in severalty and by several title, and demanded judgment of the writ brought against her and the others as against tenants in common. H. and W. accepted the tenancy in common, as the writ, &c., and traversed

[1] For the names, as given in the record, *see* above p. 247, note 6, and Y.B., Easter, 17 Edw. III., No. 13, p. 305, note 1.

[2] For this fine, as given in the record, *see* Y.B., Easter, 17 Edw. III., p. 307, note 11.

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meintint son brief qe tenent en comune. Et si al prochein jour apres celuy qe alleggea tenance en severalte fit defaut, par quei le petit *Cape* issit retournable, &c., a quel jour il fit autrefoith [defaut], par quai celuy qe avoit desclame moustra come[nt] reversion fut a luy, *ut supra*, et pria destre resceu. Et, pur ceo qe son priere fut en abatement du brief en tant qil supposa la tenance en several title sur la priere, le demandant[1] rejoint qe tenant en comune coment qil fut pas partie a luy, &c. Et puis il pria lenquest devers les ij qe avoint pledez, &c. Et les Justices ne voillount granter qe lenquest serroit pris sur ple al accion avant qe lenquest fuisse pris sils soient tenantz en comune ou noun, qar si la tenance par several title [soit trove] ceo abatera tut le brief, &c. A.D. 1344.

§ Brief[2] fuit porte vers Alice qe fuit la femme Johan Gerveys, Henre, William, et Johan, fitz mesme cele Alice. J. dit qil navoit rien, &c. Alice dit qe certein jour fin se leva de mesmes les terrez entre J. son baroun, H., W., et J., ces fitz, a un R., par qel fin R. graunta et rendi mesmes les tenementz a J., H., W., et J., et a les heirs J. le fitz. Puis J. le fitz, apres la mort son pier, lessa qe a ly attynt de mesmes les tenementz a mesme cele A., a terme de sa vie, et issint ele dit qele tient la terre partie en severalte et par several title, et demanda jugement du brief porte vers ly et les autres com vers tenantz en comune. H. et W. accepterent la tenance en comune come le brief, &c., et traverserent *Præcipe quod reddat.*

[1] MS., tenant.

[2] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books.

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A.D. 1344. the demandant's action. Against Alice the demandant maintained his writ, to the effect that she was tenant in common with the others, as his writ, &c. And against H. and W. the demandant maintained that the donor gave, &c., as his writ, &c. Process was continued on this until A. made default after appearance, wherefore the *Petit Cape* issued in respect of a third part, which was served and returned. Now at the Quinzaine A. did not appear. The Jury between the demandant and H. and W. came ready to pass its verdict.—*Gaynesford* came, and recited the process, and said that the *Petit Cape* had issued in respect of a third part without warrant, because the original writ was brought against four persons, whereas when A. pleaded several tenure, as above, the demandant maintained that she was tenant in common with H., W., and J., as his writ, &c., and since the demandant then affirmed the tenancy of the four in common, nothing ought to have been taken into the King's hand by reason of A.'s default but a fourth part, wherefore, &c.—And because J. had disclaimed, as above, by which disclaimer the freehold was affirmed to be in the persons of the three, the Court adjudged the process to be good.—And it was said that when A. pleaded several tenancy it was necessary that the demandant should maintain that she held in common with the other three, notwithstanding J.'s disclaimer, for if the demandant had said that A. held in common with H. and W. without anything more, it would have been held in that case that J. had not been, &c., and that would have abated his writ.—Afterwards J., who disclaimed, &c., came, and prayed to be admitted to defend his right by reason of A.'s default, and recited the fine, as above, and showed how he had leased his portion of the same tenements to A. for term of her life, saving the reversion to himself, &c.—*Seton*. Our writ supposes the tenancy of A. in common with the

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laccion le demandant. Vers Alice le demandant meyntint son brief qele fuit tenant en comune ove les autres, auxi com son brief, &c. Et devers H. et W. qil dona, &c., auxi come son brief, &c. Proces sur ceo continue tanqe A. fist defaut apres apparaunce, par quei le petit *Cape* issit de la terce partie retourne et servy. Ore a la xv^ne^ A. ne vint pas. Lenquest entre le demandant et H. et W. vint prest a passer.—*Gayn.* vint, et rehercea le proces, et dit qe le petit *Cape* fuist issue de la terce partie saunz garraunt, qar loriginal fuit porte vers iiij, oue quant A. pleda la severale tenure, *ut supra*, le demandant meyntint qele fuit tenant en comune ove H., W., et J., auxi come son brief, &c., et, de loure qe adounqes le demandant afferma la tenance les iiij en comune, par la defaut A. rien deust avoir este pris en la mayn le Roy forqe la iiij^te^ partie, par quei, &c.—Et pur ceo qe J. avoit desclame, *ut supra*, par qel desclamer le fraunctenement fuit afferme en les persones les iij, la Court agarda le proces bon. —Et dit fuit qe quant A. pleda la severale tenance qil covenist qe le demandant meyntint qele tient en comune ove les autres iij, *non obstante* le desclamer J., qar sil eust dit qe A. eust tenu en comune ove H. et W., saunz pluis, il eust [este] tenu en ceo [cas] qe J. neust mye[1] este, &c., et ceo eust abatu son brief.—Puis J. qi desclema, &c., vint, et pria destre resceu a defendre son dreit par la defaut A., et rehercea la fin, *ut supra*, et mustra coment il avoit lesse ceo qe a ly attynt de mesmes les tenementz a A., a terme de sa vie, savant la reversion a ly, &c. —*Setone.* Nostre brief suppose la tenance A. en A.D. 1344.

[1] MS., mys.

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A.D. 1344 others, and by your prayer you suppose her tenancy to be in severalty, and so your prayer is contrary to our writ, wherefore you cannot be admitted in this case.—*Grene.* If you bring your writ against my tenant for term of life, and demand against him certain lands in one vill, when the lands are in another vill, and he makes default after default, I shall be admitted, provided that I come before judgment, &c., and shall say that the tenements are in the other vill, and you will be compelled to maintain your writ against me; so also in this case.—*Quære* as to this.—Stonore, *ad idem.* We see clearly that by the fine the right remains in the person of J., wherefore, if the writ be wrongly taken, and he cannot be admitted, John must, on that ground, be ousted from his right, but though the demandant cannot admit him in this case, because his prayer is contrary to the demandant's writ, yet the Court will admit him.—And for that reason the Court was minded to admit him.—Therefore *Seton* said that A. had nothing by lease from J.; ready, &c.—And the others said the reverse.—Thereupon J. found security for the issues in the meantime.—*Seton.* Sir, now we pray an inquest against H. and W., because they have traversed our action.—And the Jury was there ready to pass its verdict.—Hillary. If it be found that A. had a third part of these lands by lease from J., as J. has supposed by his prayer, it will thereby be found that she holds that third part in severalty, and, if she so have it, then the whole writ will abate; therefore we will not take any inquest touching the rest before the question has been tried whether A. has a third part, &c., by lease from J., or not.—And thereupon a day was given between the demandant and J. who prayed, &c., and also between the demandant and H. and W.

No. 9.

comune ove les autres, et par vostre priere vous supposez sa tenance en severalte, et issint vostre priere a contrarie de nostre brief, par quei vous nestes mye resceivable en ceo cas.—*Grene.* Si vous portez vostre brief vers mon tenant a terme de vie, et demandez vers ly certeinz terrez en un ville, la ou les terrez sount en un autre ville, et il face defaut apres defaut, jeo serray resceu, et ceo si jeo viegne avant jugement, &c., et dirra qe les tenementz sount en lautre ville, et vous serrez chace de meyntener vostre brief vers moy; auxi en ceo cas.—*Quære super hoc.*—Ston., *ad idem.* Nous veioms bien par la fyn qe le dreit demurt en la persone J., par quei covient qe [si] le brief soit malement pris [et] il nest mye resceivable qe par taunt Johan soit ouste de son dreit, et mesqe le demandant ne le puit receivere en ceo cas pur ceo [qe] sa priere est a contrarie de son brief, la Court le receivera.—Et [pur] ceo il furent en volunte de ly avoir resceu.—Pur quei *Setone* dit qe A. navoit rien de les J.; prest, &c.—Et les autres le revers.—Sur ceo J. trova suerte des issuz en le mesne temps.—*Setone.* Sire, ore prioms lenqueste vers H. et W. de ceo de quei ils ount traverse nostre accion.—Et lenquest fuit la prest a passer.—Hill. Si trove soit qe A. avoit la terce partie de ceux terrez du les J., come J. par sa priere ad suppose, par taunt serra trove qele tynt cele terce partie en severalte, et si eit, donqes tut le brief abatera; par quei nous voloms prendre nulle enquest du remenaunt avant ceo qe cel point soit trie le quel A. ad la terce partie, &c., du les J., ou ne mye.—Et sur ceo jour fuit done entre le demandant et J., qi pria, &c., et auxint entre le demandant et H. et W.[1] A.D. 1344.

[1] The action was, in the end, discontinued, as shown by the record.

No. 10.

A.D. 1344. Debt against the Abbess of Burnham.

(10.) § Debt against the Abbess of Burnham. And the plaintiff counted that her predecessor, Margery de Louthes, bound herself, &c.—*Richemunde.* Judgment of the count, for we tell you that this same Abbess against whom he has counted is named Margery de Louthes, and so he supposes that she was predecessor to herself, and his count ought to be that this same Abbess bound herself.—*Grene.* That is not a plea unless you say that this same Margery was Abbess on the day on which the writ was purchased, because, otherwise the two statements are consistent—that she is now Abbess and that another person was Abbess on the day on which the writ was purchased, and then the statement might be true that she was a predecessor.—*Richemunde.* You have counted against

No. 10.

A.D. 1344. Dette vers Labbesse de B.[2]

(10.)[1] § Dette vers Labbesse de Bryngham.[3] Et counta qe sa predecessoresse, Margerie de Louthe,[4] soi obligea, &c.[5]—*Richem.* Jugement du counte, qar nous vous dioms qe mesme ceste Abbesse vers qi il ad counte ad a noun Margerie Louthe,[6] issint suppose il qele fut predecessoresse a luy mesme,[7] qar soun count serreit qe mesme ceste Abbesse [soi obligea.—*Grene.* Ceo nest pas plee si vous ne diez qe mesme cesty Margerie fut Abbesse][8] jour de brief purchace, qar autrement pount il ester[9] ensemble qele est ore Abbesse[10] et autre[11] jour de brief purchace, et adonqes fut ceo verite qele fut predecessoresse.[12]—*Richem.* Vous avez counte vers

[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 92 d. It there appears that the action was brought by Nicholas le Armurer, citizen of London, against the Abbess of Bornham (Burnham, Bucks) in respect of 100*l.*

[2] The words vers Labbesse de B. are from L. alone.

[3] L., B.

[4] L., Lousche.

[5] The declaration was, according to the record, "quod quædam "Margeria de Louthes, prædecessor Abbatissæ quæ nunc est, "die dominica proxima ante "Festum Sancti Gregorii Papæ, "anno regni domini Regis nunc "Angliæ duodecimo, apud Bornham, ex consensu Conventus sui, "per scriptum suum de communi "sigillo sigillatum, concessit se "teneri prædicto Nicholao in "prædictis centum libris solvendis "eidem Nicholao, vel suo certo "attornato, ad Festum Natalis "Domini tunc proxime sequens, "eadem Abbatissa, et similiter "prædicta Margeria quondam "Abbatissa, licet sæpius requisitæ, "prædictas centum libras prædicto "Nicholao nondum soluerunt . . ". . Et profert hic in Curia "quoddam scriptum, sub nomine "prædictæ Margeriæ de Louthes "Abbatissæ de Bornham, et ejus-"dem loci Conventus, quod præ-"missa testatur, &c."

[6] Louthe is omitted from L.

[7] mesme is omitted from L.

[8] The words between brackets are omitted from L.

[9] L., estre.

[10] L., Abbesce.

[11] In 25,184 the words par cas are inserted after autre.

[12] The plea in abatement of the count was, according to the roll, "quod ipsa non debet nec de jure "tenetur tali narrationi prædicto "Nicholao respondere, quia dicit "quod cum prædictus Nicholaus "superius narrando supponit "quendam [*sic*] Margeriam de "Louthes, prædecessorem Abbatissæ quæ nunc est, ex consensu "Conventus sui, concessisse se "teneri prædicto Nicholao in

No. 10.

A.D. 1344. the Abbess who is now in Court by attorney, and that Abbess is Margery de Louthes.—*Notton.* We tell you that on the day on which our writ was purchased one Joan Tornere[1] was Abbess, and that she is still living, and that she is party to our writ; and we demand judgment whether our count be not sufficiently good. —*Richemunde.* And we demand judgment since you do not deny that Margery de Louthes is now Abbess, and she is here by attorney, and no other, and you have counted against the Abbess who is here, supposing her to be predecessor to herself. Judgment of this bad count.—*Notton.* On the day on which our writ was purchased Joan was Abbess, and she is still living, and even though another may have been since created Abbess (which, however, I do not admit) still my writ is sufficiently good; and by intendment of law I ought to count against the person who was then Abbess, and no other. And, if I were to count against another, my writ would abate, because another could not be party to the writ. And when parties are called, and proffer themselves by attorney, it is to be understood that they are the same persons that were parties to the original writ.—Sharshulle. If Margery de Louthes, who is now Abbess, has appointed her attorney, and Joan never appointed an attorney for this plea, and you have counted against the person who is here by attorney, is not your count unwarranted by your writ? for, as to your writ, it is sufficiently good, even though by reason of

[1] According to the other report (*see* below, p. 266) it was alleged, on behalf of the plaintiff, that Joan de Thorney was Abbess on the day on which the writ was purchased. It is stated in Dugdale's *Monasticon* that a Joan de Dorney was Abbess before Margery de Louthes, and a Joan Turner afterwards, but the record throws no light on this point.

No. 10.

Labbesse[1] qest en Court ore par attourne, et cest Margerie de Louthe.[2]—*Nottone.* Nous vous dioms qe jour de nostre[3] brief[4] purchace fut une Johane Tornere[5] Abbesse, qest unqore[6] en pleine vie, la quele est partie a nostre brief; et nous demandoms jugement si nostre counte ne soit assez bon.—*Rich.* Et nous jugement desicome vous ne dedites pas qe Margerie Louthe[2] est ore Abbesse, et ele est cy[7] par attourne, et nul autre, et vers Labbesse qe cy est avez counte, supposaunt luy estre predecessoresse a luy mesme. Jugement de cest malveys counte.—*Nottone.* Jour de nostre brief purchace Johane fut Abbesse, qest unqore[8] en plein vie, tut soit autre cree puis en Abbesse, quele chose jeo ne conuse pas, unqore est mon brief assez bon; et devers cele qe adonqes fut Abbesse vers cel dentent de ley deyve[9] jeo counter, et vers nul autre. Et, si jeo countasse vers autre, mon counte sabatereit,[10] qar autre ne poet estre partie au brief. Et quant parties sount demandes, et ils se profrent[11] par attourne, cest a entendre mesmes ces qe sount parties al original.—Schar.[12] Si Margerie Louthe, qest ore Abbesse, eit fet son attourne, et Johane unqes fist attourne a ceo plee, et vous avez counte vers cel qest illoeqes par attourne, nest[13] vostre count degarraunti de vostre brief? qar, quant a vostre brief, il est assez bon, tut A.D. 1344.

" denariis prædictis, dicit quod " ipsa est eadem Margeria de " Louthes quæ modo est Abbatissa, " et quam idem Nicholaus suppo- " nit esse prædecessorem Abbatissæ " quæ nunc est, et per consequens " sequeretur ipsam esse præde- " cessorem sibi ipsi, quod est " inconveniens, et petit judicium " si tali narrationi respondere " debeat, &c."

[1] L., Abbesce.

[2] L., Lousche.

[3] nostre is omitted from 25,184.

[4] brief is omitted from L.

[5] L., T.

[6] unqore is omitted from 25,184.

[7] L., ycy, instead of est cy.

[8] 25,184, ore.

[9] L., devye.

[10] L., abatereit.

[11] L., profirent.

[12] L., Schard.

[13] L., ne.

No. 10.

A.D. 1344 the cession or resignation of one Abbess, a person be now Abbess other than she who was Abbess on the day on which the writ was purchased.—*R. Thorpe.* I cannot know who has appointed an attorney, but since the Abbess has appointed an attorney without giving any baptismal name, by intendment of law it shall be understood to be the person who is party to me, and no other.—Willoughby. You might have asked where the attorney was appointed, and have had your advantage from that if any other person but she who is party to you had appointed an attorney.—*R. Thorpe.* I could not have the baptismal name of her who appointed the attorney.—*W. Thorpe.* It is certain that when a writ is brought against Abbot or Abbess, the writ will not abate by reason of his or her cession or resignation, for no other will be a party to that writ but the person who then was.—Sharshulle. In that case you would lose much land: for when a writ was brought against an Abbot, and he resigned or was deprived, and another was created Abbot, if the person who was newly created could not be a party, the land would be lost, and that would be hard.—*Grene.* This count will be adjudged good unless I can have a better one, and your proof goes to show that I ought to have counted that the same person that is now alleged to be Abbess bound herself; and that count I should never be able to maintain, because on the production of the obligation my writ would abate, for if an Abbot be bound by a particular baptismal name, and he be himself Abbot at the time of the purchase of the writ, he will be named accordingly in the writ; therefore if I had counted, in this case, that the same person that executed the obligation was now bound, the writ would be abated by reason of the variance between the specialty and my writ; wherefore, if you oust me

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soit[1] ore[2] autre Abbesse par cession ou resignement A.D. 1344
Labbesse[3] [qe ne fut jour du brief purchace.—*R. Thorpe.* Jeo ne puisse saver qi ad fait attourne, mes quant][4] Labbesse ad fet attourne saunz noun de baptesme,[5] dentente de ley serra entendu cele qest partie a moy, et nul autre.—Wilby. Vous puissez aver demande ou fet attourne, et de ceo aver eu[6] avauntage si autre ust fet attourne qe cele qest partie [a vous.—[*R.*] *Thorpe.* Jeo ne poiay aver soun noun qe fit lattourne.—[*W.*] *Thorpe.* Il est certein qe quant brief est porte devers Abbe ou Abbesse, par cession ou resignement de lui le brief sabatera pas, qar nul autre serra partie][4] a cel brief forqe celuy qe adonqes fut.—Schar. Donqes voudrez[7] perdre molt[8] de terre: qar quant brief serreit porte vers Abbe, et[9] il cessa, ou fut prive, et autre fut cree en Abbe, si celuy qe de novel[10] fut cree ne put estre partie, la terre serreit perdue, qe serreit dure.—*Grene.* Ceo counte serra ajugge bon si jeo ne[11] purroy aver meillour, et vostre prove[12] va a cel[13] entente qe jeo duisse[14] aver counte qe mesme cest qest ore allegge Abbesse sobligea; et cel counte meintendra jeo jammes, qar sur la moustraunce del obligacion mon brief abatereit, pur ceo qe si Abbe par certein noun de baptesme[5] soit oblige, et il mesme au temps du brief purchace soit Abbe, il serra acordaunt nome en le brief; donqes si jeo usse counte en ceo cas qele mesme qe fit lobligacion sobligea, pur la variaunce entre lespecialte et mon[15] brief le brief serreit abatu; par quei, si vous moy

[1] 25,184, soi.
[2] ore is omitted from 25,184.
[3] Labbesse is from L. alone.
[4] The words between brackets are omitted from L.
[5] L., baptisme.
[6] eu is omitted from L.
[7] L., voidres.
[8] L., mold.
[9] et is omitted from L.
[10] novel is omitted from L.
[11] ne is omitted from 25,184.
[12] L., proefve.
[13] 25,184, entiele, instead of a cel.
[14] 25,184, dusse.
[15] 25,184, le.

No. 10.

A.D. 1344. from this count, you oust me from the action.—Stonore. The writ is good enough; but the count, which is self-contradictory, cannot be maintained by any law; and the contradictoriness is sufficiently proved when you make her successor to herself, which cannot be; and you might have counted that she herself bound herself. And when an Abbot or Abbess binds himself or herself to me, with the consent of the Convent, the House immediately becomes charged, and, whosoever may be the Head, he shall answer straightway, so that he shall not abate my writ by any change of Heads among them, but, whosoever is Head, he shall be a party to me.—Sharshulle. Suppose that Margery had come to the bar in her own person, and had proffered herself as Abbess, and you had counted against her, would not the count have been faulty, and that through your own fault, as you ought to have known who was supposed to be party to you?—*Grene.* If she had appeared in her own person the case would have been different from that which it is now when the Abbess appears by attorney, for by law I ought not to know that any other person is Abbess but the person who was so at the time at which my writ was purchased; wherefore, whosoever may have appointed an attorney as Abbess, she is to be understood to be the same person that is party to me, and that is no other than she who is party to the original writ. And it may be that the Abbess was changed to-day or yesterday; am I bound to know that? as meaning to say that he was not. And neither Court nor party can know that a person other than this same person who was party to me has appointed an attorney, when

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oustez de cel count[1] vous moy oustez daccion.—Ston. A.D. 1344.
Le brief est assez bon; mes le counte, qest contrarie en luy mesme, par nulle ley[2] ne[3] purra estre maintenu; et la contrariousete est assez prove quant vous la festez[4] successour a luy mesme,[5] qe ne put estre; et vous puissez[6] aver counte qele mesme sobligea. Et quant[7] Abbe ou Abbesse, del assent le Covent, soy[8] oblige a moy, la mesoun est tantost charge, et qi qe soit Soverein respondra hardiement,[9] dount [par lour chaunger entre eux des Sovereygnes il abatereit pas mon brief, mes qi est Sovereyn il serra][10] partie a moy.—Schar. Jeo pose qe Margerie en propre persone venist a la barre, et come Abbesse soy ust profert, et vous ussetz counte vers luy, ne serreit le counte vicious et en[11] vostre defaut qe devez saver[12] qi[13] serreit partie a vous?—*Grene.* Il serreit altre si ele fut en propre persone qil nest ore quant Labbesse est par attourne, qar de ley jeo ne dei[14] saver qautre soit Abbesse qe cele [qe feust a temps de mon[15] purchace; par quei qi eit fet attourne come Abbesse cest entendu mesme cely][10] qest partie a moy, et cest nul autre qe cele qest[16] partie al original. Et put estre qe Labbesse fut huy ceo jour ou heere chaunge; suy jeo[17] tenuz a saver cella? *quasi diceret non.* Et Court ne partie ne[18] poet[19] saver qautre persone qe mesme cel qe fut partie a moy[20] eit[21] fet attourne, quant lattourne

[1] 25,184, brief.
[2] ley is omitted from 25,184.
[3] ne is omitted from L.
[4] L., fetes.
[5] mesme is omitted from L.
[6] 25,184, peussez.
[7] L., quant al.
[8] 25,184, soit.
[9] L., hardiments.
[10] The words between brackets are omitted from L.
[11] en is omitted from L.
[12] L., savoir.
[13] L., si.
[14] L., deye.
[15] MS., son.
[16] L., est.
[17] L., jeo su, instead of suy jeo.
[18] ne is omitted from 25,184.
[19] L., pount.
[20] The words a moy are omitted from 25,184.
[21] MSS., soit.

No. 10.

A.D. 1344 the attorney is appointed by such a general name as the writ supposes. And the question whether Margery or Joan appointed the attorney cannot make an issue between us: for your record can only be that the Abbess appointed the attorney, and you cannot in law know that she is any other person than the person against whom the writ is brought. — Sharshulle. Certainly, you who are party ought to know it: for if you bring a writ against W. Sharshulle, and R. Hillary answers for him, and you accept the answer and have judgment in your favour on his plea, you will never have execution against W. Sharshulle upon that judgment.—*Grene.* Certainly, I shall have execution so long as the judgment stands in force and is not defeated by a writ of Deceit. — Kelshulle abated the count.—*Quære.*

Debt. § Nicholas le Armurer, of London, brought a writ of Debt against the Abbess of Burnham, and counted against her that one Margery, her predecessor, bound herself to be holden to him in £100, to be paid on a certain day, on which day she did not pay, wherefore, &c. — *Richemunde*, for the Abbess. Sir, we tell you that, whereas he has supposed by his count that Margery, our predecessor, acknowledged herself to be holden to him, this same person who is now Abbess is this same Margery whom he supposes to have bound herself, wherefore we demand judgment of his count.—

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est fet par tiel[1] general noun come le brief suppose. A.D 1344.
Et ceo ne purra pas fere issue entre nous lequel Margerie ou Johane fist lattourne: qar vostre recorde ne poet estre mes qe Labbesse fist lattourne, et[2] de ley vous ne poetz saver[3] qele soit autre persone[4] qe cele vers qi le brief est porte.—SCHAR. Certes vous qestes partie le duissez[5] saver[3]: qar si vous portez brief vers W. Scharshulle, et R. Hillary[6] respond pur luy, et[2] vous lacceptez, et avez jugement pur vous sur son plee, ja naverez[7] execucion vers W. Scharshulle hors de cel jugement.—*Grene.* Certes[8] si averai[9] tanqe le jugement esta en sa force nient defet par Desceite.—KELS. abati le counte.[10]—*Quære.*

§ Nicol[11] Larmurer, de Londres, porta un brief de Dette. [Fitz., *Briefe*, 358.]
Dette vers Labbesse de Brinnam, et conta devers ly qune Margerie, sa predecessoresse, se obligea estre tenuz a luy en c*li.*, a paier a certein jour, a qel jour ele ne paia pas, par quei, &c.—*Rich.*, pur Labbesse. Sire, nous vous dioms qe la ou il ad suppose par son count qe Margerie, nostre predecessoresse, se conust estre tenuz a ly, nous vous dioms qe mesme cesty qorest Abbesse est mesme cesty Margerie qil suppose qe se dust aver oblige, par quei nous demandoms jugement de son count.—

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[1] L., autel.
[2] et is omitted from L.
[3] L., savoir.
[4] persone is omitted from 25,184.
[5] 25,184, deussez.
[6] L., Kelleshulle.
[7] L., averetz.
[8] Certes is omitted from L.
[9] L., avera.
[10] According to the roll, after the plea, "prædictus Nicholaus non "potest dedicere quin Margeria de "Louthes modo est Abbatissa de "Bornham, nec quin ipse in "narratione sua supponit ipsam "esse prædecessorem Abbatissæ "quæ nunc est, &c.
"Ideo consideratum est quod "prædicta Abbatissa eat inde sine "die, et prædictus Nicholaus nihil "capiat per breve suum, sed sit in "misericordia, &c."
[11] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It appears, however, to have been used by Fitzherbert for his short abridgment of the case, and not the other report.

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A.D. 1344. *Grene.* Sir, we tell you that on the day on which our writ was purchased one Joan de Thorney was Abbess, and she must be understood to be party to us, and that we have counted against her, and this same Margery who bound herself was Joan's predecessor, wherefore we demand judgment whether our count be not sufficiently good.—*Richemunde.* And we demand judgment since he does not deny that this same Margery who bound herself is now Abbess, and it is she who is now party to him; and he has by his count supposed her to be predecessor of the present Abbess, wherefore we demand judgment of his count.—*Grene.* My count, and my writ also, ought to be understood to be, and to be maintained, against the person against whom my writ was brought, for even though the person who was Abbess on the day on which my writ was purchased may have been deposed or may have resigned, and another may have been elected, still my writ is always good against her, because her resignation ought not to abate my writ which at one time was good, and my count is not unwarranted by my writ, but maintained by the matter which I have stated. And as to your assertion that I have accepted an answer by attorney for the present Abbess, and that I have counted against the present Abbess, that cannot be found, because our writ is brought against the Abbess without naming her by her baptismal name, so that, when she was called, one answered as attorney for the Abbess who was called, and she must by law be understood to be the person against whom the writ was brought, because by intendment of law no other person ought to be called, or to appoint an attorney, and it is not proved by record that any other appointed an attorney, and therefore it ought to be understood to be the same person against whom our writ was brought.—Sharshulle. But when anyone has to count it is a matter of the first necessity that he should see

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Grene. Sire, nous vous dioms qe jour de nostre brief purchace une Johane de Thorneye fuit Abbesse, qel serra entendue partie a nous, et vers qi nous avoms counte, a qi mesme cesti Margerie qe se obligea fuit predecessoresse, par quei nous demandoms jugement si nostre count [ne] soit assetz bon.—*Rich.* Et nous jugement de puis qil ne dedist pas qe mesme cesty Margerie qe se obligea est a ore Abbesse, et la qel est ore partie devers ly; et il lad suppose par son counte predecessoresse Labbesse qorest, par quei nous demandoms jugement de son count.—*Grene.* Vers ceste vers qi moun brief fut porte mon count deit estre entenduz et meintenuz, et moun brief auxi, qar mesqe ceste qe fuit Abbesse jour de mon brief purchace soit depose ou demys, et un autre eslieu, unqore mon brief est bon tut temps devers ly, qar sa demise ne deit pas abatre mon brief qe fuit bon a un temps, et mon count nest pas desgarraunti de moun brief, einz meyntenuz par la matere qel jay livere. Et a ceo qe vous parlez qe jai accepte respouns par attorne pur Labbesse qorest, et qe jay counte vers Labbesse qorest, ceo ne puit pas estre trove, qar nostre brief est porte vers Labbesse saunz nomer par noun de baptesme, issint quant ele fut demande, un respondi par attorne pur Labbesse qe fuit demande, qe par lei deit estre entenduz ceste vers qi le brief fuit porte, qar par entendement de ley autre ne deit estre demande, ne faire attorne, ne par le recorde nest pas prove qaltre fit attorne, et quant deit estre entenduz mesme ceste vers qi nostre brief fuit porte.—Schar. Mes quant ascun[1] deit counter il est choce primies busoignable qil A.D. 1344.

[1] MS., attourne.

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A.D. 1344. whether he has his adversary ready in Court either by attorney or *in propria persona*, and if he has him not, it is for him to take his advantage of the non-appearance. Now it is the fact that you have counted by words in your count against the Abbess who is here by attorney, and she is the present Abbess.—*Grene.* Sir, that cannot be now proved but by intendment of law, and that is no other but that the Abbess against whom my writ was brought appointed her attorney.—Sharshulle. It is not so, but, if the present Abbess has appointed an attorney, your count is bad, and you have not said the reverse, and it is for you to acknowledge who it is that appoints an attorney against you, whether your adversary or another person. *Grene.* Issue can never be taken on the appointment of an attorney, but, if there be found in the record any variance in the name or in the surname, then he can take advantage of it, but the question whether one person appointed an attorney or another person appointed him can never be tried where the bill is in accordance with the writ, but it shall always be understood to be as the law supposes.—Sharshulle. The law is otherwise, for, if a writ of Debt is brought against H. Grene, and Roger Hillary comes into Court, and confesses the plaintiff's action by deceit, as if he were Henry Grene, the plaintiff will never have execution, because H. Grene will easily defeat it by an averment that he did not confess the action, &c., but that Roger Hillary did so in deceit of him.—*Grene.* Sir, that is not law, because that which you say would be contrary to the record, but in such a case suit is given by a writ of Deceit against the person who confessed the plaintiff's action.—*Quære*, &c.—*Notton.* If we had counted such a count against Joan as being the present Abbess, and one who was not Abbess on the day on which the writ was purchased had appointed this attorney, no law would put us to count against her,

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veit sil eit soun adversare prest en Court ou par attourne ou en propre persone, et sil nel eist pas cest a ly de prendre son avantage de la noun venue. Ore est il issi qe vous avetz counte par paroles en vostre counte vers Labbesse qe illoeqes est par attourne, qele est Labbesse qore est. — *Grene.* Sire, ceo ne puit estre prove a ore mes par entendement de ley,[1] qel nest autre mes qe Labbesse vers qi moun brief fut porte fit son attourne.—Schar. Noun est, mes, si Labbesse qorest eit fait attourne, vostre counte est malveys, et vous navetz pas dit le revers, et a vous est il de conustre qi fait attourne devers vous, ou vostre adversare ou autre.—*Grene.* Sur[2] la fesaunce dattourne ne puit jammes issu estre pris, mes, si homme le trove en le recorde par variaunce de noun ou de surnoun, la puit il prendre avantage de ceo, mes le qel un persone fit attourne ou autre le fit ceo ne puit estre trie la ou la bille acorde a brief, mes tut temps serra entendu ceo qe la ley suppose.—Schar. La ley est autre, qar, si un brief de Dette soit porte vers H. Grene, et Roger Hillary vint en Court et conust laccion[3] le pleintif en desceit, come [si] il fuit Henre Grene, le pleintif navera jammes execucion, qar H. Grene le[4] defra bien par un averement qil ne conust pas laccion, &c., mes Roger Hillary le fit en desceit de ly.—*Grene.* Sire, ceo nest pas ley, qar ceo qe vous parlez serreit a contrarie de recorde, mes la suite en tiel cas est done par brief de Desceit vers cely qe conust laccion le pleintif.—*Quære*, &c.—*Nottone.* Si nous ussoms counte tiel counte vers Johane qe fuit Abbesse qore est et qe ne fuit pas Abbesse jour de brief purchace eit fait cest attourne, nulle ley nous mettreit a counter vers ly, A.D. 1344.

[1] MS., ly.
[2] MS., si.
[3] MS., saccion.
[4] MS., ne le.

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A.D. 1344. because I could show clearly that I had not the party in Court, wherefore it seems that my count is sufficiently good, and capable of being maintained, and understood to be against the person who is party to my writ.—Hillary. Even though we were apprised that the person who is this day Abbess had appointed the attorney, as possibly we do understand now, still, notwithstanding the allegation of which you speak, you would count against her, or else you would take nothing by your writ, since she has now the care of the House as the other had before.—*Grene.* If a *Præcipe quod reddat* be brought against a Prior, and, while the writ is pending, he be deposed, and another be created Prior, even though the successor appear in his own person, I shall oust him from an answer because my writ is not brought against him.—Hillary. You will not do so.—*Quære*, because the other could not answer, and therefore the land would be lost, and it ought not to be by right.—*Grene.* If my count be now abated, my writ or my count will always be abated by the resignation of an Abbot or of an Abbess, because, if I had counted such a count as he gives me, supposing that this present Abbess granted, it would thereby follow that my writ would abate because it is not in accordance with the specialty.—And in the end the Court gave judgment that he should take nothing by his writ.

Scire facias. (11.) § *Scire facias* on a fine, which was levied of the manor of Ashington,[1] by divers garnishments. One

See p. 271, note 3.

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qar jeo mustra bien qe jeo navoi pas partie en Court, par quei il semble qe mon counte est assetz bon, et meyntenable, et entenduz vers cest qest partie a mon brief.—Hill. Mesqe nous fuissoms apris qe cest qest hue ceo jour Abbesse ust fait attourne, come par cas nous entendoms a ore, unqore, nient countresteaunt laggeaunce qel vous parlez, vous countrez vers ly, ou vous ne prenderez rien par vostre brief, del houre qele aveit a ore cure de la Mesoun come lautre aveit devant.[1]—*Grene.* Si un *Præcipe quod reddat* soit porte vers un Priour, et, pendaunt le brief, il soit depose, et un autre cree Priour, mesqe le successour vint en propre persone, jeo ly oustera de respouns pur ceo qe mon brief nest pas porte vers ly.—Hill. Noun fres.—*Quære,* qar lautre ne put respoundre, et par taunt serroit la terre perduz, qe ne dust estre de resoun.—*Grene.* Si moun count soit abatu a ore, toutz jours serra mon brief ou mon count abatu par demys de Abbe ou de Abbesse, qar si jeo usse counte tiel count qil il me doune, supposaunt qe cest Abbesse qorest graunta, par taunt ensuereit qe mon brief abatera pur ceo qil nest pas acordant al especialte.—Et al derreyn la Court agarda qil ne prist rienz par son brief.[2] A.D. 1344.

(11.)[3] § *Scire facias* dun fyn qe se leva de maner[4] de A.[5] par divers garnisements. Un alleggea qil tient *Scire facias.*

[1] In the MS. the report ends here abruptly, but the conclusion is inserted on another folio, and is identified by cross-references.

[2] MS., count. Fitzherbert gives the reading "brief," and this is in accordance with the record. *See* above p. 265, note 10.

[3] From L., and 25,184, until otherwise stated, but corrected by the record *Placita de Banco*, Trin., 18 Edw. III., R° 157. It there appears that the *Scire facias* was sued by Simon de Furneux the younger to have execution of a fine of the manor of Ashington (Somerset) limited to him by way of remainder after the death of Matthew de Furneux and John de Furneux the elder. There were several tenants warned.

[4] L., manoir.

[5] MSS., B.

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A.D. 1344. of the tenants alleged that he held the tenements in which he was warned as parcel of the manor of West Coker,[1] and not as parcel of the manor of Ashington[1] for term of his life, the reversion regardant to one J.,[2] and showed how, and prayed aid of him.—*Grene.* He prays aid in respect of something which is not in demand; we pray execution.—*Thorpe.* Whether it be so or not, we shall not be a party without the person in whom the right rests.—Willoughby. If it be as you say, you can allege it in bar of the action.—*Thorpe.* We cannot do so without him who has the right, because we ought not to try that without him.—Kelshulle, *ad idem.* The tenant may hold by lease from another person as parcel of the manor of West Coker, and yet

[1] *See* p. 273, note 3.

[2] For the names *see* p. 273, note 3.

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les tenementz ou il estoit garny come parcelle del maner de C.,[1] et noun pas come parcelle del maner de A.,[2] a terme de sa vie, la reversioun regardaunt a un J., et moustra coment, et pria eide de luy.[3]—*Grene.* Il prie eide de chose qe nest pas en demande; nous prioms execucion.—*Thorpe.* Le quel il[4] soit issint ou nient, nous[5] ne serroms pas partie saunz celuy en qi le dreit repose.—Wilby. Sil soit come vous parlez, vous le poez allegger en barre daccion.—*Thorpe.* Noun pas saunz celuy a[6] qi le dreit est, qar nous ne devoms pas saunz luy cella[7] trier.—Kels., *ad idem.* Le tenant poet tener par lees dautre[8] come parcelle du maner de C.[1], et unqore A.D. 1344.

[1] MSS., T.

[2] MSS., B.

[3] According to the record one of the tenants, viz. John le Doo, "dicit quod ipse est tenens de "eisdem tenementis, et dicit quod "tenementa illa sunt de manerio "de West Coker et non de prædicto "manerio de Ascyntone. Et dicit "quod quidam Johannes de Furneux tenementa illa dimisit "eidem Johanni le Doo tenenda "ipsi Johanni le Doo ad terminum "vitæ suæ de ipso Johanne de "Furneux et heredibus suis per "servitia tresdecim solidorum et "quatuor denariorum per annum, "qui quidem Johannes de Furneux "postea obiit sine herede de se, "per quod redditus prædictus et "reversio eorundem tenementorum descendit quibusdam Matilldi et Dionisiæ ut sororibus et "heredibus, &c., Et de prædicta "Matilldi exivit quidam Ricardus "Payn ut filius et heres, &c. Et "de ipsa Dionisia exivit quædam "Alicia uxor Willelmi Grede ut "filia et heres, &c., qui quidem "Ricardus, Willelmus et Alicia "redditum prædictum ac reversionem illorum "dederunt et concesseruut . . . . . "Philippo le Doo et cuidam "Rogero Torel, per quod donum et "concessionem idem Johannes le "Doo se attornavit, &c. Et postea "idem Philippus et Rogerus reddi"tum illum ac reversionem præ"dictam dederunt et concesserunt "cuidam Ricardo Brunger de West "Coker, per quod donum idem "Johannes le Doo se attornavit, "&c. Et sic dicit quod ipse tenet "tenementa illa ad terminum "vitæ suæ, et quod reversio "eorundem pertinet ad ipsum "Ricardum, sine quo non potest "tenementa illa deducere in judi"cium. Et petit auxilium de ipso "Ricardo, &c." It is not added that the aid was granted. There was a similar aid-prayer also not granted on behalf of other tenants.

[4] 25,184, qil.

[5] nous is omitted from 25,184.

[6] L., en.

[7] cella is omitted from 25,184.

[8] 25,184, dautri.

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A.D. 1344 the same parcel may be included within the manor of Ashington, whereof the fine was levied, for a manor may be made up of portions collected together; therefore his prayer may be consistent with the action.—Hillary. His statement is tantamount to saying that what he holds is not included in the fine, and that is to the action.—Therefore Hillary ousted him from aid.—And as to another garnishment sued against John le Prest, and Alice[1] his wife, John tells you, in his own person, that he has not any wife, and had not on the day on which the writ was purchased; judgment of the writ.—*Grene.* We pray execution because his wife, who can be brought at his pleasure, does not appear.—This was not allowed.

Scire facias. § A man sued a *Scire facias* upon a fine, in order to have execution of certain tenements which were parcel of the manor of Ashington, of which manor the fine was levied between certain persons; and the *Scire facias* was sued against several persons as against several tenants, to which the Sheriff returned as to one

[1] Matilda, according to the record. *See* p. 275, note 5.

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mesme la parcelle compris deinz le maner de A.,[1] A.D. 1344. dount la fyn se leva, qar de collectes quiles ensemble homme purra faire[2] manoir; par quei il purra[3] ester[4] ov laccion sa priere.—Hill. Son dit amount qe ceo qil tient nest pas compris deinz la fyn, qest al accion.—Par quei il luy ousta del eide.—Et quant a un autre garnisement suy vers Johan Prest, et Alice sa femme, Johan vous dit, en propre persone, qil nad nul femme, ne avoit jour de brief purchace; jugement du brief.[5]—*Grene.* Nous prioms execucion, qar sa femme, qest menable a sa volunte, ne vient pas.—*Non allocatur.*[6]

Scire facias. [Fitz., *Averement*, 29.]

§ Un[7] homme suist un *Scire facias* hors dun fin, davoir execucion de certeinz tenements qeux furent parcelle de maner de A.,[8] de qel maner la fin se leva entre certeinz persones; et le *Scire facias* fuit suy devers plusours severals persones come devers severals tenantz, ou le Vicounte retourna quant a

[1] MSS., B.

[2] faire is omitted from L.

[3] L., poet.

[4] L., estre.

[5] According to the roll "Johannes le Prest et Matilldis uxor "ejus" were garnished in respect of one messuage. "Et prædictus "Johannes le Prest, quoad præ- "dictum mesuagium versus eum "et prædictam Matilldem, ut "uxorem suam, petitum, dicit quod "prædictus Simon executionem "inde versus eum habere non "debet, dicit enim quod ipse "est capellanus, et non habet "aliquam uxorem, et hoc paratus "est verificare, unde petit judicium "de brevi, &c."

[6] There were some other pleadings but "Postea in Octabis Sanctæ "Trinitatis anno regni Regis nunc "vicesimo primo venit prædictus "Simon in Curia hic et dicit quod "processus iste jam diu omnino "discontinuatur. Et petit breve "ad præmuniendum omnes præ- "dictos tenentes præter prædictos "Johannem le Prest et Matilldem, "&c., et etiam petit breve ad præ- "muniendum quosdam Johannem "le Prest et Matilldem filiam "Johannis le Prest, qui unum "mesuagium inde tenent, &c. "Et ei conceditur returnabile hic "a die Sancti Michaelis in xv "dies, &c."

[7] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It has, however, been twice used by Fitzherbert for his *Abridgment*, and not the other report.

[8] MS., H.

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A.D. 1344. William[1] le Prest, and Cecilia[1] his wife, that they had been warned.—*Moubray.* Sir, we tell you that, whereas this *Scire facias* is sued against W.[1] le Prest and Cecilia[1] his wife, William is tenant of the tenements demanded against him, &c., and tells you that he is a chaplain, and has not any wife, nor ever had, and we demand judgment of the writ.—*Grene.* Since the Sheriff has returned that he and C.[1] his wife have been warned, and he does not bring his wife, in which case the default of the wife is the default of the husband, we demand judgment, and we pray execution. Hillary. How can he bring his wife, when he tenders the averment that he never had a wife? And it is not right that he should be ousted from averring that, although the Sheriff has testified that he has warned them, supposing that he has a wife; wherefore will you maintain the reverse, that is to say, that he had a wife on the day on which your writ was purchased?—And because *Grene* could not deny that le Prest had not a wife on the day on which his writ was purchased, the writ as against him was abated. This seems extraordinary since he had said that he was tenant of the tenements demanded against him, and was warned, although he had not a wife.—And as to others named *Moubray* said that one D.[2] was seised of the manor of West Coker, of which the tenements demanded were parcel, and leased the same tenements for term of their lives, the reversion regardant to this same D.,[2] and they prayed aid of him.—*Grene.* Sir, you see plainly how we suppose by our writ that the tenements demanded are parcel of the manor of Ashington, of which the fine was levied, and by his aid-prayer he supposes that they are parcel of the manor of West Coker, and so his aid-prayer is in abatement of our writ, wherefore we demand judgment

Quære.

[1] For the real names *see* p. 275, note 5.

[2] As to the name *see* p. 273, note 3.

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un William le Prest, et Cecil sa femme, qils furent garniz.—*Moubray.* Sire, nous vous dioms qe la ou cesti *Scire facias* est suy vers W. Prest et Cecil sa femme, William est tenant des tenementz demandez vers ly, &c., et vous dit qil est chapelein, et nad nulle femme, ne unqes navoit, et demandoms jugement de brief.—*Grene.* De puis qe le Vicounte ad retourne qe ly et C. sa femme sount garniz, et il namene pas sa femme, en qel cas la defaut la femme est la defaut de baroun, nous demandoms jugement, et prioms execucion.—Hill. Coment puit il amener sa femme la ou il tendit daverer qil navoit unqes femme? Et il nest pas resoun qil soit ouste daverer ceo, coment qe le Vicounte eit tesmoigne qil les eit garni, supposaunt qil ad femme; par quei voillez meyntener le revers qil avoit femme jour de vostre brief purchace?—Et pur ceo qe *Grene* ne poiet dedire qil naveit pas femme jour de son brief, &c., son brief devers ly fuit abatu.—*Quod videtur mirum* depuis qil avoit dit qil fuit tenant des tenementz devers ly demandez et fuit garni, coment qil navoit pas femme.—Et quant as autres nomez *Moubray* dit qun D. fuit seisi de maner de C.,[1] des qeux les tenementz demandez furent parcelle, et mesmes les tenements[2] lessa a terme de lour vies, la reversion regardaunt a mesme cesti, et prierent eide de ly.—*Grene.* Sire, vous veiez bien coment nous supposoms par nostre brief qe les tenementz demandez sount parcelle de maner de A.[3] de qel la fyn se leva, et par son aide prier il suppose qils sount parcelle de maner de C.,[4] issint son aide prier en abatement de nostre bref, par quei nous demandoms jugement

A.D. 1344.

Quære.

Fitz., *Counterplee de Ayde*, 4.]

[1] MS., Tetecote.
[2] MS. la maner les, instead of les tenements.
[3] MS., H.
[4] MS., T.

No. 11.

