



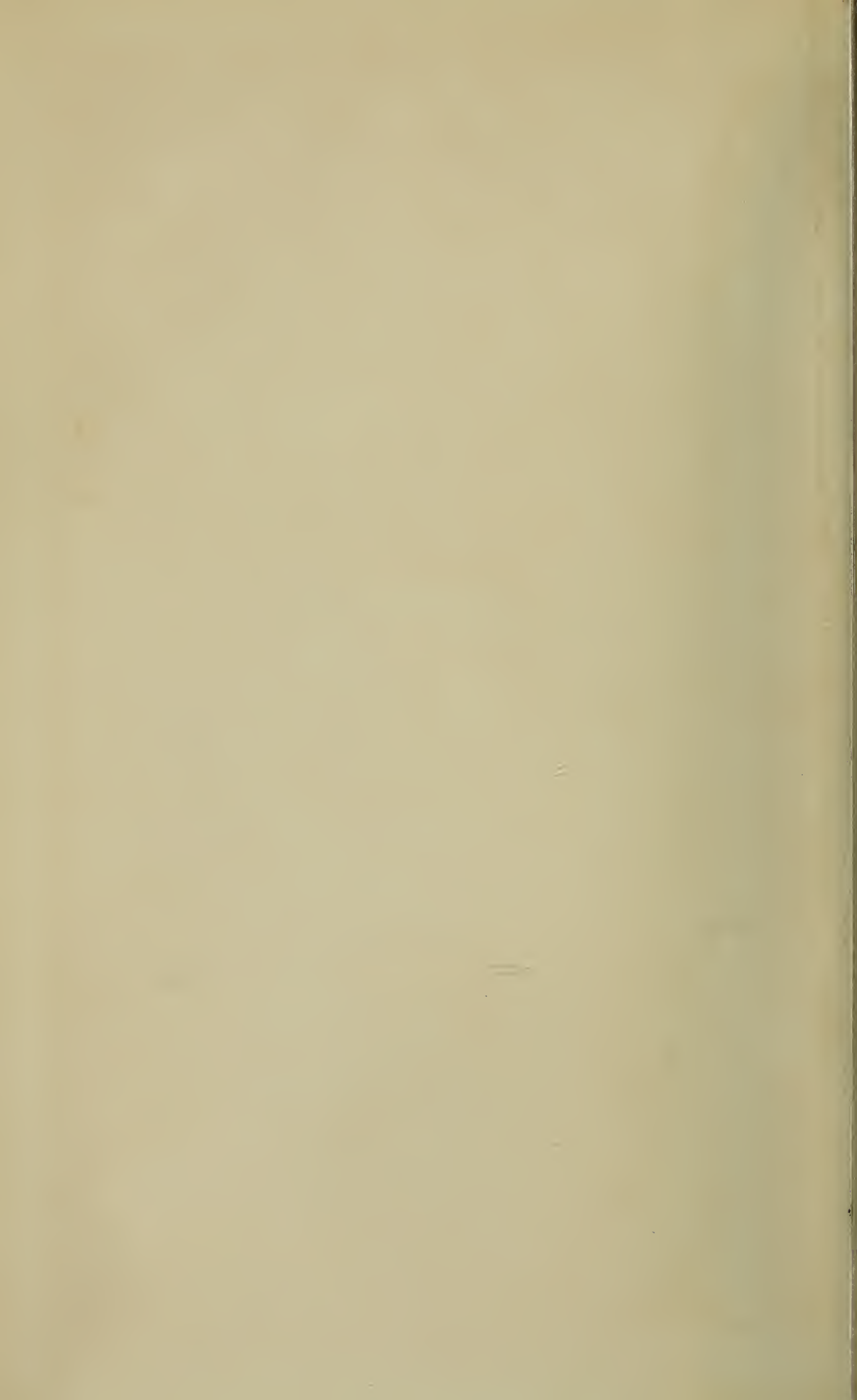
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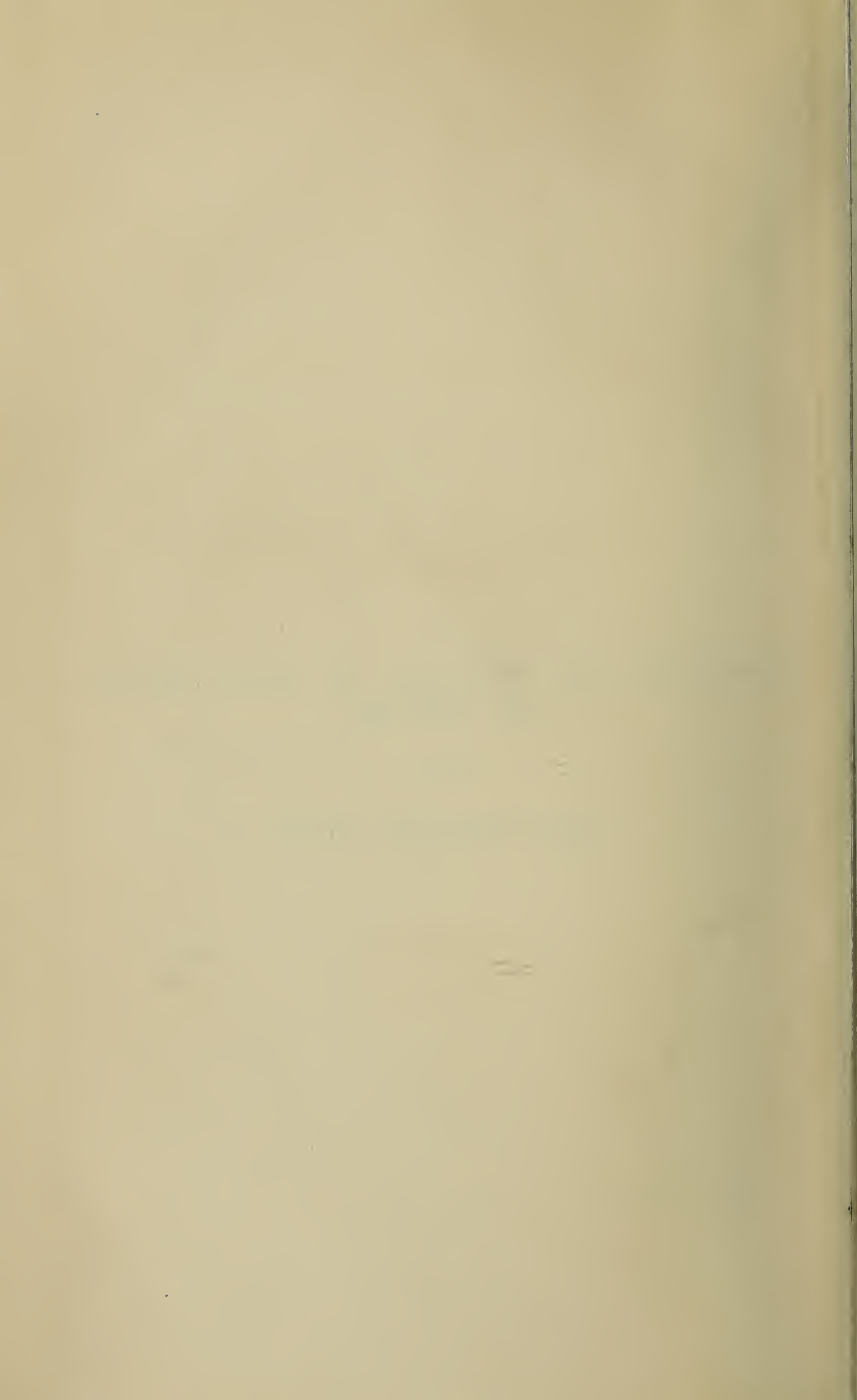
RERUM BRITANNICARUM MEDII ÆVI
SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND

DURING

THE MIDDLE AGES.



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He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be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

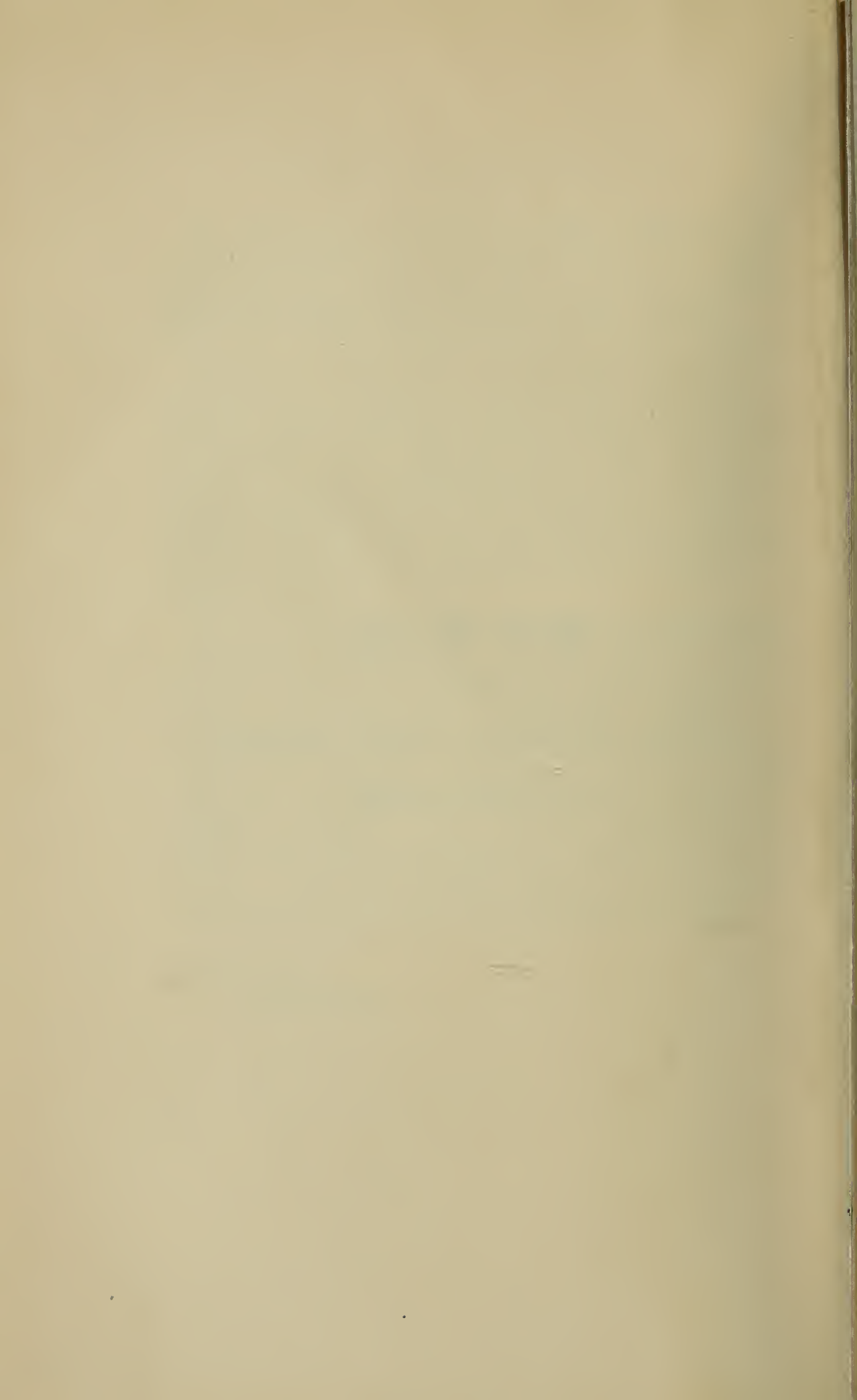
Rolls House,
December 1857.

Dear Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEARS XVIII. AND XIX.



Dear Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEARS XVIII. AND XIX.

EDITED AND TRANSLATED

BY

LUKE OWEN PIKE,

OF BRASENOSE COLLEGE, OXFORD, M.A., AND OF LINCOLN'S INN, BARRISTER-AT-LAW ;

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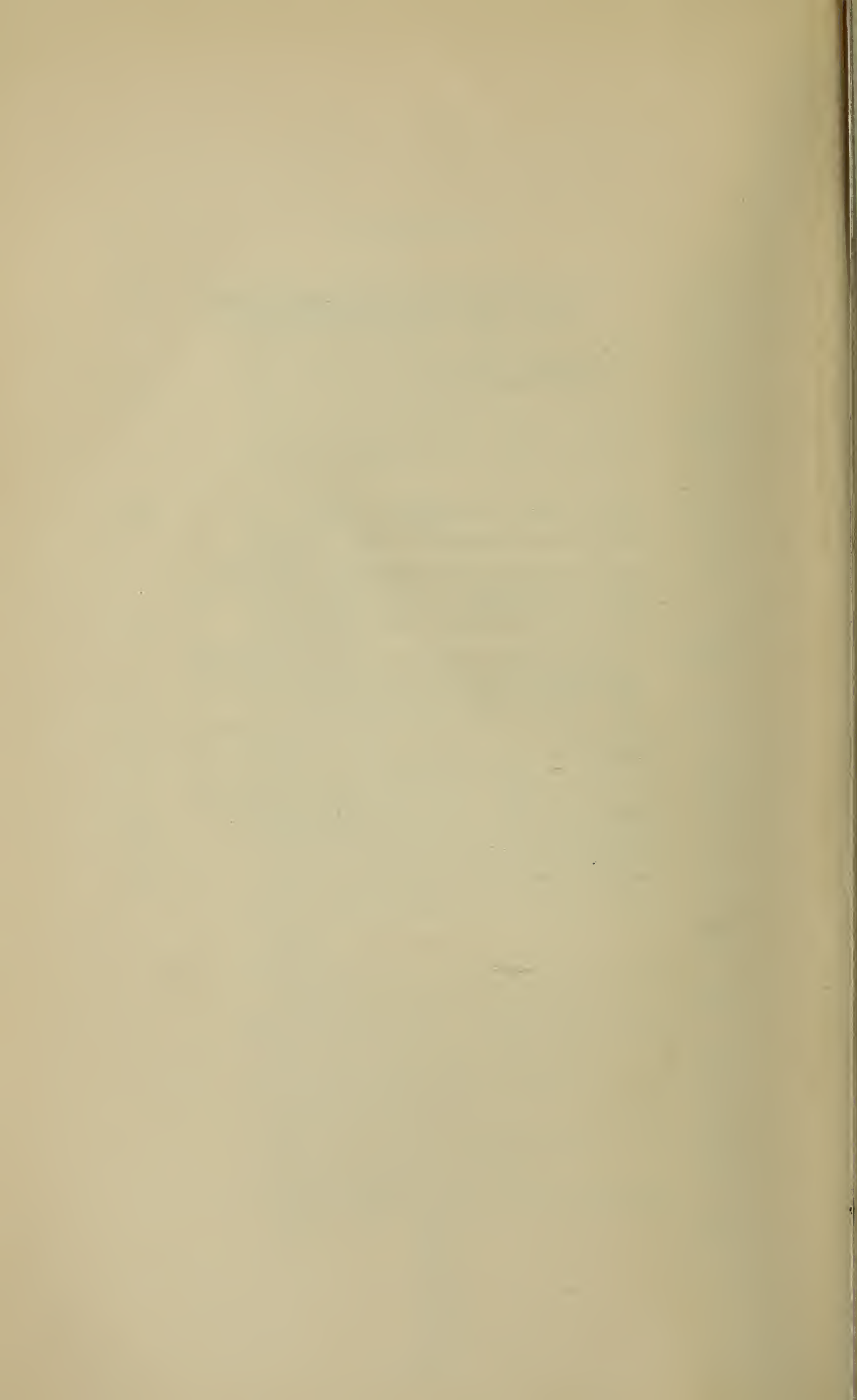
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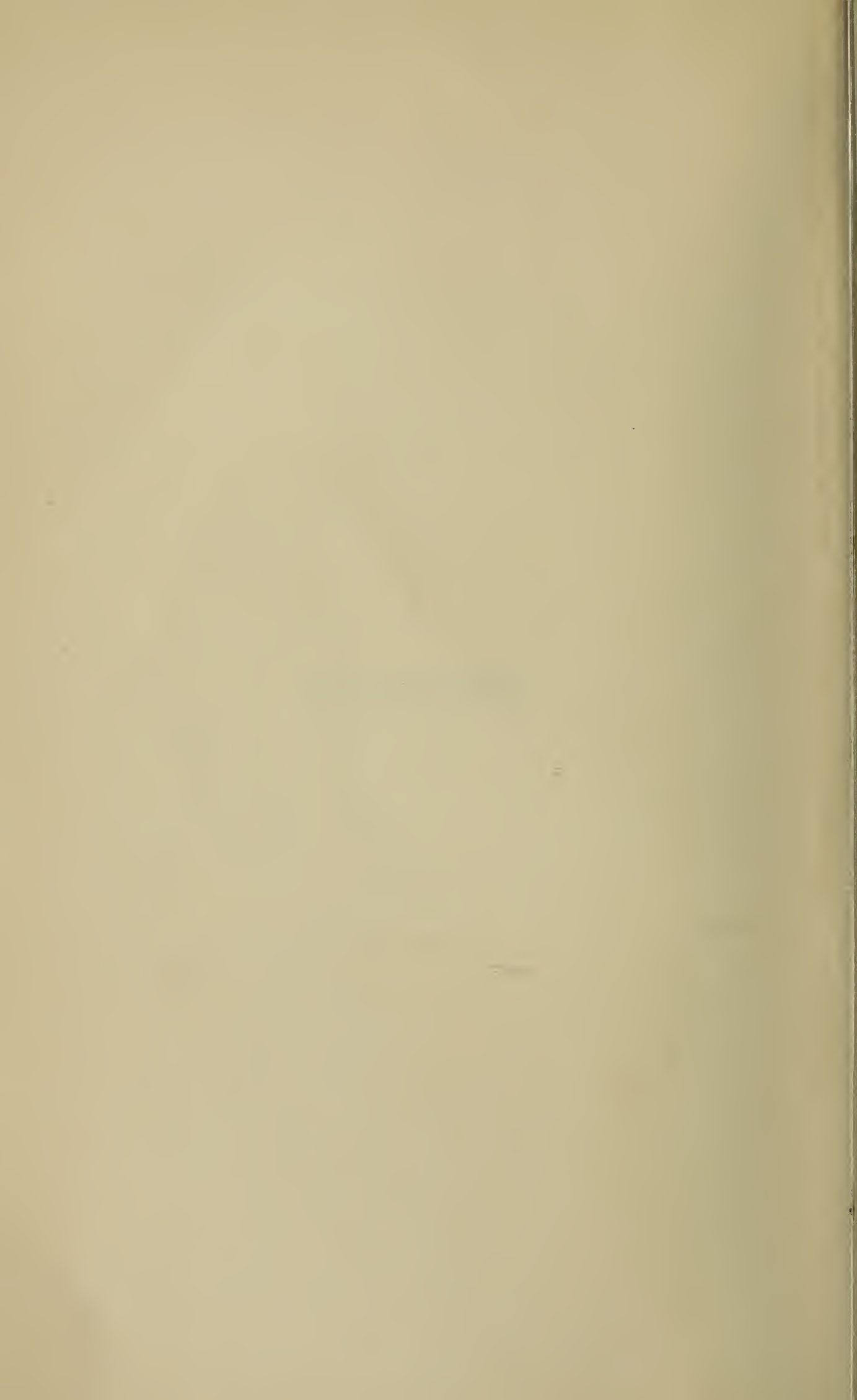
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INTRODUCTION.



INTRODUCTION.

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IN THIS volume is completed a new edition of the Year Books of the seventeenth and eighteenth years of the reign of Edward III.

Comple-  
tion of a  
new  
edition of  
the Year  
Books  
17 and 18  
Edward III.  
In what  
respects it  
differs  
from the  
old  
editions.

It differs widely both in design and in execution from those which have preceded. It has a translation, which is obviously indispensable for all readers except the very few, either in France<sup>1</sup> or in England, who are acquainted with the French of the period. Its text is based on a careful collation of all the MSS. now known to be in existence, and has been corrected by comparison with the records wherever they could be found. The abbreviated French of the MSS. has been extended in accordance with the forms which were in use at the time. The points which were decided will, it is hoped, be found in the Index of Matters. It has thus been possible to restrict the notes, for the most part, to the various readings found in the MSS., to extracts from the records, which are of the nature of various readings, to the years and chapters of statutes mentioned simply as "the statute" in the reports, and to references showing where the reports of one term are continued or appear in a different form in others. The text has thus been as little as possible encumbered with matter foreign to the methods and ideas of the contemporary reporters.

The various old editions have been fully described in the volume of Year Books (Rolls edition) containing the first three terms of the seventeenth year of the

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<sup>1</sup> In the best French editions of old French works it is now not uncommon to find a translation into modern French.

reign of Edward III.,<sup>1</sup> and in the succeeding volume containing Michaelmas Term of the seventeenth year and Hilary Term of the eighteenth.<sup>2</sup> Nothing need be added to the remarks there made except, perhaps, that if every instance in which the old editions vary *inter se*, and every instance in which all or any of them are at variance with the original MSS., had been noticed in the foot-notes, there would have been a very great waste of space which could not have served any useful purpose. It was seen from the first that this would be the case,<sup>3</sup> and a sufficient indication of the nature of the differences between the text of the Rolls edition and that of its predecessors was given by printing a specimen report of the new edition side by side with the same report as it appeared in the latest of the old editions, with a few explanatory remarks.<sup>4</sup>

As mentioned in the Introductions to the two volumes immediately preceding this, some reports have been found in the MSS. which have no place in the old editions of the Year Books. In Michaelmas Term of the 18th year only one such case has been found (No. 93), though there were several in Easter and Trinity Terms, as well as some reports in a different form of cases already printed. The new edition therefore differs in quantity as well as in other respects from its predecessors, and, unless MSS. not now known to be in existence contain other matter, it must be complete.

MSS. used  
for the  
text of  
Michael-  
mas Term  
18 Edward  
III.

The MSS. used for establishing the text of the reports of Michaelmas Term in the eighteenth year of Edward III., with which this volume commences, are the Lincoln's Inn MS., the Harleian MS. No. 741, and the Additional MS. in the British Museum numbered

<sup>1</sup> Introd. pp. ix-xxix.

<sup>2</sup> Introd. pp. xv-xviii.

<sup>3</sup> See Y.B., Hil.-Trin., 17Edw.III.  
(Rolls edition), Introd. p. xx.

<sup>4</sup> See Y.B., Hil.-Trin., 17Edw.III.  
(Rolls edition), Introd. pp. xxiv-  
xxix.

25,184, all of which have been described in previous volumes. The conclusion of the case No. 69<sup>1</sup> is also found in the Cambridge University MS. Hh. 2. 3, and in the Additional MS. in the British Museum numbered 34,789. This appears in all the MSS. as of the Hilary Term next following, but has been transferred for the purpose of making the report continuous, and in accordance with the record, which is of Michaelmas Term.

A table of references to the folios of the old editions of Michaelmas Term 18 Edward III. is placed, with other tables, at the end of this Introduction.

In this volume also commences an edition of Year Books of the nineteenth and twentieth years of the reign which have never before been printed.

Hilary Term of the nineteenth year is here completed. The MSS. used for the text of it are, as for the text of the previous term, the Lincoln's Inn MS. and the Harleian MS. No. 741, together with the Additional MS. in the British Museum numbered 34,789, and the MS. in the University Library at Cambridge, Hh. 2. 3.

The British Museum Additional MS. 34,789 is one which formerly belonged to Sir Thomas Phillips, and was purchased for the Museum in 1895. It consists of only thirty folios, and its contents are of a somewhat fragmentary character, but the writing is in hands of the fourteenth century. Four leaves only, ffo. 16-19, contain reports of cases of the nineteenth year of the reign of Edward III. They extend to case No. 31 of Hilary Term (fo. 19, b.), at the end of which they are succeeded (fo. 20) by matter relating to an Eyre of earlier date. Reference is made to this MS. in the foot-notes by the letter B.

The Cambridge MS. Hh. 2. 3. contains (*inter alia*) reports, in a hand approximately contemporary, of the whole of the 19th year of the reign of Edward III., and of the four terms of the 20th year. The folios of

Com-  
mencement  
of an  
edition of  
the Year  
Books  
19 and 20  
Edward  
III., never  
before  
printed.  
MSS. used  
for the  
text of  
Hilary  
Term  
19 Edward  
III.

<sup>1</sup> pp. 311-313.

years 19 and 20 are numbered, in pencil, 1-50, and they are mostly in good condition. The back of fo. 50 however appears to have been, at some time, without a cover, and much of it is illegible. As compared with other MSS., too, it is found that the reports of Michaelmas Term 20 Edw. III. are incomplete, and some folios following fo. 50 have probably been lost, as well as, perhaps, a folio between fo. 49 and fo. 50 of the modern numbering. The MS. as a whole agrees very closely with the Lincoln's Inn MS., the variations being less between those two than between any other two MSS. of Year Books which I have ever collated. Reference is made to this MS. in the foot-notes by the letter C.

Reference is made to the Lincoln's Inn MS. by the letter L., and to the Harleian MS. by the letter H.

The corresponding records compared.

The reports have, as usual, been compared with the corresponding records. The system on which the comparison has been made is explained in the volume next preceding this<sup>1</sup> (Easter and Trinity, 18 Edward III.), as well as the difficulties arising from the manner in which the records have been kept, and described in the official lists.

References to Fitzherbert's *Abridgment*.

As in all previous volumes edited by me, every case which occurs in Fitzherbert's *Abridgment* has been traced and noted, as well as those which are to be found in the *Liber Assisarum*.

The *Liber Assisarum* also compared.

In the printed editions of the *Liber Assisarum* the confusion mentioned in the Introductions to previous volumes<sup>2</sup> is continued. Most of the cases which really occurred in the eighteenth year of the reign are described as having occurred in the seventeenth, and most of those which occurred in the nineteenth as having occurred in the eighteenth, but some of those which are described as having occurred in the eighteenth year have not been identified at all. The references,

<sup>1</sup> Introd. pp. xviii-xxxiv.

<sup>2</sup> Y.B., Mich., 17, and Hil., 18 Edw. III. (Rolls edition), p. 18 Edw. III. (Rolls edition), p. xxi, and Y.B., Easter and Trin., 18 Edw. III. (Rolls edition), p. xxxiv.



however, to those which really did occur in the period included in the Rolls edition of the Year Books are believed to be complete.

For the second time within six years there occurs in the reports the case of a man who was dumb but not deaf. In the first case<sup>1</sup> a tenant in a real action desired to wage and perform his law as to non-summons. The Court appears to have been then of opinion that he could do this, and the book was delivered to him, so that he might be sworn. Here, however, the matter ended, because the demandant waived the alleged default which the tenant proposed to meet by the wager of law.

Legal and other curiosities: how the mute waged his law.

In the present volume we have a case<sup>2</sup> in which a dumb man actually went through the ceremony of performing his law. The object was again to prove non-summons and so to save the consequences of a default. According to the report he first "waged his law as to non-summons by signs," and afterwards, on another day, "performed his law by signs. The words were recited to him, and he heard them, and he placed his hands outside the book, and kissed the book, and so performed the law without speaking." We are not told anything as to the rank in life of this mute, who was not deaf, but he must have been of free condition, as he was tenant in a *Præcipe quod reddat*, and therefore must have had some real estate, however small. It is on that account worthy of remark that the Chief Justice of the Court of Common Pleas addressed him in English with regard to the consequences of making a false oath. "Once forsworn ever forlorn," said to him Stonore, C.J. It may or may not have been supposed that he could not

<sup>1</sup> See vol. of Y.B., Mich., 12-Trin., 13 Edw. III., p. 177, and Introd. pp. cxxiii-cxxiv.

<sup>2</sup> Below, p. 291.

understand French, but the facts seem insufficient to support this idea. The words have the appearance of a jingling proverb in common use. A modern judge of a Court in Brussels might, perhaps, upon occasion use a Flemish proverb, but it would not follow that French is not the ordinary language of the city, and generally understood there as well as Flemish.

Humours  
of the  
Courts :  
Judges  
and  
Counsel.

The humours of the Courts are illustrated by some passages between Stonore and the counsel who appears as Grene in the reports, and sometimes as Henry de Grene, sometimes as Henry de la Grene, and sometimes Henry atte Grene in the records. Grene, though a most pertinacious advocate on behalf of his clients, was not a *persona grata* to the Chief Justice. On one occasion he was arguing with great persistence a point referred to the Common Bench by Justices of Assise, when Stonore thus addressed him :—“ You are  
“ as hot upon this as if all you say were right. Do  
“ you suppose that when you came into a court of  
“ record upon an Assise brought in the county of  
“ Oxford before Sharshulle, and accepted the tene-  
“ ments as being in that county, and lost on your  
“ own plea, you will now be admitted to say that the  
“ tenements are in another county? No; you must be  
“ more learned than God before you will prove that.”<sup>1</sup>  
In another action Grene was citing a case, and putting his own interpretation on it, when Stonore broke out thus :—“ I am amazed that Grene makes himself out  
“ to know everything in the world—and he is only a  
“ young man.”<sup>2</sup>

Stonore,  
C.J., and  
Grene.

Grene had in fact been practising some years, and prominently too, but he was, no doubt, younger than some of the other pleaders. Whether he had or had not any fault of manner, which displeased the judge, it is of course impossible to know. He did not belong to one of the old county families. His name “ atte Grene ” was sufficient to indicate a peasant

<sup>1</sup> Below, p. 436.

| <sup>2</sup> Below, pp. 446-8.

extraction, and it is not impossible that the Chief Justice may have looked with disfavour on the self-assertion of one whom he regarded as his inferior by birth. Be that as it may, Grene was not a man to be easily put down. He was a King's Serjeant<sup>1</sup> before the end of the year in which Stonore had addressed him in words which were, to say the least, discouraging. He became a Justice of the Court in which Stonore had reproved him (the Common Bench) in the very year in which Stonore died, and he afterwards rose to be Chief Justice of the Court of King's Bench. He had some vicissitudes of fortune, but, in the end, appears to have been remembered by the profession as an exceptionally capable and learned Justice.<sup>2</sup>

One of the most interesting features of the Year Books is that they carry us back to a time when principles of law which are now well established were

Law in the making: gift to a man and the heirs male of his body, with reversion to the donor.

<sup>1</sup> *Liberate Roll*, 19 Edw. III., m. 5 (cited by Dugdale, *Origines Juridiciales*, *Cronica Series* 45). Grene was also described as a King's Serjeant in the grant of a wardship to him by the King, on the 20th of November, 20 Edw. III., and in a revocation of the same grant on the following 20th of December, *Rot. Lit. Pat.* 20 Edw. III., Part 3, m. 17 and m. 4.

<sup>2</sup> Bellewe, *Les ans du Roy Richard le Second*, 142. The Year Books of the reign of Richard II. have never been printed, and Bellewe collected the cases of the reign found in Fitzherbert's, Brooke's, and Statham's *Abridgments*. The passage relating to Grene occurs under the date Michaelmas Term, 22 Richard II., in Fitzherbert's *Abridgment*, *Tit. Discontinuance*, No. 50. Strange to say, though it is to all appearance correctly given in Bellewe's text, it is practically unintelligible in

the printed editions of Fitzherbert. Chief Justice Thirning is made to remark in the *Abridgment* (editions of 1516, 1565, and 1577), "Jeo die ore." His words are then followed by the words "*Grene. Le* (que in the edition of 1516) *sage justice dira*," or in English "I say now. *Grene. The learned Justice will say*." Thirning's speech is thus abruptly ended, without meaning, and Grene is made to rise from the dead, and deliver a speech of his own. Bellewe, however, prints the words thus:—"Jeo ay oie Seignour Grene le sage Justice dire," or, "I have heard Lord Grene the learned Justice say." There can be but little doubt that this is the true version, but whether Bellewe had access to Fitzherbert's or some other manuscript, or made an emendation by conjecture, we shall probably never be able to ascertain.

in doubt, and show with what difficulty and through what uncertainties those principles were accepted. The effect, for instance, of a gift to a man and the heirs male of his body was in dispute in a case in the present volume.<sup>1</sup> The facts which were practically admitted on both sides were that one John de Helton had had two sons William and John, and had given certain tenements to his younger son John "*et heredibus masculis de corpore suo exeuntibus*," the reversion being to the donor and his heirs. John the younger had a son Thomas, and two daughters, Joan and Agnes. Thomas entered after the death of his father, and died seised without heir of his body. Joan and Agnes (together with their respective husbands, Nicholas le Kene and Adam de Bakworth) thereupon entered, as his sisters and heirs, and maintained that the gift had been absolutely completed (and the condition fulfilled) in Thomas's person as heir in tail male. The son of the donor's elder son William, who was named John, abated on their possession, as heir of his grandfather the donor, and so entitled to the reversion. They in turn ejected him, and he brought an Assise of Novel Disseisin against them.

The estate claimed as a fee simple by the donee's daughters after the death of his son without issue.

The case was at first brought before the Justices of Assise for the county in which the tenements were. The defendants demanded judgment "inasmuch as the plaintiff admitted the issue in tail to have been seised, and so the limitation or estate tail was brought to an end, and the wish of the donor accomplished, and there was consequently a fee simple in the issue." But the plaintiff also prayed judgment for himself on the ground that the tenements were revertible to the donor, and could not in any way descend to Thomas's sisters in accordance with the form of the gift. This proved too much for the Justices of Assise, and there was consequently, in the end, an adjournment into the Common Bench *propter difficultatem*.

<sup>1</sup> Mich., 18 Edw. III., No. 52 (pp. 194-206).

The matter was argued at considerable length in the Court of Common Pleas, where at first the judges differed in opinion. Stonore, C.J., even went so far as to say:—"This particular case is not among any of the cases expressly mentioned in the statute (*de donis conditionalibus*) and therefore it is at common law, and consequently a fee simple." Hillary, J., and Willoughby, J., however, took the opposite view, and Stonore, C.J., must have at last agreed with them, because judgment was given in the following form:—

"The record aforesaid having been heard, and carefully examined, and the arguments of the parties on both sides having been heard, because the aforesaid Nicholas le Kene and Joan, and Adam de Bakworth and Agnes confessed above, in pleading, that the aforesaid John de Helton, the grandfather, &c., gave the aforesaid tenements, with the appurtenances, to the aforesaid John his son, and to the heirs male of John's body issuing, upon condition that, if the same John son of John should die without heir male of his body issuing, the same tenements should then revert to the aforesaid John de Helton the donor and his heirs, by force of which gift the same John son of John was seised of the same tenements according to the form of the gift, from which John son of John there issued one Thomas as son and heir, &c., which Thomas died without heir of his body issuing, it appears to the COURT here that the aforesaid tenements are revertible to the aforesaid John de Helton the donor, and his heirs, and that so John son of William de Helton, cousin and heir of the aforesaid John, the donor, lawfully entered upon those tenements. And because the aforesaid Nicholas le Kene and Joan, Adam and Agnes, in pleading above, expressly confessed that the same John son of William was seised of the same tenements, after the death of the aforesaid Thomas, until they ejected him therefrom, it is considered that the aforesaid assise be taken against them in

The  
Justices of  
the  
Common  
Bench  
differ in  
opinion.

Judgment  
at last  
given for  
the  
donor's  
heir to  
recover  
the  
reversion.

“ respect of damages, &c. And the record thereof,  
 “ together with the original writ, is remanded before  
 “ the Justices appointed to take Assises in the county  
 “ aforesaid to take the assise in respect of damages, &c.,  
 “ against the same Nicholas le Kene and others in the  
 “ country, &c.”

Nature  
and effect  
of a gift in  
tail male  
thus  
settled for  
the first  
time.

The true nature and effect of a gift in tail male were thus settled, and apparently for the first time, because no previous case relating to the matter was cited, and, had there been one, Stonore, C.J., would probably have been acquainted with it. Thus we see established a definite principle of law which was destined to hold its ground for many centuries afterwards.

Gift to a  
man and  
his heirs  
male had  
only  
recently  
been  
decided to  
be in fee  
simple.

In the same report another case is mentioned in such a manner as to show that another point which presents no difficulties in modern times had only recently been decided. If a man gave to A. “and his heirs male” what estate did A. take? The answer is given, in accordance with later law, that “his collateral heirs, as well as the lineal heirs, had the capacity of inheriting, wherefore on such a gift he had a fee simple.” And so we see law in the making.

Lease and  
Release.

On the other hand, a mode of conveyance of which we hear but little before the time of Littleton, and which became common only at a considerably later time, was quite understood by the judges, at any rate, in the 19th year of the reign of Edward III. Shars-hulle, J., said “a lease for a term of life or of years and a subsequent release effect a feoffment in fee,” and Willoughby, J., “confirmed this.” Sharshulle went even farther. A difficulty had arisen in a case of lease and release, because the release could not be produced, and Sharshulle remarked “in this case many would have said nothing about the release if they had not had it ready, but would have spoken, in general terms, of a feoffment in fee.”<sup>1</sup> A release of

<sup>1</sup> Below, p. 478.

all right to a person in possession by one who had the reversion was of common occurrence, and the effect of it was, therefore, not likely to be disputed. The only novelty in the later conveyance by lease (or bargain and sale) and release was the deliberate intention to transfer the fee simple at the time of making the lease.

It may appear strange that different Justices of the Common Pleas should at one time have held different opinions on points of law which have now been so long established that it seems almost impossible to imagine that they could ever have been in dispute. It is still more strange to find the Justices at variance on the fundamental question "What is Law?" In the third case in Hilary Term 19 Edward III.<sup>1</sup> it appears that an action of Formedon in the descender was brought by one Adam de Flaundres and Matilda his wife against Thomas son of Richard Rycheman, of Wells, in respect of tenements which had been given by one William Bouche to his daughter Mabel in tail, and which, as alleged, ought, after the death of Mabel and of her daughter Isabel, to descend to the demandant Matilda, who was Isabel's daughter. The tenant made default after default, and the demandants thereupon prayed that seisin of the tenements might be adjudged to them "*instanter*."

Then, however, there appeared one Hugh de Langebrugge, a burgess of Bristol, who prayed to be admitted to defend his right on the following grounds. He alleged that Richard de Welles, also a burgess of Bristol, gave to his son Thomas (the tenant in the action), for life, the tenements which were the subject of the demand, with remainder in fee to Hugh, the intervener, who produced a charter to that effect. The demandants pleaded that Hugh's right was not shown by fine or by any matter of record, that they could not have any answer to the deed, and as they

What is Law?

No precedent of so great force as justice, per Shars-hulle, J.

<sup>1</sup> pp. 374-378.

could not have an answer, they could demand seisin. Upon this Sharshulle, J., mentioned a similar case in which Bereford and Herle, former Justices of the Court, had given their judgment. It was to the effect that when a remainder was limited in fee simple by fine the remainder-man would be admitted to defend his right, but that it would be otherwise if the limitation were only by deed *in pais*. But, said Sharshulle, "no precedent is of such force as justice or that which is right.<sup>1</sup> Now it is the fact that one in remainder has just as much right by virtue of a deed *in pais* as by fine, though the fine is more solemn: therefore if he would be entitled to be admitted by virtue of a fine, he is so, for the same reason, by virtue of a deed."

Law is the will of the Justices, *per* Hillary, J. After some arguments, R. Thorpe, who was counsel for the demandants, said to the Court:—"I think you will do as other Judges have done in the same case, for otherwise we do not know what the law is." The *dictum* of Hillary, J., upon this was:—"Law is the Will of the Justices."

Law is justice, *per* Stonore, C.J. "No," said Stonore, C.J., "Law is Justice, or that which is right."<sup>2</sup> Then Hugh was admitted to defend his right, but whether in accordance with Stonore's or with Hillary's definition of law, or with both, is not stated.

Cases illustrating social history: villeins. While the Year Books bring before us Judges and Counsel as men of real flesh and blood, showing us their turns of thought, their modes of expression,

<sup>1</sup> "Nulle ensaumple est si fort come resoun." The word "resoun" is in the Year Books frequently used in the sense of justice. or what is right, just as in modern French "avoir raison" is the reverse

of "avoir tort," and "se faire raison soi-même" is to do justice to one's self, or to take the law into one's own hands.

<sup>2</sup> "Nanyl; ley est resoun."



their likes and dislikes, and even their foibles, the Year Books and the corresponding records throw more light upon various aspects of society than can be gained elsewhere. In the rural districts a large proportion of the inhabitants must have been either villeins or persons holding small parcels of land in villenage, that is to say, on condition of performing villein services to the lord of whom they held. These men must have been the forefathers of a very great part of our modern population, for while those who remained in their native vills or manors must have been the ancestors of those afterwards born there, the towns have always received an influx of persons born in the country. It is, therefore, of importance to know what kind of life these progenitors of the nation were leading, as well as to know the law under which they lived.

With regard to the law, it is well to approach the subject in a spirit of humility, for we can hardly expect to make ourselves better informed than the contemporaries of the villeins and neifs themselves. It is plain from the arguments in some cases that the lawyers had doubts on more points than one, though there existed a great fundamental principle that the villein and everything that was his, from his house to his children, belonged to his lord. This, however, expressed only in the crudest fashion the relation between the lord and the villein. It did not touch the relation of a lord's villein to the rest of the world, and it did not compel the lord to exercise his strict right if he saw fit to show any indulgence.<sup>1</sup> In this volume and in those which immediately precede it there are cases which throw some light on the position of villeins and neifs both from a legal and from a social point of view. They bring the villeins

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<sup>1</sup> With regard to the two extreme points of view from which the position of a villein might be regarded see, as to the lord's ownership, Prof. Vinogradoff's *The Growth of the Manor*, pp. 344-348, and, as to the villein's rights, *Villenage in England*, pp. 68-76.

and neifs before us as living creatures, in the concrete, and not only as mere abstractions which may be conveniently fitted into some legal theory.

The  
villeins  
and the  
mills.

In the year 1343 an action<sup>1</sup> was brought by Bartholomew de Fanacourt, and Lucy his wife, with the object of compelling the villeins of the manor of Tibthorpe in Yorkshire to do suit to the mill of Kirkburn in the same county. The villeins were those of the defendant, Henry Fitz Aucher, and the form of the writ against him was "*quod permittat villanos suos de Tybthorpe facere sectam ad molendinum ipsorum Bartholomæi et Lucie de Kirkebrune.*" The claim was founded on the fact that Peter de Bruys (or Bruce) had died seised of both the manors of Tibthorpe and Kirkburn, as well as other lands and tenements, that his villeins in Tibthorpe had done suit to his mill in Kirkburn by prescription, that partition of his whole inheritance had been made between his four sisters as his heirs, on his death, and that the manor of Kirkburn fell to the share of Lucy's grandmother, one of those sisters, and so descended to her. Her first husband was Robert de Everingham, and he and she gave and granted the manor to Henry de Britville, between whom and them a fine was levied by which Henry granted and rendered to them in special tail with remainder to Robert's right heirs. After Robert's death without heir of his body Lucy married Bartholomew de Fanacourt, and Robert's brother and heir, Adam de Everingham, granted and confirmed to Bartholomew a life estate in the manor if he should survive Lucy.

From Laderana, another sister of Peter de Bruys, the share which she had by the partition descended to her two daughters, Joan and Sibyl, between whom another partition was made, the manor of Tibthorpe falling to the share of Joan, from whom it descended

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<sup>1</sup> Y.B., Mich., 17 Edw. III. (Rolls edition), No. 85, pp. 364-371, and notes.

to her son the defendant. It was alleged also that Bartholomew and Lucy were seised of the suit to the mill as in fee and in right of Lucy until ten years before the purchase of the writ, when the defendant withdrew it, and would not allow his villeins to perform it.

The defendant did not dispute the descent, but alleged that Laderana held the manor of Tibthorpe discharged from the suit, and that, after partition was made between her daughters Joan and Sibyl, the share of Sibyl descended to her son and heir, Nicholas, and from him to his son and heir Miles, of whom the defendant prayed aid, which was granted.

It was, of course, not unusual for villeins to have to do suit to the mill of their own lord, but, although this form of *Quod permittat* appears in the Register of Writs, the claim that the villeins of one lord should grind their corn at the mill of another lord must have been less common, and, as appears by the pleadings, was not acknowledged by the defendant in this particular case.

There are, however, some other features of interest in the record.<sup>1</sup> The villeins who did suit to the mill were those who held particular lands, amounting to sixty-four bovates, in villenage, in Tibthorpe. In the time of Peter de Bruys the villeins named as holding those lands were only seven in number. At the time of the action they were thirty-three, or, if the wife of one of those named be excluded, thirty-two, and it is expressly stated that at this time each of them held two bovates. It seems to follow that in the time of Peter de Bruys a portion of the demesne lands of the manor subsequently occupied by villeins was not so occupied. The other alternative is that each villein then had nine bovates and one-seventh, which is extremely improbable.

Quantity  
of land  
held by a  
villein.

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<sup>1</sup> *Placita de Banco*, Mich., 17 Edw. III., R<sup>o</sup> 528.

Names of  
villeins  
and neifs:  
illegiti-  
macy  
common.

Among the villeins of the earlier period were "Ricardus præpositus" or Richard the reeve, and "Ricardus Milner" or Richard the miller, but the names of the other five are in no way remarkable. Some of the names of the thirty-two of the later period, however, give cause for reflection. Among them are "Robertus filius Matilldis," "Willelmus filius Beatricis," and "Ricardus filius Margaretæ." In each of these cases the only description of the person is as the son of his mother. There are also a "Ricardus filius Adæ," and a "Robertus filius Adæ." As Adæ is the genitive both of Adam and of Ada, it is impossible to be certain whether this Richard and this Robert were described as the sons of their father or of their mother, but "Robert son of Matilda," "William son of Beatrice," and "Richard son of Margaret" admit of no doubt. The only reasonable inference appears to be that these three villeins were bastards, "nullius filii," having no father. On the other hand a bastard was, at this time, regarded as one born free. He was not the son of a villein father, and consequently not a villein by birth.

Theory  
and  
practice  
with  
regard to  
bastardy.

In the days of Bracton the bastard offspring of a neif followed the condition of the mother,<sup>1</sup> but this was so no longer at the end of the reign of Edward II.<sup>2</sup> The question therefore arises:—How is it that we find at least nine per cent. of bastards among the villeins of one manor? The answer is probably to be found in the fact that the theory of law is one thing and the actual practice, where the aid of the law is not invoked, another. Margaret's son Richard may have been a free man in a Court of Justice, but so long as there was no one to vindicate his right he probably had to accept the position of a villein in the manor

<sup>1</sup> Bract. 5, 193, b. And see 1 Pollock and Maitland, *History of English Law*, 405-6, and Vinogradoff, *Villainage in England*, 59-60.

<sup>2</sup> Y.B., Hil., 19 Edw. II., pp. 651-653. The reference is given in 1 Pollock and Maitland, 406, note 2.

in which he was born. What else could he do? If he ran away, and escaped into a borough, he could make sure of his freedom after a year and a day, but so also he could if born a villein. If he had not sufficient courage and enterprise to take that course, there was nothing better for him to do than to live as his forefathers had lived, to cultivate his two bovates of land, and do the services which his lord might require of him. It is probable, too, that the comparatively new legal doctrines had not penetrated very far among the serfs of the manors, and that they supposed the law to be not what it actually was, but what it had been a few generations earlier, and what their parents had taught them to believe that it was.

The number of bastards may, perhaps, afford some indication of the morals prevailing in the class at the period. Shortly afterwards there was a case in which a woman brought an Appeal of Robbery.<sup>1</sup> She was described as being Margaret, daughter of Henry de Grenhulle, and she alleged that, while she was in the house of Henry de Spenhulle, William Charnels came, and feloniously robbed her (*deprædatus est*) of sixty sheep worth one hundred shillings, twenty marks in coin, three mazers worth forty shillings, twelve silver spoons worth sixteen shillings, four brazen bowls worth twelve shillings, three robes or dresses (*robis pro vestura sua*) worth sixty shillings, four dishes or platters worth eight shillings, various rings and buckles, or brooches, of gold and silver worth one hundred shillings, twenty quarters of malt worth one hundred shillings, ten quarters of wheat worth one hundred shillings, and ten quarters of meslin (a mixture of wheat and rye) worth sixty shillings.

The simple defence was that Margaret ought not to be

Morals of lords and neifs : a neif's dresses, gold and silver ornaments, plate, &c.

<sup>1</sup> Below, pp. 8-13. This report (together with No. 6 of Mich. 18 Edw. III., and No. 42 of Trin. 15 Edw. III.) is repeated by mistake in Y.B., 11 Hen. IV., fo. 93, as printed.

answered, because she was the neif of Charnels; and in the end she came to terms with him, and did not prosecute the Appeal. The question here arises:—If she was a neif, how was it that she was in possession of so much property? To say nothing of the sixty sheep and the abundance of corn, it is obvious that the silver spoons, the gold and silver rings and brooches, and the frocks, which were not of inconsiderable value if the purchasing power of money at the time be considered, could hardly, in ordinary circumstances, have belonged to a mere peasant. What were the relations between Charnels and Margaret apart from that of lord and neif, and who was the Henry de Spenhulle in whose house she was staying can never be known, but it is not impossible that Charnels had a rival, and that in his anger he took back some presents which he had made to Margaret when he was in a different mood. The fact, which appears in the report, that an Assise of Novel Disseisin had previously been brought against Charnels by her father, who had then been found by verdict to be his villein, seems to point in the same direction. Her father was angry with Charnels, or was attempting to extort an acknowledgment that the land which he had only held in villenage was his freehold; and Charnels was angry with Margaret and was showing his wrath in a not very chivalrous fashion. This is, at any rate, a possible interpretation of the details, and is quite in accordance with the indisputable fact that many persons who were described as villeins were known only as sons of their mothers.

Evidence  
of descent  
of villein  
holdings  
to females,

There are also some other curious subjects of enquiry suggested by the names of the villeins of Tibthorpe. Among them were “*Petrus filius Reginaldi et Viviana uxor ejus.*” These two persons must have counted as one only, so as to bring the total number of villeins down to thirty-two, and to make the calculation of two bovates to each villein correct. It is the only instance in which both husband and wife are mentioned.

If the tenure had been free, it would have been clear that the land was either held jointly by the husband and wife or held as in right of the wife; and it seems difficult to avoid the conclusion that a right was recognised as existing in the wife, according to the custom of the manor, though the holding was at the will of the lord. It was obviously needless to mention her name if the right, of whatever nature it may have been, was in the husband, and there seems good reason to suppose that it came to her by descent.

There are two other names mentioned which present even greater difficulties. These are "Matilldis uxor" "Adæ," and "Alicia uxor Alani." A married woman holding in absolute independence of her husband was an impossibility according to the common law of the time; and the case of Peter son of Reginald and Vivian his wife shows that the husband's name was mentioned where the wife had any right. The only possible conclusion, then, seems to be that this Matilda and this Alice were widows, and that each was permitted to hold the two bovates of land which had been occupied by her husband. The common description of the demandant, in the King's Courts, when dower is in demand is not "uxor" but "quæ fuit uxor," but there was no dower of lands held in villenage, and the widow might retain the whole, on condition of performing the customary services which her husband performed.<sup>1</sup> Matilda then was on Adam's land, and Alice was on Alan's land, each finding in some way the means of having those labours done which the lord required.

A case in the volume next preceding this throws some light on the social relations of persons of villein status with freemen.<sup>2</sup> The Prior of Barnstaple brought

Widows in possession of the villein holdings of their husbands.

Social relations of villeins and freemen: freeman and villein joint tenants.

<sup>1</sup>"*faciendo consuetudines quas vir suus fecit.*" *Placitorum Abbreviatio*, p. 84 (Berks). See also 1 Pollock and Maitland, *History of English Law*, 364. In this case (of the

time of King John) the tenant was of free condition though holding certain lands by villein services.

<sup>2</sup> Easter Term, 18 Edw. III. (Rolls edition), No. 26 (pp. 116-122).

an Assise of Novel Disseisin against four persons in respect of twenty acres of arable land and two acres of meadow. Of these four, one was Robert Boghe, the parson of the church of Harwood, two of the others were his brothers, named respectively Simon and Richard, and the fourth was one who, answering as bailiff, said that he and Richard had nothing in the tenements, and denied that they had been parties to the disseisin. Simon pleaded, in abatement of the writ, that he was tenant of the tenements and was a villein of one Richard de Bloyou, who was not mentioned in the writ. The parson then alleged that he and his brother Simon were joint tenants, and pleaded a disability in the person of the Prior as not being a perpetual Prior, elected by a Convent, and having a common seal, but only the deputy of the Abbot of St. Martin *de Campis* in Paris and removable by him. The Prior's reply was that he was a perpetual Prior, and not removable by the Abbot, and that the parson was sole tenant of the tenements put in view, Simon having been mentioned in the writ only as one who had assisted in the disseisin. The jurors of the Assise found that the parson and his brother Simon held the tenements jointly, and that the Prior was a perpetual Prior and not removable by the Abbot. They further found that a predecessor of the Prior, being seised of the tenements, demised them to one Bernard atte Boghe and his son Bernard for their lives. Bernard the son died, and Bernard the father continued his estate. Afterwards another predecessor of the Prior granted and confirmed the tenements to Bernard the father, and to Robert Boghe the parson, and to Simon his brother for their lives. After the death of Bernard the father, the present Prior entered upon the tenements, and the parson and Simon ejected him. The Court, having first asked the jurors whether Bernard the father had continued his first estate or had divested himself, and having received the answer that he had never divested himself, but had continued his first



estate during his whole life, gave judgment as follows:—  
 “ Because it has been found by the Assise that the  
 “ aforesaid Robert and Simon, on the day of the pur-  
 “ chase of the writ, held the tenements aforesaid  
 “ jointly, as the same Robert above alleged, which  
 “ Simon is a villein of the aforesaid Richard de Bloyou,  
 “ it is considered that the aforesaid Robert and Simon  
 “ do go without day, and that the aforesaid Prior do  
 “ take nothing by his writ.”

Thus the writ abated not only as against Simon, but as against his brother Robert, the parson, also, on Simon's bare statement that he was the villein of a particular lord who was not mentioned in the writ. The law was that any one who confessed himself in Court to be a villein was a villein, and that the land which he held was his lord's, and, as Willoughby, J., said, in a case of joint tenancy, it was impossible to distinguish between that which belonged to one of the tenants and that which belonged to the other.

So far the case is simple enough, but it may be suspected that the confession of villein status by a member of a family of whom all the rest appear to have been free may have been collusive. This possibility had already been noticed in the Courts. A few years earlier counsel had objected, when a defendant confessed himself to be a villein, that “ one might “ acknowledge himself to be the villein of his cousin, “ or his father, and abate the writ, and the next day “ have a release or enfranchisement from him.” Hillary, C.J., answered:—“ True; it is hard, but such is the “ law.”<sup>1</sup> The effect in this case was to defeat the Prior's writ entirely, and to leave the defendants in possession until a new and better writ could be brought.

It is of course possible that Robert, the parson, had originally been a villein, as well as his brother Simon, and had obtained a qualified enfranchisement<sup>2</sup>

<sup>1</sup> Y.B., Mich., 15 Edw. III.,  
No. 26, p. 338.

<sup>2</sup> See below, p. xxxviii.

when he entered holy orders, but there is not the least reason to suppose that this was the fact. Successive Priors of Barnstaple evidently believed that the family known by the name of atte Boghe were of free status. Bernard the father, Bernard the son, Robert the parson, and Simon himself were all treated as freemen by one or other of the Priors. Simon's own statement was only that he was "*villanus cujusdam Ricardi de Bloyou.*" Who "one Richard de Bloyou" may have been, where he lived, and what manor he held, if any, are questions which were never even asked.

One fact, however, is quite clear—that if Simon atte Boghe was a villein before he confessed himself to be one in Court, there were other members of his family who were not villeins and with whom he was associating on equal terms. If, on the other hand, as seems more probable, his confession of villenage was merely a legal artifice, it is evident that small freeholders who had brothers in holy orders thought it no shame to call themselves villeins for the moment in order to attain some particular end, either for their own benefit, or for that of their relations.

Question of warranty where land had been conveyed with warranty to a villein and his heirs, and his lord had entered as upon land acquired for himself.

The last case in the volume immediately preceding this<sup>1</sup> is a curious illustration at once of the institution of villenage and of the law of warranty. There lived at North Feriby in Yorkshire one John, who is described in French as le Clerk, and in Latin as "*Johannes clericus, filius Eustachii ad Crucem,*" and who might have been known in English as John Clerk, son of Eustace atte Crosse. He was the villein of John de Owsflete and Laura, Owsflete's wife, in right of Laura. One Peter de Feriby conveyed to him and his heirs and assigns certain land by certain charters with warranty. John and Laura seized the land into their possession as being Laura's right purchased by their villein, entered upon it, and died seised of it, and then their son Gerard entered as Laura's heir.

<sup>1</sup> Y.B., Easter and Trinity, 18 Edw. III. (Rolls edition), pp. 438-447.

An action of *Sur cui in vita* was afterwards brought by William son of Peter de Feriby against this Gerard de Owsflete in respect of the same land. He alleged that his grandmother Alice had been seised, and that the right descended from her to her son Peter as heir, and from Peter to himself, and that Gerard had not entry but after a demise which Alice's husband (Gilbert de Covenham) had made to the same Peter. Gerard pleaded in bar the feoffment to John le Clerk with warranty.

It was then argued that, as the tenant was neither heir nor assign of the villein, and could not vouch his own villein, the demandant could not be bound to warrant him. In opposition to this it was contended that when the demandant's father warranted, he extinguished all right in himself, and consequently in the demandant, and that this extinction was independent of the question whether the tenant could vouch or not.

The case was, however, complicated by the allegation that the demandant's father Peter died while his grandmother Alice, through whom he claimed, was still living. The land consequently, it was said, never vested in the father, and on that ground it was argued that he had no right and therefore could not extinguish any by the warranty. Willoughby, J., seemed to incline to the opinion that the charters with warranty did not constitute a good bar, because the tenant was not either heir or assign of the villein. Unfortunately the point was not expressly decided, and we find alike in the report and in the record only that the parties were adjourned. It is probable that they came to terms.

Apart, however, from the legal questions, relating to warranty, there arise some others which may be not without importance for the study of social history. The villein who was called "clericus" in Latin and "le clerk" in French, had, there can be little doubt, been admitted into holy orders. It is true that "clericus" is at this period used in the signification

Position of  
a villein  
admitted  
into holy  
orders.

of clerk of a Court, and even of a Sheriff's clerk, but in that case the fact is always shown by the context. There was no such thing as that which we should now call a clerk (being a layman) out of employment. "Clerc" or "clerk" might possibly mean a person of education, "*educatus*," one who had found means "*litteris edoceri*," but even those expressions were used primarily to describe one who had been prepared for orders. The collocation of the Latin words shows that the person who was enfeoffed was a clerk, that is to say, one who had been ordained, though it shows further that he was the son of Eustace atte Crosse. John son of Eustace atte Crosse would have been a sufficient description of him, if there had not been a reason for inserting something else. His attainments in letters considered by themselves would not have been mentioned in a deed by which land was conveyed to him, but his status as a clerk or clergyman would naturally appear.

Only provisionally free, and liable to become again a villein, if degraded, unless formally manumitted.

Here, however, comes in a very curious point. As soon as this John, the villein, was ordained, he ceased to be a villein, for a time, at any rate, and was in a sense enfranchised.<sup>1</sup> How then was it that the land which he had purchased, and which had been conveyed to him while a clerk in orders, was admitted without question to belong to his lord?

Among the old writers Fleta throws more light upon this subject than either Bracton or Britton. He says that an exception relating to villein status could be successfully met in several ways—by showing that the person alleged to be a villein had remained in some city, or privileged borough, or in the King's demesne, for a year and a day without any claim having been made by his lord, or on the

<sup>1</sup> Bracton (190, b.); Fleta, 235, § 2. In Britton I. xxxii, 8, it might seem at first sight that the lord's consent to the ordination was necessary for the enfranchisement "sil soeffire soen neyf estre

ordeyne a clerc." The possibility and consequences of the ordination of the villein without that consent are, however, mentioned elsewhere. I. xxxii, 22.

ground of privilege of clergy or knighthood—and that for either clerk or knight the privilege held good until he had been degraded.<sup>1</sup> Elsewhere Fleta says again that if a villein has been made clerk or knight, his privilege is good against an allegation that he is a villein, until he has been degraded. If the clerk or knight cannot be degraded, and his goods are not sufficient to satisfy his lord's damage, those persons by whom he has been promoted to his orders without his lord's consent are to be answerable to the lord. It is forbidden in the Decretals, he says, that any Bishop should presume to promote to holy orders any serf until that serf has been manumitted by his lord. If it should happen that any serf should by means of flight and concealment, or by the aid of hired and bribed witnesses, or through any crafty deception or fraud, attain to any ecclesiastical grade, then according to the Decretals he is to be deposed, and his lord is to receive him back into serfdom. If, however, a grandfather, or father, should migrate from one neighbourhood to another (*ab una patria in aliam*) and should there beget a son, who should be there brought up and promoted to an ecclesiastical grade, it being there unknown whether he is free or serf, and the lord should afterwards come and gain possession of him according to law, then he is to remain in his ecclesiastical grade if his lord will give him his freedom, but, if otherwise, he is to lose it, because, while he continues to be a person of base condition, he cannot enjoy the dignity of a priest. Again, if a lord has permitted a serf to be instructed in letters, and has [so] given him his liberty, and he has been ordained priest by a Bishop, on his lord's recommendation, and then, being led on to arrogance, has refused to perform and sing mass and canonical hours for his lord, and to obey his lord's rightful commands, declaring that he is a free man, and, as a free man,

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<sup>1</sup> 235, § 2. Cf. Bract. 190 b.

will do homage to whom he pleases, the Holy Synod anathematizes such an one, and strictly refuses him communion until he returns to his senses and obeys his lord in accordance with canonical precepts. Should he, however, obstinately remain in contempt, and be accused before the Bishop who ordained him, let him be degraded, and let him become his lord's serf, as he was born. In like manner let it be done with a knight who has become so puffed up, and ungrateful, if he has not been manumitted.<sup>1</sup>

The last words relating to the knight who has once been a villein may afford a solution of the difficulties which surround the position of the clerk who has been a villein. Degradation and reduction to serfdom were to be applied in the case of the "*militē non manumisso*." It seems clear from this that knight-hood did not of itself absolutely manumit the villein. It gave him such privilege as a knight would enjoy as long as he remained a knight, but he so remained only during good behaviour. If, however, before being knighted he had been manumitted in solemn form, as, for instance, by his lord's deed, or by his lord's acknowledgment in a court of record that he was free, he could not then be made villein again by degradation from knight-hood. It was as a free man that he had been made a knight, and though he might be degraded he could not thereby be brought back into servitude.

So also, it must be supposed, in the case of a man who had once been a villein and had been ordained. If he had previously been manumitted in solemn form, he could not by degradation be reduced any lower than the condition in which he was at the time when he took holy orders, and consequently could not thereby be made a villein again. That result could follow only when the transition from the status of a villein to that of a clerk in orders was effected without

<sup>1</sup> Fleta, 110-111. According to Bracton (5) ingratitude might bring a villein who had been "manumis-  
sus" back to servitude, but the precise meaning of "manumissus" in this passage may be doubtful.

any intermediate stage except that of instruction in letters. Theoretically a villein could not be ordained according to law, and therefore, by a kind of legal fiction apparently, when he was ordained he became free, but only for just so long a time as he remained in orders. He enjoyed a privilege, as it was termed by Bracton and Fleta, but a privilege which he might lose. It would protect him, so long as he possessed it, if his lord brought a writ of *naifty*, in order to obtain possession of his person and chattels. It might, therefore, possibly have made a conveyance to him by a person other than his lord effectual in his own person, and might have saved the land from appropriation by his lord so long as he lived, and was not degraded.

In the case of John le Clerk, the son of Eustace atte Crosse, we are not told whether the lord entered upon the land which he had purchased immediately after the purchase. We know only that the lord entered as upon land purchased by his villein. The explanation is probably to be found in the position of a villein who had become free only by a terminable privilege of which gratitude to his lord was an essential condition. In strict law it was, perhaps, possible for him to bring an Assise of Novel Disseisin, and when disability in his person was pleaded, to reply that he was free by privilege of clergy. That, however, which is legally possible is not always quite expedient. The object of the lord in allowing his villein to be ordained was not to make the clerk in orders rich in worldly possessions. The clerk might possibly acquire a title to a freehold, but his attempt to assert it against his former lord would nowhere be viewed with favour. He would certainly incur the charge of ingratitude. He would soon find himself deprived of his orders, and find not only his land but his chattels and his person at the disposal of his lord. It is, therefore, not difficult to see how a lord could safely enter upon and securely hold any land acquired

by his villein who had not been formally manumitted but who had attained such privilege of freedom as was conferred by holy orders.

Relation of a villein's lord to other persons, with regard to a villein's possessions.

It may be said that in addition to the relation of the villein to his lord, on the one hand, and to the rest of the world, on the other hand, villenage presents a third aspect—that of the villein's lord to other persons. Three consecutive cases<sup>1</sup> in the present volume bring this fact into prominence. Two of these were actions of Replevin, one of Recaption. The plaintiff in all of them was Otto de Northwode (called in the case of Recaption prebendary of the prebend of Bracklesham in the church of the Holy Trinity, Chichester) and the defendant was Thomas de Hunstane, or Honestone, with others. According to the pleadings which are found on the roll it would seem that Northwode claimed to be lord of the vill of Bracklesham in Sussex, and that Hunstane claimed to be lord of the manor of the same name.

A lord levies distress on the cattle of one holding in villenage.

In the first action Northwode complained that Hunstane had taken a pig within the close of one William Danel in the vill of Bracklesham. Hunstane avowed the taking of the pig as being Danel's pig found in Danel's keeping, and not Northwode's pig, on the ground that Danel held of him in villenage a messuage and a moiety of a virgate of land in the vill of Bracklesham by fealty, and the services of reaping two acres of corn in the manor of Bracklesham, in autumn, of mowing one acre of meadow during the year, of giving one hen at Michaelmas, and of carrying dung belonging to Hunstane as often as and whensoever he should be warned so to do. Hunstane said that he had been seised of these services by the hands of Danel as by the hands of his villein (*natiri*) and that he had distrained because they were in arrear.

We thus see the lord distraining on one holding in villenage of him just as he might distrain on a

<sup>1</sup> Hil., 19 Edw. III., Nos. 32, 33, and 34 (pp. 500-509).



free person holding by free tenure for services due. For the purposes of the distress the pig was described as the tenant's and not the lord's.

Northwode, however, pleaded that Danel was his villein of the vill of Bracklesham, and held of him in villenage certain tenements in the vill by certain services. He alleged further that he had another villein there, named Robert le Syuyere (probably the Sewer), who also held of him in villenage certain tenements in the same vill by certain services, that the pig was in this Robert's possession as Northwode's pig, and that so Hunstane had taken Northwode's pig and not Danel's.

Hunstane in reply maintained that the pig was Danel's, and in Danel's keeping, and not Northwode's.

In the second action Northwode complained that Hunstane had taken a pig, fourteen wethers, and ten ewes, in the vill of Bracklesham at a place called Smithfield. Hunstane avowed the taking of the beasts as of beasts belonging to Danel and found in his keeping, on the ground that the place of taking was Hunstane's several soil, in which Danel had no right of common, and that they were *damage feasant* there. According to his own avowry he took them just as he would have taken those of a person of free estate in similar circumstances, and did not even allege that Danel held of him in villenage, though he had so stated in the first action, much less that Danel was his villein.

Northwode now pleaded that he was lord of the vill of Bracklesham, and that Smithfield, where the taking was effected, was waste of the vill, that Danel was his villein of that vill, and there held certain tenements of him in villenage. He alleged further that he had two other villeins there, named William Lavere and John Boukere, who also held certain tenements there of him in villenage, that seven of the fourteen wethers and the ten ewes were in the possession of John the

Another lord claims the same cattle as his because they were in the possession of another person who was his villein.

The first lord takes the cattle of the same person as before, on the ground that they were *damage feasant*.

The second lord alleges that the cattle were in the possession of two other persons who were his

villeins,  
and that  
the cattle  
were  
therefore  
his.

villein as Northwode's beasts, and that the pig and the other seven wethers were in like manner in the possession of William. Therefore, he said, Hunstane had taken his beasts which were in the possession of his villeins, and not Danel's beasts.

Hunstane replied, as in the previous case, that at the time of the taking the beasts belonged to Danel and were in his keeping, and were not Northwode's beasts.

The first  
lord  
pleads in a  
Recaption  
that he  
had taken  
some of  
his own  
villein's  
cattle  
*damage  
feasant*,  
and others  
for  
services in  
arrear.

In the third case (one of Recaption) it was alleged that Northwode had had replevin of ten ewes which had been taken by Hunstane, and that Hunstane had, while the plea was pending, taken two of Northwode's pigs for the same cause for which he had previously taken the ewes. Hunstane pleaded that he had not taken any pigs for the cause for which he had previously taken the ewes. He had, he said, taken the ewes as those of William Lavere, his villein in the vill of Bracklesham, in a place called Smithfield, which was his several soil, *damage feasant*. He had taken the pigs as those of the same William Lavere because Lavere held of him in villenage a messuage and a moiety of a virgate of land in Bracklesham by certain services, and because those services were in arrear, and not for the cause for which he had taken the ewes.

The second  
lord  
replies  
that the  
villein is  
his, and  
therefore  
the cattle  
also.

To this Northwode replied that William Lavere was his villein, that the ewes and pigs were in Lavere's possession as Northwode's beasts, and that Hunstane had taken the pigs for the same cause for which he had taken the ewes, and there were further pleadings on either side to the same effect.

A person  
claimed as  
his villein  
by one  
lord holds  
land in  
villenage  
of another  
lord.

It is unfortunate that neither the report nor the record takes us further than the joinder of issue in any of these cases, as a verdict might have made some obscure points a little clearer. It is not absolutely certain, in the first action of Replevin, whether Hunstane claimed Danel as his villein, or merely asserted that Danel held tenements of him in villenage. In the

latter case Danel as between him and Hunstane might have been of free condition. Hunstane did, however, allege that he had been seised of Danel's services "*ut per manus nativi sui*," which words appear to settle the question, unless they were part of a form applicable in any case in which villein services were rendered to a lord. Northwode, however, distinctly said that Danel was his villein of his vill of Bracklesham. If that was the fact, and if it was also the fact that Danel held tenements of Hunstane by villein services, it would seem to follow that a villein belonging to one lord might hold tenements in villenage of another lord. As we have already seen,<sup>1</sup> when a villein purchased a freehold, it was the property of his lord, if the lord chose to claim it, but it is not therefore certain that he could not perform villein services on another lord's demesne, and be allowed to occupy certain tenements there, as that other lord would still hold them in demesne, and no claim to them could be made by the villein's proper lord.

In the case of Recaption it is quite clear that Laverre was claimed as Hunstane's villein, and also as Northwode's villein. It is also clear that Hunstane as lord, according to his own statement, levied a distress upon his own villein's beasts, in one instance because he found them *damage feasant* in his several soil, and in another instance for arrears of services due for tenements held in villenage. It is equally clear in all the cases that Northwode claimed all beasts in the possession of his villein as his own beasts. If this claim on the part of Northwode was good, a similar claim, if made on the part of Hunstane, must have been good also, and Hunstane's distress was therefore, in a sense, levied on his own beasts.

The report of the first case shows that this difficulty or apparent contradiction was noticed in Court. The counsel for the plaintiff said that a villein, having

Apparent  
contra-  
dictions in  
the law.

As  
between  
the lord  
and his

<sup>1</sup> Above, p. xxxvi.

own  
villein, the  
villein had  
such  
rights of  
property  
that he  
could sell  
his cattle.

regard to his lord, could not have property in the beasts even though they were his.<sup>1</sup> Kelshulle, J., thereupon asked "Cannot a villein sell his horse or his cow without his lord having an action?" And Willoughby, J., answered the question: "Yes, he can; but when the villein's beasts are taken the lord can replevy them by law."

But if his  
villein's  
cattle were  
unlaw-  
fully taken  
by another  
person  
the lord  
could  
reclaim  
them.

The outcome seems to be that, in the every day relations between lord and villein, the villein's ownership of his cattle was tacitly allowed by his lord, but that, if a stranger took them, the lord could reclaim them. The strict law was that all the villein's possessions were the lord's, and as soon as the aid of the King's Courts was invoked, that law could be strictly enforced.

Progress  
of the  
work.

As was remarked in the Introduction to the volume immediately preceding this, the rate of progress in the publication of the series is practically limited only by the rate at which proofs are supplied to me. There have been unexplained delays, for which I am not, in any way, responsible, and, so far as I am concerned, this volume might well have appeared some months ago. The next has long been ready for press, and has now been sent to the printers.

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.

L. OWEN PIKE.

*Lincoln's Inn,*

• 27th June, 1905.

<sup>1</sup> p. 502.

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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 Roger de Bankwell.

Sir William Basset.

*Justices of the Court of Common Pleas.<sup>1</sup>*

Sir John de Stonore, Chief Justice.

Sir William de Shareshulle, or Sharshulle.<sup>2</sup>

Sir Roger Hillary.

Sir Richard de Kellehulle, or Kelshulle.

Sir Richard de Wylughby, or Willoughby.

Sir John de Stouford.<sup>3</sup>

*Treasurer.*

William de Edyngton.

*Barons of the Exchequer.*

Sir William de Shareshulle, or Sharshulle, Chief Baron.<sup>2</sup>

Sir William de Stowe.

Sir William de Broclesby.

Sir Gervase de Wilford.

Sir Alan de Asshe.

<sup>1</sup> As ascertained from the Feet of Fines of the two Terms.

<sup>2</sup> Shareshulle was appointed Chief Baron on the 2nd of July, 1344 (*Rot. Lit. Pat.* 18 Edw. III., p. 2, m. 48), and again on the 10th of January, 1344-5 (m. 5). He was re-appointed to the Common Bench, as Second Justice, on the 10th of November, 1345 (*Rot. Lit. Pat.* 19 Edw. III., p. 2, m. 2). His name does not appear among those of the Justices of the

Court of Common Pleas in the Feet of Fines of Michaelmas Term 18 Edward III. It does, however, appear in Hilary Term 19 Edward III., but not afterwards until Hilary Term 20 Edward III.

<sup>3</sup> Stouford's name appears in the Feet of Fines of Hilary Term 19 Edward III. There were letters patent appointing him Justice of the Common Bench on the 25th of May, 1345 (*Rot. Lit. Pat.* 19 Edw. III., p. 1, m. 14).

NAMES OF THE "NARRATORES," COUNTORS, OR  
COUNSEL.<sup>1</sup>

Richard de Birton.  
 Roger de Blaykeston.  
 Adam Bret.  
 Hamo Derworthy.  
 John de Gavnesford.  
 Henry Grene, or de Grene, or atte Grene.  
 John de Haveryngton.  
 James Huse, or Husee.  
 R. de Midelton.  
 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  
 Hugh de Sadelyngstanes.  
 Thomas de Seton.  
 William de Skipwith.  
 John de Stouford.<sup>2</sup>  
 Robert de Thorpe.  
 William de Thorpe.

CORRECTIONS.

- Page 56, line 2, *for* "to his own disadvantage" *read* "his own fault."  
 ,, 57, line 2, *for* "arecte" *read* "arette."  
 ,, 194, note 1, *for* "name" *read* "names."  
 ,, 292, note 2, *for* "Audreu" *read* "Andreu."  
 ,, 385, note, second column, line 22, *for* "deservita" *read* "deservitæ."  
 ,, 387, note, second column, line 18, *for* "deservita" *read* "deservitæ."

<sup>1</sup> 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.

<sup>2</sup> See above *Justices of the Court of Common Pleas*, p. lv.

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

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

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Nos. 1, 2.

A.D. 1344. (1.) § A *Quare impedit* was brought for the King  
*Quare* against the Bishop of Worcester by reason that the  
*impedit.* temporalities of the Bishopric had heretofore been in  
the King's hand, and the count was to the effect that  
the Bishop's predecessor made collation, &c., and there-  
upon made induction, and afterwards through the  
postulation of Simon, heretofore Bishop of the same  
place, who was consecrated Bishop of Ely, the tem-  
poralities came into the King's hand. And they  
counted further that the church was at that time void,  
&c.

Intrusion. (2.) § A writ of Intrusion was brought, and the  
Bailiff of Bristol had cognisance of the plea.—The  
woman who had been demandant now appeared in the  
Common Bench, and the tenant also by Resummons,  
and the demandant alleged that there had been a  
failure of justice because the Bailiff would not read her



DE TERMINO MICHAELIS ANNO REGNI REGIS  
EDWARDI TERTII A CONQUESTU DECIMO  
OCTAVO.<sup>1</sup>

Nos. 1, 2.

(1.)<sup>2</sup> § *Quare impedit* pur le Roy vers Levesqe de A.D. 1344.  
Wircestre par cause des temporaltes Levesqe nad-  
gaers en sa mayn, &c., countaunt<sup>3</sup> qe le predecessour *Quare*  
Levesqe fist collacion, &c., et de ceo fist induccion, *impedit.*  
et puis par postulacioun Simond nadgaers Evesqe de  
meisme le lieu,<sup>4</sup> qe fut sacre en Evesqe Dely les  
temporaltes devindrent en la mayn le Roy. Et outre  
counterent<sup>5</sup> qe leglise a donques fut voide, &c.

(2.)<sup>6</sup> § Intrusioun porte, et Baillif de Bristout avoit *Intrusioun.*  
la fraunchise.—La femme demandant vint ore, et le  
tenaunt auxint<sup>7</sup> par Resomons, et assigna qil avoit  
failli de dreit en taunt qil ne voleit lire le brief, &c.—

<sup>1</sup> The Reports of this Term are (with the exception of the last part of No. 69, which is also in the Cambridge University MS. H.h. 2, 3, and in the Additional MS. numbered 34,789) from the Lincoln's Inn MS., the Harleian MS. No. 741, and the Additional MS. in the British Museum numbered 25,184. The heading of the Term is from the two last mentioned MSS. alone.

<sup>2</sup> From the three MSS. as above. In L., however, there is nothing to show where Trinity Term ends and Michaelmas begins.

<sup>3</sup> Harl., come tenant.

<sup>4</sup> The words de meisme le lieu are omitted from L.

<sup>5</sup> counterent is omitted from L.

<sup>6</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 40, d. It there appears that the action was brought by Margery late wife of William de la Gerche against John de Wycom and Margery his wife in respect of a messuage in the suburb of Bristol "in quod "iidem Johannes et Margeria non "habent ingressum nisi post intru- "sionem quam Agnes Curteys in "illud fecit post mortem Johannis "de Whitechurch, cui Margeria de "Whitechurch avia prædictæ Mar- "geriæ quæ fuit uxor Willelmi, "cujus heres ipsa est, illud dimisit "ad vitam ipsius Johannis de "Whitechurch."

<sup>7</sup> auxint is omitted from L.

## No. 2.

A.D. 1344. writ, &c.—The Bailiff said, by *Moubray*, that there had not been any fault in the Court, because she had been non-suited by reason of her own non-appearance, and so the original writ in this Court had been annulled. Therefore, as there had been no fault in the Court at Bristol, he prayed that this Court (the Common Bench) would not take upon itself the cognisance of the plea.—*Thorpe*. You cannot maintain that the Court at Bristol did not fail to do justice to any other end than to have the same jurisdiction; and that you cannot have according to your own statement, because the original writ, according to your own statement, is extinguished by non-suit.—*Moubray*. It is not right that this Court (the Common Bench) should have cognisance of the plea except by reason of our default, and we show that there was no default in us, and to that intent we make our allegation.—*Thorpe*. Suppose the averment had been joined between us, and the finding had been in your favour, you would not have cognisance of the plea contrary to your confession at the present time that the writ has not been prosecuted.—*WILLOUGHBY* and *HILLARY* said that the Bailiff would not have the cognisance of the plea, and that it did not lie in his mouth to allege the non-suit.—Therefore *Moubray* defended, and alleged for the tenant the same matter touching the extinction of the original writ by non-suit.—The demandant tendered the averment that she was ready

## No. 2.

Le Baillif par *Moubray* dit qil ny avoit default en A.D. 1344.  
 la Court, qar ele par sa noun venue<sup>1</sup> fut nounsuy,  
 issint loriginal anienti<sup>2</sup> ceinz. Par quai, desicome il  
 ny ad pas default en la Court, il pria qe cest Court  
 nenprist pas conissaunce.—*Thorpe*. Vous ne poetz a  
 autre effecte mayntener qe la Court ne failli de  
 dreit forqe<sup>3</sup> pur aver mesme la jurisdiction; et ceo  
 ne poetz aver a ceo qe vous dites mesmes, qar  
 loriginal, a vostre dit, par nounsuite est amorti.—  
*Moubray*. Il nest pas resoun qe ceste Court conusse  
 forqe en default de nous, et nous moustroms qe nul  
 default y avoit en nous, et a cel entent lalleggeoms.<sup>4</sup>  
 —*Thorpe*. Jeo pose qe averement fut joint<sup>5</sup> entre  
 nous, et trove fut pur vous, vous naverez pas la  
 conisaunce du plee countre vostre conussaunce a ore,  
 qe<sup>6</sup> vous avez conu qe le brief est nounsuy.—*WILBY*  
 et *HILL*. disoint qil navera pas la conisaunce, nen  
 sa bouche ne<sup>7</sup> git dallegger la nounsuyte.—Par quei  
*Moubray* defendi, et pur le tenant alleggea mesme  
 la chose sur la mortisement del original par noun-  
 suyte.<sup>8</sup>—Le demandante tendist daverer qele fut la

<sup>1</sup> L., nountenu.

<sup>2</sup> Harl., amoty.

<sup>3</sup> Harl., mes.

<sup>4</sup> Harl., allegeasoms.

<sup>5</sup> 25,184, yoint.

<sup>6</sup> L., and 25,184, et.

<sup>7</sup> ne is from L. alone.

<sup>8</sup> The defendants pleaded, accord-  
 ing to the record, "quod ipsi non  
 debent ei inde ad hoc breve  
 respondere, quia dicunt quod  
 eadem Margeria alias in Curia  
 hic . . . . per istud breve  
 petiit versus prædictos Johannem  
 et Margeriam uxorem ejus præ-  
 dictum mesuagium, cum perti-  
 nentiis, in forma prædicta. Et  
 super hoc venerunt ballivi liber-  
 tatis villæ Bristollia, et petierunt  
 inde Curiam suam, et obtinuerunt,

" et dederunt diem partibus præ-  
 dictis coram eisdem ballivis apud  
 Bristolliam, . . . . ad  
 quem diem coram præfatis Balli-  
 vis apud Bristolliam venerunt  
 prædicti Johannes et Margeria  
 uxor ejus, et obtulerunt se versus  
 prædictam Margeriam quæ fuit  
 uxor Willelmi de prædicto placito,  
 et prædicta Margeria quæ fuit  
 uxor Willelmi ibidem solemniter  
 vocata non venit. Et fuit petens,  
 ita quod tunc consideratum fuit  
 quod prædicti Johannes et Mar-  
 geria uxor ejus irent inde sine die,  
 et prædicta Margeria quæ fuit  
 uxor Willelmi et plegii sui de  
 prosequendo essent in miseri-  
 cordia, unde petunt judicium si  
 prædicta Margeria quæ fuit uxor

## No. 3.

A.D. 1344. there in the Court at Bristol, *absque hoc* that she was non-suited; ready, &c.—And the other side said the contrary.—*Quære*, if she had been ready in the Court at Bristol, and a non-suit had been adjudged, notwithstanding, whether she would be aided by Resummons, or by False Judgment.

Formedon in the descender. (3.) § A Formedon in the descender was brought in respect of a gift made to Walter, making the descent through one Ella, the demandant's ancestor.—*R. Thorpe*. Heretofore you yourself brought a *Non compos mentis*, alleging the seisin of this same Ella, and demanding a fee simple, and to that writ you appeared; judgment whether you ought to be answered to this writ of a lower nature.—*Grene*. That plea is to the action, for according to your intendment I shall never have this action.—*Thorpe*. We give the plea only to the writ, for we do not destroy the estate tail by our plea.—*Grene*. If at one time I make a mistake in taking my action, it is not therefore a reason that I should be ousted from every kind of action, for the use of a writ which contains only a supposal will not oust anyone from an action.—*STONORE*. Then is it the fact that you demanded a fee simple on the ground of the seisin of this same Ella, as they say?—*Grene*. The one supposal is not contradictory to the other, for she might at one time have had a fee simple, and aliened it, as the first writ supposes, and afterwards a fee tail might have descended to her from an ancestor higher up.—*WILLOUGHBY*. Then inasmuch as you do not deny that you previously brought a writ of Entry demanding fee simple, and that writ was not found

## No. 3.

prest, saunz ceo quele fut nounsuy; prest, &c.<sup>1</sup>—*Et* A.D. 1344. *alii e contra.*—*Quere*, si ele fut prest illoeqes, et, *non obstante*, nounsuyte eust este agarde, si ele serra eide par Resomons, ou par Faux Jugement.

(3.)<sup>2</sup> § Descendre dun doun fait a Wauter, fesaunt la descente par my une Ele sauncestre.—*R. Thorpe.* Forme de doun en le<sup>3</sup> descendre.  
Autrefoith vous meismes portastes *Non compos mentis* [Fitz., Estoppell, 222.]  
de la seisine mesme cele Ele demandant fee simple, a quel brief<sup>4</sup> vous apparustes; jugement si a ceo brief de plus basse<sup>5</sup> nature devez estre respondu.—*Grene.* Cest al accion, qar a vostre entente jeo naveray jammes<sup>6</sup> cest accion.—*Thorpe.* Nous<sup>7</sup> le donoms forqe au<sup>8</sup> brief, qar nous ne destruoms pas la taille par nostre plee.—*Grene.* Si a un temps jeo mespreisse ma suyte, nest pas resoun par taunt que jeo soy ouste daccion, qar user dun brief que nest forqe suppossaille nosterà pas homme daccion.—*Ston.* Donques est il issint que vous demandastes fee pure de<sup>9</sup> la seisine mesme cele, come ils dient?—*Grene.* Lun suppossaille nest pas contrariaunt a lautre, qar a un temps ele poait aver eu fee simple, et aliene, come le primer brief suppose, et puis par launcestre<sup>10</sup> paramount que fee taille la descendreit.—*WILBY.* Et pur ceo que vous ne dedites pas que autrefoith portastes brief Dentre demandant fee pure, et cel brief

“Willelmi ad istud breve ibidem  
“sic non prosecutum responderi  
“debeat, &c.”

<sup>1</sup> The replication was, according to the roll, “quod prædicti Johannes de Wycom et Margeria uxor ejus per hoc breve suum cassare non debent, quia dicit quod venit prædictis die et loco ad prædictum breve suum prosequendum, sed ballivi prædicti prædictis die et loco Curiam tenere noluerunt nec placitum inde continuare, et sic fuit ipsa breve suum prædictum

“prosecuta, et hoc petit quod  
“inquiratur per patriam.” Upon this issue was joined, and the *Venire* awarded.

<sup>2</sup> From the three MSS. as above.

<sup>3</sup> The words *Forme de doun en le* are from 25,184 alone.

<sup>4</sup> brief is from L. alone.

<sup>5</sup> L., haut.

<sup>6</sup> jammes is omitted from Harl.

<sup>7</sup> nous is omitted from Harl.

<sup>8</sup> Harl., du.

<sup>9</sup> L., pur, instead of pure de.

<sup>10</sup> Harl., lautre.

## No. 4.

A.D. 1344. false by verdict, nor was the estate tail such as you now suppose found, therefore, &c.—*Grene*, seeing that the Court would have given judgment, imparled, and said that Ella purchased in fee simple, while her father Walter, to whom the gift was made, was living, and aliened while she was of non-sane memory, and that while Walter was living, and so this action is upon a gift made to an ancestor higher up and descended since that time; judgment whether you can thereby bar us of our action.—HILLARY. Since you have confessed that, on the ground of the seisin of this same Ella, you have previously made use of a writ of a higher nature, take nothing by this writ, and be in mercy.—*Quære*.

Appeal. (4.) § Appeal of Robbery was brought by a woman.—

## No. 4.

par verdit ne fut pas trove faux, ne la taille trove, A.D. 1344.  
 come vous supposez a ore, par quei, &c.—*Grene*,  
*videns* qil voleit aver rendu le jugement, emparla, et  
 dit qe Ele<sup>1</sup> purchacea en fee simple, vivaunt Wauter  
 soun pere,<sup>2</sup> a qi le doun se fist, et aliena quant ele<sup>3</sup>  
 fut de noun seyn memorie,<sup>4</sup> et ceo vivaunt Wauter,  
 et<sup>5</sup> issint cest accion<sup>6</sup> est de doun fait a launcestre<sup>7</sup>  
 paramount et descendy puis cel temps; jugement si  
 par taunt nous puisses<sup>8</sup> daccion barrer.—HILL.  
 Depuis qe vous avez conu qe de la seisine<sup>9</sup> mesme  
 cele autrefoith usastes brief de plus haute nature,  
 pernez par cest brief rien, et soiez en la merceye.—  
*Quere*.<sup>10</sup>

(4.)<sup>11</sup> § Appelle de Robberie par une femme.—Le Appelle.

<sup>1</sup> L., qil; 25,184, qele, instead of qe Ele.

<sup>2</sup> The words soun pere are omitted from L.

<sup>3</sup> L., il.

<sup>4</sup> 25,184, memoire.

<sup>5</sup> et is from Harl. alone.

<sup>6</sup> In Harl. the words de plus haut are added after the word accion.

<sup>7</sup> Harl., lautre.

<sup>8</sup> Harl., poiez.

<sup>9</sup> L., disseisine.

<sup>10</sup> *Quere* is omitted from Harl.

<sup>11</sup> From the three MSS. as above. The record appears in the *Placita coram Rege*, Mich., 18 Edw. III., "Rex" R<sup>o</sup> 31. The appeal is in the form following:—"Willelmus Charnels de Bedeworthe attachia- tus fuit per corpus suum, secundum consuetudinem Angliæ, ad respondendum Margaretæ filiæ Henrici de Grenhulle de Palyngtone, simul cum Magistro Hugone de Stoke, Willelmo Hanne et Willelmo Inge, de roberia et pace domini Regis nunc fracta, unde eos appellat. Et sunt plegii ipsius Margaretæ

de prosequendo, scilicet. Robertus Emmotson et Simon Sebard. Et unde appellat prædictum Willelmum Charnels de roberia, &c., de eo quod, ubi prædicta Margareta fuit in pace Dei et domini Regis nunc, die Jovis proximo post Festum Sancti Jacobi Apostoli, anno regni domini Regis nunc decimo octavo, hora vesperarum, in villa de Palyngtone, in domo Henrici de Spenhulle, ibi venit prædictus Willelmus Charnels felonice, ut felo domini Regis, insidiando et insultu præmeditato, contra pacem domini Regis, coronam, et dignitatem suam, die, anno, hora, et villa prædictis, et ipsam Margaretam de sexaginta ovibus pretii centum solidorum, viginti Marcis in denariis numeratis, tribus mazeris pretii quadraginta solidorum, duodecim coeliaribus argenti, pretii sexdecim solidorum, quatuor ollis æneis pretii duodecim solidorum, tribus robis pro vestura sua pretii sexaginta solidorum, quatuor patellis pretii

## No. 4.

A.D. 1344. The defendant said that she ought not to be answered because she was his neif.—*Moubray*. Free, and of free condition.—*Grene*. You shall not be admitted to say that, because heretofore your father brought an Assise against us, &c., and we alleged that he ought not to be answered, because he was our villein, and our exception was found by verdict after he had joined issue, and therefore judgment was given that he should take nothing; judgment whether you, who by your writ make yourself daughter to this same person who was heretofore found to be our villein, shall be admitted to say that you are of any other condition, unless you show how.—*Moubray*. I am a stranger, for you do not make me heir to him, so that on this verdict I could have an Attaint.—*Thorpe*. Heir in this case is little to the purpose, for, when a man is a villein, his youngest son is a villein as much as his eldest, because all his issue are equally villeins.—*Grene, ad idem*. Suppose it had been found by the verdict of the Assise



## No. 4.

defendant dit que ne serra pas respondu pur ceo A.D. 1344  
 quele est sa neif.<sup>1</sup>—*Moubray*. Fraunc, et de fraunc  
 estat.—*Grene*. A ceo ne serrez resceu, qar autrefoith  
 vostre pere porta Assise vers nous,<sup>2</sup> &c., et nous  
 alleggeames qil ne serreit respondu pur ceo qil fut  
 nostre vileyn, et nostre excepcion trove par verdit a  
 sa mise, par quey fut agarde qil ne prist rien ;  
 jugement si vous, qe par vostre brief vous fetes  
 fille<sup>3</sup> a mesme celuy qautrefoith fut trove nostre  
 vileyn, serrez resceu a dire qe vous estes dautre  
 condicion, si vous ne moustrez coment.—*Moubray*.  
 Jeo suy estraunge, qar vous ne moy fetes pas heir  
 a luy, par quei qe<sup>4</sup> jeo purroy de cel verdit aver  
 Atteint.—*Thorpe*. Heir en ceo cas est poy a purpos,  
 qar si avant quant homme est vileyn est son puisne  
 fitz vileyn come leigne, qar owelment sount toux les  
 issues de luy<sup>5</sup> vileyns.—*Grene, ad idem*. Jeo pose  
 qe par verdit Dassise ust este trove qe vostre pere

“ octo solidorum, annulis et firma-  
 “ culis de auro et argento, pretii  
 “ centum solidorum, viginti quar-  
 “ teriis de brasio pretii centum  
 “ solidorum, decem quarteriis de  
 “ frumento pretii centum solido-  
 “ rum, et decem quarteriis de  
 “ mixtilione pretii sexaginta soli-  
 “ dorum, in possessione ipsius  
 “ Margaretæ existentibus, felonice  
 “ deprædatus fuit. Et, quameito  
 “ prædictus Willelmus Charnels  
 “ feloniam de roberia prædicta  
 “ fecerat, fugit. Et prædicta Mar-  
 “ garetæ ipsum recenter insecuta  
 “ fuit cum clamore et hutesio  
 “ levatis de villa in villam usque  
 “ ad quatuor villas proximiores,  
 “ &c., Et ulterius ad Curiam  
 “ domini Regis, quousque præ-  
 “ dictus Willelmus Charnels ad  
 “ sectam ipsius Margaretæ per  
 “ breve domini Regis attachiatus

“ est, &c. Et si prædictus Willel-  
 “ mus Charnels feloniam prædic-  
 “ tam velit dedicere prædicta  
 “ Margareta parata est hoc probare  
 “ versus eum tanquam felonem  
 “ Regis prout Curia, &c.”

<sup>1</sup> According to the record :—“ Et  
 “ prædictus Willelmus Charnels  
 “ defendit omnem feloniam et  
 “ roberiam, et quicquid est contra  
 “ pacem domini Regis, &c. Et  
 “ dicit quod prædicta Margareta  
 “ ad appellum suum prædictum  
 “ responderi non debet, quia dicit  
 “ quod ipsa Margareta est nativa  
 “ sua, &c.”

<sup>2</sup> The words vers nous are from  
 Harl. alone.

<sup>3</sup> L., and 25,184, fille et heir.

<sup>4</sup> qe is omitted from L.

<sup>5</sup> L., ley.

## No. 4.

A.D. 1344. that your father was free, would you not be aided in showing yourself to be free by that verdict? Therefore, *e contra*, you shall be bound by the verdict by which he was found to be a villein.—*Moubray*. *Non sequitur*, because I should allege that against you who were yourself a party, but now I am altogether a stranger to the person against whom it was alleged [that he was a villein].—*BAUKWELL*. If the verdict had passed in favour of her father, she who is not heir would never have had advantage from it, and would never have vouched that record; and possibly the father was a villein by his own confession, and his issue free, if they were not born afterwards; wherefore will you accept the averment?—*Thorpe*. Our neif, and we were seised of her; ready, &c.—And the other side said the contrary.—*Scor*. Do you mean to have that as an issue in respect of the whole, or, in case she be found free, to have another answer? as meaning to say that he would not have any other answer.—*Thorpe*. We cannot plead to the principal matter unless she be shown to be free, but as to what concerns the King we say Not Guilty.—*Scor*. The King is not yet a party, and possibly that will be saved to you by way of protestation, even though you answer to her. And we will consider whether this issue be admissible or not.—The opinion of the Court was that this was not a good issue.—Afterwards the appellor *non prosequitur* by agreement.

## No. 4.

ust este fraunc, ne serrez vous eyde de vous en-<sup>A.D. 1344.</sup>  
 fraunchier par cele verdit? *Ergo, e contra*, par le  
 verdit par quel il fut trove vileyn vous serrez lie.—  
*Moubray. Non sequitur*, qar jeo laleggeray countre  
 vous mesmes qe fuistes partie, mes ore jeo su tut  
 estraunge a celui<sup>1</sup> countre qi il est allegge.—*BAUK.*<sup>2</sup>  
 Si le verdit ust passe pur son pere, ele qe nest pas  
 heir neust<sup>3</sup> ja eu avauntage de cel,<sup>4</sup> ne<sup>5</sup> jammes  
 vouche cel recorde<sup>6</sup>; et par cas le pere par sa  
 conisaunce fut vileyn, et les issues de luy frauncs,  
 sils ne<sup>7</sup> fuissent nees apres; par quay volez lavere-  
 ment?—*Thorpe*. Nostre neife, et nous seisi de luy;  
 prest, &c.—*Et alii e contra*.—*Scot*. Entendez vous  
 daver ceo pur issue a tut, ou en cas qele soit trove  
 fraunc, daver autre respouns? *quasi diceret* il navera  
 nul autre respouns.<sup>8</sup>—*Thorpe*. Nous ne poms pleder  
 al principal si ele ne soit enfraunchi, mes, quant  
 au Roy, de rien coupable.—*Scot*. Le Roy nest pas  
 unqore partie, et par cas ceo vous serra salve par  
 protestacion,<sup>9</sup> mesqe vous respoignes a luy. Et nous  
 aviseroms de cest issue sil soit reseivable ou noun.  
 —*Opinio CURIE* ceo nest pas issue.—*Postea non*  
*prosequitur* par acorde.<sup>10</sup>

<sup>1</sup> The words a celui are omitted from Harl.

<sup>2</sup> Harl. and 25,184, *Blaik*.

<sup>3</sup> L. and 25,184, *ust*.

<sup>4</sup> The words de cel are omitted from Harl.

<sup>5</sup> L., *mes*.

<sup>6</sup> L., *de recorde*.

<sup>7</sup> ne is omitted from 25,184.

<sup>8</sup> respouns is from Harl. alone.

<sup>9</sup> Harl., *proces*.

<sup>10</sup> According to the record, after the appellee's plea, "Super hoc prædicta Margareta petit licentiam inde loquendi. Et ei conceditur.

" Et prædictus Willelmus Char-

" nels interim committitur Mares-  
 " callo, &c.

" Postea coram domino Rege,

" apud Westmonasterium venit

" prædictus Willelmus Charnels

" per Marescallum ductus, &c.

" Et prædicta Margareta, licet

" quinto die placiti solemniter

" vocata, non venit, nec est prose-

" cuta appellum suum prædictum.

" Ideo ipsa capiatur, et plegii

" sui prædicti de prosequendo in

" misericordia, &c. Et prædictus

" Willelmus Charnels quo ad

" sectam ipsius Margaretæ eat inde

" sine die. Sed quo ad sectam

" domini Regis instanter allocutus

## Nos. 5, 6.

A.D. 1344. (5.) § Trespass touching a man's goods carried  
 Trespass. off with his wife.<sup>1</sup> The defendant, who was a  
 Lombard, appeared at the *Non est inventus*, and pleaded  
 Not Guilty, and prayed that he might appoint an  
 attorney. And the point was touched that, if the de-  
 fendant be found guilty by verdict, the King will take  
 the verdict as an indictment, and that, if he be there-  
 upon found guilty at the King's suit, it will carry  
 judgment of life and member, and therefore the  
 appointment of an attorney does not lie.—*Blaykeston*.  
 It is not for a party to say that, but since nothing  
 but damages is to be recovered at the suit of the  
 party, the defendant shall not by reason of the Sheriff's  
 return, that is to say. "*Non est inventus*," lose the  
 advantage which is given to him of appointing an  
 attorney, for the Statute<sup>2</sup> purports that, in every case  
 in which there is not an Appeal, the party may appoint  
 an attorney, and the plaintiff will in this case be able  
 to appoint an attorney, and so consequently will the  
 defendant.—And afterwards the defendant found surety  
 to abide the inquest.

Appeal. (6.) § An Appeal which a woman sued against Ralph

<sup>1</sup> See Stat. 13 Edw. III. (Westm. 2), c. 34.

<sup>2</sup> 6 Edw. I. (Glouc.), c. 8.

## Nos. 5, 6.

(5.)<sup>1</sup> § *Trans de bonis viri cum muliere abductis.* A.D. 1344.  
 Le defendant, qe fut Lunbard, vint al *Non est inventus*, et pleda de rien coupable, et pria de faire son attourne. Et fut touche qe si le defendant soit soille<sup>2</sup> par le verdit qe le Roy prendra le verdit pur enditement,<sup>3</sup> et sur ceo qil<sup>4</sup> soit a suite le Roy soille<sup>5</sup> il portera jugement de vie et de membre, par quei attourne ne gist pas.—*Blaik.*<sup>6</sup> Ceo nest pas a la partie, mes del houre qa suyte de partie rien est a recoverir forge damages, et par retourn de Vicount,<sup>7</sup> saver, *Non*<sup>8</sup> *est inventus*, il ne perdra pas lavantage qe done luy est de fere attourne, qar statut voet en chescun cas ou appelle nest<sup>9</sup> pas qe partie fra attourne, et le pleintif en ceo cas purra fere attourne, et *per consequens* le defendant.—*Et postea* il trova soerte<sup>10</sup> datteindre lenqueste.

(6.)<sup>11</sup> § Appelle quene femme suyt vers Rauf de Appelle

“qualiter se velit de roberia et  
 “feloniis prædictis acquietare,  
 “dicit quod ipse in nullo est inde  
 “culpabilis, et de bono et malo  
 “ponit se super patriam.”

The *Venire* was then awarded, and Charnels was let out on mainprise. A *Capias* issued against the other appellees.

The record ends with the words  
 “Postea, hoc eodem termino, præ-  
 “dicta appellatrix finem fecit, &c.”

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> Harl., soilli.

<sup>3</sup> Harl., lenditement.

<sup>4</sup> L., sil.

<sup>5</sup> Harl., soilly.

<sup>6</sup> L., БАУК.

<sup>7</sup> L., Viscounte.

<sup>8</sup> Harl., *quod non*.

<sup>9</sup> L., ne git.

<sup>10</sup> Harl., meinprise.

<sup>11</sup> From the three MSS. as above, but corrected by the record, *Placita*

*coram Rege*, Mich., 18 Edw. III., “Rex,” R<sup>o</sup> 34. It there appears that the appeal was brought by Matilda late wife of Thomas Sprynghose against John de Chilterne and Ralph de Wedon, in the county of Buckingham.

Her statement was that “in  
 “campo villæ de Stapelforde in  
 “Comitatu Wiltesiræ in alta via  
 “regia venit prædictus Johannes de  
 “Chiltone . . . et de quodam  
 “baculo fraxineo, pretii duorum  
 “denariorum, quem tenuit in  
 “ambabus manibus suis, felonice  
 “percussit præfatum Thomam,  
 “quondam virum ipsius Matilldis  
 “in vertice capitis et ei dedit quen-  
 “dam ictum mortalem.” . . .  
 . . . Also “ibi venit prædictus  
 “Radulphus . . . et de quodam  
 “cultello longo, quem tenuit in  
 “manu sua dextera, felonice per-  
 “cussit prædictum Thomam . . .

## No. 6.

A.D. 1344. de Wedon was brought in a county other than that in which the felony was supposed to have been committed, for the writ was brought in the County of Buckingham, whereas the plaintiff supposed the felony to have been committed in the County of Southampton,<sup>1</sup> and that her husband died in London.—*Thorpe*. Judgment of this writ brought in a county other than that in which it is supposed that the felony was committed, for neither a writ of Trespass nor any other writs on which an Exigent lies can be maintained except in the counties in which the tort is supposed to have been.—*Seton*. In Trespass the place in which the trespass was committed will be in the writ, and that is the reason why the writ will be brought in the same county. Not so in the matter before us, in which no place is determined

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<sup>1</sup> Wiltshire according to the record. See p. 15, note 11, and p. 17, note 4.

## No. 6.

Wedone en autre counte qe la felonie fut suppose A.D. 1344  
 estre fait, qar le brief est porte en le Counte de  
 Bukinghame, la ou la pleintif suppose la felonie  
 estre fait en le Counte de Southamptone, et qil  
 murust en Loundres.—*Thorpe*. Jugement de ceo brief  
 porte en autre counte qe nest suppose la felonie  
 estre fet, qar brief de Trans ne<sup>1</sup> autres briefs ou  
 Exigende gist<sup>2</sup> ne sont pas meynテナbles forqe es<sup>3</sup>  
 countes ou le tort est suppose.<sup>4</sup>—*Setone*. En Trans  
 le lieu ou le trans fut fait serra el brief,<sup>5</sup> et cest  
 la cause pur, quei il serra porte<sup>6</sup> en mesme le  
 counte. *Non sic in proposito*, ou nul lieu est deter-

“ . . . per medium lateris sui  
 “ dexteri, et fecit ei quandam  
 “ plagam mortalem, unde si aliud  
 “ malum non habuisset ex ictu  
 “ quem prædictus Johannes de  
 “ Chilterne ei dedit, mortuus  
 “ fuisset ex plaga quam prædictus  
 “ Radulphus ei fecit. Et, post-  
 “ quam prædictus Thomas sic  
 “ vulneratus fuit, ductus fuit usque  
 “ civitatem Londoniarum causa  
 “ convalescentiæ expectandæ, sed  
 “ convalescere non potuit, sed  
 “ languebat ibidem usque diem  
 “ Jovis proximum post medium  
 “ Quadragesimæ tunc proxime  
 “ sequentem quod idem Thomas  
 “ obiit in parochia Sancti Michaelis  
 “ Archangeli extra portam de  
 “ Cripelgate Londoniarum ex plaga  
 “ et ictu prædictis, ut prædictum  
 “ est.”

<sup>1</sup> L., et.

<sup>2</sup> L., git; Harl., gisent

<sup>3</sup> L., els; Harl., en.

<sup>4</sup> The plea on behalf of both the appellees was, according to the record, “ quod prædicta Matilldis “ ad breve suum predictum respon- “ deri non debet, quia dicunt quod, “ secundum legem et consuetudi-

“ nem regni Regis Angliæ hactenus  
 “ usitatas, quicumque qui de  
 “ feloniam aliqua facta conqueri vel  
 “ prosequi voluerit prosequi debet  
 “ breve suum in comitatu in quo  
 “ hujusmodi feloniam facta fuit. Et  
 “ prædicta Matilldis tulit breve  
 “ suum prædictum versus eos in  
 “ Comitatu Buckinghamiæ, ubi per  
 “ appellum suum prædictum nul-  
 “ lam feloniam aut maleficium in  
 “ personis ipsorum Johannis et  
 “ Radulphi attachiavit fieri, sed in  
 “ narrando supponit prædictam  
 “ feloniam, si qua fuerit, in Comi-  
 “ tatu Wiltesiræ inchoari, et postea  
 “ apud suburbium Londoniarum  
 “ terminari per mortem prædicti  
 “ Thomæ quondam viri sui, in  
 “ quibus quidem Comitatibus Wil-  
 “ tesiræ et Londoniarum nullum  
 “ breve versus eos ad sectam ipsius  
 “ Matilldis inde dependat [*sic*], et  
 “ sic appellum prædictum per præ-  
 “ dictum breve in Comitatu Buk-  
 “ inghamiæ impetratum manu-  
 “ teneri non potest, &c. Et petunt  
 “ judicium de brevi, &c.”

<sup>5</sup> L., brief porte.

<sup>6</sup> Harl., partie.

## No. 6.

A.D. 1344. except by declaration in counting; and a writ of Account, upon which an Exigent lies, can well be maintained in a different county; and the reason is that it shall be brought where the party can best be brought to answer; and so also will this suit of Appeal. And it has been seen that when the felony has been committed in one county, and the person who was wounded died in another county, the writ of Appeal has been maintained in the county in which he died.—BASSET. That was not by judgment, but by consent, and a writ of Appeal is usually brought where the act was committed.—And the writ abated by judgment.



## No. 6.

mine forçe par declaracion<sup>1</sup> del counte ; et en A.D. 1344.  
 Acompte,<sup>2</sup> ou Exigende gist, homme la meyntendra  
 bien en autre counte ; et la cause est pur ceo qil  
 serra porte ou partie purra estre meuth mene en  
 respouns ; et auxi serra cest suyte Dappelle. Et  
 homme ad vewe ou la felonie se fit en un counte,<sup>3</sup>  
 et celuy qe fut naufre<sup>4</sup> murust en autre counte,<sup>5</sup> le  
 brief Dappelle estre<sup>6</sup> meyntenu ou il murust.<sup>7</sup>—  
 BASSET. Ceo ne fut<sup>8</sup> pas par jugement, mes de<sup>9</sup>  
 gree ; et brief<sup>10</sup> Dappelle soleit<sup>11</sup> estre porte ou le  
 fait se fist.—Et par agarde le brief abatist.<sup>12</sup>

<sup>1</sup> 25,184, claracion.

<sup>2</sup> L., Counte ; 25,184, le Counte.

<sup>3</sup> The words en un counte are omitted from L.

<sup>4</sup> L., tue ; 25,184, tuwe.

<sup>5</sup> counte is from Harl. alone.

<sup>6</sup> Harl., deit estre.

<sup>7</sup> According to the roll, “prædicta Matilldis dicit quod in hujusmodi brevibus de Appellis non est forma in Cancellaria domini Regis hactenus usitata de apponendo in eisdem certum nomen villæ vel loci ubi feloniam fuerint perpetratæ sicut in brevibus de Transgressione vel in aliis brevibus de placito terræ, sed ubicunque appellati de hujusmodi feloniis, postquam fugam fecerint citius poterint inveniri vel arestari bene licet appellantis qui versus hujusmodi malefactores prosequi voluerint brevibus sua ibidem deferre et prosequi ad felonias hujusmodi tota celeritate qua fieri poterit puniendas, &c. Et, ex quo in prædicto brevi certus locus non terminatur ubi feloniam prædicta facta fuit, eadem Matilldis non artatur per idem breve quin narrare possit et prosequi ad largum pro prædicta feloniam puniendam in quocumque

“comitatu eadem feloniam facta fuit, per quod videtur ei quod breve et appellum suum prædictum manutenenda sunt secundum legem et consuetudinem regni, &c.”

<sup>8</sup> L., nest, instead of ne fut.

<sup>9</sup> L., par.

<sup>10</sup> Harl., le brief.

<sup>11</sup> Harl., voilleit.

<sup>12</sup> Harl., se bata. According to the record, judgment was given as follows:—“Quia prædicta Matilldis tulit breve suum in Comitatu Buckinghamiæ ubi nullam feloniam aut maleficium per præfatos Johannem de Chilterne et Radulphum assignavit fieri, sed in narrando supponit feloniam prædictam in Comitatu Wiltesiræ inchoari et postmodum per mortem prædicti Thomæ apud Londonias terminari, in quibus vero comitatibus nullum habetur inde originale versus eos, prout deceret, et sic appellum prædictum per breve prædictum, in Comitatu Buckinghamiæ impetratum, non potest manuteneri secundum legem et consuetudinem regni, consideratum est quod prædicta Matilldis nihi capiat per breve suum prædic-

## No. 7.

A.D. 1344. (7.) § An Assise of Novel Disseisin in respect of  
 Assise of Novel Disseisin. £20 of rent was brought by Richard Spicer, of Wey-  
 bridge, and his wife. And there was a plea of "out of  
 their fee." And a title was shown by a specialty, by  
 which the defendant bound himself by a condition  
 (which had not been fulfilled) and his goods, and his  
 lands, in Middlesex, Buckinghamshire, and Wiltshire.  
 —*Notton*. There are no words to charge any soil in  
 particular, that is to say, no clause of distress, nor to  
 show where the rent is to be taken, nor in what place,  
 nor at what place.—This exception was not allowed.—  
 Afterwards he said that the Justices were in this case  
 only Justices of Assise in one particular county, and  
 it was supposed by the specialty that the specialty  
 charged all the defendant's land in divers counties.  
 And we tell you (said *Notton*) that at that time he  
 had a messuage in the County of Buckingham and a  
 carucate of land in Wiltshire; judgment whether you  
 will take cognisance, inasmuch as the plaintiff's pur-  
 pose in this Assise is to charge and to recover freehold  
 in another county.—*R. Thorpe*. And, inasmuch as we  
 cannot have an Assise in all the counties at once, it  
 is for us to prosecute the matter so that we shall be  
 able to charge the land in whichever county we may  
 wish, or else we are without recovery where land is  
 charged, and that cannot be: for we cannot levy a  
 distress.—*WILLOUGHBY* and *HILLARY*. You shall not  
 have an Assise, but distress, if there is a clause of  
 distress in the deed, you shall have.—*R. Thorpe*.  
 Suppose this were rent service.—*HILLARY*. You might  
 have a distress, but not an Assise nor a *Cessarit*.

## No. 7.

(7.)<sup>1</sup> § Assise de Novele Disseisine de xxli. de A.D. 1344.  
 rente par Richard Spicer, de Weybrigge,<sup>2</sup> et sa femme. *Assisa*  
 Et<sup>3</sup> plede fut hors de lour fee. Et title fut moustre *Novæ*  
 par especialte, par quel le defendant obligea luy par *Disseisinae.*  
 condicion qe ne fut pas tenue, et ses biens, et ses [18 Li.  
 terres, en Middelsexe, Bukinghame, et Wiltesire. — Ass., 1.  
*Nottone.* Il ny ad pas parole qe charge certain<sup>4</sup> soil, Fitz.  
 saver,<sup>5</sup> clause de destresse, ne ou a prendre, ne en *Assise,*  
 quel lieu ne a quel lieu<sup>6</sup> a prendre. — *Non allocatur.* 79.]  
 — Puis il dit qils sount Justices en ceo cas Dassise  
 forqe en mesme le counte, et par especialte est  
 suppose qe lespecialte charge tut sa<sup>7</sup> terre en divers  
 countes; et vous dioms qe adonques il avoit une  
 mies el Counte de Bukinghame, et une carue<sup>8</sup> de  
 terre<sup>9</sup> el Counte de Wiltesire; jugement si vous  
 voiellez conustre, desicome par ceste Assise il<sup>10</sup> est  
 a<sup>11</sup> charger et recoverir fraunctenement en autre  
 counte. — *R. Thorpe.* Et, desicome nous ne poms  
 aver Assise en tous les countes ensemble, a nous est de  
 pursuere issint<sup>12</sup> qe nous purroms<sup>13</sup> chargere la terre  
 en quel counte nous vodroms,<sup>14</sup> ou autrement ou la  
 terre est charge nous<sup>15</sup> sumes saunz recoverir, qe  
 ne poet estre: qar destresse nous<sup>16</sup> ne poms pas  
 faire.<sup>17</sup> — *WILBY* et *HILL.* Assise naveretz pas, mes  
 destresse, sil y avoit el fait, avez vous. — *R. Thorpe.*  
 Jeo pose qe ceo fut rente service. — *HILL.* Vous averetz  
 destresse, mes Assise ne *Cessarit* nient.

“ tum, sed eat prisonæ in custodia  
 “ Marescalli, &c. Et prædicti  
 “ Johannes et Radulphus eant inde  
 “ sine die, &c.”

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> L., dow; 25,184, de Woxe-  
 brugge, instead of de Weybrigge.

<sup>3</sup> Harl., ou.

<sup>4</sup> L., le; the word is omitted  
 from 25,184.

<sup>5</sup> L., en la.

<sup>6</sup> The words ne a quel lieu are  
 omitted from Harl.

<sup>7</sup> Harl., la.

<sup>8</sup> 25,184, chare.

<sup>9</sup> The words de terre are from  
 Harl. alone.

<sup>10</sup> il is from Harl. alone.

<sup>11</sup> a is omitted from L.

<sup>12</sup> The words est de pursuere  
 issint are omitted from Harl.

<sup>13</sup> purroms is omitted from L.

<sup>14</sup> L., vodrioms; Harl., plerra.

<sup>15</sup> L., si nous.

<sup>16</sup> nous is from 25,184 alone.

<sup>17</sup> faire is from Harl. alone.

## No. 8.

A.D. 1344. (8.) § A writ of Waste was brought against Robert  
Waste. Fitz-Payn and Ella his wife, supposing that the lady held in dower a manor in which the waste was supposed.—*Seton*. We hold a moiety of the manor by a gift made to our first husband and us in frank-marriage; judgment of the count.—*Thorpe*. That is to the action with regard to parcel. Will you answer as to the rest? For it is possible that you hold the rest in the same manner, and then you destroy the action in its entirety; and if you hold the rest in dower you must answer as to the waste.—*WILLOUGHBY*. We understand that she holds the rest in dower, as in case any one alleges non-tenure of parcel, he is understood to be tenant of the rest; and he falsifies your count.—*Thorpe*. That does not seem to us to be so, except with regard to the parcel; but we will aver that she holds the whole in dower, as the count supposes; ready, &c., *absque hoc* that she holds a moiety in frank-marriage, as above.—*Seton*. Whether it be a moiety of the manor, or more, or less, holden in frank-marriage, the count is abated.—*HILLARY*. That is true; you are at issue, &c.—*Seton*. We will maintain the exception.

## No. 8.

(8.)<sup>1</sup> § Wast vers R. fitz Payn et Ele sa femme, A.D. 1344.  
supposaunt que la dame tient un maner en dowere, Wast.  
en quel le wast est suppose.<sup>2</sup>—*Setone*. Nous tenoms [Fitz.,  
la moite del maner dun doun<sup>3</sup> fait a nostre primer Briefe,  
baroun et nous en fraunc mariage; jugement de 363.]  
counte.<sup>4</sup>—*Thorpe*. Cest al accion de la parcelle.  
Volez<sup>5</sup> respoudre del remenant? Qar possible est  
que vous tenez le remenant par mesme la manere, et  
donques destruez<sup>6</sup> de tut laccion; et si vous tenez le  
remanant en dowere il covient respoudre al wast.—  
WILBY. Nous entendoms que le remenant ele tient  
en dowere, come en cas quant homme allegge noun-  
tenure de parcelle, del remenant il est entendu tenant;  
et il faux vostre count.—*Thorpe*. Ceo ne nous semble  
pas forqe de la parcelle; mes nous voloms averer  
qele tient [tut en dowere, come le count suppose;  
prest, &c., saunz ceo qele tient]<sup>7</sup> la moite en fraunc  
mariage, *ut supra*.—*Setone*. Le quel il soit moitie du  
maner, ou plus, ou meins, tenu en fraunc mariage,  
le count est abatu.—HILL. Cest verite; vous estes  
a issue, &c.—*Setone*. Nous voloms meyntener<sup>8</sup> lex-  
cepcion.<sup>9</sup>

<sup>1</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 2, d. It there appears that the action was brought by William de Morle against Robert Fitz Payn and Ella his wife.

<sup>2</sup> According to the roll, the declaration was to the effect that the defendants held "manerium de Aslaghby (Aslackby, Lincolnshire) in dotem ipsius Elæ de hereditate prædicti Willelmi," and had committed waste therein, the particulars of which are assigned.

<sup>3</sup> Harl., doun un A. The words are omitted from L.

<sup>4</sup> According to the roll, the plea was that the defendants held

"medietatem ejusdem manerii ex dono et feoffamento cujusdam Willelmi le Mareschalle ipsi Elæ et cuidam Johanni le Mareschalle primo viro suo in liberum maritagium inde factis, et hoc parati sunt verificare, unde petunt judicium, &c."

<sup>5</sup> L., voiellez.

<sup>6</sup> L., and 25, 184, destruis.

<sup>7</sup> The words between brackets are omitted from Harl.

<sup>8</sup> meyntener is omitted from L.

<sup>9</sup> The replication was, according to the roll, "quod die impetrationis brevis . . . . prædicti Robertus et Ela tenuerunt integrum manerium prædictum in dotem ipsius Elæ, prout ipse

## No. 9.

A.D. 1344.

*Scire  
facias.*

(9.) § *Scire facias* to have execution upon a fine. Heretofore the tenant had aid of John de Neville, to whom the reversion belonged, and, while the plea was pending, John died, and the tenant made default at *Nisi prius*. And now John's heir came and prayed to be admitted, and prayed that the parol might demur by reason of his non-age.—*Grene*. He has come too late, because he ought to have prayed to be admitted in the country, when the tenant's default was recorded, and that he did not do.—This exception was not allowed.—*Grene*. Let him be admitted; now answer.—*Thorpe*. Now he prays that the parol may demur.—*Grene*. This is execution upon a fine, which is in like case to a judgment; and if I had recovered, he would not have his age on execution upon the judgment, because the matter has been adjudged to me as my right, nor consequently will he in this case, because by the fine this is rendered to me as my right.—*Thorpe*. If judgment be given against an ancestor, the heir of the person who lost the right will possibly not have his age when execution of the judgment has to be effected, because the right which was lost in the ancestor cannot descend to him; but if any other person than a party to the judgment die seised, his heir will have his age.—*Pole*. Delays are by statute taken away in this suit given by statute.<sup>1</sup>—WILLOUGHBY. *Scire facias* was given at common law, but the process is abridged by statute,<sup>1</sup> and on a *Scire facias* upon a recognisance the heir has by judgment had his age.—*Grene*. No wonder, for on a writ of Debt he will have his age, and the *Scire facias* is in such a case of the same nature. And I say that the statute<sup>2</sup> which gives the admission is in the words, "*parata petenti respondere*," so that the person who is admitted cannot in any case put the parol to delay by his non-age.—

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 45.| <sup>2</sup> 13 Edw. I. (Westm. 2), c. 3.

## No. 9.

(9.)<sup>1</sup> § *Scire facias* daver execucion hors dun fyn. A.D. 1341.  
 Autrefoith le tenant avoit eide de Johan de Neville, *Scire facias.*  
 a qi la reversion appendoit, et, pendant le plee Johán [Fitz.,  
 murust, et le tenant al *Nisi prius* fist default. Et *Age,*  
 ore vint leir J. et pria destre resceu, et par soun 13.]  
 nounage pria qe la parole demurast.—*Grene.* Il est  
 venuz trop tard,<sup>2</sup> qar il duist aver prie<sup>3</sup> en pays,  
 quant le default le tenant fut recorde, et ceo ne fit  
 il pas.—*Non allocatur.*—*Grene.* Soit resceu; respoignez  
 ore.—*Thorpe.* Ore il<sup>4</sup> prie qe la parole demoerge.—  
*Grene.* Cest une execucion hors dune fyn, qest en  
 semblable cas dun jugement; et, si<sup>5</sup> jeo usse recovery,  
 al execucion hors del jugement, pur ceo qe la chose  
 moy est ajuge come moun dreit, il navera pas son  
 age, *nec, per consequens,* ycy,<sup>6</sup> qar par la fyn ceo  
 moy est rendu come mon dreit.—*Thorpe.* Si juge-  
 ment se taille vers launcestre, leir de luy qe perdit  
 le dreit par cas navera pas soun age al<sup>7</sup> execucion  
 faire du jugement, pur ceo qe le dreit perdu en  
 launcestre ne ly<sup>8</sup> put descendre; mes si autre qe  
 partie al jugement devie seisi, son heir avera soun  
 age.—*Pole.* Les delayes sount tolles<sup>9</sup> par statut en  
 ceste suyte done par lestatut.—*WILBY.* *Scire facias*  
 fut done<sup>10</sup> a la comune ley, mes le proces est abregge  
 par statut, et a un *Scire facias* hors dun reconis-  
 aunce par agarde leir ad eu<sup>11</sup> son age.—*Grene.* Nest  
 par merveille, qar en brief de Dette il avera soun  
 age, et le *Scire facias* en tiel cas est de mesme la  
 nature. Et jeo dis qe lestatut qe doune la resceite  
 voet *parata petenti respondere*, issint qe celuy qest  
 resceu en nul cas mettra la parole en delay par

“superius supponit.” Upon this issue was joined, and the *Venire* awarded.

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> L., gard.

<sup>3</sup> Harl., este prist.

<sup>4</sup> L., est il.

<sup>5</sup> si is omitted from L.

<sup>6</sup> L., issi.

<sup>7</sup> al is omitted from L.

<sup>8</sup> ly is from Harl. alone.

<sup>9</sup> L., and 25,184, tolletes.

<sup>10</sup> done is from L. alone.

<sup>11</sup> eu is from Harl. alone.

## No. 10.

A.D. 1344. *Thorpe*. That statute which has the words "*parata petenti respondere*" relates to a wife who is admitted on the default of her husband, and the other admission for the person to whom a reversion belongs is given by the statute subsequently in the words "*simili modo*,"<sup>1</sup> so that the person to whom a reversion belongs will have the advantage in the same way as a *feme covert* admitted to allege that her ancestor died seised, &c.; will not she have her age?—*Grene*. She will have it, because she is named in the writ, and she will have the same advantage as her husband and herself might have had.—*Thorpe*. So in the matter before us he will have the same advantage as if the tenant had prayed this same person in aid, in which case the parol would demur. And if that were law which you say is so, an heir under age admitted on a writ of Right to defend his right, would have to wage battle, or put himself on the Grand Assise in respect of his inheritance.—*Grene*. That is the purport of the statute in case of admission, but in a case of aid prayer it remains at common law, and an infant can join battle on a writ of Right in respect of his purchase, and in that case would do so also by statute; and it has been adjudged before HERLE that he did not have his age when he had been admitted to defend.—*Notton, ad idem*. With respect to a matter on which judgment has been given, and which has only to be put in execution, the case is different from that which it would be in another action.—*Stonore*. Yes, and the execution is only of a freehold.—And they were adjourned.<sup>2</sup>

*Scire  
facias.*

(10.) § Walter Sampson and Joan his wife sued a *Scire facias* upon a fine, supposing that Joan was daughter and heir of her father according to the form whereof execution was prayed.—*Moubray* alleged in bar

The words really are "*eodem modo*."

<sup>2</sup> For the conclusion see Y.B., Trin. 19 Edw. III., No. 44.



## No. 10.

soun nounage.—*Thorpe*. Cel estatut qe dit *parata* A.D. 1344. *petenti respondere* est de femme qest<sup>1</sup> resceu par default de son baroun, et lautre rescete est done pur eeluy<sup>2</sup> a qi la reversion appent par lestatut apres<sup>3</sup> qe dit *simili modo*, issint qe celuy a qi reversion appent avera lavantage come fenime coverte resceu dallegger qe soun auncestre murust seisi, &c.; navera ele soun age?—*Grene*. Si avera, pur ceo quele est<sup>4</sup> nome el brief, et avera mesme lavantage qe<sup>5</sup> son baroun et luy puissent aver eu.—*Thorpe*. *Sic in proposito* il avera mesme lavantage come si le tenant ust prie mesme celuy en eide, en quel cas la parole demura. Et sil fut ley ceo qe vous parlez, en brief de Dreit heir deinz age resceu<sup>6</sup> a defendre son dreit,<sup>7</sup> gagera bataille<sup>8</sup> ou Graunt Assise de soun heritage.—*Grene*. Ceo voet lestatut en cas de rescete, mes en cas deyde priere ceo demoert a la comune ley, et enfant de son purchace purra joindre bataille en brief de Dreit, et auxi fra en ceo cas par statut; et il ad este ajuge<sup>9</sup> devant HERLE qil navoit pas son age quant il fut resceu.—*Nottone, ad idem*. De chose ajugge, qest a mettre en execucion soulement, est autre qe ne serreit en autre accion.—*STON*. Oyl, et lexecucion nest forqe de fraunc tement.—Et ad jour.

(10.)<sup>10</sup> § Wauter Sampson et Johane sa femme *Scire fuerent Scire facias* hors dune fyn, supposaunt<sup>11</sup> *Scire facias*. Johane fille et heir a son pere par la fourme dount execucion, &c.<sup>11</sup>—*Moubray* alleggea en barre qe la fyn

<sup>1</sup> qest is omitted from L.

<sup>2</sup> L., and 25,184, ceo qe luy.

<sup>3</sup> apres is from Harl. alone.

<sup>4</sup> L., nest.

<sup>5</sup> Harl., come.

<sup>6</sup> Harl., serra resceu.

<sup>7</sup> The words a defendre son dreit are omitted from Harl.

<sup>8</sup> Harl., la bataille.

<sup>9</sup> L., adjuge.

<sup>10</sup> From the three MSS. as above.

<sup>11</sup> For the words from (and including) "supposaunt" to "&c.," there are substituted in Harl. the words "par quele la terre fuit "rendu al aiel Johane et les heirs "de son corps Johane fille et heir "de son pere."

## No. 11.

A.D. 1344. that the fine had been executed in the person of the grandfather, and also in that of the father, in which case they are put to a Formedon, on which suit voucher would be saved to the tenant, &c.—*Richemunde*. The deed of the tenant in tail cannot be put forward as prejudicial to his issue, and that is according to the statute,<sup>1</sup> and the issue is in effect purchaser.—*Seton*. That is not so, because he will have his age as one who has entered by descent, and the deed of the ancestor will not bar the issue when he demands by Formedon, but, when the matter has been executed, it bars the heir as well in fee tail as in fee simple from *Scire facias*.—*Richemunde*. It would be right that the heir should have execution in respect of a fee simple, notwithstanding that the ancestor had had execution, and that is in accordance with the intendment of the statute<sup>2</sup> which takes away delays; and if my ancestor recovered his services by a writ of Customs and Services, notwithstanding that he had execution, I shall have execution nevertheless.—WILLOUGHBY. The case is not similar.—And he gave judgment that the plaintiff should take nothing by his writ.—See a contrary opinion of the COURT above.

A writ of Error in the King's Bench follows thereon.

Trespass. (11.) § William Hauberke, of Claxton, brought a writ of Trespass against John,<sup>3</sup> parson of the church of Isham, and his son,<sup>3</sup> and the son's brother.<sup>3</sup> Process was continued until the defendants were outlawed. And

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1.

<sup>2</sup> 13 Edw. I. (Westm. 2), c. 45.

<sup>3</sup> For the names see p. 29, note 11.

## No. 11.

fut execut en laiel, et auxint en le pere, en quel A.D. 1344.  
cas par ley<sup>1</sup> il est mys a Fourmedoun, en quele  
suyte voucher serra salve al tenant, &c.—*Richem.*  
Le fait le tenant en taille ne serra pas mys<sup>2</sup> pre-  
judiciel, et<sup>3</sup> par statut, a son issu, et en effecte  
lissue est purchaceour.—*Setone.* Noun est pas, qar  
il avera son age come celuy qest entre par descent,  
et le fait launcestre ne barrera pas lissu quant<sup>4</sup> il  
demandera par Formedoun, mes quant la chose est  
execut il barra<sup>5</sup> leir de *Scire facias* si avant de fee  
taille come de fee simple.—*Richem.* De fee simple  
serreit il resoun qe leir ust *Scire facias*, non obstante  
qe launcestre avoit execucion, et acordaunt al entent  
destatut gost delayes; et si moun auncestre recoveri  
par brief de Custumes et Services ses services<sup>6</sup> non  
obstante qil avoit execucion, jeo<sup>7</sup> averay nepurquant  
execucion.—*WILBY.* Non est simile.—Et agarda qil  
prist rien par son brief.—*Vide opinionem CURLE*<sup>8</sup> con-  
trariam supra.<sup>9</sup>

*Sequitur  
Error inde  
in Banco  
Regis.*<sup>10</sup>

(11.)<sup>11</sup> § William Hauberke, de Claxton,<sup>12</sup> porta brief  
de Trans vers Johan, persone del eglise de Isham,  
et son fitz, et son frere. Proces continue tanqe les  
defendantz furent utlages. Et avoient chartrez de

*Trans.  
[Fitz.,  
Briefe,  
364.]*

<sup>1</sup> The words par ley are omitted from Harl.

<sup>2</sup> The words pas mys are omitted from Harl.

<sup>3</sup> et is omitted from Harl.

<sup>4</sup> Harl., qar.

<sup>5</sup> Harl., oustera.

<sup>6</sup> The words ses services are omitted from Harl.

<sup>7</sup> L., ja.

<sup>8</sup> CURLE is from L. alone.

<sup>9</sup> This sentence is omitted from Harl.

<sup>10</sup> This marginal note is from 25,184 alone.

<sup>11</sup> From the three MSS. as above,

but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 173. It there appears that the action was brought by William Hauberke of Claxton against Peter de Caldecote, parson of the church of Isham, and John his son (filium ejus) and Peter brother of the same John, for a trespass in that they "in separali solo ipsius Willelmi apud Scaldeforde foderunt et terram inde projectam ad valentiam quadraginta solidorum ceperrunt et asportaverunt."

<sup>12</sup> L., C.; Harl., Cauxton; 25,184, Clayton.

## No. 11.

A.D. 1344. they had charters of pardon, and sued a *Scire facias* according to the Statute<sup>1</sup> to warn the plaintiff, who now appeared and counted against them in respect of his several land dug into, and the soil thrown up and carried away, to the value, &c.—*Grene*. Judgment of this writ, because, whereas the plaintiff supposes John<sup>2</sup> to be parson of the entire church, he tells you that he is parson only of a moiety of the church.—*Richemunde*. You are in a condition only to answer as to the trespass, and not in abatement of the writ.—*R. Thorpe, ad idem*. He was outlawed by this name, and he has his charter of pardon, at his own suit, by this name, and he has also by the same name sued the *Scire facias*, and therefore it does not lie in his mouth to say that he has another name.—*Grene*. I could not by any other name have purchased the charter of pardon, or sued the *Scire facias*, but only by such name as is expressed in the original writ; and, if I had purchased it by another name or surname, it would have been of no use to me; but I am now in such a condition for the purpose of abating the writ as I should have been in if I have had come on the first day when the original writ was returned; and, inasmuch as he does not deny the exception, judgment.—*KELSHULLE*. According to your statement you are not the same person that was outlawed.—*Grene*. I do not say that, nor do I plead in that way.—*WILLOUGHBY*, to the plaintiff's attorney. Because you cannot deny this, the COURT adjudges that you do take nothing by your writ,

<sup>1</sup> 5 Edw. III., c. 12.

| <sup>2</sup> For the name see p. 29, note 11.

## No. 11.

pardoun, et suyerent garnisement par statut vers le A.D. 1344.  
 pleintif, qe vint ore et counta vers eux de sa terre  
 several fowe et susjettu<sup>1</sup> et emporte, a la value, &c.  
 —*Grene*. Jugement de ceo<sup>2</sup> brief, qar, la ou il sup-  
 pose Johan estre persone del eglise entiere,<sup>3</sup> il vous  
 dit qil nest persone forqe de la moyte del eglise.<sup>4</sup>—  
*Richem*. Vous nestes pas en cas forqe<sup>5</sup> a respoundre  
 al trans, et noun pas pur brief abatre.—*R. Thorpe*,  
*ad idem*. Il fut utlage par tiel noun, et il ad sa  
 chartre de pardoun, a sa suyte demene, par autiel  
 noun, et auxint par mesme le noun ad suy le  
 garnisement, par quei en sa bouche ne gist par a  
 dire qil ad autre noun.—*Grene*. Jeo<sup>6</sup> ne poay par  
 autre noun aver purchace la chartre de pardoun,  
 ne suy le *Scire facias* mes par autiel noun come  
 loriginal voleit; et, si<sup>7</sup> par autre noun ou surnoun,  
 le usse purchace, ele moy ust pas value; mes ore  
 su jeo en autiel plite dabatre le brief come si<sup>8</sup> jeo  
 usse venu al primer jour del original retourne; et,  
 de ceo qil ne dedit pas lexception, jugement.—*KELS*.  
 A vostre dit vous nestes pas mesme la persone qe  
 fuistes<sup>9</sup> utlage.—*Grene*. Ceo ne die jeo pas, ne jeo<sup>10</sup>  
 ne plede pas par tiel voie.<sup>11</sup>—*WILBY*, al attourne le  
 pleintif. Pur ceo qe vous ne poiez dedire, si agarde  
 la COURT qe vous<sup>12</sup> preignez rien par vostre brief,

<sup>1</sup> Harl., *sustrictu*.

<sup>2</sup> ceo is from L. alone.

<sup>3</sup> The words del eglise entiere are from Harl. alone.

<sup>4</sup> On the appearance of the parties after the pardon of outlawry to the defendants, and the return of the *Scire facias* to the plaintiff, "*prædictus Petrus dicit quod, ubi prædictus Willelmus per breve suum nominat ipsum personam ecclesiæ de Isham, ipse non est persona nisi de medietate*

"*ecclesiæ prædictæ, unde petit judicium de brevi, &c.*"

<sup>5</sup> forqe is omitted from L.

<sup>6</sup> jeo is omitted from L.

<sup>7</sup> The words et si are omitted from L.

<sup>8</sup> si is omitted from L. and Harl.

<sup>9</sup> L., *futes*.

<sup>10</sup> jeo is from Harl. alone.

<sup>11</sup> L., *voide*.

<sup>12</sup> The words si agarde la COURT qe vous are from Harl. alone.

## No. 12.

A.D. 1344. and that you be in mercy.—*Quere* concerning this judgment, because the writ abated by judgment as against all the defendants, by reason of the misnomer of one, and that used not formerly to be done, except with regard to that person alone who was himself misnamed.

Novel  
Disseisin.

(12.) § A Novel Disseisin was brought in the County of Leicester against Richard<sup>1</sup> de Houghton by John de Rotse, knight, and the defendant pleaded by guardian in bar of the Assise, on the ground that his father died seised, after whose death he entered as son and heir, and that upon his possession one W.,<sup>2</sup> his uncle, claiming as his father's brother and heir, entered, and enfeoffed the plaintiff, and therefore, during his non-age he entered and ousted the plaintiff. And (said his Counsel) we demand judgment whether an Assise, &c. And according to the opinion of the

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For the real name see p. 33,  
note 2.

<sup>2</sup> For the real name see p. 33,  
note 8.

## No. 12.

et soiez en la mercy.<sup>1</sup>—*Quere de isto iudicio*, par A.D. 1344.  
le brief par agarde abatist vers toux par le mes-  
nomer dun, qe ne soleit pas estre fait forqe quant  
a mesme la persone qe fut mesnome *tantum*.

(12.)<sup>2</sup> § Novele Disseisine porte en le Counte de Leicestre vers Richard de<sup>3</sup> Hughtone par Johan de Rotse, chivaler, qe pleda par gardein en barre dassise, pur ceo qe son pere murust seisi, apres qi mort il entra come fitz et heir, sur qi possessioun un W. son uncle, en clamant<sup>4</sup> come frere et<sup>5</sup> heir<sup>6</sup> a son pere, entra, et feffa le pleintif, par quei il, duraunt son nounage, entra et luy ousta. Et demandoms jugement<sup>7</sup> si Assise, &c.<sup>8</sup> Et par opinioun

Novele  
Disseisine.

<sup>1</sup> All that appears on the roll after the plea in abatement of the writ is the following:—

“Et Willelmus non potest hoc  
“dedicere.

“Ideo consideratum est quod  
“ipse nihil capiat per breve suum,  
“sed sit in misericordia pro falso  
“clameo, &c.”

<sup>2</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 149. It there appears that the action was brought before Justices of Assise in Leicestershire by John de Rotse, knight, against Hugh de Houghton, Matilda late wife of William de Houghton, and seven others, in respect of one messuage, 24 acres of land, and 4 acres of pasture in Frollesworth (Frowlesworth, Leicestershire).

One answered as bailiff for all the defendants except Hugh, and traversed the disseisin, upon which issue was joined to the Assise.

<sup>3</sup> The words Richard de are omitted from Harl.

<sup>4</sup> The words en clamant are omitted from Harl.

<sup>5</sup> L., come.

<sup>6</sup> The words et heir are omitted from Harl.

<sup>7</sup> jugement is omitted from L.

<sup>8</sup> According to the record, Hugh de Houghton appeared by guardian, and pleaded as tenant of the tenements put in view “quod assisa  
“inde inter eos fieri non debuit,  
“dixit enim quod quidam Willel-  
“mus de Houghtone, pater ipsius  
“Hugonis, cujus heres ipse est,  
“obiit seisitus de prædictis tene-  
“mentis, cum pertinentiis, in  
“dominico suo ut de feodo, post  
“cujus mortem ipse Hugo, infra  
“ætatem existens, intravit in  
“eisdem, ut filius et heres, &c., et  
“statum illum continuavit quous-  
“que quidam Thomas de Hough-  
“tone, frater prædicti Willelmi,  
“clamando tenementa illa per  
“descensum hereditarium post  
“mortem prædicti Willelmi fratris  
“sui, intravit in eisdem super  
“possessione ipsius Hugonis, et

## No. 12.

A.D. 1344. COURT this was a bar, notwithstanding that it was an infant under age who pleaded in bar. Therefore the plaintiff, not admitting the tenant to be the son of the person whom he alleged to be his father, said that R.<sup>1</sup> was born before wedlock, and therefore could not be heir to any one. To this the tenant replied that it was no answer against any one in tenancy without saying fully that he was a bastard. Thereupon

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<sup>1</sup> For the real name *see* p. 33, note 2.



## No. 12.

de COURT ceo fut barre, *non obstante* qe ceo fut<sup>1</sup> A.D. 1344.  
 lenfaunt deinz age<sup>2</sup> qe<sup>3</sup> pleda en barre.<sup>4</sup> Par quei  
 le pleintif, nient conissaunt le tenant estre fitz a  
 celuy qil fist son pere, dit qe R.<sup>5</sup> nasquit avant les  
 esposailles, par quei il ne poait nully heir estre.<sup>6</sup>  
 A quei par le tenant fut replie qe ceo nest pas  
 respouns countre celuy qest<sup>7</sup> en tenaunce, saunz dire  
 pleinement bastarde.<sup>8</sup> Sur quei ils sount ajournes

“ inde feoffavit prædictum Johan-  
 “ nem qui tunc questus fuit, et  
 “ idem Hugo, adhuc infra ætatem,  
 “ &c., ipsum Johannem inde  
 “ amovit, unde petiit judicium si  
 “ idem Johannes de tali posses-  
 “ sione assisam inde versus eum  
 “ habere debuit.”

<sup>1</sup> The words ceo fut are from L.  
 alone.

<sup>2</sup> The words deinz age are  
 omitted from Harl.

<sup>3</sup> Harl., le.

<sup>4</sup> The words en barre are omitted  
 from Harl.

<sup>5</sup> Harl., qar il dit qil, instead  
 of dit qe R.

<sup>6</sup> The plaintiff's replication was,  
 according to the record, (“ non  
 “ cognoscendo ipsum Hugonem  
 “ fuisse filium prædicti Willelmi)  
 “ quod bene verum fuit quod præ-  
 “ dictus Willelmus de Houghtone  
 “ fuit seisitus de prædictis tene-  
 “ mentis, cum pertinentiis, in  
 “ dominico suo ut de feodo et jure,  
 “ et inde obiit seisitus sine herede  
 “ de se, post cujus mortem prædic-  
 “ tus Thomas de Houghtone  
 “ intravit in eisdem ut frater et  
 “ heres ejusdem Willelmi, et inde  
 “ feoffavit ipsum Johannem, vir-  
 “ tute cujus feoffamenti ipse  
 “ Johannes seisitus fuit de eisdem  
 “ ut de libero tenemento quousque  
 “ prædictus Hugo et alii in brevi  
 “ nominati ipsum inde disseisiver-

“ unt. Et quo ad hoc quod præ-  
 “ dictus Hugo supponit quod ipse  
 “ intravit in tenementis prædictis  
 “ ut filius et heres prædicti  
 “ Willelmi idem Hugo nullius  
 “ heres esse potuit eo quod nasce-  
 “ batur ante desponsalia. Et hoc  
 “ paratus fuit verificare per assi-  
 “ sam, &c., unde petiit assisam,  
 “ &c.”

<sup>7</sup> qest is omitted from Harl.

<sup>8</sup> According to the record “ Hugo  
 “ dixit quod, ex quo prædictus  
 “ Johannes non dedixit quin ipse  
 “ Hugo fuit filius præfati Willelmi  
 “ et quin ipse intravit in tene-  
 “ mentis prædictis post mortem  
 “ prædicti Willelmi, patris sui, ut  
 “ filius et heres ejusdem Willelmi,  
 “ sic clamando eadem per suc-  
 “ cessionem hereditariam de eodem  
 “ Willelmo, et de quibus tene-  
 “ mentis idem Hugo adhuc seisitus  
 “ est in forma prædicta, nec idem  
 “ Johannes aliquid allegavit ad  
 “ extraneandum ipsum Hugonem  
 “ in hac parte nisi quod idem  
 “ Hugo nascebatur ante despon-  
 “ salia, quæ quidem responsio non  
 “ jacuit contra ipsum qui tali  
 “ titulo tenementa prædicta in-  
 “ gressus fuit, et sic tenuit, nisi  
 “ præcise allegasset ipsum fuisse  
 “ bastardum, petiit judicium si ad  
 “ talem exceptionem admitti debuit  
 “ in hac parte.”

## No. 12.

A.D. 1344. they were adjourned into the Common Bench, and the plea was there recited.—*Richemunde*, for the plaintiff, prayed the Assise, because he could not have the advantage against the tenant of the refusal of the averment, because he was under age.—*Grene*. It would be contrary to what is right that such an issue between us should be taken, if by the issue the question of blood could not be finally tried. And that it could not be, because if it be now found by the Assise for the plaintiff against us, on another occasion bastardy will be alleged in us, and it will be found that we are mulier; and then we shall be put into the inheritance by judgment, as heir, and we shall now be put out of the inheritance by reason of the disability of our person, which cannot be.—*Thorpe*. It may very well be between different persons, and in different actions.—*Grene*. Besides, we tell you, for the infant under age, that, since the plea was pleaded in the country, on a Formedon which we brought against one A., he alleged bastardy in our person, whereupon, after we had come to issue, it was sent to the Bishop of Lincoln, who afterwards certified that we are mulier; and, inasmuch as the averment which the plaintiff tendered is for the purpose of estranging us from the blood, and the reverse has been finally found on trial, judgment whether there ought to be an Assise.—*Richemunde*.

## No. 12.

en Comune Baunk, et le ple illoeqes<sup>1</sup> reherce.<sup>2</sup>— A.D. 1344.  
*Richem.*, pur le pleintif, pria Lassise, pur ceo qil ne poait aver avantage vers le tenant del refuser del averement, *quia infra etatem.*— *Grene.* Il<sup>3</sup> serra countre resoun qe tiel<sup>4</sup> issue entre nous<sup>5</sup> fut pris, si le saunk finalment par lissue ne<sup>6</sup> purreit estre trie. Et ceo ne put il estre, qar si trove soit par Assise<sup>7</sup> a ore pur le pleintif countre nous, autrefoith serra bastardie allegge en nous,<sup>8</sup> et serra trove qe nous sumes mulier<sup>9</sup>; et donques serrons enherite par agarde come heir, et ore desherite par nounablete de nostre persone, qe ne put estre.—*Thorpe.* Moulit bien purra il estre entre divers persones et a divers accions.—*Grene.* Ove cella, vous dioms pur lenfant deinz age qe, puis le plee plede en pays, a un Fourmedoun qe nous portames vers un A., ou il alleggea bastardie en nostre persone, par<sup>10</sup> quei, apres ceo qe nous fuimes<sup>11</sup> a issue, maunde fut al Evesqe de Nichole, qad certifie de puisne temps qe nous sumes mulier<sup>9</sup>; et desicome laverement qil tendist est de nous estranger du saunk, et le revers est trie finalment, jugement si Assise deive estre.—

<sup>1</sup> L., la la ple, instead of le ple illoeqes.

<sup>2</sup> According to the record there were the following subsequent pleadings before the removal into the Common Bench:—

“ Et Johannes dixit quod, ex quo ipse superius placitando allegavit quod ipse nascebatur ante desponsalia, per quod de jure communi nullius heres esse potuit, et hoc paratus fuit verificare, quam quidem verificationem admittere recusavit, petiit iudicium si ipse per aliquam exceptionem per præfatum Hugonem in hac parte propositam ab assisa illa præcludi debuit, &c.

“ Et Hugo dixit quod, ex quo

“ prædictus Johannes præcise non allegavit ipsum Hugonem fuisse bastardum, petiit iudicium si per tale placitum per ipsum Johannem allegatum ad assisam aliquam in hac parte attingere debuit, &c.”

Upon this a day was given to the parties in the Common Bench.

<sup>3</sup> L., Sil.

<sup>4</sup> Harl., cele.

<sup>5</sup> Harl., eux.

<sup>6</sup> ne is from Harl. alone.

<sup>7</sup> The words par Assise are from Harl. alone.

<sup>8</sup> Harl., sa persone.

<sup>9</sup> L., mulure:

<sup>10</sup> Harl., sur.

<sup>11</sup> L., sumes.

## No. 12.

A.D. 1344. You shall not be admitted to that, because we are adjourned upon a certain point, wherefore you shall not now be admitted to take new matter, extraneous to the first matter upon which we were adjourned.—KELSHULLE. Could he not now plead a release in bar?—This was not denied.—*R. Thorpe*. That of which he speaks is a plea between other parties, which cannot oust us from our answer; and also the reverse of that of which we tender averment has not been found upon trial, but our averment is consistent with what has been found; therefore we pray the Assise.—*Pole*. Inasmuch as the question of ability of blood in us has been tried, and judgment thereupon has been rendered in a Court Christian, in which such matter naturally has to be tried and adjudged, and nowhere else, and remains of record in this Court, and has regard to every other person as well as the party himself, judgment whether an averment lies to try disability in our person.—WILLOUGHBY. What you say is wrong; judgment has not yet been given on the matter, but judgment still remains to be given on that certificate.—*Pole*. It does not remain to be given, except only with regard to the land, for you will never render judgment on the legitimacy in this Court.—WILLOUGHBY. Suppose you had been non-suited on your Formedon, would not the certificate lose its force? It would do so with respect to the rest.—*Grene*. Possibly the party might lose the advantage through the non-suit; but, even though the tenant were dead, and the writ abated for that reason, still the certificate would stand in force; and it has been seen, in an Assise of Mort d'Ancestor, that, where the tenant said that the demandant was not the next heir, and it was found by the Assise that he was not the next

## No. 12.

*Richem.* A ceo ne serrez resceu, qar nous sumes A.D. 1344.  
ajourne sur <sup>1</sup> certain point,<sup>2</sup> par quei de prendre <sup>3</sup>  
ore matere de novel, autre qe le primere sur quel  
nous sumes ajourne <sup>4</sup> ne serrez resceu.—*KELS.* Ne  
pledereit il ore un relees en barre?—*Quod non fuit*  
*dedictum.*—*R. Thorpe.* Ceo qil parle <sup>5</sup> est ple entre  
autres parties, qe nous put pas ouster de nostre  
respouns; et auxint le revers de ceo qe nous ten-  
dons <sup>6</sup> daverer nest pas trie, mes esteut ensemble;  
par quei nous prioms Lassise.—*Pole.* Desicome lablete  
du saunk en nous est trie, et jugement sur ceo  
rendu en Court Christiene, ou tiel chose naturelement,  
et nulle part aillours serra trie ne ajuge, et demoert  
ceinz de recorde, eiaunt <sup>7</sup> regarde a chescun autre  
si bien come vers la <sup>8</sup> partie mesme,<sup>9</sup> jugement si  
averement de nounablete trier en nostre persone  
ygise.—*WILBY.* Vous dites mal; la chose nest pas  
unqore <sup>10</sup> ajuge, mes le jugement demoert a rendre  
sur cel <sup>11</sup> certificacion.—*Pole.* Noun fait pas, mes  
soulement en dreit de la terre, qar sur la legitima-  
cioun vous rendrez jammes jugement ceinz.—*WILBY*  
Jeo pose qe vous fuissez nounsuy a vostre Fourme-  
doun, ne perdreit la certificacioun sa force? Si freit  
a remenant.—*Grene.* Par cas par la nounsuyte la  
partie perdra lavantage; mes tut fut <sup>12</sup> le tenant  
mort, par quei le brief abatereit, unqore la certifica-  
cioun esterreit en sa force; et homme ad vewe, en  
Assise de Mort dauncestre. qe <sup>13</sup> la <sup>14</sup> ou le tenant dit  
qe le demandant ne fut pas plus <sup>15</sup> procheyn heir,  
trove fut par Assise qil ne fut pas plus <sup>15</sup> procheyn

<sup>1</sup> L., and 25,184, en.

<sup>2</sup> point is from Harl. alone.

<sup>3</sup> Harl., pledre.

<sup>4</sup> L., adjourne.

<sup>5</sup> L., plede.

<sup>6</sup> Harl., entendoms.

<sup>7</sup> L., eaunt.

<sup>8</sup> la is from Harl. alone.

<sup>9</sup> mesme is from Harl. alone.

<sup>10</sup> Harl., fors.

<sup>11</sup> cel is omitted from L.

<sup>12</sup> L., de.

<sup>13</sup> qe is omitted from Harl.

<sup>14</sup> la is from Harl. alone.

<sup>15</sup> plus is omitted from L.