A.D. 1344. whether he ought to have the aid.—*W. Thorpe.* We cannot be parties to plead as to the question whether they are parcel of the manor of Ashington or of the manor of West Coker, because our estate is only a term for life, but we have said that one D.[1] was seised of the same tenements as parcel of the manor of West Coker, and leased them to us as parcel, so that, when he is joined, it is for him to plead whether they are parcel or not.—HILLARY. But he says that the aid-prayer falls in abatement of his writ, so that, if he allows the aid in the manner in which you pray it, he has confessed the reverse of that which his writ supposes. And it is impossible, if the tenements are parcel of the manor of Ashington that they can be parcel of the manor of West Coker, and that D.[1] held them, before the lease, as parcel of the manor of West Coker. And[2] D. will plead, when he appears, as to whether they are parcel of the one manor or of the other. And, as to his statement that the aid-prayer is contrary to his writ, in several cases, Sir, the Court will grant aid which is contrary to the demandant's writ, as on a writ of Entry *de quibus*, where the tort is supposed to have been committed by the tenant, if he show that his estate was, at the time of the purchase of the writ, for term of life, the reversion being to another, the Court will grant aid, though the party cannot; so also in this case.—WILLOUGHBY. The cause of your prayer is in abatement of his writ, wherefore he says that he will aver that the tenements demanded are parcel of the manor of Ashington, which averment he may well have for the purpose of ousting you from aid.—*W. Thorpe.* Then we tell you that the tenements demanded are parcel of the manor of West Coker, and not parcel of the manor of Ashington; ready, &c.—And the others said the reverse.

[1] For the real name *see* p. 273, note 3.

[2] It is possible that "—*Thorpe*" should be read for "And" (MS., Et).

No. 11.

sil deit laide avoir.—*W. Thorpe.* Le qel qils seient parcelle de maner de A.[1] ou de maner de C.[2] nous ne poms estre partie de pleder, pur ceo qe nostre estat nest fors a terme de vie, mes nous avoms dit qun D. fuit seisi de mesmes les tenementz come parcelle de maner de C.,[2] et nous les lessa come parcelle, issint, quant il est joint, a luy est il de pleder le quel ils soient parcelle ou ne mye.—HILL. Mes il dit qe leide priere chieit en abatement de son brief, issint qe, sil graunte laide par la manere come vous priez, il ad conu le revers de ceo qe son brief suppose. Et il ne puit pas estre, sils soient parcelle de la maner de A.[1], qils soient parcelle de maner de C.,[2] et qe D les tyent, avant le lesse, come parcelle de maner de C.[2] Et le qel ils soient parcelle de lun maner ou de lautre D. pledra quant il vendra. Et quant a ceo qil parle qe laide prier est a contrarie de son brief, Sire, en plusours cases la Court grauntera laide qel est a contrarie de brief le demandant, come en brief Dentre *de quibus*, la ou le tort est suppose par le tenant, sil moustre son estat a temps de brief purchace estre a terme de vie, la reversion a autre, le Court grauntera laide la ou la partie ne puit pas; auxi en ceo cas.—WILBY. La cause de vostre priere [est] en abatement de son brief, par qil il dist qil voet averer qe les tenementz demandez sount parcelle de maner de A.,[1] qil averement il avera bien en ostaunt vous del aide. —*W. Thorpe.* Donqes vous dioms qes les tenementz demandez sount parcelle de maner de C.,[2] et nient parcelle de maner de A.[1]; prest, &c.—Et les autres le revers.[3] A.D. 1344.

[1] MS., H.

[2] MS., T.

[3] Though it does not appear in the other report, it does appear in the record that the plaintiff (Simon de Furneux the younger) "dicit quod tenementa illa sunt de "prædicto manerio de Ascyn- "tone, et non de manerio de West "Coker," and that issue was joined thereupon.

No. 12.

A.D. 1344. Formedon in the descender.

(12.) § Formedon in the descender. A recovery by Assise of Novel Disseisin of earlier date than the gift was pleaded in bar, and it was pleaded that the gift was mesne, &c.—*Derworthy*.[1] The gift was made before the disseisin on which he recovered by Assise; ready, &c.—And the other side

[1] According to the other report below *Derworthy* was counsel for the tenants, and not, as here, for the demandant.

No. 12.

A.D. 1344. Forme de doun en le descendre.

(12.) [1] § Formedoun en le descendre. Plede fut en barre par recoverir dun Assise de Novele Disseisine de plus haut qe ne fut le doun, et le doun[2] fut mene, &c.[3]—*Der.* Le doun fut fet avant la disseisine[4] sur quel il recoveri par Assise; prest, &c.[5]—[*Et alii*

[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 100, d. It there appears that the action was brought by Hugh de la Putte (by his guardian) against John de Derburgh and Joan his wife, in respect of the manor of Almsworth or Almsworthy (Somerset) (with certain exceptions) "quod Gilbertus Pyrowe dedit "Gilberto de la Putte et heredibus "de corpore suo exeuntibus."

[2] 25,184, qe, instead of et le doun.

[3] According to the roll the plea in bar was "quod prædictus Hugo "nihil juris clamare potest in "prædictis tenementis, dicunt "enim quod quidam Johannes filius Radulphi de Boklond de "Welhope, cujus statum ipsi Jo- "hannes et Johanna habent in "prædictis tenementis, alias in "Curia Regis apud Yevele, die "Lunæ in Quindena Sancti "Hillarii anno regni Regis Ed- "wardi, patris domini Regis nunc, "secundo, coram Johanne de "Foxle et Johanne de Batesford "Justiciariis ejusdem Regis patris, "&c., ad Assisas in Comitatu "Somersetiæ capiendas assignatis, "tulit quandam Assisam Novæ "Disseisinæ versus quosdam Alia- "noram de Boklond et prædictum "Gilbertum de la Putte, cui per "breve suum prædictum supponit "prædicta tenementa data fuisse "in forma prædicta, ac alios in "brevi originali contentos, et "questus fuit se disseisiri de "manerio de Almundesworth, cum "pertinentiis, quod est idem "manerium nunc petitum, de "quadam seisina ante statum "præfati Gilberti de la Putte de "cujus seisina, &c., per quam "Assisam compertum fuit quod "prædicti Alianora, Gilbertus, et "alii in eodem brevi disseisiverant "præfatum Johannem filium Ra- "dulphi de manerio prædicto, per "quod idem Johannes seisinam "suam de manerio illo per con- "siderationem ejusdem Curiæ "recuperavit, &c. Et profert hic "recordum et processum Assisæ "prædictæ sub pede sigilli domini "Regis quæ præmissa testantur, "&c., unde petit judicium si præ- "dictus Hugo de seisina prædicti "Gilberti, versus quem præfatus "Johannes filius Radulphi per "Assisam prædictam recuperavit, "ut prædictum est, et quæ per "recuperare prædictum adnullata "fuit, actionem inde versus eos "habere debeat, &c."

[4] MSS., seisine. *See* p. 283, note 2.

[5] According to the roll the replication was, "quod ipse per "hoc ab actione præcludi non "debet in hac parte, quia dicit "quod prædictus Gilbertus Pyrowe "dedit manerium prædictum, cum "pertinentiis, exceptis, &c., præ- "fato Gilberto de la Putte in forma "supradicta diu antequam præ- "dictus Johannes filius Radulphi "aliquid habuit in manerio præ- "dicto. Et hoc paratus est veri- "ficare, unde petit judicium, &c."

No. 12.

A.D. 1344. said, on the contrary, that the gift was made after the disseisin on which he recovered by Assise.—And so to the country.—*Thorpe*. The demandant is under age, and cannot confess the record which is pleaded in bar; therefore we pray that the parol may demur.—Willoughby. If *profert* were made of the ancestor's deed in bar the parol would have to demur, but in this case not so.—Therefore he gave a day, &c.

Formedon in the descender.

§ Hugh atte Pitte[1] brought his writ of Formedon in the descender against William,[1] and demanded against him certain tenements which A.[1] gave to B.,[1] and to the heirs of his body, &c., and he made the descent by writ and count from B.[2] to Hugh the present demandant as to son, &c.—*Derworthy*. We tell you that one J.,[3] whose estate we have, was seised of these same tenements until disseised by one E.[3] and others, on which disseisin this same J.[3] brought an Assise of Novel Disseisin against this same E., and against this same B., to whom the gift was made, and others, whereupon B. came and pleaded to the Assise, by which Assise it was found that J. was disseised by E. and the others named, &c., and therefore

[1] For the real names *see* p. 281, note 1.

[2] As to the descent *see* p. 283, note 6.

[3] For the real names *see* p. 281, note 3.

No. 12.

e contra qe le doun se fist puis la disseisine[1] sur quel il recoveri par Assise.][2]—*Et sic ad patriam.*—*Thorpe.* Le demandant est deinz age, et ne poet conustre le recorde qest plede en barre; par quei nous prioms qe la paroule demurge.—Wilby. Si fet dauncestre fut mys avant en barre la paroule covendreit demorer, mes en ceo cas nient.—Par quei il dona jour, &c.[3] A.D. 1344.

§ Hughe[4] atte Pitte porta son brief de Forme de doun en le descendre vers William, et demanda vers ly certeinz tenementz les qeux A. dona a B., et a les heirs de soun corps, &c., et fit la descente[5] par brief et counte de B. a Hughe qore demande come a fitz, &c.[6]—*Dirr.* Nous vous dioms qun J.,[7] qi estat nous avoms, fuit seise de mesmes ceux tenementz tanqe disseisi par un E. et autres, sur qele disseisine mesme cesti J.[7] cy porta un Assise de Novele Disseisine vers mesme cesty E., et vers mesme cesty B. a qi le doun [fut fait] et autres, ou B. vint et pleda a Lassise, par qel Assise fuit trove qe J.,[7] fuit disseisi par E. et autrez nomes, &c., Fourme doun en descendre. [Fitz., *Age*, 12.]

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[1] MSS., seisine. *See* below note 2.

[2] The words between brackets are omitted from L. According to the roll, there was a rejoinder, "quod prædictus Gilbertus Pyrowe "non dedit manerium illud præ- "fato Gilberto de la Putte in "forma prædicta ante disseisinam "prædictam de qua disseisina præ- "dictus Johannes filius Radulphi "manerium illud recuperavit per "Assisam prædictam." Issue was joined on this.

[3] It appears from the roll, that in the end the demandant failed to appear on the day given, and that judgment was given for the tenants.

[4] This report of the case is from Harl. 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.

[5] MS., deces.

[6] According to the roll "Gilbert- "us de la Putte fuit inde seisitus "in dominico suo ut de feodo et "jure per formam, &c.," and the descent was made from him to Robert as to son and heir, and from Robert to the demandant Hugh, as son and heir.

[7] MS., A.

No. 12.

A.D. 1344. judgment was given that J. should recover his seisin and his damages, &c. And we tell you that the gift upon which Hugh now takes this action was mesne between the disseisin effected on this same J. and his recovery on the same disseisin, and so this gift was defeated, wherefore we pray judgment, &c.—*Moubray.* Sir, you see plainly that they are strangers to this record which they have alleged, and the Court is not apprised that there is such a record, nor does it lie in their mouth to allege it, because they are neither party nor privy to this record, wherefore we do not understand that the law puts us to answer to such a plea in their mouth.—Hillary. He is privy to the tenancy, and this plea maintains his tenancy, wherefore, &c.—And thereupon William[1] came, and out of his own head made *profert* of the recovery *sub pede sigilli*, and the writ of *Mittimus* with it, but *Derworthy* and *Thorpe*, who were of counsel for William,[1] were of opinion that it was not fitting, in this case, to make *profert* of the recovery.—As to that *Quære.*—And afterwards, when the demandant had had oyer of the recovery, he went out to imparl, and came back.—*Moubray.* Sir, whereas they have alleged that the gift was mesne, &c., we tell you that A. gave the tenements to B., as our writ supposes, before J. had anything in these lands; ready, &c.—*Derworthy.* A. did not give the tenements to B. before the disseisin of J., as your writ supposes, and as you have alleged; ready, &c.—*Seton.* Ready, &c., that he did.—*W. Thorpe.* Sir, the demandant is under age, and cannot be a party to this averment during his non-age, because he cannot, during his non-age, acknowledge whether there has been such a recovery of these lands or not, and therefore we pray that the parol may demur, &c.—And the Court had no regard to that, but gave a day over for causing the jury to come.

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[1] For the real name and the *profert* *see* p. 281, notes 1 and 3.

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par quei fuit agarde qe J.[1] recoverast sa seisine et ses damages, &c. Et vous dioms qe le doun sur qil Hughe prent ore ceste accion si fuit mene parentre la disseisine fait a mesme cely J.[1] et son recoverer sur mesme la disseisine, et issint cel doun defait, par quei nous demandoms jugement, &c.—*Moubray.* Sire, vous veiez bien coment a cel recorde qele ils ount allegge ils sount estraunges, et la Court nest pas apris qil [y] a tiel recorde, nen lour bouche ne gist il mye dallegger, pur ceo qils ne sount parti ne prive a cel recorde, par quei nentendoms mye qe au tiel plee en lour bouche la ley nous mette a respoundre.—Hill. Il est prive a la tenance, et cel plee meyntient sa tenance, par quei, &c. —Et sur ceo William de sa test demene vint et mist avant le recoverir *sub pede sigilli*, et le brief de *Mittimus*[2] ovesqe, mais *Derr.* [et] *Thorpe*, qe furent du conseil William furent en oppinion qil nest mye convenu en ceo cas davoir mys avaunt le recoverir.—*Super hoc quære.*—Et puis quant le demandant avoit oye le recoverir, il isit denparler, et revynt.—*Moubray.* Sire, la ou ils ount allegge qe le doun fuit meen, &c., nous vous dioms qe A. dona les tenementz a B. come nostre brief, &c., avant ceo qe J.[1] avoit unqes rieun en ceux terres; prest, &c. —*Dirr.* Avant la disseisine[3] J.,[1] A. ne dona pas les tenementz a B. auxi come vostre brief, &c., auxi come vous avetz allegge; prest, &c.—*Setone.* Prest, &c., qe cy.—*W. Thorpe.* Sire, le demandant est deins age, et ne puit estre partie a cest averrement duraunt son non age, qar il ne puit, duraunt son noun age, conustre le qel de ceux tenementz il i a tiel recoverir ou ne mye, par quei nous prioms qe la parole demurge, &c.—Et la Court navoit mye a ceo regarde, mais dona jour outre de faire venier lenqueste. A.D. 1344.

[1] MS., A.

[2] MS., *dimittimus* instead of de *Mittimus*.

[3] MS., seisine. *See* p. 283, note 2.

No. 13.

A.D. 1344. Cosinage. (13.) § Cosinage. The tenant alleged that one through whom the descent was made was seised subsequently, and enfeoffed one whose estate the tenant had, and he made *profert* of the deed.—*Grene.* Let him hold either to the last seisin or to the deed.—And *Thorpe* waived the deed, and held to the last seisin.—*Quære* whether he ought to be admitted to this, since the first plea was to the action.

Cosinage. § A man brought a writ of Cosinage against another, and demanded certain tenements by reason of the seisin of his cousin, and made the resort from his cousin,[1] because he died without heir of his body to one B.[1]; and from B.[1] he made the descent to H.,[1] and from H.[1] to himself, &c.—*Seton.* We tell you that you ought not to have an action, because this H.,[2] through whom you have made the descent, was seised of the same tenements after the death of your cousin by reason of whose

[1] For the real names and the relationships *see* p. 287, notes 1 and 8.

[2] *See* p. 287, note 8, and p. 289, note 1.

No. 13.

(13.)[1] § Cosinage. Le tenant alleggea qun par qi la descente fut fet fut seisi puis, et feffa[2] un qi estat il ad, et mist avant fet.—*Grene.* Se teigne[3] a la darreyne seisine ou al[4] fet.—Et *Thorpe* weyva le fet, et soi[5] tient a la darreyne seisine.—*Quære* sil serra resceu, depuis qe le primer plee fut[6] al accion. A.D. 1344. Cosinage.

§ Un[7] homme porta un brief de Cosinage vers un autre, et demanda certeinz tenementz de la seisine son cosin, et fit le resort de son cosyn, pur ceo qil murust saunz heir de soi, a un B.; et de B. fit la descente a un H., et de H. a ly, &c.[8]—*Setone.* Nous vous dioms qe vous ne devez accion avoir, qar cesti H., par qi vous avetz fait la descent, fuit seisi de mesme les tenementz puis la mort vostre cosin de Cosinage.

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[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 80. It there appears that the action was brought by John Streche, knight, and Elizabeth his wife, against William de Asshelonde in respect of one messuage, one carucate of land, 20 acres of meadow, and five marks of rent, and the rent "duarum librarum cimini" in Athelardestone (Atherstone, Somerset), and against others in respect of other tenements in the same vill "de quibus Matilldis Fitz "Waryn consanguinea prædictæ "Elizabethæ, cujus heres ipsa est, "fuit seisita in dominico suo ut de "feodo die quo obiit."

[2] 25,184, enfeffe.

[3] L., tient.

[4] al is omitted from L.

[5] soi is omitted from L.

[6] L., serra.

[7] This report of the case is from Harl. alone. It has not been printed in the old editions of the Year Books, nor used by Fitzherbert for his *Abridgment*.

[8] According to the roll, it was alleged in the count that "de ipsa "Matilldi descendit feodum, &c., "cuidam Johanni ut filio et heredi, "&c., et de ipso Johanne, quia "obiit sine herede de se, &c., "resortiebatur feodum, &c., cuidam "Johannæ ut amitæ et heredi, &c., "sorori prædictæ Matilldis, de "cujus seisina, &c. Et de ipsa "Johanna descendit feodum, &c., "cuidam Willelmo ut filio et "heredi, &c., et de ipso Willelmo "descendit feodum cuidam Jo-"hannæ ut filiæ et heredi, &c., et "de ipsa Johanna descendit "feodum, &c., cuidam Rogero ut "filio et heredi, &c., et de ipso "Rogero descendit feodum, &c., "isti Elizabethæ ut filiæ et heredi, "quæ nunc petit simul, &c."

No. 13.

A.D. 1344. seisin you make use of the action, and enfeoffed this same person, the present tenant, of the same tenements, with warranty, and we demand judgment whether you ought to have an action.—*Grene.* Put your conclusion with certainty—whether you wish to bar us by the warranty of H., through whom we have made the descent, or by the seisin of H. had since the death of our cousin.—*Seton.* We do not say by the warranty, but only because H. was seised after the death of your cousin, and aliened.—*Grene.* Then we tell you that H. did not aliene; ready, &c.—*Seton.* That cannot make an issue of the plea, because, whether he aliened or not, if he was seised after the death of your cousin, that is sufficient to oust you from action by this writ, and our plea was to that effect, although we mentioned alienation; therefore will you abide judgment there at your peril?—*Grene*, understanding that he would not have the issue which he had tendered, tendered the averment that H. was not seised after the death of his cousin; ready, &c.—And the other said the reverse.

No. 13.

qi seisine vous usez accion, et de mesme les tene- A.D. 1344.
mentz enfeffa mesme cesty qest ore tenant ove garrauntie, et demandoms jugement si vous devez accion avoir.—*Grene.* Mettez vostre conclusioun en certein, le qel nous vous volez barrer par la garrauntie H., par qi nous avoms fait la descente, ou par la seisine H. ewe puis la mort nostre cosyn.—*Setone.* Nous ne dioms pas par la garrauntie, mes soulement de ceo qe H. fuit seisi puis la mort vostre cosin, et aliena.[1]—*Grene.* Dounqes vous dioms nous qe H. ne aliena pas; prest, &c.—*Setone.* Cele ne puit faire issu de ple, qar, le qel il aliena ou nemie, sil fuit seisi puis la mort vostre cosin, il suffit de vous ouster daccion par cesti brief, et a cel effecte fuit nostre ple, coment qe nous parlames dallienacioun; par quei volez la demurer a vostre peril?—*Grene*, entendaunt qil navereit pas cel issu qel il avoit tendu, tendit daverer qe H. ne fuit pas seisi puis la mort son cosin; prest, &c.[2]—Et lautre le revers.

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[1] According to the record, the other tenants having vouched William de Asshelonde to warrant the tenements held by them, he, "quo ad tenementa versus eum "petita dicit quod prædictus Jo- "hannes filius Matilldis, per "medium cujus, &c., fuit seisitus "de tenementis illis post mortem "præfatæ Matilldis, de cujus "seisina, &c., et de eisdem tene- "mentis feoffavit quosdam Hugo- "nem Everard et Christinam "uxorem ejus tenendis sibi et "heredibus suis in perpetuum. Et "hoc paratus est verificare, unde "petit judicium, &c."

[2] The replication upon which issue was joined was, according to the roll, "quod prædictus Jo- "hannes filius Matilldis non fuit "seisitus de prædictis tenementis "post mortem ejusdem Matilldis "sicut prædictus Willelmus dicit."

According to the roll, a verdict was found in Easter Term in the 19th year, "quod prædictus Jo- "hannes filius Matilldis non fuit "seisitus de prædictis tenementis "post mortem præfatæ Matilldis. "Quæsiti ad quæ damna, &c., post "mortem ejusdem Matilldis, dicunt "quod ad damna viginti librarum."

Judgment was then given "quod "prædicti Johannes Streche et "Elizabetha recuperent inde seisi- "nam suam versus eos et damna "sua prædicta. Et idem Willel- "mus in misericordia." The de- mandants afterwards had execution of the damages by *Elegit*.

No. 14.

A.D. 1344. Dower. (14.) § Dower in Dunmow.—*Notton*. There are two Dunmows in the County, that is to say, Chipping Dunmow, and North Dunmow, and no Dunmow without addition; judgment of the writ.—*Moubray*. Those places which you call vills are places within the vill of Dunmow, and so they are "in Dunmow"; judgment whether the writ be not good.—*Notton*. That is tantamount to saying that there is no Dunmow with addition.—Willoughby. He maintains his writ sufficiently.—*Notton*. There is no Dunmow without addition; ready, &c.

Dower § On a writ of Dower brought in Dunmow *Notton* said: Sir, we tell you that in the same County there are Canon Dunmow and Chipping Dunmow, and so we tell you that there is no Dunmow without addition; judgment of the writ.—*Moubray*. We tell you that

No. 14.

(14.) [1] § Dowere en Donmowe.—*Nottone.* Il y ad en le Counte ij, saver,[2] Chepynge Donmowe, et North[3] Donmowe, et nul saunz adjeccioun; jugement du brief.[4]—*Moubray.* Ces[5] qe vous appellez villes sount places deinz la ville de Donmowe, et issint sount ils en Donmowe; jugement si le brief ne soit bon.[6] —*Nottone.* Taunt amount qil y[7] ad nul D. ove adjeccioun.—Wilby. Il meyntient son brief assetz.—*Nottone.* Il ny ad nul Donmowe saunz adjeccioun; prest, &c.—*Et alii e contra.* A.D. 1344. Dowere.

§ En[8] un brief de Dower porte en Donemewe, *Nottone*, Sire, nous vous dioms qen meisme le Counte il ad Canon Donemewe et Chepinge Donemewe, issint vous dioms nous qilia nulle Donemewe saunz adjeccion; jugement de brief.—*Moubray.* Nous vous Dowere.

[1] From L., and 25,184, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 234. It there appears that the action was brought by Alice late wife of William de Bumpstede against Thomas Priour in respect of "tertiæ partis unius mesuagii, "quater viginti acrarum terræ, "viginti acrarum prati, et decem "acrarum pasturæ, cum pertinen- "tiis, in Dunmawe, quam clamat "in dotem versus eum et Johannam "uxorem ejusdem Thomæ." Joan was admitted to defend her right on the default of her husband Thomas.

[2] The words ij, saver, are omitted from 25,184.

[3] 25,184, Noch.

[4] This plea was, according to the roll, "quod non est aliqua villa in "Comitatu prædicto [Essex] quæ "vocatur Dunmawe sine adjec- "tione, immo duæ sunt villæ in "eodem Comitatu quæ vocantur "Dunmawe, videlicet, una quæ "vocatur Chepyngdunmawe, et "altera quæ vocatur Canoundun- "mawe, unde petit judicium de "brevi, &c."

[5] 25,184, ceo.

[6] The replication was, according to the roll, "quod prædicta Jo- "hanna per hoc breve suum cassare "non debet, &c., quia dicit quod "Dunmawe est villa per se absque "aliqua adjectione, prout ipsa "Alicia per breve suum supponit, "in qua quidem villa de Dunmawe "prædicta loca quæ vocantur "Chepyngdunmawe et Canoun- "dunmawe existunt." It was upon this that issue was joined.

The *Venire* was awarded, but nothing further appears, except an adjournment.

[7] y is omitted from 25,184.

[8] This report of the case is from Harl. alone. It has not been printed in the old editions, nor used by Fitzherbert for his *Abridgment*.

No. 15.

A.D. 1344. Canon Dunmow and Chipping Dunmow are certain places in Dunmow, in which our writ, &c.; wherefore, &c.—*Notton*. That is tantamount to saying that there is a Dunmow without addition; ready, &c., that there is not.—Willoughby. He understands that you do not answer to him, because by his statement he shows that there is only one vill, which is called Dunmow. —*Notton*. Then we tell you, Sir, that Canon Dunmow and Chipping Dunmow are different vills in the manner in which we have made the allegation; ready, &c.— And the other side said the contrary.

Ravishment of Ward.

(15.) § Ravishment of Ward against tenant by the curtesy of England. And he claimed the wardship as of the heir of Isabel the infant's mother.—*Grene*. We tell you that the land by reason of which he claims the wardship descended to the heir from D. the heir's grandmother, and so he ought to be made heir to his grandmother and not to his mother; judgment of the writ.—*Moubray*. We tell you that W., husband of his grandmother, held the same tenements by the curtesy of England after her death, of the inheritance of the heir's mother, which W. surrendered his estate to Isabel the heir's mother and her husband, after which time W., the grandmother's husband, had nothing except by their lease for his life, and so he has the inheritance as heir of the mother, and not as heir of the grandmother.—*Grene*. Then we tell you that the

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dioms qe Canon Donemewe [et Chepinge Donemewe] sount certeinz places en Donemewe, ou nostre brief, &c.; par quei, &c.—*Nottone.* Tant amont qilia Donemewe saunz adjeccion; prest, &c., qe noun.—Wil. Il entent qe vous ne responez rien a ly, qar par son dit il moustre qilia forsqe un vile, qad a noun Donemewe.—*Nottone.* Sire, dounqes vous dioms nous qe Canon Donemewe et Chepinge Donemewe sount devers villes par la manere come nous avoms allegge; prest, &c.—*Et alii e contra.* A.D. 1344.

(15.) [1] § Ravisement de Garde vers tenant par ley Dengleterre. Et clama la garde come heir I. mere lenfaunt.[3]—*Grene.* Nous vous dioms qe la terre par resoun[4] de quele il clame la garde descendi al heir par D., laiel leir, et issint serra il fet heir a sa[5] aiele, et noun pas a sa mere; jugement de brief.—*Moubray.* Nous vous dioms qe W. baroun sa aiel[6] apres sa[7] mort, tient mesmes les tenements par la ley Dengleterre del heritage la mere leir, le quel W. rendist sus[8] son estat a I., mere leir, et soun baroun, puis quel temps W., baroun laiele, navoit rien forqe de lour lees pur sa vie, et issint est il enherite come heir la mere, et noun pas come heir laiel.—*Grene.* Donqes vous dioms qe celuy qil sup- Ravisement de Garde.[2]

[1] From L., and 25,184,, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 96, d. It there appears that the action was brought by Roger le Goys against Thomas Davy of Holme the elder, "ad respondendum quare Thomam "filium et heredem Isabellæ Whyt-"bred infra ætatem existentem, "cujus maritagium ad ipsum "Rogerum pertinet, apud Strattone "inventum rapuit et abduxit."

[2] The words de Garde are from L. alone.

[3] The declaration was, according to the roll, "quod prædicta "Isabella tenuit de eo unum "toftum, viginti et duas acras "terræ et dimidiam, cum perti-"nentiis, in Strattone, per homa-"gium [and other services] et "obiit in homagio ipsius Rogeri, "et ea ratione maritagium præ-"dicti heredis ad ipsum Rogerum "pertinet."

[4] 25,184, la resoun.

[5] L., son.

[6] L., sael, instead of sa aiel.

[7] 25,184, la.

[8] L., suis.

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A.D. 1344. person whom he supposes to be ravished is our son and our heir by blood; and we demand judgment whether by reason of any land which has descended to him, who is our son and heir, you can maintain an action of Ravishment of Ward against us, who are the infant's father, or claim anything in the wardship.—*Moubray.* And we demand judgment since you have confessed the points of our writ; and we pray seisin, &c.—And they were adjourned.

Ravishment of Ward.

§ Roger le Goys brought his writ of Ravishment.

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pose estre ravy est nostre fitz, et notre heir du saunk[1]; et demandoms jugement si par nulle terre descendue a celui qest nostre fitz et heir si vous vers nous, qe sumes pere lenfaunt, accion de Ravisement puissez meyntener, ou en la garde rien clamer.[2] —*Moubray.* Et nous[3] jugement, desicome vous avez conu les pointz de nostre brief; et prioms seisine, &c.[4]—*Et adjournantur.*[5] A.D. 1344.

§ Roger[6] le Goys[7] porta son brief de Ravisement Ravisement de Garde. [Fitz., *Garde*, 111.]

[1] L., sang.

[2] The plea was, according to the roll, "quod prædictus Rogerus non "debet inde ad hoc breve respon- "deri, dicit enim quod prædicta "Isabella, mater prædicti heredis, "fuit uxor ipsius Thomæ Davy, "de qua ipse procreavit prædictum "Thomam, quem idem Rogerus "nominat filium et heredem "Isabellæ Whitbred, et dicit quod "ipse tenet quinque acras terræ, "in prædicta villa de Strattone, "per legem Angliæ, post mortem "ipsius Isabellæ uxoris suæ, de "hereditate ipsius Thomæ filii et "heredis prædictæ Isabellæ, quæ "quidem quinque acræ terræ sunt "parcellæ prædictorum tofti et "viginti et duarum acrarum terræ "et dimidiæ, et ex quo idem "Thomas Davy est pater prædicti "Thomæ filii et heredis ipsius "Isabellæ, cui hereditas ipsius "Thomæ Davy post mortem suam "jure hereditario ratione san- "guinis, &c., descendere debeat, "et tenet prædictas quinque acras "terræ per legem Angliæ in forma "prædicta, petit judicium si "maritagium prædicti heredis "alicui alio quam ipsi Thomæ "Davy patri, &c., de jure perti- "nere debeat, &c."

[3] nous is omitted from 25,184.

[4] The replication was, according to the roll, "quod, ex quo præ- "dictus Thomas Davy non dedicit "quin prædicta Isabella, mater "prædicti heredis, tenuit de eo "prædictum toftum et viginti et "duas acras terræ et dimidiam in "prædicta villa, &c., per servitia "prædicta, per servitium militare, "nec aliquid aliud allegat per "quod idem Rogerus ab actione "sua prædicta excludi debeat, "petit judicium et damna, &c."

[5] L., ad jour. According to the roll "Dies datus est eis de "audiendo inde judicio suo hic in "Octabis Sancti Martini, &c., ad "quem diem veniunt partes præ- "dictæ. Et super hoc dies datus "est eis hic de audiendo judicio "suo hic in Octabis Purificationis "beatæ Mariæ per Justiciarios. "Ad quem diem prædictus Thomas "obtulit se versus prædictum "Rogerum de prædicto placito, "&c. Et ipse non venit.

"Ideo consideratum est quod "prædictus Thomas eat inde sine "die, &c."

[6] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It has, however, been used by Fitzherbert for his *Abridgment.*

[7] MS., de Boys, instead of le Goys.

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A.D. 1344. of Ward against Thomas Davy, of Holm, the elder, and his writ was in the words "*ostensurum quare Thomam filium et heredem Isabellæ Whytbred, cujus maritagium ad ipsum Rogerum pertinet, &c., rapuit, &c.*" And he counted that Isabel mother of Thomas held of him twenty-two acres of land by knight service, and died in his homage, &c.—*Grene.* Whereas he has by his writ made Thomas heir to Isabel, we tell you that one Maud, mother of this same Isabel, was seised of these same tenements in her demesne as, &c., and continued that estate until she took to husband one F., between which F. and Maud there was issue this same Isabel. Maud died, and, after her death, F. held the same tenements by the curtesy of England, and continued that estate all his life, and survived Isabel, so that Isabel never had anything in these tenements, and so Thomas is heir to Maud, his grandmother, and not to Isabel, his mother, wherefore judgment of the writ, which makes him heir to Isabel.—*Moubray.* We tell you that, after the death of Maud, this same F. rendered all his estate that he had in the same tenements by the curtesy, &c., to this same Isabel, and took back an estate to himself for term of his life, and so Isabel was seised after the death of Maud her mother, wherefore, &c.—*Grene.* Then we tell you that the fact is that F. rendered to Isabel only five acres, and afterwards this Isabel took to husband this same Thomas (the father) and there was issue between him and Isabel, to wit, this same Thomas (the son) whose body, &c., who is the eldest son of this same Thomas. Afterwards Isabel died, while F. was still living, whereupon Thomas (the father), because he had issue, &c., holds the five acres, as above, by the curtesy, &c., and was seised and still is of the infant as one who is tenant by the curtesy, and as the infant's father, to whom the nurture and the marriage of the same

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de Garde vers Thomas David, de Holm, leyne, et A.D. 1344.
son brief voleit *ostensurum quare T.*[1] *filium et heredem Isabellæ Whytbred,*[2] *cujus maritagium ad ipsum Rogerum pertinet, &c., rapuit, &c.*[3] Et il counta qe Isabele miere T.[1] tynt de ly xx et ij acres de terre par service de chivaler, et morust en son homage, &c.—*Grene.* La ou par son brief il fait T.[1] heir a Isabele, nous vous dioms qe une Maunde miere meisme cele Isabele cy fuit seisi de meisme ceux tenementz en soun demene come, &c., et tiel estat continua tanqe ele prist a baroun un F., entre qeux F. et M. issit meisme cele Isabele. M. morust, apres qi mort F. tynt mesme les tenementz par la curtesie Dengleterre, et cele estat continua tout sa vie, et survesquit Isabele, issint avoit Isabele unqes ryem en ceux tenementz, et issint de ceux tenementz est T.[1] heir a Maude sa aele, et ne mye a Isabele sa mere, par quei jugement du brief, qe le fait heir a Isabele. —*Moubray.* Nous vous dioms qe apres la mort M. meisme cesty F. cy rendy tout son estat qil il avoit en meisme les tenementz par la curtesie, &c., a meisme cele Isabele, et reprist estat a[4] ly pur terme de sa vie, et issint fuit Isabele seisi apres la mort M. sa miere, par quei, &c.—*Grene.* Donqes vous dioms nous issint qe F. ne rendi a Isabele forsqe v acres, et puis cele Isabele prist a baroun mesme [cesty] Thomas, et entre ly et Isabele il y avoit issue meisme cesti T.[1] qi cors, &c., qest fitz eyne meisme cest T. Puis Isabele morust, vivant F., par quei T., pur ceo qil avoit issue, &c., cy tient, *ut supra,* les v acres, par la curteisie, &c., et fuit seisi, et unqore est de lenfant come celi qest tenant par la curteisie, et come pier lenfant, a qi proprement la nurture et la mariage de mesme lenfant appent,

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MS., B.
[2] MS., de K.
[3] For the exact words as found upon the roll, *see* p. 293, note 1.
[4] MS., de.

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A.D. 1344. infant properly belong, because according to common intendment the infant will be his heir. And we tell you that afterwards, after the death of Isabel, F. died, and we do not understand that by reason of any descent made of the rest of the aforesaid tenements to Thomas (the heir) after the time when Thomas (the father) had a right to have the nurture and the marriage of Thomas (the son), Roger can maintain this writ of Ravishment against him.—*Moubray.* Your answer is in itself treble: one is that you say that you are tenant by the curtesy, &c., of the five acres which you say F. rendered to Isabel, &c., and in that way you are our tenant, in which case the law is possibly to the effect that in case you are our tenant in that manner, even though the heir were not of your blood, we should be ousted from the action; a second is that you say that you are the infant's father, and he is your eldest son, and will be your heir, &c., whereas, even if you were not tenant by the curtesy, &c., still the nurture and marriage would possibly belong to you by law; the third is that you say, as to seventeen of the acres of land, that F. did not render his estate, &c., but continued that estate during the whole of the life of Isabel, so that in that respect you show that Isabel never had anything, and that is in abatement of our writ inasmuch as we make Thomas (the son) heir of that land to Isabel; wherefore we do not understand that to such an answer, so threefold, the law, &c.—Willoughby. He pleads against you in bar on the ground that he is the infant's father, and that the infant will be his heir of his own inheritance, and also will have the reversion of the five acres of which he is tenant by the curtesy, &c., after his death, and makes his conclusion by demanding judgment whether, since he is the infant's father, to whom the nurture, &c., the action, &c., and so he discharges you by his plea of the plea which you take to be in abatement of your writ, and we discharge you

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par cause de ceo qe de comune entent il serra son heir. Et vous dioms qe puis, apres la mort Isabele, F. morust, et nentendoms mye qe par nulle descente fait del remenant de tenementz avantditz a T.[1] puis cel temps qe T. avera dreit davoir la nurture et le mariage de T.[1] qe Roger cesti brief de Ravisement devers luy puisse meyntener.—*Moubray.* Vostre respouns en ly meisme cy est treble: une est de ceo qe vous dites qe vous estes tenant par la curteisie, &c., de les v acrez qe vous dites qe F. rendi a Isabele, &c., issint estes vous nostre tenant, ou par cas la ley est tiele qen cas qe vous soiez nostre tenant par la manere, coment qe leir ne fuist mye de vostre saunk, nous serroms oustez daccion, &c.; un autre est de ceo qe vous dites qe vous estes pier lenfant, et il est vostre fitz eisne, et serra vostre heir, &c., ou, mesqe vous ne fuissetz mye tenant par la curteisie, &c., unqore par cas la nurture et le mariage de ly appendent a vous par la ley; la terce est de ceo qe vous dites qe quant a les xvij acres de terre F. ne rendy mye son estat, &c., einz cel estat continua tout la vie Isabele, issint qen dreit de ceo vous moustrez qe Isabele navoit unqes rien, et ceo est en abatement de nostre brief en taunt come de cele terre nous fesoms T.[1] heir a Isabele; par quei nentendoms mye qe a tiel respouns issint treble la ley, &c.—Wilby. Il vous plede en barre par taunt qil est pier lenfant et lenfant serra soun heir de soun heritage demene, et auxint avera la reversion de les v acres dount il est tenant par la curteisie, &c., apres son deces, et fait sa conclusioun depuis qil est pier lenfant, a qi la nurture, &c., si accion, &c., issint, quant a ple qel vous pernetz en abatement de vostre brief, par son ple il vous descharge, et nous vous deschargeōms A.D. 1344.

[1] MS., B.

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A.D. 1344. also; wherefore, &c.—*Moubray.* Then, Sir, we demand judgment, since he has confessed that the tenements are held of us, as, &c., and he does not deny that Isabel was seised of the seventeen acres of land, as, &c., by reason of which land the marriage of her heir belongs to us, whether he can oust us from this action on the ground that he is tenant of the five acres of land by the curtesy, &c., or on the ground that he is father of the infant, &c.

Attaint. (16.) § Attaint for three persons in common, on a writ of Trespass, on which they were all found guilty. Exception was taken to the writ of Attaint on the ground that this action is several, and that no one should be prejudiced by the fault of another, and that the verdict, even though it were one single verdict on a writ of Trespass, yet, with regard to those who were convicted, was several; and it is possible that the damages were all levied severally from one, or that, perhaps, more was levied from one than from another; therefore this suit cannot be taken in common.—*Thorpe.* The damages are possibly not yet levied by execution, and therefore this suit will not be delayed; and for the same reason for which they were found guilty by one jury they will have an Attaint in common; and this Attaint, though anyone may be in a position to have back by judgment that which he lost by the first judgment, is sued principally with the object of convicting the twelve original jurors; and suppose that in an Assise two or three are found to be disseisors, will they not have the Attaint in common?—*Redenesse.*

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auxint; par quei, &c.—*Moubray.* Sire, demandoms donqes nous jugement, depuis qil ad[1] conu qe les tenementz sount tenuz de nous come, &c., et il ne dedit mye qe Isabele fuit seisi de les xvij acres de terre come, &c., par resoun de qele terre le mariage de son heir a nous appent, si par taunt qil est tenant de les v acres de terre par la curteisie, &c., ou par taunt qil est pier lenfant, &c., sil nous puisse de ceste accion ouster. A.D. 1344.

(16.)[2] § Atteinte pur iij en comune, sur brief de Trespas, par quel[3] ils furent touz soiles.[4] Le brief fut[5] chalenge pur ceo qe cest accion[6] est several, et nul fut[5] greve dautri coupe, et le verdit, tut fut ceo un en[7] brief de Trespas, eiaunt regard a ceux qe furent soylez,[8] feust[9] several; et possible est qe les damages furent severalment tut leve dun, ou par cas plus leve[10] dun qe dautre; par quei ceste suyte ne poet pas estre pris[11] en comune.—*Thorpe.* Par cas les damages ne sount pas par execucion unqore levez,[12] et par taunt ne remeindra pas ceste suyte; et par mesme la resoun qils furent soillez par un enquest[13] averount ils un Atteinte en comune; et ceste Atteint, tut soit homme[14] par le jugement de reaver ceo qil perdist par le primer jugement, la suyte est[15] principalment datteindre[16] les xij; et jeo pose[17] qen Assise, ij[18] ou iij[19] sount troves disseisours, naverount il[20] Latteinte en comune?—*Reden.* Ceo Atteinte. [17 Li. Ass., 22; Fitz., *Joindre en accion*, 28.]

[1] MS., il.
[2] From L., and 25,184, until otherwise stated.
[3] L., quels.
[4] 25,184, assoilles.
[5] fut is omitted from 25,184.
[6] 25,184, atteynte.
[7] 25,184, et le.
[8] 25,184, soillez.
[9] L., poet.
[10] leve is omitted from L.
[11] pris is omitted from L.
[12] levez is omitted from L.
[13] The words par un enquest are omitted from L.
[14] homme is omitted from L.
[15] est is omitted from L.
[16] 25,184, datteintie.
[17] pose is omitted from L.
[18] 25,184, de ij.
[19] 25,184, de iij.
[20] il is omitted from 25,184.

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A.D. 1344. The cause of that is the freehold which they lost in common, but if some lost the freehold, and others did not, they would not have the Attaint in common.—*Thorpe.* Yes, they could on the disseisin.—*Redenesse.* That could not be, because possibly one is found to be disseisor of one portion, and another of another portion. —*Thorpe.* In that case the damages will be severed by judgment, and a fact of that kind changes the law. —The Court agreed to this.—And also (continued *Thorpe*) on a writ of Trespas for battery and goods carried off, brought against two persons, if one be found guilty of one act, and the other of the other act, the damages will be severed.—*Redenesse.* It is possible that, as to one, the oath will be found good, and as to another false; therefore the Court will not be able to deliver judgment; and if this suit were to be maintained, nonsuit or release would bar them all, which would not be right, inasmuch as they were arraigned severally.—Scot. We have spoken to our fellow-justices there below, and it seems to them that the writ is well taken in common; and they also say that several writs would be good; we therefore adjudge the writ good, &c.

Attaint. § A writ of Trespass was brought against several persons in common in the King's Bench, to which all pleaded Not Guilty. It was found by inquest that four were guilty, to the plaintiff's damage, &c., which four afterwards sued a writ of Attaint to convict the twelve jurors.—*Redenesse.* Sir, you see plainly how this suit is taken for the four in common to convict the twelve who passed the verdict on the writ of Trespass, on

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fait le fraunc tenement qils perdirent en comune, A.D. 1344.
mes si asquns perdirent le fraunc tenement, et asquns nient, ils naverount pas Latteint en comune.—*Thorpe.* Si pount[1] sur la disseisine.—*Reden.* Ceo ne put estre, qar par cas un est trove disseisour dune porcioun, et autre dautre porcioun.—*Thorpe.* La serrount les damages severes par jugement, et tiel fet chaunge[2] la ley.—*Ad hoc* Curia *consensit.*—Et auxi en brief de[3] Trespas de baterie des[4] biens emportez porte[5] vers ij, si lun soit soille del un fet,[6] et lautre del autre fet, les damages serrount severes.—*Reden.* Par cas quant a un serra trove le serement bon, et quant a autre faux; donqes Court ne purra faire jugement; et si ceste suyte serreit maintenu, nounsuyte ou relees barrereit touz, qe ne serreit pas resoun, desicome severalment ils furent arenez.[7]—Scot. Nous avoms parle a les compaignouns la aval,[8] et lour semble le brief bon pris en comune; et auxi ils diount qe severals briefs serrount bons; par quay nous agardoms le brief bon, &c.

§ Un[9] brief de Trespas fuit porte vers plusours en Atteynt.
comune en Baunk le Roy, ou toutz plederent de rien coupable. Trove fuit par enqueste qe iiij furent coupables, a damage le pleintif, &c., les qeux iiij suierent apres un brief Datteinte datteindre les xij.—*Redeneys.* Sire, vous veiez bien coment cest suite est pris pur les iiij en comune de atteindre les xij qe passerent en le brief de Trespas, en qel chescun

[1] L., fut.
[2] L., chalange.
[3] 25,184, de dreit de.
[4] L., ou des.
[5] porte is omitted from L.
[6] The words del un fet are omitted from L.
[7] L., arreines.
[8] The words la aval are omitted from 25,184.
[9] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. The notice of the case in Fitzherbert's *Abridgment* is so short (two lines only) that it is impossible to be certain which report he used.

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A D. 1344. which each one of the defendants answered severally, and the issue between the plaintiff and the defendants was several, so that the verdict was several against each of them, and for that reason this suit to convict the jurors should be several, and therefore we demand judgment of this writ taken in common.—*Richemunde.* Sir, you see clearly how this writ [of Trespass] was brought against them all in common, and the trespass was supposed by the writ to be all one with regard to them all, and therefore in the manner in which they were all convicted upon one original writ, and upon one plaint, and in which the damages were assessed against them all in common, in that same manner they will have suit in common to convict of the false oath.—Baukwell. Although the acts may with regard to the defendants be called several, as that which one does another does not do, still with regard to the plaintiff the act is all one, and they were all convicted of one act as reckoned with regard to him, and in case he had to sue an Attaint because the inquest had passed against him, he would have only one writ against them all, and therefore against him they will have but one writ.—*Redenesse.* Sir, this suit is made against the jurors of the inquest with the intention that each may have back that which he lost by the rendering of judgment on their verdict, in which case it is possible that one may have suffered more damage than another, for which reason a judgment on this writ taken for them all in common cannot be equal.—Scot. We have spoken to all our fellow-justices, who are quite agreed that the writ for them all in common is good, and also that several writs would be good for them; so also in Assise, where several are convicted as disseisors they will all have an Attaint in common, if they wish. This was adjudged before Willoughby and Baukwell in their Assise.—*Blaykeston.* Now, if they join ten disseisors

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de les defendants respondi severalment, et la mise entre le pleintif[1] et les defendants several, issint qe le verdit fuit several devers chescun deux, et par taunt ceste suite de les atteindre serreit several, par quei nous demandoms jugement de ceo brief pris en comune.—*Rich.* Sire, vous veiez bien coment cest brief fuit porte vers toutz en comune, et le trespas par brief suppose tut un pur eux toutz, par quei [en] mesme la manere come sur un original ils furent atteintz, et sur un pleint, et les damages taxez vers eux toutz en comune, en mesme la manere averont il la suite en comune de atteindre le faux serement. — Bauk. Coment qe les faitez vers les defendauntz serrount ditz severals, come ceo qun fait un altre ne fait pas, unqore vers le pleintif le fait est tout un, et touz furent atteintz dune fait acounte devers ly, et en cas qil fuit a suier latteint [pur ceo qe] lenquest ust passe countre ly, il navereit forqe un brief vers toutz, par quei nient devers ly naveront qun brief.—*Redeneys.* Sire, cest suite est fait vers ceux del enquest al entent chescun davoir ceo qil perdist par le jugement rendue sour lour verdit, ou puit estre qe un soit plus en damage qun autre, pur quei le jugement sur cel brief pris pur eux toutz en comune ne puit estre owel.—Scot. Nous avoms parle a toutz nos compaignons, qe se assentent bien qe le brief pur eux toutz en comune est bon, et auxint brief several serroit bon pur eux; auxint en Assise, ou plusours sount atteintz disseisours, ils averont toutz un Atteint en comune sils volent. Ceo fut ajugge devant Wilby et Bauk. en lour Assise.—*Bleik.* Ore ne puit estre qe sils joinent A.D. 1344.

[1] MS., plee.

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A.D. 1344. in one writ, so that one is found disseisor of one parcel at one time, and another disseisor of another parcel at another time, it is impossible that the writs of Attaint can ever be in common, because no one of the disseisors is a party to the act of another.—Willoughby. The fact and the verdict change the law, so that in such a case the Justices would cause the Assise to assess the damages in severalty against each disseisor, and the plaintiff would recover his damages against each of them severally according to the amount at which they were assessed by the Assise. —*Pole.* Sir, that cannot be, because in Assise, if there be disseisor and tenant, the plaintiff has a cause for having judgment as to the whole, so that, according to your statement, if one judgment be rendered as to one, and another judgment as to another, one will be, as it were, acquitted, so the judgments will be contrariant, to the effect that he will be both convicted and acquitted.—Baukwell. I saw myself in an Assise before John Bousser that the plaint was in respect of twenty acres of land, and it was found that the plaintiff was disseised of one acre by a person named, and was also disseised of the nineteen acres, quite ten years afterwards, by another person, and he enquired of the damages severally, and, because the damage was not equal, the plaintiff had judgment against them severally in respect of the damages.—Scot. Any one who did otherwise would commit error, wherefore answer, if you will, &c., because the writ is sufficiently good.—See as to the matter of this plea, Hilary Term in the 14th year.[1]

Statute Merchant Error.

(17.) § Master Richard de Cestre was ousted from his land by execution of a statute merchant, by means of a recognisance made by a stranger, who was seised of the lands before Richard had anything. And the recognisance was made for £40, and the certificate

[1] Y.B., Hil. 14 Edw. III., No. 11.

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x disseisours en un brief, issint qun est trove disseisour dune parcelle a un temps, un autre disseisour dune autre parcelle dun autre temps, les briefs Datteintz ne puissent jammes estre en comune, pur ceo qe nulle est partie a autri fait.—Wilby. Le fait et lenquest chaunge la ley qen tiel cas les Justices ferront Lassise asser les damages en severalte vers chescun, et le pleintif recovera ses damages vers chescun severalment solounc ceo qils sount assetz par Lassise.—*Pole.* Sire, ceo ne puit estre, qar en[1] Assise, sil eit disseisour et tenant, le pleintif ad cause daver jugement de tut, issint qe, par vostre dit, si devers un jugement serra rendue [et autre jugement] vers un autre et il auxi com acquite, issint jugements contrariauntz qil serra atteint et acquite.—Bauk. Jeo vi mesme qen un Assise devant Johan Bousser[2] le pleinte fuit de xx acres de terre, et trove fuit qe le pleintif fuit disseisi dun acre par un nome, et de les xix acres bien x anz apres auxi disseisi par un autre, et il enquist des damages severalment, et pur ceo qil ne fuit pas ouel, avoit jugement devers eux des damages severalment.—Scot. Cely qe fit autrement il erra, par quei responez vous si vous voletz, &c., qar le brieî est assetz bon.—*Vide de materia istius placiti Hillarii xiij^mo.*

A.D. 1344.

(17.)[3] § Meistre[5] Richard de Cestre fut ouste, par execucion dun[6] estatut marchaunt, de sa terre,[7] par reconissaunce fait par estraunge persone, qe seisi fut de la terre avant qil avoit rienz. Et la reconisaunce fut fet[8] de xl*li.*, et la certificacioun acordaunt.

Estatut Marchaunt: Errour.[4] [17 Li. Ass., 24; Fitz., *Errour*, 71.]

[1] MS., un.
[2] MS., Burser.
[3] From L., and 25,184.
[4] The words Estatut Marchaunt are from L. alone, the word Errour from 25,184 alone.
[5] L., *Moubray.*
[6] L., sur.
[7] The words de sa terre are omitted from L.
[8] fet is omitted from 25,184.

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A.D. 1344. was in accordance. But the statute purported that the money should not be paid before the 16th year of the reign, and the execution and the writ of execution were on the supposition that it was to be paid in the 14th year, whereas there was no such statute; thereupon Richard sued in the King's Bench to reverse this execution.—*Pole.* You see plainly how he is a stranger to the recognisance, which is the original, and such suit to reverse it is not given to him by law: for if judgment be rendered with regard to a stranger, and another come afterwards into possession of the land, and be ousted by execution, he will never have a writ of Error.—Baukwell. But a stranger to the judgment, if he be made a party by *Scire facias* on the execution, will, by assigning error, disturb the execution; for the same reason he will in this case have a writ of Error: for even though it be that, without answer, one may be ousted from his land by execution on statute merchant, nevertheless it is right that he should be aided in another way; and no one is prejudiced by execution except the person who is ousted from his land, because the person who made the recognisance is losing nothing, and, as he divested himself before execution, he shall not by law have a writ of Error.—*Seton.* One who is a stranger, if he had a specialty, would have *Audita Querela*; for the same reason he would have a writ of Error.—*Pole.* *Audita Querela* was given quite recently, that is to say, in the tenth year of the reign, in Parliament, on account of the mischief, and it was never given before, and it was never seen that a writ of Error was given for a stranger.—*Moubray.* If judgment be given against my tenant for term of life, I shall have a writ of Error after his death, because I suffer damage by the judgment.—*Pole* denied this. Besides, said he, the person who will have a writ of Error will be supposed to be a party by the

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Mes lestatut voleit qe ceo ne serreit pas paie avant[1] A.D. 1344.
lan xvj^me^, et lexecucion et le brief de cel[2] supposaunt qe ceo fut a paier lan xiiij^me^, la ou il y avoit nul tiel estatut; sur quai il suyst en Baunk le Roi de reverser cele execucion.—*Pole.* Vous veiez bien coment il est estraunge al reconisaunce, qest loriginal, a qi tiele[3] suite de reverser par ley nest pas done: qar si jugement soit rendu vers estraunge persone, et autre aveigne[4] apres a la terre, et soit ouste par execucion, il navera jammes Errour.—Bauk. Mes estraunge al jugement, si soit partie par[5] garnisement sur[6] lexecucion, par errour assigne destourbera lexecucion; par mesme la resoun en cel cas avera il Errour: qar tut soit il qe, saunz respounz, par execucion sur estatut marchaunt homme serra[7] ouste de sa terre, nient meyns il est resoun qil soit par autre voie eide; et nul homme est greve par lexecucion forqe celuy qest ouste de sa terre, qar celuy qe fist la reconisaunce nest de rienz perdaunt, ne par ley, la ou il se demist avant lexecucion, il navera pas Errour.—*Setone.* Celuy qest estraunge, sil ust especialte, avereit *Audita Querela*; par mesme la resoun il[8] avereit Errour.—*Pole. Audita Querela* fut[9] done ore tarde, saver,[10] lan x^me^, en Parlement, pur meschief, et unqes devant fut done,[11] mes unqes ne fut viewe Errour[12] pur estraunge.—*Moubray.* Si jugement se face vers mon tenant a terme de vie, javerai[13] Errour apres sa mort, pur ceo qe jeo suy endamage par le jugement.—*Pole negavit.* Ovesqe ceo, celuy qe avera Errour il serra suppose partie

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[1] 25,184, devant.
[2] L., ycel.
[3] L., cel.
[4] L., aviegne.
[5] The words partie par are omitted from L.
[6] 25,184, pur.
[7] serra is omitted from L.
[8] 25,184, qil.
[9] L., la y fut.
[10] 25,184, cest assaver.
[11] done is omitted from L.
[12] L., errour voide, instead of viewe Errour.
[13] L., jeo averay.

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A.D. 1344 record; but, in that case, if he should have the suit he ought to have it by reason of matter occurring outside, that is to say, because he was ousted from the land; and, besides, the person who comes into possession of the land demanded, while a writ is pending, shall never be aided by that suit, nor any more shall one who comes into possession between the making of the recognisance and execution.—*Moubray.* In the like case which you put, the law accounts the purchaser, who purchases while a writ is pending, to have no estate, but the law permits that, after a recognisance has been made, one may purchase land of the recognisor; besides, no one is so properly a party as the person out of whose possession the land was delivered, nor is anyone else prejudiced.—*Pole.* If you adjudge that he shall have the suit, you deprive us of an action on the recognisance, because we shall never have another certificate.—Baukwell. Yes, you will when the Chancery is certified of the tenor of your record, or else we shall award a new execution on the process which is before us on the certificate heretofore witnessed.—Scot. What remedy will he have, if it be not by this way, to have back the land?—*Pole.* By Account, after that which is due on the statute has been levied, or by Assise.—*Seton.* By Account he will never have a remedy until the amount in respect of which execution is made is levied; nor will he by Assise, because livery was made by warrant, and upon a judgment which stood in force.—Scot gave judgment that he should be admitted to the suit because he is the person who is principally prejudiced.—*Pole.* You see plainly how it is not proved by the record that execution is yet effected, because no extent has been

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par le[1] recorde; mes, en ceo cas, sil avereit la suite il la[2] dust aver par chose en fait dehors, cest assaver,[3] pur ceo qil fut ouste de la terre; et, ovesqe ceo, celuy qavient, pendaunt un[4] brief, a la terre demande ne serra jammes eide par cele suyte, ne nient plus celuy qavient entre la reconisaunce et lexecucion.—*Moubray.* En vostre semblaunce[5] ley acompte qe le purchaceour nad[6] nul estat qe purchace pendaunt un brief, mes ley soeffre qe apres la reconisaunce fait qe homme purra purchacer terre del reconisour; ovesqe ceo, nul est si proprement partie qe[7] celuy hors de qi possessioun la terre fut livere, ne nul autre greve.—*Pole.* Si vous agardes qil avera la suyte, vous tollez accion a nous de la reconisaunce, qar nous naveroms jammes autre certificacioun.—Bauk. Si averez quant la Chauncellerie serra asserte del tenour de vostre recorde, ou autrement nous agarderoms novele execucion sur le proces qest devant nous[8] sur la certificacion autrefoitz tesmoigne. —Scot.[9] Quel remedie avera il, sil ne soit par cest[10] voie, de reaver la[11] terre?—*Pole.* Par Lacompte, apres ceo qe par[12] lestatut est due serra leve, ou par Assise.—*Setone.* Par Acompte navera jammes remedie tanqe la somme de qai[13] lexecucion est fait serra leve; ne par Assise, qar la livere se fit par garraunt, et dun jugement qesta en sa force.—Scot agarda qil serra resceu a la suyte pur ceo qe principalment il est greve.—[*Pole.* Vous veez bien coment par le recorde nest pas prove qe execucion est unqore fet, qar nule][14] estente nest retourne ne

A.D. 1344.

[1] 25,184, al, instead of par le.
[2] L., ne.
[3] The words cest assaver are omitted from L.
[4] L., vostre.
[5] L., sembraunce.
[6] L., ad.
[7] 25,184, come.
[8] nous is omitted from L.
[9] 25,184, Schot.
[10] 25,184, cele.
[11] L., sa.
[12] par is omitted from 25,184.
[13] 25,184, qoi.
[14] The words between brackets are omitted from L.

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A.D. 1344 returned or entered on the record; so by intendment of law execution yet remains to be effected; wherefore he cannot have the suit as one who has been ousted from his land.—*Seton.* That which the Sheriff does is not parcel of the record, but part of his office when he does it by warrant, and error cannot be assigned with regard to that. And if I be ousted from my land, which matter can be the subject of averment, although the matter be not returned by the Sheriff, which is the fault of an officer, I shall not thereby be ousted from my recovery, particularly when I cannot be aided in any other way, because if I were to bring an Assise I should be barred.—*Pole.* You would never be barred by the record unless the extent had been returned.—*Seton.* What if the person who had execution pleaded by bailiff to the Assise, and this were found to be the truth? Would not the plaintiff be barred? —*Pole.* Certainly not, because the party would not have any greater advantage, even though he pleaded to the Assise by bailiff, than if the matter had been found by verdict; or else you would say that if a Sheriff feigns a writ of seisin, and by such colour puts a man in seisin, the person who is ousted shall not have an Assise, because a jury could not have cognisance of that which is done in Court. The conclusion is false. And in such a case, if such a verdict were found, the party would make *profert* of the record such as it is, and would disprove the verdict by record.—*Moubray.* When on a *Præcipe quod reddat* Error or Deceit is sued, the issue shall be taken as to whether the person who sues has been ousted from his land or not.

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entre en recorde; issint dentente de ley execucion demoert unqore affaire; par quei il, come celuy qest ouste de sa[1] terre, ne put la suyte aver.—*Setone.* Ceo qe le Vicounte[2] fait nest pas parcelle del recorde, mez[3] son office quant il le[3] fait par garraunt, et de ceo[4] ne poet homme errour assigner. Et si jeo soi ouste de ma terre, quele chose est averable, coment qe la chose ne soit pas retourne par Vicounte,[5] quel est defaut de ministre, jeo ne serray pas[6] par taunt ouste de mon recoverir, nomement quant par autre voie ne purroy estre eide, qar si jeo portasse Assise, jeo serrai barre.—*Pole.* Jammes ne serrez barre par le recorde, si lestente ne fut retourne.—*Setone.* Quay[7] si celuy qad execucion pledast par baillif al Assise, et cele verite fut[8] trove? Ne serreit[9] le pleintif barre?—*Pole.* Noun, certes, qar partie navereit plus davauntage, tut pledast il al Assise par baillif, qe si la chose fut trove par verdit; ou autrement vous dirrez si[10] Vicounte[2] feint[11] un brief de seisine, et mette un homme par tiel colour en seisine, qil navera Assise qest ouste, pur ceo qe pays ne put conustre ceo qest fet en Court. *Consequens falsum.* Et en tiel cas, si tiel[12] verdit[13] fut trove, partie mettreit[14] avant le recorde tiele[15] come il est, et desprovereit par recorde le verdit.—*Moubray.* En *Præcipe quod reddat*, quant homme[16] suyt Errour ou Desceite, homme prendra issue[17] le quel celuy qe suyt soit ouste de sa terre ou noun. *Sed non*

A.D. 1344.

[1] 25,184, la.
[2] L., Viscount.
[3] 25,184, ne.
[4] The words et de ceo are from L. alone, and are there by interlineation.
[5] The words par Vicounte are omitted from L.
[6] pas is omitted from 25,184.
[7] Quay is omitted from 25,184.
[8] 25,184, est.
[9] L., serra.
[10] L., qe si.
[11] 25,184, fist.
[12] L., cel.
[13] 25,184, verdist.
[14] 25,184, mettereit.
[15] L., en tiel forme, the word forme being inserted, in a later hand, by interlineation.
[16] L., il.
[17] issue is omitted from L.

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A.D. 1344. But not so in the matter before us.—*Pole.* What you say is wrong. Error and Deceit lie even though execution has not been effected. Not so in the matter before us, because you who are a stranger shall not according to any law have the suit unless you can first prove by record that you have suffered damage, and that by being ousted from the land; and the Sheriff may yet return that he could not effect execution inasmuch as the land is in the hand of an infant under age.—*Moubray.* Suppose the extent had been returned, which serves only for the person who will have an account after the time has passed, still you would have the averment, contrary to that return, that no livery had been made.—*Pole.* Certainly never.—*Moubray.* Then it would follow that, if execution had not been effected, because it had been returned that execution was previously had, execution would not be awarded.—*Pole.* Certainly not, if the party remained silent, and accepted the return.

Avowry. (18.) § Avowry upon the heir in socage for a relief, that is to say, for the double of his rent after the death of each tenant, for, whereas he held by fealty and ten shillings, &c., the defendant avowed on the ground that ten shillings of the rent, and a relief, which amounts to other ten shillings, were in arrear, and avowed for the twenty shillings, and laid his avowry by custom of the Rape of Hastings.—*Gaynesford*

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sic in proposito.—[*Pole.* Vous ditez mal. Errour et Desceite gisent tut ne soit execucion fait. *Non sic in proposito*],[1] qar vous qestez estraunge par nulle ley averez la suite si[2] vous ne puissez prover primes par recorde qe vous soiez endamage, et ceo par ouster de la terre; et le Vicounte purra retourner unqore qil ne put execucion fere par tant qe la terre est en la meyn un enfaunt deinz age.—*Moubray.* Jeo pose qe lestente fut retourne, qe ne seert forqe pur celuy qavera[3] acompte[4] apres le temps passe, unqore vous averez laverement qe nul livere se fit countre cel retourne.—*Pole.* Certes jammes.—*Moubray.* Donqes ensuereit[5] il[6] qe, si[7] execucion ne fut pas fet pur ceo qil[8] est retourne qautrefoitz[9] execut, ne serra pas execucion agarde.—*Pole.* Noun certes, si la partie se teust, et lacceptast. A.D. 1344.

(18.)[10] § Avowere sur leir en socage pur relief, saver, pur doubler de sa rente apres la mort de chescun tenant, qar, la ou il tient par fealte et xs., &c., il avowa pur ceo qe les xs. de la rente,[11] et releef, qamont a[12] autres xs., furent ariere, pur les xx[13] s. il avowa, et lia savowere par usage del Rape de Hastynges.[14]— Avowere. [Fitz., *Avowere*, 99.]

[1] The words between brackets are omitted from L.

[2] L., et si.

[3] L., qi avera.

[4] L., la compte.

[5] L., enswereit.

[6] il is omitted from L.

[7] si is omitted from L.

[8] 25,184, qele.

[9] L., qe altrement.

[10] From L., and 25,184, but corrected by the record, *Placita de Banco*, Trinity, 18 Edw. III., R° 31, d. It there appears that the action of Replevin was brought by John Gryke against the Prior of Hastings, in respect of three "boviculos."

[11] L., la rente de xs., instead of les xs. de la rente.

[12] L., de, instead of qamont a.

[13] L., x.

[14] The avowry was, according to the roll, "quod prædictus Johannes "tenet de ipso Priore, ut de jure "ecclesiæ suæ Sanctæ Trinitatis "de Hastynges, unum mesuagium "et unam virgatam terræ, cum "pertinentiis, in Ikelesham in "Rapa de Hastynges per fidelita-"tem et servitium decem solidorum ". . . . . annuatim . . . . "et ad contributionem faciendam "reparandi, sustentandi, et emend-"andi muros et fossatas per "costeras maris in Marisco de

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A.D. 1344. produced a deed of the avowant's ancestor, by which one whose estate the plaintiff had was enfeoffed by the services of ten shillings in lieu of all secular demands; judgment whether he can avow for the relief, or anything else which is not included in the deed, &c.—*Seton.* Tenancy carries with it relief, and relief is only an incident of the services, just as fealty is.—

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Gayn. moustra fet[1] del auncestre lavowant, par quel il est feffe par les services de x*s.* pur toutz seclers demandez; jugement si pur le[2] releef ou autre chose qe nest compris deinz le fet, &c., puisse[3] avower.[4] —*Setone.* Tenance attret a luy releef, et ceo nest qe incident des services nient plus qe nest fealte.[5]— A.D. 1344.

" Hastynges quotiens et quando " necesse fuerit, prout ipse per " ipsum Priorem aut homines suos " contigerit taxari secundum quan- " titatem terrarum et tenemento- " rum suorum in Rapa prædicta " existentium, &c., et ad faciendum " relevium post mortem cujus- " cumque tenentis, &c., videlicet " ad duplicandum redditum suum " annualem eorundem tenemento- " rum secundum consuetudinem " usitatam de terris et tenementis " in Rapa prædicta, &c., de quibus " servitiis et relevio quidam Jo- " hannes Longe quondam Prior de " Hastynges, prædecessor ipsius " Prioris, fuit seisitus per manus " cujusdam Johannis Gryke, " proavi ipsius Johannis, post " mortem Stephani Gryke patris " sui, &c., ut per manus veri " tenentis sui, &c., et quia decem " solidi de relevio ipsius Johannis " Gryke patris sui ipsi Priori a " retro fuerunt cepit ipse prædictos " tres boviculos prædicti Johannis " in prædicto loco, in feodo suo, " sicut ei bene licuit &c."

[1] fet is omitted from L.

[2] le is omitted from L.

[3] L., puissez.

[4] According to the record the plea was " quod quidam Philippus " nuper Prior de Hastynges, præ- " decessor ipsius Prioris, et ejusdem " loci Conventus, per chartam suam, " dederunt, concesserunt, et con- " firmaverunt cuidam Agneti quæ " fuit uxor Jacobi le Gryche de " Wynchelsega et heredibus suis " prædicta tenementa per nomen " totius terræ quam Johannes " filius Deringi de ipso Priore " tenuit de tenemento in Holewelle, " cum pertinentiis, cujus statum " modo habet &c., habenda et " tenenda præfatæ Agneti, heredi- " bus et assignatis suis de ipso " Philippo Priori et successoribus " suis, reddendo inde annuatim " ipsi Priori et successoribus suis " . . . . . decem solidos pro " omni servitio, consuetudine, " exactione, secta curiæ, et de- " manda, unde petit judicium si " prædictus Prior pro aliquibus " servitiis, exactione, seu demanda, " aliis quam in prædicta charta " continetur, contra chartam præ- " dictam, captionem aliquam super " ipsum justam advocare possit, " &c., et profert hic prædictam " chartam sub nomine prædicti " Philippi Prioris et ejusdem loci " Conventus, quæ præmissa testa- " tur, &c."

[5] The replication, according to the roll, was " quod prædictus " Johannes non dedicit quin ipse " teneat prædicta tenementa infra " Rapam de Hastynges prædictam, " et quin hujusmodi tenentes " secundum consuetudinem ibidem " hactenus obtentam, et similiter " de jure communi, post mortem " antecessorum suorum, relevium " facere debent et consueverunt,

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A.D. 1344. KELSHULLE. Fealty is not an acknowledgment of services, and it does not charge as relief does; and the custom of the Rape is not much to the purpose.—SHARSHULLE. He is enfeoffed for ten shillings in lieu of all annual services; but it is not granted to him to be discharged of other profits of seignory.—WILLOUGHBY. This point is not new to us; wherefore sue the Return. And you, plaintiff, are in mercy.

Voucher in Dower.

(19.) § Voucher, where, on a writ of Dower which Hugh le Despenser and his wife brought, the tenant vouched W. de Roos, and Margery his wife, the Earl of Northampton, and Elizabeth[1] his wife, J. de Typetot, and Margaret his wife, the Earl of Oxford, and Matilda his

[1] The name is from the record.

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Kels. Feaute nest pas[1] reconisaunce des services, et ceo ne charge pas come fet releef; et usage de Rape nest pas molt[2] a purpos.—Schar. Il est feffe pur xs. pur touz services annuels; mes destre descharge dautre profit de seignurie ne luy est pas graunte.—Wilby. Ceo point nest pas novel a nous; par quei suez[3] retourn. Et vous, pleintif, en la mercy.[4] A.D. 1344.

(19.)[5] § Voucher, ou, en brief de Dowere qe Hughe le Despenser[7] et sa femme porterent, le tenant[8] voucha W. Roos,[9] et Margerie[10] sa femme, le Counte de Northamtone, et I. sa femme, J. Typtot,[11] et Margarete[12] sa femme, le Counte Doxeneforde, et Vouche en[6] Dowere.

" videlicet duplicare redditum " suum, ut præmittitur, &c., quod " quidem relevium non est servi- " tium, sed accessorium ad hujus- " modi tenenciam, &c., et similiter " non dedicit seisinam prædicti " Johannis Longe quondam Prioris, " &c., prædecessoris, &c., per " manus prædicti Johannis Gryke " proavi, &c., unde petit judicium " et returnum sibi adjudicari, " &c."

[1] L., qe.

[2] L., mold.

[3] L., suytez.

[4] According to the roll, judgment was given in the following form:— " Quia prædictus Johannes non " dedicit quin ipse teneat prædicta " tenementa infra prædictam " Rapam de Hastynges, et quin " tenentes infra eandem Rapam " secundum consuetudinem præ- " dictam relevium facere debent " et consueverunt in forma præ- " dicta, nec etiam dedicit seisinam " prædicti Johannis Longe quon- " dam Prioris, &c., prædecessoris, " &c., per manus prædicti Johannis " Gryke proavi, &c., consideratum " est quod prædictus Prior eat " inde sine die, et prædictus Jo- " hannes sit in misericordia pro " falso clamore, &c., et prædictus " Prior habeat returnum prædic- " torum averiorum, &c."

[5] From L., and 25,184, until otherwise stated. The report appears to be in continuation of Y.B., Mich., 16 Edw. III., No. 89, the record of which is among the *Placita de Banco* of that term, R° 623, d.

[6] The words vouche en are from L. alone.

[7] 25,184, Spenser.

[8] John Fitz Bernard, knight, according to the record.

[9] L., Ros.

[10] MSS. of Y.B., M. The full name has been supplied from the record.

[11] 25,184, Tiptoft.

[12] The name is from the record. MSS. of Y.B., A.

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A.D. 1344. wife, sisters and heirs of Giles de Badlesmere. A fourth part was heretofore recovered by the default of J. de Typetot and his wife. The other three, with their wives, had warranted, and, while the plea was pending between the demandants and them, W. de Roos died, wherefore a Resummons was sued against Margery his wife in respect only of her portion, and the plea was continued between the demandants and the other two warrants and their wives.—*Grene* recited the process and said that it was discontinued, because, through the death of one of the warrants, the whole was without day with regard to them all, and a Resummons ought to have been sued against the tenant.—Hillary. After the tenant has been warranted, a Resummons shall not be sued against the tenant by reason of the death of one who is tenant by his warranty, but rather against his heir.—*Grene*. That is not law, because the ancestor might be bound to warranty, and not his heir; and the process against the warrant is annulled by death just as much as an original writ by the death of the tenant of the demesne.—Sharshulle. It seems that a Resummons ought to have been sued as well against the other warrants as against Margery the wife of W. de Roos.—*Grene*. Yes, certainly, because otherwise it would follow that, if Margery had nothing by descent, and the others had assets, in which case they ought to satisfy the tenant to the value of the whole, by such suit to resummon Margery in respect of a parcel only the tenant would lose the value of that portion, which would be contrary to law and reason; and the tenant, if he had been resummoned,

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Maude[1] sa femme, soers et heirs Gylys Badlesmere. A.D. 1344.
Par la defaut J. Typtot[2] et sa femme la quarte partie fut autrefoitz recoverie. Les autres iij ove lour femmes avoient garraunti, et pendaunt le plee entre les demandantz et eux W. Roos[3] murust, par quei Resomons fut suy soulement de la porcioun vers Margerie sa femme,[4] et plee continue entre les demandantz et les altres[5] ij garrauntz et lour femmes. —*Grene* rehercea le proces et dit qe cest discontinue, qar par mort dun des garrauntz[6] tut fut saunz jour vers touz, et Resomons dust aver este suy vers[7] le tenant.[8]—Hill. Apres ceo qe le tenant est garraunti, par sa mort [celuy qest tenant par sa garrauntie][9] homme ne suera pas Resomons vers le tenant, mes plus tost vers son heir.—*Grene.* Ceo nest pas ley, qar launcestre put estre lie a garrauntie, et son heir nient; et par mort est le proces anienti vers le garraunt si avant come original par mort del tenant del demene.—Schar. Il semble qe Resomons duist aver este suy auxi bien vers les autres garraunts[10] come vers Margerie la femme W. Roos.—*Grene.* Oyl, certes, qar autrement ensuereit qe si Margerie navoit rien par descente, et les autres assetz, en quel cas ils duissent[11] fere a la[12] value al tenant del entier qe par tiele suyte de resomondre Margerie de la parcelle soulement qe le tenant perdreit la value de cele porcion, qe serreit countre ley et resoun; et par cas le tenant, sil ust este

[1] The name is omitted from the MSS. of Y.B., and has been supplied from the record.
[2] 25,184, Typtoft.
[3] L., Ros.
[4] The words sa femme are omitted from 25,184.
[5] altres is omitted from 25,184.
[6] L., garrauntes.
[7] 25,184, devers.
[8] L., les tenantz, instead of le tenant.
[9] The words between brackets are omitted from 25,184.
[10] L., garraunties.
[11] L., ne duissent; 25,184, deussent.
[12] The words a la are omitted from L.

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A.D. 1344. would possibly have bound them to warranty in another way, possibly by their own deed.—Willoughby. Never in this case, after they had warranted as heirs.

Re-summons. § Hugh le Despenser and Elizabeth his wife brought a writ of Dower against a tenant, and demanded a third part of certain tenements as Elizabeth's dower, and the tenant vouched to warrant the Earl of Northampton and Elizabeth his wife, the Earl of Oxford and his wife, John de Typetot and his wife, and W. de Roos and his wife, as sisters and heirs of Giles de Badlesmere. Process was made against them until John de Typetot made default after default, wherefore the demandants recovered a fourth part of their demand. The others came into Court, and entered into warranty by reason of the deed of Giles the ancestor of the wives, and pleaded to the country. Process was continued until a certain day, when the Sheriff returned that W. de Roos was dead. Therefore a Resummons was sued against the wife of W. de Roos.—*Grene* came to the bar, and showed that all this process had proceeded wrongly, and said that he understood that the whole plea was without day against all the vouchees, because he said that when the death of W. was returned the process against all the vouchees was annulled because the demandant ought to have sued a Resummons against the tenant, so that he might be able to vouch anew, so as to put the plea in the position in which it was at the time when W.'s death was returned, or else to plead in chief.—Hillary. If the vouchees had not warranted, and W.'s death had been returned without their having entered into warranty, then the Resummons should have been sued against the tenant, but after a tenant has been warranted he is out of Court, and the vouchee

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resomons il les liereit par autre voie a garrauntie par cas par lour fait demene.—Wilby. Jammes en ceo cas, apres ceo[1] qils ount garraunti come heirs. A.D. 1344.

Resomouns. [Fitz., *Voucher*, 8.]

§ Hughe[2] le Despenser et Isabele sa femme porterent un brief de Dowere vers un tenant, et demanderent la terce partie des certeinz tenementz come le dower Isabele, qe voucha a garraunt le Counte de Northantone et I. sa femme, le Counte de O. et sa femme, Johan de Tiptoft et sa femme, W. de Ros et sa femme, come soers[3] et heirs Gylis de Badlesmere.[4] Proces fait devers eux tanqe Johan de T. fist defaut apres defaut, par quei les demandantz recoverirent la quarte partie de lour demande. Les autres viendrent en Court, et entrerent en garrauntie par cause de fet Gilez auncestre les femmes, et plederent a pays. Proces continue tanqe a certein jour qe le Vicounte retourna qe W. de Ros fuit mort. Par quei un Resomons fuit sui vers la femme W. de Ros.—*Grene* vint a la barre, et moustra qe tut cel proces ala a tort, et dist qil entendist qe tout le plee fuit saunz jour devers toutz les vouches, qar il dit qe quant la mort W. fuit retourne qe le proces vers touz les vouches fuit anienti pur ceo qe le demandant dust suier la Resomons vers le tenant, issint qil purra voucher de novel de mettre le plee en altiel cas come ceo fuit a temps de la mort W. retourne, ou autrement de pleder en chief.—Hill. Si les vouches nussent pas garraunti, et mort fuisse retourne einz ceo qils ussent entre en garrauntie, donqes serreit la Resomons sui vers le tenant, mes apres ceo qe le tenant est garraunti, et est hors de Court, et le vouche partie

[1] ceo is omitted from 25,184.

[2] This report of the case is from Harl. 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.

[3] MS., fils.

[4] MS., W.

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A.D. 1344. is party to the demandant, and, if the vouchee die, the Resummons will be sued against his heir, and not against the tenant, who is not a party to the plea.—*Grene.* That cannot be, because suppose the person who is vouched, and enters into warranty, be not bound to warrant except for term of his life, the Resummons cannot be sued against his heir because the heir is not bound to warrant; therefore, if the Resummons be not sued against the tenant, he is put to the mischief of losing his land where he might save it, if he were resummoned, by a plea to the action.—Willoughby, *ad idem.* Or it is possible that the vouchee might have committed a felony and been hanged for it, or might have been a bastard, and died without heir of his body, in which case a Resummons could not be sued against his heir.—Stonore. But in this case we are apprised that the wives were vouched, with their husbands, as heirs of Giles, and they warranted in that manner, so that the cause of warranty rests entirely in the persons of the wives, so that by the death of W. having been returned no cause was given to resummon any other than the same person in whose right W. her husband and she had previously warranted.—*Grene.* Sir, when husband and wife are vouched, when they come into Court the tenant can demand the warranty against the husband alone, or against the two, in accordance with the matter of his case, and both demands are sufficiently good where he vouches certain persons as heirs, &c.; moreover, when they come into Court he can bind them by their own deed, so that you see that, if a Resummons should be sued against the tenant, he could vouch the husband's heir, if his matter were such, or the wife, according to the matter of his case, or else plead in chief if he has warranty from no other but the person who has warranted, and whose death is returned.—Hillary. But not in this case, because the vouchees have previously

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al demandant, si le vouche devie le Resomons serra sui vers son heir, et noun pas vers le tenant, qe nest partie al plee.—*Grene.* Ceo ne puit estre, qar jeo pose qe cely qest vouche, et entre en garrauntie, ne soit tenuz de garrauntir mes pur terme de sa vie, la Resomons ne purra estre suy vers son heir pur ceo qil nest pas tenuz de garrauntir; donqes, si Resomons ne soit sui vers le tenant, il est mys a meschief de perdre sa terre, la ou il le purra salver, sil soit resomons, par plee al accion.—Wilby, *ad idem.* Ou put estre qe le vouche ust fait felonie et ust este pendue pur ceo, ou qil ust este bastard, ou devie saunz heir de soy, en qel cas Resomons ne poet estre sui vers son heir.—Ston. Mes en ceo cas nous sumes apris qe les femmes furent vouches, ov lour barouns, come heirs Gilis, et par tiel manere garrauntirent ils, issint qe la cause de garrauntie demure tout en les personez les femmes, issint qe par la mort W. retourne cause ne fuit pas done de resomondre autre mes mesme cesti en qi dreit W. soun baroun et ly avoint garraunti de temps avant. —*Grene.* Sire, quant le baroun et sa femme sount vouches, quant ils viegnent en Court le tenant purra demander la garrauntie vers le baroun soul, ou devers les deux, solonc ceo qe sa matere est, et lun et lautre assetz bon ou il vouche certeinz persones come heirs, &c.; unqore quant ils vendront en Court il les purra lier par lour fait demene, issint qe vous [veiez qe] si Resomons serroit sui vers le tenant, il purra voucher leir le baroun, si sa matere fuit tiel, ou la femme, solonc ceo qe sa matere est, ou autrement de pleder en chief sil neit garrauntie de nulle autre mes de cely qad garraunti, et qi mort est retourne.—Hill. Mes noun pas en ceo cas, qar les vouches ount garraunti de temps avant A.D. 1344.

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A.D. 1344. warranted as heirs of Giles, and if you were to be resummoned, and wished to vouch the husband's heir, you would not be admitted to do so since you previously demanded warranty against him and his wife as in right of the wife, in respect of which estate they warranted you.—Willoughby. We have seen that where husband and wife were vouched, and came into Court, and *profert* was made of the deed of both in order to bind them to warranty, the wife could discharge herself from the warranty because the deed was executed during her coverture, and that would be adjudged to be the husband's deed, but the matter before us is different in this case because the husbands warranted by reason of their wives.—*Herlastone* to *Grene*. You do not understand the process as it stands, because the Resummons is against the tenant and also against W.'s wife. And *Herlastone* showed him the writ.—*Grene*. Still, Sir, the Resummons is not good according to the intention of the Court, for the Resummons should be sued against the person whom her husband previously warranted as in right of the wife, because all the four were vouched as one heir to Giles, and they warranted in common, and therefore, by the death of one of them being returned, all the vouchees were without day, and therefore the Resummons ought to have been sued against all the three vouchees, and inasmuch as it is sued only against one, the process, as it seems to us, is without day.—*Gaynesford*. Sir, it would not be right to sue a Resummons against the other vouchees, because the parol was never without day with regard to them, but they have always had a day in Court.—*Grene*. If the parol were not put without day with regard to all the vouchees by the death of one of them having been returned, mischief would ensue to the tenant, because if he sue the Resummons only against the wife, and recover against her, he will have execution of that

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come heirs a Giles, et si vous fuisses resomons, et voderez voucher leir le baroun, vous ne serrez pas resceu depuis quatrefoitz vous demandastez la garrauntie devers ly et sa femme come en le dreit la femme, de qel estat il vous garrauntirent.—Wilby. Nous avoms vewe qe la ou le baroun et la femme furent vouches, qe vindrent en Court, et le fait lun et lautre fuit mys avant pur les lier a la garrauntie, la femme se deschargera de la garrauntie pur ceo qe ceo fuit fait duraunt la coverture, qel serreit ajugge le fait le baroun, mes nostre matere est autre icy pur ceo qe les barouns garrauntirent par resoun de lour femmes.—*Herlastone* a *Grene*. Vous nentendez pas le proces coment il est, qar le Resomons est vers le tenant, et auxint vers la femme W. Et mustra a ly le brief.—*Grene*. Sire, unqore nest pas la Resomons bon a entent de la Court, qar la Resomons serra sui vers cesty qe son baroun autrefoitz garrauntist come en la dreit la femme, qar toutz iiij furent vouches come un heir a Giles, et les mesmes garrauntirent en comune, et par taunt par la mort un deux retourne toutz les vouches furent saunz jour, par quei la Resomons dust avoir este sui vers toutz iij les vouches, et, de ceo qel est sui fors devers un, le proces, a ceo qe nous semble, est saunz jour.—*Gayn*. Sire, vers les autres vouches ne serreit il pas resoun de suier un Resomons, qar la parole ne fuit unqes saunz jour devers eux, mes tut temps ount ewe jour en Court.—*Grene*. Si la parole ne fuit mys saunz jour vers toutz les vouches par mort dun de eux retourne, meschief ensuereit al tenant, qi sil suie la Resomons soulement vers la femme, et il recovere devers ly, il navera pas execucion

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A.D. 1344. only of which she is seised, whereas it is possible that she has nothing; and, if all were resummoned, he would recover against all in common, so that, if one of them should not have wherewithal to compensate to the value, execution will be had of the entirety against the one who has.—And, because a *Cape ad valentiam* was returnable, on the Quinzaine of St. Michael, against the woman who was resummoned, a day was given over to that time.

Attaint. (20.) § Thomas Ughtred sued an Attaint, in the King's Bench, upon an Assise arraigned before Heppescotes, Parning, and Fencotes, and afterwards taken before Fencotes and Blaykeston in virtue of a new commission. And the title of the record was in the words "*Assisa capta coram* Fencotes," &c., without his baptismal name of Thomas. But upon a writ formed upon the case Thomas de Fencotes came into the King's Bench, and amended it, and inserted the word "Thomas" in the title, and [brought] the original writ, and the patent, and everything belonging to the Assise, except the new Commission in virtue of which Fencotes and Blaykeston took the Assise. And, because it seemed to the Justices that the record would not be complete if that commission were not entered—particularly since the Assise was arraigned before other Justices, Scot therefore said to them that they must sue a more complete record, if, &c.

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mes de ceo de quei ele est seisi, ou est possible qele nad rien; et, si toutz furent resomons, vers toutz il recovera en comune, issint qe, si un neit pas dount fare a la value, execucion se fra [de] lenterte vers ceste qad.—Et, pur ceo qe un *Cape ad valentiam* est retournable, vers la femme qe fuit resomons, a la quinzein de Seint Michel, jour fuit done outre tanqe a cel temps. A.D. 1344.

Atteynte. [17 Li. Ass., 23.]

(20.) [1] § Thomas Ughtred [2] suyt un Atteynte, en Baunk le Roi, dune Assise arrame [3] devant Hepp., Parnynge, et Fencotes, et puis pris [4] devant Fencotes et Blayk. par novel commission. Et le [5] title del recorde voleit *Assisa capta coram* Fencotes, &c., saunz propre noun de Thomas. Mes par brief fourme sur le [6] cas Thomas de Fencotes vint en la place le Roi, et lamenda, et mist einz el [7] title Thomas, et brief original, patent, et quant qe appent tut [8] la, sauf la novel commission, par quel [9] Fencotes et Blayk. pristrent Lassise. Et pur ceo lour sembla qe le recorde ne fut pas plein si cele commissioun nust este entre, nomement quant Lassise fut arrame [10] devant autres Justices, par quei Scot dit a eux qils suissent [11] plus plein recorde, si,[12] &c.[13]

[1] From L., and 25,184.
[2] L., de W.
[3] 25,184, arreyne.
[4] 25,184, prist.
[5] L., de, instead of et le.
[6] 25,184, del, instead of sur le.
[7] L., en.
[8] tut is omitted from 25,184.
[9] 25,184, quai.
[10] 25,184, arene.
[11] 25,184, suient.
[12] The words plus plein recorde si are omitted from 25,184.
[13] The record of this Attaint with the amended title of the Assise appears to be among the *Placita coram Rege*, Michaelmas Term, 18 Edw. III., R° 105. It was brought at the instance of Thomas Ughtred, knight, who, with eleven others, had been a defendant in an Assise of Novel Disseisin brought by Roger de Burton in respect of four marks of rent in Thurkelby (Thirkleby, Yorks).

The title as it now appears on the roll is "Assisa capta apud "Eboracum coram Thoma de "Fencotes et Rogero de Blayke-"stone, Justiciariis domini Regis "ad Assisas in Comitatu prædicto "arramatas capiendum assignatis."

The record of the Assise begins with the usual writ of *Si non*

Nos. 21, 22.

A.D. 1344. Execution on statute merchant.

(21.) § Note that one demanded execution on a statute merchant on a return of the Sheriff that the party was dead.—*Moubray.* We tell you that the person who made the recognisance held for term of his life by virtue of a fine, the remainder being to A., who is here, which A., after his death, by *Scire facias* sued against the same person that now sues to have the lands, and, by force of the same fine, had execution; judgment whether the obligee ought to have execution [of the statute merchant] in these lands. And he alleged that the fine was levied at an earlier time than that at which the recognisance was made.—*Grene.* You cannot be a party to disturb execution, because you have not a day, nor can we plead to your statement; and, if you say what is true, you will have an Assise, because the Sheriff has no warrant to give livery of anything but that of which the obligor was seised.—Willoughby. It would be extraordinary if a stranger could disturb execution.—*Grene.* Possibly he has other land which is sufficient.—Hillary. Then pray execution of the other lands: for it would be contrary to reason that you should have it in this land.—And afterwards A. produced a writ of *Audita Querela* on his case.—*Grene.* Again, as before, we pray execution, because A. has not yet a day with regard to this writ.—And they were adjourned.

Escheat.

(22.) § Escheat against John son of John Moryn and M.[1] his wife, who vouched. And afterwards, on another day, *Moubray* said that it had been found by Inquisition of Office for the King that one Thomas, who

[1] The names of the tenants are different in the other report of the same case below.

Nos. 21, 22.

(21.) [1] § *Nota* qun demanda execucion sur estatut marchaunt sur retourn de Vicounte [3] qe la partie fut mort.—*Moubray.* Nous vous dioms qe celuy qe fit la reconisaunce tient a terme de vie par une fyn, le remeindre a A. qe cy est, le quel A., apres sa mort, par garnissement suy vers mesme cestuy qe suyt ore daver les terres, et, par force de mesme la fyn, avoit execucion; jugement si en celes terres execucion deive aver. Et alleggea la fyn estre leve de plus haut qe la reconisaunce se fit.—*Grene.* Vous ne poetz pas estre partie pur destourber execucion, qar navez pas jour, ne a vostre dit ne poms [4] pleder; et, si vous ditez [5] verite, vous averez Assise, qar le Vicounte [3] nad garraunt de liverer forqe ceo dount il fut seisi.—Wilby. Il serreit mervaille si estraunge destourbereit execucion.—*Grene.* Il ad autre terre assetz par cas.[6]—Hill. Priez donqes execucion de les autres terres: qar il serroit [7] countre resoun qe vous lussez en ceste [8] terre.—Et puis A. mist avant brief de *Audita Querela* sur son cas.—*Grene.* Unqore, come avant, nous prioms execucion, qar A. nad pas unqore jour a ceo brief.—*Et adjornantur.* A.D. 1344. Execucion sur [2] statut marchaunt.

(22.) [9] § Eschete vers Johan le fitz Johan Moryn [10] et M. sa femme, qe voucherent. Et puis, un autre jour, *Moubray* dit coment par enquest doffice [11] fut trove pur le Roy qun Thomas, qe tient le maner Eschete.

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omnes addressed "Thomæ de "Heppescotes, Thomæ de Fen-"cotes, et Rogero de Blaykestone."

Issue was joined as to the oath (true or false) of the jurors of the Assise, but there were several adjournments, and the verdict of the twenty-four does not appear.

[1] From L., and 25,184.

[2] The words execucion sur are omitted from L.

[3] L., Viscount.

[4] 25,184, poez.

[5] 25,184, diez.

[6] The words par cas are omitted from L.

[7] L., serra.

[8] 25,184, cele.

[9] From L., and 25,184, until otherwise stated.

[10] L., J., instead of Johan le fitz Johan Moryn.

[11] L., office, instead of enquest doffice.

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A.D. 1344. held the manor demanded, was an adherent of the King's enemies in Scotland, for which reason the manor was seized into the King's hand, whereupon John Moryn, and M. his wife, sued to the King by Petition. Process was sued until on their mise in the King's Bench the finding was for the King; therefore judgment was given that the manor should remain in the King's hand, and this was since the last continuance. And so (said *Moubray*) they have lost, and the King has recovered upon action tried; so the writ is abated; judgment of the writ.—And some said that in that case the parol ought only to demur until suit had been made to the King, because seizure by the King does not abate a writ.—But because this does not countervail an action tried in this case the writ was by judgment abated, notwithstanding that it was alleged that the Office of the King might have been found while this writ was pending.

Escheat. § Robert de Northwode brought his writ of Escheat against Roger de Leuconere[1] and Margery his wife, and demanded certain tenements against them.—*Moubray.* Sir, we tell you that on a certain day, &c., it was found by inquisition before the Escheator that A., by reason of whose felony Robert now claims this escheat, was adherent to the Scots enemies of our Lord the King, which inquisition was returned into the Chancery, whereupon the King sued a *Scire facias* upon that inquisition against us to show whether we could say anything wherefore he should not have the same tenements as his escheat by reason that A. was so adherent to the Scots, whereupon we came and traversed the King's action, and afterwards the finding was for the King, wherefore judgment was given in Chancery that the King should recover the same tenements against us, and so

[1] A Roger de Leukenore or Lewknor is mentioned in several cases in previous years.