## No. 13.

A.D. 1344. heir, and how not so was found by verdict, that is to say for the reason that he was born before wedlock, and so a bastard, yet, notwithstanding this, the demandant by making *profert* of a Bishop's certificate, which proved him to be a mulier, recovered his land. And that was before yourself and SCROPE in the King's Bench at York.—WILLOUGHBY. Ready to aver by record that what you say is wrong. And I fully grant that when a Bishop has certified that any one is mulier, and judgment has been rendered on the certificate, it will be of record, so that there will be no need on a future occasion to send to the Bishop in relation to the same point; but another point, of which enquiry can be had by Assise, as this can, will never be delayed by such a certificate, because enquiry as to it must be made by Assise.—STONORE. Persons of Holy Church hold such persons (born before the marriage of their parents) to be muliers, and we hold them to be by the law of the land plainly bastards; and it is not well that this settled point should be put in doubt; therefore will you say anything else to bar the Assise?—Afterwards the tenant failed to appear.—Therefore the Assise was awarded at large.

Formedon in the remainder. (13.) § A Formedon in the remainder was brought against Hugh de Morisoby, supposing the gift to have

## No. 13.

heir, et par verdit fut trove coment,<sup>1</sup> par cause pur<sup>2</sup> A.D. 1344. ceo qil nasquit avant les esposailles, et issint bastarde, et, *non obstante*, le demandant par mettre avant dun certificacioun de Evesqe, qe prova luy estre mulier,<sup>3</sup> il recoveri sa terre. Et ceo fut devant vous mesmes et SCROPE<sup>4</sup> en Baunk le Roy a Everwyke. —WILBY. Prest daverer par recorde qe vous dites mal. Et jeo graunt bien quant Levesqe ad certifie ascun homme estre mulier,<sup>3</sup> et jugement sur cella rendu qil serra de recorde, issint qil ne bosoigne pas autrefoith sur mesme le point de maunder al Evesqe; mes autre point qest enquerable par<sup>5</sup> Assise, come ceo<sup>6</sup> cy est, ne serra jammes<sup>7</sup> par tiel certificacioun delaye, qar par Assise il covient<sup>8</sup> estre enquis. —STON. Ces de Seint Eglise tenent tiels<sup>9</sup> come<sup>10</sup> mulierez,<sup>11</sup> et nous les tenoms par ley de la terre overtement<sup>12</sup> bastardes; et il nest pas bien qe homme mette<sup>13</sup> ceo point trove<sup>14</sup> en doute<sup>15</sup>; par quei voillez autre chose dire pur barrer<sup>16</sup> Assise?—Puis le tenant ne vint pas.—Par quei Lassise fut agarde a large.<sup>17</sup>

(13.)<sup>18</sup> § Formedoun en remeindre vers Hughe de Morisoby,<sup>19</sup> supposaut le doune estre fait a Andreu<sup>20</sup>

Forme de doune en remeindre.

<sup>1</sup> coment is omitted from L.

<sup>2</sup> Harl., coment pur.

<sup>3</sup> L., mulure.

<sup>4</sup> L.; *Thorpe*.

<sup>5</sup> Harl., al.

<sup>6</sup> ceo is omitted from Harl.

<sup>7</sup> jammes is omitted from Harl.

<sup>8</sup> L., and 25,184, ne covient.

<sup>9</sup> L., ces.

<sup>10</sup> come is omitted from Harl.

<sup>11</sup> L., mulures.

<sup>12</sup> L., enterement; 25,184, outrement.

<sup>13</sup> Harl., come moite, instead of homme mette.

<sup>14</sup> Harl., trop.

<sup>15</sup> Harl., overte.

<sup>16</sup> Harl., aver.

<sup>17</sup> On the day given in the Common Bench Hugh de Houghton, according to the roll, failed to appear. "Ideo prædicta assisa capiatur versus eum per defectum, &c. Et sciendum quod recordum Assisæ prædictæ, una cum brevi originali et pannelo eidem brevi consuto, remittitur coram Justiciariis ad Assisas in Comitatu prædicto assignatis ad capiendum Assisam illam in patria, &c."

<sup>18</sup> From the three MSS. as above.

<sup>19</sup> L., M.; Harl., Monteby.

<sup>20</sup> L., A.

## No. 13.

A.D. 1344 been made to Andrew Hercelay in tail, and if, &c., to Michael in tail, and if, &c., to John Hercelay in tail. And the demandants made themselves daughters and heirs of John, &c. After view the tenant had aid of the King as one who held in fee simple of the gift of the King the father of the present King. And now the King gave his command to proceed.—*Seton*. What have you to show the remainder?—*Moubray*. You have had view, and afterwards you have had aid of the King, wherefore there is no need to show any specialty to you, because you have accepted us as being entitled to an answer.—*HILLARY*. Will you not say anything else?—*Moubray*, by reason of the opinion of the COURT, made *profert* of a specialty.—*Seton*. We tell you that H., brother of these same demandants who bring this writ, brought heretofore, in respect of this land and of other lands, a Formedon, as heir to this same John to whom the demandants now make themselves heirs. Process was continued until the tenant alleged against him that he was a bastard. And by certificate of a Bishop he was found to be mulier. And on the Resummons the tenant could not say anything contrary to the certificate; therefore H. then recovered as heir, which H. was seised of this land after the death of John, to whom you suppose the remainder to have been, and we have the estate of this H., and he is living this day; judgment whether, while H. is living, you can demand anything against us.—*Moubray*. That answer is double: according to one intendment it is to the abatement of the writ by reason of the possession of our brother, which would prove that the writ should be in the descender; another his present existence; and there is yet a third that the tenant has his estate.—*Thorpe*. Our plea is that, while your brother is living, you cannot demand anything.—*Moubray*. Suppose we were to say that he



## No. 13.

Hercelay<sup>1</sup> en taille, et si, &c., a Michel<sup>2</sup> en taille, A.D. 1344. et si, &c., a Johan<sup>3</sup> Hercelay<sup>1</sup> en taille. Et les demandantz se firent filles et heirs a Johan,<sup>3</sup> &c. Apres la vewe il avoit eide du Roi come celuy qe tient en fee simple del doun le Roi le pere. Et ore le Roi comaunda daler avant.—*Setone*. Quei avez del remeindre?—*Moubray*. Vous avez eu la vewe, et apres avez eu<sup>4</sup> eide du Roy, par quei ne bosoigne pas de moustrer a vous, qar vous nous<sup>5</sup> avez accepte responsable.—*HILL*. Autre chose ne voillez dire?—*Moubray*, *propter opinionem CURIÆ*, mist avant especialte.—*Setone*. Nous vous dioms qe H., frere mesmes celes qe portent<sup>6</sup> ceo brief, porta autrefoith de ceste terre<sup>7</sup> [et] dautres terres<sup>8</sup> Formedoun, come heir a mesme celuy J. a qi les demandantz se fount a ore heirs. Proces continue tanqe le tenant alleggea countre luy qil fut bastarde. Et par certificacioun Devesqe trove fut mulier.<sup>9</sup> Et a la Resomons ne savoit rien dire countre la certificacioun; par quei<sup>10</sup> H., come heir, recoveri adonques, quel H. fut seisi de cest terre apres la mort J., a qi vous supposez le remeindre, lestat de quel H. nous avoms, et huy ceo jour est en vie; jugement si, vivaunt H., vers nous puissez rien<sup>11</sup> demander.—*Moubray*. Ceo respouns<sup>12</sup> est double: a un entente al abatement du brief par possessioun de nostre frere, qe provereit le brief en descendre; un autre son estre; le terce unqore qils ount son<sup>13</sup> estat.—*Thorpe*. Nostre plee est qe, vivaunt vostre frere, vous poiez rien demander.—*Moubray*. Jeo pose qe nous deissons qil fut mort, vous relieretz

<sup>1</sup> L., de H.; Harl., Hertelay.

<sup>2</sup> L., M.

<sup>3</sup> L., J.

<sup>4</sup> eu is from Harl. alone.

<sup>5</sup> nous is from Harl. alone.

<sup>6</sup> 25,184, porterent.

<sup>7</sup> The words de ceste terre are from Harl. alone.

<sup>8</sup> L., briefs daltre instead of dautres terres.

<sup>9</sup> L., mulure.

<sup>10</sup> quei is from Harl. alone.

<sup>11</sup> rien is omitted from Harl.

<sup>12</sup> L., resoun.

<sup>13</sup> Harl., counte soun, instead of ount son.

## No. 13.

A.D. 1344. is dead, you would fasten upon us as not denied his possession, which would be to the abatement of the writ.—HILLARY. He does not take that for a plea, wherefore a protestation will save you on that head.—*Thorpe*. We allege H.'s entry into the tenements, and that we have his estate only in order to make ourselves privy, for we can allege it for that purpose.—*Pole*. What purpose does the record serve?—*Seton*. To affirm H. to be heir to your ancestor.—*Moubray*. If we would say that our brother is dead, still, because we do not deny his possession, in which case we should be made heirs to him, you would abate our writ.—*Thorpe*. We do not plead his possession in abatement of the writ.—*Stonore*. Answer.—*Moubray*. We tell you that the tenant has had view, and afterwards aid of the King; wherefore he shall not be admitted to plead in falsification of the descent, which he has affirmed by demanding view.—*Seton*. Our plea is to the action; and after view we shall be admitted to allege bastardy; but if we were to take our plea on an omission in the descent, which is only dilatory, that would be different.—*Moubray*. You cannot, after view, allege bastardy.—*R. Thorpe*. Abide judgment on the point at which we now are, and then we shall try what the law is.—*Birton*. View serves for the tenant in order that he may be certified as to the demand, so that he will be able to have an answer as to the tenancy; but in respect of a matter touching the person it is not right that view should be granted; therefore, when the demandant is put to such delay by view, it is not right that the tenant should afterwards have such an exception as to the disability of the person.—*Huse*. A plea to the action is naturally given after view, for on a writ of Aiel one will have,

## No. 13.

sur nous a nient dedit sa possessioun al abatement du brief.—*HILL*. Il prent pas ceo pur plee, par quei<sup>1</sup> protestacion vous<sup>2</sup> salvera.—*Thorpe*. Nous alleggeoms son entre en les tenements, et qe nous avoms son estat mes de nous faire prive, qar nous le puissons alleger.<sup>3</sup>—*Pole*. De quei seert le recorde?—*Setone*.<sup>4</sup> De luy affermer estre heir a vostre auncestre.—*Moubray*. Si nous vodroms dire qe nostre frere fut mort, unqore pur ceo qe nous<sup>5</sup> ne dedioms pas sa possessioun, en quel cas nous serroms fait heirs a luy, vous abaterez nostre brief.—*Thorpe*. Nous ne<sup>6</sup> pledoms pas<sup>7</sup> sa possessioun al abatement du brief.—*STON*. Respondez.—*Moubray*. Nous vous dioms qe le tenant ad eu la vewe, et apres eide du Roi; par quei a pleder de fauxer la descente, quele chose par vewe demande il ad afferme, il navendra pas.—*Setone*. Nostre plee est al accion; et apres vewe serroms resceu dallegger bastardie; mes si nous preissons plee al omissioun de la descente, qe nest forqe dilatorie, autre serreit.—*Moubray*. Apres vewe vous<sup>8</sup> nalleggeres pas bastardie.—*R. Thorpe*. Demurez<sup>9</sup> en jugement sur la point ou nous sumes, et apres assaieroms la lay.—*Birtone*.<sup>10</sup> La vewe seert pur le tenant destre ascerte de la demande, issint qil purra aver respouns a la tenance; mes de chose touchaunt la<sup>11</sup> persone nest pas resoun qe vewe serreit graunte; donqes, quant le demandant est mys a tiel delaye par la vewe, nest pas resoun qe apres<sup>12</sup> le tenant eit tiel<sup>13</sup> excepcion a la nounablete de la persone.—*Huse*. Plee al accion naturellement est done apres vewe [qar en brief Daiel apres

<sup>1</sup> Harl., qar, instead of par quei.

<sup>2</sup> vous is omitted from Harl.

<sup>3</sup> The words qar nous le puissons alleger are from Harl. alone.

<sup>4</sup> Harl., *STON*.

<sup>5</sup> nous is omitted from L.

<sup>6</sup> ne is from L. alone.

<sup>7</sup> L., and 25,184, par.

<sup>8</sup> vous is omitted from L.

<sup>9</sup> L., demuroms.

<sup>10</sup> L., *Bartone*.

<sup>11</sup> Harl., sa.

<sup>12</sup> apres is omitted from Harl.

<sup>13</sup> tiel is omitted from Harl.

## No. 14.

A.D. 1344. after view, the plea Not next heir.—*Haveryngton*. If we had given this exception at first, we should not afterwards have been admitted to have view, or aid of the King; and we are now in the estate of the King, from whom we have aid, in order to save the land for him, and we shall have the same plea for ourselves, and we shall have the same advantage as tenant by his warranty would have.

Assise of  
Novel  
Disseisin.

(14.) § A Novel Disseisin was brought in the country, before BLAYKESTON and W. THORPE, against two persons. One, without taking tenancy upon himself, pleaded a release in bar, in order to acquit himself of the disseisin. The other alleged joint tenancy in abatement of the writ. And in order to oust the latter from this plea the plaintiff said that he had nothing, but that the other defendant who was named in the writ and had pleaded the release was tenant, and upon that the Assise was taken. It was found that the one who alleged the joint tenancy had nothing, but that the other was tenant. That other, as before, without taking upon himself the tenancy, pleaded the release, and demanded judgment whether Assise, &c. Against this the plaintiff said that, since the execution of the release, he had been seised, and disseised, &c. And upon that the Assise was taken, without any title having been shown, and it was found by the Assise that the plaintiff had been seised and disseised after the execution of the release, and he, therefore, recovered. And thereupon Error was now assigned inasmuch as the plaintiff selected one particular tenant on the ground of whose tenancy he had to maintain his writ, and that tenant pleaded a release in bar, and the Court gave judgment that the plaintiff should have the Assise without showing a title, and in doing so they erred.—*Blaykeston*. That defendant was in Court, and did not take any tenancy upon himself, but as one who wished to excuse himself from any wrong, pleaded

## No. 14.

la vewe]<sup>1</sup> homme avera<sup>2</sup> nient plus procheyn heir. A.D. 1344.  
 —*Haveryngtone*. Si nous ussoms done primes ceste  
 excepcion, nous eussoms pas apres este resceu daver  
 eu la vewe ne eyde du Roi; et nous sumes ore en  
 lestat le Roi, de qi nous avoms leyde, pur salver  
 la terre pur luy, et pur nous [averoms mesme le  
 plee, et]<sup>1</sup> mesme<sup>3</sup> lavaantage averoms<sup>4</sup> come tenant  
 par sa garrauntie averoit.

(14.)<sup>5</sup> § Novele Disseisine porte en pays, devant<sup>6</sup> *Assisa*  
 BLAYK.<sup>7</sup> et W. THORPE, vers ij.<sup>8</sup> Un pleda par relees, *Novæ*  
 saunz enprendre tenance, en barre pur luy acquiter *Disseisine*.  
 de la disseisine.<sup>9</sup> Lautre alleggea joyntenance al<sup>10</sup> [17 Li.  
 abatement<sup>11</sup> du brief. Et pur luy ouster du plee le *Ass.*, 25;  
 pleintif dit qil nad rien, einz lautre qest nome et *Fitz.*,  
 qe pleda le relees, sur quei Lassise prise. Trove *Title*, 35.]  
 fut qe celuy qe alleggea la jointenance navoit rien,  
 mes lautre est tenant. Lautre, come avant, saunz  
 enprendre tenance, pleda le relees, et demanda juge-  
 ment si Assise, &c. Countre quei le pleintif dit qe  
 puis la confeccion il fut seisi et disseisi. Et sur  
 ceo Lassise pris, saunz tittle moustrer, par quele fut  
 trove qe le pleintif fut seisi et disseisi puis, par  
 quei il recoveri. Et sur ceo errour est assigne ore  
 en tant qe le pleintif eslust<sup>12</sup> un certain tenant par  
 qi tenance il fut a meyntener son brief, et celuy  
 pleda par relees en barre, et Court agarda au pleintif  
 Assise saunz tittle, et issint errerent.—*Blayk*. Il fut  
 en Court et emprist nul<sup>13</sup> tenance, mes, come celuy  
 qe se voleit excuser del tort, le pleda tut en la

<sup>1</sup> The words between brackets  
 are omitted from Harl.

<sup>2</sup> Harl., navera.

<sup>3</sup> mesme is from Harl. alone.

<sup>4</sup> averoms is from Harl. alone.

<sup>5</sup> From the three MSS. as above.

<sup>6</sup> Harl., par.

<sup>7</sup> L., BLAYST; Harl., BAUK.

<sup>8</sup> L., and 25, 184, iij.

<sup>9</sup> L., seisine.

<sup>10</sup> L., en.

<sup>11</sup> L., batement.

<sup>12</sup> L., ellust.

<sup>13</sup> nul is omitted from Harl.

## No. 14.

A.D. 1344. entirely with regard to the personal part of the matter, and not in any way to extinguish the plaintiff's right with regard to the land; therefore there would be no need to make a title in opposition to the deed used by him.—*Skipwith*. The plaintiff selected him as tenant, and so he was found to be by verdict. And if it had been found that the person whom the plaintiff selected as tenant was not tenant, and the other named in the writ had been found tenant, the writ would have abated; therefore when he pleaded a release in bar after a verdict of the Assise by which he was found to be tenant, and also after the plaintiff himself had affirmed him to be tenant, although he had previously expressly disclaimed the tenancy, yet the plaintiff gave him the advantage of pleading as tenant; therefore, when he afterwards pleaded in bar, it could not be understood that he pleaded otherwise than as tenant; nor will the plaintiff ever be able to say that he pleaded otherwise; and consequently the judgment to take the Assise was erroneous.—BAUKWELL. In a case of Assise, if the person who is tenant be in Court, and say nothing, but allow another, who has nothing, to take the tenancy upon himself and plead, will he not lose his land by reason of his silence? And he will never be admitted to say that he was tenant. Now you were in like case when you did not take the tenancy upon yourself, although it was the fact that the plaintiff made you tenant.—SCOT, *ad idem*. You take for your argument that you were tenant, but it is not expressed in the record that you ever took the tenancy upon yourself; and, even though the plaintiff gave you the advantage that you could have taken the tenancy upon you, yet, as you did not do so, whom will you blame except yourself?—And they were adjourned.<sup>1</sup>

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<sup>1</sup> See Y.B., Easter, 19 Edw. III., No. 13.

## No. 14.

personalte, et nulle rien pur esteindre le dreit le A.D. 1344.  
 pleintif quant a la terre; par quei de faire tittle  
 countre le fait use par luy ne bosoignera pas.—  
*Skipwith*. Le pleintif luy eslust<sup>1</sup> son tenant, et il  
 fut trove tiel par verdit. Et si ust este trove que  
 celuy que le pleintif eslust<sup>1</sup> son tenant nust pas este  
 tenant, mes qautre nome el brief ust este trove  
 tenant, le brief ust abatu; donques quant celuy pleda<sup>2</sup>  
 par relees en barre apres le verdit Dassise par quel  
 il fut trove tenant,<sup>3</sup> et auxi apres ceo que le pleintif  
 mesme<sup>4</sup> avoit afferme luy estre tenant, tut avoit il  
 adevant desclame expressement en la tenance, unqore  
 le pleintif luy dona avauntage de pleder come ten-  
 ant; par quei, quant il pleda apres en barre, il ne  
 put estre entendu qil pleda autrement<sup>5</sup> mes come  
 tenant; ne le pleintif ne<sup>6</sup> purra jammes dire qil  
 pleda autrement; et *per consequens* lagarde dassise  
 erroigne.<sup>7</sup>—BAUK. En cas Dassise, si celuy qest ten-  
 ant soit en Court, et die rien, mes soeffre<sup>8</sup> autre  
 que rien ad enprendre tenance et pleder, ne perdera<sup>9</sup>  
 il sa terre par son tere<sup>10</sup>? Et jammes ne serra il<sup>11</sup>  
 resceu a dire qil fut tenant. Ore fuistes vous en  
 autiel cas quant vous nenpristes<sup>12</sup> pas tenance, tut  
 fut il issint<sup>13</sup> que le pleintif vous feist<sup>14</sup> tenant.—SCOT,  
*ad idem*. Vous pernez pur argument que vous fustes  
 tenant, mes le recorde ne voet pas que unqes vous  
 enpristes tenance; et mesque le pleintiff vous dona  
 lavantage daver empris tenance, et vous ne feistes  
 pas, qi voillez<sup>15</sup> vous blamer forge vous mesmes?—  
*Et adjornantur*.

<sup>1</sup> L., ellust.<sup>2</sup> L., que pleda; the word is omitted from Harl.<sup>3</sup> tenant is from L. alone.<sup>4</sup> mesme is from Harl. alone.<sup>5</sup> autrement is omitted from Harl.<sup>6</sup> ne is omitted from L.<sup>7</sup> L., &c.; the word is omitted from 25,184.<sup>8</sup> L., soeffert; 25,184, seoffre.<sup>9</sup> L., and 25,184, perde.<sup>10</sup> Harl., accepter; 25,184, teer.<sup>11</sup> il is from Harl. alone.<sup>12</sup> L., ne pristis.<sup>13</sup> Harl., icy.<sup>14</sup> Harl., fist; 25,184, feit.<sup>15</sup> L., voellez.

## No. 15.

A.D. 1344. (15.) § Note that on an Appeal it was alleged that  
Note : the plaintiff had been outlawed for trespass. And for  
Appeal. that reason the defendant passed quit, without being  
arraigned at the suit of the King.<sup>1</sup>

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<sup>1</sup> For a Re-attachment on this Appeal *see* p. 51, note 1, and Y.B.,  
Trin., 19 Edw. III., No. 2.



## No. 15.

(15.)<sup>1</sup> § *Nota* qen Appelle fut allegge qe le pleintif est utlage pur trans. Et par taunt le defendant passa quites, saunz estre arene a la suite le Roy.

A.D. 1344.

*Nota :*  
Appelle.  
[17 Li.  
Ass., 26.]

<sup>1</sup> From the three MSS. as above. There is among the *Placita coram Rege*, Mich., 18 Edw. III., R<sup>o</sup> 35, a record of an Appeal, which, however, is there vacated, and is re-entered on R<sup>o</sup> 43. Roger Cifrewast appealed John de Chilterne and Ralph de Wedon of the death of his brother Richard Cifrewast. The plea was, “quod prædictus Rogerus ad appellum suum prædictum responderi non debet, quia dicunt quod idem Rogerus, per nomen Rogeri Cifrewast, chivaler, ad sectam Radulphi de Wedone, chivaler, pro eo quod non venit in Curia Regis coram ipso Rege . . . . . ad respondendum præfato Radulpho de quadam transgressione eidem Radulpho . . . . . illata . . . . . positus fuit in exigendo ad utlagandum, et ea occasione postmodum . . . . . utlagatus, &c.”

The appellor said nothing to this at first, and was re-committed to prison. “Ideo prædicti Johannes et Radulphus eant inde sine die, ad præsens, &c.”

It was, however, afterwards alleged by the appellor that the outlawry was of no effect, because he was in the Fleet prison at the time of its promulgation. After several delays a jury found that this was the fact, “quo prætextu consideratum est quod utlagaria prædicta in ipsum Rogerum Cifrewast sic promulgata revocetur et penitus adnulletur.”

Roger then had a writ to re-

attach the appellees. Chilterne pleaded (Wedon not appearing) that the original writ had lost its effect by reason of the outlawry, and therefore “super reattachamento prædicto absque novo originali non habet necesse respondere. Et petit iudicium, &c.”

Roger replied “quod utlagaria prædicta in ipsum sic promulgata, et quæ jam revocatur et adnullatur, promulgata fuit super quoddam breve de Transgressione, et non pro aliqua feloniam, &c., quæ quidem utlagaria super transgressione non potest dare alicui escaetum, &c., nec iudicium de vita aut membris sicut et utlagaria quæ pro causa feloniam promulgatur. Et per recordum istius ejusdem rotuli ubi loquela appelli prædicti remansit sine die plenius apparet quod prædicti Johannes de Chilterne et Radulphus de Wedone ad appellum prædictum ad tunc irent sine die, et non omnino quieti, ipseque Rogerus ad pristinum statum suum et ad communem legem restituitur ut si nulla utlagaria in persona ipsius Rogeri fuisset promulgata, ipseque sectam suam ad feloniam prædictam puniendam infra annum et diem post eandem feloniam perpetratam recenter incepit secundum formam statuti inde editi, &c., videtur ei quod prædictum breve de reattachamento manutenendum est secundum legem et consuetudinem

## No. 16.

A.D. 1344. (16.) § An Assise of Novel Disseisin for John de  
Novel Mershton and Margery his wife was adjourned into the  
Disseisin. Bench upon difficulty. The tenant pleaded in bar on  
the ground that it had previously been found in  
another Assise of Novel Disseisin between the same  
parties that the plaintiff had not been seised nor dis-  
seised, and demanded judgment whether there ought

No. 16.

(16.)<sup>1</sup> § Novele Disseisine pur J. de Merstone<sup>2</sup> et M. sa femme ajourne en Baunk sur difficulte. Le tenant pleda en barre pur ceo qautrefoith fut trove en un autre Assise de Novele Disseisine<sup>3</sup> entre mesmes les parties qe le pleintif ne fut pas seisi ne disseisi, et demanda<sup>4</sup> jugement si Assise deive estre.<sup>5</sup>

A.D. 1344.  
Novele Disseisine.  
[17 Li. Ass., 27; Fitz., *Estoppel*, 224; *Nonsuit*, 21.]

“regni et non cassandum, &c.,  
“quod si cassaretur, et idem  
“Rogerus ad novum originale  
“impetrandum poneretur, &c.,  
“ipse ab actione sua excluderetur,  
“&c., unde petit quod Johannes  
“de Chilterne respondeat, &c.

“Et, quia Curia hic vult plenius  
“avisari in præmissis, datus est  
“dies prædicto Rogero et Johanni  
“coram domino Rege a die  
“Sancti Michaelis in xv dies  
“ubicumque, &c.”

The decision, however, does not appear.

<sup>1</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 168. It there appears that the action was brought before Justices of Assise in the county of Somerset by John de Mershton and Margery his wife against Peter Pounsound, John de Cauntelo, and two others in respect of 2 messuages, 4 acres of land, and 2 acres of meadow in Chilton Cauntelo (Canteloe).

Peter answered for the other defendants as bailiff, and traversed the disseisin, whereupon issue was joined to the Assise.

<sup>2</sup> L., and 25, 184, Mertone.

<sup>3</sup> The words de Novele Disseisine are omitted from L.

<sup>4</sup> The words et demanda are omitted from L.

<sup>5</sup> Peter's plea on his own behalf, as tenant of the tenements put in

view, was, according to the record,  
“quod assisa inter eos fieri non  
“debut, dixit enim quod prædicti  
“Johannes de Mershtone et Margeria alias . . . . . tulerunt quoddam breve Assisæ Novæ Disseisinæ versus ipsum Petrum et prædictum Johannem de Cauntelo, et posuerunt in visu tenementa nunc in visu posita, ad quod quidem breve idem Petrus per ballivum suum tunc placitavit ad assisam ita quod assisa illa inde inter eos ibidem capta fuit, per quam compertum fuit quod quidam Henricus de Wollavyntone fuit seisisus de prædictis tenementis, cum pertinentiis, in dominico suo ut de feodo et jure, qui eadem tenementa dedit quibusdam Philippo de Churchedene et Johannæ uxori ejus, tenenda ad terminum vitæ ipsorum Philippi et Johannæ, reddendo inde annuatim eidem Henrico et heredibus suis duas marcas argenti, et postea idem Henricus concessit cuidam Willelmo Wyle, capellano, reversionem eorundem tenementorum post mortem prædictorum Philippi et Johannæ, virtute cujus concessionis iidem Philippus et Johanna se attornaverunt eidem Willelmo; et postea idem Willelmus Wyle per finem in curia domini Regis nunc concessit quod eadem tenementa, quæ ad ipsum Willelmum post mortem

## No. 16.

A.D. 1344 to be an Assise. Against this the plaintiff said that this verdict was one involving difficulty, and that the parties were then adjourned, and that on the day given the writ was determined by non-suit, and so there was nothing of record except the non-suit, and he prayed the Assise.—WILLOUGHBY. When a party confesses in a Court of record a matter which is to his own damage, even though he be non-suited afterwards, that still remains of record, because he will never have an Attaint contrary to his own confession; but a verdict (on which an Attaint properly lies) which has not been confirmed by judgment (for which reason an Attaint cannot serve the party) cannot be said to be of record before judgment.—

“ prædictorum Philippi et Johannæ  
 “ reverti debuerunt, remanerent  
 “ prædicto Henrico de Wollavyn-  
 “ tone et prædictæ Margeriæ, tunc  
 “ uxori ejusdem Henrici de Wol-  
 “ lavyntone, et heredibus ipsius  
 “ Henrici in perpetuum, virtute  
 “ cujus concessionis prædicti Phi-  
 “ lippus et Johanna se attornave-  
 “ runt ipsis Henrico et Margeriæ;  
 “ et postea prædictus Henricus  
 “ obiit, post cujus mortem prædicta  
 “ Margeria seisita fuit de prædicto  
 “ redditu, et quidam Johannes  
 “ filius et heres ejusdem Henrici  
 “ per quoddam scriptum suum  
 “ remisit et relaxavit prædictis  
 “ Philippo et Johannæ et eorum  
 “ heredibus in perpetuum totum  
 “ jus quod habuit in redditu præ-  
 “ dicto, nec non in tenementis præ-  
 “ dictis, qui quidem Philippus  
 “ post mortem prædictæ Johannæ  
 “ uxoris suæ tenementa illa cum  
 “ pertinentiis alienavit in feodo  
 “ prædicto Petro Pounsod qui nunc  
 “ est tenens eorundem; et postea,

“ post mortem prædicti Philippi,  
 “ prædicti Johannes de Mershtone,  
 “ et Margeria intraverunt tene-  
 “ menta in visu posita, clamando  
 “ ea ut remanere ipsius Margeriæ,  
 “ quos quidem Johannem et Mar-  
 “ geriam idem Petrus et prædictus  
 “ Johannes de Cauntelo de tene-  
 “ mentis illis recenter amoverunt;  
 “ ac etiam compertum fuit quod  
 “ prædictus Philippus de Church-  
 “ dene vixit per octo septimanas  
 “ post alienationem factam ipsi  
 “ Petro Pounsod, et quod præ-  
 “ dicta Margeria non apposuit  
 “ clameum suum in tenementis  
 “ prædictis in vita prædicti Philippi,  
 “ et sic dixit idem Petrus quod per  
 “ veredictum prædictum comper-  
 “ tum fuit quod prædicti Johannes  
 “ de Mershtone et Margeria nun-  
 “ quam fuerunt seisiti de tenemen-  
 “ tis prædictis ut de libero  
 “ tenemento suo ita quod potuerunt  
 “ inde disseisiri, unde petit judi-  
 “ cium si de tenementis illis assisa  
 “ super assisam fieri debuit, &c.’

## No. 16.

Countre quei le pleintif dist qe cel verdit fut diffi-<sup>A.D. 1344.</sup>  
cultouse, et parties adonques ajournez outre, a quel  
jour le brief fut termine par nounsuyte, et issint  
rien de recorde forqe la nounsuyte, et pria Lassise.<sup>1</sup>  
—WILBY.<sup>2</sup> Quant partie conust en Court de recorde  
chose qe soit en damage de luy, tut soit il nounsuy  
apres, unqore ceo demoert de recorde, qar countre  
sa conisaunce il navera jammes Atteinte; [mes un  
verdit, ou proprement Atteinte gist, qe nest pas  
afferme par jugement, par quei Atteinte]<sup>3</sup> ne purra  
servir a la partie, ne poet estre dit de recorde

<sup>1</sup> According to the roll "Johannes  
" de Mershtone et Margeria dix-  
" runt quod ipsi, virtute recordi  
" prædicti, ab assisa præcludi non  
" deberent in hac parte, dixerunt  
" enim quod, qualitercunque  
" assisa prædicta alias inter eos  
" capta fuit de tenementis præ-  
" dictis, partes prædictæ postea  
" propter difficultates in eodem  
" veredicto existentes adjornatæ  
" fuerunt . . . . . quo  
" die iidem Johannes de Mershtone  
" et Margeria fuerunt non prose-  
" cuti in brevi prædicto, ita quod  
" consideratum fuit quod iidem  
" Johannes de Mershtone et Mar-  
" geria et plegii sui de prosequendo  
" pro non secta sua essent in  
" misericordia, &c. Et ex quo  
" iudicium in Assisa prædicta  
" redditum non fuit super vere-  
" dicto Assisæ illius, nec super  
" aliquo articulo ejusdem, immo  
" præcise super non secta prædicta,  
" in quo casu iudicium illud ad  
" veredictum prædictum relation-  
" em non habet, nec etiam in  
" eodem veredicto continetur ex-  
" presse quod prædicta Margeria  
" nunquam fuit seisita ut de libero  
" tenemento, petierunt iudicium si  
" recordum prædictum eis præjudi-

" care seu ipsi ab assisa virtute  
" recordi illius præcludi deberent,  
" &c."

<sup>2</sup> The cause is now being heard  
in the Common Bench, but before  
removal into that Court there was  
the following pleading:—

" Et Petrus dixit quod cum præ-  
" dicti Johannes et Margeria  
" expresse cognoverunt prædictam  
" assisam inter eos alias, ut præ-  
" mittitur, captam exitisse, licet  
" iudicium super eodem veredicto  
" redditum non fuit, hoc nullo  
" modo cedere potuit in damnum  
" seu præiudicium ipsius Petri nec  
" in commodum ipsorum Johannis  
" et Margeriæ, pro eo quod non  
" secta ipsorum Johannis et Mar-  
" geriæ evenit de facto suo pro-  
" prio, et si ipsi iudicium suum  
" super veredicto prædicto expec-  
" tassent iudicium illud pro ipso  
" Petro redditum fuisset, unde  
" petiit iudicium, ut prius, si  
" prædicti Johannes et Margeria  
" contra recordum prædictum assi-  
" sam versus eum habere debue-  
" runt."

It was upon this that the parties  
were adjourned into the Bench.

<sup>3</sup> The words between brackets  
are omitted from L.

## No. 17.

A.D. 1344. *Notton*. Though he cannot have an Attaint, that is to his own disadvantage, and cannot be a reason why the non-suit should turn to his advantage.—*R. Thorpe*. The finding was not expressly against the plaintiff, because there was doubt for whom the verdict would be held to be; therefore the case is different from that which it would be if the verdict had passed expressly against the plaintiff, in which case judgment would have been rendered against the plaintiff on the verdict.—According to the opinion of some the verdict was of record, though the plaintiff was non-suited.—And note that the case was that, upon an alienation in fee, by a tenant for term of life, the plaintiff, who was in remainder by a fine, entered, and was ousted,<sup>1</sup> but that was after the death of the tenant for term of life who aliened, so that the opinion was that entry was not then given.—And the COURT was now minded to award the Assise, notwithstanding the first verdict.—But afterwards the plaintiff was non-suited.

Novel  
Disseisin. (17.) § An Assise of Novel Disseisin between the brothers De St. Paul was adjourned into the Bench upon difficulty. The tenant pleaded the plaintiff's release in bar, and the plaintiff denied his deed, and

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<sup>1</sup> See p. 53, note 5.

## No. 17.

avant jugement.<sup>1</sup>—[*Nottone*. Mesqil ne poet aver **A.D. 1344.**  
 Atteinte, ceste arecte a luy mesme, et nest pas re-  
 soun qe la nounsuyte le torne]<sup>2</sup> en avantage.<sup>3</sup>—*R.*  
*Thorpe*. Il ne fut pas expressement trove countre<sup>4</sup>  
 le pleintif, qar [ceo fut doute pur qi le verdit  
 chauntera; par quei il est autre qe si expressement  
 verdit ust passe countre le pleintif],<sup>5</sup> en quel cas  
 [homme rendra jugement countre pleintif sur verdit.  
 —Al entente dasquns [ceo fut de recorde]<sup>6</sup> coment  
 qe le pleintif fut nounsuy.—*Et nota* qe le cas]<sup>7</sup> fut  
 qe, sur alienacioun en fee dun tenant a terme [de vie,  
 le pleintif, qe fut en le remeindre par fyn, entra,  
 et fut ouste, mes ceo fut apres le decees le tenant  
 a terme]<sup>7</sup> de vie qe aliena, issint qe oppinioun fut<sup>8</sup>  
 qe adonques lentre ne fut pas done.—Et Court fut del  
 avys<sup>9</sup> a ore daver agarde Lassise, *non obstante* le  
 primere verdit.—Mes puis<sup>10</sup> le pleintif fut nounsuy.<sup>11</sup>

(17.)<sup>12</sup> § Novele Disseisine entre les Freres de **Novele**  
 Saint Paul ajourne en Bank sur difficulte. Le tenant **Disseisine.**  
 pleda en barre par relees le pleintif, qe dedit son **[17 Li.**  
**Ass., 28;**  
**Fitz.,**  
**Estoppel,**  
**223.]**

<sup>1</sup> The words *avant jugement* are from L. alone.

<sup>2</sup> The words between brackets are omitted from L. and 25,184.

<sup>3</sup> The words *en avantage* are omitted from L.

<sup>4</sup> L., *entre*.

<sup>5</sup> The words between brackets are omitted from L.

<sup>6</sup> The words between brackets are from L. alone.

<sup>7</sup> The words between brackets are omitted from Harl.

<sup>8</sup> *fut* is omitted from Harl.

<sup>9</sup> Harl., *opinion*.

<sup>10</sup> Harl., *pur ceo qe*.

<sup>11</sup> According to the roll, on the day given in the Common Bench “*prædicti Johannes et Margeria*” “*solemniter vocati non venerunt*.”

“*Et fuerunt querentes. Ideo consideratum est quod prædictus Petrus eat inde sine die, et prædicti Johannes et Margeria et plegii sui de prosequendo in misericordia.*”

<sup>12</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 217. It there appears that the Assise was brought before Justices of Assise in the County of Oxford by Hugh de St. Paul against Robert de St. Paul, and Joan his wife, and Christiana late wife of John de St. Paul, in respect of one messuage, 11 acres of land, and 4 acres of meadow in Dadyngton (Deddington).

## No. 17.

A.D. 1344. it was said that he should not be admitted to do this, because on a previous occasion it had by verdict been found to be his deed on an issue to which he was himself a party in an Assise between the same persons in which the same deed was pleaded. The plaintiff said that judgment was not rendered on that verdict, but that the writ was determined by non-suit, and also that the first Assise was adjourned on a difficulty in the verdict, so that this was not clearly found to be his deed.—And note that it was by the verdict



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fait, a quei fut dit qil ne serreit resceu, qar autre-foith par verdit a un Assise entre eux mesmes, ou mesme le fait fut plede, ceo fut trove son fait a sa mise demene.<sup>1</sup> Le pleintif dist qe sur cel verdit jugement ne fut pas rendu, mes le brief termine par nounsuyte, et auxint qe la primere Assise fut ajourne sur difficulte del verdit, issint qe clerement ceo ne fut pas trove son fait.<sup>2</sup>—[*Et nota* qe par

A.D. 1344.

<sup>1</sup> The other two did not appear, but answered by bailiff, who traversed the disseisin, upon which issue was joined to the Assise. Robert pleaded, as tenant of the tenements put in view, “quod Assisa inter eos fieri non debuit, quia dixit quod quo ad prædictum mesuagium et undecim acras terræ prædictus Hugo alias . . . . . tulit quandam Assisam Novæ Disseisinæ versus ipsum Robertum et alios in brevi nominatos, et posuit in visu prædictum mesuagium et undecim acras terræ, cum pertinentiis, ad quod breve idem Robertus tunc venit et respondit ut tenens tenementorum illorum, et dixit, quod Assisa inde inter eos fieri non debuit quia dixit quod prædictus Hugo, per nomen Hugonis fratris Petri de Sancto Paulo, per scriptum suum relaxavit et quietumclamavit ipsi Roberto omminodas actiones tam reales quam corporales, quas erga eum habuit ab origine mundi usque diem confectionis ejusdem scripti, et protulit ibidem scriptum illud quod hoc idem testabatur, . . . . . et petiit judicium si Assisa inter eos fieri debuit, ad quod idem Hugo dixit quod . . . . . scriptum illud non fuit factum suum, et hoc petiit quod inquireretur per Assisam, et

“idem Robertus similiter, per  
 “quam Assisam ibidem inter eos  
 “captam compertum fuit quod  
 “scriptum illud fuit factum suum,  
 “unde petiit judicium si idem  
 “Hugo contra recordum illud, ad  
 “quod ipsemet fuit pars, actionem  
 “versus eum habere deberet. Et  
 “quo ad prædictum pratum dixit  
 “quod prædictus Hugo per præ-  
 “dictum scriptum suum remisit,  
 “relaxavit et quietumclavit ipsi  
 “Roberto omminodas” [&c., as  
 above, as far as the word testabatur]  
 “Et Hugo dixit quod ipse per  
 “scriptum illud ab Assisa præcludi  
 “non debuit quia dixit quod scrip-  
 “tum illud non fuit factum suum,  
 “et hoc petiit quod inquireretur per  
 “Assisam &c. Et Robertus dixit  
 “quod idem Hugo ad deducendum  
 “scriptum illud admitti non  
 “debuit, quia dixit quod ipse alias,  
 “ut prædictum est, placitavit ad  
 “Assisam super eodem scripto, per  
 “quam Assisam compertum fuit  
 “quod scriptum illud fuit factum  
 “ipsius Hugonis, unde petiit judi-  
 “cium si idem Hugo ad deducen-  
 “dum scriptum illud admitti  
 “deberet, &c.”

<sup>2</sup> According to the roll, the replication by Hugh was, “quod ipse non potuit deducere quin ipse alias tulit Assisam versus prædictum Robertum et alios in forma prædicta, nec quin Assisa

## No. 17.

A.D. 1344. found to be his deed, but it was also found by the verdict that it was not the plaintiff's intention, when he executed it, to be barred from an Assise by this deed, so that the Justices then adjourned the parties on considerations of conscience. And the reasons which were given in the other Assise,<sup>1</sup> as above, were

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<sup>1</sup> *i.e.* No. 16 next above.

## No. 17.

verdit ceo fut trove son fait],<sup>1</sup> mes par verdit fut A.D. 1344.  
trove qe ceo ne fut pas lentencioun le pleintif destre  
barre par tiel fait dassise, quant il le<sup>2</sup> fist,<sup>3</sup> issint  
qe pur conscience<sup>4</sup> adonqes les Justices les ajourne-  
rent. Et les resouns a ore, *ut supra*, en lautre Assise

“ illa inter eos capta fuit super  
“ scripto prædicto, dixit tamen  
“ quod nullum recordum super  
“ Assisa illa ei prejudicare debuit  
“ in hac parte, quia dixit quod ante  
“ judicium super veredicto Assisæ  
“ illius redditum ipse fuit non  
“ prosecutus in Assisa illa, et sic  
“ recordum illud ad nihil aliud se  
“ potuit extendere nisi ad non-  
“ sectam ipsius Hugonis, et, ex quo  
“ prædictus Robertus non allegavit  
“ quod judicium redditum fuit  
“ super veredicto Assisæ prædictæ,  
“ nec super aliquo articulo in  
“ eodem veredicto, nisi solummodo  
“ super nonsecta sua. petiit judi-  
“ cium si recordum illud ei in  
“ aliquo nocere posset seu ipse  
“ virtute recordi prædicti ad dedi-  
“ cendum scriptum prædictum  
“ ad tunc præcludi deberet, &c.”

Upon this, according to the roll, a day was given to the parties before the same Justices of Assise at Westminster, when the plaintiff and the bailiff of the other two defendants appeared, but Robert did not appear. “ Ideo Assisa considerata fuit versus eum capienda per defaultam, &c. Et præceptum fuit Vicecomiti quod resummoneret recognitores Assisæ prædictæ quod essent apud Oxoniam, die Mercurii in Crastino Sanctæ Margaretæ Virginis, ad faciendum recognitionem Assisæ prædictæ, et interim facerent visum, &c. Idem dies datus fuit tam prædicto Hugoni quam prædicto ballivo, &c.” On the day given

Hugh, the plaintiff, and Joan, and the bailiff appeared in person, and Joan prayed to be and was admitted to defend on her husband's default. She then pleaded “ quod prædictus Robertus de Sancto Paulo quondam fuit seisitus de prædictis tenementis, cum pertinentiis, in dominico suo, ut de feodo et jure, et eadem tenementa, cum pertinentiis, dedit cuidam Radulpho personæ ecclesiæ de Broughtone, habenda et tenenda ipsi Radulpho et heredibus et assignatis suis in perpetuum, et obligavit se et heredes suos ad warrantandum ipsi Radulpho et heredibus et assignatis suis eadem tenementa, cum pertinentiis, qui quidem Radulphus de eisdem tenementis postea feoffavit prædictum Robertum de Sancto Paulo et ipsam Johannam &c., et sic ut assignata prædicti Radulphi vocat inde ad warrantum prædictum Robertum, qui quidem Robertus præsens in Curia gratis ei warrantizavit.”

Robert again pleaded, as warrant, the release as above, which he had pleaded as defendant in the Assise, and the subsequent pleadings were also repeated. It was then that there was the adjournment into the Common Bench.

<sup>1</sup> The words between brackets are omitted from Harl.

<sup>2</sup> le is omitted from Harl.

<sup>3</sup> L., fait.

<sup>4</sup> L., conciens.

## No. 17.

A.D. 1344. again touched now ; therefore HILLARY was minded to award the Assise at large.—*Notton*. We will aver that it is his deed.—*Grene*. You shall not be admitted to that, because heretofore, when we tendered the averment that it was not our deed, you refused the averment, and abode judgment whether we ought to have the averment contrary to the record, and upon that we were adjourned ; therefore you shall not be admitted to make an averment on a point on which you have yourself refused it.—*Notton*. It is not expressed in the record that we ever refused the averment, but we put ourselves upon the discretion of the Court, and the words of the record are “*salvis partibus rationibus*” ; therefore you cannot fix it upon us that we have refused the averment.—HILLARY to *Grene*. Will you maintain that it is not your deed ?—*Grene*. Not our deed ; ready, &c.—And the other side said the contrary.—*Quære* whether according to the rigour of the law the defendant should have been admitted to such an issue.—And note that in the first Assise of Novel Disseisin adjourned to Westminster before SHARSHULLE himself, and his fellow-justices, after the verdict had been given, the plaintiff appeared there, and was non-suited afterwards. *R. Thorpe* then prayed judgment for the defendant in whose favour the verdict had passed. SHARSHULLE said that the plaintiff and

## No. 17.

furent touches; par quei HILL. voleit aver agarde A.D. 1344. Lassise a large.—*Nottone*. Nous voloms averer qe cest son fait.—*Grene*. A ceo ne serrez resceu, qar autrefoith, quant nous tendimes daverer qe ceo ne fut pas nostre fait, vous refusastes laverement, et demurastes en jugement si<sup>1</sup> countre le recorde nous dussoms laverement aver, et sur ceo sumes ajourne; par quei daverer le point quel vous avetz refuse vous ne serrez resceu.—*Nottone*. Le recorde ne voet pas qe unques nous refusames laverement, mes demurames en descrecioun de Court, et le recorde est *salvis partibus rationibus*; par quei vous ne poiez lier sur nous qe nous avoms refuse.—HILL. a *Grene*. Volez mayntener qe ceo nest pas vostre fait?—*Grene*. Nient nostre fait; prest, &c.—*Et alii e contra*.<sup>2</sup>—*Quere si rigore juris* le<sup>3</sup> defendant ust avenu a tiel issue.—*Et nota* qen la primere<sup>4</sup> Assise de Novele Disseisine<sup>5</sup> ajourne a Westmestre devant SCHARS. mesme<sup>6</sup> et ses compaignouns, apres verdit rendu,<sup>7</sup> le pleintif apparust illoeqes, et puis fut nounsuy. *R. Thorpe* pur le defendant, pur qi verdit chaunta, pria jugement. SCHARS. Le pleintif et ses plegges covient

<sup>1</sup> si is omitted from Harl.

<sup>2</sup> According to the roll, the proceedings, after the parties appeared in the Common Bench, were as follows:—

“ Et idem Robertus profert hic  
 “ prædictum scriptum sub nomine  
 “ prædicti Hugonis quod alias  
 “ coram præfatis Justiciariis apud  
 “ Oxoniam protulit, quod prædictas  
 “ relaxationem et quieteclama-  
 “ tionem ipsi Roberto per præfatum  
 “ Hugonem in forma superius  
 “ allegata factas testatur &c. Et  
 “ petit judicium si idem Hugo  
 “ contra scriptum suum prædictum  
 “ Assisam inde versus eum habere  
 “ debeat, &c.

“ Et Hugo dicit quod scriptum

“ prædictum ei nocere non debet  
 “ quia dicit quod scriptum illud  
 “ non est factum suum. Et hoc  
 “ petit quod inquiratur per Assi-  
 “ sam. Et Robertus similiter.

“ Ideo prædicta Assisa remittitur  
 “ præfatis Justiciariis ad capien-  
 “ dum juratam loco assisæ in  
 “ patria, &c. Et sciendum quod  
 “ recordum inde una cum brevi  
 “ originali, panello, et prædicto  
 “ scripto dedicto, remittuntur  
 “ eisdem Justiciariis, &c.”

<sup>3</sup> L., qe le.

<sup>4</sup> MSS. of Y.B., terce.

<sup>5</sup> The words de Novele Disseisine are from Harl. alone.

<sup>6</sup> mesme is omitted from 25,184.

<sup>7</sup> rendu is omitted from Harl.

## No. 18.

A.D. 1344. his pledges to prosecute must in this case be in mercy, and that was the opinion of all the JUSTICES.—For that reason judgment was rendered only on the non-suit, &c.

Debt. (18.) § Debt against the Bailiff of the Liberty of St. Ethelreda who had allowed a person who had been taken on a statute merchant to go at large.—*R. Thorpe*. In counting his count he has not produced the statute, which is the ground and foundation of this action; judgment whether the law puts us to answer.—*Rokele*. That is a matter adjudged, and you have

## No. 18.

en ceo cas estre en la mercye, et cest avis a touz A.D. 1344.  
les JUSTICES.—Par quei jugement seulement fut rendu  
sur la nounsuyte, &c.

(18.)<sup>1</sup> § Dette vers Baillif de la Fraunchise Seinte Dette.  
Ethelrede<sup>2</sup> qe lessa un qe fut pris par statut mar- [Fitz.,  
chaunt aler a large.<sup>3</sup>—*R. Thorpe*. Il nad pas moustre Brieve,  
en counte countant lestatut qest pee et foundement 365;  
de ceste accion; jugement si la ley nous mette a Barre,  
respondre.—*Rok*. La chose est ajugge, et vous luy 248.]

<sup>1</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 193. It there appears that the action was brought by Roger Hardegrey, citizen of Norwich, against Nicholas Swan, bailiff of the Liberty of Saint Ethelreda, as in respect of a debt of £4.

<sup>2</sup> Ethelrede is from the roll. The MSS. of Y.B. have Edmond or Esmond.

<sup>3</sup> The declaration was, according to the roll, “quod quidam Gilbertus filius Roberti le Hayward, de Tybenham, . . . coram Willelmo filio Willelmi Butes et Johanne de Worstede, clerico, ad recognitiones debitorum in villa Norwici accipiendas deputatis, recognovit se debere prædicto Rogero prædictas quatuor libras solvendas eidem Rogero ad Festum omnium Sanctorum proxime sequens, ad quem diem prædictus Gilbertus prædictos denarios ipsi Rogero non soluit, per quod idem Rogerus, juxta certificationem inde sub sigillo prædicti Willelmi filii Willelmi in Cancellaria factam, habuit breve Edwardo de Cretynge ad tunc Vicecomiti Comi-

“tatus prædicti, per formam statuti,  
“&c., ad capiendum corpus præ-  
“dicti Gilberti filii Roberti, retor-  
“nabile coram Justiciariis hic a  
“die Sancti Michaelis in xv dies  
“anno regni domini Regis nunc  
“sexto-decimo et eum salvo custo-  
“diendum donec, &c., qui quidem  
“Vicecomes, virtute mandati  
“domini Regis ei sic directi, man-  
“davit prædicto Nicholao Swan  
“ballivo prædictæ libertatis Sanctæ  
“Ethelredæ, qui plenum habet  
“returnum omnium brevium infra  
“libertatem prædictam, et executi-  
“onem eorundem, ac etiam custo-  
“diam gaolæ et prisonum infra  
“eandem libertatem, quod ipse  
“executionem mandati domini  
“Regis prædicti faceret, virtute  
“cujus mandati idem Nicholaus  
“corpus prædicti Gilberti, apud  
“Debenham infra libertatem præ-  
“dictam, die Veneris proxima post  
“Festum Sanctæ Margaretæ Vir-  
“ginis, anno regni domini Regis  
“nunc sextodecimo, cepit, et ipsum  
“in prisona infra eandem liberta-  
“tem detinuit secundum formam  
“mandati domini Regis prædicti.  
“Et postmodum infra quindecim  
“dies post prædictam diem Veneris  
“prædictus Nicholaus ballivus, &c.,  
“pro quadam summa pecuniæ

## No. 18.

A.D. 1344. admitted it for the reason which we have supposed by our count, wherefore there is no need to produce the statute to you.—Therefore *R. Thorpe* was put to answer over.—*Thorpe*. This writ is given by statute<sup>1</sup> against the keeper of a prison, and the plaintiff has not by his writ described the defendant as keeper of a prison; judgment of the writ.—*Rokele*. It is not expressed in the statute that he is to be described as keeper by the writ.—*Thorpe*. That is the meaning.—WILLOUGHBY. We rule that you must say something else.—*R. Thorpe*. We tell you that the return of the writ came to us a long time after the time at which he has counted that it was supposed to have come to us; and we tell you that we never afterwards took him, nor did he ever come into our custody after the precept came to us; ready to verify.—*Rokele*. Then you do not deny that you took him by reason of our suit, and that you had him in custody, and that you allowed him to go at

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<sup>1</sup> 13 Edw. I. Stat. 3. (*De mercatoribus*).



## No. 18.

resceutes par cele cause come nous avoms suppose A.D. 1344.  
 par count, par quei il ne bosoigne pas de moustrer  
 a vous.—Par quei il fut mys outre.—*Thorpe*. Ceo  
 brief est done par statut vers gardeyn de prisone,  
 [et par brief lui nad pas il nome gardeyn de  
 prisone;]<sup>1</sup> jugement du brief.—*Rok*. Lestatut ne  
 voet pas qil serra nome gardeyn par brief.<sup>2</sup>—*Thorpe*.  
 Cest lentente.—*WILBY*. Dites autre chose par agarde.  
 —*R. Thorpe*. Nous vous dioms qe le retourn du  
 brief nous vint longe temps apres le temps il ad  
 counte qe ceo nous dust aver venu; et vous dioms  
 qe unqes puis<sup>3</sup> ne luy preismes, ne unqes ne vint  
 en nostre garde puis qe le maundement nous vint;  
 prest daverer.<sup>4</sup>—*Rok*. Donqes vous ne dedites pas  
 qe vous ne lui pristes par cause de nostre suyte, et  
 qe vous lui aviez en garde, et lui suffristes<sup>5</sup> aler a

“quam idem ballivus a præfato  
 “Willelmo recepit, ipsum Gilbert-  
 “um a prisona prædicta abire  
 “permisit, prædictis quatuor libris  
 “prædicto Rogero non solutis, nec  
 “de eisdem ei satisfactis, per quod  
 “prædictus Nicholaus ballivus,  
 “&c., per statutum &c., devenit  
 “debitor ipsius Rogeri de debito  
 “prædicto, prædictus Nicholaus,  
 “licet sæpius requisitus, denarios  
 “prædictos eidem Rogero non-  
 “dum reddidit, sed hucusque  
 “reddere contradixit, et adhuc  
 “contradicat, unde dicit quod  
 “deterioratus est et damnum habet  
 “ad valentiam sexaginta soli-  
 “dorum. Et inde producit sectam,  
 “&c.”

<sup>1</sup> The words between brackets  
 are omitted from Harl.

<sup>2</sup> The words par brief are omitted  
 from L.

<sup>3</sup> puis is from L. alone.

<sup>4</sup> L. is the only MS. which has  
 daverer, the others having, as usual,

“&c.” The bailiff's plea was,  
 according to the roll, “quod diu  
 “post prædictam diem Veneris  
 “proximam post Festum Sanctæ  
 “Margaretæ, videlicet die Veneris  
 “proxima ante Festum Assumpti-  
 “onis beatæ Mariæ Virginis anno  
 “regni domini Regis nunc sexto-  
 “decimo, quoddam mandatum ei  
 “liberatum fuit per prædictum  
 “Edwardum ad tunc Vicecomitem  
 “quod ipse corpus prædicti Gil-  
 “berti caperet secundum formam  
 “statuti prædicti, ante quam diem  
 “Veneris proximam ante Festum  
 “Assumptionis nullum mandatum  
 “ei liberatum fuit de capiendo  
 “corpus ejusdem Gilberti virtute  
 “statuti prædicti. Et dicit quod  
 “postquam mandatum prædictum  
 “ei liberatum fuit ipse non cepit  
 “corpus prædicti Gilberti. Et hoc  
 “paratus est verificare, unde petit  
 “judicium &c.”

<sup>5</sup> L., soeffretz.

## No. 18.

A.D. 1344. large.—HILLARY. Suppose the Bailiff took him *de son tort demene*, or for any other cause, before the precept came to him on your suit, and let him go, do you think you can afterwards charge him with the debt on your own suit? And if he was taken on your suit, then the Bailiff is not speaking seriously, and the averment which he tenders will pass against him; therefore, will you accept the averment?—*Rokele*. The Bailiff took him on our suit, and had him in custody for the cause aforesaid; ready, &c.—*R. Thorpe*. Will you say after the warrant came to us? For otherwise you do not plead to our answer.—HILLARY. He says that you took the prisoner by the King's command.—*R. Thorpe*. That may have been for another cause; and, inasmuch as we are willing to aver that since the warrant came to us we did not take him, and that he did not come into our custody afterwards, and he does not deny that matter, and he refuses that averment, judgment.—*Rokele*. You took him on such a day, as we have supposed, and that by warrant, and you let him go, &c.; ready, &c.—*R. Thorpe*. We did not take him on such a day, nor was he afterwards in our custody for such a cause; ready, &c.—And the

## No. 18.

large.—HILL. Jeo pose qil luy prist de son tort <sup>A.D. 1344.</sup> demene, ou par autre cause, avant qe precepte luy vint a vostre suyte, et luy lessa aler, quides<sup>1</sup> vous de luy charger par suyte apres de la dette? Et sil fut pris a vostre suyte, donques gabbe<sup>2</sup> il, et laverement quel il tende<sup>3</sup> passera countre luy; par quei voillez laverement?—[*Rok.* Il luy prist a nostre<sup>4</sup> suyte, et luy avoit en garde par la cause avantdit; prest, &c.]<sup>5</sup>—*R. Thorpe.* Voillez dire apres qe garraunt nous vint? Et autrement ne pledez pas a nostre respouns.—HILL. Il dist qe vous luy pristes par comaundement le Roy.—*R. Thorpe.* Ceo poet estre par autre cause; et, desicome nous voloms averer qe puis qe garraunt nous vint nous luy pristes pas, ne qil devient<sup>6</sup> en nostre<sup>7</sup> garde puis,<sup>8</sup> quele<sup>9</sup> chose il ne dedit pas, quel averement il refuse, jugement.—*Rok.* Vous luy pristes tiel jour come nous avoms suppose, et par garraunt, et lui<sup>10</sup> lessastes aler, &c.; prest, &c.<sup>11</sup>—*R. Thorpe.* Nous ne le preysmes<sup>12</sup> pas a tiel jour, ne puis en nostre garde par tiel cause ne fuit<sup>13</sup>; prest, &c.—*Et alii e contra.*<sup>14</sup>

<sup>1</sup> Harl., quites.

<sup>2</sup> Harl., gabe.

<sup>3</sup> L., tient; 25,184, tent.

<sup>4</sup> 25,184, autre.

<sup>5</sup> The words between brackets are omitted from L.

<sup>6</sup> L., devynte; Harl., deveit.

<sup>7</sup> L., vostre.

<sup>8</sup> puis is from Harl. alone.

<sup>9</sup> L., qe la.

<sup>10</sup> lui is omitted from L.

<sup>11</sup> The replication was, according to the roll, "quod virtute cujusdam mandati quod prædicto Nicholao venit de capiendo corpus prædicti Gilberti, &c., idem Nicholaus prædicta die Veneris proxima post Festum Sanctæ Margaretæ corpus ejusdem Gilberti cepit, et ipsum Gilbertum in prisona

"detinuit quousque ipsum a prisona illa abire permisit, prout ipse superius versus eum narravit. Et hoc paratus est verificare, &c."

<sup>12</sup> Harl., preissoms; 25,184, preignoms.

<sup>13</sup> L., ne vient, instead of par tiel cause ne fuit.

<sup>14</sup> The bailiff's rejoinder, upon which issue was joined, was, according to the roll, "quod ipse non cepit corpus prædicti Gilberti prædicta die Veneris proxima post Festum Sanctæ Margaretæ virtute alicujus mandati, sicut prædictus Rogerus versus eum narravit."

The *Venire* was awarded, but nothing further appears on the roll.

## Nos. 19, 20.

A.D. 1344. other side said the contrary.—HILLARY. You are at issue; and, if it be found that you took him three days afterwards, that is sufficient.

Entry. (19.) § Entry against a man and his wife, supposing the entry of the wife alone.—*Seton*. Judgment of the writ, for we tell you that the husband and his wife entered by this same person. And he said further that it was their joint purchase.—*Grene*. That is not a plea, for if at one time the wife entered alone, and afterwards divested herself, and took back an estate jointly with her husband, this writ would be good with regard to the first entry.—*Quære*, because it ought to be in the *post*.—HILLARY. Then plead the fact.—*Grene*. The wife entered alone, as above; ready, &c.—*Seton*. The husband and the wife entered by purchase; ready, &c.—*Grene*. You must say and not the wife, &c.—*Seton* took the issue in that manner.—And the other side said the contrary.

Assise of Novel Disseisin. (20.) § An Assise of Novel Disseisin was brought for the Treasurer of the church of Wells, parson of the church of A.,<sup>1</sup> against the Abbot of B.,<sup>1</sup> and the Prior of K.,<sup>1</sup> and others, in respect of a certain rent. The Abbot, as tenant of the freehold of the land, &c., pleaded by bailiff in abatement of the writ. The

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<sup>1</sup> For the real names *see* p. 71, note 5.

## Nos. 19, 20.

—HILL. Vous estes a issue,<sup>1</sup> et si trove soit que vous A.D. 1344.  
luy preistes trois jours apres il suffist.

(19.)<sup>2</sup> § Entre vers un homme et sa femme, sup- Entre.  
[Fitz.,  
Briefe,  
366.]  
posant lentre la femme soulement.—*Setone*. Juge-  
ment du brief, qar nous vous dioms que le baroun  
et sa femme entrerent par mesme celuy. Et dist  
outre que ceo fut<sup>3</sup> lour joint purchace.—*Grene*. Ceo  
nest pas plee, qar si la femme a un temps entra  
soule, et puis se demist, et reprist estat ove son  
baroun joint, pur le primere entre cestuy brief ser-  
reit bon.—*Quere*, qar il serreit en le *post*.—HILL.  
Pledez tiel fait.<sup>4</sup>—*Grene*. La femme soul entra, *ut*  
*supra*; prest, &c.—*Setone*. Le baroun et la femme  
entrerent par purchace; prest, &c.—*Grene*. Vous  
dirrez et noun pas la femme, &c.—*Setone* prist lissue  
par la manere.—*Et alii e contra*.

(20.)<sup>5</sup> § Novele Disseisine pur le Tresorer del eglise Assisa  
Novæ Dis-  
seisine.  
[17 Li.  
Ass., 29;  
Fitz.,  
Assise,  
78.]  
de Welles, persone del eglise de A., vers Labbe de  
B., et le Priour de K., et autres, de certain rente.  
Labbe, come tenant de fraunctenement de la terre,  
&c., par baillif pleda al abatement du brief.<sup>6</sup> Le

<sup>1</sup> L., estes, instead of estes a issue.

<sup>2</sup> From the three MSS. as above.

<sup>3</sup> Harl., par, instead of que ceo fut.

<sup>4</sup> 25,184, plee.

<sup>5</sup> From the three MSS. as above, but corrected by the record, Assise Roll, No. 1,430, R<sup>o</sup> 81, d. It there appears that the action was brought by Master Richard de Thisteldene, parson of the church of Mertokey (Martock), and Treasurer of the church of St. Andrew, Wells, against Nicholas "Abbas Sancti Michaelis "de periculo maris" (in Normandy), "Frater Ogerus Priour of Otry-  
"tone" (Otterton, Devonshire), "commonachus ejusdem Abbatis,"

John de Fordynton, and others, in respect of 100s. of rent in Martock (Somerset).

<sup>6</sup> According to the record, "Abbas  
"non venit, sed quidam Adam le  
"Harpour respondit pro eo tan-  
"quam ejus ballivus, et pro eo  
"dixit quod ipse fuit persona  
"medietatis ecclesie de Mertokey,  
"et tenuit tenementa in visu  
"posita, unde prædictus Magister  
"Ricardus supposuit prædictum  
"redditum provenire, ut de dote  
"medietatis ecclesie prædictæ, et  
"non nominabatur in brevi per-  
"sona, &c., unde petiit judicium  
"de brevi, &c. Et si, &c., tunc  
"dixit quod ipse nullam injuriam

## No. 20.

A.D. 1344. Prior, as one who was an alien, whose possessions had been seised into the King's hand, and who now held them as the King's farmer, prayed aid of the King, and had it. And afterwards, upon a writ of *Procedendo*, he pleaded that the demand was out of the plaintiff's fee, and thereupon they abode judgment as to whether he could have this plea, because he was tenant of the freehold, but the Abbot, who had pleaded to the Assise, was tenant. And afterwards, being put thereto by the Court, because it would not take the Assise without being apprised of the nature of the rent, the plaintiff alleged seisin by himself and his predecessors, from all time, by the hands of the

## No. 20.

Priour, come celuy qest alien, qi possessiouns furent <sup>A.D. 1344.</sup>  
 seisiz en la mayn le Roy, et qe les tient ore come  
 fermer le Roy, pria eide du Roy, *et habuit*.<sup>1</sup> Et  
 puis par brief de *Procedendo* il pleda qe hors del  
 fee le pleintif, et sur ceo demurerent sil avereit le  
 plee *quia non tenens liberi tenementi, sed Abbas qui  
 placitavit ad Assisam*. Et puis par COURT, pur ceo  
 qele ne voet prendre lassise saunz estre apris de  
 quel rente, le pleintif alleggea seisine de luy<sup>2</sup> et  
 ses predecessours, de tut temps, par meyns des terre

“ seu disseisinam prædicto Ricardo  
 “ inde fecit. Et de hoc posuit se  
 “ super Assisam. Et Ricardus  
 “ similiter. Et prædictus Nicho-  
 “ laus fuit attachiatus per Johan-  
 “ nem Belle et Petrum Harpour.  
 “ Ideo ipsi fuerunt in misericordia.  
 “ Et de omnibus aliis mandavit  
 “ Vicecomes quod non fuerunt  
 “ inventi nec habuerunt ballivos  
 “ seu aliquid, &c., per quod  
 “ potuerunt attachiari. Ideo Assisa  
 “ considerata fuit capienda versus  
 “ eos per defaltam.”

<sup>1</sup> According to the roll “ Ogerus  
 “ dixit quod ipse fuit Prior ecclesiæ  
 “ Sancti Michaelis de Otrytone, et  
 “ dixit quod tenementa in visu  
 “ posita, unde prædictus Ricardus  
 “ supposuit prædictum redditum  
 “ provenire, fuerunt de dote  
 “ ecclesiæ suæ prædictæ, quæ  
 “ quidem tenementa, una cum toto  
 “ Prioratu prædicto, et omnibus  
 “ aliis terris, tenementis, et pos-  
 “ sessionibus de prædicto Prioratu  
 “ in Anglia existentibus, dominus  
 “ Rex nunc seisiri fecit in manum  
 “ suam, pro eo quod idem Prior  
 “ alienigena et de potestate Regis  
 “ Franciæ extiterat, &c., occasione  
 “ guerræ inter ipsum dominum  
 “ Regem et illos de Francia motæ.  
 “ Et postea idem dominus Rex

“ nunc per literas suas patentes  
 “ commisit ipsi Ogero, per nomen  
 “ Fratris Ogeri de Mone Prioris de  
 “ Oterytone, Prioratum prædictum,  
 “ et omnia terras, tenementa, et  
 “ possessiones Prioratus prædicti,  
 “ exceptis feodis militum, et advo-  
 “ cationibus ecclesiarum ad præ-  
 “ dictum Prioratum et terras et  
 “ tenementa prædicta spectantibus,  
 “ habenda et tenenda eidem Rogero  
 “ quamdiu Prioratum prædictum  
 “ et terras et tenementa prædicta  
 “ in manu domini Regis contigerit  
 “ remanere, solvendo inde eidem  
 “ domino Regi, ad Scaccarium suum,  
 “ centum et decem libras ad certos  
 “ terminos, &c. Et protulit ibi-  
 “ dem easdem literas . . . .  
 “ . . . Et sic dixit quod ipse  
 “ tenuit tenementa in visu posita,  
 “ unde, &c., simul cum aliis tene-  
 “ mentis, de domino Rege, ad  
 “ firman, virtute literarum prædic-  
 “ tarum, unde petiit iudicium si  
 “ ipso domino Rege inconsulto  
 “ Assisa inter eos fieri deberet, &c.  
 “ Et prædictus Magister Ri-  
 “ cardus illud non dedixit. Ideo  
 “ dies datus fuit partibus . . . .  
 “ . . . et interim loquendum fuit  
 “ cum Rege.”

<sup>2</sup> L., and 25, 184, ceo.

## No. 21.

A.D. 1344. tenants of the lands put in view. And the Prior pleaded in bar a release from the Dean and Chapter of Wells, as Treasurer of which church the plaintiff made his plaint, which release was executed at the time when the plaintiff was himself one of the Chapter.—This plea was not allowed by SHARSHULLE, because the plaintiff demanded in his own several right, severed from the Chapter, and also because, when pleading it, he was not tenant of the freehold.—Therefore the Assise was taken, and it passed for the plaintiff, and his title was found, and his seisin.—Therefore he recovered.

Assise of  
Novel  
Disseisin.

(21.) § Novel Disseisin in such a place, and such a place, "*in Nova Foresta.*" It was pleaded in abatement of the writ that the place is not in a vill nor in a hamlet, and that, if it be found so to be, the tenant entered by judgment. It was found by the Assise



## No. 21.

tenantz mys en viewe. Et le Priour pleda en barre A.D. 1344.  
 par relees del Dean et Chapitre de W., dount le  
 pleintif se pleint come Tresorer, a quel temps le  
 pleintif mesme fut un de Chapitre.—*Non allocatur*  
 par SCHARS., pur ceo qe le pleintif demande de son  
 several dreit severe de Chapitre, et auxint il nest  
 pas tenant del fraunc tenement<sup>1</sup> qe le plede.—Par  
 quei Lassise prise, qe<sup>2</sup> passa pur le pleintif, et son  
 title trove,<sup>3</sup> et sa seisine.—Par quei il recoveri.<sup>4</sup>

(21.)<sup>5</sup> § Novele Disseisine en tiel lieu, et tiel lieu, *Assisa  
 Nova Dis  
 seisine.*  
*in Nova Foresta.* Fut plede qe le lieu nest pas en  
 ville ne en hamel, al abatement du brief, et, si trove  
 soit, le tenant entra par jugement. Par Assise<sup>6</sup> fut [17 Li.  
 Ass., 30.]

<sup>1</sup> The words del fraunc tenement are from Harl. alone.

<sup>2</sup> qe is from Harl. alone.

<sup>3</sup> The report ends here in L., with the words “&c.”

<sup>4</sup> According to the record there was a writ of *Procedendo* on the prayer of the plaintiff, “ita tamen quod ad iudicium in eadem Assisa reddendum, nobis incon- sultis, nullatenus procedatis, . . . quo quidem brevi audito et examinato, prædictus Ricardus petit quod procedatur ad captionem Assisæ.”

“Et frater Ogerus dicit quod virtute brevis prædicti ulterius in Assisa prædicta procedi non debet, dicit enim quod in brevi originali Assisæ illius ipse nominabatur Frater Ogerus Priour of Otrytone, et in prædicto brevi Justiciariis hic misso expressa fit mentio de procedendo in quadam Assisa quam prædictus Magister Ricardus arramiavit versus Nicholaum Abbatem Sancti Michaelis de periculo maris et Fratrem Ogerum Prior-

“em de Otrytone commonachum  
 “ejusdem Abbatis, et alios, &c., et  
 “sic prædictum breve de proce-  
 “dendo, &c., variat in cognomine  
 “ejusdem Fratris Ogeri a brevi  
 “originali Assisæ prædictæ, et  
 “unde petit iudicium si virtute  
 “brevis illius ulterius in Assisa  
 “ista procedi debeat.

“Et super hoc dies datus est  
 “partibus prædictis coram eisdem  
 “Justiciariis apud Westmonaste-  
 “rium die Lunæ proxima post  
 “mensem Paschæ, &c. Ad quem  
 “diem venit tam prædictus Mag-  
 “ister Ricardus quam prædictus  
 “Frater Ogerus per attornatos  
 “suos prædictos, et similiter præ-  
 “dictus ballivus venit, et datus est  
 “eis dies coram eisdem Justiciariis  
 “apud Westmonasterium die  
 “Lunæ proxima post quindenam  
 “Sanctæ Trinitatis in statu quo  
 “nunc, &c., salvis partibus, &c.”

<sup>5</sup> From the three MSS. as above.

<sup>6</sup> For the words Par Assise there are substituted in L. the words “du brief *Stouf*. quel.”

## No. 22.

A.D. 1344. that the place is not in a vill nor in a hamlet, but is in the New Forest, which is without any vill, and the disseisin also was found, and that the tenements were not parcel of the tenements previously recovered.—*Grene*. The tenant's exception is found; judgment of the writ.—*Stouford*. What other writ could he have when the place is without any vill?—*Grene*. We have not to give you any writ now, but his writ ought to be in the words "in such a place *in Nova Foresta extra villam*."—And afterwards the plaintiff recovered.

*Audita Querela.*

(22.) § An *Audita Querela* was sued upon a statute merchant, supposing that the creditor had delivered the lawful statute to the debtor in lieu of acquittance, and that he had sued execution on another statute which was forged. And because the party had been taken he could not be out on mainprise, but a *Superedeas* of execution was awarded. And the Sheriff returned to three writs of *Distringas* that the defendant in the *Audita Querela* had nothing, wherefore it was again adjudged that he should be distrained in the land which he had on the day on which the *Audita Querela* was purchased to answer as to the deceit. The Sheriff now returned that he had nothing then, and still has nothing.—*Blaykeston*. We pray that the body of the prisoner be delivered; and it was on a previous occasion allowed to us by the Court that it should be so when we had sued as above.—*STONEORE*. Where is that statute which was delivered to you in lieu of acquittance?—*Blaykeston*. It is useless; we have cancelled it and torn it up.—*Moubray*. You have here, by attorney, the party who sues execution. And see here the statute. And he prays execution.—*Blaykeston*. Do you mean to say that as your answer to the *Audita Querela*?—*Moubray*. No; he is attorney for the

## No. 22.

trove qe le lieu nest pas en ville ne en hamel, mes A.D. 1344.  
 est en la Novele Foreste, qest hors de ville, et trove  
 outre<sup>1</sup> la disseisine, et nient parcelle des tenementz  
 autrefoith recoveris.—*Grene*. Lexcepcion le tenant  
 est trove; jugement de brief.—*Stouf*. Quel brief  
 avereit il autre quant le lieu est hors de ville?—  
*Grene*. Nous durroms pas brief a ore, et si serra  
 son brief en tiel lieu *in Nova Foresta extra villam*.  
 —Et puis le pleintif recoveri.

(22.)<sup>2</sup> § *Audita Querela* fuit suy hors destatut *Audita*  
*Querela*.  
[Fitz.,  
*Audita*  
*Querela*, 9  
*Mainprise*  
18.]  
 marchaunt, supposaunt qe le creaunceour<sup>3</sup> avoit baille  
 le leal estatut al dettour en lieu dacquitaunce, et  
 qil ad suy execucion sur autre estatut forge. Et  
 pur ceo qe la partie fut pris il ne poait<sup>4</sup> estre par  
 meynprise, mes *Supersedeas* del<sup>5</sup> execucion fut agarde.  
 Et le Vicounte a iij briefs de Destresse retourna qil  
 navoit rien, par quei autrefoith fut agarde qil ser-  
 reit destreint en la terre qil avoit jour del *Audita*  
*Querela* purchace a respoundre de la desceite. Le  
 Vicounte retourna a ore qil navoit rien adonques ne  
 unqore nad.—*Blaik*.<sup>6</sup> Nous prioms qe le corps le  
 prison soit deliverez; et ceo nous fut permys<sup>7</sup> autre-  
 foith par Court [qil serreit quant nous ussoms suy  
*ut supra*.—*Ston*. Ou est cel estatut qe vous fuit  
 livere en lieu dacquitaunce?]<sup>8</sup>—*Blaik*. Ny ad force;  
 nous lavoms dampne et debruse.—*Moubray*. Vous  
 avetz cy la partie par attourne<sup>9</sup> qe suyst execucion.  
 Et veiez cy lestatut. Et il prie execucion.—*Blaik*.  
 Voletz dire cella pur respouns al *Audita Querela*?—  
*Moubray*. Nanil; il est attourne pur aver execucion

outre is omitted from L.

<sup>2</sup> From the three MSS. as above.

<sup>3</sup> L., creansour.

<sup>4</sup> L., put.

<sup>5</sup> L., sur.

<sup>6</sup> L., *Blayst*.

<sup>7</sup> L., and 25, 184, primes.

<sup>8</sup> The words between brackets are omitted from L.

<sup>9</sup> The words par attourne are from Harl. alone, in which MS. they have been added in a later hand.

## No. 23.

A.D. 1344. purpose only of having execution; but since you have not, and do not produce the statute which you say was delivered to you in lieu of acquittance, and he produces a statute which cannot, according to any law, be understood to be other than good, since you do not produce any other, we pray execution.—*STONORE*. We can do nothing, in this case, but award execution; wherefore sue execution.

Wardship. (23.) § Wardship of land.—*Grene*. As to the whole of the land, except a piece eight feet in length, the infant's ancestor enfeoffed us by this deed in fee simple, and so we are tenant of the freehold; judgment whether the writ lies against us. And, as to the rest, you are yourself seised, and were seised on the day on which the writ was purchased.—*R. Thorpe*.

## No. 23.

soulement; mes desicome vous navez pas, ne ne A.D. 1344.  
 moustrez pas lestatut quel vous dites estre livere a  
 vous en lieu dacquittance, et il moustre un estatut,  
 quel par nulle ley serreit entendu autre qe bon,  
 puis qe autre ne moustrez, nous prioms execucion.  
 —[STON. Nous ne poms en le cas forqe execucion  
 agarder;]<sup>1</sup> par quei suez execucion.

(23.)<sup>2</sup> § Garde de<sup>4</sup> terre.<sup>5</sup>—*Grene*. Quant a tut la Garde.<sup>3</sup>  
 terre, sauf viij pies<sup>6</sup> en longure, launcestre len- [Fitz.,  
 fant nous feffa par ceo fait en fee simple, et Issue,  
 issint sumes tenant de fraunc tenement; jugement 37.]  
 si vers nous le brief gise. Et del remenant vous  
 mesmes estes seisi, et fustes jour de brief purchase.<sup>7</sup>

The words between brackets are omitted from Harl.

<sup>2</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 122. It there appears that the action was brought by John de Taverham against Hugh Wykeman, and John Spyke, both of "Hedirsete" (Hethersett), in respect of the wardship of 2 mesuages, 36 acres of land, 8 acres of wood, and 4 acres of pasture in Wramplyngham (Norfolk), during the minority of William son and heir of Richard Banyard, who held the tenements of the plaintiff, and died in his homage.

<sup>3</sup> Harl., Garde de corps.

<sup>4</sup> Harl., de corps et de.

<sup>5</sup> The words de terre are omitted from L.

<sup>6</sup> Harl., pees.

<sup>7</sup> The plea was, according to the roll, "quod prædictus Ricardus tenuit prædicta tenementa de ipso Johanne de Taverham [by certain services other than those alleged in the plaintiff's declara-

tion] "et, quo ad unam placeam  
 "terræ de prædictis tenementis  
 "continentem in longitudine octo  
 "pedes et in latitudine octo pedes,  
 "dicunt quod prædictus Johannes  
 "de Taverham fuit seisitus de  
 "eadem die impetrationis brevis  
 "sui, et adhuc seisitus est, et hoc  
 "parati sunt verificare, et petunt  
 "judicium, &c.

"Et quo ad residuum prædictorum tenementorum dicunt quod prædictus Ricardus Banyard, per nomen Ricardi Banyard de Wramplyngham, per chartam suam dedit et concessit ipsis Hugoni et Johanni Spyke, per nomen Hugonis Rectoris ecclesiæ omnium Sanctorum de Magna Meltone et Johannis fratris sui capellani, totum mesuagium suum et tenementa sua in Wramplyngham, cum pertinentiis, salva sibi et heredibus suis una placea in aula continente in longitudine octo pedes et in latitudine octo pedes, et similiter per aliam chartam suam dedit et concessit eisdem Hugoni et

## No. 23.

A.D. 1344. As to that of which you say that we are ourself seised, ready, &c., that we are not, and we are not and were not seised, &c.—*Grene*. And inasmuch as you do not maintain your writ, that is to say, that we are a deforcer, judgment: for it is immaterial whether you yourself or any other person is seised. And suppose that, in a *Præcipe quod reddat* brought against me, I were to allege non-tenure, and were to say that another person holds parcel, is it an answer to say that he has nothing, without affirming against me that I myself, against whom the writ is brought, am tenant? as meaning to say that it is not. Nor is it in the matter before us.—*R. Thorpe*. Then you refuse the averment. And as to the allegation touching the feoffment, you see plainly how he makes his conclusion on the ground that he is tenant of the freehold, and that the writ does not lie against him, to which matter the law does not put me to answer; and, inasmuch as he does not deny the points of my writ, judgment; and we pray seisin of the wardship.—*HILLARY*. He says that he is tenant in a certain manner, that is to say through a feoffment made by the heir's ancestor, and to that the law does intend that you must answer; wherefore is it so?—*R. Thorpe*. We will aver that the ancestor died our tenant; ready, &c.—*Pole*. We admit that, with regard to a certain parcel, that is to say of the eight feet which are excepted in the feoffment.—

## No. 23.

—*R. Thorpe*. Quant a cel dount vous dites nous A.D. 1344.  
mesmes estre seisi, prest, &c., qe noun, et nous ne  
sumes ne fumes seisi, &c.—*Grene*. Et desicome vous  
ne meyntenez pas vostre brief, saver, qe nous sumes  
deforceour, jugement: qar si [vous mesmes ou autre  
persone soit seisi nad<sup>1</sup> force. Et jeo pose qen  
*Præcipe quod reddat* vers moy<sup>2</sup> jeo alleggasse [noun  
tenure], et]<sup>3</sup> deisse<sup>4</sup> qautre tient parcelle, est ceo  
respouns a dire qe celui nad<sup>1</sup> rien, saunz affermer  
sur moy qe jeo mesme sui tenant vers qi le brief  
est porte? *quasi diceret non. Nec in proposito*.—*R.*  
*Thorpe*. Donqes refuses laverement. Et quant a ceo  
qe vous alleggez le feffement vous veiez bien coment  
il fait sa conclusioun pur ceo qil est tenant de  
fraunc tenement, et qe le brief ne git pas vers luy,  
a quele chose ley ne moy met pas a respoudre;  
et, desicome il ne dedit pas les poynts de moun  
brief, jugement; et prioms seisine de la garde.—  
*HILL*. Il dit qil est tenant en certain manere, saver,  
par feffement del<sup>5</sup> auncestre leir, a quele chose ley  
voet qe vous responez; par quei est il<sup>6</sup> issint?—*R.*  
*Thorpe*. Nous voloms averer qe launcestre murust  
nostre tenant; prest, &c.—*Pole*. Cella conussoms de  
certain parcelle, saver, de les viij pees qe sount  
forpris en le feffement.—*R. Thorpe*. Al feffement

“Johanni Spyke unum mesuagium,  
“cum pertinentiis, in Wramplyng-  
“ham, quod vocatur Byntremes,  
“habenda et tenenda omnia præ-  
“dicta tenementa, cum pertinen-  
“tiis, prædictis Hugoni et Johanni  
“Spyke et assignatis suis in per-  
“petuum, prædicta placea in aula  
“excepta, virtute cujus conces-  
“sionis iidem Hugo et Johannes  
“Spyke fuerunt seisciti de prædictis  
“tenementis in vita ipsius Ricardi,  
“et fuerunt tenentes ipsius Jo-  
“hannis de Taverham, et sæpius  
“in vita ipsius Ricardi obtulerunt

“eidem Johanni de Taverham  
“servitia pro prædictis tenementis  
“debita et consueta, &c., unde  
“petunt judicium si prædictus  
“Johannes de Taverham actionem  
“petendi custodiam prædictam  
“versus eos habere debeat, &c.”

<sup>1</sup> L., ny ad.

<sup>2</sup> MSS., vous mesmes.

<sup>3</sup> The words between brackets  
are omitted from Harl.

<sup>4</sup> 25,184, die.

<sup>5</sup> del is from L. alone.

<sup>6</sup> il is omitted from L.

## No. 23.

A.D. 1344. *R. Thorpe.* We are a stranger to the feoffment made by our tenant, so that it is only a traverse to our writ, in support of which we tender an averment.—*HILLARY.* Will you say that he died seised?—*R. Thorpe.* I might have the wardship even though he did not die seised, as by reason of a reversion.—*Grene.* That is true, if you will allege such special matter, but otherwise not.—*R. Thorpe.* Against a fine to which my tenant was a party I shall have the averment that he held of me, and died in my homage; so *a fortiori* in this case.—*Grene.* Yes, if a stranger rendered to him for term of life, or in tail, you would possibly have the averment; but, if your tenant divested himself by fine to another person, you would not have an averment in general terms, without answering, &c.—*Pole.* No, certainly not.—*R. Thorpe.* Suppose my tenant was party to the strongest possible fine, by which he acknowledged the tenements to be the right of another person, as those which that person had by his gift, and took back an estate tail, I should, notwithstanding, be admitted to say that he continued to be and died seised, being my tenant.—*Grene.* You can also say in this case that your tenant continued to be and died seised.—*R. Thorpe.* Would it be an issue for me to say that he did not enfeoff? It would not be so; but I shall take issue on my writ traversed: for in case I should have to answer as to the feoffment, which is but in the position of a feigned feoffment, I should confess it, and should prove, notwithstanding, that the wardship belongs to me. And in any other case it is only evidence so far as I am concerned, for against the heir himself a feoffment made by his ancestor would operate only as a traverse to a Mort d'Ancestor; *a fortiori* against me.—*HILLARY.* Even though your tenant did divest himself in favour of another, who possibly did not attorn to you, still he died your tenant.—*R. Thorpe.* Certainly not with



## No. 23.

nostre tenaunt nous sumes estraunge, issint qe ceo A.D. 1344.  
 nest forqe travers a nostre brief, quel<sup>1</sup> nous tendoms  
 daverer.—HILL. Volez vous dire qil murust seisi?—  
*R. Thorpe.* Jeo purroy<sup>2</sup> aver garde tut ne murust  
 il pas seisi, come par cause de reversioun.—*Grene.*  
 Cest verite, si vous vodrez<sup>3</sup> allegger cel matere  
 especial, mes autrement nient.—*R. Thorpe.* Countre  
 fyne a quel moun tenant fut partie jeo averay avere-  
 ment qil tient de moy, et murust en moun homage;  
 a plus fort en ceo cas.—*Grene.* Oyl, si estraunge  
 persone rendist a luy a terme de vie, ou en taille,  
 par cas vous averez averement; mes si vostre tenant  
 soy demist par fyn a autre vous naverez pas avere-  
 ment general, saunz respoundre, &c.—*Pole.* Noun,  
 certes.—*R. Thorpe.* Jeo pose qe moun tenant fut  
 partie a ja si fort fyn, par quel il conisast les  
 tenementz estre autri dreit, come ceo qil avoit de  
 son doun, et reprist estat taille, jeo serray resceu,  
*non obstante*, a dire qil continua et murust seisi<sup>4</sup>  
 mon tenant; a plus fort a ore.—*Grene.* Auxi poez  
 dire en ceo cas qe<sup>5</sup> vostre tenant continua et murust  
 seisi.—*R. Thorpe.* Serreit il issue pur moy a dire  
 qil feffa pas? Noun serreit; mes jeo prendroy issue  
 sur mon brief traverse: qar en cas qe jeo respond-  
 ray al feffement, qe nest forqe en cas de feint  
 feffement, jeo le conusteray, et proveray, *non obstante*,  
 qe la garde attient a moy. Et en autre cas ceo  
 nest forqe evidence quant a moy, qar vers leir mesme  
 le feffement son auncestre a un Mort dauncestre ne  
 serroit forqe a<sup>6</sup> travers; a plus fort vers moy.—  
 HILL. Tut se demist vostre tenant a autre, qe nat-  
 tourna pas par cas a vous, unqore murust il vostre  
 tenant.—*R. Thorpe.* Nanyl<sup>7</sup> certes quant a garde

<sup>1</sup> quel is omitted from L.

<sup>2</sup> L., ne purroy jeo, instead of jeo  
 parroy.

<sup>3</sup> L., voedrez.

<sup>4</sup> seisi is from L. alone.

<sup>5</sup> L., quant.

<sup>6</sup> a is omitted from L.

<sup>7</sup> L., Nay.

## Nos. 24, 25.

A.D. 1344 regard to having wardship.—HILLARY. Will you maintain that he died seised?—*R. Thorpe*. He died seised, being our tenant; ready, &c.—And the other side said the contrary.

Note concerning  
Dower.

(24.) § Note that in Dower, where the tenant vouched, the vouchee entered into warranty, and vouched the husband's heir in the same county, and the heir made default.—HILLARY gave judgment that the demandant should recover against the tenant, and that the tenant should recover over to the value [against the first vouchee], and that the latter should recover over to the value [against the last vouchee], and that the last warrant should be in mercy.—*Blaykeston*. The judgment should be conditional where the husband's heir is vouched in the same county.—HILLARY. Yes, where the husband's heir is vouched by the tenant in demesne, but not otherwise: for, if he be vouched by any other person than the tenant in demesne, the judgment will not be conditional.

Wardship. (25.) § Wardship. After the defendant had made default he took a day over, and again made default, and thereupon the Grand Distress issued, and Pro-

## Nos. 24, 25.

aver.—HILL. Voillez meyntener qil [murust seisi?—A.D. 1344. *R. Thorpe. II*]<sup>1</sup> murust seisi nostre tenant; prest, &c.—*Et alii e contra.*<sup>2</sup>

(24.)<sup>3</sup> § *Nota* qen Dowere, ou<sup>4</sup> le tenant voucha, le vouche entra en garrauntie,<sup>5</sup> et voucha leir le baroun en mesme le counte, qe fist default.—HILL. agarda qe la<sup>6</sup> demandante recoverast vers le tenant, et il a la value, et cely outre a la value,<sup>7</sup> et le darreyn garraunt en la mercy.—*Blayk.* Le jugement serreit condicionel ou leir le baroun qest vouche en mesme le counte.—HILL. Oyl,<sup>8</sup> ou leir le baroun est vouche par le tenant en demene, mes autrement nient: qar sil soit vouche par autre qe par le tenant en demene, le jugement ne serra pas condicionel.

(25.)<sup>9</sup> § *Garde.* Apres ceo qe le defendant avoit fait default il prist jour outre, et puis fist default,<sup>10</sup> et sur ceo Grant Destresse, et<sup>11</sup> Proclamacioun fait,

<sup>1</sup> The words between brackets are omitted from Harl.

<sup>2</sup> The plaintiff's replication, upon which issue was joined, was, according to the roll, "quod prædictus Ricardus Banyard tenuit de eo prædicta tenementa, cum pertinentiis, per servitia prædicta, et obiit seisitus de eisdem tenementis in homagio ipsius Johannis de Taverham, prout ipse superius versus eos narravit. Dicit similiter quod ipse non fuit seisitus de prædicta placea terræ, cum pertinentiis, die impetrationis brevis sui, . . . nec unquam postea sicut iidem Hugo et Johannes Spyke ei imponunt."

The award of the *Venire* follows, but there is nothing further on the roll.

<sup>3</sup> From the three MSS. as above.

<sup>4</sup> ca is omitted from L.

<sup>5</sup> L., la garrauntie.

<sup>6</sup> L., and Harl., le.

<sup>7</sup> The words et cely outre a la value are omitted from L.

<sup>8</sup> Oyl is omitted from L.

<sup>9</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 195, d. It there appears that the action was brought by Robert le Sweyn, of Hales, against John de Caston, knight, in respect of the wardship of the land and of John the son and heir of Robert de Toftes of West Tofts, who held of the plaintiff, by knight service, various tenements in West Tofts and elsewhere in Norfolk, and died in his homage.

<sup>10</sup> The words et puis fist default are from Harl. alone.

<sup>11</sup> L., and 25, 184, par.

*Nota de Dowere.*  
[Fitz.,  
*Jugement*,  
121.]

*Garde.*  
[Fitz.,  
*Estoppell*,  
226; *Issue*,  
38.]

## No. 25.

A.D. 1344. clamation was made, and he appeared after the Proclamation, and took a day over three times by *Prece partium*. And now he appeared, and, as to the land and rent, alleged joint tenancy with his wife, in abatement of the writ, saving one acre of which he said that the plaintiff was himself seised. And, as to the body, he alleged priority of feoffment in bar of the action, that is to say that the infant's ancestor held other land of the defendant by a feoffment prior to that by which he held of the plaintiff the acre of which the defendant had by his plea supposed the plaintiff himself to be seised.—*Richemunde* wished to have had judgment without answering, because the defendant had been distrained to hear his judgment on the default after appearance.—*HILLARY*. All that is passed by reason of the Proclamation and the *Prece partium* taken since.—Therefore *Richemunde* said that the defendant should not be admitted to plead joint tenancy by reason of the *Prece partium*, which affirmed the tenancy.—*R. Thorpe*. Yes, by *Prece partium* a party is ousted from the allegation of non-tenure in general terms, but he can allege particular non-tenure and joint tenancy.—And afterwards *Richemunde* answered *gratis*, and said, as to the defendant's allegation of joint tenancy, that he showed that the defendant was the sole deforcner in the land, and of that he tendered averment, and, as to the statement that the plaintiff himself was seised, ready, &c., that he was not.—

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et par la Proclamacioun il vint, et prist jour outre A.D. 1344.  
 par *Prece partium* iij<sup>1</sup> foith. Et ore vint, et quant  
 a la terre et rente alleggea joyntenance ove sa  
 femme al abatement du brief, sauf dune acre dount  
 il dist qe le pleintif fut seisi mesme. Et quant al  
 corps alleggea priorite de feffement en barre daccion,  
 saver, qe launcestre tient autre terre par priorite de  
 feffement<sup>2</sup> del defendant qil ne tient lacre<sup>3</sup> del  
 pleintif dount il avoit par son plee avant suppose  
 le pleintif mesme seisi.<sup>4</sup>—*Rich.* voleit aver eu juge-  
 ment saunz respoundre, pur ceo qil fut destreint  
 doier son jugement sur la default apres apparaunce.  
 HILL. Tut cella est passe par la Proclamacioun et  
 le *Prece partium* puis.—Par quei *Rich.* dit qil ne  
 serreit resceu a la jointenaunce pur le *Prece partium*  
 qe afferme la tenance.—*R. Thorpe.* Oil,<sup>5</sup> par *Prece*  
*partium* partie est ouste dallegger nountenue general,  
 mes especial nountenue et joyntenance put il allegger.  
 —Et puis *gratis Rich.* respondi, et dist, quant a ceo  
 qil alleggea jointenance, il moustra qe le defendant<sup>6</sup>  
 fut soul<sup>7</sup> abatour en la terre, et ceo tendy daverer;  
 et, quant a ceo qil dist qil mesme fut seisi, prest, &c.,

<sup>1</sup> L., ij.

<sup>2</sup> The words de feffement are from Harl. alone.

<sup>3</sup> Harl., de launcestre.

<sup>4</sup> The plea was, according to the roll, “ quoad unam acram terræ de  
 “ prædicta terra dicit quod præ-  
 “ dictus Robertus seisitus est de  
 “ eadem acra terræ, et fuit die  
 “ impetrationis brevis, &c. Et  
 “ quo ad residuum prædictæ terræ  
 “ dicit quod ipse tenet terram illam  
 “ conjunctim cum quadam Kate-  
 “ rina uxore sua, et tenuit eodem  
 “ die impetrationis brevis, quæ  
 “ quidem Katerina non nominatur  
 “ in brevi, unde petit judicium de  
 “ brevi, &c. Et quo ad custodiam

“ corporis, &c., dicit quod prædic-  
 “ tus Robertus de Toftes, pater  
 “ prædicti heredis, tenuit de eo  
 “ unum mesuagium, centum acras  
 “ terræ, et decem acras pasturæ,  
 “ cum pertinentiis, in Westoftes,  
 “ quæ sunt alia tenementa quam in  
 “ brevi prædicto continentur, per  
 “ antiquius feoffamentum per ser-  
 “ vitium militare quam tenuit  
 “ prædictam acram terræ de præ-  
 “ dicto Roberto le Sweyn. Et hoc  
 “ paratus est verificare, unde petit  
 “ judicium, &c.”

<sup>5</sup> 25,184, Oy.

<sup>6</sup> Harl., tenant.

<sup>7</sup> soul is omitted from L.

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A.D. 1344. And as to the body, said *Richemunde*, you see plainly how we suppose the tenancy to be one entire tenancy, which fact he does not deny: for, if the tenancy were different, he could have pleaded that in abatement of the writ and count; but he did not do so, and now he pleads priority of feoffment, which plea cannot be admitted if the tenancy be not confessed to be such as is supposed by the writ; and by his plea of priority he only confesses that the ancestor held of us one acre of land, so that, if we were to plead to him as to such priority, which extends only to parcel of the tenancy supposed by our writ and count, we should waive our writ, and abate it, which cannot be; therefore judgment.—*R. Thorpe*. As to the land we have answered fully in abatement of the writ; therefore we

## No. 25.

que noun.—Et quant al corps vous veiez bien coment A.D. 1344.  
 nous supposoms la tenance estre un entier, quel chose il ne dedit pas: qar si la tenance fut divers il poait<sup>1</sup> aver plede [cella al abatement du brief et count; mes ceo ne fist il pas, et ore il plede]<sup>2</sup> priorite, quel plee ne put estre resceu si la tenance ne soit conu tiel com est suppose par le brief; et par son plee<sup>3</sup> a la priorite il conust qe launcestre ne tient de nous forqe un acre de terre,<sup>4</sup> issint qe si nous pledassoms a luy a tiel priorite qe sestent forqe a parcelle de la tenance suppose par nostre brief et count, nous weyveroms nostre brief, et labateroms, qe ne put estre; par quei jugement.<sup>5</sup>—  
*R. Thorpe.* Quant a la terre nous avoms pleinement respondu al abatement du brief; donques covient

<sup>1</sup> L., poet.

<sup>2</sup> The words between brackets are omitted from 25,184.

<sup>3</sup> plee is omitted from L.

<sup>4</sup> The words de terre are from L. alone.

<sup>5</sup> The replication, which begins with a recital of a feoffment, fines, &c., continues “Et sic dicit quod prædictus Robertus de Toftes, pater prædicti heredis, tenuit de ipso Roberto le Sweyn prædicta tenementa virtute chartæ et finium prædictorum, absque hoc quod idem Robertus de Toftes tenuit de prædicto Johanne de Castone prædicta mesuagium, centum acras terræ, et decem acras pasturæ, cum pertinentiis, in Westtoftes, alia quam in narratione sua prædicta continentur per antiquius feoffamentum per servitium militare, prout prædictus Johannes de Castone superius allegavit. Et quo ad hoc quod prædictus Johannes de Castone supponit prædictum

“Robertum le Sweyn de una acra terræ de tenementis in narratione sua contentis fore seisitum, dicit quod ipse non est seisitus de eadem acra terræ, nec fuit die impetrationis brevis sui . . . .  
 “Et hoc paratus est verificare, &c. Et quo ad hoc quod prædictus Johannes allegat ipsum tenere custodiam prædictam cum quadam Katerina uxore sua, et tenuisse die impetrationis brevis, &c., dicit quod die impetrationis brevis sui . . . . prædictus Johannes de Castone fuit solus deforcians ejusdem custodiæ, absque hoc quod prædicta Katerina tunc aliquid habuit in eadem nisi ut uxor ejusdem Johannis. Et hoc paratus est verificare, unde petit judicium.”

The conclusion next following is:—

“Dies datus esteis hic in Crastino Purificationis beatæ Mariæ, in statu quo nunc, salvis partibus, &c.”

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A.D. 1344. must still answer as to the wardship of the body ; and we say that it belongs to us and not to you ; and as to your statement that our plea of priority, if it could be accepted, would necessarily refer to the whole of the tenancy, it is not so : for with regard to the parcel which we hold jointly with our wife it is not right that we should plead to this false writ, because, when you have a good writ, we shall possibly deny the tenancy.—*Gaynesford*. When the wardship of the body is demanded only by reason of a certain tenancy, and the writ is falsified with regard to the whole of the land, the wardship of the body will not be tried on this writ.—*W. Thorpe*. It is not so, for, even though joint tenancy were alleged with regard to the whole of the land, it would still be necessary to answer as to the body ; but no law compels me to answer to his statement which cannot be made consistently with my writ in the manner in which he takes it, that is to say, as to parcel ; nor can I aver the tenancy to be one, because he does not take his plea to the diversity of the tenancy, but as to the priority of feoffment of one parcel, whereas it is impossible, if the tenancy be one, as I suppose it to be, and which fact he does not deny by his plea, that this parcel can be held of us by a later feoffment unless the whole be held by a later feoffment, and we will aver that the ancestor held of us the acre and all the rest by a prior feoffment, &c., and that averment they refuse ; judgment.—*R. Thorpe*. If joint tenancy of the whole of the land were alleged, issue would never be taken on the priority of feoffment, nor consequently will it with respect to the parcel as to which joint tenancy is alleged.—



## No. 25.

il unqore respoundre a la garde du corps ; et dioms <sup>A.D. 1344.</sup> que a nous attient, et noun pas a vous ; et de ceo que vous parlez que nostre plee a la priorite, sil<sup>1</sup> serreit acceptable, covendreit referir a tut la tenance, il nest pas issint : qar a la parcelle quele nous tenoms joynt ove nostre femme nest pas resoun que nous pledoms a ceo faux brief, qar quant vous averez bon brief, par cas, nous dedirroms la tenance.—*Gayn.* Quant la garde du corps est demande seulement par cause de certeyn tenance, et le brief soit fauxe de tut la terre, la garde du corps ne serra pas trie a ceo brief.—[*W.*] *Thorpe.* Il nest pas issint, qar mesqe joyntenance de tut la terre fut allegge, unqore quant al corps il covendreit respoundre ; [mes nulle ley moy chace<sup>2</sup> de respoundre]<sup>3</sup> a son dit que ne put estre ov mon brief a la manere qil le prent, cest<sup>4</sup> savere, a la parcelle ; ne jeo ne puisse averer la tenance estre un, qar il prent pas son plee a la diversite de la tenance, mes a la<sup>5</sup> priorite dune parcelle, ou il est impossible, si la tenance soit un, come jeo la suppose, ne quele chose il par son<sup>6</sup> plee<sup>7</sup> ne dedit pas, que cel<sup>8</sup> parcelle soit tenu de nous par posteriorite si tut ne soit tenu par posteriorite,<sup>9</sup> et nous voloms averer que lacre<sup>10</sup> et tut le remenant launcestre<sup>11</sup> tient de nous par priorite, &c.,<sup>12</sup> quel averement ils refusent<sup>13</sup> ; jugement.—*R. Thorpe.* Si joyntenance de tut la terre fut allegge, jammes ne serra issue pris sur la priorite, *nec, per consequens* de la parcelle dount joyntenaunce

<sup>1</sup> L., ne, instead of a la priorite, sil.

<sup>2</sup> chace is omitted from L.

<sup>3</sup> The words between brackets are omitted from Harl.

<sup>4</sup> cest is from L. alone.

<sup>5</sup> la is from L. alone.

<sup>6</sup> son is from Harl. alone.

<sup>7</sup> L., parle, instead of par son plee.

<sup>8</sup> cel is from L. alone.

<sup>9</sup> Harl., priorite.

<sup>10</sup> L., and 22,184, la terre.

<sup>11</sup> launcestre is omitted from L.

<sup>12</sup> Harl., prest, &c.

<sup>13</sup> L., refusent.

## No. 25.

A.D. 1344. *W. Thorpe*. That cannot be, because a writ of Wardship for the wardship of the body and of the land is good, so that it is necessary to answer as to both; and although we may be at a traverse as to the land, still the answer yet remains to be given with regard to the body, just as if a writ had been brought with regard to that alone; and since you have answered as to the wardship of the body by alleging a prior feoffment of other land, and by the subtlety of your plea you are trying to include only a part of the tenancy which I suppose to be held of me, while you allege joint tenancy of the rest, which will possibly be found against you, it is not right that I should thereby lose my answer.—*Pole*. It would be extraordinary to put him to plead priority of feoffment with regard to the parcel which he holds jointly with his wife.—*W. Thorpe*. Then he refuses the averment.—*Grene* imparled, and said that, saving to himself the advantage of the exception as to the joint tenancy of the parcel with respect to which he had pleaded it, he would maintain that the ancestor held of him other land by a feoffment prior to that by which he held of the plaintiff the acre of which he supposed the plaintiff himself to be seised; and, as to the rest of the land, the ancestor did not hold it of the plaintiff by knight service; ready, &c.—*Richemunde*. As to parcel of the land he has given two averments, that is to say, joint tenancy with his wife, and also that the ancestor did not hold of us, which pleas are double, one to the writ, the other to the action.—*R. Thorpe*. We have answered fully as to the land, and we are at issue, and, notwithstanding that, we must answer as to the wardship of the body; therefore it is right that we should show

## No. 25.

est allegge.<sup>1</sup>—*W.*<sup>2</sup> *Thorpe*. Ceo ne püt estre, qar un A.D. 1344.  
 brief de Garde du<sup>3</sup> corps et la terre est bon, issint  
 qil covient respoundre al un et a lautre; et quant  
 a la terre, coment qe nous soioms a travers, unqore  
 en dreit de corps le respouns remeint a doner, come  
 si brief soulement de cel fut porte; et<sup>4</sup> quant vous  
 avez respondu a la garde du corps par priorite  
 dautre terre, et par<sup>5</sup> sotelte<sup>6</sup> du plee voletz com-  
 prendre forqe parcelle de la tenance qe jeo suppose  
 estre tenu de moy, et del remenant allegges joynten-  
 ance, qe serra par cas trove countre vous, ny est  
 pas resoun qe par taunt<sup>7</sup> jeo perdray mon respouns.  
 —*Pole*. Il serreit merveille de luy mettre a pleder  
 priorite eiaunt regarde a la parcelle qil tient joynt  
 ove sa femme.—[*W.*] *Thorpe*. Donqes il refuse  
 laverement.—*Grene* emparla, et dist qe, sauvaunt  
 lavantage a luy del excepcioun de joyntenance de la  
 parcelle dount il avoit plede, il voleit meyntener qe  
 launcestre tient de luy autre terre<sup>8</sup> par priorite qil  
 ne tient del pleintif lacre<sup>9</sup> dount il luy suppose  
 estre seisi mesme; et, quant al remenant de la  
 terre, launcestre ne tient pas del pleintif par service  
 de chivaler; prest, &c.—*Rich*. Quant a parcelle de  
 la terre il ad done deux averementz, saver, joynten-  
 ance ove sa femme, et auxint qe launcestre ne tient  
 pas de nous, quels plees sount doubles, lun al brief,  
 lautre al accion.—*R.*<sup>10</sup> *Thorpe*. Nous avoms pleyne-  
 ment respondu a la terre, et sumes a issu, et, *non*  
*obstante* cella, nous covient respoundre a la garde  
 du corps<sup>11</sup>; donqes est ceo resoun qe nous moustroms

<sup>1</sup> The words est allegge are omitted from L.

<sup>2</sup> *W.* is from L. alone.

<sup>3</sup> The words Garde du are omitted from Harl.

<sup>4</sup> et is omitted from L.

<sup>5</sup> par is omitted from L.

<sup>6</sup> L., sotulte.

<sup>7</sup> L., statut; Harl., tenant qe.

<sup>8</sup> L., et autre, instead of autre terre.

<sup>9</sup> L., lautre acre; 25,184, launcestre acre.

<sup>10</sup> *R.* is omitted from L.

<sup>11</sup> In Harl. there are inserted after corps the words qest autre accion.

## No. 25.

A.D. 1344. the reason for which we say that it belongs to us in accordance with the facts, and we have alleged priority of feoffment, as above, and you have refused that averment; judgment.—*W. Thorpe*. You see plainly how, with regard to the wardship of the body, in order to maintain our action, we have tendered the averment that the ancestor held of us the acre which he supposes to be holden of us, and all the rest, by a prior feoffment, to which they say, in order to maintain that the wardship belongs to them, that the ancestor held other land of them by a feoffment prior to that by which he held the acre of us; and as to the rest, with respect to which they at first alleged joint tenancy, they say that it is not holden of us; judgment whether they ought to be admitted to the two averments with respect to that part; and, if they will waive the joint tenancy, we shall be ready to maintain that it is holden of us.—*Grene*. The allegation of priority of feoffment came from us, as the law directs that it should do, that is to say, from the defendant, wherefore it is contrary to law to aver priority with regard to a part as to which you have not any statement from us, and of which the tenancy is admitted.—*Birton*. Suppose the defendant had nothing in the wardship of the land, still he would have to answer as to the body, so that the answer as to the land cannot in any way extend to the body, wherefore, from divers points of view he will have the two averments; but if he took the two averments, that is to say, the joint tenancy, and the traverse of the tenancy with it, entirely in relation to the wardship of the land, he would make a great mistake.—*Skipwith*. Since he has pleaded in abatement of the writ, possibly he ought not, with regard to the lands, to be admitted to anything further; but when he has, of his own accord, taken upon himself a further answer, he shall not, on

## No. 25.

nostre cause par quei ceo attient a nous solonc ceo A.D. 1344.  
 que le fait est, et avoms allegge la priorite, *ut supra*,  
 quel averement vous refusez; jugement.—[*W.*] *Thorpe*.  
 Vous veiez bien coment,<sup>1</sup> quant a la garde du corps,  
 pur meyntener nostre accion, nous avoms tendu  
 daverer que launcestre tient de nous lacre<sup>2</sup> quel il  
 suppose estre tenu<sup>3</sup> de nous<sup>4</sup> et tut le remenant,  
 par priorite de feffement, a quei ils dient pur meyn-  
 tener que la garde attient a eux, que launcestre tient  
 autre terre par priorite de eux que lacre de nous;  
 et del remenant, dount il primes alleggerent la  
 joyntenance, dient que ceo nest pas tenu de nous;  
 jugement si a les ij averementz de cele parcelle  
 doivent estre resceu; et, sils volent weyver la joynten-  
 ance, prest serroms a meyntener que cest tenu de  
 nous.—*Grene*. La priorite vynt de nous, come la ley  
 voet qil fra, saver, del defendant, par quei daverer  
 la priorite dautre parcelle que vous navez de nostre  
 livre, et dount la tenance est conue<sup>5</sup> est countre  
 ley.—*Birtone*. Jeo pose que le defendant nust rienz  
 en la garde des terres, unqore il respoudra du  
 corps, issint que le respouns a la terre<sup>6</sup> ne se put  
 estendre en nulle manere al corps, par quei a divers  
 regardez<sup>7</sup> il avera les ij averementz; [mes sil prist  
 les ij averements,]<sup>8</sup> saver,<sup>9</sup> la jointenance, et travers  
 a la tenance ovesque, tut a la garde de la terre, il  
 faudra<sup>10</sup> bien.—*Schyp*.<sup>11</sup> Quant il ad plede al abate-  
 ment du brief, quant as terres, par cas il ne dust  
 estre<sup>12</sup> resceu plus avant; mes quant il ad empris<sup>13</sup>  
 respouns<sup>14</sup> outre<sup>15</sup> de gree, il ne fra pas le pleintif par

<sup>1</sup> coment is from Harl. alone.

<sup>2</sup> lacre is omitted from L.

<sup>3</sup> tenu is omitted from L.

<sup>4</sup> L., luy.

<sup>5</sup> Harl., tenu; 25,184, come.

<sup>6</sup> terre is omitted from L.

<sup>7</sup> L., gardz.

<sup>8</sup> The words between brackets  
are omitted from L.

<sup>9</sup> Harl., sur.

<sup>10</sup> Harl., voudra.

<sup>11</sup> 25,184, *Schyp*.

<sup>12</sup> estre is omitted from Harl.

<sup>13</sup> Harl., compris.

<sup>14</sup> respouns is omitted from  
25,184.

<sup>15</sup> outre is omitted from L.

## No. 26.

A.D. 1344. that account, make the plaintiff plead outside his writ, and, if he has embarrassed himself, he has only himself to blame.—*STONORE*. Suppose he were to allege joint tenancy with respect to the whole of the land, what would happen to this writ with regard to the wardship of the body? as meaning to say that nothing would be done, but that the issue would apply to the whole. And, although you have encumbered your answer with the acre there is no stress to be laid on that.—Afterwards the averments were entered as above<sup>1</sup> by consent.

Avowry. (26.) § Avowry in respect of the beasts of Roger Fulthorpe taken in Gunnerby for the reason that the beasts were levant and couchant in Grantham, and he drove them into the fields of Gunnerby, claiming common for one vill in the other, whereas the two villis do not intercommon, and therefore the avowant, who is lord of Gunnerby in demesne and in service, took them in his several for damage feasant.—*Grene*. He has not determined by his avowry whether he avows in his several soil or in his common, for the lord may possibly have common, and, if the taking was effected in his common, he should avow as commoner.—*Moubray*. We have avowed in our several; and that will be understood to be in our own soil.—*Grene*. Then we tell you that we, and the tenants of the lands which we hold in Grantham, having freeholds in Grantham, have had common in Gunnerby appendant to our freehold in Grantham, *absque hoc* that you have any soil in Gunnerby; ready, &c.—*Moubray*. That answer is double.—*HILLARY*. We understand that he takes for his answer that you have not a freehold, and therefore cannot avow in your several there.—*Moubray*. Ready, &c., that we have.—*Grene*. Then

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<sup>1</sup> See p. 89, note 5.

## No. 26.

taunt pleder hors de son brief, et sil soit encombre <sup>A.D. 1344.</sup>  
cest a retter a luy mesme.—*Ston.* Jeo pose qil  
alleggeast<sup>1</sup> de tut la terre joyntenance, quei avendra  
a ceo brief quant a la garde du corps? *quasi diceret*  
rien serra fet, mes serra issu pur tut. Et, tut eiez  
vous encombre vostre respouns par lacre ceo<sup>2</sup> ne  
charge pas.—Puis les averementz pur assent sount  
entrez, *ut supra.*

(26.)<sup>3</sup> § Avowere des bestes Roger Fulthorpe<sup>4</sup> pris <sup>Avowere.</sup>  
en Gunwardby<sup>5</sup> par la resoun qe les bestes furent  
cochantz et levantz en Graham, et il les chacea en  
les champs de Gunwardby<sup>6</sup> en attreant la comune  
de lun ville a lautre, queles ij villes nentrecoment  
pas, pur quei il, qest seignour de G., en demene et  
en service, les prist en son several pur damage  
fesant.—*Grene.* Il nad pas determine par savowere  
le quel il avowe en son several soil ou en sa comune,  
qar le seignour put aver comune, et si en sa comune  
la prise se fist il avowereit come comuner.—*Moubray.*  
Nous avoms avowe en nostre several; et ceo serra  
entendu en nostre soil demene.—*Grene.* Donques vous  
dioms qe nous et les terres tenantz [queles nous  
tenoms en G.],<sup>7</sup> eauntes frauntenements en<sup>8</sup> G.,<sup>9</sup>  
avoms eu comune en G. appendaunt a nostre fraunc-  
tenement en Graham,<sup>10</sup> saunz ceo qe vous avez nul  
soil en G.; prest, &c.—*Moubray.* Ceo respouns est  
double.—*Hill.* Nous entendoms qil prent pur re-  
spouns qe vous navez pas frauntenement, par quei  
vous ne puez en votre several avower illoeqes.—  
*Moubray.* Prest, &c., qe cy.—*Grene.* Donques ne

<sup>1</sup> The words qil alleggeast are omitted from L.

<sup>2</sup> 25,184, jeo.

<sup>3</sup> From the three MSS. as above.

<sup>4</sup> Harl., de Welthorpe.

<sup>5</sup> L., Tuwardeby; Harl., Gunk-  
karby.

<sup>6</sup> L., T.

<sup>7</sup> The words between brackets are omitted from Harl.

<sup>8</sup> The words eauntes fraunctene-  
ments en are from 25,184 alone.

<sup>9</sup> Harl., de Graham. The word  
or letter is omitted from L.

<sup>10</sup> L., G.

## No. 27.

A.D. 1344. you do not deny that we have common as above. And we demand judgment.—*Moubray*. You have not taken that for your plea, and, if you will accept that issue, ready, &c., that you and the ter-tenants have not been seised.—And the other side said the contrary.—And so to the country.

Mesne. (27.) § John Sigeston, knight, brought a writ of Mesne against a man and his wife. Proclamation was granted by reason of their default. The wife appeared at the return of the Proclamation, and alleged that her husband was dead, and afterwards prayed to be admitted to defend her right by reason of his default.—*Seton*. Nothing is demanded against her which falls under the head of realty, seignory, or rent; nor will she, after the death of her husband, have in this case a writ of Entry such as the statute<sup>1</sup> gives in a case in which she is capable of being admitted.—*STONE*. She is in danger of losing her seignory if she be not admitted.—*R. Thorpe*. A *feme covert* cannot either render the demand, or confess the action, after she has been admitted, and, if she were admitted, it might be that she would acknowledge herself to be mesne, whereas possibly she is not mesne, and that cannot be.—*Moubray*. If her husband and she had been in Court, they would have had a plea to say that the plaintiff was not distrained through their default, and by that plea the liability to acquit of services would be confessed, and judgment would be given thereupon, and yet the wife would not be examined; for the same reason she will have such a plea after she has been admitted.—*R. Thorpe*. She is not in the case of the statute<sup>1</sup> in which a freehold is demanded against her.—*Grene*. Suppose the tenant had to pay to her £10, and she had to pay over to the superior lord only one rose, would not the whole of that rent be lost by forjudger? Certainly it would. And a wife who

<sup>1</sup> 13 Edw. I. (Westm. 2.), c. 3.



## No. 27.

dedites vous pas qe nous avoims comune, *ut supra*. A.D. 1344.  
Et demandoms jugement.—*Moubray*. Ceo navez pas pris pur plee, et si vous volez cel issu, prest, &c., qe vous et les terres tenantz navez pas este seisi.—*Et alii e contra*.—*Et sic ad patriam*.

(27.)<sup>1</sup> § John Sigestone, chivaler, porta brief de Meen.  
Meen vers un homme et sa femme. La Proclamacioun par lour default grante. La femme<sup>2</sup> vÿnt a la Proclamacioun retourne,<sup>3</sup> et alleggea la mort son baroun, et puis par sa default pria destre resceu a defendre son dreit.—*Setone*.<sup>4</sup> Il ny ad rien demande vers luy qe chiet en realte, seignurie, ne rente; ne ele apres la mort son baroun navera pas en ceo cas brief Dentre come statut doune en le cas ou ele est receivable.—*Ston*. Ele est a perdre sa seignurie si ele ne soit resceu.—*R. Thorpe*. Femme coverte ne put rendre<sup>5</sup> ne conustre<sup>6</sup> apres son<sup>7</sup> resceite, et si ele fut resceü ceo serreit qele conustreit<sup>8</sup> luy estre meen [ou par cas il nest pas mene]<sup>9</sup> qe ne put estre.—*Moubray*. Si son baroun et luy fuisent en Court, ils avereint plee a dire qe le pleintif nest pas destreint par lour default, par quel plee lacquitaunce serreit conu, et jugement sur ceo rendu, et si ne serra pas la femme examine; par mesme la resoun avera ele tiel plee apres sa<sup>10</sup> resceite.—*R. Thorpe*. Ele nest pas en cas destatut ou frauncement est demande vers luy.—*Grene*. Jeo pose qe le tenant feist a luy xli., et ele paya outre forqe une rose, ne serra tut cel<sup>11</sup> rente perdu par le forjuger? *Certum est* qoyl. Et femme vouche ove son

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> femme is omitted from L.

<sup>3</sup> retourne is from Harl. alone.

<sup>4</sup> Harl., *Nottone*.

<sup>5</sup> Harl., conustre.

<sup>6</sup> Harl., rendre.

<sup>7</sup> Harl., sa.

<sup>8</sup> L., and Harl., conustra.

<sup>9</sup> The words between brackets are from Harl. alone.

<sup>10</sup> L., la.

<sup>11</sup> L., ele.

Nos. 28, 29.

A.D. 1344. is vouched with her husband will be admitted on the default of her husband, and yet a freehold is not demanded against her.—And *Seton*, perceiving the opinion of the COURT that the woman should have been admitted, confessed that her husband was dead.—Therefore the writ abated.

*Quare impedit.*

(28.) § The King brought a *Quare impedit* against the Abbot of Langonnet in respect of the church of Somercoates, and counted, as above in Hilary Term in the 17th year.<sup>1</sup> And execution had been given, as above.—*Richemunde*. Heretofore the King brought against us a like writ in respect of the same voidance, and upon a like title, and upon that writ we had a writ to the Bishop *non obstante reclamacione Regis*; and we do not understand that the King will be answered, because the King's command, in virtue of which the Ordinary then possibly admitted our presentee, will excuse him with regard to the King on a *Quare non admisit*.—*Thorpe*. Inasmuch as that judgment was "*salvo jure Regis*," and you do not now answer as to the King's right or his title, judgment.—Therefore *Richemunde* did not dare to abide judgment, but traversed the King's title, as above.

Error.

(29.) § Error was assigned in respect of an outlawry pronounced against a certain person in a case of felony, whereas it was proved by the record that he surrendered before the Justices, and had a *Supersedeas*, in virtue of which *Supersedeas* the Exigent lost its force.—*Scor*. We are not apprised that you delivered the *Supersedeas* to the Sheriff, and if you did not deliver it, that was your own fault, and not the fault of the Court or of the Sheriff.—*Grene*. We understand that, by reason of his surrender and mainprise, the Exigent entirely lost its force, just as if the King

<sup>1</sup> Y.B., Hil., 17 Edw. III., No. 34. The King v. Hillary.



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baroun serra resceu par default son baroun, et si nest <sup>A.D. 1344.</sup> pas fraunctenement demande vers luy.—Et *Setone, videns opinionem CURLE* que la femme ust este resceu, conust<sup>1</sup> que son baroun fut mort.—Par quei le brief abatist.

(28.)<sup>2</sup> § Le Roy porta *Quare impedit* vers Labbe <sup>*Quare impedit.*</sup> de Langnet del eglise de Somercotes, et counta, *ut* <sup>[Fitz., supra *Termino Sancti Hillarii xvij.*</sup> Et execucion <sup>*Quare impedit,*</sup> done *ut supra.*—*Rich.*<sup>3</sup> Autrefoith le Roy de mesme <sup>152.]</sup> la voidaunce porta autiel brief, et sur autiel title vers nous, a quel brief nous avoms brief al Evesqe *non obstante reclamacione Regis*; et nentendoms pas que le Roy voille estre respendu, qar le maundement le Roy, par quel Lordiner adonques par cas resceut nostre presente, luy excusera vers le Roy al *Quare non admisit.*—*Thorpe.* Desicome cel jugement fut<sup>4</sup> *salvo jure Regis*, et ore a son dreit ne son title vous ne responez pas, jugement.<sup>5</sup>—Par quei *Rich.* nosa demurer, mes traversa le title le Roy, *ut supra.*<sup>6</sup>

(29.)<sup>2</sup> § Erreur assigne dune utlagerie pronuncie <sup>Erreur.<sup>7</sup></sup> en certain persone par felonie,<sup>8</sup> la ou par le recorde est prove que devant les Justices il se rendist, et avoit le *Supersedeas*, par quel *Supersedeas*<sup>9</sup> Lexigende perdist sa force.—*Scot.* Nous sumes pas apris que vous liverastes le *Supersedeas*<sup>10</sup> a Vicounte, et si vous ne liverastes pas, donques fut ceo vostre default demene, et noun pas de Court ne de Vicounte.—*Grene.* Nous entendoms que par son rendre et la meynprise que Lexigende de tut perdist sa force auxint come

<sup>1</sup> L., and 25,184, conissant.

<sup>2</sup> From the three MSS. as above.

<sup>3</sup> Harl., HILLAR. The name is omitted from L.

<sup>4</sup> fut is omitted from L.

<sup>5</sup> jugement is omitted from Harl.

<sup>6</sup> Harl., *supra habetur.*

<sup>7</sup> Harl., Erreur assigne.

<sup>8</sup> The words par felonie are omitted from Harl.

<sup>9</sup> The words par quel *Supersedeas* are omitted from L., and Harl., Harl. substituting the word et.

<sup>10</sup> L. and 25,184, Lexigende.

## No. 30.

A.D. 1344 had pardoned him by charter while the Exigent was pending, when notwithstanding that the Sheriff might have pronounced the outlawry it could be reversed, so also in this case.—Scor. A case in which the King has pardoned is not similar to this case.—*Grene*. There is another error in the record, inasmuch as the indictment purports that he was supposed to have taken his own wools out of custody *felonice*, whereas that could only be a trespass and contempt with regard to the King, and not a felony; and inasmuch as they awarded the Exigent, in so doing they erred. And also the indictment supposes the act to have been effected in a county other than that in which the indictment was taken, so that the presenting jury could not have had any knowledge of it.—Scor. Have you not heard that a man was indicted for conspiracy in the County of Lincoln on the ground that he and others conspired to cause a stranger to come to London, in the name of another person, and to bind himself in a statute merchant, and that this was so done, for which cause he was convicted by judgment, and afterwards sued a writ of Error for a similar cause to that which you touch, and could not reverse the judgment?

Voucher. (30.) § Note that the tenant vouched, and when the *Cape ad valentiam* was returned, and the summons of the vouchee testified, the tenant alleged that the vouchee was dead, and said that he was ready either to revouch or to answer.—*Richemunde*. The Court will have the notification of the death by the Sheriff's return, and, since the Summons is testified, and the vouchee now makes default, we pray seisin.—*Moubray*. He has died possibly since the Summons was effected.—*HILLARY*. We cannot [know that], but you have put your answer into the mouth of another person,

## No. 30.

si le Roi luy ust pardone par chartre pendaunt A.D. 1344. Lexigende, et *non obstante* que le Vicounte ust pronuncie Lexigende ceo serreit reversable; auxint en ceo cas.—Scot. Ceo nest pas semblable ou le Roy lad pardone a ceo cas.—*Grene*. Il y ad autre erreur el recorde, pur ceo que lenditement voet qil dust aver desarestes ses leynes demene *felonice*, que ne poet estre forçe trespas et contempte quant au Roy, et noun pas felonie; et en tant qils agarderent Lexigende en tant errerent ils. Et auxint lenditement suppose le fait estre mys en oeuvre<sup>1</sup> en autre counte que lenditement fut pris, dount ils ne poaint<sup>2</sup> aver conissaunce.—Scot. Noistes<sup>3</sup> vous<sup>4</sup> pas qomme fut endite de conspiracie el Counte de Nicole pur ceo que lui et autres conspirerent de faire un estraunge, el noun dautre<sup>5</sup> persone, vener a Loundres et soy lier en estatut marchaunt, et issint fut fait, par quei il fut convict par jugement, et puis suyst Erreur par autiel cause come vous touchez, et ne put reverser le?

(30.)<sup>6</sup> § *Nota* que le tenant voucha, et al *Cape*<sup>7</sup> *ad Voucher. valentiam* retourne, et Somons tesmoigne sur le voucher, le tenant alleggea que le vouche est mort, et prest est de revoucher, ou respoundre.<sup>8</sup>—*Rich*. La Court ceo<sup>9</sup> avera par retourn de Vicounte, et nous prioms, depuis<sup>10</sup> que la Somons tesmoigne, et le vouche<sup>11</sup> ore fait default, seisine.—*Moubray*. Il est mort par cas<sup>12</sup> puis la Somons fait.—*HILL*. Nous ne poms mes vous avez mys vostre respouns en

<sup>1</sup> L., overe.

<sup>2</sup> L., poent.

<sup>3</sup> L., Noystes.

<sup>4</sup> vous is from 25,184 alone.

<sup>5</sup> L., autre instead of noun dautre.

<sup>6</sup> From the three MSS. as above.

<sup>7</sup> L., grant *Cape*.

<sup>8</sup> Harl., leir, instead of ou respoundre.

<sup>9</sup> ceo is omitted from L.

<sup>10</sup> depuis is from L. alone; Harl., sur, instead of depuis que.

<sup>11</sup> The words le vouche are from 25,184 alone.

<sup>12</sup> The words par cas are omitted from L.

## No. 31.

A.D. 1344. who does not appear; therefore the demandant will recover his seisin, and you will recover over to the value.—*Moubray*. That is a mischief, because we cannot recover to the value against a person who is dead.—*Quere*, in case the heir of the vouchee reverses this judgment as to recovering over to the value, whether the judgment against the tenant will be thereby annulled.

Dower. (31.) § Dower. The tenant vouched the heir then in the wardship of the Earl of Warwick, who warranted, and had aid of the King on the ground that he held the wardship by lease from the King. And upon a writ of *Procedendo* he appeared and rendered

## No. 31.

autri bouche, qe ne vynt pas; par quai le demandant A.D. 1344.  
recovera sa seisine, et vous a la value.—*Moubray*.  
Cest un meschief, qar nous naveroms pas value vers  
mort persone.—*Quere*, si leir le vouche reverse ceo  
jugement de la value, si le jugement vers le tenant  
serra par taunt anienti.

(31.)<sup>1</sup> § Dowere. Le tenant voucha leir en la Dowere.  
garde le Counte de Warrewyke, qe garrauntist, et  
avoit eide du Roy par taunt qil tient la garde du  
lees le Roy.<sup>2</sup> Et par brief de *Procedendo* il vynt

<sup>1</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 463, d. It there appears that the action was brought by Joan late wife of Ralph Basset, of Drayton, against John du Lee, in respect of a third part of 100 acres of land in Stotfold. The tenant vouched Ralph son of Ralph son of Ralph Basset, of Drayton, as heir of Ralph Basset of Drayton, who was under age, and whose body and lands were in the wardship of Thomas de Bello Campo, Earl of Warwick.

<sup>2</sup> According to the roll the Earl appears, and "petit sibi ostendi per quod tenetur prædicto Johanni prædicta tenementa warrantizare." Thereupon the tenant makes profert of a charter, "sub nomine prædicti Radulphi Basset domini de Draytone, testantem quod idem Radulphus concessit et confirmavit prædicto Johanni du Lee de Draytone et Aniciæ uxori ejus, et heredibus ipsius Johannis, unum mesuagium et centum acras terræ, cum pertinentiis, in Stotfold in Comitatu Staffordiæ, et obligavit se et heredes suos ad warrantizandum &c. Et sic dicit quod prædictus

"Comes, ut custos heredis prædicti ratione warrantiæ prædicti Radulphi Basset avi prædicti Radulphi filii Radulphi filii Radulphi consanguinei et heredis prædicti Radulphi Basset Domini de Draytone, ipsum warrantizare debet, &c."

The Earl then, "nomine prædicti heredis, nihil habens per descensum hereditarium in feodo simplici, ei warrantizat, &c. Et idem Comes dicit quod Dominus Rex nunc per literas suas patentes, de gratia sua speciali, concessit ipsi Comiti custodiam corporis præfati Radulphi filii Radulphi filii Radulphi Basset de Draytone, consanguinei et heredis ejusdem Radulphi Basset, et etiam omnium terrarum et tenementorum, cum pertinentiis, quæ fuerunt prædicti Radulphi Basset, et quæ occasione [mortis?] prædicti Radulphi Basset et ratione minoris ætatis ejusdem heredis in manum Regis existunt, habendam cum reversionibus terrarum et tenementorum quæ tenentur in dotem et ad terminum vitæ de hereditate prædicta, et omnibus aliis ad custodiam illam spectantibus, usque ad

## No. 32.

A.D. 1344. as one who had nothing of the heir's inheritance by descent.—*Grene*, for the lady, prayed her dower.—**KELSHULLE**. He is vouched in the same county, and also in other counties.—*Grene*. We shall therefore have judgment against the tenant, but, if he had been vouched in the same county alone, the judgment would have been conditional.

Waste. (32.) § Note that on a writ of Waste it was pleaded that no waste had been committed. It was found by inquest taken at *Nisi prius* that a part had been wasted, and therefore judgment was given that the plaintiff should recover the place wasted, and damages. And the Sheriff returned to the writ of execution of



## No. 32.

et rendist come celuy qe rien nad del heritage leir <sup>A.D. 1344.</sup> par descende.<sup>1</sup>—*Grene*, pur la dame, pria sa dowere. KELS. Il est vouche en mesme le counte, et auxint en autres countes.—*Grene*. Pur ceo averoms jugement vers le tenant, mes, sil fut vouche soulement en mesme le counte, le jugement serreit condicionel.<sup>2</sup>

(32.)<sup>3</sup> § *Nota* qen brief de Wast plede fut nul <sup>Wast.</sup> wast fait.<sup>4</sup> Par enquest pris par *Nisi prius* trove <sup>[Fitz., Execucion, 58.]</sup> fut qe partie fut waste, par quei<sup>5</sup> fut agarde qe le pleintif recoverast le lieu waste, et damages. [Et al brief dexecucion des damages]<sup>6</sup> le Vicounte retourna

“legitimam ætatem ejusdem  
“heredis. Et sic dicit quod ipse  
“tenet custodiam illam virtute  
“commissionis prædictæ ex dimis-  
“sione domini Regis, sine quo non  
“potest respondere, &c. Et petit  
“auxilium de ipso Rege.”

Upon this there was an adjournment “et interim loquendum cum domino Rege, &c.”

<sup>1</sup> The parties appeared on the day given, and there follows on the roll an enrolment of the writ of *procedendo* (reciting the facts) which had issued on the prayer of the demandant.

Then the tenant “petit quod prædictus Comes, custos, &c., ei warantizet, &c.”

“Et prædictus Comes, tanquam  
“custos heredis prædicti, nihil  
“habens in custodia sua de hereditate ejusdem heredis quæ eidem heredi descendit per decensum hereditarium de prædicto Radulpho quondam viro, &c., in feodo simplici, ei warantizat, &c., et reddit prædictæ Johannæ prædictam dotem suam, &c.”

<sup>2</sup> The conclusion of the case on the roll is as follows:—

“Et idem Johannes dicit quod  
“prædictus Comes, custos, &c.,  
“habet in custodia sua terras et  
“tenementa de hereditate prædicti  
“heredis, in prædicto comitatu  
“Staffordiæ, quæ eidem heredi  
“descenderunt in forma prædicta,  
“&c.”

Then follows the judgment,  
“quod si prædictus Comes, custos,  
“&c., habeat in custodia sua de  
“hereditate prædicti heredis quæ  
“ei sic descendit in eodem comitatu, &c., unde eidem Johannæ  
“facere possit ad valentiam, &c.,  
“tunc prædictus Johannes teneat  
“in pace, et prædicta Johanna  
“habeat de terra prædicti heredis  
“quæ eidem heredi descendit in  
“forma prædicta in custodia, &c.,  
“ad valentiam, &c., et si quid inde  
“defuerit, &c., de terra versus  
“prædictum Johannem petita.”

Much of this judgment is written on an erasure.

<sup>3</sup> From the three MSS. as above.

<sup>4</sup> fait is omitted from Harl.

<sup>5</sup> Harl., and 25,184, et instead of par quei.

<sup>6</sup> The words between brackets are omitted from Harl.

## No. 33.

A.D. 1344. damages that he could not effect execution, because immediately after the inquest had been taken the defendant had divested himself of his land, &c.—*Grene*. We pray execution in the lands which he had on the day on which the writ was purchased.—HILLARY. Anyone can be brought to answer in lands which he had on the day on which the writ was purchased, but with regard to execution of damages only in the lands which he had on the day on which the judgment was rendered.—*Grene*. One has often seen execution in the lands, &c., which the party had on the day on which the inquest was taken, because the day of the inquest taken at *Nisi prius* has reference to the day on which the writ was purchased.—And afterwards HILLARY awarded execution in the lands which the defendant had on the day on which the inquest was taken.

Novel  
Disseisin.

(33.) § Walter Hermer and his wife, plaintiffs, and their son brought a Novel Disseisin, in which it was pleaded in bar that A., and B. his wife, as in right of B., were seised of a manor, and A. and B., by deed *in pais*, leased parcel of the manor, in respect of which parcel the plaint is made, to one A. for his life, saving the reversion to themselves and to the heirs of B. And afterwards A. the husband granted the reversion to F. and to his heirs, and A. the tenant attorned. And afterwards F. purchased the rest of the manor from the husband and his wife, and afterwards the husband and his wife by fine acknowledged the whole manor to be the right of F. as that which he had by their gift, and F. rendered back to the husband

## No. 33.

qil ne poet execucion faire, qar tantost apres len-<sup>A D. 1344.</sup>  
 queste pris le defendant se demist de sa terre, &c.  
 —*Grene*. Nous prioms execucion<sup>1</sup> en<sup>2</sup> les terres qil  
 avoit jour de brief purchace.—HILL. Homme purra  
 estre mene en respouns<sup>3</sup> en les terres qil avoit jour  
 de brief purchace, mes quant a execucion des damages  
 forge en les terres qil avoit jour du jugement<sup>4</sup>  
 rendu.—*Grene*.<sup>5</sup> Homme ad veu sovent des terres,  
 &c., qe partie avoit<sup>6</sup> jour del enquest, qar jour del<sup>7</sup>  
 enquest<sup>8</sup> pris par *Nisi prius* ad referir<sup>9</sup> au jour de  
 brief purchace.—Et puis HILL. agarda execucion en  
 les terres, &c., jour del enquest pris.

(33.)<sup>10</sup> § Wauter Hermer et sa femme, pleintifs, et Novele  
 lour fitz porterent Novele Disseisine, ou plede fut Dis-  
 en barre pur ceo qe A., et B. sa femme, come de seisine.  
 dreit B.,<sup>11</sup> furent seisiz dun maner, et A. et B., [18 Li.  
 par fait en pays, lesserent parcelle du maner, de Fitz.,  
 quel parcelle<sup>12</sup> la plainte est fait, a un<sup>13</sup> A. a sa Assise,  
 vie, salvant la reversioun a eux et a les heirs B. 212.]  
 Et<sup>14</sup> puis A. [le baroun]<sup>15</sup> graunta la reversioun a  
 F. et a ses heirs,<sup>16</sup> et A. [le tenant]<sup>15</sup> sattourna.  
 Et puis F. purchacea le remenant del manere du  
 baroun et sa femme, et puis par fyn le baroun et  
 sa femme connussoient le manere enter estre le dreit  
 F. come ceo qil avoit de lour doun, et F. rendy

<sup>1</sup> execucion is from Harl. alone.

<sup>2</sup> L., qe.

<sup>3</sup> The words en respouns are omitted from L.

<sup>4</sup> L., brief.

<sup>5</sup> *Grene* is omitted from Harl.

<sup>6</sup> The words qe partie avoit are omitted from Harl.

<sup>7</sup> Harl., *Blaik*, instead of qar jour del.

<sup>8</sup> The words qar jour del enquest are omitted from L.

<sup>9</sup> Harl., *refeffer*.

<sup>10</sup> From the three MSS. as above.

<sup>11</sup> The words come de dreit B. are from Harl. alone.

<sup>12</sup> Harl., *dount*, instead of de quel parcelle.

<sup>13</sup> un is from L. alone.

<sup>14</sup> L., and 25,184, de.

<sup>15</sup> The words "le baroun" and "le tenant" are not in any of the three MSS., but are in the *Liber Assisarum*, and seem to be required by the context.

<sup>16</sup> The words et a ses heirs are omitted from Harl.

## No. 33.

A.D. 1344. and his wife for their lives, with remainder in tail to R., who is now tenant. The husband and wife afterwards, when they had entered upon the manor, aliened to W. and the others who are now plaintiffs, upon which alienation R. entered and ousted them. And R. demanded judgment whether they ought to have an Assise. The plaintiffs demanded judgment inasmuch as by the husband's alienation the parcel in respect of which the plaint was now made was severed from the manor, and put in action with regard to the wife and her heirs, so that by the fine which was levied of the manor alone nothing could pass or be limited of a chose which was then in action and of which the parties had nothing in possession, wherefore, when the wife entered, it could have been only an entry in her previous right, and not by force of the fine, which was void with respect to that parcel, inasmuch as the parties, at the time of the levying of the fine, were not seised, and consequently the alienation was permissible. And they prayed the Assise in respect of damages.—And they were adjourned into the Bench by reason of difficulty.—*Grene*. After the alienation made by the husband, the wife would, after his death, have an action by *Cui in vita* with regard to this as parcel; therefore, when F. was seised of the parcel in reversion, and of the rest by conveyance from the husband, and thereupon a fine was levied by the husband and his wife, as was confessed, all the right of the wife was, by her acknowledgment of right to another person, extinguished, and the new estate received in virtue of the fine alone remained to her, wherefore her entry after the fine could not be any other than that which was limited by the fine; therefore the alienation was not permissible.—*R. Thorpe*. In making use of an action of a higher nature this

## No. 33.

arere al baroun et sa femme a lour vies, le re- A.D. 1344.  
meindre en taille a R.<sup>1</sup> qest ore tenant. Le baroun  
sa femme alienèrent apres, quant ils furent entres  
en la maner,<sup>2</sup> a W., &c.,<sup>3</sup> qe sount<sup>4</sup> ore pleintifs,  
sur quele alienacioun R. entra et les ousta. Et de-  
manda jugement<sup>5</sup> sils deivent Assise aver. Les  
pleintifs demanderent jugement desicome par laliena-  
cioun le baroun la parcelle dount la plainte est  
ore fait fut severe du manere, et mys en accion  
quant a la femme et ses heirs, issint qe par la fyn  
leve del manere seulement de<sup>6</sup> chose adonques en  
accion, dount les parties rien avoient<sup>7</sup> en possession,  
rien put passer, nestre taille, par quei la femme  
quant ele entra ceo ne poet estre forge un entre  
en son auncien dreit, et noun pas par force de la  
fyn, qe fut voide de celle parcelle, par taunt qe les  
parties al temps del lever ne furent pas seisis, et  
*per consequens* lalienacioun suffrable. Et prierent Assise  
pur damages.—Et ad jour en Baunk pur difficulte.  
—*Grene*. Apres lalienacioun le baroun, la<sup>8</sup> femme,  
apres sa mort, par *Cui in vita* avera accion a ceo  
come a parcelle; donques quant F. fut seisi en re-  
versioun de la parcelle, et del remenant par demise  
le baroun, et sur ceo fyn fut leve par le baroun  
et sa femme,<sup>9</sup> qe fut confes,<sup>10</sup> tut le dreit la femme  
par sa conissaunce de dreit a autre persone fut  
esteint, et le novel estat resceu par la fyn soule-  
ment la demura, par quei son entre apres la fyn<sup>11</sup>  
ne put estre autre qe ne fut taille par la fyn;  
*ergo* lalienacioun nient suffrable.—*R. Thorpe*. Quant  
a user accion de plus haut cele parcelle serreit

<sup>1</sup> 25,184, W.<sup>2</sup> L., and 25,184, reversioun.<sup>3</sup> &c. is omitted from L.<sup>4</sup> Harl., qest, instead of qe sount.<sup>5</sup> jugement is omitted from L.<sup>6</sup> de is from L. alone.<sup>7</sup> L., and 25,184, yavoient.<sup>8</sup> 25,184, et la.<sup>9</sup> The words et sa femme are omitted from L.<sup>10</sup> Harl., enfesse; 25,184, confesse.<sup>11</sup> Harl., femme.

## No. 34.

A.D. 1344. parcel would be excepted in the demand for the manor ; but with regard to F. who was enfeoffed of the rest by the description of a manor, this was not parcel, and the fine does not extend beyond that which was a manor in his hand.—*Grene*. Suppose the fine had not been levied, and a writ of *Cui in vita* had been brought against F., after he had purchased the reversion of the parcel, and had purchased the rest, by the description of a manor, through the husband's alienation, would she not have recovered the whole manor, as well that which was in reversion as that which was in demesne, because it was all the time parcel with regard to the wife? And if she had released all her right in the manor to F., would not her right in the parcel, as well as in the rest, have been absolutely extinguished?—*Thorpe*. The case is different with regard to a release, by which her right would be extinguished as well in action as in possession, from that of a fine *sur render*, by which nothing passes except that which is in possession ; and by an acknowledgment of right as that which the conusee has of the conusor's gift nothing is divested except the manor in accordance with the terms in which it was given, and that was excepting the parcel.—And they were adjourned.

Formedon  
in the  
reverter.

(34.)<sup>1</sup> § Formedon in the reverter against the Prior

<sup>1</sup> This appears to be another report of Mich., 17 Edw. III., No. 24.

## No. 34.

forpris en la demande del manere; mes quant a F. A.D. 1344.  
 que fut feffe del remenant par noun dun manere,<sup>1</sup>  
 ceo ne fut pas parcelle,<sup>2</sup> et a plus que ne fut manere  
 en sa meyn ne sestent la fyn.<sup>3</sup>—*Grene*. Jeo pose  
 que fyn nust pas este leve, et brief de *Cui in vita*  
 ust este porte vers F., apres ceo qil avoit purchace  
 la reversioun de la parcelle, et le remenant par  
 noun du manere par lalienacioun du baroun, neust  
 ele<sup>4</sup> recoveri tut le manere,<sup>1</sup> si bien ceo que fut en  
 reversioun come ceo que fut en demene,<sup>5</sup> qar tut  
 temps fut ceo parcelle [quant a la femme? Et si  
 ele ust relese a F.<sup>6</sup> tut son dreit en le<sup>7</sup> manere,  
 neust son dreit nettement en la parcelle],<sup>8</sup> si bien  
 come en<sup>9</sup> le<sup>10</sup> remenant, este esteint?—*Thorpe*. Il  
 est autre de relees, par quel son<sup>11</sup> dreit serreit  
 esteint si bien en accion come en possession, que de  
 fyn sur rendre, par quel rien ne passe forqe ceo  
 qest en possession; et par conissance de dreit come  
 ceo qil ad de son doun rien est devestu forqe le  
 manere solonc ceo qil fut done, et ceo fut forpris  
 la parcelle.—*Et adjornantur*.<sup>12</sup>

(34.)<sup>13</sup> § *Reverti* vers le Priour de Bermondesey *Reverti*.

<sup>1</sup> Harl., manoir.

<sup>2</sup> L., and 25,184, pas cele, instead of pas parcelle.

<sup>3</sup> The words ne sestent la fyn are omitted from L.

<sup>4</sup> L., il.

<sup>5</sup> 25,184, demande.

<sup>6</sup> The words a F. are omitted from 25,184.

<sup>7</sup> Harl., del, instead of en le.

<sup>8</sup> The words between brackets are omitted from L.

<sup>9</sup> en is omitted from L.

<sup>10</sup> 25,184, el, instead of en le.

<sup>11</sup> son is omitted from Harl.

<sup>12</sup> Harl., ad jour. In the old editions, as well as in Fitzherbert's *Abridgment*, and in the *Liber*

*Assisarum*, there are added the words "Et loppinion de tote la Court de claro encoutre les pleintifs," but they do not appear in any of the three MSS.

<sup>13</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 301. It there appears that the action was brought by Maurice Turgys against John Prior of St. Saviour of Bermondsey in respect of one messuage and 20 acres of land, and against William de Cusance, clerk, in respect of one messuage and 20 acres of land, all in Camerwelle (Camberwell) "quæ Thomas de

## No. 34.

A.D. 1344. of Bermondsey on a gift made to a man and his sister and the heirs of their bodies, supposing that the land ought to revert "*eo quod uterque*" died without issue.—*W. Thorpe*. Judgment of the writ, because if the gift was such as is supposed, according to the opinion of some persons, it would be only a gift for term of life, and the rest of the words, which speak of an estate tail, would be void, and could not have any effect, and for that purpose the writ is bad; on the other hand, if it were to be adjudged that they could have a fee tail, then the whole would go by the *jus accrescendi* to the one who might survive, so that the writ should suppose the land to be revertible on the ground that the survivor died without issue, but this writ which supposes that the issue of both could come into the inheritance is false.—*Robert Thorpe, ad idem*. By the writ the gift is supposed to have been made to a man and a woman, who, according to common intendment can have an heir, and issue, between them, wherefore the writ which supposes a several inheritance between them is false.—*HILLARY*. The brother and sister could not have an heir between them, unless it were by dispensation from the Pope.—*R. Thorpe*. In that case he would have a writ supposing the gift to have been made to a man and a woman, without the word "sister," because a specialty need not be shown, and then the writ would be as if the gift had been to a man and his wife, without the word "*uterque*."—*STONORE*. When land is given to two males, or two females, and the heirs of their bodies, each of them



## No. 34.

dun doun fait a un homme et sa soer et les heirs A.D. 1344.  
 de lour corps, supposaut la terre revertir *eo quod*  
*uterque* murust saunz issue.—[*W.*] *Thorpe*. Jugement  
 du brief, qar, si le doun fut tiel come est suppose,  
 al entent dasquns, ceo ne serreit forqe doun a  
 terme de vie, et le remenant des paroles voides, qe  
 parlent de taille, et ne pount prendre effecte,<sup>1</sup> et a  
 cel purpos le brief malveys; ou, si homme ajuggeast  
 qils eussent fee taille, donques par voie dacrestre,  
 lentier a cely qe survivereit, issint qe, par taunt<sup>2</sup>  
 qe cely qe survivereit deviaist saunz issu, le brief  
 supposereit la terre revertible, mes cesty brief qe  
 suppose qe lissue de lun et lautre purreit estre  
 enherite est faux.—*Robert Thorpe, ad idem*. Par le  
 brief est suppose le doun estre fait a un homme  
 et une femme, qe de comune entent pount aver un  
 heir et issue entre eux, par quei le brief qe sup-  
 pose several enheritance<sup>3</sup> entre eux est faux.—*HILL*.  
 Le frere et la soer ne pount aver heir entre eux,  
 sil ne fut par dispensacioun del Apostoil.<sup>4</sup>—*R. Thorpe*.  
 Il avereit brief en ceo cas supposaut le doun estre  
 fait a un homme et a une femme, saunz cele parole  
 soer, qar<sup>5</sup> especialte ne covient pas estre moustre,  
 et donques serreit le brief auxi come il fut un homme  
 et sa femme saunz cele parole *uterque*.—*STON*. Quant  
 terre est done<sup>6</sup> a ij madles, ou ij<sup>7</sup> femeles, et les  
 heirs de lour corps, ils ount fee taille lun et lautre,

“ Blakeneye, frater prædicti Mau-  
 “ ricii, cujus heres ipse est, dedit  
 “ Stephano filio prædicti Thomæ  
 “ et Johannæ sorori ejusdem Ste-  
 “ phani, et heredibus de corporibus  
 “ eorundem Stephani et Johannæ  
 “ exeuntibus, et quæ post mortem  
 “ prædictorum Stephani et Jo-  
 “ hannæ ad præfatum Mauricium  
 “ reverti debent per formam dona-  
 “ tionis prædictæ, eo quod uterque  
 “ prædictorum Stephani et Jo-

“ hannæ obiit sine herede de  
 “ corpore suo exeunte, &c.”

<sup>1</sup> Harl., estat.

<sup>2</sup> L., statut.

<sup>3</sup> enheritance is omitted from L.

<sup>4</sup> The words del Apostoil are  
 omitted from L.

<sup>5</sup> Harl., quant.

<sup>6</sup> The words quant terre est done  
 are omitted from L.

<sup>7</sup> ij is omitted from L.

## No. 35.

A.D. 1344. has a fee tail, so that the one who survives will have the entirety, and his issue alone will have the inheritance, and therefore in this case he could not have any other writ but this.—HILLARY. Consider whether you will say something else.—*Seton*. By the first words of the writ it is supposed that they had a fee tail in common, and afterwards, at the end, when the words are "*eo quod uterque obiit*," &c., it supposes several fees tail and several right.—And this exception was not allowed.—And WILLOUGHBY and HILLARY adjudged the writ to be good.—And *Seton* demanded view, and had it.