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demande, soi aherda as enemys le Roi[1] Descoce, par quai le maner fut seisi en la meyn le Roi, sur quai Johan Moryn et M. sa femme[2] suyerent al Roy par Peticion. Proces taunt suy qe a lour myse en Baunk le Roi trove fut pur le Roi; par quei agarde fut qe le maner demurast en la meyn le Roi, et ceo puis la darrein continuaunce. Et issint ount ils perdu, et le Roi recoveri sur accion trie; issint le brief abatu; jugement du brief.—Et asquns disoient qe la parole ne dust en tiel cas forqe demurer tanqe la suyte fut fet au Roy, pur ceo qe le seisir le Roy nabat pas brief.—Mes pur ceo qe ceo ne[3] countrevaut accion trie en ceo cas par agarde le brief fut abatu, *non obstante* qe fut allegge qe Loffice le Roy trove pout[4] estre pendaunt ceo brief. A.D. 1344.

Eschete. [Fitz., *Briefe*, 360.]

§ Robert[5] de Northwode porta son brief Deschete vers Roger Leuconere, et Margerie sa femme, et demanda vers eux certeinz tenementz.—*Moubray.* Sire, nous vous dioms qe certein jour, &c., fuist trove par enquest devant Leschetour qe A., par qi felonie R. cleime ore ceste eschete cy, fuist en herdaunt a les Escos enemys nostre seignour le Roy, la quele enquest fuist retourne en la Chauncellerie, sur quei le Roi hors de cele enquest cy suy un *Scire facias* devers nous a moustrer si nous susoms rien dire par quei il navereit meisme les tenementz com sa eschete par cause de ceo qe A. fuist issint aherdaunt a les Escos, ou nous venimes et traversames laccion le Roy, et puis fuist trove pur le Roy, par quei agarde fuist en Chauncellerie qe le Roy recoveri vers nous meisme les tenementz, et issint avoms nous

[1] Roi is omitted from L.

[2] The words sa femme are omitted from 25,184.

[3] ne is omitted from 25,184.

[4] L., poait.

[5] This report of the case is from Harl. 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. 1344. we have lost these tenements by force of that *Scire facias* which the King brought against us while this writ of Escheat was pending, whereof the King, &c., so that we cannot render his demand, wherefore, &c.—And thereupon the King sent *sub pede sigilli* the whole record, showing how he had recovered, &c., to the Justices, and also sent a writ to them, reciting how he had recovered, and how he had subsequently given the same tenements to Simon Symeon, and he therefore commanded them that they should not do anything by reason of the writ brought by Robert, which might turn to his prejudice or that of the aforesaid Simon.—*Richemunde.* Sir, our demand is of the manor of K., except a certain exception, and the writ and the record which, &c., speak of the manor of K. without any exception, and so they do not extend to our demand, wherefore, Sir, you will not have any regard to them. And as to that which R. and M. have alleged, that they have lost, &c., by reason of a *Scire facias*, in respect of which, &c., they have not shown anything of record by which that *Scire facias* could be warranted, because they have only alleged an inquisition taken before the Escheator, which is only an inquisition of office, wherefore we do not understand that to such a plea the law, &c.—*Moubray.* We have alleged that we have lost the tenements while your writ was pending, and by action tried, and you do not deny that these are the same tenements, whereas, if we were to allege that another person had recovered against us while your writ was pending, even though the Court might not be apprised by record that our statement was true, still, in case you would not deny it, the Court would abate your writ; *a multo fortiori* in this case, since the Court is apprised of our statement by matter of record. And, on the other hand, the *Scire facias* by which, &c., for the King is sufficiently warranted by the record which, &c.—And this was said also by the Court, &c.—And

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perdu ceux tenementz par force de cel *Scire facias* A.D. 1344.
qel le Roy porta vers nous pendaunt ce brief Deschete, de qelz le Roy, &c., issint ne poms nous sa demande rendre, par quei, &c.—Et sur ceo le Roy maunda *sub pede sigilli* tout le recorde coment il avoit recoveri, &c., a les Justices, et lour maunda auxint brief recitaunt coment il avoit recoveri, et coment il avoit puis done mesme les tenementz a Simoun Symeon, par quei il lour maunda qils feissent nulle chose par cause de brief qil R., &c., qe purreit tourner en prejudice de ly ou de lavantdit S.—*Rich.* Sire, nostre demande est del maner de K. forpris certein forprise, et le brief et le recorde qils, &c., cy parlent del maner de K. saunz nulle forprise, issint ne sestendent ils pas a nostre demande, par quei, Sire, quant a ceux vous naveretz mye regarde. Et quant a ceo qe R. et M. ount allegge qil ount perdu, &c., par cause de un *Scire facias*, de qel, &c., ils nount pas mustre chose de recorde de quei cel *Scire facias* pout estre garraunti, qar ils ount rien allegge mes soulement une enquest pris devant Leschetour, la quele nest forsqe une enquest doffice, par quei nentendoms mye qe a tiel ple la ley, &c. —*Moubray.* Nous avoms allegge qe nous avoms perdu les tenementz pendaunt vostre brief, et par accion trie, et vous ne deditz mye qe ceux sount meisme les tenementz, ou, si nous alleggeames qe autre persone eust recoveri vers nous, pendaunt vostre brief, coment qe la Court ne fuit pas appris par recorde qe nostre dit fuit veritable, unqore, en cas qe vous ne voderez ceo dedire, la Court abatereit vostre brief; a molt pluis fort en ceo cas, depuis qe la Court est apris de nostre dit par chose de recorde. Et dautre part le *Scire facias* par qil, &c., pur le Roy est assetz garraunti par le recorde qel, &c.—Et ceo fuist auxint dit par la Court, &c.—Et

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A.D. 1344. Judgment. because the Court was so apprised by record that the King had recovered, &c., Stonore gave judgment that Robert should take nothing by his writ.

Cui in vita. (23.) § Note that a woman brought a *Cui in vita*, and claimed for term of her life upon a gift made to her first husband and herself and the heirs of their bodies, &c. And exception was taken to the writ on the ground that by such a gift she had a fee tail. And she maintained her writ on the ground that there was no issue, so that in effect she had only a freehold. And it was said to have been seen that a reversion had been granted in such case, but not a writ of Waste. And afterwards the writ was abated because the statement of the title was self-contradictory.

Cui in vita. § A woman brought her *Cui in vita*, and her writ was in the words "*quas clamat tenere ad vitam suam ex dimissione quam R. inde fecit præfatæ*" woman, and to one F. her husband, and to the heirs of their bodies, &c.—*Derworthy.* Judgment of the writ, because by the first clause she claims only an estate for life, and then afterwards by the subsequent words she claims a fee tail inasmuch as the writ supposes that R. conveyed to her and to her husband and to the heirs of their bodies begotten, &c.; wherefore, &c.—*Grene.* As to that we tell you that F. her husband died without having issue between them, so that, because possibility of issue is extinct, she has only an estate for term of her life; wherefore, &c.—Willoughby. Her estate still is, though possibility is extinct, an estate of fee tail, because a writ of Waste does not lie against her, nor does a writ of Entry *in consimili casu*

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pur ceo qe la Court fuist issint apris par recorde qe le Roy avoit recoveri, &c., Ston. agarda qe R. ne prist rien par son brief. A.D. 1344. *Judicium.*

(23.) [1] § *Nota* qune femme porta un[2] *Cui in vita*, et clama a terme de sa vie dun doun fait a son primer baroun et luy et les heirs de lour corps, &c. Et le brief chalenge de ceo qe par tiel doun ele[3] avoit fee taille. Et ele mayntint son brief pur ceo qil ny avoit[4] pas issue, issint en effecte ele nad qe fraunctenement. Et fut parle qe reversion[5] ad este vewe estre graunte en le cas, mes brief de Wast nient. Et puis par agarde le brief pur la[6] contrariousete del title fut abatu. *Cui in vita.*

§ Une[7] femme porta son *Cui in vita*, et son brief voleit *quas clamat tenere ad vitam suam ex dimissione quam R. inde fecit præfatæ* la femme, et a un F. son baroun et a les heirs de lour corps, &c.—*Dirr.* Jugement de brief, qar par le primere clause ele cleime estat forqe a terme de vie, et puis apres par les subsequens ele cleime fee taille par taunt qe le brief suppose qe R. lessa a ly et a son baroun et a les heirs de lour corps engendrez, &c.; par quei, &c.—*Grene.* A ceo vous dioms nous qe F. son baroun morust saunz aver issu entre eux, issint, par ceo qe possibilite dissue est esteint, nad ele forsqe estat pur terme de sa vie; par quei, &c.—Wilby. Son estat est unqore, coment qe possibilite est esteint, estat de fee taille, qar brief de Waste ne gist pas vers luy, nentre en *consimili casu* ne gist pas par *Cui in vita.*

From L., and 25,184, until otherwise stated.

[2] un is omitted from L.

L., il.

[4] L., nad, instead of ny avoit.

[5] L., le revers.

[6] la is omitted from 25,184.

[7] This report of the case is from Harl. alone. It has not been printed in the old editions of the Year Books and does not appear to have been used by Fitzherbert for his *Abridgment*.

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A.D. 1344. lie by reason of an alienation by her, &c.; wherefore, &c. —*Grene*. If she were to aliene, &c., the person having the reversion might enter; wherefore, &c.

Formedon in the descender.

(24.) § Formedon in the descender in respect of the office of a serjeanty in the church of Our Lady of Lincoln was brought against the Bishop of Lincoln and one A.[1]—And the demandant counted by *Moubray* that one Thomas[1] gave to B.[1] and to the heirs of his body begotten, by reason of which gift B.[1] was seised as of fee and of right according to the form. He took the esplees as by taking 7*d*. for every obit sung in the said church, and 6*d*. on every great Feast day on which there is a Procession, and other kinds of issues of the office of serjeanty, according to the form. From B.[2] the descent was, according to the form, &c., to C.[2] as to daughter and heir. From C.[2] the descent was, according to the form, &c., to the present demandant B.,[2] as to son and heir, and the serjeanty after the death of B.,[2] and C.,[2] the daughter and heir of the aforesaid B. ought to descend, according to the form, &c., to the demandant B. as to son and heir, &c.—*Grene*. They suppose by the words of the gift that his demand falls

[1] For the real name *see* p. 339, note 1.

[2] For the real names *see* p. 339, note 13.

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cause de sa alienacion, &c.; par quei, &c.—*Grene.* A.D. 1344.
Si ele aliene, &c., cest a qi la reversion, &c., purra entrer; par quei, &c.

Formedoun en le descendre.[2]

(24.) [1] § Fourme de doun en le descendre del office de la seriauntie en leglise de Nostre Dame de Nicole porte vers Levesqe de Nicole et un A.—Et counta par *Moubray* qun Thomas dona a B. et as[3] heirs de son corps engendres, par quel doun il fut seisi come de fee et de dreit par la fourme. Les esplees prist come en pernant vij[4] *d.* pur chescun obit[5] chaunte en la dit eglise,[6] et vj*d.* chescun jour de graunt[7] Feste quant processioun iest,[8] et autre manere dissue doffice de seriauntie, par la fourme. De B. descendi par la fourme, &c., a C. come a fille et heir. De C. descendi par la fourme, &c., a B. come a fitz et heir qore demande, et la quele apres la mort B., et C., fille et heir[9] lavandit B.,[10] a[11] B. come a fitz et heir, &c.,[12] descendre deit par la fourme, &c.[13]—*Grene.* Ils supposent par la parole

[1] From L., and 25,184, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 215. It there appears that the action was brought by John Malovel of Willingham against Thomas Bishop of Lincoln and Roger Doo "teler" of Lincoln, in respect of the office "unius seriantiæ in ecclesia "beatæ Mariæ Lincolniæ, cum "pertinentiis in Lincolnia, quod "Johannes Derlyng de Wyflyng-"ham dedit Roberto filio Willelmi "de Glentham et Amiæ uxori ejus "et heredibus de corporibus ipso-"rum Roberti et Amiæ exeunti-"bus."

[2] The marginal note is from 25,184 alone, and is there in a later handwriting. In the old editions there is the erroneous marginal note Desceite.

[3] L., les.

[4] L., viij.

[5] L., obite.

[6] 25,184, esglise.

[7] 25,184, graunde.

[8] L., yet.

[9] 25,184, filles et heirs instead of fille et heir.

[10] L., C.

[11] L., et.

[12] L., fills et heirs, instead of fitz et heir, &c.

[13] According to the record the count was (after reciting the gift) "per quod donum prædicti Ro-"bertus et Amia fuerunt seisiti "de prædicto officio, cum perti-"nentiis, ut de feodo et jure per "formam, &c., tempore pacis, "tempore Edwardi Regis avi "domini Regis nunc, capiendo "inde expletia ad valentiam, &c.

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A.D. 1344 under the head of demesne, which could vest by livery as a freehold; and when he lays the esplees he supposes that it does not fall under the head of demesne, inasmuch as he lays the esplees only as of fee and right.—Willoughby. Is your meaning that the office could not be given?—*Grene.* The writ is good in supposing a gift, because no other form of writ is given, but he ought to count that the donor granted: for in case of a reversion granted the word in the writ will be *dedit*, and the count will be that he granted.—Willoughby. Answer.—*Grene.* Judgment of the count, because he has not made it clear what the office is nor what the holder will do in the office. —*Seton.* When he has the office he will perform the duties; and it need not be now declared what duties I shall perform.—*Grene.* It cannot otherwise be known what you demand.—*Moubray.* For that purpose you can demand view; and that would be a good plea.—Willoughby. The count is sufficiently certain on these facts.—*Grene.* You see plainly how it is an office to be performed in the church, and therefore to take a certain profit; and the church is a thing spiritual, of which this Court cannot have cognisance, nor consequently of anything issuing out of it; judgment whether you ought to have cognisance.—Stonore. The office is lay.—Willoughby, *ad idem.* The office is not arising out of the soil, and, even though it were so, this Court would have cognisance, because it could not be tried elsewhere.—*Grene.* In Assise,

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de doun qe sa demande chiet en demene, qe purra vestir par livere come fraunc tenement; et quant il lie les esplees il suppose qe ceo ne chiet pas en demene par taunt qil lie les esplees soulement come de[1] fee et dreit.—WILBY. Est[2] vostre entente qe loffice[3] ne poet pas estre done?—*Grene.* Le brief est bon supposaunt doun,[4] pur ceo qautre fourme nest pas done, [mes il countera qil graunta: qar dune reversion graunte en cas le brief dirra *dedit*, et le counte serra qil graunta.—WILBY. Responez.][5] —*Grene.* Jugement du counte, qar il nad[6] pas desclare quai loffice est, ne quai il fra en loffice.—*Setone.* Quant il avera loffice il ferra la charge; [et ceo ne covient pas estre ore desclare qele charge][5] jeo ferrai.—*Grene.* Autrement ne poet homme saver ceo qe vous demandez.—*Moubray.* Pur ceo poez demander la vewe; et ceo serreit bon ple.[7]—WILBY. Le counte est assez en certein sur cel fet.[8] —*Grene.* Vous veiez bien coment cest[9] un office a fere[10] en leglise, et par tant prendre certein profit; et leglise est espirituel,[11] dount ceste Court ne put aver conisaunce,[12] *nec, per consequens*, de rien issaunt de cele[13]; jugement si vous devez conustre.—STON. Loffice est laite.—WILBY, *ad idem*.[14] Loffice nest pas sourdaunt du soil,[15] et tut fut il ceste Court avereit le conisaunce, qar aillours ne serra ceo trie.—*Grene.* A.D. 1344.

"Et de ipsis Roberto et Amia "descendit jus per formam, &c., "cuidam Margeriæ ut filiæ et "heredi, &c. Et de ipsa Margeria "descendit jus per formam, &c., "isti Johanni Malovel ut filio et "heredi, qui nunc petit, &c."

[1] de is omitted from L.

[2] L., A.

[3] L., ceo, instead of qe loffice.

[4] 25,184, le doun.

[5] The words between brackets are omitted from L.

[6] 25,184, nest.

[7] 25,184, pleynte.

[8] 25,184, tiel, &c., instead of cel fet.

[9] cest is omitted from L.

[10] 25,184, affaire, instead of a fere.

[11] 25,184, especial.

[12] L., conussaunce.

[13] L., ycel.

[14] The words *ad idem* are omitted from L.

[15] 25,184, secle.

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A.D. 1344 if the party were to bring one, what would be put in view?—*Moubray*. The church; and so would be an Abbey in case of the demand of a corody.—*Grene*. This plea does not resemble an action of Annuity, where the person only will be charged, because in this case some certain freehold must be charged.—Shars-hulle. Answer.—*Grene*. At common law there was, in such a case, no action but that of a *Quod permittat*; and by Statute[1] there is given only an Assise; judgment of the writ. And afterwards he said over that the writ had been brought against the Bishop as Head of the church, who is, as it were, tenant of the soil, against whom no other writ would lie but a *Quod permittat*; and the demandant has joined with him in the writ another person who cannot be joint tenant with the Bishop; judgment of this writ.—Stonore. But if one of those who are named in the writ be tenant with one against whom the writ lies, will not the writ be adjudged good? And I ask you what writ you would give other than this.—*R. Thorpe*. If a writ be brought against two persons, and one of them is tenant, and the other has nothing, the writ is good where it can be understood by a supposition which is in the writ that they are joint tenants; but where they cannot be joint tenants by the supposition which is in the writ, it is bad, and abatable. Now the Bishop cannot be understood to be an officer in his own church; wherefore by that intendment the writ does not lie against the Bishop, and the other named with him cannot be understood to be tenant of the soil jointly with the Bishop; and, if he could be in such a condition jointly with the Bishop, a *Quod permittat* would lie, and not a *Præcipe quod reddat*; and so, from any point of view, the writ does not lie.—Stonore. We shall not abate this writ, if no other writ will serve his purpose.—*R. Thorpe*.

[1] 13 Edw. I. (Westm. 2), c. 25.

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En Assise, si la partie[1] la portast, quei serroit[2] mys en vewe?—*Moubray.* Leglise; et auxi serra une[3] Abbeye en cas dune corodie.—*Grene.* Ceo[4] plee nest pas semblable a Annuite, ou soulement la persone serra[5] charge, qar[6] icy covient qe certein fraunctenement soit charge.—Schar. Responez.—*Grene.* A la comune ley ny avoit en tiel cas[7] forqe *Quod permittat*; et par statut nest done forqe Assise; jugement du brief. Et puis il dit outre qe le brief est porte vers Levesqe come Soverein del eglise, qest[8] come tenant du soil, vers qi nul autre brief girreit forqe *Quod permittat*; et ad joint autre en son brief qe ne put estre joint tenant ovesqe Levesqe; jugement de ceo brief.—Ston. Et si lun deux[9] nomes el brief soit tenant ovesqe celuy vers qi le brief gist, ne serra le brief agarde bon? Et jeo demande quel brief vous donez autre qe cesty.—*R. Thorpe.* Si brief soit porte vers ij, et lun est tenant, et lautre nad rien, le brief est bon la ou il put estre entendu par supposaille qest en le[10] brief [qils sount joyntenantz; mes la ou ils ne pount estre joyntenantz par le supposaille qest en le brief][11] cest malveys et abatable. Ore Levesqe en sa eglise demene ne put estre entendu officer; par quei a cely entente[12] vers Levesqe ne gist pas le brief, ne lautre nome ovesqe lui[13] ne put estre entendu tenant du soil joint ovesqe Levesqe; et, sil purreit estre de tiel condicion joint ove Levesqe, *Quod permittat* girreit, et noun pas *Præcipe quod reddat*; et issint a nul regarde git le brief.—Ston. Nous abatroms pas ceo brief, si autre ne luy purra servir.—*R. Thorpe.* A.D. 1344.

[1] L., luy, instead of la partie.
[2] L., luy.
[3] L., en.
[4] L., En ceo.
[5] serra is omitted from L.
[6] qar is omitted from L.
[7] cas is omitted from L.
[8] L., qe nest.
[9] L., des.
[10] L., du, instead of quest en le.
[11] The words between brackets are omitted from 25,184.
[12] entente is omitted from L.
[13] lui is omitted from L.

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A.D 1344. He would possibly have a *Quod permittat* against the Dean and Chapter in case no one were tenant of the office; but, if anyone else were tenant of the office, a *Præcipe quod reddat* would lie against him alone.—Willoughby. You do not yet allege anything in fact which abates the writ; wherefore, unless you say something else, the writ is sufficiently good.—And afterwards view was demanded, and granted.

Petit Cape. (25.) § Robert de Mandeville brought a writ against two persons, who made default after appearance. And they appeared on the *Petit Cape*. And each of them said severally for himself that he was tenant of the entirety, *absque hoc* that the other person named, &c., had anything in the land. And each of them severally alleged imprisonment in order to save the default.—*Blaykeston*. We do not admit the imprisonment; but, whereas their plea is to the abatement of the writ by several tenancy, they shall not be answered as to that before the default is saved.—This was not allowed.—Therefore *Blaykeston* maintained his writ to the effect that they were tenants in common.—*Moubray*. And since he has held to the default, which we have saved by our plea of which we tender averment, and he does not maintain the reverse, judgment how we are to leave the Court.—This was not allowed.—Therefore each of them maintained severally for himself that he was tenant of the entirety.—And the other side said the contrary.

Præcipe quod reddat. § Richard de Maundeville brought his writ against Elys de Ascheburne and Thomas de Ascheburne, and

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Il avereit par cas vers Dean et Chapitre *Quod permittat* en cas qe nul fut tenant del office; et si ascun autre fut tenant del office *Præcipe quod reddat* girreit vers luy soul.—Wilby. Vous nalleggez rien en fet unqore qe abat le brief[1]; par quei, si vous ne diez[2] autre chose, le brief est assetz bon.—Et puis la vewe fut demande, et graunte.[3] A.D. 1344.

(25.)[4] § Robert Maundeville porta brief[5] vers deux, qe apres apparaunce firent defaut. Et vindrent par le Petit *Cape*. Et chescun severalment a per luy disoint qils furent tenantz del entier, saunz ceo qe lautre nome, &c., rien y avoit. Et alleggerent emprisonement pur salver la defaut severalment.—*Blaik*. Nous conissoms pas lemprisonement; mes, la ou lour plee est al abatre du brief par several tenaunce, a[6] ceo ne serrount ils respondu avant[7] qe la defaut soit salve.—*Non allocatur*.—Par quei *Blayk*. meyntent [son brief qe tenant en comune.—*Moubray*. Et desicome il soy ad pris a la defaut, quel nous avoms salve par nostre plee qe nous tendoms daverer, et il ne meyntynt][8] pas le revers, jugement coment nous devoms departir.—*Non allocatur*.—Par quei ils mayntendrent severalment, chescun a per luy, qil fut tenant del entier.—*Et alii e contra*. Petit *Cape*.

§ Richard[9] de Maundeville porta son brief vers Elys de Ascheburne et Thomas de Ascheburne, et *Præcipe quod reddat*. [Fitz., *Saver de Defaute*, 34.]

[1] The words le brief are omitted from L.

[2] L., ditez.

[3] All that appears on the roll, after the count, is the prayer for and grant of view, and the *Dies datus*.

[4] From L., and 24,184, until otherwise stated.

[5] L., briefs.

[6] L., et.

[7] avant is omitted from L.

[8] The words between brackets are omitted from L., but some of them are inserted, out of place, lower down.

[9] This report of the case is from Harl. alone. It has not been printed in the old editions, but appears to have been used, rather than the other report, by Fitzherbert for his short abridgment of the case.

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A.D. 1344 demanded certain tenements against them. Elys and Thomas, after appearance, and before they had accepted the tenancy in common, made default, wherefore the *Petit Cape* issued returnable now at the Quinzaine. The demandant held to the default.—*Moubray*. You have Elys here, who tells you that he is tenant of the entirety, and was so on the day on which the writ was purchased, *absque hoc* that Thomas had anything, and he tells you that this default ought not to injure him, because he tells you that, before his day which he had in the Bench, while he was going towards Ireland, he came on such a day to Lichfield, and there a dispute arose between such a person and such a person so that there was blood shed between them, wherefore the bailiffs of the town came and pursued them with the object of attaching them. They took to flight, and came into this same Elys's inn; and the bailiffs pursued them and found this same Elys in their company, and, supposing that he had been one of those who made the fray, took him and imprisoned him, and detained him in prison until such time that his day which he had in the Bench was passed; so he could not be there on his day; wherefore, &c.—*Notton*. Sir, you have Thomas here, who tells you that he is tenant of the entirety, and was so on the day on which the writ was purchased, *absque hoc* that Elys has anything, &c., and he tells you that he was in prison, &c. (and he alleged where, as above), and we do not understand that this default ought to injure him.—*Blaykeston*. Sir, you see plainly how we have brought our writ against them as against tenants in common, and they answer as tenants in severalty, and both allege imprisonment, so that, if we answer as to that imprisonment, the tenancy in severalty will thereby be held as not denied by us, and that would abate our writ. And, if we answer as to the several tenancy, the imprisonment will thereby

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demanda vers eux certeinz tenementz. E. et T., apres apparaunce, avant ceo qil avoint accepte la tenance en comune, firent defaut, par quei le petit *Cape* issit retournable a ore a la xv. Le demandant se prist a la defaut.—*Moubray.* Vous avetz cy E., qe vous dit qil est tenant de lenter, et fuit jour de brief, &c., saunz ceo qe T. rien navoit, et vous dit qe cele defaut ne ly deit nuyre, qar il vous dit qavant son jour qil avoit en Baunk, auxint come il fuit en alant vers Irland, tiel jour si vint il a Lichefeld, et illoeqes debat sourdi entre un tiel et un tiel issint qentre eux ils avoint saunk espaundu, par quei les baillifs de la ville vindrent et les pursuerent davoir attache meismes ceux. Ils se mystrent a la fute, et vindrent en lostel mesme cesty E.; et les baillifs les pursuerent, et troverent mesme cely E. en lour compaignie, entendu qil eust este un deux qe firent la fray le pristerent et lemprisonerent, et en prison detyndrent tanqe a tiel temps qe son jour qil avoit en Baunk fuit passe; issint ne puit il mye a son jour estre; par quei, &c.—*Nottone.* Sire, vous avetz cy T., qe vous dit qil est tenant de lenter, et fuit jour de brief, &c., saunz ceo qe E. rien ad, &c., [et] vous dit qil fuit en prisone, &c., [et] alleggea ou, *ut supra*, et nentendoms mye qe cel defaut ly deit nuyre.—*Bl.* Sire, vous veiez bien coment nous avoms porte nostre brief vers eux come vers tenantz en comune, et ils respoundent come tenantz en severalte, et lun et lautre alleggent enprisonement, ou, si nous respondroms[1] a cel enprisonement, par taunt serra[2] tenuz a nient dedit de nous la tenance en severalte, et ceo abatereit nostre brief. Et, si nous respondroms a la severale tenance, par taunt serra tenuz a nyent dedit de A.D. 1344.

[1] MS., respons. | [2] MS., serrez.

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A.D. 1344. be held as not denied by us. And so their answer is in itself double, and to that we cannot have our answer with certainty, nor can we join an averment on both; therefore we demand judgment, &c.—Sharshulle. The answer is that one who is sole tenant of the entirety does not accept tenancy in common with the other who has nothing, and therefore he must first show his tenancy to be several, and afterwards you must answer as to the imprisonment; and whereas you say that you cannot have a certain answer to their statement, you can do so, because one averment may serve your purpose against them both, as by maintaining the tenancy in common as your writ supposes; wherefore consider whether you will say anything else.—And he was compelled by the Court to maintain his writ, and said that on the day on which his writ was purchased they were tenants in common; ready, &c.—And the other side said the contrary.

Scire facias.

(26.) § *Scire facias* to have execution on a recognisance. — *Thorpe.* We tell you that the plaintiff granted by this deed that if we should be ready within three weeks of Easter to come into this Court and levy a fine of certain lands, &c., the recognisance should

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nous lenprisonement. Et issint est lour respouns double en ly meisme, a quei nous ne poms avoir nostre respouns en certein, ne nous ne poms mye joyndre laverrement sur lun et sur lautre; par quei nous demandoms jugement, &c.—SCHAR. Il nest mye respouns qe cesti qe soul tenant de lenter accepte la tenance en comune ov lautre qil nad rien, et pur ceo covient il primes demustrer sa tenance several, et puis respondre a lenprisonement; et pur ceo qe vous parles qe vous ne poietz mye avoir a lour dit respouns en certein, cy poietz, qar un averrement vous purra servir vers lun el vers lautre auxi come de ceo meintener la tenance en comune come vostre brief, &c.; par quei veiez si vous volez autre chose dire.—Et il fuit chace par la COURT de meintener son brief, et dit qe jour de son brief, &c., ils furent tenantz en comune; prest, &c.—*Et alii e contra.* A.D. 1344.

(26.) [1] § *Scire facias* daver execucion dune reconisaunce.—*Thorpe.* Nous vous dioms qe le pleintif graunta par ceo fait qe si nous fuissoms [3] prest [a iij symaynes du Pasche de vener][4] cy et lever un fyn de certeines terres, &c., qe la reconisaunce per- *Scire facias.*[2]

[1] From L., and 25,184. There is a similar case among the *Placita de Banco*, Trin., 18 Edw. III., R° 176. It, however, appears there, as an *Audita Querela*. Thomas de Pabenham, knight, had executed a recognisance to Roger de Bydendenne for 100*l*. There was a defeasance to the effect that if Thomas and his brother Edward "venissent in Curia Regis coram "Justiciariis suis hic et parati "extitissent infra tres septimanas "Paschæ anno regni domini Regis "nunc Angliæ quinto-decimo "levare finem præfato Rogero et "heredibus suis de omnibus terris "et tenementis quæ iidem Thomas "et Edwardus habuerunt in "marisco de Romene in Comitatu "Kanciæ tunc dicta recognitio "centum librarum pro nulla "haberetur. . . . . Et "licet iidem Thomas et Edwardus "conventiones prædictas quantum "in ipsis fuit compleverunt," nevertheless Roger sued execution.

[2] The marginal note is omitted from L.

[3] 25,184, feussoms.

[4] The words between brackets are omitted from L.

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A.D. 1344. lose its force; and we tell you that we then were ready; judgment whether execution, &c.—*Moubray.* He was not then ready; ready, &c.—*Thorpe.* That can only be averred by record, that is to say, if you then proffered yourself, and a default was recorded against us, and entered.—Stonore. Was there any writ pending between you then?—*Thorpe.* If there was no writ brought, then it was by no default of ours that the fine was not levied, but by his.—*Moubray.* We tender the averment that he was not ready as the condition purports, which averment he refuses; judgment.—And afterwards the averment on that point was admitted.—*Quære.*

Annuity. (27.) § The Abbot of St. James of Northampton

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dreit sa force; et vous dioms qe adonqes nous fumes prest; jugement si execucion, &c.[1]—*Moubray.* Il ne fut pas prest adonqes; prest, &c.—*Thorpe.* Cella ne put estre avere mes par recorde, saver, si vous adonqes profristes,[2] et defaut recorde et entre sur nous.—Ston. Y avoit nul brief pendaunt entre vous adonqes?—*Thorpe.* Sil y avoit pas brief porte, donqes ny avoit pas defaut en nous qe la fyn ne fut leve, mes en luy mesme.—*Moubray.* Nous tendoms daverer qil ne fut pas prest come la[3] condicion voet, quel averement il refuse; jugement.—Et puis sur[4] ceo laverement est resceu.[5]—*Quære.* A D. 1344.

(27.)[6] § Labbe de Seint Jakes de N.[8] porta brief Annuite.[7] [Fitz., *Aide*, 141.]

[1] Upon the appearance of the parties after the *Audita Querela* had been sued "idem Thomas "dicit quod tam ipse quam præ- "dictus Edwardus frater suus "venerunt coram præfatis Justi- "ciariis domini Regis infra præ- "fatas tres septimanas Paschæ, et "parati fuerunt levasse finem "prædictum præfato Rogero . . ". . . . . et prædictus Rogerus "nec aliquis ex parte sua coram "præfatis Justiciariis tunc venit, "et petit judicium si idem Rogerus "executionem debiti prædicti "versus cum habere debeat, &c."

[2] L., profites.

[3] The words come la are omitted from 25,184.

[4] sur is omitted from L.

[5] According to the roll the proceedings were as follows:— "Rogerus dicit quod ipse impetra- "vit quoddam breve de Conventione "in Comitatu Kanciæ returnabile "ad quindenam Paschæ proximam "ante præfatas tres septimanas "Paschæ superius nominatas, quod "quidem breve returnatum fuit "coram præfatis Justiciariis do- "mini Regis de Banco ad præfatam "quindenam Paschæ, ... ad "quem diem prædicti Thomas et "Edwardus non venerunt, nec "infra præfatas tres septimanas "Paschæ sequentes, ad prædictum "finem levandum. Et hoc paratus "est verificare, unde petit judicium "et executionem debiti prædicti "sibi adjudicari, &c.

"Et Thomas dicit, ut prius, quod "tam ipse [&c. as above] et parati "fuerunt levasse finem prædictum, "&c. Et hoc petit quod inquiratur "per patriam. Et Rogerus simili- "ter." The award of the *Venire*, and some adjournments follow.

[6] From L., and 25,184, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 147. It there appears that the action was brought by the Abbot of St. James without Northampton against Roger Waldeshefe, vicar of the church of Watford, in respect of arrears of an annuity of two marks.

[7] The marginal note is omitted from L.

[8] 25,184, Norf.

No. 27.

A.D. 1344. brought a writ of Annuity against the Vicar of the church, &c.,[1] and had no other title than prescription.—*Moubray.* He is a man of Holy Church, and does not produce any lay contract; judgment whether the Court will take cognisance.—*Grene.* And since a title by prescription is sufficient, and it can be averred in this Court, and nowhere else, we demand judgment.—*Moubray.* The Prior of Barnwell and the Prior of Durham were put to show the commencement of a rent in like cases.—WILLOUGHBY. No; they did so *gratis*; and plenty of others have been answered on the like title of prescription.—*Moubray.* If you will take cognisance, we are ready to answer.—WILLOUGHBY. Answer, if you will.—*Moubray.* We tell you that the vicar found his church discharged, and he prays aid of the Abbot of St. James, his patron, and of the Ordinary.—*Grene.* You shall not be admitted to that aid-prayer, because, as to the Abbot, he is himself the party that is plaintiff; and you ought not to have aid

[1] For the names *see* p. 351, note 6.

No. 27.

Dannuite vers le viker del eglise, &c., et navoit autre title forqe prescripcion.[1]—*Moubray.* Il est homme de Seinte Eglise, et ne moustre nul ley contracte; jugement si Court voille conustre.—*Grene.* Et desicome title de prescripcion est suffisaunt, quel est averable en cest Court, et nulle part aillours, nous demandoms jugement.—*Moubray.* Le Priour de Bernewelle,[2] et le Priour de Duresme[3] en autiel cas furent mys de moustrer comencement de la rente.—Wilby. Nanil; ils firent de gree; et autres assetz ount este respondu sur autiel title.—*Moubray.* Si vous voletz[4] conustre, prest a respoundre.—Wilby. Si vous voletz,[5] responez.—*Moubray.* Nous vous dioms qe le viker trova sa eglise descharge, et prie eyde del Abbe de Seint Jake son patroun, et del Ordiner.[6]—*Grene.* A cel eyde priere ne serrez resceu, qar[7] quant a Labbe il est mesme partie pleintif; ne del Ordiner, saunz A.D. 1344.

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[1] According to the roll the declaration was "quod quidam "Nicholaus, quondam Abbas "Sancti Jacobi extra Norham- "tonam, prædecessor prædicti "Abbatis, fuit seisitus de prædicto "annuo redditu ut de jure ecclesiæ "suæ Sancti Jacobi extra Nor- "hamtonam per manus cujusdam "Adæ nuper vicarii ecclesiæ de "Watforde, prædecessoris prædicti "Rogeri, tempore pacis, tempore "Edwardi Regis patris domini "nunc . . . . . et dicit "quod prædictus Nicholaus quon- "dam Abbas, &c., et omnes præ- "decessores sui Abbates, &c., a "tempore quo non extat memoria "seisiti fuerunt de eodem anno "redditu percipiendo in forma "prædicta per manus prædicti "Adæ quondam vicarii, &c., et "omnium prædecessorum suorum "usque ad viginti annos ante diem "impetrationis brevis, &c."

[2] L., B.

[3] L., D.

[4] L., voillez.

[5] L., voilet, instead of vous voletz.

[6] L., Ordeiner. The aid prayer was, according to the roll, "quod "ipse est vicarius ecclesiæ præ- "dictæ, et quod tempore quo fuit "institutus in eadem ipse invenit "vicariam suam exoneratam de "prædicto annuo redditu, et quod "ipse non potest vicariam suam "onerare de eodem annuo redditu "sine Episcopo Lincolniensi, loci "Diocesano, et prædicto Abbate, "ejusdem loci patrono, et petit "auxilium de ipsis Episcopo et "Abbate."

[7] qar is omitted from L.

No. 28.

A.D. 1344. of the Ordinary without having aid of the patron.— And, notwithstanding, aid was granted to him by judgment.

Deceit. (28.) § Note that Deceit was sued upon a recovery on a recognisance,[1] and the garnishers[2] were examined

[1] The original recovery was in an action of Annuity. *See* the other report below, and the extract from the record, p. 355, note 2.

[2] One only according to the record, and the other report below.

No. 28.

aver del patroun, ne devez eyde aver. — Et, *non obstante*, par agarde eyde luy fut graunte.[1] A.D. 1344.

(28.)[2] § *Nota* Desceite fut suy hors dune recoverir hors dune reconisaunce, et en absence des parties Desceite.

[1] It appears on the roll that the Bishop and the Abbot, when summoned, did not appear, and the vicar had to answer without them. His plea was "quod prædictus "Nicholaus, quondam Abbas, præ- "decessor, &c., et prædecessores "sui non fuerunt seisiti de præ- "dicto annuo redditu per manus "prædicti Adæ quondam vicarii, "prædecessoris sui, et etiam "prædecessorum suorum, sicut "prædictus Abbas superius versus "eum narravit."

Issue was joined upon this, and the verdict found was "quod "prædictus Nicholaus quondam "Abbas Domus prædictæ, præde- "cessor ipsius Abbatis qui nunc "est, et omnes prædecessores sui, a "tempore quo non extat memoria, "seisiti fuerunt de prædicto annuo "redditu per manus prædicti Adæ "quondam vicarii prædictæ eccle- "siæ de Watforde et omnium "prædecessorum suorum usque ad "viginti et unum annos ante diem "impetrationis brevis Regis . . ". . . . quod prædictus Ro- "gerus Vicarius . . . . . "prædictum annuum redditum "subtraxit et illum reddere con- "tradixit, ad damnum ipsius nunc "Abbatis sexaginta solidorum, "præter arreragia prædictorum "viginti et unius annorum."

Judgment was accordingly given for the Abbot to recover the annuity, with arrears and damages.

[2] From 25,184 alone, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 59. It there appears that "Præceptum fuit "Vicecomiti (Notinghamiæ), cum "ostensum esset domino Regi ex "parte Prioris de Blida quod "Rogerus filius Ricardi de What- "tone in Curia domini Regis nunc "coram Justiciariis suis hic falso "et in deceptionem ejusdem Curiæ "Regis recuperavit versus eum "per defaltam suam executionem "de viginti et duabus libris de "arreragiis cujusdam annui reddi- "tus quadraginta solidorum, quem "idem Rogerus in Curia Regis "nunc coram Willelmo de Herle "et sociis suis nuper Justiciariis "Regis nunc Itinerantibus in "Comitatu prædicto per considera- "tionem ejusdem Curiæ nunc "recuperavit versus eum, . . . ". . . cum idem Prior nunquam "præmunitus fuit essendi coram "præfatis Justiciariis Regis ad "ostendendum si quid pro se "haberet vel dicere sciret quare "executio prædicta versus eum "fieri non debuit, Vicecomiti præ- "cepit Rex quod distringeret "prædictum Rogerum . . . . ". . . . ad respondendum tam "Regi quam prædicto Priori de "falsitate et deceptione prædictis, "&c. Præcepit etiam Rex Vice- "comiti, sicut prius, quod venire "faceret in Curia hic ad præfatum "terminum Willelmum de Mar- "tone et Johannem de Bartone per "quos mandavit in Curia hic quod

No. 28.

A.D. 1344. in the absence of the parties,[1] and they knew nothing of the garnishment.—Kelshulle gave judgment that the plaintiff should have back that which had been levied from him, and that the person who sued execution should be taken.—*Richemunde* prayed damages.—Hillary. Why more in this case than in a plea of land?—And he had not damages adjudged to him.

Deceit. § The Prior of Blythe brought a writ of Deceit against Roger de Whatton, for that Roger was supposed to have recovered against him an annuity by default upon a *Scire facias* which issued upon a judgment given against one of his predecessors,[2] whereas he was never warned. And he sued a writ to cause the garnishers to come, upon which one of them came by return of the Sheriff on the first day. With regard

[1] It was in the absence only of the party against whom the deceit was alleged. The Prior who brought the writ of Deceit appeared at the same time as the garnisher. *See* the extract from the record, and the other report below.

[2] Against the Prior himself, according to the record. *See* p. 355, note 2.

No. 28.

les garnisours examinez, qe ne savoient rien del garnisement.—Kels. agarda qe le pleyntif reeust ceo qe fut leve de lui, et cely qe suyst execucion pris. —*Rich.* pria damages.—Hill. Pur ceo quey plus qen ple de terre?—*Et non habuit damna adjudicata.* A.D. 1344.

§ Le[1] Priour de Blide porta un brief de Deceite devers Roger de Wattone, de ceo qe Roger dust aver recoveri devers ly un annuite par defaut en un *Scire facias* issu hors dun jugement taille devers un predecessour, la ou il ne fuit unqes garni. Et suist brief de faire vener les garnisours, ou lun vint par retourn de Vicounte a primer jour. En dreit de Desceite. [Fitz., *Disceit*, 42.]

" scire fecerat prædicto Priori quod " esset in Curia hic in Crastino " Purificationis beatæ Mariæ " proxime præterito, ostensurus si " quid pro se haberet vel dicere " sciret quare prædictæ viginti et " duæ libræ de arreragiis prædictis " de terris et catallis suis in " balliva sua fieri, et prædicto " Rogero reddi, non deberent, si, " &c., ad informandum in Curia " hic de præmunitione prædicta, " et quod Vicecomes vel subvice- " comes suus tunc esset in Curia hic " in propria persona sua ad certifi- " candum præfatis Justiciariis hic " de præmunitione prædicta, &c.

" Et modo venit prædictus " Johannes de Bartone. . . . . " Et modo etiam venit prædictus " Prior. . . . Et prædictus " Johannes de Bartone juratus, " et diligenter examinatus dicit " super sacramentum suum quod " ipse nunquam præmunivit præ- " fatum Priorem essendi hic ad " præfatum Crastinum Purifica- " tionis beatæ Mariæ, prout præ- " dictus Vicecomes per returnum " suum supposuit.

" Ideo præceptum est Vicecomiti " quod distringat prædictum Ro- " gerum filium Ricardi per omnes " terras, &c., et quod de exitibus, " &c., et quod habeat corpus ejus " hic in Octabis Sancti Johannis " Baptistæ audiendum inde judi- " cium suum, &c. Ad quem diem " venit prædictus Prior. Et Ro- " gerus non venit. Et Vicecomes " mandat quod idem Rogerus " districtus est per catalla ad " valentiam decem denariorum, et " manucaptus est per [four names]. " Ideo ipsi in misericordia.

" Et consideratum est quod " prædictus Prior rehabeat areragia " annui redditus prædicti, et " damna quæ soluit ratione judicii " prædicti. Et idem Rogerus " capiatur, &c."

[1] This report of the case is from Harl. 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. 29.

A.D. 1344. to the other the Sheriff returned that he had nothing whereby he could be attached. And the Court proceeded to the examination of the one who had come, in the absence of the other, whereupon it was found that he had never warned the Prior. — Therefore *Richemunde* prayed his judgment for the Prior. — Hillary. You shall not yet have judgment, nor until you have sued other process against the party, for, if he had appeared, he might possibly have said something to show that we ought not to have proceeded to examination concerning the deceit, and when he does come he will possibly say something to show why you should not have judgment against him; but you may have a writ to distrain him to come to hear his judgment, if you will.—And *Richemunde* prayed the writ in that manner, and it was granted.—On the day which he had Roger did not appear, and therefore the Court gave judgment that he should be taken, and that the Prior should have back that which he lost by the first judgment, but the Prior did not recover damages.[1] Nevertheless damages were prayed by the party, &c.

Formedon in the remainder.

(29.) § Formedon in the remainder, where land had been leased to one for term of life, the remainder being to two others and their heirs. And the heir of the survivor brought the Formedon in the remainder.—*Moubray.* Judgment of the writ. You see plainly how the heir of one only demands, and it is proved by the specialty that the remainder was limited to the other as well as to him.—*Seton.* That ought not to be a reason why the action should be in any other than us, that is to say, by reason of survival.—*Moubray.* You suppose that the ancestors had nothing,

[1] He did have back the damages which he had had to pay by reason of the previous judgment against him, but did not recover damages in the action of Deceit. *See* p. 355, note 2.

No. 29.

lautre le Vicounte retourna qil naveit rien ou estre attache. Et la Court ala al examinement de ceoly qe fuit venuz, en absence del autre, par quei fuit trove qil ne garnist unqes le Priour. Par quei *Richem.* pria son jugement pur le Priour. Hill. Vous naveretz pas jugement unqore tanqe vous eiez sui autre proces devers la partie, qar, sil ust apparu, il poet aver dist ascune chose par cas qe nous ne dussoms pas aver ale a lexaminement de la desceit, et quant il vendra il dirra ascune chose par cas qe vous naveretz pas jugement devers ly; mes vous averetz brief de ly destreindre de vener et doier son jugement, si vous voillez. — Et *Richem.* le pria en tiel manere, et ceo fuit graunte.—A jour qil avoit il ne vint pas, par quei la Court agarda qe Roger fuit pris, et qe le Priour reust ceo qil perdist par le primer jugement, mes il ne recoveri pas damages. Unqore cel la fuit prie par la partie, &c. A.D. 1344.

(29.)[1] § Remeyndre, ou terre fut lesse a un a terme de vie, le remeyndre a ij, [et lour heirs]. Et le heire[2] cely qe survesquist porta Formedoun en remeyndre.—*Moubray.* Jugement de brief. Vous veez bien coment leir del un soulement demande, et par lespecialte est prove le remeyndre taille a autre si avant come a lui.—*Setone.* Ne deit pas cause pur quei accion serreit en autre qen nous, saver, par survire. — *Moubray.* Vous supposez qe les auncestres Remeyndre. [Fitz., *Briefe*, 361.]

[1] From 25,184 alone, which MS. appears to be corrupt. From p. 361, line 21 to the end of the report, the remainder is made expectant on an estate tail, whereas at the beginning it is expectant on an estate for life, and there are other inconsistencies.

[2] MS., les heirs, instead of le heire.

No. 29.