Account. (35.) § Account in respect of 40 marks. The defendant alleged that by a collateral indenture the plaintiff granted that, if he paid 16 marks on a certain day, then, &c., and he said that the plaintiff accepted in part payment certain acres of corn, and that he was always ready to pay the rest on such days as the plaintiff would have made acquittance, and still is ready; and he produced the money.—*Blaykeston*. He does not produce any specialty testifying this acceptance on our part, nor does he allege payment of the money, as the indenture purports, wherefore the law does not put us to answer.—*Moubray*. Then is it the fact that you accepted the corn in lieu of payment, &c.?—*Blaykeston*. We do not admit this acceptance, &c., but we will aver that you were not always ready to pay the money on the day, and did not tender it; ready, &c.—HILLARY. Will you not now accept the

## No. 35.

issint qe celuy qe survyst avera lentier, et les issues A.D. 1344. de luy soulement enherites, par quei autre qe cesty brief navera il poynt en le cas.—HILL. Avisez vous a dire autre chose.—*Setone*. Par les primers paroles del brief est suppose qil avoient fee taille en comune, et puis par la fyn, quant il dist *eo quod uterque obiit*, &c., il suppose severals tailles et several dreit.—*Et non allocatur*.—Et WILBY et HILL. agarderent le brief bon.—Et *Setone* demanda la vewe; *et habuit*.<sup>1</sup>

(35.)<sup>2</sup> § Acompte de xl marcz. Le defendant alleg- Acompte. gea qe par endenture de cost le pleintif graunta qe sil paiast xvj marcz a certain jour qadonqes, &c., et dist qe le pleintif en partie de paiement resceut certain acres des blez, et le remenant il fut tut temps<sup>3</sup> prest daver paye a tiels jours<sup>4</sup> qil voleit aver fait acquitaunce, et unqore est<sup>5</sup>; et mist avant l'argent.—*Blaik*. Il ne moustre pas especialte tesmoignaunt cel<sup>6</sup> assent<sup>7</sup> de nous, ne il n'allegge pas paiement d'argent com l'indenture purporte, par quei ley ne nous mette pas a respoudre.—*Moubray*. Donqes est il issint qe vous resceustes les blez en lieu de paiement, &c?—*Blaik*. Nous ne conussoms pas cel resceite, &c., mes nous voloms averer qe vous ne fustes pas prest al jour del paier, nel tendistes pas; prest, &c.—HILL. Ne volez aver l'argent

<sup>1</sup> According to the roll, "Prior "petit inde visum. Habeat." On a subsequent day given the Prior pleaded "quod prædictus Mauricius nihil juris inde versus eum clamare potest, dicit enim quod prædictus Thomas de Blakeneye dedit tenementa illa in feodo simplici, et non in feodo talliato sicut prædictus Mauricius per breve suum supponit." Issue was joined upon this and the *Venire* awarded.

William de Cusance vouched

the Prior to warrant in respect of the tenements demanded against him.

After some delays, caused by certain writs from the King to the Justices, there was an award of the *Venire de novo*, with which the entry on the roll ends.

<sup>2</sup> From the three MSS. as above.

<sup>3</sup> temps is from Harl. alone.

<sup>4</sup> jours is from Harl. alone.

<sup>5</sup> est is omitted from L.

<sup>6</sup> Harl., del.

<sup>7</sup> Harl., argent.

## Nos. 36, 37.

A.D. 1344. money which is tendered?—*Blaykeston*. We will aver as before.—And the other side said the contrary.—*Quere* how will the plaintiff obtain the money if the averment passes against him.—And *quere* why he could not have abode judgment on the ground that the defendant did not allege payment, nor a simple tender, but only a tender on condition that the plaintiff would make acquittance, &c., for in this case there is no need to have an acquittance, because payment and tender are averable in this case.

Note. (36.) § Note that in Dower the warrant, after he had taken a *Prece partium*, rendered her dower to the demandant, and notwithstanding that he came on that day, and did not take any delay, except with the demandant's consent, he was amerced.—*Quere*.

Novel  
Disseisin (37.) § Novel Disseisin for the wife of John Cherdestoke. The tenant, by bailiff, pleaded to the Assise. It was found by verdict that the father of the person who is tenant leased to the husband of the woman who is plaintiff a part of the land in respect of which the plaint is made, for term of the husband's life, and that before their marriage, at a certain rent, and, after the death of the lessor, the lessor's wife, being tenant in dower of the rest of the land, leased the same to the plaintiff's husband and to the plaintiff, for term of the life of the woman who was tenant in dower, at a certain rent, &c. And afterwards the person who now answers as tenant, as son and heir of the first lessor, granted the rent issuing from the tenements put in view, which were to revert to him after the death of his mother, tenant in dower, to be taken by the hands of the woman who is plaintiff and her husband as tenants for their lives, to abide with the husband and his

## Nos. 36, 37.

[a ore qest tendu?—*Blaik*. Nous voloms averer *ut* <sup>A.D. 1344</sup>  
*prius*.—*Et alii e contra*.—*Quere* coment il avendra  
al argent]<sup>1</sup> si laverement passe countre luy.—*Et*  
*quere* pur quei il ne poait aver demure de ceo qil  
nallegea pas paiement, ne simple tendre forqe<sup>2</sup> sur  
condicion sil volust<sup>3</sup> aver fait acquitaunce, &c., qar<sup>4</sup>  
en ceo cas il ne bosoigne pas aver acquitaunce, qar  
paiement et tendre sount averables en le cas.

(36.)<sup>5</sup> § *Nota* qen Dowere le garraunt, apres ceo *Nota*.  
qil avoit pris *Prece partium*, rendist a la demandante  
son dowere, et *non obstante* qil vint a cel jour, et  
ne prist nulle delaye, forqe del assent la demandante,  
il fut amercie.—*Quere*.

(37.)<sup>5</sup> § *Novele Disseisine* pur la femme Johan <sup>Novele</sup>  
Cherdestoke. Le tenant, par baillif, pleda al Assise. <sup>Dis-</sup>  
Trove fut par verdict qe le pere<sup>6</sup> cely qest tenant <sup>seisine.</sup>  
lessa al baroun la femme qest pleintif parcelle de <sup>[18 Li.</sup>  
la terre dount la plainte est fait, a terme de la vie <sup>Ass., 3;</sup>  
le baroun, et ceo devant les esposailles, rendant <sup>Fitz.,</sup>  
certein rente, et, apres la mort le lessour, la femme <sup>*Confirma-*</sup>  
le lessour, tenant en dowere del remenant, lessa <sup>*cion*, 7;</sup>  
mesme le remenant al baroun le pleintif et a luy, <sup>*Reless*,</sup>  
a terme de la vie la femme tenant en dowere, <sup>30;</sup>  
rendant certein rente, &c. Et puis cely qe re- <sup>*Verdit*,</sup>  
spound come tenant a ore, come fitz et heir le <sup>24.]</sup>  
primer lessour, granta la rente issaunt des tenementz  
mys en vewe, qe a luy duissent<sup>7</sup> revertir apres la  
mort sa miere, tenant en dowere, a prendre par les  
meyns<sup>8</sup> la femme qest pleintif et soun baroun<sup>9</sup> come  
tenantz a lour vies, [a demurer al baroun et sa

<sup>1</sup> The words between brackets  
are omitted from L.

<sup>2</sup> Harl., mes.

<sup>3</sup> Harl., ust volut.

<sup>4</sup> Harl., et.

<sup>5</sup> From the three MSS. as above.

<sup>6</sup> L., pyre.

<sup>7</sup> L., deussent; Harl., dust.

<sup>8</sup> MSS., meyns de baroun.

<sup>9</sup> The words et soun baroun are  
from Harl. alone.

## No. 37.

A.D. 1344. wife, who is plaintiff, for their lives, and bound himself to warrant the same rent, together with the same tenements, for their lives, and that by a deed of which *profert* was made by the plaintiff in evidence; and after the death of the woman who was tenant in dower, and the plaintiff's husband, the person who is plaintiff was seised. And upon that verdict they were adjourned, by reason of difficulty, into the Bench.—*Grene*. The point of difficulty is no other than whether a confirmation made to the wife of that which is the freehold of the husband alone can give a freehold to the wife; and that cannot be.—*HILLARY*. If that be so, the difficulty is very small. As meaning to say that the wife would not have any estate by any such confirmation.—*R. Thorpe*. See here the deed which was put in evidence, and we pray that you look at it, and give judgment in accordance with the effect of the deed which was put in evidence and found by verdict.—*HILLARY*. Rest assured that we have nothing to do with the deed which you produce, unless it was entered on the record, because we must give judgment in accordance only with the record which is sent to us, and we cannot know whether this be the same deed or another; therefore we have no regard to your deed; but if the deed had been entered on the record, it would be otherwise.—*Blaykeston*. You have by the record whose deed it was of which *profert* was made, by which deed the person who is tenant bound himself to warrant the same tenements to the person who is plaintiff for her life. That is sufficient, and, even though the grant of the rent and warranty of it be void, the warranty took effect as to the land.—*HILLARY*. As to a part the wife had nothing in the land except as wife, and as to the rest it is not yet found that she was seised at the time of the execution of the deed.—*R. Thorpe*. The deed which is produced purports, if

## No. 37.

femme, qest pleintif a lour vies],<sup>1</sup> et obligea luy a A.D. 1344.  
 garrauntir mesme la rente, ensemblement ove mesmes  
 les tenementz, a lour vies, et ceo par un fait quel  
 fut mys avant par la pleintif en evidence; et apres  
 la mort la femme tenant en dowere et son baroun  
 celuy qest pleintif fut seisi. Et sur ceo verdit furent  
 ajournez, pur difficulte, en Baunk.—*Grene*. Le point  
 de difficulte nest autre mes si confermement fait a  
 la femme de ceo qest soul le fraunc tenement le  
 baroun purra doner fraunc tenement a la femme;  
 et ceo ne put estre.—*HILL*. Sil soit issint, la diffi-  
 culte est molt petit. *Quasi diceret* la femme navera<sup>2</sup>  
 nul estat par nul tiel confermement.—*R. Thorpe*.  
 Veiez cy le fait qe fut mys en evidence, et prioms  
 qe vous le veiez, et ajugges solonc la force<sup>3</sup> del fait  
 qe fut mys en evidence et trove par verdit.—*HILL*.  
 Soiez certain qe nous navoms quei faire del fait qe  
 vous mettez<sup>4</sup> avant, sil ne fut entre en<sup>5</sup> le recorde,  
 qar il nous covient jugger solonc<sup>6</sup> le recorde soule-  
 ment qest mande a nous, et nous ne<sup>7</sup> poms saver  
 si ceo soit mesme le fait ou autre; par quei nous  
 navoms nul regarde a vostre fait; mes sil fut entre  
 en le recorde autre serreit.—*Blaik*. Vous avez par  
 le recorde qi fait fut mys avant, par quel celuy qest  
 tenant soy obligea a garrauntir mesmes les tene-  
 mentz a cele qest pleintif pur sa vie. Ceo suffist,  
 et, tut soit le graunt de la rente et garrauntie de  
 cel voide, quant a la terre la garrauntie prist effecte.  
*HILL*. Quant a parcelle la femme navoit rien, forqe  
 come femme, en la terre, et en le remenant nest  
 pas trove unqore qele fut seisi a temps de la confec-  
 cion.—*R.*<sup>8</sup> *Thorpe*. Le fait qest mys avant, si vous le<sup>9</sup>

<sup>1</sup> The words between brackets are omitted from L.

<sup>2</sup> L., nad.

<sup>3</sup> L., forqe, instead of la force.

<sup>4</sup> L., poms mettre, instead of vous mettez.

<sup>5</sup> en is omitted from L.

<sup>6</sup> Harl., sur.

<sup>7</sup> ne is omitted from L.

<sup>8</sup> R. is from Harl. alone.

<sup>9</sup> le is omitted from L.

## No. 37.

A.D. 1344. you will look at it, that the party himself, reciting that they held by lease from his father, released, and he will never be admitted in opposition to those words, to avoid the deed by way of a plea of non-seisin.—*HILLARY*. What you say is contrary to law. Even though the seisin of the person to whom I release be supposed by my release, I shall be able to say that he was not seised.—*R. Thorpe* denied this.—*Grene*. A party will never take any advantage from this deed which was not pleaded, and particularly with regard to warranty which falls under specialty, even though it was found by verdict.—*R. Thorpe*. Then, according to your statement, when the party who is plaintiff has a right to recover by virtue of such a deed, it would be at the pleasure of the tenant to oust him from the inheritance, because the plaintiff cannot plead such a special deed of warranty, nor a deed of release made to him, except at the pleasure of the tenant, and therefore it is not right that he should lose the advantage by the tenant's fault; but he will be aided by producing the deed in evidence when it has been affirmed by verdict just as much as if it had been pleaded.—*Grene*. No; he will rather have Attaint, if the Assise pass against him, than be aided by such a special deed which has not been pleaded, and which never falls within the cognisance of the Assise: for if I be a termor in the County of Northampton of land held by your lease for a term of years, and you execute a release to me in London, that gives me a freehold, and I shall be aided by way of plea on such a deed; but if it were found by Assise taken in the County of Northampton, in which the land is, that would be of no avail.—*R. Thorpe*. Certainly it would avail: for the date or place at which the deed was executed will not prejudice the matter where the reverse could not be proved; and, according to your statement, one will never have an Assise in respect of a rent charge



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voudres veer, voet qe la partie mesme, reherceant qils <sup>A.D. 1344.</sup> tyndrent<sup>1</sup> du lees soun pere, relessa,<sup>2</sup> countre quels paroles par voie du plee il serra jammes resceu de voider le fait par noun seisine.—HILL. Vous parles countre ley. Tut soit suppose par moun relees la seisine celuy a qi jeo relesse, jeo dirroy<sup>3</sup> qil ne fut pas seisi.—*R. Thorpe dedixit.*—*Grene.* Par ceo fait qe ne fut pas plede, et nomement de garrauntie qe chiet en especialte, tut fut il trove par verdit, partie ne prendra jammes avantage.—*R. Thorpe.* Douqes, a vostre dit, quant partie pleintif ad dreit a recoverir par force de cel<sup>4</sup> fait, il serreit a la volunte le tenant de luy desheriter, qar pleintif ne put pleder tiel fait especial de garrauntie, ne de<sup>5</sup> relees fait a luy, forqe a la volunte<sup>6</sup> le tenant, et pur ceo nest pas resoun qe par default de tenant il perde lavantage; mes par mettre le<sup>7</sup> avant en evidence quant il est afferme par verdit il serra eyde si avant<sup>8</sup> come sil fut plede.—*Grene.* Nanil; il avera pus tost Atteinte, si Assise passe countre luy, qe destre eyde sur tiel fait especial nient plede, quel ne chiet jammes en conissaunce dassise: qar si jeo soy termer el Counte de Northamtone de terre de vostre lees a terme daunz, et vous moy facez relees en Loundres, ceo moy doune<sup>9</sup> fraunc tenement, et<sup>10</sup> par voie de plee jeo serroy<sup>11</sup> eide sur tiel fait; mes sil fut trove par Assise pris el Counte de Northamtone, ou la terre est, il vaudra<sup>12</sup> pas.—*R. Thorpe.* Certes si freit: qar la date ou le fait se fit ne grevera pas ou le revers ne purreit estre prove; et a vostre dit de rente charge par especialte

<sup>1</sup> L., tendreint.

<sup>2</sup> Harl., lessa.

<sup>3</sup> L., dirra.

<sup>4</sup> L., and 25, 184, cel.

<sup>5</sup> de is from L. alone.

<sup>6</sup> L., volente.

<sup>7</sup> Harl., le fet.

<sup>8</sup> The words si avant are omitted from L.

<sup>9</sup> L., durra.

<sup>10</sup> et is from L. alone.

<sup>11</sup> L., serra.

<sup>12</sup> L., vendra.

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A.D. 1344. granted by specialty, because, through the tenant's default, no enquiry will be made, when *profert* is made of the specialty, whether the plaintiff was seised by such title.—*Blaykeston*. We pray seisin, at any rate, of the part with respect to which it is found that the lease was made to the wife and her husband.—*WILLOUGHBY*. As to that part which the woman who was tenant in dower leased to the plaintiff and her husband for the life of the tenant in dower, and as to which the heir, in whom the right reposed, confirmed their estate for their lives by release, it is clear that, as to that, the plaintiff will recover. And as to the statement that such a confirmation does not fall within the cognisance of the Assise, it is not so when the confirmation gives an estate, and if the Assise take upon themselves to give such a verdict, although the deed was not pleaded at first, the party will have the advantage. Therefore as to that part let her recover her seisin, and damages assessed as to that part, and also damages for the time during which the writ was pending, and let the defendant who effected the disseisin in opposition to his own deed go to prison. And as to the other part, as to which it is found that the plaintiff, at the time of the confirmation, had it only as wife of her husband, in whose possession neither release nor confirmation could be of any avail, let her take nothing by the Assise.

Dower. (38.) § Thomas de Verdoun vouched on a writ of Dower which Hugh le Despenser and his wife brought against him. And whereas the demand was for a third

## No. 38.

homme navera pas Assise, qar, par default del tenant <sup>A.D. 1344.</sup>  
 homme nenquerra pas, quant lespecialte est<sup>1</sup> mys  
 avant, si le pleintif fut seisi par tiel tittle.—*Blayk.*  
 Nous prioms seisine de la parcelle au meyns dount  
 il est trove qe le lees fut fait a la femme et son  
 baroun.—*WILBY.* Quant a cele parcelle qe la femme  
 tenant en dowere lessa al pleintif et son baroun a  
 la vie la tenant en dowere, et puis par relees leir<sup>2</sup>  
 en qi le dreit reposa, lour estat a lour vies fut  
 conferme, de ceo est il clere qe la pleintif recovers.  
 Et a ceo qest dit qe tiel<sup>3</sup> confermement chiet pas  
 en conissaunce dassise, il nest pas issint quant ceo  
 doune estat, et sils enpreignent<sup>4</sup> sur eux a dire<sup>5</sup> tiel  
 verdit, tut ne soit ceo primes<sup>6</sup> plede, partie avera  
 avantage. Par quei quant a cel parcelle recovers sa  
 seisine, et damages taxes de la parcelle, et les  
 damages auxint pendaunt le brief, et le defendant,  
 qe fist<sup>7</sup> la disseisine countre soun fait, a la prisone.  
 Et quant al autre parcelle dount il est trove qe la  
 pleintif, a temps del confermement, navoit forqe  
 come femme son baroun, en qi possessioun relees  
 ne confermement ne purra valer,<sup>8</sup> preigne rien par  
 Lassise.

(38.)<sup>9</sup> § Thomas de Verdoun<sup>10</sup> vouche al brief de <sup>Dowere.</sup>  
 Dowere qe Hughe le Despenser et sa femme porte-  
 rent vers luy. Et la ou la demande fut de la terce

<sup>1</sup> est is omitted from L.

<sup>2</sup> 25,184, lyer.

<sup>3</sup> L., cel.

<sup>4</sup> L., enpreyngnet; Harl., con-  
preignent.

<sup>5</sup> The words a dire are omitted  
from L.

<sup>6</sup> primes is omitted from Harl.

<sup>7</sup> fist is from L. alone.

<sup>8</sup> L., value.

<sup>9</sup> From the three MSS. as above,  
but corrected by the record, *Placita*

*de Banco*, Mich., 18 Edw. III.,  
R<sup>o</sup> 173. It there appears that the  
action was brought by Hugh le  
Despenser and Elizabeth his wife  
against Thomas de Verdoun,  
knight, in respect of a third part of  
the manor of Little Stanbrigge  
(Stanbridge, Essex) as Elizabeth's  
dower of the endowment of Giles de  
Badlesmere, her previous husband.

<sup>10</sup> L., Werdoun; 25,184, Werdone.

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A.D. 1344. part of the manor of M.,<sup>1</sup> Thomas alleged that he held the entire manor, except the advowson and knights' fees, for term of his life, by lease from Giles de Badlesmere, whose heirs he had vouched, and he vouched to warrant "*de prædicta tertia parte.*" And now the vouchees appeared, and *profert* was made of the deed of their ancestor to bind them; and it supposed that the lease was of the entire manor, except the advowson and the knights' fees.—*R. Thorpe*, for the vouchees, demanded judgment of the voucher, because it was proved by the record that the voucher was in respect of the entire demand without any exception, and now it was sought to maintain the voucher by a deed of which *profert* was made, and which related only to a part of the demand, because in the deed the advowson and knights' fees were excepted.—*Grene*. It cannot in any way be understood, since I declared my tenancy, and showed my tenancy to be of the manor, except a certain exception, that I vouch in any other manner than that in which I have taken upon myself the tenancy; therefore the voucher relates only to that of which I showed myself to be tenant, and in that way the process has been continued against you, always making mention of the exception;

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<sup>1</sup> For the name of the manor see p. 125, note 9.

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partie du maner de M., Thomas alleggea qil tient A.D. 1344.  
 le maner entier du lees Giles de Badelesmere,<sup>1</sup>  
 qi heirs il ad vouche, a terme de sa vie, salves  
 lavowesoun et fees de chivaler, *et de prædicta tertia*  
*parte vocavit ad warantum.*<sup>2</sup> Et ore<sup>3</sup> les vouches  
 vindrent,<sup>4</sup> et le fait lour auncestre fut mys avant de  
 les lier, qe supposa le lees de tut le maner sauvez  
 lavowesoun et fees de chivaler.<sup>5</sup>—*R. Thorpe*, pur les  
 vouches, demanda jugement del voucher, qar par le  
 recorde est prove le voucher del entier de la de-  
 mande saunz nulle forpris, et ore est il de meyn-  
 tener le voucher par fait quel il met avant forge de  
 parcelle de la demande, qar en le fait avowesoun<sup>6</sup>  
 et fees sont forpris.—*Grene*. Il put nient estre en-  
 tendu, quant jeo desclarra ma tenaunce, et moustra  
 ma tenance estre del maner, forpris certain forpris,  
 qe jeo vouche en autre manere qe jeo navoy<sup>7</sup> em-  
 pris la tenaunce; par quei le voucher nest forge de  
 ceo dount jeo moustray moy estre tenant, et par  
 cel voie est le proces continue vers vous touz jours  
 fesaunt mencion de la forprise; par quei jeo prie

<sup>1</sup> L., Breeklesmyllne.

<sup>2</sup> Harl., *warantum*. According to the roll, "Thomas . . . .  
 " alias dixit quod ipse tenet mane-  
 " rium prædictum, cum pertinen-  
 " tiis, exceptis advocacione ecclesiæ  
 " ejusdem manerii, et feodis  
 " militum, per nomen Thomæ de  
 " Verdoun, militis, ad terminum  
 " vitæ suæ, ex dimissione Egidii de  
 " Badlesmere, militis. Et in forma  
 " illa vocat inde ad warantum  
 " Willelmum de Bohun Comitem  
 " Northamptoniæ et Elizabeth  
 " uxorem ejus, sororem et unam  
 " heredum prædicti Egidii, Jo-  
 " hannem de Veer Comitem  
 " Oxoniæ et Matilldem uxorem  
 " ejus, sororem et alteram heredum  
 " prædicti Egidii, Johannem Tybe-

" tot et Margaretam uxorem ejus,  
 " sororem et alteram heredum  
 " prædicti Egidii, et Margeriam  
 " quæ fuit uxor Willelmi de Roos  
 " de Hamelak, sororem et alteram  
 " heredum prædicti Egidii, qui  
 " modo veniunt per summoni-  
 " tionem eis inde factam."

<sup>3</sup> ore is from Harl. alone.

<sup>4</sup> According to the roll, "petunt  
 " eis ostendi per quod ei waranti-  
 " zare, debent, &c."

<sup>5</sup> According to the roll, Thomas de Verdon made *profert* of a *scriptum* to the effect stated above in his voucher, "et petit quod ei  
 " warantizent, &c."

<sup>6</sup> L., avoesons.

<sup>7</sup> L., and 25,184, naveray.

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A.D. 1344. therefore I pray the warranty.—*R. Thorpe*. When you made exception of certain fees, and did not state definitely how many fees, and how much rent, that exception was null, because every exception must be definite, so that the exception with regard to this manor is null, and it shall be understood that you took upon yourself the tenancy of the fees as well as of the rest.—*Grene*. Even though it be so, still the advowson was definitely excepted; and suppose that I had vouched in respect of all that was in demand, and that I could bind you only in respect of a part, still you would warrant in respect of that part, and you would escape from warranty in respect of the rest with regard to which I had no lien, and I should lose the land.—*Pole*. If a tenant vouch in respect of a part only, and make no answer as to the rest, and the demandant do not take advantage of that, nor pray seisin, but suffer process to be continued on the voucher with regard to the part, the whole process is discontinued; and if the tenant vouch in respect of the whole of the demand, and process be made on the voucher in respect of less than that of which the voucher is made, again the whole is discontinued.—*W. Thorpe*, for the demandant, prayed seisin.—*R. Thorpe*. If the voucher be adjudged good, we shall be ready to answer.—*HILLARY*. If we adjudge the voucher good in this case, and you abide judgment, the judgment will be that the demandant do recover.—*R. Thorpe*. At common law, even though the inquest passed upon the voucher, and the cause of the voucher was found, the judgment was no other but that the voucher should stand, and in that respect the law is changed by statute<sup>1</sup> on account of the delay; but, when any one pleads in law, and to the discretion of the Court, it is at common law.—*Grene*. If I make *profert* of a deed to bind you to warranty, and you

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 6.

## No. 38.

la garrauntie.—*R. Thorpe*. Quant vous fistes forprise <sup>A.D 1344.</sup> de certainz fees, et nel meistes pas en certain quant des fees, et<sup>1</sup> come bien de rente, cele forprise fut nulle, qar chescun forprise covient estre en certain, issint qe la forprise en dreit de cel est nulle, mes serra entendu qe vous empristes tenance des fees si bien come de remenant.—*Grene*. Tut soit il issint, unqore lavowesoun fut forprise en certain; et mettez qe de tut jeo usse vouche qe fut en demande, et<sup>1</sup> jeo vous poây<sup>2</sup> lier forqe de la parcelle, unqore cel parcelle<sup>3</sup> vous garrauntirez, et del remenant dount jeo naveray<sup>4</sup> pas lien vous estourterez, et jeo perdroy terre.—*Pole*.<sup>5</sup> Si le tenant vouche forqe de parcelle, et del remenant rien respount, et le demandant de ceo ne prent avantage, ne prie seisine, mes soeffre proces estre continue sur le voucher en dreit de la parcelle, tut le proces est discontinue; et si le tenant vouche del entier de la demande, et proces sur le voucher soit fait de meyns qe le voucher nest, unqore tut est discontinue.—[*W.*] *Thorpe*, pur la demandante, pria seisine.—*R. Thorpe*. Si le voucher soit agarde bon, prest serroms a respoundre.—*HILL*. Si nous agarderoms le voucher bon en ceo cas, et vous attendez jugement, lagarde serra qe la demandante recovere.—*R. Thorpe*. A la comune ley, mesqe lenqueste passa sur le voucher, et la cause del voucher fut trove, lagarde ne fut autre mes qe le voucher esterreit, et la par statut pur la delaye est la ley chaunge; mes quant homme plede en ley, et descrecioun de Court, cest a la comune ley.—*Grene*. Si jeo mette avant fait de vous lier a garrauntie, et vous demurez en jugement,

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<sup>1</sup> et is from Harl. alone.

<sup>2</sup> L., poi.

<sup>3</sup> parcelle is omitted from Harl.

<sup>4</sup> L., ay.

<sup>5</sup> Harl., *Rok*.

## No. 38.

A.D. 1344. abide judgment, the Court will give judgment not that you shall warrant, but that you shall lose the land.—*R. Thorpe*. We are not in such a case, and, if we were, you would never prove that to be law.—*STONORE*. We understand that the tenant vouches only in accordance with his tenancy such as he has declared it to be, that is to say, with an exception; and when the tenant discloses his tenancy to the effect that he holds the manor, except the advowson and the fees, in accordance with the specialty by which he would bind you, and the demandant, accepting that voucher, will allow it, by that agreement she will abridge her demand as affecting the advowson and the fees, as the law is to be understood; therefore we do not see any fault either in the demandant or in the tenant.—*Notton*. Our plea is to this voucher, which has the effect of an original writ against us, by bringing us into Court to answer, and the law purports that we must be definitely informed what it is that we have to warrant, and that we are not, because, when the exception is not made definitely, one cannot know what is the residue of the manor; consequently we are not vouched with regard to any definite portion.—*STONORE*. You are vouched to warrant the part of which he is tenant; and he cannot know, and is not in law expected to know, anything about the rest, of which he is not tenant, but which is in the tenancy of another person.—*R. Thorpe*. He has not disclaimed the fees and the advowson by asserting that he holds the rest for term of life by lease from our ancestor. It is consistent with that statement that he holds the advowson, and the fees, in fee simple; and, as to the statement that non-tenure will not abate a writ of Dower, it certainly does so with regard to the part as to which non-tenure is alleged; but it is not properly a plea of non-tenure to say that I hold only so much unless he is able to mention another tenant.—*HILLARY*,



## No. 38.

Court nagardera pas<sup>1</sup> qe vous garraunterez, mes per- A.D. 1344.  
 drez terre.—[*R.*] *Thorpe*. Nous sumes pas en tiel  
 cas, et, si nous fussions, vous proverez jammes cella  
 estre ley.—*Ston*. Nous entendoms qe le tenant ne<sup>2</sup>  
 vouche forqe acordaunt a sa tenance quel il avoit  
 moustre avaunt, saver par<sup>3</sup> forprise; et quant le  
 tenant discoverye sa tenance qil tient le maner,  
 forpris lavowesoun et fees, acordauntz al especialte  
 par quel<sup>4</sup> il vous voleit lier, et la demandante,  
 acceptaunt ceo voucher, le soeffrai,<sup>5</sup> par cel agree-  
 ment ele abreggera<sup>6</sup> sa demande del avowesoun et  
 des fees come ley voleit; par quei nous ne<sup>2</sup> veoms  
 nulle default en la demandante nen le tenant.—  
*Nottone*. Nostre plee est a ceo voucher, qest original  
 devers nous, de nous mener en Court de respoudre,  
 et ley voet qe nous soioms instructs quei nous  
 duissoms garrauntir en certain, et ceo ne sumes pas,  
 par quei quant la forprise est en noun certain,  
 homme ne poet saver ceo qest le remenant del  
 maner; *per consequens* de nul certain porcion sumes  
 vouche.—*Ston*. Vous estes vouche a garrauntir la  
 parcelle dount il est tenant; et del remenant, dount  
 il nest pas tenant, mes est en autri tenance, il ne  
 put ne ne deit de ley saver.—*R. Thorpe*. Il nad  
 pas desclame en les fees et avowesoun par taunt qil  
 tient le remenant a terme de vie du lees nostre aun-  
 cestre. *Cum*<sup>7</sup> *hoc stat* qil tient lavowesoun et les fees  
 en fee simple; et ceo qe homme parle qe nountenue  
 nabatera pas brief de Dowere, certes si fait de la  
 parcelle dount nountenue est allegge; mes ceo nest  
 pas propre nountenue a dire qe<sup>8</sup> jeo ne tienk qe  
 taunt sil ne donast autre tenant.—*HILL*. En brief

<sup>1</sup> Harl., najuggera jammes, in-  
 stead of nagardera pas.

<sup>2</sup> ne is from L. alone.

<sup>3</sup> par is from L. alone.

<sup>4</sup> The words par quel are from  
 Harl. alone.

<sup>5</sup> Harl., suffri.

<sup>6</sup> 25,184, abatera.

<sup>7</sup> Harl., come.

<sup>8</sup> qe is from L. alone.

## No. 38.

A.D. 1344. On a writ of Dower, where the demand against me is for ten acres, and I say that I hold only nine, and with respect to those nine I vouch to warrant, and the demandant accepts the voucher, is not that an answer, and is not the demand understood to be abridged? So in the matter before us, where the tenant alleges that he is tenant only of so much, and vouches.—*R. Thorpe*. No one knows what it is of which exception was made, because the fees may be quite the greater part of the manor.—*W. Thorpe*. Suppose that the tenant had vouched you in respect of the whole of the third part, and, in order to bind you, had made *profert* of a specialty by which you were bound to warrant the whole, except the advowson and fees, and had bound you by another deed with regard to the fees and advowson, would not you have to warrant?—*R. Thorpe*. Not unless it was definitely stated to how many the fees amounted.—*STONORE*. It would be an extraordinary thing to show that to you who are heir to the person that executed the deed.—*R. Thorpe*. If you adjudge the voucher good, we are ready to answer, &c., because we do not wish to be in the case of the Earl of Lancaster, in which the exception was indefinite.<sup>1</sup>—*STONORE*. You are not in the like case: for this is an action of Dower, in which the demand can be abridged, and the other was a Formedon.<sup>2</sup>—*R. Thorpe*. I well know that she can abridge, &c., but still the abridgment must be definite.—*HILLARY*. Suppose that the tenant had said that he held the manor, except as above, and had said that as to that of which he was tenant the husband was never seised so that he could endow, &c., would not the demandant have been well answered? Consequently the voucher is good in respect of the same quantity, and is sufficiently definite.—*Grene*. Moreover, they cannot now be admitted to this exception, because they have compelled us to show by

*See* Y.B., Mich., 17 Edw. III., No. 65. | <sup>2</sup> Really an action of Intrusion.

## No. 38.

de Dowere, ou la demande est de x acres devers A.D. 1344.  
 moy, jeo die que jeo ne tienk que ix, et de ceo jeo<sup>1</sup>  
 vouche a garraunt, et la demandante lacepta, nest  
 ceo pas respouns, et la demande<sup>2</sup> entendu<sup>3</sup> abregge?  
*Sic in proposito*, quant le tenant que ne fut forqe  
 tenant de taunt, et vouche.—*R. Thorpe*. Nul homme  
 sciet<sup>4</sup> de quai la forprise fut fait, qar les fees pount  
 estre tut le plus del maner.—[*W.*] *Thorpe*. Jeo  
 pose que le tenant vous eust vouche de tut la terce  
 partie, et pur vous lier eust mys avant une especialte,  
 par quele vous luy fuissez tenuz a garrauntir tut,  
 sauvez lavowesoun et fees, et par autre fait vous  
 eust lie des fees et avowesoun, ne garraunteres<sup>5</sup>  
 vous pas?—*R. Thorpe*. Noun, sil ne fut mys en  
 certain come bien les fees amontirent.<sup>6</sup>—*STON*. Ceo  
 serreit<sup>7</sup> merveille de moustrer a vous qestes heir a  
 celui que fist le fait.—*R. Thorpe*. Si vous agardes  
 le vouchier bon, prest a respoundre, &c., qar nous  
 ne voloms pas estre en le cas le Counte de Lan-  
 castre, ou la forprise fut en noun certain.—*STON*.  
 Vous nestes pas en le cas: qar cest un Dowere, ou  
 la demande purra estre abregge, et lautre fut en  
 Fourmedon.—*R. Thorpe*. Jeo say bien<sup>8</sup> quele purra  
 abregger, &c., mes unqore labreggement serra en  
 certain.—*HILL*. Jeo pose que le tenant ust dit qil  
 tint le maner, forpris *ut supra*, et avoit dit que de<sup>9</sup>  
 ceo dount il fut tenant unqes seisi si que dower, &c.,  
 nust<sup>10</sup> la demandante<sup>11</sup> este bien respu? *Per*  
*consequens* le vouchier bon de mesme la quantite et  
 assez en certain.—*Grene*. Unqore navendrent<sup>12</sup> il pas  
 a ore a ceo chalange, qar il nous ount chace de

<sup>1</sup> jeo is omitted from L.<sup>2</sup> Harl., demandant.<sup>3</sup> Harl., tendy.<sup>4</sup> L., Nulle ceo est, instead of Nul homme sciet.<sup>5</sup> 25,184, graunterez.<sup>6</sup> Harl., amounterount.<sup>7</sup> L., ne serreit.<sup>8</sup> bien is from Harl. alone.<sup>9</sup> de is from Harl. alone.<sup>10</sup> L., myst; Harl., mist.<sup>11</sup> Harl., and 25,184, demande.<sup>12</sup> Harl., navendrount.

## No. 39.

A.D. 1344 what we would bind them, thus accepting the voucher.—*R. Thorpe*. That was only on behalf of one of the parceners, and not on behalf of the others, and that was by agreement between us.—HILLARY. You will never have record of that, because we understand that the deed was produced and read, as relating to them all.—WILLOUGHBY adjudged the voucher good.—And they entered into warranty and said that the husband, &c., was never seised so that he could endow the demandant, &c.—And the other side said the contrary.

Entry. (39.) § A. the wife of J. Gille brought a writ of Entry within the degrees against one who made default after default. There came one William son of John de Acton, who was out of the degrees. He was admitted by judgment [to defend his right] notwithstanding that his admission was counterpleaded, and he vouched another out of the degrees.—*Richemunde*. The voucher of any one out of the degrees is absolutely taken away by the statute.<sup>1</sup>—*Moubray*. We cannot abate the writ for any mistake in the degrees; and the statute is to be understood in the sense that a tenant who can abate the writ shall not vouch out of the degrees, but this does not apply to a stranger intervening.—WILLOUGHBY. Say something else, or we shall award the voucher.—*Richemunde*. Neither he who is vouched, nor any of

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<sup>1</sup> 3 Edw. I. (Westm. 1), c. 40.

## No. 39.

moustrer par quai nous luy voloms lier, acceptaunt A. D. 1344.  
 le voucher.—*R. Thorpe*. Ceo ne fut forqe pur ascun  
 des parceners, et noun pas pur les autres, et cel  
 fut nostre acorde.—*HILL*. De ceo naveres jammes<sup>1</sup>  
 recorde, qar nous entendoms le fait moustre et lieu  
 a touz.—*WILBY* agarda le voucher bon.—Et ils en-  
 trerent en garrauntie, et disoient qe le baroun, &c.,  
 unqes seisi si qe dower la pout; prest, &c.—*Et alii  
 e contra*.<sup>2</sup>

(39.)<sup>3</sup> § A. la femme J. Gille<sup>4</sup> porta brief Dentre Entre.  
 deinz les degreez vers un qe fist default apres de-  
 faut. Vint un William fitz Johan de Actone qe fut  
 hors degrees.<sup>5</sup> Fut resceu par agarde, *non obstante*  
 qe ceo fut countreplede, et il voucha un autre hors  
 de les degrees.<sup>6</sup>—*Rich*. Cest purement tollet par  
 statut<sup>7</sup> de voucher ascun hors des degrees.<sup>6</sup>—*Moubray*.  
 Nous ne poms pas brief abatre par mesprisioun<sup>8</sup> de  
 degrees<sup>6</sup>; et statut est a entendre qe tenant qe  
 purra brief abatre ne vouchera pas hors des degrees,<sup>6</sup>  
 mes noun pas destraunge surveant.—*WILBY*. Dites  
 autre chose, ou nous agarderoms le voucher.—*Rich*.  
 Celuy qest<sup>9</sup> vouche ne nul de ses auncestres ne furent

<sup>1</sup> Harl., and 25,184, pas.

<sup>2</sup> According to the roll, after the  
 tenant's prayer to be warranted,  
 "Comes et alii in forma illa ei  
 "warantizant, &c. Et dicunt  
 "quod prædictus Hugo et Eliza-  
 "beth uxor ejus dotem ejusdem  
 "Elizabeth inde habere non  
 "debent, &c., quia dicunt quod  
 "prædictus Egidius quondam vir,  
 "&c., de cujus dotatione, &c.,  
 "nunquam fuit seisisus de præ-  
 "dicto manerio, cum pertinentiis,  
 "unde, &c., post desponsalia inter  
 "eos celebrata, ut de feodo, ita  
 "quod ipsam Elizabeth inde  
 "dotare potuit."

Upon this issue was joined, and  
 the *Venire* awarded. Nothing  
 further appears on the roll, except  
 an adjournment.

<sup>3</sup> From the three MSS. as above.

<sup>4</sup> Gille is from Harl. alone. The  
 other MSS. G.

<sup>5</sup> L., des grees.

<sup>6</sup> L., grees.

<sup>7</sup> The words par statut are from  
 Harl. alone.

<sup>8</sup> Harl., meseripeion; 25,184,  
 mespressioun.

<sup>9</sup> Harl., and 25,184, qil.

## No. 40.

A.D. 1344. his ancestors were ever seised, &c.—*Sadelyngstanes*. You shall not be admitted to plead that, because heretofore we prayed to be admitted on the ground that this same person whom we now vouch leased to the tenant, on whose default we are admitted, and afterwards granted the reversion to us, which cause you traversed, and the finding was for us on your mise; judgment whether you shall be admitted to say that he had nothing.—*Richemunde*. That was only found and the issue was only taken on the question whether you had the reversion or not.—And afterwards the averment on the non-seisin was admitted *gratis*.

Ejectment  
from  
Wardship. (40.) § John de Stonore, knight, brought Ejectment from Wardship against John de Chyvreston, knight, and William Carse, chaplain, in respect of the lands of the heir of John de Aumarle, supposing that the ancestor held of him by a moiety of one knight's fee, that is to say, by homage, fealty, and scutage, when scutage occurs, &c., of which services he was seised, and that the ancestor died in his homage, and that the aforesaid John de Stonore was for a long time in peaceable seisin of the wardship, from such a day until such a day when he was forcibly ejected, to his damage, &c., of £100.—

## No. 40.

unques seisi, &c.—*Sadl.*<sup>1</sup> A ceo ne serrez resceu, qar A.D. 1344  
 autrefoith nous priames destre resceu par tant qe  
 mesme cely qe nous vouchoms a ore lessa al tenant,  
 par qi defaut nous sumes resceu, et puis graunta  
 la reversion a nous, quel cause vous traversastes, et  
 fut trove pur nous a vostre mise; jugement si a  
 dire qe celuy navoit rien<sup>2</sup> serrez resceu.—*Rich.* Ceo  
 ne fut trove, ne a autre entente lissu pris mes le  
 quel vous aviez<sup>3</sup> reversioun<sup>4</sup> ou noun.—Et puis *gratis*  
 laverement fut resceu sur la noun seisine.

(40.)<sup>5</sup> § Johan de Stonore, chivaler, porta Enget-  
 tement de Garde vers Johan de Chevestone, chivaler, Engette-  
ment de  
Garde.  
 et William Carse,<sup>6</sup> chapeleyn, des terres leir Johan  
 de Aumarle,<sup>7</sup> supposaunt qe launcestre tient de luy  
 par la moyte dun fee de chivaler, saver, homage,  
 fealte, et escuage, quant lescu court, &c., des queux  
 services<sup>8</sup> il fut seisi, et murust en son homage, et  
 lavant dit J. Stonore pur longe temps en peisible<sup>9</sup>  
 seisine,<sup>10</sup> &c., de tiel jour tanqa<sup>11</sup> tiel jour qil fut  
 engette aforcement, a des damages, &c., de *chi.*<sup>12</sup>—

<sup>1</sup> Harl., *Sadilyng*.

<sup>2</sup> rien is omitted from L.

<sup>3</sup> Harl., avetz; 25,184, avez.

<sup>4</sup> 25,184, rien.

<sup>5</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 460. It there appears that the action was brought by John de Stonore, knight, against John de Chyvreston, knight, and William Carse, chaplain, touching the wardship of a moiety of the manor of Seyntemarietavy (St. Mary Tavy, Devon), during the infancy of the heir of John de Aumarle.

<sup>6</sup> MSS. of Y.B., Crasse.

<sup>7</sup> MSS. of Y.B., B.

<sup>8</sup> services is omitted from L.

<sup>9</sup> 25,184, plein.

<sup>10</sup> Harl., plenere counte, instead of peisible seisine.

<sup>11</sup> The words de tiel jour tanqa are omitted from Harl.

<sup>12</sup> The declaration was, according to the record, “quod, cum prædictus Johannes de Aumarle tenuisset de eo prædictam medietatem manerii prædicti per homagium, et fidelitatem, et ad scutagium domini Regis quandraginta solidorum cum acciderit viginti solidos et ad plus plus, et ad minus minus, &c., et faciendi sectam ad Curiam ipsius Johannis de Stonore de Redmor, de tribus septimanis in tres septimanas, de quibus homagio et servitiis idem Johannes de Stonore fuit seisitus per manus

## No. 41.

A.D. 1344. *Huse* defended, and imparled, and afterwards, when called, did not return into Court.—WILLOUGHBY. The Court adjudges that the plaintiff do recover the wardship, because it is supposed that the heir is under age, and that is not denied, and do recover his damages of £100, according as he has counted.

*Non  
compos  
mentis.*

(41.) § *Non compos mentis* against a man and his wife, supposing that the demandant's ancestor leased to them when he was of non-sane memory.—*Gaynesford*, for the wife, who was admitted by reason of her husband's default, vouched to warrant a stranger.—*Derworthy*. She vouches out of the degrees; judgment.



No. 41.

*Huse* defendi, et emparla, et puis demande<sup>1</sup> revint A.D. 1344. pas.<sup>2</sup>—WILBY. Si agarde la Court qe le pleintif recovere la garde, pur ceo qest suppose leir deinz age, qe nest pas dedit, et ses damages de *cli.*, solone ceo qil ad counte.<sup>3</sup>

(41.)<sup>4</sup> § *Non compos mentis* vers un homme et sa femme, supposaunt qe launcestre<sup>5</sup> le demandant lessa a eux quant il fut de noun seyne memorie.<sup>6</sup>—*Gayn.* pur la femme, qe fut reseu par la default son baroun, voucha a garraunt estraunge persone.—*Der.* Ele vouche hors de les degrees; jugement.—*Gayn.*

*Non compos mentis.*  
[Fitz., Brief, 367.]

“ prædicti Johannis de Aumarle, ut  
“ per manus veri tenentis sui, et  
“ obiit in homagio suo, per quod  
“ custodia prædictæ medietatis  
“ manerii prædicti usque ad legiti-  
“ mam ætatem Johannis filii et  
“ heredis prædicti Johannis de  
“ Aumarle ei pertineat, et idem  
“ Johannes de Stonore in plena et  
“ pacifica seisina ejusdem custodiæ  
“ diu extiterit, videlicet a Festo  
“ Inventionis Sanctæ Crucis anno  
“ regni domini Regis nunc Angliæ  
“ duodecimo usque ad Festum  
“ Purificationis beatæ Mariæ anno  
“ regni ejusdem domini Regis nunc  
“ quartodecimo, prædicti Johannes  
“ de Chyvrestone et Willelmus,  
“ prædicto herede infra ætatem  
“ existente, ipsum Johannem de  
“ Stonore a custodia illa violenter  
“ ejecerunt, unde dicit quod  
“ deterioratus est et damnum habet  
“ ad valentiam centum librarum.”

<sup>1</sup> 25,184, fist default et.

<sup>2</sup> According to the roll, “ Jo-  
“ hannes de Chyvrestone et Wil-  
“ lelmus . . . . . veniunt et  
“ defendunt vim et injuriam,  
“ quando, &c. Et petierunt licen-  
“ tiam inde loquendi, et obtinu-

“ erunt. Et postea solemniter  
“ vocati non revenerunt, sed  
“ recesserunt, in contemptum  
“ Curia.”

<sup>3</sup> According to the roll, the judgment was, “ quod prædictus  
“ Johannes de Stonore recuperet  
“ versus eos custodiam prædictam,  
“ et damna sua prædicta.”

In the following Easter Term  
“ Johannes de Stonore hic, &c.  
“ cognovit quod prædicti Johannes  
“ de Chyvrestone et Willelmus  
“ satisfecerunt ei de damnis suis  
“ prædictis. Ideo iidem Johannes  
“ de Chyvrestone et Willelmus sint  
“ inde quieti, &c.”

<sup>4</sup> From the three MSS. as above. The record appears to be that found among the *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 294. A writ of Entry *dum non fuit compos mentis* was brought by Richard de Trewennard and Richard son of John de Wethen against Roger de Reskemmer and Joan his wife, in respect of tenements in various places in Cornwall.

<sup>5</sup> Harl., le pere.

<sup>6</sup> 25,184, memoire.

## No. 41.

A.D. 1344. —*Gaynesford*. Your bad writ does not deprive me of the voucher; and we will aver that the person whom we vouch leased to us, *absque hoc* that we entered by your ancestor.—*Derworthy*. The lease is supposed to have been made by our ancestor, wherefore the issue ought to be taken on that lease supposed to have been made by our ancestor.—*Gaynesford*. That cannot be in this case, because it is possible that the husband alone entered, and that, through his alienation and the taking back of an estate, the wife now holds jointly by lease from the person who is vouched; and therefore we cannot take issue on a traverse of the ancestor's lease, because if the vouchee leased, then we ought to have warranty on such a deed.—*HILLARY*. If the fact be such, the lease is not such as he supposes by his writ, that is to say, made to the husband and his wife; therefore will you accept the averment which the demandant tenders, that is to say that his ancestor leased to your husband and you, as his writ supposes? —*Gaynesford*. Yes, we entered by the person whom we vouch, *absque hoc* that his ancestor leased to our husband and us; ready, &c.—And the other side said the contrary.

## No. 41.

Vostre malveys brief ne moy toude<sup>1</sup> pas le vouchier; A.D. 1344. et voloms averer qe celui qe nous vouchoms nous lessa, saunz ceo qe nous entrames par vostre auncestre.—*Der.* Le lees est<sup>2</sup> suppose par nostre auncestre,<sup>3</sup> par quei sur le lees suppose par nostre brief lissu covient estre pris. [—*Gayn.* Ceo ne poet estre<sup>4</sup>]<sup>5</sup> en ceo cas, qar il est possible qe le baroun soul entra, et par alienacioun et reprise la femme tient ore joynt du lees celui qest vouche; et donques ne poms pas prendre issu a travers du lees launcestre, qar sil<sup>6</sup> lessa et si dussoms nous aver sur tiel<sup>7</sup> fait garrauntie.—*HILL.* Si le fait soit tiel,<sup>8</sup> le lees nest pas tiel come il<sup>9</sup> suppose par son brief, saver, fait al baroun et sa femme; par quei volez laverement qe le demandant tend, saver, qe son auncestre lessa a vostre baroun et vous, come son brief suppose?<sup>10</sup>—*Gayn.* Oyl, nous entrames par celui qe nous vouchoms, saunz ceo qe son auncestre lessa a nostre baroun et nous; prest, &c.<sup>11</sup>—*Et alii e contra.*

<sup>1</sup> Harl., tout.

<sup>2</sup> 25,184, estre.

<sup>3</sup> The words suppose par nostre auncestre are from L. alone, the other two MSS. substituting the words nostre accion.

<sup>4</sup> estre is omitted from L.

<sup>5</sup> The words between brackets are omitted from Harl.

<sup>6</sup> Harl. and 25,184, il.

<sup>7</sup> L., tite aver.

<sup>8</sup> L., eu.

<sup>9</sup> L., est.

<sup>10</sup> There is no mention of any vouchier in the record. The count of the demandants against the wife is as follows:—

“ Petunt versus eam prædicta  
“ tenementa, cum pertinentiis, ut  
“ jus et hereditatem suam, et in  
“ quæ idem Rogerus et Johanna

“ non habent ingressum nisi per  
“ Radulphum de Trelewythe, avun-  
“ culum prædictorum Ricardi et  
“ Ricardi, cujus heredes ipsi sunt,  
“ qui illa eis dimisit, dum idem  
“ Radulphus non fuit compos  
“ mentis suæ, &c.”

<sup>11</sup> The plea was, according to the roll, “ quod, ubi prædicti Ricardus  
“ et Ricardus per breve suum  
“ supponunt ipsam et præfatum  
“ virum suum ingressos fuisse in  
“ tenementis prædictis per præ-  
“ dictum Radulphum de Trele-  
“ wythe, ipsa intravit in tenementis  
“ illis per quendam Radulphum  
“ Fraunke capellanum, absque hoc  
“ quod prædictus Radulphus de  
“ Trelewythe dimisit tenementa  
“ illa prædicto Rogero et Johanna,  
“ sicut prædicti Ricardus et Ri-

## No. 42.

A.D. 1344. (42.) § Formedon in the reverter for Robert de Pavely. Exception was taken to the writ, because it was in the words "*ad præfatum, &c., reverti,*" whereas it should be in the words "*præfato, &c., reverti.*"—This exception was not allowed, because in Formedon in the reverter the form is in the accusative case, and in Formedon in the descender and Formedon in the remainder in the dative case.—And afterwards exception was taken to the writ on the ground that it supposed the issue in tail to have died without issue, which does not prove the action unless the first donee in tail had died without issue, and that should be expressly supposed by the writ.—This exception was not allowed.—And afterwards view was demanded.—*W. Thorpe.* Heretofore we demanded the entire manor, which we now demand save a certain exception, and you abated that writ on the ground of non-tenure of the part which is now excepted, and that after you had had view. And we demand judgement whether you ought to have view on this writ.—*R. Thorpe.* You do not allege that this writ was purchased immediately after the first was abated, so that, for any

## No. 42.

(42.)<sup>1</sup> § *Reverti* pur Robert Pavely. Le brief A.D. 1344.  
chalange, qe voleit *ad præfatum, &c., reverti*, ou il *Reverti.*  
serreit *præfato, &c., reverti*.—*Non allocatur*, qar en le *[Fitz.,*  
*Reverti* la Fourme est en lacusatif<sup>2</sup> cas, et en le *Brief,*  
*descendere* et le *remanere* en le datif<sup>3</sup> cas.—Et puis *368;*  
le brief chalange de ceo qil suppose lissue en taille *Journes*  
mort saunz issue, qe ne prove pas laccion si le *acomptes,*  
primer done en taille ne fut mort saunz issue, [et *13; View,*  
ceo<sup>4</sup> serreit expressement suppose par le brief].<sup>5</sup>— *74.]*  
*Non allocatur*.—Et puis la vewe fut demande.—[*W.*]  
*Thorpe*. Autrefoith demandames le maner entier, quel  
nous demandoms ore sauf<sup>6</sup> certeyn forprise, quel  
brief abatistes par nountenue de la parcelle qest ore  
forprise, et ceo apres ceo qe vous aviez la vewe.  
Et demandoms jugement si a cesty brief devez la  
vewe aver.—*R. Thorpe*. Vous n'allegges pas qe cesty  
brief est purchase freschement apres le primer abatu,<sup>7</sup>

“cardus per breve suum sup-  
“ponunt. Et hoc parata est  
“verificare, unde petit iudicium,  
“&c.”

There was then a replication  
“quod prædictus Radulphus de  
“Trelewythe dimisit tenementa  
“prædicta præfatis Rogero et  
“Johannæ in forma qua ipsi per  
“breve suum supponunt.” It was  
upon this that issue was joined and  
the *Venire* awarded.

<sup>1</sup> From the three MSS. as above,  
but corrected by the record, *Placita*  
*de Banco*, Mich., 18 Edw. III.,  
R<sup>o</sup> 347, d. It there appears that  
the action was brought by Robert  
de Pavely, knight, against Richard  
Pouer of Charlton in respect of  
the manor of Wendlebury (Oxon)  
with certain exceptions, “quod  
“Galfridus de Pavely, consanguini-  
“neus prædicti Roberti, cujus  
“heres ipse est, dedit Willelmo  
“de Stanforde in liberum marita-

“gium cum Matildi sorore ejus-  
“dem Galfridi, et quod post  
“mortem prædictorum Willelmi,  
“et Matilldis, et Agnetis filiaë et  
“heredis eorundem Willelmi et  
“Matilldis, ad præfatum Robertum  
“reverti debet per formam donati-  
“onis prædictæ, eo quod prædicta  
“Agnes obiit sine herede de corpore  
“suo exeunte.” The demandant in  
his count claimed the reversion  
as heir of the donor, tracing the  
descent from him to Robert, as son  
and heir, from Robert to Robert as  
son and heir, from the last-named  
Robert to Laurence as son and  
heir, and from Laurence to Robert  
the demandant, as son and heir.

<sup>2</sup> Harl., accusative.

<sup>3</sup> L., dative; Harl., dative.

<sup>4</sup> ceo is omitted from L.

<sup>5</sup> The words between brackets  
are omitted from Harl.

<sup>6</sup> Harl., saunz.

<sup>7</sup> Harl., brief.

## No. 42.

A.D. 1344. thing that you say, this writ may be abated by reason of non-tenure or joint tenancy, as the first was; and so we are at large to give such an exception, and we cannot know the fact except by view.—*W. Thorpe*. That which you say about making suit immediately holds good only in case any one wished to allege non-tenure, and that at common law; but you are ousted from view by the statute,<sup>1</sup> which statute does not make any mention of immediate suit, because view serves only to give you certainty with regard to the demand, and that you have.—*R. Thorpe*. According to your statement, if we had had view twenty years ago, you could now oust us from it on this writ.—*W. Thorpe*. Yes, certainly.—And he was ousted from view by judgment, and alleged non-tenure.—*Grene* alleged as above, and said that this writ had been sued immediately [after the abatement of the other].—*R. Thorpe*. You will find that there are sixteen days between the abatement of the first writ, and the purchase of this writ, and the Chancellor was then here in this Hall.—*WILLOUGHBY*. What of that? When the first writ was abated, the attorney had nothing more to do, and his principal was at the inn, and could not know the fact, and therefore this writ has been sued soon enough; therefore answer.—*R. Thorpe*. Whereas he supposes that the land ought to revert to him, because Agnes,<sup>2</sup> daughter and heir of the persons to whom the gift was made, died without issue, as to that we tell you, in no way admitting that there was any such Agnes, that there was one Alice who was issue in tail, and survived, and obtained an estate, and it is by reason

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 48.

<sup>2</sup> It will be observed that the name was given as Agnes in the demandant's writ (p. 143, note 1).

The names Alice and Agnes seem to have been transposed, throughout the report, in the MSS. of Y.B.

## No. 42.

issint, pur rien qe vous dites, cesty brief purra estre A.D. 1344.  
 abatu par nountenue ou joyntenaunce, come fut le  
 primer; et issint sumes a large de doner<sup>1</sup> tiel ex-  
 cepcion, et ceo ne poms saver forqe<sup>2</sup> par la vewe.  
 —[*W.*] *Thorpe*. Ceo qe vous parles de fresche suyte  
 tient lieu si homme voleit allegger nountenue, et  
 ceo par comune ley; mes par lestatut vous estes  
 ouste de la vewe, quel estatut ne fait pas mencion  
 de fresche suyte, qar vewe ne sert forqe de vous  
 acerter<sup>3</sup> de la demande, et ceo estes vous.—*R.*<sup>4</sup>  
*Thorpe*. A vostre dit, si nous eussoms eu la vewe  
 de cy a xx aunz, vous nous ousterez ore a ceo  
 brief.<sup>5</sup>—[*W.*] *Thorpe*. Oyl, certes.—Et par agarde fut  
 ouste de la vewe, et alleggea nountenue.—*Grene*  
*alleggea ut supra*, et dit qe ceo brief fut fresche-  
 ment suy.—*R. Thorpe*. Vous le troverez xvj<sup>6</sup> jours  
 entre le primer<sup>7</sup> brief abatu et celuy brief purchace,  
 et adonques le Chauncelier fut cy en la sale.—*WILBY*.  
 De ceo quei? Quant le primer brief fut abatu, lat-  
 tourne navoit plus a faire, et son mestre<sup>8</sup> fut<sup>9</sup> al  
 ostiel,<sup>10</sup> qe le ne put saver, par quei ceo fut assetz<sup>11</sup>  
 freschement suy; par quei responez.—*R. Thorpe*.  
 La ou il suppose<sup>12</sup> qe la terre a luy deit revertir,  
 pur ceo qe Agnes<sup>13</sup> fille et heir celuy<sup>14</sup> a qi le  
 doun se fist murust saunz issue,<sup>15</sup> a ceo vous dioms  
 qe, nient conissaunt qil y avoit tiele Agnes, qil<sup>16</sup>  
 y avoit une Alice, qe fut issue en la taille, et sur-  
 vesquit et attendy<sup>17</sup> estat, par qi mort saunz issue

<sup>1</sup> Harl., denjoier, instead of de doner.

<sup>2</sup> L., si noun.

<sup>3</sup> aserter; Harl., asserter.

<sup>4</sup> *R.* is from 25,184 alone.

<sup>5</sup> The words a ceo brief are from 25,184 alone.

<sup>6</sup> Harl., qen xvj.

<sup>7</sup> primer is from Harl. alone.

<sup>8</sup> 25,184, meistier.

<sup>9</sup> fut is omitted from L.

<sup>10</sup> L., houstel; 25,184, hostel.

<sup>11</sup> L., a cessetz.

<sup>12</sup> suppose is omitted from L.

<sup>13</sup> Here and in other places in the MSS. the name Alice has been substituted for Agnes, and *vice versa*. See p. 143, note 1.

<sup>14</sup> Harl., celuy A.

<sup>15</sup> Harl., heir, &c.

<sup>16</sup> Harl., qar.

<sup>17</sup> Harl., tendi.

## No. 42.

A.D. 1344. of her death without issue that the reversion should be supposed ; judgment of the writ.—*W. Thorpe*. Though there may have been ever so many persons issue in tail, I shall not, in claiming the reversion, make mention of any but the one who was last seised, that is to say, I shall suppose that by the death of that one without issue, without having regard to any other, the land ought to revert, because if she, of whom he speaks, or her issue were living (and we do not admit that there was any such person), that will come by way of answer ; besides, we tell you that heretofore, on a like writ, which was abated on the ground of non-tenure, we made a like descent, which he accepted.—*WILLOUGHBY*. He does not say that there was no such person as you suppose, and in that way attempt to show the descent false ; but, if there were two co-heirs, your writ ought to be in the words “*eo quod uterque obiit sine herede.*”—*W. Thorpe*. He shall not be admitted to say, contrary to the acceptance on the first writ, that the person whom we suppose to be named Agnes was named Alice. Now he makes his protestation that he does not admit that there was any Agnes, by which protestation it may be understood that Agnes was misnamed in the writ which was first brought, and he shall not be admitted to allege that contrary to the affirming of the name on the first writ ; and if he means to say that this Agnes named in the writ had a co-parcener, Alice by name, then that is not a plea if she did not survive, because, if Agnes survived, and the whole vested in her, the whole would have to revert by reason of her death without issue.—*WILLOUGHBY*. We understand from the manner of the plea that there were both an Alice and an Agnes, and, if so, it would be a good writ which made them both dead without issue ; and therefore answer.—*Grene*. On that same writ he alleged non-



## No. 42.

la reversion serreit suppose; jugement de brief.—A.D. 1344.

[*W.*] *Thorpe*. Fuissent ils ja tant des issues en taille, jeo ne ferroy en le revertir mencion de nul forqe de ceo qe darreyn fut seisi, saver, a supposer par sa mort saunz issue, saunz aver regarde dautre, qe la terre revertira, qar si cel dount il parle fut en vie, ou son issue, quele chose nous conissons pas, qe tiel yavoit, ceo vendra par respouns; ovesqe ceo, vous dioms qe autrefoith, en autiel<sup>1</sup> brief, qe fut abatu par nountenue, nous feymes autiel descent, qel il accepta.—*WILBY*. Il dit pas qil y avoit nul<sup>2</sup> tiel come vous supposez, et issint a fauxer la descence; et<sup>3</sup> sils fuissent deux coheirs vostre brief serreit *eo quod uterque obiit sine herede*.—[*W.*] *Thorpe*. Countre<sup>4</sup> lacceptaunce en le primer brief il ne serra pas resceu a dire qe celuy qe nous supposoms estre nome Agnes [avoit a noun Alice. Ore fait il sa protestacioun qil ne conust pas<sup>5</sup> qil y avoit nulle Agnes, par quele protestacioun poet estre entendu qe Agnes]<sup>6</sup> en le brief<sup>7</sup> qe primes fut porte fut<sup>8</sup> mesnome, a quei il ne serra resceu countre laffermer en le primer brief; et sil voet dire qe cele Agnes nome el brief avoit autre parcener, Alice par noun,<sup>9</sup> donqes nest ceo pas plee si ele nust<sup>10</sup> survesqi, qar si Agnes survesquit, et tut fut en luy, par sa mort saunz issue tut serreit a revertir.—*WILBY*. Nous entendoms par la manere del plee qil y avoient et<sup>11</sup> Alice et Agnes, et, *si sic*, serra il bon brief de faire lun et lautre mort saunz issue; et pur ceo responez.<sup>12</sup>—*Grene*. A mesme ceo brief

<sup>1</sup> Harl., autre.

<sup>2</sup> Harl., un.

<sup>3</sup> L. and 25,184, est.

<sup>4</sup> L., entre; Harl., conustre.

<sup>5</sup> The words qil ne conust pas are omitted from L.

<sup>6</sup> The words between brackets are omitted from Harl.

<sup>7</sup> L., primer brief.

<sup>8</sup> fut is omitted from L.

<sup>9</sup> The words par noun are from Harl. alone.

<sup>10</sup> L., myst.

<sup>11</sup> et is from L. alone.

<sup>12</sup> Harl., riens.

## No. 42.

A.D. 1344. tenure, and thereby he is ousted from this plea, that is to say, inasmuch as this writ was purchased immediately after the other was abated, he has thus affirmed the writ good in this point by that plea of non-tenure; therefore he shall not be admitted to return now and abate the writ for such a cause.—HILLARY. You ousted him from that exception by your plea; therefore he may well be admitted.—*Grene*. Then you see plainly that it is supposed by the first writ, and by this also, that there was a daughter, Agnes by name, which fact is not denied by them, and which fact, even though they were willing to do so, contrary to their acceptance alike on the first writ and on this, they shall not be admitted to traverse to the effect that she was named by any other name; and we will aver that this Agnes, whom we make daughter in the descent, had not any sister Alice, and that there was not any other daughter in the descent but this one; ready, &c.—*R. Thorpe*. You must answer to us as to whether there was a daughter Alice, as we surmise, and, inasmuch as we have surmised it, and you do not deny it, judgment of the writ.—STONORE. You cannot say that Agnes, who is supposed to be daughter, is misnamed, because of the acceptance on the first writ, for, if it was the fact that she was wrongly named, you ought to have abated the first writ.—*Gaynesford*. It is certain that on the first writ we could not have abated the writ on the ground of non-tenure and also by such an exception; therefore, inasmuch as there were two faults in the first writ, and we abated it by reason of one fault, it is right that if this writ be false with regard to the other point, the advantage should be saved to us on this second writ; and according to law

## No. 42.

il ad allegge nountenue, de quei il est ouste, saver <sup>A.D. 1344.</sup>  
 par tant qe ceo brief fut purchace freschement apres  
 lautre abatu, et issint par cel plee afferma il le  
 brief bon en ceo poynt; par quei ore a retourner  
 et abatre le brief par tiel cause il ne serra resceu.  
 —HILL. Vous luy oustastes par plee de cel excep-  
 cion; par quei il avendra bien.—*Grene.* Donques  
 vous veiez bien qe suppose est par le primer brief  
 et<sup>1</sup> cesty auxi qune fille y avoit Agnes par noun,  
 quele chose nest pas dedit deux, ne quele chose,  
 tut voleint il countre<sup>2</sup> lour acceptaunce, quai<sup>3</sup> al  
 primer brief quai<sup>4</sup> a cesty, de traverser quele fut  
 nome par autre noun il ne serra resceu<sup>5</sup>; et voloms  
 averer qe cele Agnes, qe nous fesoms fille de la  
 descente, navoit nulle soer [Alice, ne qe autre fille  
 en la descente y avoit forqe une; prest, &c.]<sup>6</sup>—*R.*  
*Thorpe.* Vous respoundrez a nous sil y avoit une  
 fille Alice, come nous surmettoms, et, desicome nous  
 lavoms surmys, et vous le deditez pas, jugement  
 du brief.—*STON.* Vous poez pas<sup>7</sup> dire qe Agnes,  
 qest suppose fille, soit mesnome, pur laceptaunce  
 en le primer brief, qar sil fut issint quele fut male-  
 ment nome, vous duissez aver abatu le primer brief.  
 —*Gayn.* Il est certeyn qen le primer brief nous ne  
 poames pas aver abatu le brief par nountenue, et  
 auxint par tiel excepcion; donques, quant<sup>8</sup> en le primer  
 brief<sup>9</sup> il y avoient<sup>10</sup> ij defautes, et nous abatimes  
 par lun default, il est resoun qe si cesty soit faux  
 en lautre poynt qe lavantage nous soit salve en ceo  
 secunde brief; et par ley ne poet estre tenu<sup>11</sup> nient

<sup>1</sup> L., qe.<sup>2</sup> L., and 25,184, conustre.<sup>3</sup> Harl., qe il prent.<sup>4</sup> Harl., quant.<sup>5</sup> The words il ne serra resceu  
are omitted from Harl.<sup>6</sup> The words between brackets  
are omitted from Harl.<sup>7</sup> Harl., apres.<sup>8</sup> 25,184, qar.<sup>9</sup> The words en le primer brief  
are from Harl. alone.<sup>10</sup> Harl., furent.<sup>11</sup> tenu is from Harl. alone.

## No. 43.

A.D. 1344. it cannot be held as not denied by us that Agnes was daughter.—*Grene*. At any rate you cannot deny it contrary to your own acceptance.—*R. Thorpe*. To expedite the matter, and not because the law is such, we will plead over, and we vouch to warrant A. de B. to be summoned, &c.<sup>1</sup>—*Grene*. Neither she nor any of her ancestors had anything after the death of the person who was last seised in tail; ready, &c.—*HILLARY*. According to what law will you have that averment?—*Grene*. By the intendment of the statute,<sup>2</sup> because, through her death, the land is revertible to us.—*W. Thorpe*. The averment given by the statute<sup>2</sup> is since the seisin of his ancestor, and that averment he does not take; judgment.—*Grene* took the averment on the estate of the vouchee and her ancestors since the seisin of his ancestor, on whose seisin, &c.—And the other side said the contrary, so that when the warrant comes he will have the advantage which the tenant lost by his plea.

*Quare non admisit.* (43.) § *Quare non admisit*, against the Bishop of Winchester, for the King, in respect of a presentation to a Hospital recovered by *Quare impedit* against a

<sup>1</sup> For the real name and the counties see p. 151, note 1.

<sup>2</sup> 3 Edw. I. (Westm. 1), c. 40.

## No. 43.

dedit de nous qe Agnes fut fille.—*Grene*. Cella ne <sup>A.D. 1344.</sup> poez dedire a tut le meyns countre vostre acceptaunce.—*R. Thorpe*. Pur deliverer, et noun pas pur ceo qe la ley est tiel, si voloms dire outre, et vouchoms a garraunt A. de B., qe serra somons, &c.<sup>1</sup>—*Grene*. Cele ne nul de ses auncestres navoient rien puis la mort celuy qe fust seisi darreyn par la taille<sup>2</sup>; prest, &c.—*HILL*. Par quele ley averez vous tiel averement?—*Grene*. Par lentent del estatut, qar par sa mort est la terre revertible a nous.—*[W.] Thorpe*. Laverement par lestatut est puis la seisine son auncestre, et cel<sup>3</sup> averement prent il pas; jugement.—*Grene* prist laverement sur lestat le<sup>4</sup> vouche et<sup>5</sup> ses auncestres puis<sup>6</sup> la seisine soun auncestre, de qi seisine, &c.<sup>7</sup>—*Et alii e contra*, issint qe quant le garraunt vendra, il avera lavantage qe le tenant par son plee ad perdu.

(43.)<sup>8</sup> § *Quare non admisit* vers Levesqe de Wincestre, pur le Roy, del presentement dun Hospital recoveri par *Quare impedit* vers estraunge persone <sup>*Quare non admisit.*</sup>

<sup>1</sup> The voucher appears on the roll, immediately after the count, in the following form:—"Ricardus . . . . vocat inde ad warrantum Agnetem sororem et heredem Martini de la Rokele summonendam in Comitibus Londoniarum, Buckinghamiæ, et Berkesciræ, et Surreiæ, &c."

<sup>2</sup> The words par la taille are omitted from L.

<sup>3</sup> Harl., tiel.

<sup>4</sup> Harl., qele.

<sup>5</sup> Harl., ne.

<sup>6</sup> 25, 184, et.

<sup>7</sup> The demandant's counterplea of the voucher was, according to the roll, in the form following:—"quod prædictus Ricardus ad istud v care ad warrantum

"admitti non debet, &c., dicit  
"enim quod prædicta Agnes,  
"quam, &c., nec aliquis anteces-  
"sorum suorum fuerunt seisiti de  
"prædicto manerio, exceptis, &c.,  
"in dominico nec in servitio, post  
"seisinam prædicti Galfridi de  
"Pavely consanguinei, &c., de  
"cujus seisina, &c., ita quod ipsum  
"Ricardum vel aliquem anteces-  
"sorum suorum inde feoffasse  
"potuerunt."

Issue was joined upon this, but, before it was tried, "prædictus Robertus concedit quod prædictus Ricardus habeat vocare suum prædictum ad warrantum, &c. Ideo prædicta Agnes sum-moneatur, &c."

<sup>8</sup> From the three MSS. as above.

## Nos. 44-46.

A.D. 1344. stranger on confession of the action.—*Seton*. We tell you that the Hospital is of such condition that there are a Prior and Brethren, and the Prior, upon every vacancy, without license being asked of any one, shall be elected by the Brethren, and presented to the Ordinary, and installed. And he alleged further that the last Prior had been elected, &c., as above, and installed, and that all other Priors before him, before the time of memory (and he mentioned each one in particular) had been so elected, *absque hoc* that, as supposed by the King's declaration in the *Quare impedit*, a Prior had been admitted on the presentation of the person through whom the King claimed.

Note. (44.) § Note that, if the person who is demandant omits in his process any part of his demand included in the original writ, the whole is discontinued.

Note. (45.) § Note that Thomas de Lathom brought a *Præcipe quod reddat*, and it was pleaded that part of the demand was in another vill. And it was found that part was in the vill in which the writ was brought, and part in the other. And by judgment he recovered the part which is in the vill in which his writ was brought.

Note. (46.) § Note that a tenant vouched to warrant one who appeared immediately, and asked by what the tenant would bind him. The tenant said that the vouchee's father, whose heir he is, leased the tenements to the tenant for his life, saving the reversion to himself and his heirs, and so the tenant vouched him by reason of the reversion, and so would bind him.—*Grene*. And, inasmuch as he shows nothing in proof of this lease, and has nothing else to bind us except a reversion which we disclaim, and that utterly,

## Nos. 44-46.

sur nient dedire.—*Setonc.* Nous vous dioms que <sup>A.D. 1344.</sup> Lospital est de tiel condicion qil y ad<sup>1</sup> Priour et Freres, et le Priour, a chescun voidaunce, saunz conge<sup>2</sup> demander de nul, serra eslu par les Freres, et presente al Ordiner, et installe.<sup>3</sup> Et alleggea outre que le darreyn Priour fut eslu, &c., *ut supra*, et installe,<sup>3</sup> et touz autres devant luy, devant temps de memorie,<sup>4</sup> et les noma en certeyn, saunz ceo que celuy que fut suppose par la demoustraunce le Roy en le *Quare impedit* fut resceu al presentement celuy par my qi le Roy clama.

(44.)<sup>5</sup> § *Nota* que si homme<sup>6</sup> demandant entrelest *Nota.* partie de sa demande compris deinz loriginal en son proces tut est discontinue.

(45.)<sup>5</sup> § *Nota* que Thomas de Lathom porta *Precipe Nota.* *quod reddat*, et plede fut que<sup>7</sup> parcelle de la demande fut en autre ville. Et trove fut que partie fut en la ville ou le brief est porte, et partie<sup>8</sup> en lautre. Et il recoveri par agarde la parcelle qest en la ville ou son brief fut porte.

(46.)<sup>5</sup> § *Nota* que tenant voucha a garraunt un que *Nota.* vient tantost, et demanda par quei il luy voleit lier. Le tenant<sup>9</sup> dit que le pere le vouche, qi heir il est, luy lessa les tenementz a sa vie, salvant la reversioun a luy et ses heirs, et issint par cause de reversioun luy vouche il, et issint luy voet<sup>10</sup> il lier. —*Grene.* Et desicome de cel lees il ne moustre rien, et autre chose nad de nous lier forge reversioun,<sup>11</sup> en quel nous desclamoms, et<sup>12</sup> outrement,

<sup>1</sup> 25,184, avoit.

<sup>2</sup> conge is omitted from L.

<sup>3</sup> 25,184, enstalle.

<sup>4</sup> 25,184, memoire.

<sup>5</sup> From the three MSS. as above.

<sup>6</sup> L., le.

<sup>7</sup> L., par.

<sup>8</sup> The words et partie are omitted from L.

<sup>9</sup> L., and 25,184, Et il, instead of Le tenant.

<sup>10</sup> L., voleit.

<sup>11</sup> L., en reversioun.

<sup>12</sup> et is omitted from Harl.

## No. 47.

A.D. 1344. judgment whether he can be admitted to bind us.—  
*R. Thorpe.* We pray seisin for the demandant.—  
WILLOUGHBY. The COURT adjudges that you do recover  
against the tenant, and that he be in mercy, and that  
the other who is vouched be without day.

Note. (47.) § Note that in a *Warantia Chartæ* the defend-  
ant said that the plaintiff was not impleaded. And  
because he did not deny the deeds nor the warranty,  
it was adjudged that the plaintiff should recover "*pro  
loco et tempore.*" And the issue was entered as to  
whether the plaintiff was impleaded or not.—*Quære*



## No. 47.

jugement sil purra estre resceu de nous lier.—*R.* A.D. 1344.  
*Thorpe.* Nous prioms,<sup>1</sup> pur le demandant, seisine.—  
 WILBY. La COURT agarde qe vous recoverez vers le  
 tenant, et il en la mercy, et lautre qest vouche  
 saunz jour.

(47.)<sup>2</sup> § *Nota* qen Garrauntie de Chartre le de-<sup>*Nota.*</sup>  
 fendant dit qe le pleintif ne fut pas emplede.<sup>3</sup> Et,  
 pur ceo qil ne dedit pas les fetz ne<sup>4</sup> la garrauntie,  
 fut agarde qe le pleintif recoverast *loco et tempore*.  
 Et lissue fut entre sil<sup>5</sup> fut emplede<sup>6</sup> ou nient.<sup>7</sup>—

<sup>1</sup> prioms is omitted from L.

<sup>2</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 450. It there appears that the action was brought by Ralph de Crombelle, knight, the younger, and Avice his wife, against William la Zouche of Haringworth, in respect of warranty of the manor of Basford (Basford, Notts).

The declaration was, according to the roll, “quod cum prædictus Willelmus . . . per chartam suam . . . dedisset, concessisset, et charta sua confirmasset prædictis Radulpho et Aviciæ manerium prædictum . . . habendum et tenendum . . . prædictis Radulpho et Aviciæ, et eorum heredibus et assignatis de capitalibus dominis feodi in perpetuum, et obligavit se et heredes suos ad warrantandum prædictis Radulpho et Aviciæ et eorum heredibus et assignatis manerium illud contra omnes gentes in perpetuum, et postea quidam Henricus de Wynkeburne . . . tulit quoddam breve Assisæ Novæ Disseisinæ versus

“ prædictos Radulphum et Aviciam de manerio prædicto, . . . pendente quo placito, prædictus Willelmus, licet sæpius requisitus, &c., manerium illud prædictis Radulpho et Aviciæ warrantizare contradixit, et adhuc contradicit.”

<sup>3</sup> According to the roll “Willelmus . . . non potest dedicere prædictam chartam esse factum suum, nec quin ipse teneatur warrantizare prædictis Radulpho et Aviciæ manerium prædictum, &c., sed dicit quod ipsi non sunt placitati de manerio illo, &c.”

<sup>4</sup> ne is omitted from L.

<sup>5</sup> sil is omitted from Harl.

<sup>6</sup> L., plede.

<sup>7</sup> Harl., noun. After William's plea the roll continues as follows:—  
 “Et nihilominus consideratum est quod warrantizet eis pro loco et tempore, &c.

“Et Radulphus et Avicia dicunt quod ipsi sunt implacitati de manerio prædicto, sicut ipsi narrando supponunt.”

Issue was joined upon this, and the *Venire* awarded. Nothing further appears on the roll.

## No. 48.

A.D. 1344. whether he will recover damages in this case.—And see above where damages were recovered in a like case.

Novel  
Disseisin.

(48.) § Novel Disseisin brought by Margaret late wife of Ranulph de Dacre against Richard de Salkeld and his wife,<sup>1</sup> in respect of common of pasture in M.,<sup>1</sup> &c., appendant to her freehold in Cumwhinton. It was pleaded in bar, that, in the time of King Henry,<sup>2</sup> one who was lord of the soil,<sup>3</sup> approved a part, saving a sufficiency, &c., and afterwards the land came, by forfeiture, into the hand of the King the father of the present King, &c., who gave it to Richard who now answers as tenant, and by license from the King, Richard divested himself, and took back an estate to himself and his wife, and there were breaches in the enclosure, and the plaintiff put her beasts in, and Richard and his wife re-closed it; and as to the rest they themselves approved, saving a sufficiency, &c.; judgment whether an Assise, &c. The plaintiff, not in any way admitting

<sup>1</sup> For the names see p. 157, note 2.

<sup>2</sup> Edward I., according to the record. See p. 157, note 13.

<sup>3</sup> For the name see p. 157, note 13.

## No. 48.

*Quære* sil recovera damages en le cas.—*Et vide supra*, A.D. 1344.  
ou damages sount recoveriz *in consimili casu*.<sup>1</sup>

(48.)<sup>2</sup> § Novele Disseisine pur Margarete<sup>3</sup> que fut la femme R. Dacre vers Richard de Saltkelde et sa femme, de comune de pasture en M., &c., [appendaunt, &c., en Cumquityngtone<sup>4</sup>].<sup>5</sup> Plede fut en barre coment, en temps le Roi H., un que fut<sup>6</sup> seigneur de soille, sapprowa de parcelle, salvant suffisauntie, &c., et puis la terre par forfeiture devynt<sup>7</sup> en la mayn le Roi le pere, &c., qel la dona a Richard que respound a ore come tenant, et par conge le Roy,<sup>8</sup> Richard se demist, et reprist estat a luy et sa femme, et breskes<sup>9</sup> descheirent,<sup>10</sup> et la pleintif mist einz ses bestes, et Richard et sa femme refermerent lenclosture<sup>11</sup>; et quant al remenant ils sapprowerent mesmes, salvant suffisauntie,<sup>12</sup> &c.; jugement si Assise, &c.<sup>13</sup> La pleintif, nient conissante les pointz de son

<sup>1</sup> The last sentence is omitted from Harl.

<sup>2</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 326. It there appears that the Assise was brought before Justices of Assise in the County of Cumberland by Margaret late wife of Ranulph de Dacre, against Richard de Salkeld, and Matilda his wife, Walter de Crakenthorpe, and Adam de Warthecope, in respect of common of pasture in Corby, “quæ pertinet ad liberum tenementum suum in Cumquityngtone . . . videlicet ad communandum in sexaginta acris bosci, et ducentis acris moræ et pasturæ cum omnimodis averiis quolibet anno per totum annum.”

<sup>3</sup> MSS. of Y.B., Margerie.

<sup>4</sup> L., C.; 25,184, Culquinkintone.

<sup>5</sup> The words between brackets are omitted from Harl.

<sup>6</sup> fut is omitted from L.

<sup>7</sup> L., deyvenent.

<sup>8</sup> The words le Roy are from Harl. alone.

<sup>9</sup> Harl., and 25,184, brekes.

<sup>10</sup> L., cheierent.

<sup>11</sup> L., lenclostre; Harl., la cloisture.

<sup>12</sup> Harl., sufficiauntie; 25,184, sufficeaunce.

<sup>13</sup> According to the roll, after an award of *Assisa capiatur* against the other defendants who did not appear except by bailiff, Richard and Matilda pleaded, as tenants of the tenements put in view, “quod tenementa in visu posita non fuerunt nisi triginta acræ bosci, et centum acræ moræ, et dixerunt quod assisa inde inter eos fieri non debuit, quia dixerunt quod

## No. 48.

A.D. 1344. the points of his bar, said that approvement is given by statute<sup>1</sup> between lord and tenant, and by another statute<sup>2</sup> between lord of the soil and neighbour; and she said that the land in which she claims the common is holden of her as of her manor of Irthington, to which manor she claims that the common is appendant, and it is not permitted by any law that a tenant should approve against his lord; and she demanded judgment, and prayed the Assise in respect of

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<sup>1</sup> 20 Hen. III. (Merton), c. 4.

| <sup>2</sup> 13 Edw. I. (Westm. 2), c. 46.

## No. 48.

barre, dist qe approwement est done par estatut A.D. 1344.  
 entre seignur et tenant, et par autre estatut entre  
 seignur du soil et veysyn; et dist qe la terre en  
 quel ele cleime la comune est tenu de luy come de  
 son maner de I.,<sup>1</sup> a quel maner il cleyme la comune  
 estre appendaunt, et par nulle ley est done qe le  
 tenant vers son seignur se put<sup>2</sup> apprower; et de-  
 manda jugement, et pria Assise pur damages.<sup>3</sup> Sur

“ iidem Ricardus et Matilldis sunt  
 “ domini villæ de Magna Corkeby,  
 “ et prædicta Margareta nullum  
 “ solum habuit in eadem, et  
 “ dixerunt quod prædicta villa fuit  
 “ in manu cujusdam Alani de  
 “ Laceles tempore Edwardi Regis  
 “ avi domini Regis nunc, qui  
 “ eodem tempore inclusit præ-  
 “ dicta tenementa in visu posita,  
 “ exceptis sex acris bosci, et illa  
 “ tenuit inclusa toto tempore suo,  
 “ salvando sufficientem communam  
 “ omnibus tenentibus prædictæ  
 “ villæ de Cumquityngtone, et  
 “ dixerunt quod postea prædictum  
 “ manerium de Magna Corkeby  
 “ per forisfacturam Andreæ de  
 “ Harclay devenit in manum  
 “ domini Regis patris, &c., qui  
 “ quidem dominus Edwardus Rex  
 “ pater, &c., per chartam suam  
 “ dedit manerium prædictum de  
 “ Magna Corkeby prædicto Ricardo  
 “ de Salkeld, habendum sibi et  
 “ heredibus suis in perpetuum, et  
 “ idem Ricardus tenuit tenementa  
 “ illa inclusa toto tempore suo, qui  
 “ quidem Ricardus manerium præ-  
 “ dictum, cum pertinentiis, per  
 “ licentiam domini Regis dedit  
 “ prædictis Waltero et Adæ habenden-  
 “ dum sibi et heredibus suis  
 “ in perpetuum, et iidem Walterus  
 “ et Adam manerium illud postea,  
 “ per licentiam domini Regis,  
 “ dederunt prædictis Ricardo et

“ Matilldi et heredibus de corpori-  
 “ bus suis exeuntibus, qui quidem  
 “ Ricardus et Matilldis tenuerunt  
 “ manerium prædictum, simul cum  
 “ prædictis tenementis in visu  
 “ positis; et dixerunt quod de præ-  
 “ dictis sex acris bosci prædicti  
 “ Ricardus et Matilldis, ut domini  
 “ prædictæ villæ de Magna Corkeby,  
 “ approauerunt se de prædictis sex  
 “ acris bosci, et inde fecerunt duo  
 “ molendina aquatica, salvando  
 “ omnibus tenentibus prædictæ  
 “ villæ de Cumquityngtone suffi-  
 “ entem communam suam, &c.  
 “ Et dixerunt quod diversæ breccæ  
 “ fuerunt in prædicto clauso ita  
 “ quod averia ipsius Margarete  
 “ intraverunt prædictum clausum,  
 “ et iidem Ricardus et Matilldis  
 “ fugaverunt averia prædicta extra  
 “ clausum prædictum, et breccas  
 “ prædictas reparaverunt, salvando  
 “ omnibus tenentibus villæ præ-  
 “ dictæ de Cumquityngtone suffi-  
 “ entem pasturam, &c. Et petier-  
 “ unt iudicium si assisa fieri  
 “ deberet, &c.”

<sup>1</sup> MSS. of Y.B., S. See below,  
 note 3.

<sup>2</sup> Harl., puisse.

<sup>3</sup> According to the roll, the repli-  
 cation was, “ non cognoscendo  
 “ aliquid approuamentum factum  
 “ fuisse tempore prædicti domini  
 “ Regis avi, dixit quod tempore  
 “ ejusdem Regis avi, &c., prædictus

No. 48.

A.D. 1344. damages. Thereupon they were adjourned into the Bench.—*Haveryngton*. When the lord is seised, at the commencement, of the entire manor, he can pasture *per*

## No. 48.

quei ils sont ajournes en Baunk.<sup>1</sup>—*Har.* Quant le A.D. 1344.  
seignur est seisi, a comencement, de tut le maner, il

“ Alanus de Laceles tenuit præ-  
“ dictam villam de Magna Corkeby,  
“ cum pertinentiis, de quodam  
“ Thoma de Multone, antecessore  
“ ipsius Margaretæ, cujus heres  
“ ipsa est, ad tunc domino de  
“ Cumquityngtone, per homagium  
“ et alia servitia, et iidem Ricardus  
“ et Matilidis eandem villam modo  
“ tenent immediate de prædicta  
“ Margareta ut de manerio suo  
“ de Irthyngtone, unde prædictum  
“ manerium de Cumquityngtone est  
“ membrum, per servitia prædicta.  
“ Et per statutum domini Regis  
“ ordinatur quod domini vastorum  
“ et boscorum se possunt appruare  
“ de vastis suis, salva tenentibus  
“ et vicinis sufficiente pastura, cum  
“ libero ingressu et egressu, &c.,  
“ sed in eodem statuto non con-  
“ tinetur quod dominus appruare se  
“ potest, &c., contra voluntatem  
“ domini sui de quo ipse tenet  
“ tenementa illa, et in quibus  
“ tenementis iidem domini habent  
“ communam, &c. Et sic statutum  
“ illud pro prædictis Ricardo et  
“ Matilidi nihil operatur in hoc  
“ casu. Et ex quo iidem Ricardus  
“ et Matilidis cognoverunt ipsam  
“ Margaretam habere communam  
“ ibidem, et cognoverunt fuga-  
“ tionem prædictorum averiorum  
“ de communa prædicta, et sic  
“ ipsam Margaretam inde dis-  
“ seisiri, petunt iudicium, et  
“ assisam de damnis, &c.”

<sup>1</sup> According to the roll there were  
the following pleadings in the Court  
of the Justices of Assise before the  
removal into the Common Bench:—

“ Et Ricardus et Matilidis, non  
“ cognoscendo quod prædictum

“ manerium de Cumquityngtone  
“ est membrum prædicti manerii  
“ de Irthyngtone, dixerunt quod  
“ prædicta Margareta non dedixit  
“ quin ipsi sunt domini prædictæ  
“ villæ de Magna Corkeby, et quod  
“ eadem Margareta nullum solum  
“ habet in eadem, et quin ipsa  
“ Margareta sufficientem pasturam  
“ habet tanquam pertinentem ad  
“ liberum tenementum suum in  
“ Cumquityngtone. Et quo ad  
“ hoc quod ipsa dixit quod per  
“ statutum domini Regis dominus  
“ non potest se appruare contra  
“ voluntatem domini sui de quo  
“ ipse tenet, &c., eadem Margareta,  
“ quæ nullum solum habet in  
“ Magna Corkeby non debet in-  
“ telligi de jure alia quam vicina  
“ inter vicinos in eadem villa quo  
“ ad ipsos Ricardum et Matilidem  
“ in hoc casu, per quod bene licuit  
“ ipsis appruare se de tenementis  
“ prædictis, unde petierunt judi-  
“ cium, &c.

“ Et Margareta dixit quod ante  
“ statutum, &c., nullus dominus  
“ alicujus villæ potuit se appruare  
“ de aliquo vasto sine voluntate  
“ omnium illorum qui habuerunt  
“ communam in eadem, et statu-  
“ tum de vastis appruandis ordina-  
“ tum est tantum inter dominum  
“ et tenentem, et vicinum et  
“ vicinum, &c., prout per verba in  
“ eodem statuto contenta apparet  
“ expresse, nec in eodem statuto  
“ sunt aliqua verba expressa quod  
“ dominus se potest appruare sine  
“ voluntate domini sui de quo ipse  
“ tenet, per quod ipsa Margareta,  
“ ut superior domina, &c., adhuc  
“ est ad communem legem versus

## No. 48.

A.D. 1344 *my et per tout* without hindrance; therefore, if he divests himself of a part, saving common to himself, that which was previously pasture is common after the feoffment, and, although the name may be changed, the profit of the common will remain as large as the pasture was before. Now we are agreed that the common was appendant before the approvement, and that will only be understood to be by reason of the reservation on the feoffment from the first, wherefore we pray the Assise in respect of damages; and we are agreed that the common is appendant to our freehold, which is part of our manor of Irthington, of which manor their services are parcel.—*Skipwith*. If it had been the fact that the common from so remote a time, that is to say, from the time of the first feoffment by the lord, had been reserved, that ought to have been pleaded by the plaintiff; but the record is not to that effect; therefore it can only be understood that she has common, as any other commoner, appendant to a freehold which she has by purchase, and in case she has it by purchase, there is no doubt but that she will have no other estate, and that she will not be able to claim as being in any other condition than that of her feoffor, against whom the tenant could have approved; and consequently he can approve against her, even though she has the seignory.—*Birton*. Even though she has seignory, she is in the position of claiming this common as appendant to her own freehold in which she has not seignory,



## No. 48.

put pestre<sup>1</sup> par my et tut saunz destourbaunce; A.D. 1314.  
 donques sil se<sup>2</sup> demette de parcelle, salvant a luy comune,  
 ceo qe avant fut pestre apres le feffement est comune,  
 et tut soit le noun chaunge, le profit de la comune  
 demura si large com fut<sup>3</sup> le pestre adevant. Ore  
 nous sumes a un qe la comune fut appendaunt  
 avant lapprowement, et ceo ne serra entendu mes  
 par resoun de<sup>4</sup> reserver sur le feffement adeprimes,  
 par quei nous prioms Assise des damages; et nous  
 sumes a un qe cest appendaunt a nostre fraunctene-  
 ment, qest parcelle de nostre maner de Hertyingtone,  
 de quel maner lour services sont parcelle.—*Skip*.  
 Sil ust estre issint<sup>5</sup> qe la comune de si haut temps,  
 saver, de temps<sup>6</sup> del primer feffement fait par le  
 seignur, ust este reserve, ceo dust par la pleintif  
 aver este plede; mes le recorde nest pas tiel; par  
 quei homme ne poet entendre mes qele ad comune,  
 come autre comuner, appendaunt a fraunctenement  
 quel ele ad par purchace, ou en cas qele leit<sup>7</sup> par  
 purchace nest pas doute qele navera autre estat, ne  
 par autre condicion purra clamer qe son feffour, vers  
 qi le tenant se poait<sup>8</sup> aver approwe, *per consequens*  
 vers<sup>9</sup> cele, tut eit ele seignurie.—*Byrtone*. Tut eit  
 ele seignurie,<sup>10</sup> ele est a clamer cest comune  
 appendaunt a son fraunctenement demene en quel

“ præfatos Ricardum et Matilldem  
 “ prout ante statutum extiterat.  
 “ Et ex quo ante statutum, &c.,  
 “ nullus se potuit appruare, &c.,  
 “ nec, per consequens, præfati  
 “ Ricardus et Matilldis se appruare  
 “ possunt in hoc casu, maxime cum  
 “ quodlibet statutum sit stricti  
 “ juris, et verba contenta in eodem  
 “ stricte debent intelligi, unde  
 “ petit iudicium ut prius, et  
 “ assisam de damnis, &c.”

It was upon this that a day was  
 given in the Common Bench.

<sup>1</sup> L., estre.

<sup>2</sup> Harl., soit; 25,184, soit.

<sup>3</sup> fut is omitted from L.

<sup>4</sup> The words resoun de are from  
 L. alone.

<sup>5</sup> Harl., and 25,184, icy.

<sup>6</sup> The words saver de temps are  
 omitted from L.

<sup>7</sup> L., luy eit.

<sup>8</sup> L., poet.

<sup>9</sup> vers is from Harl. alone.

<sup>10</sup> L., la seignurie,

## No. 48.

A.D. 1344. so that, having regard to the freehold by reason of which she would have the common, she is only a neighbour with respect to us, and so the statute<sup>1</sup> which gives approvement between neighbour and neighbour is binding between us, notwithstanding the seignory.—*Huse*. The statute which gives the approvement is not given for those who have the seignory of the soil, because they have only services, and they cannot approve in another person's soil, but it operates to the advantage of those who have and are in possession of the soil, and that having regard to the commoners; therefore, since the soil is ours, and she is not a commoner, the approvement is maintainable by statute.—*Sadelyngstanes*. There is no land which is not held of another person until one comes to the King; therefore if it were to be adjudged that a tenant of the soil could not approve against the person of whom the soil is held, the statute which gives the approvement could never be of any avail: for the person of whom the waste is held would purchase other land to which common would be appendant there, and would prevent approvement, and that could not be.—*Mutlow*. Since she claims only common by her suit, she shall be aided only as a commoner; and inasmuch as the common is claimed as being appendant to land in which it is not supposed that she has seignory, so far as the having of common is concerned, she is only a neighbour.—*R. Thorpe*. Admeasurement of pasture does not lie between lord and tenant; and also, if the defendant were to bring a *Quo jure* against us, every word of the writ would be false.—WILLOUGHBY. It seems that Admeasurement would lie for the plaintiff

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 46.

## No. 48.

ele nad pas seignurie, issint qe, eaunt regarde a A.D. 1344.  
 fraunctenement par resoun de quel ele avereit la  
 comune, ele nest forqe veysyn a nous, et issint  
 lestatut qe doune lapprowement entre veysyn et  
 veysyn ceo<sup>1</sup> lie entre nous, *non obstante* seignurie.<sup>2</sup>  
 —*Huse*. Lestatut qe doune lapprowement nest pas  
 done pur ces<sup>3</sup> qount la seignurie du soil, qar il  
 nount forqe les services, qe se purront pas apprower  
 dautri soil, mes oeuvre en avantage de ces qount et  
 sont possessiones del soil, et ceo eaunt regarde as  
 comuners; donques quant le soil est nostre, et ele  
 nest pas<sup>4</sup> comuner, lapprowement par statut est  
 meymtenable.—*Sadling*. Il y ad<sup>5</sup> nulle terre qe ne  
 soit tenu dautre tanqe [homme viegne al Roy; donques  
 si]<sup>6</sup> homme ajuggeast<sup>7</sup> qe tenant du soil se poait<sup>8</sup>  
 pas apprower vers celuy de qi le soil est tenu,  
 jammes ne serra lestatut qe doune lapprowement de  
 value: qar celuy de qi le wast est<sup>9</sup> tenu purchacera  
 autre terre a quei comune<sup>10</sup> illoeqes serra append-  
 aunt, et<sup>11</sup> destourbera lapprowement, qe ne put estre.<sup>12</sup>  
 —*Muttelowe*. Quant ele cleyme forqe comune par sa  
 suyte, ele ne serra eide forqe come comuner; et  
 desicome la comune est clame appendaunt a terre  
 en quele nest pas suppose qele ad seignurie, quant  
 a la comune aver ele nest forqe veysyn.—*R. Thorpe*.  
 Amesurement ne gist pas par entre seignur et ten-  
 ant; et auxint, si le defendant porte *Quo jure*<sup>13</sup> vers  
 nous, chescun parole de brief serreit faux.—*WILBY*.  
 Il semble qe Amesurement girreit pur la pleintif

<sup>1</sup> L., si.<sup>2</sup> Harl., sa seignurie.<sup>3</sup> L., eux.<sup>4</sup> Harl., qe.<sup>5</sup> 25,184, avoit.<sup>6</sup> The words between brackets  
are from Harl. alone.<sup>7</sup> L., ad juggeast.<sup>8</sup> L., poeyt; Harl., poet.<sup>9</sup> est is omitted from L.<sup>10</sup> L., la comune.<sup>11</sup> Harl., il; the word is omitted  
from L.<sup>12</sup> The words qe ne put estre are  
omitted from L.<sup>13</sup> 25,184, *Quid juris, &c.*, instead  
of *Quo jure*.

## No. 48.

A.D. 1344. against another commoner, but not against the defendants; but that would be because they are seised of the soil, not by reason of the seignory which is in the plaintiff.—*Middleton*. The lord has two estates, one as lord, the other as commoner; therefore it is necessary to see in virtue of which estate he is supposed to have the advantage of ousting his tenant from the approvement: not by reason of seignory, for he has not the common in that way, because, even though he had aliened the seignory, the common would abide with him by reason of the freehold which is in his hand, and to which it is appendant; and if he were to aliene the land to which the common is appendant, notwithstanding the fact that the seignory might abide with him, the common would be extinguished in his person; therefore, inasmuch as he has not the common by reason of the seignory, the seignory cannot be a cause for which he could prevent approvement.—*Mutlow*. It cannot be understood that he has the common reserved through his seignory, but that he has it by way of attraction, since attraction is by way of vicinage, and not of seignory.—*STONORE*. How will you have the Assise?—*Haveryngton*. In respect of damages, Sir.—*HILLARY*. Will you have it to enquire as to the sufficiency?—*Moubray*. We are agreed as to that, and nothing now remains to be adjudged but whether he can approve or not.—*HILLARY*. It is not confessed in pleading that there is a sufficiency; but because it seems to the COURT that a person who is tenant of the soil can approve as well against his lord as against another commoner,

## No. 48.

vers autre comuner, mes vers le defendant nient; A.D. 1344.  
 mes ceo serreit<sup>1</sup> pur ceo qils sount seisiz du soil,  
 noun pas par cause<sup>2</sup> de la seignurie qest en le  
 pleintif.—*Midd.* Le seignur ad deux estatz, un com  
 seignur, autre com comuner; donques il est<sup>3</sup> a re-  
 garder de quel estat il deit aver lavantage douter  
 son tenant del approwement: par cause<sup>4</sup> de seignurie  
 nemye,<sup>5</sup> qar par cele voie ad il pas la comune, pur  
 ceo qe tut ust il aliene la seignurie, la comune par  
 resoun de fraunctenement qest en sa mayn, a quei  
 ele est appendaunt luy demurast; et sil alienast la  
 terre a quei la comune est appendaunt, *non obstante*  
 qe la seignurie luy<sup>6</sup> demurast, la comune serreit  
 esteynt hors de sa persone; donques quant il nad pas  
 la comune par resoun de la seignurie, la seignurie<sup>7</sup>  
 ne poet estre cause pur quei il destourbereit lap-  
 prowement.—*Mutl.* Il ne put estre entendu qil ad  
 la comune par my sa<sup>8</sup> seignurie reserve, mes par  
 voie dattret<sup>9</sup> puis qe lattreit est par voie de veysyn-  
 age, et noun pas de seignurie.—*STON.* Coment voilez  
 aver lassise?—*Har.* Sire,<sup>10</sup> en dreit des damages.—  
*HILL.* La volez vous aver denquere de la suffisaun-  
 tie<sup>11</sup>?—*Moubray.* De ceo sumes a un, et rien fait  
 ore<sup>12</sup> dajuger mes le quel il se puit<sup>13</sup> apprower ou  
 noun.—*HILL.* Il nest pas conu en plee qil ad  
 suffisauntie<sup>11</sup>; mes pur ceo qe [semble a la COURT  
 qe celuy qest]<sup>14</sup> tenant de soil<sup>15</sup> se poet apprower,  
 si bien vers son seignur com vers autre comuner,

<sup>1</sup> The words mes ceo serreit are omitted from L.

<sup>2</sup> L., comune.

<sup>3</sup> Harl., fait, instead of il est.

<sup>4</sup> The words par cause are omitted from 25,184.

<sup>5</sup> Harl., nient; the word is omitted from 25,184.

<sup>6</sup> luy is from Harl. alone.

<sup>7</sup> The words la seignurie are omitted from L.

<sup>8</sup> Harl., la.

<sup>9</sup> 25,184, de attreit.

<sup>10</sup> Sire is omitted from L.

<sup>11</sup> Harl., sufficiauntie.

<sup>12</sup> ore is omitted from Harl.

<sup>13</sup> L., poet; Harl., purra.

<sup>14</sup> For the words between brackets there is substituted in L. the word le.

<sup>15</sup> Harl., wast.

## No. 49.

A.D. 1344. sue the Assise to enquire as to the sufficiency.—Afterwards *Sadelyngstanes* came, and said that the clerk would not enter definitely on what point the Assise was awarded, but had made up the roll as if nothing had been pleaded in bar. And (said *Sadelyngstanes*) unless this be amended we shall suffer disherison, because otherwise the Assise would be taken at large, and our approvement would not serve us at all, whereas according to your judgment we can approve.—STONORE. For anything that has yet been said the Assise must be taken; and the Justices will consider in what manner it is to be taken in this case. And if the plaintiff has sufficient common, what more does she want?—And so note that, although approvement be pleaded in bar, the Assise must be taken on the sufficiency.

*Quare impedit.*

(49.) § *Quare impedit* in respect of the church of Eglosros. And the plaintiff took his title to the effect that he was seised of a garden and two acres of land, to which the advowson is appendant, and presented.<sup>1</sup>—*Grene*. We tell you that one R.<sup>2</sup> was seised of the

<sup>1</sup> For the name of the presentee see p. 169, note 12.

<sup>2</sup> As to the name see p. 171, note 3.

## No. 49.

suez Lassise denquere de<sup>1</sup> la suffisauntie.<sup>2</sup>—Puis vint<sup>A.D. 1344.</sup> *Sadl.*, et dit qe le clerk ne voleit pas entrer en certain sur quel point Lassise est agarde, mes ad fait rulle come si rien nust este plede en barre. Et si ceo ne soit eide<sup>3</sup> nous sumes desherite, qar autrement Assise serreit pris<sup>4</sup> a large,<sup>5</sup> et nostre approwement nous servira de nient, la ou par vostre agarde<sup>6</sup> nous poms apprower.—*STON.* Pur rien qe unqore<sup>7</sup> est dit il covient prendre Assise; et les Justices saviserount en quele manere<sup>8</sup> ele est a prendre en ceo cas. Et si la pleintif eit comune assez, quei voet ele plus?—*Et sic nota* qe tut soit approwement plede en barre sur la suffisauntie il covient prendre Assise.<sup>9</sup>

(49.)<sup>10</sup> § *Quare impedit* del eglise de Egelros.<sup>11</sup> Et *Quare impedit.* prist son tite qil fut seisi dun gardyn et deux acres de terre a quei lavowesoun est appendaunte, et presenta.<sup>12</sup>—*Grene.* Nous vous dioms qun R. fut seisi

<sup>1</sup> de is from L. alone.

<sup>2</sup> Harl., sufficiauntie.

<sup>3</sup> eide is omitted from L.

<sup>4</sup> Harl., curra, instead of serreit pris.

<sup>5</sup> The words a large are omitted from L.

<sup>6</sup> L., vos agards, instead of vostre agarde.

<sup>7</sup> unqore is from L. alone.

<sup>8</sup> 25,184, manoir.

<sup>9</sup> After the appearance of the parties in the Common Bench all that is shown upon the roll (except some adjournments) is the following judgment:—

“ Quia visum est CURLE quod, non obstantibus rationibus ipsorum Ricardi et Matilldis superius allegatis, procedendum est ad captionem assisæ in hoc casu, videlicet, si prædicta Margareta

“ habeat sufficientem pasturam, nec ne, ideo recordum inde, simul cum brevi originali et pannello, mittuntur præfatis Justiciariis ad capiendum assisam in patria, &c.”

<sup>10</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 284, d. It there appears that the action was brought by Roger de Carmynou against John de Carmynou (and three others whose names do not concern the report) in respect of a presentation to the church of Eglosros (Cornwall).

<sup>11</sup> L., Eglers; Harl., E.

<sup>12</sup> According to the record, the plaintiff's declaration was, “ quod ipsemet fuit seisitus de uno gardino et duabus acris terræ, cum pertinentiis, in Eglosros, ad

## No. 49.

A.D. 1344. manor of Eglosros, to which the advowson is appendant, and presented,<sup>1</sup> which R.<sup>1</sup> gave the same manor to Oliver and Isolda<sup>1</sup> his wife, and the heirs of the body of Isolda begotten. R., the donor, died, and after his death the manor (&c.) was assigned to his wife to hold in the name of dower, and she presented; and after the death of the woman tenant in dower, and of Isolda, Oliver entered, and aliened the garden, and an acre of land, and the advowson, to the plaintiff in fee, wherefore the defendant who is issue of Isolda entered, and seised the advowson, and so it belongs to him to present; and we pray a writ to the Bishop.

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<sup>1</sup> As to the names *see* p. 171, note 3.



## No. 49.

du maner de E., a quei lavowesoun est appendaunt, A.D. 1344.  
 et presenta, le quel R. dona mesme le maner a  
 Oliver et Isolde sa femme, et les heirs du corps  
 Isolde engendrez. R., le donour, devia, apres qi  
 mort le manere, &c., fut assigne a sa femme a tener  
 en noun de dowere, la quele presenta; et apres la  
 mort la femme tenant en dowere, et Isolde, Oliver  
 entra, et aliena al pleintif en fee le gardyn et lacre<sup>1</sup>  
 de terre, et lavowesoun, par quei le defendant qest  
 issue de Isolde entra,<sup>2</sup> et seisi lavowesoun, et issint  
 appent a luy a presenter; et prioms brief al Evesqe.<sup>3</sup>

“ quæ advocatio ecclesiæ prædictæ  
 “ pertinet, et ad eandem ecclesiam  
 “ præsentavit quendam Willelmum  
 “ Carselake, . . . . .  
 “ post cujus resignationem præ-  
 “ dicta ecclesia modo vacat, et, pro  
 “ eo quod ipse Rogerus modo  
 “ seisitus est de prædictis gardino  
 “ et terra ad quæ, &c., ad ipsum  
 “ Rogerum ad prædictam ecclesiam  
 “ pertinet præsentare.”

<sup>1</sup> 25,184, les acres.

<sup>2</sup> entra is omitted from Harl.

<sup>3</sup> John's plea (the other defend-  
 ants claiming nothing in the  
 presentation) was, according to the  
 record, “ quo ad prædictas duas  
 “ acras terræ et gardinum ad quæ  
 “ prædictus Rogerus supponit præ-  
 “ dictam advocacionem pertinere,  
 “ dicit quod tenementa illa non  
 “ sunt nisi una acra terræ tantum.  
 “ Et dicit quod quidam Rogerus  
 “ de Carmynou fuit seisitus de  
 “ manerio de Eglosros ad quod  
 “ advocatio ecclesiæ prædictæ  
 “ pertinet, qui ad eandem præsen-  
 “ tavit quendam Ricardum de  
 “ Coleforde, . . . . . qui  
 “ quidem Rogerus manerium illud  
 “ ad quod &c., dedit quibusdam  
 “ Olivero de Carmynou et Isoldæ

“ uxori ejus et heredibus de corpore  
 “ ejusdem Isoldæ exeuntibus, qui  
 “ inde seisiti fuerunt per formam  
 “ doni prædicti, de quibus exivit  
 “ iste Johannes ut filius et heres,  
 “ &c. Et postmodum prædicta  
 “ Isolda obiit, post cujus mortem  
 “ prædicta ecclesia vacavit per  
 “ mortem prædicti Ricardi de Cole-  
 “ forde, et præfatus Oliverus præ-  
 “ sentavit ad eandem quendam  
 “ Robertum Polhorman . . . . .  
 “ . . . Et postmodum prædictus  
 “ Rogerus obiit, et prædictus  
 “ Oliverus assignavit prædictum  
 “ manerium ad quod, &c., cuidam  
 “ Johannæ quæ fuit uxor præfati  
 “ Rogeri de Carmynou, tenendum  
 “ nomine dotis, &c., in allocatio-  
 “ nem aliorum tenementorum,  
 “ &c., quo tempore prædicta  
 “ ecclesia vacavit per mortem præ-  
 “ dicti Roberti de Polhorman, per  
 “ quod prædicta Johanna præsen-  
 “ tavit ad eandem quendam Jo-  
 “ hannem Rous de Roscarnou,  
 “ . . . . . quæ quidem  
 “ Johanna postmodum obiit, et  
 “ præfatus Oliverus intravit in  
 “ manerio prædicto ad quod, &c.,  
 “ et inde seisitus fuit. Et postmo-  
 “ dum prædictam acram terræ,

## No. 49.

A.D. 1344. —*Derworthy*. We tell you that is quite true that R. was seised and presented, and gave the manor to Oliver and Isolda, and the heirs of their bodies, &c., excepting two acres of land, the garden, and the advowson, and he died seised of that portion and of the advowson, and that was assigned to his wife in name of dower, and after her death his son entered and enfeoffed us; judgment; *absque hoc* that you entered upon the acre and the garden as you suppose.—*Grene*. That plea is manifold: one that

## No. 49.

—*Der.* Nous vous dioms qe bien est verite qe R. fut A.D. 1344.  
 seisi et presenta, et dona le manere a Oliver et  
 Isolde et les heirs de lour corps, &c., forpris deux  
 acres de terre, le gardyn, et lavowesoun, et de cel  
 porcion et lavowesoun il murust seisi, et cel fut  
 assigne a sa femme en noun de dowere, et apres  
 sa mort son fitz<sup>1</sup> entra et nous feffa; jugement;  
 saunz ceo qe vous entrastes en lacre et<sup>2</sup> le gardyn  
 come vous supposes.<sup>3</sup>—*Grene.* Ceo plee est *multiplex*:

“ simul cum advocacione ecclesie  
 “ predictæ, alienavit præfato Ro-  
 “ gero qui nunc, &c. Et ipse  
 “ Johannes de Carmynou, ut filius  
 “ de corpore ejusdem Isoldæ pro-  
 “ creatus, perpendens alienationem  
 “ illam ad exheredationem suam  
 “ fieri per prædictum Oliverum,  
 “ qui nullum statum habuit in  
 “ eadem nisi ad terminum vitæ  
 “ suæ tantum, recenter intravit in  
 “ terra illa simul cum advocacione  
 “ supradicta. Et ea ratione ad ipsum  
 “ Johannem et non ad præfatum  
 “ Rogerum pertinet ad prædictam  
 “ ecclesiam præsentare, unde petit  
 “ judicium et breve Episcopo, &c.”

<sup>1</sup> Harl., fitz et heir.

<sup>2</sup> L., en.

<sup>3</sup> The replication, as entered on  
 the roll, was “ Rogerus bene cog-  
 “ noscit quod prædicta advocatio  
 “ ecclesie prædictæ fuit pertinens  
 “ ad manerium de Eglosros præ-  
 “ dictum, sed ubi prædictus Jo-  
 “ hannes supponit præfatum Ro-  
 “ gerum de Carmynou dedisse  
 “ prædictum manerium integre  
 “ prædictis Olivero et Isoldæ et  
 “ heredibus de corpore ejusdem  
 “ Isoldæ exeuntibus, idem Rogerus  
 “ dedit præfato Olivero et Isoldæ  
 “ et heredibus de corporibus eorun-  
 “ dem Oliveri et Isoldæ exeuntibus  
 “ manerium prædictum, cum per-

“ tinentiis, exceptis prædictis  
 “ duabus acris terræ, et gardino, et  
 “ advocacione ecclesie prædictæ,  
 “ quæ quidem terram, gardinum,  
 “ et advocacionem in seisina sua  
 “ propria retinuit, et inde obiit  
 “ seisitus, &c., post ejus mortem  
 “ intravit in eisdem præfatus  
 “ Oliverus, ut filius et heres præfati  
 “ Rogeri donatoris, &c., et eadem  
 “ terram, gardinum, et advocati-  
 “ onem assignavit præfatæ Jo-  
 “ hannæ quæ fuit uxor Rogeri,  
 “ tenenda nomine dotis, quæ  
 “ quidem Johanna sic seisita de  
 “ tenementis illis præsentavit ad  
 “ eandem ecclesiam præfatum  
 “ Johannem Rous, &c. Et post  
 “ mortem ejusdem Johannæ præ-  
 “ fatus Oliverus intravit in eisdem  
 “ tenementis ad quæ, &c., ut in  
 “ reversione sua, &c., et inde  
 “ seisitus fuit ut de feodo simplici,  
 “ et postmodum inde feoffavit  
 “ ipsum Rogerum qui nunc, &c.,  
 “ tenendis sibi et heredibus de  
 “ corpore suo exeuntibus, de quibus  
 “ tenementis ad quæ, &c., ipse  
 “ Rogerus seisitus fuit virtute  
 “ feoffamenti prædicti, et statum  
 “ illum continuavit quousque præ-  
 “ dicta ecclesia vacavit, &c., et  
 “ adhuc inde est seisitus, &c. Et  
 “ hoc paratus est verificare, unde  
 “ petit judicium, &c.”

## No. 49.

A.D. 1344. the advowson is not appendant to the manor ; a second the entry of the heir upon the manor, and that he enfeoffed you ; a third that we did not enter upon the acre and the advowson ; and also that the gift of the manor was made to the husband and his wife in tail. —STONORE. Will you maintain that your feoffor had a fee ? because the matter depends upon that, and, if he omits that, with regard to that which he says about the manor, he may lose.—*Thorpe*. So we understand it, Sir.—*Derworthy*. They have not denied that the advowson is appendant to the garden and the acre of land, nor that we are seised.—*Grene*. Certainly we have done so, because we understand the advowson to be appendant to the manor : for even though it were the fact that there was such an alienation of a part of the manor with the advowson by the tenant for term of life, we understand that it could not sever the right, even though we did not enter upon the land, but only upon the advowson, and that this would cause the advowson to be rejoined to the manor.—*KELSHULLE*. How do you enter upon an advowson ?—*Grene*. By watching for a presentation when it shall fall in.—*WILLOUGHBY*. Do you suppose that by this alienation of a part of the manor the advowson would be severed from it as a whole ? as meaning to say that it would not.—*Moubray*. Yes, because judgment to that effect was lately affirmed, in such a case, in the King's Bench, witness the case of J. Raleigh and Greneville.<sup>1</sup>—*Derworthy*. We tell you that he did not enter, and we demand judgment, inasmuch as he does not deny that we are seised of the acre, &c., to which the advowson is appendant, and we pray a writ to the Bishop.—*Grene*. And we pray judgment, inasmuch as the advowson is by right appendant to the manor, and was, through our entry, by right rejoined to the manor, of which you do not deny that we are seised,

<sup>1</sup> See Y.B., Hil., 17 Edw. III., No. 12, and Easter, 17 Edw. III., No. 4,

## No. 49.

un qe ceo nest pas appendaunt al maner; autre A.D. 1344.  
 lentre leir en le maner, qe vous feffa; le terce qe  
 noun nentrames pas en lacre et lavowesoun; et  
 auxint qe le doun se fist del maner<sup>1</sup> al baroun et  
 sa femme en taille.—*Ston.* Volez vous meyntener  
 qe vostre feffour avoit fee? qar sur ceo depent la  
 bosoigne, et, sil entrelessa ceo, ceo<sup>2</sup> qil parle del  
 maner il le<sup>3</sup> purra perdre.—*Thorpe.* Auxint, Sire,  
 entendoms nous.—*Der.* Ils nount pas dedit lavowe-  
 soun estre appendaunt al gardyn et lacre de terre,  
 et qe nous sumes seisi.—*Grene.* Certes<sup>4</sup> si avoms,  
 qar nous entendoms lavowesoun estre appendaunt al  
 manere: qar tut fut il issint qil y avoit tiel aliena-  
 cioun de parcelle del manere<sup>5</sup> ove lavowesoun par  
 le tenant a terme de vie qe ele ne put severer de  
 dreit, tut nentrames pas en la terre, mes en lavowe-  
 soun soulement, nous entendoms qe ceo freit lavowe-  
 soun estre rejoint al manere.—*KELS.* Coment entrez  
 vous en avowesoun?—*Grene.* Par gaiter<sup>6</sup> de pre-  
 sentement quant il escherra.—*WILBY.* Quidez vous  
 par<sup>7</sup> cel alienacioun de parcelle qe lavowesoun serra  
 severe du<sup>8</sup> gros? *quasi diceret non.*—*Moubray.* Oyl,  
 qar le jugement fut afferme ore tarde en tiel cas  
 en Baunk le Roy, *teste J. Rale, et Greneville.*—*Der.*  
 Nous vous dioms qil nentra pas, et demandoms  
 jugement, desicome il ne dedit pas qe nous sumes  
 seisi del acre, &c., a quei lavowesoun est appendaunt,  
 et prioms brief al Evesqe.—*Grene.* Et nous juge-  
 ment, desicome cest appendaunt al maner de dreit,  
 et par my nostre entre ceo fut rejoint de dreit al  
 maner, de quel<sup>9</sup> vous ne dedites<sup>10</sup> pas nous estre

<sup>1</sup> The words del maner are omitted from L.

<sup>2</sup> ceo is from L. alone.

<sup>3</sup> L., ne.

<sup>4</sup> Certes is omitted from L.

<sup>5</sup> The words del manere are from Harl. alone.

<sup>6</sup> L., granter.

<sup>7</sup> Harl., qe.

<sup>8</sup> Harl., en.

<sup>9</sup> The words de quel are omitted from L.

<sup>10</sup> L., distes.

## No. 49.

A.D. 1344. and we pray a writ to the Bishop.—*Derworthy*. He does not deny that we are seised of the acre of land to which the advowson is appendant, nor that we were seised on the day on which the writ was purchased; and we pray a writ to the Bishop.—*Thorpe*. We are agreed between us that the ancestor higher up presented, and that the advowson was then appendant to the manor; and whereas they say that he gave the acre and the advowson to Oliver and Isolda and the heirs of their bodies begotten, we say that he gave the entire manor to Oliver and Isolda and the heirs of Isolda's body begotten, and that we shall be ready to maintain if they will aver the reverse; and we have said that, after the death of Isolda, of whom we are issue, Oliver, who had only a term for life in that manner, and that in our right, aliened in fee the acre which was parcel of the manor, and the advowson, upon which alienation we entered, and by that entry the advowson was rejoined to the entire manor, so that, whether he be now seised of the acre or not, it does not change the matter; therefore, inasmuch as he does not deny our entry since the alienation was made, judgment.—*Derworthy*. We were seised of the acre, and of the advowson, as above, and we have continued that estate, *absque hoc* that you entered; ready, &c.—*Thorpe*. We entered; ready, &c.—And the other side said the contrary.—And it seemed to

## No. 49.

seisi, et prioms brief al Evesqe.—*Der.* Il ne dedit <sup>A.D. 1344.</sup> pas qe nous sumes seisi del acre de terre<sup>1</sup> a quei lavowesoun, &c., et fumes<sup>2</sup> jour de brief purchase; et<sup>3</sup> prioms brief al Evesqe.—*Thorpe.* Nous sumes a un entre nous qe launcestre paramount presenta, et qe ceo fut adonques appendaunt al maner; et la ou ils dient qil dona lacre et lavowesoun a Oliver et Isolde et les heirs de lour corps engendrez,<sup>4</sup> nous dioms<sup>5</sup> qil dona le maner entier a Oliver et Isolde<sup>6</sup> et les heirs du corps Isolde engendrez, et cella serroms prest de meyntener sils volent averer le revers; et apres la mort Isolde, de qi nous sumes issu, avoms dit qe Oliver, qe navoit qe terme de vie par la manere, et ceo en nostre dreit, aliena en fee lacre qe fut parcelle del maner, et lavowesoun, [sur quel alienacioun nous entrames, par quel entre lavowesoun]<sup>7</sup> fut rejoynt al maner entier, issint qe, le quel il soit<sup>8</sup> ore seisi del acre ou nemy, ceo ne chaunge pas la matere; par quei, desicom il ne dedit pas nostre entre puis lalienacioun fait, jugement.—*Derw.* Nous fumes<sup>9</sup> seisi del acre et<sup>10</sup> lavowesoun, *ut supra*, et cel estat avoms continue, saunz ceo qe vous entrastes; prest, &c.—*Thorpe.* Nous entrames; prest, &c.—*Et alii e contra.*<sup>11</sup>—Et sembloit

<sup>1</sup> The words de terre are from L. alone.

<sup>2</sup> 25,184, prioms.

<sup>3</sup> Harl., par quei nous.

<sup>4</sup> engendrez is from L. alone. Harl., et.

<sup>5</sup> dioms is omitted from L.

<sup>6</sup> The words et Isolde are omitted from Harl.

<sup>7</sup> The words between brackets are omitted from Harl.

<sup>8</sup> Harl., sount.

<sup>9</sup> Harl., sumes. The word is omitted from L.

<sup>10</sup> Harl., ove.

<sup>11</sup> The pleadings on the roll sub-

sequent to the replication are the following:—

“ Et Johannes dicit, ut prius,  
 “ quod, cum ipse perpendebat præ-  
 “ dictam alienationem ad exhere-  
 “ dationem suam in forma supra-  
 “ dicta factam, ipse recenter  
 “ intravit in prædicta terra, &c.,  
 “ simul cum advocacione, &c., et  
 “ ipsum Rogerum inde amovit.  
 “ Et hoc paratus est verificare,  
 “ unde petit judicium, &c.  
 “ Et Rogerus dicit quod ipse  
 “ seisitus fuit de terra prædicta ad  
 “ quam, &c., virtute feoffamenti  
 “ prædicti, et statum illum con-

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A.D. 1344. the COURT, even though he never did enter upon the acre, since the alienation in fee, by a person who by his silence is admitted to have had only a term for life, is admitted, to the disherison of the party, so that the acre and the advowson were, by reason of the forfeiture incurred by this alienation, liable to seizure by the person in whom the right reposes, yet that, even though he did not enter upon the acre, the advowson should upon his claim, on the next vacancy, be adjudged to the person to whom the reversion belonged, as appendant to the manor, from which manor the advowson was not severed except during the alienation in fee, which alienation could be defeated by entry, because it is a proper entry upon an advowson to make a claim, on the next vacancy, by presentation.

Trespass. (50.) § Trespass against Gilbert de Buringhame,



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a la COURT, tut nentra il unqes en lacre, quant A.D. 1344.  
 lalienacioun en fee, par celuy qe en teisant est conu  
 aver forqe terme de vie, est conu, a desheritesoun  
 de partie, issint qe lacre et lavowesoun furent, par  
 forfaiture de cel alienacioun, a seisir par celuy en  
 qi le dreit repose, qe<sup>1</sup> tut nentra<sup>2</sup> il pas en lacre,  
 qe lavowesoun par son clamer a la proscheyn void-  
 aunce<sup>3</sup> serreit ajuge a celuy a qi la reversioun  
 appendoit com appendaunt al maner, de quel maner  
 ceo ne fut pas severe<sup>4</sup> forqe duraunt lalienacioun  
 en fee, quel alienacioun par entre purreit estre de-  
 fait, qar cest propre entre davowesoun de mettre  
 chalange sur la proschein<sup>5</sup> voidaunce par presente-  
 ment.<sup>6</sup>

(50.)<sup>7</sup> § Trans vers Gilbert de Bukinghame, Trans.

“tinuavit quousque ecclesia præ-  
 “dicta vacavit, prout ipse superius  
 “dixit, et adhuc inde seisitus est,  
 “absque hoc quod prædictus Jo-  
 “hannes in terra illa intravit, seu  
 “ipsum inde unquam amovit.”  
 Issue was joined upon this.

<sup>1</sup> Harl., et.

<sup>2</sup> Harl., mist.

<sup>3</sup> voidaunce is omitted from Harl.

<sup>4</sup> Harl., sewere.

<sup>5</sup> Harl., purchaz. The word is omitted from L.

<sup>6</sup> According to the roll there was a verdict at *Nisi prius* “quod  
 “Rogerus de Carmynou infra  
 “nominatus fuit seisitus de terra  
 “ad quam advocatio ecclesiæ  
 “infra contentæ pertinet virtute  
 “feoffamenti quod ipse placitando  
 “allegavit, et statum suum con-  
 “tinuavit quousque ecclesia præ-  
 “dicta vacavit, et adhuc inde  
 “seisitus est absque [hoc] quod  
 “prædictus Johannes in terra illa  
 “intravit seu ipsum unquam inde

“amovit. Dicunt etiam quod  
 “tempus semestre præteriit per  
 “impedimentum prædicti Jo-  
 “hannis, et quod Episcopus con-  
 “tulit ecclesiam prædictam per  
 “lapsum temporis. Dicunt etiam  
 “quod ecclesia prædicta valet per  
 “annum secundum verum valo-  
 “rem ejusdem viginti libras  
 “tantum. Et dicunt quod alii in  
 “brevi nominati nullum impedi-  
 “mentum fecerunt.”

Judgment was accordingly given for the plaintiff to recover his presentation and have a writ to the Bishop, and to recover his damages, viz. two years' value of the church.

<sup>7</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III, R<sup>o</sup> 297, d. It there appears that the action was brought by Geoffrey de Elfton and Margaret his wife against Gilbert de Bokyngham, parson of the church of “Wykham” (Wickham, Berks) in respect of an assault upon Margaret.

## No. 50.

A.D. 1344. parson of the church of Wickham.—*Derworthy*. Judgment of the writ, because we tell you that Gilbert is parson of the church of Welford, and Wickham is a chapel within the parish of Welford.—*Skipwith*. It is but a superfluous addition in this writ of Trespass, where the defendant has a name and surname.—*WILLOUGHBY*. Then, is it so?—*Skipwith*. He is parson of the church of Wickham; ready, &c.—*Derworthy*. He is parson of Wickham, because Wickham is within the parish of Welford, and he is as much parson of the one vill as of the other.—*WILLOUGHBY*. If it be as you say, he is not parson of the church of Wickham, because there is not any church in Wickham.—*Derworthy*. But, if I take such an averment, it will be held to be not denied by me that there is a church of Wickham, and there is not one; but, if he will say that Wickham is a church, and not a chapel of Welford, ready, &c., that it is a chapel.—*WILLOUGHBY*. We shall not, upon this writ of Trespass, try whether it is a chapel or a church.—*Mutlow*. Our dispute is not whether we are parson of Welford or of Wickham, because we admit that we are parson of both, but we say that there is no church of Wickham, but that Wickham is a chapel of Welford, wherefore the issue shall be made as to whether Wickham is a church or a chapel of Welford.—*WILLOUGHBY*. That is not a reason why he should be put to plead outside his writ

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persone del eglise de [Wikham.—*Derw.* Jugement de A.D. 1344. brief, qar nous vous dioms qe Gilbert est persone del eglise de]<sup>1</sup> Welforde, et Wikham est chapelle deinz la paroche de Welforde.<sup>2</sup>—*Skip.* Il nest<sup>3</sup> forqe un adjeccion de superfluite en ceo brief de Trans, la ou il ad noun et surnoun.—*WILBY.* Donqes est il issint?—*Skip.* Il est persone del eglise de Wikham<sup>4</sup>; prest, &c.—[*Der.* Il est persone de Wikham, qar Wikham est<sup>5</sup> deinz la paroche de Welforde, et il est si avant persone del une ville com del entre.—*WILBY.* Sil soit com vous parlez, il nest pas persone del eglise de Wikham, qar il ny ad pas eglise en Wikham.]<sup>6</sup>—*Der.* Mes si jeo preisse<sup>7</sup> tiel averement, il serra tenu a nient dedit de moy qil y ad eglise de Wikham,<sup>8</sup> et ceo ny ad il pas; mes sil voet dire qe Wikham<sup>4</sup> est eglise et noun pas chapelle de Welforde, prest, &c., qe cy.—*WILBY.* Nous ne trieroms<sup>9</sup> pas en ceo brief de Trans sil<sup>10</sup> soit chapelle ou eglise.—*Muttelowe.* Nostre debat nest pas le quel nous soioms persone de Welforde ou de Wikham,<sup>4</sup> [qar nous conissons estre persone de lun et lautre, mes nous dioms qil ny ad pas eglise de Wikham, mes qe Wikham]<sup>6</sup> est chapelle de Welforde, [par quai lissue se fra le quel Wikham soit eglise ou chapel de Welforde].<sup>11</sup>—*WILBY.* Ceo nest pas resoun qil soit mys<sup>12</sup> a pleder hors de son brief

<sup>1</sup> The words between brackets are omitted from Harl.

<sup>2</sup> The plea was, according to the roll, "quod Wykham est quædam "capella annexa ad ecclesiam de "Welleforde, unde ipse est persona, et dicit quod, ubi prædictus "Galfridus nominat ipsum in brevi "suo personam ecclesiæ de Wykham, ipse est persona ecclesiæ de "Welleforde, et non persona ecclesiæ de Wykham. Et hoc paratus "est verificare, unde petit iudicium, &c."

<sup>3</sup> Harl., conust, instead of Il nest.

<sup>4</sup> L., Welkham.

<sup>5</sup> Harl., gest, instead of qar Wikham est.

<sup>6</sup> The words between brackets are omitted from L.

<sup>7</sup> preisse is omitted from L.

<sup>8</sup> L., Wilkham.

<sup>9</sup> Harl., mettroms.

<sup>10</sup> Harl., qil.

<sup>11</sup> The words between brackets are from Harl. alone.

<sup>12</sup> mys is omitted from Harl.

## No. 50.

A.D. 1344. by a collateral matter, which is put forward for the purpose of putting him outside his writ. And suppose it were said that he is not parson of Wickham, as he is not according to the opinion of some persons, I say, for myself, that, whereas he is named by another surname in this writ of Trespass, the plaintiff ought not to do anything more than maintain that he is such a person as the writ supposes; wherefore, will you accept the averment?—*Grene*. I have tendered the averment that Wickham is a chapel of Welford, of which I am parson, which averment he refuses; judgment.—*STONORE* and *HILLARY* said that, if the defendant were to say that he is not parson of Wickham, it would be not denied by him that Wickham is a church.—*KELSHULLE*. “*Negativa nihil ponit*”; and suppose I were to bring a writ against you by the name of Robert son of John, and you were to say that your father’s name was William and not John, will the issue be that your father was named John or that he was named William? I say that the issue will be made in accordance with my writ, and I shall have it in accordance with the way in which my writ supposes that you are named, without taking issue on that which he supposes collaterally.—*HILLARY*. If he say that he is not parson of the church of Wickham, it will be held to be not denied that there is a church of Wickham.—*WILLOUGHBY*. It is not so.—*HILLARY*. Certainly it will be.—*STONORE*. Deliver yourself.—*Derworthy*. We tell you, as above, that Wickham is a chapel of Welford, and so he is not parson of the church of Wickham; ready, &c.—And the other side said the contrary.

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par chose en coste, qest mys de luy mettre hors de son brief. Et jeo pose qe ceo fut parle<sup>1</sup> qil nest pas<sup>2</sup> persone de Wikham, come il nest pas<sup>2</sup> al entente dascuns, jeo die pur moy la ou il est nome par autre surnoun en ceo brief de Trans, unqore ne deit le pleintif autre chose faire forsqe meyn-tener qil est tiel come son brief suppose; par quei voletz laverement?—*Grene*. Jay tendu<sup>3</sup> daverer qe Wikham<sup>4</sup> est chapelle de Welforde, dount jeo su persone, quel averement il refuse; jugement.<sup>5</sup>—*STON.* et *HILL.* *dixerunt* qe si le defendant deist qil nest pas persone de Wikham qe ceo est nient dedit de luy qe Wikham<sup>6</sup> est eglise.—*KELS.* *Negativa nihil ponit*; et jeo pose qe<sup>7</sup> jeo porte brief vers vous par noun de Robert fitz Johan, et vous ditez qe vostre pere<sup>8</sup> avoit a noun William, et noun pas Johan,<sup>9</sup> le quel se<sup>10</sup> fra issue qe vostre pere avoit noun Johan ou William? Jeo die qe acordaunt a mon brief lissue se fra, et solonc ceo qe mon brief suppose qe vous estes nome jeo laveray, saunz prendre issu sur ceo qil suppose de cost.—*HILL.* Sil die qil nest pas persone del eglise de Wikham,<sup>11</sup> serra tenu a nient dedit qil y ad eglise de Wikham.<sup>11</sup>—*WILBY.* Il nest pas issint.—*HILL.* Certes si serra.—*STON.* Deliveriez vous.—*Der.* Nous vous dioms, *ut supra*, qe Wikham<sup>4</sup> est chapelle de Welforde, et issint nest il pas persone del eglise de Wikham; prest, &c.—*Et alii e contra.*<sup>12</sup>

<sup>1</sup> L., and 25,184, pas plee.

<sup>2</sup> pas is from Harl. alone; L., est instead of nest pas.

<sup>3</sup> L., entendu.

<sup>4</sup> L., Wilkham.

<sup>5</sup> Harl., mes.

<sup>6</sup> L., Wylkham.

<sup>7</sup> The words et jeo pose qe are omitted from Harl.

<sup>8</sup> Harl., persone.

<sup>9</sup> Johan is omitted from L.

<sup>10</sup> L., ceo.

<sup>11</sup> L., Welkham.

<sup>12</sup> The words *Et alii e contra* are omitted from Harl. According to the record there was a replication "quod prædictus Gilbertus est persona ecclesiæ de Wykham, prout ipse superius per breve et narrationem suam supponit." It was upon this that issue was joined.

The *Venire* was awarded, but nothing further appears upon the roll.

## No. 51.

A.D. 1344. (51.) § Dower of land and rent.—*Gaynesford* alleged,  
 Dower. as to the land, that one Alesia<sup>1</sup> was endowed higher  
 up, and that her husband and she leased the same  
 land to the ancestor of the demandant's husband, to  
 hold to him and the heirs of his body,<sup>2</sup> for the life of  
 Alesia who held in dower, which Alesia is still living;  
 and, after the death of his ancestor, the demandant's  
 husband, as son and heir of his father in tail, entered.  
 And (said *Grene*) we demand judgment whether you  
 can demand dower of the estate of your husband, who  
 held only for the life of another person who is still  
 living, and who holds by an earlier endowment.—*Grene*.  
 That plea is double, and self-contradictory: one is the  
 earlier dower, which is a bar even though our husband  
 had had a fee simple; the other is that, even though  
 there was no earlier dower, our husband's estate was  
 only *pur autre vie*.—And WILLOUGHBY put the tenant  
 to hold to one.—And *Gaynesford* held to the point  
 that the husband had only *pur autre vie*.—And, as  
 to the rent, *Gaynesford* pleaded in bar on the ground

<sup>1</sup> See p. 185, note 14.

<sup>2</sup> For the actual terms of the  
 settlement see p. 185, note 14.

## No. 51.

(51.)<sup>1</sup> § Dowere de terre et rente.—*Gayn.* alleggea, A.D. 1344.  
 quant a la terre, qun A. fut dowe de plus haut, et Dowere.  
 son baroun et luy lesserent mesme<sup>2</sup> la terre al  
 auncestre<sup>3</sup> le baroun la demandante, a luy et les  
 heirs de son corps, pur la vie A. qe tient en dowere,  
 quel A. est unqore en pleyne vie; et, apres la mort  
 son auncestre, le baroun la demandante, com fitz et  
 heir a son pere de la taille, entra. Et demandoms<sup>4</sup>  
 jugement si del estat vostre baroun qe navoit forqe  
 a autri<sup>5</sup> vie, qest unqore en vie, et tient de plus  
 haut dowement, si dowere puissez demander.—*Grene.*  
 Ceo plee est double et contrariaunt: un<sup>6</sup> le<sup>7</sup> dowere  
 de plus haut, qest barre tut ust<sup>8</sup> nostre [baroun en  
 fee simple; autre, tut ny avoit il<sup>9</sup> pas dowere de  
 plus haut, lestat<sup>10</sup> nostre]<sup>11</sup> baroun forqe a autri<sup>12</sup>  
 vie.—Et WILBY mist le tenant de soi tener al un.—  
 Et *Gayn.* se tient a ceo qe le baroun navoit forqe  
 a autri<sup>13</sup> vie.<sup>14</sup>—Et de la rente *Gayn.* pleda en barre

<sup>1</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 473, d. It there appears that the action was brought by Margery late wife of John de Hunstane against Henry son of William de Hunstane, knight, in respect of a third part of 4 messuages, two mills, three gardens, 181 acres of land, 3 acres of meadow, 200 acres of pasture, 200 acres of wood, and 49s. 2d. of rent in various villis in Sussex.

<sup>2</sup> mesme is omitted from Harl.

<sup>3</sup> L., autre.

<sup>4</sup> The words Et demandoms are omitted from 25,184.

<sup>5</sup> Harl., terme de.

<sup>6</sup> un is omitted from L.

<sup>7</sup> le is from Harl. alone.

<sup>8</sup> L., qe lestat, instead of qest barre tut ust.

<sup>9</sup> L., and 25,184, ele.

<sup>10</sup> lestat is omitted from L.

<sup>11</sup> The words between brackets are omitted from Harl.

<sup>12</sup> Harl., fe ou a terme de, instead of forqe a autri.

<sup>13</sup> Harl., terme de autri.

<sup>14</sup> As to a portion of the tenements demanded the tenant, according to the roll, rendered dower. "Et quo ad residuum tenementorum prædictorum . . . . . dicit quod quidam Laurentius de Bodekete obiit seiscitus de tenementis illis . . . . . in dominico suo ut de feodo, post cujus mortem quidam Gilbertus, filius et heres ejusdem Laurentii, assignavit eadem tenementa cuidam Alesie quæ fuit uxor prædicti Laurentii tenenda nomine dotis, &c., quæ quidem Alesia nupsit se cuidam Nicholao Gentyll. Et postmodum iidem Nicholaus et Alesia per finem concesserunt

## No. 51.

A.D. 1344. that it was only rent which tenants for term of life paid during their lives, and alleged that the rent was given as above, as the land was given, in tail to the ancestor of the demandant's husband.—*Grene*, as to the whole, maintained that the husband was seised so that he could endow.—*Gaynesford*. We have acknowledged a seisin in him as of fee in such a manner that you are not dowable thereof; judgment whether you can have an action, if you do not show any other



## No. 51.

pur ceo qe ceo ne fut forqe rente qe tenantz a terme de vie feisent a lour vies, et alleggea qe la rente fut done *ut supra*, com la terre fut done, qen taille al auncestre le baroun la demandante.<sup>1</sup>—*Grene*, quant a tut, meyntynt qe le baroun fut seisi qe dower la pout.<sup>2</sup>—*Gayn*. Noun avoms conu un seisine a luy come de fee en manere de quei vous nestes pas dowable; jugement, si vous ne moustrez autre

A.D. 1344.

“ tenementa illa quibusdam Willel-  
 “ mo de Hunstane et Sibillæ uxori  
 “ ejus et heredibus de corporibus  
 “ eorundem Willelmi et Sibillæ  
 “ exeuntibus, tota vita præfatæ  
 “ Alesia, quæ adhuc superstes est,  
 “ reddendo inde per annum eisdem  
 “ Nicholao et Alesia decem libras  
 “ tota vita ejusdem Alesia. Et post  
 “ mortem ipsorum Willelmi et  
 “ Sibillæ intravit in eisdem præ-  
 “ dictus Johannes quondam vir,  
 “ &c., de cujus dotatione, &c., ut  
 “ filius et heres eorundem Willel-  
 “ mi et Sibillæ per formam, &c.  
 “ Et dicit quod, ante prædictam  
 “ concessionem prædictorum Ni-  
 “ cholai et Alesia præfato Willelmo  
 “ et Sibillæ in forma supradicta  
 “ inde factam, nec prædicti Willel-  
 “ mus et Sibilla, nec prædictus  
 “ Johannes de cujus dotatione, &c.,  
 “ fuerunt seisi de tenementis illis  
 “ ut de libero tenemento, &c. Et  
 “ dicit quod postquam prædicta  
 “ tenementa assignata fuerunt præ-  
 “ fatæ Alesia nomine dotis, &c.,  
 “ in forma prædicta, præfatus Gil-  
 “ bertus concessit reversionem  
 “ eorundem tenementorum præfa-  
 “ tis Willelmo et Sibillæ et heredi-  
 “ bus de corporibus suis exeuntibus,  
 “ post quorum mortem præfatus  
 “ Johannes seisitus fuit de tene-  
 “ mentis illis, &c., ut filius et heres  
 “ eorundem Willelmi et Sibillæ,

“ &c., in cujus persona illi duo  
 “ status, videlicet de feodo talliato  
 “ et de libero tenemento nunquam  
 “ fuerunt adunati in jure, sed  
 “ semper remanserunt in persona  
 “ ejusdem Johannis per diversos  
 “ titulos, &c., unde petit judicium  
 “ si prædicta Margeria de tali statu  
 “ dotem inde habere debeat, &c.”

<sup>1</sup> As to several specified portions  
 of the rent the plea was, according  
 to the roll, “ quod post mortem  
 “ prædictorum Willelmi de Hun-  
 “ stane et Sibillæ præfatus Jo-  
 “ hannes, de cujus dotatione, &c.,  
 “ fuit seisitus de redditu prædicto  
 “ in feodo talliato per formam, &c.,  
 “ unde petit judicium si prædicta  
 “ Margeria dotem inde habere  
 “ debeat in hoc casu, &c.”

<sup>2</sup> According to the roll “ quo ad  
 “ prædictum redditum undecim  
 “ solidorum et decem denariorum  
 “ dicit quod prædictus Johannes vir  
 “ suus fuit seisitus de redditu illo  
 “ ut de feodo, ita quod eam inde  
 “ dotare potuit. Et hoc petit quod  
 “ inquiratur per patriam. Et Hen-  
 “ ricus similiter. Et quo ad tene-  
 “ menta residua, &c., dicit quod  
 “ prædictus Johannes quondam  
 “ vir, &c., fuit seisitus de eisdem  
 “ ut de feodo, ita quod ipsam  
 “ Margeriam inde dotare potuit.  
 “ Et hoc paratus est verificare,  
 “ &c.”

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A.D. 1344. possession in him.—*Grene*. Seised as of fee, so that he could endow us.—*Gaynesford*, as before.—*WILLOUGHBY*. You do not acknowledge in the husband any estate of which she is dowable, and she will not make a title for her husband; wherefore, will you accept the averment?—*STONORE*. Who was it to whom the husband and his wife leased? And suppose they leased to the heir, to whom the reversion belonged, he was then seised of the whole, of fee, and right, and freehold, and then the wife would be dowable.—*Gaynesford*. No, Sir, not when he came to the fee and right, and to the freehold by different titles.—*WILLOUGHBY*. Will not the heir have a Formedon on such a seisin?—*W. Thorpe*. No, Sir, he will not have one.—*Gaynesford* pleaded, as to the land, that the person to whom the gift was by the limitation as above was the same person to whom the right was regardant by way of reversion after the death of the woman who was tenant in dower, for whose life the gift was made by the limitation, and that the demandant's husband, as above, was issue in tail, and so had the fee, and the right, and the freehold, but by different titles; judgment whether you ought to have dower of such an estate.—*Grene*. That is a different bar, and new matter, to plead which you shall not be admitted; but, inasmuch as against your [original] bar, from which you cannot depart, we tendered the averment that our husband was seised so that he could endow, which averment you have refused, judgment; and we pray

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possessioun en luy, si accion puissez aver.<sup>1</sup>—*Grene.* A.D. 1344.  
 Seisi com de fee si qe dower nous put.—*Gayn., ut prius.*—WILBY. Vous conussez nul estat al baroun de quei ele est dowable, et ele ne fra pas title a son baroun; par quei volez<sup>2</sup> laverement?—STON. Qi fut celuy a qi le baroun et sa femme lesserent? Et jeo pose qils lesserent al heir a qi la reversioun appendoit, donqes fut il seisi del tut, de fee, et dreit, et fraunctenement, et donqes serreit la femme dowable.—*Gayn.* Sire, nanil,<sup>3</sup> quant il avient par divers titles al fee et dreit<sup>4</sup> et fraunctenement.—WILBY. Navera leir Fourme de doun de tiel seisine?—*W. Thorpe.* Sire,<sup>5</sup> noun avera pas.—*Gayn.,* quant a la terre, pleda qe<sup>6</sup> celuy a qi le doun par la taille *ut supra*<sup>7</sup> fut mesme la persone a qi le dreit fut regardaunt par voie de reversion apres le decees la femme tenante en dowere, a qi vie le doun se fist par la taille, et le baroun la demandante, *ut supra*, fut issue<sup>8</sup> en taille, et issint avoit fee, et le<sup>9</sup> dreit, et le<sup>9</sup> fraunc tenement, mes par divers titles; jugement si de tiel estat devez<sup>10</sup> dowere aver.—*Grene.* Cest autre barre, et novel matere, a quei vous ne serrez resceu; mes, desicome countre vostre barre, de quel vous ne poez departir, nous tendoms<sup>11</sup> daverer qe nostre baroun fut seisi si qe dower, &c., quel averement vous avez refuse, jugement; et prioms

<sup>1</sup> According to the roll "Henricus dicit quod ipse paratus est verificare quod predictus Johannes quondam vir, &c., nullum alium statum habuit in predictis tenementis quam ipse superius supponit. Et, ex quo predicta Margeria non dedit ea que per ipsum superius sunt allegata, petit iudicium si prefata Margeria ad verificationem quam preterdit admitti debeat in hac parte &c."

<sup>2</sup> L., voiellez.

<sup>3</sup> L., nanille.

<sup>4</sup> L., al dreit.

<sup>5</sup> Sire is omitted from L.

<sup>6</sup> MSS. of Y.B., a.

<sup>7</sup> The words *ut supra* are omitted from L.

<sup>8</sup> issue is omitted from L.

<sup>9</sup> le is from L. alone.

<sup>10</sup> L., deive; 25,184, deivettez.

<sup>11</sup> L., and Harl., entendoms.

## No. 51.

A.D. 1344. seisin.—*Stouford*. You tender an averment that your husband was seised as of fee, and we fully admit it, and therefore there is no need to aver that which is admitted; and, inasmuch as you will not take to our admission, and will not show any other estate in your husband, judgment.—*Grene*. I quite agree with you that, if you had pleaded in that way, you would have ousted me from the averment, but your first plea gives me the traverse, wherefore you cannot now oust me by a new plea in bar; and, inasmuch as he refuses the averment, judgment.—*Stouford*. And we demand judgment, inasmuch as we acknowledge the husband's estate of fee, and of right, and so we acknowledge that of which you tender averment, whether you ought to be admitted to the averment.—And so to judgment.—*WILLOUGHBY*. As to the rent, in respect of which you do not acknowledge any estate in the husband except for the life of the wife, he tendered the averment that the husband was seised of fee, &c., so that he could endow her, and there we hold you to be at a traverse; therefore, in respect of that, let the averment stand; and your other plea shall be entered in the manner in which it is pleaded.—*STONORE* said that he wondered that *Grene* would not abide judgment in respect of the land upon the tenant's admission, because if the heir enters after the death of his ancestor, and endows his mother, and afterwards takes a wife, and his mother surrenders to him her estate, he then has the whole, and, if he dies, although the mother survives, the son's wife

## No. 51.

seisine.—*Stouf*. Vous tendez un averement qe vostre A.D. 1344.  
baroun fut seisi com de fee, et nous le<sup>1</sup> conussoms  
bien, par quei il ne bosoigne pas daverer ceo qest  
conu; et, desicome vous ne volez prendre a nostre  
conussaunce, ne vous ne volez autre estat moustrer  
en vostre baroun, jugement.—*Grene*. Jeo grant bien  
ove vous qe, si vous eussez plede par cel voie, vous  
moy eussez ouste del averement, mes vostre primer  
plee moy doune le travers, par quai<sup>2</sup> ore par novel  
barre vous moy ousterez pas; et, desicome il refuse  
laverement, jugement.<sup>3</sup>—*Stouf*. Et nous jugement,  
desicom nous conussoms lestat le baroun de fee, et  
de dreit, et issint conussoms ceo qe vous tendez<sup>4</sup>  
daverer, si al averement deivez<sup>5</sup> estre resceu.—*Et  
sic ad judicium*.—*WILBY*. Quant a la rente, dount  
vous conussez<sup>6</sup> nul estat en le baroun forqe a la  
vie la femme, il tendy daverer qe seisi com de fee,  
&c., si qe dower la puyt,<sup>7</sup> la nous vous tenoms a  
travers; par quei en dreit de cel estoise<sup>8</sup> laverement;  
et vostre autre plee serra entre en la manere qil  
est plede.—*STON*. dist qil avoit merveille qe *Grene*  
ne voleit pas demurer en jugement en dreit de la  
terre de sa<sup>9</sup> conussaunce, qar si leir entre apres la  
mort son auncestre, et dowe sa miere, et puis prent  
femme, et sa miere luy rende sus son estat, donqes  
ad il tut, et sil devie, coment<sup>10</sup> qe<sup>11</sup> la mere survist,

<sup>1</sup> le is omitted from L.

<sup>2</sup> quai is from Harl. alone.

<sup>3</sup> According to the roll " Margeria  
" dicit quod, ex quo ipsa parata est  
" verificare quod prædictus Jo-  
" hannes quondam vir, &c., fuit  
" seistus de tenementis illis ut de  
" feodo ita quod ipsam inde dotare  
" potuit, quam quidem verificati-  
" onem prædictus Henricus admit-  
" tere recusat, petit judicium et  
" seisinam de dote sua in hac parte  
" sibi adjudicari, &c." The judg-

ment follows immediately on the  
roll.

<sup>4</sup> L., qest entendu, instead of qe  
vous tendez.

<sup>5</sup> 25,184, deivetez.

<sup>6</sup> Harl., nous conisoms, instead  
of vous conussez.

<sup>7</sup> Harl., pout; L., &c., instead of  
dower la puyt.

<sup>8</sup> L., estoiez.

<sup>9</sup> L., et de, instead of de sa.

<sup>10</sup> coment is omitted from 25,184.

<sup>11</sup> qe is omitted from L.

## No. 51.

A.D. 1344. will be endowed.—*Grene*. Yes, Sir, but the case is different, because, even though this lease was made in this case to the person to whom the reversion belongs, the woman who leased was *covert baron*, and so she has an action, and will be able to defeat this estate of freehold by a *Cui in vita*; but if she had leased, being a *feme sole*, it would be otherwise.—Afterwards *Grene* said:—We pray judgment on the ground that he has refused the averment, and in addition to that on his admission.—*R. Thorpe*. Then is it so?—*WILLOUGHBY* recited the whole plea, and how the averment had been refused, and also that the tenant had admitted the husband's seisin of fee, as above. There-  
 Judgment. fore (said he) the Court adjudges that the demandant do recover her dower, and that the other be in mercy.—And he granted a writ to the Sheriff to enquire as to damages, because the demandant said that her husband died seised.

## No. 51.

la femme le fitz serra dowe.—*Grene.* Oyl, Sire, mes A.D. 1344.  
 le cas est autre, qar tut fut ceo lees fait<sup>1</sup> en ceo  
 cas a celuy a qi la reversioun appent, la femme qe  
 lessa fut coverte de baroun, et issint ad ele accion,  
 et purra defaire cel estat de fraunctement par  
*Cui in vita*; mes si ele soule ust lesse, autre serreit.  
 —*Puis Grene.* Nous prioms jugement<sup>2</sup> de ceo qil  
 ad refuse laverement, ovesqe cella de sa conussance.  
 —*R. Thorpe.* Donques est il issint?—*WILBY* rehercea  
 tut le<sup>3</sup> plee, et coment laverement fut refuse, et  
 auxint il ad conu la seisine le baroun de fee, *ut*  
*supra.* Par quei agarde la COURT qe la demandante *Judicium.*<sup>4</sup>  
 recovere son dowere, et lautre en la merceye.<sup>5</sup>—Et  
 granta brief a Vicounte des damages, pur ceo qe  
 la demandante dist qe son baroun murust seisi.<sup>6</sup>

<sup>1</sup> fait is omitted from L.

<sup>2</sup> jugement is omitted from 25,184.

<sup>3</sup> Harl., cele, instead of tut le.

<sup>4</sup> The marginal note is from L. alone.

<sup>5</sup> The judgment appears on the roll as follows:—"Quia prædictus "Henricus verificationem quam "præfata Margeria superius præ- "tendebat non admittit, et ex- "presse cognovit quod prædicti "Nicholaus et Alesia statum quem "habuerunt in tenementis illis "concesserunt præfatis Willelmo "et Sibillæ in forma supradicta, "et postea præfatus Gilbertus, "cui tenementa illa post mortem "præfate Alesie fuerunt reverti- "bilia, reversionem inde concessit "eisdem Willelmo et Sibillæ, ut "supradictum est, per quod jus et "feodum eorundem, quod fuit "præfato Gilberto revertibile, "adhæsit libero tenemento in "personis prædictorum Willelmi

"et Sibillæ, qui de tali statu  
 "obierunt seisiti, &c., qui quidem  
 "status, post mortem eorundem  
 "Willelmi et Sibillæ descendit  
 "præfato Johanni quondam viro,  
 "&c., ut filio et heredi, &c., per  
 "quod videtur CURIÆ hic quod  
 "idem Johannes seisitus fuit de  
 "eisdem tenementis ut de feodo  
 "ita quod eam inde dotare potuit.  
 "Et ideo consideratum est quod  
 "prædicta Margeria recuperet  
 "seisinam suam de tenementis  
 "illis."

The *Venire* was awarded as to the rent, respecting which issue had been joined.

<sup>6</sup> According to the roll "Et super "hoc prædicta Margeria dicit quod "prædictus Johannes quondam "vir, &c., obiit seisitus de prædic- "tis tenementis quæ ipsa superius "recuperavit, et petit breve ad "inquirendum de damnis, &c. Et "ei conceditur."

Nos. 51 *bis*, 52.

A.D. 1344. (51 *bis*.) § Note that a note of a fine was levied, by which a reversion was granted to W. and his heirs, and which was to the effect that (after the death of A. who held for term of his life, the remainder after A.'s death being to B. for his life, and the reversion, after the death of both A. and B., to the grantor and his heirs) the tenements should remain to W.—W. sued a *Quid juris clamat* against A. alone, and A. appeared.—And *Grene* said that the writ was sued against A., supposing that he held for his life, and that after his death the tenements were to remain to the plaintiff, whereas the note of the fine supposed that another had a mesne estate by remainder, and so the writ was not warranted by the note, and therefore A. should not be put to claim.—*Rokele*. B. has nothing, and therefore we shall not be put to sue against him.—*WILLOUGHBY*. What will you gain by the attornment of B.? as meaning to say nothing.—*HILLARY*. The writ is not in accordance with the note. Therefore go. Adieu.

Note. § Note that, whereas a *Quid juris clamat* was sued against one of the [two] tenants for term of life, because the other had nothing in the freehold, but the one against whom the writ was sued was tenant of the whole, yet, because the writ was not in accordance with the note of the fine, judgment was given that the tenant should go without day.

Assise of Novel Disseisin. (52.) § John son of William de Helton<sup>1</sup> brought an

<sup>1</sup> For the name of the parties *see* p. 195, note 10.



## Nos. 51 bis, 52.

(51 bis.)<sup>1</sup> § *Nota* que note se leva, par quele rever- A.D. 1344.  
sioun fut graunte a W. et ses heirs, et apres le *Nota :*  
decees A., que ceo tient a terme de<sup>3</sup> vie, issint que *Quid juris*  
apres son decees remeigne a B. pur sa vie, et que *clamat.*<sup>2</sup>  
apres le decees lun et lautre al grantour et ses *[Fitz.,*  
heirs revertir deveroit,<sup>4</sup> remeigne a W. que suist *Quid juris*  
*clamat, 1.]*  
*juris clamat* vers A. seulement que vint.—Et *Grene*  
dist que le brief fut suy vers A. supposant qil tient  
a sa vie, et que apres son decees remeindre deit al  
pleintif, la ou la note<sup>5</sup> suppose qautre ad estat mene  
par remeindre, et issint le brief desgarranti de la  
note, par quai il ne serreit pas mys de clamer.<sup>6</sup>—  
*Rokel*. B. nad rien; par quei vers luy ne serroms  
pas mys de suyre.—*WILBY*. Quei avez vous par  
attournement de B.<sup>7</sup>? *quasi diceret nihil*.—*HILL*. Le  
brief est desacordaunt a la note; par quei alez a  
Dieu.<sup>8</sup>

§ *Nota*<sup>9</sup> que, la ou un *Quid juris clamat* fut suy *Nota*.  
devers lun des tenantz a terme de vie, pur ceo que  
lautre navoit rien en le franctenement, einz celuy  
vers qi, &c., fut tenant del entier, unqore, pur ceo  
que le brief, &c., fut desacordaunt a la note, agarde  
fut que le tenant ala saunz jour.

(52.)<sup>10</sup> § Johan le fitz William de Hiltone porta *Assise de*

<sup>1</sup> From Harl., and 25,184, until otherwise stated.

<sup>2</sup> The word *Nota* is omitted from 25,184, and the words *Quid juris clamat* from Harl.

<sup>3</sup> Harl., sa, instead of terme de.

<sup>4</sup> 25,184, deiverent.

<sup>5</sup> Harl., il avoit instead of la note.

<sup>6</sup> 25,184, desclamer.

<sup>7</sup> 25,184, A.

<sup>8</sup> 25,184, Dieux.

<sup>9</sup> This report of the case is from L. alone. Neither report appears to be that which was used by Fitzherbert for his *Abridgment*.

<sup>10</sup> From L., Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 368. It there appears that the Assise was brought before Justices of Assise for the County of Westmoreland by John son of William de Helton against Master William de Brampton, Nicholas de Layburne, Nicholas le Kene and Joan his wife, Adam de Bakworth and Agnes his wife, and four others, in respect of 4 messuages, 80 acres of land, and 6 acres of meadow in Brampton.

## No. 52.

A.D. 1344. Assise of Novel Disseisin against two men and their wives, and others,<sup>1</sup> in the County of Westmoreland. The men with their wives pleaded in bar on the ground that one John de Helton, grandfather of the wives, had issue two sons, John the elder, and Thomas the younger.<sup>2</sup> John the ancestor, &c., gave the tenements to his younger son Thomas<sup>3</sup> in fee simple. After the death of Thomas,<sup>3</sup> who died seised, Thomas<sup>4</sup> entered as son and heir, and died without issue of his body, and after his death the wives, with their husbands, entered as sisters and heirs. John the plaintiff, as cousin, abated, claiming as heir. We ousted him; judgment whether an Assise, &c. To this the plaintiff said

<sup>1</sup> For the names of the parties *see* p. 195, note 10.

<sup>2</sup> The two sons were, according to the record, William the elder, and John the younger. *See* p. 197, note 4, and p. 199, note 1.

<sup>3</sup> John, according to the record.

<sup>4</sup> *i.e.* John's son, Thomas, according to the record.

## No. 52.

Assise de Novele Disseisine vers ij hommes et lour A.D. 1344  
femmes, et autres, el Counte de Westmerland. Les  
hommes ove lour femmes plederent en barre pur  
ceo qun J. de Hiltone, aiel les femmes, avoit issu<sup>1</sup>  
ij fitz, Johan eigne,<sup>2</sup> et Thomas puysne. J. laun-  
cestre, &c., dona a Thomas son puisne fitz en fee  
simple les tenementz. Apres la mort Thomas qe  
murust seisi, Thomas entra com fitz et heir, et  
murust saunz issu de son corps, apres qi mort les  
femmes come soers et heirs, ove lour barouns en-  
trerent. Johan le pleintif com cosyn abatist,<sup>3</sup> clamant  
com heir. Nous luy oustames; jugement si Assise, &c.<sup>4</sup>

<sup>1</sup> issu is omitted from Harl.

<sup>2</sup> Harl., esne; 25,184, eisne.

<sup>3</sup> L., abaty.

<sup>4</sup> According to the roll "prædicti  
" Nicholaus le Kene, Johanna,  
" Adam, et Agnes responderunt ut  
" tenentes de duobus mesuagiis et  
" octo acris terræ, et prædictus  
" Magister Willelmus respondit ut  
" tenens de residuo, &c.

" Et prædicti Nicholaus le Kene,  
" Johanna, Adam, et Agnes dixe-  
" runt, quo ad prædicta tenementa  
" quæ ipsi tenuerunt, quod assisa  
" inde inter eos fieri non deberet  
" quia dixerunt quod quidam Jo-  
" hannes de Heltone, avus prædicti  
" Johannis qui tunc questus fuit,  
" seisitus fuit de prædictis tene-  
" mentis in dominico suo ut de  
" feodo et jure, qui quidem Jo-  
" hannes habuit duos filios, vide-  
" licet Willelmum antenatum, &c.,  
" et quemdam Johannem postna-  
" tum, &c., qui quidem Johannes,  
" avus, &c., dedit tenementa in  
" visu posita prædicto Johanni  
" filio suo et heredibus suis in per-  
" petuum, de quo quidem Johanne  
" exierunt quidam Thomas et  
" prædictæ Johanna et Agnes, post

" cujus mortem intravit prædictus  
" Thomas ut filius et heres, qui  
" quidem Thomas obiit sine herede  
" de corpore suo exeunte, post  
" cujus mortem prædictæ Johanna  
" et Agnes intraverunt in prædictis  
" tenementis ut sorores et heredes  
" ipsius Thomæ, &c., prædictus  
" Johannes filius Willelmi qui tunc  
" questus fuit, ut consanguineus et  
" heres prædicti Thomæ, suppo-  
" nendo prædictum Johannem  
" avum, &c., dedisse prædicta tene-  
" menta prædicto Johanni filio suo  
" et heredibus de corpore suo  
" exeuntibus, et quod prædictus  
" Thomas obiit sine herede de cor-  
" pore suo exeunte, intravit super  
" possessionem ipsarum Johannæ  
" et Agnetis, prædicti Nicholaus,  
" Johanna, Adam et Agnes ipsum  
" inde amoverunt, prout eis bene  
" licuit, et petierunt judicium si  
" prædictus Johannes filius Wil-  
" lelmi versus ipsos assisam inde  
" habere deberet."

There was a similar plea on  
behalf of Master William de Bramp-  
ton, who claimed by feoffment from  
the above-named Thomas.

## No. 52.

A.D. 1344 that the gift was made to Thomas<sup>1</sup> and the heirs male of his body, and inasmuch as Thomas the son of Thomas<sup>1</sup> died without heir male of his body, he entered, as heir of the donor, upon his reversion. And he prayed the Assise for damages. The tenants, not denying the gift in tail, as above, demanded judgment inasmuch as the plaintiff admitted the issue in tail to have been seised, and so the limitation was brought to an end, and the wish of the donor accomplished, and consequently a fee simple adjudged in the issue by force of this gift confessed by the plaintiff; and (said the tenants) we demand judgment whether there

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<sup>1</sup> John, according to the record.

## No. 52.

A quei il dit qe le doun fut fait a Thomas et les heirs madles de son corps, et, pur taunt qe Thomas le fitz Thomas murust saunz heir madle de son corps, il entra, com heir le donour, en sa reversioun. Et pria Assise pur damages.<sup>1</sup> Les tenantz, nient dedisant<sup>2</sup> le doun en taille, *ut supra*, demanderent jugement desicome il avoit conu lissue en taille estre<sup>3</sup> seisi, et issint la taille parfourny, et la volunte le donour acomply, et *per consequens* fee simple ajugge en lissue par force de cel doun conu del pleintif; et demandoms jugement<sup>4</sup> si Assise devereit estre.<sup>5</sup> A.D. 1344.

<sup>1</sup> The replication to the plea of the two husbands and wives (which is preceded by a similar replication to the plea of Master William de Brampton and a rejoinder on his behalf) was, according to the roll, "quod ipse ratione prædicta ab assisa sua excludi non deberet, quia dixit, ut prius, quod prædictus Johannes de Heltone, avus, &c., cujus heres ipse est, fuit seisitus de prædictis tenementis, cum pertinentiis, unde prædicti Nicholaus et alii ad tunc responderunt ut tenentes, &c., in dominico suo ut de feodo et jure, de quo quidem Johanne exierunt prædicti Willelmus et Johannes &c., qui quidem Johannes, avus &c., dedit prædicta tenementa, cum pertinentiis, prædicto Johanni filio suo et heredibus masculis de corpore suo exeuntibus, ita quod si idem Johannes obiret sine herede masculo de corpore suo exeunte tunc prædicta tenementa reverterentur ad prædictum Johannem, avum, &c., et heredes suos, ut ad donatorem, &c., virtute cujus feoffamenti prædictus Johannes filius Johannis fuit seisitus de prædictis tenementis

"informa prædicta. Et de ipso Johanne exivit prædictus Thomas, ut filius et heres, qui quidem Thomas obiit sine herede de corpore suo exeunte, et prædictus Johannes qui tunc questus fuit, ut consanguineus et heres prædicti Johannis donatoris, &c., intravit in tenementis prædictis, ut in reversione sua, et inde seisitus fuit quousque prædictus, Nicholaus et alii ipsum inde amoverunt. Et petiit judicium, et assisam de damnis, &c."

<sup>2</sup> L., disaunt.

<sup>3</sup> estre is omitted from Harl.

<sup>4</sup> jugement is omitted from L.

<sup>5</sup> According to the roll, the rejoinder, on behalf of the two husbands and wives, was, "non dediendo prædictum donum factum fuisse prædicto Johanni et heredibus masculis de corpore suo exeuntibus, prout prædictus Johannes filius Willelmi superius placitando allegavit, dixerunt quod, ex quo idem Johannes non dedixit seisinam ipsius Thomæ virtute doni prædicti post mortem ipsius Johannis patris, &c., virtute cujus possessionis prædictum donum in persona ipsius Thomæ ut in herede masculo

## No. 52.

A.D. 1344. ought to be an Assise. And thereupon they were adjourned into the Bench by reason of difficulty.—*Skipwith*. The point is no other than whether, when the land was given to a man, to hold to him and the heirs male of his body, &c., by reason of the possession of his issue male, the sisters of this male issue will have the inheritance, or the land will revert for default of issue male. Now it seems that the land will revert, and that the sisters will not have the inheritance, for if the issue male could have any other estate than his father, who was the first donee, had, it would be either through the gift or through descent; he could not have it by the gift, because the gift does not extend more at large in the issue than it does in the first donee; and it would be impossible that he could have a higher estate by descent than his ancestor had. And it is certain that, if his ancestor had had no male issue, the land would have reverted to the donor, and consequently it will revert by default of issue male of the person who is issue in tail: for if any one will say that the fee became a fee simple in the first issue male in tail, because the wish of the donor should be adjudged to be performed, inasmuch as the first issue in tail, who is a male, is seised in accordance with the form, then for the same reason

## No. 52.

Et sur ceo furent ajournes en Baunk pur difficulte.<sup>1</sup> A.D. 1344.

—*Skip*. Le point nest pas autre mes quant la terre fut done a un homme, a luy et les heirs madles de son corps, &c., le quel par la possession de son issue madle les soers de celuy madle serrount enheritez, ou la terre revertira par default dissu madle. Ore semble qe la terre revertira, et qe les soers ne serrount pas enheritez, qar si lissu madle avereit autre estat qe son pere, qe fut le primer done, ceo serreit ou par le doun, ou par descente; par le doun nient, qar le doun ne sestent nient plus large en lissu qe ne fait en le primer done<sup>2</sup>; et par descente serreit impossible qil eut plus haut estat qe son auncestre avoit. Et *certum est* qe, si son auncestre eust eu nul issue madle, la terre ust reverti al donour, et *per consequens* par default dissu madle de celuy qest issu en taille: qar qi qe<sup>3</sup> vodra dire qe le fee fut pure en le primer issu madle en la taille, par taunt qe la volunte le donour serreit ajugge fourny<sup>4</sup> en taunt come le primer issu en taille, qest madle, est seisi par la fourme, par mesme

“ omnino fuit completum, et  
“ feodum simplex in persona sua  
“ adjudicatum, petierunt judicium  
“ si assisam versus eos habere  
“ deberet, &c.”

<sup>1</sup> According to the roll there was a further pleading on behalf of the plaintiff in the Court of the Justices of Assise “ quod, ex quo prædicti  
“ Nicholaus et alii cognoverunt  
“ quod prædictus Johannes de  
“ Heltone avus, &c., dedit prædicta  
“ tenementa prædicto Johanni  
“ filio suo et heredibus masculis  
“ de corpore suo exeuntibus, &c.,  
“ virtute cujus doni prædictus  
“ Johannes fuit seisitus in forma  
“ prædicta, post cujus mortem,  
“ pro eo quod prædictus Thomas

“ filius ejusdem Johannis obiit sine  
“ herede, &c., prædicta tenementa  
“ fuerunt revertibilia prædicto  
“ Johanni de Heltone ut donatori,  
“ &c., et nullo modo prædictis  
“ Johannæ et Agneti, ut sororibus  
“ ipsius Thomæ, descendere potu-  
“ runt per formam donationis præ-  
“ dictæ, &c., petiit judicium, ut  
“ prius, et assisam de damnis, &c.”

After this there was an adjournment before the Justices of Assise at Westminster, and after that the adjournment into the Common Bench.

<sup>2</sup> L., donee.

<sup>3</sup> Harl., sil, instead of qi qe.

<sup>4</sup> Harl., par la fournîe.

## No. 52.

A.D. 1344. it should be so adjudged where land is given to a man and the heirs of his body begotten, because the limitation would be brought to an end by the seisin of the first issue. But the reverse is law, for lineal issue in the second, third, or fourth generations will have the same advantage as the first, and yet they are not begotten of the body of the first donee; consequently the same law will hold good in this case.—*R. Thorpe*. Any one who is a female is a stranger to such a form of gift, and this is not like Multon's case, on which judgment was given in Parliament, and in which the sisters had the inheritance, because in that case the gift was to him and his heirs male, so that his collateral heirs as well as the lineal heirs had the capacity of inheriting, wherefore on such a gift he had a fee simple. Not so in the case before us, in which the reversion of the fee simple was saved by the gift.—*HILLARY*. Then will you say that, in this case in which you are, the daughters, if he had had any, would not have had the inheritance?—*R. Thorpe*. It is certain that they would not.—*Grene*. At common law, when issue in tail possibly had a Mort d'Ancestor, because after having issue the donee had a fee simple, the sisters in such a case ought to have had the inheritance; but since the statute,<sup>1</sup> which defines the remedy by express words, as well for the issue of the issue, as for the first issue, the law is different; therefore the inheritance must be adjudged to be in tail, as the words of the gift purport.—*Huse*. According to the old law the issue in tail had a Mort d'Ancestor, but not a fee simple, for when the estate tail was continued, although the tenant could aliene if lineal issue failed, in that case a Formedon in the reverter was given, and a person who was collateral heir never had a Mort d'Ancestor. Therefore in this case, whether the gift was made before or after the statute, since a

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1, (*De donis conditionalibus*).



## No. 52.

la resoun serreit ajugge la ou terre est done a un homme et les heirs de son corps engendrez, qe par la seisine del<sup>1</sup> primer issu qe la taille serreit fourny.<sup>2</sup> Mes le reverse est ley, qar le seconde, terce, quart issue en la line avera mesme lavauntage com le primer, et si ne sount ils pas engendrez du corps le primer; *per consequens* mesme la ley se<sup>3</sup> tendra en ceo cas.—*R. Thorpe*. Qi qe soit femele est estraunge a tiel<sup>4</sup> fourme, et ceo cas nest pas semblable al cas de Multone qe fut ajugge en Parlement, ou les soers furent enheritez, qar la fut le doun a luy et ses<sup>5</sup> heirs madles, issint qe ses<sup>5</sup> heirs collaterals si bien come les heirs lineals furent enheritables, par quei sur tiel doun il avoit<sup>6</sup> fee simple. *Non sic in proposito*, ou reversioun de fee simple par le doun fut salve.—*HILL*. Donques voiletz dire qen ceo cas ou vous estes qe les filles, sil ust eu, ne serrount pas enheritez?—*R. Thorpe*. *Non, certum est*.—*Grene*. A la comune ley, quant issu en la taille avoit Mort dauncestre par cas, pur ceo qe apres issu il avoit fee simple, les soers en tiel cas duissent aver este enherites; mes apres lestatut, qe taille remedie par expresse parole, si bien pur lissu de lissu com pur le primer issu, la ley est autre; par quei il covient ajugger leheritaunce par taille solonc<sup>7</sup> ceo qe les paroles de doun purportent.—*Huse*. Al auncien ley lissu en taille avoit Mort dauncestre, mes noun pas fee simple, qar, quant la taille fut continue, tut put il aliener si issu en la lyne defaillist, la Formedoun<sup>8</sup> en le *reverti* fut done, et<sup>9</sup> celuy qe fut heir collateral navoit unques Mort dauncestre. Par quei en ceo cas, le quel le doun fut fait puis ou devant statut,<sup>10</sup> quant reversioun

<sup>1</sup> Harl., en.<sup>2</sup> Harl., parfourni.<sup>3</sup> Harl., and 25,184, ceo.<sup>4</sup> Harl., cest.<sup>5</sup> L., les.<sup>6</sup> avoit is omitted from L.<sup>7</sup> L., solom.<sup>8</sup> L., Fourme.<sup>9</sup> L., a.<sup>10</sup> statut is omitted from L.

## No. 52.

A.D. 1344. reversion was saved in the donor, the donee had only a fee tail, and that must be in accordance with the form, that is to say, for males only.—*Sadelyngstanes*. When the donor gave to hold to the donee and the heirs male of his body, and that first donee had male issue, the estate tail, and the wish of the donor, on that point, had been accomplished, so that female issue of the male issue would have the inheritance, and therefore, whether the issue male had a fee simple or only a fee tail, the sisters are capable of inheriting.—*STONORE*. It is necessary to look at the statute which states the case of entail, and this particular case is not among any of the cases expressly mentioned by the statute, and therefore it is at common law, and consequently a fee simple.—*Seton*. Certainly, Sir, we rely greatly on that on our side.—*Sadelyngstanes*. We understand that in case of such a gift the issue had, at common law, an inheritance as of fee simple, for it is certain that they could have aliened; and although alienation is restrained by statute, the estate, when it is continued, remains as it was at common law, that is to say, one of fee simple.—*Moubray*. This limitation by which the gift is made to a man and the heirs male of his body is more restricted, and does not give inheritance so largely as if the gift were made to one and the heirs of his body, in which case the twentieth in descent would have only a fee tail, and in default of issue the land would be revertible, &c.; *a fortiori* in this case.—*WILLOUGHBY*, to the plaintiff. It is still necessary to take the Assise, because another tenant has, in the same Assise, pleaded to the Assise with respect to a part of the land; therefore as to this sue an Assise in respect of damages, and as to the rest sue an Assise also.—And so note that female issue

## No. 52.

fut salve en le donour, le done navoit qe fee taille, A.D. 1344.  
 et ceo covient estre acordaunt a la fourme, saver,  
 pur les madles soulement.—*Sadl.* Quant il dona a  
 luy et les heirs madles de son corps,<sup>1</sup> et celuy  
 primer done avoit issu madle, la taille et la volunte  
 le donour en cel point fut acompli<sup>2</sup> issint qe lissu  
 femele de lissu madle serreit enherite, par quei, avoit  
 lissu madle fee simple ou forqe fee taille, les soers  
 sount enheritables.—*STON.* Il fait a regarder<sup>3</sup> lestatut  
 qe doune le cas de taille, et ceo cy est en nul des  
 cas exprees par statut, par quei cest a la comune  
 ley, et, *per consequens* fee simple.—*Setone.* Certes,  
 Sire, de ceo nous fichoms<sup>4</sup> moult de nostre part.<sup>5</sup>—  
*Sadling.* Nous entendoms qen cas de tiel doun a  
 la comune ley lissu fut enherite come de fee simple,  
 qar *certum est* qil pount<sup>6</sup> aver aliene; et<sup>7</sup> tut soit  
 lalienacioun restreynt par statut, lestat, quant il est  
 continue, demurt<sup>8</sup> com fut<sup>9</sup> a la comune ley, saver,  
 de<sup>10</sup> fee simple.—*Moubray.* Cest taille par quel le  
 doun est fait a un homme<sup>11</sup> et les heirs madles de  
 son corps est plus restreynt, et ne doune pas en-  
 heritaunce si largement come si doun fut fait a un  
 et les heirs de son corps, en quel cas le xx<sup>me</sup> en  
 la descente navereit forqe fee taille, et par<sup>12</sup> default  
 dissu serreit revertible, &c.; a plus fort en ceo cas.  
 —*WILBY,* al pleintif. Il covient unqore prendre  
 Lassise, qar un autre tenant quant a parcelle de  
 la terre en mesme Lassise ad plede al Assise; par  
 quei quant a ceo cy suez Assise des damages, et  
 del remenant suez Assise auxint.<sup>13</sup>—*Et sic nota* qe

<sup>1</sup> Harl., &c., instead of de son corps.

<sup>2</sup> L., acompluy.

<sup>3</sup> 25,184, recorder.

<sup>4</sup> Harl., fechoms; 25,184, fuchoms.

<sup>5</sup> Harl., part demene.

<sup>6</sup> L., poeint; Harl., poet.

<sup>7</sup> L., and 25,184, qar.

<sup>8</sup> 25,184, devant.

<sup>9</sup> fut is omitted from L.

<sup>10</sup> de is from L. alone.

<sup>11</sup> L., and 25,184, Thomas.

<sup>12</sup> par is omitted from L.

<sup>13</sup> According to the roll judgment was given in the Common Bench as follows:—"Audito et diligenter examinato recordo prædicto,

## No. 53.

A.D. 1344. will not inherit by such a gift, even though the issue male was seised.

*Scire  
facias.*

(53.) § The Prior of Watton brought a *Scire facias* upon a recovery on a writ of Annuity, in the time of the King the grandfather of the present King, for one of his predecessors, who recovered against John de Egremont, in order to have execution of the arrears against John son and heir of the person who was party. And the party was warned, "*juxta tenorem brevis,*" to be here, and exception was taken to that expression. And then the record, being read, was found to be in the words "*quod talis summonitus fuit ad respondendum tali quod redderet ei tantum de quodam annuo redditu xl. solidorum quos ei detinet, &c.*" And the count was entered in the record, that is to say, that his ancestor by his deed, for himself and his heirs, granted the aforesaid annuity, and further

## No. 53.

lissu femele par tiel doun ne serra pas enherite, A.D. 1344.  
tut fut issue madle seisi.

(53.)<sup>1</sup> § Le Priour de Wattone porta *Scire facias* Scire facias. [Fitz., Monstrans de faits, fins, et records, 174.] hors dun recoverir<sup>2</sup> sur brief Dannuite, en temps le Roy laiel, pur un de ses predecessours, qe recoveri vers Johan de Gremound,<sup>3</sup> pur aver execucion des arrerages vers Johan fitz et heir celuy qe fut partie. Et la partie fut garny, *juxta tenorem brevis*, destre icy, et cel array fut chalange. Et puis le record lieu voleit *quod talis summonitus fuit ad respondendum tali quod redderet ei tantum de quodam annuo redditu xl. solidorum quos ei detinet, &c.* Et le count entre<sup>4</sup> el recorde, saver, qe son auncestre par son fait, pur luy et ses heirs, lannuite avant dite granta, et

“ auditisque hinc inde partium  
“ prædictarum rationibus suis,  
“ quia prædicti Nicholaus le Kene  
“ et Johanna, Adam de Bakworthe  
“ et Agnes superius placitando  
“ cognoverunt quod prædictus  
“ Johannes de Heltone, avus, &c.,  
“ dedit prædicta tenementa, cum  
“ pertinentiis, prædicto Johanni,  
“ filio suo, et heredibus masculis  
“ de corpore suo exeunte, ita quod,  
“ si idem Johannes filius Johannis  
“ obiret sine herede masculino de  
“ corpore suo exeunte, tunc eadem  
“ tenementa prædicto Johanni de  
“ Heltone donatori et heredibus  
“ suis reverterentur, per quod  
“ donum idem Johannes filius  
“ Johannis fuit seiscitus de eisdem  
“ tenementis secundum formam,  
“ &c., de quo quidem Johanne filio  
“ Johannis exivit quidam Thomas,  
“ ut filius et heres, &c., qui quidem  
“ Thomas obiit sine herede de  
“ corpore suo exeunte, videtur  
“ CURIÆ hic quod prædicta tene-  
“ menta sunt revertibilia prædicto  
“ Johanni de Heltone donatori

“ et heredibus suis, et sic Johannes  
“ filius Willelmi de Heltone con-  
“ sanguineus et heres prædicti  
“ Johannis donatoris licite intravit  
“ in tenementis illis. Et quia  
“ prædicti Nicholaus le Kene et  
“ Johanna, Adam et Agnes supe-  
“ rius placitando expresse cogno-  
“ verunt quod idem Johannes  
“ filius Willelmi de eisdem tene-  
“ menta post mortem prædicti  
“ Thomæ, &c., seiscitus fuit quous-  
“ que ipsi eum inde amoverunt,  
“ consideratum est quod prædicta  
“ assisa capiatur versus eos de  
“ damnis, &c. Et recordum inde,  
“ simul cum brevi originali, re-  
“ mittitur coram Justiciariis ad  
“ Assisas in Comitatu prædicto  
“ capiendas assignatis ad capien-  
“ dum assisam de damnis, &c.,  
“ versus eosdem Nicholaum le  
“ Kene et alios in patria, &c.”

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> Harl., reconisaunce.

<sup>3</sup> L., Egremount.

<sup>4</sup> entre is omitted from L.

## No. 53.

A.D. 1344. bound a certain manor for the payment. “*Et profert scriptum quod hoc testatur, et prædictus*” the grantor “*bene cognoscit prædictum scriptum, et quicquid in eo continetur et non potest dedicare quin prædicta arrearagia a retro sunt. Postea concordati sunt per licentiam Curie. Et est concordia talis: quod prædictus J. cognoscit prædictum annuum redditum esse jus ipsius Abbatis<sup>1</sup> et ecclesie sue Beate Mariæ, &c., et concedit solvere, &c., ad terminos prædictos, et nisi fecerit, &c., concedit quod Vicecomes Eboraci levare faciat de terris suis et heredum suorum.*” And that record was of the time when John de Metyngham was Justice Itinerant at York.—*R. Thorpe*. Have you not any specialty proving the grant as above?—*Moubray*. There is no need for it, since judgment has been given on the matter.—*Thorpe*. As to that we take your records to witness that they did not produce any specialty; and you see plainly that they have not any specialty witnessing the grant, which is the source of this action; judgment whether they ought to be answered.—*Moubray*. After judgment has been given on the matter, and it has been entered upon the record, there is no need subsequently to produce a specialty.—*R. Thorpe*. If you deraign warranty by a writ of *Warantia Chartæ*, you will not have execution afterwards if you do not produce a specialty, and that has been adjudged in this Court.—*HILLARY*. Yes, he will have execution, if the specialty has been entered, and judgment rendered thereupon; but I should like to know by what judgment this execution will be warranted, because there is not any judgment.—*WILLOUGHBY, ad idem*. According to the opinion of some, he should rather have process to cause the record to come into the King’s Bench and there complete the judgment on the plea, because judgment is wanting in this record, and that Court serves for reversing, and amending, and completing what has been done or what is wanting in another Court.—

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<sup>1</sup> Apparently a mistake for *Prioris*.

## No. 53.

obligea un certeyn maner outre a la sout.<sup>1</sup> *Et pro-* A.D. 1344.  
*fert scriptum quod hoc testatur, et prædictus celuy*  
*bene cognoscit prædictum scriptum, et quicquid in eo*  
*continetur, et non potest deducere quin prædicta arreragia*  
*a retro sunt. Postea concordati sunt per licentiam*  
*Curie. Et est concordia talis: quod prædictus J.*  
*cognoscit prædictum annuum redditum esse jus ipsius*  
*Abbatis et ecclesie sue Beatæ Mariæ, &c., et concedit*  
*solvere, &c., ad terminos prædictos, et nisi fecerit, &c.,*  
*concedit quod Vicecomes Eboraci<sup>2</sup> levare faciat de terris*  
*suis et heredum suorum. Et ceo recorde fut quant*  
 Johan de Metyngham fut Justice Irraunt a Ever-  
 wyke.—*R. Thorpe.* Avez nulle especialte provaunt le  
 grant *ut supra*?—*Moubray.* Il ne bosoigne pas quant  
 la chose est ajugge.—*Thorpe.* De ceo pernomms vos  
 recordez qils ne moustrent nul; et vous veiez  
 bien coment ils nount pas especialte tesmoignaunt  
 le grant, qest sourse de cest accion; jugement sil  
 deivent estre respondu.—*Moubray.* Apres qe la chose  
 est ajugge, et entre en recorde, il ne bosoigne pas  
 apres daver lespecialte.—*R. Thorpe.* Si vous derenez  
 garrauntie par brief de Garrauntie de Chartre, vous<sup>3</sup>  
 naverez pas execucion apres si vous ne moustrez  
 pas especialte, et ceo ad este ajugge ceinz.—*HILL.*  
 Si avera, si lespecialte soit entre, et jugement sur  
 ceo rendu; mes jeo vodra saver de quel jugement  
 cele execucion serra<sup>4</sup> garraunti, qar il ny ad pas  
 jugement.—*WILBY, ad idem.* Al entent dascuns,  
 homme avera plus toust proces de faire vener le  
 recorde en Baunk le Roy, et parfournir le jugement  
 sur le plee,<sup>5</sup> qar en ceo recorde jugement y faut,  
 et cele place y sert<sup>6</sup> de reverser, et amender, et  
 parfournir ceo qest fait ou faut en autre place.—

<sup>1</sup> 25,184, suyte.<sup>2</sup> Harl., and 25,184, *Lincolniæ.*<sup>3</sup> L., si vous.<sup>4</sup> serra is from L. alone.<sup>5</sup> plee is omitted from L.<sup>6</sup> 25,184, faut.

## No. 53.

A.D. 1344. *Pole*. He will not have such suit, because the whole is discontinued.—*Moubray*. Although the judgment was not so formal as that which you would now give in a like case, it at least purports the effect of a judgment; and it appears by record that fines could at that time be admitted on a writ of Annuity, though they may not be now; and if final agreement was then made, and then admitted by the Court, you ought to put it in execution, because a fine does not require words of a judgment.—*HILLARY*. And if a fine were levied on a *Præcipe quod reddat*, which would you have—execution on the fine, or execution on the judgment? as meaning to say on the fine.—*Haverlyngton*. The case is different here from that which it would be in respect of a deed acknowledged and enrolled of which execution cannot be made: for when on the action of Annuity there was process made by writ, and the parties appeared upon process, and assented to an agreement by leave of the Court, the Court has sufficient warrant to award execution upon this.—*HILLARY*. And suppose such a plea had been before us last Term, should we now, in this Term, award execution? as meaning to say that they would not. Why then should we do so any more in this case.—Afterwards, unexpectedly, the plaintiff having been called, because his counsel was not in court, the COURT adjudged a non-suit.—*HILLARY* to *Moubray*. You did well in being non-suited, because, if you had awaited judgment, it would have passed against you, and then you would have been amerced for the counterplea, and now you will not.—*WILLOUGHBY*. He would have taken nothing by his writ if he had abode judgment in this case.—And note that on the same record, on another occasion, in the King's Bench, the Prior had execution. But this matter was not then touched in arrest of execution. And it seems that the record is thereby affirmed in that Court.



## No. 53.

*Pole.* Il navera pas tiele suyte, qar tut est discon-<sup>A.D. 1344.</sup>tinue.—*Moubray.* Tut ne fut pas le jugement si fourmel com vous le vodrez<sup>1</sup> a ore rendre en cas semblable, au meyns ceo purporte effecte du jugement<sup>2</sup>; et il semble par le recorde qe<sup>3</sup> fines a tiel temps furent acceptables en brief Dannuite, tut ne soient ils pas a ore; et si acorde final adonques fut fait, et de Court resceu adonques,<sup>4</sup> vous le devez mettre en execucion, qar fyn ne demande pas parole de jugement.—*HILL.* Et si sur *Præcipe quod reddat* fyn se leva, le quel averez vous, execucion hors de la fyn ou hors del jugement? *quasi diceret* hors de la fyn.—*Har.* Il est autre en ceo cas qil ne serreit dun fait conu et en roulle dount homme ne purra pas faire execucion: qar quant sur Lannuite il y avoit proces fait par brief, et parties par proces vyndrent, et de lour assent, par conge de Court, acorderent, Court ad garraunt assetz, hors de cel, dagarder execucion.—*HILL.* Et jeo pose qun tiel plee<sup>5</sup> ust este devant nous cest autre terme, agarderoms ore ceo terme execucion? *quasi diceret non.* Par quei plus a ore?—Puis sodeynement, le pleintif demande, pur ceo qe son counsayl ne fut pas prest, COURT agarda un nounsuyte.—*HILL.* a *Moubray.* Vous feistes bien qe vous fustes nounsuy, qar si vous eussez attendu jugement, il eust passe countre vous, et donques eussez este amercye pur le countreplee, et ore ne serrez pas.—*WILBY.* Il nust pris rien par son brief sil eust demure en jugement el cas.—*Et nota* qe sur mesme le recorde autrefoith en Baunk le Roy le Priour avoit execucion. Mes ceste matere adonques ne fut pas touche en arrest del execucion. Et semble qe le recorde par taunt<sup>6</sup> est afferme illoeqes.

<sup>1</sup> L., voedrez.<sup>2</sup> L., brief.<sup>3</sup> qe is omitted from L.<sup>4</sup> adonques is omitted from L.<sup>5</sup> plee is omitted from L.<sup>6</sup> The words par taunt are omitted from L.

Nos. 54, 55.

A.D. 1344. (54.) § Formedon for Fulk Constable and his wife,  
 Formedon. and the co-parcener of the wife.—*Thorpe* demanded view.—*Moubray*. Heretofore we demanded against yourselves the entire manor of which we now demand two parts, and our writ then abated, after view, on the ground of non-tenure which you alleged, and in respect of which we now make exception; judgment whether you shall now have view again.—*Thorpe*. This is another demand, and we cannot know, except by view, which two parts you demand.—*Moubray*. You will not be permitted to allege non-tenure on this writ.—*WILLOUGHBY*. Yes, he will.—*Thorpe*. If one bring a writ of Right of Advowson in respect of a church, view is not grantable; but if one bring a writ of Right of Advowson in respect of certain tithes, I shall have view, because I cannot otherwise know of what tithes. So in the matter before us.—*WILLOUGHBY* granted him view, by judgment.—*Quære*, because he will now make just such view of the entire manor as was previously made.

Receipt. (55.) § A writ was brought by Roger de Antyngham against Robert Bourser, who made default after default. Hugh de Audele, Earl of Gloucester, came by attorney, and said that Robert held for term of life by lease from him, the reversion being to him, and prayed to be admitted. And he made *profert* of a writ of warrant of attorney, by which the King, recording that Hugh the Earl was unable to travel *propter impotentiam*, and reciting that Robert held for term of life by lease from the Earl, *ut est dictum, et alias tali die fecit defaultam, et adhuc, ut presumitur, tali die*

## Nos. 54, 55.

(54.)<sup>1</sup> § Fourmedoun pur Fouke Constable et sa femme et la parcenere la femme.—*Thorpe* demanda la vewe.—*Moubray*. Autrefoith demandames le maner entier vers vous mesmes dont nous demandoms ore les ij<sup>2</sup> parties, quel brief abatist, apres la vewe, par nountenue qe vous alleggeastes, de quei nous fesoms a ore forpris; jugement si a ore autrefoith la vewe, &c.—*Thorpe*. Cest autre demande, et nous ne poms saver, forqe par la vewe, queux ij<sup>3</sup> parties vous demandez.—*Moubray*. A ceo brief vous ne serrez pas resceu dallegger nountenue.—*WILBY*. Si serra.—*Thorpe*. Si jeo porte brief davowesoun del eglise, la vewe nest pas grantable; mes si jeo porte brief davowesoun des certeyn dismes javeray la vewe, pur ceo qe jeo ne<sup>4</sup> puisse saver de queux dismes. *Sic in proposito*.—*WILBY* luy granta par agarde la vewe. *Quære*, qar il fra ore autiel vewe del entier, com avant fut fait.

(55.)<sup>5</sup> § Brief porte vers Robert Bourser, qe fist default apres default, par Roger de Antyngham.<sup>6</sup> Hughe Daudeley,<sup>7</sup> Count<sup>8</sup> de Gloucestre, par attourne vynt, et dist qe Robert tient de son lees a terme de vie, la reversion a luy, et pria destre resceu. Et moustra brief<sup>9</sup> de garraunt dattourne, par quel le Roy, recordant qe Hughe le Count *propter impotentiam* ne poait travailler,<sup>10</sup> et reherceaunt qe R. tient de son lees a terme de vie, *ut est dictum, et alias tali die fecit defaltam, et adhuc, ut præsumitur, tali die*<sup>11</sup>

A.D 1344.  
Forme-  
doun.

Resceite.  
[Fitz.,  
Attourne,  
67; Coun-  
terplee de  
Resceit, 9.]

<sup>1</sup> From the three MSS. as above.

<sup>2</sup> Harl., jugement a, instead of ore les ij.

<sup>3</sup> Harl., dieux.

<sup>4</sup> ne is from Harl. alone.

<sup>5</sup> From the three MSS. as above, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 641. It there appears that the action was brought by Roger de

Antyngham against Robert Bourser, knight, in respect of the manor of Little Barningham (Norfolk).

<sup>6</sup> Harl., quei, instead of Roger de Antyngham.

<sup>7</sup> L., Daudelegh.

<sup>8</sup> Count is omitted from L.

<sup>9</sup> brief is omitted from L.

<sup>10</sup> 25,184, travayler.

<sup>11</sup> die is omitted from L

No. 55.

A.D. 1344. *facturus est defaultam, in exheredationis ipsius Comitis periculum, concessimus ei de gratia speciali quod possit facere attornatum loco suo ad defensionem juris sui, et ad lucrandum vel perdendum, et ad faciendum quicquid prædictus Comes faceret si præsens esset, &c. Qui quidem Comes attornavit coram nobis A. et B. ad lucrandum et perdendum, et ad faciendum quicquid, &c. Et ideo vobis mandamus quod prædictos, &c., vel alterum, &c., ad hoc recipiatis.*<sup>1</sup>—

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<sup>1</sup> For the exact words of this writ, as they appear on the roll, see p. 215, note 4.

## No. 55.

*facturus est defaltam, in exheredationis ipsius Comitis* A.D. 1344.  
*periculum, concessimus ei de gratia speciali quod*  
*possit facere attornatum loco suo*<sup>1</sup> *ad defensionem*  
*juris sui, et ad lucrandum et perdendum, et ad faci-*  
*endum*<sup>2</sup> [*quicquid prædictus Comes faceret si præsens*  
*esset, &c. Qui quidem Comes attornavit coram nobis*  
*A. et B. ad lucrandum et perdendum, et ad faciendum*  
*quicquid*]<sup>3</sup> *&c. Et ideo vobis mandamus quod præ-*  
*dictos, &c., vel alterum, &c., ad hoc recipiatis.*<sup>4</sup>—

<sup>1</sup> The words *coram nobis* are inserted after *suo* in Harl.

<sup>2</sup> The words *et ad faciendum* are from Harl. alone.

<sup>3</sup> The words between brackets are omitted from Harl.

<sup>4</sup> The King's writ to the Justices was, according to the roll, in the following form:—"Cum placitum pendeat in Curia nostra coram vobis per breve nostrum inter Rogerum de Antyngham, petentem, et Robertum Bourser, chivaler, tenentem, de manerio de Parva Bernyngham, cum pertinentiis, in Comitatu Norfolciæ, quod quidem manerium idem Robertus tenet ad vitam suam ex dimissione Hugonis de Audele Comitis Gloucestriæ, ut est dictum, et in placito prædicto taliter sit processum, ut accepimus, quod idem Robertus in Curia nostra coram vobis fecit defaltam a die Sanctæ Trinitatis proxime præterito in xv dies, et iterato in Crastino Sancti Martini proxime futuro defaltam facere, ut creditur, jam intendit, machinans ipsum Comitem de jure reversionis manerii prædicti excludere, ad damnum et exheredationem ipsius Comitis manifestum, super quo idem Comes nobis supplicavit ut, cum ipse

"adeo impotens sui corporis jam existit quod non potest sine inevitabili mortis periculo laborare, velimus in hac parte subvenire, Nos, pro eo quod evidenter nobis constat quod præfatus Comes, propter impotentiam suam prædictam et debilitatem ejus corporis irrecuperabilem, coram vobis, ad diem ad quem præfatus Robertus aliam defaltam, ut speratur, est facturus, esse non potest ad defendendum jus suum, prout moris est, in præmissis, Concessimus eidem Comiti quod ipse loco suo facere possit attornatum seu attornatos suos ad petendum se admitti ad defensionem juris sui de manerio prædicto si ipsum Robertum alias defaltam facere contingat, qui quidem Comes attornavit coram nobis loco suo Willelmum de Berghe et Gilbertum de Berdefeld ad petendum se admitti ad defensionem juris sui per defaltam ipsius Roberti versus prædictum Rogerum de manerio prædicto, et similiter ad lucrandum vel perdendum in placito prædicto, et omnia alia et singula faciendum quæ idem Comes faceret si præsens esset. Et ideo vobis mandamus quod prædictos Willelmum et Gilbertum, vel

## No. 55.

A.D. 1344. *Moubray*. Any one who desires to be admitted ought to appear in his own person, because he cannot appear by attorney where he is not a party to the plea: for, after one has prayed to be admitted, while the plea was pending whether he should be admitted or not, a great dispute has been seen as to whether he could appear by attorney, but it has never been seen that any one appeared by attorney before the prayer to be admitted. And it is ordained by Statute<sup>1</sup> that a Justice shall not do what is contrary to law and right by reason of any writ under the great or little seal. And we pray seisin.—WILLOUGHBY. Say something else if you will, for otherwise he will be admitted.—*Moubray*. His warrant to appear by attorney is of earlier date than his prayer to be admitted, in accordance with which prayer he would be made a party, &c.—This exception was not allowed.—*Seton*. Suppose the admission to defend be counterpleaded, the attorney will not be able to find security for the issues.—STONORE. Yes, he will do so; and so purport the words of his warrant “*ad faciendum quicquid prædictus Comes faceret, &c.*”—*Moubray*. Saving this point to ourselves, we tell you that heretofore, on the same original writ, the tenant vouched to warrant this same Hugh and Margaret his wife; process was continued until they appeared to warrant, and prayed aid of those who were coheirs with this same Margaret, by reason of coparcenary, supposing the lien of the warranty to be in them by reason of the wife’s right, and also the right to this land to be in the wife and her heirs; judgment whether he shall be admitted by reason of his right, when he has affirmed that which is contrary to it in the same plea.—WILLOUGHBY. If

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<sup>1</sup> 2 Edw. III., c. 8, and 14 Edw. III., St. I., c. 14

## No. 55.

*Moubray.* Celuy qe serreit resceu covendreit estre A.D. 1344.  
 en propre persone, qar par attourne ou il nest pas  
 partie al plee ne poet il estre : qar, apres ceo qomme  
 ad prie destre resceu, pendaunt le plee sil serreit  
 resceu ou noun, homme ad vewe grant debat sil  
 serreit<sup>1</sup> par attourne, mes avaunt la priere de re-  
 sceit ne fut unqes vewe qomme fut par attourne.  
 Et par statut est ordeine qe pur brief de grant ne  
 petit seal Justice ne<sup>2</sup> face countre ley et resoun.  
 Et prioms seisine.—*WILBY.* Ditez autre chose si  
 vous voillez, qar il serra resceu autrement.—*Moubray.*  
 Son garraunt destre par<sup>3</sup> attourne est deigne temps<sup>4</sup>  
 qe sa priere nest,<sup>5</sup> par quel priere il serra fait par-  
 tie, &c.—*Non allocatur.*—*Setone.* Jeo pose qe la re-  
 sceit soit countreplede, lattourne ne purra<sup>6</sup> pas  
 trover seorte<sup>7</sup> de les issues.—*STON.* Si fra; et ceo<sup>8</sup>  
 voet son garraunt *ad faciendum quicquid predictus*  
*Comes*<sup>9</sup> *faceret, &c.*—*Moubray.* Sauf a nous ceo cy,  
 vous dioms qe autrefoith a mesme loriginal qe le  
 tenant voucha a garraunt mesme celuy Hughe et  
 Margarete sa femme; proces continue tanqe ils  
 vyndrent de garrauntir, et prierent, par cause de  
 parcenerie, eyde des coheirs<sup>10</sup> mesme cel Margarete,  
 supposaunt le lien de la garrauntie<sup>11</sup> estre en eux  
 par cause de dreit la femme, et auxint le dreit en  
 la femme et ses heirs de ceste terre; jugement si  
 par cause de son dreit, desicome il ad afferme le  
 revers en mesme le plee, sil serra resceu.—*WILBY.*

“ alterum ipsorum, si ambo inte-  
 “ resse non possint, loco ipsius  
 “ Comitum, ad hoc recipiatis.”

<sup>1</sup> Harl., serreit resceu destre.

<sup>2</sup> ne is from L. alone, and there  
 n a later hand.

par is from Harl. alone.

temps is omitted from L.

<sup>5</sup> nest is omitted from Harl.

L., poet.

<sup>7</sup> L., surte; Harl., soerte.

<sup>8</sup> The words et ceo are omitted  
 from L.

<sup>9</sup> The words *predictus Comes* are  
 from Harl. alone.

<sup>10</sup> Harl., de parceners, instead of  
 des coheirs.

<sup>11</sup> The words de la garrauntie are  
 omitted from Harl.

## No. 55.

A.D. 1344. husband and wife lease for term of life, even though it be by deed *in pais*, whichever of them survives will be admitted to defend his or her right.—*Moubray*. We do not understand that to be so, except where the conveyance has been by fine.—*Thorpe*. It is possible that the husband alone leased, and that the wife may be bound to warrant by reason of a release made by her ancestor with warranty, or of her own release before marriage, and therefore the one statement is not in contradiction to the other.—*Moubray*. Where no special deed is shown, it cannot be understood otherwise than that the warranty commenced by lien and extended to the wife, and by such right as was saved in the wife.—*Grene*. Entering into warranty does not prove that the reversion would be to the wife, because, even though she had nothing in the reversion, she would warrant by reason of her own deed or possibly the deed of her ancestor, for she might have bound herself by fine after marriage, or by her release with warranty before marriage, although the tenant held for term of life by lease from her husband, and therefore if her husband and she warranted, it is consistent with the fact that the tenant held by lease from the husband.—HILLARY. Entry into warranty by the husband and the wife on a previous occasion is not contrariant to the husband's prayer now; therefore say something else.—*Moubray*. Then we tell you that since the entry into warranty, as above, the Earl's wife has died, and the Earl afterwards entered upon Robert Bourser, and enfeoffed Robert de Causton, who enfeoffed Robert Bourser, and so the reversion is discontinued; judgment whether he shall be admitted.—



## No. 55.

Si le baroun et la femme lessent<sup>1</sup> a terme de vie, A.D. 1344.  
 tut soit il par fait en pays, qi deux<sup>2</sup> qe<sup>3</sup> survist  
 serra resceu a defendre son dreit.—*Moubray*. Ceo  
 nentendoms nous pas sil ne fut par fyn.—*Thorpe*.  
 Il poet estre qe le baroun soul lessa, et qe la  
 femme, par relees de son auncestre ove garrauntie,  
 ou<sup>4</sup> de son reles<sup>5</sup> demene avaunt les esposailles,  
 serra tenuz a garrauntir, par quei lun<sup>6</sup> nest pas  
 contrarie<sup>7</sup> a lautre.—*Moubray*. Quant nul fait especial  
 nest moustre, homme ne purra entendre autre mes  
 qe la garrauntie comencea par lien et sestendi en  
 la femme, et par tiel dreit qe fut salve en la femme.  
 —*Grene*. Lentre en la garrauntie ne prova pas qe  
 la reversioun serreit en la femme, qar, tut<sup>8</sup> navoit  
 ele [rien en la reversioun, ele garrantra par son  
 fait demene ou le fait son auncestre par cas, qar  
 ele]<sup>9</sup> se poait par fyn apres les esposailles, ou par  
 son relees ove garrauntie<sup>10</sup> avaunt les esposailles, tut  
 tient le tenant du lees son baroun a terme de vie,  
 aver lye, et donqes si son baroun [et lui garrauntis-  
 sent, *cum hoc stat* qe le tenant tient de lees le  
 baroun.—*HILL*. Lentre en la garrauntie du baroun]<sup>9</sup>  
 et la femme autrefoith nest pas contrariant a la  
 priere du baroun a ore; par quei dites autre chose.—  
*Moubray*. Donqes vous dioms qe puis lentre en  
 garrauntie, *ut supra*, la femme le Counte devia, et  
 apres le Counte entra sur R. Bourser, et feffa R.  
 Caustone le quel feffa R. Bourser, et issint la re-  
 versioum discontinue; jugement sil serra resceu.<sup>11</sup>—

<sup>1</sup> lessent is omitted from L.

<sup>2</sup> L., de ceux.

<sup>3</sup> qe is omitted from L.

<sup>4</sup> 25,184, ne.

<sup>5</sup> 25,184, lees.

<sup>6</sup> Harl., nulle.

<sup>7</sup> Harl., contrariaunt.

<sup>8</sup> tut is omitted from L.

<sup>9</sup> The words between brackets  
are omitted from L.

<sup>10</sup> Harl., demene, instead of ove  
garrauntie.

<sup>11</sup> Roger's counterplea was, ac-  
 cording to the roll, "quod prædic-  
 tus Comes ad defensionem juris  
 " sui admitti non debet, quia dicit  
 " quod prædictus Comes, post diem  
 " impetrationis brevis sui versus  
 " prædictum Robertum de manerio  
 " prædicto, . . . . in-

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A.D. 1344. *R. Thorpe.* To that plea as to entering upon Robert Bourser the law does not put us to answer, because it does not lie in his mouth to allege entry, while the writ was pending, upon the person whom he supposes to be tenant, and against whom he supposes that he will deraign his demand, as against tenant; and, inasmuch as he does not deny that the reversion is in us, judgment.—*Grene, ad idem.* It is possible that the Earl entered, as he alleges, and leased to Robert de Causton for the life of Robert Bourser, and that Robert de Causton leased his estate to Robert Bourser, in which case the reversion would continue to be saved, and therefore the allegation does not prove the reversion to be discontinued in the Earl.—*WILLOUGHBY, ad idem.* If the case were such, there would not be any reason, on account of the Earl's entry upon Robert Bourser, why he should not be admitted, nor would his demise to Robert de Causton for the life of Robert Bourser constitute such a reason, and when Robert de Causton leased back to Robert Bourser, all that Robert de Causton had was divested out of his person, and Robert Bourser was, as it were, in his original estate.—*Have-ryngton.* When the Earl entered upon Robert Bourser, inasmuch as his tenancy was then only by disseisin, the original reversion was possibly not discontinued, because Robert Bourser had a right to recover against

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R.<sup>1</sup> *Thorpe*. A ceo plee<sup>2</sup> dentrer sur R. Bourser<sup>3</sup> A.D. 1344. ley ne nous mette pas a respoudre, qar ceo ne gist pas en sa bouche dallegger entre, pendaunt le brief, sur celuy qil suppose estre tenant et vers qi il suppose derener sa demande come devers<sup>4</sup> tenant; et, desicome il ne dedit pas la reversioun en nous, jugement.—*Grene, ad idem*. Il poet estre qe le Counte entra, come il allegge, et lessa a R. Caustone a la vie R. Bourser, et R. Caustone lessa a R. Bourser son estat, en quel cas la reversioun serreit touz jours salve, par quei ceo ne prove pas reversioun discontinue en le Counte.—*WILBY, ad idem*. Si le cas fut tiel, par lentre le Counte sur R. Bourser, ceo ne serra pas cause qil ne serra resceu, ne sa demyse a R. Caustone [a la vie R. Bourser]<sup>5</sup> [nient, et quant R. Caustone lessa arrere a R. Bourser, tout qe R. Caustone]<sup>6</sup> [avoit fuit hors de sa persone, et R. Bourser]<sup>7</sup>. come en son primer estat.—*Har*. Quant le Counte entra sur R. Bourser, pur ceo qe sa tenaunce ne fut forge par<sup>8</sup> disseisine, par cas la primer reversioun ne fut pas discontinue, qar R. Bourser avoit dreit a recoverir

“ trusit se in manerio prædicto  
 “ super possessionem prædicti  
 “ Roberti, ipsum Robertum inde  
 “ omnino amovendo, per quod jus  
 “ et feodum ejusdem manerii ad-  
 “ tunc in persona ipsius Comitis,  
 “ ratione intrusionis prædictæ,  
 “ mere residebat, qui quidem  
 “ Comes postmodum prædictum  
 “ manerium cuidam Roberto de  
 “ Caustone, chivaler, dimisit tenen-  
 “ dum ad terminum vitæ ipsius  
 “ Roberti de Caustone, et idem  
 “ Robertus de Caustone prædictum  
 “ manerium ulterius dimisit præ-  
 “ dicto Roberto Bourser, virtute  
 “ cujus dimissionis præfato Roberto  
 “ de Caustone per ipsum Comitem

“ inde factæ in forma prædicta  
 “ reversio ejusdem manerii post  
 “ mortem ipsius Roberti Bourser  
 “ discontinuata fuit, unde petit  
 “ judicium si prædictus Comes in  
 “ hoc casu admitti debeat, &c.”

<sup>1</sup> R. is from 25,184 alone.

<sup>2</sup> Harl., qil parle.

<sup>3</sup> Bourser is from Harl. alone.

<sup>4</sup> devers is from Harl. alone.

<sup>5</sup> The words between brackets are omitted from 25,184.

<sup>6</sup> The words between brackets are from Harl. alone.

<sup>7</sup> The words between brackets are omitted from L.

<sup>8</sup> par is omitted from L.

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A.D. 1344. him, and consequently he had a right to the reversion, and therefore, notwithstanding the entry, he might possibly be admitted by reason of his disseisin; but when he leased over to Robert de Causton he saved a new reversion to himself, and afterwards, when Robert Bourser took an estate from Robert de Causton he extinguished his first estate, and consequently, if that was the case, the Earl would not be entitled to be admitted on the ground on which he prays; and to destroy that ground is sufficient for our plea.—*STONEORE*. Even though the fact were as supposed, he would be entitled to be admitted by reason of the reversion which abides in him, for if he did enter upon his tenant for term of life, notwithstanding his entry while the writ was pending, he would be admitted. And, if his tenant for term of life had surrendered his estate to him, he would be entitled to be admitted, because notwithstanding the act of his tenant, he would be admitted to defend his right: for, if the right was in him on the day on which the writ was purchased, and still is, it will not be lost by the default of his tenant; but, if he had divested himself of the reversion, while the writ was pending, it would be otherwise.—*WILLOUGHBY*. If you were to say that, when he had entered on Robert Bourser, he aliened in fee to Robert de Causton, it would be different, but you do not do that; therefore there is no point on which to abide judgment.—*R. Thorpe*. And even if he had done so, it would not lie in the tenant's mouth to allege a conveyance made while the demandant's writ was pending; and we will aver that Robert Bourser, on the day on which the writ was purchased, held for term of life by lease from the Earl, *absque hoc* that he ever had any other estate afterwards; ready, &c.—*Moubray*. We tell you

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vers luy, et *per consequens* il avoit dreit en la re-<sup>A.D. 1344.</sup>versioun, par quei, *non obstante* lentre, par sa disseisine par cas il serreit resceu; mes quant il lessa outre a R. Caustone il salva novel reversioun en luy, et apres, quant R. Bourser prist estat de R. Caustone, il esteint<sup>1</sup> son primer estat, et *per consequens*, sil fut issint, il ne serra pas resceivable en la manere qil prie; et a destruire cele manere ceo suffit<sup>2</sup> pur plee.—STON. Tut fut il issint com est suppose, il serreit resceivable par cause de reversioun qe demurt en<sup>3</sup> luy, qar sil fut entre sur son tenant a terme de vie, *non obstante* son entre pendaunt le brief, il serra resceu. Et, si son tenant a terme de vie ust rendu son estat a luy, il serreit resceivable, qar *non obstante* fait son tenant il serreit resceu a defendre son dreit: qar quant le dreit fut en luy jour de brief purchace, et unqore est, par default<sup>4</sup> son tenant ceo ne serra pas perdu; mes, sil se ust demys de reversioun, pendaunt le brief, autre serreit.—WILBY. Si vous deissez qe quant il fut entre sur R. Bourser qil eust aliene en fee a R. Caustone autre serreit, mes ceo<sup>5</sup> ne faites vous pas; par quei il ne fait pas a demurer.—R. Thorpe. Et, tut lust il fait, ne girreit pas en sa bouche dallegger demise fait pendaunt son brief; et nous voloms averer qe R. Bourser, jour de brief purchace, tient du lees le Counte a terme de vie, saunz ceo qe unqes puis autre estat avoit; prest, &c.<sup>6</sup>—Moubray. Nous vous

<sup>1</sup> In Harl. there are inserted after the word esteint the words saccion issi qil ne poet estre.

<sup>2</sup> Harl., fuit.

<sup>3</sup> Harl., ove.

<sup>4</sup> default is omitted from Harl.

<sup>5</sup> ceo is omitted from L.

<sup>6</sup> According to the roll "Comes dicit quod prædictus Robertus Bourser, prædicto die impetrati-  
onis brevis, &c., tenuit prædictum

"manerium ad terminum vitæ  
"suæ ex dimissione ipsius Comitis,  
"absque hoc quod prædictus Ro-  
"bertus Bourser unquam postea  
"aliquem alium statum habuit in  
"prædicto manerio ex dimissione  
"alicujus ulterius quam ipsius  
"Comitis. Et hoc paratus est  
"verificare, &c. Et petit quod  
"admittatur, &c."

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A.D. 1344. that the Earl entered upon Robert Bourser, as above, and leased to Robert de Causton for his life, so that the estate which the Earl had in the reversion by the first lease was discontinued by the second lease; and our statement that Robert de Causton leased to Robert Bourser was not of the substance of our plea, and was not one on which we laid any stress.—*R. Thorpe*. You have not denied that Robert Bourser, on the day on which the writ was purchased, held by lease from us, and then you make him tenant by lease from another person in order to discontinue the reversion in us, and that matter we destroy by our averment which we tender, that he had not any other estate but that by lease from us: for by our manner of pleading we are agreed that he was tenant on the day on which the writ was purchased, and, according to your statement, he still is. Therefore the manner in which he is tenant is the subject of our dispute; and you say that it is by lease from Robert de Causton, and we say that he never had any estate except by lease from us, and that destroys your statement, and that averment you refuse; judgment.—*Seton*. It is sufficient for us to destroy the manner in which you claim the reversion, and even though you had it by some other course than that by which you have claimed, that would not give you any advantage; now we have sufficiently shown discontinuance of the reversion which you affirm to be in you after the death of Robert Bourser, inasmuch as the Earl was subsequently seised, and leased to another person, and so the first reversion is discontinued, and a new reversion is saved by the second lease.—*STONORE*. For anything that you say the reversion and the right which is to be lost are in the person who prays to be admitted, and if he affirms that the right is in him in one way, and you confess that it is in him in another way, will he not be admitted? And when you suppose that Robert Bourser is tenant, and your object is to recover against him

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dioms qe le Counte entra sur R. Bourser, *ut supra*, A.D. 1344 et lessa a R. Caustone a sa vie, issint lestat qe le Counte avoit en la reversioun par le primer lees discontinue par le secunde lees; et ceo qe nous deimes qe R. Caustone lessa a R. Bourser ceo ne fut pas de<sup>1</sup> substance de nostre plee, ne ne fut pas a charger.—*R.*<sup>2</sup> *Thorpe*. Vous navez pas dedit qe R. Bourser, jour du brief purchace, tient de nostre lees, et puis vous luy faites tenant dautri lees pur discontinuer reversioun en nous, quele chose nous destruoms par nostre averement qe nous tendoms, qil navoit autre estat forqe de nostre lees: qar par manere de nostre plee nous sumes a un qil fut tenant jour de brief purchace, et unqore est a vostre dit. Donqes la manere coment il est tenant est nostre debat; et vous dites qe du lees R. Caustone, et nous dioms qe unqes estat avoit forqe de nostre lees, quel destruit ceo qe vous dites, quel averement vous refusez; jugement.—*Setone*. A destruire la manere coment vous clamez la reversioun suffit, et tut lusses vous par̄ autre cours qe vous navez clame, ceo ne vous durra pas avauntage; ore moustroms<sup>3</sup> assetz discontinuance de la reversioun qe vous affermez en vous apres la mort R. Bourser, par taunt qe le Counte puis fut seisi, et lessa a autre, et issint la primer reversioun discontinue, et novel reversioun salve par le secunde<sup>4</sup> lees.—*STON*. Pur rien qe vous dites la reversioun et le<sup>5</sup> dreit qest a perdre est en celui qe prie destre resceu, et sil afferme dreit en luy par une voie, et vous le conussez par autre, ne serra il resceu? Et quant vous supposez R. Bourser tenant, et vers luy come tenant

<sup>1</sup> de is omitted from L.

<sup>2</sup> R. is from L. alone.

<sup>3</sup> Harl., moustrez.

<sup>4</sup> L., primer.

<sup>5</sup> Harl., del, instead of et le.

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A.D. 1344. as tenant, and he never had estate, as he says, except by lease from the Earl, why shall not the Earl be admitted?—*Seton*. If he had a reversion in any other way than that in virtue of which he has prayed to be admitted, it is his fault that he did not pray as having a reversion in that manner; but for us it is sufficient to destroy the reversion in him such as he has himself affirmed it to be.—*Huse, ad idem*. If I had said that he did not lease to Robert Bourser for his life, that would have been a sufficient answer; for the same reason I shall by a plea in law destroy the cause for his admission. And even though he may have the reversion in another manner, he loses the advantage by the manner of his plea.—*STONORE*. The Earl's entry on his tenant is not a cause for ousting him from admission; and even if the tenant had surrendered his estate to the Earl while the writ was pending, he would still be admitted, because the act of the tenant will not cause him to lose his right, and he is not ousted from the reversion by the lease over.—*Haveryngton*. I think he will be ousted from admission by entry on his tenant, because it will be impossible that he can have the reversion when he is himself seised of fee, and of right, and of freehold. Therefore, after his entry, he could not have a reversion by reason of the first lease, unless it were by reason of a re-entry of his tenant upon him, or else unless the tenant had recovered against him by Assise, when the tenant would be restored to his freehold, and he to his right of reversion; but when no such fact is alleged, but it is alleged that the Earl, after his entry, leased to another for the life of the lessee, saving a new reversion by that last lease, it would be impossible to prove that he had a reversion by the first lease. And the further statement supposing Robert de Causton to have leased to Robert Bourser is not of the substance; and even if there were any stress to be laid on this, still Robert Bourser would



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estes a recoverir, et il unques estat avoit, a ceo qil A.D. 1344.  
dit, forqe de son lees, pur quei ne serra il resceu ?  
—*Setone*. Sil ust reversioun par autre voie qil nad  
prie, cest sa defaut qil nust prie par<sup>1</sup> la manere ;  
mes suffit a nous a destruire<sup>2</sup> la reversioun en luy  
tiele com il ad mesmes<sup>3</sup> afferme.—*Huse, ad idem*.  
Si jeo usse dit qil ne lessa pas a R. Bourser a sa  
vie, ceo serreit suffisaunt respouns ; pur mesme la  
resoun par plee en ley jeo destruera la cause de sa  
resceite. Et tut eit il reversioun par autre manere,  
il perde lavantage par manere de son plee.—*STON*.  
Lentre le Counte sur son tenant nest pas cause de  
luy ouster de la resceit ; et mesqe le tenant pen-  
daunt<sup>4</sup> le brief luy ust rendu sus son estat, unqore  
serreit il resceu, qar le fait le tenant ne luy fra  
pas perdre son dreit, et par le lees outre nest il  
pas ouste de reversioun.—*Har*. Jeo quide par  
son entre sur son tenant il serra ouste de resceit,  
qar il serra impossible qil ust reversioun quant il  
mesme<sup>5</sup> fut seisi de fee, et de dreit, et de franc-  
tenement. Donques, apres son entre, il ne put aver  
reversioun par le primer lees, sil ne fut par reentre  
de son tenant sur luy, ou autrement qil ust re-  
covery par Assise vers luy, et donques serreit le  
tenant remys a son franc tenement, et il a son dreit  
de reversioun ; mes quant tiel fait nest pas allegge,  
mes qe<sup>6</sup> le Counte, apres son entre, lessa a autre  
pur la vie le lesse, salvaunt novel reversioun par  
cel darreyn lees, il serreit impossible a prover qil  
ust reversioun par le primer lees. Et ceo qest parle  
outre qe R. Caustone dust aver lesse a R. Bourser  
[ceo nest pas de substauce ; et tut fut ceo a charger,  
unqore Robert Bourser ne serra pas tenant forqe de

<sup>1</sup> L., en.<sup>2</sup> L., destruer.<sup>3</sup> mesmes is omitted from Harl.<sup>4</sup> pendaunt is omitted from L.<sup>5</sup> mesme is omitted from Harl.<sup>6</sup> qe is from Harl. alone.

## No. 55.

A.D. 1344. not be tenant except by this second lease, and not by the first lease, for the tenancy is not restored to him by course of law.—*R. Thorpe*. You have made Robert Bourser tenant, and as to that we are agreed; therefore it is sufficient to aver that he has no other estate than that by lease from us.—*Haveryngton*. That averment has two meanings: one that Robert Bourser was seised in virtue of your lease on the day on which the writ was purchased, and has continued that estate; another that, although he was then seised, he now has nothing, and according to that meaning he ousts Robert Bourser by the entry and the lease made by the Earl to Robert de Causton.—*Moubray*. To support that we tell you that we never alleged that Robert Bourser is now tenant, but we said that Robert de Causton leased to him. It is consistent with that statement that he has nothing now.—*Haveryngton*. He who had the reversion on the day on which the writ was purchased could oust himself from it in many ways, as by grant of the reversion, by entry upon his tenant, or by alienation to another (in which last case, even though the tenant should recover his freehold back again, the reversion would be in the feoffee), and also by release made to the tenant; therefore, even though he had the reversion on the day on which the writ was purchased, that is no proof that he should be admitted.—*WILLOUGHBY* to *Thorpe*. The averment which you tender does not prove the reversion to be in you, because, if the Earl leased to Robert de Causton for his life, and he leased to Robert Bourser for his life, the reversion, after the death of R. Bourser, would be regardant to Robert de Causton, and

## No. 55.

cel secunde lees,<sup>1</sup> et noun pas par primer lees, qar A.D. 1344  
 nest pas remys en luy par cours de ley.—*R. Thorpe*.  
 Vous avez fait R.<sup>2</sup> Bourser]<sup>3</sup> tenant, et de ceo sumes  
 a un; par quai suffist daverer qil nad autre estat  
 forqe de nostre lees.—*Hav.* Cel averement ad ij  
 ententes: un qe R. Bourser fut seisi de vostre lees  
 jour de brief purchace, et cel estat ad continue; un  
 autre qe,<sup>4</sup> tut fut il seisi adonques, a ore il nad rien,  
 et a cel entente il oust al<sup>5</sup> lentre, et le lees fait  
 par le Counte a R. Caustone.—*Moubray*. Pur afforcer<sup>6</sup>  
 cella nous vous dioms qe unqes ne alleggeames qe  
 R. Bourser fut a ore tenant, mes deimes qe R.  
 Caustone lessa a luy. *Cum hoc stat* qil nad rien<sup>7</sup>  
 a ore.—*Hav.* Celuy qad reversioun jour de brief  
 purchace par moltz des voies se put ouster,  
 com par grant de reversioun, par entre sur son  
 tenant, ou alienacioun a autre, en quel cas, tut re-  
 covere son tenant arrere son fraunctenement, la  
 reversioun serra en le feffe, et auxint par releés fait  
 al tenant; par quei, tut ust il reversioun jour de  
 brief purchace, ceo nest pas prove qil serreit<sup>8</sup>  
 resceu.—*WILBY a Thorpe*. Laverement qe vous tendez  
 ne prove pas reversioun en vous, qar, si le Counte  
 lessa a R. Caustone a sa vie, et il lessa<sup>9</sup> a R.  
 Bourser a sa vie, la reversioun<sup>10</sup> apres le decees R.  
 Bourser serra regardaunt a R. Caustone, et noun pas

<sup>1</sup> In 25,184, there are here inserted, apparently by mistake, the words “—*Hav.* Cel averement ad “dieux ententes, un qe R. Bourser.” They occur again, as in the other MSS., two sentences below.

<sup>2</sup> R. is from Harl. alone.

<sup>3</sup> The words between brackets are omitted from L. in this place, but are inserted after the word suffist, ten words below, the words par quei suffist being thus repeated.

<sup>4</sup> qe is from Harl. alone.

<sup>5</sup> al is from Harl. alone.

<sup>6</sup> Harl., affermer.

<sup>7</sup> The words qil nad rien are from Harl. alone.

<sup>8</sup> L., and 25,184, ne serreit.

<sup>9</sup> Harl., ne lessa.

<sup>10</sup> In L. the reports of Michaelmas Term, 18 Edward III., end here abruptly at the end of a folio, and are succeeded on the next folio by those of Hilary Term, 19 Edward III.

## No. 55

A.D. 1344. not to the Earl; therefore, even though you could prove that Robert Bourser had only for his life, that will not cause you to be admitted.—*Thorpe*. Our averment is that Robert Bourser, whose possession of the freehold is confessed, never had anything except by lease from us; ready, &c.—*WILLOUGHBY*. The question whether Robert Bourser be seised by lease from Robert de Causton, or not, is not of importance in the matter, but the Earl's entry, and his lease made to Robert de Causton is that on which stress is to be laid; therefore either destroy that by your averment, or else confess it, and prove that it will not prejudice you.—*Gaynesford*. Suppose the Earl had disseised Robert Bourser, his tenant for term of life, and had enfeoffed Robert de Causton in fee, and Robert Bourser had entered immediately, would not Robert de Causton's estate be defeated, and Robert Bourser be in his original estate, the reversion being in the Earl?—*Seton*. Certainly not, because if I disseise my tenant for term of life, and make a feoffment to another in fee, even though my tenant afterwards recovers by Assise, the reversion will not be to me, but will abide in the feoffee.—*HILLARY*. It will be to you, because by the recovery the estate of the feoffee is completely defeated; and you have by plea made Robert Bourser tenant, and the Earl will aver that Robert Bourser never had anything except by lease from him; therefore will you accept the averment?—*Haveryngton*. We did not take it, nor do we lay stress on it as part of our plea, that Robert Bourser is now tenant.—*Birton*. Suppose my tenant for term of life alienes in fee while a writ is pending against him; I enter upon him; I am still entitled to be admitted to

## No. 55.

al Counte ; par quei, tut puissez prover qe R. Bourser A.D. 1344  
navoit forqe a sa vie, ceo ne vous fra pas estre  
resceu.—*Thorpe*. Nostre averement est qe R. Bourser,  
qi possessioun de fraunctenement est conu, navoit  
unqes rien<sup>1</sup> forqe<sup>2</sup> de nostre lees ; prest, &c.—*WILBY*.  
Le quel R. Bourser soit seisi del lees R. Caustone  
ou noun nest pas a charger en la matere,<sup>3</sup> mes  
lentre le Counte, et son lees fait a R. Caustone  
cest a charger ; par quei ou destruez cel par vostre  
averement, ou autrement<sup>4</sup> le conissez, et provez qil  
vous grevera pas.—*Gayn*. Jeo pose qe le Count ust  
disseisi R. Bourser, son tenant a terme de vie, et  
ust feffe R. Caustone en fee, et freschement R.  
Bourser ust entre, ne serreit lestat R. Caustone de-  
fait, et R. Bourser en son primer estat, la reversioun  
en le<sup>5</sup> Counte ?—*Setone*.<sup>6</sup> Noun certes,<sup>7</sup> qar si jeo  
disseisi mon tenant a terme de vie,<sup>8</sup> et face feffe-  
ment a autre de<sup>9</sup> fee, tut recovere mon tenant apres  
par Assise, la reversioun ne serra pas a<sup>10</sup> moy, mes  
demura en le feffe.—*HILL*. Si<sup>11</sup> serra, qar lestat le  
feffe par le recoverir est de net<sup>12</sup> defait ; et par  
plee vous avez fait R. Bourser tenant, et il voet  
averer qil navoit unqes rien<sup>1</sup> forqe de son lees ;  
par quei voletz cel averement ?—*Hav*. Nous ne<sup>13</sup>  
preismes<sup>14</sup> pas<sup>15</sup> cel, ne nous le chargeoms pas come  
parcelle de plee, qe R. Bourser est ore tenant.—  
*Byrtone*. Jeo pose qe mon tenant a terme de vie  
aliene en fee pendaunt un brief vers luy ; jeo entre  
sur luy ; unqore suy jeo reseceivable par sa default a

<sup>1</sup> rien is omitted from Harl.

<sup>2</sup> forqe is from Harl alone.

<sup>3</sup> Harl., manere.

<sup>4</sup> The words ou autrement are from Harl. alone.

<sup>5</sup> Harl., al, instead of en le.

<sup>6</sup> Harl., *Nottone*.

<sup>7</sup> Harl., veirs.

<sup>8</sup> The words a terme de vie are from Harl. alone.

<sup>9</sup> Harl., en.

<sup>10</sup> 25,184, en.

<sup>11</sup> Harl., sil.

<sup>12</sup> Harl., nette.

<sup>13</sup> ne is omitted from Harl.

<sup>14</sup> 25,184, poms.

<sup>15</sup> Harl., pur.

[Fitz.,  
*Feffements  
et Faits*,  
62.]

No. 55 *bis*.

A.D. 1344. defend my right on his default. Or if he enters into Religion, and is professed, and I enter by reason of his profession, I shall be admitted notwithstanding my entry.—WILLOUGHBY. In case of profession the writ is abated, because, if the writ be brought against my ancestor, and, while the writ is pending, he is professed, and I enter, and by judgment rendered against him after the profession I, who am in possession as heir, am ousted, it is perfectly clear that I shall have an Assise.—*Quære*.—STONORE. For anything that is pleaded, the right, as to this land which is to be lost, is in the Earl; for what reason then should he be ousted from defending his right? Therefore either admit the Earl, or else you will be adjourned, and that will possibly be to your damage and delay.—Afterwards they were adjourned.

Replevin. (55 *bis*.) § A. sued a Replevin against the Prior of Hurley, in respect of a sow and five pigs. The Prior avowed, as to the sow, that she was *damage feasant* in his several in another place, and they were at a traverse

## No. 55 bis.

defendre mon dreit. Ou sil<sup>1</sup> entre en Religiou, et A.D. 1344. soit professe, et jeo entre<sup>2</sup> par sa profession, *non obstante* mon entre, jeo serra resceu.—WILBY. En [Fitz., *Briefe*, 369.] cas de profession le brief est abatu, qar, si brief soit porte vers mon auncestre, et pendaunt le brief il est professe, et jeo entre, et par jugement taille apres la profession vers luy jeo suy ouste qe suy einz com heir, javera Assise, *constat de claro*.—*Quære*.—STON. Pur rien qest plede le dreit est en le Counte de ceste terre qest a perdre; par quele resoun donqes serreit il ouste a defendre son dreit? Par quei ou resceyvez le Counte, ou vous serrez ajourne, et ceo serra par cas vostre damage et delay.—*Postea adjornantur*.<sup>3</sup>

(55 bis.)<sup>4</sup> § A. suyt<sup>5</sup> *Replegiari* vers le Priour de *Replegiari*. Horle,<sup>6</sup> dune truye et v porcelles.<sup>7</sup> Le Priour avowa [Fitz., *Replevin*, 34.] quant a la truye<sup>8</sup> en son several, damage fesant en autre lieu, et sur le lieu<sup>9</sup> furent a travers.—Et

<sup>1</sup> Harl., qil.

<sup>2</sup> The words et jeo entre are omitted from Harl.

<sup>3</sup> On the roll the case concludes as follows:—

“ Et Rogerus dicit quod, ex quo  
“ prædictus Comes non dedit  
“ quin ipse ingressus fuit manerium prædictum, et illud dimisit  
“ prædicto Roberto de Caustone,  
“ tenendum in forma prædicta, seu  
“ quin reversio ejusdem manerii  
“ alio modo ad ipsum Comitem  
“ pertinet quam per petendum se  
“ admitti prius supposuit, petit  
“ judicium, &c.

“ Et Comes dicit quod, ex quo  
“ prædictus Rogerus non dedit  
“ quin prædictus Robertus Bourser,  
“ prædicto die impetrationis brevis,  
“ &c., tenuit prædictum manerium  
“ ad terminum vitæ suæ ex dimissione ipsius Comitis, seu quin

“ reversio ejusdem manerii post  
“ mortem ipsius Roberti Bourser  
“ ad tunc ipso Comiti pertinebat  
“ ratione dimissionis prædictæ, et  
“ semper paratus est verificare  
“ quod prædictus Robertus Bourser  
“ nunquam alium statum postea  
“ habuit in prædicto manerio ex  
“ dimissione alicujus alterius quam  
“ ipsius Comitis, quam quidem  
“ verificationem prædictus Rogerus  
“ non admittit, petit judicium,  
“ &c.”

After this there were several adjournments, but nothing further appears on the roll.

<sup>4</sup> From Harl., and 25,184.

<sup>5</sup> Harl., suist.

<sup>6</sup> Harl., Herle.

<sup>7</sup> Harl., porceux.

<sup>8</sup> Harl., troye.

<sup>9</sup> The words sur le lieu are omitted from Harl.

## No. 56.

A.D. 1344. as to the place.—And, as to the pigs, he did not take them.—And the other side said the contrary.—And the jury found for the Prior with regard to the sow, and, as to the pigs, that at the time of the taking the sow was with pig, and afterwards had her litter while in the defendant's keeping; and they assessed the damages in respect of the pigs, if, &c.—*Grene*. The plaint is abated; for it is found that he did not take the pigs; and, if the Replevin should be maintainable on such special matter, it ought to have been pleaded.—*Notton*. The taking is sufficiently found, and we cannot attain our purpose, or have recovery, except by Replevin.—*Grene*. I quite think so, but then you ought to have aided yourself by way of plea when the taking was traversed, and that matter has been so adjudged in a like case.—*KELSHULLE*. The reverse of your contention was adjudged in the time of the King the father of the present King in respect of a cow in calf.—*WILLOUGHBY*. As to the sow let him take nothing by his writ; and as to the pigs let him have the beasts quit, and let him recover his damages assessed by the jury at fifteen pence.—And note that it was found by the jury that the defendant was seised of the pigs, and of the sow also, because no one came to have deliverance.

*Cessavit*. (56.) § A *Cessavit* was brought by John son of John de Ralegh<sup>1</sup> against John Alayn,<sup>1</sup> supposing that the tenant held of him one messuage and sixteen acres of land by homage, fealty, suit of court, and the service of eleven shillings, of which services the demandant's ancestor was seised by the hand of the tenant until two years before the purchase of the writ. It was

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<sup>1</sup> The names are here given as they appear on the roll.



## No. 56.

quant as porcelles<sup>1</sup> il ne prist pas.—*Et alii e contra.* A.D. 1344.  
 —Et trove fut par Enquest pur le Priour quant a la truye,<sup>2</sup> et, quant as porcelles, qau temps de la prise qe la truye<sup>2</sup> fut enporcele,<sup>3</sup> et puyz deporcella en la garde le defendant; et assistrent les damages de les porcelles, si, &c.—*Grene.* La plainte est abatu: qar<sup>4</sup> trove est qil ne prist pas les porcelles; et si le *Replegiari* sur tiel<sup>5</sup> matere especial serreit meyntenable, ceo dust aver este<sup>6</sup> plede.—*Nottone.* La prise est trove assetz,<sup>7</sup> et nous ne poms par autre voie avenir, ne aver recovery<sup>8</sup> forqe par *Replegiari*.—*Grene.* Jeo crey bien, mes donqes duissez vous aver eyde par voie de plee quant la prise fut traverse, et ceste chose ad este ajugge en autiel cas.—*KELS.* Le revers de vostre entente fut ajugge en temps le Roy le pere<sup>9</sup> dune vache en privite.<sup>10</sup>—*WILBY.* Quant a la truye<sup>2</sup> ne preigne rien par son brief; et quant as porcelles eit les avers quites, et recovere ses damages taxes par Enquest a xv deners.—*Et nota* qe par Enquest fut trove qe le defendant est seisi des porcelles, et la truye<sup>2</sup> unqore, qar nul vynt pur la deliveraunce avoir.

(56.)<sup>11</sup> § *Cessavit* par J. fitz J. Rale vers Johan le fitz Aleyn, supposaunt qe le tenant tient de luy un mies et xvj acres de terre par homage, fealte, et suyte, et les services de xjs., des queux services launcestre le demandant fut seisi par la mayn le tenant, tanqe as ij aunz avaunt le brief purchase.

<sup>1</sup> Harl., porceux.

<sup>2</sup> Harl., troye.

<sup>3</sup> Harl., ov porcelx.

<sup>4</sup> qar is from Harl. alone.

<sup>5</sup> Harl., cel.

<sup>6</sup> este is from Harl. alone.

<sup>7</sup> Harl., assetz bon.

<sup>8</sup> Harl., recoverer.

<sup>9</sup> Harl., lautre Roy, instead of le Roy le pere.

<sup>10</sup> Harl., empreynt, instead of en privite.

<sup>11</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Easter, 17 Edw. III., R<sup>o</sup> 152. There is a shorter report of the case in that term, No. 40. The record is there cited.

*Cessavit.*  
 [Fitz.,  
*Cessavit*,  
 20.]

## No. 56.

A.D. 1344. pleaded, as to twelve acres, that John de Ralegh,<sup>1</sup> after the death of Simon, his father, assigned the services of these twelve acres, that is to say two shillings, to Joan<sup>1</sup> his father's wife in the name of dower, by reason of which assignment the tenant attorned to the woman, and so he holds of the woman and not of the demandant; ready, &c.—And the other side said the contrary.—And as to the messuage, and four acres of land, Simon the demandant's grandfather<sup>2</sup> enfeoffed John<sup>3</sup> the tenant's father in fee simple, after the statute,<sup>4</sup> by his deed, of which the tenant made *profert*, and so, as to that, he is tenant of the chief lord.—To this the demandant said that nothing passed.—And by inquest taken at *Nisi prius* before SHARSHULLE it was found, as to the messuage and four acres, that nothing passed by the ancestor's feoffment; and, as to the twelve acres, it was found that the tenant held of the woman who was tenant in dower, as he supposed, and not of the demandant.<sup>5</sup>—*Huse* now prayed judgment on the verdict for the demandant, as to the messuage and four acres in respect of which the issue had been found in his favour.—*R. Thorpe*. This is a *Cessavit*, in which all might be saved by tender of services, and it has not been enquired by what services this portion which it is supposed is to be lost is holden, nor how much is in arrear, and so enquiry has not been fully made, and therefore you cannot proceed to judgment. Besides, the count purports that the ancestor was seised until two years before the writ was brought, whereas the heir cannot have an action in respect of a cesser in the time of his ancestor, and therefore you cannot give judgment on this count.—*Huse*. You have passed that point, and the writ and count are affirmed, and

<sup>1</sup> The names are here given as they appear on the roll.

<sup>2</sup> John, his father, according to the roll. See Y.B., Easter, 17 Edw. III., p. 455, note 11.

<sup>3</sup> John and his wife, according to the roll.

<sup>4</sup> 18 Edw. I. (*Quia emptores*), c. 1.

<sup>5</sup> See Y.B., Easter, 17 Edw. III., p. 459, note 3.

## No. 56.

Plede fut, quant a les xij acres, qe Johan de Rale, A.D. 1344 apres la mort Symond<sup>1</sup> son pere assigna les services de ceux xij acres a A. la femme son pere en noun de dowere, saver ijs., par quel assignement le tenant sattourna a la femme, issint tient il de la femme, et noun pas del demandant; prest, &c.—*Et alii e contra*.—Et, quant al mesuage et iiij acres de terre, Symond aiel le demandant feffa J. pere le tenant en fee simple puis le statut par son fait quel il mist avaunt, et issint est il tenant de cel a chief seignur.—A quei le demandant dit qe rien ne passa.—Et par enquest pris par *Nisi prius* devant SCHAR. fut trove, quant al mesuage et iiij acres, qe rien ne passa par le feffement launcestre; et, quant a les xij acres, fut trove qe le tenant tient de la femme tenante en dowere, come el supposa, et noun pas del demandant.—*Huse* pria ore jugement sur le verdit pur le demandant del mies et de les iiij acres dount la mise est trove pur luy.—*R. Thorpe*. Cest un *Cessavit* qe par tendre de services tut purra estre safve,<sup>2</sup> et il nest pas enquys par queux services cele porcioun qe dust estre perdu est tenu, ne come bien est aderere, et issint nest ceo pas pleinement enquys, par quei vous ne poetz a jugement aler. Ove ceo, le counte voet qe launcestre fut seisi taunqe a ij aunz avaunt le brief porte, ou de cesser en temps launcestre leir ne puyt avoir accion, par quei vous ne poez faire jugement sur cel counte.—*Huse*. Vous estes passe cel poynt, et brief et counte est afferme,

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<sup>1</sup> Symond is omitted from Harl. | <sup>2</sup> Harl., salve.

## No. 56.

A.D. 1344 you have pleaded to the action, and put yourself upon a jury, and the reverse of your issue has been found; therefore you cannot turn back, and plead in abatement of the writ and count. And as to your statement that enquiry has not been fully made, there is no necessity to enquire as to the quantity, which is not traversed by party, nor saved by protestation: for he might have had issue on that, but as he would not do so, and pleaded to a different issue by denying the tenancy, he put himself in this jeopardy of losing the land, if the finding should be against him; and a Justice at *Nisi prius* ought not by law to enquire as to anything but that which is put in issue by the parties.—HILLARY. Yes, he will; in Dower he will enquire as to damages, and in other cases also in which damages can be recovered, even though the issue be on another definite point; and, if the jury were now here before us, rest assured that we should enquire as to this matter.—Huse. We take your records to witness that he tenders nothing; and in case he did tender, and we were disputing between us how much should be tendered, that would possibly make a new issue.—Thorpe. It is impossible, after one issue has been tried, to take another on the same plea, as the issue put by the parties.—Skipwith. When the nature of the writ is to the effect that the party is to recover damages, even though the parties put themselves on the country on another point, a Justice would enquire as to damages, as for instance on possessory writs, and also on a writ of Trespass; but this writ is in its nature one affecting only freehold, and therefore this enquiry ought not to be made, nor is there any mischief, because it is the tenant's fault so far as the issue is wrongly taken; and, Sir, we are put entirely out of doubt on this point, because the party does not tender anything.—WILLOUGHBY. He could not know how much he ought to tender.—Birton.

## No. 56.

et avez plede al accion, et mys en enquest, et le A.D. 1344.  
 revers de vostre mise trove; par quey vous ne poetz  
 retourner de pleder al abatement du brief et counte.  
 Et quant a ceo que vous dites que ceo nest pas  
 pleinement enquys, il ne bosoigne pas enquerrer de  
 la quantite, quel nest pas par partie traverse, ne  
 par<sup>1</sup> protestacion safve<sup>2</sup>: qar sur cel il poait avoir  
 eu issue, mes quant il voleit pas, mes pleda a autre  
 issue en dedisaunt la tenaunce, il se mist a cel  
 jupartie de perdre la terre, si trove fut countre luy;  
 et Justice a *Nisi prius* ne deit enquerrer par ley<sup>3</sup>  
 mes ceo qest mys des parties.—HILL. Si fra; en  
 Dowere il enquerra de damages, et autres cas<sup>4</sup> auxint  
 ou homme recovere damages, tut soit lissue sur  
 autre certeyn poynt; et, si lenquest fut ore icy  
 devant nous, soietz certain que nous lenquerroms.—  
*Huse*. Nous pernomms vos recordes qil ne tend rien;  
 et en cas qil tendist, et nous fuissoms entre nous  
 en debat come bien serreit tendu, novel issue ceo<sup>5</sup>  
 freit par cas.—*Thorpe*. Ceo ne puyt estre, apres un<sup>6</sup>  
 issue trie, de prendre un autre en mesme le plee a  
 mise des parties.—*Skyp*.<sup>7</sup> Quant la nature du brief  
 voet que partie recovere damages, tut descendist par-  
 tie en pays sur autre poynt, Justice enquerreit de  
 damages, come en briefs de possessioun, et auxint  
 en brief de Trans; mes cesty brief de sa nature  
 nest forqe de fraunctenement, par quei ceo ne dust  
 pas estre enquys, ne il nest pas meschief, qar cest  
 la defaut del tenant pur lissu mespris; et, Sire,  
 nous sumes ouste tut de cel doute, qar la partie tend  
 rien.—WILBY. Il ne puyt saver come bien il tendra.—

<sup>1</sup> par is omitted from Harl.

<sup>2</sup> Harl., sauve.

<sup>3</sup> The words par ley are from  
Harl. alone.

<sup>4</sup> cas is from Harl. alone.

<sup>5</sup> 25,184, ne.

<sup>6</sup> Harl., son.

<sup>7</sup> Harl., SCROPE.

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A.D. 1344. He ought to tender the whole in accordance with our count, because, even though a part be not holden of us, the whole is to be understood as issuing from the rest which is holden of us.—WILLOUGHBY. That cannot be, because you suppose the whole to be holden only by so much service, and if it be found that a part, and that the greater part, is not holden of you, it is impossible that the rest can be holden by as great a quantity as that by which you have supposed the whole to be holden.—Huse. A writ of *Cessavit* is good even though I include in it land which is holden of me and other land which is not holden of me; and even though it be found that part is not holden of me, still that which is holden of me will be recovered together with the arrears; and even though I include in my writ more than is holden of me, still I shall recover the services of the rest, which is holden of me, together with the land.—R. Thorpe. We will free you from the difficulty, and we tell you that three shillings belong to this portion with respect to which the finding is in the demandant's favour, and that amount we tender.—HILLARY. You must tender services for two years at least.—R. Thorpe. Then see here six shillings; and he tenders further, for arrears while the writ was pending, fifteen shillings for the whole time.—Birton. The time for making a tender is past after the issue has passed against him.—This exception was not allowed, because the tender was made before judgment, &c.—And the point was touched that, if the tenant were now to tender less than ought to be tendered, and it were so found by inquest to be taken afterwards, by reason of the non-tender now he will not be afterwards admitted to tender more.—And therefore Thorpe said that he tendered the full amount for damages and the whole.—Huse. We tell you that eleven shillings are issuing from the messuage and four acres of land; and inasmuch as he

## No. 56.

*Byrtone.* Il tendra lentier come nous countames, qar <sup>A.D. 1344</sup> mesqe parcelle ne soit pas tenu de nous, tut est entendu<sup>1</sup> issaunt del remenant qest tenu de nous.—*WILBY.* Ceo ne put estre, qar vous supposez tut estre tenu forqe par tant,<sup>2</sup> et si trove soit qe partie, et tut le plus, nest pas tenue de vous, il ne put estre qe le remenant soit tenue par autiel quantite come vous avez suppose lentier estre tenu.—*Huse.* *Cessavit* est bon tut compreigne jeo terre qest tenu de moy et autre terre qe nest pas tenu de moy; et tut soit ceo trove qe parcelle nest pas tenue de moy, [unqore ceo qest tenu de moy serra recoveri ove les arrerages; et]<sup>3</sup> [coment qe jeo compreigne plus en mon brief qe nest tenu de moy,]<sup>4</sup> unqore les services del remenant qest tenu de moy jeo recoverai ove la terre.—*R. Thorpe.* Nous vous voloms eser,<sup>5</sup> et vous dioms qe a<sup>6</sup> ceste porcioun qest trove pur le demandant attenent iijs., et ceo tendoms.—*HILL.* Il vous<sup>7</sup> covient tendre pur ij anz au meyns.—*R.*<sup>8</sup> *Thcrpe.* Donqes veiez cy vjs.; et outre il tendy, pur<sup>9</sup> arrerages pendaunt le brief,<sup>10</sup> xvs. de tut temps.—*Byrtone.* Il est passe le tendre, apres issu passe countre luy.—*Non allocatur, quia ante judicium, &c.*—Et fut touche sil tendist meyns qe de resoun devereit ore<sup>11</sup> estre tendu, et ceo fut trove par enquest a prendre apres, qe pur le nient tendre a ore il ne serra pas resceu apres de tendre plus.—*Et ideo Thorpe* dit qil tendist au plein pur damages et tut.—*Huse.* Nous vous dioms qe del mesuage et iiij acres de terre les xjs. sount issaunts;

<sup>1</sup> 25,184, tendu.<sup>2</sup> Harl., tenant.<sup>3</sup> The words between brackets are not in either of the MSS. though printed in the old editions.<sup>4</sup> The words between brackets are omitted from Harl.<sup>5</sup> 25,184, user.<sup>6</sup> a is omitted from Harl.<sup>7</sup> vous is from Harl. alone.<sup>8</sup> R. is from Harl. alone.<sup>9</sup> Harl., les.<sup>10</sup> saver is inserted after brief in Harl.<sup>11</sup> ore is from Harl. alone.

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A.D. 1344. has not tendered the full amount, judgment; and we pray seisin.—*R. Thorpe*. Now, judgment of the count, inasmuch as he has counted that one messuage and sixteen acres of land are holden of him by eleven shillings, and now he confesses that the whole is issuing from a part of the land, and so that is at variance with his count.—*Grene*. That does not in any way abate his count, because, even though there be more included in his writ than is holden of him, his writ will not abate in respect of the parcel which is holden of him; and the quantity of the services is not denied by plea; and, since the part which is not holden of him is discharged, the charge falls entirely upon the portion which is found to be holden of him.—*WILLOUGHBY*. If it had been so found, it would possibly be as you say; but it is found that in a manner the whole is holden of him, because although it be found that a part is holden of a woman in the manner in which the tenant supposes, that manner proves that, after the death of the woman, the seignory is by right that of the person who is now demandant: for when his father assigned to the wife of his grandfather, to hold in the name of dower, that quantity of services, although the tenant held of the woman for the time, still the right of seignory in the same part continued to be with him, and the tenancy will again become one after the death of the tenant in dower, as the demandant supposes to be the case; therefore apportionment of the services ought to be made in this case; but, if it had been found simply that the tenant did not hold of him, it would be otherwise.—*Birton*. There is nothing else found upon which stress can be laid, except the issue of the parties, for you will not have any regard to that special matter which was not pleaded by party nor put to judgment, because no one will have Attaint on that, since the issue was taken on the traverse of the tenancy only; there-



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et, desicome il nad pas tendu au plein, jugement; A.D. 1344.  
 et prioms seisine.—*R.*<sup>1</sup> *Thorpe*. Ore, jugement de  
 count, desicome il ad counte qun mesuage et xvj  
 acres de terre sount tenuz de luy par xjs., et ore  
 il conust qe de parcelle de la terre lentier est  
 issaunt, et issint variaunt de son count.—*Grene*.  
 Ceo abat nul rien son count, qar tut soit il<sup>2</sup>  
 plus compris deinz son brief qe nest tenu de luy,  
 son brief nabatera pas de la parcelle qest tenu de  
 luy; et la quantite des services nest pas dedit par  
 plee; et, quant la parcelle qe nest pas tenu de lui  
 est descharge, la charge chiet tut sur la porcioun  
 qest trove tenu<sup>3</sup> de luy.—*WILBY*. Sil fust issint  
 trove, par cas il serreit issint come vous parletz;  
 mes il est trove qen manere tut est tenu de luy,  
 qar coment qe ceo<sup>4</sup> soit trove qe partie soit tenue  
 dune femme en manere come le tenant suppose, cele  
 manere proeve qen dreit, apres la mort la femme,  
 la seigneurie est seon<sup>5</sup> qest demandant a ore: qar  
 quant son pere assigna<sup>6</sup> a la femme son ael, a tenir  
 en noun de dowere, la quantite des services, tut  
 tient le tenant de la femme pur le temps, unqore  
 dreit de seigneurie luy demoert en mesme la parcelle,  
 et la tenaunce est a revener un apres la mort la  
 tenante en dowere, com<sup>7</sup> le demandant suppose estre;  
 par quei<sup>8</sup> apporcionement des services covient en  
 ceo cas estre fait; mes sil fut trove qe le tenant  
 simplement ne tient pas de luy, autre serreit.—  
*Byrtone*. Autre chose nest trove qe fait a charger  
 forqe la mise des parties, qar a cel matere especial  
 qe ne fut pas plede de partie ne mys en jugement  
 vous naveretz nul regarde, qar sur ceo navera nul  
 homme Atteinte, qar lissu fut prise sur travers de

<sup>1</sup> *R.* is from Harl. alone.<sup>2</sup> il is from Harl. alone.<sup>3</sup> Harl., et tenu.<sup>4</sup> ceo is from Harl. alone.<sup>5</sup> Harl., sene.<sup>6</sup> Harl., lassigna.<sup>7</sup> Harl., et une en come.<sup>8</sup> The words par quei are from Harl. alone.

## No. 56.

A.D. 1344. fore you will not have any regard to that special matter.—*Huse, ad idem.* The record does not purport that this John de Ralegh, who assigned the dower, was our ancestor, but the words are “*quidam Johannes de Ralegh,*”<sup>1</sup> and he might be another person.—WILLOUGHBY. We understand that he was your father, and no one else, unless he has been found to be another person, and the woman would in that case have a *Cessavit*, and, if the tenant pleaded with regard to the right, she would have aid of you in whom the right to the seignory abides; therefore you, who have such a right, cannot say that the entirety of the services is issuing out of the part.—*Grene.* And if seignory of the entirety abides in the demandant, then no apportionment lies, because by statute<sup>2</sup> apportionment lies only where a conveyance of part is made in fee simple.—*Skipwith.* If it so be that you take the verdict to mean that a part is not holden of the demandant, and that the rest is holden of him, then no apportionment lies, but it is right that the part holden of him should be charged with the service as to which he has counted; and if the whole is found to be holden of him, a part of it being in reversion, then the writ does not lie.—*Thorpe.* Either by plea or by verdict the writ will abate, because the tenant pleaded by fourching in answering on the ground of different tenancies, and by the verdict the tenancy is found to be several, and therefore the writ does not lie.—WILLOUGHBY. The time for that has passed.—*R. Thorpe.* We cannot make a *Cessavit* or any other writ good where it does not lie.—*Huse.* Since the Court understands that the person who assigned dower was our ancestor, and that so the reversion should be in us, we therefore tell you that, according to the pro-

<sup>1</sup> For the exact words, as they appear in the record, see Y.B., 17 Edw. III., p. 455, note 11.

<sup>2</sup> 18 Edw. I. (*Quia emptores*), c. 2.

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la tenance seulement ; par quei a cele<sup>1</sup> matere A.D. 1344. espediale naveretz<sup>2</sup> nul regarde.—*Huse, ad idem.* Le recorde ne voet pas qe celuy Johan Rale qe assigna le dowere fut nostre auncestre, mes voet *quidam Johannes*<sup>3</sup> Rale, qe purra estre autre persone.—WILBY. Nous entendoms qil fut vostre pere, et nul autre, sil nust este trove autre, et la femme en ceo cas avera le *Cessavit*, et si le tenant pledast en dreit, ele avereit eyde de vous en qi le dreit demoert de la seignurie ; par quey vous, qavez tiel dreit, ne poez dire qe lentier des services soit issaunt de la par-celle.—*Grene.* Et si seignurie demoert en le dem- mandant de tut, donques ne<sup>4</sup> gist nul<sup>5</sup> apporcionement,<sup>6</sup> qar par statut apporcionement ne gist pas mes ou demise en fee simple est fait de parcelle.—*Skypp.* Sil soit issint qe vous pernez le verdit a cel en- tente qe parcelle nest pas tenu del demandant, et le remenant est tenu de luy, donques gist nul apporcionement, mes il est resoun qe la parcelle tenu de luy soit charge de ceo dount il ad counte ; et si tut par ceo verdit soit trove<sup>7</sup> tenu de luy dount partie est en reversioun, donques gist pas le brief.—*Thorpe.* Quei par plee quei par verdit le brief sabatera, qar le tenant pleda par fourcher de respoudre come de diverse tenance,<sup>8</sup> et par verdit la tenaunce est several, par quei le brief ne gist pas.—WILBY. Cella est passe.—*R. Thorpe.* Nous ne pooms pas faire *Cessavit* ne nul brief bon par la ou il ne gist pas.—*Huse.* Puy qe Court entent qe celuy qe assigna dowere fut nostre auncestre, et issint qe reversioun serreit en nous, donques vous dioms qe

<sup>1</sup> Harl., tiel.<sup>2</sup> 25,184, navera.<sup>3</sup> Harl., qe mesme, instead of *quidam Johannes.*<sup>4</sup> ne is omitted from Harl.<sup>5</sup> nul is omitted from Harl.<sup>6</sup> Harl., lapporcionement.<sup>7</sup> trove is omitted from Harl.<sup>8</sup> Harl., devers tenants, instead of de diverse tenance.

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A.D. 1344. portion there are six shillings coming from the house and the four acres, and inasmuch as he has not tendered the full amount, we demand judgment.—*R. Thorpe*. It seems to us, inasmuch as the whole is found to be holden of him, part in demesne, and part in service, the writ must be abated.—*WILLOUGHBY*. It is an extraordinary thing to maintain a *Cessavit* in this matter, when the tenancy still continues to be one with regard to the right, because it seems that apportionment does not lie.—*R. Thorpe*. Certainly not, because it is impossible that security could now be found for part; and after the death of the woman, when the whole will be one tenancy in demesne, it will not be known for which part the security was given.—*Huse*. It has not been found that the reversion is in us, and in case, by chance, it had been, a *Cessavit* would not lie; but, inasmuch as the writ and the count are affirmed, and the portion which has now been found to be holden of us cannot by any law be saved except by tender, and now he does not tender, judgment.—*Thorpe*. If there be several tenants, and several seignories, that is to say, if the woman has one seignory and the demandant another, then the writ does not lie; and, if the seignory be one, because part is in service and part in demesne, holden of him, the writ does not lie.—*Grene*. According to your interpretation no *Cessavit* will hold good, because if my tenant who holds of me alienes a part in fee tail to hold of himself, in this way he will be my tenant as to part in service and as to part in demesne, and consequently a *Cessavit* does not lie. The conclusion is false.—*Thorpe*. It is law that a *Cessavit* does not lie in such a case.—*WILLOUGHBY*. It does not, because the fact that the part which is holden of him in

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del mies et les iiij acres sount avenantz, solonc la A.D. 1344.  
porcioun, vjs., et, desicome il nad pas pleynement  
tendu, jugement.—*R. Thorpe*. El nous semble, desicome  
trove est tut estre tenu de luy, partie en  
demene, et partie en service, qil covient abatre le  
brief.—*WILBY*. Il est merveille en ceste matere de  
meyntener *Cessavit*, quant la tenaunce demoert unqore<sup>1</sup>  
un en dreit, qar<sup>2</sup> il semble qe apporcionement ne  
gist pas.—*R. Thorpe*. Noun, certes, qar il ne put  
estre qe soerte serreit trove de parcelle a ore; et  
apres la mort la femme, quant tut serra une tenance  
en demene,<sup>3</sup> homme ne<sup>4</sup> savera pas<sup>5</sup> de quele par-  
celle la soerte fut fait.—*Huse*. Il nest pas trove la  
reversioun en nous, et en cas qil fut par cas, *Ces-*  
*savit* ne girra pas; mes desicome brief et count  
sount<sup>6</sup> affermes, et la porcioun qest ore<sup>7</sup> trove tenu  
de nous par nulle ley purra estre safve<sup>8</sup> forqe par  
tendre, et ore<sup>9</sup> il ne tend pas, jugement.—*Thorpe*.  
Sils soient severals tenantz, et severals seignuries,  
saver, qe la femme ad une seignurie, le demandant<sup>10</sup>  
une autre, donqes ne gist pas le brief; et, si la  
seignurie soit une, pur ceo qe partie est en service,  
et partie en demene, tenu de luy, le brief ne gist  
pas.—*Grene*. A vostre entente nul *Cessavit* tendra  
lieu, qar si mon tenant qe tient de moy aliena  
parcelle en fee taille a tenir de luy mesme,  
issint<sup>11</sup> qe de parcelle il serra mon tenant en service,  
et<sup>12</sup> partie en demene, et *per consequens* *Cessavit* ne  
gist<sup>13</sup> pas. *Consequens falsum*.—*Thorpe*. Il est ley qe  
*Cessavit* ne gist pas en tiel cas.—*WILBY*. Noun, qar  
overture en la parcelle qest tenu de luy en service

<sup>1</sup> unqore is omitted from L.

<sup>2</sup> qar is from Harl. alone.

<sup>3</sup> Harl., descente.

<sup>4</sup> ne is omitted from Harl.

<sup>5</sup> pas is omitted from Harl.

<sup>6</sup> sount is omitted from Harl.

<sup>7</sup> ore is from Harl. alone.

<sup>8</sup> Harl., sauve.

<sup>9</sup> Harl., ceo.

<sup>10</sup> 25,184, et le tenant instead of  
le demandant.

<sup>11</sup> Harl., et issint.

<sup>12</sup> et is from Harl. alone.

<sup>13</sup> Harl., girra.

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A.D. 1344. service is open to distress will abate the writ.—*Grene*. Yes, if it be so open. But if the whole is lying fallow I shall recover that which is holden of me in demesne.—*STONORE* to *Huse*. It was for you, who are demandant, to have prayed that enquiry of the matter should be fully made, and if you did not do so, and you will not now accept that which he tenders you, and we cannot know of ourselves, for default of examination, how much you ought to have, upon whom will you cast the blame for that?—*Huse*. We pray that it be better enquired.—*Thorpe*. And we pray it also.—*WILLOUGHBY*. Sue the jury-process.—*Huse*. We pray a *Nisi prius*.—*WILLOUGHBY*. The jury is without day, and therefore there must be a new *Venire facias*.—*Huse*. Enquiry of that as to which enquiry remains to be made will be made by the same jury.—*KELSHULLE*. That cannot be, because there must be new jury-process, and, when the panel is returned, you will have a *Nisi prius*.—*WILLOUGHBY*. We will consider.—And afterwards a *Venire facias* issued to the first jurors *ad inquirendum*.—*Quære* whether they will enquire anew as to the whole matter, or only as to the point as to which enquiry remained to be made on the previous occasion.<sup>1</sup>

Replevin (57.) § Replevin for the Abbot of Ford against Ralph Daubeney in B.<sup>2</sup>—*Huse* took exception to the writ because it was brought in a hamlet.—This exception was not allowed.—*Huse* avowed in A.,<sup>3</sup> which is a different place from that in which the plaintiff makes

<sup>1</sup> See Y.B., Easter, 17 Edw. III. (Rolls edition), p. 459, note 3, for both verdicts.

<sup>2</sup> For the name of the place see p. 249, note 9.

<sup>3</sup> For the name of the place see p. 251, note 2.

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abatera le brief.—*Grene*. Oyl, sil soit issint. Mes A.D. 1344. si tut gise freche<sup>1</sup> jeo recoverai ceo qest en demene tenu de moy.—*STON.* a *Huse*. A<sup>2</sup> vous qestes demandant fut ceo daver prie qe la chose ust este pleynement enquys, et si vous ne feistes pas,<sup>3</sup> et ore ne voillez resceyver ceo qil vous<sup>4</sup> tend, et<sup>5</sup> nous ne pooms saver de nous mesmes come bien vous duissez avoir, pur defaut dexamination, a qi voillez arretir cel?—*Huse*. Nous prioms qil soit meuth enquys.—*Thorpe*. Et nous le prioms.—*WILBY*. Suetz lenquest.—*Huse*. Nous prioms *Nisi prius*.—*WILBY*. Lenquest est saunz jour, par quei il covient avoir novel *Venire facias*.—*Huse*. Ceo qe remeint a enquerer serra enquys par mesme lenquest.—*KELS*. Ceo ne put estre, qar il covient avoir novel proces vers lenquest, et quant la<sup>6</sup> panel serra retourne vous avez *Nisi prius*.—*WILBY*. Nous voloms aviser.—Et puis *Venire facias* issist vers les primers<sup>7</sup> jurours *ad inquirendum*.—*Quære* sils enquerrount tut de novel, ou soulement le point qautrefoith remist a enquerer.<sup>8</sup>

(57.)<sup>9</sup> § *Replegiari* pur Labbe de Forde<sup>11</sup> vers Rauf *Replegiari*.<sup>10</sup> Daubeney en B.—*Huse* chalengea le brief de ceo qil est porte en hamel.—*Non allocatur*.—*Huse* avowa en A., qest autre lieu qe la ou il se pleint, pur

<sup>1</sup> Harl., friche.

<sup>2</sup> A is omitted from Harl.

<sup>3</sup> pas is omitted from Harl.

<sup>4</sup> vous is omitted from 25,184.

<sup>5</sup> et is omitted from Harl.

<sup>6</sup> la is from Harl. alone.

<sup>7</sup> primers is from Harl. alone.

<sup>8</sup> For the first and for the second verdict, as appearing on the roll, and for the judgment which followed see Y.B., Easter, 17 Edw. III., p. 459, note 3.

<sup>9</sup> From Harl., and 25,184, but

corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 354, d. It there appears that the action was brought by the Abbot of Ford against Ralph Daubeneye, knight, who, with others, as alleged in the declaration, "in Leghe, in quodam loco qui vocatur Bradeleghe, cepit quatuor vaccas ipsius Abbatis, &c."

<sup>10</sup> Harl., Avowere.

<sup>11</sup> 25,184, Forche.

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A.D. 1344. his plaint, for suit to a Hundred<sup>1</sup> Court, and in that place as in parcel of the tenements which the Abbot holds in the Hundred, and which are charged with the suit.--And note that he laid the seisin by prescription.--*Derworthy*. A.<sup>1</sup> and B.<sup>1</sup> are one and the same place; and we say that he cannot avow for suit to the Hundred Court, because Ralph the grandfather of Ralph who now avows, whose heir he is, by this deed released to the predecessor of this Abbot, for all his men free and bond, all suit and demands which he had by reason of his Hundred Court, and all other secular demands, and at that time, this same person by whose hands he has laid the seisin was seised and held of the Abbot; judgment whether he will be able to maintain this avowry against the deed of his ancestor.--*Huse*. We say that

<sup>1</sup> For the names of the places see p. 251, note 2, and note 5.



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suyte a Hundred en le lieu ou il ad dit<sup>1</sup> come en A.D. 1344.  
 parcelle des tenementz qe Labbe tient deinz le  
 Hundred et charges de la suyte.—*Et nota* qil lya  
 la seisine par prescripcion.<sup>2</sup>—*Derw.* A. et B. sount  
 un mesme lieu; et nous dioms qe pur suyte al  
 Hundred ne poet il avower, qar R. aiel R. qore  
 avowe, qi heir, &c., par ceo fait relessa al prede-  
 cessour cesty Abbe a<sup>3</sup> touz ses hommes fraunkz<sup>4</sup> et  
 bondes chescun suyte et demande qil avoit par cause  
 de son Hundred, et tutes autres seculers demandes, a  
 quel temps mesme cely par qi meyns il ad lie la seisine  
 fut seisi et tient del Abbe; jugement sil purra ceste  
 avowere countre le fait son auncestre meyntener.<sup>5</sup>—

<sup>1</sup> 25,184, counte.

<sup>2</sup> The avowry was, according to the roll, “advocat prædictam captionem in quodam loco qui vocatur Whateleghe, et juste, &c., dicit enim quod ipse est dominus Hundredi de Southpeditone, infra quod Hundredum sunt-Leghe, Strete, et Fordebrigge, quæ sunt hameletti villæ de Wynsham, unde prædictus locus in quo, &c., est parcella, et ad quod Hundredum omnes libere tenentes infra idem Hundredum debent facere sectam quolibet anno de tribus septimanas in tres septimanas. Et dicit quod prædictus Abbas tenet in Leghe unum toftum, viginti acras terræ, et septem acras moræ, unde prædictus locus in quo, &c., est parcella, et de quibus tenementis secta illa debetur ad Hundredum prædictum. Et de qua secta ad idem Hundredum quidam Radulphus Daubeneye avus ipsius Radulphi, cujus heres ipse est, fuit seisitus per quendam Willelmum Gockou tunc tenentem terrarum et tenementorum illo-

rum, et similiter omnes antecessores ejusdem Radulphi Daubeneye avi, &c., fuerunt seisiti de eadem secta per illos qui tenementa illa tenuerunt a tempore quo non extat memoria. Et, quia prædicta secta eidem Radulpho nunc a retro fuit per sexdecim annos ante diem captionis prædictæ, cepit ipse prædictas vaccas pro secta prædicta de primis tribus annis prædictorum sexdecim annorum, in prædicto loco, prout ei bene licuit, &c.”

<sup>3</sup> 25,184, et a.

<sup>4</sup> fraunkz is from Harl. alone.

<sup>5</sup> The plea was, according to the roll, “quod prædictus locus quem prædictus Radulphus vocat Whateleghe est idem locus quem ipse nominat Bradeleghe, et in quo, &c. Et dicit quod idem Radulphus captionem prædictam justam advocare non potest, dicit enim quod quidam Radulphus de Albinacio, dominus de Southpeditone, avus prædicti Radulphi, cujus heres ipse est, per scriptum suum quietum clamavit de se et

## No. 57.

A.D. 1344. the place in which we avow is a different place from that in which he makes his plaint; ready, &c.—*STONORE*. He allows with you that the place in which he makes his plaint and that in which you avow are the same, and gives the advantage of that; therefore the averment will not serve you in any way.—*Birton*. Possibly, Sir, the place in which he makes his plaint is without the Hundred, and where possibly I shall not be able to avow; and in the other, in which I suppose the taking, I shall be able to avow; therefore it would be contrary to reason, even though he be willing to confess that it is one and the same place, that I should be put to mischief by agreeing with him.—*STONORE*. There is no mischief.—*WILLOUGHBY*. Is this your ancestor's deed?—*Huse*. He makes his plaint in a place which is called Bradlegh,<sup>1</sup> and we have avowed in Whatelegh,<sup>1</sup> and we tell you that they are different places, and that neither is known by the name of the other; and we tell you further that the place in which we avow is parcel of the land which William Gockou<sup>1</sup> held, whom he supposes to have been the Abbot's tenant at the time of the execution of the deed, and so the taking was effected in Whatelegh<sup>1</sup> and not in Bradlegh<sup>1</sup>; ready, &c.—*Grene*. You had oyer of the deed, and on the deed you went out to imparl.—This objection was not allowed.—*HILLARY*. If

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<sup>1</sup> These names have in the translation been corrected by the record.

## No. 57.

*Huse.* Nous dioms qe le lieu ou<sup>1</sup> nous avowoms A.D. 1344. est autre lieu qe la ou il se pleint; prest, &c.—*STON.* Il le graunt ovesqe vous qe tut est un lieu ou il se pleint et ou vous avowes, et vous doune lavantage; par quei laverement vous<sup>2</sup> servira<sup>3</sup> de nient.—*Byrton.* Sire,<sup>4</sup> par cas le lieu ou il se pleint est hors del Hundred, et ou jeo ne purroy par cas avower; et en<sup>5</sup> lautre, ou jeo suppose, &c., jeo purroy avower; donqes serreit il countre resoun qe, tut voille il conustre tut estre un lieu, jeo serroy mys a meschief destre a un ove luy.—*STON.* Il ny ad nul meschief.—*WILBY.* Est ceo le fait vostre auncestre?—*Huse.* Il se pleint en un lieu qest appelle Hadel, et nous avoms avowe en Walhadle,<sup>6</sup> et vous dioms qils sount divers lieux, et nul conu par autri noun; et outre vous dioms qe le lieu ou nous avowoms est parcelle de la terre qe W. Ouloi<sup>7</sup> tient, qil suppose estre le tenant Labbe au temps de la confeccion du fait, et issint se fist la prise en Wadlepe,<sup>8</sup> et noun pas en Hadel; prest, &c.—*Grene.* Vous avez oy<sup>9</sup> le fait, et sur le fait estes issu denparler.—*Non allocatur.*—*HILL.* Sils<sup>10</sup> soient

“ heredibus suis in perpetuum  
 “ ipsum Abbatem de Forda et  
 “ ejusdem loci Conventum et eorum  
 “ successores omnes homines suos  
 “ servientes et tenentes liberos et  
 “ villanos de manerio eorum de  
 “ Leghe, cum suis pertinentiis, et  
 “ de omnibus terris et tenementis  
 “ ad dictum manerium spectanti-  
 “ bus, cum omnibus eorum perti-  
 “ nentiis, ab omnibus sectis  
 “ curiarum, consuetudinibus, et  
 “ servitiis quibuscumque, ac omni-  
 “ bus sæcularibus demandis ad  
 “ ipsum vel heredes suos occasione  
 “ Hundredi sui prædicti per nomen  
 “ Hundredi de Southpedertone vel  
 “ aliter quoquo modo pertinentibus,  
 “ in liberam, puram, et perpetuam

“ eleemosynam, &c. Et profert hic  
 “ prædictum scriptum sub nomine  
 “ prædicti Radulphi, avi, &c., quod  
 “ hoc testatur, &c., unde petit  
 “ judicium si contra factum prædic-  
 “ tum captionem prædictam justam  
 “ advocare possit in hac parte,  
 “ &c.”

<sup>1</sup> Harl., en qi.

<sup>2</sup> vous is omitted from Harl.

<sup>3</sup> Harl., servereit.

<sup>4</sup> Sire is from Harl. alone.

<sup>5</sup> en is omitted from Harl.

<sup>6</sup> Harl., Wadelay.

<sup>7</sup> Harl., B., instead of W. Ouloi.

<sup>8</sup> Harl., Waydhale.

<sup>9</sup> Harl., ce.

<sup>10</sup> Harl., Si y.

## No. 58.

A.D. 1344. they be different places, you must maintain your plaint, or else it will abate.—WILLOUGHBY, *ad idem*. The plaintiff might, if he would, accept the statement that it is all one place; but it does not follow from that the avowant must do so if he does not wish; and possibly the deed extends to one place, and not to the other.—*Huse*. Certainly; and that is the fact.—And afterwards they were at a traverse with regard to the place.

Formedon (58.) § Ralph de Cromwell brought a writ of Forme-

## No. 58.

divers lieux, il<sup>1</sup> covient qe vous<sup>2</sup> meyntenez<sup>3</sup> vostre A.D. 1344.  
 plainte, ou ele abatera.—WILBY, *ad idem*. Le pleintif  
 le purreit accepter, sil voleit, qe tut est un lieu;  
 mes de ceo nensuyt pas qil le<sup>4</sup> fra sil ne voille;  
 et par cas le fait sestent al un lieu, et noun pas  
 al autre.—Huse. Certes; et issint est il.<sup>5</sup>—Et puis  
 sont a travers sur le lieu.<sup>6</sup>

(58.)<sup>7</sup> § R. de Cromwelle porta brief de<sup>8</sup> Forme Forme de

<sup>1</sup> Harl., y vous.

<sup>2</sup> The words qe vous are omitted from Harl.

<sup>3</sup> Harl., meyntener.

<sup>4</sup> Harl., ne.

<sup>5</sup> il is omitted from Harl.

<sup>6</sup> According to the record “Radulphus dicit quod, qualitercumque prædictus Abbas supponit prædictum locum de Bradeleghe esse illum eundem locum quem ipse Radulphus nominat Whateleghe, idem locus de Whateleghe est alius locus quam Bradeleghe, in quo loco de Whateleghe prædicta captio facta fuit, et non in prædicto loco de Bradeleghe. Et hoc paratus est verificare, unde petit iudicium, &c.”

“Et Abbas dicit quod captio illa facta fuit in prædicto loco de Bradeleghe, sicut ipse superius supponit.”

Upon this issue was joined.

A jury afterwards found at *Nisi prius*, “quod locus quem prædictus Radulphus in advocare suo nominat Whateleghe est ille idem locus quem prædictus Abbas in narratione sua nominat Bradeleghe, et cognoscitur per unum nomen et per aliud indifferenter. Et sic dicunt quod captio de qua prædictus Abbas queritur facta fuit in Bradeleghe, prout prædictus Abbas per narrationem suam supponit. Et

“assident damna ipsius Abbatis ad quadraginta solidos.”

Judgment was then given for the Abbot to recover his damages as assessed by the jury.

<sup>7</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 414, d. It there appears that the action was brought by Ralph de Cromwelle, the elder, knight, against Robert le Walker of Ketelsby and Agnes his wife, and William their son, in respect of 10s. of rent in Ketelsby (Kettleby, Lincolnshire) “quas Radulphus de Crumwelle, avus prædicti Radulphi de Crumwelle senioris, cujus heres ipse est, dedit Johanni de Crumwelle et heredibus de corpore suo exeuntibus.”

According to the count “De ipso Johanne, quia obiit sine herede de corpore suo exeunte, revertebatur jus per formam, &c., prædicto Radulpho avo, &c., ut donatori, &c., et de ipso Radulpho avo, &c., descendit jus reversionis, &c., cuidam Radulpho ut filio et heredi, &c. Et de ipso Radulpho descendit jus, &c., isti Radulpho de Crumwelle seniori ut filio et heredi, &c., qui nunc petit.”

<sup>8</sup> The words brief de are from Harl. alone.

## No. 59.

A.D. 1344 in the reverter. don in the reverter in respect of ten shillings of rent, supposing that his grandfather gave to B.<sup>1</sup> and the heirs of his body, &c., and that it ought to revert, &c., for default of issue.—*Richemunde*. We tell you that the land put in view is out of the demandant's fee; judgment whether he ought to be answered without showing a specialty.—*Pole*. We have a title in our writ, that is to say, that our ancestor was seised and gave.—*STONORE*. If he were to show a specialty it would be a different title from that which the nature of his writ requires.—*Richemunde*. And inasmuch as he does not maintain that it is within his fee, and does not show any specialty which charges our freehold, judgment whether he ought to be answered.—*WILLOUGHBY*. In a like case a party has been answered without showing a specialty, and your plea is to the action; therefore consider whether you will abide judgment.—*Richemunde*. In Assise he would not charge my freehold without showing a specialty; therefore he will not do so any more upon this writ.—*WILLOUGHBY*. A writ of Assise does not include a title; but this writ, which relates to the right, does so, whereas your demurrer is to the whole.—*Richemunde*. If it seems to you that he should be answered without showing a specialty, we shall be ready to answer.—*WILLOUGHBY*. You must plead yourself, and, if you abide judgment, you will lose the rent at once.—*Richemunde*. If you so adjudge, we are ready to answer.—*WILLOUGHBY*. Answer.—*Richemunde*. He never had anything by gift from the demandant's grandfather; ready, &c.—And the other side said the contrary.

Assise of  
Mort  
d'Ance-  
tor.

(59.) § Assise of Mort d'Ancestor against two in common, on whose default the Assise was awarded, and remained until now to be taken.—*Huse*. You

<sup>1</sup> For the name see p. 255, note 7.

## • No. 59.

de doun en *reverti* de *x.s.* de rente, supposaut que son ayel dona a B. et les heirs de son corps, &c., et par default dissu revertira, &c.—*Rich.* Nous vous dioms que la terre mys en vewe est hors de son fee; jugement si saunz especialte deyve estre respondu.—*Pole.* Nous avoms title en nostre brief, saver, que nostre auncestre fut seisi et dona.—*STON.* Sil moustrast especialte ceo serreit un autre title que la nature de son brief demande.—*Rich.* Et desicome il ne meyntient pas que ceo soit deinz son fee, ne il ne moustre pas especialte que charge nostre frauntenement, jugement sil deyve estre respondu.—*WILBY.* En autiel cas partie ad este respondu saunz especialte, et vostre plee est al accion; par quei veiez si vous voletz demurer.—*Rich.* En Assise il ne charge-reit pas mon frauntenement saunz especialte; pur quei nient plus en cesty brief.—*WILBY.* Assise ne comprennent pas title; mes cesty brief, qest en dreit, fait, ou<sup>3</sup> vostre demure est<sup>4</sup> a tut.—*Rich.* Sil vous semble qil serra respondu saunz especialte, prest serroms a respondre.—*WILBY.* Vous plederetz<sup>5</sup> mesmes, et si vous demurez, vous perdrez la rente tantost.—*Rich.*<sup>6</sup> Si vous agardes, prest sumes a respondre.—*WILBY.* Respondez.—*Rich.* Il navoit unques rien de son doun; prest, &c.<sup>7</sup>—*Et alii e contra.*

(59.)<sup>8</sup> § Assise de Mort dauncestre vers ij en comune, par qi default Lassise fut agarde, et remist a prendre tanqa ore.—*Huse.* Vous avez cy A. vers

A.D. 1344.  
doun<sup>1</sup>:  
*Reverti.*<sup>2</sup>  
[Fitz.,  
*Hors de*  
*son fee,*  
23.]

Assise de<sup>9</sup>  
Mort  
daun-  
cestre.

<sup>1</sup> The words *Forme de doun* are from Harl. alone.

<sup>2</sup> *Reverti* is omitted from Harl.

<sup>3</sup> *ou* is omitted from Harl.

<sup>4</sup> Harl., *estre.*

<sup>5</sup> Harl., *pledez.*

<sup>6</sup> Harl., *R. Thorpe.*

<sup>7</sup> The plea was, according to the record, "quod idem Johannes nun-

"quam aliquid habuit in eodem  
"redditu de dono prædicti Radulphi  
"avi, &c."

Issue was joined upon this, and the *Venire* awarded, but nothing further appears upon the roll.

<sup>8</sup> From Harl., and 25,184.

<sup>9</sup> The words *Assise de* are from Harl. alone.

## No. 59.

A.D. 1344. have here A., against whom and one B. the Assise was brought, and he tells you that B. is tenant of this freehold, and he has nothing in this freehold at present, but his father and B. purchased the same tenements to hold to them and the heirs of his father, and B. made default, and the Assise is to be taken by her default, and A. is entitled to the inheritance as heir of his father, &c., and he prays to be admitted.—*Grene* counterpleaded this admission, because the Assise had been awarded against him, which award must be executed, and the Assise is not now to be taken by default but was so on the other day, at which time he did not pray to be admitted.—And, notwithstanding, he was admitted by judgment, and he vouched.—*Grene*. You shall not be admitted to this voucher, because your ancestor, whose heir you are, was the first who intruded after the death of our ancestor.—*Husc*. You see plainly how he has not denied the cause of our prayer, that is to say, that our ancestor and the person on whose default we are now admitted purchased to hold to them and the heirs of our father, in respect of which tenancy our father and his wife would have been admitted to vouch, notwithstanding the counterplea; consequently we who are heir ought to be admitted. Besides, the counterplea of voucher in this way is given by the Statute of Westminster the First,<sup>1</sup> and admission was given a long time afterwards by Statute<sup>2</sup> for the person in whom the right rests, against whom this counterplea is not given, because he is neither tenant nor tenant by his warranty, against whom the counterplea extends, &c. And the woman who is tenant will have the advantage of a recovery to the value, and against her, if she had vouched, the counterplea would not have been admissible, nor consequently is it now.—And there was also touched the point that if a writ be brought against

<sup>1</sup> 3 Edw. I. (Westm. 1), c. 40.

| <sup>2</sup> 13 Edw. III. (Westm. 2), c. 3,



## No. 59.

qi et un B. Lassise est porte, qe vous dit<sup>1</sup> qe B. A.D. 1344. est tenant de ceo fraunctenement, et il nad rien en ceo fraunctenement a ore, mes son pere et B. purchacerent mesmes les tenementz a eux et les heirs son pere, et B. fait default, et Lassise a prendre par sa default, et A. come heir son pere est enherite, &c., et pria destre resceu.—*Grene* le countrepleda pur ceo qe Lassise est agarde devers luy, quel agarde covient estre execut, et auxint Lassise a ore<sup>2</sup> nest pas a prendre par default,<sup>3</sup> mes fust al autre jour, a quel temps il ne pria destre resceu.—Et *non obstante*, il fut resceu par agarde, et voucha.—*Grene*. A ceo vouchier ne serretz<sup>4</sup> resceu, qar vostre auncestre, qi heir vous estes, fut le primer qe sabatist apres la mort nostre auncestre.—*Huse*. Vous veiez bien coment il nad pas dedit la cause de nostre priere, saver, qe nostre auncestre, et cely par qi default nous sumes ore<sup>5</sup> resceu purchacerent a eux et a les heirs nostre pere, de quel tenaunce nostre pere et la femme, *non obstante* le<sup>6</sup> countreplee, ussent este resceu de vouchier; *per consequens*, nous qe sumes heir. Ovesqe ceo, le countreplee de vouchier par cel voie est done par Westmestre Primer, et resceit est done par statut longe temps puis pur celuy en qi le dreit repose, countre qi cel countreplee nest pas done, qar il nest pas tenant, ne tenant par sa garrauntie, countre queux le countreplee sestent, &c. Et<sup>7</sup> par le recoverir en value la femme qest tenant avera lavantage, countre qi, si ele ust vouche, le countreplee ne serreit pas receivable, *nec, per consequens*, a ore.—Et auxint fut touche qe si brief soit porte vers le baroun et sa

<sup>1</sup> Harl., diont.<sup>2</sup> The words a ore are from Harl. alone.<sup>3</sup> The words par default are from Harl. alone.<sup>4</sup> Harl., devez estre.<sup>5</sup> ore is from Harl. alone.<sup>6</sup> Harl., ceo.<sup>7</sup> Et is from Harl. alone.

No. 59 *bis*.

A.D. 1344. husband and wife, and they vouch, it is no counter-plea to say that the husband or his ancestor was the first that intruded; but to say that the wife or her ancestor was the first who intruded would be a good counterplea, &c.—And it appeared to the Court that in this case, notwithstanding that the heir is now sole party, and as sole party has vouched, such a counterplea is not sufficient to oust him from the voucher.—*Grene*. Then we tell you that neither the person whom you vouch nor any of his ancestors had anything in the tenements, &c.—And this was counterpleaded on the ground that in the statement of the cause for his prayer to be admitted, which is confessed by the demandant, the vouchee's seisin is expressly supposed, and, further, on the ground that the demandant held to a different counterplea at first.—But this exception was not allowed.—Therefore he took the averment that the vouchee was seised, &c.—The Assise came, and the polls were challenged, and most of them were tried with regard to insufficiency, because they had not any land.—*Grene*. The Assise has come through the Bailiff of a Liberty, and you will find that within the Liberty there are not any who are more sufficient.—WILLOUGHBY. What of that? for in default of them we shall cause men foreign to the Liberty to come.

Formedon (59 *bis*.) § Thomas de Longvylers, knight, brought a  
in the  
descender.

## No. 59 bis.

femme, et ils vouchent, ceo nest pas countreplee q̄e A.D. 1344. le baroun ou son auncestre fut le primer q̄e abatist; mes a dire q̄e la femme ou son auncestre fut le primer q̄e abatist serreit bon countreplee, &c.—Et il sembloit a la COURT en ceo cas, *non obstante* q̄e leir est ore soul partie, et soul partie<sup>1</sup> ad<sup>2</sup> vouche, q̄e tiel countreplee nest pas suffisant de luy ouster del voucher.—*Grene.* Donques vous dioms q̄e celuy q̄e vous vouchez ne nul de ses auncestres rien y avoint,<sup>3</sup> &c.—Et fut countreplede pur ceo q̄en la cause de sa priere, quel est conu del demandant q̄e sa seisine est suppose<sup>4</sup> expressement, ovesqe ceo, pur ceo q̄e le demandant se tient a autre countreplee adeprimes.—*Sed non allocatur.*—Par quei il prist laverement q̄e seisi, &c.—Lassise vynt et les testes<sup>5</sup> chalanges, et furent touz les plus trieiz pur meyns suffisauntz, pur ceo q̄ils navoint pas de<sup>6</sup> terre.—*Grene.* Lassise est venuz par Baillif de la Fraunchise<sup>7</sup> et deinz<sup>8</sup> la Fraunchise vous troverez q̄ils ne sount pas<sup>9</sup> plus suffisauntz.—WILBY. De ceo [quei]? qar en<sup>10</sup> defaut deux nous ferroms venir foreyns.

(59 bis.)<sup>11</sup> § Thomas Longelers,<sup>14</sup> chivaler, porta Formedoun<sup>12</sup>:  
Descendre.<sup>13</sup>

<sup>1</sup> The words soul partie are omitted from Harl.

<sup>2</sup> Harl., al.

<sup>3</sup> Harl., navoient, instead of y avoint.

<sup>4</sup> 25,184, conu.

<sup>5</sup> Harl., tetes.

<sup>6</sup> de is from Harl. alone.

<sup>7</sup> The words de la Fraunchise are from Harl. alone.

<sup>8</sup> Harl., de mesme.

<sup>9</sup> pas is omitted from Harl.

<sup>10</sup> Harl., q̄en, instead of qar en.

<sup>11</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 547.

It there appears that the action was

brought by Thomas de Lungvylers, knight, against Robert de Neville, of Farnley, knight, in respect of the manor of Gergrave (Gargrave, Yorks), and tenements in Armley, and against two others in respect of other tenements also in Armley, which William de Lungvylers gave to Bertha (Berte) daughter of Robert de Markham in tail. Thomas claimed as son and heir of Bertha.

<sup>12</sup> Formedoun is from Harl. alone, in which MS. it is not in the same hand as the text.

<sup>13</sup> Descendre is from 25,184 alone.

<sup>14</sup> Harl., del.

No. 59 *bis*.

A.D. 1344. Formedon in the descender against Robert de Neville, supposing the gift to have been made to Bertha, his mother, and the heirs of her body begotten.—*Mutlow*. He cannot demand anything, because the demandant's father, whose heir he is, by this deed which is here, enfeoffed our grandfather, whose heir we are, and bound himself and his heirs to warrant our grandfather and his heirs, and so he will be bound to warrant us; and we demand judgment whether contrary to the deed of his ancestor, &c. And we tell you that assets descended to him, &c.—*Grene*. You see plainly how this deed is not used as the deed of any ancestor to whom the gift extends, nor of anyone in the descent, and so the deed and the warranty are at common law; and he adds to his answer that assets descended to

## No. 59 bis.

Fourmedoun en le descendre vers Robert de Neville, A.D. 1344. supposant le doun estre fait a Berte,<sup>1</sup> sa miere, et les heirs de son corps engendres.—*Mutil.*<sup>2</sup> Il ne put rien demander, qar le pere le demandant, qi heir il est, par ceo fait qe cy est, enfeffa nostre aiel, qi heir nous sumes, et obligea luy et ses heirs a garrauntir a luy et ses heirs, et issint nous serra il tenuz a garrauntir; et demandoms jugement si countre le fait son auncestre, &c. Et vous dioms qe assetz luy descendi, &c.<sup>3</sup>—*Grene.* Vous veiez bien coment ceo fait nest use com le fait de nul auncestre<sup>4</sup> a qi le doun sestent, ne nul en la descente, et issint le fait et la garrauntie a la comune ley; et il ajout<sup>5</sup> a son respouns qe assetz nous descendi

<sup>1</sup> Harl., B; 25,184, Beatrice.

<sup>2</sup> Harl., *Muttell.*

<sup>3</sup> The plea was, according to the roll, “quo ad tenementa quæ prædictus Thomas nominat manerium de Gergrave, . . . . . quod quidam Willelmus de Lungvylers, pater prædicti Thomæ, cujus heres ipse est, per chartam suam dedit, concessit, confirmavit, et quietum clamavit cuidam Galfrido de Neville, domino de Horneby, avo prædicti Roberti, cujus heres ipse est, eadem mesuagia et terram per nomen totius terræ quam idem Willelmus habuit in Gergrave, tam in feodo de Skiptone, quam in feodo de Percy, ex utraque parte aquæ de Ayr, . . . . . et obligavit se et heredes suos ad warrantandum prædicto Galfrido heredibus et assignatis suis prædictam terram . . . . . Et quo ad tenementa in Armeley . . . . . quod prædictus Willelmus pater ejusdem Thomæ per chartam

“suam dedit [ &c. as above ] eadem tenementa, simul cum aliis tenementis, &c., per nomen totius terræ quam habuit in villa de Armanlay, quæ est eadem villa quam prædictus Thomas in brevi suo nominat Armeley, . . . . . et obligavit se [ &c. as above ] . . . . . Et profert hic quandam chartam, sub nomine ipsius Willelmi, tam de terris et tenementis in Gergrave, quam de terris et tenementis in Armeley, quæ prædicta dona, confirmationes, quietamclamanciam, et warrantiam testatur in forma prædicta. Et dicit quod satis descendebat prædicto Thomæ de prædicto Willelmo, patre suo, post mortem ipsius Willelmi, in feodo simplici, apud Glusburne in Ayrdale in eodem Comitatu, et petit judicium si idem Thomas contra factum prædictum actionem inde versus cum habere debeat.”

<sup>4</sup> auncestre is from Harl. alone.

<sup>5</sup> Harl., y avoit.

No. 59 *bis*.

A.D. 1344. us, as if the warranty were restricted by statute,<sup>1</sup> in which case, if we were to take issue that nothing descended to us, the deed of our ancestor would be confessed, and then he would, on our confession of the deed, go back to the common law, and would bar us; therefore the law does not put us to answer to such a deed.—*Moubray*. You demand on the seisin of your mother, in which case the deed of your father, who was your mother's husband, would not bar, if you had nothing by descent.—*Grene*. Then you use it on the understanding that he was her husband at that time, and on that understanding we will imparl. And afterwards he said that assets did not descend to him; ready, &c.—*WILLOUGHBY*. We hold you to be at issue, for we shall enquire as to what has descended to you, and, if we find by inquest that assets have descended to you to the value, you will be barred, and, if less, you will be barred in proportion to that which has descended to you, according to the value.—*Grene*. That cannot be, as it seems, because if we said that nothing has descended to us, and it were found that something had descended to us, we should be barred in respect of the whole, without having regard to the value of that which has descended to us, even though our demand were greater by twenty librates of land than the value of that which has descended to us, because the issue comes from us that nothing has descended to us; and if the reverse of our issue be found we shall have no advantage of the value.—*WILLOUGHBY*. It is not as you say, because on the issue enquiry will not be made as to the whole, and the issue properly comes from the person who is tenant when he says that assets have descended to you.—*Grene*. We tell you that there has descended to us to the value of twenty shillings only, and that our demand is to the value of thirty librates of land; judgment whether by reason of such descent we shall be barred.—*WILLOUGHBY*.

## No. 59 bis.

com si la garrauntie fut restreint par statut, en A.D. 1344. quel cas, si nous preissons issu qe rien nous descendi, le fait nostre auncestre serreit conu, et donques resortereit il sur nostre conissaunce del fait a la comune ley et nous barrereit; par quei a tiel fait ley ne nous met pas a respoundre.—*Moubray*. Vous demandez de la seisine vostre miere, en quel cas le fait vostre pere, qe fut baroun a vostre miere, ne barrereit pas, si vous nussez par descente.—*Grene*. Donques le usez a cele entente qil fut baroun adonques, et a cele entente emparleroms. Et puis dit qe assetz ne luy descendi pas; prest, &c.—*WILBY*. Nous vous tenoms a issu, qar nous enquerroms de ceo qe vous est descendu, et si nous trovoms par enquest qe assetz vous est descendu a<sup>1</sup> la value, vous serrez barre, et, si meyns, pur la porcioun qe vous est descendu, solonc la value, vous serrez barre.—*Grene*. Ceo ne poet estre, a ceo qe semble, qar si nous deissons qe rien nous est descendu, et trove fut qe asqune chose nous fut descendu, saunz aver regarde a la value de ceo qe nous est descendu, nous serroms barre de tut, mesqe nostre demande fut plus par *xxli*. de terre<sup>2</sup> qe la value de ceo qe nous descendist, qar lissue vient de nous qe rien nous est descendu; et si [le revers de nostre mise soit trove nous naveroms nul avauntage de la value.—*WILBY*. Il nest pas issint com vous parles, qar homme nenquerra de tut par lissue, et proprement]<sup>3</sup> lissue vynt de luy qest tenant quant il dit qe assetz vous est descendu.—*Grene*. Nous vous dioms qe a la value [de *xxs*. nous descendi seulement, et nostre demande est a la value]<sup>3</sup> de *xxxli*. de terre; jugement si par tiel descente serroms barre.<sup>4</sup>—*WILBY*.

<sup>1</sup> Harl., saunz avoir regard a.

<sup>2</sup> The words de terre are omitted from Harl.

<sup>3</sup> The words between brackets are omitted from Harl.

<sup>4</sup> The replication was, according to the record, "quod virtute chartæ illius ab actione sua prædicta excludi non debet in hac parte, quia dicit quod nihil

No. 59 *ter.*

A.D. 1344. Then we shall enter your confession, and the tenant tenders the averment that assets descended to you; therefore you are now at your first issue; but he has now an advantage from your confession, if it be entered.—*Grene.* We pray that it be entered.—And so it was.—And note that the descent to the value was alleged to be in the same county in which the writ was brought.

Voucher. (59 *ter.*) § *Grene* vouched to warrant, for John Lymyn, Gilbert Lymyn.—*Huse.* You shall not be admitted to that voucher, because heretofore you, as tenant for term of life, prayed aid of this same Gilbert by reason of his reversion, and aid was granted to you; and, inasmuch as it was then at your election either to vouch or to pray in aid, and you put us to delay by your aid-prayer, judgment whether you shall be admitted to vouch the same person.—*Grene.* It is quite clear that we should have voucher of another person, and it is no greater delay to the demandant to vouch the same person than to vouch another. Besides, if the person who was prayed in aid had joined himself to us, we should have voucher of himself for cause shown, and the showing of a cause would not be for



No. 59 *ter*.

Donques nous entroms vostre conisaunce, et le tenant A.D. 1344. tend daverer qe assetz vous descendi; par quei vous estez ore a vostre primer issu; mes de vostre conisaunce ad il ore un avauntage sil soit entre.—*Grene*. Nous prioms qil soit entre.—*Et ita est*.—*Et nota* qe la descente en value est allegge en mesme le Counte ou le brief est porte.<sup>1</sup>

(59 *ter*.)<sup>2</sup> § *Grene* voucha a garraunt, [pur Johan Voucher. Lymyn, Gilbert Lymyn].<sup>3</sup>—*Huse*. A ceo voucher ne serrez<sup>4</sup> resceu, qar autrefoith come tenant a terme de vie priastes eide par cause de reversioun de mesme celuy G., et leide vous fut graunte; et, desicome adonques fut en vostre chois daver vouche ou prie en eide, et vous nous mistes<sup>5</sup> en delay par leyde priere, jugement si a voucher mesme la persone serrez resceu.—*Grene*. Voucher dautre persone serreit tut clier qe<sup>6</sup> nous averoms, et nient plus de<sup>7</sup> delay est al demandant a voucher mesme la persone gautre. Ovesqe ceo, si celuy qest prie se ust joint a nous, nous averoms le voucher de luy mesme<sup>8</sup> par cause, et la moustrance de la cause ne serreit

“descendebat eidem Thomæ de  
“prædicto Willelmo, patre suo, in  
“feodo simplici, post mortem præ-  
“dicti Willelmi, nisi tantummodo  
“viginti solidatæ terræ in præ-  
“dicta villa de Glusburne, et hoc  
“paratus est verificare, unde petit  
“judicium, &c.”

<sup>1</sup> According to the roll there was a rejoinder “quod post mortem  
“prædicti Willelmi patris prædicti  
“Thomæ, cujus heres ipse est,  
“satis descendebat eidem Thomæ  
“de eodem patre suo, apud præ-  
“dictam villam de Glusburne in  
“Comitatu prædicto, in feodo  
“simplici.”

Issue was joined upon this and the *Venire* awarded.

Afterwards at *Nisi prius* before Richard de Willoughby “prædictus  
“Thomas de Lungvylers non est  
“prosecutus, prout idem Ricardus  
“hic recordatur.

“Ideo consideratum est quod  
“prædictus Robertus eat inde sine  
“die, &c.”

<sup>2</sup> From Harl., and 25,184.

<sup>3</sup> The words between brackets are omitted from Harl.

<sup>4</sup> Harl., devez estre.

<sup>5</sup> Harl., mettes.

<sup>6</sup> Harl., et.

<sup>7</sup> de is omitted from Harl.

<sup>8</sup> mesme is omitted from Harl.

No. 59 *ter.*

A.D. 1344. any other reason than that he would in that case himself be a party to the plea; but, when he is not a party, the voucher is given without showing a cause.—WILLOUGHBY. If he had been a party, and had joined himself in aid, I will grant you that voucher of himself would be given for cause shown; but that would be on his account and not on yours.—*Grene.* One has seen it given by judgment in such a case.—WILLOUGHBY. Would it be right, when he has been prayed in aid and would not come, that you should vouch for his own advantage himself, who was summoned to be a party, and did not appear, and so give him the advantage which he has himself lost?—*Grene.* I vouch for my own benefit, and not for his; and I have not lost the advantage by his default.—WILLOUGHBY. No, but by your own default, in that you prayed aid when you might have vouched.—*Grene.* We vouch, as assign, this same Gilbert, as one Gilbert cousin and heir of John de Weston.—*Huse.* It is the same person who is again vouched, and therefore he shall not be admitted.—*Grene.* Before, we were ousted because we vouched him for the same cause for which we previously had aid; but now we vouch him for another cause: for, if John de Weston were living, we should have voucher against him, as assign of Gilbert, and for the same reason with regard to his heir.—STONORE. If Gilbert were tenant, could he vouch himself for such a cause? I say that he could not. Why then should you any more?—*Grene.* He will not have voucher of himself except for cause shown, that is to say, in order to save some estate, but we are not in that case; and it is right that we should have the same advantage of vouching him as we should

No. 59 *ter.*

pas autre resoun mes pur ceo qil mesme serreit A.D. 1344.  
 partie al plee; mes quant il nest pas partie le  
 voucher est done saunz cause.—WILBY. Sil fut partie,  
 et soi ust joynt en eyde, jeo vous granteray qe  
 par cause<sup>1</sup> le voucher serreit done de luy mesme;  
 mes ceo serreit par cause de luy, et noun pas de  
 vous.—Grene. Homme lad vewe par jugement en le  
 cas.—WILBY. Serreit il resoun, quant il fut prie en  
 eyde et ne veot<sup>2</sup> pas venir, qe vous vouches luy  
 mesme en avantage de luy qest somons destre par-  
 tie et ne vient<sup>3</sup> pas, et issint luy doner avantage  
 [quel luy mesme ad perdu?—Grene. Jeo vouche  
 pur mon profit demene, et noun pas pur seon; et  
 jeo nay pas perdu lavantage]<sup>4</sup> par sa default.—WILBY.  
 Noun, mes par vostre default demene qe vous priastes  
 eyde quant vous puissez avoir vouche.—Grene.  
 Vouchoms, come assigne, mesme celuy [Gilbert, un  
 Gilbert]<sup>4</sup> cosynt et heir Johan de Westone.—Huse.  
 Il est mesme la persone qe unqore est vouche, par  
 quei il ne serra resceu.—Grene. Devant fumes ouste<sup>5</sup>  
 pur ceo qe nous luy vouchames par mesme la cause  
 par quel autrefoith nous avoms<sup>6</sup> leide; mes ore<sup>7</sup>  
 luy vouchames par autre cause: qar si Johan de  
 Westone fut en vie nous averoms le voucher devers  
 luy come assigne Gilbert, et par mesme la resoun  
 de son heir.—STON. Si Gilbert fut tenant, vouchereit  
 il luy mesme sur tiel<sup>8</sup> cause? Jeo dis qe noun.  
 Par quei vous plus?—Grene. Il navera pas voucher  
 de luy mesme mes<sup>9</sup> par cause, saver,<sup>10</sup> pur sauver  
 ascun estat, mes nous sumes pas en le cas; et il  
 est resoun qe nous eyoms mesme lavantage de luy

<sup>1</sup> Harl., cas.<sup>2</sup> Harl., voet.<sup>3</sup> 25,184, voet.<sup>4</sup> The words between brackets  
are omitted from Harl.<sup>5</sup> Harl., il nous ousta, instead of  
fumes ouste.<sup>6</sup> Harl., lavoms.<sup>7</sup> ore is omitted from Harl.<sup>8</sup> Harl., cel.<sup>9</sup> mes is omitted from Harl.<sup>10</sup> Harl., si noun.