A.D. 1344. in which case survival is of no importance.—Willoughby. Do you not suppose that survival serves as well for a right in action as for a right vested in possession? as meaning to say that all is one.—*Grene.* Suppose that, after the death of the tenant for term of life, the land had been limited to the right heirs of two strangers, in that case the survival of the heir of one of them would not give an action to him alone without mentioning the heirs of the other; and it is the same case as that which we now have in hand, since the persons to whom and to whose heirs the remainder was limited never had anything.—Hillary. It is quite a different case; and, moreover, in the case which you put, according to the interpretation of some people, the survivor alone would have an action.—Willoughby. Your plea is to the action if you abide judgment.—*Moubray* imparled, and then demanded judgment of the writ, on the ground that the survival of the ancestor is not supposed by the writ (and the remainder is not proved to be in him otherwise than by survival), and so matter set forth in his writ which would prove the action to be in him.—Sharshulle. He has made that point clear in his count, and it need not be in the writ; therefore answer.—*Moubray.* The words of the writ are "*et quæ post mortem Margeriæ*," to whom the gift was made in tail, "*et Mabillæ filiæ et heredis Margeriæ, &c.,*" and of the two daughters to whom the remainder was limited, "*remanere debent*" to the demandant as cousin and heir of one of those in the remainder, "*et quod prædicta Mabilla obiit sine herede de corpore suo exeunte*," whereas no remainder is limited in such a form as is supposed by the writ; but the writ supposes at the commencement that, if Margery should die without heir of her body, the others would have the remainder.—*Seton.* We have counted that Mabel was seised as issue in tail, wherefore, by default of issue from her, the land ought by

No. 29.

navoient rienz, en quel cas survire nest pas a charger. A.D. 1344.
—Wilby. Quidez vous pas qe survire seert auxi bien a dreit en accion come de dreit vestu en possessioun? *quasi diceret* tut est un.—*Grene.* Jeo pose qapres le deces le tenant a terme de vie la terre ust este taille as dreits heirs ij estranges persones, le survire en tiel cas de leir lun ne durra pas accion a lui soul saunz nomer les heirs lautre; et mesme le cas est ore entre meyns, desicome ces a qi et lour heirs le remeyndre fut taille unqes navoient rien.—Hill. Cest tut autre cas; et uncore en le cas qe vous mettes, al entente dasquns gentz, cely qe survyereit avereit soul accion.—Wilby. Vostre plee est al accion si vous demurez.—*Moubray* emparla, et demanda jugement du brief, pur ceo qe par le brief nest pas suppose le survire del auncestre, et autrement nest pas prove le remeyndre en lui, sil ne fut par survire, et issint matere fait en soun brief qe provereit accion en lui.—Schar. Cel poynt ad il desclare el count, [et] en le brief ne serra il pas; par quei responez.—*Moubray.* Le brief voet *et quæ post mortem Margeriæ*, a qi le doun fut fait en taille, *et Mabillæ filiæ et heredis Margeriæ, &c.*, et les deux filles, as queux le remeindre fut taille, al demandant come a cosyn et heir lun de ces en le remeyndre, *remanere debent, et quod prædicta Mabilla obiit sine herede de corpore suo exeunte*, ou sur tiele fourme nul remeyndre est taille, come suppose est par le brief; mes le brief suppose a comencement qe si Margerie deviast saunz heir de soun corps qe les autres averount le remeyndre.—*Setone.* Nous avoms counte qe Mabille, com issue en taille, fut seisi, par quei, par defaut dissue de lui, deit la terre

No. 30.

A.D. 1344 the limitation to remain to the person who was last seised.—*Moubray.* You would have a good writ, even though two or three in the descent had been seised in accordance with the form, after the form had come to an end, by showing the reversion to the original donor, supposing him to have died without issue, and that would be more in accordance with the gift.—SHARSHULLE. I can never grant you that.—*Seton.* No, Sir, it would be false, because he did not die without issue.—*Moubray.* What have you to show the remainder?—*Seton* made *profert* of a specialty, in which there was the word "*redibunt*," whereas it ought to have been "*remanebunt*."—And, notwithstanding, he did not dare to abide judgment, on account of the opinion of the COURT, but he traversed the form of the gift.

Avowry. (30.) § Note than in avowry for rent charge the person who was party, and tenant of the land, was a stranger to the deed.—*Moubray.* He did not charge by this deed; ready, &c.—*Pole.* He did charge by the deed; ready, &c.—And the other side said the contrary.

No. 30.

remeyndre a cely qe drein fut seisi par la taille.— *Moubray.* Vous averez bon brief, tut fuissent ij ou iij en la descent seisi par la fourme, apres la fourme cesse, de reversion al primer donour,[1] supposaunt lui estre mort saunz issue, et ceo serroit plus acordaunt al doun.— Schar. Ceo ne vous grauntera jeo pas. —*Setone.* Noun, Sire, ceo serreit faux, qar il murust pas saunz issue.—*Moubray.* Quey avez del remeindre? —*Setone* mist avant especialte, qe voleit *redibunt*, ou il duist estre *remanebunt*.—Et, *non obstante*, il nosa pas demurer, *propter opinionem* Curiæ, mes traversa la fourme. A.D. 1344. [Fitz., *Feffements et Faits*, 61.]

(30.) [2] § *Nota* qen avowere de rente charge, celuy qest partie et tenant de la terre fut estraunge au fait.[3]—*Moubray.* Il ne chargea pas par ceo fait; prest, &c.[4]—*Pole.* Il chargea par le fait; prest, &c. —*Et alii e contra.*[5] Avowere.

[1] MS., done.

[2] From 25,184 alone. The case appears to be that which is found among the *Placita de Banco*, Trin., 18 Edw. III., R° 154. An action of Replevin was brought by Roger Folejaumbe, of Longusdene, against Robert de Shalcros, in respect of a taking of beasts at Little Longusdene (Longstone, Derbyshire).

[3] According to the roll the avowry was "quod quædam Margeria de "Parva Longusdene, quondam "uxor Henrici Folejambe, fuit "seisita de medietate manerii de "Parva Longusdene, cum perti- "nentiis, in dominico suo ut de "feodo et jure, quæ quidem "Margeria concessit cuidam Ri- "cardo filio suo et cuidam "Johannæ filiæ Nicholai de "Ingwardeby et heredibus inter "eos legitime procreatis quendam "annuum redditum quinque mar- "carum" with a clause for distress, "de quibus Ricardo et Johanna "exivit quædam Margeria quæ "nunc est uxor prædicti Roberti, "cui quidem Margeriæ prædictus "redditus descendit ut filiæ et "heredi," and the taking was for arrears of this annual rent. "Et "profert hic in Curia quoddam "scriptum sub nomine prædictæ "Margeriæ de Parva Longusdene "quod concessionem prædictam "testatur in forma prædicta."

[4] According to the roll the plea was "quod prædicta Margeria de "Parva Longusdene non oneravit "prædictam medietatem manerii "de Parva Longusdene de præ- "dicto annuo redditu per prædic- "tum scriptum." Issue was joined upon this plea.

[5] According to the roll, Shalcros did not appear on the day

Nos. 31, 32.

A.D. 1344. Trespass. (31.) § Note that in the King's Bench exception was taken to a bill touching goods carried off, on the ground that between the same parties there was a writ pending in respect of the same trespass in the Common Bench, upon which writ the parties were at issue.—*Seton.* The law does not put us to answer to that, and that is not a mischief, because, if we recover in this Court, you can allege the fact in that Court, and *e contra*; wherefore, in this personal plea, unless you were to allege that we had heretofore recovered damages in respect of the same trespass, it is nothing to the purpose.—*Midelton.* That cannot be so, because, since we have pleaded to issue in another Court, if you were to be answered in this Court, then, should you recover in this Court, we should never be admitted to allege the fact afterwards in the other Court; and so it would follow that we should be twice charged, because we have at our peril pleaded to issue; wherefore we must necessarily have this exception now.

Aid. (32.) § A tenant for term of life prayed aid of the heir of one with whom he purchased jointly from three chaplains to hold to him and to the heirs of his joint feoffee, and he prayed that the parol might demur by reason of the non-age of the prayee.—*Grene.* He ought not to have aid, because we tell you that the chaplains never had anything.—*Thorpe.* You must speak as to our estate, for, whether the chaplains had anything or not, that cannot make an issue, because that does not destroy the cause of our prayer: for by whosesoever lease I hold, if I have only a term for life, and the right is in another, I shall have aid.—*Grene.* Will it not be a good issue that you hold

Nos. 31, 32.

(31.) [1] § *Nota* en Bank le Roy un bille des biens emportes fut chalenge, pur ceo qe entre mesmes les parties y avoit de mesme le trespas brief pendaunt el Comune Bank, sur quel brief les parties furent a issue.—*Setone.* A ceo ley ne nous met pas a respoundre, ne ceo nest pas meschief, qar si nous recoveroms icy, vous le poetz allegger la, et *e contra*; par quei, en ceo plee personel, si vous nalleggeasses qe de mesme le trespas nous ussoms autrefoith recovery[2] damage, nest pas a purpos.—*Midel.* Ceo ne poet estre, qar, quant nous avoms pledee a issue en autre place, et vous fustez respondu icy, tut recoverez vous cy, nous serroms pas resceu dallegger le apres en autre place; et issint ensuereit qe nous serroms ij foith charge, pur ceo qe nous avoms a nostre peryl plede a issu; par quei il covynt a force qe nous leyoms a ore. A.D. 1344. Trespas.

(32.) [1] § Tenant a terme de vie pria eide del heir cely ove qil purchacea joynt de iij chapeleyns et a les heirs son joynt feffe, et par nounage del prie pria qe la parole demurast.—*Grene.* Eide ne deit il aver, qar nous vous dioms qe les chapeleyns navoient unqes rien.—*Thorpe.* Vous parlerez a nostre estat, qar, avoint ils ou noun, ceo ne fra pas issue, pur ceo qe ceo ne destruit pas la cause de nostre priere: qar de quicunqe lees jeo tyenk, si jeo ney qe terme de vie, et le dreit en autre, javeray eide.—*Grene.* Ne serra ceo bon issue qe vous ne tenez rien de Eide.

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given, and the *jurata* was taken against him by default, the verdict being "quod prædicta Margeria de "Parva Longesdene non oneravit "prædictam medietatem manerii "de Parva Longusdene de præ- "dicto annuo redditu quinque "marcarum per scriptum ipsius "Margeriæ, sicut prædictus Ro- "bertus asserit, ad damnum ipsius "Rogeri quadraginta solidorum." Judgment was given "quod "prædictus Rogerus recuperet "versus eum damna prædicta, "et idem Robertus in misericordia, "&c."

[1] From 25,184 alone.

[2] MS., covery.

No. 33.

A.D. 1344. nothing by lease from the chaplains? For the same reason I shall have this plea in order to destroy the cause of your prayer.—*Thorpe* said *gratis* that they were seised and leased.—*Grene.* They had nothing; ready, &c.—*Thorpe.* They were seised, and leased; ready, &c.—And so to the country.

Entry. (33.) § Entry against Henry Vavasour.—*Moubray*, as to parcel, alleged that he had lost it by execution of a fine levied at a time earlier than that of the purchase of the writ; judgment of the writ.—*Richemunde.* Answer as to the rest.—*Moubray.* It is not necessary.—*Blaykestone.* If you allege non-tenure of parcel on the day on which the writ was purchased, that abates the whole writ; but since you were fully tenant on the day on which the writ was purchased, and have lost parcel while the writ was pending, the writ will abate with respect to that portion alone.—*Grene.* We tell you that, when the *Scire facias* was sued against him to have execution upon the fine, he pleaded, in avoidance of the fine, that not one of the parties was seised, which plea was insufficient, because he did not show that any one else was seised at that time, and so his plea was feigned, and on that feigned plea execution was awarded, and neither that plea nor recovery upon it can abate the writ, since the action was not tried, and so the writ is not abatable with regard to any parcel: for when any one who has no right in the demand so recovers by default or feigned plea against one against whom I have brought my writ at an earlier time than he brought his, the first writ is not abated, but upon execution of the judgment the dispute by way of Assise will fall between him and me upon the right, and if he who so pleaded a feigned plea, by reason of which he lost, had only a term for life, the person to whom the reversion belonged might enter.—Sharshulle. Do you believe that, where a

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lour lees? Par mesme la resoun averay jeo ceo plee pur destruire la cause de vostre priere.—*Thorpe gratis* dist qils furent seisiz et lesserent.—*Grene.* Ils navoient rien; prest, &c.—*Thorpe.* Seisi, et lessant; prest, &c.—*Et sic ad patriam.* A.D. 1344.

(33.) [1] § Entre vers Henre Vavasour.—*Moubray,* quant a parcelle, alleggea qe par execucion dune fyn leve deygne temps qe le brief nest il avoit perdu; jugement du brief.—*Rich.* Responez de remenant.—*Moubray.* Ne bosoigne pas.—*Blayk.* Si vous alleggez noun tenure, jour de brief purchace, de parcelle, cel abat tut le brief; mes quant vous fuistes pleynement tenant jour de brief purchace, et pendaunt le brief vous avez perdu parcelle, brief nebatera forqe de la porcioun.—*Grene.* Nous vous dioms qe quant le *Scire facias* fust suy vers lui daver execucion hors de la fyn, il pleda qe nul des parties fust seisi, en voidaunce de la fyn, quel plee ne fust pas suffisaunt, pur ceo qil ne moustra pas autre estre adonqes seisi, et issint soun plee feynt, sur quel plee feint execucion fut agarde, quel plee, ne recoverir sur cel, put brief abatre, del houre qe laccion fut pas trie, issint le brief abatable de nul parcelle: qar quant homme qe nul dreit en ad recovere [2] issint par defaut ou feint plee vers un sur qi jay porte mon brief deigne temps qil ne porta le soen, homme nabat pas le primer brief, mes sur lexecucion del jugement le debat par Assise cherra entre lui et moy sur le dreit, et si cely qe pleda issint feyntement, par quei il perdist, navoit qe terme de vie, cely a qi la reversion appendoit purra entrer.—Schar. Quidez vous cella, la ou homme perd par Entre.

[1] From 25,184 alone.

[2] In the MS. this word is inserted by interlineation in a later hand.

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A.D. 1344. man loses by discretion of the Court on a mispleading, and not by render, nor by default, nor by non-denial, the person to whom the reversion belongs can enter? I wish that were law.—Willoughby. That is not law. —Hillary adjudged that he must answer as to the rest of the land.

Quare impedit. (34.) § *Quare impedit* for the King against "*electum confirmatum Herefordensem ad præbendam de Murtone majorem in ecclesia de Herefordia.*"—*Derworthy.* Between the words "*electum*" and "*confirmatum*" an "*et*" is wanting, because there cannot be two additions without the copulative "*et.*"—And this exception was not allowed.—*Derworthy.* "*Ad præbendam de Murtone majorem*" is false Latin, because it ought to be "*majori.*"—*W. Thorpe.* There are in the church two prebends of Moreton, the greater and the less, so that the word "*majorem*" has relation to the prebend, and not to the vill of Moreton.—*Derworthy.* Then the writ ought to be in the words "*ad præbendam majorem in M.*"—This exception was not allowed.—*Derworthy.* There are two Moretons, that is to say, the less and the greater; and it is not determined by the writ in which Moreton the prebend is; judgment of the writ. —*W. Thorpe.* The prebend is always in the church, and so the writ supposes by the words "*ad præbendam in ecclesia, &c.*"; and the word "Moreton" in the writ is there only for the purpose of determining which prebend is demanded; wherefore, unless you say that there are two Moretons, and a prebend in each of them, and so known to be, you do not answer, because a *Quare impedit* will be brought in accordance with the manner in which the subject of demand is known, and by that name, or else I might bring a *Quare impedit* in respect of a prebend when there is no such prebend in existence.—*R. Thorpe.* A *Quare impedit* must be brought in a vill just as much as a

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descrecioun de Court sur mespleder, et noun par rendre, ne par defaut, ne nient dedire, qe cely a qi la reversioun appent puit entrer? Jeo vodray qe ceo fut ley.—Wilby. Ceo nest pas ley.—Hill. agarda qil respoundist del remenant. A.D. 1344.

(34.) [1] § *Quare impedit* pur le Roy vers *electum confirmatum Herefordensem ad præbendam de Murtone majorem in ecclesia de H.—Der.* Entre *electum confirmatum* faut un *et*, qar ij adjeccions ne pont estre saunz copulacion de *et.—Et non allocatur.—Der. Ad præbendam de Murtone majorem* est faux Latyn, qar il serreit *majori.*—[*W.*] *Thorpe.* En leglise sount ij provendres de Murtone, la greyndre et la meyndre, issint qe le *majorem* ad relacioun ad *præbendam*, et noun pas a la ville de Murtone.—*Der.* Dounqes serreit le brief *ad præbendam majorem in M.—Non allocatur.—Der.* Il y sount ij Murton, saver, le meyndre et le greyndre; et par le brief nest par determine en quel Murtone la provendre soit; jugement de brief.—[*W.*] *Thorpe.* La proveandre est touz jours en leglise, et ceo suppose le brief *ad præbendam in ecclesia, &c.*; et ceo qe le brief voet de Murtone ceo nest forqe a determiner quel provandre est demande; par quey si vous ne diez [2] qils y sount ij Murtone [et] provandre en lun et lautre, et issint conu, vous ne responez, pur ceo qen la manere quele est conu, et par tiel noun, serra *Quare impedit* porte, ou autrement jeo porteray *Quare impedit* dune provandre ou il ny ad nul tiele.—*R. Thorpe. Le Quare impedit* covient estre porte en ville auxi avant come *Quare impedit.* [Fitz., *Briefe*, 362.]

From 25,184 alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 232, d. It there appears that the action was brought by the King to whom "Johannes Electus Herefordensis "confirmatus" was summoned to answer, "de placito quod per- "mittat ipsum præsentare idoneam "personam ad præbendam de "Moretone Majorem in ecclesia "Sancti Ethelberti Herefordiæ."

[2] MS., dediez.

No. 35.

A.D. 1344. *Præcipe*, wherefore it must be determined in what vill. —*W. Thorpe.* What if the prebend be in two counties —where shall the writ be brought?—*R. Thorpe.* Where the substance and the body of the prebend are.[1]

Dower. (35.) § Dower for a woman.—*Pole.* We tell you that heretofore, after the death of her husband, all the lands were seised into the King's hand by *Diem clausit extremum*, and she was endowed in the Chancery of the same lands of which she is seised; judgment whether she can have an action.—*Blaykeston.* We tell

[1] There are, at present, three prebends of Moreton in the Cathedral Church of Hereford, viz., Moreton Parva, Moreton and Whaddon, and Moreton Magna.

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Præcipe, par quei ceo serra determine en quel ville. A.D. 1344.
—[*W.*] *Thorpe*. Quai si la provendre soit en ij Countes, ou serra le brief porte?—*R. Thorpe*. La ou le gros et le corps de la provandre est.[1]

(35.)[2] § Dowere pur femme.—*Pole*. Nous vous dioms qautrefoith, apres la mort son baroun, totes les terres par *Diem clausit extremum* furent seisiz en la mayn le Roi, et ele en la Chauncellerie dowe de mesmes les terres dount ele est seisi; jugement si accion puisse aver.[3]—*Blayk*. Nous vous dioms qa Dowere. [Fitz., *Dower*, 61.]

[1] According to the roll the King claimed the presentation "ratione "Episcopatus Herefordensis nuper "vacantis et in manu Regis "existentis," and on the ground that the prebend became vacant while the temporalities were in his hand. The Bishop traversed the vacancy while the temporalities were in the King's hand, and issue was joined thereon. The verdict was "quod præbenda de Moretone non "fuit vacans tempore quo tem-"poralia Episcopatus Hereford-"ensis fuerunt in manu domini "Regis post mortem ejusdem "Thomæ de Cherletone nuper "Episcopi Herefordensis, immo "præbenda fuit plena de quodam "Adam de Herwyntone per quen-"dam Adam de Orletone nuper "Episcopum Herefordensem ad "eandem præbendam præsentato "per totum tempus quo temporalia "prædicta in manu domini Regis "extiterunt."

Judgment was given "quod "prædictus Electus recuperet præ-"sentationem suam ad præbendam "prædictam, et habeat breve "Episcopo loci Diocesano," &c.

[2] From 25,184 alone, but corrected by the record *Placita de Banco*, Trin., 18 Edw. III., R° 241. It there appears that the action was brought by Simon de Herford, of West Rasen, and Mabel, his wife, against the Abbot "de Rupe" (of Roche), in respect of a third part of the manor of Roxby, except six messuages and six bovates of land, and against several others in respect of a third part of several tenements in the vill of Roxby (Lincolnshire), as Mabel's dower "ex dotatione Johannis Paynelle "quondam viri, &c."

[3] As to part of what was demanded against him, the Abbot, according to the roll, pleaded non-tenure, and as to the rest "quod præ-"dictus Johannes Paynelle, quon-"dam vir, &c., tenuit de domino "Edwardo avo domini Regis nunc "in capite, ita quod post mortem "ipsius Johannis Paynelle præ-"dictum manerium de Roxby, et "manerium de Westrasen in "Comitatu prædicto, et manerium "de Southcome in Comitatu "Dorsetiæ, et manerium de Drax "in Comitatu Eboraci, de quibus "idem Johannes Paynelle obiit "seisitus, seisita fuerunt in manum "ipsius Edwardi Regis avi, &c." [each of which manors was extended at a certain sum *per annum*, that of West Rasen, at

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A.D. 1344. you that at the time of this endowment she was under age; and we tell you, as will appear by the extents, that she was not endowed of the third part by a large portion; judgment whether by such acceptance of dower during her non-age she ought to be barred.—*Pole.* And we demand judgment, inasmuch as she has confessed that she was endowed in a Court of record, which endowment is in satisfaction of the whole, &c.—Willoughby, *ad idem.* A lady will never be

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temps de cel dowement ele fut deinz age; et vous dioms, come purra apparer par les extentes, ele ne fut pas dowe de la terce partie par graunt porcioun; jugement si par tiel resceit de dowere duraunt son nounage deyve estre barre.[1]—*Pole.* Et nous jugement, desicome ele ad conu qele fut dowe en Court de recorde, quele dowement est en allowaunce de tut, &c.[2]—Wilby *ad idem.* Dame en Chauncellerie A.D. 1344.

39*l.* 18*s.* 4½*d.*] "Et dicit quod "prædicta Amabilla secuta fuit in "Cancellaria ejusdem Regis Ed- "wardi avi, &c., pro dote sua "habenda, ita quod de tenementis "prædictis assignatæ fuerunt præ- "dictæ Amabillæ viginti et octo "libratæ et novem solidatæ et una "denarata terræ et redditus in "prædicti manerio de Westrasen "per prædictum Regem Edwardum "avum, &c., in Cancellaria sua, in "allocationem totius dotis ipsam "de maneriis prædictis contingente "[*sic*], de quibus quidem viginti "et octo libratis novem solidatis, "et una denarata terræ et redditus "in prædicto manerio de Westrasen "eadem Amabilla adhuc seisita "est, et fuit die impetrationis "brevis . . . . . Et petit "judicium si prædicti Simon et "Amabilla dotem ipsius Amabillæ "de prædicto manerio de Roxby "habere debeant. Et profert hic "idem Abbas tenorem assignati- "onis prædictæ in forma prædicta "factæ, et inclusum in quodam "brevi domini Regis Justiciariis "hic directo, quæ sequitur in "hæc verba." The writ, with the extents of the lands and the assignment of dower, is then set out at length.

[1] The replication was, according to the roll, "Simon et Amabilla "dicunt quod prædictus Abbas "ipsos ab actione dotis ipsius "Amabillæ ratione assignationis "dotis prædictæ præcludere non "debet, quia dicunt quod tempore "assignationis prædictæ prædicta "Amabilla fuit infra ætatem, et "manerium de Westrasen prædic- "tum minus sufficienter extende- "batur, quia valet per annum "centum marcas, et assignatio "prædicta in jure citius dici debet "secta heredis ejusdem Johannis "Paynelle pro commodo suo "proprio et in præjudicium præ- "dictæ Amabillæ facta quam secta "ipsius Amabillæ, et, ipsa Ama- "billa posita ad actionem suam "dotis sequendam, petunt judicium "et seisinam dotis prædictæ, &c."

[2] According to the record "Abbas "dicit quod ex quo prædicti Simon "et Amabilla non dedicunt quin "prædicta Amabilla post mortem "prædicti Johannis Paynelle "quondam viri ipsius Amabillæ "secuta fuit in Cancellaria Regis "Edwardi avi, &c., pro dote sua "habenda et quin prædictæ viginti "et octo libratæ, novem solidatæ, "et una denarata terræ et redditus "in prædicto manerio de Westra- "sen assignatæ fuerunt eidem Am- "abillæ in allocationem totius dotis "suæ ipsam de maneriis prædictis "contingente [*sic*], et quin ipsa

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A.D. 1344. endowed in Chancery before the lands have been extended, and, if she will aver that the lands have been badly extended, she can have a re-extent, and if she does not pray that, but is endowed, accepting the first extent, and possibly has less than she rightly ought to have, that is her fault. Therefore when the King renders the rest to the heir, it is not right that she should be endowed a second time.—*Thorpe.* Even though a woman under age may take a certain portion in satisfaction of the whole of her dower, the law will favour her, at her full age, so that she may be again endowed of the rest. And suppose that the inheritance had remained in the King's hand, still she would be aided by having a re-extent, &c., and by being again endowed; for the same reason she will have an action against the heir after livery has been made to him: for, when the King is seised of an inheritance after the death of his tenant, if the wife does not sue for her dower, the King renders the whole to the heir, saving her dower to the wife; and then the wife will sue by common law against the heir, and there is no need for her to cause a re-seizure into the King's hand.—Willoughby. I have never heard that after a woman had been endowed in Chancery, and the dower had been accepted for her, she has been endowed a second time, after her process.

Entry. (36.) § Writ of Entry brought by one Alice.[1]—*Grene.*

[1] For the name in full *see* p. 375, note 2.

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serra jammes dowe avant qe les terres soient estenduz, A.D. 1344. et, si ele voet [averer] qe les tenementz soient malement estenduz, ele put aver reestent, et si ele ne prie pas cella, mes, agreant la primere estente, ele est dowe, et par cas eyt meins quel de resoun dust aver, cest sa defaut. Donqes, quant le Roi rende al heir le remenant, nest resoun qele soit autrefoith dowe.—*Thorpe.* Mesqe femme deinz age preigne certeyn porcioun en allowaunce de tut son dowere, la ley la favora, a son pleyn age, dautrefoith estre dowe del remenant. Et jeo pose qe leritage ust demure en la mayn le Roy, uncore ele serra eyde reestendre, &c., et autrefoith dowe; par mesme la resoun vers leir apres la livere fait a lui ele avera accion: qar, quant le Roy est seisi dun heritage apres la mort son tenant, si la femme ne suyt pas pur son dowere, le Roi rend tut al heir, savaunt a la femme son dowere; et donqes la femme suera par comune ley vers leir, et ne bosoigne pas qele face reseisser en la mayn le Roi.—Wilby. Jeo nay pas oy qapres femme fut dowe en Chauncellerie et accepte pur lui qele autrefoith fuit dowe puys soun proces.[1]

(36.) [2] § Entre par un A.—*Grene.* Nous dioms qe Entre. [Fitz., *Cui in vita, et ante devorcium*, 8.]

" continue seisita fuit de prædictis " viginti et octo libratis, novem " solidatis, et una denarata terræ " et redditus in prædicto manerio " de Westrasen, et adhuc iidem " Simon et Amabilla inde seisiti " sunt, et fuerunt die impetrationis " brevis, &c., petit judicium si " prædicti Simon et Amabilla " actionem dotis prædictæ versus " ipsum habere debeant, &c."

[1] According to the roll "Postea " prædicti Simon et Amabilla " solemniter vocati non sunt prose- " cuti."

Judgment was therefore given for the tenants. This is in accordance with the different report evidently used by Fitzherbert for his *Abridgment*.

[2] From 25,184 alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 240 d. It there appears that an action of *Cui in vita* was brought by Alice, late wife of Andrew Payn, against Nicholas de Exonia in respect of a messuage in Winchester, into which the tenant had not entry " nisi per Thomam de " Aune."

No. 36.

A.D. 1344. We tell you that by the custom of Winchester, where the tenements are, if a husband and his wife make a feoffment, and the wife comes into their Court there, and acknowledges that it is her wish, she is barred for ever, and we tell you that A.,[1] by whom our entry is supposed, and B.[1] enfeoffed us by this deed of the same tenements, which were of the right of the wife, whereupon she, being examined in the Court, &c., acknowledged that it was her wish, and this B. is still living, and so we entered by A. and B. his wife; judgment of the writ.—*Derworthy.* You entered by the husband alone, as the writ supposes; ready, &c.—*Grene.* You shall not be admitted to that, because it would be in avoidance of the entry which we show, and which is of record; wherefore, unless you will show that the entry was at another time, you shall not be admitted. —This exception was not allowed.—Therefore the averment was taken on the traverse of the entry.

[1] For the name *see* p. 377, note 1.

No. 36.

par usage de Wycestre, ou les tenements sount, si le baroun et sa femme facent feffement, et la femme viengne en lour Court illoeqes, et conusse qe cest sa volunte, ele est barre a touz jours, et vous dioms qe A., par qi nostre entre est suppose, et B. de mesmes les tenementz, qe furent de dreit la femme, nous fefferent par ceo fait, sur quei ele examine en la Court, &c., conust qe ceo fut sa volunte, la quele B. est en pleyn vie, et issint entrames par A. et B. sa femme; jugement de brief.[1]—*Der.* Vous entrastes par le baroun soul, come le brief suppose; prest, &c.—*Grene.* A ceo ne serrez resceu, qar ceo serreit en voidaunce de lentre quel nous moustroms, quel est de recorde; par quei si vous ne moustres a autre temps lentre vous ne serrez a ceo resceu.—*Non allocatur.*—Par quei laverement est pris sur le travers del entre.[2] A.D. 1344.

[1] The plea was, according to the roll, "quod de consuetudine in- "civitate Wyntoniæ a tempore quo "memoria non existit obtenta et "approbata, si viri et eorum "uxores de tenementis quæ sunt "de jure uxorum suarum seu "etiam de perquisito eorundem "virorum et uxorum, &c., aliquem "feoffaverint, et hujusmodi uxores "postmodum in Curia Civitatis "prædictæ coram Maiore et ballivis "ejusdem Civitatis venerint et "confessæ et examinatæ hujusmodi "feoffamentis consenserint, &c., "et ea ratificaverint, &c., hujus- "modi feoffamenta vim et effectum "finis in Curia domini Regis "levati obtinent, et semper hac- "tenus obtinere solebant, &c. Et "dicit quod prædictus Thomas de "Aune, per quem prædicta Alicia "per breve suum prædictum sup- "ponit ipsum Nicholaum habere "ingressum in prædicto mesuagio, "et quædam Juliana uxor ejusdem "Thomæ de prædicto mesuagio "quod fuit de perquisito ipsorum "Thomæ et Julianæ ipsum Nicho- "laum feoffaverunt, et eadem "Juliana postea in Curia ejusdem "Civitatis coram Maiore et ballivis "ejusdem Civitatis inde confessa "et examinata feoffamento illo "consensum attribuit, et illud "secundum consuetudinem præ- "dictam ratificavit, &c., et ita "habuit ipse ingressum in præ- "dicto mesuagio per prædictos "Thomam et Julianam, et non "per ipsum Thomam tantum, &c. "Et hoc paratus est verificare, "unde petit judicium de brevi, "&c."

[2] The replication, upon which issue was joined, was according to the roll, "Alicia, non cognoscendo "prædictam consuetudinem, &c., "dicit quod prædictus Nicholaus "per hoc breve suum cassare non

Nos. 37, 38.

A.D. 1344. Intrusion.[1] (37.) § Note that where a husband and his wife entered upon a purchase made by the wife's villein, the wife's heir pleaded in bar [a deed] of the demandant's ancestor made with warranty to the villein, and made his conclusion that by the warranty the right was extinguished in the blood.—*Thorpe*. He is a stranger to this deed; judgment whether this plea lies in his mouth.—Willoughby. Will you have warranty by this deed?—*Grene*. What of that? It does not prove that I shall not bar him, since the clause of warranty extinguishes right as much as a release does. —*Thorpe*. It has been heard that the heir of an assign, because he was within the degree of his ancestor, has barred by warranty, although possibly he could not have vouched; but here he is not in the like case, because even though the husband's entry might be adjudged to be in right of his wife as the person in whom the freehold abides after such entry, still the wife and her heirs are quite out of the course in which the villein was, and cannot claim anything from him.—*Grene*. Suppose that my very tenant has a right and a defence in a certain land by a warranty, and afterwards the land escheats to me by forfeiture, you will say, for that reason, that I shall not bar by the deed. The conclusion is false.—Willoughby. You will never bar, in that case, by warranty.

Audita Querela. (38.) § Note. Execution on a statute merchant was sued against three persons, of whom one was under age; and he sued an *Audita Querela*, and judgment was given by the Court that he should be discharged, because he was found by inspection to be still under age.

[1] Though this case is described, in the margin of the MS., as one of Intrusion, it bears a strong resemblance to No. 57 below, which is a *Sur cui in vita*. The latter is not improbably a better report of the same proceedings, and is made clearer by the record.

Nos. 37, 38.

(37.) [1] § *Nota* qe ou baroun et sa femme entrent en le purchaz le vileyn la femme, leir la femme pleda en barre ov garrauntie launcestre le demandant fait a vileyn, et fist conclusioun qe par le garrauntie le dreit fut esteint en le sank.—*Thorpe.* Il est estraunge a ceo fait; jugement si en sa bouche gise.—Wilby. Averez vous garrauntie par ceo fait? —*Grene.* De ceo quei? Ceo ne prove pas qe jeo ne ly barre del houre qil esteynt dreit la clause de garrauntie si avant come reles.—*Thorpe.* Homme ad oy qe leir dassigne, pur ceo qil fut en le degree de soun auncestre, ad barre par garrauntie, tut ne put il par cas aver vouche; mes icy nest il pas en tiel cas, qar tut ajugeast homme lentre le baroun en le dreit sa femme, come cest dount en qi le fraunctenement demoert apres tiel entre, uncore la femme et ses heirs sont tut hors de cours en quel le vileyn fut, et de lui puyt rien clamer.—*Grene.* Jeo pose qe mon verrai tenant eit dreit et defens en une terre par un garrauntie, et puys par forfaiture la terre moy eschete, vous dirrez par cel resoun qe jeo ne barroy pas par le fait. *Consequens falsum.*—Wilby. Vous barrez jammes en le cas par garrauntie. A.D. 1344. Intrusioun.

(38.) [2] § *Nota.* Statut marchaunt suy vers iij dount un fut deinz age, qe suyst *Audita Querela*, qe fut par agarde de Court descharge, *quia adhuc infra ætatem per inspectionem.* *Audita Querela.*

" debet, dicit enim quod prædictus " Nicholaus habuit ingressum in " prædicto mesuagio per prædictum " Thomam, prout ipsa per breve " suum supponit, et non per feoffa- " mentum prædictorum Thomæ et " Julianæ, prout prædictus Ni- " cholaus superius placitando allegavit."

The *Venire* was awarded, but nothing further appears, except an adjournment.

[1] From 25,184 alone.

[2] From 25,184 alone, until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 189. It there appears that Thomas Colle, of Shrewsbury, Hugh Colle, and John Colle, brother of Hugh, were bound in a statute merchant to Hildebrand Suderman " attornato " Ducis de Gerle" for £250.

No. 38.

A.D. 1344. Statute merchant.

§ Thomas Colle, John Colle, and Hugh Colle acknowledged themselves to be bound to one Hildebrand in a certain sum of money, to be paid on a certain day, on which day they did not pay, wherefore Hildebrand sued until Hugh's body was taken, and part of the lands was delivered in execution. Then, afterwards, Thomas and the others, after advising together, made their suggestion in the Chancery that this same Hildebrand had made an acquittance to them of this same debt, and, notwithstanding his deed, had sued execution, whereupon they had an *Audita Querela* directed to the Justices of the Bench, in the words "*quod vocatis partibus coram eis, &c.*," in virtue of which writ the Justices sent a writ to the Sheriff to cause Hildebrand to come, and also Thomas and the others. Hugh came conducted by the Sheriff, as he was remaining in custody in the Fleet.[1] Thomas appeared by attorney. And John did not appear. With regard to Hildebrand the writ was not served. And, as to Hugh, the Court considered upon inspection that he was under age, and therefore judgment was given that he should go quit. This was extraordinary, because Hildebrand was not present. — As to the

[1] In Newgate according to the record, p. 381, note 3.

No. 38.

A.D. 1344. Statute marchaunt. [Fitz., *Enfant*, 6.]

§ Thomas[1] Colle, Johan Colle, et Hughe Colle se conustrent estre tenuz a un H.[2] en un certein summe de deniers, a paier a un certein jour, a qel jour ils ne paierent pas, par quei H.[2] suy taunt qe corps H. fuist pris, et partie de terres liveres en execucion. Puis apres T. et les autres par lour avys firent lour suggestion en la Chauncellerie qe meisme cesti H.[2] lour avoit fait acquitaunce de meisme la dette, et, nient countresteaunt son fait, qil avoit sui execucion,[3] sur qi ils avoient une *Audita Querela* as Justices de Baunk *quod vocatis partibus coram eis, &c.*, par force de qel brief les Justices maunderent brief a Vicounte de faire venir H.,[2] et auxint T. et les autres.[4] Hughe vint par le Vicounte et demura en garde de Flete. T. vint par attourne. Et J. ne vint pas. Devers H.[2] le brief ne fuit pas servy. Et quant a Hughe fuit avys a la Court par inspeccion qil fuit deinz age, par quei fuit agarde qil alast quist. *Quod mirum fuit*, qar H.[2] ne fuit pas la.[5]—

[1] This report of the case is from Harl. 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., R.

[3] According to the roll "licet "prædicti Thomas, Hugo, et "Johannes dictas ducentas et "quinquaginta libras præfato "Hildebrando a diu est soluissent, "et literas ipsius Hildebrandi "acquietanciæ inde penes se "habeant, præfatus tamen Hilde-"brandus executionem recogniti-"onis prædictæ jam prosequitur "..... præfatumque "Hugonem ..... per "Vicecomites nostros Londoni-"arum capi et prisonæ nostræ de "Neugate mancipari procuravit in "qua adhuc taliter detinetur."

[4] According to the roll "Præ-"ceptum est Vicecomitibus Lon-"doniarum quod venire faciant hic "..... tam prædictum "Hildebrandum quam prædictum "Hugonem .... et etiam "eisdem Vicecomitibus et Vice-"comiti Salopiæ quod de execu-"tione ulterius facienda versus "prædictos Thomam, Hugonem, "et Johannem omnino supersee-"deant."

[5] According to the roll "Ad quem "diem venit prædictus Thomas "Colle per Willelmum Banastre, "attornatum suum. Et Vice-"comites Londoniarum duxerunt "hic corpus prædicti Hugonis, qui "quidem Hugo personaliter visus "hic in Curia adjudicatus est infra "ætatem, per quod consideratum "est quod idem Hugo de prædicto "debito sit quietus, et exoneratus."

No. 39.

A.D. 1314. others *Moubray* said: Sir, against John we demand execution, because he has not appeared. And as to Thomas, since he has appeared by attorney, let him produce the acquittance upon which the *Audita Querela*, &c.—*Gaynesford*. The writ is not served as to Hildebrand, and so he has not a day in Court; wherefore, &c.—*Moubray*. Hildebrand had previously made his attorney to sue execution, which attorney is now in Court; and, since your suit is taken with the object of preventing this execution, he prays that you do show this acquittance, on which your suggestion, &c., and, if you do not do so, he prays execution.—*Herlastone*, the Clerk. On this writ by which Hildebrand sues execution he has a day at Michaelmas, wherefore this person who is attorney will not be able to do anything until the same time.—Willoughby. Hildebrand is not in Court, and the writ is not served upon him, wherefore, inasmuch as he does not appear in Court to this *Audita Querela* either in his own person, or by attorney, we must give a day over.—And thereupon a day was given over to Michaelmas.—And Thomas was not put to produce the acquittance.[1]

Wardship. (39.) § The Earl of Warwick brought a writ of

[1] There is another report of this case in Michaelmas Term next following (No. 90).

No. 39.

Quant a les autres *Moubray*: Sire, devers Johan, qil ne vint pas, nous demandoms execucion. Et devers T.,[1] de puis qil vint par attourne, mette avant acquitaunce sur qel le *Audita Querela*, &c.—*Gayn.* Le brief nest pas servy vers H.,[2] issint nad il mye jour en Court; par quei, &c.—*Moubray.* H.[2] avant ces houres ad fait son attourne de suier execucion, le qel attourne est ore cy; et, depuis qe vostre suite est[3] a destourber cel execucion, il pri qe vous mustrez cele acquitaunce, sur qele vostre suggestion, &c., et, cy ne mye, il prie execucion.—*Herlastone*, clerk. A cel brief par qel H.[2] suie execucion il ad jour tanqe a la Seint Michel, par quei ceste qest attourne ne purra rien faire tanqe a meisme le temps.—Wilb. H.[2] nest pas cy, ne le brief nest pas servy devers ly, par quei, depuis qen ceste *Audita Querela* il nest pas cy, nen propre persone, ne par attourne, il covient qe nous donoms jour outre.—Et sur ceo jour fuit done outre tanqe a la Seint Michel.[4] —Et T. ne fuit pas mys de mettre avant lacquitaunce. A.D. 1344.

(39) [5] § Le Counte de Warrewike porta brief de Garde.

[1] MS., W.

[2] MS., R.

[3] MS., eit.

[4] According to the roll "Quo ad "prædictum Hildebrandum [Vicecomites] mandaverunt quod idem "Hildebrandus ante receptionem "prædicti brevis, &c., adiit ad "partes transmarinas, et adhuc "non rediit, per quod ipsum ad "diem illum venire facere non "potuerunt. Ideo sicut prius "præceptum est eisdem Vicecomitibus quod venire faciant hic a die "Sancti Michaelis in xv dies præ"dictum Hildebrandum ad cog"noscendum vel dedicendum "literas suas prædictas, et ulterius "facturum et recepturum quod "Curia domini Regis in præmissis, "&c. Et interim de executione "statuti prædicti omnino super"sedeant, &c."

[5] From 25,184 alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 216 d. It there appears that the action was brought by Thomas de Bello Campo (Beauchamp) Earl of Warwick, against Robert de Bracy, knight, in respect of the wardship of Joan and Cecilia, daughters and heirs of John de Salso Marisco, who held of the Earl a fourth part of the manor of Ekyntone (Eckington, Worcestershire) and who died in the Earl's homage.

No. 39.

A.D. 1344. Wardship of the body.—*Grene* alleged that by a feoffment the ancestor became at the same time tenant to both, that is to say, to the plaintiff and to the defendant, and so the matter was at common law, and the defendant was the first to seize the wardship; judgment whether an action against him, &c.—*Thorpe*. We are a stranger to the feoffment, and to the manner in which the infant's ancestor came into possession; and we will aver that the infant's ancestor held of us, and our ancestors, and those whose estate we have, the land which we suppose to be holden of us, by a feoffment prior to any by which his ancestor held of you, and your ancestors, and those whose estate you have, the land which he held of you.—*Grene*. You shall not be

No. 39.

Garde du corps.—*Grene* alleggea par feffement qe launcestre a un mesme temps devynt tenant a eux ij, saver, au pleintif et lui, et issint a la comune ley, et il primes happa la garde; jugement si vers lui accion, &c.[1]—*Thorpe*. Nous sumes estraunge al feffement, et a la manere coment launcestre lenfant avynt; et voloms averer qe launcestre lenfant tient de nous, et noz auncestres, et ces qi estat nous avoms, par priorite, la terre quel nous supposoms estre tenu de nous, qe launcestre ne tient[2] de vous et voz auncestres et ces qi estat vous avez la terre qil tient de vous.[3]—*Grene*. Vous ne serrez resceu A.D. 1344.

[1] The plea was, according to the roll, "quod quidam Petrus de "Salso Marisco, pater prædicti "Johannis cujus heres ipse fuit, "tenuit manerium de Agbarwe, "cum pertinentiis, de ipso Roberto, "per servitium militare, et etiam "quartam partem manerii de "Ekyntone, cum pertinentiis, de "præfato Comite, per servitium "militare, qui quidem Petrus de "eisdem manerio, et quarta parte, "ac aliis terris et tenementis "feoffavit quendam Thomam de "Beysyn tenendis sibi et here-"dibus suis in perpetuum. Et "postea . . . . . levavit "quidam finis inter prædictum "Petrum et Matilldem uxorem "ejus, querentes, et præfatum "Thomam de Beysyn, deforci-"antem, de prædictis maneriis et "aliis terris et tenementis, &c., "per quem finem idem Thomas "concessit et reddidit tenementa "prædicta, cum pertinentiis, præ-"fatis Petro et Matilldi, tenenda "sibi et heredibus de corporibus "suis exeuntibus in perpetuum, "per quas concessiones et reddiți-"onem idem Petrus uno et eodem "tempore devenit tenens præfati "Comitis de prædicta quarta "parte manerii de Ekyntone et "tenens ipsius Roberti de prædicto "manerio de Agbarwe. Et dicit "quod, post mortem prædicti Petri, "præfatus Johannes, pater præ-"dictarum heredum, intravit in "prædicto manerio de Agbarwe, et "illud tenuit de ipso Roberto. Et "ipse Robertus seisitus fuit per "manus ejusdem Johannis de "servitiis suis, &c., post cujus "mortem ipse Robertus posses-"sionem prædictarum heredum "primo adeptus fuit, unde petit "judicium si prædictus Comes "actionem de Custodia versus "eum habere debeat in hoc casu, "&c."

[2] The word pas is here inserted, in a later hand, in the MS.

[3] The Earl's replication was, according to the record, "quod "ipse ad finem prædictum non est "pars, nec heres partis, per quod "ad illum non habet necesse "respondere, sed dicit quod præ-"dictus Johannes, pater prædicta-"rum heredum, et antecessores "sui, et illi quorum statum idem

No. 40.

A.D. 1344. admitted to that, contrary to the alleged feoffment of one land and the other at the same time.—This exception was not allowed, because he is a stranger.—Therefore the issue was taken on the priority.

Continuation. (40.) § For which purpose do you take your plea—to destroy our bar, or to make a title?—*Grene.* We demand judgment whether, contrary to that which we have alleged, you can bar us from this action.—*R. Thorpe.* Whosoever would show a fine to be void, on the ground that no one of the parties was seised, alleges nothing, unless he says that he himself, or some one whose estate he has, was seised at the time, but it is otherwise with regard to a judgment, because

No. 40.

contre le feffement allege del un terre et lautre a un mesme temps.—*Non allocatur*, pur ceo qil est estraunge.—Par quei sur la priorite lissue est pris.[1] A.D 1344

(40.)[2] § Le quel pernez vous plee, pur destruire nostre barre, ou pur faire title?—*Grene.* Nous demandoms jugement si, countre ceo qe nous avoms allegge, nous puisses de ceste accion barrer.—*R. Thorpe.* Qi qe voet voider une fyn par tant qe nul des parties fut seisi il nallegge pas sil ne die qil mesme adonqes ou ascuns qi estat il ad fust seisi, mes il est autre dun autre jugement, qar si jugement *Residuum.*

" Johannes habuit in prædicta " quarta parte manerii de Ekyn- " tone prædicti, tenuerunt quartam " partem illam manerii prædicti " de ipso Comite et antecessoribus " suis per antiquius feoffamentum, " per servitium militare, quam " prædictus Johannes vel ante- " cessores sui, vel illi quorum " statum idem Johannes habuit in " prædicto manerio de Agbarwe " tenuerunt manerium de Agbarwe " prædictum, per idem servitium, " de prædicto Roberto vel ante- " cessoribus suis, vel illis quorum " statum idem Robertus habet." Issue was joined upon this.