No. 59 *ter.*

A.D. 1344. have with regard to another, if another were heir.—  
 WILLOUGHBY. Such a voucher has not been seen—to  
 vouch, as a man's assign, the same person, whose  
 assign the person vouching makes himself to be.—  
 STONORE. I say that he will not for any cause have  
 voucher of the person of whom he had aid, unless it  
 be for a cause which has arisen since.—*Birton*. He  
 vouches for the same reason for which he previously  
 prayed aid, for when the vouchee appears the tenant  
 will be able to bind him by his own deed.—WILLOUGHBY.  
 You have vouched, as assign of Gilbert Lymyn,  
 Gilbert himself as heir of John de Weston, and it  
 would be extraordinary to vouch, upon the same deed,  
 as assign, and also immediately, the same person,  
 and it appears to the COURT that, unless you can say  
 something else, the voucher does not lie.—*Grene*. We  
 vouch John de Weston and Richard Lymyn.—*Huse*  
 imparled, and recited how the tenant had prayed in  
 aid Gilbert Lymyn, as above, supposing his estate to  
 be by lease from Gilbert, and afterwards vouched  
 Gilbert simply, and afterwards again as Gilbert's assign,  
 vouching him as heir of Gilbert's feoffor, supposing,  
 by all this, his estate to be through Gilbert, wherefore  
 he shall not be admitted to vouch another person, who  
 is a stranger, supposing his estate to be through  
 another.—WILLOUGHBY and HILLARY. Will you say  
 anything else against the voucher?—*Huse*. We tell  
 you that neither John de Weston nor any of his an-  
 cestors ever had anything in demesne or in reversion  
 so that they could, &c., since the seisin of our ancestor;  
 ready, &c.—HILLARY. Your counterplea ought to ex-  
 tend to both the vouchees.—*Huse*. If he is to have  
 a voucher, by such feigning, of one who never had

No. 59 *ter*.

voucher come nous averoms vers autre, si autre fut A.D. 1344.  
 heir.—WILBY. Homme nad pas vewe tiel voucher  
 de voucher, com assigne un homme, mesme celuy  
 qi assigne il se fait.—STON.<sup>1</sup> Jeo die qil navera  
 par nulle cause voucher de celuy de qi il avoit eyde,  
 sil ne soit par cause avenu puy.—*Birtone*. Il vouche  
 par mesme la resoun qil pria devant,<sup>2</sup> qar quant il  
 vendra il luy purra<sup>3</sup> lier par son fait demene.<sup>4</sup>—  
 WILBY. Vous avez vouche, com assigne G. Lymyn,<sup>5</sup>  
 Gilbert mesme com heir J. de Westone, et il serreit  
 merveille de voucher, sur un mesme fait, com assigne,  
 et auxint immediate<sup>6</sup> mesme la persone, et semble  
 a la COURT, si vous ne diez autre chose, qe le  
 voucher ne gist pas.—*Grene*. Nous vouchoms J. de  
 Westone et Richard Lymyn.<sup>7</sup>—*Huse* emparla, et re-  
 hercea coment il avoit prie en eyde Gilbert Lymyn,<sup>8</sup>  
*ut supra*, supposant son estat estre de soun lees,  
 et puy lui voucha simplement, et puy com son  
 assigne, vouchaunt lui com heir le feffour Gilbert,  
 supposant par tut ceo cy son estat estre par G.,  
 par quey de voucher autre estraunge persone, sup-  
 posant estat estre par autre, ne serra il resceu.—  
 WILBY et HILL. Voletz autre chose dire countre le  
 voucher?—*Huse*. Nous vous dioms qe J. de Westone  
 ne nul de<sup>9</sup> ces<sup>10</sup> auncestres navoient unqes rien<sup>11</sup>  
 en demene ne reversioun<sup>12</sup> si qils point, &c., puy  
 la seisine nostre auncestre; prest, &c.—HILL. Vostre  
 countreple se covient estendre al un et lautre.—  
*Huse*. [[Sil] deit avoir voucher par tiel feindre de

<sup>1</sup> Harl., *Stouff*.

<sup>2</sup> The words qil pria devant are from Harl. alone.

<sup>3</sup> Harl., vouche, &c., pur luy, instead of vendra il luy purra.

<sup>4</sup> The case ends here in the old editions, though the conclusion of the report is found in both MSS.

<sup>5</sup> Lymyn is omitted from Harl.

<sup>6</sup> Harl., &c.

<sup>7</sup> Harl., de H.

<sup>8</sup> Harl., G., instead of Gilbert Lymyn.

<sup>9</sup> Harl., autre de.

<sup>10</sup> 25,184, des, instead of de ces.

<sup>11</sup> rien is from Harl. alone.

<sup>12</sup> Harl., service,

## No. 60.

A.D. 1344. anything, it would be hard.—STONORE. He can vouch ten persons at his peril.—*Huse*. It would be contrary to reason to maintain the voucher of a person who never had anything, and none of whose ancestors ever had anything.—WILLOUGHBY. What do you say as to the other vouchee?—*Huse*. Nothing.—HILLARY. Then, for that reason, let the voucher stand.

Besaiel. (60.)<sup>1</sup> § Warin de Bassingbourne demanded by writ of Besaiel against John Frend,<sup>2</sup> who vouched to warrant George Frend,<sup>3</sup> cousin and heir of John de Halughton,<sup>4</sup> heretofore Bishop of Carlisle.—*Skipwith*. He has vouched himself who is tenant; judgment whether he ought to be admitted to this voucher.—*Grene*. We tell you that John de Halughton,<sup>4</sup> the Bishop, gave to our ancestor in fee tail, and we are issue in tail, and so, in order to save the estate tail, we vouch ourself as heir of the donor.—*Skipwith*.

<sup>1</sup> The case is mentioned as one of Formedon by Fitzherbert in his *Abridgment*, and he appears to have used a different report of it. The record, however, clearly shows that the action was one of Besaiel, founded on the seisin of the demandant's great-grandfather.

<sup>2</sup> For the real name see p. 273, note 5.

<sup>3</sup> As to this voucher and the real name see p. 273, note 7.

<sup>4</sup> For the name see p. 273, notes 7 and 10.

## No. 60.

cely que unques rien y avoit, ceo serreit dure.—STON. A.D. 1344. Il vouchera x a son peril.—*Huse*.<sup>1</sup> Il<sup>2</sup> serreit countre resoun de meyntener le voucher de<sup>3</sup> cely que unques rien avoit ne ses auncestres.—WILBY. Quei parlez quant al autre?—*Huse*. Rien.—HILL. Et pur ceo estoise<sup>4</sup> le voucher.

(60.)<sup>5</sup> § Warrayn de Bassingbourne demanda par brief de Besaiel vers Johan Frend, que voucha a garraunt G. Frend cosyn et heir Johan Frend, nadgers<sup>6</sup> Evesqe de Cardoille.<sup>7</sup>—*Skyp*. Il ad vouche luy mesme qest tenant; jugement si a ceo voucher deyve estre resceu.<sup>8</sup>—*Grene*. Nous vous dioms que J. F., Evesqe, dona a nostre auncestre en fee taille, [et nous sumes issue en la taille],<sup>9</sup> et issint pur saver la taille, vouchoms nous mesmes come heir le donour.<sup>10</sup>—

<sup>1</sup> The words between brackets are omitted from Harl.

<sup>2</sup> Harl., y.

<sup>3</sup> Harl., vers.

<sup>4</sup> 25,184, estoiez.

<sup>5</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 370, d. It there appears that the action was brought by Warin, son of Warin de Bassyngburne, knight, against George son of John de Brumpton of Meldreth, in respect of the manor of Meldreth (Cambridgeshire). The demandant in his count alleged that his great-grandfather Warin de Bassyngburne, knight, died seised, and traced the descent from the last-mentioned Warin to Edmund as son and heir, from Edmund to Warin as son and heir, and from that Warin to himself as son and heir.

<sup>6</sup> Harl., nadgaers.

<sup>7</sup> According to the roll the tenant vouched "Georgium Frend, con-

" sanguineum et heredem Johannis  
" de Halughtone nuper Episcopi  
" Karliolensis, in Comitatus Es-  
" sexiæ et Middelsexiæ."

<sup>8</sup> The counterplea of the voucher was, according to the roll, "quod  
" prædictus Georgius Frend et præ-  
" dictus Georgius filius Johannis  
" sunt una et eadem persona, et  
" petit iudicium si ad vocare se  
" ipsum absque speciali causa  
" admitti debeat, &c."

<sup>9</sup> The words between brackets are from Harl. alone.

<sup>10</sup> According to the roll "Georgius  
" dicit quod prædictus Johannes de  
" Halughtone, quondam Episcopus  
" Karliolensis, fuit seisisus de præ-  
" dicto manerio, cum pertinentiis,  
" in dominico suo ut de feodo et  
" jure, et idem manerium, cum  
" pertinentiis, per chartam suam,  
" dedit Johanni de Bromptone et  
" Mabillæ uxori ejus et heredibus  
" de corporibus ipsorum Johannis  
" et Mabillæ exeuntibus, et obli-

## No. 60.

A.D. 1344 And inasmuch as this voucher is not for the purpose of saving the estate of another person who holds jointly with you, nor the estate of another person by way of remainder, because the fee simple rests entirely in you, and everything that there is, judgment whether you shall be admitted such a voucher: for even though you be deprived of the voucher, there is no mischief, because you cannot recover against yourself to the value, and, since you are now seised of the whole, you can vouch as heir to your ancestor.—*Grene*. The estate tail is defeated, if the voucher be not granted. Besides, we shall never have warranty over, as heir to our ancestor, of the estate which we now have, from our ancestor's feoffor, because he will escape on the ground that our estate is different from that which was by feoffment from him.—*Skipwith*. In some cases one will be ousted from warranty by a change of estate, as, for instance, if one changes his estate by his own act he will be ousted from warranty; but if my ancestor enfeoffs me in fee tail, and through his death the fee simple accrues to me by descent according to law, independently of any act of mine, then I shall have warranty, for the whole rests in me; for suppose my ancestor leases to me for term of life, and afterwards the reversion descends to me through him, I shall have warranty as heir.—*Grene*. You will not have warranty in right of the descent to you when the freehold abides with you by a different course: for when



## No. 60.

*Skip*.<sup>1</sup> Et desicome cest voucher nest pas pur salver A.D. 1344. autri estat qest joint ovesqe vous, ne autri estat par voie de remeyndre, pur ceo qe tut demoert en vous le fee pure, et qanqil y<sup>2</sup> ad, jugement si a tiel<sup>3</sup> voucher serrez resceu: qar mesqe le<sup>4</sup> voucher vous soit tollet meschief ny ad<sup>5</sup> pas, qar vous ne poetz recoverir vers vous mesmes en la value, et quant ore vous estes seisi del entier vous poetz voucher com heir a<sup>6</sup> vostre auncestre.—*Grene*. La taille est defait, si le voucher ne soit graunte. Ovesqe ceo, nous naveroms jammes garrauntie outre, com heir a nostre auncestre, de lestat qe nous avoms ore, del feffour nostre auncestre, qar il estourtera par taunt qe nostre estat est autre qe par my son feffement.—*Skyp*. En cas par change destat homme serra ouste de garrauntie, com si de son fait demene il chaunge son estat homme serra oste de garrauntie<sup>7</sup>; mes si mon auncestre moy feffe en fee taille, et par sa mort par descente le fee<sup>8</sup> moy acrest par ley, maugre le meen,<sup>9</sup> la averay jeo la garrauntie, qar tut repose en moy; qar mettez moy qe mon auncestre moy lesse a terme de vie, et puy la reversioun par my luy a moy descend, javeray la garrauntie com heir.—*Grene*. Vous naverez pas la garrauntie par dreit descente en vous quant le fraunc tenement vous demoert par autre cours:

“ gavit se et heredes suos ad waran-  
 “ tizandum prædictum manerium,  
 “ cum pertinentiis, prædictis Jo-  
 “ hanni et Mabillæ et heredibus  
 “ de corporibus ipsorum Johannis  
 “ et Mabillæ exeuntibus. Et dicit  
 “ quod de ipsis Johanne et Mabilla  
 “ exivit prædictus Georgius, &c.,  
 “ unde idem Georgius, ut filius et  
 “ heres ipsorum Johannis et  
 “ Mabillæ per formam, &c., vocat  
 “ ad warrantum ipsum Georgium  
 “ Frend ut consanguineum et here-

“ dem prædicti Episcopi de feodo  
 “ simplici &c.”

<sup>1</sup> Harl., *Setone*.

<sup>2</sup> y is omitted from Harl.

<sup>3</sup> Harl., cel.

<sup>4</sup> Harl., le tiel.

<sup>5</sup> Harl., nad il, instead of ny ad.

<sup>6</sup> a is from Harl. alone.

<sup>7</sup> The words homme serra oste de garrauntie are from Harl. alone.

<sup>8</sup> fee is from Harl. alone.

<sup>9</sup> Harl., mene.

## No. 61.

A.D. 1344. the person whom you would bind as by tenancy continued in you through his feoffment can show your estate to be by feoffment from another person, and that the warranty commenced subsequently, he will escape.—WILLOUGHBY to *Skipwith*. Even though he might be able in that case to deraign warranty as heir, where the ancestor enfeoffed him for term of life, or in fee simple, there would be nothing extraordinary in that, because the fee simple would be in the heir in such a case, and he could elect to have his estate either by descent or by purchase; but in this case the estate tail remains, because his issue would have a Formedon and no other action; therefore he cannot be said to be in possession through descent from the donor.—*Thorpe*. Will he recover to the value against himself? And as to this voucher it was adjudged before you that the tenant should be ousted in such a case.<sup>1</sup>—WILLOUGHBY. I do not think so.—*Grene*. He will not recover against himself, but he will recover against his feoffor such an estate as he now has.—*Quere* how.—*Skipwith*. He has now a fee simple, because the collateral heir will have a Mort d’Ancestor on his seisin, and that seisin he has by descent.—WILLOUGHBY. With regard to a collateral heir he has a fee simple, but with regard to an heir in the direct line of descent a fee tail; therefore that estate tail can be saved only by voucher; therefore will you say anything else, &c.?—And by judgment WILLOUGHBY awarded the voucher.

*Quare  
impedit.*

(61.) § John<sup>2</sup> Lestraunge and A.<sup>2</sup> his wife brought a *Quare impedit* against Edmund de Thorpe in respect of

<sup>1</sup> See Y.B., Hil., 18 Edw. III.,  
No. 18.

<sup>2</sup> For the real names see p. 277,  
note 6.

## No. 61.

qar quant cely qe vous voudrez<sup>1</sup> lier com par ten- A.D. 1344.  
 aunce continue en vous par son feffement purra  
 moustrer vostre estat estre<sup>2</sup> par autri feffement, et  
 puyz la garrauntie comence, il<sup>3</sup> estourtera.—WILBY  
 a *Skyp*. Mes qil purra en le cas derrener la gar-  
 rauntie come heir, la ou launcestre luy feffa a terme  
 de vie, ou en fee simple, ne serreit pas merveille,  
 qar le fee pure serreit en leir en tiel cas, et il  
 eslirreit son estat par descente ou par purchace;  
 mes en ceo cas la taille demoert, qar son issu  
 avereit Formedoun, et nul autre accion; pur quei il  
 ne poet estre dit einz par descente par my le  
 donour.—*Thorpe*. Recovera il a la value vers luy  
 mesme? Et de ceo voucher ad este ajuge devant  
 vous qe le tenant fut ouste en ceo cas.—WILBY.  
 Ceo ne crey jeo pas.—*Grene*. Il recovera pas vers  
 luy mesme, mes il recovera vers son feffour tiel  
 estat taille come il ad a ore.—*Quere* coment.—*Skyp*.  
 Il ad ore fee simple, qar leir collateral avera Mort  
 dauncestre de sa seisine, et cele seisine ad il par  
 descente.—WILBY. Vers heir collateral il ad fee  
 simple, mes vers cely en la descente fee taille; par  
 quei cel taille ne purra estre salve forqe pur voucher;  
 par quei voletz autre chose dire, &c.?—Et par agarde  
 WILBY agarda<sup>4</sup> le voucher.<sup>5</sup>

(61.)<sup>6</sup> § Johan Lestraunge et A. sa femme porte-  
 rent *Quare impedit* vers E. Thorpe de la moite del *Quare  
 impedit.*

<sup>1</sup> 25,184, vodreis.

<sup>2</sup> estre is from Harl. alone.

<sup>3</sup> MSS., et il.

<sup>4</sup> agarda is from Harl. alone.

<sup>5</sup> The voucher was, according to the roll, awarded thus:—"Habeat eum hic in Octabis Purificationis beatae Mariæ per auxilium CURLE." There were several adjournments, but nothing further appears on the roll.

<sup>6</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 438. It there appears that the action was brought by Roger Lestraunge and Joan his wife against Edmund de Thorpe, in respect of a presentation to a moiety of the church of Fresyngfeld (Fressingfield, Suffolk).

## No. 61.

A.D. 1344. a moiety of the church of N.,<sup>1</sup> counting that one John de Thorpe<sup>2</sup> was seised of one acre of land to which the advowson is appendant, and presented, and gave the acre and the advowson to four persons,<sup>2</sup> and one of them released to the other three, who enfeoffed the woman who is plaintiff and her first husband, and so the plaintiffs are seised, and it belongs to them to present.—*Grenc.* Not in any way admitting that the advowson is appendant, nor that they are seised, &c., of the acre, we tell you that the four had nothing by feoffment from this John de Thorpe; ready, &c. And further, in order to have a writ to the Bishop, we tell you that this John de Thorpe died seised, and that, after his death, his fees and advowsons were seised into the hand of the King, who assigned a third part of this advowson in Chancery, and other tenements, to John's wife in satisfaction, &c., and afterwards Edmund, son

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<sup>1</sup> For the real name see p. 277, note 6. | <sup>2</sup> For the names see p. 277, note 6.

## No. 61.

eglise de N., countaunt qun J. fut seisi dun acre A.D. 1344  
 de terre a quei lavowesoun est appendant, et presenta, et dona a iiij<sup>1</sup> lacre et lavowesoun, et un deux relessa a les iij,<sup>2</sup> les queux fefferent le primer baroun et la femme pleintif, et issint sount ils seisis, et a eux appent a presenter.<sup>3</sup>—*Grenc.* Nient conissaunt qe lavowesoun est appendaunt, ne qils sount seisis, &c., del acre, nous vous dioms qe les iiij<sup>4</sup> navoient rien del feffement cely J. Thorpe; prest, &c. Et outre, pur brief avoir al Evesqe, vous dioms qe cely Johan Thorpe murust seisi, apres qi mort fees et avowesouns furent seisis en la mayn le Roy,<sup>5</sup> qe assigna la terce partie de cel avowesoun, en Chauncellerie, et autres, &c., a la femme J., en allowaunce, &c., et puy Edmond<sup>6</sup> fitz et heir J.

<sup>1</sup> 25,184, as iij, instead of a iiij.

<sup>2</sup> 25,184, ij.

<sup>3</sup> The declaration was, according to the roll, "quod quidam Johannes filius Roberti de Thorpe fuit seisitus de una acra terræ, cum pertinentiis, in Fresyngfelde, ad quam advocatio medietatis prædictæ ecclesiæ pertinet, . . . . . qui . . . . . ad eandem medietatem ecclesiæ prædictæ præsentavit quendam Johannem Fysshe, . . . . . post cujus mortem prædicta medietas ecclesiæ prædictæ modo vacat, qui quidem Johannes filius Roberti postea de prædicta acra terræ, cum pertinentiis, ad quam, &c., feoffavit quosdam Robertum Broun, Robertum Sparhauke, Rogerum de Hempstede, et Johannem Roberd de Ingham, tenenda sibi et heredibus suis in perpetuum, qui quidem Johannes Roberd postmodum remisit, relaxavit, et omnino quietum clamavit ipsis Roberto, Roberto, et Rogero, et eorum

"heredibus totum jus et clameum  
 "quod habuit in prædicta acra  
 "terræ cum pertinentiis, ad quam,  
 "&c. Et postmodum iidem Robertus, Robertus, et Rogerus  
 "dederunt prædictam acram terræ,  
 "cum pertinentiis, ad quam, &c.,  
 "prædicto Johanni filio Roberti de  
 "Thorpe et Johannæ uxori ejus,  
 "quæ quidem Johanna modo est  
 "uxor prædicti Rogeri Lestraunge,  
 "tenendam sibi et heredibus ipsius  
 "Johannis, qui quidem Johannes  
 "filius Roberti postmodum obiit.  
 "Et prædicti Rogerus Lestraunge  
 "et Johanna uxor ejus modo seisiti  
 "sunt de prædicta acra terræ, cum  
 "pertinentiis, ad quam, &c. Et sic  
 "dicunt iidem Rogerus Lestraunge  
 "et Johanna uxor ejus quod ad  
 "ipsos ad prædictam medietatem  
 "ecclesiæ prædictæ pertinet præsentare."

<sup>4</sup> 25,184, iij.

<sup>5</sup> The words en la mayn le Roy are omitted from Harl.

<sup>6</sup> Harl., W.

## No. 61.

A.D. 1344. and heir of John sued by *Diem clausit extremum*, and had the tenements out of the King's hand, and presented twice (and *Grene* showed how), and it is now the third turn, which belongs to us who have the estate of the woman tenant in dower. And *Grene* made this John de Thorpe ancestor to the defendant. And he prayed a writ to the Bishop.—*Mutlow*. We make protestation that, if it should seem to the Court that the feoffment which he traverses can make an issue, we are ready to maintain it. But you see plainly that he does not deny that the advowson is appendant to the acre, of which he does not deny that we are seised, whereas, even if that were by disseisin, it would belong to us to present by reason of the possession of the substance to which, &c.; and we pray a writ to the Bishop.—*Grene*. Then you refuse the averment.—*Thorpe*. We take the record of the Court to witness that we do not refuse the averment, if it can make an issue; but, in order to move the Court, we say that it cannot make an issue since he does not deny that the advowson is appendant to the acre of which we are seised; and to take issue on the manner in which we came to that acre will not be a traverse.—*Grene*. In one case it is so, and in another case it is not: for, if you claimed by feoffment from a stranger, I should not have an issue on the feoffment, but since you claim by feoffment from one who was our ancestor the feoffment is traversed, and this John de Thorpe, through whom you claim that the feoffment was made to four persons, was our grandfather whose heir we are; therefore it will make an issue.—*WILLOUGHBY*. You do not deny that the advowson is appendant to the acre, and if so, it is not an issue, as it seems, without answering as to his seisin of the acre.—*Grene*. We do not admit the appendance.—*R. Thorpe*. At any rate, you do not deny it; and a feoffment is traversable in a

## No. 61.

suist par *Diem clausit extremum*, et avoit hors, &c., A.D. 1344. et presenta deux foith (et moustra coment) et ore le terce tourn, qappent a nous eiaunt lestat la femme tenante en dowere. Et fit cely J. Thorpe auncestre a luy.<sup>1</sup> Et pria brief al Evesqe.—*Mutl.* Nous fesoms protestacioun qe, si la Court veit<sup>2</sup> qe le feffement quel il traverse purra faire issue, nous sumes prest del meyntener. Mes vous veiez bien coment il ne dedit pas lavowesoun estre appendaunt al acre, de quel il ne dedit pas qe nous sumes seisi, ou tut fut ceo par disseisine, a nous appendreit a presenter pur la possessioun du gros a quei, &c.; et prioms brief al Evesqe.—*Grene.* Donqes refuses laverement.—*Thorpe.* Nous pernomms recorde<sup>3</sup> de Court<sup>4</sup> qe nous ne refusoms pas laverement, sil purra faire issu; mes, pur mover la Court, dioms qe ceo ne purra pas faire issu, del houre qil ne dedit pas lavowesoun estre appendaunt al acre dount nous sumes seisi; et prendre issue sur la manere coment nous avenimes a lacre ne serra pas travers.—*Grene.* Il est en cas issint, et en cas nient: qar si vous clamastes par feffement destraunge jeo navera pas issu sur le feffement, mes quant vous clamez par le feffement dun qe fut nostre<sup>5</sup> auncestre le feffement est traverse, et cely J. Thorpe, par my qi<sup>6</sup> vous clamez le feffement estre<sup>7</sup> fait a les iiij, fut<sup>8</sup> nostre<sup>9</sup> aiel, qi heir nous sumes; pur quei ceo fra issue.—*WILBY.* Vous ne deditez pas lavowesoun estre appendaunt al acre; et, *si sic*, il nest pas issue, a ceo qe semble, saunz respoudre a sa seisine del acre.—*Grene.* Nous ne conissons pas lappendaunce.—*R. Thorpe.* Au meyns vous le deditez pas; et feffement

<sup>1</sup> Harl., celuy J. Thorpe.

<sup>2</sup> 25,184, voet.

<sup>3</sup> Harl., a recorde.

<sup>4</sup> The words de Court are from Harl. alone.

<sup>5</sup> Harl., heir.

<sup>6</sup> 25,184, si.

<sup>7</sup> estre is omitted from Harl.

<sup>8</sup> Harl., fitz.

<sup>9</sup> Harl., vostre.

## Nos. 62, 63.

A.D. 1344. case where an advowson is in gross, but not otherwise.  
 —And afterwards the defendant departed in contempt  
 Judgment. of the Court.—Therefore the plaintiff had a writ to  
 the Bishop.

Note. (62.) § Note that a writ was brought against Reynold Grey and Geoffrey Selyman by one *Præcipe*. The Sheriff returned that Geoffrey had been summoned, and that Reynold had nothing wherein he could be summoned.—*Thorpe* prayed an *Alias* writ of Summons against Reynold in the land demanded, and that the Sheriff should be amerced, and prayed a *Cape ad valentiam* against Geoffrey, who did not appear.—*Grene*. This is one *Præcipe*, and, if its office be not effected against one, it consequently is not against the other; therefore the writ altogether is unserved.—WILLOUGHBY. What you say would possibly be true if one of them had performed his law as to non-summons.—*Thorpe*. If the Sheriff testifies that the summons has been served on both, and one has been essoined, and the other makes default, you will award the *Cape* by reason of his default. So in the matter before us.—*Grene*. The cases are not similar, because in that which you suppose the writ has been served, but now it has not.—Afterwards an *Alias* writ of Summons was awarded as to the whole, and the Sheriff was amerced.

Entry (63.) § Entry *sur disscisin* against Elizabeth Saunz-



## Nos. 62, 63.

en cas est traversable, la ou lavowesoun est gros, A.D. 1344. et autrement nient.—Et puis le defendant departist en despit de la Court.—Par quei le pleintif ad brief *Judicium*.<sup>1</sup> al Evesqe.<sup>2</sup>

(62.)<sup>3</sup> § *Nota* que brief fut porte vers Reignald<sup>4</sup> *Nota*. Grey<sup>5</sup> et Geffre Selyman,<sup>6</sup> par un *Præcipe*. Le Vicounte retourna que G. fut somons, et que R. nad rien ou estre somons.—*Thorpe* pria *Sicut alias* vers R. *in terra petita*, et que le Vicounte fut amercie, et vers G., que ne vynt pas, *Cape ad valentiam*.<sup>7</sup>—*Grene*. Cest un *Præcipe*, et, si loffice ne soit pas fait vers lun, *per consequens*<sup>8</sup> ne vers<sup>9</sup> lautre; par quei en tut le brief est desservi.<sup>10</sup>—WILBY. Par cas si lun ust<sup>11</sup> fait sa ley de noun somons vous deissetz verite.—*Thorpe*. Si le Vicounte tesmoigne la somons sur lun et lautre, et lun fut essone, et lautre fait default, par sa default<sup>12</sup> vous agarderez le *Cape*. *Sic in proposito*.—*Grene*. *Non est simile*, qar en vostre semblaunce le brief est servy, mes ore nest il pas.—Puys fut agarde de tut *Sicut alias*, et le Vicounte amercie.

(63.)<sup>13</sup> § Entre sur disseisine vers Elizabeth Entre

<sup>1</sup> The marginal note is from 25,184 alone.

<sup>2</sup> Immediately after the declaration it appears on the roll that "Edmundus . . . petit licentiam inde loquendi, &c. Et habet, &c. Postea prædictus Edmundus solemniter vocatus non revenit, sed discessit in contemptu Curie, &c." Judgment was therefore given for the plaintiffs.

<sup>3</sup> From Harl., and 25,184.

<sup>4</sup> Harl., A.

<sup>5</sup> Harl., Grene.

<sup>6</sup> Harl., de L.

<sup>7</sup> The words *Cape ad valentiam* are omitted from Harl.

<sup>8</sup> The words *per consequens* are omitted from Harl.

<sup>9</sup> vers is omitted from Harl.

<sup>10</sup> 25,184, darreyn.

<sup>11</sup> Harl., sil ust; 25,184, si lun, instead of si lun ust.

<sup>12</sup> The words par sa default are omitted from Harl.

<sup>13</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 500. It there appears that the action was brought by Thomas son of Bartholomew de Huntyngfelde against

## No. 63.

A.D. 1344. aver, in respect of lands of which she disseised the *de quibus*. demandant's grandfather.—*Grene*. We tell you that your grandfather by this deed enfeoffed one A., chaplain,<sup>1</sup> and bound himself and his heirs to warrant the chaplain and his heirs and his assigns, which chaplain enfeoffed us,<sup>2</sup> and so, if we were to be impleaded [by any one else] he would, as heir, be bound to warrant us, as assign; judgment.—*Rokele*. You see plainly

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<sup>1</sup> For the names of the feoffees  
see p. 285, note 5.

<sup>2</sup> For this feoffment see p. 285,  
note 5.

## No. 63.

Saunzaver,<sup>1</sup> de les queux ele disseisist lael le de- A.D. 1344.  
 mandant. — *Grene.* Nous vous dioms qe vostre ael *de quibus.*<sup>2</sup>  
 par ceo fait feffa un A., chapeleyn,<sup>3</sup> et obligea luy  
 et ses heirs a garrauntir a luy et ses heirs et ses  
 assignes, le quel chapeleyn<sup>4</sup> nous feffa, et issint, si  
 nous feussoms emplede, il, come heir, nous serreit  
 tenuz de garrauntir, come assigne; jugement.<sup>5</sup>—*Rokel.*

Elizabeth late wife of Ralph Saunzaver in respect of the manor of Eselynge (Eastling, Kent), of which, as alleged, she disseised Laurence de Huntyngefelde, the demandant's grandfather.

<sup>1</sup> Saunzaver is from 25,184 alone.

<sup>2</sup> The words *de quibus* are from 25,184 alone.

<sup>3</sup> chapeleyn is omitted from Harl.

<sup>4</sup> Harl., A.

<sup>5</sup> The plea was, according to the roll, "quod prædictus Laurentius, avus, &c., per nomen Laurentii de Huntyngefelde, militis, dedit, concessit, et charta sua confirmavit quibusdam Benedicto de Huntyngefelde, personæ ecclesiæ de Eselynge, et Radulpho, Capellano manerii de Sheldforde, heredibus, et eorum assignatis, totum prædictum manerium de Eselynge, cum pertinentiis, sine aliquo retenemento, et alia manerium terras et tenementa, cum pertinentiis, in Comitatu prædicto, habenda et tenenda in dominico et dominio eisdem Benedicto et Radulpho, heredibus et eorum assignatis, de capitalibus dominis feodorum in perpetuum, et obligavit se et heredes suos ad warrantandum eisdem Benedicto et Radulpho, heredibus et eorum assignatis, manerium prædictum de Eselynge in dominico et dominio, cum pertinentiis, et alia manerium et tenementa præ-

dicta contra omnes gentes in perpetuum. Et iidem Benedictus et Radulphus, habita inde plene seisina sua, dederunt, concesserunt, et charta sua indentata confirmaverunt Matildi quæ fuit uxor Laurentii de Huntyngefelde, militis, ad totam vitam ipsius Matilldis, totum prædictum manerium de Eselynge, cum pertinentiis, sine aliquo retenemento, et alia manerium et tenementa prædicta in Comitatu prædicto, quæ habuerunt ex dono et feoffamento prædicti Laurentii, habenda et tenenda in dominico et dominio præfatæ Matildi de capitalibus dominis feodi ad totam vitam suam, ita quod post mortem ipsius Matilldis prædictum manerium de Eselynge, cum pertinentiis, et alia tenementa prædicta sine aliquo retenemento, remanerent prædictæ Elizabeth filix prædicti Laurentii, heredibus et assignatis ipsius Elizabeth in perpetuum. Et dicit quod, si ipsa ab aliquo alio de manerio prædicto implacitaretur, prædictus Thomas, ut heres prædicti Laurentii, eidem Elizabeth tanquam assignatæ prædictorum Benedicti et Radulphi teneretur manerium prædictum warrantizare, et petit iudicium si prædictus Thomas contra factum prædicti Laurentii, avi sui, cuius heres ipse est, actionem habere debeat. Et

## No. 63.

A.D. 1344. how he uses the deed of the same ancestor whom we suppose to have been disseised, whose deed amounts to a traverse of the disseisin; therefore we will aver our writ.—*Grene*. Then you do not deny that it is the deed of your ancestor; and we do not use the deed as a deed which was made to us, but as one which was made to another person whose estate we have; and the deed would have been a bar in the mouth of the chaplain, and consequently is so in ours. And this is sufficiently consistent with his writ, for, if we disseised his ancestor and afterwards his ancestor enfeoffed by this deed, that must fall under the head of a bar.—*Huse, ad idem*. If we used the deed as one which had been made to ourself, inasmuch as he has supposed only one entry, and that same entry which the demandant supposes to have been by disseisin we by using the deed must suppose to be by feoffment, and feoffment and disseisin traverse each other, and therefore the averment would lie in that case; but here he supposes one divesting out of the person of his ancestor, that is to say by disseisin effected by us, and we suppose by his deed another divesting effected in favour of another person, wherefore that falls under the head of a bar as properly as would the deed of another ancestor.—*R. Thorpe*. The assignment made to you by the chaplain has the effect of a traverse, that is to say that you entered by him, and not by disseisin, and the feoffment of the same ancestor has the effect of a traverse, and so the whole plea is a traverse.—*Birton, ad idem*. My ancestor's warranty, where I claim from him, is no stronger a bar than his feoffment, but his feoffment, in this case, will not

## No. 63.

Vous veiez bien coment il use le fait mesme laun- A.D. 1344.  
 cestre qe nous suppose estre disseisi, qi fait est a  
 travers de la disseisine<sup>1</sup>; par quei nous voloms  
 averer<sup>2</sup> nostre brief.—*Grene*. Donques ne deditez pas  
 qe cest le fait vostre auncestre; et nous ussoms  
 pas le fait come fait qe<sup>3</sup> se fit a nous, mes a un  
 autre qi estat nous avoms; et en la bouche le  
 chapeleyn<sup>4</sup> ceo ust este barre, et *per consequens* en  
 la nostre. Et ceo put estre ove son brief assetz  
 bien, qar si nous disseisoms son auncestre, et puy  
 son auncestre feffa par ceo fait, il covient qe ceo  
 chese en barre.—*Huse, ad idem*. Si nous ussoms le  
 fait come cel qe se fit a nous mesmes, pur ceo  
 qil nad suppose forqe un entre, et ceo qe le de-  
 mandant suppose par disseisine nous par le user  
 del fait supposeroms mesme lentre estre par feffe-  
 ment, et feffement et disseisine sount a travers, par  
 quei la girreit laverement; mes icy il suppose un  
 demise hors de la persone son auncestre, saver, par<sup>5</sup>  
 disseisine fait par nous, et nous supposoms par son  
 fait autre demise fait a autre persone, par quei ceo  
 chiet en barre si proprement com fait dautre aun-  
 cestre.—*R. Thorpe*. Lassignement fait a vous par  
 le chapeleyn,<sup>4</sup> est a travers, saver, qe vous entrastes  
 par luy, et noun pas disseisine, et le feffement  
 mesme launcestre est a travers, issint tut a travers.  
 —*Byrtone, ad idem*. La garrauntie mon auncestre,  
 ou jeo cleyme de luy, est nient plus fort barre qe  
 son feffement, mes son feffement, en ceo cas, ne

“ profert hic in Curia quandam  
 “ chartam per ipsum Laurentium  
 “ prædictis Benedicto et Radulpho  
 “ inde factam, et etiam aliam  
 “ chartam per ipsos Benedictum  
 “ et Radulphum prædictæ Matilldi,  
 “ ad totam vitam suam, inde  
 “ factam, et, post mortem ipsius  
 “ Matilldis, prædictæ Elizabeth  
 “ heredibus et assignatis suis

“ remanere, &c., sicut prædictum  
 “ est, quæ dona et feoffamenta  
 “ prædicta testantur in forma  
 “ prædicta, &c.”

<sup>1</sup> Harl., lasseisine.

<sup>2</sup> Harl., avoir.

<sup>3</sup> qe is omitted from Harl.

<sup>4</sup> Harl., A., instead of le chape-  
 leyn.

<sup>5</sup> par is from Harl. alone.

## No. 63.

A.D. 1344. fall under the head of a bar, nor consequently will the warranty.—*W. Thorpe*. Yes, it would; the feoffment would bar.—*Stonore*. What if his ancestor had brought an Assise against you? Would you have barred it by this deed?—*Grene*. So, Sir, we understand.—*Skipwith*. In an Assise of Mort d'Ancestor the feoffment of the same ancestor has the effect of a traverse of the seisin; and it has just as much the effect of a traverse though it be made to a stranger as when made to the tenant who pleads it. So in the matter before us.—*W. Thorpe*. And, in God's name, inasmuch as he does not deny his ancestor's deed, but tenders an averment on his writ, which is not admissible in opposition to the deed, judgment.—*R. Thorpe*. And we pray judgment inasmuch as the deed has only the effect of a traverse, and we have offered to aver our writ, and he has refused that averment; and, if it should appear to the Court, &c.—*Willoughby*. This is just the case of Bavent, which occurred in the time of the last King, on a writ of Entry, where the demandant was admitted to aver his writ in opposition to such a deed.—*W. Thorpe*. It is not so, because in that case the deed of the same ancestor made to the tenant himself was pleaded in bar, and here it is pleaded that the deed was made to another.—*Willoughby*. Both equally have the effect of a traverse, if there was only one entry as we understand; and if there was a disseisin, and afterwards such a feoffment as there is said to have been, that should be pleaded. *W. Thorpe*. There is nothing more to be said. We abide judgment whether he shall be admitted to aver his writ in opposition to the deed which is not denied.—*R. Thorpe*. We tell you that this chaplain, whose assign he makes himself, took an active part in the disseisin in respect of which we make use of this action, and we understand that we ought to have the same advantage as if our ancestor had himself been a

## No. 63.

cherra pas en barre, *nec, per consequens* la garrauntie. A.D. 1344.  
 —[*W.*] *Thorpe*. Si freit; le feffement barreit.—*STON*.  
 Quei si son auncestre ust porte vers vous Assise?  
 Le ussez<sup>1</sup> vous barre par ceo fait?—*Grene*. Sire,<sup>2</sup>  
 si entendoms nous.—*Skyp*. En Assise de Mort  
 dauncestre le feffement de mesme launcestre est a<sup>3</sup>  
 travers a<sup>4</sup> la seisine; et si avant est il a travers tut  
 soit il fait a autre estraunge come al tenant mesme  
 qe le plede. *Sic in proposito*.—[*W.*] *Thorpe*. De  
 par Dieux, et, desicome il ne dedit le fait son  
 auncestre, mes tend un averement sur son<sup>5</sup> brief, qe  
 nest pas resecevable countre le fait, jugement.—*R.*  
*Thorpe*. Et nous jugement desicome le fait nest  
 forqe a travers, et nous avoms tendu daverer nostre  
 brief, quel averement il ad refuse; et si Court veit,  
 &c.—*WILBY*. Cest le cas de Bavent<sup>6</sup> qe avient en  
 temps lautre Roy en un brief Dentre, ou le de-  
 mandant countre tiel fait fut resceu daverer son  
 brief.—[*W.*] *Thorpe*. Noun est, qar en cel cas le  
 fait mesme launcestre fait al tenant mesme fut plede  
 en barre, et icy est plede qe le fait se fist a autre.  
 —*WILBY*. Owelement est lun et lautre a travers,  
 sil ny avoit qun entre come nous entendoms; et  
 sil y avoit disseisine, et puys tiel feffement come  
 est parle, ceo serreit<sup>7</sup> plede.—[*W.*] *Thorpe*. Il ny  
 ad pas<sup>8</sup> plus. Nous demuroms en jugement si  
 countre le fait qe nest pas dedit si<sup>9</sup> daverer son  
 brief serra il resceu.—*R.* *Thorpe*. Nous vous dioms  
 qe cely chapeleyn,<sup>10</sup> qi assigne il se fait, fut a la  
 disseisine faire dount nous usoms laccion, et enten-  
 doms daver mesme lavantage com si nostre auncestre

<sup>1</sup> Harl., lissuz.<sup>2</sup> Sire is omitted from Harl.<sup>3</sup> a is from Harl. alone.<sup>4</sup> 25,184, et.<sup>5</sup> 25,184, un.<sup>6</sup> Harl., Chanete.<sup>7</sup> Harl., ore serreit.<sup>8</sup> 25,184, Y ad, instead of Il ny  
ad pas.<sup>9</sup> 25,184, qe.<sup>10</sup> Harl., cel A., instead of cely  
chapeleyn.

## No. 64.

A.D. 1344. party, and had brought an Assise against the tenant and the chaplain, in which case neither the chaplain, even though he might be tenant by his warranty, nor the tenant himself would oust him from the Assise.—WILLOUGHBY. That would be the effect of his writ, which would suppose them all to be disseisors; and it would be an extraordinary thing to try, upon this writ, whether the chaplain was a disseisor or not.—*R. Thorpe*. We tell you that the chaplain disseised our ancestor, as above, *absque hoc* that he ever had anything by gift from our ancestor; ready, &c.—*Grene*. That is tantamount to saying that nothing passed; ready, &c., that the land did pass.

Note. (64.) § Note that, in a *Præcipe quod reddat*, a man who was dumb had previously waged his law as to non-summons by signs, and now performed the law by signs; and the words were recited to him, and he heard them, and he placed his hand outside the book, and kissed the book, and so performed the law without speaking.<sup>1</sup> And the writ abated.—And STONORE said to him:—"Once forsworn, ever forlorn."

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<sup>1</sup> See also Y.B., Easter, 13 Edw. III., p. 176.



## No. 64.

fut mesme partie, et portast Lassise vers luy et le <sup>A.D. 1344</sup> chapeleyn,<sup>1</sup> en quel cas ne le chapeleyn,<sup>2</sup> tut fut il tenant par sa garrauntie, ne le tenant mesme ne luy oustereit mesme<sup>3</sup> dassise, &c.—WILBY. Ceo freit son brief qe supposereit touz estre disseisours; et il serreit merveille en ceo brief de trier si le chapeleyn<sup>1</sup> fut disseisour ou noun.—*R. Thorpe*. Nous vous dioms qil disseisi nostre auncestre, *ut supra*, saunz ceo qe le chapeleyn<sup>1</sup> avoit unqes rien del doum nostre auncestre; prest, &c.<sup>4</sup>—*Grene*. Taunt amounte qe rien passa; prest, &c., qe cy.<sup>5</sup>

(64.)<sup>6</sup> § *Nota* qun homme muet,<sup>7</sup> en *Præcipe* <sup>Nota.</sup> *quod reddat*, gagea sa ley de noun somons par <sup>[Fitz.,</sup> *signes* autrefoith, et ore par signes fit la ley; <sup>Ley, 64.]</sup> et les paroles luy<sup>8</sup> furent reherces, et il oyst,<sup>9</sup> et mist sa meyn outre le livere, et le beisa, et issint saunz parole parforny la ley. Et le brief abatist.—Et STON. luy<sup>8</sup> dit:—Ones forsworne, evere forlorne.<sup>10</sup>

<sup>1</sup> Harl., A., instead of le chapeleyn.

<sup>2</sup> Harl., qe A., instead of ne le chapeleyn.

<sup>3</sup> Harl., pas.

<sup>4</sup> The replication was, according to the roll, “quod ipse per chartas prædictas ab agendo, &c., excludi non debet, dicit enim quod prædicta Elizabeth et prædicti Benedictus et Radulphus, et alii, &c., ad opus ipsius Elizabeth disseisiverunt prædictum Laurentium avum, &c., absque hoc quod prædictum manerium unquam transivit in possessionem prædictorum Benedicti et Radulphi per factum seu feoffamentum prædicti Laurentii. Et hoc

“prætendit verificare, unde petit judicium, &c.”

<sup>5</sup> The rejoinder was, according to the roll, “quod manerium prædictum transivit in possessionem prædictorum Benedicti et Radulphi per factum et feoffamentum prædicti Laurentii, sicut in prædicta charta eis inde confecta supponitur.”

Issue was joined upon this, and the *Venire* was awarded.

<sup>6</sup> From Harl., and 25,184.

<sup>7</sup> Harl., moet.

<sup>8</sup> luy is omitted from Harl.

<sup>9</sup> Harl., oyt.

<sup>10</sup> In Harl. the English words are:—“Onis forsuoryn evire forlorne.”

## No. 65.

A.D. 1344. (65.) § Replevin against three persons. A.<sup>1</sup> denied Replevin. the taking. The two others,<sup>1</sup> as A.'s bailiffs, made cognisance of the taking by reason that one W.<sup>1</sup> held of one R.<sup>1</sup> the land of which the place of taking is parcel, by a moiety of one knight's fee, that is to say, homage, fealty, and scutage, to wit, when the scutage runs, &c., of which services R.<sup>1</sup> was seised, &c., which R.<sup>1</sup> granted the services of W.<sup>1</sup> in fee tail to one J.<sup>1</sup> by reason of which grant W.<sup>1</sup> attorned, and afterwards W.<sup>2</sup> gave, before the statute,<sup>3</sup> a great part of the land to divers persons in fee simple, to hold of himself; and afterwards W.<sup>4</sup> gave that which he had in demesne, and granted the services in fee simple to T.<sup>1</sup>; and the tenants attorned to T., and T. attorned to J.<sup>1</sup> the tenant in tail. And the estate tail was brought down by descent to the person in whose name the cognisance was made; and the tenancy in demesne and the services of T. were brought down to the plaintiff on whom the cognisance was made. And note that counsel did not avow for A.,<sup>5</sup> although he was named, because

<sup>1</sup> For the names *see* p. 293, note 10.

<sup>2</sup> It was, according to the record, Richard the son of Thomas Audreu (which Thomas is called W. in the report), who conveyed. *See* p. 293, note 10.

<sup>3</sup> 18 Edw. I. (*Quia emptores*), c. 1.

<sup>4</sup> Robert the son of Richard, according to the record. *See* p. 293, note 10.

<sup>5</sup> *i.e.*, Walter Tornay.

## No. 65.

(65.)<sup>1</sup> § *Replegiari* vers iij. A. dedit la prise.<sup>2</sup> Les A.D. 1344.  
 ij, come baillifs A., conussent<sup>3</sup> la prise par resoun *Replegiari*.  
 qun W. tient dun R. la terre dount le lieu, &c.,  
 par la moyte dun fee de chivaler, saver, homage,  
 fealte, et escuage, saver, quant lescu court, &c., des  
 queux services il fut seisi, &c., le quel R. graunta  
 les services W.<sup>4</sup> en fee taille a un J., par quel  
 graunt W. attourna, et puis W.<sup>5</sup> dona, avant statut,  
 a divers gentz, grant partie de la terre en fee  
 simple, a tener de luy mesme; et puy W. dona  
 ceo qil avoit en demene, et graunta les services en  
 fee simple<sup>6</sup> a T.; et les tenantz sattournerent a  
 T.,<sup>7</sup> et T.<sup>8</sup> attourna a J.<sup>9</sup> tenant en la taille, et con-  
 veia la taille par descente a celuy en qi noun la  
 conisaunce est fait; et conveia la tenaunce en de-  
 mene, et des services de T.<sup>8</sup> al pleintif sur qi la  
 conisaunce est fait.<sup>10</sup> *Et nota* qil navowa pas pur A.,

<sup>1</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 435, d. It there appears that the action was brought by Alice Peytefyn against Walter Tornay, Stephen Webbold, and Robert Smoke, in respect of a taking of two horses, two oxen, and two cows, in a place called Clatcombe in the vill of Stocktone (Stuckton, Wilts).

<sup>2</sup> According to the roll Walter Tornay pleaded *Non cepit*, and issue was joined thereon.

<sup>3</sup> 25,184, conusantz.

<sup>4</sup> W. is from Harl. alone.

<sup>5</sup> W. is from Harl. alone, and appears there by interlineation.

<sup>6</sup> simple is from Harl. alone.

<sup>7</sup> Harl., E.

<sup>8</sup> Harl., C.

<sup>9</sup> Harl., R.

<sup>10</sup> According to the roll the cognisance was in the following form, "Et Stephanus et Robertus, ut

" ballivi præfati Walteri, cognos-  
 " cunt captionem prædictam in  
 " prædicto loco, et juste, &c., dicunt  
 " enim quod Clatcombe, qui est  
 " prædictus locus in quo prædicta  
 " captio facta fuit, est quædam  
 " magna placea continens in se  
 " diversa dominia. Et dicunt quod  
 " quidam Thomas Andreu, quon-  
 " dam tenuit sex mesuagia, centum  
 " acras terræ, et viginti acras prati,  
 " cum pertinentiis, in prædicta  
 " villa, unde prædictus locus in  
 " quo, &c., est parcella, de quodam  
 " Johanne de Vernoun, per servi-  
 " tium feodi unius militis, videlicet  
 " per homagium, fidelitatem, et ad  
 " scutagium domini Regis quadra-  
 " ginta solidorum, cum acciderit,  
 " viginti solidos, et ad plus plus,  
 " et ad minus minus, de quibus  
 " servitiis prædictus Johannes de  
 " Vernoun fuit seisitus per manus  
 " prædicti Thomæ, ut per manus veri  
 " tenentis sui, quæ quidem servitia

## No. 65.

A.D. 1344. in the *Recordari* the cause assigned was “*quia*” the two who now make cognisance of the taking “*distrinxerunt pro servitiis debitis*” to A., so that he did not dare to vary from the cause assigned.—*Quære*.—*Derworthy*. The cognisance is made for the same person that has

No. 65.

tut fut il nome, pur ceo qen le *Recordari* la cause fut A.D. 1344.  
*quia* les ij qore conussout la prise *distrixerunt*  
*pro servitiis debitis* a A., issint qil nosa pas varier  
 de la cause.—*Quere*.—*Derw*. La conisaunce est fait

“ idem Johannes de Vernoun post-  
 “ modum concessit quibusdam  
 “ Johanni de Tornay et Nicholae  
 “ uxori ejus tenenda sibi et here-  
 “ dibus de corporibus suis exeunti-  
 “ bus, virtute cujus concessionis  
 “ praefatus Thomas se attornavit  
 “ eisdem Johanni de Tornay et  
 “ Nicholae, &c. Et de ipsis Jo-  
 “ hanne et Nicholaa descenderunt  
 “ servitia praedicta cuidam Johanni  
 “ ut filio et heredi, &c. Et de  
 “ praedicto Thoma descenderunt  
 “ tenementa praedicta cuidam Ri-  
 “ cardo ut filio et heredi, &c., qui  
 “ se attornavit praefato Johanni  
 “ filio Johannis de servitiis pra-  
 “ dictis, &c. Et postmodum idem  
 “ Ricardus, ante statutum, &c.,  
 “ alienavit unum mesuagium,  
 “ duas virgatas et tres acras terrae,  
 “ unam acram prati et dimidiam,  
 “ de tenementis praedictis, quibus-  
 “ dam Johanni Peytefyn et Jo-  
 “ hannæ uxori ejus tenenda de  
 “ ipso Ricardo et heredibus suis.  
 “ per servitium septem solidorum  
 “ et octo denariorum et unius oboli  
 “ per annum, et etiam duodecim  
 “ acras terrae, de tenementis illis,  
 “ quibusdam Johanni Colswayn et  
 “ Agneti uxori ejus, tenendas de  
 “ eodem Ricardo et heredibus suis,  
 “ per servitia unius denarii per  
 “ annum, et etiam [four other  
 “ similar gifts]. Et totum resi-  
 “ duum tenementorum praedictor-  
 “ rum, videlicet unum mesuagium,  
 “ sexdecim acras terrae et dimi-  
 “ diam, et unam acram prati et  
 “ dimidiam reservavit sibi et here-  
 “ dibus suis, et inde obiit seiscitus,

“ simul cum servitiis praedictis ut  
 “ de feodo et jure, post cujus  
 “ mortem intravit in tenementis  
 “ illis quidam Robertus ut filius  
 “ et heres, et inde seiscitus fuit,  
 “ simul cum servitiis praedictis, per  
 “ manus tenentium tenementorum  
 “ praedictorum, &c., qui quidem  
 “ Robertus postmodum, post statu-  
 “ tum, &c., tenementa praedicta,  
 “ simul cum servitiis praedictis,  
 “ dedit et concessit quibusdam  
 “ Stephano de Uggeforde et Agneti  
 “ uxori ejus et heredibus ipsius  
 “ Stephani, tenenda de capitalibus  
 “ dominis feodi, &c., virtute cujus  
 “ concessionis praedicti tenentes se  
 “ attornaverunt praefatis Stephano  
 “ et Agneti de servitiis suis pra-  
 “ dictis, et iidem Stephanus et  
 “ Agnes se attornaverunt de servi-  
 “ tiis suis praefato Johanni filio  
 “ Johannis de Tornay. Et de  
 “ ipso Johanne filio Johannis  
 “ descenderunt servitia praedicta  
 “ cuidam Johanni ut filio et heredi,  
 “ &c. Et de ipso Johanne descen-  
 “ derunt eadem servitia praefato  
 “ Waltero, in cujus jure cognoscunt  
 “ captionem praedictam fieri, &c.  
 “ Et de praedictis Stephano et  
 “ Agnete descenderunt tenementa  
 “ praedicta cuidam Johanni ut  
 “ filio et heredi, &c., qui quidem  
 “ Johannes se attornavit de servi-  
 “ tiis suis praefato Johanni patri  
 “ praedicti Walteri, &c., et soluit ei  
 “ quinquaginta solidos pro relevio  
 “ post mortem praedicti Stephani  
 “ patris sui, &c. Et postea idem  
 “ Johannes filius Stephani se  
 “ attornavit praefato Waltero de

## No. 66.

A.D. 1344. denied the taking; judgment whether they shall be admitted.—HILLARY. The bailiffs will not have judgment given against them, even though their master has denied the taking.—Therefore the plaintiff said that the place of taking was without the defendant's fee.—And the other side said the contrary.—*Quære* whether they will have aid.<sup>1</sup>

Debt. (66.) § Debt against the Abbot of St. James of Northampton, by two writs.—*Grene* made *profert* of the plaintiff's indentures by which he granted that if the Abbot should pay a certain sum, &c., the obligations should lose their force, and said that the Abbot was ready to pay on the day, and at all times since, and still is ready to pay, and produced the money.—*R. Thorpe*. He has taken his delays by essoin, and now he appears through the Grand Distress; therefore he shall not be admitted to say that he was always ready.—*Grene*. Then you refuse the averment; and we abide judgment.—KELSHULLE to the plaintiff. Will you accept the money?—*Thorpe*. We will consider.—And afterwards *Thorpe* tendered the averment that the Abbot did not tender the money on the appointed day; ready, &c.—And the other side said the contrary.—*Quære* whether the plaintiff will lose that which is now offered if the issue should pass against him.—I think so.

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<sup>1</sup> The query is answered in the record. See p. 297, note 3.

## No. 66.

pur mesme la persone qad<sup>1</sup> dedit la prise; juge- A.D. 1344.  
ment sils serrount resceu.—HILL. Les baillifs ne  
serrount pas atteintz, tut eit lour meistre dedit la  
prise.—Par quei il dit qe hors de son fee.<sup>2</sup>—*Et alii*  
*e contra*.—*Quære* sils averount eyde.<sup>3</sup>

(66.)<sup>4</sup> § Dette vers Labbe de Seint Jake de N.<sup>5</sup> Dette.  
par ij briefs.—*Grene* mist avant endentures le pleintif  
par queux il granta qe si Labbe paiast certeyn  
summe, &c., qe les obligaciouns perdront lour force,  
et dist qil fut prest au jour de payer, et tut temps  
puys, et unqore est, et mist avant les deners.—*R.*  
*Thorpe*. Il ad pris ses delays par essone, et ore  
est venuz par la Grand<sup>6</sup> Destresse; par quei a dire  
qil fut tut temps prest il ne serra pas resceu.—  
*Grene*. Donques refusez laverement; et demuroms  
en jugement.—*KELS.*, al pleintif. Voletz avoir<sup>7</sup> les  
deners?—*Thorpe*. Nous aviseroms.—Et puys tendist  
daverer qil ne tendist pas les deners a jour assiz;  
prest, &c.—*Et alii e contra*.—*Quære*, si le pleintif  
perdra ceo qest ore profert, si lissue passe countre  
luy.—*Credo quod sic*.

“ totis servitiis suis, exceptis  
“ homagio et relevio. Et de ipso  
“ Johanne filio Stephani descen-  
“ derunt tenementa prædicta cui-  
“ dam Johanni qui nunc est tenens  
“ de eisdem, &c. Et, quia homa-  
“ gium ejusdem Johannis filii  
“ Johannis et relevium post mor-  
“ tem prædicti patris sui eidem  
“ Waltero, die captionis prædicta,  
“ a retro fuerunt, iidem Stephanus  
“ et Robertus, ut ballivi ejusdem  
“ Walteri, pro homagio et relevio  
“ prædictis ceperunt averia præ-  
“ dicta in prædicto loco, prout eis  
“ bene licuit, &c.”

<sup>1</sup> 25,184, qil ad.

<sup>2</sup> Alice pleaded, according to the  
record, “ quod prædictus locus in

“ quo, &c., est extra feodum præ-  
“ dicti Walteri.” Upon this issue  
was joined.

<sup>3</sup> According to the record, the  
two bailiffs prayed and had aid of  
Walter. “ Et jungit se prædictis  
“ Stephano et Roberto in respon-  
“ dendo, &c. Et paratus est  
“ manūtenere verificationem quam  
“ iidem Stephanus et Robertus  
“ superius prætedebant, &c.” The  
*Venire* was then awarded to try the  
issue. There is nothing further  
on the roll.

<sup>4</sup> From Harl., and 25,184.

<sup>5</sup> 25,184, Norff.

<sup>6</sup> Harl., Graunt.

<sup>7</sup> avoir is from Harl. alone.

## Nos. 67, 68.

A.D. 1344. (67.) § Replevin in respect of beasts harnessed to a  
 Replevin. plough in Westmede.—The defendant avowed for *damage feasant* at Kermede, and said that it is all one place, and said that this was his several.—The plaintiff said that he had a way, and a right of driving, and driving back there.—The avowant said that it was his several; ready, &c.—And the other side said the contrary.—The inquest taken at *Nisi prius* before WILLOUGHBY said that the plaintiff had a way, and a right of driving, and driving back at the place in which he made his plaint. And they said further that the place in which the taking was effected was the avowant's several.—And note that there was no mention made in the record that enquiry was made as to damages; but WILLOUGHBY recorded by word of mouth that the jury assessed the damages, and if, &c., at twenty shillings.—*Skipwith*. The finding is for the defendant, as it seems, because a large place, or piece of land may be known by one name, and part of the place may be several, and part the way or the common of the plaintiff; therefore on the verdict enquiry ought to be made whether the taking was effected in the part which is the avowant's several, or in the part in which the plaintiff has common and right of way; and, therefore, since the jury has expressly stated this—that the place in which the taking was effected is the avowant's several—it ought to suffice.—HILLARY. Such special matter ought to be pleaded, but it was not; therefore by the manner of their pleading the parties were agreed as to the place; therefore whatever enquiry was made beyond the point whether that place was the avowant's several or the plaintiff's way was impertinent; therefore the Court adjudges that the plaintiff do recover his damages assessed, &c., and that the avowant be in mercy.

Formedon. (68.) § Formedon by several *Præcipes*, and some of the *Præcipes* abated on the ground of joint tenancy alleged by virtue of a fine, of a part of which fine *profert*



Nos. 67, 68.

(67.)<sup>1</sup> § *Replegiari* des avers jointz<sup>2</sup> en<sup>3</sup> une charue A.D. 1344. en Westmede.—Le defendant avowa pur damage *Replegiari.* fesaunt a Kermede,<sup>4</sup> et dit qe tut est un lieu, et [Fitz., Verdit, 23.] dit qe ceo fut son several.—Le pleintif dit qil ad chymyn, chace, et rechace illoeques.—Lavowant dit qe ceo fut son several; prest, &c.—*Et alii e contra.*—Par *Nisi prius* lenquest pris devant WILBY dit qe le pleintif avoit chace, et rechace, et chymyn ou il se pleint. Et disoint outre qe le lieu ou la prise se fit fut le several celuy qe avowa.—*Et nota* qen le recorde ny ad pas mencion fait qe enquys fut des damages; *sed* WILBY recorda de bouche qe lenquest assistrent les damages, et si, &c., a xxs.—*Skyp.* Il est trove pur le defendant a ceo qe semble, qar un grand<sup>5</sup> lieu et<sup>6</sup> place purra estre conu par un noun, et partie del lieu purra estre several, et parcelle le chymyn ou la comune le pleintif; donques covendreit sur verdit denquere le quel la prise se fit en la parcelle qest several al avowaunt, ou en la parcelle qest comune et chymyn al pleintif; et donques quant enquest expressement ad dit cella qe le lieu ou, &c., fut son several, ceo deit suffire.—HILL. Tiele matere especial covendreit estre plede, mes ceo ne fut il pas; par quei par la manere de lour plee les parties furent a un del lieu; par quei quanqe fut enquys outre le poynt le quel ceo fut son several, ou le chymyn le pleintif fut impertinent; pur quei agarde la COURT qe le pleintif recovere ses damages taxes, &c., et lavowant en la mercie.

(68.)<sup>1</sup> § Forme de doun par plusours *Præcipe*, et *Forme de doun.* les uns *Præcipe* abatirent par joyntenaunce allegge par fyn, dount partie fut moustre, et quant a un

<sup>1</sup> From L., and 25,184.<sup>2</sup> Harl., posetz.<sup>3</sup> Harl., a.<sup>4</sup> Harl., K.<sup>5</sup> Harl., graunt.<sup>6</sup> The words lieu et are omitted from Harl.

## No. 68.

A.D. 1344. was made, and as to one *Præcipe* the tenant vouched to warrant a husband and his wife.—*Sadelyngstanes*. We tell you that neither the wife nor her ancestors ever had anything; ready, &c.—*Notton*. That counterplea is not given either by statute or by common law.—*Sadelyngstanes*. By common intendment such a voucher is given by virtue of the lien which extends to the wife herself or her ancestors; therefore the averment is sufficient to toll such a voucher.—*WILLOUGHBY*. It is also a common intendment that such a voucher is given by virtue of the lien which extends to the husband and the wife jointly by fine; and so it must be understood, for *profert* has been made of a part of the fine, by which it is supposed that the husband and his wife rendered the tenements; therefore will you aver that neither the husband, nor the wife, nor their ancestors had anything?—*Moubray*. *Profert* is made of the fine in respect of other land, in order to abate the writ on the ground of joint tenancy, and not to maintain the voucher, and even though *profert* of it were made for the purpose of maintaining the voucher, still we, who are a stranger to the fine, should have the averment; and voucher of the husband and his wife tends to delay more than voucher of the husband alone, because she can afterwards be admitted to defend her right.—*HILLARY*. The statute<sup>1</sup> speaks of the case in which one is vouched, and not of the case in which two are vouched, and in the first case gives the counterplea that neither that one nor his ancestors had anything.—*WILLOUGHBY*. We see mischief both on one side and on the other, because, if the tenant were ousted by such a counterplea from vouching the husband and the wife, and were put to vouch the husband alone, then as soon as it came to the point of binding him, if he produced the fine of the husband and the wife, by which they

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<sup>1</sup> 3 Edw. I. (Westm. 1.), c. 40.

## No. 68.

*Præcipe* le tenant voucha a garraunt le baroun et sa femme. — *Sadl.* Nous vous dioms qe la femme ne ses auncestres navoint unqes rien; prest, &c. — *Nottone.* Ceo countreple nest pas done par statut comune ley. — *Sadl.* De comune entent tiel voucher est done par lien qe sestent en la femme mesme ou ses auncestres; par quei laverement est suffisaunt de toller tiel voucher. — *WILBY.* Il est auxint comune entent qe par lien qe sestent al baroun et la femme joynt par<sup>1</sup> fyn; et issint serra entendu, qar partie dune fyn est mys avant, par quele est suppose qe le baroun et sa femme rendirent les tene-mentz; par quei voletz vous averer qe le baroun ne<sup>2</sup> la femme ne lour auncestres rien y avoint? — *Moubray.* La fyn est mys avaunt dautre terre, pur abatre le brief pur jointenaunce, et noun pas pur meyntener le voucher, et tut fut ele mys avant a cele entente de meyntener le voucher, [unqore nous, qe sumes estraunge a la fyn, averoms laverement]<sup>3</sup>; [et il chiet plus en delay le voucher]<sup>4</sup> del baroun et sa femme qe del baroun soul, qar ele purra apres estre resceu. — *HILL.* Lestatut parle ou un est vouche, et doune le countreple, et noun pas ou deux sont vouchez, saver, a dire qe lun ne<sup>5</sup> ses auncestres navoient unqes rien. — *WILBY.* Nous veioms meschief dune part et dautre, qar, si le tenant fut ouste par tiel countreplee de voucher le baroun et sa femme, et fut mys de voucher le baroun soul, quant il vendra sur le poynt de iuy lier, et il meist avant fyn<sup>6</sup> del baroun et la femme, par quel les ij

<sup>1</sup> 25,184, come par.

<sup>2</sup> 25,184, et.

<sup>3</sup> The words between brackets are omitted in this place from Harl., but have been inserted by interlineation before the words de meyntener le voucher.

<sup>4</sup> The words between brackets are omitted from Harl.

<sup>5</sup> 25,184, qe.

<sup>6</sup> 25,184, le fait le fait.

## No. 69.

A.D. 1344. were both bound to the warranty, he would escape from the warranty, and the tenant would suffer disherison. But if the warranty were by deed *in pais*, it would be otherwise, because the whole would be accounted the deed of the husband, for in that case the husband alone would be bound, even though the wife might be bound by the words of the deed. And there is also mischief to the demandant by delay if he cannot have the counterplea to the estate of the wife, because he may possibly be delayed by the admission of the wife to defend her right. But it is better that the demandant should be delayed than that the tenant should suffer disherison in respect of his warranty. And in case the demandant should allow the voucher, if afterwards the wife prayed to be admitted, he would not be admitted to say, in contradiction of his acceptance of the voucher, that she had nothing; but if the Court allows the voucher, nothing is accepted by him. Therefore let the voucher stand.

Waste. (69.) § Hugh le Despenser brought a writ of Waste against A.<sup>1</sup> supposing that A.<sup>1</sup> held of Hugh for term of A.'s<sup>1</sup> life, by lease from William la Zouche Mortimer, and Eleanor his wife, mother of the aforesaid Hugh, whose heir he is, and Hugh counted that they leased, &c., saving the reversion to themselves and the heirs of the wife.—*Grene*. You see plainly how the writ

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<sup>1</sup> For the real name see p. 303, note 6.

## No. 69.

feussent liez a la garrauntie, il estourtereit de la A.D. 1341.  
 garrauntie, et serreit desherite. Mes sil fut par fait  
 en pais, pur ceo qe<sup>1</sup> tut serreit acompte<sup>2</sup> le fait le  
 baroun, autre serreit, qar la serreit le baroun soul  
 lie, tut fut la femme lie par parole du fait. Et  
 auxint pur le demandant il y ad meschief de delay  
 sil ne purra avoir countreple<sup>3</sup> a lestat la femme,  
 qar par la resceit de la femme il purra estre de-  
 laye. Mes plus vaut qe le demandant soit delaye  
 qe le tenant desherite de sa garrauntie. Et en cas  
 qe le demandant grauntast le voucher, apres, si la  
 femme pria destre resceu, il ne serra pas resceu,  
 countre son accepter, a dire qele navoit rien; mes  
 si la Court la receit rien est accepte de luy. Pur  
 quei<sup>4</sup> estoise<sup>5</sup> le voucher.

(69.)<sup>6</sup> § Hughe le Despenser porta brief de Wast Wast.  
 vers A. supposant qil tient de luy a terme de sa  
 vie du lees William la Zouche Mortimer, et E.<sup>7</sup> sa  
 femme, mere lavantdit Hughe, qi heir il est, et  
 counta qils lesserent, &c., salvant la reversioun a  
 eux et les heirs la femme.<sup>8</sup>—*Grene*. Vous veiez bien

<sup>1</sup> Harl., quai, instead of ceo qe.

<sup>2</sup> 25,184, acunte.

<sup>3</sup> 25,184, contreplede.

<sup>4</sup> After quei there are inserted in Harl. the words WILBY dit par agarde.

<sup>5</sup> 25,184, estoietz.

<sup>6</sup> From Harl. and 25,184 only, until otherwise stated, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 294, d. It there appears that the action was brought by Hugh le Despenser against Anthony Citroun, in respect of waste in the manor of Great Merlawe (Marlow, Bucks), "quod Willelmus la Zouche Mortimer et Alianora, uxor ejus, mater predicti Hugonis, cujus heres

" ipse est, præfato Antonio dimiserunt ad vitam ipsius Antonii."

<sup>7</sup> Harl., M.; 25,184, Marg.

<sup>8</sup> The declaration was, according to the roll, that "idem Antonius fecit vastum, venditionem, destructionem, et exilium, in prædicto manerio, videlicet fodendo et puteos faciendo in triginta acris terræ, et marleam et arzillum inde vendendo, pretii centum solidorum, et prosternendo unam aulam, et maeremium inde vendendo pretii viginti librarum, unam cameram pretii decem librarum, unam grangiam pretii duodecim librarum, unam boveriam pretii sex librarum, duas pistrinas pretii utriusque quin-

## No. 69.

A.D. 1344. includes mention of a lease, as of a lease made by the husband and his wife, by which a reversion is supposed to be saved in the blood of the wife, and that could not be except by fine, of which the writ ought to make mention, and that it does not do; judgment of the writ.—WILLOUGHBY. And, if it were by fine, it would still be a lease, and though the writ do not make mention of that, it seems that the writ is good enough; and if the lease were by deed *in pais*, and the law be such that a reversion can abide only in the blood of the husband on such a lease, that should be pleaded by way of answer.—*Grene*. The writ should make express mention of that in the words "*per finem inde in Curia levatum*."—STONORE. Suppose that the lease were by deed *in pais*, and that the wife surviving or her heirs would not make use of an action of this nature, but vouchsafed that you should hold for term of your life, it follows therefore that you could commit waste without being punished, and that would be too hard.—*Grene*. And, Sir, it would be harder that I should be put to plead to such a writ, for if I pleaded to him on this writ, denying the waste, and so affirming the reversion to be in him as heir of the wife, the husband's heir, to whom the reversion might belong, would oust me on the ground of my acceptance

## No. 69.

coment le brief comprend un lees du lees fait par A.D. 1344. le baroun et sa femme, par quel reversioun dust estre salve en le sank la femme, quele chose ne purra estre sil ne fut par fyn de quey le brief freit menciou, et ceo ne fait il pas; jugement de brief. —WILBY. Et, sil fut par fyn, unqore serreit il lees, et tut ne face pas le brief de ceo menciou, il semble qe cest assetz bon; et si ceo fut par fait en pays, et la ley soit tiel qe reversioun ne pout demurer forqe en le sank le baroun sur tiel lees, ceo serreit ple de par voie de respouns.—Grene. Brief freit expresse menciou de cel *per finem inde in Curia levatum*.—STON. Jeo pose qe ceo fut par fait en pays, et la femme qe survesquit ou ses heirs ne voleint pas user accion de cel, mes vouchèrent sauf qe vous le tenisses pur terme de vostre vie, ensuyt pur ceo qe vous purreis faire wast saunz estre puny, ceo serreit trop dure chose.—Grene. Sire, et plus dure chose serreit qe jeo fusse mys de pleder a un tiel brief, qar si jeo pledasse a luy a cesty brief, dedisaunt le wast, et issint affermaunt la reversioun en luy come heir la femme, leir le baroun, a qi la reversioun serreit, moy ostereit pur

“quaginta solidorum, et succi-  
 “dendo et vendendo duo millia  
 “quercuum pretii cujuslibet qua-  
 “tuor solidorum, ducentas fraxinos  
 “pretii cujuslibet trium solidorum  
 “et quatuor denariorum, duo  
 “millia ducentas et quadraginta  
 “fagos grossas pretii cujuslibet  
 “trium solidorum, septingentas  
 “fagos minores pretii cujuslibet  
 “duo solidorum, centum et sexa-  
 “ginta pomaria pretii cujuslibet  
 “decem et octo denariorum, sexa-  
 “ginta et decem pirus pretii  
 “cujuslibet duorum solidorum,  
 “sexaginta et duodecim fraxinos

“pretii cujuslibet quatuor solido-  
 “rum, quater viginti ulmos pretii  
 “cujuslibet trium solidorum et sex  
 “denariorum, et exulando quosdam  
 “Philippum Filyan, qui unum mesu-  
 “agium [et] unam virgatum terræ  
 “tenuit in villenagio, Willelmum  
 “atte More, qui unum mesuagium  
 “et viginti acras terræ tenuit in  
 “villenagio, et Rogerum Godwyne,  
 “qui unum mesuagium et duo-  
 “decim acras terræ tenuit in  
 “villenagio in eodem manerio,  
 “per graves et intolerabiles distric-  
 “tiones, ad exheredationem ipsius  
 “Hugonis.”

## No. 69.

A.D. 1344. of her heir to his disherison.—HILLARY and WILLOUGHBY adjudged the writ good.—And the fact was that the lease was by deed *in pais*.—*Stouford*, as to certain oak-trees, alleged that they were taken for the purpose of improving and repairing old houses of the same manor, and building new houses, because the manor was not fully provided with lodging, and in particular such a house and such a house, and for the repair of the houses of bondmen and of other tenants of the manor. And, as to other trees, he avowed the cutting for the purpose of making folds, waggons, carts, and ploughs for the same manor, and for fire-wood. And, as to certain trees, he justified the cutting by the order of the plaintiff for billets for the plaintiff's use, and he produced the plaintiff's letters in witness of this, and others to show the plaintiff's gifts.—*Derworthy*. As to what he says and avows that he cut, &c., by reason



## No. 69.

mon accepter en desheritaunce<sup>1</sup> de luy.—HILL. et **A.D. 1344**  
 WILBY agarderent le brief bon.—Et *casus est* qe ceo  
 fut par lees fait en pays.—*Stou.*, quant a certeinez  
 keynes, alleggea qe pris en amendement de veilles  
 meisouns repparailler de mesme le maner, et novels  
 mesouns faire, pur ceo qe le maner ne fut pas a  
 pleyn herberge, saver, tiel mesoun, et tiel, &c., et  
 auxint pur amendement des mesouns des bondes et  
 des dautres tenantz del maner. Et des autres arbres  
 avowa pur faudes<sup>2</sup> faire, chares, charettes, et charues,  
 de mesme le maner, et pur ardre. Et, quant as  
 certeinz arbres, justifia par comandement le pleintif  
 pur bouche al oeps<sup>3</sup> le pleintif, et moustra ses  
 lettres ceo tesmoignaunt, et autres qe le pleintif  
 dona.<sup>4</sup>—*Der.* Quant a ceo qil parle et avowe par nos

<sup>1</sup> desheritaunce is from Harl. alone.

<sup>2</sup> Harl., fautes.

<sup>3</sup> Harl., hus.

<sup>4</sup> The plea was, according to the roll, "quo ad . . . vastum, "venditionem, &c., in prædictis "boscis, &c., succidendo duo millia "quercuum, et alia supra nominata, "dicit quod ipse, per literas præfati "Hugonis eidem Antonio inde "directas, succidit quadringentas "fagos, pretii cujuslibet octo "denariorum, et inde fecit fieri "novem millia buscarum vocata- "rum talwode pro expensis hospitii "ejusdem Hugonis, &c. Et, per "diversas literas ejusdem Hugonis, "liberavit diversis hominibus, de "dono et mandato ejusdem Hugo- "nis, sexaginta et novem fagos, "unde profert hic literas prædictas "præfati Hugonis eidem Antonio "inde directas, quæ testantur "mandatum et dona prædicta, &c. "Et pro una domo vocata boveria "de novo facienda, et cæteris

"domibus ejusdem manerii veteri-  
 "bus et debilibus emendandis,  
 "reficiendis, et reparandis, vide-  
 "licet una aula, sex cameris,  
 "duobus grangiis, una coquina,  
 "tribus stabulis, una vaccaria, una  
 "dayeria, una bercaria, una por-  
 "caria, et una wyndas portis, et  
 "aliis necessariis infra manerium  
 "prædictum, succidit centum et  
 "quingenta quercus pretii  
 "cujuslibet sex denariorum, cen-  
 "tum fagos pretii cujuslibet octo  
 "denariorum, trescentas fagos  
 "pretii cujuslibet duorum denari-  
 "orum, triginta fraxinos et viginti  
 "ulmos pretii cujuslibet quatuor  
 "denariorum, de quibus arboribus  
 "pro prædicta domo de novo  
 "facienda decem quercus pretii  
 "cujuslibet sex denariorum, novem  
 "fraxinos pretii cujuslibet trium  
 "denariorum, viginti fagos pretii  
 "cujuslibet sex denariorum, et  
 "quadraginta fagos pretii cujus-  
 "libet unius denarii succidit, et  
 "pro carucis, carectis, herciis,

## No. 69.

A.D. 1344. of our letters, it is not that of which we complain; but beyond that he has committed waste of such a number of trees. And as to what he says touching repair of the houses of the manor, and of the houses of the bondmen of the manor, he has committed waste beyond that. And as to building new houses, and making folds, waggons, carts, and ploughs, and harrows, and fire-wood, we demand judgment whether he can avow the cutting for that cause. And whereas he says that he cut for folds, &c., only two hundred beech-trees and elm-trees, he cut four hundred.—*Grene.*

## No. 69.

lettres qil coupa, &c., de ceo pleynoms pas; mes A.D. 1344.  
 estre ceo il ad fait wast de tiel noumbre. Et quant  
 a ceo qil parle damendement des mesouns del maner,  
 et des mesouns les bondes del maner, outre ceo ad  
 il fait wast. Et quant as novels mesouns faire, et  
 faudes, chares, charettes, et charues, et herces, et a  
 ardre, nous demandoms jugement si par cele cause  
 purra le couper avower. Et ou il dit qil coupa pur  
 faudes, &c., forqe cc<sup>1</sup> foux et oumes,<sup>2</sup> il coupa eccc.<sup>3</sup>

“ inclusura, et faldis, et ad arden-  
 “ dum in eodem manerio neces-  
 “ sario ducentas fagos pretii  
 “ cujuslibet unius denarii, et  
 “ pro domibus nativorum infra  
 “ manerium prædictum reparandis  
 “ et manutenendis super tene-  
 “ menta sua quæ tenent in bond-  
 “ agio trescentas quercus pretii  
 “ cujuslibet unius denarii, quadra-  
 “ ginta fraxinos et viginti ulmos  
 “ pretii cujuslibet quinque dena-  
 “ riorum, et pro carucis eorun-  
 “ dem nativorum, et ad ardensum  
 “ in tenementis suis necessario,  
 “ et ad includendum tenementa  
 “ sua prædicta centum fagos, et  
 “ pro faldis eorundem nativorum  
 “ quadringentas fagos pretii cujus-  
 “ libet unius oboli, quæ quidem  
 “ arbores crescebant super tene-  
 “ menta eorundem nativorum.  
 “ Et quo ad totum residuum quod  
 “ prædictus Hugo ei imponit ipsum  
 “ succidisse in boscis prædictis, et  
 “ etiam quo ad vastum, venditi-  
 “ onem, et destructionem, &c., in  
 “ terris, domibus, et gardinis præ-  
 “ dicti manerii, et etiam exilium  
 “ de prædictis nativis, &c., dicit  
 “ quod ipse in nullo est inde  
 “ culpabilis. Et hoc paratus est  
 “ verificare, unde petit judicium.”

<sup>1</sup> Harl., c.

<sup>2</sup> Harl., eums.

<sup>3</sup> Harl., iij. The replication was,  
 according to the record, “ quo ad  
 “ hoc quod prædictus Antonius  
 “ superius cognovit quod præ-  
 “ dictam domum vocatam bove-  
 “ riam de novo construxit, et ad  
 “ illam tantas arbores, ut præ-  
 “ mittitur, succidit, et etiam cog-  
 “ novit succisionem prædictarum  
 “ arborum ad faldas pro eodem  
 “ manerio faciendas, et ad reficien-  
 “ dum domos prædictorum nativo-  
 “ rum in manerio prædicto, et  
 “ faldas suas faciendas, et ad  
 “ ardensum in tenementis eorun-  
 “ dem nativorum, ut supradictum  
 “ est, quæ in jure sine speciali  
 “ waranto in hoc casu advocari non  
 “ possunt, petit judicium de cogni-  
 “ tione ipsius Antonii, &c.

“ Et dicit quod ultra illud quod  
 “ in prædictis literis continetur  
 “ prædictus Antonius succidit præ-  
 “ dictas arbores in boscis prædictis  
 “ ad summam diversarum arborum  
 “ in narratione sua superius con-  
 “ tentam, et ultra cognitionem  
 “ ejusdem Antonii tam de numero  
 “ arborum quam de pretio earun-  
 “ dem, videlicet pro prædicta domo  
 “ de novo facienda ducentas et  
 “ sexaginta quercus pretii cujus-  
 “ libet quatuor solidorum, sexa

## No. 69.

A.D. 1344. You cannot abide judgment on my confession, and also aver in relation to the same matter that I cut a greater quantity.—WILLOUGHBY. He can do so very well. But as to the point on which you have abode judgment—as to whether such cutting is avowable or not—we will not give judgment upon that until enquiry has been had touching the rest, and also how much has been cut for building new houses, and making folds, &c., and touching the taking of the trees, &c., and when enquiry has been had as to that, you will then have your plea; and, therefore, plaintiff, sue a writ of enquiry of waste.—STONORE to *Grene*. Do not remain in any doubt, because this inquest will be taken before us or some of us, and possibly on the ground itself in which the waste is assigned, and then you will have afterwards that which right demands, &c.—The writ was in the form “*Præceptum est Viccomiti quod venire faciat hic xij, &c., et interim quod videant locum vastatum, &c.*”—On another day the defendant was essoined “*de placito Vasti unde Jurata.*”—*Thorpe* recited how, as to part, as appears by the record, he pleaded

## No. 69.

—*Grene*. Vous ne poetz pas demurer en jugement A.D. 1344. sur ma conisaunce, et auxint averer pur mesme la chose qe jeo coupay plus.—*WILBY*. Si fra molt<sup>1</sup> bien. Mes, de ceo qe vous estes demure en jugement si tiel couper soit avowable ou noun, cella ne voloms pas ajuger tanqe del remenant soit enquys, et auxi com bien soit coupe pur novels mesouns faire, et faudes, &c., et del prise des arbres, &c., et, quant ceo serra enquys, donques averez vostre plee; et pur ceo, vous, pleintif, suetz lenqueste.—*STON*. a *Grene*. Ne dotez pas, qar ceste Enqueste serra pris devant nous ou ascun de nous, et par cas<sup>2</sup> sur mesme la place ou le wast est assigne, et donques averez apres ceo qe resoun demande, &c.—*Præceptum est Vicecomiti quod venire faciat hic xij, &c., et interim quod videant locum vastatum, &c.*—A un autre <sup>Fitz.,</sup> jour le defendant est essone *de placito Vasti unde* <sup>Essone, 3.</sup> *Jurata*.<sup>3</sup>—*Thorpe* rehercea coment, quant a parcelle, come piert par le recorde, il pleda en jugement, et

“ginta fraxinos pretii cujuslibet  
 “trium solidorum et quatuor  
 “denariorum, ducentas fagos  
 “pretii cujuslibet trium solidorum,  
 “quadraginta ulmos pretii cujus-  
 “libet trium solidorum et sex  
 “denariorum, et quadraginta fagos  
 “pretii cujuslibet duorum solidorum,  
 “et pro carucis, carectis,  
 “inclusuris, faldis, et ad arden-  
 “dum, &c., quingentas fagos pretii  
 “cujuslibet duorum solidorum, et  
 “pro reparatione tenementorum  
 “nativorum manerii prædicti  
 “quadringentas quercus pretii  
 “cujuslibet quatuor solidorum,  
 “sexaginta fraxinos pretii cujus-  
 “libet quatuor solidorum, triginta  
 “ulmos pretii cujuslibet trium  
 “solidorum et sex denariorum, et  
 “pro carucis, carectis, inclusuris et  
 “faldis eorundem nativorum quad-

“ringentas fagos pretii cujuslibet  
 “duorum solidorum. Et etiam  
 “prædictus Antonius fecit vastum,  
 “venditionem, destructionem, et  
 “exilium de terris, domibus,  
 “gardinis, et hominibus prædictis,  
 “ad exheredationem ipsius Hu-  
 “gonis, prout ipse in narratione  
 “sua prædicta supponit.” Upon  
 this issue was joined.

<sup>1</sup> Harl., mon.

<sup>2</sup> The words et par cas are from Harl. alone.

<sup>3</sup> The report ends here in the MSS. of this Term, but both Harl. and 25,184 refer to the following Hilary Term for the essoin, and the conclusion is found there in L., Harl., the Cambridge MS. Hh. 2, 3, and the Additional MS. 34,789.

## No. 69.

A.D. 1344. to judgment, and as to part to the inquest; and the essoin extends only to the latter part, and as to the rest which was pleaded to judgment, he does not appear either in his own person or by attorney, nor is he essoined, and we pray judgment on the default.—STONORE. What judgment would you have on the default? Even if the default were recorded, it would still be necessary to make enquiry as to the waste.—*Thorpe*. He would be distrained to hear his judgment on the default.—*Pole*. Can he in one and the same plea be essoined and make default?—*Thorpe*. Yes, in this case very well.—HILLARY. Our Clerks say that in such a case their practice is to amend the essoin, and the essoin should be in the words “*unde Jurata et Judicium.*”<sup>1</sup>

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<sup>1</sup> The conclusion of the report is in Y.B., Trin., 19 Edw. III., No. 53.

## No. 69.

de parcelle al enqueste ; et a cele parcelle soulement A.D 1344.  
 sestent lessone, et quant al remenant plede en jugement  
 il nest en propre persone, par attourne, ne essone, et  
 prioms jugement sur la default.—*STON.* Quel juge-  
 ment voilletz vous<sup>1</sup> aver sur la default? Mesqe la  
 default fuit recorde il covendreit unqore enquire<sup>2</sup> del  
 wast.—*Thorpe.* Il serra destreint doier son jugement  
 sur la default.—*Pole.* Poet il en un mesme<sup>3</sup> plee  
 estre essone et faire default?—*Thorpe.* Oyl, en ceo  
 cas molt<sup>4</sup> bien.—*HILL.* Nos clerks dient qen tiel  
 cas ils<sup>5</sup> usent damendre lessone, et lessone serreit  
*unde Jurata et Judicium.*<sup>6</sup>

<sup>1</sup> vous is omitted from Harl.

<sup>2</sup> Harl., quere.

<sup>3</sup> The words un mesme are omitted from 34,789.

<sup>4</sup> Harl., mout.

<sup>5</sup> ils is omitted from Harl.

<sup>6</sup> The words *et Judicium* are omitted from 34,789. The matter is entered of this Michaelmas Term, 18 Edw. III., on the roll as follows:—“Præceptum est Vice-  
 comiti quod venire faciat hic in  
 Octabis Sancti Hillarii xij, &c.,  
 per quos, &c., et qui nec, &c.,  
 ad recognoscendum, &c., quia  
 tam, &c. Et interim prædicti  
 juratores prædicta tenementa  
 vastata videant, &c. Idem dies  
 datus est partibus prædictis hic  
 de audiendo iudicio, &c. Ad  
 quem diem prædictus Antonius  
 fecit se inde essoniari de malo  
 veniendi, &c. Et habuit diem  
 tam de jurata prædicta quam de  
 illo super quo super placitaverunt  
 ad iudicium.”

According to the roll a jury found a verdict at *Nisi prius* “die  
 Mercurii proximo ante Festum  
 Pentecostes.” It was “quod  
 prædictus Antonius fecit vastum

“ in manerio in recordo contentum

“ ultra id quod ipse placitando

“ cognovit,” with details.

Judgment was given thus:—

“ Quia compertum est per veredic-  
 tum inquisitionis prædictæ in  
 “ quam partes prædictæ se posuer-  
 “ unt quod prædictus Antonius fecit  
 “ vastum, venditionem, destructi-  
 “ onem, et exilium, de domibus,  
 “ boscis, gardinis et hominibus quæ  
 “ tenet ad terminum vitæ suæ, ex  
 “ dimissione prædictorum Willelmi  
 “ et Alianoræ, ad exheredationem  
 “ prædicti Hugonis, ut est dictum,  
 “ et illud super quo superius  
 “ placitando partes prædictæ fuer-  
 “ unt ad iudicium, &c., pro majori  
 “ parte in inquisitione prædicta  
 “ continetur, per quod per prædic-  
 “ tum Hugonem relinquitur ulte-  
 “ rius adnunc super isto brevi  
 “ prosequendum, per Statutum,  
 “ &c., consideratum est quod præ-  
 “ dictus Hugo recuperet versus  
 “ prædictum Antonium seisinam  
 “ suam de prædictis tenementis  
 “ vastatis per visum juratorum  
 “ inquisitionis prædictæ, et damna  
 “ sua in triplo, quæ se extendunt  
 “ in triplo ad trescentas et quin-

## No. 70.

A.D. 1344. (70.) § Trespass in respect of growing trees cut and  
Trespass. carried off. The defendant said that he had estovers,  
in the place in which the trespass was alleged, to be  
taken by view of the Forester, of dead wood, and  
*housebote* of green and growing wood; and he said  
that by view of the Forester he took so much dead  
wood, and for building so much.—*Pole*. That which  
he says as to dead wood is not an answer to my



## No. 70.

(70.)<sup>1</sup> § Trans des arbres cressautes coupez et A.D. 1344.  
emportes. Le defendant dit qil avoit estovers illoeqes <sup>Trans.</sup>  
par vewe de Forester, a prendre de mort boys, et  
pur mesouns de boys vert et cressaunt; et dit qe  
par vewe de Forester il prist taunt de mort boys,  
et pur edifier taunt.<sup>2</sup>—*Pole.* De ceo qil parle de  
mort boys ceo nest pas respouns a ma plainte.—

“ quaginta libras, novem solidos,  
“ et novem denarios. Et idem  
“ Antonius in misericordia.”

The plaintiff had execution of  
the damages by *Elegit*, and there  
is an extent of the defendant's  
lands.

<sup>1</sup> From Harl., and 25,184, but  
corrected by the record, *Placita de*  
*Banco*, Mich., 18 Edw. III., R<sup>o</sup> 381.  
It there appears that the action  
was brought by John de Leybourne  
against Richard son of Howel de  
Hampton. According to the de-  
claration the defendant cut down  
sixty oak-trees, at Cause and Mun-  
sterley (Minsterley, Salop), and  
carried them off.

<sup>2</sup> The plea was, according to the  
roll, “ quod quidam Petrus Corbet,  
“ dominus de Cawes, fuit seisis de  
“ villis de Pultone et Munsterleye,  
“ et de Foresta de Hoxstowe, de  
“ qua quidam Foresta loci ubi præ-  
“ dictus Johannes assignat prædic-  
“ tas arbores fore succisas et as-  
“ portatas sunt parcellæ, et tunc  
“ temporis quidam Ricardus filius  
“ Roberti de Hope fuit seisis de  
“ maneriis de Hope et Mathel-  
“ hurste, qui quidem Petrus dedit  
“ prædicto Ricardo filio Roberti  
“ proavo cujusdam Sibillæ nunc  
“ uxoris prædicti Ricardi filii  
“ Howeli, cujus heres ipsa est, vil-  
“ lam de Pultone, et quatuor dimi-  
“ dias virgatas terræ in villa de  
“ Munsterlee, cum suis mesuagiis

“ et pertinentiis, pro homagio et  
“ servitio suo, et pro escambio terræ  
“ de Hope, et per scriptum suum  
“ concessit prædicto Ricardo filio  
“ Roberti et heredibus suis quod  
“ habeant focalia mortui bosci ad  
“ ignem suum, et haybote, in Foresta  
“ de Hoxstowe, sine visu Forestari-  
“ orum, et housbote et maeremium  
“ ad domos suas construendum per  
“ visum Forestariorum. Et etiam  
“ concessit . . . . .  
“ multa alia proficua, prout in præ-  
“ dicto scripto continetur. . . . .  
“ . . . Et dicit quod idem Ricardus  
“ filius Howeli . . . . . cepit, per  
“ vices, arbores usque ad numerum  
“ prædictum, . . . . . sed dicit  
“ quod quædam arbores fuerunt  
“ parvæ quercus parvi pretii, et  
“ quædam mortui bosci quæ amise-  
“ runt viredinem et fructum, et eas  
“ cepit ad ignem suum et hayas et  
“ gardina sua in prædictis tene-  
“ mentis emendandum, sine visu  
“ forestariorum, et quasdam arbores  
“ cepit, per vices, ad domos suas  
“ construendum in tenementis  
“ prædictis. per visum Forestario-  
“ rum, virtute scripti prædicti. Et  
“ profert hic in Curia prædictum  
“ scriptum quod hoc testatur in  
“ hæc verba.” The deed is set out  
at length. “ Et petit iudicium si  
“ prædictus Johannes aliquam  
“ transgressionem in persona præ-  
“ dicti Ricardi assignare possit,  
“ &c.”

## No. 71.

A.D. 1344. *plaint.*—This exception was not allowed.—Therefore *Pole* said that the defendant came with force and arms, as he complained, and cut and carried off without view, and without livery; ready, &c.—*Moubray*. Do you mean that to be your answer?

*Formedon.* (71.) § David son of David de Fletwyke<sup>1</sup> brought a *Formedon* in the descender against the parson of *Wigan*.—*Seton*. Heretofore this present demandant brought a *Formedon* in the remainder in respect of the same tenements and against ourself, and took his title from a gift made by the same person that he now makes donor, and supposed that they ought to remain to him, as son and heir of his father, in fee tail; judgment of this writ in the descender which is contrariant to that writ.—*Moubray*. We waged law as to non-summons, and thereby abated the writ.—*WILLOUGHBY*. Answer to this writ.—*Seton*. Sir, this present term you abated a writ in the descender because the demandant had previously brought a *Non compos mentis*<sup>2</sup>; why will not this writ abate?—*WILLOUGHBY* and *HILLARY*. Answer.—*Moubray*. We are described as parson, and we found our church seised, and we pray aid of the patron, and the Ordinary, that is to say, of the Bishop of Coventry and Lichfield,

<sup>1</sup> For the real name of the demandant see p. 317, note 2.

<sup>2</sup> See above No. 3 (pp. 6-8).

## No. 71.

*Non allocatur.*—Par quei *Pole* dit qil vint a force et armes, come il se pleint, et coupa et emporta saunz vewe, et saunz livere; prest, &c.<sup>1</sup>—*Moubray*. Voletz ceo pur respouns? A.D. 1344.

(71.)<sup>2</sup> § David le fitz David de Fletwyke porta Formedoun en descendre vers la persone de Wygan. —*Setone*. Autrefoith des mesmes les tenementz, et vers nous mesmes, cesty qore demande porta Formedoun en le remeyndre, et prist son tittle dun doun fait par mesme celuy qil fait ore donour, et supposa qe ceo dust remeyndre a luy, come fitz et heir son pere, en fee taille; jugement de ceo brief en descendre, qest contrariaunt de cel brief.—*Moubray*. Nous gageames la ley de noun somons, et par taunt abatimes le brief.—*WILBY*. Respondez a cesty brief. —*Setone*. Sire, ore ceste terme vous abatistes un brief en descendre pur ceo qe le demandant autrefoith porta *Non compos mentis sue*; pur quei nabatera pas cesty brief?—*WILBY* et *HILL*. Respondez.—*Moubray*. Nous sumes nome persone, et nous trovames nostre eglise seisi, et prioms eyde de patroun, et Lordiner, saver, Levesqe de Lichefelde, et Robert

<sup>1</sup> The replication was, according to the roll, "quod, ubi prædictus Ricardus asserit se cepisse arbores prædictas ad domos construendum, per visum Forestariorum, &c., idem Ricardus cepit arbores illas de injuria sua propria, sicut idem Johannes superius queritur, et non per visum Forestariorum, sicut prædictus Ricardus dicit."

Upon this issue was joined and the *Venire* awarded, but nothing further appears on the roll.

<sup>2</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 545. It there appears that the action was

brought by Simon son of Simon de Holand against Ivo de Langeton, parson of the church of Wigan. In the report this case is confused with No. 85, the *Quod permittat* which the Prior of Hayerholme brought against David son of David de Fletwyke, knight (*Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 446). The demand in this Formedon was of four messuages and other tenements in Wigan (Lancashire) which Thurstan de Holand, knight, gave to Simon son of Thurstan de Holand, the demandant's father, in tail.

## No. 72.

A.D. 1344. and of Robert de Langeton the patron.—*Blaykeston*. We tell you that Robert has nothing in the patronage ; judgment whether of him, &c.—*Moubray*. You do not deny that we ought to have aid of the Ordinary, and it is no greater delay to you for us to have aid of both than of one.—*WILLOUGHBY, ad idem*. It is not right that he should answer without aid, and you do not mention any other patron, and we do not consider that we ought to admit the averment which you tender unless you say something as to the estate of the Ordinary as well as that of the patron ; therefore either accept the aid-prayer or else you will be adjourned.—*Blaykeston*. Then let him have the aid.—*Quære*.

*Nuper  
obiit.*

(72.) § *Nuper obiit* by three persons against four persons. Now two of the demandants did not appear after essoin ; the third proffered himself. Three of the tenants appeared by attorney ; the fourth appeared in person. And the one who appeared in his own person said that he was a villein of the Archbishop of York, and demanded judgment of the writ.—*Midelton*. We cannot now answer to that, nor can he now allege that against us in abatement of the writ, because a *Summoneas ad sequendum simul* must be awarded against our co-parceners, and, until they are severed from us, we cannot reply

## No. 72.

de Langetone patroun.—*Blaik*. Nous vous dioms qe <sup>A.D. 1344.</sup> R. nad rien en le patronage; jugement si de luy, &c.—*Moubray*. Vous ne deditez<sup>1</sup> qe nous ne devoms<sup>2</sup> eyde del Ordiner avoir, et en delay de vous nest ceo plus daver eide de les deux qe del un.—*WILBY*, *ad idem*. Il nest pas resoun qil respoigne saunz eide, et vous ne donez pas autre patroun, et nous ne sumes pas avise de resceyver laverement qe vous tendez si vous ne parletz a lestat Lordiner si bien come del patroun; par quei ou grantes leide, ou vous serrez ajourne.—*Blayk*. Eit leyde donqes.<sup>3</sup>—*Quere*.

(72.)<sup>4</sup> § *Nuper obiit* par iij vers iiij. Ore les ij <sup>*Nuper obiit.*</sup> demandantz apres lessone ne veignent<sup>5</sup> pas; le terce se profri. Les iij tenantz furent<sup>6</sup> par attourne; le quart apparust. Et celuy en propre persone<sup>7</sup> qapparust dit qil est le vileyn Lercevesqe<sup>8</sup> Deverwike, et demanda jugement du brief.—*Midd*. Nous ne pooms a ceo ore respoudre,<sup>9</sup> ne il ne poet a ore countre nous ceo allegger al abatre du brief, qar il covient qe *Summoneas ad sequendam simul* soit agarde vers nos parceners, et, taunqeles soient severes de nous, nous ne poms a cel ex-

<sup>1</sup> Harl., dites rien.

<sup>2</sup> 25,184, deymes.

<sup>3</sup> After the count "Ivo," according to the roll, "dicit quod ipse  
" invenit ecclesiam suam prædic-  
" tam seisitam de prædictis tene-  
" mentis, et quod ipse non potest  
" præfato Simoni sine Roberto de  
" Langetone, chivaler, ecclesiæ  
" prædictæ patrono, et Rogero  
" Episcopo Coventrensis et Lyche-  
" feldensis, loci illius diocesano, inde  
" repondere. Et petit auxilium de  
" ipsi patrono et Episcopo, sum-  
" monendis in eodem Comitatu,  
" &c.

" Ideo ipsi summoneantur quod  
" sint hic a die Paschæ in tres sep-  
" timanas ad respondendum simul  
" cum, &c. Idem dies datus est  
" partibus prædictis hic, &c."

<sup>4</sup> From Harl., and 25,184.

<sup>5</sup> Harl., venent.

<sup>6</sup> furent is from Harl. alone.

<sup>7</sup> The words en propre persone are omitted from Harl.

<sup>8</sup> 25,184, Lercevesqe.

<sup>9</sup> Harl., avoir a ore a ceo respouns, instead of a ceo ore respoudre.

## No. 73.

A.D. 1344. to this exception.—HILLARY. The confession which he has now made will be entered, because, if he were to remain silent now, he would never have the exception on another day.—*Midelton*. That may be to the advantage of the Archbishop, but we cannot now reply to him as, for instance, by saying that the Archbishop is dead. And this, Sir, is a *Nuper obiit*, in which case, if this writ were to abate, we should not have any other.—WILLOUGHBY. You would have a Mort d'Ancestor against the Archbishop and the others.—*Quære*.—And a day was given over, and a *Summoneas ad sequendum simul*, and a protestation was entered that the demandant who appeared, &c., did not admit that the tenant was a villein, because HILLARY said that by law a villein cannot be a party to any continuance.—And WILLOUGHBY said that, even if the Archbishop were dead, the writ would abate through the tenant's confession, because he would remain the villein of the church; therefore from every point of view the writ will abate afterwards, and the delay which the demandant now takes is to his own damage.

Replevin. (73.) § Nicholas Tryvet brought a Replevin against James de Audele, who avowed the taking. And the plaintiff said that the place of taking was without the avowant's fee. It was found by inquest taken at *Nisi prius* that the place was without his fee.—HILLARY. Inasmuch as he has effected the taking without his fee, in which case the Statute of Marlborough<sup>1</sup> purports that he must pay ransom, he must be taken.—*Pole*. No, never in Replevin anything more than damage suffered by the party, and amercement; but on a writ founded on the statute it is otherwise.—STONORE. The statute says in general terms that one who takes a distress without his fee shall pay ransom; is it then right, even though the party has sued by Re-

<sup>1</sup> 52 Hen. III. (Marlb.), c. 1 and c. 2.

## No. 73.

cepcion replier.—HILL. Sa conussaunce a ore serra A.D. 1344.  
 entre, qar sil tust a ore il navera pas lexeccion a  
 un autre jour.—*Midd.*<sup>1</sup> Ceo put estre en avantage  
 del Ercevesqe, mes nous ne poms ore replier a luy  
 come a dire qe Lercevesqe<sup>2</sup> est mort. Et, Sire,  
 cest un *Nuper obiit*, ou si cesty brief abatist nous  
 naveroms nul.—WILBY. Mort dauncestre vers Lerch-  
 evesqe et les autres.<sup>3</sup>—*Quere.*—*Et dies datus est* outre,  
 et *Summoneas ad sequendum simul*, et protestacioun  
 entre qe la demandante qe vint, &c., ne conust pas  
 luy estre vileyn, qar HILL. dit qe le vileyn ne poet  
 par ley estre partie a nul continuaunce.—Et WILBY  
 dit qe tut fut Lercevesqe<sup>2</sup> mort qe le brief par sa  
 conussaunce sabatereit, qar il demureit vileyn del  
 eglise; par quei a touz regardes le brief abatera  
 apres, et le delay qe le demandant prent ore est  
 son damage.<sup>4</sup>

(73.)<sup>5</sup> § Nicholas Tryvet porta *Replegiari* vers James *Replegiari*.  
 Daudele, qavowa la prise. Et le pleintif dit qe hors  
 de son fee. Trove fut par enquest pris par *Nisi*  
*prius* qe hors de son fee.—HILL. Il covient, pur  
 ceo qil ad fait la prise hors de son fee, en quel  
 cas lestatut de Marleberge voet qil fra ranceoun,  
 qil soit pris.—*Pole.* Nanyl, jammes en *Replegiari*  
 forqe damage a la partie et amerciement; mes en  
 brief foundu sur estatut autre est.—STON. Lestatut  
 parle generalment qe celuy qe fait destresse hors  
 de son<sup>6</sup> fee fra ranceoun; est ceo donqes resoun  
 qe, tut eit<sup>7</sup> la partie suy par<sup>8</sup> *Replegiari*, et un

<sup>1</sup> Harl., *Moubray*.

<sup>2</sup> 25,184, Lerchevesqe.

<sup>3</sup> Harl., Levesqe est autre, instead  
 of Lerchevesqe et les autres.

<sup>4</sup> The conclusion of this report is  
 in Y.B., Easter, 19 Edw. III., No. 21.

<sup>5</sup> From Harl., and 25,184.

<sup>6</sup> son is from Harl. alone.

<sup>7</sup> eit is from Harl. alone.

<sup>8</sup> par is from Harl. alone.

## Nos. 74, 75.

A.D. 1344. plevin, that when a fact is found to be of that nature upon which the punishment and the ransom are given by the statute, you should be excused because a particular writ has been used?—*Pole*. Yes, Sir, that has always been the practice since the statute was made.—And, because enquiry had not been made as to the damages, a new *Venire facias* issued.

Dower. (74.) § Dower for the wife of H. Vavasour. The tenant vouched H. son and heir of H., the demandant's husband, to be summoned in the same county and other counties. And he came, and warranted, in accordance with the deed of his ancestor, as one who had nothing by descent, and rendered dower to the demandant.—*Midelton*. We pray our dower against the tenant, because the heir is vouched in another county.—*HILLARY*. The COURT adjudges that you do recover against the heir, if he have assets in the same county, and, if not, against the tenant, and that the tenant do then recover to the value against the heir.

Dower. (75.) § Dower. *Blaykeston*, for the tenant, vouched.—*Moubray*. You shall not be admitted to that voucher, because you entered by our husband.—*Blaykeston*. He does not counterplead the voucher in accordance with any law; and inasmuch as he does not deny the seisin of the person whom we vouch, or of his ancestors, since the seisin of her husband, judgment: for even though it were the fact that I entered at one time by her husband, which I do not admit, and afterwards aliened, and took back an estate from the person whom I vouch, it would be right that I should have my voucher, or else I should lose my compensation to the value, which would not be law.—*Moubray*. I should oust you from view by such a plea, and this counterplea was also adjudged good in the like case of *Clyfford*.—*Blaykeston*. In that case the demandant alleged that the tenant entered by her husband, and continued



## Nos. 74, 75.

tiel fait est trove sur quel le punissement est done A.D. 1344. et ranceoun par statut, par luser du brief serrez excuse?—*Pole*. Sire, oyl, il ad este use puis le temps qe lestatut fut fait.—Et, pur ceo qe ne fut pas enquys des damages, novel *Venire facias* issist.

(74.)<sup>1</sup> § Dowere pur la femme H. Vavasour. Le Dowere. tenant voucha H. fitz et heir H., baroun la demandante, qe serra somons en mesme le counte, et autres countes, qe vynt, et garrauntist par le fait<sup>2</sup> de son auncestre, come celuy qe rien nad par descente, et rendi dowere a la demandante.—*Mid*. Nous prioms nostre dowere vers le tenant, qar leir est vouche en autre counte.—*HILL*. La COURT agarde qe vous recoveres vers leir, sil eit<sup>3</sup> assetz en mesme le counte, et, si noun, vers le tenant, et il a la value vers leire.<sup>4</sup>

(75.)<sup>1</sup> § Dowere. *Blayk.*, pur le tenant, voucha.—Dowere. *Moubray*. A ceo vouchier ne serrez resceu, qar vous entrastes par nostre baroun.—*Blayk*. Il le countreplede par nulle ley; et desicome il ne dedit pas la seisine de celuy, ne de ses auncestres, qe nous vouchames, puy la seisine son baroun, jugement: qar, tut fut il issint qe jeo entroy a un temps par son baroun, come jeo ne conusse pas, et puy eusse aliene, et repris estat de celuy qe jeo vouche, il serra<sup>5</sup> resoun qe jeo eusse mon vouchier, ou autrement jeo perdroy ma value, qe ne serreit pas ley.—*Moubray*. Jeo vous ousteroy, par tiel plee, de vewe, et auxint ceo countreplee fut ajuge bon en autiel cas de Clyfforde.—*Blaik*. La alleggea la demandante qe le tenant entra par son baroun, et cel

<sup>1</sup> From Harl., and 25,184.

<sup>2</sup> 25,184, feat.

<sup>3</sup> Harl., ad.

<sup>4</sup> The words vers leire are from

Harl. alone, where they have been inserted by interlineation.

<sup>5</sup> Harl., nest il pas, instead of ii serra.

## No. 76.

A.D. 1344. that estate; and as to view the counterplea is given by statute.<sup>1</sup>—*Moubray*. There was no continuance of estate alleged in the case which I have mentioned to you; and, on the other hand, it is right that I should be favoured in this suit just as much as on a writ of Entry, in which case your degree would be supposed to be by the husband, notwithstanding any subsequent change of estate.—*Blaykeston*. If I now have only a fee tail, or a term for life, is it right that I should now be ousted from my voucher?—*STONORE*. You will not have the voucher by reason of any suppositions in opposition to the deed which he alleges; but if your tenancy be such as you allege, plead it.—*Blaykeston*. Inasmuch as he does not counterplead our voucher in accordance with any law, we pray that the vouchee be summoned.—*HILLARY*. Because you do not deny that you entered by her husband, and do not assign any other cause for your voucher, we oust you from the voucher.—*Blaykeston*. Never seised so that he could endow her; ready, &c.—And the other side said the contrary.

Account. (76.) § Account in socage against a man and his wife. And the writ was formed upon the case. And the plaintiff counted in accordance with the writ,

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 48.

## No. 76.

estat continua; et quant a la vewe le countreplee A.D. 1344.  
 est done par statut.—*Moubray*. Y ny avoit pas continuaunce allegge en le cas qe jeo vous ay<sup>1</sup> dit; dautre part, il est resoun qen ceste suyte jeo soy favoure taunt avant com en brief Dentre, en quel cas vostre degre serreit suppose par le baroun, *non obstante* chaunge destat puyt.—*Blayk*. Si jeo ney ore forqe fee taille, ou terme de vie, est il resoun qe jeo soy ouste ore<sup>2</sup> de mon voucher?—*STON*. Par posiciouns, vous naverez pas le voucher countre le fait qil allegge; mes si vostre tenance soit tiel come vous allegges, pledez le.—*Blayk*. Pur ceo qil countreplede par nulle ley le voucher, nous prioms qil soit somons.—*HILL*. Pur ceo qe vous ne deditez<sup>3</sup> pas qe vous entrastes par son baroun, et autre cause pur vostre voucher ne<sup>4</sup> donetz, nous vous oustoms del voucher.—*Blayk*. Unqes seisi si qe dower la puyt; prest, &c.—*Et alii e contra*.

(76.)<sup>5</sup> § Acompte en sokage vers un homme,<sup>6</sup> et sa femme. Et le brief fut fourme,<sup>7</sup> sur le cas. Et counta acordaunt au brief, et declara<sup>8</sup> coment son

<sup>1</sup> 25,184, ei.

<sup>2</sup> Harl., unqore.

<sup>3</sup> Harl., ditz.

<sup>4</sup> Harl., nous.

<sup>5</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 582, d. It there appears that the action was brought by Robert son of Robert le Neve, of Ashby, against Thomas Meriele of Burgh, and Margaret his wife, “de placito quare, cum de communi consilio Regni Regis Angliæ provisum sit quod custodes terrarum et tenementorum quæ tenentur in socagio heredibus terrarum et tenementorum illorum, cum ad plenam ætatem pervenerint, reddant rationabilem comptum

“ suum de exitibus de terris et tenementis illis convenientibus de tempore quo custodiam illam habuerint ratione minoris ætatis heredum prædictorum, iidem Thomas et Margareta præfate Roberto rationabilem comptum suum de exitibus convenientibus de terris et tenementis suis in Askeby, Herlyngflet, Somerleton, Lound, et Fretone, quæ tenentur in socagio, et quorum custodiam iidem Thomas et Margareta habuerunt dum prædictus Robertus infra ætatem fuit, reddere contradicunt, &c.”

<sup>6</sup> Harl., le baroun, instead of un homme.

<sup>7</sup> Harl., porte.

<sup>8</sup> 25,184, desclarra.

## No. 76.

A.D. 1344. and showed how his ancestor held the lands (and he gave the particulars) of the Countess of Pembroke, in socage, by fealty and twelve pence *per annum* in lieu of all services, and died in fealty to her, so that after his death, by reason of the non-age of the plaintiff, the same tenements came into the wardship of the wife, the plaintiff's mother, to whom the inheritance could not descend, to wit, on such a day in such a year, and remained in her hands and those of her husband from the day aforesaid until such a day in such a year when the plaintiff became of age, and in the meantime they took the profits and issues arising from the same lands, wherefore he had many times afterwards prayed an account, and they had refused it tortiously and contrary to the custom of the Realm, and to his damage, &c.--*Skipwith* denied all that was alleged to be contrary to the custom of the Realm, and the

## No. 76.

auncestre tient les terres, et les mist en certeyn, de la Countesse de Penbroke, en sokage, par fealte<sup>1</sup> et xij<sup>2</sup> deners par an pur touz services, et murust en sa fealte, dount apres sa mort, par nounage le pleintif, mesmes les tenementz devyndrent en la garde la femme miere le pleintif, a qi leritage ne put descendre, saver, tiel jour, tiel an, et en la meyn mesme cele et de son baroun, du jour avaunt dit tanqe a tiel jour, tiel an, demurent, qil vynt a son age, et en le mene temps prist les profitz et issuez provenantz des mesmes les terres, par quey il sovent puis ad prie lacompte, et ils lount dedit a tort et countre la custume de Realme,<sup>3</sup> et ses damages, &c.<sup>4</sup> —*Skyp.* defendi quant qe<sup>5</sup> est countre la custume<sup>6</sup>

<sup>1</sup> Harl., defalte.

<sup>2</sup> MSS. of Y.B., ij. The correction is made in accordance with the record.

<sup>3</sup> Harl., Roialme.

<sup>4</sup> The declaration was, according to the roll, “quod cum prædicti Thomas et Margareta habuerunt in custodia sua, ratione minoris ætatis suæ, pro eo quod eadem Margareta est mater prædicti Roberti et propinquior amica, medietatem sex mesuagiorum, quater viginti acrarum terræ, unius acræ prati, duarum acrarum pasturæ, sex acrarum turbariæ, et quinque solidatarum redditus, cum pertinentiis, in prædictis villis, quæ quidem tenementa tenentur de Maria Comitissa Pembrochiæ in socagio, ut de dimidio Hundredo suo de Luthynglond, per fidelitatem, et servitium duodecim denariorum per annum pro omni servitio, a Festo Sancti Michaelis Archangeli anno regni domini Regis nunc Angliæ quarto, quod præ-

dictus Robertus pater prædicti Roberti obiit, usque ad idem Festum Sancti Michaelis anno regni domini Regis nunc quinto-decimo, et per idem tempus receperunt proficua de exitibus provenientibus de terris et tenementis prædictis, dum sic infra ætatem fuit, ad valentiam decem librarum per annum, ad rationabilem compotum eidem Roberto, cum ad plenam ætatem suam pervenisset, per formam statuti, reddendum, prædicti Thomas et Margareta compotum suum de exitibus provenientibus de prædictis terris et tenementis de tempore quo custodiam illam habuerunt eidem Roberto, dum ad plenam ætatem suam pervenit, non reddiderunt sed ei reddere contradicunt, unde dicit quod deterioratus est, et dannum habet ad valentiam centum librarum, et inde producit sectam, &c.”

<sup>5</sup> 25,184, tanqe.

<sup>6</sup> Harl., comune.

## No. 77.

A.D. 1344. damage, and demanded judgment of the count because the plaintiff did not count as to what age he was when the ancestor died, and when he supposed that they had seized the wardship, so that, at the end of the time at which he had counted that he had come of age, it might appear by his declaration that he was of full age.—This exception was not allowed, because the matter would come by way of answer.—*Skipwith*. Then we tell you that he is not yet of full age, nor of such age that such a writ is given for him.—*Grene*. Ready, &c., that he is of such age that this writ is given for him.—*Skipwith*. He is there in his own person; let him be inspected by the Court.—And so he was.—And he seemed to be of the age of sixteen years and more.—*STONORE*. This action is not given before he arrives at his full age.—*HILLARY*. Because it seems to the COURT that he is not of such an age that such a writ is given for him, do you, defendant, go. Adieu.—And so note that, although he will have his land when sixteen years of age, he will not have his action of Account before he is of full age.

Formedon. (77.) § Formedon.—*Birton*. We tell you that the tenements are of the manor of B., and held as of that manor which is Ancient Demesne; judgment of

## No. 77.

de Realme,<sup>1</sup> et damages, et demanda jugement de A.D. 1344. counte pur ceo qil ne counta pas de quel age il fut au temps qe launcestre murust,<sup>2</sup> et quant ils supposent qils happerunt la garde issint qe par la fyn del temps qil ad counte qil vynt a son age qe purra apparer par sa moustraunce qil fut de pleyn age.—*Non allocatur*, qar ceo vendra par respouns.—*Skyp*. Donques vous dioms qil nest pas de pleyn age unqore, ne de tiel age qe tiel brief est done pur luy.<sup>3</sup>—*Grene*. Prest, &c., qil est de tiel age qe ceo brief luy est done.—*Skyp*. Il est la en propre persone ; soit vewe de Court.—*Et ita fuit*.—Et il sembloit del age de xvj aunz et plus.<sup>4</sup>—*Ston*. Cest accion nest pas done avaunt qil viengne a son pleyn age.—*Hill*. Pur ceo qe semble a la COURT qil nest pas de tiel age qe tiel brief soit done pur luy, vous, defendant, alez a Dieu.<sup>5</sup>—*Et sic nota*, tut avera il sa terre de xvj aunz,<sup>6</sup> il navera<sup>7</sup> pas accion Dacompte avant son plein age.

(77.)<sup>8</sup> § Formedoun.—*Byrtone*. Nous vous dioms <sup>Forme-</sup> que les tenementz sont del maner [de B., et tenu <sup>doun.</sup> del manere],<sup>9</sup> qest aunciene demene ; jugement du

<sup>1</sup> Harl., Roialme.

<sup>2</sup> 25,184, murust.

<sup>3</sup> The plea was, according to the roll, "quod non debent inde ei ad hoc breve respondere, quia dicunt quod, cum per breve prædictum supponitur quod hujusmodi custodes heredibus terrarum et tenementorum quæ tenentur in socagio rationabilem computum de exitibus provenientes de hujusmodi terris et tenementis, cum ad plenam ætatem pervenerint, reddere teneantur, idem Robertus filius Roberti est infra ætatem, et hoc parati sunt verificare, unde petunt iudicium, &c."

<sup>4</sup> According to the roll "Et prædictus Robertus filius Roberti, præsens in Curia, hoc non dixit."

<sup>5</sup> According to the roll, the judgment was "Ideo consideratum est quod prædicti Thomas et Margareta eant inde sine die, et prædictus Robertus filius Roberti nihil capiat per breve suum, &c. Sed nihil de misericordia quia infra ætatem, &c."

<sup>6</sup> aunz is omitted from Harl.

<sup>7</sup> Harl., nad.

<sup>8</sup> From Harl., and 25,184.

<sup>9</sup> The words between brackets are from Harl. alone.

## No. 78.

A.D. 1344. the writ.—And WILLOUGHBY put him to say that the tenements were parcel of the manor, which was extraordinary.—*Skipwith*. We tell you that within that manor there is the fee of Waure, in which fee the tenements demanded are, and that fee is frank fee; ready, &c.—*Birton*. He does not say that there are divers fees within the manor, so that it may be consistent with his statement to assert that the whole manor is within that fee; and then his plea would have the effect of an averment that the whole manor is frank fee. And if his plea be taken in that manner then his plea can be averred by the record of Domesday. But if he were to say afterwards that there are divers fees, and would confess that one is Ancient Demesne, and another frank fee, it would be otherwise.—WILLOUGHBY. We understand that he does not deny that part of the manor is Ancient Demesne.—*Birton*. Then we tell you that this fee of which they speak is Ancient Demesne; ready, &c.—And the other side said the contrary.

(78.) § Bartholomew de Fanacourt and Lucy his wife brought *Quod permittat villanos facere sectam ad molendinum* against Henry Fitz Aucher, as appears above.—*Grene* showed how Laderana, through whose hand the seisin was laid, was seised of the manor discharged of the suit, how from her that manor and other tenements descended to Sibyl and Joan as to two daughters and one heir, and how by partition the manor to which the villeins belong of whom it is supposed that they ought to do the suit, &c., was



## No. 78.

brief.—Et WILBY lui mist a dire que les tenementz A.D. 1344. furent parcelle del maner, *quod mirum fuit*.—*Skyp*. Nous vous dioms que deinz cel maner si ad il le fee de Waure, deinz quel fee les tenementz demandez sount, quel fee est fraunc fee; prest, &c.—*Byrtone*. Il ne dist<sup>1</sup> pas que deinz le maner sont divers fees, issint que ove son dit put estere<sup>2</sup> que tut le manoir soit deinz cel fee; et donques serreit a cel entente son plee daverer que tut le manoir est fraunc fee. Et si son ple soit pris par la manere, donques son plee est averable par recorde de Domesday.<sup>3</sup> Mes sil deist apres<sup>4</sup> qils furent divers fees, et voleyt<sup>5</sup> conustre lun estre aunciene demene, et lautre fraunc fee, autre serreit.—WILBY. Nous entendoms qil ne dedit pas que parcelle del manoir ne soit aunciene demene.—*Byrtone*. Donques vous dioms que cel fee dount ils parlent<sup>6</sup> est aunciene demene; prest, &c.—*Et alii e contra*.

(78.)<sup>7</sup> § Barthelmeu<sup>8</sup> Fanacourt et Luce sa femme porterent *Quod permittat villanos facere sectam ad molendinum* vers Henre Fitz Aucher,<sup>9</sup> *ut patet supra*.—*Grene* moustra coment Ladran,<sup>10</sup> par qi mein<sup>11</sup> la seisine est lie, fut seisi del maner descharge de suyte, de qi descendirent cel maner et autres tenements a S.,<sup>12</sup> et J.<sup>13</sup> come as ij filles et un heir, et par purpartie le maner de quei les villeins sount que suppose est que duissent faire la suyte, &c., fut

<sup>1</sup> Harl., dedit.

<sup>2</sup> Harl., estre.

<sup>3</sup> Harl., Demysday.

<sup>4</sup> apres is omitted from Harl.

<sup>5</sup> voleyt is omitted from Harl.

<sup>6</sup> Harl., il pleint, instead of ils parlent.

<sup>7</sup> From Harl., and 25,184. The words *Quod permittat* appear in the margin of both MSS., but are not contemporary with the text of either. The report is a continuation of

that of the *Quod permittat* in Michaelmas Term, 17 Edw. III. (No. 85). The record, *Placita de Banco*, Mich., 17 Edw. III., R<sup>o</sup> 528, is there cited (Rolls edition, p. 365, &c.).

<sup>8</sup> Harl., Birtone; 25,184, Bertyn.

<sup>9</sup> MSS. of Y.B., Hauger.

<sup>10</sup> Harl., la derrin.

<sup>11</sup> Harl., mesme.

<sup>12</sup> MSS. of Y.B., J.

<sup>13</sup> MSS. of Y.B., A.

## No. 79.

A.D. 1344. allotted to Joan, &c.; from Joan the descent was to Henry against whom the writ is brought. From Sibyl, the other parcener, who had other lands by the partition, &c., he conveyed the right to her purparty by descent to Miles de Stapleton, and so Henry holds in coparcenary with Miles his coparcener, without whom he cannot either charge or discharge, and he prays aid of Miles.—*Moubray*. It is your own withdrawing of suit.—This exception was not allowed.—*Moubray*. Then we tell you that, while our writ was pending, Henry has by fine divested himself of the manor; and so he cannot be in the condition of a parcener.—*HILLARY*. Then you confess that he is not tenant, and therefore abate your own writ.—*Moubray*. I do not confess that; but he is not in the condition of a parcener.—*HILLARY*. Even if he had aliened, and taken back an estate, before the writ was purchased, he would have aid; therefore let him have the aid.

*Scire  
facias.*

(79.) § John de Staunton and Amy his wife sued a *Scire facias* upon a fine by which Thomas de Cranthorne rendered to them and the heirs of John. It was alleged in bar that they had themselves been subsequently seised by virtue of the same fine, and so the fine had been executed.—*Sadelyngstanes*. Whereas they say that we have been subsequently seised by force of the same fine, ready, &c., that we have not been subsequently seised either by force or by execution of the fine, &c.—And the other side said the contrary.

## No. 79.

allote a J., &c.; de J. descendi a H. vers qi le A.D. 1344. bref est porte. De S.<sup>1</sup> lautre parcenere qavoit autres terres en purpartie, &c., conveya le dreit de sa purpartie par descente a Milles de Stappeltone,<sup>2</sup> et issint tient il en parcenerie ove Milles son parcener, saunz qi il ne poet charger ne descharger, et prie eide de luy.<sup>3</sup>—*Moubray*. Cest de vostre sustrere demene.—*Non allocatur*.—*Moubray*. Donques vous dioms qe, pendaunt nostre brief, par fyn, H. sad demys del manoir; et issint ne put il estre en estat de parcener.—*HILL*. Donques conussez vous qil nest pas tenant, donques abates vostre brief.—*Moubray*. Ceo jeo ne conusse pas; mes en estat de parcener nest il pas.—*HILL*. Tut ust il aliene, et repris estat, devant le brief purchace, il avera eide; par quei eit leide.

(79.)<sup>4</sup> § Johan Stauntone et Amie sa femme suerent *Scire facias* hors dun fyn par quel Thomas Cranthorne rendist a eux et les heirs J. Fut allegge en barre qils mesmes furent seisis puys par vertue de mesme la fyn, et issint la fyn execut.<sup>5</sup>—*Sadl*. La ou ils dient qe nous fuymes<sup>6</sup> seisis puys par force de mesme la fyn, prest, &c., qe nous fumes pas seisis puys par force ne execucion de la fyn,<sup>7</sup> &c.—*Et alii e contra*.<sup>8</sup>

<sup>1</sup> MSS. of Y.B., A.

<sup>2</sup> The surname de Stappeltone does not appear on the roll.

<sup>3</sup> The aid-prayer, as it appears in the record, is printed in Y.B., Mich., 17 Edw. III., p. 371, note 2.

<sup>4</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 315. It there appears that the *Scire facias* was sued by John de Staunton, and Amy his wife, against Simon de Staunton, parson of the church of Staunton, to have execution of a

fine levied between the said John and Amy, plaintiffs, and Thomas de Cranthorne, deforciant.

<sup>5</sup> According to the roll Simon pleaded "quod post finem prædicti tum præfati Johannes et Amia fuerunt seisiti de prædictis tenementis virtute finis prædicti, unde petit judicium, &c."

<sup>6</sup> Harl., sumes.

<sup>7</sup> The words la fyn are omitted from Harl.

<sup>8</sup> The replication was, according to the roll, "quod ipsi non fuerunt

Nos. 80, 81.

A.D. 1344. (80.) § *Scire facias* upon a fine against Alice late wife of J. Thyos.—*Moubray*. We tell you that the tenements of which he demands execution against us are not included in the fine; ready, &c.—*Midelton*. Included; ready, &c.—And the other side said the contrary.

Detinue of a charter. (81.) § Detinue of a charter sued by two men and their wives against the Prior of Wymondley. One husband and his wife previously failed to appear, wherefore they were summoned to prosecute, and now the writ is served.—*Sadelyngstanes* prayed severance.—*WILLOUGHBY*. Will you divide the charter? And it is as much right that one should have it as the other.—*Sadelyngstanes*. This suit touches the inheritance, and though one will not prosecute, it is not right that the other should thereby suffer disherison; and the defendant is not put to any mischief, because delivery made to one, or recovery by one will be a good answer for him against the other. And on a writ of Wardship of the body, brought by two persons, one will recover the whole by reason of the non-suit of the other; and if parceners were tenants it would be hard that we, who prosecute the suit, should by the non-suit of our coparcener be excluded from our answer and our warranty, &c.—*WILLOUGHBY*. And it would also be hard for your coparcener who would have to compensate you *pro rata*, and would lose his warranty.—*Seton*. If it were so, it would be his own default, because he would not prosecute his suit with us.—And afterwards *WILLOUGHBY*, with great reluctance, adjudged the severance, and awarded the Distress against the

## Nos. 80, 81.

(80.)<sup>1</sup> § *Scire facias* hors dune fyn vers Alice que fut la femme J. Thyos.<sup>2</sup>—*Moubray*. Nous vous dioms que les tenementz dount il<sup>3</sup> demande execucion vers nous ne sont pas compris deinz la fyn; prest, &c.—*Midd*. Compris; prest, &c.—*Et alii e contra*. A.D. 1344.  
*Scire facias*.

(81.)<sup>1</sup> § Detenue de chartre suy par deux et lour femmes vers le Priour de Wymidle. Lun baroun et sa femme autrefoith ne vyndrent pas, par quei ils furent somons a suyre, et ore le brief servi.—*Sadl*. pria la severaunce.—*WILBY*. Voletz vous partir la chartre? Et il est taunt<sup>5</sup> de resoun que lun leit come lautre.—*Sadl*.<sup>6</sup> Ceste suyte touche enheritement, et mesqe lun ne voille pas suyre, par taunt nest pas resoun que lautre soit enherite<sup>7</sup>; et le defendant nest pas a meschief, qar le bail<sup>8</sup> fait a lun ou le recoverir de lun luy serra bon<sup>9</sup> respouns vers lautre. Et en brief de Garde de corps porte par deux par nounsuyte [de lun lautre recoversa lentier; et si les parcnens serront tenantz il serreit fort que nous que fesoms la suyte par nounsuyte]<sup>10</sup> de nostre parcnere serroms forclos de nostre respouns et nostre garrauntie, &c.—*WILBY*. Et auxi fort serreit pur vostre parcnere que freit *pro rata* a vous, et perdreit sa garrauntie.—*Setone*. Si issint fuit<sup>11</sup> ceo serreit sa defaut qil ne voleit suyre ovesqe nous.—Et puy *WILBY*, a grand<sup>12</sup> peyne, agarda la severaunce, et agarda la Destresse vers le defendant. Detenue de chartre.<sup>4</sup>

“seisiti de tenementis illis virtute  
“finis prædicti post levationem  
“ejusdem finis.” Issue was joined  
upon this.

Before the issue was tried, Simon died, and John and Amy sued another *Scire facias* against other tenants.

<sup>1</sup> From Harl., and 25,184.

<sup>2</sup> Harl., de S.

<sup>3</sup> Harl., ele.

<sup>4</sup> The words de chartre are from Harl. alone.

<sup>5</sup> 25,184, teint.

<sup>6</sup> Harl., *Sch*.

<sup>7</sup> Harl., *desherite*.

<sup>8</sup> Harl., *ley*.

<sup>9</sup> Harl., *bien*.

<sup>10</sup> The words between brackets are from Harl. alone.

<sup>11</sup> 25,184, *soit*.

<sup>12</sup> Harl., *graunt*.

## No. 82.

A.D. 1344. defendant.—And note that the COURT is not apprised what charter this is, nor whether it touches the inheritance of the plaintiffs or not, but at a future time, when the defendant comes, it will be known by way of answer, as it seems.

Formedon. (82.) § John son of John le Clerk, of Great Marlow, brought against the Master of the Hospital of St. Thomas the Martyr of Southwark a Formedon in the descender upon a gift made by Godard, the Master's predecessor, and demanded a moiety of the issues of two of the said Master's mills after view.—*Gaynesford*. The Master answers as tenant of the mills, and tells you that they are without the fee and the seignory of the demandant; judgment whether without a specialty, &c.—*Thorpe*. There is as much reason for being answered without showing a specialty on this writ as on a Formedon in the reverter.—*WILLOUGHBY*. There is a title in the writ.—*Seton*. Would it be right to charge our soil at his wish? Besides, we are not in a common case, because he takes his title from a gift made by a former Master of the Hospital of St. Thomas

## No. 82.

—*Et nota* qe Court nest pas apris quele chartre ceo A.D. 1344. est, ne si ceo touche lour heritage ou noun, mes en temps avenir, quant le defendant vendra, ceo savera homme par voie de respouns, a ceo qil semble.<sup>1</sup>

(82.)<sup>2</sup> § Johan le fitz Johan Clarke de Grand Merlowe<sup>3</sup> porta vers le Meistre del Hospital de Seint Thomas le Martyr de Suthwerke<sup>4</sup> Formedoun en descendre dun doun fait par Godard,<sup>5</sup> son predecessour, et demanda la moite<sup>6</sup> des issues de ij moleyns le dit Meistre apres la viewe.—*Gayn*. Le Meistre respound come tenant des molyns, et vous dit qe hors del fee et la seignurie del demandant; jugement si saunz especialte, &c.—*Thorpe*. Il est taunt de resoun en cesty brief destre respondu saunz especialte come en Formedoun en le *reverti*.—*WILBY*. Il y ad title en le brief.—*Setone*. Serreit il resoun de charger nostre soil par son veut? Ovesqe ceo, nous ne sumes pas en comune cas, qar il prent son title dun doun fait par le Meistre jadis del Hospital de Seint

<sup>1</sup> The words a ceo qil semble are from Harl. alone.

<sup>2</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 635. It there appears that the action was brought by "Johannes filius Johannis le Clerke de Magna Merlawe" against William, Master of the Hospital of St. Thomas the Martyr, of Southwark, in respect of "medietatam exituum provenientium de duobus molendinis ipsius Magistri, cum pertinentiis, in Magna Merlawe, quam Godardus quondam Magister Hospitalis Sancti Thomæ Martyris de Suthwerke dedit Johanni de Magna Merlawe Clerke et heredibus de corpore suo exeuntibus, et quæ

"post mortem prædicti Johannis de Magna Merlawe, et Johannis filii et heredis ejusdem Johannis de Magna Merlawe descendere debet" to the demandant.

In the count the descent is made from John "de Magna Merlawe Clerke," to John as son and heir, and from the last-named John "isti Johanni de Magna Merlawe, Clerke, qui nunc petit."

<sup>3</sup> The words de Grand Merlowe are omitted from Harl.

<sup>4</sup> The words le Martyr de Suthwerke are omitted from Harl.

<sup>5</sup> Harl., G.; 25,184, Godefrey. Godard is from the record.

<sup>6</sup> MSS. of Y.B., moite de deux parties.

## No. 82.

A.D. 1344. the Martyr, &c., whereas a gift made by Abbot, Prior, or Master, if it was not made with the consent of his Convent or Chapter, cannot be of any avail after the death of the donor. And if it was with consent, &c., that ought to be proved by specialty. Therefore even though he were entitled to an answer in respect of the gift of another person, he would not, without showing a specialty, be by law entitled to an answer in respect of such a gift which could charge the successor.—WILLOUGHBY. Then you can take your plea to the action, as by saying that inasmuch as he does not show a specialty which proves the gift to have been made with the consent of the Convent, in this case such a gift does not constitute a charge against you who are successor, and upon that you can abide judgment; and in this case it seems to some persons an extraordinary plea for you, where he demands a moiety of the profits of your mill, to plead in the manner in which you have.—*Gaynesford*. Certainly, Sir, we take exception to the writ.—WILLOUGHBY. Will you abide judgment on the plea which you have given?—*Gaynesford*. We will imparl. And he came back and said that there was an alienation before the Statute.<sup>1</sup>—WILLOUGHBY. By whom and to whom?—*Gaynesford*. By the same person to whom he supposes the gift to have been made to one Godard of Southwark.—*Thorpe*. Show whether this Godard to whom he supposes the alienation to have been made is the same as he whom we suppose to be donor, or another person.—*Gaynesford*. Will you accept the averment?—*Thorpe*. You ought by right to show this, because, if it was the same person, then this cannot be an alienation, but an extinguishment, which would have to be by specialty, as by release.—*Birton, ad idem*. One who is seised of a rent charge cannot extinguish it in the tenant of the soil except by release, nor can he convey it to another person except by grant followed by attornment;

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1 (*De donis conditionalibus*).



## No. 82.

Thomas le Martir,<sup>1</sup> &c., ou le donn fait par Abbe, A.D. 1344. Priour, ou Meistre, sil ne fut del assent de son Covent ou Chapitre, ne poet estre de value apres la mort le donour. Et sil fut par assent, &c., ceo covient estre prove par especialte. Par quei tut fut il dautri donn responsable, de tiel donn qe purreit<sup>2</sup> charger le successour par ley serreit il pas saunz especialte responsable.—WILBY. Donques poez vous prendre vostre plee<sup>3</sup> al accion, come a dire desicome il ne moustre pas especialte qe prove qe le donn se fit del assent del Covent, en quel cas vers vous gastes successour tiel donn ne charge pas, et sur ceo demurer en jugement; et si semble il a ascun gent merveillous plee pur vous, la ou il demande de vostre molyn la moyte des profitz, a pleder par la manere.—*Gayn*. Certes, Sire, nous chalengeoms<sup>4</sup> le brief.—WILBY. Voletz vous demurer sur le plee qe vous avez done?—*Gayn*. Nous enparleroms. Et revint et dit qe aliene avant statut.—WILBY. Par qi, et<sup>5</sup> a qi?—*Gayn*. Par mesme celuy a qi il suppose le donn a un Godard<sup>6</sup> de Suthwerke.<sup>7</sup>—*Thorpe*. Moustrez le quel ceo soit mesme le Godard<sup>6</sup> a qi il suppose lalienacioun qe nous supposoms donour ou autre persone.—*Gayn*. Voletz laverement?—*Thorpe*. Vous le<sup>8</sup> deyvetz faire par resoun, qar, sil fut mesme la persone, donques ne put ceo pas estre alienacioun, mes esteindre, quel cherreit en especialte com par relees.—*Byrtone*, *ad idem*. Celuy qest seisi dun rente charge il ne la put esteindre en<sup>9</sup> le tenant du soil forqe par relees, ne a autre se put il demettre forqe par grant et attournement;

<sup>1</sup> The words le Martir are omitted from Harl.

<sup>2</sup> Harl., serra.

<sup>3</sup> 25,184, title.

<sup>4</sup> Harl., chalengeames.

<sup>5</sup> et is omitted from Harl.

<sup>6</sup> Harl., G. ; 25,184, Godefrey.

<sup>7</sup> The words de Suthwerke are omitted from Harl.

<sup>8</sup> 25,184, ne.

<sup>9</sup> Harl., forqe par.

## No. 83.

A.D. 1344. and in both cases it must be effected by specialty.—  
 WILLOUGHBY. Do you think, if the alienation had been made by release, that he would show it to you? as meaning to say that he would not. Therefore will you accept the averment?—*Thorpe*. Not aliened before the statute<sup>1</sup>; ready, &c.

*Quare  
impedit.*

(83.) § The King brought a *Quare impedit* against John de Segrave and others, and the King by letter under the Privy Seal commanded the Justices that they should, for a certain cause, cause proceedings to be stayed, and that they should stay proceedings in the said plea, so that they should do nothing whereby the others should be ousted, on this occasion, from the effect of their presentation.—*STONORE*. We have heard

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 1 (*De donis conditionalibus*).

## No. 83.

et en lun et lautre cas ceo covient estre fait par <sup>A.D. 1344</sup> especialte.—WILBY. Quides vous, si lalienacioun ust este fait par relees, qil le moustra a vous? *quasi diceret non*. Par quei voletz laverement? <sup>1</sup>—*Thorpe*. Nient aliene avant statut; prest, &c.<sup>2</sup>—*Et alii e contra*.

(83.)<sup>3</sup> § Le Roi porta *Quare impedit* vers Johan <sup>*Quare impedit*</sup> de Segrave et autres, et le Roi maunda par lettre south la targe a les Justices qe par certeyn cause qils duissent faire surseer, et qils surseysent el dit plee, issint qils rien ne<sup>4</sup> feissent par quei qe les autres<sup>5</sup> feussent oustes, a ceste foith, de leffecte de lour presentement.<sup>6</sup>—*Ston*. Nous avoms entendu la

<sup>1</sup> The plea, as entered on the roll, was “quod actio ad petendum tene-  
“ menta sic data competit de tene-  
“ mentis sic datis et alienatis post  
“ statutum de donis conditionali-  
“ bus editum et non ante. Et dicit  
“ quod prædictus Johannes avus  
“ prædicti Johannis filii Johannis  
“ le Clerke de Magna Merlawe  
“ medietatem prædictam, cum per-  
“ tinentiis, ante editionem statuti  
“ prædicti, alienavit prædicto God-  
“ ardo tunc Magistro Hospitalis  
“ prædicti, et hoc paratus est veri-  
“ ficare, unde petit judicium, &c.”

<sup>2</sup> The replication, upon which issue was joined, was, according to the roll, “quod prædictus Johannes,  
“ avus, &c., non alienavit prædic-  
“ tam medietatem, cum pertinentiis,  
“ prædicto Godardo ante editionem  
“ statuti prædicti, sicut prædictus  
“ Magister dicit.”

The *Venire* was then awarded. Nothing further appears on the roll.

<sup>3</sup> From Harl., and 25,184, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 621. It there appears that the action was

brought by the King against John de Segrave, and others mentioned in the writ of Privy Seal cited below. There was one writ against Segrave, and another against the rest.

<sup>4</sup> The words rien ne are omitted from Harl.

<sup>5</sup> autres is omitted from 25,184.

<sup>6</sup> The writ was, according to the roll, in the form following:—“Ed-  
“ ward par la Grace de Dieu Roy  
“ Dengleterre et de Fraunce, et  
“ Seignur Dirlande a noz chers et  
“ foialx Johan de Stonore et ses  
“ compaignons noz Justices du  
“ Bank saluz. Come nadgaires,  
“ par cause qe done nous feust en-  
“ tendre qe nous avoions droit de  
“ presenter a lesglise de Fennytan-  
“ tone par reson de la garde de la  
“ terre et de leyr Johan de Beau-  
“ mont esteante en nostre main,  
“ eussions presente a mesme lesglise  
“ nostre cher clerc Johan de Mel-  
“ bourne, et sur ceo plee soit meu  
“ devant vous par nostre brief  
“ *Quare impedit* entre nous et Johan  
“ de Segrave, chivaler, Esmon

No. 83.

A.D. 1344. the King's pleasure, and therefore we shall not make any continuance, nor do anything else; and aid yourselves as best you know how.—*Birton*. We pray a writ to the Bishop.—*WILLOUGHBY*. We have no warrant to give judgment, and without judgment you will not have a writ to the Bishop.—*Birton*. The King has made suit, and his attorney has taken continuance on the same suit, and thereupon an inhibition has been directed to the Bishop, by which his hands are tied, so that he cannot admit our presentee; and since the King has commanded you that we are to have the effect of our presentation, and we cannot have it without a writ out of this Court, we pray a writ to the Bishop. And this is not prejudicial to the King, because in every judgment, where the King is a party, his right is saved.—And then a writ to the Bishop was awarded.

## No. 83.

volunte du Roi, et pur ceo ne ferroms nul continu- A.D. 1344.  
 aunce, ne autre chose; et eidez vous a meuth qe  
 vous saverez.—*Byrton*. Nous prioms brief al Evesqe.  
 —*WILBY*. Nous navoms pas garraunt de rendre  
 jugement, et saunz jugement naverez pas brief al  
 Evesqe.—*Byrton*. Le Roi ad fait la suyte, et son  
 attourne pris continuaunce a mesme la suyte, et  
 sur ceo inhibicioun est direct al Evesqe, par quel  
 ses meyns sount lies qil ne poet nostre presente  
 resceyvere; et del heure qe le Roi vous ad maunde  
 qe nous eioms leffecte de nostre presentement, et  
 ceo ne poms avoir saunz brief hors de ceinz, nous  
 prioms brief al Evesqe. Et ceo nest pas prejudice  
 au Roi, qar en chescun jugement, ou le Roy est  
 partie, son dreit est salve.—Et puis brief est agarde *Judicium*.<sup>1</sup>  
 al Evesqe.<sup>2</sup>

“ Goneville persone de lesglise de  
 “ Tiringtone, William de Neutone,  
 “ persone de lesglise de Segrave,  
 “ William de Loughtone, persone  
 “ de lesglise de Wytherdeleye, et  
 “ Johan de Repyngdone, persone  
 “ de lesglise de Overtone, les queux  
 “ cleymment avoir droit en lavoeson  
 “ de lesglise avantdite, et ja nostre  
 “ dit presente est venu devant nous  
 “ et nous ad certifie coment il ne  
 “ poet a ceste foiz avenir a les  
 “ munimentz et evidences tochantz  
 “ la declaracion de nostre droit et  
 “ du droit du dit heir en celle par-  
 “ tie, et nous nient voillantz qe les  
 “ avantditz Johan de Segrave,  
 “ Esmon, William, William, et  
 “ Johan de Repyngdone soient de-  
 “ stourbez outre reson de leffecte  
 “ de leur presentement par colour  
 “ de nostre presentement ou du  
 “ plee avantditz, vous mandons qe  
 “ vous facez surseer de mesme le  
 “ plee devant vous, et soeffrez qe  
 “ les avantditz Johan de Segrave,

“ Esmon, William, William, et  
 “ Johan de Repingdone puissent  
 “ avoir et enjoier leffecte de leur  
 “ presentement a la dite esglise a  
 “ ceste foiz, nient contresteaunt  
 “ nostre dit presentement et le plee  
 “ susdit, Sauvant toutesfoiz a nous  
 “ et au dit heir nostre droit de pre-  
 “ senter autrefoiz a mesme lesglise,  
 “ qant nous le voudrons chalenger.  
 “ Done souz nostre prive seal a  
 “ Oxoñ le xxvij jour de Novembre  
 “ lan de nostre regne Dengleterre  
 “ disoytisme et de France quint.”

<sup>1</sup> *Judicium* is from 25,184 alone.

<sup>2</sup> According to the roll “ Ideo  
 “ consideratum est quod prædictus  
 “ Johannes de Segrave habeat breve  
 “ Episcopo Lincolnensi, Dyoces-  
 “ ano, quod, non obstante reclama-  
 “ tione domini Regis, ad præsentationem prædicti Johannis ad  
 “ præsens ad prædictam ecclesiam  
 “ idoneam personam admittat, &c.,  
 “ Salvo jure Regis cum alias inde  
 “ loqui voluerit, &c., et similiter

## No. 84.

A.D. 1344.

*Scire  
facias.*

(84.) § The Abbot of Lire sued a *Scire facias* against the Dean of Wimborne upon a judgment on a recovery of an annuity delivered for the Abbot's predecessor against the Dean's predecessor. And, because the Dean claimed to hold of the patronage of the King as his free chapel, he heretofore had aid of the King. And afterwards the King gave his command to proceed, and on the day given the Dean's attorney could not find *Stouford*, who was of his counsel, and therefore it was entered on the roll that "*nihil dicit quare predictus Abbas executionem inde versus eum habere non debet.*"<sup>1</sup> And then it was said to the Abbot that he should sue to the King. And now a letter under the Privy Seal came to the Justices, with a bill enclosed, reciting that the Deanery is of the foundation and patronage of the King, and that the Justices, in order to save the King's right, were to hear the party in discharge, &c.—*STONORE*. It is right that they should say what they will for the King.—*R. Thorpe*. The King is not a party; and, Sir, we have not yet sued to the King as it was said that we were to do; therefore we pray a day over.—*W. Thorpe*. You see plainly how by this judgment delivered against our predecessor there is not supposed to be any ground or foundation of a lay contract, but a submission to spiritual judgment, which judgment, as appears by the record, is alleged to have ordained this annuity in lieu of certain tithes which the Dean is alleged to have had, so that there was a *quid pro quo*, whereas these tithes belonged from all previous time to the Dean and Chapter of the same chapel, the particulars of which were shown to you, and so there was no reason for this annuity, nor any specialty of the Dean with the assent of his Chapter, nor is there any specialty of the King; who is patron. And we demand judgment whether by such

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<sup>1</sup> The Latin words are from the entry on the roll itself.

## No. 84.

(84.)<sup>1</sup> § Labbe de Lyre suist *Scire facias* vers le Dean de Wynborne hors dun jugement sur un recoverir dune annuite taille pur le predecessour Labbe vers le predecessour le Dean. Et, pur ceo qe le Dean clama a tener del avowere le Roi come sa fraunc chapelle, il avoit autrefoith eide du Roi. Et puis le Roy manda daler avaunt, a quel jour latourne le Dean ne puit avoir *Stouford*, qe fut de soun conseil, par quei en roulle est entre *quod nihil dicit quare executio fieri non debet*. Et donques fuit dit al Abbe qil suist au Roy. Et ore lettre south la targe vint as Justices, ove un bille enclos, herceaunt qe le Deane est de la foundacioun et lavowere le Roi, et qe les Justices, pur le dreit le Roy sauver, oyassent la partie en descharge, &c.—*STON*. Il est resoun qe pur le Roy ils dient ceo qils vodront.—*R. Thorpe*. Le Roi nest pas partie; et, Sire, nous navoms pas suy unqore au Roi come dit nous fut; par quei nous prioms jour outre.—*[W.] Thorpe*. Vous veiez bien coment par ceo jugement taille vers nostre predecessour nest pas suppose pee ne fondement de lay contract, mes par submission de jugement espirituel, le quel jugement, a ceo qe piert par le recorde, dust avoir ordene cele annuite pur certeyns dismes qe le Dean dust avoir eu, issint *quid pro quo*, la ou celes dismes de tut temps adevant furent au Dean et Chapitre de mesme la chapelle, com homme vous moustra les parcelles, et issint ny avoit pas cause de cel annuite, ne especialte du Dean del assent de son Chapitre, ne du Roi qest patroun ny ad il pas. Et deman-

A.D. 1344.

*Scire  
facias.*

“ jure prædicti heredis, &c.” There was also a similar writ to the Bishop in favour of the other defendants.

<sup>1</sup> From Harl., and 25,184. The report is evidently in continuation

of Y.B., Trin., 17 Edw. III., No. 46. The record (*Placita de Banco*, Trin., 17 Edw. III., R<sup>o</sup> 362,) is there cited. The aid of the King and subsequent proceedings as found in the record are at p. 607, note 4 (Rolls edition).

## Nos. 85, 86.

A.D. 1344. a judgment delivered on the confession of our predecessor, who was only guardian, and could not charge except for his own time, you ought to have execution against us who are successor.—And this answer was entered on the roll.—And nevertheless it was said to the plaintiff that he was to sue to the King.—And a day was given, &c.

*Quod permittat.*

(85.) § The Prior of Haverholme brought *Quod permittat villanos facere sectam ad molendinum*, to wit, his villeins A., B., and C. in respect of all corn growing on such land, and wheat, &c., to the thirtieth dish, of which land A. holds so much, and B. so much, &c. And he counted that this is his right, and the right of his church, and whereof his predecessor was seised, &c., by the hands of the villeins aforesaid, and others previously holding the same land, taking the esplees as in the multure of the mill, &c., until the defendant withdrew the villeins from the suit, &c., to his damage, &c.—*Moubray* denied the damages alone.—*WILLOUGHBY* said that the esplees should be laid as in toll of the mill.—*Thorpe*. It will not be so unless the mill is in demand.—And note that some say that on this writ in which a right is demanded, the party should deny the right and the damages also.—And others said not.—*Quære*.

*Cessavit.*

(86.) § *Cessavit* against a poor woman.—*Seton*. The demandant is himself tenant by his own disseisin; judgment of the writ.—*Notton*. You shall not be ad-



Nos. 85, 86.

doms jugement si par tiel jugement taille sur conus- A.D. 1344.  
 aunce de nostre predecessour, qe ne fut forqe gardeyn,  
 et ne pout charger forqe pur son temps, si devers  
 nous, qe sumes successour, execucion devez avoir.—  
 Et ceo respouns entre en roulle.—Et ja le meyns  
 dit est al pleintif qil sue au Roi.—*Et dies datus*  
*est, &c.*

(85.)<sup>1</sup> § Le Priour de Haverholme porta *Quod per-* *Quod per-*  
*mittat villanos facere sectam ad molendinum,* saver, *mittat.*  
 A., B., et C. ses villeyns de touz les<sup>2</sup> blees cres-  
 sauntz en tiel terre, et forment, &c., al xxx<sup>3</sup> veisselle,  
 dount A. tient taunt, et B. taunt, &c. Et counta  
 qe cest son dreit, et le dreit<sup>4</sup> de sa eglise, et dount  
 son predecessour fut seisi, &c., par les meyns les  
 villeyns avantdits et autres mesme la terre tenantz  
 devant, pernant les esplees come en multure du molyn,  
 &c., tanqe le defendant les ad sustret de la suyte,  
 &c., a ses damages, &c.—*Moubray* defendi par my  
 damages *tantum*.—*WILBY* dit qe les esplees serrount  
 lies come en toune de molyn.—*Thorpe*. Noun serra  
 si le molyn ne fut en demande.<sup>5</sup>—*Et nota* qe asquns  
 dient qe homme en ceo brief ou dreit est demande  
 qe partie defendra le dreit<sup>6</sup> et damages auxi.—*Et*  
*aliqui dicunt quod non*.—*Quære*.

(86.)<sup>7</sup> § *Cessavit* vers une poure femme.—*Setone*. *Cessavit*.  
 Le demandant mesme est tenant par sa disseisine;  
 jugement du brief.—*Nottone*. A ceo ne serrez resceu,

<sup>1</sup> From Harl., and 25,184. There is among the *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 446, a case in which the Prior of Haverholme brings a similar *Quod permittat* against David son of David de Fletwyke in respect of villeins doing suit to the Prior's mill of Leuesyngham (Leasingham, Lincolnshire). After the declara-

tion view is prayed and granted, and no further pleadings appear.

<sup>2</sup> The words touz les are omitted from Harl.

<sup>3</sup> Harl., tressime.

<sup>4</sup> The words et le dreit are omitted from Harl.

<sup>5</sup> Harl., demene.

<sup>6</sup> Harl., dirreit.

<sup>7</sup> From Harl., and 25,184.

## No. 87.

A.D. 1344. mitted to that, because we have a day by *Prece partium*, and so you have affirmed yourself to be our tenant.—*Seton*. Then we tell you that since the last continuance you have disseised us, and so you are tenant, and you take the profits; ready, &c.—*Notton*. We have not disseised her since the last continuance; ready, &c.—And the other side said the contrary.

*Scire  
facias.*

(87.) § The King heretofore brought against the Abbot of Bec Hellouin a *Scire facias* upon a recovery on *Quare impedit*, by which he recovered the same presentation against the Abbot. The Prior of Okebourne, as general attorney of the Abbot, pleaded, in bar of execution, that the King had ratified the estate of the person who was presentee at the time when he recovered, which ratification was equivalent to a presentation. And, besides, the King, by reason of the war between him and the French, seized the lands, fees, and advowsons which belonged to the said Abbot in England, and leased them, with [other] fees and advowsons, to the Prior, for the time that the war might continue, rendering £1,000 *per annum* (and he showed a patent to that effect), and he did not understand that, contrary to that lease, by which the King had divested himself, during the lease, of every profit except the farm, the King would be answered.—*W. Thorpe*. As to the first point, the ratification of the estate of the parson cannot have the effect of a presentation, because the clerk had the church by the presentation of the person who presented him and not by the person who confirmed it. And inasmuch as execution of the recovery cannot be accomplished in any other manner than by presentation *W. Thorpe* demanded judgment, and he also produced a record, *sub pede sigilli*, of the ninth year of the present King, in which the King had, in the King's Bench at York, before SCROPE,

## No. 87.

gar nous avoms jour par *Prece partium*, et issint A.D. 1344. avetz affermê vous estre tenant. — *Setone*. Donques vous dioms qe puis la darreyn continuaunce vous nous avetz disseisi, et issint estes tenant, et pernetz les profits; prest, &c.—*Nottone*. Nous ne la disseisoms pas puis; prest, &c.—*Et alii e contra*.

(87.)<sup>1</sup> § Le Roy autrefoith porta vers Labbe de Bekherlewyn<sup>2</sup> *Scire facias* hors dun recoverir sur *Quare impedit*, par quel il recoveri vers Labbe mesme son presentement. Le Priour de Okebourne, come attourne general Labbe, pleda, en barre del execucion, qe le Roy avoit ratifie lestat celuy qe adonques fut presente quant il recoveri, quel ratificacioun countervalust presentement. Et, ovesqe ceo, le Roy seïst les terres, fees, et avowesouns, par cause de la guerre entre luy et ces<sup>3</sup> de Fraunce, qe furent al dit Abbe en Engleterre, et les lessa, ove fees et avowesouns, al Prior de Okebourne pur le temps qe la guerre durra, rendaunt<sup>4</sup> mille *li.* par an, et moustra patent de cel, et nentendy pas qe countre cel lees, par quel, duraunt le lees, le Roy se avoit demys de chesqun profit sauf la ferme, il voleit estre respondu.—[*W.*] *Thorpe*. Quant a primer point, la ratificacioun de lestat la persone ne poet estre effect de presentement, qar le clerk avoit leglise del presentement celuy qe luy presenta, et noun pas par cely qe conferma; et, desicome l'execucion del recoverir ne poet par autre manere estre forny forqe par presentement, il demanda jugement, et auxint mist avaunt recorde, *sub pede sigilli, de anno nono* le Roi qore est, ou le Roy avoit en Bank le Roi a

<sup>1</sup> From Harl., and 25,184. The case is differently reported in Y.B., Easter, 18 Edw. III., No. 38 (Rolls edition, pp. 157-171). The record there cited appears in the *Placita de Banco*, Easter, 18 Edw. III., R<sup>o</sup> 355.

<sup>2</sup> Harl., Lyre.

<sup>3</sup> 25.184, ses ennemis, the word ennemis having been inserted later.

<sup>4</sup> 25,184, duraunt.

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A.D. 1344 execution in a like case against the Abbot of Thorney. And, said *W. Thorpe*, as to the other point, even though the King leased as above, it does not lie in the Prior's mouth to have advantage of that lease, because he is a stranger; and although he might allege that, still, since the King had a right to present by reason of the recovery, and he is not ousted from that by his lease by express words, the presentation abides with him; therefore judgment for the King.—*Grene*. Advowson of a church is nothing else than presentation to a church when it is void, and, since the King then leased the advowson, he could not, during the time that his lease continued, have a presentation, which is the effect of the advowson.—*W. Thorpe*. When the King had recovered by the judgment, he had a right to present; he had another right by his seizure; therefore, although he divested himself of that which he had seized, still the right which had accrued to him by his recovery remained to him.—*R. Thorpe*. I fully grant you that it remained to him, but not for the purpose of having execution during the time that another remained seised of the advowson by his lease; but, as soon as that lease expires, I fully grant you that he will have execution.—*Blaykeston*. The Prior speaks entirely for himself, and says nothing whatever for the Abbot who is party to the plea.—*WILLOUGHBY*. If the Prior were not his co-monk, what you say would be good; but the record purports that the Prior is the co-monk of the Abbot.—*W. Thorpe*. It was never so pleaded, nor does his patent, which he produced, and by which his plea should be warranted, purport it.—And then it was asked by the COURT where the patent was. And it was not in Court nor entered on the roll.—Of this *W. Thorpe* prayed record for the King.—*R. Thorpe*. We vouch the record of Chancery touching all the lands, fees, and advowsons of the Priory of Okebourne, which are the same lands, fees, and advowsons that

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Everwike, devant SCROPE, execucion en autiel cas vers A.D. 1344. Labbe de Thorneye. Et, quant a lautre point, tut lessa le Roi *ut supra*, ceo ne gist pas en sa bouche, qar il est estraunge daver avantage par cel lees; et coment qil poait cel allegger, unqore del heure que le Roi par le recoverir avoit un dreit de presenter, et de cel il nest pas ouste par expresse parole par son lees, le presentement luy demoert; par quei jugement pur le Roi.—*Grene*. Avowesoun deglise nest nul autre mes presentement al eglise quant ele est voide, et quant le Roy lest adonques lavowesoun, il ne put pur le temps que son lees dure avoir presentement, quel est defect de lavowesoun.—[*W.*] *Thorpe*. Quant le Roy avoit recoveri par le jugement avoit il un dreit de presenter; un autre dreit avoit il par son seisir; donques, tut soy demist il de ceo qil avoit seisi, unqore le dreit quel luy fut acru par son recoverir luy demura.—*R. Thorpe*. Jeo grant bien que cely demoert, mes nient pur avoir execucion pur le temps qautre demurt seisi de lavowesoun de son lees; mes quel heure que cel lees cesse jeo grant bien qil avera execucion.—*Blayk*. Le Priour parle tut pur luy mesme, et nul rien pur Labbe qest partie au plee.—*WILBY*. Si le Priour ne fut son comoigne vous deissetz bien; mes le recorde voet que le Priour est comoigne Labbe.—[*W.*] *Thorpe*. Unques ne fut il issint plede,<sup>1</sup> ne sa patent quel il moustra, et dount son plee serreit garraunti, nel veot<sup>2</sup> pas.—Et donques fut demande de COURT ou la patent fut. Et ele ne fut pas en Court nentre en roule.—De quei [*W.*] *Thorpe* pria record pur le Roi.—*R. Thorpe*. Nous vouchoms record de Chauncellerie que totes les terres, fees, et avowesouns de la Priourie de Okebourne, que sont mesmes les terres, fees, et

<sup>1</sup> plede is from Harl. alone.| <sup>2</sup> Harl., voet.

## No. 87.

A.D. 1344. were leased to the Prior.—And STONORE said that, if the vacancy occurred before the King leased, the King would have this presentation to this clerk, and, if afterwards, then it is otherwise.—*Grene*. Whether it was before or after the vacancy, he will not have the presentation before the expiration of his lease: for suppose that the King has a right to present, and the church is void, and, before he presents, he gives the advowson to another person, *eo ipso* he divests himself of the presentation; and, for the same reason, when he leases for a certain time, he is ousted from presenting before the expiration of his lease.—STONORE. Will you confess that the church was void before the lease?—*R. Thorpe*. This is a *Scire facias*, and we can say whatever we will that falls under the discretion of the Court. And we tell you that we sued in Parliament for the Prior, making a suggestion as to this suit; and it was adjudged that, if the Chancellor could be apprised that the vacancy occurred after the lease was made to us, he should revoke the King's presentation. Thereupon the Chancellor directed the Ordinary to certify to him the time of the vacancy, which is since the lease; and so the Chancellor, whose duty it is to execute the judgment of Parliament, is apprised that the church became void after the lease; and so by the same judgment of Parliament the King's presentation is revocable; and we do not understand that the King will be answered; and as to this matter we vouch the record of Chancery.—STONORE. We well recollect that the Ordinary certified as you say; but it was then said that the time of vacancy will not appear by certificate of the Ordinary. But will you say that the church became void after the lease?—*W. Thorpe*. He should not be admitted to do so; the plea is pleaded; therefore we pray execution.—They were adjourned.<sup>1</sup>

<sup>1</sup> For the conclusion, as shown by the record, see Y.B., Easter, 18 Edw. III. (Rolls Edition), p. 169, note 6.

## No. 87.

avowesouns qe furent lessez al Priour.—Et STON. A.D. 1344. dit qe si la voidaunce escheit<sup>1</sup> avaunt qe le Roy lessa, a cest clerke qe le Roy avera cest presentement, et si puyz donques est il autre.—*Grene.* Fut ele avant, fut ele puyz voidaunce, il avera pas le presentement devant son lees fini: qar jeo pose qe le Roi eit dreit de presenter, et qe leglise soit voide, et, avaunt qil presente, il doune lavowesoun a un autre, *eo ipso* il soy demette del presentement; et, par mesme la resoun, ou il lest par certeyn temps, devant son lees fyny<sup>2</sup> il est ouste de presenter.—STON. Volez vous conustre qe leglise fut voide avant le lees?—*R. Thorpe.* Cest un *Scire facias*, et nous pooms dire qanqe<sup>3</sup> nous voloms qe chiet en descressioun de Court. Et vous dioms qe nous suimes en Parlement pur le Priour, et fesaunt suggestioun de cest suyte; et fut agarde qe si le Chauncelier purra estre appris qe la voidaunce escheit puyz le lees fait a nous qil repellereit le presentement le Roi.<sup>4</sup> Sur quei le Chauncelier manda al Ordiner, qil luy certifia le temps de la voidaunce, quel est puyz le lees; et issint est le Chauncelier, qest executour del agarde de Parlement, appris qe leglise se voida puyz, et issint par mesme lagarde de Parlement le presentement le Roy reppellable; et nentendoms pas qe le Roi voille estre respondu; et de ceste chose vouchoms recorde de Chauncellerie.—STON. Il nous sovient<sup>5</sup> bien qe Lordiner certifia com vous parletz; mes fut dit<sup>6</sup> adonques qe temps de voidaunce ne vendra pas par certificacioun de Ordiner. Mes voletz vous dire qe leglise se voida puyz le lees?—[*W.*] *Thorpe.* Il ne serreit resceu; le plee est plede; par quei nous prioms execucion.—*Adjornantur.*

<sup>1</sup> Harl., cherreit.

<sup>2</sup> fyny is omitted from Harl.  
Harl., quant.

<sup>4</sup> The words le presentement le Roi are from Harl. alone.

<sup>5</sup> 25,184, surmette.

<sup>6</sup> dit is omitted from Harl.

## No. 88.

A.D. 1344. (88.) § Thomas Haselshawe brought an Attachment on Prohibition against the Commissary of the Bishop of Bath on the ground that he held plea in Court Christian, when the said Thomas had sued a writ of Trespass against the Bishop of Bath, surmising against the said Thomas that he had been excommunicated for this suit by writ of Trespass. The Commissary pleaded to the country that he did not hold any plea. And it was found at *Nisi prius* that he did hold plea, to the plaintiff's damage of five hundred marks. And now the plaintiff prays his judgment.—*Huse*. He is excommunicated, and see here the letter of the Bishop of Bath which testifies the fact; therefore you ought not to deliver judgment for him.—*Moubray*. There is no mean time between verdict and judgment.—*R. Thorpe*. The Justice could not have allowed the letter of excommunication at *Nisi prius*. Besides, this letter has been made since that time.—*Huse, ad idem*. If a Protection were produced for the defendant, or outlawry were alleged in the person of the plaintiff, you would stay judgment. So in the matter before us.—*WILLOUGHBY*. The Bishop himself is, in a manner, a party, and it is his Commissary; therefore it would be a strong measure to delay judgment: for the Bishop can always testify that the plaintiff is excommunicated at his pleasure.—*R. Thorpe*. The Bishop is not now a party, nor does the writ purport that the defendant is his Commissary, nor are you apprised of that, nor can that be held as not denied by the defendant, because he could not have denied it, that is to say, he could not have said that he was not Commissary, because that was not an issue. And, further, the words of the writ are "*nuper Commissarius*," and the writ thus supposes that he was Commissary in time past, and not at the time at which the plea was pleaded. And I well know that it is law that by testification of a Bishop, and his letter which is, as it were, of



## No. 88.

(88.)<sup>1</sup> § Thomas Haselshawe porta Attachement A.D. 1344. sur Prohibicioun vers le Commissare Levesqe de Baaz de ceo qil tient plee en Court Christiene de ceo qe le dit Thomas avoit suy brief de Trans vers Levesqe de Baaz, surmettant a luy qil estoit escomenge pur cele suyte el brief de Trans. Le Commissare pleda au pays qil tient nul plee. Et par *Nisi prius* fut trove qil tient plee, a damage le pleintif de V<sup>c</sup><sup>2</sup> marcs. Et ore il prie son jugement. —*Huse*. Il est escomenge, et veiez la lettre de Levesqe de Baaz qe le tesmoigne; par quei pur luy ne devez jugement rendre.—*Moubray*. Il ny ad pas meen temps entre le verdit et jugement.—*R. Thorpe*.<sup>3</sup> Al *Nisi prius* le Justice ne poait pas avoir allowe lettre descomengement. Ovesqe ceo, ceste lettre est fete puis cel temps.—*Huse, ad idem*. Si Proteccioun fut mys avaunt pur le defendant, ou utlagerie allegge en le pleintif, vous surserrez del jugement. *Sic in proposito*.—*WILBY*. Levesqe mesme en manere est partie, et cest son Commissare; donqes serreit il fort a delaier le jugement: qar Levesqe luy tesmoignera estre escomenge a sa volunte.—*R. Thorpe*. Levesqe nest pas partie a ore, ne le brief ne voet pas qe le defendant est son<sup>4</sup> Commissare, ne de ceo nestes vous pas appris, ne ceo ne poet estre nient dedit de luy, qar il ne put avoir dedit cella, saver, qil ne fut pas Commissare, qar ceo ne fut pas issue. Et unqore voet le brief *nuper Commissarius*, [quel brief suppose qil fut en temps passe Commissare, et noun pas a temps del plee plede].<sup>5</sup> Et jeo say bien qil est ley qe par tesmoigneance Devesqe, et sa lettre, quele est en le cas come de recorde, partie

<sup>1</sup> From Harl., and 25,184.

<sup>2</sup> Harl., C.

<sup>3</sup> The name is omitted from Harl.

<sup>4</sup> Harl., nest pas, instead of est son.

<sup>5</sup> The words between brackets are omitted from Harl.

## No. 89.

A.D. 1344. record in the case, a party can be disabled, and so great mischief can be assigned in such a case. But nevertheless it is law, and particularly where he is himself a party.—*W. Thorpe*. We pray that, whatever you may do with regard to the party, you will grant a *Capias* for the King.—*Stonore*. You will not have that before judgment; and the party will have a day over; and in the mean time he will be able to take advice.—And *quære* the remedy.

Formedon. (89.)<sup>1</sup> § Formedon against Margaret Harang, tenant by her warranty in Formedon, who warranted only one acre of land, where the original writ was for two parts of a manor.—*Notton* counted that the tenant by her warranty deforced him, &c., of one acre, &c., in the two parts of the manor.—And afterwards it was alleged that, whereas the demandant demanded as brother and heir of his brother, his brother had issue one John who is still living in Shropshire, and the land demanded is in Essex.—*Thorpe*. There never was any such person; ready, &c.—*Grene*. Will you

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<sup>1</sup> See Mich., 17 Edw. III., No. 8.

## No. 89.

serra fait nounable, si put homme en cas assigner A.D. 1344. graunt meschief. Mes nepurquant il est ley, nomenment ou il mesme est partie.—[W.] *Thorpe*. Nous prioms,<sup>1</sup> quei qe vous facez<sup>2</sup> pur la partie, qe vous grauntes *Capias* pur le Roy.—*STON*. Avant jugement laverez pas; et la partie avera jour outre; et en le meen temps se purra il conseiller.—Et *quere* remedie.

(89.)<sup>3</sup> § Formedoun vers Margarete<sup>4</sup> Harang, tenant par sa garrauntie en Fourmedoun, qe garrauntist forqe une acre de terre, ou loriginal fut de ij parties dun maner.—*Nottone* counta qele par sa garrauntie luy deforcea, &c., un acre, &c., en les ij parties du maner.<sup>5</sup>—Et puy allegge fut, ou le demandant,<sup>6</sup> demanda come frere<sup>7</sup> et heir a son frere, qe son frere avoit issue un J.<sup>8</sup> qest en pleyne vie en Salope, et la terre demande est en Essexe.<sup>9</sup>—*Thorpe*. Il ny avoit unqes nul tiel; prest, &c.<sup>10</sup>—*Grene*.

<sup>1</sup> prioms is from Harl. alone.

<sup>2</sup> Harl., judgement, instead of quei qe vous facez.

<sup>3</sup> From 25,184 alone, but corrected by the record, *Placita de Banco*, Mich., 18 Edw. III., R<sup>o</sup> 467. It there appears that the action was brought by Nicholas de Stodham against William Vaghan, knight, and Joan his wife, in respect of two parts of the manor of Plumburgh (Plumberrow) in Essex (with certain exceptions), which John de Flore, chaplain, gave to Thomas de Stodham and Isabel his wife in special tail.

Joan was admitted to defend on default of her husband, and (to omit other matters not relating to the report) vouched, as to one acre, Margaret Harang, who appeared and warranted.

<sup>4</sup> MS. of Y.B., Johan.

<sup>5</sup> It was alleged in the count, according to the record, that “de ipsis Thoma et Isabella descendit jus per formam, &c., cuidam Thomæ ut filio et heredi, &c., et de ipso Thoma, quia obiit sine herede de se, descendit jus per formam, &c., isti Nicholao, ut fratri et heredi, qui nunc petit, &c.”

<sup>6</sup> MS. of Y.B., la demandante, instead of le demandant.

<sup>7</sup> MS. of Y.B., soer.

<sup>8</sup> MS. of Y.B., A.

<sup>9</sup> The plea was, according to the roll, that “idem Thomas habuit exitum, Johannem nomine, qui adhuc est in plena vita in Comitatu Salopiæ commorans, et hoc parata est verificare, unde petit judicium, &c.”

<sup>10</sup> The replication, upon which issue was joined, was, according to the roll, that “idem Thomas frater

## No. 90.

A.D. 1344 say that there is not any such person?—WILLOUGHBY. He does say so.—*Huse*. Ready, &c., that there is. And we pray a writ to the Sheriff of Shropshire.—*Thorpe*. You will have it where the land is.—*Grene*. The issue came from us, and in the affirmative.—HILLARY. The men of Shropshire cannot know whose son he is so well as those of the county in which the demand is. And where will you say that he was born?—*Grene*. At Shrewsbury.—STONORE. He is now at Shrewsbury, and to-morrow he may be in London; where will you aver that he is?—*Thorpe*. We will aver that there never was any such person; ready, &c.—*Grene*. Although you tender an averment in general terms, that will be taken only as a traverse of our special matter, which came from us, that is to say, whereas we say that there is a particular person, your statement is tantamount to saying that there is no such person.—*Thorpe*. Then do you refuse the averment that there never was any such person?—*Grene*. We will aver that there was such a person, and the allegation of his existence comes from us, and it is for us to assign the place where, as ought to be done, and otherwise it would not be an answer; therefore the jury will come from that place and no other; so it was in Gigolle's case in the Bedford Eyre.—WILLOUGHBY. Enter their plea, and give a day.—And the *Venire facias* was directed to be from the neighbourhood in which the land is, that is to say, it was directed to the Sheriff of Essex.

*Audita  
Querela.*

(90.) § Hildebrand Suderman sued, as general attorney of the Duke of Guelders, execution on a statute merchant against Thomas Colle, John Colle, and a third person, whereupon they sued an *Audita Querela*, supposing that they had payed, and that they had an acquittance. And now no one appeared to prosecute the *Audita Querela* but John Colle, who produced an

## No. 90.

Voletz dire qil ny ad nul tiel?—WILBY. Si dit il. A.D. 1344.  
 —Huse. Prest, &c., qe cy. Et prioms brief a  
 Vicounte de Salope.—Thorpe. Vous laveretz ou la  
 terre est.—Grene. Lissu vynt de nous, et laffirmatif.  
 —HILL. Ces de Salope ne pount saver qi fitz il  
 est si proprement come ces ou la demande est. Et  
 ou voletz vous dire qil naquit?—Grene. A Salope.  
 —STON. Il est ore a Salope, et demeyn a Loundres;  
 ou voletz donques averer son estre?—Thorpe. Nous  
 voloms averer qil ny avoit unques nul tiel; prest, &c.  
 —Grene. Coment qe vous tendez daverer general-  
 ment, ceo serra pris forqe a travers de nostre  
 especialte, qe vint de nous, saver, ou nous dioms qil  
 y ad un tiel, et vostre dit amont a tant qil y ad  
 nul tiel.—Thorpe. Donques refusez laverement qil y  
 avoit unques nul tiel?—Grene. Nous voloms averer  
 qil y avoit un tiel, et lalleggeaunce del estre de lui  
 vynt de nous, et a nous est a doner le lieu ou, com  
 il covendreit faire, et autrement ceo serra pas re-  
 spouns; par quey de cel lieu et nul autre pays  
 vendra; issint fut ceo en le cas de Gigolle en Leire  
 de Bedeforde.—WILBY. Entrez lour plee, et dones  
 le jour.—Et *Venire facias* comaunde del visne ou la  
 terre est, saver, a Vicounte de Essex.<sup>1</sup>

(90.)<sup>2</sup> § Hildebrand Suderman<sup>3</sup> suist, come general *Audita Querela*.  
 attourne le Duke de Guerles,<sup>4</sup> execucion sur estatut  
 marchaunt vers Thomas Colle, Johan Colle, et le  
 tierce, sur quei ils suerent *Audita Querela* [supposaunt  
 qils avoient paye, et qils avoient acquitaunce. Et  
 ore nul vint de suire le *Audita Querela*],<sup>5</sup> mes Johan

“ ipsius Nicholai nunquam ali-  
 “ quem exitum habuit de corpore  
 “ suo exeuntem.”

<sup>1</sup> It is expressed in the roll that  
 the *Venire* was directed to the  
 Sheriff of Essex.

<sup>2</sup> From Harl., and 25,184. The  
 beginning of this case is in Trinity

Term, next preceding (No. 38).  
 The record, *Placita de Banco*,  
 Trin., 18 Edw. III., R<sup>o</sup> 189, is there  
 cited (Rolls edition, pp. 378-383).

<sup>3</sup> 25,184, Soceman.

<sup>4</sup> 25,184, Cerle.

<sup>5</sup> The words between brackets  
 are from Harl. alone.

## No. 90.

A.D. 1344. acquittance made to them of part, at Bruges in Flanders, and tendered an averment of payment of part there, as the Court might adjudge, because he produced an indenture to the effect that if he paid a part he should be quit with regard to the statute. And the writ made mention of the indenture but not of the payment.—*Moubray*. We have nothing to do with that which he says about payment, of which no suggestion was made in Chancery; and, besides, the acquittance supposes the payment to have been for a sum different from that which the statute purports; therefore we pray execution.—*Pole*. When you are in Court it is sufficient to show cause, in every way in which I can say it, why you should not have execution, for I shall have the advantage of making *profert* of an acquittance now, although the writ makes no mention of it.—*KELSHULLE*. Yes, if it was made subsequently.—*Pole*. Besides, one of the three obligors heretofore proved in this Court that he was under age, and for that reason he was discharged by judgment; consequently they were all discharged, because this is a record, which cannot be bad against one and good against another.—*WILLOUGHBY*. You say that which you would like to be the fact.—*STONE*. We have looked at the indenture, which supposes a different statute and for a different sum from this of which he now demands execution, and the acquittances which you produce suppose that the payment was made in respect of a different statute from this, and so that which you produce is not in accordance with your writ of *Audita Querela*; therefore you have nothing for you to prevent execution, and therefore let him have execution.—And note that *WILLOUGHBY* said, in this plea, that, if on such a defeasance the party paid after the day appointed in the defeasance, and the payment was accepted and admitted, it was sufficiently good by reason of the acceptance.—And

## No. 90.

Colle, qe mustra acquitaunce fait a eux de parcelle a Bruge<sup>1</sup> en Flaundes, et de partie tendist daverer le paye illoeqes, et<sup>2</sup> quanqe la Court agarde, qar il mustra endenture qe sil<sup>3</sup> payast partie qil serreit quites de lestatut. Et le brief fit mencion de l'ententure mes noun pas del payement.—*Moubray*. A ceo qil parle de payement, de quei la suggestion ne fut pas fait en Chauncellerie, nous navoms quei faire; et, ovesqe ceo, lacquitaunce suppose le payement pur autre summe qe lestatut purporte; par quei nous prioms execucion.—*Pole*.<sup>4</sup> Quant vous estes en Court, il suffit a moustrer par quanqe jeo say dire pur quei vous naverez pas execucion, qar jeo averay avantage de mettre avaunt acquitaunce a ore, coment qe le brief de ceo ne fait pas mencion.—*KELS*. Oyl, sil fut fait puis.—*Pole*. Ove cella, un de les iij autrefoith ceinz prova qil fut deinz age,<sup>5</sup> par quei par agarde il est descharge; *per consequens* touz, qar cest un record qe ne poet estre malveys vers un et bon vers autre.—*WILBY*. Vous dites talent.—*STON*. Nous avoms regarde l'ententure, qe suppose autre estatut et dautre summe qe cesty dount il demande ore execucion, et les acquitaunces qe vous mettez avant supposent qe le payement fut fait pur autre estatut qe ceo cy, et issint ceo qe vous mettez avant est desacordaunt a vostre brief de *Audita Querela*; par quei vous navetz rien pur vous a destrure lexecucion, par quei eit lexecucion.—*Et nota* qe *WILBY* en ceo plee dist si<sup>6</sup> sur tiele defesaunce la partie paiast apres le jour assis en la defesaunce, et ceo fut accepte et resceu, qe le payement fut assez bon par lacepter.—

<sup>1</sup> Harl., Burgh.

<sup>2</sup> Harl., par.

<sup>3</sup> 25,184, saver qil, instead of  
qe sil.

<sup>4</sup> 25,184, *Thorpe*.

<sup>5</sup> After the word age there are  
inserted in Harl. the words quant  
il fit lestatut.

<sup>6</sup> 25,184, qe.

## No. 91.

A.D 1344. note that it is extraordinary that the COURT previously annulled the statute as against the one who was under age, where the suggestion made for the purpose of discharging him was of a different character, and there was no writ relating to such matter.—And so it seems that the Court had no warrant to do this.—*Quære*.

Conclu-  
sion of the  
Intrusion  
for the  
Abbot of  
Grimsby.

(91.) § *Seton*. We have pleaded in bar the deed of his predecessor with warranty with the consent of his Convent, and that is admitted; judgment whether in opposition to the deed he can demand anything, inasmuch as he has also not denied that we are the eldest son of him to whom the deed was made.—*WILLOUGHBY*. And you have not denied that you were not then *in rerum natura*. How then can you take an estate by this deed?—*Skipwith, ad idem*. He has not used the deed as one who claims by way of remainder after the death of his father, nor as one who claims by descent through his father, but as one who claims an immediate estate by the deed, and that cannot be since he was not then *in rerum natura*.—*Seton*. We have not aided ourself by this deed, nor pleaded as by feoffment made to us, and therefore the Court ought not to adjudge it as a feoffment used by us; but, if from another point of view the deed can avail us, that is sufficient; and it is right and law, as far as one can, to hold to the wish of the donor; now even though it were the fact that by the deed the freehold could not pass to us immediately, because we were not then *in rerum natura*, you can still see by the same deed that his wish was that the land should abide with us after the death of our father, and that by way of remainder, and therefore the deed admitted bars him with regard to us as being in by remainder.—*HILLARY*. If you had been *in rerum natura* at the



## No. 91.

*Et nota mirum* que COURT anienti lestatut autrefoith A.D. 1344. vers cely deinz age, la ou sa suggestion de luy descharger fut autre, ne sur tiel matere navoit pas brief.—Et issint semble que Court navoit pas garraunt de ceo faire.—*Quære.*

(91.)<sup>1</sup> § *Setone.* Nous avoms plede le feat son predecessour ove garrauntie del assent son Covent en barre, qest conu; jugement si contre le feat puisse rien demander, et desicome il nad pas dedit que nous sumes eigne fitz a cely a qi le feat se fist.—WILBY. Et vous navetz pas dedit que vous ne fustes pas adonques *in rerum natura*. Coment purretz donques prendre estat par ceo fait?—*Skyp., ad idem.* Il nad pas use le feat come cely que cleyme [par voie de remeindre apres la mort son pere, ne come celuy que cleyme]<sup>2</sup> par descente par my son pere, mes come cely que cleyme estat *immediate* par le fait, et ceo ne put estre quant adonques il ne fut pas *in rerum natura*.—*Setone.* Nous avoms pas eide par ceo fait, ne plede com par feffement fait a nous, par quei Court ne deit pas ajuger le come feffement use de nous, mes si a autre regarde le fait nous purra valer, ceo nous suffit; et il est resoun et ley, en tant que homme purra, attrere a la volunte le donour; ore tut fut il issint que par le don *immediate* le fraunctenement [ne] purra passer en nous, pur ceo que adonques nous ne fumes pas *in rerum natura*, donques poetz veer par mesme le feat que sa volunte fut que la terre demureit a nous apres le deces nostre pere, et ceo par voie de remeyndre, par quei le fait conu luy barre vers nous come celuy que einz sumes en le remeyndre.—HILL. Si vous ussez este a temps

*Residuum*  
del Intru-  
sion pur  
Labbe de  
Grymesby.  
[Fitz.,  
*Feffements*  
et *Faits*,  
60.]

<sup>1</sup> From 25,184 alone. This is the conclusion of the case of the Abbot of Grimsby against Richard son of William son of James de Swynflet, beginning as No. 30 of Easter Term, 17 Edw. III. The

record (*Placita de Banco*, Easter, 17 Edw. III., R<sup>o</sup> 351) is there cited (Rolls edition, pp. 413-417).

<sup>2</sup> The words between brackets, though appearing in the old editions, are omitted from the MS.

## No. 92.

A.D. 1344. time of the execution of the deed, you would by that deed have taken a joint estate; and as you were not *in rerum natura* the deed was void with regard to you.—WILLOUGHBY. This matter has been sufficiently discussed; therefore the COURT adjudges that the demandant do recover his seisin, and that the other be in mercy.—*Skipwith*. It is his own intrusion; we pray our damages.—WILLOUGHBY. Sue a writ to the Sheriff for your damages.—And note that enquiry was not made as to collusion in this case.—*Quære*.

*Scire  
facias.*

(92.) § *Huse*. A recognisance was made to the Earl of Salisbury on statute merchant by John Petit, knight, for a certain sum, and in the 13th year of the present King the Earl had execution of his lands, and after the Earl's death the Earl's executors were seised of his lands by force of the execution aforesaid. And after that execution, to wit, in the 17th year of the present King, this same John Petit made another recognisance to one Adam Fraunceys, which Adam, by reason of non-payment, has sued execution of the lands of this same John, and had execution, and the executors aforesaid are ousted, and therefore they pray a writ that they may be put back into their possession.—WILLOUGHBY. If it be so, they will have an Assise of Novel Disseisin, and you will not have any other remedy out of this Court.—*Huse*. We shall not have an Assise against one who is in by judgment.—*Stouford*. There would be no harm in granting aid out of this Court.—WILLOUGHBY, with the assent of HILLARY, said to *Huse*, that he must elect to have an Assise of Novel Disseisin, or else a *Scire facias* against the person who had had execution to show cause why the executors should not have the land back, &c., because we will not oust him by judgment out of this Court without an answer.—*Huse* prayed a *Scire facias*.—And he had it.—See below.<sup>1</sup>

<sup>1</sup> See Y.B., Hil., 19 Edw. III., No. 18.

## No. 92.

de la confeccion *in rerum natura*, par cel fait vous A.D. 1344.  
 eussetz pris joynt estat; et quant vous ne feustes  
 pas le feat fut voide vers vous.—WILBY. Ceste matere  
 est assetz despute; par quei agarde la COURT qe le  
 demandant recovere sa seisine, et lautre en la mercie.  
 —*Skyp*. Cest de son abatement demene; nous  
 prioms nos damages.—WILBY. Sues brief a Vicounte  
 pur vos damages.<sup>1</sup>—*Et nota* qe la collusion<sup>2</sup> en ceo  
 cas nest pas enquys.—*Quære*.

(92.)<sup>3</sup> § *Huse*. Un reconissaunce se fit al Count *Scire*  
 de Salesbury sur estatut marchaunt par Johan Petit, *facias*.  
 chivaler, de certeyne summe, et lan xiiij le Roi qore  
 est le Count avoit execucion des terres, et apres sa  
 mort les executours le Count furent seisis de ses  
 terres par force del execucion avantdit. Et puy cel  
 execucion, saver, lan xvij le Roi qorest, mesme cely  
 Johan Petit fit un autre reconissaunce a un Adam  
 Fraunceys, le quel Adam pur noun payement ad  
 suy execucion des terres mesme cely Johan, et ad  
 execucion, et les executours avant dits sont oustes,  
 dount ils prient brief<sup>4</sup> qils puissent estre remys a  
 lour possessioun.—WILBY. Sil soit issint, ils averont  
 Assise de Novele Disseisine, et autre remede hors de  
 ceinz naverez pas.—*Huse*. Nous averoms pas Assise  
 vers cel qest einz par jugement.—*Stouf*. Il nest pas  
 mal de granter eide hors de ceinz.—WILBY, del  
 assent HILL., ly<sup>5</sup> dit qil eslust Lassise de Novele  
 Disseisine,<sup>6</sup> ou autrement *Scire facias* vers cely qad  
 execucion pur quei ils naveront arrere, &c., qar  
 nous ne<sup>7</sup> luy oustoms pas par agarde hors de ceinz  
 saunz respouns.—*Huse* pria *Scire facias*.—*Et habuit*.  
 —*Vide infra*.

<sup>1</sup> For the judgment and writ of enquiry of damages, as on the roll, see Y.B., Easter, 17 Edw. III. (Rolls edition), p. 415, note 8.

<sup>2</sup> MS. of Y.B., conclusioun.

<sup>3</sup> From Harl., and 25,184.

<sup>4</sup> brief is omitted from Harl.

<sup>5</sup> ly is omitted from Harl.

<sup>6</sup> The words de Novele Disseisine are omitted from Harl.

<sup>7</sup> ne is from Harl. alone.

## No. 93.

A.D. 1344. (93.) § Note that an Attaint on an Assise of Mort  
Attaint on d'Ancestor was brought by an infant under age, which  
Assise of writ of Assise purported only that enquiry was to be  
Mort made touching two points, that is to say, whether the  
d'Ances- ancestor died seised, and who was the next heir, and  
tor. the writ of Attaint supposed that all the three points,  
as in case of a man of full age, were to have been  
enquired and had been enquired by the Assise, and so  
the writ of Attaint was at variance with the record,  
and therefore it was abated.

## No. 93.

(93.)<sup>1</sup> § *Nota* qe Atteint sur Assise de Mort dauncestre qe fuit porte par un enfaunt deinz age, quel briefe Dassise ne voleit qe fuit enquis forqe de ij pointz, saver, si launcestre morust seisi et qil fuit plus prochein heir, et Latteint supposa qe toutz les iij come pur homme de plein age furent enquerables et enquis par Assise, issi Latteint variaunt del recorde, par quei il fuit abatu.

A.D. 1344.  
Atteint sur  
Assise de  
Mort  
Daunces-  
tre.

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<sup>1</sup> From Harl. alone.



HILARY TERM  
IN THE  
NINETEENTH YEAR OF THE REIGN OF  
KING EDWARD THE THIRD  
AFTER THE CONQUEST.

HILARY TERM IN THE NINETEENTH YEAR OF  
THE REIGN OF KING EDWARD THE THIRD  
AFTER THE CONQUEST.

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No. 1.

A.D.  
1344-5.  
Wardship  
of the  
body.

(1.) § Wardship of the body. The parties were at issue on the tenancy. It was found that the ancestor held of the plaintiff, but whether the heir was married or not the jurors did not know; and, if he was married, they assessed the damages, and the value of the marriage, at £100, and if unmarried they assessed the damages at 100 shillings. The defendant now brought the infant into Court, ready to render to the plaintiff, and said that the infant was unmarried.—*Thorpe*. We pray the value of the marriage.—HILLARY. Is he married or not?—*Thorpe*. We cannot know.—HILLARY. The COURT adjudges that you do recover the wardship, and 100



DE TERMINO HILLARII ANNO REGNI REGIS  
EDWARDI TERTII A CONQUESTU DECIMO  
NONO.<sup>1</sup>

No. 1.

(1.)<sup>2</sup> § Garde de corps. Ils furent a issue sur la tenance. Trove est qe launcestre tient del pleintif,<sup>4</sup> mes si leir fut marie ou noun ils ne savoint; et, si marie, ils<sup>5</sup> assistrent les damages et la value del mariage a *cli.*, et, si desmarie, a *cs.* Le defendant ore en Court mena<sup>6</sup> lenfant, prest a rendre al pleintif, et dist qil est desmarie.—*Thorpe.* Nous prioms la value del mariage.—*HILL.* Est il marie ou noun? —*Thorpe.* Nous ne pooms saver.—*HILL.* La COURT agarde qe vous recovrez la garde, et damages de *cs.*;

A.D.  
1344-5.  
Garde de  
corps.<sup>3</sup>  
[Fitz.,  
Jugement,  
123.]

<sup>1</sup> The reports of this Term are from the Lincoln's Inn MS. (called L.), the Harleian MS. No. 741 (called H.), the Additional MS. in the British Museum numbered 34,789 (called B.), and the MS. in the University Library at Cambridge, numbered Hh. 2. 3. (called C.). In L. the word SANCTI is inserted before "HILLARII."

<sup>2</sup> From B., C., H., and L. The record is possibly that found among the *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 376. It there appears that an action was brought by Richard atte Welle against Richard de Farnhulle "quod reddat ei Willelmum filium et heredem Thomæ de Wyntere-shulle, cujus custodiam ad ipsum Ricardum atte Welle pertinet, eo quod prædictus Thomas

"terram suam de eo tenuit per servitium militare."

According to the declaration Thomas's lands, &c., were alleged to be in Compton-by-Guildford (Surrey). The plea, upon which issue was joined, was "quod custodia prædicti heredis non pertinet ad prædictum Ricardum atte Welle, sicut ipse versus eum narrando supponit."

<sup>3</sup> The words de corps are from C. alone.

<sup>4</sup> The jury found, according to the roll, "quod prædictus Thomas tenuit tenementa prædicta de præfato Ricardo atte Welle per servitium militare," and were thereupon asked certain questions. See below, p. 373, note 5.

<sup>5</sup> ils is from L. alone.

<sup>6</sup> H., amena.

## No. 2.

A.D.  
1344-5. shillings damages; and if you shall hereafter find that the infant is now married, come into this Court, and you shall have your remedy of the value of the marriage, and process out of this Court.—And STONORE caused the value of the marriage to be entered on the roll as it was assessed by the jury, and if the plaintiff further complains afterwards then shall enquiry be made touching his suggestion, as is said.—And note that the heir was of the age of only ten years, and in that case the lord can tender a marriage to him, even though he may be married, and, on his refusal, have a writ of Forfeiture of Marriage, because he is still under marriageable age.—Nevertheless, *quære*.

*Quære  
impedit.*

(2.) § A *Quære impedit* was brought by the Lady of Bardolf against the Bishop of Norwich and Master John de Kellesey.—*Moubray*, for Master John, said that he is parson imparsoned, and was so years and days before the writ was brought, by collation of the Bishop of Norwich, and said that the writ does not lie against him.—*Grene*. He pleads as a disturber, for he claims to hold through the patronage of another person, and consequently not through ours, and he has not denied our title; judgment, and we pray a writ to the Bishop.—*Moubray*. We say that your title

## No. 2.

et si vous troveretz apres qe lenfant est<sup>1</sup> marie ore, venetz ceinz, et vous<sup>2</sup> averetz remedie de la value del mariage, et proces hors de ceinz.—Et<sup>3</sup> Ston. fist entrer la value del mariage en roulle qe fut taxe par lenqueste, et sil se pleigne apres donques serra sa suggestioun enquis, *ut dicitur*.—*Et nota* qe leir fut forqe del age<sup>4</sup> de x aunz, en quel cas le seignur luy poet tendre mariage, tut fuit il marie, et sur le refuser aver forfeiture, *quia est adhoc infra annos nubile*.—*Quere tamen*.<sup>5</sup>

A.D.  
1344-5.

(2.)<sup>6</sup> § *Quare impedit* vers Levesqe de Northwych<sup>8</sup> et Mestre Johan de Kellesey<sup>9</sup> porte<sup>10</sup> par la dame de Bardolf.—*Moubray*, pur Mestre Johan, dit qil est persone enpersone, et fuit<sup>11</sup> aunz et jours avant<sup>12</sup> le brief porte, de la collacion Levesqe de Northwych,<sup>8</sup> et dit qe le brief vers<sup>13</sup> luy<sup>14</sup> ne gist pas.—*Grene*. Il plede<sup>15</sup> come destourbour, qar il cleime a<sup>16</sup> tenir dautri avowere, et *per consequens* noun pas del nostre, et il nad pas dedit nostre title; jugement, et prioms brief al Evesqe.—*Moubray*. Nous dioms<sup>17</sup> qe

<sup>1</sup> C., soit.

<sup>2</sup> vous is omitted from B.

<sup>3</sup> Et is from B. alone.

<sup>4</sup> The words del age are omitted from B.

<sup>5</sup> The words *Quere tamen* are omitted from B. According to the roll the jurors, "quæsiti cujus "ætatis prædictus heres sit, dicunt "quod ætatis tresdecim annorum. "Quæsiti si idem heres maritatus "sit necne, dicunt quod maritatus "est. Quæsiti de valore maritagii "ejusdem heredis dicunt quod maritagium ejusdem valet centum "marcas. Quæsiti ad quæ damna, "&c., dicunt quod ad damnum "viginti librarum ultra valorem "maritagii prædicti."

The judgment was, "quod idem "Ricardus atte Welle recuperet

"versus eum prædictum valorem

"maritagii prædicti et damna sua

"prædicta."

The plaintiff had execution by *Elegit*.

<sup>6</sup> From B., C., H., and L.

<sup>7</sup> The marginal note is omitted from B. and H.

<sup>8</sup> B., and H., Norwis; C., Norwyk.

<sup>9</sup> B., and H., Kelsey.

<sup>10</sup> porte is omitted from H.

<sup>11</sup> B., and H., fust.

<sup>12</sup> B., and L., devant.

<sup>13</sup> vers is omitted from B. and H.

<sup>14</sup> luy is omitted from H.

<sup>15</sup> B., cleyme.

<sup>16</sup> B., de. The word is omitted from H.

<sup>17</sup> The words Nous dioms are omitted from B.

## No. 3.

A.D.  
1344-5.

is a very title, and that we hold, as above, by collation of the Bishop, who gave by reason of the time having passed, and so we hold of your patronage; judgment whether the writ lies against us.—And, notwithstanding, WILLOUGHBY awarded a writ to the Bishop, and gave judgment that the parson should be amerced.—*Quære*.—And as to the Bishop, he disclaimed the patronage, except as Ordinary, and said that he had given as above by reason of the lapse of time; judgment of the writ.—*Grene*. He disclaims the patronage, and therefore, since the Ordinary is himself a party, we pray a writ to the Metropolitan.—WILLOUGHBY and HILLARY said that he should have it.—And so it was done.—*Quære*.

Receipt.

(3.) § A writ was brought against a tenant who made default after default.—*Huse*. You have here John,<sup>1</sup> who tells you that the person who makes default has only a term for life, the remainder being to John and his heirs for ever. And *Huse* produced a deed showing the gift, witnessing, &c., and prayed that he might be admitted.—*R. Thorpe*. You see plainly that his

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<sup>1</sup> For the real name see p. 375, note 9.

No. 3.

vostre tite est verrey, et qe nous tenoms, *ut supra*, de la collacion Levesqe, qe dona par temps passe, et issi tenoms de vostre avowere; jugement<sup>1</sup> si le brief vers nous y gise.—Et, *non obstante*, WILBY agarda brief al Evesqe, et la persone en la merceye.—*Quere*.—Et quant al Evesqe il<sup>2</sup> desclama en lavowere sauf come Ordeigner,<sup>3</sup> et dist *per lapsum temporis* il avoit done *ut supra*; jugement du brief.—*Grene*. Il descleime en lavowere, par quei, de puis qil est mesme partie qest Ordeigner,<sup>4</sup> nous prioms brief al Metropolitan.<sup>5</sup>—WILBY et HILL. disoint qil avera.—*Et ita factum est*.—*Quere*.

A.D.  
1344-5.

(3.)<sup>6</sup> § Brief porte vers tenant qe fit default apres default.—*Husc*. Vous avetz cy Johan qe vous dit qe cely qe fait<sup>8</sup> default nad qe terme de vie, le remeyndre a J. et a ses heirs a touz jours. Et moustra fait del doun tesmoignant, &c., et pria destre resceu.<sup>9</sup>—*R. Thorpe*. Vous veietz bien coment son

Resceite.<sup>7</sup>  
[Fitz.,  
Resceit,  
111.]

<sup>1</sup> jugement is omitted from C.

<sup>2</sup> il is omitted from B.

<sup>3</sup> B., and H., Ordeiner; L., Ordiner.

<sup>4</sup> B., and H., Ordeiner.

<sup>5</sup> C., Metriopolitone; L., Metropolitan.

<sup>6</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 168, d. It there appears that an action of Formedon in the descender was brought by Adam de Flaundes and Matilda his wife against Thomas son of Richard Rycheman of Wells, in respect of 1 messuage, 2 shops, and 4 acres of land in Wells (Somerset), which William Bouche gave to his daughter Mabel in tail, "et quæ, post mortem prædictæ Mabillæ, et Isabellæ filiæ ejusdem Mabillæ, præfatæ Matildi filiæ prædictæ Isabellæ et consan-

"guineæ et heredi ejusdem Mabillæ descendere debent."

Upon the tenant's default the demandants "instanter petunt seisinam de prædictis tenementis . . . sibi adjudicari."

<sup>7</sup> L., Proces. The marginal note is omitted from C.

<sup>8</sup> C., fet; L., fist.

<sup>9</sup> According to the record, "Super hoc venit quidam Hugo de Langebrugge, Burgensis Bristolliæ, et dicit quod quidam Ricardus de Welles, Burgensis Bristolliæ, per chartam suam dedit Thomæ filio suo prædicta tenementa, cum pertinentiis, tenenda ad totam vitam ipsius Thomæ, ita quod post decessum ipsius Thomæ prædicta tenementa, cum pertinentiis, integre remanerent præfato Hugoni tenenda sibi et heredibus suis in per-

## No. 3.

A.D.  
1344-5.

right is not proved by record or by fine, and we cannot have any answer to this deed, nor is it an issue to say that he has nothing in remainder; and, since we cannot have an answer to his statement, we pray seisin.—SHARSHULLE. One has heard speak of that which BEREฟอร์ด and HERLE did in such a case, that is to say, when a remainder was limited in fee simple by fine they admitted the person in remainder to defend, and it was said by them that it would be otherwise if the limitation were by deed *in pais*; but nevertheless, no precedent is of such force as that which is right; now it is the fact that one in remainder has just as much right by virtue of a deed *in pais* as by fine, save that the fine is more solemn; therefore, if he would be entitled to be admitted by virtue of a fine, for the same reason he is by virtue of a deed; and the demandant is not in the position of having no answer, because he will have the same answer as the tenant would have if a writ of Formedon in the remainder were brought.—*R. Thorpe*. When any one has a reversion, whether in virtue of his own deed or by grant of the reversion, there is an outlying fact, which can be put to proof in the shape of lease to and attornment of the tenant, which fact is traversable; or there may be a plea that he has nothing in reversion; but with regard to this remainder, which is but parol, I who am a stranger, and cannot deny the specialty, am without answer.—*Grene*. You can traverse the gift in the form in which I have alleged it, or say that the tenant has a fee, or that the remainder was limited to another, or that the gift was made in fee simple, *absque hoc* that the remainder

## No. 3.

dreit nest pas prove par recorde ne fyne, et a ceo fait ne poms aver respons, ne il nest pas issue a dire qil nad rien<sup>1</sup> en le remeyndre; et de puis que nous ne poms aver respons a soun dit<sup>2</sup> nous prioms seisine.—SCHAR. Homme ad oy parler ceo que BERR. et HERLE firent en autiel<sup>3</sup> cas, saver quant remeindre par fyne fut taille de fee simple ils resceutrent, &c., et fuist par eux parle qautre serreit sil fut par fait en pais; mes<sup>4</sup> nepurquant nulle ensauple est si fort come resoun; ore est il issi que taunt avaunt ad celuy en le remeindre dreit par fait en pays come par fyne, sauf que la fyne est plus solempne<sup>5</sup>; par quei, si par fyn il serreit resceyvable, par mesme la resoun par fait; et le demandant nest pas sanz respons, qar il avera mesme le respons comme tenant avereit si brief de remeyndre fut porte.—*R. Thorpe.* Quant homme ad reversion, soit il par son fait<sup>6</sup> demene, ou par graunt de reversion, la il y ad fait dehors que poet cheire<sup>7</sup> en conisance come lees et<sup>8</sup> attournement de tenant, quel fait est traversable,<sup>9</sup> ou qil nad rien en la reversion; mes a ceste<sup>10</sup> remeindre que nest forqe parole jeo que su estraunge, et ne puisse dedire lespecialte, jeo su sanz respons.—*Grene.* Vous poetz<sup>11</sup> traverser le doun par la fourme que jeo ai allegge, ou dire que le tenant ad fee, ou que le remeindre fuit taille a autre, ou que le doun fut fait<sup>12</sup> en fee simple, sanz ceo que le

A.D.  
1344-5.

“petuum. Et profert hic prædic-  
“tam chartam, quæ hoc testatur,  
“&c. Et dicit quod tenementa  
“prædicta sunt jus suum. Et, ex  
“quo venit ante judicium reddi-  
“tum, petit quod ipse per defaultam  
“prædicti Thomæ filii Ricardi non  
“amittat jus suum in hac parte,  
“sed admittatur ad defensionem  
“juris sui, &c.”

<sup>1</sup> H., rien par descende.<sup>2</sup> L., dist; H., fait.<sup>3</sup> B., ceo; C., and H., tiel.<sup>4</sup> mes is omitted from B.<sup>5</sup> C., sollempne.<sup>6</sup> B., lees.<sup>7</sup> B., and H., chere.<sup>8</sup> H., ou.<sup>9</sup> H., traverse, instead of est traversable.<sup>10</sup> B., ad oste, instead of a ceste.<sup>11</sup> C., poetz.<sup>12</sup> fait is omitted from B.

## No. 3.

A.D.  
1344-5.

itself was limited to us as we suppose.—*Birtone*. Suppose the tenant were impleaded, and vouched in respect of his estate, and lost, and recovered over to the value, would not the person in remainder have execution in respect of this recovery to the value? Yes, he would have it. And that proves that the tenant, on such a deed, holds in his right; consequently he is entitled to be admitted; and otherwise he would suffer disherison; and if he is admitted that is no delay to the demandant, because he will be answered immediately.—*HILLARY*. You say what is true; and therefore, Demandant, will you say anything else to oust him from being admitted?—*R. Thorpe*. If it so seems to you, we are ready to say what is sufficient; and I think you will do as others have done in the same case, or else we do not know what the law is.—*HILLARY*. It is the will of the Justices.—*STONORE*. No; law is that which is right.—And according to the opinion of the COURT he is entitled to be admitted.—Therefore *Thorpe* said that the tenant had a fee; ready, &c.—And the other side said the contrary.



No. 3.

remeindre mesme<sup>1</sup> fuit taille a nous comme nous supposoms.—*Birtone*. Jeo pose qe le tenant fuit plede, et vouche de son estat, et perdist, et recoverist a la value, navera<sup>2</sup> celuy en le remeindre execucion de cele recoverir en value? Si, avereit. Et ceo proeve qe le tenant sur tiel fait tient en son dreit; *per consequens* il est resceivable; et autrement il serreit desherite; et sil soit resceu ceo nest pas delay al demandant, qar il serra tantost respoundu.—*HILL*. Vous dietz verite; et pur ceo, vous,<sup>3</sup> demandant, voilletz autre chose<sup>4</sup> dire de luy ouster de la resceite?—*R. Thorpe*. Sil vous semble, prest a dire<sup>5</sup> assetz; et jeo quide qe vous voilletz faire comme autres ount fait en mesme le cas, ou autrement nous ne savoms ceo qe la ley est.—*HILL*. Volunte des Justices.—*STON*. Nanyl; ley est resoun.—*Et per opinionem CURIE*<sup>6</sup> il est resceivable.—Par quei *Thorpe* dit qe le tenant avoit<sup>7</sup> fee; prest, &c.—*Et alii e contra*.<sup>8</sup>

A.D.  
1344-5.

<sup>1</sup> mesme is omitted from B. and H.

<sup>2</sup> L., et apres, instead of navera. The word is omitted from C.

<sup>3</sup> vous is omitted from H.

<sup>4</sup> The words autre chose are omitted from H.

<sup>5</sup> H., nous dirroms, instead of prest a dire.

<sup>6</sup> CURIE is omitted from C.

<sup>7</sup> B., ad.

<sup>8</sup> According to the record, the counterplea of the prayer to be admitted was as follows: "Adam et Matilldis dicunt quod prædictus Hugo ad defensionem juris sui admitti non debet, &c., quia dicunt quod die impetrationis brevis sui . . . præ-

"dictus Thomas habuit feodum in prædictis tenementis." Issue was joined upon this. After adjournments a jury found, at *Nisi prius*, in the 21st year of the reign, "quod die impetrationis brevis . . . Thomas filius Ricardi infra nominatus nihil habuit in tenementis infra contentis nisi ad terminum vitæ suæ tantum, reversione inde ad prædictum Hugonem et heredes suos spectante, prout idem Hugo placitando allegavit."

Judgment was thereupon given for Hugh to be admitted, and he vouched to warrant Thomas son of Richard Richeman of Welles (*i.e.* the tenant).

## No. 4.

A.D.  
1344-5.  
*Quare  
impedit.*

(4.) § John de Tydilmyntone, clerk,<sup>1</sup> brought a *Quare impedit* against Alice late wife of William<sup>1</sup> Dabernoun, in respect of the church of Fetcham, and counted that William<sup>2</sup> Dabernoun was seised of this advowson and three other advowsons (and he named them) which William<sup>2</sup> presented to this church, &c., and afterwards, in the ninth year of the King,<sup>2</sup> granted by his deed to John the plaintiff that he might present, at the next voidance, to whichever of the four churches should first become void; and he said that this church was the first to become void after the grant, and so it belonged to him to present.—*Moubray* took exception to the declaration on the ground that a presentation to the other three churches was not alleged in the

<sup>1</sup> For the real names, see p. 381, note 1.

<sup>2</sup> As to the names, facts, and dates, see p. 381, note 4.

## No. 4.

(4.)<sup>1</sup> § Johan de Tilmyntone,<sup>2</sup> clerke,<sup>3</sup> porta *Quare* A.D. 1344-5  
*impedit* vers Alice que fuit la femme William Aubrenoun del eglise de Fecham, et counta que William *Quare impedit.*  
 Aubrenoun fuit seisi de cel avoweson et autres iij [Fitz., *Quare impedit,*  
 avowesouns, et les noma, quel W. presenta a ceste 154.]  
 eglise, &c., et puis, lan ix du Roi, graunta par son fait a Johan qest pleintif qil purreit presenter, a la prochein voidaunce, a quele eglise de iij qe primere-  
 ment se voidreit; et dit que ceste eglise se voida primerement puis le grant, issint appent a luy, &c.<sup>4</sup>  
 —*Moubray* chalengea le count de ceo que presente-  
 ment ne fuit pas lie en les autres iij eglises en

<sup>1</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 29. It there appears that the action was brought by John de Tydilmyntone, clerk, against Alice late wife of John Dabernoun, knight, in respect of a presentation to the church of Fecham (Surrey).

<sup>2</sup> B., Tymyltone; H., Tylmyngtone.

<sup>3</sup> clerke is omitted from C.

<sup>4</sup> The declaration was, according to the record, “quod quidam Johannes Dabernoun, miles, fuit seisitus de advocacione ecclesie prædictæ, simul cum advocacionibus ecclesiarum de Aldebury, Stoke Dabernoun, et Theyntone, tempore pacis, tempore Edwardi Regis avi domini Regis nunc, qui ad eandem ecclesiam de Fecham præsentavit quendam Robertum Dabernoun, clericum suum, qui ad præsentationem suam fuit admissus et institutus, . . . . . per cujus mortem prædicta ecclesia modo vacat. Et de ipso Johanne Dabernoun descendit advocatio prædicta, simul cum prædictis advocacionibus ecclesi-

arum prædictarum, cuidam Johanni Dabernoun, ut filio et heredi, &c., qui quidem Johannes filius Johannis, die Jovis in Festo Sancti Stephani, anno regni domini Regis nunc nono, apud Stoke Dabernoun, per scriptum suum, concessit ipsi Johanni de Tydilmyntone quod cum ecclesie prædictæ vel aliqua earum per mortem, vel resignationem, vel aliquo alio modo, vacassent, vel vacasset quod ipse Johannes de Tydilmyntone ad ipsam ecclesiam quæ primo vacasset de eisdem ecclesiis præsentare posset idoneam personam ad ipsam sic vacantem loci illius diocesano. Et quia prædicta ecclesia de Fecham est prima ecclesia quæ vacavit, &c., de prædictis quatuor ecclesiis, post confectionem prædicti scripti, pertinet ad ipsum Johannem de Tydilmyntone ad prædictam ecclesiam de Fecham præsentare . . . . . Et profert hic prædictum scriptum sub nomine prædicti Johannis filii Johannis, quod concessionem prædictam in forma prædicta esse factam testatur, &c.”

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person of William, and also that the plaintiff did not say that William was seised as of fee and right.—This exception was not allowed.—*Moubray*. The deed purports that he might present, which is not a grant of a presentation.—*Mutlow*. That is to the action.—And *Moubray* did not dare to abide judgment, but said that William,<sup>1</sup> the grantor, was seised of four manors to which the four advowsons are appendant, and presented as above; and afterwards in the fourteenth year of the present King, a fine was levied, &c., by which William<sup>1</sup> took an estate for his life in the manors, the remainder being to his son John<sup>1</sup>; and, after the death of William,<sup>1</sup> John<sup>1</sup> entered by virtue of the fine, and assigned to Alice the manor of Fetcham, with the advowson, to hold in the name of dower, in satisfaction, &c.; and he said that before the date of the deed, which deed Alice does not admit, she was the wife of William,<sup>1</sup> and so she holds by right of dower to which she had become entitled at an earlier time, and so she is seised, and it belongs to her to present. And he prayed a writ to the Bishop.—*Mutlow*. That plea is double; one is the fine, the

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<sup>1</sup> For the real names, &c., see p. 383, note 5.

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W., et auxi qil ne dit<sup>1</sup> pas qe W. fuit seisi comme de fee et dreit.—*Non allocatur.*—*Moubray.* Le fet voet qil purreit presenter, quel nest pas graunt de presentement.—*Mutl.* Cest al accion.—Et il<sup>2</sup> nosa pas demurer, mes dit qe W. le grantour fuit seisi de iiiij maners as quex les iiiij avowesons sount appendauntz, et presenta *ut supra*; et puis lan xiv du Roi qore est fyne se leva, &c., par quel W.<sup>3</sup> prist estat a sa vie en les maners, le remeindre a J.<sup>3</sup> son fitz; et, apres la mort W., J. entra par la fyne et assigna a Alice le maner de Feccham, ove lavoweson, a tener en noun de dowere, en allowaunce, &c.; et dit qe devant la date del fait, quel fait ele ne conust pas, ele fuit femme W., issint tient ele de<sup>4</sup> dreit de dowere deigne temps deservi, et issint est ele seisi, et a luy appent a presenter. Et pria brief al Evesqe.<sup>5</sup>—*Mutl.* Ceo plee est double;

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<sup>1</sup> B., dedit.

<sup>2</sup> il is from B. alone.

<sup>3</sup> B., un J.

<sup>4</sup> B., en.

<sup>5</sup> Alice's plea was, according to the roll, "(non cognoscendo prædictum scriptum esse factum prædicti Johannis filii Johannis) dicit quod prædictus Johannes Dabernoun, miles, fuit seisitus de advocatione prædictæ ecclesiæ de Feccham tanquam pertinente ad manerium suum de Feccham, qui ad eandem præsentavit præfatum Robertum Dabernoun, &c. Et de ipso Johanne Dabernoun descendit manerium illud ad quod, &c., et advocatio prædicta, simul cum maneriis de Aldebury, Stoke Dabernoun, et Teyntone, et advocationibus ecclesiarum eorundem maneriorum, cuidam Johanni Dabernoun, ut filio et heredi, &c., qui quidem Johannes filius Johannis cepit ipsam

" Aliciam in uxorem diu ante  
" datam prædicti scripti. Et post-  
" modum, in crastino Purificationis  
" beatæ Mariæ anno regni domini  
" Regis nunc quartodecimo, in  
" Curia hic coram J. de Stonore et  
" sociis suis Justiciariis hic, levavit  
" quidam finis inter prædictum  
" Johannem filium Johannis, que-  
" rentem, et quosdam Thomam de  
" Pernecote et Thomam atte Doune,  
" deforciantes, de prædictis mane-  
" riis de Feccham, Aldebury, Stoke  
" Dabernoun, cum pertinentiis, et  
" de aliis terris, tenementis, et  
" advocationibus ecclesiarum, &c.,  
" per quem finem idem Johannes  
" recognovit prædicta maneria et  
" tenementa, cum pertinentiis, et  
" advocationes prædictas esse jus  
" ipsius Thomæ atte Doune, ut illa  
" quæ iidem Thomas et Thomas  
" habuerunt de dono prædicti  
" Johannis, et pro illa, &c., iidem  
" Thomas et Thomas concesserunt

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other dower of earlier date.—*STONORE*. We understand the fine to have been levied since the grant from which you take your title, and in that case it is nothing to the purpose.—*Grene*. And, even though the fine was levied at a subsequent time, still they understand that by the alienation by fine we were possibly put out of possession, and put to our action of Covenant.—*Thorpe*. We allege the fine in order to prove that he who assigned dower was seised in such a manner that he could assign it.—*Mutlow*. With regard to that intent, there is no need to speak of it, because a disseisor would be able to assign dower.

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un est la fyn, lautre dowere de plus haut.—*Ston.* Nous entendoms la fyne leve<sup>1</sup> puis le graunt de qi vous pernetz vostre tite, et donqes nest ceo pas a purpos.—*Grene.* Et tut se<sup>2</sup> leva la fyne de puisne temps, unqore ils entendent qe par lalienacioun par la fyn qe nous fumes mys hors de possession par cas, et mys a nostre accion de Covenant.—*Thorpe.* Nous alleggeoms la fyne de prover qe celuy qe assigna fuit seisi par la manere qil pout assigner.—*Mutl.* A cel entent ne bosoigne<sup>3</sup> il pas de parler de<sup>4</sup> cel, qar disseisour purreit<sup>5</sup> assigner dowere.—

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“runt prædicto Johanni prædicta  
 “maneria, cum pertinentiis, et  
 “advocationes prædictas, et ea ei  
 “reddidit [*sic*], &c., habenda et  
 “tenenda, &c., tota vita ejusdem  
 “Johannis, et post decessum  
 “ipsius Johannis prædictum mane-  
 “rium de Aldebury, cum pertinen-  
 “tiis, remaneret Willelmo filio  
 “Johannis filii ejusdem Johannis  
 “Dabernoun et Margeriæ filia  
 “Johannis de Hamptone, militis,  
 “et heredibus de corporibus suis  
 “exeuntibus, et si, &c., tunc  
 “post decessum ipsorum Willelmi  
 “et Margeriæ idem manerium,  
 “cum pertinentiis, remaneret rectis  
 “heredibus ipsius Willelmi, &c.,  
 “et omnia alia maneria et tene-  
 “menta, cum pertinentiis, et advo-  
 “cationes prædictæ remanerent  
 “prædicto Willelmo et heredibus  
 “de corpore suo procreatis, &c.,  
 “et si, &c., tunc post decessum  
 “ipsius Willelmi eadem maneria  
 “et tenementa, cum pertinentiis, et  
 “advocationes prædictæ remane-  
 “rent rectis heredibus ipsius Wil-  
 “lelmi, &c. Et postmodum præ-  
 “dictus Johannes filius Johannis  
 “obiit, per quod præfatus Willel-  
 “mus in prædictis maneriis et

“tenementis, cum pertinentiis, et  
 “advocationibus, intravit virtute  
 “finis prædicti, et assignavit ipsi  
 “Alicia prædictum manerium de  
 “Feccham, cum pertinentiis, et  
 “advocationem ecclesiæ ejusdem  
 “manerii, simul cum aliis terris  
 “et tenementis, in allocationem  
 “totius dotis suæ quæ eam con-  
 “tingebat, &c. Et prædictum  
 “manerium de Teyntone, simul  
 “cum advocatione ecclesiæ ejus-  
 “dem manerii, descendit præfato  
 “Willelmo ut consanguineo et  
 “heredi prædicti Johannis Daber-  
 “noun, qui quidem Willelmus  
 “adhuc superstes, &c., et sic dicit  
 “quod ipsa seisita est de manerio  
 “de Feccham, et advocatione  
 “ecclesiæ ejusdem manerii, nomine  
 “dotis, de antiquiori tempore  
 “deservita quam est data prædicti  
 “scripti, per quod ad ipsam  
 “Aliciam, et non ad prædictum  
 “Johannem, pertinet ad ecclesiam  
 “illam præsentare. Unde petit  
 “judicium, et breve Episcopo, &c.”

<sup>1</sup> leve is omitted from C. and L.<sup>2</sup> C., and L., soy.<sup>3</sup> C., bussoigne.<sup>4</sup> H., pleder, instead of parler de.<sup>5</sup> C., and L., purra.

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—HILARY. His conclusion is upon dower of earlier date, &c.—*Mutlow*. Then you see plainly that the grant is not denied, nor is it denied that this is the first voidance of any of the four churches; and, as to that which she says about dower, it is not dower by common right, for by common right she would have only the third turn; judgment whether by this endowment, which was only by her collusion and covin, she can oust us from this presentation; and we pray a writ, &c.—*Thorpe*. As to that which you say con-



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HILL. Sa<sup>1</sup> conclusion est sur dowere de plus haut, &c.—*Mutl.* Donques<sup>2</sup> vous veietz bien coment le graunt nest pas dedit, ne qe ceo soit la primere voidaunce de les iiij eglises; et ceo qele<sup>3</sup> parle de dowere nest pas dowere de comune dreit, qar par comune dreit<sup>4</sup> ele navereit forqe la<sup>5</sup> terce tourn; jugement si par cel<sup>6</sup> dowement, quel ne fuit forqe soun assent et covyn, nous puisse<sup>7</sup> de cel<sup>8</sup> presentement ouster<sup>9</sup>; et prioms brief, &c.<sup>10</sup>—*Thorpe.* De ceo qe vous parletz de

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<sup>1</sup> B., and C., La.

<sup>2</sup> Donques is from B. alone.

<sup>3</sup> H., and L., qil.

<sup>4</sup> The words qar par comune dreit are omitted from B.

<sup>5</sup> la is from B. alone.

<sup>6</sup> B., and H., tiele.

<sup>7</sup> B., and H., puissetz.

<sup>8</sup> B., and H., ceo.

<sup>9</sup> B., and H., oster.

<sup>10</sup> The replication was, according to the roll, “quod prædicta Alicia expresse cognovit quod prædictus Johannes Dabernoun fuit seisitus de advocacione ecclesiæ prædictæ, et ad ecclesiam illam præsentavit, &c., quæ quidem advocatio descendit præfato Johanni filio Johannis ut filio et heredi, nec dedit quin idem Johannes filius Johannis fuit seisitus de advocacione illa ut de feodo et jure tempore confectionis prædicti scripti, nec quin idem scriptum sit factum ejusdem Johannis filii Johannis, per quod concessit, &c., virtute ejus concessionis jus præsentandi ad ecclesiam illam accevit ipsi Johanni de Tydilmyntone, eo quod ista est prima vacatio, &c., quod quidem jus prædictus Johannes filius Johannis in vita sua nec heres ejusdem Johannis post mortem ejusdem Johannis annullare seu

“infringere potuit quoquo modo, “maxime cum idem Johannes de “Tydilmyntone, si præsentationem “suam hac vice non haberet, esset “sine recuperare, et prædictum “scriptum vacuum in perpetuum, “nec dedit quin ista est prima “vacatio, &c., alicujus ecclesiæ de “prædictis quatuor ecclesiis post “confectionem prædicti scripti, “per quod ad ipsum Johannem et “non ad prædictam Aliciam “pertinet ad ecclesiam prædictam “præsentare. Et quo ad hoc quod “eadem Alicia allegat ipsam fore “tenentem de advocacione præ- “dicta, nomine, &c., de antiquiori “tempore deservita, &c., ex “assignatione præfati Willelmi, “&c., dicit quod hoc ei præjudicare “non debet, quia dicit quod secun- “dum legem terræ, et communem “modum in Anglia, cuilibet mulieri “post mortem viri sui pro dote sua “de advocacionibus ecclesiarum “competit præsentare ad quam- “libet ecclesiam in tertia vaca- “tione, &c., per quod præfata “assignatio dotis præfate Aliciæ “per prædictum Willelmum de “advocacione illa integra per “consensum et assensum eorun- “dem Willelmi et Aliciæ sic contra “jus commune facta post confec- “tionem prædicti scripti, &c.,

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cerning common right of dower, that she will have only a third part of each parcel, it is not so; for if she be endowed of anything in gross, and that be only a third part, having regard to that which belonged to the husband, that endowment is as good by common right as a third part of each parcel; therefore, since we are endowed by the person who was thus tenant by virtue of the fine, against that person he would not deraign his presentation contrary to the conveyance made by the fine, but would be aided by an action of Covenant against the heirs; and just like a termor who has been ousted by such a conveyance, he cannot claim anything against us who hold by a higher right, for it cannot be called covin, when it was uncertain which church would first become void, to take one for our dower rather than another, and so there is no blame to us for accepting it; but if he had granted in precise terms the presentation to this particular church, there would be some colour for the assertion; and, according to law, when there are several advowsons, the wife shall be endowed with certainty. And suppose this manor with the advowson had been assigned to us *ad ostium ecclesiæ*, or *ex assensu patris*, even though it was in gross, we should retain the presentation as against him notwithstanding any grant made after the assignment, and consequently now.—SHARSHULLE. Do you understand that the fine ousts the plaintiff from

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comune dreit de dowere, qe le navera forqe terce partie<sup>1</sup> de chesqune parcelle, il nest pas issi; qar si ele soit dowe dun gros, et ceo ne soit forqe la terce partie, eaunt regard a ceo qe fuit au baroun, cel dowement est auxi bon de comune dreit comme la terce partie de chesqune parcelle; dount quant nous sumes dowe par celuy qe issint fuit tenant par la fyne, vers qi il derrenera pas<sup>2</sup> son presentement countre la demise [fait<sup>3</sup> par la fyne, mes par accion de Covenant serreit eide vers les heirs, si avant come termer qe fuit ouste par un tiel demise]<sup>4</sup> vers nous qe tenoms de plus haut dreit il ne poet rienz clamer, qar covyn ne poet ceo<sup>5</sup> pas estre dit quant ceo fuit en noun certain quel eglise primes voidreit plus de prendre un en nostre dowere qun autre, issint nulle defaut en nous en la resecite; mes sil ust graunte precise le presentement a ceste eglise asqun colour serreit; et de ley, quant plusours avowesouns sount, ele serra dowe en certain. Et jeo pose qe ceo<sup>6</sup> maner ove lavoweson al uys del<sup>7</sup> mouster<sup>8</sup> nous ust este assigne, ou *ex assensu patris*, tut fuit il un gros, nous retendroms<sup>9</sup> le presentement<sup>10</sup> vers luy<sup>11</sup> *non obstante* asqun graunt fait puis<sup>12</sup> lassignement, et *per consequens* a ore.—  
SCHAR. Entendetz vous qe la fyne oste celuy hors

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“ potius intelligi debet in jure  
 “ quædam conventio seu compositio  
 “ inter partes per collusionem et  
 “ in fraudem facta quam assigna-  
 “ tio dotis secundum communem  
 “ legem, &c., quæ quidem con-  
 “ ventio, sive collusio, vel fraus  
 “ jus ipsius Johannis, quod ei  
 “ accrevit diu ante assignationem  
 “ prædictam, nullo modo adnullare  
 “ potest, unde petit judicium, et  
 “ breve Episcopo, &c.’

<sup>1</sup> C., tourn.<sup>2</sup> C., par.<sup>3</sup> C., fet. The word is omitted from B. and H.<sup>4</sup> The words between brackets are omitted from B.<sup>5</sup> ceo is from B. alone.<sup>6</sup> B., and H., ceste.<sup>7</sup> H., a us de, instead of al uys del.<sup>8</sup> C., moustrour; L., moustrer.<sup>9</sup> B., tendroms.<sup>10</sup> The words le presentement are omitted from L.<sup>11</sup> L., le pleintif.<sup>12</sup> B., and H., par.

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possession of the presentation? Be assured that it does not; for after the grantor had granted the presentation as above, even though he had divested himself of his estate by fine, that would not now be to the prejudice of another person who is a stranger, and who had a title before; and therefore address yourself to the other point.—*Thorpe*. Neither collusion, nor any fault can be cast upon the woman, in this case, in respect of this acceptance of dower, and it is not right that she should by her husband's deed be ousted from the advantage of her dower which has accrued to her by very and good title, and particularly in this case; for if she now have the presentation to this church, the right of every one will be saved, because the plaintiff will not be put to any mischief by reason that neither the deed nor the grant can take effect, for he will have the first presentation to any of the other three churches which shall fall in.—*SHARSHULLE*. He certainly never will.—*Derworthy*. She can hold in dower, by common right, only that which she could have deraigned by law and by judgment, and that would be only the third turn; therefore, since the heir could have kept her out of the first two turns, we shall, on this first voidance, have the same advantage against her that we should have had against the heir if the assignment had not been made.—*Moubray*. When the husband has only one advowson, the wife can have in dower only the third turn; but when there are several advowsons, she will have one particular advowson assigned to her, for it is in accordance with right that she should have the profit of her third turn as soon as the heir has the profit of the two parts; and such is the common course in the Chancery.—*Grenc*. That is

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de possession de presentement? Soietz en certain  
 qe noun; qar apres cel qil avoit graunte le pre-  
 sentement *ut supra*, tut ust il par fyne soy demys  
 de son estat, ore<sup>1</sup> ne serra pas prejudice a autre  
 estraunge persone qe title avoit devant; et pur ceo  
 parletz al autre point.—*Thorpe*. Consense, en ceo  
 cas, ne default<sup>2</sup> ne poet estre jettu sur la femme de  
 cele accepter de dowere, et il nest pas resoun qe  
 par le fait soun baroun ele soit ouste del<sup>3</sup> avantage  
 de son dowere qe luy est acru par verroy et<sup>4</sup> bon<sup>5</sup>  
 title, et nomement en ceo cas; qar si ele eit le  
 presentement a ore de ceste eglise, chesquny dreit  
 serra salve,<sup>6</sup> qar pur ceo qe le fait ne le graunt  
 ne<sup>7</sup> poet ore prendre effecte countre le dowement de  
 plus haut il serra pas a<sup>8</sup> meschief, qar il avera le  
 primer presentement qe escherra<sup>9</sup> de les autres iij  
 eglises.—*SCHAR*. Certes, jammes.—*Derworthe*. Ele ne  
 poet tener en dowere, de<sup>10</sup> comune dreit, mes ceo  
 quele par ley et par<sup>11</sup> jugement poait aver derene,  
 et ceo serreit forqe la terce tourne; par quei, quant  
 leir la poait aver rebote de les ij primers tournes,  
 a cest primere voidaunce nous averoms mesme  
 lavantage vers luy qe nous ussoms eu vers leir si  
 lassignement nust pas este fait.—*Moubray*. Quant le  
 baroun nad forqe un avoweson, la femme ne pout<sup>12</sup>  
 aver en dowere forqe le terce tourne; mes quant  
 ils y sount plusours ele avera certain avoweson  
 assigne a luy, qar resoun voet quele eit le profit de  
 son terce tourne<sup>13</sup> si toust come leir de les<sup>14</sup> ij  
 parties; et issint est comune cours en la Chauncel-

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1344-5.<sup>1</sup> B., and H., ceo.<sup>2</sup> The words ne default are omitted from C.<sup>3</sup> B., de cel.<sup>4</sup> et is omitted from B. and H.<sup>5</sup> bon is omitted from B.<sup>6</sup> B., and H., saufve.<sup>7</sup> ne is omitted from B.<sup>8</sup> a is omitted from B. and H.<sup>9</sup> B., cherra.<sup>10</sup> B., and H., par.<sup>11</sup> par is from B. alone.<sup>12</sup> B., and H., poait.<sup>13</sup> tourne is omitted from B. and H.<sup>14</sup> Harl., ses. The word is omitted from B.

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not law, and the whole matter depends on that point; for, if out of three advowsons she would always have the third advowson in dower, it would then be necessary that the advowsons should always be held to be of equal value, or else she would have more or less than she ought to have, and so that is incompatible. And even if it happened that at a particular time three advowsons were of the same value, still that would not cause any change in common dower, because it is necessary to hold to the common course of law, that is to say, to endow the wife of the third turn, because more commonly churches are not of equal value, so that this special fact still cannot change the law, which ought to be certain. And, as to that which is said that in Chancery the practice is to endow ladies of certain fees and advowsons, yes, certainly, that is so after extent made, so that the wife will have one thing as an equivalent for another, and even that will be by her own consent.—*R. Thorpe*. Will she not bar another demandant of dower at a later date in respect of this tenancy where she thus holds in respect of dower of an earlier date? Certainly she will; and she will defeat charges, and will hold discharged.—*Skipwith*. If one particular manor be charged by the husband after the marriage, and the wife accept that manor for her dower in its entirety, she will hold it charged, and yet it is dower, but, because she ought by common right to have only the third part of it, and could have held that third part discharged, and have cast

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lerie.—*Grene.* Ceo<sup>1</sup> nest pas<sup>2</sup> ley, et de cel point pent tote la matere; qar, si ele avereit toux jours de iij avoesouns la terce avoesoun en dowere, donques<sup>3</sup> coviendreit qe les avoesouns fuissent tut temps tenu<sup>4</sup> dowele value, ou autrement ele avereit plus ou meins qele ne duist aver,<sup>5</sup> et issi nest il pas convenient. Et tut fuit ceo qa la foith qe iij avoesouns fuissent dune value, unqore ceo ne chaungera pas comune dowere,<sup>6</sup> qar<sup>7</sup> il covient tener comune cours de ley, saver,<sup>8</sup> de dower femme de terce<sup>9</sup> tourne, pur ceo qe plus<sup>10</sup> comunement les eglises ne sount pas de owele value, issi qe cel especial fait ne purra pas unqore chaunger la ley quele covient estre en certain. Et, de ceo qe homme<sup>11</sup> parle qen Chaucellerie homme use de dower dames de certains fees et avoesouns, oyl,<sup>12</sup> certes,<sup>13</sup> cest apres extente fait, issi qele avera une chose en value dautre, et si serra ceo unqore de soun assent demene.—*R.*<sup>14</sup> *Thorpe.* Ne barra ele autre demandante de<sup>15</sup> dowere de plus bas<sup>16</sup> de cele tenance qele tient issint de dowere de plus haut? *Certum est quod sic*; et defra charges et tendra descharge.—*Skip.* Si un certain maner soit charge<sup>17</sup> par le baron puis les esposailles, et la femme resceit cel maner pur soun dowere enterelement, ele tendra charge, et si<sup>18</sup> est il dowere, mes pur ceo qele ne duist aver de comune dreit forqe la terce partie de cele, et cella<sup>19</sup> ele pout aver tenu<sup>20</sup>

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1344-5.<sup>1</sup> Ceo is omitted from B.<sup>2</sup> pas is omitted from C.<sup>3</sup> Harl., il.<sup>4</sup> The words tut temps tenu are from B. alone.<sup>5</sup> Harl., navereit, instead of ne duist aver.<sup>6</sup> C., and L., dowere comune, instead of comune dowere.<sup>7</sup> qar is omitted from B.<sup>8</sup> saver is from B. alone.<sup>9</sup> terce is omitted from B.<sup>10</sup> plus is omitted from B. and H.<sup>11</sup> C., qomme, instead of qe homme.<sup>12</sup> oyl is omitted from B.<sup>13</sup> certes is from B. alone.<sup>14</sup> R. is omitted from B.<sup>15</sup> de is from H. alone.<sup>16</sup> bas is omitted from B.<sup>17</sup> The words soit charge are omitted from B.<sup>18</sup> B., issi.<sup>19</sup> B, la, instead of et cella.<sup>20</sup> tenu is omitted from H.

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the whole of the charge on the two other parts during her time, she will be charged by reason of her own folly; so in the matter before us, by reason of her acceptance she will be ousted from any claim against us of a presentation which we have by purchase from her husband, which purchase is a higher title than the assignment made by consent and not according to common right.—*Thorpe*. Suppose the whole of the husband's inheritance, and not one particular portion, is charged, and she accepts one manor in dower, will she not hold it discharged? as meaning to say that she will. So also in this behalf, since the grant did not extend specially to one particular advowson, but generally to the church which should first chance to be void, so that this grant extended to all the advowsons, no one can say that there was any mistake in the acceptance of dower such as to prevent her retaining the presentation discharged just as much as in the other case.—*Skipwith*. In the similar case which you put there is no mischief to the person who has a charge, because, even though she hold one manor discharged, the rest of the inheritance remains charged for the whole; but in case we do not recover the presentation we are precluded as to the rest; and if you had accepted your dower according to common right we should have recovered the presentation *de claro*.—*Moubray*. You will have the presentation to the first of the other three churches which shall become void, or else a writ of Covenant.—*STONORE*. He will never deraign a presentation by writ of Covenant; and if he did not now raise a dispute over this pre-



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descharge, et jettu pur souu temps tut la charge en les ij<sup>1</sup> parties, pur sa folie ele serra charge; *sic in proposito*, par son accepter ele serra ouste vers<sup>2</sup> nous<sup>3</sup> de clamer presentement qavoms par purchace de souu baroun,<sup>4</sup> quel est title de plus haut qe nest lassignement qest fait par assent et noun pas de comune dreit.—*Thorpe*. Jeo pose qe tut leritage le<sup>5</sup> baroun, et noun pas certain porcion, soit charge, et ele resceit un maner en dowere, ne tendra ele descharge? *quasi diceret sic*. Auxi de cest part, quant le graunt sestendist<sup>6</sup> pas especialment a certain avoesoun, mes generalment a quele qe primes casuelment se voidast, issint qe cel graunt sestendist a toux, nulle homme poet dire qen la resceit de dowere y avoit mesprisioun<sup>7</sup> mes qele retendra<sup>8</sup> le presentement si avant come en<sup>9</sup> lautre cas descharge.<sup>10</sup>—*Skip*. En la semblaunce qe vous mettetz ny ad<sup>11</sup> pas meschief a<sup>12</sup> celuy qavera le charge, qar, tut teigne ele descharge un<sup>13</sup> maner, le remenant del heritage demoert charge de tut; mes en cas qe<sup>14</sup> nous ne<sup>15</sup> recoveroms mie<sup>16</sup> le presentement nous sumes forclos au remenant; et si vous ussetz resceu vostre dowere de comune dreit nous ussoms recoveri le presentement *de claro*.—*Moubray*. Vous averetz le primer presentement de les autres iij qe primes voidra, ou autrement brief de Covenant.—*Ston*. Il ne derrenera<sup>17</sup> jammes presentement par brief de Covenant; et sil ne meist ore debat sur ceo presentement il

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1344-5.<sup>1</sup> B., iij.<sup>2</sup> B., devers.<sup>3</sup> The words vers nous are omitted from H.<sup>4</sup> B., plus baaz quel est title, instead of purchace de souu baroun.<sup>5</sup> H., de son.<sup>6</sup> B., sestent.<sup>7</sup> C., mespressioun.<sup>8</sup> H., tendra.<sup>9</sup> B., si.<sup>10</sup> B., tendra descharge.<sup>11</sup> L., and C., nad; H., nest, instead of ny ad.<sup>12</sup> B., pur.<sup>13</sup> B., son; L., le.<sup>14</sup> B., and C., si.<sup>15</sup> ne is omitted from B.<sup>16</sup> mie is from L. alone.<sup>17</sup> H., recovera.

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A.D. 1344-5. sentation he would never have anything against the heir of his lessor by action of Covenant.—*Birton*. Suppose she had recovered her dower, would it not be at the will of the Sheriff to deliver to her either in gross to the value of the whole, or a third part of each parcel? And if he delivered it as in gross, would she not be, for the purpose of defence, or discharge, at the same advantage as if he delivered the third part of each parcel? as meaning to say that she would. So also in this behalf.—*Blaykeston*. If a woman demands dower in several vills, and recovers, and execution of the whole is made in one of the vills, that is a disseisin in respect of so much as is beyond a third part in that vill, even though the livery be only to the value of a third part having regard to the whole of the demand.—*Thorpe*. When that which she holds is in value no more than a third part of the husband's inheritance, be it in gross by itself or a third part of each parcel, she will equally have the advantage in her tenancy in dower, because, for the same reason for which she would have a third part of each manor, she would be put to take a third part of each acre or rood, which cannot be.—*Huse*. If certain land is assigned *ad ostium ecclesie* to a wife to hold in the name of dower, and afterwards the husband is vouched, and loses, and makes that land over to the value, even though he had other land sufficient to make over to the value, she will never deraign that which is so made over to the value by action of Dower, and yet the judgment was not binding on that land in particular. So also in this matter, even though it be the fact that the conveyance did not, at the time of its execution, extend to this presentation in particular, still against us who have the advantage of the deed, since this is the first voidance, such an assignment

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avera jammes rienz vers leir son lessour par accion de Covenant.—*Birtone*. Jeo pose quele ust recoveri soun dowere, ne serreit il a la volunte le Vicounte de liverer a luy un gros en value de tut, ou la terce partie de chesque parcelle? Et sil liverast ceo come un<sup>1</sup> gros, ne serra ele par voie de defens, ou<sup>2</sup> a descharger, a mesme lavantage come sil<sup>3</sup> liverast la terce partie de chesque parcelle? *quasi diceret sic*. Auxi de ceste part.—*Blayk*. Si femme demande dowere en plusours villes, et recovere, et execucion soit fait de tut en un des villes, cest un disseisine de quanqest outre la terce partie en cele ville, tut soit la livere forqe a la value de la terce partie eaunt regarde a tut la demande.—*Thorpe*. Quant ceo quele tient est<sup>4</sup> en<sup>5</sup> value nient plus forqe la<sup>6</sup> terce partie del heritage le baron, soit il gros a per luy ou terce partie de chesque parcelle, owelment avera ele lavaantage en sa tenaunce de dowere, qar par mesme la resoun qe de chesqun maner ele avereit terce partie si serreit ele<sup>7</sup> mys de prendre terce partie de chesque acre ou rode, qe ne poet estre.—*Huse*. Si certain terre soit assigne a huis<sup>8</sup> de mouster a une femme a tener en noun de dowere, et puis le baroun est vouche, et perde, et face cel en value, tut avoit il autre terre assetz daver fait en value, jammes ne derreignera ele ceo qest issi fait en value par accion de Dowere, et si ne<sup>9</sup> se lia pas le jugement en cele terre en certain. Auxi en ceste matere, tut soit il qe le lees sestendi [pas en certain al temps de la confeccion a<sup>10</sup> cest presentement, unqore, vers nous qavoms avantage del fet, del houre qe cest la primere voidaunce],<sup>11</sup> tiel

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1344-5.<sup>1</sup> un is from H. alone.<sup>2</sup> ou is omitted from B.<sup>3</sup> B., il; L., si ele.<sup>4</sup> est is omitted from B. and H.<sup>5</sup> en is omitted from C.<sup>6</sup> H., de la.<sup>7</sup> B., il.<sup>8</sup> B., and H., use; L., huys.<sup>9</sup> B., ele ne.<sup>10</sup> a is from B. alone.<sup>11</sup> The words between brackets are omitted from H.

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of dower cannot cause any prejudice.—*R. Thorpe*. In the case which you put, if the warranty commenced at a later time than the assignment, she would recover her dower, and we are in like case.—*Pole*. Since he who was seised had the power to grant the presentation, and did grant it, although the advowson remained in him, the presentation was vested in the grantee, and the grantor was out of possession of that first presentation, and so also was he who entered by virtue of the fine and assigned dower; and an assignment of dower cannot take effect except of that of which he who assigned was in possession; therefore by such assignment this presentation could not vest in the woman, as at the time of the assignment it was in a person other than the person who assigned.—*Sadelyngstanes*. There is no doubt that the heir could have barred her, on a writ of Dower, as to the two first presentations; therefore it is not right that by covin between the heir and her we should be ousted from this presentation, which the heir could have retained if she had made use of such an action. Besides, suppose the husband had granted to the plaintiff, for term of his life, the advowson of the church which should first become void out of four churches, now at the time of the grant it would be uncertain with regard to which advowson the grant would take effect; then suppose that before any voidance the wife was endowed of one church in particular, in satisfaction, &c., and that church afterwards was the first to become void subsequently to the grant, I say that the endowment would be defeated, and that the person to whom the grant was made is tenant of the advowson; *a fortiori* in this case in which our recovery

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assignement de dowere ne purra pas prejudice faire. — *R.*<sup>1</sup> *Thorpe*. En vostre cas, si la garrantie comencea plus bas que lassignement, ele recoversoun dowere, et en tiel cas sumes nous. — *Pole*. Quant celuy que seisi fut pout<sup>2</sup> graunter le presentement, et le graunta, tut demura lavoessoun en luy, le presentement fuit vestu en le grante, et le grauntour<sup>3</sup> hors de possession de cele primere presentement, et auxint fut celuy<sup>4</sup> qentra par la fyne et assigna dowere; et assignement de dowere ne poet prendre effecte mes de ceo dount celuy que assigna fut possessione<sup>5</sup>; *ergo* par tiel<sup>6</sup> assignement ceo presentement ne pout<sup>7</sup> en la femme vester,<sup>8</sup> qal temps<sup>9</sup> del assignement fut en autre qen celuy que assigna. — *Sadl.* Nest pas doute que leire la<sup>10</sup> pout aver barre al brief de Dowere de<sup>11</sup> les deux primeres presentements; donques par covyne entre leire et luy nest pas resoun que nous soioms ouste de cel presentement, que leire pout aver retenu si<sup>12</sup> ele ust use<sup>13</sup> accion. Ovesqe ceo, jeo pose que le baroun ust graunte al pleintif lavoessoun del eglise que primes se voidreit de iiij<sup>14</sup> eglises, pur terme de sa vie, ore<sup>15</sup> al temps del graunt serreit ceo en noun certain de quel avoessoun le graunt prendreit effecte; donques mettez que avant nulle voidaunce la femme fuit dowe dune eglise en certain en allowaunce, &c., et cele eglise apres<sup>16</sup> primes se voida puis la graunt, jeo die que le dowement serreit defet, et celuy a qi le graunt se fist tenant del avoessoun; a plus fort en ceo cas

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1344-5.<sup>1</sup> *R.* is omitted from *B.*<sup>2</sup> *B.*, et pout.<sup>3</sup> The words et le grauntour are omitted from *H.*<sup>4</sup> celuy is omitted from *B.*<sup>5</sup> *H.*, en possession.<sup>6</sup> *B.*, and *H.*, cel.<sup>7</sup> *B.*, fut.<sup>8</sup> *B.*, vestu; *H.*, vestier.<sup>9</sup> *C.*, tiel temps.<sup>10</sup> *B.*, ne la.<sup>11</sup> *B.*, a.<sup>12</sup> *B.*, et si.<sup>13</sup> *B.*, and *H.*, usse.<sup>14</sup> *B.*, iij.<sup>15</sup> ore is omitted from *B.*<sup>16</sup> apres is omitted from *C.*

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is not in defeasance of her dower, but only a presentation *hac vice*.—*R. Thorpe*. Much less in this case, for in the case which you put the person to whom this grant would be made would be tenant of the freehold, against whom a writ would lie, and he would have his warranty; but you who have no estate in the advowson, and against whom I could not have recovered my dower, cannot counterplead the endowment; and a termor cannot oust a guardian from wardship, nor can a termor plead anything which is in discharge of the freehold, even though the charge commenced after his term.—WILLOUGHBY and HILLARY said expressly that the reverse is settled law.—*R. Thorpe*. The reverse of that has been adjudged; and suppose that the manor to which the advowson, &c., together with the advowson, had been recovered by us by writ of Dower against the person who was tenant of the freehold, would he prevent execution? as meaning to say that he would not.—WILLOUGHBY. Yes, he would, when the dower was contrary to common right.—*Thorpe*. Suppose this advowson had been assigned to us *ad ostium ecclesie*, it is certain that notwithstanding that subsequent grant we should have retained the presentation; and for the same reason now; for we as properly hold in this case by dower of earlier date as in the other case; and we shall also by this dower bar the wife of our husband's heir of dower of later date; and when dower is demanded of three manors, and the Sheriff delivers one manor by way of execution, in

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ou nostre<sup>1</sup> recoverir nest pas en defesaunce<sup>2</sup> de soum  
dowere, mes soulement un presentement a cest<sup>3</sup>  
foithe.<sup>4</sup>—*R. Thorpe.* A moult meins en ceo cas, qar  
el cas qe vous mettez celuy a qi cel graunt serreit  
fait serreit tenant de franktenement, vers qi brief  
girreit, et avereit sa garrantie; mes vous qavetz  
nul estat en lavoosoun, et<sup>5</sup> vers qi jeo ne poay  
aver recoveri moun dowere ne poietyz countrepleder  
le dowement; et termer noustera pas gardeyn de  
garde, ne termer ne poet pleder rienz qest en<sup>6</sup> [Fitz.  
*Faux*  
*Recovere,*  
35.]  
puis soum terme.—WILBY et HILL. disoint expresse-  
ment<sup>7</sup> le revers [estre ley certain.<sup>8</sup>—*R. Thorpe.* Le  
revers]<sup>9</sup> ad este ajuge; et jeo pose qe le maner a  
qi lavoosoun, &c., ensemblement ove lavoosoun, ussent  
este recovery par nous par brief de Dowere vers  
celuy qe fuit tenant de franktenement, destourbera  
il execucion? *quasi diceret non.*—WILBY. Oil, ferreit,  
quant le dowement fuit countre comune dreit.—  
*Thorpe.* Jeo pose qe cel avoosoun nous ust este  
assigne al huys<sup>10</sup> de mouster,<sup>11</sup> *certum est* qe,<sup>12</sup> nient  
countreesteaunt cel<sup>13</sup> graunt puis, nous ussoms retenu  
le presentement; et par mesme la resoun a ore;  
qar auxi proprement tenoms<sup>14</sup> en ceo cas de dowere  
plus haut qen lautre cas; et auxi<sup>15</sup> de ceo dowere  
[barroms la femme leire nostre baroun de dowere plus  
bas; et quant dowere est demande de<sup>16</sup> iij<sup>17</sup> maners,  
et le Vicounte livere un maner par execucion],<sup>9</sup> en

<sup>1</sup> C., and L., vostre.

<sup>2</sup> B., destourbaunce.

<sup>3</sup> B., un.

<sup>4</sup> B., and H., foitz.

<sup>5</sup> et is omitted from B. and H.

<sup>6</sup> en is omitted from B.

<sup>7</sup> expressement is omitted from B.

<sup>8</sup> H., certeyn leye, instead of ley certain.

<sup>9</sup> The words between brackets are omitted from B.

<sup>10</sup> B., al uys; C., a luys; H., al us, instead of al huys.

<sup>11</sup> C., moustiere.

<sup>12</sup> C., *quod*.

<sup>13</sup> B., tiel.

<sup>14</sup> tenoms is omitted from H.

<sup>15</sup> auxi is from B. alone.

<sup>16</sup> H., en.

<sup>17</sup> H., iij.

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satisfaction, is not the livery good?—*Grene*. I grant you all the cases. In the first case of dower *ad ostium ecclesie*, because that assignment is definite and of earlier date, she will retain it; and, as to barring the heir's wife, that is no wonder, because it is right between those who claim in respect of the estate of the heir with regard to whom this would be dower of earlier date; and so also, where a manor is assigned in its entirety, the endowment is good against every one except against one to whose damage it is. And suppose that, when a Sheriff so delivers an entire manor, the lady should come into this Court and complain that this manor was charged, and pray a remedy, and to have a third part of each manor, would she not be aided in this Court? It is certain that she would.—*WILLOUGHBY*. Of two mischiefs the lesser must be chosen; but it is a less mischief that the lady should recover her presentation (as there was no fault in her at the time of the assignment, when she accepted her dower as above, on account of the want of certainty, as is alleged, and even though she recover, the plaintiff can have a writ of Covenant, and deraign in damages the value of the presentation, as one who is disseised will do if he recover by Assise a manor to which an advowson is appendant and the disseisor presents, [for then] such presentation will fall under the head of damages on the recovery) than it would be to oust the lady from recovering, since she cannot be aided in any other way if she do not have the presentation.—*Stouford*. It is certain that, if she had taken her dower as common law gives it, that is to say, the third presentation, we should then have recovered; therefore it is not right that the grant of one who had power to grant should be restrained by collusion



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allowaunce, nest pas<sup>1</sup> la livere bon?—*Grene.* Jeo vous graunt touz les cas. En le primer cas de dowere al huys de mouster,<sup>2</sup> pur ceo que cel assignement est en certain et de plus haut, ele retendra<sup>3</sup>; et, quant a barrer la femme leire, nest pas merveille, qar entre ces que cleyment del estat leire vers qi ceo fuit dowere de plus haut, il est resoun; et auxi, ou un maner est assigne entier, le dowement est bon vers chesqun homme sauf vers celuy en qi damage il est. Et mettez moi que quant Vicounte livere issint un maner entier et la dame venist ceinz et se pleignisit<sup>4</sup> que cel maner fuit charge, et pria remedie, et daver la terce partie de chesqun maner, ne serra ele pas eide ceinz? *Certum est quod sic.*—*WILBY.* De deux meschiefs le meindre est a eslire<sup>5</sup>; mes meindre meschief est que la dame recovere soun presentement, en qi nulle defaut fuit al temps del assignement, quele resceust<sup>6</sup> soun dowere *ut supra*, pur la nouncerteinte, come est allegge, et, tut recovere ele, le pleintif poet aver brief de Covenaut, et derrener en damages la value del presentement, come un qest disseisi fra sil recovere par Assise un maner a qi avoeson est appendant<sup>7</sup> et le disseisour presente, tiel presentement cherra sur le recoverir en damages, qil ne serreit douster la dame de recoverir, que par nulle autre voie serra eide si ele<sup>8</sup> neit le presentement.—*Stouf.* *Certum est* si ele ust pris soun dowere come comune ley doune, saver le terce presentement, donques nous ussoms recoveri; donques nest ceo<sup>9</sup> pas resoun que le graunt celuy que poair en avoit de graunter soit<sup>10</sup> restreint par assent

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1344-5.<sup>1</sup> pas is from L. alone.<sup>2</sup> C., moustiere.<sup>3</sup> B., recordera.<sup>4</sup> B., and H., pleinyssist.<sup>5</sup> B., and H., elire.<sup>6</sup> C., resceut.<sup>7</sup> The words est appendant are omitted from B.<sup>8</sup> B., sil, instead of si ele.<sup>9</sup> ceo is from H. alone.<sup>10</sup> H., serreit.

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entre leire et la femme : et a ceo<sup>1</sup> que homme<sup>2</sup> parle<sup>3</sup> de nouncerteinte que la femme ne poait<sup>4</sup> saver,<sup>5</sup> jeo die quele fuit tenuz de saver<sup>5</sup> a son peril si bien cel graunt que fuit general com si le graunt se ust estendu especialment a un des avoesouns soulement. —*Birtone*. Assignement de doweres defait menes<sup>6</sup> estates de franktenement; a plus fort de chatel; et si jeo vous graunte la vesture de moun boys, et puis jeo vende le boys a autre, vous ne poietz pas couper le boys apres lalienacion, mes serretz mys a accion. —*WILBY negavit*.—Et puis vynt la dame par acord,<sup>7</sup> et ne pout dedire qal pleintif nappent<sup>8</sup> a presenter a cest foith, sauf soun dreit autrefoith, par force del assignement *ut supra*.<sup>9</sup>—Par quei HILL.

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<sup>1</sup> The words et a ceo are omitted from C.

<sup>2</sup> L., qomme, instead of que homme.

<sup>3</sup> parle is omitted from C. and L.

<sup>4</sup> C., and L., pout.

<sup>5</sup> B., and H., salver.

<sup>6</sup> B., menez; H., meenz.

<sup>7</sup> The words par acord are omitted from B.

<sup>8</sup> B., nappent pas.

<sup>9</sup> After the replication, the pleadings on the roll are the following:—

“ Et Alicia dicit quod de jure  
“ communi statim post desponsalia  
“ inter virum et mulierem cele-  
“ brata accrescit jus mulieri ad  
“ dotem de tenementis unde vir  
“ suus fuit seisitus ut de feodo post  
“ desponsalia, &c., licet actio inde  
“ non oritur ante mortem ejusdem  
“ viri, quod quidem jus idem vir  
“ in vita sua nec heres ejusdem  
“ post mortem viri, &c., adnullare  
“ potest quin mulier illa habebit  
“ actionem petendi jus illud post  
“ mortem viri sui quod ei prius

“ accrevit, videlicet dotem de tene-  
“ mentis under vir suus fuit  
“ seisitus in forma prædicta. Et  
“ prædictus Johannes non dedicit  
“ quin ipsa fuit uxor præfati  
“ Johannis filii Johannis diu ante  
“ datam prædicti scripti, per quod  
“ ante datam illam ipsa habuit jus  
“ ad dotem suam, de quo quidem  
“ jure ipsa modo seisita est, vide-  
“ licet de antiquiori tempore de-  
“ servita, per quod ad ipsam  
“ pertinet ad ecclesiam præsentare,  
“ unde petit judicium et breve  
“ Episcopo, &c.

“ Et prædictus Johannes bene  
“ cognoscit quod mulier post mor-  
“ tem viri sui de jure communi  
“ habebit actionem de dote de  
“ tenementis unde vir suus fuit  
“ seisitus in dominico suo ut de  
“ feodo, &c., post desponsalia, &c.,  
“ sed dicit quod dotem illam petere  
“ et habere debet per nomen tertie  
“ partis, secundum legem terræ, et  
“ communem modum, et non per  
“ aliquod integrum, &c., nec com-  
“ pelli potest de jure dotem suam

## No. 5.

A.D.  
1344-5. Therefore HILLARY awarded a writ to the Bishop for the plaintiff.—Note that according to the opinion of the COURT the plaintiff would have recovered by law in this case, &c.

Account. (5.) § One J., as son and heir, brought a writ of Account against one B., supposing that B. was receiver of A. the father of J., whose heir J. is, and that he bound himself to A. and to A.'s heirs and executors to render a faithful account. And J. made *profert* of a deed which witnessed the fact.—*Richemunde*. By common law neither heir nor executor had a writ of Account; and by statute<sup>1</sup> the action is given to executors only; judgment of the writ.—*Thorpe*. He would have an action of Covenant rather than an action of Account on such a deed.—*Grene*. I think the heir or

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<sup>1</sup> 13 Edw. I. (Westm. 2), c. 23.

No. 5.

agarda pur le pleintif brief al Evesqe.<sup>1</sup>—*Nota per opinionem CURLE* le pleintif ust recoveri par ley en le cas, &c.<sup>2</sup> A.D.  
1344-5

(5.)<sup>3</sup> § Un J., comme fitz et heire, porta brief Dacompte vers un B.,<sup>4</sup> supposant qil estoit reseceivour A. pere J., qi heire il est, et qil soy obligea a A. et a<sup>5</sup> ses heirs et ses executours a leal acompte rendre. Et mist avant fait qe le tesmoigna.—*Rich.* Par comune ley heire ne executour navoit<sup>6</sup> brief Dacompte; et par statut est done accion as executours soulement; jugement du brief.—*Thorpe.* Il avereit plus tost accion de Covenant qe Dacompte sur tiel<sup>7</sup> fait.—*Grene.* Jeo quide qe leire ou<sup>8</sup>

Acompte.  
[Fitz.,  
Accompt,  
56.]

“ alio modo recipere, nec tenens  
“ alio modo ei assignare dotem  
“ quam per tertiam partem vel per  
“ tertiam præsentationem et in  
“ tertia vacatione, &c., et si per  
“ consensum et assensum ejusdem  
“ mulieris aliquod integrum ei  
“ assignatum fuerit pro dote, si sit  
“ in præjudicium alterius, assigna-  
“ tio illa expresse est contra jus  
“ commune et communem modum  
“ de dote, et non de rigore juris,  
“ sed potius intelligi debet in jure  
“ compositio sive conventio inter  
“ assignantem et recipientem per  
“ collusionem facta quam vera  
“ assignatio dotis ad communem  
“ legem, quæ quidem conventio  
“ sive collusio in forma supradicta  
“ facta post confectionem prædicti  
“ scripti in derogationem juris  
“ ipsius Johannis cedere non debet,  
“ maxime cum ille qui assignavit,  
“ &c., præsentationem istam ha-  
“ bere non posset, licet de advoca-  
“ tione prædicta seisitus fuisset,  
“ unde petit judicium et breve  
“ Episcopo, &c.

“ Et super hoc prædicta Alicia  
“ non potest dedicere quin ad præ-

“ dictum Johannem, ratione præ-  
“ dicta, pertinet ad prædictam  
“ ecclesiam hac vice præsentare,  
“ salvis eidem Aliciæ præsentati-  
“ onibus suis ad eandem in aliis  
“ vacationibus cum acciderint,  
“ &c.”

<sup>1</sup> According to the roll judgment was given as follows :—

“ Ideo consideratum est quod  
“ idem Johannes recuperet præ-  
“ sentationem suam ad ecclesiam  
“ prædictam, et habeat breve  
“ Episcopo Wyntoniensi, loci illius  
“ diocesano, quod, non obstante  
“ reclamatione prædictæ Aliciæ, ad  
“ præsentationem præfati Johannis  
“ ad prædictam ecclesiam idoneam  
“ personam admittat. Et eadem  
“ Alicia in misericordia, &c. Et  
“ super hoc idem Johannes re-  
“ mittit ei damna, &c.”

<sup>2</sup> The last sentence is omitted from B. and H.

<sup>3</sup> From B., C., H., and L.

<sup>4</sup> B., W.

<sup>5</sup> a is from B. alone.

<sup>6</sup> B., avereit.

<sup>7</sup> B., and H., cel.

<sup>8</sup> B., and H., et.

## Nos. 6, 7.

A.D.  
1344-5.

the executors had an action on an obligation at common law, and why should he not have an action of Account as well as an action of Debt?—HILLARY and WILLOUGHBY said that the heir will not have an action of Debt, when there is an executor.—*Grene*. Why do you say so? The reverse has been seen lately in this Court. And the heir will have a writ of Annuity.—HILLARY. But will the heir recover arrears due in the time of his ancestor? as meaning to say that he will not.—*Grene*. Yes, in some cases, as, for instance, if I grant you an annuity to hold to you and your heirs during the life of another person, and you die, your heir will have the annuity.—WILLOUGHBY. Yes, but not arrears, except those falling due in his own time.—HILLARY. Give up the deed to the executors, and take nothing by this writ, and be in mercy.

Covenant. (6.) § An Abbot brought a writ of Covenant against a man and his wife in respect of a rent of so many loaves, and so many gallons of ale, so many dishes of food, and so many candles, to be taken in the Abbey aforesaid, and pasture for two oxen or two cows, to be released.—*Gaynesford* drew the fine in the form that the husband and his wife released as much as they had, &c., for their lives, to the Abbot and his successors.—And the fine was accepted, and the wife was examined.

Statute  
Merchant.

(7.) § J. Ferers made a statute merchant to W. Sunyartone, who leased his estate to J.; and a writ of Entry *ad terminum qui præterit* was brought

## Nos. 6, 7.

executours<sup>1</sup> avoint accion<sup>2</sup> par obligacion a la comune ley, et purquei navera il accion Dacompte auxi<sup>3</sup> bien comme de Dette?—HILL. et WILBY disoint qe leire, quant il y<sup>4</sup> ad executour, navera pas accion de Dette.—Grene. Pur quei ditetz vous issint? Le revers ad este view ceinz tarde. Et heire avera brief Dannuite.—HILL. Mes recovers leire arrerages de temps son ancestre? *quasi diceret non.*—Grene. Oyl, en asquin cas, com si<sup>5</sup> jeo vous<sup>6</sup> graunt a vous et vos heirs un annuite a autri vie, vous devietz,<sup>7</sup> vostre heir avera lannuite.—WILBY.<sup>8</sup> Oyl, mes noun pas arrerages, forqe de son temps demene.—HILL.<sup>9</sup> Bailletz le fet as executours, et pernetz rien par ceo brief, et soietz en la mercy.

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(6.)<sup>10</sup> § Un Abbe porta brief de Covenant vers un homme et sa femme *de redditu tot panum, et tot lagenarum cervisie, tot ferculorum, tot candelarum capi-endo in Abbathia predicta, et pastura ad duos<sup>12</sup> boves vel duas vaccas<sup>13</sup> in B. relaxando.*—Gayn. treit la fyne qe le baroun et la femme relessent quanqils avoient, &c., pur lour vies al Abbe et ses successeurs.—*Et recipitur, et uxor examinatur.*

Coven-  
ant.<sup>11</sup>  
[Fitz.,  
Fynes,  
70.]

(7.)<sup>14</sup> § J. Ferers<sup>16</sup> fist un estatut marchaunt a W. Suynartone,<sup>17</sup> qe lessa son estat a J.<sup>18</sup>; et un<sup>19</sup> brief de Entre *ad terminum qui præterit fut<sup>20</sup> porte*

Statut<sup>15</sup>  
Marchant.  
[Fitz.,  
Resceit,  
112.]

<sup>1</sup> C., and L., executour.

<sup>2</sup> B., laccion.

<sup>3</sup> B., si.

<sup>4</sup> y is omitted from B.

<sup>5</sup> si is omitted from B.

<sup>6</sup> vous is omitted from B. and H.

<sup>7</sup> B., dioms qe.

<sup>8</sup> B., HILL.

<sup>9</sup> B., Birtone.

<sup>10</sup> From B., C., H., and L.

<sup>11</sup> H., Fyn. The marginal note is omitted from C.

<sup>12</sup> B., *duos equos vel duos.*

<sup>13</sup> The words *vel duas vaccas* are omitted from B.

<sup>14</sup> From B., C., H., and L.

<sup>15</sup> L., Estatut. The marginal note is omitted from C.

<sup>16</sup> B., and H., Piers.

<sup>17</sup> B., Synartone; C., Swaynartone.

<sup>18</sup> H., S. The words a J. are omitted from B.

<sup>19</sup> The words et un are omitted from C.

<sup>20</sup> fut is omitted from C. and H.

## No. 7.

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1344-5.

against the tenant of the freehold, who made default after default.—*Thorpe* recited to the effect that the writ was brought by collusion in order to cause J., who was tenant by the statute merchant, to lose his chattel interest, and prayed that no judgment should be given; and he said further that the action was not true but feigned, and traversed it.—*Seton*. He is not within the case of the statute affecting a termor,<sup>1</sup> because he can have an Assise.—*WILLOUGHBY*. He will not have an Assise, for, with regard to him, a writ does not lie to demand freehold, wherefore when the demandant brings his writ against the person who is tenant, and recovers, his recovery is good by law; and although he will have an Assise in an ordinary case in which he is ousted, he will not have an Assise in this case where he has only a chattel interest.—And the COURT inspected the Statute of Gloucester,<sup>1</sup> and said that he was in a case like that of the statute.—And afterwards judgment was rendered for the demandant, but, as to execution, it was stayed.—And they were at a traverse on the title.—*Blaykeston*. Now find security for the issues.—*HILLARY*. The statute does not so purport.—*Blaykeston*. The mischief in delaying us is the same as in a case of prayer to be admitted.—*HILLARY*. You are at issue between you, and, because the statute does not purport that security for the issues should be found in such case, you shall not have security. And *HILLARY* gave a day for the inquest.—*Quære*, if they had been at a traverse whether the person who prayed to prevent the execution was tenant by statute merchant or not, whether security for the issues would have been found or not, because then this would have been a case like that in the statute; for when it is admitted that one who prays to be admitted has a reversion, although he be admitted to the delay of the demandant, he shall not

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<sup>1</sup> 6 Edw. I. (Glouc.), c. 11.



## No. 7.

vers tenant de fraunctonement, qe fit default apres default.—*Thorpe* rehercea coment le brief est porte par collusion de fere J.<sup>1</sup> perdre son chatel qest tenant<sup>2</sup> par statut, et pria qe nul jugement se fist; et dit outre qe laccion nest pas verroy mes feint, et la traversa.—*Setone*. Il nest pas en cas de statut de termer,<sup>3</sup> qar il poet<sup>4</sup> aver Assise.—*WILBY*. Noun avera, qar le brief ne gist pas vers luy a demander fraunctonement, par quei quant le demandant porte son brief vers celuy qest tenant, et recovere, son recoverir est bon par ley; et tut eit il Assise en comune cas ou il est ouste, en ceo cas il navera pas Assise, et il nad forqe chatel.—Et la COURT vist lestatut de Gloucestre, et dit qil est en semblable cas destatut.—Et puis est jugement rendu pur le demandant, mes quant a execucion cesse.—Et sur le tittle sont a travers.—*Blaik*. Trovetz<sup>5</sup> ore soerte des issues.—*HILL*. Ceo ne voet pas lestatut.—*Blaik*. Cest mesme le meschief qil nous delaiera com en cas de prier destre resceu.—*HILL*. Vous estes a issue entre vous, et, pur ceo qe lestatut ne voet pas qe soerte de les<sup>6</sup> issues en le cas soit trove, vous naveretz pas soerte.<sup>7</sup> Et dona jour sur lenqueste.—*Quære*, sils ussent este a travers le quel celuy qe pria a destourber lexecucion fut tenant par statut marchaunt ou noun, si soerte des issues ust este trove ou noun, qar adonqes ust ceo este en semblable cas destatut; qar quant celuy qe prie destre resceu conu luy soit qil ad reversion, tut soit il resceu en delaye del demandant, il trovera pas

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1344-5.<sup>1</sup> H., S.<sup>2</sup> tenant is omitted from B.<sup>3</sup> B., and H., terminer.<sup>4</sup> C., purreit.<sup>5</sup> C., trove.<sup>6</sup> The words soerte de les are omitted from B., and the words soerte de from H.<sup>7</sup> B., and H., seurte.

## Nos. 8, 9.

A.D.  
1344-5.

find security for the issues ; nor, as it seems, shall he in this case, when it is admitted that he now has an estate by statute merchant.—Therefore *quære*.—And note that it was alleged, in order to oust the termor from his prayer, &c., that he who made the statute had only a fee tail, and that after his death his son entered, in whose possession this land was discharged, which issue enfeoffed the person against whom the writ was brought, upon whose possession execution was sued, and so the demandant had no right to have execution under the statute, and consequently the termor could not plead the statute.—This exception was not allowed, because the execution was good against the heir's assign, since the person who took an estate in fee simple could not make the estate of his feoffor less.

Note.

(8.) § Note that one with regard to whom judgment had been given that he must account before auditors refused to account except upon condition that they would allow in his favour an acquittance which had been disallowed in the Bench for the reason that on a previous occasion he had in the same plea made *profert* of another deed, the finding in respect of which had been against him.—WILLOUGHBY said that he refused to abide by the common law, and therefore should be put in irons.

Mesne.

(9.) § Mesne.—*Grene*. Whereas he supposes that

## Nos. 8, 9.

soerte des issues; *neque hic* a ceo qe semble, quant conu est qil ad estat a ore par statut marchaunt.—*Quere ergo.*—*Et nota* qe allegge fuit, pur le ouster de sa prier, &c.,<sup>1</sup> qe celuy qe fit lestatut navoit forqe fee taille, apres qi mort son fitz entra, en qi possession cele terre estoit descharge, le quel issue feffa celuy vers qi le brief est porte, hors de qi possession lexecucion fuit suy, et issint navoit il dreit daver execucion par lestatut, et *per consequens* il ne poait pleder lestatut.—*Non allocatur*, qar vers<sup>2</sup> lassigne leir lexecucion fut bon, pur ceo qil qe<sup>3</sup> prist estat en<sup>4</sup> fee simple ne pout enfebler lestat son feffour.<sup>5</sup>

A.D.  
1344-5.

(8.)<sup>6</sup> § *Nota* qe celuy qe fut ajuge dacompter devant<sup>7</sup> auditours refusa dacompter sil ne fut issi qils luy voleint aver allowe une acquitance quel fuit desalowe en Baunke pur ceo qautrefoith en mesme le plee il mist avant autre fet qe fut trove countre luy.—WILBY dit qil refusa la comune ley, par quei il serra mys en ferres.<sup>8</sup>

*Nota.*

(9.)<sup>9</sup> § *Mene.*—*Grene.* La ou il suppose qe certain

*Mene.*  
[*Fitz.*,  
*Mesne*,  
37.]

<sup>1</sup> B., aver la execucion, instead of le ouster de sa prier, &c.

<sup>2</sup> vers is omitted from B.

<sup>3</sup> qe is omitted from B. and H.

<sup>4</sup> B., and H., de.

<sup>5</sup> The words *et cetera* are added in B.

<sup>6</sup> From B., C., H., and L.

<sup>7</sup> devant is omitted from B.

<sup>8</sup> B., and L., fers.

<sup>9</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 50, d. It there appears that the action was brought by Philip de Endlene- wyke against Thomas son of Henry Bedyke. The count was,

according to the record, “quod  
“cum ipse teneat de prædicto  
“Thoma unum mesuagium, cum  
“pertinentiis, in Suthwerke per  
“fidelitatem et servitium quadra-  
“ginta solidorum per annum,  
“pro quibus servitiis prædictus  
“Thomas ipsum Philippum ac-  
“quietare debet versus quos-  
“cunque, &c., prædictus Comes  
“[Johannes de Warena, Comes  
“Surreiæ] distringit ipsum Philip-  
“pum in prædicto mesuagio pro  
“duobus solidis pro defectu ac-  
“quietanciæ prædicti Thomæ,  
“&c.”

## No. 9.

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1344-5

certain land is held of us, we say that this land and other land is held of us as an entirety; judgment of the count.—*Moubray*. Will you say that we hold this land and other land of you?—*Grene*. Whether you hold of us or not, we shall have this answer, since you suppose what is parcel of a tenancy to be an entirety; and it is possible that you hold part in demesne and part in service, in which case you ought to count in accordance with your matter.—*HILLARY*. Such a count as he has counted would be good in such a case; therefore will you say anything else?—*Grene*. What have you to show the liability to acquit?—*Gaynesford*. We tell you that one J.<sup>1</sup> was seised of two messuages, in respect of one of which we demand acquittal of services, and held them of one A.,<sup>1</sup> whose estate in the seignory you have, by fealty, and the services of six marks and eight shillings; and afterwards the messuages were severed by feoffment, and the messuage which we hold was after the severance held by the services of forty-eight shillings, and your ancestor released, by this deed, to one whose estate we have, eight shillings, and so we hold of you by the services of forty shillings, and you are seised by our hand, and the Earl of Warren distrained us for two shillings, and we pray acquittal.—*Richemunde*. We tell you

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<sup>1</sup> For the real names see p. 415, note 8.

## No. 9.

terre est tenu de nous, nous dioms qe cele terre et autre terre est tenu<sup>1</sup> de nous com un gros; jugement de count.—*Moubray*. Voilletz dire qe nous tenoms<sup>2</sup> cele terre et autre terre<sup>3</sup> de vous<sup>4</sup>?—*Grene*. Le quel vous tenetz de nous ou noun, nous averoms cel respons, quant vous supposez parcelle dune tenaunce estre un gros; et possible est qe vous tenetz parcelle en demene, et parcelle en service, en quel cas vous dussetz counter solonc vostre matere.—*HILL*. Tiel<sup>5</sup> count serreit<sup>6</sup> bon come il ad counte en tiel cas; par quei voilletz autre chose dire?—*Grene*. Quei avetz del acquitance?—*Gayn*. Nous vous dioms qun J. fut seisi de les deux mies dount nous demandoms del un acquitance, et les tient dun A., qi estat vous avetz en la seignurie, par feaute et les services de vj marcz et viijs.; et puis les mies par feffement furent severetz, et le mies qe nous tenoms apres le severaunce tenu<sup>1</sup> par les services de xlvijs., et vostre auncestre, par ceo fait, relessa a un qi estat nous avoms les viijs., issi nous<sup>7</sup> tenoms de vous par les services de xls., et vous seisi par my nostre meyne, et le Count de Garrein nous destreinist pur ijs., et prioms lacquitaunce.<sup>8</sup>—*Rich*. Nous

A.D.  
1344-5.

<sup>1</sup> B., and H., tenuz.

<sup>2</sup> B., vous tenez, instead of nous tenoms.

<sup>3</sup> The words et autre terre are omitted from B.

<sup>4</sup> B., nous.

<sup>5</sup> C., cel.

<sup>6</sup> B., est.

<sup>7</sup> nous is from L. alone.

<sup>8</sup> This reply to the question what Philip had to show the liability to acquit appears on the roll as follows:—

“ Philippus dicit quod quidam  
“ Thomas filius Adæ de Basyngges  
“ consanguinens prædicti Thomæ  
“ filii Henrici, cujus heres ipse est,

“ quosdam Johannem de Mundene  
“ et Agatham uxorem ejus de  
“ duobus mesuagiis et medietate  
“ unius acræ terræ, cum pertinen-  
“ tiis, in Suthwerke, unde præ-  
“ dictum mesuagium, &c., est  
“ parcella, ante statutum, &c.,  
“ feoffavit, habendis et tendendis  
“ eisdem Johanni et Agathæ, et  
“ heredibus et assignatis suis, de  
“ ipso Thoma filio Adæ per servi-  
“ tium sex marcarum per annum,  
“ &c., et dicit quod prædicta  
“ Agatha postmodum obiit, post  
“ cujus mortem idem Johannes  
“ Mundene de eodem mesuagio,  
“ cum pertinentiis, quosdam Adam

## No. 9.

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that this J. held the two messuages, as above, of this A. of whom they speak, by feoffment from him, rendering to the chief lord the services due, which A. held of the lord paramount, whose estate the Earl of Warren now has, by the services of four shillings, and so, after the severance of the messuages, he who now holds the one messuage is charged to render the services of two shillings to the chief lord; judgment whether he can demand against us acquittal of the rent payable by his own hand.—They were adjourned.

“ Scot et Wimarcam uxorem ejus,  
 “ post statutum, &c., feoffavit,  
 “ tenendo de capitali domino  
 “ feodi, &c., per servitia inde  
 “ debita, &c., et dicit quod quidam  
 “ Johannes filius et heres prædic-  
 “ torum Adæ et Wimarcæ, post  
 “ mortem eorundem Adæ et  
 “ Wimarcæ, quosdam Willelmum  
 “ de Rikethorn et Elenam uxorem  
 “ ejus de eodem mesuagio, cum per-  
 “ tinentiis, feoffavit, &c., tenendo  
 “ sibi et heredibus suis, &c., de  
 “ capitali domino, &c., quod  
 “ quidem mesuagium adtunc ap-  
 “ portionatum fuit ad servitium  
 “ quadraginta et octo solidorum  
 “ secundum quantitatem eorundem  
 “ tenementorum, &c., et dicit quod,  
 “ mesuagio illo in seisina eorun-  
 “ dem Willelmi et Elenæ existente,  
 “ quidam Henricus Bedyke, pater  
 “ prædicti Thomæ filii Henrici,  
 “ cujus heres ipse est, per scriptum  
 “ suum ipsis Willelmo et Elenæ,  
 “ heredibus et assignatis suis, octo  
 “ solidos de prædicto reddito  
 “ quadraginta et octo solidorum  
 “ remisit, et quiete clamavit, ita  
 “ quod iidem Willelmus et Elena  
 “ extunc tenerent mesuagium illud  
 “ de ipso Henrico et heredibus suis  
 “ per servitium quadraginta soli-  
 “ dorum per annum, ita quod nec

“ ipse nec heredes sui præter illos  
 “ quadraginta solidos per annum  
 “ de mesuagio illo exigere vel  
 “ vindicare possent, &c. Et  
 “ profert hic prædictum scriptum  
 “ sub nomine prædicti Henrici  
 “ quod hoc testatur, &c. Et dicit  
 “ quod prædicta Elena, post mortem  
 “ prædicti Willelmi, de mesuagio  
 “ illo quosdam Johannem de  
 “ Dallyngrugge et Thomam atte  
 “ Wode feoffarunt, habendo et  
 “ tenendo sibi et heredibus et  
 “ assignatis suis de capitali  
 “ domino, &c. Et postea idem  
 “ Johannes de Dallyngrugge totum  
 “ jus suum quod habuit in prædicto  
 “ mesuagio præfato Thomæ atte  
 “ Wode, heredibus et assignatis  
 “ suis, remisit et quiete clamavit,  
 “ &c. Et dicit quod prædictus  
 “ Thomas atte Wode postmodum  
 “ per chartam suam ipsum Philip-  
 “ pum de mesuagio illo feoffavit,  
 “ habendo et tenendo ipsi Philippo  
 “ et heredibus suis de capitali  
 “ domino per servitia inde debita  
 “ et consueta. Et ita dicit quod  
 “ ipse est tenens prædicti Thomæ  
 “ filii Henrici de mesuagio præ-  
 “ dicto, et idem Thomas seisisus  
 “ est per manus ipsius Philippi de  
 “ fidelitate et servitio quadraginta  
 “ solidorum prædictorum, pro qui-

## No. 9.

vous dioms qe celuy J. tient les deux mies, *ut supra*, de celuy A. dount ils parlent, par feffement de luy, fesaunt au chief seignur les services dues, le quel A. tient du seignur paramount, qi estat le Count de Garrein ad a ore, par les services de iijs., issint, apres la severaunce de les mies, cest qore tient lun mies est charge de faire les services de<sup>1</sup> ijs. au chief seignur; jugement si de la rente payable par sa main demene puisse acquitaunce vers nous demander.<sup>2</sup>—*Adjornantur*.<sup>3</sup>

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“ bus servitiis prædictus Thomas  
“ filius Henrici ipsum Philippum  
“ versus quoscunque acquietare  
“ tenetur, unde petit quod prædic-  
“ tus Thomas filius Henrici ipsum  
“ acquietet, &c.”

<sup>1</sup> The words services de are from C. alone.

<sup>2</sup> The plea was, according to the roll:—“ Thomas filius Henrici  
“ dicit quod ipse prædictum  
“ Philippum de prædicto redditu  
“ duorum solidorum acquietare  
“ non tenetur, quia dicit quod  
“ prædictus Thomas filius Adæ  
“ consanguineus, &c., de prædictis  
“ duobus mesuagiis et medietate  
“ unius acræ terræ prædictos  
“ Johannem de Mundene et  
“ Agatham, ut præmittitur, feoffa-  
“ vit, habendis et tenendis sibi et  
“ heredibus suis de ipso Thoma et  
“ heredibus suis per servitium  
“ sex marcarum prædictarum, et  
“ faciendo pro se et heredibus suis  
“ cuidam Nicholao le Taillour tunc  
“ capitali domino tenementorum  
“ prædictorum quatuor solidos per  
“ annum. Et dicit quod reëditus  
“ quem prædictus Comes a præfato  
“ Philippo exigit est parcella ejus-  
“ dem redditus quem prædictus  
“ Nicholaus le Taillour percipere

“ consuevit, quem redditum duo-  
“ rum solidorum prædictus Philip-  
“ pus præfato Comiti, qui statum  
“ prædicti Nicholai le Taillour  
“ modo habet in prædicto redditu  
“ duorum solidorum, juxta formam  
“ feoffamenti præfatis Johanni de  
“ Mundene et Agathæ, ut præ-  
“ mittitur, facti, per manus suas  
“ proprias reddere tenetur, &c.,  
“ unde petit judicium si ipse præ-  
“ fatum Philippum de prædicto  
“ redditu duorum solidorum ac-  
“ quietare debeat.”

<sup>3</sup> After adjournments, according to the roll, “ Philippus, non cog-  
“ noscendo quod prædictus Nicho-  
“ laus le Taillour unquam aliquid  
“ habuit in prædicto mesuagio vel  
“ prædicto redditu in dominico vel  
“ servitio, &c., dicit quod status  
“ quem prædictus Comes habet,  
“ &c., non est de statu præfati  
“ Nicholai le Taillour, sicut præ-  
“ dictus Thomas superius supponit.  
“ Et hoc paratus est verificare,  
“ unde petit judicium, &c.

“ Et Thomas dicit quod prædic-  
“ tus Comes habet statum præ-  
“ fati Nicholai in prædicto redditu  
“ sicut ipse superius asseruit.”

Issue was joined upon this, and the verdict was “ quod status

## No. 10.

A.D. 1344-5.  
Formedon. (10.) § Formedon against W. Rollestone<sup>1</sup> and one J.<sup>1</sup>—*Seton*. J.<sup>1</sup> has nothing, but W.<sup>1</sup> tells you that he holds jointly with A.<sup>1</sup> his wife, who is not named in the writ; judgment of the writ.—*Moubray*. We have the tenant named in our writ, *absque hoc* that A. has anything; ready, &c.—*Seton*. Then you can say that they are sole tenants.—*Moubray*. The writ is good as brought against two, if one of them be tenant alone, and therefore the law does not compel me to aver that one who has disclaimed is tenant.—WILLOUGHBY.

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<sup>1</sup> For the real names see p. 419, notes 1 and 4.



No. 10.

(10.)<sup>1</sup> § Forme doun vers W. Rolstone et un J.— A.D. 1344-5.  
*Setone.* J. nad rien, mes W. vous dit qil tient Forme-  
joint ove<sup>2</sup> A. sa femme, qe nest pas nome el brief<sup>3</sup>; doun.  
jugement du brief.<sup>4</sup>—*Moubray.* Nous avoms tenant [Fitz.,  
nome en nostre brief, sanz ceo qe A. rienz ad; *Main-*  
prest, &c.—*Setone.* Donques poietz dire qils sount *tenauns de*  
soul tenantz.—*Moubray.* Le brief est bon porte vers *briefe,*  
deux, si lun soit soulement tenant, par quei daverer *51.]*  
celuy estre tenant qad desclame ley ne moy chace<sup>5</sup>

“ quem prædictus Comes habet in  
“ prædicto redditu duorum solido-  
“ rum non est de prædicto Nicholao.  
“ Dicunt etiam quod prædictus  
“ Philippus distringitur pro defectu  
“ acquietanciæ prædicti Thomæ ad  
“ damnum ejusdem Philippi quad-  
“ raginta solidorum.”

The judgment was, “ quod  
“ prædictus Thomas acquietet  
“ præfatum Philippum de serviitiis  
“ prædictis, et idem Philippus  
“ recuperet versus eum damna  
“ sua prædicta.”

<sup>1</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 242, d. It there appears that the action was brought by William son of Peter de Acclom against Juliana late wife of William de Rollestone, and Robert son of William de Rollestone, in respect of 8 messuages, and 13 bovates and 20 acres of land, one acre of meadow, and one rood of moor, and against four others and their wives in respect of other tenements, all in Catwyke (Catwick, Yorks), which, as alleged, Amice de Faucomberge gave to Peter de Faucomberge in tail, and which, after the death of Peter, and of Walter his son and heir, and of Avelina sister of Walter, and of

Peter son of Avelina, ought to descend to the demandant as son of the last-named Peter.

<sup>2</sup> B., od.

<sup>3</sup> The words el brief are from L. alone.

<sup>4</sup> According to the record there were several pleas on behalf of the several tenants. “ Juliana dicit  
“ quod ipsa nihil habet nec habuit  
“ die impetrationis brevis, &c., in  
“ prædictis tenementis.

“ Et Robertus, quo ad omnia  
“ tenementa versus ipsum petita,  
“ exceptis duobus mesuagiis et  
“ duabus bovatis terræ de prædictis  
“ tenementis, dicit quod ipse tenet  
“ illa conjunctim cum quadam  
“ Katerina uxore ejus, et tenuit  
“ die impetrationis brevis, quæ  
“ quidem Katerina non nominatur  
“ in brevi, et petit judicium de  
“ brevi, &c. Et, quo ad prædicta  
“ duo mesuagia dicit quod prædicta  
“ Amicia de Faucomberge non  
“ dedit illa mesuagia et terram  
“ prædicto Petro de Faucomberge  
“ et heredibus de corpore suo  
“ exeuntibus sicut idem Willelmus  
“ per breve suum supponit.”

Issue was then joined on this traverse of the gift.

<sup>5</sup> H, chacera.

## Nos. 11, 12.

A.D. 1344-5. That is true.—*Seton*. And, if the Court will accept the averment in that manner, ready, &c., to aver the joint tenancy.—And *Moubray* had the averment, as above, that is to say, that the wife, in whom the joint tenancy was alleged, had nothing, but that he had the tenant named in the writ.—And the other side said, on the contrary, that the woman held jointly.

*Sequatur suo periculo.* (11.) § To the *Sequatur suo periculo* the Sheriff returned that the vouchee was dead. The tenant vouched his heir. The demandant said that, although the vouchee's death was returned, he would aver that the vouchee was living. And there was touched the point that he could not be admitted to the averment contrary to the return of the Sheriff. But, notwithstanding, the averment was joined between them on the question whether the vouchee was dead or living.

Aiel. (12.) § Gilbert Talbot brought a writ of Aiel<sup>1</sup> against Ralph de Wylyntone, and his wife.<sup>2</sup> After aid prayed

<sup>1</sup> As to the nature of the action see p. 421, note 5.

<sup>2</sup> For earlier proceedings between the same parties in relation to the

same tenements see Y.B., Mich., 13 Edw. III., No. 79, and Mich., 14 Edw. III., No. 95.

Nos. 11, 12.

pas.—WILBY. Il est verite.—*Setone*. Et, si Court voille reseivre laverement par la manere, prest, &c., la jointenance.—Et *Moubray* ad laverement, *ut supra*, saver, qe la femme en qi la jointenance est allege nad rienz, mes qil ad tenant nome el brief.<sup>1</sup>—*Et alii e contra* qe la femme tient joint.

A.D.  
1344-5.

(11.)<sup>2</sup> § Al *Sequatur suo periculo* le Vicounte retourna qe le vouche est mort. Le tenant voucha son heir. Le demandant dit, coment qe sa mort fut retourne, il voet averer sa vie. Et fuit touche<sup>4</sup> qil ne serra pas reseu countre retourne de Vicounte. *Sed, non obstante*, laverement est joint entre eux sur la mort et la vie le vouche.

*Sequatur suo periculo.*<sup>3</sup>  
[Fitz., *Averement*, 30.]

(12.)<sup>5</sup> § Gilbert Talbot porta brief Daiel vers Rauf de Wilyngtone et sa femme. Apres eide prie du

Aiel.  
[Fitz., *Resceit*, 113.]

<sup>1</sup> According to the record, the demandant replied, as to the alleged joint tenure, "quod prædicta Kate-  
rina, die impetrationis brevis  
sui, nihil habuit in eisdem [tene-  
mentis]," and issue was joined also upon this. The entry upon the roll ends with the award of the *Venire*.

<sup>2</sup> From B., C., H., and L.

<sup>3</sup> The marginal note is omitted from B.

<sup>4</sup> H., dist.

<sup>5</sup> From B., C., H., and L. There is among the *Placita de Banco* (Hil., 19 Edw III., R<sup>o</sup> 132, d), a record of an action of Cosinage (not of Aiel) to which this report seems to relate. It there appears that the action was brought by Gilbert Talbot against Ralph de Wyllyntone and Eleanor his wife in respect of "Castrum de Keyrkenny et Com-  
motum de Iskenny, cum perti-  
nentiis, de quibus Lewelinus ap

" Rees Vaghan, consanguineus  
" ipsius Gilberti, cujus heres ipse  
" est, fuit seisitus in dominico suo  
" ut de feodo, die quo obiit, &c. Et  
" unde dixit quod prædictus Lewel-  
" inus consanguineus, &c., fuit seisi-  
" tus in dominico suo ut de feodo,  
" tempore pacis, tempore Edwardi  
" Regis avi domini Regis nunc,  
" capiendo inde expletia ad valen-  
" tiam, &c., et inde obiit seisitus,  
" &c. Et de ipso Lewelino, quia  
" obiit sine herede de se, resortie-  
" batur feodum, &c., cuidam  
" Wenthanæ, ut amitæ et heredi,  
" sorori Resi patris prædicti  
" Lewelini, &c. Et de ipsa  
" Wenthana descendit feodum,  
" &c., cuidam Ricardo ut filio et  
" heredi, &c. Et de ipso Ricardo  
" descendit feodum, &c., isti Gil-  
" berto ut filio et heredi qui nunc  
" petit, &c."

<sup>6</sup> C., Brief Daiel.

## No. 12.

A.D.  
1344-5.

of the King, and a writ *de procedendo*, the husband and his wife made default. And afterwards the husband was essoined on the King's service, and the wife appeared. And on another day afterwards the wife was essoined on the King's service, and she has a day now, and prays to be admitted by reason of her husband's default.—*R. Thorpe*. She has a day by essoin on the King's service, and now she does not show her warrant; judgment.—*WILLOUGHBY*. Everything that was done before now was the act of her husband.—*R. Thorpe*. If, Sir, she had not then been essoined, the land would have been lost, and she cannot, therefore, say that the essoin was cast to her damage.—*WILLOUGHBY*. Will you say anything else against her admission?—*R. Thorpe*. We tell you that on the day on which the writ was purchased the husband and his wife were tenants, but the husband has aliened while our writ was pending; judgment whether she ought to be admitted as tenant.—*WILLOUGHBY*. By the writ you suppose her to be tenant, and she cannot plead to that which you say before she is admitted.—*R. Thorpe*. She can do so; and suppose any one against whom I bring my writ vouches, and I say that he has divested himself while my writ was pending, I shall oust him from the voucher; so also in this behalf.—*WILLOUGHBY*. That may be, but the cases are not alike; therefore let her be admitted.

## No. 12.

Roy, et brief *de procedendo*, le baroun et sa femme firent default. Et puis le baroun fuit essone de service le Roi, et la femme apparust. Et a autre jour apres le femme fuit essone de service le Roi, et ore ad jour, et par default son baroun prie destre resceu.—*R. Thorpe*. Ele ad jour par essone de service le Roy, et ore<sup>1</sup> ne moustre pas son garrant; jugement.—*WILBY*. Ceo est le fet son baroun quant que fuit fet devant ces heures.—*R. Thorpe*. Sire, si ele nust este adonques essone la<sup>2</sup> terre ust este perdu, par quei ele ne pout dire que lessone fut jettu en damage de luy.—*WILBY*. Voilletz autre chose dire countre la resceite?—*R. Thorpe*. Nous vous dioms que jour du brief purchace le baroun et sa femme furent tenantz, mes pendaunt nostre brief le baron ad aliene; jugement si come tenant deive estre resceu.—*WILBY*. Vous la supposez tenant par brief, et devant la resceite ele ne poet pas pleder a ceo que vous parletz.—*R. Thorpe*. Si poet; et jeo pose que homme<sup>3</sup> vouche vers<sup>4</sup> qi jeo porte moun brief, et jeo die qil sad demys pendaunt moun brief, jeo luy ousteray del voucher; auxi de ceste part.—*WILBY*. Poet estre, *sed non est simile*; par quei soit resceu.<sup>5</sup>

A.D.  
1344-5<sup>1</sup> ore is from B. alone.<sup>2</sup> B., et la.<sup>3</sup> B., and C., qomme, instead of que homme.<sup>4</sup> H., celuy vers.

<sup>5</sup> According to the roll "Iidem  
" Radulphus et Alianora tunc  
" venerunt in Curiam, &c. Et  
" postmodum, continuato inde  
" inter eos processu, . . . .  
" tam prædictus Gilbertus quam  
" præfati Radulphus et Alianora  
" placitaverunt et posuerunt se hic  
" inde in juratam patriæ, &c, quæ  
" quidem jurata continuata fuit  
" inter eos usque in crastino Sancti  
" Martini anno regni domini Regis

" nunc decimo septimo, ad quem  
" diem prædicti Radulfus et  
" Alianora fecerunt defaultam, &c.,  
" ita quod tunc præceptum fuit  
" Vicecomiti quod caperet præ-  
" dictum Castrum et Commotum  
" in manum domini Regis, &c.,  
" et quod summoneret eos quod  
" essent hic a die Paschæ in tres  
" septimanas proxime sequentes  
" audituri inde iudicium suum.  
" Ad quem diem Vicecomes man-  
" davit quod cepit, &c., et quod  
" summonuit, &c. Et prædictus  
" Radulphus tunc fecit se inde  
" essoniari de servitio domini  
" Regis, &c., et habuit inde diem

## No. 12.

A.D.  
1344-5.

—And she prayed aid of the King, as previously she and her husband had prayed on another occasion.<sup>1</sup>—*R. Thorpe*. Her husband and she had aid in the same plea, which aid will serve for her to have her value; judgment. Besides, the husband has divested himself, as above.—This exception was not allowed, wherefore the aid was granted, notwithstanding.<sup>2</sup>

<sup>1</sup> Y.B., Mich., 14 Edw. III., No. 95, p. 232.

<sup>2</sup> This case is continued in Y.B., Mich., 19 Edw. III., No. 60. The question of jurisdiction in relation

to the Principality of Wales, which here appears, as in the record, at the end of note 3 to p. 425, is there noticed in the report.

## No. 12.

—Et ele pria eide du Roi, *ut prius*<sup>1</sup> *alibi* son baroun et luy prierunt.—*R. Thorpe*. En mesme le plee son baroun et luy avoint eide, quel<sup>2</sup> eide servira pur luy daver sa value; jugement. Ovesqe ceo, le baroun sad demys *ut supra*.—*Non allocatur*, par quei *non obstante*, leide est grante.<sup>3</sup>

A.D.  
1344-5.

“ per essonium suum de servitio  
 “ domini Regis prædictum usque a  
 “ die Michaelis in xv dies proxime  
 “ sequentes, &c. Idem dies data  
 “ fuit prædictæ Alianoræ hic, &c.  
 “ Ad quem diem prædicta Alianora  
 “ fecit se inde essoniari de servitio  
 “ domini Regis, &c., et habuit inde  
 “ diem per essonium suum de  
 “ servitio domini Regis prædictum  
 “ usque ad hunc diem, scilicet a  
 “ die Sancti Hillarii in xv. dies  
 “ proxime sequentes, &c. Et  
 “ prædictus Radulphus tunc fecit  
 “ defaultam, per quod iudicium  
 “ super defaultam illam tunc  
 “ respectuabatur usque ad hunc  
 “ diem, eo quod prædicta Alianora  
 “ tunc essoniata fuit, &c. Et modo  
 “ venit tam prædictus Gilbertus  
 “ per attornatum suum quam præ-  
 “ dicta Alianora in propria per-  
 “ sona sua, et eadem Alianora  
 “ dicit quod prædicta Castrum et  
 “ Commotum sunt jus suum, &c.  
 “ Et, ex quo ipsa venit ante judi-  
 “ cium, &c., parata præfato Gil-  
 “ berto inde respondere, petit quod  
 “ admittatur ad defensionem juris  
 “ sui in hac parte. Et admittitur,  
 “ &c.”

<sup>1</sup> B., *supra*.

<sup>2</sup> B., de quel.

<sup>3</sup> The prayer of aid of the King appears on the roll as follows:—  
 “ Alianora dicit quod dominus Rex  
 “ nunc per chartam suam, de gratia  
 “ sua speciali, dedit et concessit  
 “ cuidam Johanni de Wylyntone,

“ qui jam obiit, et ipsi Radulpho,  
 “ per nomen Radulphi filii ejusdem  
 “ Johannis, et Alianoræ uxori  
 “ ejusdem Radulphi, Castrum de  
 “ Keyrkenny, cum pertinentiis,  
 “ quod fuit Johannis Mautravers  
 “ inimici et rebellis domini Regis,  
 “ et quod, per forisfacturam ejus-  
 “ dem Johannis Mautravers, ad  
 “ manum Regis, tanquam escaeta  
 “ Regis, devenit, habendum et  
 “ tenendum eisdem Johanni de  
 “ Wylyntone, Radulpho, et Alia-  
 “ noræ, et heredibus de corpore  
 “ ipsius Radulphi legitime pro-  
 “ creatis, una cum terris et tene-  
 “ mentis et commoto de Iskenny,  
 “ nec non feodis militum, advoca-  
 “ tionibus ecclesiarum, libertatibus,  
 “ consuetudinibus, et aliis commo-  
 “ ditatibus ad dicta Castrum,  
 “ terras et tenementa, et commota  
 “ qualitercumque spectantibus, de  
 “ Rege et heredibus suis et aliis  
 “ capitalibus dominis feodi illius,  
 “ per servitia inde debita et con-  
 “ sueta, ita quod, si idem Radul-  
 “ phus sine herede de corpore suo  
 “ procreato obiret, tunc post  
 “ mortem prædictorum Johannis,  
 “ Radulphi, et Alianoræ prædicta  
 “ Castrum et Commotum, cum  
 “ suis pertinentiis, Henrico filio  
 “ Henrici de Wylyntone et heredi-  
 “ bus masculis de corpore suo  
 “ legitime procreatis remanerent,  
 “ tenenda de domino Rege, &c.,  
 “ per servitia inde debita et con-  
 “ sueta in perpetuum. Et, si idem

## No. 13.

A.D.  
1344-5.  
Dower.

(13.) § Dower. The husband's heirs were vouched as those whose lands were out of the wardship of any one, and their bodies were in the wardship of their mother, who was demandant. The heirs, being under age, on the voucher, came on the same day to the bar, and asked what the tenant had to bind them to warranty, &c.—*Gaynesford*. They are under age, and do not come by process, in which case they shall not by law be admitted to warrant, nor to answer as to their ancestor's deed, even though they may be willing to do so *gratis*.—WILLOUGHBY. Then you have nothing [to bind them].—*Gaynesford*. The deeds are

“ Henricus filius Henrici sine  
“ herede masculino de corpore suo  
“ legitime procreato obiret, tunc  
“ post mortem ipsius Henrici filii  
“ Henrici prædicta Castrum et  
“ Commotum, cum suis pertinentiis,  
“ rectis heredibus ipsius  
“ Radulphi remanerent, tenenda de  
“ domino Rege et heredibus suis ac  
“ aliis capitalibus dominis &c.,  
“ per servitia prædicta in perpetuum.  
“ Et profert prædictam chartam  
“ domini Regis quæ præmissa testatur,  
“ &c., unde dicit quod ipsa non  
“ potest præfato Gilberto sine domino  
“ Rege inde respondere. Et petit  
“ auxilium de ipso domino Rege, &c.”

“ Dies datus est eis hic a die  
“ Sanctæ Trinitatis in xv dies, et  
“ interim loquendum est cum  
“ domino Rege, &c.”

Further proceedings are entered on the roll. There is a writ from the King to the Justices, dated the 5th of June in the 19th year of the reign, reciting that the demandant had prayed a remedy for the delay to which he had been subjected, and directing them to proceed.

Upon a subsequent appearance

of the parties the King sent another writ to the Justices, dated the 16th of November in the same year, reciting his grant, by charter, to his eldest son Edward, of the Principality of Wales, &c., and concluding “ vobis ad præsens  
“ mandatum nostrum significamus,  
“ mandantes quod quicquam  
“ contra formam et effectum  
“ chartæ nostræ supradictæ in  
“ ipsius Principis seu juris et  
“ libertatum suorum præjudicium  
“ in hac parte indebite nullatenus  
“ attemptetis, libertates et alia in  
“ dicta charta contenta eidem  
“ Principi coram vobis sicut justitiam fuerit allocantes.”

“ Et super hoc prædicta Alianora  
“ petit quod Curia hic ulterius  
“ non procedat in placito isto, pro  
“ eo quod prædicta tenementa  
“ nunc petita sunt infra Principatum  
“ prædictum, &c.”

“ Et Gilbertus dicit quod Curia  
“ ista seisisa fuit de isto placito  
“ diu antequam dominus Rex se  
“ demisit de Principatu Walliæ, et  
“ prædicta Alianora, postquam  
“ admissa fuit in isto eodem  
“ placito, postquam dominus Rex



No. 13.

(13.)<sup>1</sup> § Dowere. Les heirs le baroun furent vouches come qi terres furent hors de chesquny garde, et lour corps en la garde lour mere qest demandante. Les heirs deinz age sur le<sup>2</sup> vouchier a mesme le jour vindrent a la barre, et demanderent ceo qe le tenant avoit de les lier a la garrantie,<sup>3</sup> &c.—*Gayn*. Ils sont deinz age, et ne venent pas par proces, en quel cas par ley ils ne serrount pas resceu<sup>4</sup> de garrantir, ne respondre al fet lour auncestre, tut voleint ils ceo faire de gree.—WILBY. Donques navetz rienz.—*Gayn*.<sup>5</sup> Les fetes sont entres

A.D.  
1344-5.  
Dowere.