[1] It appears on the roll that at *Nisi prius* Robert de Bracy "calum- " niavit araiamentum panelli, eo " quod factum fuit per Robertum " atte Wode subvicecomitem Comi- " tis Warrewykiæ in Comitatu " Wygorniæ. Et Comes non " potest hoc dedicere. Ideo . . . . " præceptum est Custodibus Placi- " torum Coronæ quod de novo " venire faciant," [&c.]. In the end a jury found a verdict " quod " Johannes de Salso Marisco, " pater Johannæ et Ceciliæ filiarum " et heredum Johannis de Salso " Marisco, et antecessores sui " tenuerunt quartam partem man- " erii de Ekyntone de Thoma de " Bello Campo Comite Warrewykiæ " et antecessoribus suis per anti- " quius feoffamentum, per servitum " militare, quam tenuerunt mane- " rium de Agbarwe de Roberto de " Bracy vel antecessoribus suis vel " de ipsis quorum statum prædictus " Robertus vel antecessores sui " habent, &c., per servitum mili- " tare, prout prædictus Comes " placitando allegavit. Et assident " damna ipsius Comitis occasione " detentionis custodiæ prædictæ ad " ducentas marcas. Et dicunt " quod prædictæ Johanna et Cecilia " maritatæ sunt."

The judgment was " quod præ- " dictus Comes recuperet seisinam " de custodia prædictarum here- " dum versus prædictum Robertum, " et damna sua prædicta."

[2] From 25,184 alone. The report is in continuation of Y.B., Hil., 18 Edw. III., No. 32 (Roger de Leukenore *v.* Robert de Northwode). The record, *Placita de Banco*, Hil., 18 Edw. III., R° 266 d, is there cited in the Rolls edition.

No. 41.

A.D. 1344. if a judgment be pleaded against me in bar, it is sufficient to say that the person against whom the writ was brought was not tenant.—*Grene.* It is not so any more than in case of a fine.—*Thorpe.* We tell you that the person against whom the writ of Right was brought was tenant, and so the recovery was good, by virtue of which recovery the person to whom the render was made was seised, and died seised, after whose death Hamond, whom you suppose to have been a disseisor, entered as son; and we demand judgment. And then he recited his plea and said *absque hoc* that Hamond disseised the demandant's ancestor, since, &c. —Willoughby. You are at a traverse, if you will.—*Grene.* At the time at which the writ of Right was brought the person against whom the writ was brought had nothing except by reason of nurture, the freehold resting in our grandfather; ready, &c.—Hillary. Your writ is traversed with regard to the disseisin; will you not maintain your writ on that point?—*Grene.* No; there is no need; we are out of that point through his plea.—*Thorpe.* Let him choose his issue on which point he will.

Note. (41.) § Note that Gerard del Isle, who was admitted to defend his right by reason of the default of Alice del Isle, because it was found that this same Alice held by lease from him for term of her life, vouched to warrant this same Alice.—*Thorpe.* You see plainly how he is admitted by reason of the default of Alice, wherefore he shall not be admitted to revouch this same Alice without showing a cause, any more than if she had stayed in Court and he had warranted her tenancy to her, because the cause of his aid-prayer

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soit plede contre moi en barre, il suffit a dire qe cely vers qi le brief fut porte ne fut tenant.—*Grene.* Noun fait, nient plus qen cas de fyn.—*Thorpe.* Nous vous dioms qe cely vers qi le brief de Dreit fut porte fut tenant, issint le recoverir bon, par force de quel recoverir cely a qi le rendre se fist fut seisi, et murust seisi, apres qi mort Hamond, qe vous supposez disseisour, entra come fitz; et demandoms jugement. Et puis rehercea soun plee, et dit saunz ceo qe Hamond disseisi soun auncestre, puys, &c.—Wilby. Vous estes a travers, si vous voillez.—*Grene.* A temps del brief de Dreit porte cely vers qi le brief fut porte navoit rien forqe par resoun de nurture, le frauncteneement reposaunt en nostre ayel; prest, &c.—Hill. Vostre brief est traverse sur la disseisine; ne voilez vous meyntener vostre brief en cel poynt?—*Grene.* Non; il ne bosoigne; nous sumes par son plee hors de cel poynt. —*Thorpe.* Elisse soun issue sur quel poynt il vodra.[1] A.D. 1344

(41.)[2] § *Nota* qe Gerrard del Isle, qe fut resceu a defendre son dreit par la defaut Alice del Isle, par tant qe trove fut[3] qe mesme cele A. tient de son lees a terme de vie, voucha a garraunt mesme cele Alice.—*Thorpe.* Vous veietz bien coment il est resceu par la defaut A., par quei de revoucher mesme cele saunz cause il ne serra resceu, nient plus qe si ele ust demure en Court et il ust garraunti a mesme celuy sa tenaunce, qar la cause de son eyde *Nota.* [Fitz., *Voucher*, 9.]

[1] The conclusion of the case, as shown in the record, appears in Y.B., Hil., 18 Edw. III., p. 591, note 2 (Rolls edition).

[2] From 25,184 alone, until otherwise stated.

[3] From the word fut onwards the report is in L. as well as in 25,184. There appears to be missing from L. a folio which contained Nos. 28–40, and the beginning of No. 41. It must, however, have been missing some centuries, as the folio on which No. 27 ends is numbered, in a hand which can hardly be later than the reign of Elizabeth, xij, and that which begins with a portion of No. 41, xiij.

No. 42.

A.D. 1344. is founded on the same cause for which he would have had to warrant her.—Kelshulle. And if Gerard had warranted Alice, could not Gerard revouch Alice?—*R. Thorpe.* Never without showing a cause.—And Gerard showed that the lady had enfeoffed him in fee simple at a time earlier than his lease to her.—*Moubray.* He never had anything by feoffment from the lady before the purchase of the writ; ready, &c.

Rescous. (42.) § Rescous of beasts taken for *damage feasant*, and in respect of battery of the plaintiff's servant. The particular beasts were not determined by count. But exception was not taken to this, for the defendant pleaded Not Guilty, and nothing more. And, when the inquest was taken, the rescue of two horses was found, and further the battery of the servant, to the damage, in the whole, of £10. The plaintiff prayed his judgment.—*W. Thorpe.* No one can proceed to judgment on this verdict, by reason of the defect that the issue was not put with certainty as to what it was of which the rescue was effected, because, if damages were awarded to the plaintiff on this verdict, he would to-morrow have another action in respect of this same rescue, and would recover damages a second time (and that could not be), because it could not be an answer to allege this recovery which is indeterminate.—*Derworthy.* Yes, you will always be aided by such a recovery unless he can show another rescue.—Willoughby. It is not so, because by the count it is not supposed of what beasts the rescue was effected, and a party will not recover damages for a rescue of which he has not complained, and upon this verdict the defendant will never have Attaint.—*Gaynesford.* Yes, he will.—Willoughby. In what words?—*Gaynesford.* "*Quare de quadam transgressione eidem illata.*"—Willoughby. He will never have Attaint except upon some particular fact.—Sharshulle. Would it be right,

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priere est foundu sur mesme la cause par quel il la dust aver garraunti.—Kels. Et si G. ust garraunti a A., ne put G. revoucher A.?—*R. Thorpe.* Jammes saunz cause.—Et il[1] moustra qe la dame luy feffa en fee simple de temps plus haut.—*Moubray.* Il navoit unqes rien del feffement la dame avant le brief purchace; prest, &c. A.D. 1344.

(42.)[2] § Rescous des avers pris pur damage fesaunt, et pur le seriant[3] le pleintif batu. Par[4] le count ne fut pas determine queux avers. Mes ceo ne fut pas chalenge, qar le defendant pleda de rien coupable saunz plus. Et, lenquest pris, trove fut la rescous de deux chivals, et outre la batre de seriant,[3] a damage de tut a x*li.* Le pleintif pria soun jugement.—[*W.*] *Thorpe.* Sur ceo verdit homme ne put aler a jugement, et ceo pur defaut qe la mise nest pas en certein de quai la rescous fut fet, qar, si damages fussent agardes au pleintif sur ceo verdit, il avera demeyn une autre[5] accion de mesme cely rescous, et autrefoith recovera damages, qe ne put estre, qar il serreit pas respons dallegger cel recoverir qest en noun certeyn.—*Der.* Si averez vous touz jours eyde sur tiel recoverir sil ne purra moustrer autre rescous. —Wilby. Il nest pas issint, qar par counte[6] nest pas suppose des queux avers rescous est fet, et partie ne[7] recovera pas[8] damages de rescous[9] dount il nest pas pleint, et sur ceo verdit le defendant navera jammes Atteint.—*Gayn.* Si avera.—Wilby.[10] Par quels paroles?—*Gayn. Quare de quadam transgressione eidem illata.*—Wilby. Il navera jammes Atteint forqe de certeyn[11] fait.—Schar. Serreit il resoun, Rescous.

[1] il is omitted from L.
[2] From L., and 25,184, until otherwise stated.
[3] L., seruant.
[4] L., Et par.
[5] autre is omitted from L.
[6] L., compte.
[7] L., nest.
[8] pas is omitted from 25,184.
[9] 25,184, un trespas.
[10] Wilby is omitted from L.
[11] 25,184, chose.

No. 42.

A.D. 1344. since you have been convicted by verdict both of one act and of the other, that you should pass quit, and particularly in respect of the battery which is determinate? And that which you allege was your own fault in that you did not take exception to the count. —*W. Thorpe.* You cannot give judgment with regard to the battery, because the damages relating to that are not severed by the verdict, but the jury has given a total for the whole in common; and it is true that it was our fault that exception was not taken to this; but it is also true that it was the plaintiff's fault that this was not mentioned in the count, and it was he who ought naturally to have set it forth, that is to say, inasmuch as he has not shown by his count matter upon which damages could be adjudged for him, he should take nothing, or else the parties should be put to plead again, as it has often been seen, after verdict passed, because it was impossible to proceed to judgment upon the issue of the parties as found, that they had to plead again, and were put to do so by the Court.—Stonore. Where is the jury? And he said that because he wished that the damages for the rescue and those for the battery should be severed.—*R. Thorpe.* If the rescue of twenty oxen had been supposed by the count, and the rescue of two only had been found by the verdict, and the damages had been assessed with certainty, we should still have recovered; and the reason is that the stress of the matter is not the question whether there were more or less, for the jurors are judges of the fact as in any common case, and inasmuch as they have affirmed the rescue with certainty, and assessed the damages with certainty, that ought to suffice.—Willoughby. In the case which you put there has been a good count, and a rescue assigned with certainty. Not so here.— *R. Thorpe.* Suppose that, when the writ was read, the defendant, without having had anything further counted against him, could only confess the action, would not

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puis qe vous estes soille[1] par verdit de lun fet[2] et lautre, qe vous passassez[3] quites, et nomement de la baterie qest en certein? Et ceo qe vous alleggez fut vostre defaut qe vous nusses chalenge le count.—[*W.*] *Thorpe.* De la baterie ne poez[4] agarde faire, qar les damages de cel ne sount pas severes par verdit, mes lenquest ad somme[5] tut en comune; et verite est qil y[6] avoit defaut qe[7] ceo ne fut pas chalenge; et auxi qe ceo ne fut pas counte est la defaut du pleintif, quel il deit naturelement acomprer,[8] saver, pur ceo qil nad pas moustre par son count matere sur quei homme purra ajuger par luy damages, qil prist rien, ou autrement de mettre les parties de repleder auxi come homme ad sovent vewe, apres verdit passe, pur ceo qe homme ne poait aler a jugement sur mise de partie trove, qils dussent repleder, et a ceo furent mys par Court.—Ston. Ou est lenquest? Et ceo dit il pur ceo qil voleit qe les damages de la rescous [et de baterie fussent severez.—*R. Thorpe.* Si par count ust este suppose la rescous][9] de xx boefs, et par verdit fut trove rescous des ij soulement, et les damages assis en certeyn, unqore ussoms recovery; et la cause est pur ceo qe, fut ceo plus ou meyns nest pas a charger, qar ceux[10] del enquest sount juges auxi come en comune cas, desicome ils ount dit la rescous en certeyn et les damages assis[11] en certeyn ceo deit suffire.—Wilby. En vostre cas il y ad bon count,[12] et rescous assigne en certeyn.—*Non sic hic.*—*R. Thorpe.* Jeo pose qe quant le brief fut leu[13] qe le defendant, saunz plus avoir counte, ne put aver A.D. 1344.

[1] 25,184, soule.
[2] fet is omitted from L.
[3] L., passes.
[4] L., put.
[5] L., assume.
[6] y is omitted from 25,184.
[7] L., et.
[8] L., agomprere.
[9] The words between brackets are omitted from L.
[10] 25,184, cele.
[11] 25,184, asseiz.
[12] count is omitted from L.
[13] 25,184, lieu.

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A.D. 1344. the plaintiff have judgment?—Sharshulle said that he would not.—And Willoughby said the two cases of confession and verdict are not alike.—Stonore. It is not right that you should pass quit in respect of this trespass; and that which you (the defendant) allege is your own fault.—And judgment was given that the plaintiff should recover his damages assessed by the jury.—*Quære* as to this judgment.

Rescous. § In a writ of Rescous the words were "*ostensurus quare, cum idem A., in feodo suo, &c., quædam averia per C., servientem suum, capi fecisset, &c., idem B. averia illa vi, &c., rescussit, et in prædictum C. insultum fecit, verberavit, et vulneravit, &c.*" And the defendant appeared, and, without having had any count from the plaintiff as to what manner of beasts they were of which he supposed the rescue, &c., pleaded Not Guilty as to the whole writ, as well with regard to the rescue as with regard to the battery. Now the jury came, and was charged on the pleading of the parties, and said that the defendant was guilty of the rescue, and also of the battery, to the damage of the plaintiff of £50, and said further that the rescue was made of two horses.—*W. Thorpe.* Sir, you cannot render any judgment on this verdict, because, Sir, you see plainly there by the record that the plaintiff did not by his count assign the rescue as having been made of any particular beasts, and, though the jury has mentioned them, that is without warrant, and so, Sir, it so stands now that if the plaintiff, at another time, would bring his writ of Rescous against the defendant, and count of the rescue of two horses, it would be no answer for the defendant to say that heretofore the plaintiff recovered damages against him for the same rescue, because that would not be proved by the

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dedit, navereit le pleintif jugement?—Schar. *negavit.* —Et Wilby dit qe ceo nest pas semblable de conisaunce[1] et verdit.—Ston. Il nest pas resoun qe vous passes quites de ceo trespas; et ceo qe vous alleggez est vostre defaut demene.—Et fut agarde qe le pleintif recoverast ses damages taxes par lenquest, &c. —*Quære de judicio.* A.D. 1344.

§ En[2] un brief de Rescous le brief voleit *ostensurus quare, cum idem A., in feodo suo, &c., quædam averia per C., servientem suum, capi fecisset, &c., idem B. averia illa vi, &c., rescussit, et in prædictum C. insultum fecit, verberavit, et vulneravit, &c.* Et le defendant vint, et saunz avoir count del ple[intif] qele manere des avers ils furent des qeux il supposa le rescous, &c., pleda de rien coupable quant a tut le brief, auxi bien a le rescous come a la baterie. Ore vint lenquest, et fuit charge sur le ple de parties, et dit qe le defendant[3] fuit coupable de le rescous et auxint de la baterie, au damage le pleintif de l*li.*, et dit outre qe le rescous fuit fait de ij chivals.—*W. Thorpe.* Sire, vous ne poiez mye sur ceo verdit nulle jugement rendre, qar, Sire, vous veiez bien la par le recorde coment le pleintif par son counte assigna mye par son counte le rescous estre faitz de nulles certeinz avers, et, coment qe lenquest lad dit, est[4] saunz garraunt, issint, Sire, si est qore si le pleintif autrefoitz voleit porter son brief de Rescous vers le defendant, et counter del rescous de ij chivals, le defendant navereit mye respouns a dire qe autrefoitz il recoveri damages vers ly mesme pur le rescous, qar ceo ne serra mye Rescous. [Fitz., *Rescous*, 15.]

[1] L., conussaunce.

[2] This report of the case is from Harl. alone, and has not been printed in the old editions of the Year Books. It does, however, appear to have been used by Fitzherbert, and not the other report, for his short abridgment of the case.

[3] MS., pl.

[4] MS., estre.

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A.D. 1344. record, inasmuch as it is indeterminate ; therefore, Sir, the parties must be put to plead again, and the plaintiff must make his count with certainty, just as we have seen, Sir, in an Assise of Novel Disseisin, that, after verdict had been passed and the assise adjourned into the Bench by reason of difficulty, because the Court perceived that there was error in the process, they re-adjourned the matter before the Justices in the country, and there the parties were put to plead again ; wherefore, &c.—Stonore. It is found by the jury that the defendant is guilty as well of the battery as of the rescue, and the Court is sufficiently certified as to the battery, and therefore it seems that we can well enough render judgment on the verdict.—*W. Thorpe.* Sir, the damages as to the whole are assessed at a certain total of £50, and if you were to render judgment on the verdict, inasmuch as the count is certain with regard to the battery, it would then be necessary that the damages should be apportioned, and that you cannot do, since the jury is no longer in Court.—*R. Thorpe.* They have sufficient warrant to render judgment on this verdict, for suppose that at first, when the plaintiff counted against the defendant, and omitted to specify in his count what were the beasts in respect of which he complained, the defendant had confessed the rescue as the plaintiff alleged, in that case the Court would not have hesitated to render judgment, on his confession, for the plaintiff, notwithstanding the uncertainty of his count, and since to that count he pleaded Not Guilty when he might have abated it, and it is now found on his mise that he is guilty, that which is found as the fact shall be as strong against him as his own confession ; wherefore, &c.—And thereupon the Justices were in doubt as to their judgment, for some of them would have sent for the jury to come back and apportion the damages because the battery was certain, and others

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prove par le recorde, de [ceo] qe ceo est noun cer- A.D. 1344.
tein ; par quei, Sire, il covient qe les parties soient mys de repleder, et qe le pleintif mette son counte en certein, auxi come, Sire, nous avoms vewe en Assise de Novele Disseisine, apres verdit passe et lassise ajourne en Baunk pur difficulte, qe, pur ceo qe la Court voet qil avoit errour en le proces, ils reajournerent devant Justices en pays, et la furent ils mys a repleder ; par quei, &c.—Ston. Il est trove par lenquest qe le defendant est coupable auxi bien de la baterie come del rescous, et quant a la baterie la Court est assez bien en certein, par quei il semble qe sur le verdit nous poms assetz bien rendre jugement.—*W. Thorpe.* Sire, les damages quant a tout sount assummez en certein a 1*li.*, et si vous deussez rendre jugement sur le verdit, pur taunt qe le counte quant a la baterie est en certein, dounqes coviendreit il qe les damages fuissent parcelez, et ceo ne poietz vous mye ore faire depuis qe lenquest nest mye ore cy.—*R. Thorpe.* Ils ount assetz garraunt de rendre jugement sur ceo verdit, qar jeo pose qe adeprimes, quant le pleintif counta vers le defendant, et myst mye son counte en certein de qels avers il se pleigni qe le defendant eust conue le rescous come le pleintif, &c., la Court la ne eust fait nulle arest la qe ils neussent rendu jugement, sur sa conisaunce, pur le pleintif, nient countresteaunt la nouncerteinte de soun count, et de puis qe a cel count il pleda de rien coupable la ou il puit avoir abatu, et trove est ore a sa mise qil est coupable, ceo qest sur trove serra auxi fort devers ly come sa conisaunce demene ; par quei, &c. —Et sur ceo les Justices furent en awer de lour jugement, qar les uns voleint avoir remaunde pur lenquest davoir parcele les damages pur ceo qe la baterie fuit en certein, et les uns voleint avoir fait

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A.D. 1344. would have made the parties plead again.—And afterwards, on the morrow, Sharshulle gave judgment that the plaintiff should recover his damages of £50, and that the other should be taken.—And the statement of the jury that the rescue made had been of two horses was put upon the record.—And Sharshulle said that if the plaintiff should, at any future time, complain of the rescue of the two horses, as *W. Thorpe* alleged that he might do, as above, this record would now fall in bar to him, because he previously recovered damages in respect of the same rescue, notwithstanding the uncertainty of his count on the present occasion.

Admeasurement of Pasture.

(43.) § Admeasurement of Pasture was brought against three persons in respect of common of pasture in Thimbleby appurtenant to the plaintiff's freehold in the same vill. After view two of the three made default.—*Moubray*, for the third, said that he held his freehold jointly with another named in the writ, and should not therefore be put to answer without him.—*Seton*. You have taken a *Prece partium* after view, and therefore you shall not be admitted to say that you cannot answer alone.—*Moubray*. That *Prece partium* does not purport to be between such an one demandant and such an one tenant, as it would in a plea of land. Besides, my plea is not to the abatement of the writ.—Willoughby. By the *Prece partium* you have taken the answer upon yourself alone; therefore answer.—*Moubray*. We tell you that Foxton is a hamlet of Thimbleby, and separate, so that they intercommon, and John de Sigeston is lord of Foxton, and the wastes in Foxton are his, and he has been seised, himself and his ancestors, from all time until, in the time of the present King, he enfeoffed the

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les parties davoir replede.—Et puis lendemayn Sch. agarda qe le pleintif recoverast ses damages de l*li.*, et qe lautre fuit pris.—Et ceo qe lenquest avoit dit qe le rescous fuit fait des ij chivals fuit mys en le recorde.—Et Sch. dit qe si le pleintif autrefoitz se voile pleindre de le rescous de ij chivals, come *W. Thorpe* alleggea, *ut supra*, qe cest recorde ore ly cherra en barre, pur ceo qe autrefoitz pur mesme le rescous il recoveri damages, *non obstante* la nouncerteinte de son count a ore. A.D. 1344.

(43.) [1] § Amesurement de pasture porte vers iij de comune de pasture en Thymelby appurtenaunt al fraunc tenement le pleintif en mesme la ville. Apres la vewe les ij firent defaut.—*Moubray* pur le terce dit qil tient son fraunctenement joint ovesqe autre nome el brief, par quei saunz luy il ne serra mys a respoundre.—*Setone.* Vous avez, apres la vewe, pris *Prece partium*, par quei vous ne serrez pas resceu a dire qe vous ne poez soul respoundre.—*Moubray.* Ceo *Prece partium* ne voet pas entre un tiel *petentem* et un tiel *tenentem*, come serreit en plee de terre. Ovesqe ceo, mon plee nest pas al abatre du brief.—Wilby. Par le *Prece partium* vous avez enpris soul le respouns [2]; par quei responez.—*Moubray.* Nous vous dioms qe Foxtone est hamel de Thymelby, et severe, issint qils [3] entrecomunent, et Johan de Sigestone est seignur de Foxtone, et les wastes en Foxtone sount les soens, qe seisi ad este, et luy et ses auncestres de tut temps tanqe en temps cesty Roi [4] qil enfeffa le pleintif dun Amesurement de pasture. [Fitz., *Admesurement*, 7; *Estoppell*, 225.]

[1] From L., and 25,184. The prayer for and grant of view in a like case appear in Y.B., Trin., 16 Edw. III., No. 52, and in the *Placita de Banco* of that Term, R° 197 d. The action was brought by John, son of Adam de Foxton, against Henry de Foxton in respect of pasture in the vill of Thimbleby (Yorkshire).

[2] L., revers.

[3] qils is omitted from L.

[4] Roi is omitted from L.

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A.D. 1344. plaintiff of one messuage and one bovate of land to which the plaintiff claims to have common, at which time common could not be appendant; judgment whether the writ lies in his case.—*Seton.* We tell you that the land to which we claim that the common is appendant is Ancient Demesne, and from all time a hide, and, although the lord could not have common in his own demesne land, he had the pasture in lieu of this profit, and, when he has divested himself, the person enfeoffed by him will have common in lieu of the pasture which he had, and we demand judgment, and pray the admeasurement.—*Moubray.* Then it is so; and we demand judgment.—*Grene.* Even though it were as he says, that would only prove that we should not have common in the soil which belongs to the lord by reason of the unity of possession of the one land and of the other; but still it is not proved that Admeasurement does not lie in his case: for in respect of the land which he held the lord had common in the land of every other free tenant of the vill, as appendant, and would have Assise of common of pasture, notwithstanding that he was lord, and would have Admeasurement against the others; *a fortiori* shall we have it who have been enfeoffed by him.—Willoughby. That is not so: for Admeasurement does not lie between lord and tenant, nor shall the lord ever be admeasured; nor consequently does the writ of Admeasurement lie for him, for those between whom the writ will lie must necessarily be of equal condition.—*Moubray.* When he brings his writ of Admeasurement against me in respect of the common which he has in my land, the writ will never lie, for I shall be admeasured

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mies et un bove de terre a quei il cleime aver comune, a quel temps comune ne put estre appendaunt; jugement si le brief vers luy gise. Et dit qe la pasture mys en vewe fut[1] en F.—*Setone.* Nous vous dioms qe la terre a quel[2] nous clamons la comune estre appendaunt[3] est auncien demene, et de tut temps hide,[4] et, tut ne poet le seignur aver comune en sa terre demene, il avoit la pasture en lieu de cel profit, et, quant il sad demys, le feffe par[5] luy avera comune en lieu de pasture qil avoit; et demandoms jugement, et prioms lamesurement.—*Moubray.* Donqes est il issi[6]; et demandoms jugement.—*Grene.* Tut fut il come il parle, ceo ne provereit mes qe nous naveroms pas comune[7] en le soile qest au seignur pur la unite de possessioun de lun terre[8] et lautre; mes unqore nest ceo pas prove qe Amesurement ne[9] gist vers luy: qar en la terre qil tient si avoit le seignur comune en la terre de chescun[10] autre fraunc[11] tenant de la ville, come appendaunt, et avereit Assise de comune de pasture, *non obstante* qil fut seignur, et avereit Amesurement vers les autres; a plus fort nous qe sumes feffe par luy.—Wilby. Ceo nest pas issi: qar entre seignur et tenant ne gist pas Amesurement, ne le seignur jammes ne[12] serra amesure[13]; *nec per consequens* le brief ne gist pas pur luy, qar ces entre queux le brief girra il covient qils soient de owel[14] condicion.—*Moubray.* Quant il[15] porte son brief Damesurement vers moy de la comune qil ad en ma terre, ne girra jammes le brief, qar jeo serra A.D. 1344.

[1] fut is omitted from 25,184.
[2] L., quai.
[3] The words estre appendaunt are omitted from 25,184.
[4] L., yde.
[5] L., la.
[6] 25,184, yci.
[7] comune is omitted from L.
[8] terre is omitted from L.
[9] ne is omitted from L.
[10] L., chef quant.
[11] 25,184, fraunch.
[12] ne is omitted from 25,184.
[13] L., amesurement.
[14] L., owels.
[15] il is omitted from L.

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A.D. 1344. by reason of the suit as well as he; but I could not be admeasured in my own soil, nor consequently shall he be admeasured in that soil; and I have alleged that all the rest of the land in Foxton has from all time been in the possession of the lord. And inasmuch as Admeasurement must lie by reason of common which he and I are supposed to have in land other than that which I hold, and there is no other but that which was in the hand of the lord, in which he could not have common for the reason above, we demand judgment.—*Grene.* It is not as you say, for each of us can very well be admeasured in the soil of another person.—Hillary. If there were other free tenants, the lord would possibly have common of pasture in their freehold, but now he has said that all the land was in the lord's hand except that which the defendant holds, so that the common in that parcel cannot be a cause of admeasurement, nor can common of pasture be appurtenant in the rest by reason of the unity of possession; wherefore, &c. — Stonore. He is now claiming the common, not as being in the lord's estate, but as neighbour with neighbour; and would it be right that you should have common in his land, and he not in yours? And the lord also will have common in his land; wherefore should he not have common in the lord's soil?—And they were adjourned.

Parceners prayed in aid.

(44.) § The Earl of Huntingdon demanded against Hugh le Despenser, tenant by his warranty, who

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amesure si avant par la suyte come luy; mes jeo ne puisse[1] estre amesure en mon soil demene, *nec*,[2] *per consequens* en cel soille il ne serra pas amesure; et tut le remenant de la terre en F. ay jeo allegge de tut temps estre en[3] la possessioun le seignur. Et,[4] desicome Lamesurement covient giser par cause de comune[5] qe luy et moy dussoms aver en autre terre qe ceo qe jeo tenke, et autre ny[6] ad forqe ceo qe fut en meyn du seignur, en quel il ne put comune aver, *causa qua supra*, nous demandoms jugement.—*Grene.* Il nest pas come vous parlez, qar chescun de nous purra bien estre amesure en autri[7] soille.—Hill. Si autres frauncz tenantz y fuissent, le seignur en lour fraunctenement avereit par cas comune de pasture, mes ore dist il qe tut fut[8] en la meyn le seignur sauf ceo qe le defendant tient, [ou la comune en cele parcelle ne puit estre cause damesurement, nen le remenant][9] par cause de la unite de possessioun ne put comune de pasture estre appurtenant; par quei, &c.—Ston. Il cleime ore la comune noun pas en estat de seignur, mes come veysyn ov veysyn; et serreit il resoun qe vous averez comune en sa terre, et il noun pas en la vostre? Et le seignur auxi avera comune en sa terre; pur quei navera il[10] comune en[11] soun[12] soille?—*Et adjornantur.* A.D. 1344.

(44.)[13] § Le Counte de Huntyngdone demanda vers Hughe le Despenser,[15] tenant par sa garrauntie, qe Priere en eyde de parceners.[14] Fitz., *Aide*,142?]

[1] L., puise.
[2] *nec* is omitted from L.
[3] en is omitted from 25,184.
[4] Et is omitted from L.
[5] The words de comune are omitted from L.
[6] L., yny.
[7] L., autre.
[8] 25,184, fut il.
[9] The words between brackets are omitted from L.
[10] il is omitted from L.
[11] L., de.
[12] L., sa.
[13] From L., and 25,184.
[14] The marginal note is from L., there being nothing in a contemporary hand in the margin of 25,184.
[15] L., de A., instead of le Despenser.

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A.D. 1344. heretofore had aid of his co-parceners, that is to say, the Earl of Gloucester and Margaret his wife, and others, who were summoned in aid, and made default, wherefore it was adjudged that Hugh should answer alone.—And, nevertheless, when this judgment was given, Hugh was essoined.—Afterwards Hugh appeared, and prayed aid of Ralph de Stafford, and his wife, daughter and heir of Margaret, and of his other co-parceners. —*Pole.* Heretofore you had aid of them, and by reason of their default it was adjudged that you should answer alone, and afterwards the parol demurred on account of a Protection, and afterwards a Resummons was taken *Prece partium*, so you have answered alone; wherefore you shall not be admitted to have the aid. —*Thorpe.* This is a different aid-prayer from the first, and praying aid of another person; and if I pray aid of any one, and he dies, I shall have aid of his heir; and you see plainly how there is entered on the roll a judgment that Hugh should answer alone, which judgment was contrary to reason, because Hugh was not then in Court, but essoined, in which case the default of the prayees in aid ought alone to have been recorded, and the judgment respited, &c., and this ought no more to prejudice him than if the judgment had been respited, and a day given over. And if it had been so done, and Margaret had died before the judgment, I should afterwards, on another day, have aid of her heir; for the same reason now. And, Sir, this aid-prayer is in lieu of voucher; and I could not recover to the value against a person deceased.—Stonore. The roll is good, and the judgment also: for it could not have been otherwise done on the day.—*Thorpe.* If a wife prays to be admitted by reason of the default of her husband, when the demandant is essoined, no judgment will be given on the question of her admission; but it will be all expressed in the roll, and judgment will be respited; so also should it have been in this case.—*Pole.* The judgment was not given by

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autrefoith avoit eide de ses parceners, et le Counte A.D. 1344.
de Gloucestre et Margarete sa femme, et autres qe furent somons[1] en eyde, et firent defaut, par quei fut agarde qe Hughe respondist soul.—*Et tamen*, quant cel agarde se fit, Hughe fut essone.—Puis vint Hughe, et pria eyde de Rauf de Stafforde et sa femme, fille et heir M., et ses[2] autres parceners.—*Pole.* Autrefoith vous lavetz eyde,[3] et par lour defaut agarde fut qe vous respondistes soul, et puis la parole demura par Proteccion, et puis la Resomons pris *Prece partium*, issint avez respondu soul; par quei vous navendrez pas.—*Thorpe.* Cest autre eyde priere et dautre qe ne fut la primere; et si jeo prie eyde dun, et il moert, javeray de son heir[4]; et vous veietz bien coment qen le roulle soit entre un agarde qe Hughe respondist soul, quel agarde fut countre resoun, pur ceo qe adonqes Hughe ne fut pas en Court, mes essone, en quel cas la defaut des pries dust aver este soulement recoîde, et le jugement respite, &c., ceo ne deit plus grever qe[5] si le jugement ust este respite, et jour done outre. Et sil ust este issint fet, et M. ust devie avant, lautre jour apres jeo averay eide de son heir; par mesme la resoun a ore. Et, Sire, cest eide priere est en lieu de voucher; et vers mort persone ne purroy jeo recoverir value.—Ston. Le roulle est bon, et lagarde auxint: qar autrement ne put homme aver fait a la journe.—*Thorpe.* Si femme prie destre resceu par defaut son baroun, ou le demandant est[6] essone, nul jugement se fra sur[7] la resceite; mes tut serra mote en roulle, et jugement respite; auxi serra il en ceo cas.—*Pole.* Le jugement nest pas rendu par

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[1] somons is omitted from L.
[2] L., ces.
[3] 25,184, leide.
[4] L., ces heirs, instead of son heir.
[5] L., et.
[6] est is omitted from L.
[7] L., par.

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A.D. 1344. reason of his default who was essoined, but by reason of the default of other persons who were prayed in aid.—And by judgment he was ousted from the aid.—Therefore he showed that the King, the grandfather of the present King, gave the tenements to Gilbert de Clare, his ancestor, and the heirs of Gilbert's body, on condition that, if Gilbert's wife should survive, she should have power to aliene, &c.,[1] and he prayed aid of the King.—And he has it.—And, nevertheless, warranty is not included in the King's charter, nor is the reversion saved.

Dower. (45.) § A man [and his wife] brought a writ of Dower against a tenant, and demanded a third part of certain tenements.—*Richemunde.* We tell you that the wife herself heretofore brought a writ of *Cui in vita* against ourselves, and that for the entirety of the tenements of which she now demands a third part, and on the ground of an alienation by this same person, her former husband, on the ground of whose seisin she now brings her writ of Dower; to this writ of *Cui in vita* the tenant appeared, and we demand judgment whether she ought to be answered as to this writ of Dower.—And the woman who was demandant was a poor woman, and had no counsel.—And Hillary questioned her as to whether she had previously brought her *Cui in vita* in respect of the same tenements, and she said "Yes."—Therefore Hillary gave judgment that she should take nothing by her writ.—But this seems extraordinary, because it is possible that it might have been found against the woman on the *Cui in vita*, to the effect that she had nothing except as wife, in which case she would have an action of Dower.—But I believe it would have been necessary to plead this.

[1] For the actual terms of this settlement *see* the Charter Roll (Chancery) 18 Edw. I., Nos. 59 and 60, cited in Pike's *Constitutional History of the House of Lords*, p. 68.

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defaut de celuy qe fut essone, mes par defaut dautres persones qe furent pries,[1] &c.—Et par agarde il[2] fut ouste de leide.—Par quei il moustra qe le Roi laiel dona ove sa fille a G. de Clarre[3] son auncestre les tenementz, et les heirs du corps G., issint qe si[4] la femme survesquist qel[5] purreit aliener, &c., et pria eyde du Roi.—*Et habet.*—*Et tamen warantia non continetur in charta Regis, nec salvatur reversio.* A.D. 1344.

(45.)[6] § Un homme porta un brief de Dower vers un tenant, et demanda la terce partie des certeinz tenementz.—*Richem.* Nous vous dioms qele mesme autrefoitz porta un brief de *Cui in vita* vers nous mesmes, et de lenterite de quei ele [demande] ore la terce partie, et dallienacion mesme cesty son baroun de qi seisine ele porte ore son brief de Dower; a qel brief il[7] aparust, et demandoms jugement si a cesty brief de Dower serra ele respondu.[8]—Et la femme demandant fuit une povere femme, et navoit pas de conseille.—Et Hill. lapposa si ele avoit autrefoitz porte son *Cui in vita* de mesmes les tenementz, qe dit qoil.—Par quei il agarda qele ne prist [rien] par son brief.—*Quod mirum videtur*, qar puit estre qen le *Cui in vita* ust este trove contre la femme qele navoit rien si noun come femme, en qel cas ele avera accion de Dower.—*Sed credo* qe ceo covenist estre plede. Dowere. [Fitz., *Estoppell*, 221.]

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[1] 25,184, prieez.
[2] il is omitted from 25,184.
[3] L., C.
[4] si is omitted from L.
[5] L., qil.
[6] From Harl. alone. The case has not been printed in the old editions of the Year Books, though used by Fitzherbert for his *Abridgment*.
[7] MS., ele.
[8] MS., ressu.

No. 46.

A.D. 1344. Assise of Novel Disseisin.

(46.) § One Thomas Quyntyn brought an Assise of Novel Disseisin against one Philip and Alice his wife, and Thomas their son, and made his plaint in respect of four marks of rent. Thomas appeared, and said that, whereas by the writ he was supposed, in Latin, to be son of Philip and Alice, he was the son of Philip begotten of Eleanor, Philip's first wife, and not the son of Alice, and he demanded judgment of the writ. Philip and Alice answered as tenants of the tenements put in view, and said that they were out of the plaintiff's fee, and demanded judgment whether he ought to be answered without showing a specialty.—*Grene*, for the plaintiff. We tell you that one John son and heir of Warin Quyntyn was seised of the manor of Fulham, which is now put in view, and from which it is supposed that the rent is to be taken, and granted us the same rent for term of our life, and granted that, whenever the said rent should be in arrear, it should be quite lawful for us to distrain for the same rent, by virtue of which grant we were seised until disseised by them, and we pray the Assise. And he made *profert* of a deed which was in the words "*quod cum Warinus Quintyn*,

No. 46.

A.D. 1344. *Assisa Novæ Disseisinæ.* [Fitz., *Monstrans de faits, fins, et records,* 170]

(46.) [1] § Un Thomas Quyntyn [2] porta un Assise de Novele Disseisine vers un Phillippe et Alice sa femme, et Thomas [3] lour fitz, et fit sa pleint de iiij marcz de rente. Thomas [3] vint, et dit qe la ou par brief il fuit suppose fit en latin a Phillippe et Alice, il fuit le fitz Phillippe engendre dune Elianore et primere femme, et noun pas le fitz Alice, et demanda jugement de brief.[4] Phillippe et Alice respondirent come tenantz [des tenementz] mys en vewe, et diseint qils furent hors de fee pleintif et demanderent jugement si saunz especialte serreit il respondu.[5]—*Grene*, pur le pleintif. Nous vous dioms qun Johan fitz et heir Waryn Qeuntyn fuit seisy de maner de Fulham, qest ore mis en vewe, et dount la rente est suppose a prendre, et nous graunta mesme la rente pur terme de nostre vie, et graunta qe a qel houre qe la dit rente fuit arere qe bien lirreit a nous a destreindre pur mesme la rente, par vertue de qel graunte nous fumes seisi tanqe par eux disseisi, et prioms Lassise. Et mist avant fait qe voleit *quod cum Warinus Quintyn* [6] *pater suus,*

[1] This case has not been printed in the old editions of the Year Books, though used by Fitzherbert for his *Abridgment*. It is from Harl. alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 54. It there appears that the Assise was brought by Thomas Quyntyn, of Newport, against Philip de Walkote and Alice his wife, and Thomas "filius "eorundem Philippi et Aliciæ" in respect of four marks of rent in Fulham (Middlesex).

[2] MS., Geffrey de Walton instead of Thomas Quyntyn.

[3] MS., Johan.

[4] The plea of Thomas, the son, was "quod ipse Thomas non est "filius prædictæ Aliciæ sed filius "prædicti Philippi et cujusdam "Alianoræ primæ uxoris suæ, unde "petit judicium de brevi, &c. Et "si, &c., tunc dicit quod ipse "nullam injuriam seu disseisinam "inde fecit." Issue was joined on this traverse to the Assise.

[5] According to the roll, "Philippus et Alicia tanquam tenentes "de tenementis in visu positis "dicunt quod tenementa illa sunt "extra feodum et dominium præ-"dicti Thomæ Quyntyn, unde "petunt judicium si assisam inde "versus eos habere debeat, nisi "aliquod speciale factum Curiæ "ostendat per quod tenementa illa "de prædicto redditu onerari "debeant, &c."

[6] MS., *Mintyn*.

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A.D. 1344. *pater suus, concesserit Thomæ Quyntyn iiij marcas redditus ad terminum vitæ suæ percipiendas de manerio de Fulham, quam quidem concessionem ratifico et confirmo, et ulterius concedo quod si redditus prædictus aretro fuerit, &c., quod bene liceat præfato Thomæ pro termino vitæ suæ pro prædicto redditu distringere."—Gaynesford.* Sir, you see plainly how by the deed, of which he makes *profert* with regard to having this rent, it is supposed that the rent commenced at a time before this deed by the grant of Warin, the father of John, which grant is the ground and foundation of this rent, in proof of which grant they show nothing, wherefore we demand judgment whether he ought to have the Assise on this specialty.—*Grene.* And we demand judgment, since we have taken for title to this rent that John was seised of the manor of Fulham, and granted, and they do not deny John's seisin of the manor at the time of the grant, nor that we were seised of the rent; therefore we pray the Assise.—*W. Thorpe.* If he were to have the Assise by reason of this specialty of confirmation alone, whereas it is supposed

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concesserit Thomæ Quyntyn[1] *iiij marcas redditus ad terminum vitæ suæ percipiendas de manerio de Fulham, quam quidem concessionem ratifico et confirmo, et ulterius concedo quod si redditus prædictus aretro fuerit, &c., quod bene liceat præfato Thomæ pro termino vitæ suæ pro prædicto redditu distringere.*[2]— *Geyn.* Sire, vous veiez bien coment par le fait, qil il mette avant davoir cest rente, est suppose qe la rente comensa de temps avant cel fait par le graunt Waryn, pere Johan, qel graunte est pee et foundement de cel rent, de quei ils ne mustrent rien, par quei nous demandoms jugement si sur cel especialte deit il Lassise avoir.—*Grene.* Et nous demandoms jugement, depuis qe nous avoms pris pur title de cest rente qe Johan fut seisi de maner de Fulham, et graunta, et ils ne dediount pas la seisine Johan de maner a temps de graunt, ne qe nous fumes seisi de la rente; par quei nous prioms Lassise.—*W. Thorpe.* Si par cel especialte de confermement soulement il avereit Lassise, la ou par le conferme- A.D. 1344.

[1] MS., *Galfrido de Waltone* instead of *Thomæ Quyntyn*.

[2] According to the roll, "Thomas "Quyntyn dicit quod quidam "Johannes filius et heres Warini "Quyntyn de Neuport in Comitatu "Essexiæ fuit seisitus de manerio "de Foleham, cum pertinentiis, "qui per scriptum suum recitavit "quod cum prædictus Warinus "pater suus nuper dederit et per "chartam suam concesserit ipsi "Thomæ quatuor marcas annui "redditus ad totam vitam ejusdem "Thomæ percipiendas annuatim "de tenementis in visu positis per "nomen manerii de Foleham . "... idem Johannes con- "cessionem et donationem præ- "dictas per scriptum suum præ- "dictum ratificavit, et confirmavit, "et concessit pro se, heredibus, et "assignatis suis quod ipse Thomas "et assignati sui in prædictis tene- "mentis, cum pertinentiis, pro "prædicto redditu, cum a retro "fuerit, distringere possint tota "vita ipsius Thomæ, ad quorum- "cumque manus devenisset, &c. "Et profert hic prædictum scrip- "tum sub nomine prædicti Jo- "hannis quod præmissa testatur, "&c., cujus data est apud Neuport "die Lunæ proxima post Festum "Inventionis Sanctæ Crucis anno "regni Regis Edwardi patris, &c., "quarto [*not* set out], virtute cujus "concessionis ipse fuit seisitus de "redditu prædicto quousque præ- "dicti Philippus et alii in brevi "nominati ipsum inde disseisi- "verunt. Et petit assisam, &c."

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A.D. 1344. by the confirmation that the rent commenced at a previous time, then would ensue the mischief that he would now recover against us by reason of this deed, and at a future time he would bring another Assise by reason of the first deed, and would recover other four marks.—Hillary. If he should recover by reason of this deed, he would not recover anything by reason of the first deed, nor, *e converso*, if he should recover the rent by reason of the first deed, would he recover anything by reason of the confirmation.—*Pole.* It is not right that, if the first deed has been burnt, or lost, we should be ousted from our rent, so long as we have the confirmation.—And afterwards *Gaynesford* said that John was not seised of the manor of Fulham at the time at which he confirmed the rent, and showed a grant indented to prove that he was not seised.

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ment est suppose la rente comenser de temps avant, meschief ensuereit qil recovereit ore devers nous par cel fait, et autrefoitz par le primer fait il portereit un autre Assise et recovereit autres iiij marcz.—Hill. Sil recovereit par cel fait, il ne recovereit rienz par le primer fait, *nec, e converso*, sil eit recoveri la rente par le primer fait il ne recovereit rien par le confermement.—*Pole.* Il nest pas resoun qe si le primer fait fuit ars ou perduz qe nous serroms oustee de nostre rente, tanqe nous eyoms le conferment.—Et puis *Gayn.* dit qe Johan ne fuit pas seisi de maner de Fulham a temps quant il conferma la rente, et mustra une graunt endente coment il ne fuit pas seisi.[1] A.D. 1344.

[1] After Quyntyn's replication the roll continues as follows:—" Et " Philippus et Alicia dicunt quod " prædictus Warinus dimisit præ- " dictum manerium unde, &c., " cuidam Simoni de Parys et " Roesiæ uxori ejus, tenendum ad " terminum vitæ eorundem Si- " monis et Roesiæ Reddendo inde " eidem Warino octo marcas per " annum. Et dicunt quod prædictus " redditus quatuor marcarum de " quo prædictus Thomas queritur, " &c., non potest intelligi alius " redditus quam parcella præ- " dicti redditus octo marcarum, " qui quidem Simon et Roesia " statum suum inde concesserunt " quibusdam Willelmo Dawe et " Margeriæ uxori ejus. Et postea " prædicti Simon, Roesia, et Wil- " lelmus obierunt. Et prædicta " Margeria statum suum quam " habuit in manerio illo reddidit " præfato Johanni filio Warini ut " illi ad quem reversio inde post " mortem prædictorum Simonis et " Roesiæ spectabat, qui quidem " Johannes filius Warini tenebatur " cuidam Willelmo Sparkes in quin- " quaginta libris per quoddam scrip- " tum obligatorium de statuto mer- " catoris, &c., certis terminis in " dicta obligatione solvendis. Et " pro eo quod idem Johannes " filius Warini terminos solutionis " in dicta obligatione contentos " non observavit, dictus Willelmus " Sparkes secutus fuit breve domini " Regis de capiendo corpus præ- " dicti Johannis secundum formam " statuti, &c., ita quod postmodum " ad prosecutionem ejusdem Wil- " lelmi prædicta tenementa, unde, " &c., quæ præfato Johanni filio " Warini reddita fuerunt in forma " prædicta, liberata fuerunt eidem " Willelmo Sparkes per breve Regis " tenenda per formam statuti, &c., " quousque prædictum debitum " inde levasset, &c., qui quidem " Willelmus postmodum statum " suum quem habuit in eisdem " tenementis concessit ipsi Philippo " versus quem, &c., per scriptum " suum, quod hic proferunt, et " quod idem testatur, cujus data " est apud Londonias die dominica

No. 47.