“ se demisit de Principatu præ-  
“ dicto, petiit inde auxilium de  
“ ipso domino Rege ratione chartæ  
“ domini Regis, &c., in qua con-  
“ tinetur quod tenementa petita  
“ tenentur de domino Rege et  
“ heredibus suis, et sic affirmavit  
“ jurisdictionem istius Curie, et  
“ non constat Curie per aliquod  
“ mandatum de Rege nec de  
“ Principe quod tenementa petita  
“ sunt de Principatu, nec quod  
“ Justiciarii in isto placito superse-  
“ dere debeant, per quod non  
“ intendit quod in ore prædictæ  
“ Alianoræ, quæ alias affirmavit  
“ jurisdictionem Curie, jaceat ad  
“ contradicendum vel calumnian-  
“ dum jurisdictionem in hac parte,  
“ &c. Et, si videatur Curie quod  
“ de calumniando jurisdictionem  
“ Curie prædictæ Alianora admitti  
“ debeat, paratus est dicere satis,  
“ &c., ad jurisdictionem istius  
“ Curie manutendam, &c. Et, ex  
“ quo prædicta Alicia nihil aliud  
“ dicit pro jure suo defendendo in  
“ hac parte, petit judicium, &c.

“ Et Alianora dicit, ut prius,  
“ quod prædicta tenementa supe-  
“ rius petita sunt infra Principa-  
“ tum prædictum quem dominus

“ Rex nunc dicto Principi concessit,  
“ cum omnibus et singulis ad  
“ Principatum prædictum perti-  
“ nentibus, ut Cancellariam suam,  
“ cognitionem placitorum, et omnia  
“ alia ad regalitatem Principatus  
“ ejusdem spectantibus, prout in  
“ brevi prædicto plenius continetur.  
“ Et non intendit quod Curia hic  
“ contra concessionem domini  
“ Regis de Principatu prædicto,  
“ cum omnibus ad Principatum  
“ illum spectantibus, præfato Prin-  
“ cipi factam, quam breve prædic-  
“ tum testatur, in placito isto  
“ cognoscere velit, &c. Et si, &c.,  
“ parata est alia dicere, &c.

“ Et, quia nondum visum est  
“ Curie si procedendum sit ulterius  
“ in placito isto nec ne, datus est  
“ dies tam præfato Gilberto quam  
“ prædictæ Alianoræ per attornatos  
“ suos hic a die Paschæ in tres  
“ septimanas in statu quo nunc,  
“ salvis partibus rationibus suis  
“ hinc inde dicendis, &c.”

<sup>1</sup> From B., C., H., and L.

<sup>2</sup> H., cele.

<sup>3</sup> The words a la garrantie are from H. alone.

<sup>4</sup> C., resceuz.

<sup>5</sup> *Gayn*. is omitted from H.

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entered upon a roll. And, notwithstanding, he made *profert* of a deed, and alleged as above, that they could not warrant, &c., on the first day by reason of their tender age.—And, notwithstanding this, KELS-HULLE, with the consent of his fellow-justices, gave judgment that the demandant should recover on their render.—And so note touching a render of persons under age admitted by the Court.

*Præcipe  
quod  
reddat.*

(14.) § A *Præcipe* was brought.—*Grene* demanded view.—*Rokele*. You previously had view on the same original writ, and afterwards the parol demurred by reason of our non-age, because this writ affects the right.—*Thorpe*. That is not to be understood, for this exception that the demandant is under age should be given before view.—View was not allowed.—Therefore *Grene* alleged several tenancy, in respect of parcel, on behalf of one of those who were named [in the writ, which was brought] against a husband and wife and a third person, in abatement of the writ brought against them in common.—And, as to the husband and wife, they vouched to warrant.—HILARY. In respect of what parcel do you vouch?—*Grene*. In respect of that of which he supposes me to be tenant.—HILLARY. Do you propose to abate the whole writ, and also to vouch?—*Grene*. Although the third person named in the writ with the husband and his wife would abate the writ, they will not consent to this plea, which is possibly false, but allow the writ to be good; and then it is right that they should have their voucher, because they will not be compelled to take, by reason of the plea of another, any plea, on which they might lose their freehold, against their will.—

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en roulle. Et, *non obstante*, il moustra fet, et alleggea *ut supra*, qal primer jour ils ne pount garrauntir, &c., pur tendresse<sup>1</sup> de leur age.—Et, *non obstante*, KELS., *ex assensu sociorum suorum*, agarda qe la demandante sour leur rendre recoverast.—*Et sic nota* de rendre de ces deinz age resceu de COURT.

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(14.)<sup>2</sup> § *Præcipe* porte.—*Grene* demanda la vewe.—*Præcipe Rokele*. Autrefoithe avietz la vewe a mesme loriginal, *quod reddat*.<sup>3</sup> et apres la parole par nostre<sup>4</sup> noun age demura, [Fitz., *View*, 75.] pur ceo qe cest brief est mixt en le<sup>5</sup> dreit.<sup>6</sup>—*Thorpe*. Ceo nest pas entendable,<sup>7</sup> qar cele<sup>8</sup> excepcion qe demandant est deinz age serreit done avant la vewe.—*Non allocatur*.—Par quei *Grene* alleggea several tenance de parcelle pur un des nomes vers le baroun et sa femme, et le terce, al abatement du brief porte en comune.—Et quant al baron et sa femme ils vouchent a garraunt.—HILL. De quel parcelle vouchez vous?—*Grene*. De ceo dount il moi suppose tenant.—HILL. Voilletz vous abatre tut le brief, et auxint vouchent<sup>9</sup>?—*Grene*. Coment qe le terce nome en le brief<sup>10</sup> ove le baron et sa femme<sup>11</sup> voleit abatre le brief, ils ne volent pas assenter a ceo plee, qest faux par cas, mes grauntent le brief bon; et donques est il resoun qils eient leur vouchent, qar ils serrount pas chacetz<sup>12</sup> de prendre, par plee dautre,<sup>13</sup> nulle plee,<sup>14</sup> sur quel ils purrount perdre leur franctenement, countre leur gree.—HILL. Si

<sup>1</sup> C., tendresce.

<sup>2</sup> From B., C., H., and L.

<sup>3</sup> The words *quod reddat* are from H. alone.

<sup>4</sup> B., vostre.

<sup>5</sup> le is from Harl.

<sup>6</sup> The words en le dreit are omitted from B.

<sup>7</sup> B., cours dallegger.

<sup>8</sup> B., tiel.

<sup>9</sup> The words et auxint vouchent are omitted from B.

<sup>10</sup> The words en le brief are from L. alone.

<sup>11</sup> The words ove le baron et sa femme are omitted from H.

<sup>12</sup> B., and H., chace.

<sup>13</sup> dautre is omitted from H.

<sup>14</sup> The words nulle plee are omitted from B.

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HILLARY. If you vouch in respect of the rest of the tenements included in the writ, thereby affirming the third person named with you in the writ to be several tenant of a part, as he himself has pleaded, then your plea is as much to the abatement of the writ as his is; and if you vouch in respect of the whole, the demandant must maintain his writ.—*Thorpe*. When they vouch, it can only be understood that they agree to the writ, that is to say, that the three hold in common as the writ supposes, so that their plea cannot be understood to be to the abatement of the writ; and it is not right that, against their will, they should hold to a false issue, to the jeopardy of the land, through the plea of another which is possibly made with the consent of the demandant.—HILLARY. It is certain that the plea of several tenancy is to the abatement of the whole writ; how then shall a voucher be allowed to which the demandant cannot have any answer?—*Grene*. He can have an answer, because the tenants give him that advantage on account of severing their pleas. And if one wished to plead a release, which might possibly be false, and another wished to traverse the title, he would be admitted to do so.—HILLARY. I quite believe that; in that case they would be agreeing to the writ.—And afterwards *Grene* waived the exception, and vouched in respect of the whole.

Novel  
Disseisin

(15.) § Novel Disseisin in the County of Buckingham, before SHARSHULLE and his fellow-justices, for Edmund de Reynham, in which it was pleaded in bar that the tenant previously brought an Assise in respect of the same meadow now put in view, in the

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vous vouchetz del remenant compris el<sup>1</sup> brief, affirm-  
aunt le terce nome ov<sup>2</sup> vous estre several<sup>3</sup> tenant  
de la parcelle, come il mesme ad plede, donques est  
vostre plee si bien<sup>4</sup> al abatement du brief come le  
soen est; et si vous vouchetz de tut il covient qe  
le demandant meintient soun brief.—*Thorpe*. Quant  
il vouche, il ne poet estre entendu mes qil acorde<sup>5</sup>  
au brief, saver,<sup>6</sup> qe les iij tenent en comune come  
le brief suppose, issi qe soun plee ne poet estre  
entendu<sup>7</sup> al abatement du brief; et il nest pas re-  
soun qils se teignent, maugre lour, a un faux issue,  
en<sup>8</sup> juperdie<sup>9</sup> de la terre, par le plee lautre qest  
par cas del assent le demandant.—*HILL*. Il set  
certein qe la severale tenance est al abatement de  
tut le brief; coment serra donques un vouchier suffert  
a quei le demandant ne poet aver respouns?—*Grene*.  
Si poet, qar les tenantz luy dount lavantage pur  
le severer de lour ple. Et si lun voleit pleder un  
reles, qest faux par cas, et lautre voleit<sup>10</sup> traverser  
le title, il serreit resceu.—*HILL*.<sup>11</sup> Jeo croi bien;  
la acorderunt ils au brief.—Et puis *Grene* weyva  
lexcepcion, et voucha del entier.

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(15.)<sup>12</sup> § Novele Disseisine el Counte de Bukingham, devant *SCHAR*. et ses compaignouns, pur Edmond Reynam,<sup>13</sup> ou plede fuit en barre pur ceo qe le tenant autrefoith porta Assise de mesme le pree ore mys

Novele  
Disseisine.  
[Fitz.,  
Assise, 81,  
18 Li.  
Ass., 16.]<sup>1</sup> B., en le; H., en; L., de.<sup>2</sup> B., od.<sup>3</sup> B., general.<sup>4</sup> The words si bien are omitted from L.<sup>5</sup> B., acorda; H., acordout.<sup>6</sup> B., si.<sup>7</sup> entendu is omitted from C. and L.<sup>8</sup> B., a.<sup>9</sup> L., jupartie.<sup>10</sup> B., and C., le voleit.<sup>11</sup> *HILL*. is omitted from H.<sup>12</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R° 108.

It there appears that the action was brought at Aylesbury before Justices of Assise in the County of Buckingham by Edmund de Reynham against John Romayn and Joan his wife, in respect of a disseisin of two acres of meadow in Kyngeseye (Kingsey).

<sup>13</sup> The words pur Edmond Reynam are omitted from H.

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County of Oxford, and against the same person that is now plaintiff, who came and pleaded in bar his ancestor's release with warranty, which was avoided on the ground that the ancestor was under age, and so it was found, and therefore the present tenant recovered ; judgment, since the present plaintiff accepted the same tenements as being in another county, whether there ought to be an assise. And he made *profert* of the record, &c. The plaintiff said that the law did not put him to answer

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en vewe el Counte de Oxone, et vers mesme la persone qest ore pleintif, qe vint et pleda en barre par le relees sou n auncestre od garrantie, qe fuit voide par taunt qil fuit deinz age, et ceo trove, par quei il recoveri; jugement, de puis qil accepta mesmes les tenementz en autre counte, si countre le recoverir assise deive estre. Et mist avant le recorde, &c.<sup>1</sup> Le pleintif dist qe ley ne luy mist a

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<sup>1</sup> The plea was, according to the roll, "quod assisa inter eos fieri non debuit, &c., quia dixerunt quod idem Johannes et Johanna alias coram . . . . . Justiciariis domini Regis ad omnes Assisas, &c., in Comitatu Oxoniæ capiendas assignatis apud Oxoniam . . . . . tulerunt quandam Assisam novæ Disseisinæ versus præfatum Edmundum et alios, &c., et questi fuerunt se disseisiri de duabus acris prati, cum pertinentiis, in Hentone juxta Chynnore, quod est idem pratum nunc in visu positum, unde, &c. Ad quam quidem Assisam prædictus Edmundus venit, et respondit ut tenens dicti prati, et dixit quod assisa inde inter eos fieri non debuit, quia dixit quod, illo prato in seisina cujusdam Johannis de Reynham, patris ipsius Edmundi, cujus heres ipse est, existente, quidam Edwardus filius Johannis Romayn de Wylenhale, frater prædicti Johannis Romayn, cujus heres ipse est, per scriptum suum remisit, relaxavit, et omnino pro se et heredibus suis in perpetuum quietum clamavit ipsi Johanni de Reynham et heredibus suis totum jus et clameum quod habuit in prædicto prato, cum pertinentiis, &c., et obligavit se et heredes

"suos ad warrantiam, &c., unde  
"dixit quod, si ipse de prato illo  
"ab aliquo alio implacitaretur,  
"prædictus Johannes Romayn, ut  
"frater et heres prædicti Edwardi,  
"teneretur ei, ut filio et heredi  
"prædicti Johannis de Reynham,  
"pratum illud warrantizare, &c.  
"Et petiit judicium si contra  
"scriptum illud assisa inde inter  
"eos fieri debuit. Ad quod præ-  
"dicti Johannes Romayn et Jo-  
"hanna dixerunt quod ipsi virtute  
"scripti prædicti ab assisa illa  
"præcludi non debuerunt, quia  
"dixerunt quod tempore confec-  
"tionis prædicti scripti dictus Ed-  
"wardus non fuit plenæ ætatis, &c." Issue was joined on this, and the Assise found "quod tempore con-  
"fectionis prædicti scripti prædic-  
"tus Edwardus fuit infra ætatem,  
"et quod prædicti Edmundus et  
"alii in Assisa illa nominati  
"injuste et sine judicio prædictos  
"Johannem Romayn et Johannam  
"de prædicto prato, cum pertinen-  
"tiis, disseisiverunt, per quod con-  
"sideratum fuit quod iidem  
"Johannes Romayn et Johanna  
"recuperarent inde seisinam suam,  
"&c. Et petierunt judicium, ex  
"quo prædictus Edmundus in  
"Assisa prædicta placitando ac-  
"ceptavit prædictum pratum fore  
"in prædicta villa de Hentone in  
"Comitatu Oxoniæ, et seisinam

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to any assise brought in another county, and prayed the assise; and upon that they were adjourned into the Bench.—*Grene*. He has pleaded in bar a recovery of tenements which were demanded in another county, and they cannot according to any law be understood to be the tenements in respect of which we make our plaint, for recovery of tenements in one vill is no bar to a demand made in another vill; *a fortiori* in this case.—*Huse*. If you came into Court on a demand made against you of tenements in Grene, when in fact they were in Huse, and you in pleading accepted the writ as good, and you lost, you would never be admitted to say that the tenements were in Huse; so in the matter before us.—*Grene*. I well know that a party can never give jurisdiction to a Court by accepting it; for, when Justices assigned to take Assises in a certain county hold plea in a county other than that for which their warrant is, even though the parties consent to it, whatsoever they do in a county other than that for which their warrant is is disseisin if the party be ousted by execution; therefore it is nothing to the purpose, when I bring an Assise in one county, to allege a recovery in another county.—*WILLOUGHBY*. The Justices of Assise could not enquire whether the tenements were in one county or in another, but we can; and that was one of the reasons



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respondre a nulle assise porte en autre counte, et pria assise; sur quei ils sont adjournes en Baunk.<sup>1</sup> —*Grene*. Il ad plede en barre par recoverir des tenementz demandetz<sup>2</sup> en autre counte, qe ne poet par nulle ley, estre entendu les tenementz dont nous pleignoms, qar recoverir des tenementz<sup>3</sup> en une ville ne barre pas a un demande fait en autre ville; a plus fort en ceo cas.—*Huse*. Si vous venistes en Court a tenementz demandetz vers vous en Grene, ou *de rei veritate* ils furent en Huse, et en pledaunt<sup>4</sup> vous acceptastes le brief<sup>5</sup> bon, et perdistes, vous serrez resceu jammes a dire qe les tenementz furent en Huse; *sic in proposito*.—*Grene*. Jeo sai bien qe partie par accepter ne purra jammes doner jurisdiction a Court; qar, quant Justices as Assises en certain counte tenent plee en autre counte qe leur garrant nest, tut assentent parties a cel, quant qils fount en autre counte qe la ou leur garrant est est<sup>6</sup> disseisine si partie soit ouste par execucion; donques nest ceo rien a purpos, quant jeo porte Assise en un counte, allegger recoverir en autre counte.—*WILBY*. Les Justices as Assises ne poient enquere si les tenementz furent en un counte ou en autre, mes nous poms; et ceo fuit une des causes

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“ suam de prædicto prato versus  
 “ eum recuperarunt, si ad illud  
 “ breve per quod prædictus Ed-  
 “ mundus supposuit prædictum  
 “ pratum esse in prædicta villa de  
 “ Kyngeseye in Comitatu Bucking-  
 “ hamie assisa inde inter eos  
 “ fieri deberet, &c.” The record of  
 the Assise in the County of Oxford  
 was sent to the Justices of Assise  
 of the County of Buckingham by  
*Mittimus*, and is set out at length  
 on the roll.

<sup>1</sup> According to the roll the replication was: “Prædictus Edmundus  
 “ dixit quod ipse questus fuit se

“ disseisiri in libero tenemento suo  
 “ in Kyngeseye, ad quod prædicti  
 “ Johannes Romayn et Johanna  
 “ nihil dixerunt quare assisa  
 “ remanere debuit. Et instanter  
 “ petiit assisam, &c.  
 “ Et super hoc dies datus fuit  
 “ hic.”

<sup>2</sup> demandetz is omitted from B.  
 and H.

<sup>3</sup> C., and L., damages.

<sup>4</sup> The words en pledaunt are  
 omitted from H.

<sup>5</sup> B., les briefs, instead of le brief.

<sup>6</sup> H., cest.

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for which they made the adjournment into this Court, and therefore we shall enquire whether the same tenements were previously put in view, or not, in the first Assise.—*Grene*. You have no other warrant than the Justices of Assise had on this writ of Assise, for the writ of Assise is your warrant with regard to this plea, and not your general warrant which extends to holding pleas throughout the realm.—WILLOUGHBY. It is not so, for, when an Assise is adjourned before us, we can try a release executed in a foreign county, and that the Justices of Assise cannot do.—STONORE to *Grene*. You are as hot upon this as if all that you say were right. Do you suppose that when you came into a court of record upon an Assise brought in the County of Oxford before SHARSHULLE, and accepted the tenements as being in that county, and lost on your own plea, you will now be admitted to say that the same tenements are in another county? No; you must be more learned than God before you will prove that; but it would be otherwise if the Assise had been taken by your default.—Afterwards the plaintiff *non est prosecutus* on account of this opinion, &c.

Assise of  
Novel  
Disseisin.(16.) § Note that *Huse* recited that an Abbot brought

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pur quei ils firent lajournement cy,<sup>1</sup> et pur ceo nous enquerroms si mesmes les tenementz autrefoith<sup>2</sup> en la primere Assise furent mys en vewe ou noun.—*Grene.* Vous navetz nul autre garrant qils navoint sur ceo brief Dassise, qar le<sup>3</sup> brief Dassise est a<sup>4</sup> ceo plee vostre garraunt, et [noun pas vostre garraunt general qe sestent a tenir les plees par tut le realme.<sup>5</sup>—*WILBY.* Il est pas issi, qar, quant Assise est]<sup>6</sup> adjourne devant nous, nous trieroms<sup>7</sup> reles fait en forein counte, et ceo ne poient ils pas fere.—*STON.* a *Grene.* Vous fetes auxi chaud<sup>8</sup> com sil fut resoun tut<sup>9</sup> ceo qe vous ditetz.<sup>10</sup> Quidetz vous quant vous venistes en Court de recorde al Assise porte en Oxenford devant<sup>11</sup> *SCHAR.*, et acceptastes les tenementz estre en cel counte, et perdistes sur vostre plee demene, qe vous serretz resceu ore a dire qe mesmes les tenementz sont en autre counte? Nanyl; vous serretz plus sage qe<sup>12</sup> Dieux avant qe vous le proveretz; mes autre serreit si Lassise ust este pris par vostre default.—*Postea non prosecutus, propter opinionem, &c.*<sup>13</sup>

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(16.)<sup>14</sup> § *Nota* qe *Huse* rehercea qun Abbe porta *Assisa Novæ Disseisinæ*.<sup>15</sup>

<sup>1</sup> B., icy.<sup>2</sup> autrefoith is omitted from C. and L.<sup>3</sup> B., cele.<sup>4</sup> B., de.<sup>5</sup> C., roialme.<sup>6</sup> The words between brackets are omitted from B.<sup>7</sup> B., vous dorroms, instead of nous trieroms.<sup>8</sup> B., and H., chaut.<sup>9</sup> tut is from B. alone.<sup>10</sup> B., and H., parletz.<sup>11</sup> devant is from C. alone, and there interlined.<sup>12</sup> B., de.<sup>13</sup> On the roll nothing follows the

giving of the day in the Bench, except an adjournment, in a later hand.

<sup>14</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 82, d. It there appears that the action was brought before Justices of Assise in the County of Worcester by the Abbot of Tewkesbury agains Cecilia de la Doune and John her son, in respect of a disseisin of five shillings of rent in Rydmarle Abbetote (Redmarley).<sup>15</sup> The marginal note is from C. alone. In the other MSS. it is*Nota.*[Fitz.,  
*Title*, 34;  
18 Li.  
Ass., 17.]

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an Assise of Novel Disseisin, in respect of rent, before Justices appointed to take Assises. The tenant pleaded *hors de son fee*. Thereupon the plaintiff made himself a title to the effect that he and his predecessors had been seised from all time. And the defendants abode judgment whether that was a title without a specialty. And thereupon they were adjourned into that Court, *propter difficultatem*. Therefore (said *Huse*) I pray the assise for the plaintiff, and so it has often been adjudged for others in like cases.—And WILLOUGHBY, by advice of his fellow-justices, awarded the assise to be taken in the country on that title of prescription, &c.

Replevin. (17.) § Richard Fitz-Simon, knight, complained in

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un Assise de Novele Disseisine devant Justices assignes, de rente, &c. Le tenant pleda hors de son fee, sur quei le pleintif se<sup>1</sup> fist<sup>2</sup> title qe luy et ses predecessours furent seisis de tut temps. Et demurerent en jugement si ceo fuit title saunz especialte. Et<sup>3</sup> sur ceo pur<sup>4</sup> difficile, sount adjournes ceinz. Par quei pur le pleintif jeo prie assise, et<sup>5</sup> issint ad este ajugge pur autres en cas semblables sovent.—Et WILBY par avisement de ses compaignouns agarda lassise a prendre en pays sur cel title de prescripcioun, *et cætera*.<sup>6</sup>

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(17.)<sup>7</sup> § Richard fitz Simond, chivaler, se pleint

*Replegari.*  
[Fitz.,  
Aide,  
143.]

<sup>1</sup> C., and L., luy.

<sup>2</sup> fist is omitted from C.

<sup>3</sup> Et is omitted from B.

<sup>4</sup> pur is omitted from B.

<sup>5</sup> et is omitted from C. and H.

<sup>6</sup> According to the roll, the defendants made default, and the Abbot prayed that the Assise might be taken against them by default. "Et super hoc quæsitum fuit per Justiciarios de prædicto Abbate cujusmodi redditus erat de quo ipse superius querebatur se disseisiri, qui dixit quod redditus siccus. Et quæsitum fuit etiam si idem Abbas haberet aliquam aliam specialitatem unde redditus ille cepit originem, &c., et quam ostenderet Curia, &c., qui dixit quod non, sed tantum quod ipse et omnes prædecessores sui a tempore quo non extitit memoria seisisi fuerunt de redditu prædicto ut de libero tenemento quousque prædicti Cæcilia et Johannes ipsum inde injuste et sine judicio disseisiverunt, &c., quam quidem seisinam intendebat fore titulum sufficientem ad assisam illam capiendum,

"&c., et petiit quod procederetur ad captionem assisæ, &c. Et quia non visum erat præfatis Justiciariis per hujusmodi titulum procedere ad captionem assisæ prædictæ," there was an adjournment before the Justices of Assise, another before the same Justices at Westminster, and after further adjournments an adjournment before the Justices of the Common Bench. "Ad quem diem venit prædictus Abbas per attornatum suum prædictum, et prædicti Justiciarii de Banco, visis recordo et processu prædictis, consideraverunt assisam prædictam fore capiendam, &c. Ideo eadem assisa, simul cum brevi originali, et panello, et omnibus aliis adminiculis assisam illam tangentibus, remittuntur præfatis Justiciariis ad Assisas in Comitatu prædicto capiendas assignatis ad assisam illam capiendam in patria, &c."

<sup>7</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 78, d. It there appears that the action was

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Replevin against Robert de Marny, knight, who avowed upon John son and heir of John de St. Philbert for homage in arrear in respect of certain beasts, and for fealty and rent in respect of the rest of the taking.—*Grene*. The plaintiff has nothing in the tenements whereof, &c., except of the dower of his wife, and prays aid of his wife.—*Seton*. The avowry is not

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en *Replegiari* vers Robert Marny, chivaler, qavowa sur J.<sup>1</sup> fitz et heir J. de Seint Filberd<sup>2</sup> pur homage arere de certeinz bestes, et pur feaute et rente del remenant de la prise.<sup>3</sup>—*Grene*. Le pleintif nad rienz en les tenementz dount, &c., forge del dowere sa femme, et prie eide de sa femme.<sup>4</sup>—*Setone*. Lavowere nest pas

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brought by Richard Fitz Simond against Robert de Marny, knight, in respect of a taking of ten cows and one hundred sheep in Leghes (Leigh, Essex).

<sup>1</sup> MSS. of Y.B., R.

<sup>2</sup> B., Philberd; Harl., Filbert.

<sup>3</sup> The avowry was, according to the roll, “quod quidam Benedictus de Blakenham tenuit manerium de parva Leghes, unde prædictus locus in quo, &c., est parcella, de quodam Roberto de Marny, avo ipsius Roberti, cujus heres ipse est, per homagium, fidelitatem, et ad scutagium domini Regis quadraginta solidorum, cum acciderit, quadraginta solidos, et ad plus plus, et ad minus minus, et per servitium centum solidorum ad Festa Sancti Michaelis et Paschæ per æquales portiones solvendorum, de quibus servitiis præfatus Robertus, avus, &c., fuit seisitus per manus prædicti Benedicti, qui quidem Benedictus de manerio prædicto, cum pertinentiis, feoffavit quendam Thomam de Blakenham tenendo sibi et heredibus suis de capitalibus dominis, &c., et idem Thomas se attornavit præfato Roberto avo, &c., de homagio et fidelitate sua, &c. Et de ipso Roberto descenderunt prædicta servitia cuidam Willelmo ut filio et heredi, &c., patri ipsius Roberti qui nunc advocat, &c., quo tempore præfatus Thomas de

“Blakenham feoffavit quendam  
“Johannem de Sancto Philberto  
“de manerio prædicto, cum perti-  
“nentiis, tenendo sibi et heredibus  
“suis de capitalibus dominis, &c.  
“Et idem Johannes se attornavit  
“præfato Willelmo patri. &c., de  
“fidelitate sua, &c. Et quia post  
“mortem prædicti Johannis homa-  
“gium et fidelitas Johannis filii  
“et heredis ejusdem Johannis, et  
“post mortem prædicti Willelmi  
“patris ipsius Roberti qui nunc,  
“&c., cujus heres ipse est, prædic-  
“tus redditus per decem annos  
“ante diem captionis prædictæ  
“areto fuerunt, advocat ipse  
“captionem quinque vaccarum de  
“prædictis decem vaccis pro  
“homagio prædicti Johannis filii  
“Johannis, et captionem aliarum  
“quinque vaccarum prædictarum  
“de eisdem decem vaccis pro  
“fidelitate ejusdem Johannis filii  
“Johannis, et captionem prædic-  
“tarum ovium pro quinquaginta  
“solidis de termino Sancti Mi-  
“chaelis primi anni prædictorum  
“decem annorum super prædictum  
“Johannem filium Johannis, ut  
“super verum tenentem suum, ut  
“in feodo suo, &c.”

<sup>4</sup> The aid-prayer was, according to the roll, “Ricardus dicit quod ipse nihil habet in prædicto manerio de Parva Leghes nisi ut vir cujusdam Adæ uxoris suæ, quod quidem manerium iidem Ricardus et Ada tenent in dotem

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made on the wife, and he is a stranger, and has as yet said nothing to which he could not be a party; judgment whether aid, &c.—WILLOUGHBY. After plea pleaded it will be too late to have aid of his wife, because she will not be able to disavow him when she comes.—*Moubray*. And because she will not be able to plead any other plea than her husband can, so that all will be accounted his plea, it is not right that aid should be granted in delay of us.—HILLARY. Yes, it is.—WILLOUGHBY. The avowry is made on the heir of the wife's first husband, as it seems, and if the plaintiff were now to plead to issue without aid, and afterwards the wife were joined with him, and they prayed aid over of the heir, when the heir came he would not be able to disclaim, because he could not alter the plea pleaded, and it would not be right that the heir should be ousted from that answer.—*Thorpe*. It is true that the avowry is made on the husband's heir, of whom, if the wife were party, she would have aid, and therefore aid must be granted of the wife.—HILLARY. Let him have the aid.

*Scire  
facias.*

(18.) § *Scire facias* for the executors of the Earl of Salisbury, as appears above in last Michaelmas term,<sup>1</sup>

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<sup>1</sup> No. 92, p. 364.



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fet sur la femme, et il est estraunge, et rienz ad dit unqore a quei il ne purra estre partie; jugement si eide, &c.—WILBY. Apres plee plede<sup>1</sup> serra trop tarde daver eide de sa femme, qar ele ne luy purra pas desavouer quant ele vendra.—*Moubray*. El pur ceo quele<sup>2</sup> ne purra pas pleder autre plee que son baroun ne poet, issint que tut serra acompte son plee, nest pas resoun que leide en nostre delaye soit graunte.—HILL. Si est.—WILBY. Lavowere est fet sur leire le baroun la femme, a ceo que semble, et sil pledast ore a issue saunz eide, et apres la femme fuit joint a luy, et ils priassent outre eide del heire, quant il vendra il ne purra pas desclamer, pur ceo qil ne purreit pas chaunger le plee plede, et ne serreit pas reson que leire fust ouste de cel<sup>3</sup> respons.—*Thorpe*. Il est<sup>4</sup> verite que lavowere est fait sur leir le baroun, de qi, si la femme fuit partie, ele avereit eide, par quei de la femme covient eide estre graunte.—HILL. Eit leide.<sup>5</sup>

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(18.)<sup>6</sup> § *Scire facias* pur les executours le Count de Salesbure, *ut patet supra Michaelis ultimo*, vers

*Scire facias.*  
[Fitz.,  
Briefe,  
370.]

“ ipsius Adæ, et quod ipse non  
“ potest ad advocare prædictum  
“ sine præfata Ada respondere, et  
“ petit auxilium de ipsa Ada.”

<sup>1</sup> plede is from H. alone.

<sup>2</sup> B., qil.

<sup>3</sup> B., and H., tiel.

<sup>4</sup> B., nest.

<sup>5</sup> Immediately following the aid-prayer on the roll, follow the words  
“ Et Robertus non potest hoc  
“ dedicere, ideo ipsa summoneatur  
“ quod sit hic a die Paschæ in  
“ xv dies per R. Hillary ad respon-  
“ dendum simul si, &c.”

After adjournment “ eadem Ada  
“ jungit se prædicto Ricardo in  
“ respondendo, &c. Et iidem Ri-  
“ cardus et Ada dicunt quod ipsi  
“ tenent prædictum manerium in

“ dotem ipsius Adæ, et quod re-  
“ versio inde post mortem ejusdem  
“ Adæ ad quendam Johannem  
“ filium et heredem Johannis de  
“ Sancto Philberto spectat, sine  
“ quo non possunt præfato Roberto  
“ inde respondere. Et petunt  
“ auxilium de ipso Johanne sum-  
“ monendo in eodem comitatu, &c.  
“ Ideo ipse summoneatur quod sit  
“ hic in Octabis Sanctæ Trinitatis  
“ per R. de Kelleshulle ad respon-  
“ dendum simul, &c.”

Adjournments and a Protection for the prayee in aid follow, and the case was put *sine die*.

<sup>6</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 411, d. The recital in the *Scire facias*

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against certain persons who had ousted them by execution on a statute merchant, whereas they held by force of a statute merchant made to the Earl, their testator, at an earlier time, to show cause why they should not have again their possession, &c. And, after the record had been read, it was asked whether they had the will; and because they were seised as executors judgment was given that they should be answered without producing the will, notwithstanding that execution was previously had and adjudged for their testator, and not for themselves. Afterwards exception was taken to the writ, on the ground that several villis were mentioned in the record of the first extent, and were named otherwise than in the *Scire facias*; and afterwards on the ground the writ does not suppose the executors to have been seised at any time by execution. But because the words of the writ were *prædictos executores amorendo*, by which words their seisin is understood, the exception was not allowed.—*Grene*. You see plainly that by their seisin it is supposed that execution was had on the statute, and the object of this suit is to put it in execution a

which was directed to the Sheriff of Cornwall, was, as there appears, that whereas John Petyt, knight, had become bound in a statute merchant to William “de Monte acuto,” Earl of Salisbury, for £1,600, and the Sheriff had delivered certain of John’s goods and chattels, and all John’s lands which were in his bailiwick on the day on which John became bound to the Earl “per rationabile pretium et extentam, videlicet” [here follows a specification of the lands, &c., in fifty-nine villis]. to hold until the amount of the debt had been levied, with costs and damages, “ac jam ex insinuatione Elizabeth de

“Mountagu, Simonis Episcopi  
“Eliensis, Prioris de Bustlesham  
“Mountagu, Willelmi filii Wil-  
“lelmi Mountagu, Nicholai de la  
“Beche, Johannis de Wynkefelde,  
“Johannis de Mere, Willelmi de  
“Raugele, Roberti de Burtone, et  
“Jacobi de Beauforde, executorum  
“testamenti præfati Comititis, ac  
“cepimus quod licet nec prædictus  
“Comes in vita sua nec præfati  
“executores post mortem ejusdem  
“Comititis debitum prædictum de  
“prædictis tenementis levaverunt,  
“quidam tamen Adam Fraunceys  
“et Thomas de Brandone Cives et  
“Mercenarii Londoniarum, pro eo  
“quod prædictus Johannes Petyt

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certains personnes q'avoient ouste eux par execucion sur estatut marchaunt, la ou ils tiendrent par force dun estatut fait al Count, leur testatour, deigne temps, pur quei ils ne duissent reaver leur possession, &c. Et, apres le recorde lieu, demande fuit sils avoient testament; et pur ceo q'ils furent seisis come executours fuit agarde q'ils serrount respondu saunz testament, *non obstante* qe devant lexecucion<sup>1</sup> fuit fet, et agarde pour leur testatour, et noun pas pur eux mesmes. Puis le brief est chalenge de ceo qe plusours villes furent en le recorde de la primere extent, et autrement nome qen ceo *Scire facias*; et puis de ceo qe le brief ne<sup>2</sup> suppose pas<sup>3</sup> les executours a asqun temps estre seisi par execucion. Mes pur ceo qe le brief voleit *prædictos executores amovendo*, par quel parole leur seisine est entendu,<sup>4</sup> *non allocatur*.—*Grene*. Vous veietz bien coment par leur seisine<sup>5</sup> est suppose qe lestatut fuit execut, et ceste suite est de la mettre autrefoith en execucion;

A.D.  
1344-5.[Fitz.,  
Monstrans  
de faits,  
fins, et  
records,  
171.][Fitz.,  
Scire  
facias, 12.]

“ et quidam Michael de Trene-  
“ wythe, junior, et Robertus  
“ Duraunt . . . . .  
“ per formam statuti Regis præ-  
“ dicti recognoverunt se et quem-  
“ libet eorum in solidum debere  
“ præfatis Adæ Fraunceys et  
“ Thomæ de Brandone ducentas  
“ et quadraginta libras certis  
“ terminis in eadem recognitione  
“ contentis solvendas, et eis  
“ terminis statutis non soluerunt,  
“ tantum sunt prosecuti quod idem  
“ Vicecomes, virtute cujusdam  
“ brevis Regis de iudicio sibi  
“ directi de liberando eis omnia  
“ terras et tenementa quæ idem  
“ Johannes habuit die recogni-  
“ tionis prædicti debiti eis factæ,  
“ tenenda quousque prædictas  
“ ducentas et quadraginta libras  
“ inde levassent, eadem terras et

“ tenementa quæ præfato Comiti  
“ prius liberata fuerunt in forma  
“ supradicta prædictis Adæ et  
“ Thomæ de Brandone postea  
“ liberavit, executores prædictos  
“ de eisdem amovendo, Et quia  
“ prædicta recognitio prædictarum  
“ mille et sexaginta librarum præ-  
“ fato Comiti facta est de anteriori  
“ data quam prædicta recognitio  
“ ducentarum et quadraginta libra-  
“ rum præfatis Adæ et Thomæ de  
“ Brandone facta, et iudicia in  
“ Curia Regis rite reddita et  
“ executiones eorundem manu-  
“ tenere vult, ut tenetur, dominus  
“ Rex,” &c.

<sup>1</sup> lexecucion is omitted from C.<sup>2</sup> ne is omitted from C.<sup>3</sup> pas is omitted from C. and L.<sup>4</sup> B., estendu.<sup>5</sup> B., suyte.

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second time; judgment of the writ.—WILLOUGHBY. If this Court, when it awarded the last execution, had been apprised that the other execution had been awarded by force of another and an earlier statute, it would have delayed execution; therefore, since this Court was deceived, and they were thereupon ousted, it is right that this Court should give redress, and aid cannot be given in any other way.—*Grene*. It can by Assise.—WILLOUGHBY. One cannot have an Assise when the ouster was by warrant out of this Court.—*Grene*. He can have it; for suppose that, after I have execution of certain lands by statute merchant, one who has no right feigns an action against the tenant of the freehold, and recovers by covin, and ousts me by execution of the judgment, shall I not have an Assise? And the reason is that I was not a party; so also in the matter before us.—And that point was granted.—*Thorpe*. Suppose any one has execution in this Court upon a fine or a judgment, and is afterwards ousted, will he have suit by way of a new *Scire facias*? as meaning to say that he will not. Why then any more in this case?—WILLOUGHBY. In that case he will have an Assise; and this suit is not new in the particular case.—*Grene*. Certainly it is new, for it has never been seen; but we saw at York that Camoys sued a *Scire facias* against one who had execution on a statute merchant of later date to show cause why he should not have execution by force of a statute which was of earlier date, but in that case he had then had no execution, and for that reason the *Scire facias* was maintained; but where execution had been previously awarded that was never seen.—WILLOUGHBY. Camoys's case was such a case as this is.—STONORE. I am amazed that *Grene* makes himself out to know everything in the world—

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jugement du brief.—WILBY. Si cest Court, quant ele agarda la darreyne execucion, ust este apris qe lautre execucion ust este agarde par force dun autre estatut eigne,<sup>1</sup> ils ussent delaie lexecucion; donques<sup>2</sup> quant ceste Court fuit desceu, et sur ceo ils furent oustes, il est resoun qe ceste Court le face redreser, et par autre voie ne purra estre eide.—*Grene*. Si serra par Assise.—WILBY. Il navera pas Assise quant louser fuit par garraunt hors de ceinz.—*Grene*. Si avera; qar jeo pose qapres ceo qe jay execucion par estatut marchaunt de certains terres, un qe nul dreit nad feint une accion vers tenant de franc tenement, et recovere par covyn, et moy ouste par execucion de jugement, navera jeo Assise? Et la cause est pur ceo qe jeo ne fu<sup>3</sup> pas partie; *sic in proposito*.—*Et illud erat concessum*.—*Thorpe*. Jeo pose qe homme ad execucion<sup>4</sup> ceinz hors dune fyn ou dun jugement, et puis est ouste, avera il suite par novel garnisement? *quasi diceret non*. Pur quei plus eu ceo cas?—WILBY. La avera il Assise; et ceste suite nest<sup>5</sup> pas<sup>6</sup> novel el cas.—*Grene*. Certes si est, qar unques ne fuit cel<sup>7</sup> vewe; mes nous veimes qe Camoys a Everwyke suyt de garnir un qavoit execucion sur estatut marchaunt de puisne date pur quei il navereit execucion par force dun<sup>8</sup> estatut qe fuit deigne date,<sup>9</sup> mes la avoit il eu adonques nulle execucion, et pur ceo fuit le garnisement meintenu; mes ou lexecucion fuit devant agarde unques ne fut ceo<sup>10</sup> vewe.—WILBY. La cas de Camoys fuit autiel cas come cest est.—STON. Jeo moy<sup>11</sup> merveille qe *Grene* soi<sup>12</sup> fet savoir tut le mound, et nest forqe

A.D.  
1344-5.[Fitz.,  
Assise,  
82.]<sup>1</sup> H., deisne temps.<sup>2</sup> B., demande.<sup>3</sup> B., su.<sup>4</sup> L., qexecucion soit suy hors de, instead of qe homme ad execucion.<sup>5</sup> nest is omitted from L.<sup>6</sup> pas is omitted from C. and L.<sup>7</sup> B., and H., tiel.<sup>8</sup> B., and H., de son.<sup>9</sup> date is omitted from C.<sup>10</sup> ceo is omitted from B.<sup>11</sup> H., me. The word is omitted from B.<sup>12</sup> B., ce; H., se.

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and he is only a young man.—WILLOUGHBY. Your plea is to the action; will you abide judgment thereon?—*Grene*, on account of the opinion of the COURT, did not dare to abide judgment, but said:—By this writ it is supposed that the executors ought to have this land again, until they have levied of it the whole debt, whereas by the first extent and by execution it is proved that the first execution was of several other lands, and in several other vills than those from which it is now supposed by this writ that they have been ousted, and so it is proved that the debt is to be levied not only of this land but of this land and all the rest of which the first execution was had; judgment of this writ which supposes that they are to hold and to have again this land to hold until the whole debt is levied.—WILLOUGHBY. We will inspect the record, to see whether it is so.—And afterwards *Grene* said:—By this writ it is understood that by our execution we have ousted them from all that they first had by their execution, whereas by the extent and the livery made to us it is proved that we have not had execution of a moiety of that which was delivered to them; for their execution was in forty vills, and ours only in seven or eight vills, so that by their writ it is supposed that they ought to have again that of which they are themselves seised; judgment of the writ.—*Huse*. We will aver that by the execution which you

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joefnes<sup>1</sup> homme.—WILBY a *Grene*. Vostre plee est al accion; voletz la demurer?—*Grene*, *propter opinionem CURLÆ*, nosa pas<sup>2</sup> demurer, mes dit qe par ceo brief est suppose qe les executours deivent reaver, tanqils<sup>3</sup> eient leve de cele terre tote la dette, ou par la primere extente et par<sup>4</sup> execucion est prove qe la primere execucion fuit de plusours autres terres, et en plusours autres villes qe nest suppose ore par cest brief qils sount oustes, issint est il prove qe nient soulement de ceste terre mes de ceste terre<sup>5</sup> et tote le remenant dount la primere execucion se fit la dette serra leve; jugement de ceo brief qe suppose qils tiendront et reaverount ceste terre a tener tanqe tote la dette soit leve.—WILBY. Nous voloms veer le recorde sil soit issi.—Et puis *Grene* dit qe par ceo brief est entendu qe par nostre execucion nous les avoms ouste de quantqils avoint primes par lour execucion, ou par lextente et le livre fait a nous est prove qe nous avoms pas execucion de la moite qe fuit livre a eux; qar lour execucion fuit en xl villes et la nostre forge en vij villes<sup>6</sup> ou viij,<sup>7</sup> issint qe par lour brief est suppose qils deivent reaver ceo dount ils sount mesmes seisi; jugement du brief.<sup>8</sup>—*Huse*. Nous voloms averer qe par lexecucion qe vous suistes

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1344-5.<sup>1</sup> B., and H., joeven.<sup>2</sup> pas is from B. alone.<sup>3</sup> H., qanqils.<sup>4</sup> par is from L. alone.<sup>5</sup> terre is from L. alone.<sup>6</sup> villes is from H. alone.<sup>7</sup> L., viij villes.

<sup>8</sup> The plea was, according to the record, "iidem Adam et Thomas, " non cognoscendo quod prædicti " executores seisiti fuerunt de præ- " dictis tenementis, dicunt quod " ubi executores illi per breve suum " supponunt tenementa quæ præ- " fato Comiti liberata fuerunt per

" extentam ad sectam ejusdem

" Comitum factam et returnatam

" fuisse integre liberata præfatis

" Adæ et Thomæ per extentam ad

" eorum sectam factam et hic

" returnatam, dicunt quod terræ et

" tenementa quæ per eandem

" extentam ad sectam ipsorum

" Adæ et Thomæ factam eis

" liberata fuerunt non sunt nisi sex

" mesuagia, unum molendinum,

" duæ carucatæ et duæ acræ terræ

" Cornubienses, quadraginta soli-

" datæ et duæ denaratæ redditus

" tantum in [seven vills named] et

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sued we were ousted of all that of which our testator had execution.—*R. Thorpe*. The reverse of your averment can be shown by the record by which your writ should be warranted.—*STONE*. Even though it be the fact that a less quantity, or to a less value, or a less number of names of vills is in one extent than in the other, still that does not prove that you have not ousted him by your execution; for possibly you had a more favourable extent than he had; and, although several vills may be named, some may be hamlets of the others, because in Cornwall there is found one vill, such as St. Martin's or St. Peter's, in which there are a hundred vills, and so it may be in this case, and as much will be had by execution in one vill as in a hundred.—*Thorpe*. Then, if the matter be such, it ought to be alleged in order to maintain the writ, and otherwise you will not so understand it.—*Pole*. Our writ is not in any way warranted by your extent, but rests entirely on our extent; for the words of our writ of *Scire facias* are *virtute cujusdam brevis de executione liberasti, prædictos executores amovendo*.—*Thorpe*. And if no extent had been made at our suit, you would not then have a writ of this nature, but an Assise, for, if the Sheriff were to make livery in such a case without an extent, it would be without warrant.—*WILLOUGHBY*. That is true; and therefore a writ of this nature would lie only in respect of the parcel of which the extent and livery were made, and if they were ousted from the rest an Assise would lie.—*Pole*. Suppose he extended the whole, and made a return only as to parcel,



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nous fumes ouste de quanqe nostre testatour avoit execution.—*R. Thorpe.* Le revers de vostre averement poet apparer par recorde de quel vostre brief serreit garraunti.—*STON.* Tut soit il qe meindre quantite ou a meindre value ou en<sup>1</sup> meins des nouns des villes soit en lune estent qen lautre, ceo ne prove pas unqore<sup>2</sup> qe vous navetz par vostre execution luy ouste; qar vous avietz plus favorable extente par cas qil navoit; et, coment qe plusours villes soient nomes, asquns pount estre hamels des autres, qar en Cornewaille il y ad asqun ville, com Seint Martyn<sup>3</sup> ou Seint Piere,<sup>4</sup> en quel sount<sup>5</sup> c villes, et si<sup>6</sup> purra<sup>7</sup> il estre en ceo cas, et tant avera homme par execution en une ville comme en c.—*Thorpe.* Et si la matere soit<sup>8</sup> tiel ceo dust estre allegge pur meintener le brief, et autrement nel entendretz pas.—*Pole.* Nostre brief nest pas garranti de vostre extente nulle rien, mes tut sur nostre extente; qar nostre brief de *Scire facias* voet *virtute cujusdam brevis de executione liberasti, prædictos executores amovendo.*—*Thorpe.* Et, si nulle extente fuit fait a nostre suite, donqes naveretz<sup>9</sup> pas tiel brief, mes Assise, qar le Vicounte sil feist livere en tiel cas saunz extente<sup>10</sup> ceo serreit saunz garraunt.—*WILBY.* Cest verite; par quei de la parcelle dount lextente fuit<sup>11</sup> fet et livere tiel brief girreit seulement, et, si<sup>12</sup> del remenant fuissent<sup>13</sup> ouste, Assise girreit.—*Pole.* Jeo pose qil estendist tut, et retourna

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“ extenta prædicto Comiti facta se  
 “ extendit ad majorem valorem,  
 “ &c. et in pluribus villis quam  
 “ prædicta extenta ad sectam ipso-  
 “ rum Adæ et Thomæ facta, unde  
 “ petunt judicium de brevi,” &c.

<sup>1</sup> C., H., and L., a.

<sup>2</sup> unqore is omitted from C. and L.

<sup>3</sup> B., Pere.

<sup>4</sup> B., Martyn.

<sup>5</sup> B., soit.

<sup>6</sup> H., issi.

<sup>7</sup> C., and L., purreit.

<sup>8</sup> B., fut.

<sup>9</sup> B., navera.

<sup>10</sup> B., execution.

<sup>11</sup> B., nous fit; H., vous fut.

<sup>12</sup> si is omitted from B.

<sup>13</sup> B., vous fustes.

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I should have this writ.—WILLOUGHBY. You can maintain your writ only in one of two ways, that is to say, either because some of the villis named are hamlets of another, or because more was delivered to him than the extent purports, and therefore if you wish to have the averment you will have it by reason of one of these special facts.—*Pole*. We will aver that the whole of that which was previously delivered to our testator, and of which we were seised in accordance with the extent, was delivered to them; ready, &c.—WILLOUGHBY. Will you say that the whole was extended at their suit, and delivered to them.—*Pole*. Yes, Sir.—*Grene*. The reverse is proved by the extent itself which is before you of record.—*Pole*. Then you refuse the averment?—*Grene*. The whole was not extended and delivered to us; ready, &c.—And the other side said the contrary.

Writ of  
Right of  
advowson.

(19.) § The Abbot of St. Bennet brought a writ of

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forqe parcelle, javeray le<sup>1</sup> brief.—WILBY. Vous ne poietz pas meintener vostre brief sil ne soit par une de deux voies, saver, ou pur ceo qe asqun soit hamelle dautre, ou pur ceo qe plus luy fuit livere qe lextente ne purport, et pur ceo si vous voilletz aver laverement vous laveretz par asqun de ces<sup>2</sup> fetes especial.—*Pole*. Nous voloms averer qe lentier autrefoith livere<sup>3</sup> a nostre testatour, et dount nous fumes seisi par lextente, fut<sup>4</sup> livere a eux; prest, &c.<sup>5</sup>—WILBY. Voletz dire qe lentier a lour suite fuit estendu, et livere a eux?—*Pole*. Sire, oyl.—*Grene*. Le revers est prove par lextente mesme qest devant vous de recorde.—*Pole*. Donqes refusetz vous laverement?—*Grene*. Lentier ne fuit pas estendu et livere a nous; prest, &c.—*Et alii e contra*.<sup>6</sup>

A.D.  
1344-5.(19.)<sup>7</sup> § Labbe de Seint Benet<sup>11</sup> porta briefBrief de<sup>8</sup>  
Dreit<sup>9</sup>  
davoweson.<sup>10</sup>  
[Fitz.,  
*Jugement*,  
124.]<sup>1</sup> B., cel.<sup>2</sup> C., and L., ses.<sup>3</sup> C., fuit livere.<sup>4</sup> B., fist; the word is omitted from C. and L.<sup>5</sup> According to the record the executors replied "quod omnia terræ et tenementa in brevi contenta, quæ præfato Comiti liberata fuerunt per extentam, &c., adeo integre postmodum præfatis Adæ et Thomæ liberata fuerunt, virtute prædictæ extentæ eis inde factæ, sicut eidem Comiti prius liberata fuerunt. Et hoc parati sunt verificare," &c.<sup>6</sup> According to the roll, after the replication of the executors, "Adam et Thomas de Brandone dicunt quod quidam Henricus de Trewynnarde tenet duas carucatas terræ in Tremur de prædictis tenementis quæ prædicto Comiti liberata fuerunt, unde per breve suum

"supponunt ipsos executores

"ammotos fuisse, &amp;c., et tenuit

"die executionis prædictæ extentæ

"eisdem Thomæ et Adæ in forma

"supradicta factæ. Et hoc parati

"sunt verificare, unde petunt;

"judicium," &amp;c.

"Et executores dicunt quod ipsi

"ammoti fuerunt per executionem

"extentæ prædictæ ad sectam

"prædictorum Adæ et Thomæ

"factæ de omnibus terris et

"tenementis præfato Comiti prius

"liberatis."

Issue was joined upon this. The *Venire* was awarded, but nothing further appears on the roll, except adjournments.<sup>7</sup> From B., C., H., and L.<sup>8</sup> The words Brief de are omitted from B. and H.<sup>9</sup> Dreit is omitted from B.<sup>10</sup> davoweson is omitted from C. and H.<sup>11</sup> C., Benette.

## No. 20.

A.D.  
1344-5.

Right of advowson against certain persons, and recovered by default after default, and judgment was therefore given that he should recover, and that execution should be stayed until enquiry had been had as to collusion. By Inquest of office taken it was found that the plaintiff held *in proprios usus*, &c. And there were shown in evidence the Pope's Bull and the King's license for the appropriation. And now it was prayed that the judgment might be enlarged to the effect that the Abbot was to hold *in proprios usus*, because the demandant's right is found to be such, and it is not his fault that he did not count, because he could not count if his adversary did not appear, and in case his adversary had appeared he would have counted "to hold *in proprios usus*," and would have recovered in that form if judgment had been given on action tried; for the same reason he will have that judgment now.—HILLARY. I have seen judgment given, in such a case, on action tried, only to the effect that the demandant should recover the advowson.—STONORE. Judgment is rendered, and that cannot be altered or amended by us; therefore sue execution.—*Thorpe* prayed that execution might be awarded to put him in possession *in proprios usus*.—HILLARY. You will not have such execution, but only execution in accordance with the judgment.—*Thorpe*. We pray a *Scire facias* against the parson of the church to show cause why we shall not have execution.—WILLOUGHBY. Willingly; that you shall have; therefore sue the writ.

Ravish-  
ment of  
Ward.

(20.) § Ravishment of Ward in respect of such an one, daughter and heir of her father.—*Gaynesford*. After the death of her father, one who was his son

## No. 20.

de Dreit<sup>1</sup> davoweson vers certains gentz, et recoveri par default apres default, par quei fuit agarde qil recoverast, et qe execucion cessast tanqe enquis fuit de la collusion. Par enqueste doffice pris fuit trove qe le pleintif<sup>2</sup> tient en propre oeps, &c. Et en evidence fuit moustre Bulle del Pape et conge du Roi del appropriacion. Et ore fuit prie qe le jugement fuit enlargi a tenir<sup>3</sup> en propre oeps, qar le dreit le demandant est trove tiel, et ceo nest pas default de luy qil ne counta pas, qar il ne<sup>4</sup> pout aver counte si son adversare<sup>5</sup> nust<sup>6</sup> venuz, et en cas qil ust venuz il ust counte a tenir en propre oeps, et issint ust recoveri si jugement se ust fait sur accion trie; par mesme la resoun a ore.—HILL. Jay vewe le jugement en le cas sur accion trie<sup>7</sup> forqe soulement qe le demandant recoverast lavoweson.—STON. Le jugement est rendu, quel ne put estre change ne amende par nous; par quei suetz execucion.—*Thorpe* pria qe execucion fuit agarde de luy mettre en possession en propre oeps.—HILL. Vous naveretz pas tiel execucion forqe acordant al jugement.—*Thorpe*. Nous prioms *Scire facias* vers la persone del eglise pur quei nous naveroms<sup>8</sup> pas execucion.—WILBY. Vous laveretz volonters; par quei suetz le brief.

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1344-5.

(20.)<sup>9</sup> § Ravissement de Garde dune tiele, fille et heir son pere.—*Gayn*. Apres la mort son pere, un

Ravissement de Garde.  
[Fitz., Garde, 112.]

<sup>1</sup> The words de Dreit are omitted from B.

<sup>2</sup> B., predecessour.

<sup>3</sup> H., tenier.

<sup>4</sup> ne is omitted from H.

<sup>5</sup> C., adversere.

<sup>6</sup> B., navoit.

<sup>7</sup> trie is omitted from B.

<sup>8</sup> H., vous naveretz, instead of nous naveroms.

<sup>9</sup> From B., C., H., and L., but

corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 108, d.

It there appears that the action was brought by Elias de Godele against Richard de Buttethorne, in respect of the ravishment of Margaret daughter and heir of Richard de Bathampton, at Knapp, near Christchurch Twynham (Hants).

## No. 20.

A.D.  
1344-5.

entered, and died seised, so that she should be made sister and heir to her brother; judgment of the writ.—*Huse*. Such a plea does not lie in your mouth, since you claim nothing in the wardship.—WILLOUGHBY. Will he either claim, or say anything else to this false writ?—And according to the opinion of the Court the plaintiff shall in law be put to answer to this.—Therefore *Huse* said that the brother was not seised; ready, &c.—And the other side said the contrary.

## No. 20.

son fitz entra, et murust<sup>1</sup> seisi, issint qele serreit<sup>2</sup> fait soer et heir a son frere; jugement du brief.<sup>3</sup>—*Huse*. Tiel<sup>4</sup> ple ne gist pas en vostre bouche qe rien ne clametz en la garde.—WILBY. Clamera il ou dirra autre chose a ceo faux brief?—*Et per opinionem* le pleintif de lei serra mys a ceo respondre.—Par quei *Huse* dit qe le frere ne fuit pas seisi; prest, &c.<sup>5</sup>—*Et alii e contra*.<sup>6</sup>

A.D.  
1344-5.

<sup>1</sup> L., muruyt.

<sup>2</sup> L., le brief, instead of qele serreit.

<sup>3</sup> The plea was, according to the record, “quod, ubi prædictus Elias per breve suum supponit præfatam Margaretam esse filiam et heredem prædicti Ricardi de Bathampton, idem Ricardus habuit quendam filium, Ricardum nomine, qui post mortem prædicti patris sui intravit in terris et tenementis quæ fuerunt ejusdem patris sui, et inde obiit seisitus, &c., sine herede de se, per quod tenementa illa descenderunt præfatæ Margaretæ ut sorori et heredi, &c., unde petit judicium de isto brevi quod supponit prædictam Margaretam fore heredem prædicti Ricardi de Bathampton,” &c.

<sup>4</sup> H., cel.

<sup>5</sup> The replication was, according

to the record, “quod, ubi prædictus Ricardus de Buttethorne supponit præfatum Ricardum filium Ricardi seisitum fuisse de tenementis prædictis post mortem prædicti patris sui, idem Ricardus filius Ricardi nunquam seisitus fuit de tenementis illis post mortem prædicti patris sui, sicut prædictus Ricardus supponit.” Issue was joined upon this.

<sup>6</sup> On the day given, according to the roll, “Elias, relicta verificatione quam superius prætendebat, non potest dedicere quin prædictus Ricardus filius Ricardi fuit seisitus de prædictis tenementis post mortem prædicti patris sui.”

Judgment was therefore given that the plaintiff should take nothing by his writ.

## No. 21.

A.D.  
1344-5.  
Prayer to  
be  
admitted.

(21.) § Note that Adam Broun and his wife, against whom the writ was brought, departed in contempt of the Court. And the demandant was essoined, and his essoiner prayed seisin. Thereupon Edward Mountagu and Alice his wife, and John de Segrave and Margaret his wife, in right of the ladies as daughters and heirs of Thomas Earl of Norfolk, by reason of a reversion descended from Thomas to them in fee tail, through a lease made by Thomas to the tenants for their lives with the King's license, prayed to be admitted in accordance with the same form. And they all appeared by attorney appointed in virtue of a writ framed in accordance with their case,<sup>1</sup> except Edward, who appeared in person.

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<sup>1</sup> As to this writ *see* p. 459, note 6.



No. 21.

(21.)<sup>1</sup> § *Nota* qe Adam Broun et sa<sup>3</sup> femme, vers queux le brief fuit porte, departirent en despit de la Court. Et le demandant est essone, et lessoignour pria<sup>4</sup> seisine. Sur quei Edward Mountagu et Alice sa femme, J. Segrave et Margarete<sup>5</sup> sa femme, de dreit les dames com filles et heirs Thomas Count de Norffole, par cause de reversion descendu de Thomas a eux en fee taille, par le lees Thomas fait as tenantz a lour vies par conge le Roi par mesme la fourme prierent destre resceu. Et touz furent par attourne par brief fourme sur lour cas, sauf Edward, qe fuit en propre persone.<sup>6</sup>—*R. Thorpe.*

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1344-5.  
Prier  
destre  
resceu.<sup>2</sup>  
[Fitz.,  
*Resceit*,  
114.]

<sup>1</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 192, d. It there appears that an action of Entry in the *post* had been brought by Hugh Berry against Adam Broun and Margery his wife, in respect of the manor of Dykeleburghe (Dickleborough, Norfolk), “in quod iidem Adam et Margeria non habent ingressum nisi post disseisinam quam Rogerus Bygot inde injuste et sine iudicio fecit Willelmo Berry avunculo prædicti Hugonis, cujus heres ipse est, . . . . . qui quidem Adam et Margeria habuerunt diem hic ad hunc diem postquam placitaverunt cum prædicto Hugone, et posuerunt se inde in juratam patriæ. Et modo, scilicet in crastino Purificationis beatæ Mariæ comparuerunt hic in Curia, per Thomam Wayte attornatum suum, per quod essoniator prædicti Hugonis petit quod essonium prædicti Hugonis adjudicetur et adjornetur per apparenciam prædicti Thomæ attornati prædictorum Adæ et

“ Margeria, qui quidem Adam, in  
“ propria persona sua, et similiter  
“ attornatus prædictæ Margeria  
“ petunt auditum prædicti essonii,  
“ quo audito, petierunt licentiam  
“ inde loquendi, et obtinuerunt.  
“ Et postea prædicti Adam et  
“ Margeria solemniter vocati non  
“ venerunt, sed recesserunt in  
“ contemptu Curia, &c., per quod  
“ essoniator prædicti Hugonis  
“ petit seisinam eidem Hugoni de  
“ prædicto manerio adjudicari.”

<sup>2</sup> The marginal note in B. is *Nota*. There is none in C.

<sup>3</sup> B., Alice sa.

<sup>4</sup> B., demanda.

<sup>5</sup> B., Alice ; C., Alianore ; H., and L., Elianore.

<sup>6</sup> According to the roll “ Super hoc venit quidam Edwardus de Monte Acuto et protulit Justiciariis Regis hic breve domini Regis,” dated 1 Feb. in the nineteenth year of the reign, reciting that an action was pending touching the manor aforesaid, “ quod quidem manerium iidem Adam et Margeria tenent ad terminum vitæ eorundem Adæ et Margeria ex dimissione Thomæ

## No. 22.

A.D.  
1344-5.

—*R. Thorpe.* The essoiner cannot plead to this prayer to be admitted, and inasmuch as admission to defend is not given unless the parties appear *in propria persona*, we pray seisin.—HILLARY ordered that the essoin should be adjudged and adjourned, and that the prayer to be admitted should be entered.—And so it was done.—And thereupon Edward wished to appoint his attorney in Court by bill, but could not.

Detinue of  
writing.

(22.) § William White brought a writ of Detinue of

“ nuper Comitis Norffolciæ et  
 “ Marescalli Angliæ, ut dicitur, ac  
 “ jam ex parte Johannis de Segrave  
 “ et Margaretæ uxoris ejus, unius  
 “ filiarum et heredum prædicti  
 “ Comitis, et Edwardi de Monte  
 “ Acuto et Aliciæ uxoris ejus,  
 “ alterius filiarum et heredum  
 “ ejusdem Comitis, accepimus quod  
 “ iidem Adam et Margeria, per  
 “ collusionem inter ipsos et  
 “ præfatum Hugonem habitam  
 “ machinantes prædictos Johan-  
 “ nem, Margaretam, Edwardum,  
 “ et Aliciam de jure reversionis  
 “ manerii prædicti excludere,  
 “ manerium prædictum eidem  
 “ Hugoni in crastino Purificationis  
 “ beatæ Mariæ proxime futuro  
 “ reddere, vel defaultam, aut aliud  
 “ quod in præjudicium Johannis,  
 “ Margaretæ, Edwardi, et Aliciæ  
 “ cedere poterit, facere, ut creditur,  
 “ intendunt, ad exheredationem  
 “ prædictarum Margaretæ et  
 “ Aliciæ manifestam, super quo  
 “ iidem Johannes, Margareta, et  
 “ Alicia nobis supplicarunt ut, cum  
 “ ipsi adeo impotentes sui existant  
 “ quod absque maximo corporum  
 “ suorum periculo laborare non  
 “ possunt, velimus eisdem Johanni,  
 “ Margaretæ et Aliciæ in hac parte  
 “ subvenire, Nos pro eo quod  
 “ evidenter nobis constat quod

“ præfati Johannes, Margareta, et  
 “ Alicia, propter impotentiam suam  
 “ prædictam, ad diem prædictum  
 “ usque Westmonasterium person-  
 “ aliter venire non possunt ad  
 “ defendendum, una cum præfato  
 “ Edwardo, jus ipsarum Margaretæ  
 “ et Aliciæ, prout moris est in  
 “ præmissis, concessimus eisdem  
 “ Johanni, Margaretæ, et Aliciæ  
 “ quod ipsi loco suo facere possint  
 “ attornatum vel attornatos ad  
 “ petendum, una cum præfato  
 “ Edwardo, se admitti ad defensi-  
 “ onem juris prædictarum Mar-  
 “ garetæ et Aliciæ de manerio  
 “ prædicto, qui quidem Johannes,  
 “ Margareta, et Alicia attornaver-  
 “ unt coram nobis loco suo  
 “ Nicholaum de Bedyngam, et  
 “ Willelmum de Aylestone ad  
 “ petendum, una cum eodem  
 “ Edwardo, se admitti ad defensi-  
 “ onem juris ipsarum Margaretæ  
 “ et Aliciæ versus prædictum  
 “ Hugonem de manerio prædicto,  
 “ et similiter ad lucrandum vel  
 “ perdendum in placito prædicto,  
 “ et ad omnia alia et singula  
 “ faciendum, una cum præfato  
 “ Edwardo, quæ iidem Johannes,  
 “ Margareta, et Alicia facerent si  
 “ præsentessent. Et ideo vobis  
 “ mandamus quod ipsos Nicho-  
 “ laum et Willelmum, vel alterum

## No. 22.

Lessoignour ne poet pleder a ceste resceite, mes desicomme resceite nest pas done sils ne fuissent en propre persone, nous prioms seisine.—HILL. comaunda dajuger et adjourner lessone, et dentrer lour prier.—*Et ita factum est.*<sup>1</sup>—Et Edward sur ceo voleit aver fet en Court son attourne par bille, *et non potuit.*

A.D.  
1344-5.

(22.)<sup>2</sup> § William White<sup>4</sup> porta brief de Detenue Detenue  
descript.<sup>3</sup>

“ ipsorum, si ambo interesse non  
“ possunt, loco ipsorum Johannis,  
“ Margaretæ, et Aliciæ ad hoc  
“ recipiatis. . . .”

“ Qui quidem Edwardus præsens  
“ hic in Curia, et similiter prædic-  
“ tus Willelmus de Aylestone  
“ attornatus prædictorum Jo-  
“ hannis, Margaretæ, et Aliciæ,  
“ virtute brevis domini Regis præ-  
“ dicti, dicunt quod dominus Rex  
“ quondam Rex Angliæ, avus  
“ domini Regis nunc, per chartam  
“ suam dedit et concessit et charta  
“ suæ confirmavit Thomæ de  
“ Brothertone, nuper Comiti Norf-  
“ folciæ et Marescallo Angliæ,  
“ patri prædictarum Margaretæ et  
“ Aliciæ, cujus heredes ipsæ sunt,  
“ omnia castra, villa [*sic*], maneria,  
“ Burgos, et honores, quæ fuerunt  
“ Rogeri le Bygod quondam  
“ Comitis Norffolciæ, inter quæ  
“ prædictum manerium de Dykele-  
“ burghe nunc petitum continetur,  
“ habenda et tenenda eidem  
“ Thomæ quondam Comiti, patri,  
“ &c., et heredibus de corpore suo  
“ legitime procreatis. Et post-  
“ modum prædictus Thomas quon-  
“ dam Comes, pater, &c., dimisit  
“ manerium prædictum prædictis  
“ Adæ et Margeriæ ad terminum  
“ vitæ ipsorum Adæ et Margeriæ.  
“ Unde dicunt quod prædicti Adam  
“ et Margeria tenent manerium

“ prædictum ad terminum vitæ  
“ suæ ex dimissione prædicti  
“ Thomæ quondam Comitis, patris,  
“ &c., reversio ejusdem manerii ad  
“ prædictas Margaretam et Aliciam  
“ spectans in forma prædicta, et,  
“ salva actione ipsis Margaretæ  
“ et Aliciæ per breve de forma  
“ donationis cum illud sequi  
“ voluerint, petunt se admitti ad  
“ defensionem juris ipsarum Mar-  
“ garetæ et Aliciæ per defaltam  
“ prædictorum Adæ et Margeriæ,  
“ ex quo veniunt ante iudicium  
“ parati prædicto Hugoni inde  
“ respondere, et jus eorundem  
“ Margeriæ et Aliciæ defendere.”

<sup>1</sup> According to the roll “ Quia  
“ prædictus Hugo modo essoniatus  
“ est versus prædictos Adam et  
“ Margeriam de prædicto placito,  
“ et habet diem per essonium suum  
“ hic usque in crastino Sancti  
“ Johannis Baptistæ proxime  
“ futuro, . . . . ideo  
“ respectuatur iudicium quo ad  
“ seisinam habendam usque ad  
“ præfatum crastinum.”

After several further adjourn-  
ments the demandant failed to  
appear. “ Ideo ipse et plegii sui de  
“ prosequendo in misericordia.”

<sup>2</sup> From B., C., H., and L.

<sup>3</sup> B., de escriptez; the word is  
omitted from H.

<sup>4</sup> B., Wit.

## No. 22.

A.D.  
1344-5

writing against a vicar of Holbeach, who alleged that he received the writings on condition to render them to the plaintiff or to another person, and he did not know whether the conditions had been kept or not, and prayed a *Scire facias* against the other person, &c. And the other person was warned, and appeared in person, and said that William did not appear against him either in person or by attorney, and prayed that the writings might be delivered to him.—*Moubray*. The plaintiff appears by attorney, on this original writ, against the vicar, and that ought to be sufficient for this plea.—*WILLOUGHBY*. No; the vicar is delivered by his answer.—*Moubray*. The plaintiff appears by attorney against the person who is warned.—*Skipwith*. He could not be appearing by attorney before we had interpleaded, but would be appearing in person; and we cannot appoint an attorney against him; why then should he be able to appoint an attorney against us?—*Thorpe*. Certainly he cannot; when any one pleads in the manner in which the defendant did in this plea, the Court will tell the plaintiff's attorney that he must have his principal on another day in person. But the record does in fact purport that *Idem dies* was given to the plaintiff's attorney when the *Scire facias* issued, and, as *Moubray* says, that William has appointed his attorney against the person who is warned. And we tell you that we have kept the covenants on our part, and that they have been broken on his part, for the covenants were that, in order to set at rest a dispute between them, they should submit themselves to four arbitrators, and in case the arbitrators could not agree, they were to stand by the award of an umpire; and as security for these covenants four knights bound themselves by two obligations to us and to him severally in £100 (and these are the obligations which are now demanded) on

## No. 22.

descript<sup>1</sup> vers un viker de Holbeche, qalleggea qil reseceust les escripts sur condicion a rendre a luy ou a un autre, et il ne savoit si les condicions fuerunt tenuz ou noun, et pria garnisement vers luy, &c. Et il fuit garny, et vint en propre persone, et dit qe William ne vint pas en propre persone ne par attourne vers luy, et pria qe les escriptz fuissent liveretz a luy.—*Moubray*. Il est par attourne, a cest original, vers [le viker, et ceo deit suffire a ceo plee.—*WILBY*. Nanil; le viker par son respons est delivers.—*Moubray*. Il est par attourne vers]<sup>2</sup> celui qest garny.—*Skip*. Ceo ne poait<sup>3</sup> il estre avant qe nous ussoms entreplede, mes serreit en propre persone; et nous ne poms pas faire attourne vers luy; pur quei donques fra<sup>4</sup> il attourne vers nous?—*Thorpe*.—Noun certes; quant homme plede par la manere qe<sup>5</sup> le defendant fist en ceo plee, par Court serra<sup>6</sup> dit al attourne le pleintif qil ust son mestre a autre jour en propre persone. Et ore le recorde voet qe *Idem dies* fuit done al attourne le pleintif quant le garnisement issit, et, come *Moubray* dit, qe W.<sup>7</sup> ad fet son attourne vers celui qest garny. Et vous dioms qe nous avoms tenu<sup>8</sup> les covenantz de nostre part, et sount enfreintes de sa part, qar les covenantz furent qe, pur apeser<sup>9</sup> debat entre eux, ils se mettreint en iiij arbiters, et en cas qils ne puissent acorder ils esterreit al agarde dun nounpere; et en soerte de ses covenantes iiij chivalers soi obligerent par ij obligacions a nous et<sup>10</sup> luy severalment en *cli.*, queux obligacions sount ore demandetz, issint qe

A.D.  
1344-5.[Fitz.,  
Garnishe  
et Gar-  
nishment,  
33.]<sup>1</sup> B., dun escript.<sup>2</sup> The words between brackets are omitted from H.<sup>3</sup> B., and H., poet.<sup>4</sup> B., fist.<sup>5</sup> B., com.<sup>6</sup> C., and L., serreit.<sup>7</sup> H., and L., Richard, instead of qe W.<sup>8</sup> B., and H., tenutz.<sup>9</sup> C., appesser.<sup>10</sup> The words nous et are omitted from L.

## No. 23.

A.D.  
1344-5.

condition that if one of us should fail to keep the condition the obligations should be delivered to the one in whom no fault should be found. (And *Thorpe* made *profert* of an indenture in witness of the fact.) And we stood by the decision of the umpire elected by consent of the parties, and you would not abide by his award; therefore we pray that the obligations be delivered to us.—*Skipwith*. Now it is necessary that the knights who are bound, and to whose charge and damage the writings are to be delivered, should be warned, for they are properly parties to this covenant.—*STONORE*. They are not so, but the parties between whom the dispute was are parties to this covenant, and the knights have bound themselves foolishly.—*Thorpe*. The knights have nothing to discharge them but the good faith of the person who has the obligations in his keeping; therefore it is quite right that they should be made parties before the obligations are delivered up.—*WILLOUGHBY*. That does not seem to us to be so; therefore answer.—*Skipwith* took exception to the writ of *Scire facias* on the ground that it was not warranted by nor in accordance with the record. And afterwards he took the issue that the person who was named as umpire did not arbitrate; ready, &c.—And the other side said the contrary.

Trespass. (23.) § Trespass in respect of corn cut and carried off.—*Grene*. We tell you that one Alice,<sup>1</sup> who held in

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<sup>1</sup> For the real name see p. 467, note 2.

## No. 23.

si<sup>1</sup> lun faillist de nous en la<sup>2</sup> condicion qe<sup>3</sup> les obligacions serrount bailletz a celuy en qi nulle defaut serra<sup>4</sup> trove. Et mist avant endenture qe le tesmoigne. Et nous estumes al arbitrement del nounpere eslieu<sup>5</sup> par assent des parties, et vous ne voilletz pas esteer a son agarde; par quei<sup>6</sup> nous prioms qe les obligacions nous soient deliverez.<sup>7</sup>—*Skip*. Ore covient qe les chivalers qe sount obligetz, en qi charge et damage les escriptz sount a liverer, fuissent garniz, qar<sup>8</sup> ils sont proprement parties a ceo covenant.—*STON*. Noun sount, einz<sup>9</sup> les parties entre queux le debat fuit sont parties a ceo covenant, et ils se ount folement lies les chivalers.<sup>10</sup>—*Thorpe*. Ils nount autre chose de les descharger forqe la bone foy celuy qad les obligacions en garde; donques devant qils fuissent liveretz serreit il bien resoun qils fuissent parties.—*WILBY*. Ceo ne semble il pas a nous; par quei responez.—*Skip*. chalengea le brief de *Scire facias*, qil ne est pas garranti ne acordant al recorde. Et puis prist issue qe celuy le nounpere narbitra pas; prest, &c.—*Et alii e contra &c.*

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(23.)<sup>11</sup> § Trans des bledz scietsz et enportez.—*Grene*. Trans. [Fitz.,  
Barre,  
249.]

<sup>1</sup> si is omitted from C.

<sup>2</sup> L., sa.

<sup>3</sup> C., et qe.

<sup>4</sup> C., and L., serreit.

<sup>5</sup> C., eslu.

<sup>6</sup> B., et, instead of par quei.

<sup>7</sup> C., delivers.

<sup>8</sup> B., et.

<sup>9</sup> C., and L., pas; the word is omitted from B.

<sup>10</sup> L., les chivalers soi ount folement lies, instead of ils se ount folement lies les chivalers.

<sup>11</sup> From B., C., H., and L., but

corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 168.

It there appears that the action was brought by John Gaske against John de Fulcarby, Robert atte Berne, and thirteen others. The plaint was that the defendants, with force and arms, &c., "blada "ipsius Johannis Gaske, scilicet, "frumentum, siliginem, ordeum, "et avenas, ad valentiam, &c., "apud Halibourne nuper cres- "centia messuerunt et asportave- "runt."

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dower of the plaintiff's inheritance, leased her estate in the tenements to us, and we, during the life of Alice,<sup>1</sup> sowed the soil, and the corn ripened during her life; therefore, after her death, we came peaceably into his freehold, and cut our corn; judgment whether any tort, &c.—*Sadelyngstanes*. That is tantamount to saying that you took your own corn, and not our corn; we will aver our writ.—*WILLOUGHBY*. He has avowed in respect of his corn, for a cause assigned, and in your freehold.—*Skipwith*. I cannot have a traverse or an answer as to a lease made to him, wherefore with regard to my writ, which is traversed, I must be admitted to maintain it.—*WILLOUGHBY*. You can have a good answer, for you can say that he sowed after the death of Alice,<sup>1</sup> and so carried off your corn.—*Huse*. He does not acknowledge any property in the plaintiff at any time; therefore the case is quite different from what it would be if he acknowledged it, and disproved the property afterwards by cause assigned.—*WILLOUGHBY*. Then you will not say anything else?—*Sadelyngstanes*. We tell you that the land was sown after the death of Alice,<sup>1</sup> and so you

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<sup>1</sup> For the real name *see* p. 467, note 2.



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pleintif en dowere, nous lessa son estat des tenementz &c., et nous, en la vie Alice, semames le soille, et en sa vie les bledz engranes; par quei, apres sa mort, nous venimes ove<sup>1</sup> la pees en son franctenement et sciames nos bledz; jugement si tort, &c.<sup>2</sup>—*Sadl.* Taunt amount qe vous preistes voz bledz<sup>3</sup> demene et noun pas noz bledz<sup>4</sup>; nous voloms averer nostre brief.—*WILBY.* Il ad avowe de ses bledz, par cause, et en vostre<sup>5</sup> franctenement.—*Skip.* A lees fait a luy jeo ne puisse<sup>6</sup> aver travers ne respons, par quei a moun brief qest traverse il covient qe jeo soi<sup>7</sup> resceu del meintener.—*WILBY.* Vous poietyz aver bon respons, qar vous poietyz dire qil sema puis la mort Alice, et issint enporta vos bledz.—*Huse.* Il conust a nul temps la proprete al pleintif; par quei il est tut autre qe sil le<sup>8</sup> conissat, et puis desprovast<sup>9</sup> par cause la proprete.—*WILBY.* Donques ne volletz autre chose dire?—*Sadl.* Nous vous dioms qe la terre fuit seme apres la mort Alice, et issint enportastes noz bledz; prest,

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1344-5.<sup>1</sup> B., od.

<sup>2</sup> The plea was, according to the record, "quod quædam Sibilla de Westcote tenuit tertiam partem manerii de Halibourne in dotem, &c., ex dotatione Johannis de Westgate quondam viri sui, quæ quidem tertia pars est eadem tenementa in quibus prædictus Johannes Gaske queritur, &c., reversione inde post mortem præfatæ Sibillæ ad prædictum Johannem Gaske spectante. Et dicit quod eadem Sibilla dimisit ipsi Johanni de Fulcarby tertiam partem illam tenendam ad totam vitam ejusdem Sibillæ, et postmodum idem Johannes de Fulcarby seminavit terram illam cum siligine, ordeo, et avenis, in

"vita prædictæ Sibillæ, et eandem terram sic per ipsum in vita ejusdem Sibillæ seminatam postea messuit, et blada super eandem terram crescentia asportavit, prout ei bene licuit, &c., unde petit judicium si prædictus Johannes Gaske actionem de transgressione de hoc versus cum habere debeat, &c."

<sup>3</sup> C., and L., bles.<sup>4</sup> I., les nos, instead of noz bledz.<sup>5</sup> B., nostre.<sup>6</sup> C., puis.<sup>7</sup> soi is omitted from C.<sup>8</sup> le is omitted from B. and H.<sup>9</sup> H., provast. The words et puis desprovast are omitted from B.

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A.D. 1344-5. carried off our corn; ready, &c.—*Grene*. Sown during her life; ready, &c.—And the other side said the contrary.

Trespass. (24.) § Trespass in Weston.—*Richemunde*. We tell you that there is not any Weston without addition in the county (and he mentioned the additions in particular); judgment of the writ.—*WILLOUGHBY*. This is not a *Præcipe*, but is a writ of Trespass, in which case your exception does not hold good.—*Setone*. From what neighbourhood will the jury be caused to come when one is at a traverse? The Court will not know, nor the Sheriff any more, and that causes the writ to be bad, so that there is the same reason in this case as there would be in a *Præcipe*.—And, notwithstanding, *WILLOUGHBY* adjudged the writ to be good.

Writ by several *Præcipes*. (25.) § The Abbot of Combe brought a writ by several *Præcipes*. And as to some of the tenants he put himself upon an inquest, and as to the others they have a day now. And at *Nisi prius* the Abbot was non-suited.—*Skipwith* prayed that those who have a day now might answer.—*Pole*. The whole writ is determined by non-suit.—*Skipwith*. The *Præcipes* are, as it were, different writs, and if one *Præcipe* were discontinued, or abated, the others would stand; and moreover he had not a day in the country except as to the parcel with regard to which he was upon the inquest.—*WILLOUGHBY*. Are not the pledges amerced for the non-suit with regard to the whole writ? How then can the writ stand afterwards?—*Skipwith*. I

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&c.—*Grene*. Seme en sa vie; prest, &c.—*Et alii* A.D.  
1344-5.  
*e contra*.<sup>1</sup>

(24.)<sup>2</sup> § *Trans* en Westone.—*Rich*. Nous vous <sup>Trans.</sup> dioms qil y ad nulle Westone saunz adjeccion el<sup>3</sup> counte<sup>4</sup> (et dona en certain les adjeccions); jugement du brief.—*WILBY*. Ceo nest pas *Præcipe*, mes est un<sup>5</sup> brief de *Trans*, en quel cas vostre excepcion ne tient pas lieu.—*Setone*. De quel visne<sup>6</sup> fra homme venier pays quant homme serra a travers? Court ne savera, ne Vicounte nient le plus, et ceo fait le malveis brief, issi qil y ad mesme la cause icy que serreit en un *Præcipe*.—Et, *non obstante*, *WILBY* agarda le brief bon.

(25.)<sup>2</sup> § *Labbe* de Coumbe porta brief par plusours <sup>Brief par plusours</sup> *Præcipe*. Et quant a asquns il descendist en enquete, <sup>*Præcipe*.<sup>7</sup></sup> et a les autres avoint jour a ore.<sup>8</sup> Et al *Nisi prius* il <sup>[Fitz.,</sup> fuit nounsuy.—*Skip*.<sup>9</sup> pria que les autres qount <sup>*Nonsuit*,  
22.]</sup> jour a ore responassent.—*Pole*. Tut le brief est termine par nounsuite.—*Skip*.<sup>9</sup> Ils sount come divers briefs, et si un *Præcipe* fuit discontinue, ou abatu, les autres esterrount; et auxint il navoit pas jour en pays forqe a la parcelle dount il fuit al enquete.—*WILBY*. Ne sount les plegges amerciez pur la nounsuite eaunt regarde a tut le brief? Coment poet le brief donques estere<sup>10</sup> apres?—*Skip*. Les

<sup>1</sup> The replication, upon which issue was joined, was, according to the record, "Johannes Gaske quo ad hoc quod prædictus Johannes de Fulcarby dicit quod ipse seminavit prædictam terram in vita præfatæ Sibillæ, [dicit quod] idem Johannes seminavit terram illam post mortem ejusdem Sibillæ." Nothing further appears on the roll except the award of the *Venire*.

<sup>2</sup> From B., C., H., and L.  
H., en le.

<sup>4</sup> The words el counte are omitted from B.

<sup>5</sup> The words est un are omitted from B. and H.

<sup>6</sup> C., *quo visneto*, instead of quel visne.

<sup>7</sup> The marginal note is from C. alone.

<sup>8</sup> The words a ore are omitted from C.

<sup>9</sup> B., *Thorpe*.

<sup>10</sup> C., *esteer*.

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1344-5.

fully grant that the pledges are amerced only once ; but, Sir, the case is different when some have a day in the country by process, and the others have a day here, from that which it would be if the whole of them had one and the same day.—And afterwards by judgment a non-suit was entered as to all the *Præcipes*.

*Quare  
impedit.*

(26.) § The King brought a *Quare impedit* against Thomas de Ferrars in respect of the church of Brington by reason of the lands and the heir of Henry de Ferrars being in his hand, and said that Henry was seised of the manor of Newbottle, to which the advowson is appendant, and presented, and that he held that manor, and the manor of Groby, and other lands, &c., of the King *in capite*, and died, and that after his death, by reason of the non-age of William, Henry's son and heir, the King is seised of the wardship, and so it belongs to the King to present.—*Mutlow*. The King takes different titles in his count, that is to say, one on the ground that the manor to which, &c., is held of him, another on the ground that, even though

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plegges ne sont forqe<sup>1</sup> une foith amerciez, jeo graunt bien; et, Sire, il est autre quant par proces les unes<sup>2</sup> ount jour<sup>3</sup> en pays, et les autres icy, qe si trestoutz ussent un mesme jour.—Et puis par agarde nounsuite fuit entre a toux les *Præcipe*.

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(26.)<sup>4</sup> § Le Roi porta *Quare impedit* vers Thomas de Ferers del eglise de Birtone<sup>5</sup> per resoun<sup>6</sup> des terres et leire Henre Ferrers en sa mein esteauntz, et dit qe H. fuit seisi del maner de Neubotille, a quei lavoweson est appendant, et presenta, et tient cel maner, et le maner de Croby, et autres terres,<sup>7</sup> &c., en chief du Roi, et murust,<sup>8</sup> apres qi mort, par noun age W. fitz et heir H., le Roi est seisi de la garde, issint appent a luy a presenter.<sup>9</sup>—*Mutl.* Le Roi prent divers titles en son count, saver, un pur ceo qe le maner a quei, &c., est tenu de luy, autre, tut

*Quare  
impedit.*  
[Fitz.,  
Double  
Plec, 19.]

<sup>1</sup> C., and L., pas.

<sup>2</sup> B., autres.

<sup>3</sup> B., toutz jours.

<sup>4</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 219. It there appears that the action was brought by the King against "Thomas de Ferrariis" in respect of the church of Bryntone (Brington, Northants).

<sup>5</sup> B., Piryntone.

<sup>6</sup> The words *par resoun* are omitted from C.

<sup>7</sup> *terres* is omitted from C.

<sup>8</sup> L., *muruyt*.

<sup>9</sup> According to the record the declaration was "*quod quidam Henricus de Ferrariis fuit seisitus de manerio de Neubotele, ad quod advocatio ecclesiæ prædictæ pertinet, in dominico suo ut de feodo et jure, tempore pacis, tempore domini Regis nunc, et ad eandem ecclesiam præsentavit*

" *quendam Magistrum Johannem de Clipstone, clericum suum, qui ad præsentationem suam fuit admissus et institutus tempore ejusdem domini Regis nunc, qui quidem Henricus manerium prædictum ad quod, &c., et manerium de Groby, una cum aliis terris et tenementis, de ipso domino Rege tenuit in capite, et inde obiit seisitus, &c., post cujus mortem idem dominus Rex prædictum manerium de Neubotle ad quod, &c., seisivit in manum suam ratione minoris ætatis Willelmi filii et heredis prædicti Henrici, ratione custodiæ, &c., quo tempore dicta ecclesia vacavit post mortem prædicti Magistri Johannis, &c., et ea ratione ad ipsum dominum Regem ad prædictam ecclesiam ad præsens pertinet præsentare, prædictus Thomas ipsum injuste impedit."*

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it were not held of him, yet, because Henry de Ferrars held other lands of him, it should belong to him to present.—*Skipwith, ad idem.* He has taken different grounds for his title by his count, one by his prerogative, another by common right as any ordinary person of the people would do; and, if I were to say that the manor of Newbottle was not held of the King, I should be concluded by non-denial as to the rest.—*WILLOUGHBY.* It is right that the King should count in accordance with the facts of his case; and his writ is grounded on the fact that the lands and the heir are in his hand; and he has counted to that effect, so that he does not claim by reason of one manor alone, but by reason of the whole, and therefore answer.—*Mutlow.* We tell you that the manor of Newbottle, to which the advowson is appendant, is not held of the King, but of Robert de Ferrars, by the service of one yearling hawk in lieu of all services. And we tell you that Henry de Ferrars during his life, after he had presented, leased the same manor, with the appurtenances, to Thomas, against whom the writ is brought, for Thomas's life, and afterwards released all his right to Thomas, so that when Henry died he had nothing. And, after the death of Henry, Thomas enfeoffed two chaplains in fee, and took back an estate in the manor and advowson for a term of ten years, of which ten years only two years have yet passed. And after that lease the church became void, wherefore Thomas presented one who on his presentation was admitted, and before that time the King neither seized nor raised any dispute. And afterwards upon suggestion that the manor of Newbottle was held of the King *in capite*, and aliened without his license, command was given to the Escheator by writ that, if he should find it to be so, he should seize, &c. And we demand judgment whether the King can claim anything against us in the presentation.—*R. Thorpe.* He

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ne fuit ceo pas tenu de luy, pur ceo qil tient autres terres de luy, a luy appendreit a presenter.—*Skip., ad idem.* Il ad pris divers causes de son title par son count, un par sa prerogative, autre par comune dreit come comune homme de poeple freit; et si jeo deise que le maner de N. ne fuit pas tenu du Roi jeo serroi<sup>1</sup> conclus par nient dedire del remenant.—*WILBY.* Il est resoun que le Roi counte solonc son fait<sup>2</sup>; et son brief est par resoun des terres et leire en sa mein; et ceo ad il counte, issint qil ne<sup>3</sup> cleyme pas<sup>4</sup> par resoun [dun maner soulement, mes par resoun]<sup>5</sup> de tut, et pur ceo responez.—*Mutl.* Nous vous dioms que le maner de N., a quei lavoweson est appendaunt, nest pas tenu du Roi, einz de Robert Ferers par service dune esperver sore pur touz services. Et vous dioms que Henre Ferers en sa vie, apres ceo qil avoit presente, lessa mesme le maner a Thomas, od les appurtenances, vers qi le brief, &c., a la vie Thomas, et puis relessa tut son dreit a Thomas, issint que quant H. murust<sup>6</sup> il navoit rienz. Et, apres la mort H., Thomas enfeffa deux chapeleins en fee, et prist estat arere a terme de x aunz del maner et lavoweson, des queux x aunz il ny ad que deux aunz passes unqore, puis quel lees leglise voida, par quei Thomas presenta, &c., que a son presentement fuit resceu, avant quel temps le Roi ne seისტ pas ne mist debat. Et puis sur suggestioun que le maner de N. fuit tenu en chief du Roi, et aliene saunz son conge, comande fuit al Eschetour par brief que sil trovast par la manere qil seისტ, &c. Et demandoms jugement si le Roi vers nous en le presentement puisse rien clamer.<sup>7</sup>

A.D.  
1344-5.[Fitz.,  
Monstrans  
de faits,  
fins, et  
records,  
172.]<sup>1</sup> C., and L., serra.<sup>2</sup> L., cas.<sup>3</sup> ne is omitted from B.<sup>4</sup> pas is omitted from B.<sup>5</sup> The words between brackets are omitted from H.<sup>6</sup> L., muruyt.<sup>7</sup> According to the record the plea was “(non cognoscendo quod “prædictum manerium de Groby “tenetur de domino Rege in “capite, prout in narratione ipsius

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has alleged that the manor of Newbottle, to which the advowson, &c., is not held of the King; he has alleged besides that the infant's ancestor had nothing at the time of death; he has alleged besides plenarty on his own presentation; to which will he hold?—**STONE.** You can put him to one particular fact by your replication.—*Sadelyngstanes, ad idem.* We are charged by his count with so many matters that we must destroy it in its entirety, and in such a way that no one thing by itself would be an answer to his declaration, wherefore, &c.—*R. Thorpe.* You see plainly how he has alleged that Henry de Ferrars was seised, and presented, and that Henry leased to him the manor of Newbottle, to which the advowson is appendant, for term of his life, by which lease the reversion was saved in Henry and his blood;

“ domini Regis supponitur) dicit  
 “ quod prædictus Henricus pater  
 “ prædicti heredis, &c., prædictum  
 “ manerium de Neubotele, ad quod  
 “ advocatio ecclesiæ prædictæ  
 “ pertinet, tenuit de Roberto de  
 “ Ferrariis per servitium unius  
 “ esperarii sori per annum, et  
 “ non de ipso domino Rege. Dicit  
 “ etiam quod prædictus Henricus  
 “ de prædicto manerio de Neubotele  
 “ ad quod, &c., fuit seisitus in  
 “ dominico suo ut de feodo et jure  
 “ et ad eandem ecclesiam tanquam  
 “ ad prædictum manerium de  
 “ Neubotele pertinentem præsen-  
 “ tavit prædictum Magistrum  
 “ Johannem de Clipstone, qui ad  
 “ præsentationem ipsius Henrici  
 “ fuit institutus in eadem, qui  
 “ quidem Henricus prædictum  
 “ manerium de Neubotele, cum  
 “ pertinentiis, ad quod, &c., per  
 “ quoddam scriptum dimisit præ-  
 “ fato Thomæ tenendum ad totam  
 “ vitam ipsius Thomæ, et postmo-  
 “ dum, prædicto manerio de Neubo-

“ tele ad quod, &c., in seisinâ ipsius  
 “ Thomæ existente, idem Henricus  
 “ per quoddam aliud scriptum  
 “ suum remisit, relaxavit, et pro se  
 “ et heredibus suis quietum clama-  
 “ vit eidem Thomæ et heredibus  
 “ suis in perpetuum totum jus et  
 “ clameum quod habuit in eodem,  
 “ virtute quorum scriptorum idem  
 “ Thomas de dicto manerio, cum  
 “ pertinentiis, &c., ad quod, &c.,  
 “ fuit seisitus, et seisinam suam  
 “ inde continuavit usque post  
 “ mortem ejusdem Henrici, ita  
 “ quod idem Henricus, die quo  
 “ obiit, nihil habuit in prædicto  
 “ manerio ad quod, &c., nec in  
 “ advocatione prædicta, &c. Et  
 “ postea idem Thomas de prædicto  
 “ manerio de Neubotele, ad quod,  
 “ &c., quosdam Philippum de  
 “ Bartone, clericum, et Ricardum  
 “ de Fresyngfelde, capellanum,  
 “ feoffavit habendo et tenendo  
 “ eisdem Philippo et Ricardo et  
 “ heredibus ipsius Ricardi in  
 “ perpetuum, qui quidem Philippus



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—*R. Thorpe.* Il ad allegge qe le maner de N.<sup>1</sup> a quei lavoweson, &c., nest pas tenu du Roi; ovesqe ceo qe launcestre lenfant al temps de son moriaunt navoit rienz; ovesqe ceo, plenerte de son presentement demene; a quei se voet il tenir?—*Ston.* Vous luy poietz par vostre replicacion mettre a un certain fet. —*Sadl., ad idem.* Nous sumes charge par son count des tauntz des choses qil nous covient destruer<sup>2</sup> tut, et issint qe nulle a per luy a sa moustraunce serreit respons, par quei, &c.—*R. Thorpe.* Vous veietz bien coment il ad allegge qe H. Ferers fuit seisi, et presenta, et qil luy lessa le maner de N. a quei lavoweson est appendaunt, a terme de vie, par quel lees la reversion fuit salve en H. et son sank; et de

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“ et Ricardus manerium prædic-  
 “ tum, cum pertinentiis, ad quod,  
 “ &c., postmodum præfato Thomæ  
 “ dimiserunt tenendum ad ter-  
 “ minum decem annorum tunc  
 “ proxime sequentium, qui quidem  
 “ terminus nondum est elapsus.  
 “ Et dicit quod, post dimissionem  
 “ eidem Thomæ ad terminum  
 “ annorum de manerio prædicto,  
 “ ad quod, &c., factam, eadem  
 “ ecclesia vacavit, per quod idem  
 “ Thomas ad eandem ecclesiam  
 “ tanquam ad prædictum mane-  
 “ rium de Neubotele pertinentem  
 “ quendam Philippum de Bartone,  
 “ clericum suum, præsentavit, qui  
 “ ad præsentationem suam fuit  
 “ admissus et institutus in eadem.  
 “ Dicit etiam quod, post instituti-  
 “ onem ejusdem Philippi ad  
 “ præsentationem ipsius Thomæ  
 “ sic factam, Dominus Rex suppo-  
 “ nendo manerium prædictum ad  
 “ quod, &c., de ipso Rege teneri in  
 “ capite, et prædictum Henricum  
 “ manerium prædictum ad quod,  
 “ &c., præfato Thomæ alienasse in  
 “ feodo, licentia ab ipso domino

“ Rege non obtenta, mandavit  
 “ Escaetori suo Comitatus prædicti  
 “ quod manerium prædictum ad  
 “ quod, &c., in manum ipsius  
 “ domini Regis seisiret, qui quidem  
 “ Escaetor, virtute mandati Regis  
 “ prædicti, manerium prædictum,  
 “ cum pertinentiis, ad quod, &c.,  
 “ in manum ipsius domini Regis  
 “ seisivit, unde petit judicium  
 “ ex quo prædictum manerium  
 “ de Neubotele ad quod, &c., de  
 “ ipso domino Rege non tenetur  
 “ in capite, et, ex quo prædictus  
 “ Henricus de prædicto manerio ad  
 “ quod, &c., non obiit seisitus, nec  
 “ eodem tempore aliquid habuit in  
 “ eodem manerio nec in advoca-  
 “ tione ecclesiæ prædictæ, si  
 “ ratione minoris ætatis heredis  
 “ prædicti, seu virtute seisinæ  
 “ ipsius Regis prædictæ, ad ipsum  
 “ dominum Regem ad ecclesiam  
 “ prædictam pertineat præsentare,  
 “ seu actionem versus eum habere  
 “ velit seu debeat, &c.”

<sup>1</sup> B., W.<sup>2</sup> C., destruire.

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1344-5.

and, as to that which he says that Henry released to him Henry's right afterwards, he shows nothing in witness thereof, and so in law it can only be understood that Henry died seised of the reversion; and he has confessed that he aliened in fee to the chaplains, which alienation was to the disherison of Henry's heir, who was in the King's wardship, and therefore the heir had a right to enter, and consequently the King in his right had a right to seize, and that by reason of wardship; judgment, and we pray a writ to the Bishop.—*Mutlow*. We have alleged that Henry first leased to us and then released, so that Henry, at his death, had nothing, and that we aliened in fee to others, with whom the release ought naturally to remain, and not with us, who are a termor and have nothing in the freehold, and so we have shown that it belongs to us to present, and that the ancestor had nothing by which his heir could have any inheritance, and we demand judgment.—*Thorpe*. He supposes that the release was made to himself, and to him it naturally belongs to have the release, and he does not produce it. And suppose the heir himself, when of full age, were a party to Thomas in a *Quare impedit*, and Thomas claimed by virtue of the release as above, would he be answered without showing it? as meaning to say that he would not. Nor consequently will he be with regard to the King who claims in right of the heir.—*Skipwith*. If I claimed in virtue of that estate which I had by the release, it would not be right that I should allege it if I did not produce it; but since I have nothing of that estate, but completely divested myself of it, and claim only a term of years, it is quite otherwise; and it is certain that by that release Thomas had a fee. And suppose further that I had pleaded that Henry conveyed to us in fee, without

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ceo qil parle qe H. relessa a luy son<sup>1</sup> dreit apres, il ne moustre nulle rien qe le tesmoigne, issint de ley ne poet estre entendu mes qe H. murust<sup>2</sup> seisi de la reversion; et il ad conu qil aliena en fee a les chapeleins, quel alienacion fuit en<sup>3</sup> desheritaunce del heire H., qe fuit en la garde le Roi, par quei leire<sup>4</sup> avoit dreit dentrer, et *per consequens* le Roi<sup>5</sup> en son dreit de seisir, et ceo par resoun de garde; jugement, et prioms brief al Evesqe.—*Mutl.* Nous avoms allegge qe H. primes lessa a nous et puis relessa, issint qe H. a son moriaunt navoit rien, et qe nous alienames en fee as autres as queux naturelement relees deit demurer, et noun pas vers nous, qe sumes termer et rien avoms en le franctenement, et issint avoms moustre qe a nous appent a presenter, et qe launcestre rienz navoit par quei son heir purreit estre enherite, et demandoms jugement.—*Thorpe.* Il suppose qe le relees fuit fait a luy mesme, a qi naturelement il attient daver le relees, et il nel<sup>6</sup> moustre pas. Et jeo pose qe leire mesme,<sup>7</sup> a son plein age, fuit partie a luy a un *Quare impedit*, et il clamast<sup>8</sup> par relees *ut supra*, serra il respondu saunz le moustrer? *quasi diceret non. Per consequens* ne vers le Roi qe cleime en le dreit leire.—*Skip.* Si jeo clamasse de cel [estat qe javoy par le relees, il ne serreit pas resoun qe jeo le<sup>9</sup> alleggeasse si jeo nel meisse avant; mes quant jeo ney rienz de cel]<sup>10</sup> estat, mes de nette moi su<sup>11</sup> demys, et ne cleyme qe terme daunz, il est tut autre; et il est certain qe par cel relees Thomas avoit fee. Et mettetz donques qe jeo usse plede qe Henre lessa a nous en fee, saunz aver

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<sup>1</sup> B., com son.

<sup>2</sup> L., muruyst.

<sup>3</sup> B., a.

<sup>4</sup> B., le Roi.

<sup>5</sup> The words le Roi are omitted from C.

<sup>6</sup> C., nest.

<sup>7</sup> mesme is from B. alone.

<sup>8</sup> L., demist.

<sup>9</sup> le is omitted from H.

<sup>10</sup> The words between brackets are omitted from B.

<sup>11</sup> B., and H., may, instead of moi su.

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having mentioned the release, and they had replied that Henry leased for term of life, I should never afterwards have been aided by the release to prove the fee, either by verdict or by plea.—*SHARSHULLE*. In this case many would have said nothing about the release if they had not had it ready, but would have spoken, in general terms, of a feoffment in fee; for a lease for a term of life or of years and a subsequent release effect a feoffment in fee.—And *WILLOUGHBY* confirmed this.—*Huse*. A feoffment, which includes warranty, ought naturally to remain with the feoffee, even though he divest himself of the land, because, if he be vouched, he will have his warranty over; but a release, which only extinguishes a right in the land will, of common right, remain with the person who is tenant of the land.—*WILLOUGHBY*. A person who wishes to be aided by a release, and is a party to it, is a fool if he delivers it to another.—*Blaykeston*. There is no difference between me, although I was a party (since I am now in possession as termor), and the greatest stranger in the world who might be a termor; and, if a stranger were termor, he would aver the release to the country; consequently we shall do so in this case.—*WILLOUGHBY*. The cases are not alike.—*Haver-ington*. There is yet another reason why the King cannot have the wardship, for even though it happened that you did not lay any stress on the release because it is not produced, still it has not been pleaded at what time Thomas aliened in fee; and, if Thomas had aliened during the life of Henry, it is certain that his heir could not have entered, nor consequently the King in right of the heir.—*WILLOUGHBY*. Possibly he would: for the King has a right in action, and he will not be deprived of his right by the laches of another person; but no such fact is pleaded.—*Seton*. The King has travelled away from his declaration as

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parle del relees, et ils ussent replie qe H. lessa a<sup>1</sup> terme de vie, jammes ne usse jeo este eide par relees apres a prover le fee, ne par verdit ne par plee.—SCHAR. Meint homme en ceo cas voleit rienz aver parle del relees sil nel ust eu<sup>2</sup> prest, mes generalment daver parle de feffement en fee; qar lees a terme de vie ou daunz et puis relees fount feffement de fee.—*Et hoc* WILBY. *affirmavit.*—*Huse.* Feffement,<sup>3</sup> qe comprend garrantie, naturelement doit demurer vers celuy qest partie, tut soi demette il de la terre, pur ceo qe, sil soit vouche, il avera sa garrantie outre; mes relees, qesteint forqe dreit en la terre, de comune dreit demura vers celuy qest tenant de la terre.—WILBY. Celuy qe voet estre eide et est partie a un relees il est fole qe le livre a autre.—*Blaik.* Il nest nient<sup>4</sup> plus diversite de moi, tut fu<sup>5</sup> jeo partie, quant jeo su ore einz comme termer, qe<sup>6</sup> del<sup>7</sup> plus estraunge du mounde qe fuit termer; et si estraunge fuit termer il avereit par pays<sup>8</sup> le relees; en ceo<sup>9</sup> cas *per consequens* nous.—WILBY. *Non est simile.*—*Hav.* Il y ad autre cause unqore pur quei le Roi ne poet aver garde, qar tut fuit ceo qe vous ne chargeastes<sup>10</sup> pas le relees pur ceo qil<sup>11</sup> nest pas moustre, unqore il nest pas plede a quel temps Thomas aliena en fee; et si, en la vie H., Thomas ust aliene, *constat* qapres sa mort son heire ne pout aver entre, *nec per consequens* le Roi en son dreit.—WILBY. Par cas il freit: qar le Roi<sup>12</sup> ad dreit en accion, et son avantage ne serra pas tollet par autri lachesse; mes tiel fait nest pas plede.—*Setone.*<sup>13</sup> Le Roi ad departie de sa moustraunce a ceo qe

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1344-5.<sup>1</sup> B., qe.<sup>2</sup> B., veu.<sup>3</sup> The words *Huse.* Feffement are omitted from H.<sup>4</sup> B., nent.<sup>5</sup> B., su.<sup>6</sup> B., com.<sup>7</sup> B., de.<sup>8</sup> B., paiis.<sup>9</sup> B., and H., tiel.<sup>10</sup> C., chargeasses; H., chargez.<sup>11</sup> C., and L., qele.<sup>12</sup> B., leire, instead of le Roi.<sup>13</sup> B., STON.

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it seems; for his writ and his count also are in the words *ratione custodiæ, &c.*, and now he abides judgment on the alienation made in fee to the disherison of the heir and his own seizing for that reason, which is a different title, as to which he cannot be answered on this writ.—STONORE. He pursues his title, and maintains it by matter admitted by you.—*Pole*. He is now abiding judgment entirely on another matter.—*R. Thorpe*. Now you see plainly that they waive their first answer, upon which we were abiding judgment, since he does not produce any specialty which naturally belongs to him because he is a party, and they take another plea to our declaration, whereas we understand, notwithstanding what they have said, that the declaration is good and maintained; judgment, and we pray a writ to the Bishop.—And afterwards, on the morrow, *Skipwith* made *profert* of the release.—

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semble: qar son brief et count auxi est *ratione custodiae, &c.*, et ore demoert il en jugement sur lalienacion fait en fee a<sup>1</sup> desheritaunce leire<sup>2</sup> et son seisir par la manere, qest autre title, a quei il ne poet estre respondu a cest brief.—*STON.* Il pursuyt son title, et le meintent par chose conu de vous.—*Pole.* Il demoert ore tut sur autre matere.<sup>3</sup>—*R.*<sup>4</sup> *Thorpe.* Ore<sup>5</sup> vous veietz bien qils<sup>6</sup> weyvent lour primer respons, sur quei nous fumes en jugement, del houre qil ne<sup>7</sup> moustra pas<sup>8</sup> especialte, quel naturelement attient a luy pur ceo qil est partie, et prent autre plee a nostre moustraunce, [ou nous entendoms, *non obstante* ceo qils ount dit, la moustraunce]<sup>9</sup> bone et meinteneue; jugement et prioms brief al Evesqe.<sup>10</sup>—Et puis, lendemein, *Skip.*

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1344-5.

<sup>1</sup> C., H., and L., et.

<sup>2</sup> H., del heire.

<sup>3</sup> L., title, &c.

<sup>4</sup> R. is omitted from B.

<sup>5</sup> Ore is omitted from C.

<sup>6</sup> L., coment ils.

<sup>7</sup> ne is omitted from B.

<sup>8</sup> B., par (deleted).

<sup>9</sup> The words between brackets are omitted from B.

<sup>10</sup> The replication was, according to the record, “quod, ex quo idem Thomas non dedicit prædictum Henricum prædictum manerium de Groby de domino Rege tenuisse in capite die quo obiit, et Willelmum filium et heredem ejusdem Henrici eodem tempore infra ætatem extitisse, et ea ratione in custodia ipsius domini Regis fuisse, et ipsum dominum Regem de prædicto manerio de Neubotele, ad quod, &c., fuisse seisitum, sed expresse placitando cognovit prædictum Henricum patrem prædicti Willelmi, cujus heres ipse est, in custodia ipsius domini Regis existentis, de

“ prædicto manerio de Neubotele, “ ad quod, &c., fuisse seisitum in “ dominico suo ut de feodo et jure, “ nihil ostendens seu allegans per “ quod idem Henricus dictum “ manerium de Neubotele, ad quod, “ &c., præfato Thomæ dimisise[t] “ nisi quandam dimissionem eidem “ Thomæ ad terminum vitæ suæ “ tantum inde factam, et postmo- “ dum ipsum Henricum totum jus “ et clameum quod habuit in “ eodem manerio, ad quod, &c., “ eidem Thomæ et heredibus “ suis remisise, &c., de quibus “ quidem dimissione et quieta- “ clamatione nihil specialitatis “ Curie hic ostendit, quæ absque “ speciali facto nullatenus poterint “ verificari, et sic jus et feodum “ manerii prædictii, ad quod, “ &c., post mortem prædicti “ Henrici patris, &c., per aliqua “ verba præallegata in aliquo “ alio quam in persona heredis “ prædicti minime residere valeant “ seu debeant, præsertim cum ad “ illud quod idem Thomas dicit

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A.D. *R. Thorpe.* Heretofore we abode judgment on the  
1344-5. non-production of the release, and that fact is recorded  
by the Court, and our plea entered on the roll, and



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mist avant le<sup>1</sup> relees.<sup>2</sup>—*R. Thorpe.* Devant<sup>3</sup> ces heures sumes demure en jugement sur la nient moustraunce del relees, et cele chose de Court recorde, et nostre plee entre en rulle, et prioms

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“ ipsum Henricum jus suum quod  
 “ habuit in prædicto manerio ad  
 “ quod, &c., eidem Thomæ et  
 “ heredibus suis remisisse, &c.,  
 “ absque aliquo facto speciali  
 “ illud idem testificante, Curia in  
 “ hac parte tali dicto vacuo fidem  
 “ adhibere non possit, et etiam  
 “ idem Thomas expresse cognovit  
 “ ipsum Thomam post mortem  
 “ prædicti Henrici de prædicto  
 “ manerio ad quod, &c., prædictos  
 “ Philippum et Ricardum in feodo  
 “ feoffasse, quod quidem feoffa-  
 “ mentum ad exheredationem  
 “ ipsius heredis censetur expresse,  
 “ et seisina ipsius domini Regis de  
 “ manerio prædicto ad quod, &c.,  
 “ ratione custodiæ, et in jure ipsius  
 “ heredis occasione prædicta in  
 “ hac parte justa adjudicari  
 “ debeat; unde, ex quo idem  
 “ Thomas de prædictis dimissione  
 “ et quieta clamatione nihil  
 “ specialitatis Curia, &c., hic  
 “ ostendit præmissa testificans,  
 “ maxime cum tale factum, si  
 “ quod inde fuerat, penes ipsum  
 “ Thomam, cui illud fuisse factum  
 “ ipsemet superius allegavit, re-  
 “ maneret, et licet idem Johannes  
 “ [de Clone] qui sequitur, &c.  
 “ [pro domino Rege] per duos dies  
 “ continue super præmissis placi-  
 “ tando petierit recordum et  
 “ judicium a Curia hic in hac  
 “ parte, et adhuc petit præcise, et  
 “ tamen prædictus Thomas aliquod  
 “ factum speciale præmissas re-  
 “ missiones et quietas clamationes  
 “ testificans tunc non ostendebat

“ nec adhuc ostendit, petit judi-  
 “ cium pro domino Rege, et breve  
 “ Episcopo, &c.”

<sup>1</sup> H., un.

<sup>2</sup> According to the record  
 “ Thomas, recitando placitum  
 “ suum prædictum profert hic  
 “ quoddam scriptum sub nomine  
 “ ipsius Henrici patris, &c., in  
 “ hæc verba:—A toux ceux qe  
 “ cestes lettres verrount ou orrount  
 “ Henry de Ferrers, Seigneur de  
 “ Groby, Saluz en Dieu. Sachez  
 “ moi avoir relesse de moi et mes  
 “ heirs quiteclame a mon trescher  
 “ frere monsieur Thomas de  
 “ Ferrers a ses heirs et a ses  
 “ assignes tot le dreit qe jeo ai en  
 “ le manoir de Newebotle ove les  
 “ apurtiegnantz en le Counte de  
 “ Northampton. En tesmoig-  
 “ naunce de quele chose a cestes  
 “ presentes lettres jeo ay mys mon  
 “ seal. Escript a Groby le xvij  
 “ jour Daust Lan du regne le Roi  
 “ Edward tiers apres le Conquest  
 “ dissettisme. Unde ex quo ipse  
 “ superius allegavit prædictum  
 “ Henricum nihil habuisse in  
 “ manerio prædicto ad quod, &c.,  
 “ die quo obiit, nec ex quo feoffa-  
 “ mentum prædictum præfatis  
 “ Philippo et Ricardo inde factum  
 “ reputari potest in exheredati-  
 “ onem heredis prædicti, petit  
 “ judicium si ad ipsum dominum  
 “ Regem, ratione minoris ætatis  
 “ heredis prædicti, ad ecclesiam  
 “ prædictam pertineat præsentare,  
 “ &c.”

<sup>3</sup> H., avant.

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we pray judgment on the plea pleaded, and we do not understand that you shall now be admitted to produce the release; and on that we wish to have judgment for the King.—*Skipwith*. The Court cannot record against us that we have not produced nor that we will not produce the release, for we pleaded by way of disputation that it was not necessary for us to produce it because we had only a term, and we never abode judgment absolutely on the point; and our plea is always pursuant to our first answer, because, according to your own statement, nothing was wanting at the beginning but that the release, which falls to be proven by specialty and by averment, was not produced, and with regard to that we now make satisfaction.—*Grene*. The *profert* of the release is in contradiction to your first plea, because by your first plea it was expressly admitted that Henry de Ferrars divested himself only for the life of Thomas, and that the reversion was saved in himself and his heirs, as common right gives it, because on the lease no remainder was limited to any other person; for to that which was said as to a release, which could not be without a specialty of which no *profert* was made, the Court would by law have no regard; therefore we demand judgment whether you shall be admitted to this new plea.—*STONORE*. It is certain that no release

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jugement sur le<sup>1</sup> ple plede, et nentendoms pas qaore de moustrer le<sup>2</sup> relees serretz resceu; et sur ceo voloms aver jugement pur le Roi.—*Skip.* Court ne poet recorder sur nous qe nous avioms pas ne qe<sup>3</sup> nous voloms pas moustrer relees, qar nous pledames par voie desputisoun<sup>4</sup> qil ne bosoigna<sup>5</sup> pas de<sup>6</sup> moustrer pur nous qe avioms qe terme, et nous<sup>7</sup> ne<sup>8</sup> demurames unqes *precise* sur le point; et nostre plee est pursuajunt toutz jours sur nostre primer respons, qar rienz y faillist a comencement, a vostre dit demene, mes qe le relees, qe chiet en especialte et noun pas en averement, ne fuit pas moustre, et a ceo nous fesoms ore gree.—*Grene.* La moustraunce del relees est en contrarie de vostre primer plee, qar par vostre primer plee<sup>9</sup> fuit expressement graunte qe H. Ferers soi demist forqe pur sa vie, et la reversion salve en<sup>10</sup> luy et ses<sup>11</sup> heirs, come comune dreit doune, pur ceo qe<sup>12</sup> sur le lees<sup>13</sup> le remeindre ne fuit pas taille en autre persone; qar de ceo qe fuit parle de relees, qe ne poait estre saunz especialte, et de quei rienz estoit moustre, par lei Court navereit<sup>14</sup> regarde; par quei nous demandoms jugement si a ceo novel ple serretz resceu.<sup>15</sup>—*STON.*

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1344-5.<sup>1</sup> le is from B. alone.<sup>2</sup> le is omitted from B. and H.<sup>3</sup> H., mesqe, instead of ne qe.<sup>4</sup> C., and L., despotesoun.<sup>5</sup> C., bussoigna.<sup>6</sup> B., del.<sup>7</sup> nous is omitted from B. and C.<sup>8</sup> ne is omitted from L.<sup>9</sup> The words qar par vostre primer plee are omitted from H.<sup>10</sup> B., a.<sup>11</sup> B., a ses.<sup>12</sup> qe is omitted from B.<sup>13</sup> H., relees.<sup>14</sup> B., navera.<sup>15</sup> According to the record "Et Johannes qui sequitur dicit quod

" prædictus Thomas ad prædictum

" factum modo ostendendum ad-

" mitti non debet, ex quo ad finale

" judicium cum ipso domino Rege

" idem Thomas superius placitavit

" prout idem Johannes superius

" allegavit, et ex quo prædictus

" Thomas non dedit prædictum

" Henricum tenuisse prædictum

" manerium de Groby de domino

" Rege in capite, et quin prædictus

" Henricus fuit seiscitus de præ-

" dicto manerio ad quod, &amp;c., in

" dominico suo ut de feodo et jure,

" nihil Curie hic ostendendo per

" quod idem Henricus se dimisit de

" eodem, sed allegando quandam

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was produced until now, and on your first plea you abode judgment that it did not belong to you to have the release of which you spoke, and so your plea was recorded and entered; therefore we have now no regard to the *profert* of the release; and inasmuch as you did not produce it in time we hold it as nought. And therefore sue a writ to the Bishop for the King.

*Præcipe  
quod  
reddat.*

(27.) § Note that in a *Præcipe quod reddat* one J., by reason of the default of the tenant for term of life, who made default, being the person against whom the writ was brought, prayed to be admitted as heir of his father by reason of his father's lease; and by

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Il est certain que nul relees avant ore fuit moustre, et sur vostre primer ple demurastes en jugement qa vous n'attient pas<sup>1</sup> d'aver<sup>2</sup> le relees dount vous parlastes, et issint vostre ple recorde et entre; par quei a la moustraunce del relees a ore navoms nulle regarde; et pur ceo que vous le moustrastes pas a temps nous le tenoms come nient. Et pur ceo<sup>3</sup> suetz<sup>4</sup> brief al Evesqe pur le Roi.<sup>5</sup>

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(27.)<sup>6</sup> § *Nota* qen *Præcipe quod reddat* un J., par default le tenant a terme de vie que fit default, vers qi le brief fuit porte, pria come heir son pere destre resceu par le lees son pere; et par son noun

*Præcipe quod reddat.*<sup>7</sup>  
[Fitz., Age, 1.]

“ dimissionem, et super hoc quan-  
“ dam remissionem et quietam  
“ clamationem de eodem manerio  
“ ad quod, &c., quæ vacua verba  
“ absque facto speciali idem  
“ testificante adjudicari debent, et  
“ etiam cognovit prædictum feoffa-  
“ mentum prædictis Philippo et  
“ Ricardo factum in feodo, quod  
“ quidem feoffamentum reputari  
“ debet in exheredationem prædicti  
“ heredis, et sic seisinam ipsius  
“ domini Regis justa, petit judi-  
“ cium pro domino Rege et breve  
“ Episcopo, &c.”

<sup>1</sup> pas is omitted from B.

<sup>2</sup> B., del aver.

<sup>3</sup> The words pur ceo are omitted from C.

<sup>4</sup> C., and L., pursuetz.

<sup>5</sup> According to the roll the judgment was:—“ Quia prædictus  
“ Thomas non dedit prædictum  
“ Henricum tenuisse prædictum  
“ manerium de Groby de domino  
“ Rege in capite, et quin prædictus  
“ Henricus fuit seisitus de prædicto  
“ manerio de Neubotele ad quod,  
“ &c., in dominico suo ut de feodo  
“ et jure, et etiam quin prædictus  
“ Henricus dimisit ei manerium

“ prædictum ad quod, &c., ad  
“ terminum vitæ ipsius Thomæ, et  
“ postmodum eidem Thomæ re-  
“ misit et quietum clamavit totum  
“ jus suum quod habuit in eodem,  
“ nullum tale factum speciale illud  
“ testificans Curie hic ostendendo,  
“ quæ verba vacua adjudicantur,  
“ et sic feoffamentum prædictum  
“ prædictis Philippo et Ricardo de  
“ manerio ad quod, &c., factum in  
“ feodo censetur in exheredationem  
“ prædicti heredis, et ita seisinam  
“ [domini Regis] in jure ipsius  
“ heredis justa, quam quidem  
“ seisinam idem Thomas . . .

“ . . . . .  
“ quod ad ipsum dominum regem  
“ ad ecclesiam prædictam ratione  
“ custodiæ heredis prædicti . .  
“ . . . [con]sideratum est quod  
“ prædictus dominus Rex recuperet  
“ præsentationem suam versus  
“ prædictum . . . . .  
“ habeat breve Episcopo L . . .  
“ . . . loci illius Diocesano quod,  
“ &c.” The roll is in bad condition  
and partly illegible at the end.

<sup>6</sup> From B., C., H., and L.

<sup>7</sup> The marginal note is from C. and L.

## Nos. 28, 29.

A.D. 1344-5. reason of his non-age he prayed that the parol might demur.—*Grene*. The statute<sup>1</sup> purports that he shall be ready to answer, and that he was not; judgment, and we pray seisin.—WILLOUGHBY. He answers sufficiently, and there is no doubt but that the parol must now demur, and therefore let it demur, &c.

*Cui in vita.*

(28.) § *Cui in vita*. A tenant by his warranty vouched the husband's heir, who was under age, and prayed that the parol might demur.—*Derworthy*. We pray seisin for the demandant in accordance with the statute.<sup>2</sup>—HILLARY. It is not in the case of the statute, except where the tenant in demesne vouches.—And WILLOUGHBY confirmed this.—And therefore the parol demurred.

Dower.

(29.) § Dower of a third part of £4 of rent against forty tenants in common. The *Cape* was served against some, who made default. The others appeared on every occasion, and had a day by *Idem Dies*.—*Grene*, for those who had a day by *Idem Dies*, said: two of those who now do not appear, and against whom the *Cape* has been served, are dead; judgment of the writ.—*Pole*. That does not lie in your mouth, contrary to the return of the Sheriff who testifies the summons.—

<sup>1</sup> 13 Edw. I. (Westm. 2), c. 3.

| <sup>2</sup> 13 Edw. I. (Westm. 2), c. 40.

## Nos. 28, 29.

age pria qe la parole demurast.—*Grene*. Lestatut voet qil serra prest a respondre, et ceo ne fut il pas; jugement, et prioms seisine.—*WILBY*. Il respond assetz, et il nest pas doute qe la parole ore<sup>1</sup> covient demurer, et pur ceo demurge, &c. A.D.  
1344-5.

(28.)<sup>2</sup> § *Cui in vita*. Tenant par sa garrantie voucha leire le baroun deinz age, et pria qe la parole demurgeast.<sup>3</sup>—*Der*. Nous prioms par lestatut seisine pur le demandant.—*HILL*. Il nest pas en cas destatut, mes la ou le<sup>4</sup> tenant<sup>5</sup> en demene vouche.<sup>6</sup>—*Et hoc WILBY affirmavit*.—*Et ideo* la parole demura.<sup>3</sup> *Cui in  
vita.*  
[*Fitz.*  
*Age*, 2.]

(29.)<sup>7</sup> § Dowere de la terce partie de iiiijli.<sup>8</sup> de rente vers xl<sup>8</sup> tenantz en comune. Vers les unes le *Cape* servy, qe fount default.<sup>9</sup> Les autres toux jours apparurent; et ount jour par *Idem Dies*.—*Grene*, pur ces qount jour par *Idem Dies*, dit qe les ij de ces qe ne venent pas, vers queux le *Cape* est servy, sont morts; jugement du brief.—*Pole*. Ceo ne git pas en vostre bouche, countre le retourn de Vicounte qe tesmoigne la somons.—*Grene*. Jeo *Dowere.*  
[*Fitz.*  
*Avere-*  
*ment*, 31.]

<sup>1</sup> C., and L., ne; the word is omitted from H.

<sup>2</sup> From B., C., H., and L.

<sup>3</sup> B., and H., demurast.

<sup>4</sup> le is from B. alone.

<sup>5</sup> C., tenauntz.

<sup>6</sup> C. vouchent.

<sup>7</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III, R<sup>o</sup> 424, d. It there appears that the action was brought by William de Colville, knight, and Elena his wife, against John de Veer, William Mazone, William de Aldwynele and ninety-two others, or one hundred and ten, including the wives of certain of the tenants, in respect of "tertiam

"partem sex libratarum redditus, cum pertinentiis, in Thrapstone, . . . ex dotatione Johannis filii Walteri filii Alani de Hadyngtone quondam viri, &c."

<sup>8</sup> As to the number see above, note 7.

<sup>9</sup> According to the roll, thirty-eight of the tenants, including Mazone and Aldwynele, made default, "ita quod tunc præceptum fuit Vicecomiti quod caperet in manum Regis tertiam partem triginta et octo partium prædictarum sex libratarum redditus in quater viginti et quindecim partes divisi."

## No. 29.

A.D.  
1344-5.

*Grene.* Suppose the Sheriff had returned the death of one, would not the demandant have the averment that he is living, in maintenance of his writ, contrary to the return? as meaning to say that he would. For the same reason, on the other hand, the answer is given to a tenant to aver the death of one who has been named as tenant, in order to falsify the writ, notwithstanding that the summons has been testified.—*Pole.* The cases are not alike.—But he did not say why.—*Grene.* The demand is in respect of rent charge, wherefore we are put to mischief if we cannot allege this, for, if the demandant recover against them in respect of their portion, execution will run in the land which we hold, because rent charge is not apportionable, that is to say, by apportioning and casting on the tenancy of those who make the default their portion of the rent which may be recovered.—*WILLOUGHBY.* The answer is not given in this case for you, nor was this ever law in such a case; and you are free from mischief, because, if the rent be hereafter demanded, and refused, and the demandant, having recovered it brings an Assise, you will have an answer by saying that those against whom she recovered were dead before the recovery.—*Grene.* I do not think so; and, if it were so, I should for the same reason have that answer now to prevent judgment.—*WILLOUGHBY.* You will not have the averment except on account of mischief which could befall you in case you did not have it; and, in a case in which judgment is rendered against my ancestor when he is dead, and I am ousted by execution, I shall have an Assise and shall then aver his death.—*Grene.* The reverse has been often adjudged, because the heir will have a writ of Deceit.—*WILLOUGHBY.* I tell you that this is certainly law, and always has been, and will be, that the heir will in such a case aver the death of his ancestor in



## No. 29.

pose que le Vicounte ust<sup>1</sup> retourne la mort dasqun, navereit le demandant averement countre le retourn en meintenaunce de soun brief qil fuit en vie? *quasi diceret sic.* Par mesme la resoun arremein al tenant est done le<sup>2</sup> respons daverer la mort celuy qest tenant pur fauxer le brief, *non obstante* la somons tesmoigne.—*Pole.* *Non est simile.*—*Sed non dixit quare.*—*Grene.* La demande est de rente charge, par quei nous sumes a meschief si nous nel puissoms allegger, qar, sil recovere vers eux pur la porcion, lexecucion courra en la terre que nous tenoms, qar rente charge nest pas apporcionable, saver, de apporcioner et jettre<sup>3</sup> sur lour tenance<sup>4</sup> que fount default la porcion de le rente que serra<sup>5</sup> recoveri.—*WILBY.* Le respons nest pas done en le cas pur vous, ne unques ne fuit ceo lei en tiel cas<sup>6</sup>; et vous estes saunz meschief, qar, si<sup>7</sup> la rente soit demande apres et denie,<sup>8</sup> et il que recovere porte Lassise, vous averetz respons<sup>9</sup> a dire que ceux vers queux ele<sup>10</sup> recoverist furent mortz avant le recoverir.—*Grene.* Ceo ne croy jeo pas; et, sil fust issint, par mesme la resoun jeo laveray a ore a destourber le jugement.—*WILBY.* Vous naveretz pas laverement sil ne fust pur meschief que vous avendreit en cas que vous lussetz pas; et, en cas que<sup>11</sup> jugement est rendu countre<sup>12</sup> moun ancestre quant il est mort, et jeo soi ouste par execucion, javeray Assise et averay sa mort.—*Grene.* Le revers ad este sovent ajuge, qar leire avera brief de Desceit.—*WILBY.* Certainement jeo vous die qil est ley, et touz jours fuit, et serra, que leire en le cas avera la mort soun auncestre en Assise, quei que

A.D.  
1344-5.<sup>1</sup> B., eit.<sup>2</sup> le is from L. alone.<sup>3</sup> B., gettere.<sup>4</sup> C., tenauntz.<sup>5</sup> C., H., and L., serreit.<sup>6</sup> The words ceo lei en tiel cas are omitted from B.<sup>7</sup> si is omitted from B.<sup>8</sup> C., le tenant devye.<sup>9</sup> H., plee. The word is omitted from B. and C.<sup>10</sup> B., il.<sup>11</sup> L., que vous lussetz et.<sup>12</sup> B., vers.

## No. 30.

A.D.  
1344-5.

Assise, whatever you may say about precedents, so that you are not put to any mischief though you do not have the averment.—*Skipwith*. A difference between rent service and rent charge has been talked of in this case; I hold that it is all one, since he will not have the averment except on account of mischief, and mischief there is not, for the reason above; judgment.—WILLOUGHBY adjudged the writ good.—*Grene* demanded view of the land.—*Pole*. Our husband died seised of the rent whereof the demand, &c.—WILLOUGHBY. And will you not say anything else?—And afterwards WILLOUGHBY by judgment granted him view, and rendered judgment in respect of their portion against those who made default after default.—*Quere* as to both judgments, &c.<sup>1</sup>

License  
given by  
the King.

(30.) § The King gave license to Robert, lord of Clifford, to enable him to enfeoff certain chaplains of a great part of his inheritance, and of the Sheriffdom of Westmoreland, so that they, being in plenary seisin thereof, might be able to re-enfeoff the same lord, to hold to him and the heirs male of his body, and, failing issue,

<sup>1</sup> Y.B., Trin., 19 Edw. III., No. 55 appears to be a continuation of this case.

## No. 30.

vous parletz des ensaumples, issi que vous nestes pas a meschief tut neietz<sup>1</sup> pas laverement.—*Skip*. Homme parle de diversite en ceo cas de rente service et rente charge; jeo tenk tut un, de puis qil navera pas laverement sil ne fuit pur meschief, et ceo nest il pas, *causa qua supra*; jugement.<sup>2</sup>—WILBY agarda le brief bon.—*Grene* demanda la vewe de la terre.—*Pole*. Nostre baroun murust<sup>3</sup> seisi de la rente dount la demande, &c.—WILBY. Et autre chose ne voletz dire?—Et puis WILBY par agarde<sup>4</sup> luy granta la vewe,<sup>5</sup> et rendist jugement de lour porcion vers ces que fount default apres default.<sup>6</sup>—*Quere de utroque judicio, &c.*

A.D.  
1344-5.[Fitz.,  
View, 76.]

(30.)<sup>7</sup> § Le Roi dona conge a<sup>9</sup> Robert<sup>10</sup> seigneur de Clifford de qil pout feffer certains chapeleyns de graunt partie de son heritage et de la Vicounte de Westmerlonde, issint que eux, en de cele plenere seisine, puissent refeffer mesme le seigneur a luy et a les heirs madles de son corps, et pur default dissue le

Conge  
done par  
le Roi.<sup>8</sup>[18 Li.  
Ass., 18;  
Fitz.,*Entre  
congeable,*  
39; *Garde,*  
114.]<sup>1</sup> B., navez.<sup>2</sup> jugement is omitted from C. and L.<sup>3</sup> L., muruyt.<sup>4</sup> C., and L., jugement.<sup>5</sup> According to the roll, "Johannes de Veer, et alii qui alias comparuerunt, &c., veniunt et petunt visum, &c. Habeant, &c."<sup>6</sup> According to the roll, "prædicti Willelmus Mazone, et Willelmus de Aldewynce modo non veniunt. Et Vicecomes modo testatur diem captionis, &c., et quod summonuit, &c., per quod prædicti Willelmus et Elena petunt seisinam suam versus prædictos Willelmum Mazone et Willelmum de Aldewynce de tertia parte portionis prædictarum sex libratarum redditus

"ipsos Willelmum Mazone et Willelmum de Aldewynce contingentis. Ideo consideratum est quod prædicti Willelmus de Colville et Elena recuperent inde seisinam suam versus eos, &amp;c., per defaultam, &amp;c."

There were several pleas on behalf of several tenants who appeared, upon which issue was joined. With respect to them the *Venire* was awarded. There were several adjournments, but nothing further appears on the roll.<sup>7</sup> From B., C., H., and L.<sup>8</sup> The marginal note is from L. In C. it is *Terre* . . . . In H. it is *Nota*, Office. In B. there is none.<sup>9</sup> B., al.<sup>10</sup> Robert is omitted from B.

## No. 30.

A.D.  
1344-5.

with remainder over, in virtue of which license the chaplains were enfeoffed. And before they had re-enfeoffed Robert died. And through the non-age of Robert's heir, and by reason of some other lands, the King seized the rest of the inheritance by *Diem clausit extremum*. The feoffment made to the chaplains on condition as above was found, upon which, and upon the charter of license as above, a *Scire facias* issued against the chaplains, returnable in Chancery, to show cause wherefore the land so occupied by them to the disherison of the heir, and in such a manner as to deprive the King of his wardship, should not be seized into the King's hand. And the chaplains came and said that they were the King's tenants by his license, as above, and that by their forfeiture the King would have escheat, and other profits of seignory, and that, as to the license given to them by the King's charter to re-enfeoff, it was only at their pleasure to make the re-enfeoffment; moreover they had been at all times ready to re-enfeoff Robert during his life, but he wished to have the settlement by fine, as would appear by record, for he sued a writ of Covenant in the Common Bench, in respect of the same matter, which was pending until his death. And because the Sheriffdom was not delivered to them, and certain of the tenants had attorned to them, so that they could not, when the writ of Covenant was returnable on the first day, have made an estate to him by fine, with his consent there was a continuance. And after his death they endowed his wife; and at all times since his death they had been ready, if they had had the King's license, to re-enfeoff Robert's heir, and still were ready, in accordance with the form, &c. And they demanded judgment whether the King would maintain this writ against them who were his tenants

## No. 30.

remeindre outre, par quele conge les chapeleins furent feffes. Et avant qils refefferent, Robert murust.<sup>1</sup> Et par noun age del heir R., et par resoun dasquens autres terres, le Roi seisist par *Diem clausit extremum* le remenant del heritage. Le feffement fet<sup>2</sup> par le condicion *ut supra* a les chapeleins fuit trove, hors de quei, et la chartre de licence *ut supra*,<sup>3</sup> garnissement issit vers les chapeleyns, retournable en Chauncellerie, sils sussent rienz dire pur quei la terre issi ocupe par eux en desheritesoun leire, et pur tollir<sup>4</sup> le Roi de garde, ne serreit seisi en la mein le Roi; qe vindrent et disoint qils sont tenantz le Roi par son conge, *ut supra*, et par forfeiture de eux le Roi avereit eschete, et autre profit de seignurie, et ceo qe par la chartre le Roi fuit done conge a eux de refeffer le refeffer est forqe a lour volunte de faire; ovesqe ceo, ils furent tut temps prest en la vie R. de luy avoir refeffe, mes il le voleit aver eu par fyne, comme purra apparer par recorde, qar el Comune Bank il suyt brief de Covenant de mesme la chose, quel fut pendant<sup>5</sup> tanqe sa mort. Et pur ceo qe la Vicounte ne fuit pas livere a eux, et certains tenantz attournes a eux, issint qils [ne poaint, quant le brief de Covenant al primere jour fuit retournable, aver fet estat a luy par fyne de son assent si fuit ceo continue].<sup>6</sup> Et apres sa mort ils dowerunt sa femme; et tut temps<sup>7</sup> puis sa mort et unqore sont prest, sils ussent eu<sup>8</sup> conge du Roi, de refeffer leire R., et par la fourme, &c. Et demanderent jugement si le Roi vers eux qe sont ses tenantz par la manere voleit ceo brief meintener.

A.D.  
1344-5.<sup>1</sup> L., muruyt.<sup>2</sup> fet is omitted from B. and C.<sup>3</sup> The words *ut supra* are omitted from B.<sup>4</sup> C., par tiel brief, instead of pur tollir.<sup>5</sup> The words quel fut pendant are from B. alone.<sup>6</sup> The words between brackets are omitted from B.<sup>7</sup> temps is omitted from C.<sup>8</sup> eu is from L. alone.

## No. 31.

A.D.  
1344-5.

in this manner.—SADINGTON. They had nothing except upon condition: for suppose that Robert had been living, and that the chaplains had forfeited, and would not afterwards make re-enfeoffment, Robert could have entered into his first estate, and nobody would have had an escheat.—*Haveryngton*. If the King now causes the lands to be seized, it must be in his own right, and Robert's heirs will suffer disherison, because they cannot enter upon the chaplains contrary to the conveyance.—*Stouford*. Through the King's seizure the heir will have the fee simple, and the chaplains, who have no title to their own use, can release, and then the right of every one will be saved.—*Blaykeston*. What would then become of the estate tail?—*Stouford*. It would be lost through your default, because you would not make re-enfeoffment to Robert.—SADINGTON. Because by the King's license, which is of record, and by inquisition returned into this Court on *Diem clausit extremum*, it is expressly proved that you had no other estate than one upon condition to re-enfeoff, and you have admitted in your answer that you had time, during Robert's life, after the feoffment made to you, during which you could have re-enfeoffed Robert, and you did not do so, so that your tenancy is no other than in disherison of the heir who is in the King's wardship, whose right the King is bound to save, the COURT adjudges, by advice of the King's Council, that the tenements be seized into the King's hand, and that he be answered as to the issues since Robert's death. And let whosoever will sue to the King by petition, &c.

Dower.

(31.) § Note that the wife of Ralph Basset brought a writ of Dower against a tenant, and he vouched the heir of the husband, who was in the wardship of the Earl of Warwick. The Earl appeared, and warranted

## No. 31.

—SAD.<sup>1</sup> Ils navoient rienz forqe par condicion: qar mettez qe R. fuit en vie, et les chapeleyns ussent forfaitz, et apres ils ne voleint avoir fet refeffement, R. pout aver entre en son primere estat, et nulle homme avereit eschete.—*Hav.* Si le Roi face seisir les terres a ore, ceo covient estre en son propre dreit, et les heirs R. desherites, qar ils ne pount entrer sur les chapeleyns countre la demise.—*Stouf.* Par le seisir le Roi leire avera fee simple, et les chapeleyns, qe nul title nount a lour oeps demene, pount relessier, et donques est chesquny dreit salve.—*Blaik.* Ou deviendreit la taille donques?—*Stouf.* Pery en vostre default qe ne voilletz pas fere refeffement a R.—SAD.<sup>1</sup> Pur ceo qe par la licence le Roi, qest de recorde, et enqueste ceinz retourne sur *Diem clausit extremum*, est expressement prove qe vous navietz autre estat forqe sur condicion daver refeffe, et en vostre respons avetz conu qe vous avietz temps, en la vie R., puis le feffement fait a vous, qe vous puissetz aver refeffe R., et ne feistes pas, issint qe vostre tenance nest autre forqen desheritesoun leire en la garde le Roi, qi dreit le Roi est tenu de salver, par avys le Conseille le Roi, la COURT agarde qe les tenementz soient seisz en la mein le Roi, et qil soit respondu<sup>2</sup> des issues puis la mort R. Et sue qi qe voudra au Roi par peticioun, &c.

A.D.  
1344-5.

(31.)<sup>3</sup> § *Nota* qe la femme R. Basset porta brief de Dowere.<sup>4</sup> Dowere vers un tenant, qe voucha leire le baroun [Fitz., *Ayde de Roy*, 64.] en la garde le Count de Warwyke,<sup>5</sup> qe vint et

<sup>1</sup> L., Sadl.<sup>2</sup> H., charge.

<sup>3</sup> From B., C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 295, d. It there appears that the action was brought by Joan late wife of Ralph Basset, of Drayton, against Hugh de Meygnel and Alesia his

wife. The tenants vouched Ralph, son of Ralph, son of Ralph Bassett, "consanguineus" and heir of Ralph Basset of Drayton, who was in the wardship of Thomas de Bello Campo, Earl of Warwick.

<sup>4</sup> L., *Nota de Dowere*.<sup>5</sup> H., Garreyne.

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A.D.  
1344-5.

as one who had nothing in his wardship of the heir's inheritance which had descended to the heir in fee simple<sup>1</sup>; and because he held the wardship by lease from the King he prayed aid of the King.—KELSHULLE. You ought to have prayed aid before you warranted, and so it has been wont to be done in the like case.—*Seton*. The reverse has recently been done where the same heir was vouched.—And, the roll having been fetched, it was found that on a previous occasion the guardian had aid after he had warranted.<sup>2</sup> And he who entered that other aid was blamed, because the Clerks said that it is not the ordinary course to enter any warranty in such a case as this before the aid has been granted and the King has signified his pleasure.

<sup>1</sup> See p. 499, note 7.

<sup>2</sup> The case to which reference is here made is Y.B., Mich., 18 Edw. III., No. 31, the roll is that of the *Placita de Banco* of the same term

R<sup>o</sup> 463, d, and the passage which shows how the Earl entered into warranty and afterwards prayed aid of the King is cited at p. 105, note 5 in the present volume.



## No. 31.

garrantist come celuy qe rien nad par descente en fee simple del heritage leire<sup>1</sup>; et pur ceo qil tient du lees le Roi la garde il pria eide du Roi.<sup>2</sup>—KELS. Vous prierez eide avant qe<sup>3</sup> vous ussetz garranti, et issi<sup>4</sup> soleit homme faire en tiel<sup>5</sup> cas.—*Setone*. Le revers ad este fet ore tarde ou mesme leire fuit vouche.—Et, roulle<sup>6</sup> quis, fuis trove qaltrefoith apres ceo qe le gardein avoit garranti qil avoit leide. Et celuy qentra cel autre eide fuit blame, qar les Clercs disoint qe ceo nest pas cours dentrer nulle garrantie come en tiel cas avant leide graunte et qe le Roi eit maunde sa volunte.<sup>7</sup>

A.D.  
1344-5

<sup>1</sup> The words del heritage leire are omitted from B.

<sup>2</sup> According to the record, the Earl, "custos prædicti heredis, "dicit quod dominus Rex, ex gratia sua speciali, per literas suas "patentes concessit ei custodiam "corporis heredis prædicti ac "omnium terrarum et tenementorum, cum pertinentiis, quæ fuerunt prædicti Radulphi Basset, ". . . habendam cum "reversionibus terrarum et tenementorum quæ tenentur in dotem "et ad terminum vitæ de hereditate "prædicta . . . usque "ad legitimam ætatem ejusdem "heredis . . . Et "profert hic easdem literas domini "Regis patentes quæ prædictam "concessionem testantur, et unde "dicit quod ipse tenet custodiam "prædictam ex dimissione domini "Regis in forma prædicta, sine quo "non potest prædictis Hugoni et "Alesia inde respondere, et petit "auxilium de ipso domino Rege."

<sup>3</sup> L., quant, instead of avant qe.

<sup>4</sup> issi is omitted from B.

<sup>5</sup> L., ceo.

<sup>6</sup> B., rowe.

<sup>7</sup> The reports of this term end here in B. After the prayer of aid of the King there was, according to the roll, an adjournment, "et "interim loquendum cum domino "Rege." The King then sent a writ close to the Justices, dated the 28th of February in the nineteenth year of the reign, reciting the demandant's prayer that she might not be longer delayed, and directing them to proceed.

Thereupon "prædicti Hugo et "Alesia petunt quod prædictus "Comes, custos, &c., eis warrantizet, " &c. Et prædictus Comes, ut "custos heredis prædicti, nihil "habens in custodia sua de "hereditate prædicti heredis, quæ "eidem heredi descendit per "descensum hereditarium in feodo "simplici de eodem Radulpho "quondam viro, &c., eis warrantizat, " &c., et reddit prædictæ Johannæ "prædictam dotem suam, &c."

The judgment was, "Quia "testatum est per prædictos "Hugonem et Alesiam quod præ- "dictus custos satis habet in "custodia sua de hereditate præ- "dicti heredis quæ eidem heredi

## No. 32.

A.D.  
1344-5.  
Replevin.

(32.) § Replevin.—*Grene* avowed for customs in arrear which were due from those who held of him in villenage, as in respect of beasts belonging to those who so held of him.—*Gaynesford*. We tell you that these same persons, as to whom he says that they hold of him in villenage, are our villeins, and so their possession of the beasts is our possession, and so

## No. 32.

(32.)<sup>1</sup> § *Replegiari*.—*Grene* avowa pur custumes arere de ces qe tiendrent de luy en villenage, come des bestes mesmes ces qe issi tenent<sup>2</sup> de luy.<sup>3</sup>—*Gayn*. Nous vous dioms qe mesmes ces queux il dit qe tenent de luy en boundage sount nos villeins, et issint lour possession des bestes nostre possession, et

A.D.  
1344-5.*Replegiari*.  
[Fitz.,  
*Replevin*,  
32.]

“descenderunt in forma prædicta  
“ . . . . . unde eidem  
“ Johannæ facere possit ad valen-  
“ tiam, &c., consideratum est quod,  
“ si prædictus Comes, custos, &c.,  
“ habeat terras et tenementa in  
“ custodia sua de hereditate  
“ prædicti heredis quæ eidem  
“ heredi descenderunt de eodem  
“ Radulpho quondam viro, &c., in  
“ forma prædicta, unde præfata  
“ Johannæ facere possit ad valen-  
“ tiam prædictæ dotis suæ, tunc  
“ prædicti Hugo et Alesia teneant  
“ in pace, et prædicta Johanna  
“ habeat de terra prædicti heredis  
“ in custodia, &c., ad valentiam,  
“ &c., et, si quid inde defuerit, id  
“ habeat de terra versus prædictos  
“ Hugonem et Alesiam petita, &c.”

<sup>1</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 393, d. It there appears that an action was brought by Otto de Northwode against Thomas de Hunstane, William de Hunstane, and others, in respect of a taking of “unum porcum in villa de Bracklesham infra clausum cujusdam Willelmi Danel.”

<sup>2</sup> H., tiegnent.

<sup>3</sup> The words de luy are omitted from C. The avowry on behalf of Thomas was, according to the record, “quod ipse cepit prædictum porcum ut porcum cujusdam Willelmi Danel et in

“ custodia sua inventum, et non  
“ porcum prædicti Ottonis, et idem  
“ Thomas, pro se ipso et prædictis  
“ Willelmo et aliis, bene advocat  
“ captionem ejusdem porci in præ-  
“ dicto loco, &c., . . . . super  
“ prædictum Willelmum Denel, et  
“ juste, &c., quia dicit quod præ-  
“ dictus Willelmus tenet de ipso  
“ Thoma unum mesuagium, et  
“ medietatem unius virgatæ terræ,  
“ cum pertinentiis, in prædicta  
“ villa de Bracklesham, in villenagio,  
“ per fidelitatem et servitium  
“ metendi duas acras cujuscunque  
“ generis bladi in manerio suo de  
“ Bracklesham in autumno, et  
“ falcandi unam acram prati  
“ annuatim, sumptibus ipsius Wil-  
“ lelmi, et solvendi unam gallinam  
“ ad festum Sancti Michaelis, et  
“ cariandi fimos ejusdem Thomæ  
“ quotiens et quando ad hoc præ-  
“ munitus fuerit, similiter sumpti-  
“ bus ejusdem Willelmi, &c., de  
“ quibus servitiis idem Thomas  
“ fuit seisitus per manus ipsius  
“ Willelmi, ut per manus nativi  
“ sui, &c., et, quia prædicta servitia  
“ de uno anno integro proximo  
“ ante diem captionis prædictæ  
“ ipsi Thomæ a retro fuerunt, cepit  
“ ipse prædictum porcum ipsius  
“ Willelmi in custodia sua inven-  
“ tum in prædicto loco, &c., qui  
“ est parcella eorundem tenemen-  
“ torum, &c., in feodo suo, &c.,  
“ sicut bene licuit, &c.”

## No. 32.

A.D.  
1344-5.

they are our beasts.—*Grene*. They are free men ; ready, &c.—*Gaynesford*. That is not an issue in this case of taking of beasts.—*Grene*. The beasts are theirs and not yours ; ready, &c.—*Gaynesford*. We grant that the beasts were in their possession, and, as a villein, having regard to his lord, could not have property in them even though the beasts were theirs, it is therefore necessary that you abide judgment in law, or else that you take a traverse on the question of property.—*KELSHULLE*. Cannot a villein sell his horse or his cow without his lord having an action ? —*WILLOUGHBY*. Yes, he can ; but when the villein's beasts are taken the lord can replevy them by law ; and because the question whether they are villeins or not cannot make an issue in this plea, issue must be taken on the question of property, that is to say, that the beasts belonged to those who hold in this way in villenage, and not to the plaintiff, as he has said.— Therefore by compulsion of the COURT *Grene* took the issue in that way.

No. 32.

issint sount ils noz avers.<sup>1</sup>—[*Grene*. Ils sount fraunkes hommes; prest, &c.—*Gayn*. Ceo nest pas issue en ceo cas de prise des avers.]<sup>2</sup>—*Grene*. Ils sount lour avers et noun pas les voz; prest &c.—*Gayn*. Nous grauntoms qe les avers furent en lour possession, et come villein, eaunt regarde a son seigneur, ne<sup>3</sup> purreit aver proprete, si furent ils lour avers, par quei il covient qe vous demuretz en jugement en ley, ou autrement qe vous pernetz travers sur la manere de la proprete.—*KELS*. Ne poet un vilein vendre son chival ou sa vache sanz ceo qe le seigneur avera accion?—*WILBY*. Si poet; mes quant les avers le villein sount pris le seigneur les poet replever par ley; et, pur ceo qil ne poet en ceo cas faire issue de plee le quel ils sount<sup>4</sup> villeins ou noun, si covient il prendre issue sur la manere de la proprete, saver, qe les avers furent a ces qe tenent par la manere en villenage, et noun pas al pleintif com il ad dit.—Par quei par chace de *COURT Grene* prist lissue par la manere.<sup>5</sup>

A.D.  
1344-5.

<sup>1</sup> The plaintiff's plea was, according to the record, "quod prædictus Thomas per hoc captionem prædicti porci justam advocare non potest, &c., quia dicit quod ipse est dominus villæ prædictæ, et quod prædictus Willelmus est natus suus ejusdem villæ, et tenet de ipso Ottone certa tenementa per certa servitia in eadem villa in villenagio, et dicit quod ipse habet quendam Robertum le Syuyere nativum suum in eadem villa, qui etiam tenet de ipso Ottone certa tenementa in eadem villa per certa servitia in villenagio, &c., et dicit quod prædictus porcus fuit in possessione prædicti Roberti nativi sui ut porcus ipsius Ottonis, et ita cepit prædictus Thomas prædictum porcum ipsius Ottonis in pos-

" sessione prædicti Roberti nativi, &c., existentem, et non porcum prædicti Willelmi, et hoc paratus est verificare, &c."

<sup>2</sup> The words between brackets are omitted from H.

<sup>3</sup> ne is from H. alone, and there interlined in a later hand.

<sup>4</sup> H., soient.

<sup>5</sup> According to the record Thomas replied "quod prædictus porcus, tempore captionis ejusdem, fuit porcus prædicti Willelmi, et in custodia sua inventus, &c., et non porcus prædicti Ottonis, sicut idem Otto dicit." Issue was joined upon this.

There were several adjournments, but nothing further appears on the roll.

A similar case follows this on the roll, the parties being the same, but

## No. 33.

A.D.  
1344-5.  
Replevin.