A.D. 1344. Note as to execution.

(47.) § A man sued a writ to the Sheriff of Middlesex to cause him to have execution of certain tenements which he recovered against one A. The Sheriff did nothing by reason of this writ, wherefore he sued an *Alias* writ and a *Pluries vel causam nobis significes*. To this last writ the Sheriff returned that he had seized corn growing on the same land for a certain debt due to the King from the person against whom the recovery was had in respect of a fine which he had made to the King for a trespass of which he had been found guilty.—*Richemunde*. We pray execution, because it is not right that, for any debt or fine due to the King from one who has no right in the land, and whose estate is defeated by judgment, we should be delayed in respect of our execution.—And the

No. 47.

A.D. 1344. *Nota* de execucion. [Fitz., *Execucion*, 56.]

(47.) [1] § Un homme suist brief a Vicounte de Middelsexe de ly faire avoir execucion de certeinz tenementz queux il recoveri vers un A. Le Vicounte ne fit rien pur cel brief, par quei il suist le *Sicut alias* et *Sicut pluries vel causam nobis significes.* A qel brief le Vicounte retourna qil avoit seisi bleez cressantz en mesme la terre pur certein dette due a Roy de[2] cely vers qi le recoverir se fist dun fyn qil fit a Roy pur un trespas de qel il fuit atteint. —*Rich.* Nous prioms execucion, qar il nest pas resoun qe pur nulle dette ou fin due a Roy de ly qe nulle dreit ad en la terre, et qi estat est defait[3] par jugement, nous soioms delaie de nostre execucion.—

" in festo Sancti Nicholai anno " regni Regis Edwardi patris " domini Regis nunc quarto. Et " dicunt quod, tenementis illis in " seisina ejusdem Philippi sic " existentibus, prædictus Johannes " filius Warini per scriptum suum " remisit et in perpetuum quietum- " clamavit ipsi Philippo et cuidam " Elianoræ tunc uxori suæ heredi- " bus et assignatis ejusdem Philippi " totum jus et clameum quod " habuit seu quocunque modo " habere potuit in tenementis illis, " et obligavit se et heredes suos " ad warantizandum, &c. Et " proferunt hic prædictum scriptum " sub nomine prædicti Johannis " filii Warini quod hoc testatur, " &c., cujus data est apud Lon- " donias die Lunæ in Festo Con- " versionis Sancti Pauli anno " regni Regis Edwardi patris, &c., " quarto. Et sic dicunt quod " tempore confectionis prædicti " scripti præfati Johannis filii " Warini de confirmatione, &c., " idem Johannes non fuit seisitus " de prædictis tenementis nunc in " visu positis, et unde, &c. Et de " hoc ponunt se super Assisam. Et " Thomas similiter. Ideo capiatur " Jurata loco Assisæ, sed ponitur " in respectum hic usque in Octa " bas Sancti Michaelis pro defectu " juratorum quia nullus venit. Ideo " Vicecomes habeat corpora, &c. " Postea continuato inde processu " inter partes prædictas usque ad " hunc diem, scilicet a die Paschæ " in xv dies anno regni domini " Regis nunc Angliæ decimo nono " Et modo veniunt prædicti Phil- " ippus, Alicia, et Thomas filius " eorundem Philippi et Aliciæ, " . . . . et prædictus Thomas " Quyntyn solemniter vocatus non " est prosecutus. Ideo consideratum " est quod prædicti Philippus, " Alicia, et Thomas filius eorundem " Philippi et Aliciæ eant inde sine " die, et prædictus Thomas Quyn- " tyn et plegii de prosequendo in " misericordia. Quærantur nomina " plegiorum, &c."

[1] This case is from Harl. alone. It has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*.

[2] MS., a.

[3] MS., defaut.

Nos. 48, 49.

A.D. 1344. Court granted him execution, notwithstanding the Sheriff's return, but to have execution of the land alone, and not to cause him to have execution of the land with the crop, so that the Sheriff should not be compelled to cause him to have execution of the land until the crop had been taken away, if he would not do so *gratis*.

Account. (48.) § Note that *Pole* counted, on a writ of Account, that the defendant had been receiver of the moneys of one A. who was plaintiff, and that he had received a certain sum of money, by the hand of one H., to make profit, and to traffic [for the plaintiff's benefit] and thereof to render an account.—*Moubray*, for the defendant, said that the defendant was never the plaintiff's receiver by the hand of H., as *Pole* had counted, and of that he tendered averment.—*Pole*. That is not an issue, but he must come to a denial of the receipt generally, because that which he says by way of answer is a plea to discharge him before the auditors in respect of that particular receipt which has been assigned, because before them I shall be able to charge him with divers receipts.—Hillary. You say what you would like to be the fact, for he will not be charged before auditors with any receipts but those which you assign by your count before us, and the issue which he tenders is proper; therefore will you accept the averment?—And the issue was taken that the defendant was never the plaintiff's receiver by the hand of H., as the plaintiff had counted.—And the other said the reverse.

Account. As to this see Michaelmas Term in the 14th year.[1] (49.) § On a writ of Account brought against two persons one was outlawed. And the plaintiff counted against the other who had appeared, and who demanded judgment whether he ought to be put to answer alone, without his companion, since the suit was taken against

[1] The reference should probably be to Michaelmas Term in the 13th year. Y.B. Mich., 13 Edw. III., No. 29.

Nos. 48, 49.

Et la Court ly graunta execucion, *non obstante* le retourn de Vicounte, daver execucion soulement de la terre, mes noun pas de ly faire avoir execucion de la terre ove la vesture, issint qe le Vicounte ne serra pas arte de ly fair avoir execucion de la terre tanqe la vesture soit ouste, sil ne voet de gree, &c. A.D. 1344.

(48.)[1] § *Nota* qe *Pole* counta, en un brief Dacompte, qe le defendant fuit resceivour de les deners un A. qe fuit pleintif, et qil resceut certein summe dargent par my la mayn un H. a profiter et a marchander, et de ceo acompte rendre.—*Moubray*, pur le defendant, dit qil ne fuit unqes son resceivour par my la mayn H. auxi come il ad counte, et ceo tendist daverer.—*Pole*. Ceo nest pas issue, einz covient qil soit a dedist de la resceit generalment, qar ceo qil dit pur respouns est ple pur ly descharger devant les auditours de cel resceit assigne, qar devant eux jeo ly purray charger de divers resceites.—Hill. Vous ditez talent, qar il ne serra charge devant les auditours forqe de resceites queux vous assignez par vostre counte devant nous,[2] et lissue qil il tend est covenable: par quei volez laverement?—Et lissu fuit pris qil ne fuit unqes son resceivour par la mayn H. auxi come il avoit counte.—Et lautre [le] revers. Acompte. [Fitz., *Issue*, 35.]

(49.)[3] § En un brief Dacompte porte vers ij lun fuit utlage. Et le pleintif counta vers lautre qavoit apparu, qe demanda jugement sil soul sauuz son compaignoun serreit mys a respoundre, de puis qe la suite fuit pris devers eux en comune.—*Gayn*. La Acompte. *De hoc Michaelis xiiij.* [Fitz., *Respond*, 9.]

[1] From Harl. alone. This case has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his short abridgment of the report.

[2] MS., vous.

[3] From Harl. alone. This case has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*.

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A.D. 1344. them in common.—*Gaynesford.* The suit against the other is brought to an end by his outlawry, wherefore, if you do not answer now, I shall be ousted from my action.—*Richemunde.* It is possible that the other, who is outlawed, may have a release, and that will bar you, and we shall be aided by that if you wait until he has his charter of pardon.—Hillary. It is possible that he may never have his charter of pardon, and therefore you must answer the plaintiff.—And he said that he had never been receiver.

Statute merchant. The continuation is in Michaelmas Term in the same year.[1]

(50.) § On a statute merchant the cognisor made his suggestion in the Chancery that he had paid the money, and that the other had delivered to him the letters obligatory of the statute in lieu of acquittance, and afterwards had sued execution on other counterfeit letters of a statute. And thereupon he had an *Audita Querela* directed to the Justices, &c., upon which a *Venire facias* issued to the Sheriff to cause the person to whom the recognisance was made to come, and to send the body of the cognisor, &c. Process was continued upon this against the person to whom the recognisance was made, and as far as the *Pluries Distringas*, to which writ the Sheriff returned that he had nothing, whereupon *Blaykeston* came to the bar, and showed the process, as before, and prayed that, as the Sheriff had returned that the person to whom the recognisance was made had nothing, the cognisor, whose body remained in prison, might go quit, and also prayed a *Supersedeas* to the Sheriff to stay execution. Thereupon the Justices deliberated, and agreed that the cognisor should sue another *Pluries Distringas* to distrain the person to whom the recognisance was made in the lands which he had on the day on which the *Venire facias* issued against him, and that if the Sheriff should then testify that at that time

[1] Y.B., Mich., 18 Edw. III., No. 22.

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suete vers lautre est mys a la fin par sa utlagerie, par quei, si vous ne responez a ore, jeo serra ouste de maccion.—*Richem.* Il est possible qe lautre, qest utlage, eit relesse, qel vous barra, et par qel nous serroms aide si vous attendez tanqil eit sa chartre. —Hill. Il est possible qil navera jammes sa chartre, par quei il covint qe vous responez a ly, qe dist qil ne fuit unqes resceivour. A.D. 1344.

(50.) [1] § En un statut marchaunt le conisour fist sa suggestion en la Chauncellerie qil avoit paye les deniers, et qe lautre en lieu dacquitaunce ly avoit baille les lettres obligatories del estatut, et qe puis apres par autres lettres countrefaitz de lestatut il avoit suy execucion. Et sur ceo il avoit un *Audita Querela* as Justices, &c., sur quei le *Venire facias* issuit a Vicounte de faire vener cest a qi la conisaunce, &c., et maunder[2] le corps lautre, &c. Proces sur ceo continue vers celi a qi la conisaunce [fut fait], et, tanqe a *Distringas sicut pluries*, a qel brief le Vicounte retourna qil navoit rien, sur quei *Blaik.* vint a la barre, et moustra le proces come devaunt, et pria, de puis qe le Vicounte avoit retourne qe cesti a qi la conisaunce, &c., navoit rien qe le conisour qi corps demura en prison pout aler quites, et auxi un *Supersedeas* a Vicounte de sursere dexecucion, sur quei les Justices se aviserunt, et ceo acorderunt qil suerèit une graunt Destresse *sicut pluries* à destreindre cely a qi la conisaunce, &c., en les terrez qels il avoit jour del *Venire facias* issu vers luy, et si le Vicounte adonqes tesmoigneroit Statut Marchaunt. *Residuum eodem anno Michaelis.* [Fitz., *Proses*, 169.]

[1] From Harl. 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*.

[2] MS., maunda.

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A.D. 1344. he had no lands or tenements, and still had none, the cognisor should then have a *Capias* against him.

Quid juris clamat. (51.) § One A. sued a *Quid juris clamat* against a tenant in order to know with certainty what right he claimed in certain tenements, of which one B. had granted the reversion to A.—*Derworthy*, for the tenant. Sir, we tell you that B., his grantor, leased to us the same tenements for term of our life, rendering for the two first years after the lease one rose-blossom *per annum*, and after the two years to the end of twenty years rendering £20 *per annum*, and granted to us by the same deed that, if we should die within the twenty years, our executors should hold the land until the same twenty years had come to an end; judgment whether on this note, which supposes our estate to be only for term of life, we shall be put to attorn, when we have shown our estate to be different. And he produced to the Court a deed which witnessed his statement.—*Grene*. Sir, since he has admitted his estate to be for term of life (as the note supposes) as to that which he says that his executors would hold, after his death, until the end of the twenty years, if he died within the twenty years, that matter has not yet come to pass in fact, and in his person no estate other than a term for life can rest, for an estate for a term [of years] and an estate of freehold cannot at the same time rest in one person, because, if any one has first an estate for a term of years, and afterwards receives from the lessor a confirmation for term of life, the term of years ceases, wherefore we demand judgment, and pray judgment that he do attorn.—Sharshulle. It is not right that he should be put to attorn on this note which supposes his estate to be only for term of life, when his estate is larger, for, if he should attorn, the estate which his executors

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qil navoit adonqes terres ne tenementz, ne unqore nad, adonqes le conisour avereit devers ly le *Capias*.[1] A.D. 1344.

(51.) [2] § Un A. suist un *Quid juris clamat* vers un tenant a saver moun quele dreit il clama en certeinz tenementz des qeux un B. ly avoit graunte la reversion.—*Derr.*, pur le tenant. Sire, nous vous dioms qe B., soun grauntour, nous lessa mesmes les tenementz a terme de nostre vie, rendaunt les deux primers anz apres la les un floure de rose, et apres les deux anz tanqe a la fyn des xx anz rendaunt xx*li.* par an, et graunta a nous par mesme le fait qe si nous deviassoms deinz les xx anz qe noz executours tenissent la terre tanqe les xx anz fuissent passez par mesme la fyn; jugement si sur cele note, qe suppose nostre estat soulement estre a terme de vie, serroms mys datourner, la ou nous avoms mustre nostre estat estre autre. Et mist avant fait a la Court qe tesmoigna son dit.—*Grene.* Sire, depuis qil ad conue soun estat estre a terme de vie, come la note suppose, et quant a ceo qil parle qe ceux executours lavereint apres son deces, si deviast deinz les xx anz, tanqe al fin de les xx anz, cest chose nest pas unqore avenuz en fait, et en sa persone autre estat qa terme de vie ne puit demurer, qar estat de terme et de fraunctenement ne poient a un temps demurer en un persone, qar si un homme eit primes estat a tèrme daunz, et puis prent conferment a terme de vie de lessour lestat, le[3] terme des anz cesse, par quei nous demandoms jugement, et prioms jugement qil attourne.—Schar. Il nest pas resoun qil soit mys dattourner sur cel note qe suppose soun estat soulement a terme de vie, et ou son estat est plus large, qar, sil attournast, lestat qel *Quid juris clamat.*

[1] MS., *Cape.*

[2] From Harl. alone. The case has not been printed in the old editions of the Year Books, nor does it seem to have been used by Fitzherbert for his *Abridgment.*

[3] MS., a.

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A.D. 1344. would have would be lost through his attornment, and that would not be right where such a bargain has been made between your grantor and you; and, though he may not attorn by virtue of this note, you must blame yourselves either, on the one hand, for having made such a purchase of a reversion, in respect of which you could not by law compel the tenant to attorn, or, on the other hand, for having taken such a note supposing his estate to be simply for term of life when you could have had a note making mention of the whole of the tenant's estate, as I believe, because it would have been right that you should have had a note in that form, and then his estate could have been saved.—*Grene.* I could not have had any other note but such as I have, supposing his estate to be only for term of life; and it is a permissible thing for every one to be able to grant the reversion expectant on the death of his tenant for life, and the estate which he claims for his executors will be saved to him on his attornment, and entered upon the roll, since he has shown it to the Court, wherefore it is right that on this note he should be put to claim, since I could not have any other note.—SHARSHULLE. If he now attorns upon that note, his estate cannot be saved to him, because we will not put it upon the roll that he has any other estate than is supposed by the note.—*Grene.* Sir, I know well that on a note supposing the estate of the tenant to be only for term of life, where the tenant showed that he had a term for life, and three years beyond to his executors, he was put to attorn by judgment, and a writ of Waste was maintained against him on the supposition that his estate was only for term of life.—Afterwards the parties were adjourned to Michaelmas Term.

Formedon in the reverter.

(52.) § On a writ of Formedon in the reverter the

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ces executours avereint serreit peri par son attourne- A.D. 1344.
ment, et ceo ne soit pas resoun par un tiel bargain fait entre vostre grauntour et vous; [et] mesqil nattourne pas sur cele note, rettez a vous mesmes un de ceo qe vous faitez un tiel purchace de reversion de quei vous purrez pas chacer le tenant dattourner par la ley, ou de ceo qe vous preistez un tiel note supposaunt soun estat simplement a terme de vie la ou vous purrez avoir ewe note fesaunt mencion de tut lestat le tenant a ceo qe jeo crey, qar ceo serreit resoun qe vous ussez ewe note, et donqes purreit soun estat avoir este salve. —*Grene.* Jeo ne purray nulle autre note avoir ewe forqe tiel come jay, supposaunt son estat soulement a terme de vie; et il est congeable chose qe chescun homme purra graunter la reversion de son tenant a terme de vie, et son estat qel il cleime a ces executours ly serra salve sur son attournement, et entre en le roule, de puis qil ad mustre a la Court, par quei il est resoun qe sur cele note nous soit mys de clamer depuis qe jeo ne purray autre note avoir.—Schar. Sil attourne ore sur cel note, son estat ne puit estre salve a ly, qar nous ne voloms pas mettre en roule qil ad autre estat qe nest suppose par la note.—*Grene.* Sire, jeo say bien qe sur un note supposaunt lestat le tenant soulement a terme de vie, la ou il mustra qil avoit estat a terme de vie, et iij anz outre a ces executours, il fuit mys dattourner par jugement, et brief de Wast meyntenue devers ly supposaunt son estat soulement a terme de vie.—Puis apres les partiez furent ajournez tanqe a terme de Seint Michel.

(52.) [1] § En un bref de Forme de doun en le Fourne de doun en le reverty. [Fitz., *Age*, 11.]

[1] This case has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*. It is from Harl. alone, but corrected by the record. *Placita de Banco*, Trin., 18 Edw. III., R° 100. It there appears that the

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A.D. 1344. demandant appeared by guardian.—*Notton.* This is a writ which by its nature affects the right, and the demandant is under age, wherefore we pray that the parol may demur until his full age.—*Derworthy.* The parol will not demur any more in this case than on a writ of Formedon in the descender, unless some collateral matter be shown to which the demandant could not be a party during his non-age, wherefore, &c.—Notwithstanding this, because the demandant was under age, and this was a writ affecting the right by demanding the fee simple on the seisin of his ancestor, the parol was put without day.

Formedon in the descender.

(53.) § One Alice brought her writ of Formedon in the descender, and, after appearance, she caused herself to be essoined as being on the King's service, and

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reverti le demandant fuit par gardein.—*Nottone.* Cest un brief de dreit en sa nature, le demandant est deinz age, par quei nous prioms qe la parole demurge tanqe a soun age.[1]—*Dirr.* La parole ne demura nient pluis cy qen un brief de Forme de doun en le descendre, si homme ne moustre matere de coust a quei le demandant ne puit estre partie duraunt son noun age, par quei, &c.—*Hoc non obstante*, pur ceo qe le demandant fuit deinz age, et ceo fuit un brief de dreit a demander fee simple de lasseisine [son auncestre[2]] la parole fuit mys saunz jour.[3] A.D. 1344.

(53.)[4] § Une Alice porta son brief de Forme de doun en le descendre, et, apres apparaunce, ele se fist essoner de service le [Roy], et par cel essone Forme de doun en le descendre [Fitz., *Essone*, 169.]

action was brought by Agatha late wife of John de Reigni and Thomas son of Thomas de Reigni "per "Walterum atte Forde attorna- "tum prædictæ Agathæ et custo- "dem prædicti Thomæ," against Thomas de Orchard in respect of the manor of Orchard (with certain exceptions) and against others in respect of certain tenements in Orchard (Somerset) "quæ Ro- "bertus de Niwetone, proavus "prædictæ Agathæ, et consangui- "neus prædicti Thomæ · filii "Thomæ, cujus heredes ipsi sunt, "dedit Almarico de Orchard et "heredibus de corpore suo exeun- "tibus, et quæ, post mortem præ- "dicti Almarici, ad præfatos "Agatham et Thomam filium "Thomæ reverti debent per "formam donationis prædictæ eo "quod prædictus Almaricus obiit "sine herede de corpore suo "exeunte."

[1] The prayer of the tenants appears on the roll as follows:—"quod prædictus Thomas filius "Thomæ, qui nunc petit simul, "&c., est infra ætatem, et dicunt "quod ipsi non debent prædictis "petentibus ad hoc breve re- "spondere, prædicto Thoma filio "Thomæ sic infra ætatem exist- "ente, &c., et petunt quod loquela "ista remaneat usque ad ætatem, "&c."

[2] The words son auncestre are omitted from the MS., but, being in accordance with the record, they have been supplied from Fitzherbert's *Abridgment*.

[3] All that appears on the roll after the prayer of the tenants is the following:—"Et Agatha et Thomas "filius Thomæ non possunt hoc "dedicere. Ideo consideratum est "quod loquela ista remaneat usque "ad ætatem, &c."

[4] From Harl. 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*.

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A.D. 1344. by that essoin she had a day until now at the Quinzaine. She now appeared, and she did not bring her warrant [for the essoin], wherefore the tenant prayed judgment how he was to leave the Court.—*Derworthy.* She is demandant, wherefore she can cast such an essoin to her own delay without having any warrant for this essoin; and, besides, she is under age, wherefore, &c.—And it was said by the Court that it is as necessary for the demandant, when he is essoined as being on the King's service, to produce his warrant for that essoin, on the day which he has by the essoin as it would be for the other party, notwithstanding that this esssoin is to his own delay.—Therefore, because Alice had no warrant for this essoin, judgment was given that she and her pledges to prosecute should be in mercy. But, because, upon inspection, she was adjudged to be under age the amercement was pardoned.

Statute merchant.

(54.) § On a Statute merchant *Pole* came to the bar, and showed how the body of the cognisor had been taken by the Sheriff by reason of a writ of *Capias* which came to him, which writ was not warranted by the record, because it was not in accordance with the record, and so the cognisor was taken without warrant, wherefore *Pole* prayed a writ to the Sheriff to deliver the body of the cognisor, which had been so taken without warrant.—The Justices looked at the writ, and also at the record upon which, &c., and found that the writ was not warranted, because the record purported that the cognisor had acknowledged himself to be bound in the debt, &c., on the Monday next before the Feast of St. Edmund; besides, a day was given by the roll in Easter Term, and the writ was returned now on the Quinzaine of Trinity, and the Justices found by the roll that on the day which was given in Easter

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avoit jour tanqe ore a la xv^ne^. Ore vint ele, et ne porta mie son garraunt, par quei le tenant pria jugement coment il devereit departir.—*Dirr.* Ele est demandant, par quei en delay de ly mesme ele pount getter un tiel essone saunz avoir garraunt de cel essone; et, ovesqe ceo, ele est deinz age, par quei, &c.—Et fuit dit par la Court qe auxi avant covient il al demandant, quant il est essone de service le Roy, de mettre avant garraunt de cel essone, au jour qil ad par lessone, come il ferreit a autre, *non obstante* qe cel essone est en delay de ly mesme. —Par quei, pur ceo qe Alice navoit garraunt de cel essone, fuit agarde qe ly et ses plegges de suier fuissent en la mercy. Mes, pur ceo qele par inspeccion[1] fuit ajuge dedeinz age lamerciement fuit perdone.[2] A.D. 1344.

(54.)[3] § En un estatut marchaunt *Pole* vint a la barre, et moustra coment le corps le conisour fuit pris par le Vicounte par cause dun brief qe ly vint de prendre, le qel brief ne fut pas garraunti del recorde, qar il fuit desacordaunt al recorde, et issint fuit il pris sanz garraunt, par quei il pria brief au Vicounte a deliverer le corps le conisour qi issint fuit pris saunz garraunt.—Les Justices regarderent le brief, et auxint le recorde hors de qel, &c., et troverent qe le brief ne fuit pas garraunti, qar le recorde voet qe le conisour se avoit conu estre tenu en la dette, &c., le Lundy prochein devant la Feste de Seint Edmound; ovesqe ceo, par roulle jour fuit done tanqe a Terme du Pasqe, et le brief fuit retourne ore a xv^ne^ de la Trinite, et les Justices troverent par roulle qe au jour qe fuit done a Terme Statut marchaunt.

[1] MS., suspecte.
[2] MS., done.
[3] From Harl. alone. This case has not been printed in the old editions of the Year Books, nor does it appear to have been used by Fitzherbert for his *Abridgment*.

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A.D. 1344. Term nothing had been done, and so the process was discontinued. Therefore they granted a writ to the Sheriff to deliver the body of the cognisor, which had so been taken without warrant.—*Quære*, on this, if the Court had found by the roll that the process had been continued until the present time, whether they could, inasmuch as the writ was not warranted by the record, have granted a writ to the Sheriff to deliver the body so taken without warrant.—I think not, as they were apprised by the Sheriff's return that the body had been taken, because then they ought immediately to have granted another writ to take the body of the same cognisor.

Secta ad molendinum.

(55.) § A man brought a writ against a tenant in the words "*quod faciat sectam ad molendinum suum, &c.*" After appearance the person against whom the writ was brought made default, wherefore the demandant prayed his judgment to recover his suit to the mill, and to have a writ to the Sheriff to enquire as to the damages, and not to have damages in accordance with his count. And, because the demandant was a man in Religion, they would not award execution until enquiry had been made, according to the statute,[1] touching any collusion and deceit which there might have been.—As to this matter see Easter Term in the sixth year on a like writ, and Hilary Term in the 13th year.[2]

Scire facias.

(56.) § Thomas de Tochewyke sued a *Scire facias* upon a recognisance against William le Vavasour, to know with certainty wherefore he ought not to have execution of a certain debt acknowledged by William, the day for the payment of which had passed.—William appeared, and said that Thomas by his deed indented,

[1] 13 Edw. I. (Westm. 2), c. 32. | [2] Y.B., Hil., 13 Edw. III., No. 28.

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de Pasqe rien ne fuit fait, issint le proces discontinue. Par quei ils granterent brief au Vicounte a deliverer le corps le conisour, qe issint fuit pris saunz garraunt.—*Quære, super hoc*, si la Court eust trove par roulle qe le proces eust este continue tanqe a ore, sils poient, par taunt qe le brief ne fuit pas garraunti par le recorde, avoir graunte brief au Vicounte pur avoir delivere le corps issint pris saunz garraunt.—*Credo quod non*, de puis qils furent apris par retourn du Vicounte qe le corps fuit pris, qar donqes covendreit il meintenant davoir graunte autre brief de prendre le corps mesme le conisour. A.D. 1344.

Suite de Molein. [Fitz., *Damage*, 87; *Jugement*, 120.]

(55.) [1] § Un homme porta un brief vers un tenaunt *quod faciat sectam ad molendinum suum, &c.* Apres apparaunce cely vers qi le brief fuit porte fist defaut, par quei le demandant pria son jugement de recoverir sa suite, et qil avoit brief a Vicounte denquere des damages, et noun pas damages auxi come il avoit counte. Et pur ceo qe le demandant fuit homme de religion il ne voleint pas agarder execucion tanqe enqis fuit la collusioun sur desceit qe poet estre fait a lestatut.—*De hoc Paschæ sexto* en atiel brief, et *Hillarii xiij°*.

Scire facias. [Fitz., *Barre*, 247.]

(56.) [2] § Thomas Tochewyke suist un *Scire facias* hors dune reconisaunce vers William le Vavasour, a saver moun pur [quei] il ne dust avoir execucion de certein dette par ly reconue, de qel le jour fuit passe.—William vint, et dit qe Thomas par son fait

[1] From Harl. alone. This case has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*.

[2] This case has not been printed in the old editions of the Year Books, though it has been used by Fitzherbert for his *Abridgment*. It is from Harl. alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 142. It there appears that the *Scire facias* was sued by Thomas de Tochewyke and William de Berkhamstede of Wingrave against William le Vavasour, vicar of the church of Wynge (Wing, Bucks), for execution of a recognisance for £40.

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A.D. 1344. of which William made *profert*, had granted that, if William should acquit and discharge the said Thomas and his heirs of an annual rent of six marks as against one Robert,[1] for which all the lands of the said Thomas were charged for the term of Robert's[1] life, and should also pay the arrears incurred before the Feast of St. Martin next after the execution of the deed, or should cause the said Thomas to have the writing by which the rent was granted to Robert, so that neither this same Thomas, nor his heirs, nor his executors should suffer damage by default of acquittance on the part of this same William, the recognisance should then lose its force. And he said that at every term since the execution of the deed he had paid the rent to Robert.[1] And he made *profert* of Robert's acquittance. And he did not understand that Thomas ought to have execution.—*Grene.* Sir, you see plainly how

[1] For the real name *see* p. 431, note 1.

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endente, qel il mist avant, graunte qe sil acquitast, et deschargeat le dit Thomas et ses heirs dun annuel rente de vj marcz devers un Robert, en qel toutz les terres le dit Thomas furent chargez par terme de la vie Robert, et auxint paiat les arrerages encoruz avant la Feste de Seint Michel prochein apres la confeccion de fait, ou fait al dit Thomas avoir lescript par qel la rente fuit graunte a Robert, issint qe mesme cesti T., ses heirs ne ses executours ne fuissent pas endamages en defaute de la noun acquitaunce mesme cesti William, qadounqes la reconisaunce perdreit sa force. Et dit qe chescun terme puis la fesaunce de fait il avoit paie la rente a Robert. Et mist avant acquitaunce de Robert. Et nentendist pas qil dust execucion avoir.[1]—*Grene.* Sire, vous veiez A.D. 1344.

[1] According to the roll Vavasour pleaded "quod cum prædicti "Thomas et Willelmus de Berk- "hamstede per scriptum suum "indentatum concesserunt quod, si "prædictus Willelmus le Vavasour "acquietaret et exoneraret præ- "fatos Thomam et Willelmum de "Berkhamstede de quodam annuo "redditu quinque marcarum per "annum versus Nicholaum de "Salford nuper vicarium ecclesiæ "de Styuecle, in quo redditu "omnia terræ et tenementa "sua in Comitatu Bukinghamiæ "onerata sunt, ad totam vitam "ipsius Nicholai, et etiam quod, si "acquietaret ipsos Thomam et "Willelmum de Berkhamstede de "omnibus arreragiis de toto tem- "pore ante confectionem scripti "prædicti ante Festum Sancti "Michaelis proxime sequens, ita "quod nec iidem Thomas seu "Willelmus de Berkhamstede nec "heredes vel executores sui pro "defectu acquietantiæ redditus "prædicti seu arreragiorum supra- "dictorum aliquo modo fuerint "gravati seu damnum incurrant "tota vita ipsius Nicholai, vel "etiam si idem Willelmus le "Vavasour faceret prædictos "Thomam et Willelmum de Berk- "hamstede habere scriptum per "quod ipsi onerantur præfato "Nicholao in redditu prædicto ex- "tra possessionem præfati Nicholai, "quod extunc præfata recognitio "quadraginta librarum pro nulla "teneretur, sin autem prædicta "recognitio in suo staret robore et "vigore. Et profert hic in Curia "quoddam scriptum indentatum "quod præmissa testatur, et etiam "tres acquietantias sub nomine "prædicti Nicholai præfatis "Thomæ et Willelmo de Berk- "hamstede factas, unam videlicet "de decem libris quæ a retro "fuerunt simul et de omnibus "arreragiis ante diem confectionis "ejusdem scripti" [and two others showing payment of the annuity at subsequent terms when due]. "Et dicit quod ipse soluit

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A.D. 1344. the deed, of which he makes *profert*, to discharge himself from execution, includes certain matters which ought to be done before the Feast of St. Michael, that is to say, that he ought to discharge Thomas of the rent with regard to Robert,[1] or that he ought to cause Thomas to have the writing in virtue of which the rent commenced, and in his answer he has not shown that he has done either the one or the other; therefore we demand judgment, and pray execution.—*Moubray.* Sir, the deed purports that if we discharge him, and acquit him of the rent with regard to Robert,[1] so that neither he nor his heirs shall be distrained or prejudiced by reason of our non-acquittance, and also if we pay the arrears incurred before the Feast of St. Michael, the recognisance shall then lose its force, so that we are in no way charged by the deed to do anything before the Feast of St. Michael, except only

[1] For the real name *see* p. 431, note 1.

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bien coment le fait qel il mette avant, en descharge- A.D. 1344.
aunt ly dexecucion, comprent certeinz choces qeux duissent estre faitz avant la Feste Seint Michel, saver, qil deschargereit Thomas de la rente devers Robert, ou qil ly ferreit avoir lescript par qil la rente comensa, et en soun respouns il nad pas mustre qil nad fait ne lun ne lautre; par quei nous demandoms jugement, et prioms execucion.[1]—*Moubray.* Sire, le fait voet qe si nous ly deschargeoms et acquitoms de la rente vers Robert, issint qe ly ne ses heirs ne soient destreinz ne grevez par noun acquitaunce de nous, et auxint paioms les arrerages encoruz avant la Feste Seint Michel qadounqes la reconisaunce perde sa force, issint qe par le fait nous sumes rienz chargez de faire avant la Seint Michel,

" prædictum annuum redditum " quinque marcarum prædicto " Nicholao terminis superius " statutis, simul cum omnibus " arreragiis, &c., et quod prædicti " Thomas et Willelmus de Berk- " hamstede pro defectu acquiet- " antiæ redditus prædicti vel " arreragiorum prædictorum nullo " modo fuerunt gravati vel dam- " num habuerunt, et sic dicit quod " ipse complevit conditiones in præ- " dicto scripto contentas, et petit " judicium si prædicti Thomas et " Willelmus de Berkhamstede " executionem debiti prædicti " versus cum habere debeant, &c."

[1] The replication was, according to the roll, " quod prædictus Wil- " lelmus le Vavasour per superius " allegata executionem suam præ- " dictam retardare non debet, quia " dicunt quod cum in prædicta " indentura continetur quod, si " prædictus Willelmus le Vavasour " complevisset omnes conditiones " in prædicta indentura contentas " ante supradictum Festum Sancti " Michaelis, et etiam quod servaret " ipsos Thomam et Willelmum de " Berkhamstede indemnes ratione " onerationis supradictæ ad totam " vitam prædicti Nicholai, quod " extunc prædicta recognitio om- " nino foret vacua et pro nullo " haberetur, et dicunt quod præ- " dictus Willelmus le Vavasour " non exoneravit, nec acquietavit " prædictos Thomam et Willel- " mum de Berkhamstede de annuo " redditu seu arreragiorum [*sic*] " supradictorum versus prædictum " Nicholaum nec fecit ipsos re- " habere scriptum prædictum per " quod onerantur prædicto Nicho- " lao in annuo redditu prædicto " ante Festum Sancti Michaelis " supradictum, et sic idem Willel- " mus le Vavasour non complevit " conditiones in prædicta inden- " tura contentas, et petunt judi- " cium et executionem debiti " prædicti sibi adjudicari, &c."

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A.D. 1344. to pay the arrears, and since we have shown that we paid the arrears before that time, and also that we have paid the rent for each subsequent term, as is proved by the acquittances, and he does not say that he has been prejudiced, or distrained for the annuity, and so the conditions are fully performed, we therefore demand judgment whether he ought to have execution.—Sharshulle. The deed is copulative, and must refer as much to the preceding conditions in the deed as to that which is last expressed, so that it is as much necessary to discharge and acquit him of the annuity before the Feast of St. Michael as to pay the arrears before the Feast of St. Michael; and he understands that he is not discharged by the fact that you have paid the rent for each term, unless you can show a discharge touching the right, so that the annuitant has no longer any ground for demanding the annuity. —*Moubray.* But, Sir, the deed is to the effect that if we discharge and acquit him, and pay the arrears before the Feast of St. Michael, so that neither he nor his heirs shall be prejudiced or suffer damage by default in acquittance, the recognisance shall then lose its force, so that the general words which precede in the deed shall be understood to be in accordance with the special words which are put after them in the deed. And we have shown that we have paid the rent, &c., so that he and his heirs have not been prejudiced by reason of non-acquittance, and he does not say the reverse of that, wherefore we demand judgment.—Sharshulle. As to that which you say that nothing was to have been done before Michaelmas except the payment of arrears because that is the last thing specially mentioned before the time, the intendment of law, Sir, is not so, but that all the conditions previously mentioned in the deed must be performed before that time, for if I execute with you a deed in discharge of a recognisance with a condition that, if

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mes soulement de paier les arrerages, et de puis qe nous avoms mustre qe nous paiames les arrerages avant cel temps, et auxint nous avoms paie la rente de chescun terme puis, come il est prove par les acquitaunces, et il ne dist pas qil ad este greve, ou destreint pur lannuite, issint les condicions pleinement parfourniz, par quei nous demandoms jugement sil deit execucion avoir.—Schar. Le fait est copulative, et deit auxi avant referrer a les condicions precedenz en le fait com a ceo qe a drein est nome qil covient auxi avant ly descharger et acquiter del annuite avant le Seint Michel come de paier les arrerages avant le Seint Michel; et il entent qil nest pas descharge pur ceo qe lavetz paie la rente de chescun terme, si vous ne poiez mustrer descharge en le dreit, issint qil nad pas cause a demander pluis lannuite.—*Moubray.* Mes, Sire, le fait est qe si nous ly deschargeoms et acquitoms, et paioms les arrerages avant le Seint Michel, issint qe ly ne ses heirs soient grevez ou endamages par defaute de non acquitaunce qadounqes la reconisaunce, &c., issint qe les paroles generals precedenz en le fait serrount entenduz solonc les paroles especials metez apres en le fait. Et nous avoms mustre[1] qe nous avoms paie la rente, &c., issint qe ly et ces heirs furent pas grevez par cause de noun acquitaunce, de qele chose il ne dit pas le revers, par quei nous demandoms jugement.—Schar. Quant a ceo qe vous parles qe rien dust estre fait avaunt la Seint Michel mes le paiement des arrerages pur ceo qe ceo est drein nome avaunt le temps, Sire, lentent de ley nest pas tiel, mes qe toutz les condicions avant nomez en le fait deivent estre faitz avant cel temps, qar si jeo vous face un tiel fait en descharge dune reconisaunce qe si A.D. 1344.

[1] Between this part of the report and the conclusion there are other cases interposed in the MS., but the two portions are connected by cross references.

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A.D. 1344. you enfeoff me of one acre of land in such a vill, and of another acre of land in such a vill, before a certain time, the recognisance shall then be of no effect, then if you make a feoffment both of the one acre and of the other before the time, the force of the recognisance is defeated; and as to that which you say that the general words are to be understood according to the general or special words which come after, it is not so, Sir, for if I give certain tenements to you and to your heirs, although the subsequent words of the deed are to have to you and the heirs of your body begotten, your estate will be one of fee simple in virtue of the first words, which cannot be restricted by the subsequent words, &c.; wherefore, &c.—Stonore, *ad idem*. The indenture purports that if William discharge Thomas of the annuity, &c., as above, the recognisance shall then lose its force. Now you have not shown that William has discharged him, for though William has paid the rent and the arrears, &c., still Thomas remains charged; and you have not shown that William has caused Thomas to have the deed touching this annuity, as the indenture purports; wherefore, &c.—And the Court was minded to give judgment for Thomas.—And on the morrow *Moubray* came to the bar, and had in his hand the deed by which the annuity was granted, and said that William was ready to deliver the deed to Thomas, as the indenture purported, and did not understand that he ought to have execution, &c.—The others objected that he ought

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vous moy enfeffez dune acre de terre en tiel ville, A.D. 1344.
et dune autre acre de terre en tiel ville, avant certein temps, qadounqes la reconisaunce, &c., si vous faitez feffement de lune terre et de lautre avant le temps, la reconisaunce est defet[1] en sa force; et quant a ceo qe vous parlez qe les paroles generals serrount entenduz solonc les paroles generals ou especials apres, Sire, il est pas issi, qar si jeo doune certeinz tenementz a vous et a voz heirs, mesqe le fait parle a avoir a vous et a les heirs de vostre corps engendrez, vostre estat serra de fee simple par les primers paroles, qe ne poient estre restreinz par les paroles subsequentz; par quei, &c.—Ston., *ad idem*. Lendenture voet qe si W. descharge T. de lannuite, &c., *ut supra*, qadounqes la conisaunce perde sa force. Ore navez pas mustre qe W. ly ad descharge, qar coment qil ad paie la rente et les arrerages, &c., unqore T. demurt charge; ne vous avetz pas mustre qe W. luy ad fait davoir fait de cele annuite, come lendenture voet; par quei, &c.—Et la Court fuit en volunte davoir rendu jugement pur T.—Et lendemayn vint *Moubray* a la barre, et avoit le fait en poyn, par qele lannuite fuit graunte, et dit qe W. fuit prest [de] deliverer le fait a T., come lendenture voleit, et nentendi mye qil dust execucion, &c.[2]—A qi les autres disoient qe a ceo

[1] MS., fet.

[2] After the replication the roll continues as follows:—"Et Willelmus le Vavasour dicit, ut prius, quod prædicti Thomas et Willelmus de Berkhamstede executionem denariorum supradictorum versus eum habere non debent, &c., quia dicit quod cum in prædicta indentura continetur quod, si idem Willelmus le Vavasour acquietaret prædictos Thomam et Willelmum de Berkhamstede de annuo redditu et arreragiorum supradictorum versus prædictum Nicholaum, vel etiam quod faceret ipsos Thomam et Willelmum de Berkhamstede rehabere scriptum prædictum, per quod ipsi onerantur prædicto Nicholao de annuo redditu prædicto, quod extunc prædicta recognitio foret vacua et pro nullo haberetur, &c. Et dicit quod ipse acquietavit ipsos Thomam et Willelmum de Berk-

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A.D. 1344. not to be admitted to this, because he had previously pleaded another plea, upon which they had abode judgment, wherefore, &c.—And afterwards the parties came to terms.

Cui in vita.

(57.) § William son of Peter de Feriby brought a *Cui in vita*[1] against Gerard de Owsflete, and demanded against him certain tenements on the ground of the seisin of Alice, his grandmother, and he made the descent from Alice to Peter as to son, &c., and from Peter to himself as to son, &c.—*Seton.* We tell you

[1] This action would in later times have been described as a *Sur cui in vita.*

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ne dust il avenir, pur ceo qe devant il avoit plede autre plee, sur quel furent demore en jugement, par quei, &c.—Et puis les parties se acorderent.[1] A.D. 1344.

(57.)[2] § William fitz Piers de Feryby porta le *Cui in vita* vers Gerard de Owsflete, et demanda vers ly certeinz tenementz de la seisine Alice, sa aeel, et fit la descente de A., a Piers come a fitz, &c., et de P. a ly come a fitz, &c.[3]—*Setone.* Nous vous *Cui in vita.*

" hamstede de annuo redditu et " arreragiorum supradictorum si- " cut superius allegatum est. Et " etiam profert hic in Curia præ- " dictum scriptum per quod iidem ' Thomas et Willelmus de Berk- " hamstede obligati fuerunt præ- " dicto Nicholao in annuo redditu " prædicto, et aliud scriptum per " quod idem Nicholaus remisit et " quietum clamavit totum jus et " clameum quod habuit in prædicto " annuo redditu prædictis Thomæ " et Willelmo de Berkhamstede, et " paratus est liberare ipsis Thomæ " et Willelmo de Berkhamstede " scripta prædicta, &c. Et petit " judicium si executionem debiti " prædicti, conditionibus supra- " dictis per ipsum totaliter com- " pletis, habere debeant, &c."

[1] On the roll the conclusion of the case is as follows :—" Et postea " iterum venit prædictus Willel- " mus le Vavasour hic in Curia, et " obtulit præfatis Thomæ et Wil- " lelmo de Berkhamstede scripta " prædicta, &c., et petit quod " recognitio prædicta omnino sit " adnullata, &c. Et prædicti " Thomas et Willelmus receperunt " prædicta scripta hic in Curia, et " concedunt quod prædictus Wil- " lelmus le Vavasour satisfecit eis " de debito prædicto, et volunt " quod recognitio prædicta sit " tractata, &c. Ideo, &c."

[2] This case has not been printed in the old editions of the Year Books, nor does it appear to have been used by Fitzherbert for his *Abridgment*. It is from Harl. alone, but corrected by the record, *Placita de Banco*, Trin., 18 Edw. III., R° 104, d. It there appears that the action was brought by William son of Peter de Feriby against Gerard de Useflete (Ouse-fleet), knight, in respect of 9 acres of land in Swanneslond (Swanland, Yorks), " in quas idem Gerardus " non habet ingressum nisi post " dimissionem quam Gilbertus de " Covenham quondam vir Aliciæ " filiæ Petri de Feriby aviæ præ- " dicti Willelmi, cujus heres ipse " est . . . . . inde fecit " Petro filio Willelmi filio Hervici " de Feriby, &c."

[3] According to the count in the roll " Alicia avia, &c., fuit seisita " . . . . tempore Edwardi " Regis avi domini Regis nunc, " . . . . . et de ipsa Alicia " descendit jus cuidam Petro ut " filio et heredi, &c., et de ipso " Petro descendit jus isti Willelmo " ut filio et heredi, qui nunc petit, " &c."

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[1] For the real names *see* p. 441, note 1.

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dioms qe P. vostre piere par my qi, &c., par ceux faitz qe cy sount, de meisme les tenementz enfeffa un R. le Clerk, a avoir a ly et ses heirs et ses assignes, et obligea ly et ses heirs a garrauntir, &c., a R. ces heirs et ces assignes, le qel R. cy fuist le vyleyn une Lore, miere meisme cesti G., par quei H. baroun meisme cele Lore, come en le dreit Lore, seisi meisme les tenements en sa mayn come le purchace R. L. cel estat continua toute la vie H. et apres la mort H., et morust seisi, apres qi mort G. entra come fitz et heir L.; et demandoms jugement si encountre les faitz P. vostre auncestre, qe issint volent garrauntie, accion devez avoir. Et sur ceo il mist avant iij faitz par les qeux R. purchacea de P. primes iij acres, et puis ij acres, et puis une acre.—*Moubray.* Vostre ple est double, qar si P. survesqist A., et enfeffa R. auxi come par la manere de vostre plee, de comune entente, deit estre entendu, par cel feffement tout saunz garrauntie nous sumes ouste daccion; un autre est de ceo qe vous reliez sur la garrauntie, par quei, &c.—Et [*Setone*] mist son respouns en certein, et demanda jugement si encountre les faitz qe voleint garrauntie, par qele garrauntie descendu sur ly apres la mort P. saccion fuit esteint, si accion, &c.[1]—*Moubray.* Sire, vous veiez A.D. 1344.

[1] The plea, as entered on the roll, was "quod prædictus Willelmus "nihil juris clamare potest in "prædicta terra, quia dicit quod "quidam Petrus de Feriby, pater "prædicti Willelmi filii Petri, "cujus heres ipse est, per medium "cujus, &c., fuit seisitus de præ- "dicta terra, cum pertinentiis, "versus eum petita in dominico "suo ut de feodo et jure, et, per "nomen Petri filii quondam Wil- "lelmi filii Hervici de Northferiby, "per chartam suam dedit et con- "cessit cuidam Johanni clerico "filio Eustachiii ad Crucem de "Northferiby, heredibus et assig- "natis suis, unam acram terræ, "cum pertinentiis, in Swaneslond, "habendam et tenendam sibi "heredibus et assignatis suis in "perpetuum, et obligavit se et "heredes suos ad warantizandum "prædicto Johanni heredibus et "assignatis suis prædictam terram, "cum pertinentiis, contra omnes "homines in perpetuum. Et idem "Petrus per prædictum nomen per "quandam aliam chartam suam "dedit et concessit eidem Johanni

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A.D. 1344 does not make himself either heir or assign of R.[1] to whom he supposes the deeds to have been made, and so the warranty by which he expects to bar us does not extend to him, wherefore, Sir, we do not understand that the law puts us to answer to those deeds in his hand. Besides, Sir, we tell you that Peter died while Alice was living, on the seisin of which Alice, &c.—*Seton*. You do not deny that these are the deeds of your ancestor, and, as to that which you say that the warranty does not extend to us, that is no proof that we ought not to plead the same warranty in bar, for the assign of an assign can plead warranty in bar by way of rebutting, and yet the warranty does not extend to him, wherefore, &c.—Willoughby. The reason for which any one is to be barred by warranty is that the demandant may be held

[1] For the real name *see* p. 441, note 1.

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bien coment par son plee il ne se fait heir ne assigne R. a qi il suppose les faitz estre fait, et issint la garrauntie par qele il nous bie barrer ne sestent pas a ly, par quei, Sire, nentendoms mye qe[1] a eux faitz en sa mayn la ley nous mette a respoundre. Ovesqe ceo, Sire, nous vous dioms qe P. morust vivant A. de qi seisine, &c.—*Setone.* Vous ne deditz mye qe ceux sount les faitz vostre auncestre, et, quant a ceo qe vous ditez qe la garrauntie ne sestent mye a nous, ceo nest mye prove qe nous ne devoms mye pleder en barre par mesme la garrauntie, qar assigne de assigne, par voie de reboter, purra pleder la garrauntie en barre, unqore la garrauntie ne sestent mye a luy, par quei, &c.—Wilby. La cause est par quei homme deit estre barre par garrauntie pur ceo qe par voie[2] de voucher A.D. 1344.

" heredibus et assignatis suis unam " acram terræ, cum pertinentiis, " in eadem villa, habendam et " tenendam eidem Johanni here- " dibus et assignatis suis in per- " petuum, et obligavit se et " heredes suos ad warantizandum " prædicto Johanni heredibus et " assignatis suis prædictam ter- " ram, cum pertinentiis, contra " omnes homines in perpetuum " Et idem Petrus, per prædictum " nomen, &c." [made three more like charters touching lands in the same vill] " quæ quidem terra in " prædictis chartis contenta est " eadem terra versus eum nunc " petita. Et profert hic prædictas " chartas, sub nomine prædicti " Petri, quæ hoc testantur in forma " prædicta, &c., qui quidem Jo- " hannes fuit nativus quorundam " Johannis de Usflete, et Loræ uxo- " ris suæ ut de jure prædictæ Loræ " matris prædicti Gerardi, cujus " heres ipse est, qui quidem Jo- " hannes et Lora terram prædictam " in manum suam seisiverunt, et " ut jus prædictæ Loræ per nati- " vum suum eis adquisitum intra- " verunt, et inde obierunt seisiti, " &c., post quorum mortem idem " Gerardus, ut filius et heres præ- " dictæ Loræ prædictam terram " intravit. Et petit judicium, ex " quo jus in persona prædicti Petri " patris prædicti Willelmi, cujus " heres ipse est, per medium " cujus, &c., per chartas suas præ- " dictas omnino adnullaretur, et, " per consequens, in omnibus illis " qui per prædictum Petrum, seu " per medium ipsius Petri, aliquid " juris in prædicta terra clamare " possent, virtute warantiæ in " eisdem chartis contentæ, si " contra warantiam illam actionem " versus eum inde habere debeat, " &c."

[1] MS., qi.

[2] MS., veis.

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A.D. 1344. to warrant by way of voucher. Now, you have yourself shown that the demandant in this case will not in any manner be held to warrant these tenements by these deeds, for with regard to you he ought not to warrant because you are neither heir nor assign of R.,[1] and you cannot vouch your own villein, and for that reason it seems to him that the law does not put him to answer to such deeds in your hand.—*W. Thorpe.* Sir, the heir of an assign will be admitted to plead in bar, and yet he will never be able to have warranty by way of voucher.—*Grene.* We show by the plea which we have pleaded that the right was extinguished in the person of Peter, through whom, &c., because he bound himself to warrant the tenements to R.,[1] and, inasmuch as his right was so extinguished, no right can descend from him to William; so we plead this warranty in bar as by way of rebutting, because it falls in the mouth of any one who is tenant to show that the right of the demandant or of his ancestor, through whom, &c., has been extinguished, &c., wherefore, &c. And, besides, suppose your ancestor has enfeoffed my tenant of certain tenements with warranty, and my tenant afterwards commits a felony, of which he is convicted, and I enter as upon my escheat, and you bring your writ against me on the ground of your own seisin or of the seisin of another person who was an ancestor, I shall in that case rebut you by the warranty, by which warranty descended upon you after the death of your ancestor your action was extinguished inasmuch as you had been held to warrant, &c., and yet the warranty does not extend to me; so also in this case.—Willoughby. The one is just as doubtful as the other.—*Moubray.* If the law be such as, &c., then a disseisor would be admitted to plead such a warranty in bar, and that would be contrary to law.—*Grene.* I say that a disseisor will have such a plea

[1] For the real name *see* p. 441, note 1.

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le demandant soit tenuz de garrauntir. Ore avez A D. 1344.
mesmes mustre qe le demandant en ceo cas ne serra en nulle manere tenuz de garrauntir ceux [tenementz] par ceux faitz, qar devers vous il ne deit mye garrauntir pur ceo qe vous nestes pas heir nassigne R., ne vous ne poietz mye voucher vostre vilein, par quei il semble a ly qa tiels faitz en vostre mayn la ley ne ly mette mye a respoundre.—*W. Thorpe.* Sire, heir dassigne serra resceu de pleder en barre, et unqore ne purra il jammes avoir garrauntie par voie de voucher.—*Grene.* Nous mustroms par le ple qel nous avoms plede qe le dreit fuit esteint en la persone P. par my qi, &c., pur ceo qe se obligea de garrauntir les tenementz a R., et, pur ceo qe son dreit fuit issint esteint, nulle dreit ne poet descendre de ly a W.; issint pledoms nous cel garrauntie en barre come par voie de reboter, qar il cheit en chescun bouche qest tenant de mustrer qe le dreit le demandant ou de son auncestre par my qi, &c., fuit esteint, &c., par quei, &c. Et dautre jeo pose qe vostre auncestre eit enfeffe mon tenant de certeinz tenementz ove garrauntie, et puis mon tenant fait felonie, pur la qele il est atteint, jeo entre come en ma eschete, vous portez vostre brief vers moy de vostre seisine demene ou de la seisine un autre auncestre, jeo vous reboteray la par la garrauntie, par la qele garrauntie descendu sur vous apres la mort vostre auncestre vostre accion fuit esteint par taunt qe vous fuistes tenuz de garrauntir, &c., unqore la garrauntie ne sestent pas a moy; auxi en ceo cas.—Wilby. Cest *æque dubium.—Moubray.* Si la ley soit tiel cum, &c., dounqes serreit un disseisour resceu de pleder en barre par un tiel garrauntie, et ceo serreit encountre ley.—*Grene.* Jeo die qe un

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A.D. 1344 in bar in order to show that the demandant's right has been extinguished.—*Moubray.* We have shown as clearly as possible that Peter died while Alice, our grandmother, on whose seisin, &c., was living, and that is not denied by you, and so we have shown that Peter had no right, and therefore he could not extinguish any right. You are entirely a stranger to the warranty which, &c., and the warranty does not extend to you, wherefore we demand judgment whether the law puts us to answer to such a deed in your hand, and we pray seisin of the land.—*Seton.* And, inasmuch as we have produced the deeds of your ancestor, through whom, &c., which deeds you do not deny, and by the warranty included in the same deeds the right of your ancestor was extinguished, so that no right could descend through him to you, we demand judgment whether an action, &c.—And so to judgment. —And thereupon they were adjourned.

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disseisour avera tiel plee en barre de mustrer qe le dreit le demandant fuist esteint.—[*Moubray*]. Auxi bien come il serreit avoms[1] moustre qe P. morust vivant Alice nostre aeele, de qi seisine, &c., la quele chose nest pas dedit[2] de vous, issint avoms mustre qe P. navoit mye dreit, par quei il ne puit nulle dreit esteindre. A la garrauntie quele, &c., vous estes tout estraunge, et la garrauntie ne sestent rien a vous, [parquei] nous demandoms jugement si a tiel fait en vostre mayn la ley nous mette a respoundre, et prioms seisine de terre.[3]—*Setone.* Et [nous] jugement, depuis qe nous avoms mys avant les faitz vostre auncestre par my qi, &c., les qeux faitz vous ne deditz pas, et par la garrauntie comprise deinz meisme les faitz le dreit vostre auncestre fuist esteint, issint par my luy nulle dreit a vous pout descendre, si accion, &c.—*Et sic ad judicium.*—*Et super hoc adjornantur.* A.D. 1344.

[1] MS., avoir.

[2] MS., demande.

[3] On the roll the replication immediately following the plea is:—"quod prædictus Gerardus "ipsum Willelmum ab actione sua "præcludere non debet, quia dicit "quod prædictus Petrus pater "ipsius Willelmi, per medium "cujus, &c., obiit, vivente præ-"dicta Alicia, de cujus seisina "idem Willelmus petit terram "prædictam, &c., ita quod in "persona ipsius Petri nullum jus "de terra prædicta vestitum fuit. "Et ad warantiam illam quam "ipse supponit esse factam per "prædictum Petrum patrem ipsius "Willelmi prædicto Johanni "clerico de terra prædicta, cui "quidem Johanni idem Gerardus "non facit se heredem nec assig-"natum, et sic ad warantiam "illam, licet ipse ab aliquo "extraneo de terra prædicta "implacitaretur, omnino extra-"neum, &c., petit judicium si ad "utendum facto cum warantia, "cui quidem facto ipse est extra-"neus, si tale placitum in ore "suo jaceat, et petit seisinam "terræ, &c."

There is nothing further on the roll, except adjournments.

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A

Abatement of Writs:

(Assise of Novel Disseisin.) If the writ is brought against two persons, and one of them declares himself a villein, and his lord is not named in the writ, and the Assise finds (*inter alia*) that the two were joint tenants, the writ abates as to the whole, and not only as to a moiety, 116-122; 123, note 9.

(Attaint.) When the action is brought by more persons than one upon a verdict in Trespass finding them guilty, a writ for them all in common is good, but several writs for each of them would be good also, 300-306.

(*Cui in vita.*) Where an estate for life is claimed on the ground that a gift was made to the demandant and her husband and the heirs of their bodies, the writ abates, because her estate is an estate tail, even though possibility of issue be extinct, 336-338.

(Debt.) Where an agent has leased for years by a deed in which it is expressed that the rent is to be paid either to the principal or the agent, and the agent brings an action of Debt for arrears, the writ abates, because it should have been brought in the name of the principal, 200-204.

Abatement of Writs—*cont.*

(Dower.) Where the demand is for the third part of a manor the writ will not abate for non-tenure of a part of it, 30-32.

Issue joined, where the plea in abatement was that there were two vills, each with an addition, and one only was mentioned in the writ, and that without addition, 290-292; 291, notes 1, 4, and 6.

(Forfeiture of Marriage.) The enactment of the Statute of Merton, c. 6, that the lord may retain the heir's land for twenty-one years is no ground for the abatement of the writ, even though it be alleged therein that the marriage was offered *juxta formam statuti*, but the lord may elect either to retain the land or to bring the action, 104-108.

(Formedon in the descender.) A writ brought in respect of the office of a serjeanty in a cathedral church is good, 338-344.

(Formedon in the remainder.) Where a remainder has been limited to two persons in fee, one of whom has died without issue, the writ is good for the heir of the other, who has the benefit of the right in action which accrued by survival to his ancestor, and the writ will not abate even though the word "*redibunt*" may have been used in the specialty instead of "*remanebunt*," 358-362.

(*Præcipe quod reddat.*) If the tenant be described in the writ as parson

Abatement of Writs—*cont.*
of a particular church, and plead that he is not and was not on the day of the purchase of the writ parson of that church, and the plea be not denied, the writ abates, 246.

(*Quare impedit.*) A writ brought by the Queen Consort will not abate for any reason for which it would not abate if brought by the King, 28-30.

A writ brought against a Bishop "*electus confirmatus*," will not abate for the omission of the copulative *et*, 368; 371, note 1.

(*Quare incumbravit.*) A writ will not abate for omission to state before what Justices a recovery was had on *Quare impedit*, because *Quare incumbravit*, unlike *Scire facias*, does not need to be warranted by a record, 94.

(*Scire facias* on Fine.) When it is alleged that the person against whom the writ is brought is a villein and holds in villenage, an averment simply that he is tenant of the freehold will not be admitted, and the writ will abate, 10-12.

If among the ter-tenants stated in the Sheriff's return to have been warned there are A. and his wife B., and A. appears and tenders the averment that he is a chaplain and has not, and never had any wife, and the plaintiff cannot deny it, the writ abates as against A., 274; 275, note 5; 276.

(*Scire facias* on judgment in *Quare impedit.*) The writ will not abate for the omission of the clause "*et quia volumus ea quæ in Curia nostra rite acta sunt debitæ executioni demandari*," but it will abate for the omission of the Court and place where the recovery was had, 12.

(Trespass.) Where a taking of a beast, &c., belonging to a Religious House is alleged to have been in the time of a named predecessor of the existing Head of that House, and the words "*quæ fuit* [*A.*, *&c.*] *predecessoris*" are omitted, the writ is nevertheless good, 230.

Abbey:
Advowson of. *See* Advowson.

Account:
Action of, in which the defendant pleaded, as to a part of the time during which he was alleged to have been the plaintiff's receiver and bailiff, that he had had a lease for years from the plaintiff of a manor in respect of which an account was demanded, and as to the rest, partly that he had accounted before auditors appointed by the plaintiff, and partly that he had not been the plaintiff's bailiff or receiver. The plaintiff was not allowed to deny that any thing passed by his deed of lease, and judgment was given for the defendant as to that portion of his plea, but issue was joined as to the other facts, 72-80.

When it is alleged in the declaration that the defendant, as the plaintiff's receiver, received a certain sum of money from a particular person to traffic for the plaintiff's profit, and the defendant tenders the averment that he was never the plaintiff's receiver by the hand of that person, it is a good plea to issue, and the receipt need not be denied in general terms, 416.

If a writ of Account be brought against several persons, and one of them be outlawed, the plaintiff can count against the others, and they are compelled to answer him, 416-418.

Admeasurement of Dower:
View granted in, not only of the third part, but also of the other two parts, 140-142.

ADMEASUREMENT OF PASTURE:
Does not lie between lord and tenant, because those between whom the writ will lie must be of equal condition, 400.

ADMISSION:
To defend. *See* RECEIPT.

ADVOWSON:
The advowson of an Abbey or a Priory may be appendant, just as that of any church, 52, 68.
When any one (whether King or subject) is put out of possession of his advowson by the usurpation of a presentation, he has no remedy but either to wait for the first vacancy and then present, or else to proceed by writ of Right of Advowson, 64, 72.

AGE:
Where a demandant in Formedon in the descender is under age, and a record of a recovery against the donee from whom he descends is pleaded in bar, the parol will not demur, though it is otherwise where his ancestor's deed is pleaded in bar, 282, 284.
Where a demandant in Formedon in the reverter is under age, the parol will, upon prayer of the tenant, demur until he is of full age, 422-424; 425, notes 1 and 3.

AID-PRAYER:
Where in *Scire facias* on Fine levied of the manor of A. one of the ter-tenants alleges that he holds his tenements for life as parcel of the manor of B., and not of the manor of A., and prays aid of the reversioner, the prayer goes to the abatement of the writ, and aid will not be immediately granted, but issue may be joined on the plaintiff's averment that the tenements are parcel of the manor of A., 270-272; 273, note 3; 276-278; 279, note 3.

AID-PRAYER—*cont.*
If a tenant for term of life pray aid of the heir of A., with whom he purchased jointly to himself and A.'s heirs, and it be pleaded that the persons from whom the purchase was made never had anything, *semble* that he must answer to this plea before he can have aid, 364-366.
When co-parceners have been prayed in aid and have made default, and judgment has thereupon been given that the person who prayed aid must answer alone, he cannot afterwards be allowed to pray in aid the heir of one of those co-parceners together with the others, even though he may have been essoined at the time when the judgment was given, 402-406.
See ANNUITY.

AID OF THE KING:
Prayed and granted where no warranty had been included, and no reversion saved, in the King's charter, 406.

AMENDMENT:
(Of judgment.) Where in an action of Trespass *de wallia reparanda* a verdict had been found that the ter-tenants ought to repair a sea-wall, but that the defendant, being a ter-tenant, had neglected to do so, and that the damages amounted to a certain sum, and judgment was given only for the plaintiff to recover the damages, and the plaintiff's counsel prayed, on the following day, that the judgment might be amended, and that the defendant should be distrained to repair the wall, the Court further awarded a writ to distrain as prayed, 234-238; 237, note 1.

ANCIENT DEMESNE:
See RECORDARI FACIAS LOQUELAM.

Annuity:
Title by prescription, in action of, is sufficient, without showing any lay contract, even though both parties be men of Holy Church, and can be averred in the King's Court only, and not in Court Christian, 350-352.
Aid is granted, of the patron and Ordinary, in action of, where the plaintiff being an Abbot, is the patron, and the defendant, being a vicar, alleges that he found his vicarage discharged at the time of his institution, 352-354; 353, note 6.

Appeal:
In Appeal of Maihem the ancient punishment was loss of member for member, and so remained according to the rigour of the law in the time of Edward III., though not enforced, 130.
How it differs from an action of Trespass, 130.
Outlawry in, 130.

Assise:
See Novel Disseisin.

Attaint:
When an Assise has been in the first instance arraigned before particular Justices of Assise, and afterwards taken before others by virtue of a new Commission, and after the verdict Attaint is brought in the King's Bench, the record of the Assise is incomplete without the last commission, and the plaintiff must sue a complete record before the Attaint can proceed, 328.
See Abatement of Writs.

Attorney:
Made by bill or writ, 8.
Warrant of, is good, if the word "de" be introduced in it between the baptismal name and surname of the principal, though differing in that respect from the original writ, because there is in that case no omission in the warrant, 130.

Audita Querela:
The writ of, was first given in the year 10 Edw. III., in Parliament, 308.
Where the writ was brought on the ground that there was a defeasance of a recognisance, on which execution was sued, to the effect that, if the obligor came into Court at a certain time ready to levy a fine of certain tenements, the recognisance should be null, and that the obligor did go into Court ready to levy the fine at the appointed time, but that the obligee did not appear, and the obligee denies this, issue as to the fact may be joined to the country, 348-350; 349, note 1; 351, notes 1 and 5.
Where the obligor in a statute merchant sued an *Audita Querela* and process had issued thereon as far as the *pluries distringas*, to which the Sheriff returned that the obligee had nothing, the Court would not immediately direct the release of the obligor or a stay of execution, but directed that another *pluries distringas* should be sued to distrain the obligee in the lands which he had on the day of the issue of the *Venire facias*, and after that, if the obligee had no lands, &c., at that time, a *Capias*, 416-418.
See Statute Merchant.

C

Cape:
See Process.

Case cited:
Reygmadoyn's, otherwise Repinghale's case, 40; 41, note 4.

Cognisance of Pleas:
Where cognisance of a plea of land is claimed by the bailiff of a liberty, and is counterpleaded by the tenant

Cognisance of Pleas—*cont.*
on the ground that the tenements are not within the liberty, issue will be joined between the bailiff and the tenant, and the demandant will not be a party to it, but will have *Idem dies*. and there will be no writ of *Nisi prius*, 142-152.
If the bailiff of a liberty omits to claim cognisance of a plea touching any tenements on one occasion, the fact will not prejudice any claim in respect of a plea touching the same tenements on a subsequent occasion, 150.

Cosinage:
Where the demandant claims on the ground of the seisin of a particular person, A. the tenant may plead that another person, B., through whom the descent is made, was seised at a subsequent time, and aliened to one whose estate he has, but cannot also plead B.'s warranty. Nor can the demandant have an issue on the supposed alienation, but must traverse the seisin of B., 286-288.

Council:
See Parliament.

Cui in vita:
Pleadings in, where the writ was in the *per*, and the tenant alleged that the entry was through a husband and his wife who had power to enfeoff according to the custom of Winchester, and not through the husband alone as alleged by the demandant, 374-376; 375, note 2; 377, notes 1 and 2.
Or *sur cui in vita* brought by grandson alleging the seisin of his grandmother, 338-346.
See Abatement of Writs.

Custom:
Where it is the custom of a Rape, &c., that a relief should be paid to the lord on the death of each tenant in

Custom—*cont.*
socage, and the lord has given and granted tenements at a certain fixed rent in lieu of all secular demands, the custom nevertheless applies, and the lord may distrain for the relief, 314-318; 319, note 4.

D

Damages:
See Deceit; Rescous; Secta ad molendinum.

Debt:
Action of, against one who had undertaken to pay the plaintiff for cattle purchased of him by another person. *Quære* as to the production of a specialty, 22.
Action of, as against executor, against one who denied that he was executor, and pleadings thereon, 124.
When the action is brought against the Head of a Religious House without mention of his or her baptismal name, and it is alleged in the declaration that a predecessor who is named became bound, and it is pleaded in abatement of the declaration that the person named as predecessor is in fact the existing Head, and the plea is not denied, the declaration abates, and judgment is given for the defendant, 256-270; 257, notes 5 and 12; 265, note 10.
See Abatement of Writs.

Deceit:
Action of, on the ground that a tenant in Formedon had caused to be produced for him a Protection as for one on the King's service beyond sea, when he was in fact residing at a stated place in England, 12-20.
Where A. had recovered in an action of Annuity against B., and subsequently obtained judgment to have

DECEIT—*cont.*
execution on B.'s supposed default after having been duly warned in virtue of a *Scire facias*, and B. sued a writ of Deceit alleging that he had never been warned, a writ issued to the Sheriff to cause the garnishers mentioned in the return to the *Scire facias* to appear. One of them appearing was examined in Court in the absence of A. and of the other garnisher, and testified upon oath that he had never warned B., but judgment was not given for B. upon the deceit until new process had issued against A. to hear his judgment, and A. had made default thereon. Judgment was then given for B. to have back all that had been levied from him by reason of the execution, but without any damages for the deceit, and a *Capias* issued against A., 354-358; 355, note 2; 358, note 1.

DEEDS:
When in Assise of Novel Disseisin for rent, the defendant pleads that the tenements out of which the rent is demanded are out of the plaintiff's fee, the plaintiff must show a specialty before he can have the Assise, 408-410; 409, note 5; 411, note 2.
Where it is alleged that a father has granted a rent, which grant his son and heir has confirmed, it is sufficient to produce the deed of confirmation without the original grant, 410-412; 411, note 2.
Different opinions touching the effect of special or particular words following general words in, 434-436.
See DETINUE.

DETINUE:
If A., the bailee of writings, appears in Court on the first day, and produces them for delivery to B., the plaintiff, and C. who has brought another writ of Detinue against the defendant prays to interplead, judgment is respited until the fourth day, for the return of C.'s writ. The Court then allows the writings to be given up to B., and then allows C. to state his claim. If C. afterwards has judgment in his favour, he will recover damages only as in a case in which the writings have been burnt, 214-226.
If any one is enfeoffed of certain lands by certain deeds and assigns those lands to another, the feoffee has a right to the deeds, and not the assign, in order that the feoffee and his heirs may be protected in case they should be vouched to warrant, 224.

DOWER:
Fine upon writ of, 10.
If suit has been made in Chancery after the husband's death, and certain tenements have there been assigned in satisfaction of the whole dower, and the dowress has had livery thereof, she cannot afterwards maintain an action of Dower on the ground that she was under age at the time of the assignment, and that a portion of the tenements was extended below the true value, though she might have had a re-extent before the assignment was actually made, 370-374.
When the demandant has previously brought a *Cui in vita* against the tenant in respect of the tenements out of which she claims dower, she is estopped from bringing an action of Dower, unless she can plead that in the *Cui in vita* it was found that she had nothing in the lands except as wife, 406.
See ABATEMENT OF WRITS; ADMEASUREMENT OF DOWER.

E

Entry :

Where the plea was, as to parcel, in abatement of the writ, on the ground that the tenant named in the writ had lost it by execution of a fine previous to the purchase of the writ, it was held that he must answer as to the rest of the land, 366-368.

Entry, *sur disseisin* :

Continuation of pleadings in, from Hil., 18 Edw. III., No. 32, 386-388.

Error :

Judgment of the Court of Common Pleas reversed in the King's Bench on a writ of Error, where the errors assigned were that the Justices had wrongly proceeded after a discontinuance, and that at the *Sequatur suo periculo* the vouchee, instead of the tenants' attorney, was told to sue at his own peril, 134-136 ; 135, note 8.

See Statute Merchant.

Escheat :

Where the demandant brings a writ of Escheat on the ground of a felony committed by his tenant (A.) and the tenant in the action (B.) pleads that, while the writ was pending, the King sued a *Scire facias* against him in the Chancery to show cause why the tenements should not remain in the King's hand in accordance with an Inquisition of Office found to the effect that A. was adherent to the King's enemies, and produces a record of a judgment given for the King to recover the tenements on that *Scire facias*, the demandant will take nothing by his writ, because the King's recovery is by action tried, 330-336.

Essoin :

Where a demandant has been essoined, as being on the King's service, until a certain day, it is necessary for him, equally with a tenant who has been so essoined, to produce the warrant of essoin on the appointed day, and if he fail to do so he will be non-suited, 424-426.

Estoppel :

See Dower.

Examination :

Of supposed garnisher, where a party alleged that he had not been warned in accordance with a *Scire facias*, 354-358 ; 355, note 2.

Execution :

Where a demandant has recovered land by judgment, and writs of execution, *alias* and *pluries*, have been sued, and the Sheriff has returned that he has seized corn growing on the land for a debt due to the King, the Court awards execution for the demandant to take effect as soon as the crops have been removed, 416.

See Statute Merchant ; Voucher.

Executors :

If an action is brought against any one as executor, and he alleges that the debtor died intestate, that allegation is insufficient, and he must specifically deny that he is executor, and the plaintiff may then reply that he administered, upon which replication issue may be joined, 124, 125, note 16.

F

Fine of Lands :

Levied upon writ of Dower, 10.

Forfeiture of Marriage :

A defendant cannot have a plea to the effect that the heir's ancestor

Forfeiture of Marriage—*cont.*
did not hold of the plaintiff, and also to the effect that the tenure was in socage and not by knight service. The issue may be on either, but not on both, 108-112.
See Abatement of Writs.

Formedon :
If, as to a moiety of the tenements in demand, one be vouched who is under age, and it be prayed that the parol demur until his full age, judgment will be given against the tenant in respect of the other moiety, unless he plead some answer as to that also, 204.
If the action is brought against several tenants in common, one of whom pleads in abatement of the writ on the ground of several tenure by reason of a lease for life, and then makes default, and the reversioner prays to be admitted to defend his right, and the demandant traverses the lease, upon which traverse issue is joined ; and if other tenants traverse the gift, upon which traverse issue is also joined ; no verdict will be taken on the second issue until the first has been tried, because, if that be found as alleged, by the person praying to be admitted the writ will abate in its entirety, 248, 250, 254.

Formedon in the descender :
After view had the tenant cannot plead non-tenure of the tenements put in view, but only of the tenements demanded, 212.
Where the tenant pleads in bar a recovery of the tenements in Assise of Novel Disseisin by one whose estate he has against the donee, before the date of the gift, the tenant is sufficiently a privy by reason of his tenancy, and the plaintiff must answer to the plea, and there will be an issue whether the donor gave to the donee before the disseisin on which there was a recovery, 280-282 ; 283, note 2 ; 282-284.
Action of, for the office of a serjeanty in a cathedral church, pleadings therein in abatement of the writ, which was held good, and grant of view, 338-344 ; 345, note 3.
Essoin in, 424-426.
See Age.

Formedon in the remainder :
Where *profert* is made of a deed to show the limitation of the remainder, a plea in the form that the donor did not give by that particular deed is not admissible, but it must be in the form that the donor did not give as the writ supposes, 194-196.
No action of, can be maintained, if a specialty cannot be produced, 196.
See Abatement of Writs.

Formedon in the reverter :
Plea of bastardy in, 30.
See Age.

I

Infant :
See Age ; Statute Merchant.

Interpleader :
See Detinue.

J

Jurata utrum :
Cognisance of plea of, claimed by bailiff of a liberty, 142-152.

K

King, the :
See Execution ; Quare impedit ; Scire facias on Judgment.

L

Livery :

Dispute whether livery of seisin was necessary where there was a deed of lease for a term of years, 76-80.

M

Mesne :

If there are a lord paramount, two mesne lords, and a tenant of the demesne, and the tenant brings an action of Mesne against his immediate lord and recovers, and that lord brings an action of Mesne against his immediate lord and does not disclose the fact that it is for the recovery of the damages for which he had been distrained, but accepts the general issue "not distrained through his default," and the jury finds the facts to be as above, the plaintiff in the second action of Mesne will not recover, 112-114.

Action of, where the defendant pleaded that he had never been seised of the plaintiffs' services, and they alleged that they had attorned to him after a feoffment made to them, and that he was thus seised. Issue joined thereon, 126; 127, notes 3 and 5.

N

Novel Disseisin :

Pleadings in Assise of, 22-26.

Admission of reversioner to defend in Assise of, 24.

How Assise of is taken in different circumstances, 26.

Novel Disseisin—*cont.*

Where it was pleaded that there had been a lease for years, and a subsequent confirmation in fee, but only as security for the term, and it was found by verdict that there had been a verbal agreement that the lessee should have only the term, and there was no specialty to that effect, it was adjudged that this was a feoffment in fee simple, 122.

Pleadings in Assise of, for rent, 408-412.

See Abatement of Writs; Deed.

Nuisance :

Pleadings in, where the nuisance alleged was damage from rain caused to the plaintiff's house through the erection of an adjoining and higher house, 210-212.

View granted in, 210, 212.

O

Office, Inquest or Inquisition of :

When the King has seized tenements, after an Office found in his favour, and a petition to him has been endorsed to the effect that right is to be done, the petitioner cannot in Court aver the petition as a traverse to the Office until the facts have been found in his favour by another Inquest of Office, 44-46.

See Escheat.

P

Parliament :

Endorsement on petition in, by triers appointed by the King and Council, 166; 167, note 5.

Petition :
See Parliament.

Pleading :
See Abatement of Writs (*Sci. fa.* on Fine) ; Account ; Aid-prayer ; Annuity ; Audita Querela ; Cosinage ; Cui in vita ; Debt ; Entry ; Executors ; Forfeiture of Marriage ; Formedon ; Formedon in the descender ; Formedon in the remainder ; Formedon in the reverter ; Mesne ; Novel Disseisin ; Nuisance ; Præcipe quod reddat ; Quare impedit ; Quare incumbravit ; Ravishment of Ward ; Replevin ; Scire facias (on Fine) ; Scire facias (on judgment in *Quare impedit*) ; Trespass ; Wardship ; Warranty.

Præcipe quod reddat :
If the writ is brought against two persons as tenants in common, and each makes default after appearance, and subsequently, on the return of the *Petit Cape*, each alleges, in order to save judgment by default, that he was imprisoned, and at the same time each of them pleads that he is tenant of the entirety, the demandant must maintain his writ to the effect that they are tenants in common, upon which issue may be joined, and must afterwards answer as to the imprisonment, 344-348.

Prebend :
Lease of, 200-204.

Prescription :
See Annuity.

Principal and Agent :
See Abatement of Writs (Debt).

Priory :
Advowson of. *See* Advowson.

Process :
If a real action be brought against four persons, and one of them disclaim, and if afterwards another make default after default, and the

Process—*cont.*
Petit Cape issue in respect of a third part of the lands demanded, the process is good, because after the disclaimer of one, the demandant is concerned only with the three other tenants, 246-248, 252.

Protection :
See Deceit.

Q

Quale jus :
See Secta ad molendinum.

Quare impedit :
In respect of a presentation to a Priory, 46-72.
When the presentation is claimed by heir in tail he must in his declaration show a presentation by the donor, and that the right to present was continued in the blood of the plaintiff's ancestors, 50, 68.
A recovery in an action of *Quare impedit* brought while the parson of the church is living may be good, if the parson dies while the writ is pending, 94.
If the action be brought in respect of a prebend against one who has it by collation from a Bishop, it is not necessary that the Bishop should be mentioned in the writ, 132.
The King's direction to stay proceedings in, where he was plaintiff, and understood the incumbent to be in possession by good title, 133, note 14.
Where the action is brought by the King on the ground that the church was void while he was seised of the advowson after the death of his tenant *in capite*, and the defendant, being a Bishop, pleads that the church became void in that tenant's lifetime, and was void for six

QUARE IMPEDIT—*cont.*
months, and he had the right to present as Ordinary, judgment will be given against him, in the absence of any denial that the deceased held of the King and that the church was void after the King had seized the advowson into his hand, 154-156; 157, note 10.

Where the action is brought by the King on the same ground, and the defendant pleads a fine *sur don, grant, et render* in virtue of which he had a remainder immediately expectant on the death of the tenant for life whose lands, with the advowson, had been seized into the King's hand, and pleads that the lands, issues, and advowson had been delivered to him in virtue of an *ouster le main*, and these facts are not denied, the King will nevertheless recover his presentation, if the church was void when the land and advowson were seized into his hand, 170-194.

The King's letters under the Privy Seal, sent to the Justices of the Common Bench, pending an action, in contravention of the Statute of Northampton, 180; 183, note 2; 185, note 2.

When the action is brought by the King against the very patron and another on the ground that the patron has granted a next presentation to the King, and the patron confesses the grant, the other defendant cannot derive any advantage from the fact that no specialty has been shown to prove it, and if he pleads that the patron did not grant, as alleged, judgment will be given against him, as against one who has said nothing to delay judgment for the King, 238-246; 243, note 6.

See ABATEMENT OF WRITS; SCIRE FACIAS.

QUARE INCUMBRAVIT:
Action of, where it was alleged that the plaintiff had recovered the presentation to the church by *Quare impedit*, and had delivered a Prohibition to the Bishop, pending that plea, and that the Bishop had, while that plea was pending, and within the period of six months, encumbered the church. Pleadings dilatory and other thereon, and issue whether the Bishop had encumbered within the six months after the vacancy or not, 88-98.

Action of, lies without any previous recovery by *Quare impedit*, 92, 94.

If the plaintiff, in his declaration, omits the statement that the Bishop refused to admit his presentee, it is immaterial, because the act of encumbering the church is a refusal, 94.

See ABATEMENT OF WRITS.

QUEEN CONSORT:
See ABATEMENT OF WRITS (*Quare impedit*).

QUID JURIS CLAMAT:
When it is expressed in the note of a fine that A. has granted to B. a reversion expectant on the death of C. therein described as tenant for life, and it is shown by deed that C. has in fact an estate for life, and that should he die within 20 years his executors shall hold the land until the 20 years are past, *quære* whether C. can be compelled to attorn to B., 420-422.

R

Ravishment of Ward:
Pleadings in, where the plaintiff alleged that the infant's mother held certain tenements of him and died in his homage, and the defendant pleaded that he held a portion of the tenements, after the mother's death, by the curtesy of England, and that he was the father of the infant, to whom his inheritance would descend after his death, 292-300; 293, note 3; 295, notes 2 and 4.

Receipt:
Where husband and wife, holding for term of their two lives, make default, and the husband dies, the reversioner may be admitted to defend, and may plead the death in abatement of the writ, after he has been admitted, but not before, 2-4.
An heir having a reversion in fee tail may be admitted to defend as well as one having a reversion in fee simple, 4-8.
Of reversioner in Assise of Novel Disseisin, 24.
One having only a fee tail in remainder may be admitted to defend, 32-40.
Of wife, in the Bench, where husband and wife had made default at *Nisi prius*, 82.
If an action be brought against several persons in common, one of whom disclaims, and another of whom pleads several tenure by reason of a lease for life from him who disclaims, and the latter then prays to be admitted to defend his right, as reversioner, he will be admitted, unless the lease be traversed, 248, 250, 252-254.

Recordari facias loquelam:
For removal of a cause from a Court of Ancient Demesne, 114-116.

Relief:
See Custom.

Repleader:
See Rescous.

Replevin:
Where cognisance was made for services due for one acre of land, and the plaintiff alleged that he held that acre and other land as one entire tenancy by the same services, it was held that the person who made cognisance must answer as to whether that was the fact or not, and issue was joined upon his traverse, 100-104.
Where the avowry was made upon the heir in socage for a relief according to the custom of the Rape of Hastings, and he pleaded a deed of the avowant's predecessor by which the tenements were given and granted at a fixed rent in lieu of all secular demands, but did not deny the existence of the custom, judgment was given for the avowant to have the Return, 315-318; 319, note 4.
Where the avowry is for rent charge, and *profert* is made of a deed to prove the charge, the plaintiff may, though a stranger to the deed, plead that the person supposed to have charged the land did not in fact do so, 362.

Rescous:
Where the writ was in respect of a rescue of the defendant's beasts, which had been taken *damage feasant* by the plaintiff's servant, and of battery of the servant, and no beasts had been specified in the declaration, and the defendant had pleaded simply Not Guilty, and upon issue joined thereon a verdict

Rescous—*cont.*
had been found that there had been a rescue of two horses, and that the defendant was guilty of the rescue and the battery, to the plaintiff's damage of a certain sum, judgment was in the end given for the plaintiff to recover the damages. The Justices, however, at first disagreed, some desiring that the jury should be recalled, and required to apportion the damages for the rescue and the battery respectively, and others being in favour of a Repleader, 390-398.

Resummons:
See Voucher.

S

Scire facias (on Fine):
Where a release was pleaded as to parcel, and was found by verdict not to be the plaintiff's deed, execution was awarded with regard to that parcel, and the deed was cancelled, 100.
Where it was alleged that the tenements were in a vill other than that supposed by the fine, issue was taken as to whether the tenements were in the one vill or the other, but this was by consent only, 128-130.
See Abatement of Writs; Aid-prayer.

Scire facias (on Judgment in Quare impedit):
Pleadings in, where it was pleaded against the King, who sued for execution, that he had, subsequently to his recovery, confirmed the estate of the then existing incumbent, and had leased the temporalities of an alien Abbot which were in his hand, and in whose right he claimed, to an English Prior before any vacancy occurred, and both pleas were allowed, 156-170.
Two peremptory pleas may be pleaded for judgment in law, but not in issue to the country, 164.
The King's Letters Patent confirming an incumbent in his possession notwithstanding the action, and writ close to the Justices to stay proceedings, 169, note 6.
See Abatement of Writs.

Scire facias (on Recognisance):
Pleadings in, with regard to the interpretation of a defeasance, 428-438.

Sea-walls:
Repair of, 234-238.

Secta ad molendinum:
Where judgment is given for the demandant on the tenant's default, the damages awarded will not be those claimed in the count but those found by subsequent writ of enquiry of damages, 428.
Where an ecclesiastic recovers on the tenant's default a *Quale jus* will issue before execution is awarded, 428.

Statutes cited:
20 Hen. III. (Merton), cc. 6 and 7, 104.
——————— c. 6, 105, note 2, 106.
52 Hen. III. (Marlb.), c. 28, 230.
13 Edw. I. (Westm. 2), c. 5, § 3, 65, note 6.
——————— c. 14, 40.
——————— c. 25, 342.
——————— c. 32, 428.
——————— c. 48, 232, 234.
18 Edw. I. (*Quia emptores*), 108.
2 Edw. III. (Northampton), c. 8, 185, note 2.
5 Edw. III., c. 12, 130.

Statutes (Construction of):
The King's letters under the Privy Seal directed to the Justices of the Common Bench, informing them that his right is clear in an action of *Quare impedit* in which he is plaintiff, are in contravention of the Statute of Northampton (2 Edw. III., c. 8), and, upon objections made, are followed by his writ close, directing the Justices to proceed in accordance with justice, any commands sent to them under the great or little seal notwithstanding, 180; 183, note 2; 185, note 2.

Statute Merchant:
If A. is ousted from lands by execution of a statute merchant in which B., who was previously seised of the same lands, became bound to C., and that execution was effected at an earlier time than the time mentioned in the statute for the payment of the money, a writ of Error lies for A. to reverse the execution, 306-310.
If the obligor is tenant for life of certain lands by virtue of a fine, and dies, and the remainder-man has execution of the fine by *Scire facias*, *Quære* whether the latter can prevent execution of the statute merchant in his land, either by *Audita Querela* or otherwise, 330.
Where there are several obligors, one of whom has been taken and lodged in prison, and they sue an *Audita Querela*, and the prisoner being produced in Court by the Sheriff is, on inspection, held by the Court to be under age, he will, even in the absence of the obligee, be discharged of the debt by judgment, 378, 380; 381, note 4.
Where the obligee has appointed an attorney to sue execution, and an *Audita Querela* is sued, and the *Venire* thereon has not been served upon him, the attorney cannot do anything, and an *Alias venire* will issue to cause the obligee to appear, 382; 383, note 4.
When the obligor has been taken in virtue of a writ of *Capias*, and it is found that the writ was not warranted by the record, by reason of variance in dates, the Court will direct the Sheriff to release him, 426-428.
See Audita Querela.

Sur Cui in vita:
See Cui in vita.

T

Tail, Estate:
See Abatement of Writs (*Cui in vita*).

Trespass:
Where the declaration is of trespass, assault, and battery, on a particular day in a particular year, a counter-allegation of assault by the plaintiff on another day cannot be admitted in justification, and the defendant can only deny that the alleged trespass was committed on the day and in the year alleged in the declaration, 196-200.
Where there is a justification on the ground that a beast was taken as a heriot belonging to the defendant on the death of his tenant, and not against the peace, the plea is insufficient unless the defendant adds a traverse *absque hoc* that he took the plaintiff's beast, 228, 230-232.
Quære whether when the parties have pleaded to issue in the Common Bench on a writ touching goods carried off, the plaintiff can bring a bill against the same party in respect of the same matter in the King's Bench, 364.
See Abatement of Writs; Amendment.

V

VENUE:

When, in an action of Deceit, it is alleged by the plaintiff that the defendant, who had made use of a Protection as going in the King's service beyond sea, was in fact residing at a stated place in England, and alleged by the defendant that he had commenced his journey, but was delayed by sickness at another stated place, the jury will come from the neighbourhood of the place in which the sickness is alleged, and not from that of the place in which the continued residence is alleged, 20.

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   This Chronicle traces the history of the monastery from its foundation by King Ina of Wessex, to the reign of Richard I. The author incorporates into his history various charters of the Saxon kings, as illustrating not only the history of the locality but that of the kingdom.

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   This work gives the only contemporaneous account of the rise of the Lollards.

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   This is a metrical translation of a Latin Prose Chronicle, written in the first half of the 16th century. The narrative begins with the earliest legends and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." The peculiarities of the Scottish dialect are well illustrated in this version.

7. Johannis Capgrave Liber de Illustribus Henricis. *Edited by* the Rev. F. C. Hingeston, M.A. 1858.

   The first part relates only to the history of the Empire from the election of Henry I. the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, from the accession of Henry I. in 1100, to 1446, which was the twenty-fourth year of the reign of Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

8. Historia Monasterii S. Augustini Cantuariensis by Thomas of Elmham, formerly Monk and Treasurer of that Foundation. *Edited by* Charles Hardwick, M.A., Fellow of St. Catherine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191.

9. Eulogium (Historiarium sive Temporis): Chronicon ab Orbe condito usque ad Annum Domini 1366; a monacho quodam Malmesbiriensi exaratum. Vols. I.-III. *Edited by* F. S. Haydon, B.A. 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., with a continuation to the year 1413.

10. Memorials of Henry the Seventh; Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quædam ad eundem Regem Spectantia. *Edited by* James Gairdner. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet Laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1506. Other documents of interest are given in an appendix.

11. Memorials of Henry the Fifth. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhami Liber Metricus de Henrico V. *Edited by* Charles A. Cole. 1858.

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Vol. III., Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index.

Edited by Henry Thomas Riley, M.A., Barrister-at-Law. 1859-1862.

The *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, gives an account of the laws, regulations, and institutions of that City in the 12th, 13th, 14th, and early part of the 15th centuries. The *Liber Custumarum* was compiled in the early part of the 14th century during the reign of Edward II. It also gives an account of the laws, regulations, and institutions of the City of London in the 12th, 13th, and early part of the 14th centuries.

13. Chronica Johannis de Oxenedes. *Edited by* Sir Henry Ellis, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa, it substantially begins with the reign of King Alfred, and comes down to 1292. It is particularly valuable for notices of events in the eastern portions of the kingdom.

14. A Collection of Political Poems and Songs relating to English History, from the accession of Edward III. to the reign of Henry VIII. Vols. I. and II. *Edited by* Thomas Wright, M.A. 1859-1861.

15. The "Opus Tertium," "Opus Minus," &c. of Roger Bacon. *Edited by* J. S. Brewer, M.A., Professor of English Literature, King's College, London. 1859.

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17. Brut y Tywysogion; or, The Chronicle of the Princes of Wales. *Edited by* the Rev. John Williams ab Ithel, M.A. 1860.

This work, written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. A Collection of Royal and Historical Letters during the Reign of Henry IV. 1399-1404. *Edited by* the Rev. F. C. Hingeston, M.A., of Exeter College, Oxford. 1860.

19. The Repressor of over much Blaming of the Clergy. By Reginald Pecock, sometime Bishop of Chichester. Vols. I. and II. *Edited by* the Rev. Churchill Babington, B.D., Fellow of St. John's College, Cambridge. 1860.

The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. His work gives a full account of the views of the Lollards, and has great value for the philologist.

20. Annales Cambriæ. *Edited by* the Rev. John Williams ab Ithel, M.A. 1860.

These annals, which are in Latin, commence in 447, and come down to 1288. The earlier portion appears to be taken from an Irish Chronicle used by Tigernach, and by the compiler of the Annals of Ulster.

21. The Works of Giraldus Cambrensis. Vols. I.-IV. *Edited by* the Rev. J. S. Brewer, M.A., Professor of English Literature, King's College, London. Vols. V.-VII. *Edited by* the Rev. James F. Dimock, M.A., Rector of Barnburgh, Yorkshire. Vol. VIII. *Edited by* George F. Warner, M.A., of the Department of MSS., British Museum. 1861-1891.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John.

The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland, the first in 1183, the second in 1185-6, when he accompanied Prince John into that country. The *Expugnatio Hibernica* was written about 1188. Vol. VI. contains the *Itinerarium Kambriæ et Descriptio Kambriæ*; and Vol. VII., the lives of S. Remigius and S. Hugh. Vol. VIII. contains the Treatise *De Principum Instructione*, and an index to Vols. I.-IV. and VIII.

22. Letters and Papers illustrative of the Wars of the English in France during the Reign of Henry the Sixth, King of England, Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. Joseph Stevenson, M.A., Vicar of Leighton Buzzard. 1861-1864.

23. The Anglo-Saxon Chronicle, according to the several Original Authorities. Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* Benjamin Thorpe, Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography.

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 Walsingham, Precentor of St. Albans.

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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.

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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.

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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 language 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.

54. The Annals of Loch Cé. A Chronicle of Irish Affairs, from 1041 to 1590. Vols. I. and II. *Edited, with a Translation, by* William Maunsell Hennessy, M.R.I.A. 1871.

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.

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