(33.) § And when, in another Replevin between the same parties, *Grene* avowed in the same manner as in respect of the beasts of other persons who were strangers, *Gaynesford* said: Those upon whom he has avowed are our villeins, and the one in whom he attaches the property is our villein also, and so the beasts are ours; ready, &c.—*Grene*. They are his

No. 33.

(33.)<sup>1</sup> § Et quant a un autre *Replegiari* entre mesme les parties, *Grene* avowa par mesme la manere come des avers dautres estraunges.<sup>3</sup>—*Gayn.* Ces sur queux il ad avowe sount noz villeins, et celuy en qi il attache la proprete est nostre villein auxi, et issint sount ils nos avers; prest, &c.<sup>4</sup>—

A.D.  
1344-5.  
*Reple-*  
*giari.*<sup>2</sup>  
[*Fitz.,*  
*Replevin,*  
32.]

the alleged taking was of a cow  
“infra portas cujusdam Thomæ  
“Boukere” also in the vill of  
Bracklesmere.

<sup>1</sup>From C., H., and L. The record seems to be that found among the *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 272. It there appears that an action was brought by Otto de Northwode against Thomas de Hunstane, William de Hunstane, and another. The declaration was in respect of a taking of “unum poreum, et “quatuordecim multones, et decem “oves matrices,” in the vill of Bracklesham (Sussex) at a place called Smethefeld.

<sup>2</sup>The marginal note is omitted from H.

<sup>3</sup>The avowry on behalf of Thomas was, according to the record, “quod ipse cepit prædicta “averia ut averia cujusdam Willelmi Danel et in custodia sua “inventâ, et non averia prædicti “Ottonis, et idem Thomas pro se “ipso et prædicto Willelmo et aliis “bene advocat captionem prædictorum averiorum . . . . . “et juste, quia dicit quod prædictus locus . . . . . est “separale solum ipsius Thomæ, in “quo prædictus Willelmus nullam “communam habet, &c., et quia “ipse . . . . . invenit prædicta “averia prædicti Willelmi in prædicto loco de Smethefelde in “separali solo suo herbam suam

“deparentia et damnum facientia  
“cepit ipse prædicta averia prædicti Willelmi in prædicto loco, “&c., sicut ei bene licuit.”

<sup>4</sup>The plea, according to the record, was “Otto dicit quod “prædictus Thomas captionem “prædictorum averiorum justam “advocare non potest, quia dicit “quod ipse est dominus villæ “prædictæ, et quod prædictus locus “de Smethfelde in quo, &c., est “vastum ejusdem villæ, et quod “prædictus Willelmus est natus “suus ejusdem villæ, et tenet de “ipso Ottone certa tenementa in “eadem villa per certa servitia in “villenario, et quod ipse Otto “habet quosdam Willelmum “Lavere et Johannem Boukere “nativos suos in eadem villa, qui “etiam tenent de ipso Ottone certa “tenementa in eadem villa in “villenario, et dicit quod septem “multones de prædictis multonibus “et decem oves matrices fuerunt “in possessione prædicti Johannis “nativi, &c., ut averia ipsius “Ottonis, et prædicti porcus et “septem multones residui in “possessione prædicti Willelmi “Lavere ut averia ipsius Ottonis, “et ita cepit prædictus Thomas “prædicta averia ipsius Ottonis in “possessione prædictorum Johannis et Willelmi Lavere “nativorum, &c., existentia, et non “averia prædicti Willelmi Danel, “et hoc paratus est verificare, &c.,

## No. 34.

A.D. 1344-5. beasts whose beasts we have said they are, and not yours; ready, &c.—*Gaynesford*. You must answer as to the manner in which they are so, just as in the previous case.—*Grene*. It is a different case, because I suppose the property to be in another person.—*Gaynesford*. It is all one, because I suppose the very person in whom you attach the property to be my villein.—WILLOUGHBY to *Gaynesford*. Even though the issue were taken in general terms, and the fact were found to be such as you have alleged, you would attain your purpose.—And nevertheless the issue was joined in the same manner as above.

Recaption. (34.) § Recaption of beasts, between the same parties, contrary to the custom of the realm, and against the peace.—*Grene* alleged, as above, that they were the



No. 34.

*Grene.* Les avers celuy qe nous avoms dit, et noun pas les voz; prest, &c.—*Gayn.* Vous respoundretz a la manere si bien come en le primer cas.—*Grene.* Cest autre cas, qar jeo pose qe la proprete soit en autre.—*Gayn.* Tut est un, qar jeo suppose mesme celuy en qi vous attachetz la proprete estre moun villein.—*WILBY* a *Gayn.* Mesqe lissue fuit pris general et tiel fait fuit trove come vous alleggez vous averetz vostre purpos.—*Et tamen* lissue fuit joint sur la manere, *ut supra*.<sup>1</sup>

A.D.  
1344-5.

(34.)<sup>2</sup> § Reprise des avers, entre mesmes les parties, countre la custume du roialme, et countre la pees.<sup>4</sup>—*Grene, ut supra*, alleggea qils furent autri

Reprise.<sup>3</sup>  
[Fitz.,  
*Replevin*,  
32.]

“ unde petit judicium et damna sibi  
“ adjudicari, &c.”

<sup>1</sup> The replication was, according to the record, “ quod prædicta averia, tempore captionis prædictæ, fuerunt averia prædicti Willelmi Danel, et in custodia sua inventa, et non averia prædicti Ottonis sicut idem Otto dicit.” Issue was joined upon this.

The *Venire* was awarded, and there were several adjournments, but nothing further appears on the roll.

There is a similar case on R<sup>o</sup> 410, d, in which there is the same plaintiff, and Thomas de Honestone is the only defendant.

<sup>2</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 272, d. It there appears that the action was brought by Master Otto de Northwode, prebendary of the prebend of Bracklesham in the church of the Holy Trinity, Chichester, against Thomas de Honestone.

<sup>3</sup> The marginal note is from H. In C. it is Reprise des avers, in L., *Replegiari*.

<sup>4</sup> The declaration was, according to the record, “ Willelmus de Neubrigge, qui sequitur pro domino Rege, et prædictus Otto, per prædictum Willelmum attornatum suum, queritur quod, cum idem Otto breve Regis Vicecomiti Comitatus prædicti [Sussexiæ] detulisset, videlicet de decem ovibus matricibus sibi replegiandis, quas idem Thomas . . . . cepisset et injuste detinisset, et idem Vicecomes eidem Ottoni averia illa replegiavisset, et ei dedisset diem usque ad proximum Comitatum, . . . . et prædictum Thomam attachiavisset ad respondendum super hoc prædicto Ottoni, et postmodum præcepisset dominus Rex loquelam illam poni coram Justiciariis hic. . . . idem Thomas, pendente placito prædicto coram eisdem Justiciariis hic, . . . . averia ipsius Ottonis, videlicet duos porcos, in

## No. 34.

A.D.  
1344-5.

beasts of another person.—*Gaynesford* affirmed, for the same reason as above, that they were his beasts.—*Grene*. Now judgment of the writ, because, as to that which was taken out of the possession of villeins, it cannot, so far as he is concerned, be said to be done against the peace.—*Gaynesford*. Yes, it can; this action is given just as much as a Replevin.—*Huse, ad idem*. A writ of Trespass and a writ of Appeal are given to him to whom the property belongs, and also to one out of whose possession the goods are taken, because both servant and master will have an Appeal in respect of the same felony.—*WILLOUGHBY*. This writ is as good as a Replevin in the case.—*Grene*. If you adjudge the writ to be good, ready to answer.—*WILLOUGHBY*. We adjudge the writ to be good.—*Grene* took the issue on the property of the beasts, as above, that is to say that they were the beasts of another person, and not the plaintiff's beasts, as he had said; ready, &c.—And the other side said the contrary.

## No. 34.

avers.—*Gayn.* aforcea, par la cause *ut supra*, qe ces avers.—*Grene.* Ore jugement du brief, qar de ceo qe fuit pris hors de possession des villeins ne poet estre dit, quant a luy,<sup>1</sup> fait countre la pees.—*Gayn.* Si poet<sup>2</sup>; si bien est cest accion done come *Replegiari*.—*Huse, ad idem.* Brief de Trans et brief Dappelle est done a celuy a qi la proprete est, et auxi a celuy hors de qi possession les biens sount enportes, qar le garsoun<sup>3</sup> et le mestre<sup>4</sup> dune mesme felonie averount appelle.—*WILBY.* Cest brief est auxi bon come le *Replegiari* en le cas.—*Grene.* Si vous agardetz le brief bon, prest a respondre.—*WILBY.* Nous agardoms le brief bon.—*Grene* prist lissue sur la proprete des avers, *ut supra*, saver, qils furent autri avers, et noun pas les avers le pleintif, comme il ad dit; prest, &c.—*Et alii e contra.*<sup>5</sup>

A.D.  
1344-5.

“ villa de Bracklesham cepit  
“ occasione qua prius ceperat præ-  
“ dictas oves, &c., et sicut prius  
“ detinet, et in contemptu præ-  
“ ceptorum Regis se justiciari non  
“ permittit, &c.”

<sup>1</sup> H., celuy.

<sup>2</sup> H., poietz.

<sup>3</sup> H., les garsouns, instead of le garsoun.

<sup>4</sup> H., les mestres, instead of le mestre.

<sup>5</sup> The plea was, according to the record, “ cum prædictus Otto  
“ supponit ipsum Thomam cepisse  
“ prædictos duos porcos ea occa-  
“ sione qua prius ceperat prædictas  
“ oves, idem Thomas dicit quod  
“ ipse nullos porcos prædicti  
“ Ottonis cepit occasione qua prius  
“ ceperat prædictas oves, &c., et  
“ dicit quod . . . cepit  
“ prædictas decem oves ut oves  
“ cujusdam Willelmi Lavere nativi  
“ sui in prædicta villa de Brackle-  
“ sham, in quodam loco qui vocatur

“ Smethefelde, in separali solo  
“ ipsius Ottonis [for Thomæ]  
“ herbam suam depascentes et  
“ damnum facientes, &c., et præ-  
“ dictos duos porcos ut porcos  
“ ejusdem Willelmi et in custodia  
“ sua inventos, &c., pro eo quod  
“ idem Willelmus tenet de ipso  
“ Thoma unum mesuagium et  
“ medietatem unius virgatæ terræ,  
“ cum pertinentiis, in Bracklesham  
“ in villenagio, per certa servitia  
“ sibi facienda, quæ servitia ipsi  
“ Thomæ per unum annum in-  
“ tegrum a retro fuerunt, cepit ipse  
“ prædictos porcos prædicti Wil-  
“ lelmi nativi sui, &c., et in custodia  
“ sua inventos, pro prædictis  
“ servitiis sibi a retro existentibus,  
“ &c., et non ea occasione qua  
“ prius ceperat prædictas oves, &c.,  
“ et hoc paratus est verificare, &c.,  
“ unde petit judicium, &c.”

The plaintiff replied “ quod  
“ prædictus Willelmus est nativus  
“ suus, et quod prædicti oves et

## No. 35.

A.D.  
1344-5.  
Account.

(35.) § Thomas son of Thomas de Radcliffe brought a writ of Account against a knight. Process was continued until the defendant was outlawed. And he had a charter of pardon, and sued a *Scire facias* to warn Thomas son of Thomas, who appeared, and, without oyer of the *Scire facias*, counted that the defendant was his receiver.—*W. Thorpe*. The original writ is extinguished, for you will find that, whereas Thomas son of Thomas brought the writ, the warrant of attorney for him was only in the name of Thomas de Radcliffe, who must be understood to be another person, that is to say, his father, and so the writ is discontinued; therefore you cannot hold plea upon it. And it was found on the roll to be as he said.—*R. Thorpe*. We have appeared at your suit upon the *Scire facias*, and have counted, and you do not answer to our count; judgment, &c. Besides, you who have sued a charter of pardon on the outlawry pronounced on the original writ have affirmed the process to be good; for, if it had been discontinued as you allege, that would be ground for reversal by writ of Error.<sup>1</sup>—*W. Thorpe*. We cannot accept as good a process which has been discontinued.—*STONE*. We have found another defect, which you have not mentioned between you, for the *Scire facias* recites how Thomas son of Thomas

<sup>1</sup> In the end a writ of Error was actually brought in the King's Bench, and the outlawry was reversed. See Y.B., Trin., 19 Edw. III., No. 32, and the *Placita coram*

*Rege* of the same term, R<sup>o</sup> 109. It there appears that the defendant who was outlawed was Thomas de Goushulle.

No. 35.

(35.)<sup>1</sup> § Thomas le fitz Thomas de Radcliffe porta brief Dacompte vers un chivaler. Proces continue tanqe le defendaunt fuit utlage. Et avoit chartre de pardoun, et suyt garnisement vers Thomas le fitz Thomas, qe vint sanz oy del garnisement, et counta qil fuit son reseceivour.—[*W.*] *Thorpe*. Le brief original est amorti, qar vous troveretz, ou Thomas le fitz Thomas porta<sup>3</sup> le brief, le<sup>4</sup> garrant dattourne pur luy fuit forqe en le noun Thomas de Radcliffe, qest entendu autre persone, saver, son pere, issi le brief discontinue; par quei sur cel vous ne poietz plee tener. Et issi fuit trove par roulle come il dit.—*R. Thorpe*.<sup>5</sup> Nous sumes venuz a vostre suite par le garnisement, et avoms counte, a quei vous responez pas; jugement, &c. Ovesqe ceo, vous qavetz suy chartre de pardoun sur lutlagarie pronuncie sur loriginal avetz afferme le proces bon; qar, sil ust este discontinue come vous alleggetz, ceo serreit a reverser par<sup>6</sup> Erreur.—[*W.*] *Thorpe*. Nous ne poms pas accepter proces bon qest discontinue.—*Ston*. Nous avoms trove<sup>7</sup> un autre default, de quei vous ne parletz pas entre vous, qar le garnisement reherce coment Thomas le fitz Thomas porta le brief

A.D.  
1344-5.  
Acompte.<sup>2</sup>

“ porci fuerunt in possessione ejusdem Willelmi ut averia ipsius Ottonis, &c., et quod prædictus Thomas . . . cepit prædictos porcos ipsius Ottonis in possessione prædicti Willelmi existentes occasione qua prius ceperat prædictas oves, prout ipse per prædictum breve supponit, &c. Et hoc paratus est verificare, &c., unde petit judicium, &c.”  
Thomas rejoined “ quod ipse cepit prædictas oves prædicti Willelmi nativi et in custodia sua inventas in separali solo suo damnum facientes, &c., et prædictos porcos ejusdem Willelmi nativi, &c., et in custodia sua

“ inventos, &c., pro servitiis sibi, ut præmittitur, aretro existentibus, et non averia prædicti Ottonis una et eadem occasione prius sicut idem Otto dicit.”

Issue was joined upon this, and the *Venire* awarded. Nothing further appears on the roll except adjournments.

<sup>1</sup> From C., H., and L.

<sup>2</sup> H., *Scire facias*.

<sup>3</sup> porta is omitted from C.

<sup>4</sup> C., and L., et le.

<sup>5</sup> C., and H., *Rich*.

<sup>6</sup> C., pur.

<sup>7</sup> L., trovoms; H., troveroms, instead of avoms trove.

Nos. 36, 37.

A.D.  
1344-5.

brought the writ of Account, &c., and is then in the words *Scire facias prædicto Thomæ, &c., de tempore quo fuit receptor denariorum ipsius Thomæ*, without the words *fili Thomæ*, so it is to be understood to be the father who is warned and not the son.—*R. Thorpe*. He has affirmed the *Scire facias* to be good, and the Court cannot by virtue of their office abate it.—*WILLOUGHBY*. The COURT will not do anything unless it has warrant.—*STONORE* to *W. Thorpe*. You can deliver the whole matter, and put yourself out of danger, if you will plead with him.—*W. Thorpe*. If you will hold the plea upon a writ and process which are discontinued as above, we tell you that we were never his receiver; ready, &c.—And the other side said the contrary.—And the averment stood, and a day was given over.—And *W. Thorpe* pleaded now, because on another day he will have the same advantage that he now has to allege discontinuance, &c.

*Replevin.* (36.) § Note that in *Replevin* avowry was made for rent service, and the parties wished, by consent, to be at issue as to whether the whole of the manor, whereof the place at which the taking was effected was parcel, was out of the avowant's fee.—And *WILLOUGHBY* said that the COURT would not allow this issue except in respect of the particular place.

Ravish-  
ment of  
Ward.

(37.) § *Ravishment of Ward.*—*Grene*. We tell you that the infant's ancestor divested himself of the land, by reason of which he claims the wardship, to one A., and for A.'s life, to hold of the chief lord of the fee, which A. attorned to the chief lord while the ancestor was living, and after the ancestor's death the chief lord is this day seised by A.'s hand, &c.; and we tell you that the ancestor held other land of one Alice in socage, wherefore, after his death, by virtue of a lease from the infant's mother, to whom the wardship belonged by reason of nurture, we have the wardship, and the plaintiff came and would have

## Nos. 36, 37.

Dacompte, &c., et donques voet ceo,<sup>1</sup> *Scire facias* A.D.  
1341-5.  
*predicto Thomæ, &c., de tempore quo fuit receptor*  
*denariorum ipsius Thomæ,*<sup>2</sup> saunz dire *fili Thomæ,*  
issi qe cest entendu le pere qest garny et noun  
pas le fitz.—[R.] *Thorpe.* Il ad afferme le garnisement  
bon, et Court doffice nel poet pas abatre.—WILBY.  
COURT ne fra rienz si ele neit<sup>3</sup> garrant.—STON. a [W.]  
*Thorpe.* Vous poietz deliverer tut, et vous mettre  
hors de daunger, si vous voilletz pleder ove luy.—[W.]  
*Thorpe.* Si vous voilletz tenir le plee sur brief et  
proces discontinue *ut supra,* nous vous dioms qunqes  
son reseivour; prest, &c.—*Et alii e contra.*—*Et*  
*stetit verificatio,* et jour done outre.—Et [W.] *Thorpe*  
pleda a ore, pur ceo qa autre jour il avera mesme  
lavantage qe<sup>4</sup> ore ad dallegger discontinuance, &c.

(36.)<sup>5</sup> § *Nota* qen *Replegiari* avowere fait pur rente Reple-  
giari.<sup>6</sup>  
[Fitz.,  
Issue,  
39.]  
service, et parties par assent voleint aver este a  
issue qe tut le maner, dount le lieu ou la prise, &c.,  
se fit,<sup>7</sup> est hors de son fee.—Et WILBY dist qe  
COURT nel soeffra pas forqe sur le lieu.

(37.)<sup>5</sup> § Ravisement de Garde.—*Grene.* Nous vous Ravise-  
ment de  
Garde.<sup>8</sup>  
dioms qe launcestre lenfant soi demist de la terre,  
par resoun de quele il cleime la garde, a un A.  
et a la vie A., a tenir du chief seignur de fee, le  
quel A. attourna a luy, vivant launcestre, et apres  
sa mort il huy ceo jour seisi par sa meyn, &c.; et  
vous dioms qe launcestre tient autre terre dune Alice  
en sokage, par quei, apres sa mort, du lees la mere  
lenfaunt, a qi attient par resoun de nurture, nous  
avoms la garde, et il vint et nous voleit aver tollet

<sup>1</sup> H., le.<sup>2</sup> H., &c., instead of *quo fuit receptor denariorum ipsius Thomæ.*<sup>3</sup> H., il nad; L., de nient, instead of ele neit.<sup>4</sup> H., come.<sup>5</sup> From C., H., and L.<sup>6</sup> H., *Nota.*<sup>7</sup> The words *se fit* are omitted from H.<sup>8</sup> The words *de Garde* are omitted from H.

## No. 38.

A.D.  
1344-5.

deprived us of the wardship, and we did not permit him; judgment whether tort, &c.—*Mutlow*. He has alleged attornment made to us by A. during the life of the ancestor, and also seisin by A.'s hand, after the death of the ancestor; let him hold to one.—*Thorpe*. We have shown that you have another tenant for the time, and we have further shown that we have a right in the wardship, as it is necessary to do on this writ, and to that you do not answer; judgment.—*Mutlow*. The infant's ancestor held of us on the day on which he died; ready, &c.—*Thorpe*. That we admit—that he was your tenant in right.—*Mutlow*. We tell you that A. was enfeoffed to hold of the infant's ancestor and his heirs, performing the services due to the chief lord, so that what A. paid to us was as bailiff of the infant's ancestor; judgment, &c.—*Grene*. He was enfeoffed to hold of the chief lord; ready, &c.—And the other side said the contrary.

*Cui in  
vita.*

(38.) § *Cui in vita*. Which tenements she claims by virtue of a conveyance made to her husband, and herself, and the heirs of their bodies, &c., and into which the tenant has not entry but by her husband.—*Moubray*. We tell you that her husband, while under age, was seised of the same tenements, and aliened them to this same person from whom she takes her title, and this feoffment from which she takes her title was made to her husband and herself while her



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la garde, et nous<sup>1</sup> soeffroms pas; jugement si tort, &c.—*Mutl.* Il ad allegge attournement fait a nous par A. en la vie launcestre, et auxi seisine par sa mein apres la mort launcestre; se tiegne al un.—*Thorpe.* Nous avoms moustre qe vous avetz<sup>2</sup> autre tenant par<sup>3</sup> le temps, et outre nous<sup>4</sup> avoms moustre qe nous avoms dreit en la garde, come il bosoigne<sup>5</sup> en ceo brief, et a ceo vous responez pas; jugement.—*Mutl.* Launcestre lenfant tient de nous jour qil murust<sup>6</sup>; prest, &c.—*Thorpe.* Ceo conissons nous qil fuit vostre tenant en dreit.—*Mutl.* Nous vous dioms qe A. fuit feffe a tener del auncestre lenfant et ses heirs, fesaunt les services dues au chief seignur, issint qe ceo qe A. nous paia fuit come baillif launcestre lenfant; jugement, &c.—*Grene.* Il fuit feffe a tener de chief seignur; prest, &c.—*Et alii e contra.*

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(38.)<sup>7</sup> § *Cui in vita.* Les queux ele cleime du lees fet a son baroun, et luy, et les heirs de lour corps, &c., en les queux le tenant nad entre si noun par son baroun.—*Moubray.* Nous vous dioms qe son baroun deinz age fuit seisi de mesmes les tenementz, et aliena a mesme celuy de qi ele<sup>8</sup> prent son title, et cel feffement dount ele<sup>8</sup> prent son title fuit fait a son baroun et luy tanqe come son

*Cui in  
vita.*  
[Fitz.,  
Remitter  
14.]<sup>1</sup> C., si nous.<sup>2</sup> L., nous avoms, instead of vous avetz.<sup>3</sup> H., pur.<sup>4</sup> nous is from H. alone.<sup>5</sup> C., bussoigne.<sup>6</sup> L., muruyt.<sup>7</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 150. It there appears that the action was brought by Joan late wife of William de Affawille against Robert de Pinho, in respect of one

message and two ferlings of land in Churstowe, or Churchstow-by-Alvington (Devon), "quæ clamat "tenere sibi et heredibus de corpore suo et de corpore prædicti "Willelmi quondam viri sui exeuntibus ex dimissione Adæ de Morechelewylle, et in quæ idem "Robertus non habet ingressum "nisi per prædictum Willelmum "quondam virum ipsius Johannæ, "qui illa ei dimisit."

<sup>8</sup> H., il.

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1344-5. husband was still under age, so this was more properly a re-entry in his first right than an estate which would give a right to the wife; and since by such re-entry he was in his first estate, and so the title of her who now demands was extinguished, judgment whether an action, &c.—*Grene*. We will aver the conveyance made, as above, to our husband and us.—This was not allowed, because this conveyance was admitted.—*Grene*. Your statement is tantamount to saying that we have nothing except as wife.—This exception was not allowed.—Therefore *Grene* said that the husband was of full age at the time of the feoffment made in his favour; ready, &c.—And the other side said the contrary.

Avowry. (39.) § The Abbot of Our Lady of York avowed on the Prior of Drax for cornage and for the repair of his mill-pool as for services regardant to his manor of Whitgift. And a deed of confirmation of the Earl of Lincoln, whose estate in the services the Abbot had, which recited a deed of the Earl's ancestor made to

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baroun fuit deinz age, issint fuit eco plus proprement un reentrer en son primere dreit qe estat qe durreit dreit a la femme; et de puis qe par tiel reentrer il fuit en son primer estat, et issint son tittle qore demande anienti, jugement si accion, &c.<sup>1</sup>—*Grene*. Nous voloms averer le lees fait, *ut supra*, a nostre baroun et nous.—*Non allocatur*, qar ceo est conu.—*Grene*. Vostre dit amounte qe nous navoms forqe come femme.—*Non allocatur*.—Par quei il dit qe de pleine age al temps de la prise del feffement; prest, &c.—*Et alii e contra*.<sup>2</sup>

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(39.)<sup>3</sup> § Labbe Nostre Dame de Everwyke avowa *Avowere*.<sup>2</sup> sur le Priour de Drax pur cornage et reparailer lestaunke<sup>5</sup> de soun molyn com des services regardauntz a son maner de Whitgift. Et le fait del conferment le Count de Nicolle, qi estat Labbe ad en les services, qe recita doun de soun auncestre

<sup>1</sup> The plea was, according to the record, “quod prædicta Johanna  
“ nihil juris clamare potest in  
“ prædictis tenementis per hujus-  
“ modi breve, quia dicit quod  
“ prædictus Willelmus quondam  
“ vir ipsius Johannæ, ante despon-  
“ salia inter eos celebrata, fuit  
“ seiscitus de eisdem tenementis in  
“ dominico suo ut de feodo et jure,  
“ et, infra ætatem existens, feoffavit  
“ prædictum Adam de eisdem tene-  
“ mentis habendis et tenendis sibi  
“ et heredibus suis in perpetuum,  
“ et idem Adam postmodum de  
“ eisdem tenementis feoffavit præ-  
“ dictos Willelmum et Johannam,  
“ eodem Willelmo adhuc infra  
“ ætatem existente, unde, ex quo  
“ idem Willelmus primo infra  
“ ætatem existens feoffavit prædic-  
“ tum Adam in forma prædicta, et  
“ postea cepit statum in eisdem  
“ tenementis infra ætatem, et per

“ consequens in suo priori statu,  
“ petit judicium si prædicta Jo-  
“ hanna ex dimissione prædicta  
“ actionem inde habere debeat, &c.”

<sup>2</sup> The replication, upon which issue was joined, was, according to the record, “quod prædictus  
“ Robertus ipsam per hoc ab  
“ actione sua petendi prædicta  
“ tenementa ratione dimissionis  
“ prædictæ præcludere non debet,  
“ quia dicit quod prædictus Willel-  
“ mus, tempore quo ipse et  
“ prædicta Johanna ceperunt  
“ statum in eisdem tenementis ex  
“ dimissione prædicti Adæ, fuit  
“ plenæ ætatis.”

Nothing further appears on the roll except the award of the *Venire*.

<sup>3</sup> From C., H., and L.

<sup>4</sup> The marginal note is omitted from C.

<sup>5</sup> H., *lestang*.

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the Prior's predecessor to hold by a less service, was pleaded in bar. And they are abiding judgment, inasmuch as the avowant is a stranger, whether the law puts him to answer.—They were adjourned.—See the judgment below.<sup>1</sup>

Formedon. (40.) § Richard Earl of Arundel brought a Formedon in the reverter upon a deed made by his ancestor in the time of King John, and made the descent through Richard<sup>2</sup> his grandfather to Edmund his father, and from Edmund to Richard the present demandant.—*Sadelyngstanes*. Heretofore, in the sixth year of the King the father of the present King, Edmund, the demandant's father, brought a writ of Right in respect of the same tenements against her first husband and the wife who is now party with Thomas de Batesforde her present husband, and described himself as

<sup>1</sup> See Y.B., Trin., 19 Edw. III., No. 30, but the distress is there said to have been for five shillings of rent service.

<sup>2</sup> For the descent, as stated in the record, see p. 519, note 3.

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fait al predecessour le Priour a tener par meindre service, fuit plede en barre. Et sount en jugement, desicome lavowaunt est estraunge, si ley luy mette a respondre.—*Adjournantur.*—*Vide judicium infra.*

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(40.)<sup>1</sup> § Richard Count Darundelle porta Fourme-<sup>Fourme-</sup>doun en *reverti* dun doun fait par son auncestre en <sup>doun.</sup> temps de Roi Johan, et fit la descente par my Richard son aiel a Edmond son pere, de Edmond a R. qore demande.<sup>3</sup>—*Sadl.* Autrefoith, lan vj<sup>4</sup> le Roi pere le Roi qore est, Edmund pere le demandant porta brief de Dreit de mesmes les tenementz vers le primer baroun et la femme qest ore partie ove Thomas Batesforde<sup>5</sup> son baroun, et se noma

<sup>1</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 255. It there appears that the action was brought by Richard Earl of Arundel against Thomas de Batesforde and Matilda his wife, and Thomas Matilda's son, in respect of the manor of Sporle (Norfolk). Thomas son of Matilda made default, and the other two tenants, alleging that they held the entirety of the manor, were admitted to answer in respect thereof.

<sup>2</sup> H., *Reverti*.

<sup>3</sup> According to the record, the count against Thomas de Batesforde and Matilda was "quod . . . Willelmus filius Alani consanguineus [prædicti Comitis] fuit seisitus de prædicto manerio, cum pertinentiis, in dominico suo ut de feodo et jure, . . . tempore Regis Johannis consanguinei domini Regis nunc, . . . qui quidem Willelmus manerium illud dedit . . . Anselmo [de

"Veer] et Hawisiæ [uxori ejus] et heredibus de corporibus suis exeuntibus, per quod donum iidem Anselmus et Hawisia fuerunt inde seisiti . . . Et de ipsis Anselmo et Hawisia, quia obierunt sine herede de corporibus suis exeunte, revertebatur jus, &c., præfato Willelmo ut donatori, &c. Et de ipso Willelmo descendit jus reversionis, &c., cuidam Johanni ut filio et heredi, &c., et de ipso Johanne cuidam Johanni ut filio et heredi, &c. Et de ipso Johanne descendit jus reversionis, &c., cuidam Johanni ut filio et heredi, &c., et de ipso Johanne cuidam Ricardo ut filio et heredi, &c. Et de ipso Ricardo descendit jus, &c., cuidam Edmundo ut filio et heredi, &c. Et de ipso Edmundo descendit jus, &c., isti Ricardo ut filio et heredi qui nunc petit, &c."

<sup>4</sup> H., xvij.

<sup>5</sup> C., and L., Baldesforde; H., B.

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*Edmundus filius Alani* in Latin, and thus supposed Edmund's father to have been named Aleyn; judgment of the count which supposes him to have had the name of Richard.—And they did not dare to abide judgment, because the words of the record were “Edmond Fitz-Aleyn” in French, and not in Latin.<sup>1</sup> Nor would they abide judgment on the ground that the demandant's ancestor, through whom he claims, made use of a writ of Right, which is of a higher nature.—Therefore they traversed the gift.—And the other side said the contrary.

Dower.

(41.) § Dower.—*Moubray*. We tell you that the tenements whereof, &c., and others were in the seisin of the ancestor of the demandant's husband, and that he died seised; and because tenements in Blithe, in which the demand is made, are by custom partible among males, the same tenements descended to the demandant's husband and Agnes, against whom the writ is brought, the daughter of W. brother of the demandant's husband, between whom partition was made, so that this land was allotted to Agnes; judgment whether an action, &c.—*Richemunde*. Seised so that he could endow us.—This was not allowed.—Therefore *Richemunde* said that her husband was sole seised, and died seised, *absque hoc* that there was any partition; ready, &c.—*Moubray*. There was a partition; ready, &c.—*Richemunde*. That is not an answer, because, even though there was a partition, our husband might still have died sole seised as of fee, of which estate we should be dowable.—WILLOUGHBY. Then you ought to have pleaded in a different manner.—Afterwards *Richemunde* took issue on the partition, &c.

Trespass.

(42.) § Trespass in H.—*Grene*. There is no vill

<sup>1</sup> For questions relating to surnames, which arose out of the use of the Latin word *filius*, and the French word *fitz*, see Y.B., 13 and 14 Edw. III., Introd. pp. lxxviii-lxxxii.

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*Edmundus*<sup>1</sup> *filius Alani* en latyn, issint supposa son pere aver noun Aleyn; jugement de count que luy suppose aver noun Richard.<sup>2</sup>—Et ils noserunt pas demurer, qar le recorde voleit Edmond fitz Aleyn en fraunceis, et noun pas en latyn. Ne ils ne voleint demurer de ceo que son auncestre, par qi il cleime, usa le brief de Dreit, qest de plus haut nature.—Par quei il traverserunt le doun.—*Et alii e contra*.<sup>3</sup>

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(41.)<sup>4</sup> § Dowere.—*Moubray*. Nous vous dioms que les tenementz dount,<sup>5</sup> &c., et autres furent en la seisine launcestre le baroun la demandante, et murust<sup>6</sup> seisi; et pur ceo que les tenementz en Blithe, ou la demande est, par usage sont departables entre madles, mesmes<sup>7</sup> les tenementz descendirent al baroun la demandante et Agnes, vers qi le brief est porte, fille W. frere son baroun, entre queux purpartie se fist, issi que cele terre fuit allote a Agnes; jugement si accion, &c.—*Rich*.<sup>8</sup> Seisi<sup>9</sup> si que dower nous pout.—*Non allocatur*.—Par quei il dit que son baroun fuit soul seisi, et murust<sup>6</sup> seisi, saunz ceo qil y avoit purpartie; prest, &c.—*Moubray*. Il y avoit purpartie; prest, &c.—*Rich*. Ceo nest pas respons, qar tut y avoit il purpartie, unqore poait nostre baroun aver devie soul seisi come de fee, de quel estat nous serroms dowable.—*WILBY*. Donques duissetz aver plede par autre manere.—Puis *Rich*. prist issue sur la purpartie, &c.

Dowere.  
[Fitz.,  
Dowere,  
62.]

(42.)<sup>10</sup> § Trans en H.<sup>11</sup>—*Grene*. Il ny ad ville ne

Trans.

<sup>1</sup> C., and L., Thomas.

<sup>2</sup> MSS. of Y.B., Edm.

<sup>3</sup> It appears on the roll that issue was joined on a traverse of the gift, and that the *Venire* was awarded, but nothing further.

<sup>4</sup> From C., H., and L.

<sup>5</sup> dount is omitted from C.

<sup>6</sup> L., murust.

<sup>7</sup> mesmes is omitted from H.

<sup>8</sup> L., *R. Thorpe*.

<sup>9</sup> Seisi is omitted from C.

<sup>10</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III, R<sup>o</sup> 275. It there appears that the action was brought by Edmund Heryard, of Holt, against John de Notyng- ham, of Uppingham, and five others, in respect of a trespass and assault at "Halyoke" (Northants).

<sup>11</sup> C., and H., F.; L., V.

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or hamlet in the county of Northampton, in which the writ is brought, known by such a name, but H. is a vill in the county of Leicester; judgment of the writ.—*Rokele*. H. is a place in the county of Northampton which is neither in a vill nor in a hamlet; ready, &c.; judgment whether my writ be not sufficiently good.—*Grene*. You cannot say that unless you say that it is a large district.—*Rokele*. I will aver that which I have said, and that is sufficient for me.—*WILLOUGHBY*. That is true.—*Grene*. There is no such place out of vill or hamlet in the county of Northampton; ready, &c.—And the other side said the contrary.

Covenant. (43.) § Covenant was brought against a woman and her son by two chaplains, and they counted by *Seton* that an agreement was made, &c., that the husband<sup>1</sup> and wife should enfeoff the chaplains, and that they, having had plenary seisin of the tenements, should re-enfeoff the husband<sup>1</sup> and wife and a third person, and *Seton* made *profert* of a deed which testified the facts.

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<sup>1</sup> There was no husband of Margery mentioned in the declaration on the roll, but only her son. See p. 523, note 8.



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hamelle el counte de Northamtone, ou le brief est porte, conu par tiel noun, mes H.<sup>1</sup> est ville el counte de Leycestre; jugement du brief.<sup>2</sup>—*Rokel.* H.<sup>1</sup> est une place el counte de Northamtone qe nest en ville nen hamelle; prest, &c.; jugement si moun brief ne soit assetz bon.<sup>3</sup>—*Grene.* Ceo ne poietz dire si vous ne dietz qe cest un graunt pays.—*Rokel.* Jeo voille averer moun dit, et ceo moi suffit.—*WILBY.* Il est verite.—*Grene.* Il ny ad nulle tel place hors de ville ou<sup>4</sup> hamelle el counte de Northamtone; prest, &c.—*Et alii e contra.*<sup>5</sup>

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(43.)<sup>6</sup> § Covenant porte vers une femme et son fitz par ij chapeleins, [et counterent par *Setone* qe acorde se prist, &c., qe le baroun et la femme feffereint les chapeleins],<sup>7</sup> et qe eux ount eu de cel plenere seisine, refeffereient le baron et la femme et le terce, &c., et moustra fait qe le tesmoigne.<sup>8</sup>—

Covenant.  
[Fitz.,  
Varians,  
65.]

<sup>1</sup> C., and H., F.; L., V.

<sup>2</sup> According to the record the plea was “quod non est aliqua talis villa nec hamelettus in in prædicto Comitatu qui vocatur Halyoke. Et hoc parati sunt verificare, et petunt iudicium de brevi.”

<sup>3</sup> The replication was, according to the record, “Edmundus non dedicit quin Halyoke non sit villa nec hamelettus, set dicit quod Halyoke est quidam locus qui est extra quamlibet villam et quodlibet hamelettum, in quo quidem loco transgressio prædicta facta fuit, et in quo breve de Transgressione manuteneri debet, unde petit iudicium, &c.”

<sup>4</sup> H., ne.

<sup>5</sup> The rejoinder, upon which issue was joined, was, according to the record, “quod non est talis locus qui vocatur Halyoke extra quam-

“libet villam seu hamelettum in Comitatu prædicto.”

The award of the *Venire* and adjournments only follow.

<sup>6</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 222. It there appears that the action was brought by William, Vicar of the church of “Castelemeleghe” (Elmley Castle, Worcestershire), and William de Edbrytone, chaplain, against Margery late wife of Thomas de Hynetone, and Odo her son, in respect of one messuage, one carucate of land, five acres of meadow, five acres of pasture and 20s. of rent in Hynetone (Hinton, Gloucestershire).

<sup>7</sup> The words between brackets are omitted from H.

<sup>8</sup> According to the record the count or declaration was “quod, cum . . . . convenisset

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—*Mutlow* took exception to the writ on the ground that in the specialty the woman's son had a surname of his own, and none in the writ, but was there described only as the son of, &c.—This exception was not allowed.—And afterwards he took exception to the writ on the ground that it was supposed that the woman and her son were parties to the covenant of the one part, and the chaplains and one Hugh of the other part, which Hugh is not named in the writ, and he is named in the specialty, and so the writ is at variance with the specialty.—This exception was not allowed: for by the covenant Hugh is not to take any profit, but is named only for the sake of testification, and for that purpose he is named and his seal affixed.—Therefore *Mutlow* again demanded judgment of the writ, because a third person who was to take an

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*Mutl.* chalengea le brief de ceo qen lespecialte le fitz la femme avoit propre surnoun, et en brief<sup>1</sup> nulle forqe un tiel, fitz, &c.—*Non allocatur.*—Et puis de ceo qe suppose est qe al covenant furent la femme et son fitz parties dune part, et les chapeleins et un Hughe dautre part, quel Hughe nest<sup>2</sup> pas nome el brief, et en lespecialte est il nome, issi le brief variaunt del<sup>3</sup> especialte.—*Non allocatur*: qar par le covenant il nest pas a prendre profit, mes par cause de tesmoignaunce nome, et a cel regarde est il nome, et son seal mys.—Par quei unqore il demande jugement du brief, qar le terce qe

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“ inter prædictos Margeriam et  
 “ Odonem, ex parte una, et  
 “ Hugonem de Cokeseye tunc  
 “ senescallum Thomæ Comit  
 “ Warrewikiæ in Comitatu Glouce  
 “ triæ, ex altera, per scriptum  
 “ indentatum inter prædictos Mar  
 “ geriam et Odonem et Hugonem  
 “ factum, scilicet, quod prædicti  
 “ Margeria et Odo feoffarent præ  
 “ dictos Willelmum et Willelmum  
 “ de omnibus terris et tenementis,  
 “ redditibus et servitiis, cum  
 “ pertinentiis, quæ habent in  
 “ Hynetone, habendis et tenendis  
 “ sibi et heredibus suis in per  
 “ petuum, et iidem Willelmus  
 “ et Willelmus, habita inde plena  
 “ et pacifica seisina, concederent  
 “ et dimitterent eadem tenementa,  
 “ cum pertinentiis, prædictis Mar  
 “ garetæ et Odoni et Ingelramo  
 “ fratri ejusdem Odonis, tenenda  
 “ ad terminum vitæ ipsorum  
 “ Margeriæ, Odonis, et Ingelrami,  
 “ et quod post decessum ipsorum  
 “ Margeriæ, Odonis, et Ingelrami,  
 “ prædicta tenementa, cum per  
 “ tinentiis, remanerent Thomæ  
 “ Comiti Warrewikiæ et heredibus  
 “ de corpore suo procreatis, et  
 “ si idem Comes sine herede

“ de corpore suo procreato obiret,  
 “ eadem tenementa, cum pertinen  
 “ tiis, rectis heredibus ipsius  
 “ Comitæ remanerent, Et, in  
 “ casu quo prædicti Margeria,  
 “ Odo, et Ingelramus pro diversis  
 “ gravaminibus et prosecutionibus,  
 “ et malicia dominorum et vicino  
 “ rum, non poterunt in prædictis  
 “ tenementis manere in pace,  
 “ prædictus Comes vel heredes  
 “ sui tenerentur eis facere debita  
 “ escambia de terris prædicti  
 “ Comitæ prout utraque pars  
 “ consentire poterit, Et quod  
 “ istas conventiones deberent  
 “ perficere citra festum Sancti  
 “ Michaelis tunc proximo sequens,  
 “ prædicti Margeria et Odo, licet  
 “ sæpius requisiti, prædictam con  
 “ ventionem hucusque facere  
 “ contradixerunt, et adhuc contra  
 “ dicunt, unde dicunt quod  
 “ deteriorati sunt et damnum  
 “ habent ad valentiam ducentarum  
 “ librarum. Et inde producent  
 “ sectam, &c. Et proferunt hic in  
 “ Curia prædictum scriptum inden  
 “ tatum quod hoc testatur, &c.”

<sup>1</sup> H., count.

<sup>2</sup> L., ne fuit.

<sup>3</sup> H., al.

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estate with the woman and her son, and who was to take an estate through this covenant, was not named. —This exception was not allowed: for, although he is afterwards to have an estate by feoffment from the chaplains, yet inasmuch as the chaplains who are now plaintiffs were to take the estate, he is not a party, and with respect to that alone is the covenant now in demand.—*Mutlow*. The specialty purports that the covenant was made between the woman and her son of the one part and Hugh of the other part, that is to say, that the woman and her son were to enfeoff the chaplains, so that Hugh is a party to the covenant and contract, and the chaplains are not, and now Hugh, who is an immediate party, is not named, but the chaplains who are not parties are named; judgment of the writ.—*Seton*. Although Hugh was named, he is not in effect a party, but a conveyer of the covenant of another person, which does not sound in any way to his advantage; and *Mutlow's* plea is to our action; judgment, and we pray our damages.—*Mutlow*. And we pray judgment of this writ which supposes

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prendreit<sup>1</sup> estat ove la femme et son fitz, et qest a prendre estat par my ceo covenant, nest pas nome.—*Non allocatur*: qar, tut avera il apres estat par feffement des chapeleins, unqore en ceo qe les chapeleins qore se pleignent prendrent estat il nest pas partie, et de ceo est le covenant a ore soulement demande.—*Mutl.* Lespecialte voet qe le covenant se prist entre la femme et son fitz dune part et Hughe dautre part, saver, qe la femme et son fitz feffereint les chapeleins, issint qe Hughe est partie al covenant et contracte, et les chapeleins pas, et ore Hughe nest pas nome, qest directe partie, mes les chapeleins qe ne sount pas parties; jugement du brief.<sup>2</sup>—*Setone.* Tut fuit Hughe nome, il nest pas partie en effecte mes conveieur dautri covenant, qe ne soune rien en avantage de luy; et son plee est a nostre accion; jugement, et prioms nos damages.<sup>3</sup>—*Mutl.* Et nous jugement de ceo brief

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<sup>1</sup> C., perdreit.

<sup>2</sup> This plea in abatement of the writ was, according to the roll, "quod, cum prædicti Willelmus et Willelmus per breve et narrationem sua nituntur disrationare prædictam conventionem inter ipsos Willelmum et Willelmum, querentes, et eosdem Margeriam et Odonem factam, et ad probationem hujus conventionis profecerunt hic in Curia prædictum scriptum indentatum inter ipsos Margeriam et Odonem et quemdam Hugonem de Cokeseye confectum, in quo quidem scripto nullus loquitur ex una parte nisi prædictus Hugo, et ex hoc sequitur quod prædictum breve non warantzatur per scriptum illud, petunt iudicium si virtute illius scripti, quod non probat aliquam conventionem inter

" prædictos Willelmum et Willelmum et prædictos Margeriam et Odonem factam, ad hoc breve responderi debeant, &c."

<sup>3</sup> The replication was, according to the record, "quod licet prædictum scriptum quod ipsi superius protulerunt sit inter prædictum Hugonem et prædictos Margeriam et Odonem confectum, nihilominus proficuum illius conventionis mere pertinet ad ipsos Willelmum et Willelmum primo capiendum, in quo casu nullus actionem habere potest nisi ille vel illi ad quorum emolumentum illa conventio facta fuit, et in prædicto scripto evidenter apparet quod illa conventio facta fuit per prædictum Hugonem ad emolumentum ipsorum Willelmi et Willelmi, et postmodum ad refeoffandum

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1344-5. that which is false, that is to say, that the chaplains were parties.—They were adjourned.

(44.) § Covenant for the executors of Nicholas de Wedergrave against the Prior of St. John of Jerusalem, &c., in respect of manors and tenements which belonged to the Templars in the county of Somerset, to wit, Load, and several other places. And they counted that a lease was made by the Prior's predecessor to their testator for his life, so that, if he should die

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que suppose un faux, saver, que les chapeleins furent parties.<sup>1</sup>—*Adjournantur.* A.D. 1344-5.

(44.)<sup>2</sup> § Covenant pur les executours Nichol de Wedergrave vers le Priour Seint Johan de Jerusalem, &c., des maners et tenementz que furent as Templers el counte de Somerset, saver, Lode, et autres plusours lieux. Et counterent que le lees par le predecessour le Priour fuit fait a lour testatour a sa vie, issi que

Covenant.  
[Fitz.,  
Covenant  
24.]

“ prædictos Margeriam et Odonem  
“ et quendam Ingelramum fratrem  
“ ejusdem Odonis tenendum ad  
“ terminum vitæ eorundem, et  
“ post decessum eorundem Mar-  
“ gerie, Odonis, et Ingelrami  
“ remanere talliatum prædicto  
“ Comiti Warrewikiæ certis con-  
“ ditionibus in eodem scripto  
“ contentis, et prædictus Hugo non  
“ est pars huic conventioni nisi ad  
“ commodum alienum, petunt  
“ judicium et damna sibi adjudi-  
“ cari, &c.”

<sup>1</sup> The rejoinder was, according to the record, “ quod, ex quo prædictum scriptum quod prædicti Willelmus et Willelmus superius protulerunt ad actionem suam manutenendam non concordat brevi et demonstrationi ipsorum Willelmi et Willelmi in hoc quod quædam extranea persona loquitur in eodem scripto, et non prædicti Willelmus et Willelmus, unde petunt judicium, &c.”

After adjournments the parties appeared, and Margery and Odo pleaded “ quod prædictus Willelmus de Ebrytone, postquam ipsi placitaverunt, per scriptum suum remisit, relaxavit, et omnino in perpetuum quietum clamavit prædictis Margerie et Odoni omnimodas actiones, querelas,

“ et demandas, quas habuit vel  
“ aliquo modo habere poterit  
“ versus eos ratione cujusdam  
“ conventionis factæ inter ipsos  
“ Margeriam et Odonem, ex una  
“ parte, et prædictum Hugonem de  
“ Cokeseye ex altera, . . . . .  
“ prout in prædicta indentura inde  
“ inter eos plenius continetur, ac  
“ etiam cujuscumque alterius con-  
“ tractus, &c. Ac proferunt hic in  
“ Curia prædictum scriptum sub  
“ nomine prædicti Willelmi de  
“ Ebrytone quod hoc testatur.  
“ . . . . . Et hoc parati  
“ sunt verificare, unde petunt  
“ judicium, &c.”

To this was pleaded “ Non est factum.” upon which issue was joined. The *Venire* was awarded as to the witnesses to the deed and jurors, but further adjournments only appear upon the roll.

<sup>2</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 345, d. It there appears that the action was brought (in the County of Somerset) by Andrew de Welles, parson of the church of Shepham (Shipham, Somerset) and John Danyel, as executors of the will of Nicholas de Wedergrave, against Philip de Thame, Prior of the Hospital of St. John of Jerusalem in England.

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within twelve years, the executors should hold till the end of the term above-mentioned. And they counted that the testator was seised and died seised within the term, and that after his death the defendant entered. And in counting they mentioned manors only, without specifying other tenements; and exception was taken to this.—*Huse*. All that was leased was only the manors, and though the writ and the count make mention of tenements which might be understood to be other than the manors, that is only for the purpose of being in accordance with the specialty.—And the count was adjudged good by WILLOUGHBY.—*Grene*. Show that they are executors.—*Huse* made *profert* of a will in which executors other than the plaintiffs were named, and not one of the plaintiffs, for the probate of the will purported and supposed that not one of those who were named would accept administration, for which reason the Ordinary gave administration to those who bring the writ.—*Grene*. The will proves



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sil deviaſt deinz les xij aunz qe les executours tiendreit a la fyne del terme ſuſdit. Et counterent qil fuit ſeisi et muruſt<sup>1</sup> ſeisi deinz le terme, apres qi mort le defendaunt entra. Et en countant fit mencion des maners ſoulement sanz parler des autres tenementz; qe fut chalenge.—*Huse*. Quant qe fuit lesse ne fuit forqe les maners, et ceo qe brief et counte fount mencion des tenementz qe duist estre entendu autre qe les maners, ceo nest forqe pur acorder al especialte.—Et le count par WILBY agarde bon.—*Grene*. Mouſtretz qils ſount executours.—*Huse* mist avant testament en quel autres executours qe les pleintifs furent nomes, et nulle des pleintifs, qar le prove del testament voleit et supposa qe nulle de ces qe fuit nome voleit prendre administracion, par quei Ordeigner bailla administracion a ces qe portent le brief.<sup>2</sup>—*Grene*. Le testament prove qe

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1344-5.<sup>1</sup> L., muruſt.

<sup>2</sup> Except the words between brackets, which occur in the writ, the declaration and *profert* were, according to the record, as follows:—"quod cum, vicesimo nono die Octobris anno regni domini Regis Edwardi patris domini Regis nunc decimo octavo in Warda de Faryndone Londoniarum convenisset inter prædictum Priorem, ex consensu fratrum suorum, et ipsum Nicholaum, videlicet quod idem Prior, per consensum fratrum suorum, dimitteret eidem Nicholao . . . maneria et tenementa quæ fuerunt Templariorum, videlicet Lode, Mertoke, Templecombe, Babyngtone, Hydone, Worle, Westcomelond, Godeleghe, et Wylytone, cum pertinentiis, eidem Nicholao, ad terminum vitæ suæ, sub tali conditione quod si idem Nicholaus infra

"terminum duodecim annorum  
 "[decesserit], prædicta terræ et  
 "tenementa heredibus, executori-  
 "bus, [vel assignatis suis],  
 "quousque duodecim anni [a  
 "tempore dimissionis eorundem],  
 "plenarie [completi fuerint], re-  
 "manerent, de quibus terris et  
 "tenementis ipse Nicholaus fuit  
 "seisitus, &c., octavo die proximo  
 "post conventionem prædictam,  
 "Et postea, die Lunæ proximo  
 "post festum Sancti Edmundi  
 "Regis et Martyris anno regni  
 "Regis nunc quinto, idem Nicho-  
 "laus obiit, post cujus mortem  
 ". . . . . præfa-  
 "tus Thomas Prior, &c., terras et  
 "tenementa prædicta intravit, et  
 "seisinam suam inde diu continua-  
 "vit, per quod prædicti executores  
 "requisiverunt præfatum Thomam  
 "Priorem, &c., quod ipse conven-  
 "tionem supradictam teneret, &c.,  
 "et, post mortem ejusdem Thomæ

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that others are executors.—*Huse*. The others are dead.—*Grene*. At any rate the will does not make you executors.—*Huse*. That is to our action.—*Grene*. Suppose you were to have suit, how ought you to be described? as meaning to say not as executors, because the Ordinary in such a case does not make them executors, but grants them administration of the goods.—*WILLOUGHBY*. When the Ordinary himself cannot have such an action, how can he give the action to another?—*Huse*. If he will abide judgment there, it is to our action; and suppose any one makes a nuncupative will, and afterwards the Ordinary appoints those who are named, will they not have an action?—*WILLOUGHBY*. In that case they are executors, and deputed by the testator; and although an Ordinary can assign administrators of the deceased, he cannot give an action for them, which action he has not himself.—*STONORE*. It is unheard of that those to whom administration has been entrusted by an Ordinary have had any action except in respect of the goods of

“ Prioris, prædictus Prior nunc  
 “ terras et tenementa prædicta  
 “ intravit, quem quidem Priorem  
 “ nunc præfati executores sæpius  
 “ requisiverunt quod ipse conven-  
 “ tionem illam eis teneret, &c.,  
 “ præfatus Thomas Prior, tempore  
 “ suo, et prædictus Prior nunc, licet  
 “ sæpius requisiti, conventionem  
 “ prædictam tenere omnino recu-  
 “ sarunt, et idem Prior nunc eam  
 “ tenere adhuc contradicit, unde  
 “ dicunt quod deteriorati sunt et  
 “ damnum habent ad valentiam  
 “ mille librarum. Et inde produ-  
 “ cunt sectam, &c. Et proferunt  
 “ hic quoddam scriptum indenta-  
 “ tum sub nomine præfati Thomæ  
 “ Prioris, &c., et fratrum ejusdem  
 “ Hospitalis, sigillo suo communi  
 “ signatum, quod prædictam con-  
 “ ventionem testatur, &c. Pro-

“ ferunt etiam hic literas præfati  
 “ Nicholai testamentarias, quæ  
 “ testantur quod idem Nicholaus  
 “ condidit testamentum suum apud  
 “ Welles in domo Sancti Johannis,  
 “ die Lunæ proximo ante festum  
 “ Sancti Edmundi Regis anno  
 “ domini millesimo trescentesimo  
 “ tricesimo primo, et constituit  
 “ executores suos, videlicet quos-  
 “ dam Magistrum Laurentium de  
 “ la Bare, Willelmum de Cherle-  
 “ tone, Adam de Cheleworthe, et  
 “ Thomam de la Haye, et eorum  
 “ coadjutorem quendam Thomam  
 “ de Comptone, ita quod si con-  
 “ tingeret unum eorum aut duos  
 “ interesse non posse quod duo  
 “ eorum facerent administrati-  
 “ onem, &c., cum prædicto  
 “ coadjutore. &c., quod quidem  
 “ testamentum probatum fuit

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autres sount executours.—*Huse.* Les autres sount mortes.—*Grene.* Au meins le testament ne vous fet pas executours.—*Huse.* Cest a nostre accion.—*Grene.* Jeo pose qe vous duissetz aver suyte, coment serretz vous nome? *quasi diceret* noun pas executours, qar Lordeigner en tiel cas les fait pas executours, mes les grant<sup>1</sup> administracion des biens.<sup>2</sup>—*WILBY.* Quant Lordeigner mesme ne pout pas aver tiel accion, coment poet<sup>3</sup> il doner laccion a autre?—*Huse.* Sil voleit la demurer, cest a nostre accion; et jeo pose qe homme face testament nuncupatif, et puis Lordeigner mette celes nomes,<sup>4</sup> naverount ils pas accion?—*WILBY.* La sount ils executours, et depute par le testatour; et coment qe Ordener purra assigner administratours<sup>5</sup> le mort, il ne poet doner accion pur eux quel accion il navoit pas mesme.—*STON.* Homme nad pas oy qe ces as queux administracion par Ordeigner fuit baile avoint accion forqe des

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“ coram Roberto de Westone,  
“ auditore et Commissario domini  
“ Simonis Cantuariensis Archie-  
“ piscopi diocesim Bathoniensem  
“ et Wellensem jure metropolitano  
“ actualiter visitante.

“ Et idem Commissarius pro eo  
“ pronunciavit. Et quia omnes  
“ prædicti executores in testa-  
“ mento prædicto nominati, excepto  
“ Laurentio de la Barre, qui  
“ tempore probationis ejusdem  
“ testamenti in partibus extitit  
“ transmarinis, administrationem  
“ bonorum prædicti Nicholai recu-  
“ sarunt admittere, administrati-  
“ onem bonorum ejusdem defuncti  
“ idem Commissarius ex officio suo  
“ commisit præfatis Andree de  
“ Welles, rectori de Shepham, et  
“ Johanni Danyel, et eisdem depu-  
“ tavit coadjutorem præfatum  
“ Thomam de Comptone juxta  
“ dispositionem prædictam, &c.”

<sup>1</sup> H., baile.

<sup>2</sup> The plea was, according to the record, “ quod, cum prædicti  
“ Johannes et Andreas utantur  
“ isto brevi de Conventione versus  
“ ipsum Priorem, nominando ipsos  
“ executores testamenti prædicti  
“ Nicholai, nihil Curie hic osten-  
“ dendo testificans ipsos fore execu-  
“ tores testamenti ejusdem Nicholai  
“ per eundem Nicholaum in testa-  
“ mento suo constitutos, sed tantum  
“ ipsos administratores bonorum  
“ dicti Nicholai per Ordinarium,  
“ &c., ex officio, &c., deputatos  
“ fuisse, ut est dictum, [Prior]  
“ petit judicium si prædicti  
“ Andreas et Johannes ut execu-  
“ tores testamenti prædicti Ni-  
“ cholai breve istud versus eum in  
“ hoc casu manutenere possit, &c.”

<sup>3</sup> C., poietz.

<sup>4</sup> C., and L., nouns.

<sup>5</sup> C., and L., administrours.

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which they have been seised and from which they have been ousted.—*Skipwith, ad idem*. If four persons be made executors by the testator, and two of them administer, and the other two do not, those who administer will not have an action without the others who are named, because they could release, and it is thereby proved that administration does not give an action unless those who administer are executors also.—*WILLOUGHBY*. That is true; and it is also possible that those who are named as executors will employ an action afterwards in respect of the same matter.—*Huse*. We will aver that those who are named as executors are dead, wherefore no one else can have an action.—*Sadelyngstanes*. Certainly not, for an executor of an executor has been forjudged of action by judgment in this Court.—*Pole*. It is certain that the executor of an executor will have an action.—They were adjourned.—Judgment below.<sup>1</sup>

Avowry.

(45.) § Margaret de Dacre avowed for cornage and other services.—*Moubray*. We tell you that one Ada,

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<sup>1</sup> See p. 535, note 4. And see Y.B., Easter, 19 Edw. III., No. 2, for the conclusion of the report.

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biens dont ils furent seisis et oustes.—*Skip.*, *ad idem*. Si iiij soient faitz executours par le testatour, et les deux administrent, et les autres deux nient, ceux qe administrent naverount pas accion saunz les autres nomes, qar ils pount relessen, et par tant est prove qe administracion ne doune pas accion saunz ceo qils fuissent<sup>1</sup> executours ovesqe.—*WILBY*. Il est verite; et possible auxint est qe ces qe sont nomes executours<sup>2</sup> voillent user accion apres de mesme la chose.—*Huse*. Nous voloms averer qe ces qe sont nomes executours sont mortz, par quei autre ne pout aver accion.—*Sadl*. Noun certes, qar executour dexecutour<sup>3</sup> ad este forjuge daccion par agarde ceinz.—*Pole*. Il est certain qe executour dexecutour avera accion.—*Adjornantur*.—*Judicium infra*.<sup>4</sup>

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(45.)<sup>5</sup> § Margarete<sup>6</sup> Dacre avowa pur cornage et autres services.<sup>7</sup>—*Moubray*. Nous vous dioms qune Avowere.

<sup>1</sup> H., ne fuissent.

<sup>2</sup> executours is from L. alone.

<sup>3</sup> dexecutour is omitted from L.

<sup>4</sup> According to the roll, after an adjournment, "quæsitum est a prædictis Andrea et Johanne si aliquid aliud ostendere velint, per quod liquere potest Curia ipsos fore executores testatoris prædicti. Dicunt quod non. Et quia videtur Curia hic quod literæ quas superius hic ostenderunt non testantur ipsos Andream et Johannem esse executores prædicti Nicholai per ipsum Nicholaum constitutos, sed tantum administratores bonorum ejusdem Nicholai per Ordinarium deputatos, consideratum est quod iidem Andreas et Johannes nihil capiant per breve istud, sed sint in misericordia pro falso clamore, &c. Et Prior inde sine die."

<sup>5</sup> From C., H., and L., but

corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 173. It there appears that the action was brought by Robert de Whyteryghe against Margaret de Dacre, in respect of a taking of one horse, three oxen, and one cow.

<sup>6</sup> H., Margerie.

<sup>7</sup> According to the record the avowry was on the plaintiff, "quia . . . prædictus Robertus tenet de ea quinque mesuagia et decem bovatas terræ in . . . villa de Burghe super Sabulones . . . per homagium, fidelitatem, et servitium duorum solidorum et unius denarii ad cornagium per annum, . . . quod quidem cornagium attra[h]it ad se custodiam et maritagium secundum usum in Comitatu prædicto usitatos, et faciendi sectam ad curiam ipsius Margarete de Burghe super

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*Haverington.* We and our ancestors have been seised

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Ade, sauncestre, qi heir ele est, conferma a nostre auncestre a tenir par feaute et une rose pur touz services; jugement si pur autres services puissetz avower.<sup>1</sup>—*Har.* Nous et nos auncestres seisiz par

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“ Sabulones de tribus septimanis  
 “ in tres septimanas, et per servi-  
 “ tium faciendi et reparandi  
 “ stagnum molendini dictæ Mar-  
 “ garetæ in prædicta villa de  
 “ Burghe, quandocumque idem  
 “ stagnum sit fractum, videlicet  
 “ cum præmunitus fuerit per  
 “ servientem dictæ Margaretæ  
 “ villæ prædictæ, inveniendi unum  
 “ hominem operantem in stagno  
 “ prædicto quolibet die quousque  
 “ idem stagnum sufficienter sit  
 “ factum et reparatum, et per  
 “ servitium molendi omminoda  
 “ blada sua crescentia in prædictis  
 “ decem bovatis terræ ad prædic-  
 “ tum molendinum ad tertium  
 “ decimum vas, de quibus servitiis  
 “ prædicta Margareta fuit seisita  
 “ per manus prædicti Roberti ut  
 “ per manus veri tenentis sui. Et  
 “ quia prædictum servitium de  
 “ cornagio eidem Margaretæ aretro  
 “ fuit per duos annos integros ante  
 “ diem captionis prædictæ, et etiam  
 “ quia stagnum molendini præ-  
 “ dicti fractum fuit per fluxus  
 “ aquæ die Lunæ proxima post  
 “ festum Purificationis beatæ  
 “ Mariæ proximum ante diem  
 “ captionis prædictæ, et idem  
 “ Robertus die Martis tunc proxime  
 “ sequente per quendam Johannem  
 “ de Pulhowe servientem dictæ  
 “ Margaretæ villæ prædictæ præ-  
 “ munitus fuit mittendi unum  
 “ hominem ad faciendum et  
 “ reparandum stagnum prædic-  
 “ tum, et idem Robertus aliquem  
 “ hominem ad idem stagnum  
 “ faciendum et reparandum mit-

“ tere recusavit, cepit ipsa equum  
 “ prædictum pro prædicto servitio  
 “ de cornagio aretro existente. Et  
 “ quia idem Robertus ad prædic-  
 “ tum stagnum faciendum et  
 “ reparandum in forma prædicta  
 “ unum hominem operantem  
 “ ibidem invenire recusavit, cepit  
 “ ipsa tres boves et vaccam præ-  
 “ dictos in prædicto loco ut in  
 “ parcella, &c., et infra feodum  
 “ suum, prout ei bene licuit, &c.”

<sup>1</sup> According to the record,  
 Robert's plea was (“ protestando  
 “ quod ipse non cognoscit quod  
 “ prædicta Margareta fuit seisita  
 “ de servitiis prædictis per manus  
 “ ipsius Roberti, prout in advocare  
 “ suo prædicto dixit) dicit quod  
 “ quædam Ada de Moreville, quon-  
 “ dam uxor Willelmi de Furni-  
 “ valle, consanguinea prædictæ  
 “ Margaretæ, cujus heres ipsa est,  
 “ fuit seisita de duobus toftis et  
 “ decem bovatis terræ, cum perti-  
 “ nentiis, in prædicta villa de  
 “ Burghe super Sabulones, quæ  
 “ sunt eadem tenementa quæ præ-  
 “ dicta Margareta in advocare suo  
 “ prædicto nominavit per nomen  
 “ quinque mesuagiorum et decem  
 “ bovatarum terræ, in dominico suo  
 “ ut de feodo, quæ quidem Ada  
 “ in legia viduitate sua eadem  
 “ tenementa per chartam suam  
 “ dedit Roberto de Whyterigge  
 “ patri ipsius Roberti, cujus heres  
 “ ipse est, Tenenda et habenda  
 “ sibi et heredibus de corpore  
 “ suo procreatis, de ipsa Ada et  
 “ heredibus suis in perpetuum,  
 “ reddendo inde annuatim eidem

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by the hand of him and of his ancestors from time whereof there is no memory, *absque hoc* that, since time of memory, we had any such ancestor; ready, &c.—*Moubray*. Not admitting your seisin, &c., we tell you that you had such an ancestor since time of memory; ready, &c.—And the other side said the contrary.



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sa mein et de ses auncestres de temps dount il ny ad memore, sauuz ceo qe nous avioms puis temps de memore nulle tiel auncestre; prest, &c.<sup>1</sup>—*Moubray*. Nient conissaunt vostre seisine, &c., vous dioms qe vous avietz tiel auncestre puis temps de memore; prest, &c.—*Et alii e contra*.<sup>2</sup>

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“ Adæ et heredibus suis unum denarium ad festum Paschæ pro omnibus servitiis. Et obligavit se et heredes suos ad warrantandum, &c. Et profert hic prædictam chartam quæ hoc testatur, &c. Et de ipsa Ada descendit servitium prædictum denarii cuidam Helewisæ ut filiæ et heredi, et de ipsa Helewisia, &c., cuidam Adæ ut filiæ et heredi, et de ipsa Ada, quia obiit sine herede de se, resortiebatur servitium prædictum cuidam Johannæ sorori prædictæ Adæ de Moreville. Et de ipsa Johanna descendit servitium prædictum cuidam Thomæ de Multone ut filio et heredi, et de ipso Thoma, &c., cuidam Thomæ ut filio et heredi, &c., et de ipso Thoma, &c., cuidam Thomæ ut filio et heredi, &c., et de ipso Thoma, &c., cuidam Thomæ ut filio et heredi, &c. Et de ipso Thoma descendit servitium prædictum isti Margarete quæ modo advocat ut filiæ et heredi, &c. Et petit judicium si prædicta Margareta pro prædicto servitio de cornagio seu pro reparatione stagni prædicti super ipsum Robertum advocare possit, &c.”

<sup>1</sup> Margaret's replication was, according to the record, “ quod ipsa et antecessores sui, a tempore quo non extat memoria, fuerunt seisiti de omnibus servitiis præ-

“ dictis pro quibus ipsa modo advocavit, &c., per manus prædicti Roberti et antecessorum suorum, et illorum qui prædicta mesuagia et terram tenuerunt, absque hoc quod ipsa Margareta unquam post tempus memoriæ habuit aliquam antecessorem quæ nominabatur Ada de Moreville quondam uxor Willelmi de Furnivalle, quæ prædictum Robertum patrem, &c., feoffavit, sicut prædictus Robertus supponit. Et hoc parata est verificare, unde petit judicium, &c.”

<sup>2</sup> Robert's rejoinder, upon which issue was joined, was, according to the record (“ protestando quod ipse non cognoscit quod prædicta Margareta et antecessores sui fuerunt seisiti de servitiis prædictis in forma prædicta) dicit quod post tempus memoriæ prædicta Margareta habuit quandam antecessorem quæ nominabatur Ada de Moreville quondam uxor Willelmi de Furnivalle, et quæ prædictum Robertum de White-rigge, patrem ipsius Roberti, de prædictis tenementis feoffavit tenendis in forma qua ipse superius dixit.”

There follows on the roll as part of the same case, a verdict found at *Nisi prius* in the twenty-first year of the reign “ quod Adam de Cliftone dedit tenementa infra scripta prædictis Willelmo le

## No. 46.

A.D.  
1344-5.  
Waste.

(46.) § John de Handlo heretofore brought a writ of Waste, as appears above; and as to parcel the defendant pleaded to the inquest on a traverse of the waste, and as to the rest abode judgment whether an action of Waste, &c., because as to some houses which were fallen to ruin the plaintiff granted to him to make his profit, and also as to a mine of iron-stone and sea-coal granted to him to make his profit. And the defendant made *profert* of the plaintiff's deed "*quod hoc testatur*," and the enrolment is in those words. And the plaintiff abode judgment whether by virtue of such a deed the defendant could excuse himself of waste: for it was not expressly granted to him by the deed that he could commit waste, or do any thing else but that which the common law gives; and upon this they now have a day.—The defendant, being now questioned, had not the deed in Court, whereupon *R. Thorpe* demanded judgment on the ground that he had not the specialty in virtue of which he had avowed the waste, and prayed that he might be convicted of the waste, and prayed seisin and an inquest to enquire as to the damages.—*Moubray*. The effect of the deed by which we are to be aided is entered on the roll, and admitted by the party, and upon that we are abiding judgment by plea heretofore pleaded, as is of record on the roll; therefore there is no need to have the specialty as there would be if we were in the position that issue would have to be taken upon it. And suppose I had avowed the waste in virtue of such a deed as I have

## No. 46.

(46.)<sup>1</sup> § Johan Hanlo porta autrefoith brief de Wast, *ut patet supra*; et quant a parcelle le defendant pleda al enqueste sur travers del wast, et del remenant demura en jugement si accion de Wast, &c., pur ceo qe quant as mesouns ruynouses le pleintif luy graunta de faire son profit, et auxi de miner de fere<sup>2</sup> et carbouns de miere il luy graunta de fere son profit. *Et profert scriptum suum quod hoc testatur*, et tiel est lenroullement. Et le pleintif demura en jugement si par tiel fait il soi purreit excuser de wast: qar par le fet nest pas graunte a luy expressement qil purra fere wast, nautre chose qe comune dreit doune; et sur ceo ount jour a ore. —Le defendant, a ore oppose, nad pas le fait en Court, sur quei *R. Thorpe* demanda jugement desicome il nad pas especialte par quel il ad avowe le wast, et pria qil fuit atteint del<sup>3</sup> wast, et pria seisine et enqueste pur damages.—*Moubray*. La force del fait par quel nous serroms eide est entre en roulle, et conu de partie, et sur ceo sumes en jugement par plee autrefoith plede, come est de<sup>4</sup> recorde par roulle; par quei il ne. bosoigne<sup>5</sup> pas daver lespecialte come si nous fuissoms en cas qe issue sur cel deveroit estre pris. Et mettez qe jeo usse avowe le wast sur tiel<sup>6</sup> fait come jai allegge, et

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1344-5.  
Wast.

“Wright et Isoldæ uxori ejus et heredibus de corporibus ipsorum Willelmi et Isoldæ exeuntibus, sicut idem Willelmus Curtays per breve suum supponit.

“Ideo consideratum est quod prædictus Robertus recuperet versus eam damna sua prædicta. Et prædicta Margareta in misericordia, &c.”

[The clerks must have enrolled the wrong *Postea*, with judgment thereon, misled, no doubt, by the names Robert and Margaret.]

<sup>1</sup> From C., H., and L. The report is in continuation of Y.B., Hil., 17 Edw. III., No. 21. The record is among the *Placita de Banco*, Hil., 17 Edw. III., R<sup>o</sup>140, d, and is cited in the Rolls edition pp. 101-107. It there appears that the action was brought by John de Handlo against Hugh de Aldenham.

<sup>2</sup> C., pere; L., peer.

<sup>3</sup> C., et del.

<sup>4</sup> de is from H. alone.

<sup>5</sup> L., busoigne.

<sup>6</sup> H., and L., cel.

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A.D.  
1344-5.

alleged, and had not produced any specialty in witness of my statement, and the plaintiff had allowed me to do that, and had abode judgment on my confession, the Court would give judgment on the plea; *a fortiori* in this case.—WILLOUGHBY. The Court would never have accepted such a plea from you without a specialty, even though the party had omitted to take exception to the matter; and the Court cannot give judgment on a deed which is neither entered on the roll nor produced by the party; and there is possibly in the same deed something else which is to your damage, of which, if the deed were produced, the party would have the advantage.—*Moubray*. He would never have the advantage of any other words but those upon which he has previously by plea abode judgment, so that you have to give judgment on the plea pleaded, and not on the specialty.—*R. Thorpe*. If any one brings Assise, or *Warrantia Chartæ*, or Formedon in the remainder, and on one day makes *profert* of a specialty, and the words of the roll are "*quod hoc testatur*," and the deed is not entered in full, what will he take by his writ on another day if he has not the deed ready? As meaning to say nothing. So in the matter before us.—WILLOUGHBY. In that case the deed is produced in support of the action; not so in this case.—*R. Thorpe*. Certainly it is all one: for when either an action or an answer is founded on a specialty, and the party's deed is lost, all is gone.—STONORE to *W. Thorpe*. I hold you to be in the same plight as if you had not produced any specialty on the first day.—*W. Thorpe*. No, Sir; for in that case this would not have been entered in the roll, nor would the party have abode judgment on it; and I desire to know what it is upon which the party will abide judgment with me—whether upon the plea pleaded or upon the non-production of the deed; for I demand judgment whether he shall be admitted to both.—*R. Thorpe*.

## No. 46.

nusse de ceo moustre nulle especialte tesmoignant<sup>1</sup> mon dit, et le pleintif moi ust a cella accepte, et ust demure en jugement sur ma conissance, Court sur le plee ajuggereit; a plus fort en ceo cas.—WILBY. Court nust ja resceu tiel plee de vous saunz especialte, tut ust partie entrelesse la chose de chalenge; et Court ne poet ajugger sur fait qe nest<sup>2</sup> entre en roulle ne moustre de partie; et par cas en mesme le fait il ad autre cause qest en damage de vous, de quel, si le fet fuit moustre, partie avereit avauntage.—*Moubray*. Jammes dautre paroule navereit avauntage forqe de ces<sup>3</sup> dount par plee avant il est demure, issi qe vous avetz dajuger<sup>4</sup> sur<sup>5</sup> plee plede, et noun pas sur lespecialte.—*R. Thorpe*. Si<sup>6</sup> homme<sup>7</sup> porte Assise, ou Garrantie de Chartre, ou Fourmedoun en remeindre, et a un jour il mette avant especialte, et roulle dit *quod hoc testatur*, et le fet pleinement nest pas entre, a un autre jour quei prendra il par son brief sil neit pas prest le fait? *Quasi diceret nihil. Sic in proposito*.—WILBY. La est il par voie daccion; *non sic hic*.—*R. Thorpe*. Certes tut est un; qar quant accion ou respons est foundu sur<sup>5</sup> especialte, et son fait est perdu, tut est ale.—*STON.* a [*W.*] *Thorpe*. Jeo vous tenk<sup>8</sup> en mesme le plite come si vous nussetz moustre nulle especialte<sup>9</sup> al primer jour.—[*W.*] *Thorpe*. Sire, nanylle; qar donqes nust ceo pas este entre en roulle, ne partie sur ceo demure; et jeo voudray<sup>10</sup> saver sur quei partie voudra demurer en jugement ovesqe moi, si sur le plee plede ou sur la nient moustrance de fait: qar jeo demande jugement si a toux deux serra il resceu.—

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1344-5.<sup>1</sup> C., testmoignant.<sup>2</sup> L., nest pas.<sup>3</sup> H., ceo.<sup>4</sup> C., and H., damage.<sup>5</sup> L., par.<sup>6</sup> Si is from L. alone.<sup>7</sup> homme is omitted from C.<sup>8</sup> H., tienk.<sup>9</sup> L., fait.<sup>10</sup> C., and L., voudra.

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1344-5.

We abide judgment on both, for it all came from yourself and your deed.—WILLOUGHBY. You cannot have both, that is to say, have judgment on the deed as to whether he has the power to sell, &c., and also on the non-production of the deed; for the two are contrary, and not pursuant one to the other.—STONORE. Issue to a jury was heretofore joined as to parcel, and the verdict has not yet been taken for want of jurors and of consideration, for it might very well have been taken; and waste in that parcel in respect of which the deed was pleaded in bar was not confessed; therefore, since you have not the deed, do you desire that enquiry of waste should be had as to the whole?—*W. Thorpe*. No, Sir; even though the party would agree to this with me, no jury could excuse me contrary to my own confession in this plea, but we pray judgment on our plea pleaded.—WILLOUGHBY to *R. Thorpe*. You embarrass us by your manner of abiding judgment on both, as above, and you cannot have both.—*R. Thorpe*. We hold to our plea on the roll, and demand judgment.—Therefore in respect of that with regard to which issue was heretofore joined to a jury, and also with respect to the rest, in order to ascertain the value and the quantity, a *Venire facias* issued by award of the COURT, and a *Nisi prius* was granted.—And they were minded to give judgment afterwards in accordance with the finding of the jury.—And it was alleged that it was so done in the case in which Hugh le Despenser was a party in the last Term.<sup>1</sup>

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<sup>1</sup> Y.B., Mich., 18 Edw. III. (Rolls edition), No. 69, pp. 302-312, and p. 313, note 6, in the present volume.

## No. 46.

*R. Thorpe.* Nous<sup>1</sup> demuroms<sup>2</sup> sur toux deux, qar tut vint de vous mesmes et vostre fait.—WILBY. Vous ne poietz pas aver les deux, saver, dajuger sur le fait sil purra vendre, &c., et auxint sur la nient moustraunce del fet; qar ceux deux sont contraries, et noun pas pursuauntz.—STON. Lenqueste autrefoith de parcelle fuit joint, et nest pas unqore pris pur defect des jurours, et<sup>3</sup> davisement, qar homme le poait molt bien aver pris; et le wast de la parcelle dount le fait<sup>4</sup> fuit plede en barre ne fuit<sup>5</sup> pas conu; par quei, de puis qe vous navetz pas le fait, voletz qe homme enquerge quant a tut del<sup>6</sup> wast?—[*W.*] *Thorpe.* Nanylle, Sire; tut moi vodreit partie a ceo accepter, nulle enqueste moi excusereit countre ma conissaunce en ceo ple, mes sur nostre plee plede nous prioms jugement.—WILBY a *R.*<sup>7</sup> *Thorpe.* Vous nous encombretz par la manere de vostre demure sur les deux, *ut supra*, queux vous ne poietz pas aver.—*R. Thorpe.* Nous tenoms sur nostre plee en roulle, et demandoms jugement.—Par quei sur ceo dount lenquest autrefoith fuit joint, et auxint del remenant, pur saver<sup>8</sup> la value et la quantite, *Venire facias* issit par agard de COURT, et *Nisi prius* graunte.—Et<sup>9</sup> apres voleint ils ajuger solonc ceo qe serra trove par lenqueste.—Et fuit allege qe issint fuit fait ou Hugh le Despenser fuit partie *proximo Termino*.

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1344-5.<sup>1</sup> H., certes nous.<sup>2</sup> H., tenoms.<sup>3</sup> The words des jurours et are from L. alone.<sup>4</sup> L., ple.<sup>5</sup> L., nest, instead of ne fuit.<sup>6</sup> L., de tut quant al, instead of quant a tut del.<sup>7</sup> L., *W.*, instead of WILBY a *R.*; *R.* is omitted from H.<sup>8</sup> C., and H., salver; L., sauver.<sup>9</sup> Et is omitted from H.

## No. 47.

A.D.  
1344-5.  
Escheat.

(47.) § The Dean and Chapter of Hereford brought a writ of Escheat on the seisin of John Blod, on the ground that he committed a felony, for which he was outlawed. And they counted in particular when he was outlawed, and for what felony, &c.—*R. Thorpe*. We tell you that this outlawry was afterwards reversed in the King's Bench, and he was restored to the law. And *R. Thorpe* made *profert* of the record of the reversal *sub pede sigilli*. And he prayed judgment whether an action, &c.—*Skipwith*. We have alleged



## No. 47.

(47.)<sup>1</sup> § Le Dean et le<sup>2</sup> Chapitre de Hereforde porterent brief Deschete de la seisine Johan Blod, *eo quod feloniam fecit, pro qua utlagatus fuit*. Et counte-  
rent en certain quaut, et pur quele felonie, &c.<sup>3</sup>—*R. Thorpe*. Nous vous dioms qe cele utlagerie apres en Baunk le Roi fuit reverse, et il restitut a la ley. Et mist avant le recorde *sub pede sigilli* del reverser. Jugement si accion, &c.<sup>4</sup>—*Skip*. Nous avoms

A.D.  
1344-5.  
Eschete.

<sup>1</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 261, d. It there appears that the action was brought by the Dean and Chapter of the church of St. Ethelbert, Hereford, against William son of Hugh Blod, of Hereford, in respect of one messuage in Hereford extended at 20*s. per annum*.

<sup>2</sup> le is from L. alone.

<sup>3</sup> The count was, according to the record, "quod . . . Johannes Blod tenuit de prædictis Decano et Capitulo prædictum mesuagium, cum pertinentiis, per fidelitatem, et servitium quinque solidorum et quatuor denariorum, . . . sectam ad curiam ipsorum Decani et Capituli de Canonbakhone in Hereforde de tribus septimanis in tres septimanas, . . . qui quidem Johannes Blod, die Martis proxima post festum de Corpore Christi, anno regni Regis nunc octavo, apud Hereforde, occidit quendam Hugonem Denys. Et postmodum quidam Willelmus frater prædicti Hugonis secutus fuit quoddam Appellum versus ipsum Johannem de morte prædicta, et, continuato processu super Appello prædicto quousque prædictus Johannes ad sectam præfati Willelmi per breve

"domini Regis de Exigi facias, &c., utlagatus fuit, quod quidem breve de Exigi fuit returnabile coram domino Rege in Octabis Sancti Michaelis anno regni Regis nunc undecimo, per quod prædictum mesuagium ad ipsos Decanum et Capitulum, tanquam escaeta sua reverti debet, &c."

<sup>4</sup> According to the record "Willelmus . . . venit. Et alias vocavit ad warantum Johannem Mareschal, capellanum, qui modo venit per summotionem ei factam in Comitatu Middelsexiæ, . . . et gratis ei warrantizat, &c. Et, non cognoscendo quod prædictus Johannes tenuit mesuagium prædictum de prædicto Decano et Capitulo per servitia prædicta, dicit quod iidem Decanus et Capitulum actionem inde ratione utlagariæ prædictæ versus eum habere non debent, dicit enim quod idem Johannes alias per brevia domini Regis venire fecit coram eodem domino Rege recordum et processum utlagariæ prædictæ, ac etiam quædam recordum et processum coram Willelmo Scot et sociis suis, Justiciariis ad Gaolam de Neugate deliberandam assignatis, habita, quæ quidem recorda et processus venerunt coram domino Rege termino Trinitatis, anno

## No. 47.

A.D.  
1344-5

the outlawry with the particulars, and they have alleged reversal, and the cause of reversal, to wit, that he was in prison at the time at which he was outlawed; and the imprisonment at the time of the pronouncement of the outlawry is not proved by record; and we, who are the chief lord, were not warned [as to the reversal], and therefore not a party thereto; and we will aver that at the time of the pronouncement of the outlawry, and long before, and afterwards, he was at large; and also, as is proved by the same record of which he makes *profert*, he was not restored to the law by virtue of this reversal, but by the King's charter of pardon a long time before, and that could not be a cause for extinguishing our action of Escheat; and we demand judgment. For suppose one who is clerk convict performs his purgation, and, in the time mean between the delivery of his person made to the Ordinary and his purgation, he is outlawed, and he sues to reverse the outlawry, and brings a Bishop's certificate which testifies that he was all that time in prison, the chief lord, or another person on behalf of the King will have an averment against that certificate that he was at large. So in the matter before us.—WILLOUGHBY. What you say is wrong; averment contrary to the Bishop's certificate is not given in that case; and in this case of reversal the chief lord shall not be warned as to the reversal; but if he had entered by way of escheat before the reversal, and had been warned to

No. 47.

allegge lutlagerie en certain, et le reverser ount ils allegge, et la cause del reverser, saver, qil estoit adonques en prisoun quant il fuit utlage; et len-prisonement al temps de la pronunciacion del utlagerie nest pas prove par recorde; et nous, qe sumes chief seignur, ne fumes garny, ne a ceo donques partie; et voloms averer qal temps del utlagerie pronuncie il fuit a large, et longe temps devant, et apres; et auxi, come prove est par mesme le recorde qil mette avant, il ne fuit pas restitut a la ley par force de cel reverser, mes par la chartre le Roi de pardoun longe temps devant, quel ne poait estre cause desteindre nostre accion Deschete; et demandoms jugement. Qar jeo pose qe homme qest clerk atteint face sa purgacion, et, en le mene temps entre la livre fet de luy al Ordiner et sa purgacion, il est utlage, et il suyt de reverser, et porte certificacion Devesqe qe tesmoigne qe tut cel temps il fuit en sa prisoun, coudre cella chief seignur ou autre persone avera averement pur le Roi qil fuit a large. *Sic in proposito.*—WILBY. Vous ditetz male; averement coudre la certificacion Devesqe nest pas done en le cas; et en ceo cas de reverser le chief seignur ne serra pas garny al reverser; mes sil fuit<sup>1</sup> entre avant le reverser par voie deschete, et ust este garny daver este partie

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1344-5.

“regni domini Regis nunc decimo  
“octavo, et ibidem, recordis et  
“processibus illis inspectis et  
“examinatis, compertum fuit  
“quod die promulgationis utla-  
“gariæ prædictæ, et diu ante, et  
“post, præfatus Johannes captus  
“fuit, et in prisona de Neugate  
“detentus, per quod consideratum  
“fuit in eadem Curia Regis quod  
“utlagaria prædicta in ipsum  
“Johannem sic promulgata revo-  
“carentur et adnullaretur, &c.

“Et profert hic recordum et  
“processum utlagariæ prædictæ et  
“etiam recordum et processum  
“revocationis et adnullationis ejus-  
“dem utlagariæ in forma prædicta,  
“sub pede sigilli domini Regis,  
“quæ præmissa testantur, &c.,  
“unde petit judicium si iidem De-  
“canus et Capitulum ratione utla-  
“gariæ prædictæ sic adnullatæ  
“breve istud de Escaeta versus eum  
“manutenere possint, &c.”

<sup>1</sup> H., ust.

## No. 48.

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1344-5.

be a party to the reversal, then possibly he would have the averment that the outlaw was at large, &c., in order to maintain the record; but now the record of the outlawry is reversed, and his peace is proclaimed by judicial writ. Therefore, as that judgment stands in force, you cannot demand escheat, and therefore the COURT adjudges that you do take nothing by your writ, &c.

Voucher.

(48.) § A writ was brought against one who vouched a husband and his wife. And they warranted, and vouched over. And afterwards the wife alleged the death of her husband while suit was being made against the vouchee, and prayed that the demandant might sue a Resummons, if he would, against the tenant. And the demandant admitted the death, and sued a Resummons against the tenant, who appeared, and re-vouched the husband's heir alone, and prayed that, by reason of the heir's non-age, the parol might demur.—*Grene*. Heretofore he vouched to warrant, and was warranted by the wife, wherefore, while she is living, he cannot vouch another.—*Birton*. It is possible that the wife was bound to warrant for the time of the husband's life, and not further, and it is not right that the tenant should be compelled to vouch a second time one from whom he has not his warranty.—*Grene*. Such a special fact ought to be shown.—They were adjourned.

## No. 48.

al reverser, la avereit il averement par cas qe a large, &c., pur meintener le recorde; mes ore est le recorde del utlagerie reverse, et par brief de jugement sa pees crie. Par quei, esteaunt cel jugement en sa force, vous ne poietz pas demander eschete, qar quei agarde la COURT qe vous ne preignetz rienz par vostre brief, &c.<sup>1</sup>

A.D.  
1344-5.

(48.)<sup>2</sup> § Brief porte vers un qe voucha le baroun et sa femme, qe garrantirent et vouchèrent outre. Et puis la femme alleggea la mort son baroun pendant la suite vers le vouche, et pria qe le demandant suesit Resomons, sil voleit, vers le tenant. Et le demandant le conust, et suyt Resomons vers le tenant, qe vint, et revoucha leire le baroun seulement, et par son nounage pria qe la parole demurast. —*Grene*. Devant ces heures si voucha il a garraunt et fuit garraunti de la femme, par quei, vivant cele, il ne poet autre vouchier. —*Birtone*. Il est possible qe la femme pur la vie le baroun fuit tenutz a garrantir, et nient plus avant, et nest pas resoun qe le tenant soit arce de vouchier autrefoith celui de qi il nad pas sa garrantie. —*Grene*. Tiel especial fait coviendreit estre moustre. —*Adjournantur*.

Voucher.<sup>3</sup>

<sup>1</sup> According to the record,  
“Decanus et Capitulum non  
“possunt hoc [*i.e.*, the plea of the  
“vouchee] dedicere.

“Ideo consideratum est quod  
“iidem Decanus et Capitulum

“nihil capiant per breve istud,  
“sed sint in misericordia pro falso  
“clamore. Et Johannes inde sine  
“die, &c.”

<sup>2</sup> From C., H., and L.

<sup>3</sup> H., Revoucher.

## No. 49.

A.D. 1344-5. Execution on statute merchant. (49.) § *Notton* showed that one had by execution on statute merchant sued to take the body of the recognisor, that is to say, one A.,<sup>1</sup> which A. has been taken, and the writ has been returned into this Court to the effect that he has been taken. And this A. (said *Notton*) has brought to you out of the Chancery an *Audita Querela* for the recognisee to show cause why he has sued contrary to his deed, and now the recognisee does not appear, so that he is non-suited on his own suit to have execution, wherefore we pray that you do record the non-suit; for in case he were in Court, and would sue, we should pray a writ of *Venire facias* on our *Audita Querela*.—*STONORE*. There is no need to sue against A., when he is taken, before the quarter of a year has passed which the statute<sup>2</sup> gives; therefore see whether you will sue a *Venire facias*, or not: for no non-suit will be recorded, nor will he now be called by us.—*Notton* prayed a *Venire facias*, and that A. might be let out on mainprise, so that he might be able to make his suit.—*WILLOUGHBY*. Sue your writ; but A. will not be let out on mainprise, but the Sheriff will produce his body here.—And he had a writ to that effect.

<sup>1</sup> For the names of the parties  
see p. 553, note 1.

<sup>2</sup> 13 Edw. I., St. 3.

## No. 49.

(49.)<sup>1</sup> § *Nottone* moustra qun avoit par execucion sur estatut marchaunt suy de prendre le corps le reconissour, saver, un A., quel A. est pris, et le brief est retourne ceinz qil est pris, le quel A. ad porte a vous de la Chauncellerie un *Audita Querela* par quei il ad suy countre son fet, et ore le reconisse<sup>3</sup> ne vient pas, issi est il noun suy a sa suite dexecucion, par quei nous prioms qe vous recordetz la nounsuite; qar en cas qil fuit ci et voleit suire, nous prieroms brief hors de nostre *Audita Querela* de lui faire venir.—*STON.* Il ny ad pas mester de suyre vers A., quant il est pris, devant qe le quarter del an soit passe com statut doune; par quei veietz si vous voilletz suyre *Venire facias* ou noun: qar nounsuite serra nulle recorde, ne il ne serra pas demande a ore par nous.—*Nottone* pria *Venire facias* et qe A. fuit lesse a meinprise, issint qil purra faire sa suite.—*WILBY.* Suetz vostre brief; mes a meinprise ne serra il pas, mes le Vicounte avera le corps A. icy.—*Et tale breve habuit.*<sup>4</sup>

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1344-5.Execu-  
cion<sup>2</sup> sur  
estatut  
mar-  
chaunt.  
[Fitz.,  
Nonsuit,  
23.]

<sup>1</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 419, d. It there appears that the body of John de Swaffham (of the county of Kent) had been taken in execution on a statute merchant in which he was bound to John de Porterebrugge for the sum of £20, and was detained in Maidstone gaol.

The writ of *Audita Querela* sued by John de Swaffham on the ground of the execution of a defeasance of the statute merchant by John de Porterebrugge is enrolled, John de Porterebrugge not having appeared when the

Sheriff made his return as to the taking of John de Swaffham.

<sup>2</sup> H., Proces.

<sup>3</sup> reconnesour.

<sup>4</sup> According to the roll "super hoc venit quidam Robertus Vyneter ex parte predicti Johannis de Swaffham, et petit breve Vicecomiti de Venire faciendo præfatum Johannem de Porterebrugge super præmissis responsurum, &c., et etiam de habendo corpus præfati Johannis de Swaffham ad faciendum et recipiendum quod Curia, &c. Et ei conceditur returnabile hic a die Paschæ in xv dies."

## No. 50.

A.D.  
1344-5.  
*Quare  
impedit.*

(50.) § Hugh de Audeley, Earl of Gloucester, brought a *Quare impedit* against the Abbot of Chester, counting that in the time of King Richard one John de Clare was seised of the manor to which the advowson is appendant, and presented, and that it descended to his two daughters, between whom and their husbands partition was made of the manor and of the advowson, so that they were to present by turn. Therefore the elder and her husband, commencing their turn, presented in the time of King John, &c. And afterwards the second daughter and her husband, following in their turn, presented in the time of King Henry III. And he made the descent of the purparty of the manor and advowson, to present by turn, from the elder daughter to the ancestor of one Gilbert,<sup>1</sup> who is in the wardship of the Earl, &c., by reason of non-age, because his ancestor held of the Earl by knight service, and so the Earl is seised, and it belongs to him to present.—*Mutlow*. Whereas they say that the church

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<sup>1</sup> For the details of this descent see p. 555, note 3.



## No. 50.

(50.)<sup>1</sup> § Hugh Daudele, Count de Gloucestre, porta *Quare impedit* vers Labbe de Cestre, countaunt qen temps le Roi Richard un J. de Clare fuit seisi du maner a quei lavoweson est appendant, et presenta, de qi descendi a ij filles, entre queles et lour barouns purpartie se fist del maner et del avoweson, et a presenter par tourne. Par quei leignesse et son baroun, en comenceaunt tourne, presenterent en temps le Roi Johan, &c. Et puis la seconde et son baron, en pursuaunt tourne, presenterent en temps le Roi H. Et fist descente de la purpartie del maner et lavoweson, a presenter par tourne, del eignesse al auncestre un G.,<sup>2</sup> qest en la garde le Count, &c., et par noun age, pur ceo qe son auncestre tient de luy par service de chivaler, issint est il seisi et a luy appent a presenter.<sup>3</sup>—*Mutl.* La ou ils dient qe

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1344-5.  
*Quare  
impedit.*

<sup>1</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 345. It there appears that the action was brought by Hugh de Audeleghe, Earl of Gloucester, against the Abbot of Chester, in respect of a presentation to the church of Deneforde (Denford, Northants).

<sup>2</sup> MSS. of Y.B., J.

<sup>3</sup> According to the record, the declaration was, "quod quidam Johannes de Clare seisitus fuit de manerio de Deneforde, cum pertinentiis, ad quod advocatio ecclesie prædictæ pertinet, tempore pacis, tempore Regis Ricardi, . . . qui ad eandem ecclesiam præsentavit quendam Walterum de Say, clericum suum, qui ad præsentationem suam fuit admissus et institutus. . . Et de ipso Johanne de Clare descendit manerium de Dene-

forde prædictum ad quod, &c.,  
" quibusdam Mariæ et Margaretæ  
" ut filiabus et heredibus, &c.,  
" inter quas manerium illud  
" partitum fuit, et advocatio præ-  
" dicta remansit eisdem Mariæ et  
" Margaretæ in communi, &c.,  
" præsentandi per turnum, &c.,  
" ita quod in proxima vacatione  
" ecclesie prædictæ tunc accidenti  
" prædicta Maria et heredes sui  
" præsentarent, &c., et in proxima  
" vacatione ex tunc accidenti, &c.,  
" prædicta Margareta et heredes  
" sui ad eandem præsentarent, &c.,  
" et sic alternatim et successive  
" præsentarent ad ecclesiam illam  
" in perpetuum, quæ quidam Maria  
" nupsit se cuidam Gilberto de  
" Deneforde, et præfata Margareta  
" nupsit se cuidam Matthæo le  
" Botiller. Et postmodum præ-  
" dicta ecclesia vacavit per mortem  
" prædicti Walteri, &c., per quod  
" prædicti Gilbertus et Maria, ut

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A.D.  
1344-5.

is appendant, it is not appendant, and whereas they say that John, the common ancestor, presented, he did not present, nor was his presentee admitted, &c.; and whereas they speak of partition, there was not any such partition, nor any such presentation by the par-ceners as they have alleged. But we tell you that, in the time of King William the Conqueror, the Earl of Chester gave this advowson, by the description of the church of Denford, to Saint Werburg and the monks serving God there, and King Edward, the grandfather of the present King, by his charter which is here, confirmed the gift. And *Mutlow* produced a Papal Bull also. And we tell you (said *Mutlow*) that the present Abbot presented, &c., by reason of the death of whose presentee the church is now void. And before him his predecessor presented in the time of the King the father, and in the time of the grandfather of the present King. And, before that, his predecessor presented in the time of King Henry III.; judgment, and we pray a writ to the Bishop.—*R. Thorpe*. His

“ in jure ipsius Mariæ, incipiendo  
 “ turnum, &c., præsentarunt ad  
 “ eandem quendam Magistrum  
 “ Johannem Mauncelle, clericum  
 “ suum, qui ad præsentationem  
 “ suam fuit admissus et institutus,  
 “ tempore pacis, tempore Regis  
 “ Johannis, &c. Et postea, vacante  
 “ ecclesia illa per mortem prædicti  
 “ Johannis Mauncelle, prædicti  
 “ Matthæus et Margareta præsen-  
 “ tarunt ad eandem quendam  
 “ Robertum le Botiller, clericum  
 “ suum, continuando, turnum, &c.,  
 “ qui ad præsentationem suam  
 “ fuit admissus et institutus,  
 “ tempore pacis, tempore Henrici  
 “ Regis, proavi domini Regis nunc,  
 “ &c., post cujus mortem prædicta  
 “ ecclesia modo vacat, &c. Et de  
 “ ipsa Maria descendit jus propartis

“ suæ, &c., quibusdam Matilldi et  
 “ Agneti ut filiabus et heredibus,  
 “ &c. Et de ipsa Agnete, quia  
 “ obiit sine herede de se, descendit  
 “ propars sua præfatæ Matilldi,  
 “ ut sorori et heredi, &c. Et de  
 “ ipsa Matilldi descendit propars  
 “ sua cuidam Gilberto ut filio et  
 “ heredi, &c. Et de ipso Gilberto  
 “ descendit propars illa cuidam  
 “ Gilberto ut filio et heredi, &c.,  
 “ qui adhuc superstes est, et infra  
 “ ætatem, et in custodia ipsius  
 “ Comitis existens, eo quod idem  
 “ Gilbertus, pater ipsius Gilberti  
 “ nunc, tempore mortis suæ tenuit  
 “ medietatem manerii prædicti  
 “ et advocationis prædictæ præ-  
 “ sentandi per turnum, &c., de  
 “ ipso Comite per servitium  
 “ militare, &c. Et dicit quod

## No. 50.

leglise est appendaunt, ele nest pas appendaunt, et ou ils dient qe J., le comune auncestre, presenta, il ne presenta pas, ne son presente resceu, &c.; et ou ils parlent de purpartie, il ny avoit pas tiel purpartie, ne tiel<sup>1</sup> presentement par les parceners come ils ount allegge. Mes vous dioms qen temps le Roi William<sup>2</sup> le<sup>3</sup> Count de Cestre dona cel avoeson par noun del eglise de D.,<sup>4</sup> a Seint Werburgh et les moignes Dieu servauntz illeoques, et le Roi E., laiel, par sa chartre qe cy est, le conferma. Et moustra Bulle auxi. Et vous dioms qe Labbe gore est presenta, &c., par qi mort leglise est ore voide. Et devant luy son predecessour presenta en temps le Roi le pere, et le Roi laiel. Et devant en temps le Roi H. son predecessour presenta; jugement, et prioms brief al Evesqe.<sup>5</sup>—*R. Thorpe.* Son

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“ prædicti Matthæus et Margareta  
 “ de proparte sua ipsam Mar-  
 “ garetam contingente feoffavit  
 “ Abbatem de Cestria. Et quia  
 “ ista est tertia vacatio ecclesiæ  
 “ prædictæ post prædictam parti-  
 “ tionem inter præfatam Mariam  
 “ et Margaretam de prædicto  
 “ manerio factam, et turnus  
 “ accidens in jure heredum præ-  
 “ fatæ Mariæ, &c., pertinet ad  
 “ ipsum Comitem, ut in jure præ-  
 “ dicti Gilberti heredis in custodia  
 “ sua existentis, ad ecclesiam  
 “ prædictam præsentare, prædictus  
 “ Abbas injuste ipsum impedit.”

<sup>1</sup> tiel is omitted from C.

<sup>2</sup> H., Richard.

<sup>3</sup> H., William.

<sup>4</sup> MSS. of Y.B., A.

<sup>5</sup> The plea was, according to the record, “ quod ubi prædictus  
 “ Comes in narratione sua præ-  
 “ dicta supponit præfatum Johan-  
 “ nem de Clare seisitum fuisse  
 “ de manerio de Deneforde, cum

“ pertinentiis, ad quod asserit  
 “ advocationem ecclesiæ prædictæ  
 “ pertinere, et ad eandem præsen-  
 “ tasse quendam Walterum de  
 “ Say, clericum suum, &c., non  
 “ cognoscendo quod advocatio  
 “ prædicta unquam fuit pertinens  
 “ ad manerium prædictum, dicit  
 “ quod prædictus Walterus nun-  
 “ quam fuit admissus et institutus,  
 “ &c., ad præsentationem prædicti  
 “ Johannis de Clare, &c., dicit  
 “ etiam quod prædicti Gilbertus  
 “ et Maria nunquam aliquid  
 “ habuerunt in advocatione præ-  
 “ dicta, nec præfatus Johannes  
 “ Mauncelle unquam fuit admissus  
 “ et institutus in ecclesia prædicta  
 “ ad præsentationem ipsorum Gil-  
 “ berti et Mariæ. Dicit etiam  
 “ quod ipse Abbas nihil clamat in  
 “ advocatione prædicta ex feoffa-  
 “ mento prædictorum Matthæi et  
 “ Margarete. Et pro habendo  
 “ breve Episcopo, &c., dicit quod  
 “ tempore Willelmi Conquæstoris,

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1344-5.

answer is double, one in destruction of our title, the other the last presentation which is an answer by itself to this *Quare impedit*; wherefore let him hold to one in particular.—WILLOUGHBY. He has destroyed your title, and further shows matter in order to have a writ to the Bishop.—*R. Thorpe*. If he wishes to do so in that manner, that is sufficient for us.—*Mutlow*. We do so wish.—*R. Thorpe*. Then we tell you that John de Clare presented as above, and that partition was made. And whereas they say that the elder daughter, in whose right we now claim to present by turn, did not present, ready, &c., that she did present as above, and that her presentee was admitted and instituted by the Bishop.—And the other side said the contrary.

*Quare  
impedit.*

(51.) § John de Skipwythe and Isabel his wife

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| <p>“ &amp;c., quidam Hugo Comes Cestriæ<br/> “ per chartam suam dedit et<br/> “ concessit ecclesiæ Abbatia<br/> “ Sanctæ Werburgæ Cestriæ et<br/> “ monachis ibidem deo servienti-<br/> “ bus ecclesiam de Deneforde<br/> “ prædictam et terram ecclesiæ<br/> “ tenendam sibi et successoribus<br/> “ suis in perpetuum, quam quidem<br/> “ concessionem dominus Edwardus<br/> “ Rex, avus, &amp;c., per chartam<br/> “ suam, ac etiam dominus Papa<br/> “ Clemens quintus per bullam suam<br/> “ confirmaverunt, &amp;c. Et profert<br/> “ hic chartam prædicti Hugonis<br/> “ Comitis, &amp;c., et confirmationem<br/> “ dicti Edwardi Regis avi, &amp;c.,<br/> “ ac etiam bullam prædicti<br/> “ Clementis Papæ, &amp;c., quæ præ-<br/> “ missa testantur. Et dicit quod<br/> “ idem Abbas nunc et omnes<br/> “ prædecessores sui a tempore quo<br/> “ non extat memoria seisisi fuerunt<br/> “ de advocacione prædicta, et idem<br/> “ Abbas nunc præsentavit ad eccle-</p> | <p>“ siam illam quendam Thomam<br/> “ de Arwe, clericum suum, qui ad<br/> “ præsentationem suam fuit ad-<br/> “ missus, &amp;c., tempore Regis nunc,<br/> “ per cujus mortem prædicta<br/> “ ecclesia modo vacat, &amp;c. Et<br/> “ idem Abbas nunc præsentavit ad<br/> “ eandem quendam Thomam de<br/> “ Bynydone, clericum suum, qui<br/> “ ad præsentationem suam fuit<br/> “ admissus, &amp;c., tempore ejusdem<br/> “ Regis nunc. Et quidem Thomas<br/> “ Abbas, &amp;c., prædecessor, &amp;c.,<br/> “ præsentavit ad eandem quendam<br/> “ Willelmum de Strixtone, cleri-<br/> “ cum suum, qui ad præsentationem<br/> “ suam fuit admissus, &amp;c.,<br/> “ tempore Edwardi Regis avi, &amp;c.<br/> “ Et idem Thomas Abbas, &amp;c.,<br/> “ ante præfatum Willelmum, præ-<br/> “ sentavit ad eandem quendam<br/> “ Walterum de Thorpe, clericum<br/> “ suum, qui ad præsentationem<br/> “ suam fuit admissus, &amp;c., tempore<br/> “ ejusdem Regis, avi, &amp;c. Et</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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respons est double, un qe destruit nostre tittle, autre le drein presentement qest respons a per luy a ceo *Quare impedit*: par quei se tiegne al un en certain.—WILBY. Il ad destruit vostre tittle, et outre moustre pur aver brief al Evesqe.—*R. Thorpe*. Sil le voille par la manere, ceo nous suffit.—*Mutl.* Si voloms.<sup>1</sup>—*R. Thorpe*. Donques vous dioms qe J. de Clare presenta *ut supra*, et qe la purpartie se fist. Et la ou ils dient qe leignesse, en qi dreit par tourne nous clamoms a ore, ne presenta pas, prest, &c., qele presenta *ut supra*, et son presente resceu et institut de Evesqe.—*Et alii e contra*.<sup>2</sup>

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1344-5.

(51.)<sup>3</sup> § Johan Skipwythe et Isabele sa femme *Quare impedit*.

“quidam Simon Abbas, præde-  
“cessor, &c., præsentavit ad  
“eandem quendam Rogerum  
“Blankmouster, clericum suum,  
“qui ad præsentationem suam fuit  
“admissus, &c., tempore ejusdem  
“Regis, avi, &c., per quod ad  
“ipsum Abbatem nunc, et non ad  
“prædictum Comitem, pertinet ad  
“prædictam ecclesiam præsentare,  
“unde petit judicium et breve  
“Episcopo, &c.”

<sup>1</sup> C., voilloms.

<sup>2</sup> The replication was, according to the record, “quod prædicti Gilbertus et Maria fuerunt seisiti de advocacione prædicta tanquam pertinente, &c., et præsentarunt ad eandem ecclesiam præfatum Johannem Mauncelle qui ad præsentationem suam fuit admissus, &c., prout ipse superius asserit. Et hoc paratus est verificare unde petit judicium, &c.”

This was followed by a rejoinder from the Abbot “quod prædictus Johannes Mauncelle non fuit admissus et institutus, &c., ad præsentationem prædictorum Gil-

“berti et Mariæ, &c., sicut præ-  
“dictus Comes dicit.”

It was upon this that issue was joined.

The *Venire* was awarded, and, upon a subsequent day given, the Earl failed to appear.

Judgment was therefore given for the Abbot to have a writ to the Bishop. A writ to enquire as to the value of the church followed, and it was found that the church was of the value of 100 marks *per annum*, and became vacant on the Sunday next after the Feast of St. Andrew the Apostle in the 18th year of the reign.

“Et quia ad præfatas Octabas Sanctæ Trinitas quando idem Abbas recuperavit, &c., tempus semestre nondum lapsum fuit, consideratum est quod idem Abbas recuperet versus eum damna sua, videlicet quinquaginta marcas pro medietate valoris ecclesiæ prædictæ unius anni, &c.”

<sup>3</sup> From C., H., and L., but corrected by the record, *Placita de*

*Quare impedit*.  
[Fitz.,  
*Quare impedit*,  
155.]

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1344-5.

brought a *Quare impedit* against William Wastelyn, counting that Gilbert des Arches and Hugh de Neville were seised in the time of King Henry III., and presented, and made composition between them to present by turn, &c., by virtue whereof Gilbert, taking the first turn, presented, &c. And afterwards Hugh<sup>1</sup> presented, and the church is now void after the death of his presentee. And they made the descent from Gilbert to his heir, who granted the advowson, to present by turn, to Isabel the wife of John, and so they are seised, and so it belongs to them to present on this occasion.—*Mutlow*. They have said that Gilbert and Hugh were seised of

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<sup>1</sup> Not Hugh, but Hugh's son Thomas, according to the record. See p. 561, note 3.

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porterent *Quare impedit* vers William Wastelyn, countant qun Gilbert<sup>1</sup> de A. et Hughe de Neville<sup>2</sup> en temps le Roi Henri furent seisiz, et presenterent, et firent composicion entre eux a presenter par tourne, &c., par quei Gilbert en comenceaunt tourne presenta, &c. Et puis Hughe presenta et apres la mort de qi presente leglise est ore voide. Et fist la descente de Gilbert a son heir qe graunta lavoeson, a presenter par tourne, a Isabele la femme Johan, et issint sount ils seisiz, et issi appent a eux a presenter a ore.<sup>3</sup>—*Mutl.* Ils ount dit qe G.

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1344-5.

*Banco*, Hil., 19 Edw. III., R<sup>o</sup> 229. It there appears that the action was brought by John de Skipwythe and Isabel his wife against William Wastelyn of Brumby in respect of a presentation to the church of Bekeby (Bigby, Lincolnshire).

<sup>1</sup> L., Gilberd.

<sup>2</sup> MSS. of Y.B., Darches instead of de Neville.

<sup>3</sup> According to the record, the declaration was, "quod quidam Gilbertus des Arches et Hugo de Neville fuerunt seisiti de advocacione ecclesie predictae, tempore pacis, tempore Henrici Regis proavi domini Regis nunc, qui ad eandem ecclesiam praesentaverunt quendam Johannem de Neville clericum suum, qui ad praesentationem suam fuit admissus et institutus, . . . inter quos concordia facta fuit, scilicet, quod praedictus Gilbertus primo praesentaret ad ecclesiam praedictam et praedictus Hugo et heredes sui praesentarent secundo ad ecclesiam praedictam, et sic alternatim praedictus Gilbertus et heredes sui et praedictus Hugo et heredes sui praesentarent ad ecclesiam praedictam in perpetuum, qui quidem Gilbertus incipiente primo turno

" post concordiam inter eos factam  
 " praesentavit post mortem praedicti Johannis de Neville ad eandem ecclesiam quendam Willelmum de Brauncewelle, clericum suum, qui ad praesentationem suam fuit admissus et institutus. . . .  
 " Et de ipso Hugone descendit jus, &c., cuidam Thomae ut filio et heredi, &c., qui quidem Thomas ad ecclesiam praedictam, ut in secundo turno incipiente, praesentavit quendam Laurentium de Stibeti, clericum suum, qui ad praesentationem suam fuit admissus et institutus, . . .  
 " . . . post  
 " cujus mortem praedicta ecclesia modo vacat. Et de ipso Gilberto descendit jus, &c., cuidam Roberto ut filio et heredi, &c., qui quidem Robertus advocacionem praedictam, &c., dedit praedictae Isabellae nunc uxori ipsius Johannis de Skipwythe, habendam sibi et heredibus de corpore suo exeuntibus, et ea ratione pertinet ad ipsos Johannem et Isabellam ad ecclesiam praedictam modo praesentare, &c., praedictus Willelmus ipsos injuste impedit."

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the advowson in common, and they do not show how Gilbert and Hugh acquired it; judgment of the count.—This exception was not allowed.—Afterwards *Mutlow* took exception on the ground that the plaintiffs alleged a grant of the advowson, which is supposed to be in gross, and which must be vested by particular words, whereof they show nothing.—This exception was not allowed.—Nevertheless *quære*.—Therefore *Mutlow* said, that, whereas the plaintiffs suppose that Gilbert and Hugh presented in common, their clerk was not admitted on the presentation of those two in common; and, whereas they say that a composition was taken, there was not any composition, nor did Gilbert present by turn as above, nor was his presentee admitted; but we tell you that Hugh was seised of a moiety of one acre of land to which the advowson is appendant, &c., and presented, &c. And afterwards *Mutlow* traced, by means of descent and purchase, the land and the advowson to the ancestor of the party against whom the writ is brought, who presented twice, and from whom the land, &c., descended to William, against whom the writ is brought, who presented, &c., and he prayed a writ to the Bishop.—*Sadelyngstanes*. That



## No. 51.

et H. furent seisis en comune del avoeson, et ne<sup>1</sup> moustrent pas coment ils aviendrent; jugement de count.—*Non allocatur*.—Puis chalengea de ceo qe le pleintif alleggea graunt del avoeson, qest suppose estre un gros, qe coviendreit<sup>2</sup> vestir par parole, et de ceo ne moustre rienz.—*Non allocatur*.—*Quære tamen*.—Par quei il dit qe la<sup>3</sup> ou il suppose qe G. et H. presenterent en comune, &c., lour clerk ne fuit pas resceu al presentement de eux<sup>4</sup> deux en comune; et, la ou ils dient qe composicion se prist, il ny avoit pas composicion, ne G. ne presenta pas par tourn *ut supra*, ne son presente resceu, &c.; mes vous dioms qe H. fuit seisi de la moite dune acre de terre a quei lavoeson appent, &c., et presenta, &c. Et puis par descente et purchace conveia la terre et lavoeson a son auncestre vers qi le brief, &c., qe presenta ij foith, de qi descendi<sup>5</sup> a W., vers qi, &c., qe presenta, &c., et pria brief al Evesqe.<sup>6</sup>—

A D.  
1344-5.<sup>1</sup> ne is omitted from H.<sup>2</sup> C., covyndreit; H., covendreit.<sup>3</sup> la is from L. alone.<sup>4</sup> The words de eux are omitted from H.<sup>5</sup> C., descent.

<sup>6</sup> The plea was, according to the record, after a recital of a portion of the declaration, "quod prædictus Hugo de Neville fuit solus seisitus de medietate unius acre terre, cum pertinentiis, in Bekeby, ad quam advocatio ecclesie prædictæ pertinet, et quod prædictus Gilbertus nihil habuit in advocacione prædicta, et quod prædictus Johannes de Neville non fuit admissus nec institutus ad præsentationem ipsorum Gilberti et Hugonis sicut iidem Johannes et Isabella in narratione sua supponunt. Et quo ad hoc quod

" prædicti Johannes et Isabella  
 " dicunt quod concordia facta fuit  
 " inter prædictos Gilbertum et  
 " Hugonem, scilicet [&c. as above]  
 " dicit quod nunquam aliqua  
 " concordia inter ipsos Gilbertum  
 " et Hugonem facta fuit. Et quo  
 " ad hoc quod dicunt quod præ-  
 " dictus Gilbertus præsentavit præ-  
 " dictum Willelmum de Braunce-  
 " welle, ut incipiente turno, &c.,  
 " . . . qui ad præsentationem  
 " suam fuit admissus et institutus,  
 " . . . dicit quod  
 " prædictus Willelmus de Braunce-  
 " welle non fuit admissus nec  
 " institutus ad ecclesiam prædic-  
 " tam ad præsentationem ipsius  
 " Gilberti, . . . et petit  
 " judicium si ad breve istud  
 " responderi debeant, &c. Et pro  
 " brevi habendo Episcopo dicit  
 " quod prædictus Hugo fuit solus

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answer is double: one the destruction of our title, the other the last presentation, so that, even though we maintain our title, he will have a writ to the Bishop on the non-denial of the last presentation.—STONORE. He gives you an advantage, because you can now elect your issue to your own advantage.—*Thorpe*. And inasmuch as he will not hold to a particular answer, &c., judgment; and we pray a writ to the Bishop.—WILLOUGHBY. And will you not say anything else? Abide judgment there, and you will very soon be delivered.—*Sadelyngstanes*. We do not admit the last presentation to have been made by him or by his ancestor; and we tell you that Gilbert and Hugh presented in common, as above, and that Gilbert presented, taking the first turn; ready, &c.—And the other side said the contrary.

Fine.

(52.) § Fine, by which *Grene* proposed to release, for a husband and his wife and the heirs of the husband,

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>“ seisitus de prædicta terra ad<br/> “ quam, &amp;c., tempore pacis,<br/> “ tempore prædicti Henrici Regis,<br/> “ qui ad ecclesiam illam præsen-<br/> “ tavit ipsum Willelmum de<br/> “ Brauncewelle, clericum suum,<br/> “ qui ad præsentationem suam<br/> “ fuit admissus et institutus. . .<br/> “ . . . Et de ipso Hugone<br/> “ descendebat prædicta terra ad<br/> “ quam, &amp;c., cuidam Thomæ ut<br/> “ filio et heredi, &amp;c., qui ad<br/> “ ecclesiam illam præsentavit præ-<br/> “ dictum Laurencium de Stibeti,<br/> “ clericum suum, qui ad præsen-<br/> “ tationem suam fuit admissus et<br/> “ institutus. . . . .<br/> “ Et de ipso Thoma descendebat<br/> “ prædicta terra ad quam, &amp;c.,<br/> “ cuidam Nicholao ut filio et<br/> “ heredi, &amp;c., qui quidem Nicho-<br/> “ laus de prædicta terra ad quam,<br/> “ &amp;c., feoffavit quendam Robertum</p> | <p>“ Wastelyn, habenda sibi et here-<br/> “ dibus suis in perpetuum, qui<br/> “ quidem Robertus præsentavit<br/> “ quendam Willelmum Wastelyn,<br/> “ clericum suum, qui ad præsen-<br/> “ tationem suam fuit admissus<br/> “ et institutus. . . . .<br/> “ Et idem Robertus postea, vacante<br/> “ ecclesia prædicta per mortem<br/> “ prædicti Willelmi Wastelyn præ-<br/> “ sentati per ipsum Robertum,<br/> “ præsentavit ad ecclesiam præ-<br/> “ dictam quendam Johannem<br/> “ Wastelyn, clericum suum, qui ad<br/> “ præsentationem suam fuit ad-<br/> “ missus et institutus. . . . .<br/> “ Et de ipso Roberto descendebat<br/> “ prædicta terra ad quam, &amp;c.,<br/> “ cuidam Roberto ut filio et<br/> “ heredi, &amp;c., et de ipso Roberto<br/> “ descendebat prædicta terra ad<br/> “ quam, &amp;c., isti Willelmo Waste-<br/> “ lyn ut filio et heredi, versus</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## No. 52.

*Sadl.* Ceo respons est double : un destruccion de nostre tite, autre le darrein presentement, ou, tut meintenoms nostre tite, sur le darrein presentement nient<sup>1</sup> dedit il avera brief al Evesqe.—*STON.* Il fait vostre avantage, qar vous poietz ore a vostre avantage eslire<sup>2</sup> vostre issue.—*Thorpe.* Et desicome il ne voet prendre certain respons, &c., jugement; et prioms brief, &c.—*WILBY.* Et autre chose ne voilletz dire? Demuretz la, et vous serretz delivers tauntost.—*Sadl.* Nous ne conissons pas le darrein presentement fait par luy ne par son auncestre; et vous dioms qe G. et H. presenterent en comune, *ut supra*, et qe compositcion se prist, *ut supra*, et Gilbert, en comenceaunt tourne, presenta; prest, &c.—*Et alii e contra.*<sup>3</sup>

A.D.  
1344-5.

(52.)<sup>4</sup> § Fyne, par quel *Grene* voleit aver relesse pur le baroun et sa<sup>5</sup> femme et les heirs le baroun

Fyne.  
[Fitz.,  
Reless,  
31.]

“ quem, &c., qui quidem Willelmus  
“ Wastelyn, vacante ecclesia præ-  
“ dicta per mortem prædicti  
“ Johannis Wastelyn, præsentavit  
“ ad ecclesiam prædictam quendam  
“ Willelmum Wastelyn, clericum  
“ suum, qui ad præsentationem  
“ suam fuit admissus et institutus,  
“ . . . . per cujus mortem  
“ prædicta ecclesia modo vacat,  
“ et ea ratione pertinet ad ipsum  
“ Willelmum, et non ad ipsos  
“ Johannem et Isabellam, ad  
“ ecclesiam prædictam præsentare,  
“ &c.”

<sup>1</sup> nient is omitted from H.

<sup>2</sup> H., aler a.

<sup>3</sup> The replication upon which issue was joined was, according to the record, “ Johannes et Isabella, “ protestando quod prædicti Gilbertus et Hugo fuerunt seisiti de “ advocatione ecclesiæ prædictæ, “ et ad eandem ecclesiam in “ communi præsentaverunt præ- “ dictum Johannem de Neville et

“ quod concordia facta fuit inter  
“ ipsos Gilbertum et Hugonem,  
“ dicunt quod prædictus Willelmus  
“ de Brauncewelle fuit admissus et  
“ institutus ad præsentationem  
“ ipsius Gilberti ad ecclesiam  
“ prædictam sicut ipsi in narra-  
“ tione sua supponunt, &c.”

The plaintiffs subsequently failed to appear on a day given, and judgment was then rendered “ quod prædictus Willelmus eat inde “ sine die, et prædicti Johannes et “ Isabella nihil capiant per breve “ suum sed sint in misericordia “ pro falso clamore, &c., et idem “ Willelmus habeat breve Episcopo “ loci diæcesano prædicti [quod], “ non obstante reclamatione præ- “ dictorum Johannis et Isabellæ, “ ad ecclesiam prædictam ad præ- “ sentationem prædicti Willelmi “ idoneam personam admittat, “ &c.”

<sup>4</sup> From C., H., and L.

<sup>5</sup> H., la.

## No. 53.

A.D.  
1344-5.

to another man and his wife and the heirs of their bodies begotten, and, if they died without heir of their bodies, to the right heirs of the husband.—WILLOUGHBY. Can an estate be limited by release?—*Grene*. No, but they had such an estate before.—STONORE. A fine must be final between the parties.—WILLOUGHBY. How can any one release to the husband's heir when there is no such person? That would be extraordinary.—*Grene*. One can release to you and your heirs, even though you have not an heir.—WILLOUGHBY. In that case the whole estate would be in me, but in this case the husband has not a fee tail.—And afterwards *Grene* proposed to grant in the form above.—And the fine in this form was not admitted.—Therefore he rendered and granted in the form above; and then the fine was admitted, &c.

Writ of  
Con-  
spiracy.

(53.) § John Beauflour brought a writ of Conspiracy against John de Godesfelde and others. All made default except one, against whom *Grene* counted that tortiously he conspired with the others who did not appear, by deceitful compact and confederacy made in parley between them, at London, to cause John Beauflour to be appealed of the death of William Beauflour by Isabel the wife of William, and tortiously for that, on a certain day, in a certain year, in such a Ward at London, they procured the said Isabel to attach an Appeal before such a Coroner and Sheriffs of London, by force whereof he was taken on such a day, and put in custody in Newgate, and there remained by force of the said Appeal until such a day, &c., when this same Isabel was non-suited on her said Appeal before RICHARD DE KELSHULLE and his fellows, JUSTICES

## No. 53.

a<sup>1</sup> un autre homme et sa femme et les heirs de lour corps engendres, et, sils devient saunz heir de lour corps, as dreitz heirs le baroun.—WILBY. Poet homme par relees tailler estat?—*Grene*. Nanille, mes tiel estat avoint ils a devant.—STON. Fyne covient estre final entre parties.—WILBY. Coment purra homme relessier al heir le baroun ou il y ad nul tiel? Ceo serreit merveille.—*Grene*. Homme purra relessier a vous et vos heirs, et si navietz<sup>2</sup> pas heir.—WILBY. Ceo serreit tut en moi,<sup>3</sup> mes en ceo cas le baroun nad pas fee taille.—Et puis *Grene* voleit aver graunte *ut supra*.—*Et non admittitur*.—Par quei il rendist et graunta *ut supra*; et donques fuit ceo resceu, &c.

A.D.  
1344-5.

(53.)<sup>4</sup> § Johan Beauflour porta brief de Conspiracie vers Johan Godesfelde et autres. Touz firent default sauf un, vers qi *Grene* counta qe atort ensemblement ove les autres qe ne venent<sup>6</sup> pas<sup>7</sup> par faux alliaunce et confederacie entre eux purparle conspirant, a Loundres, de faire Johan estre appelle de la mort W. [Beauflour par Isabelle<sup>8</sup> la femme W.],<sup>9</sup> et pur ceo atort qe certain jour et an a Loundres en tiel garde ils procurerent la dite Isabelle<sup>8</sup> dattacher un Appelle devant tiel Coroner et Vicountes de Loundres, par force de quel il estoit pris tiel jour, et mys en la garde de Neugate, et par force del dit Appelle illoeqes demura tanqe tiel jour, &c., qe mesme ceste Isabelle<sup>8</sup> devant RICHARD DE KELL.

Brief de<sup>5</sup>  
Con-  
spiracye.  
[Fitz.,  
Con-  
spiracie,  
12.]<sup>1</sup> C., and L., et.<sup>2</sup> H., navoms.<sup>3</sup> H., veyne.

<sup>4</sup> From C., H., and L., but corrected by the record, *Placita de Banco*, Hil., 19 Edw. III., R<sup>o</sup> 424. It there appears that the action was brought by John Beauflour against "Maurellus" de Saunforde in respect of a conspiracy between

him and John de Godesfelde, William Devenyssh, and John Coke of Bedford.

<sup>5</sup> The words Brief de are from C. alone.

<sup>6</sup> H., veignent.<sup>7</sup> pas is from L. alone.<sup>8</sup> MSS. of Y.B., Alice.

<sup>9</sup> The words between brackets are omitted from H.

## No. 53.

A.D.  
1344-5.

of Gaol-delivery, wherefore he passed quit at her suit, and was arraigned at the suit of the King, and acquitted, &c., and so tortiously and contrary to the Ordinances<sup>1</sup> in such case provided, and to the damage, &c.—*Gaynesford* denied the tort, and force, and all deceitful compacts and conspiracies, and everything contrary to the Ordinances in such case provided, and the damage, &c., and said Not Guilty; ready, &c.—And the other side said the contrary.

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<sup>1</sup> 28 Edw. I. (*Art. sup. car.*), c. 10 ; 33 Edw. I. (*Ordin. de Consp.*).

## No. 53.

et ses compaignouns JUSTICES assignes, &c., a son dit appelle fuit nounsuy, par quei il passa quites a sa suite, et fuit arrene a la suite le Roi, et acquite, &c., atort et encountre les Ordinaunces en tiel cas purveux,<sup>1</sup> et a damage, &c.<sup>2</sup>—*Gayn.* defendi tort, et force, [et totes faux alliaunces et conspiracies, et quant gest encountre les Ordinaunces en tiel cas purveux, et damage],<sup>3</sup> et dist qe de rien coupable; prest, &c.—*Et alii e contra.*<sup>4</sup>

A.D.  
1344-5.

<sup>1</sup> H., purvewes.

<sup>2</sup> The declaration against Saunforde was, according to the record, that, "conspiracione inter prædictum Maurellum et præfatos Johannem de Godesfelde, Willelmum, et Johannem Coke, . . . . . in Warda de la Vynetrie Londoniarum, præhabita, ipsum Johannem Beauflour, per Isabellam quæ fuit uxor Willelmi Beauflour, de morte prædicti Willelmi quondam viri sui apud Cliftone in comitatu Bedefordie felonice interfecti, coram Johanne Syward et Johanne de Aylesham, tunc Vicecomitibus Londoniarum, et Johanne de Foxtone, tunc Coronatore Civitatis Londoniarum, appellari (ratione cujus appelli idem Johannes Beauflour . . . . . apud Londonias captus fuit per Vicecomites prædictos, et ad gaolam Regis de Neugate ductus) et in gaola illa [from a certain day to a certain day] detineri (quo die idem Johannes Beauflour ductus fuit coram præfato Ricardo de Kellehulle et sociis suis Justiciariis ad gaolam prædictam deliberandum assignatis per custodes ejusdem gaolæ, et prædicta Isabella tunc non fuit prosecuta appellum suum prædictum, per quod consideratum

"fuit ibidem quod eadem Isabella caperetur, &c., et plegii sui de prosequendo essent in misericordia, &c., et tunc idem Johannes Beauflour allocutus per Curiam ad sectam domini Regis de feloniam prædictam, &c., posuit se, &c., quod non fuit inde culpabilis, &c., et, continuato inde inde processu, . . . . . compertum fuit per juratam de prædicto Comitatu Bedefordie quod idem Johannes Beauflour non fuit culpabilis de feloniam prædictam, per quod tunc consideratum fuit in eadem Curia quod idem Johannes Beauflour iret inde quietus) falso et malitiose procuravit, ad damnum ipsius Johannis Beauflour mille librarum, et contra formam &c. Et inde producit sectam, &c."

<sup>3</sup> The words between brackets are omitted from H.

<sup>4</sup> According to the record "Maurellus . . . . . defendit vim et injuriam, quando, &c. Et bene defendit quod ipse non est culpabilis de conspiracione prædicta. Et de hoc ponit se super patriam. Et Johannes Beauflour similiter."

The *Venire* was awarded, but nothing further appears on the roll, except adjournments.





( 571 )

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INDEX OF MATTERS.

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## INDEX OF MATTERS.

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### A

#### ABATEMENT OF WRITS :

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(Attaint.) When the writ has been brought on verdict in Assise of Mort d'Ancestor for an infant, in which there were only two points for enquiry, and the writ of Attaint supposes that there were three points as in the case of one of full age, it abates for variance, 366.

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If the writ be brought against several persons, one of whom disclaims tenancy, and another pleads that

#### ABATEMENT OF WRITS—*cont.*

he holds jointly with his wife who is not mentioned in the writ, the disclaimer does not vitiate the writ, and the demandant need not aver that the person disclaiming is tenant, but the alleged joint tenancy must be traversed, if the writ is to be maintained, 418-420.

(Formedon in the reverter.) A writ claiming the reversion on a gift to a man and his sister, and the heirs issuing from their bodies, "*eo quod uterque obiit sine herede de corpore suo exeunte*," is good, 112-116 ; 113, note 13.

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(Novel Disseisin.) Where the tenements were described in the writ as being "*in Nova Foresta*," and the plea in abatement was that the place is not in a vill or hamlet, and the Assise found that the place is not in any vill or hamlet, but in the New Forest, which is not in any vill or hamlet, it was held that the writ was good, and that there was no necessity to add the words "*extra villam*" after the words "*in Nova Foresta*," 74-76.

(*Nuper obiit*.) If one of the tenants appears in person, and confesses that he is a villein, the writ abates, 318-320.

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ABATEMENT OF WRITS—*cont.*

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(Trespas.) If the writ be brought against several persons, and one of them is misnamed, it will abate as against all, even though he may have been outlawed and obtained a charter of pardon of outlawry by the name mentioned in the original writ, 28-32; 31, note 4; 33, note 1.

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Action of, by heir against guardian in socage, under Stat. Marl. c. 17, does not lie until he is of the full age of twenty-one, though he may have his land when he is sixteen, 324-328.

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ACCOUNT—*cont.*

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When, in a *Cui in vita*, one who has been vouched, and has become tenant by his warranty, vouches the husband's heir who is under age, the parol will demur, because the Statute Westm. 2, c. 40, applies only where the person vouching is tenant in demesne, and not where he is tenant by his warranty, 488.

## AID :

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See ABATEMENT OF WRITS ; CONSPIRACY.

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## ATTACHMENT ON PROHIBITION :

Where the plaintiff had alleged that plea had been held in Court Christian by a Bishop's Commissary, who

ATTACHMENT ON PROHIBITION—*cont.*

had pleaded to issue that he did not hold plea, and the verdict at *Nisi prius* was that he did hold it, and the plaintiff prayed judgment in the Common Bench, the Commissary, in order to stay judgment, produced the Bishop's letter excommunicating the plaintiff and so disabling him. *Quere* the remedy, 354-356.

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Cannot be appointed by bill when admission to defend is prayed, 460.

## AUDITA QUERELA :

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See STATUTE MERCHANT.

## AVERMENT :

See SHERIFF'S RETURN.

## B

## BASTARD :

Where issue is joined upon the question whether a person is bastard or not, the decision rests with a Court Christian, and the Bishop sends his certificate to the King's Court, but where the allegation is only that a person was born before the marriage of his parents, enquiry may be had by Assise, the reason being that persons so born are held to be legitimate by Holy Church, but bastards by the law of England, and unless judgment has been rendered upon it, the Bishop's certificate of legitimacy in a previous action will not prevent such enquiry, 34-40.

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## C

## CASES CITED :

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Multon's case (in Parliament), 202.

## CESSAVIT :

Where the demandant supposed that certain specified tenements were holden of him by the tenant by certain specified services, and the tenant pleaded, as to part, that they were not holden of the demandant, but of another person named, and, as to the rest, that the demandant's father had enfeoffed the tenant's father and his wife thereof in fee,

CESSAVIT—*cont.*

upon issue joined the jury at *Nisi prius* found for the tenant, as to the first part, and for the demandant as to the rest, without mentioning the services by which they were holden, or how much was in arrear. Judgment being prayed for the demandant as to the portion in respect of which the verdict was in his favour, the tenant made a tender of a certain sum in satisfaction of the arrears, which sum the demandant would not accept, but again prayed judgment. It was held that the demandant ought to have prayed fuller examination of the jury, and that the Court had not sufficient information on which to give judgment. The demandant thereupon prayed new jury process to the same jury as before, and the tenant also, and this was granted. A second verdict was practically to the same effect as the first, but with the addition of a statement of the services by which the two portions of the tenements were respectively holden. The arrears due in respect of the portion in respect of which the finding was in the demandant's favour having been paid into Court, and security having been found for the future payment of the rent, judgment was given that the tenant should retain his land, and that the demandant should be amerced for his false claim in respect of the rest, 234-248, and Y.B., Easter, 17 Edw. III. (Rolls edition), pp. 454-458, with record there cited.

The tenant cannot, after *Prece partium*, plead in general terms that the demandant is tenant by his own disseisin, but may plead that the demandant has disseised him since the last continuance, and that is a good issue. 346-348.

## CHANCERY :

*See* SCIRE FACIAS IN CHANCERY.

## COGNISANCE OF PLEAS :

When the Court of Common Pleas has allowed cognisance of a plea to the bailiffs of a liberty, and the demandant re-appears in that Court and alleges that he has been wrongly non-suited in the Court of the liberty, issue may be joined upon the facts, and the Court of Common Pleas will award a *Venire*, 2-6.

## COMMON :

Argument touching the origin and nature of Common of pasture, 156-168.

*See* NOVEL DISSEISIN.

## CONFIRMATION :

Where A. (a husband) holds tenements for his life by demise from B., and B.'s heir confirms the demise to A. and A.'s wife for their lives, the wife takes nothing by such confirmation though made with warranty, 120, 124.

Where, on the other hand, a dowress leases to a husband and wife for the life of the dowress, and the heir by release confirms to the husband and wife for their lives, the confirmation operates in favour of the wife, 124.

## CONSPIRACY :

Where it was alleged that A. had, in conspiracy with others, caused B. to be appealed of homicide by the widow of the person alleged to have been feloniously slain, and to be detained in gaol, and the widow had been non-suited on the Appeal, and B. had been afterwards arraigned at the King's suit, and found not guilty, B. brought a writ of Conspiracy in the Common Bench and claimed damages. A. pleaded Not Guilty of the conspiracy, and issue was joined on that plea, 566-568 ; 569, notes 2 and 4.

## COUNCIL, THE KING'S :

See SCIRE FACIAS IN CHANCERY.

## COVENANT :

Where A. and B. had by deed covenanted with C., the steward of D., that they would convey certain tenements to E. and F., who were to reconvey to A. and B. and G. for their lives, with successive remainders to D. in tail, and to D.'s right heirs, a writ of Covenant was brought by E. and F. against A. and B. for non-performance. It was pleaded in abatement of the writ that C. (and not E. or F.) was a party to the deed, and that consequently the writ was not warranted by the deed. The Court adjourned without deciding the point, 522-529.

Where there was a covenant by deed to lease certain manors to A. for his life, with a condition that if he should die within twelve years, his executors should hold until the end of twelve years from the time of the lease, and A. died before the expiration of the term, and the lessor entered upon the lands, a writ of Covenant was brought by two persons as executors. When called upon to produce their testator's will it was found that other persons had been therein named as executors, and neither of the plaintiffs. The executors named had refused to administer, and the plaintiffs had been appointed administrators by the Ordinary. It was held that the Ordinary himself would not have such an action, and could not therefore give it to another, and that the plaintiffs, not being executors, should take nothing by their writ, 528-534 ; 535, note 4.

## CUI IN VITA :

Where the alleged title was a conveyance by A. to the demandant's husband, and herself, and the heirs

CUI IN VITA—*cont.*

of their bodies, and it was pleaded that the husband had, while under age and unmarried, enfeoffed A. of the tenements in fee, and had, while still under age, taken from A. the estate mentioned by the demandant, and had therefore been merely restored to his original estate, the demandant had to plead to issue that the husband was of full age at the time at which he and she took back their estate from A., 514-516.

See AGE, PRAYER OF.

## D

## DAMAGES :

See EJECTMENT FROM WARDSHIP.

## DEATH :

Sheriff's return not conclusive evidence of, 420.

When the Sheriff has returned that he served a writ upon one of several tenants, the other tenants cannot be admitted to the averment that he is dead, unless special mischief be shown by them, 488-492.

## DEBT :

Action of, under the Statute *De mercatoribus*, against a keeper of a gaol who had, as alleged, allowed the obligor in a statute merchant to escape, and pleadings thereon, 64-70.

Where the action was brought on obligation, and a defeasance was pleaded to the effect that if the debtor should pay a certain sum on a certain day the obligation should lose its force, and the debtor replied that he was ready to pay on the day, and always had been, and produced the money in Court, the plaintiff refused to accept it, and issue was joined on his averment that the debtor did not tender it on the appointed day, 296.



## DEED :

A deed by which A. conveys tenements to B. and B.'s first-born son lawfully begotten has no force or effect in relation to B.'s son, if the latter was not *in rerum natura* at the time of the execution of the deed, though if *in rerum natura* at the time he would take a joint estate with his father, 362-364.

## DETINUE :

Where the action was brought by several persons against the bailee of a charter, and some of them who had not appeared did not prosecute after having been summoned, they were severed, although the contents of the charter were unknown to the Court, 334-336.

Where the action was brought against a defendant who alleged that writings had been delivered to him to redeliver to the plaintiff (A.) or to another person (B.) in accordance with certain conditions, and that he did not know whether the conditions had been fulfilled or not, and prayed a *Scire facias* to warn B. to appear, the *Scire facias* issued. B., when he appeared, alleged that the plaintiff and he agreed to submit certain matters to arbitration, and abide by the decision of an umpire, that four knights severally became sureties for the observance of the agreement by the parties, that the writings which were detained were the obligations of the knights, and that as he had accepted the award of the umpire and the plaintiff had not, they ought to be delivered to him. Upon a suggestion that the knights ought first to be warned as parties, by *Scire facias*, the Court held that the parties to the dispute were the only parties to the agreement, and that the knights, if they suffered, must take the consequences of their own folly, 460-464.

## DOWER :

Judgment in action of, is not conditional when the tenant vouches one who vouches over the husband's heir, and the latter makes default, but is to the effect that the demandant shall recover against the tenant, and he against the first vouchee, and the first vouchee against the second, 84.

If the tenant vouch the husband's heir who is an infant, and the guardian warrants as one who has nothing in his wardship of the heir's inheritance which descends to the heir in fee simple, the judgment will be for the demandant to recover against the tenant, if the vouchee has been vouched in several counties; but, if he has been vouched only in the county in which the writ is brought, the judgment will be conditional, *i.e.* for the demandant to recover out of the heir's inheritance which the guardian has in his wardship, and if there be any deficiency, out of the tenant's land, 104-106; 107, note 1; 499, note 7.

If the demand is for a third part of a manor, and the tenant alleges that he holds the entire manor, except the advowson of the church and the knights' fees, for term of his life, and vouches the heirs of his lessor in respect of the third part, the voucher is good, notwithstanding the fact that the number of the knights' fees is not definitely stated, 124-134.

It was pleaded in bar that the land of which dower was demanded had previously been assigned by one A. as dower to one B. who had subsequently married one C. and, with C., had granted the land to the parents of the demandant's husband in special tail, for the life of B., that the demandant's husband on the death of his parents had

DOWER—*cont.*

entered, but that neither he nor his parents had been seised of the land as of freehold before the grant made by B. and C., that A. had granted the reversion to the husband's parents in special tail, and that the husband was seised after their death as son and heir, that the two estates (one of freehold, and one of fee tail) were not by law united ("*adunati*") in his person, but were held by different titles, and judgment was prayed whether the demandant could have dower of such an estate. Against this the demandant tendered the averment that her husband had been seised as of fee so that he could endow her. The tenant prayed judgment whether she could be admitted to this averment, as she had not denied the allegations in the plea. Judgment was given that, inasmuch as the tenant would not accept the demandant's averment, but expressly confessed the grant to the husband's parents in special tail for the life of B. and the grant to them of the reversion after B.'s death, whereby the right and fee which had been revertible to A. became united with (*adhesit*) the freehold in their persons, and inasmuch as their estate had descended to the demandant's husband as son and heir, he was seised as of fee so that he could endow, and that therefore the demandant should recover her dower, 184-194; 185, note 14; 189, note 1; 191, note 3; 195, note 5.

Where the tenant vouched the husband's heir in the same county and in other counties, and he warranted as one who had nothing by descent, judgment was given that the demandant should recover against him if he had assets in the same county, but if not, against the ten-

DOWER—*cont.*

ant, who should recover to the value against him, 322.

Where it is not denied that the tenant has entered by the husband, voucher is not allowed unless some special cause be shown, 322-324.

Where the husband's heirs were vouched while under age, but when their [socage] lands were not in wardship, they were admitted to warrant and to render dower, 426-428.

Where dower is demanded in respect of rent against several tenants, and some appear, and others make default after default, there will be apportionment, and judgment will be given for the demandant to recover seisin of their proportion of the rent against the defaulters, 492; 493, note 6.

Where it was pleaded in bar that tenements in a certain place were partible by custom, that the tenements out of which dower was demanded had descended to the husband and another, and that partition had been made, the demandant was compelled to traverse the partition, upon which traverse issue was joined, 520.

See AMERCEMENT; QUARE IMPEDIT.

DUM NON FUIT COMPOS MENTIS:

See ENTRY.

## E

EJECTMENT FROM WARDSHIP:

If, after the plaintiff's declaration, the defendant imparl, and do not return into Court, judgment will be given for the plaintiff to recover the wardship, and damages to the amount claimed in his declaration, 136-138.

ENTAIL:

See NOVEL DISSEISIN.

## ENTRY :

Where the writ is within the degrees, and the tenant makes default after default, a reversioner who is out of the degrees may be admitted to defend his right, and may vouch another person who is out of the degrees to warrant, the statute of Westminster the Second, c. 40, notwithstanding, 134-136.

Where, on a writ of Entry *dum non fuit compos mentis* brought against husband and wife, the wife, being admitted to defend, on her husband's default, vouches one who is out of the degrees, alleging that the entry was through him and in virtue of his lease, and not through the demandant's ancestor, issue will be joined on the question whether the lease was made by the ancestor who was *non compos mentis*, or not, 138-142; 141, note 11.

ENTRY, in the *per* :

When it is supposed in the writ brought against man and wife that the entry was that of the wife alone, and it is alleged in abatement of the writ that both husband and wife entered by the same person, it is not sufficient to plead that the husband and wife entered by purchase, but there must be added the words "and not the wife alone," 70.

ENTRY, in the *post* :

Admission of reversioner to defend in. See RECEIPT.

ENTRY, *de quibus, sur disseisin* :

Where the demandant brought the action on the ground that the tenant disseised his grandfather, and the tenant pleaded a deed by which the grandfather enfeoffed certain persons, whose assign the tenant was, it was held that this was a traverse of the disseisin, and the demandant was allowed to maintain his writ by a replication that the

ENTRY, *de quibus, sur disseisin*—*cont.*

tenant and others did disseise the grandfather, *absque hoc* that anything passed by the deed, and issue was joined upon a rejoinder that the land did pass, 282-290; 291, note 4.

## ERROR :

See NOVEL DISSEISIN; OUTLAWRY.

## ESCHEAT :

Where the writ was brought by the lord on the ground that his tenant had been outlawed after committing a felony, and the plea was that the outlawry had been reversed in the King's Bench because the tenant was in prison at the time at which it was pronounced, and before, and afterwards, and the record of the reversal was produced, the demandant was not permitted to aver that the tenant was at large at that time, but took nothing by his writ, because that record stood in force, 546-550; 551, note 1.

## ESSOIN :

Where, on a writ of Waste, there was a demurrer on a point of law, and also an issue of fact to be tried by a jury, and the day given to the parties *de audiendo judicio* was the same as that given for the return of the *Venire*, and the defendant was afterwards essoined in the form "*de placito unde jurata, &c.*", without any reference to the demurrer, with regard to which the plaintiff prayed judgment by default, the matter was referred to the Clerks of the Court, who said that the practice was to amend the essoin in such a case, so that it should be in the words "*unde jurata et judicium, &c.*" 310-312; 313, note 6.

## ESTOPPEL :

If, in Assise of Novel Disseisin, it be pleaded that in a previous Assise between the same parties in respect

ESTOPPEL—*cont.*

of the same tenements a verdict has been given to the effect that the plaintiff had never been seised so that he could be disseised, it is no estoppel unless judgment has been given on the verdict; but it is otherwise when the plaintiff confesses matter to his own prejudice, in which case the matter remains of record against him even if he be non-suited, 52-56.

If, in Assise of Novel Disseisin, the defendant plead the plaintiff's release in bar, and the plaintiff reply *non est factum*, he cannot be estopped from so pleading by the fact that in a previous Assise between the same parties in respect of the same tenements the deed had been found to be his on a like plea, unless judgment has been given on the verdict, 56-64.

## ESTOVERS :

*See* TRESPASS.

## EXCOMMUNICATION :

*See* ATTACHMENT ON PROHIBITION.

## EXECUTION :

*See* WASTE.

## EXECUTORS :

Where executors have been in possession of land delivered to their testator on execution of a statute merchant, and have been ousted, and bring a *Scire facias* calling upon the defendant to show cause why they should not again have possession, the Court does not require them to produce the will, because they have been seised as executors, 444.

*See* COVENANT.

## F

## FINE OF LANDS :

Examples of, 408, 564-566.

## FINE :

On writ of Annuity. *See* ANNUITY.

## FORMEDON :

View in, 212.

Voucher in, 298-302.

Plea of Ancient Demesne in, 328-330.

*See* VENUE.

## FORMEDON IN THE DESCENDER :

Where the action was brought by one as heir to his mother, to whom it was alleged that a gift had been made in fee tail, a deed of the demandant's father, with warranty, was pleaded in bar, and it was stated that assets had descended to the demandant from his father. Issue was joined on the question whether assets had so descended or not, 260-266.

The action having been brought in respect of a moiety of the issues of two mills, it was pleaded that the alleged donee had, before the statute *de donis conditionalibus*, aliened to the alleged donor the same moiety, and that the action did not lie in respect of tenements aliened before the act. The tenant was not required to show any specialty, but issue was joined on a traverse of the alleged alienation before the statute, 336-340; 341, notes 1 and 2.

*See* ABATEMENT OF WRITS.

## FORMEDON IN THE REMAINDER :

Questions as to the admissibility of certain pleadings in, after view, 40-46.

## FORMEDON IN THE REVERTER :

On a gift to a man and his sister and the heirs issuing from their bodies, 112-116.

How the writ of differs in form from the writs of Formedon in the descender and Formedon in the remainder, 142.

When the writ is brought in respect of rent, and the tenant alleges that it is out of the demandant's fee, and pleads that the demandant ought not to be answered without showing a specialty, it is not a good demurrer, but the tenant must traverse the alleged gift, 254-256.

## G

## GAOL, KEEPER OF :

*See* DEBT.

## H

## HEIR :

*See* ACCOUNT.

## HOUSEBOTE :

*See* TRESPASS.

## I

## INFANT :

Where an averment was tendered that an heir was of such age that he could have a writ of Account against his guardian, it was not accepted, but he was inspected by the Court, 328.

*See* AGE, PRAYER OF ; DOWER.

## INTRUSION :

Cognisance of plea of, by bailiff or bailiffs of a liberty, 2-6.

Action of, 362-364.

## IRONS, PUTTING IN :

*See* ACCOUNT.

## J

## JUDGMENT :

Amendment of. *See* RIGHT OF ADVOWSON.

## JURORS :

Challenge of polls of an Assise for insufficient holding of land, 260.

If the jurors summoned by the bailiff of a liberty do not hold sufficient land, a *Venire facias* will issue to others who may be foreign to the liberty, 260.

## JUSTICES OF ASSISE :

Jurisdiction of, 434-436.

## K

## KING, THE :

*See* QUARE IMPEDIT.

## L

## LAW :

Definition of by Hillary, J., as "the will of the Justices," 378.

Definition of by Stonore, C.J., C.P., as "that which is right" or reasonable, 378.

## LEASE AND RELEASE :

A lease for life or for years and a subsequent release were equivalent to a feoffment in fee in the year 1345, 478.

## LIBERTY :

*See* COGNISANCE OF PLEAS ; JURORS.

## M

## MAINPRISE :

An obligor in a statute merchant who sues an *Audita Querela* against the obligee, cannot, if he has been taken and is in gaol, be let out on mainprise, though he may have a *supersedeas* of execution, 76.

## MARRIAGE :

Tender of by guardian to ward, 372.

## MESNE :

Pleadings in, where the action was brought on the ground that the plaintiff was distrained for two shillings by reason of the defendant's failure to acquit him, and the defendant alleged that the person who distrained had the estate of one who was the lord paramount to whom the two shillings had to be paid, as well as six marks to one whose estate the defendant had, in accordance with the terms of a feoffment, 112-116; 117, notes 2 and 3.

See RECEIPT.

## METROPOLITAN :

Writ to the. See QUARE IMPEDIT.

## MISCHIEF :

Of two mischiefs the lesser must be chosen, 402.

## MISNOMER :

See ABATEMENT OF WRITS. (Trespas.)

## MORT D'ANCESTOR, ASSISE OF :

Admission to defend in. See RECEIPT.  
Voucher in. See VOUCHER.

## MUTE :

See WAGER OF LAW.

## N

## NEIF :

See APPEAL OF ROBBERY.

## NISI PRIUS :

Duties and powers of Justice at, 238.

## NON-SUIT :

When a real action is brought by a writ with several *Precipes*, and the demandant joins issue with some of the tenants, and the others have a day in the Common Bench, and the demandant is non-suited at *Nisi prius* with regard to the tenants with whom he had joined issue, the effect is a non-suit with regard to all the *Precipes*, 468-470.

See ESTOPPEL.

## NOVEL DISSEISIN :

Assise of, does not lie for rent on a specialty charging all a particular person's lands in divers counties mentioned, but only where one county alone is mentioned, 20.

Pleadings in, relating to bastardy, 32-40.

Pleadings in Error upon Assise of, 46-48.

Pleadings in, where the Assise was brought in respect of rent against an alien Abbot and Prior, and the Prior had become the King's farmer of the Priory for so long a time as it should remain in the King's hand, 70-74.

Husband and wife (A. and B.) have been seised of a manor in right of the wife (B.), and have leased parcel of it to C. for his life, saving the reversion to themselves and the heirs of B., and A. has granted the reversion to D. and his heirs, and C. has attorned to D., and D. has purchased the rest of the manor from A. and B., who have afterwards by fine acknowledged the whole manor to be right of D., and D. has rendered it back to them for their lives, with remainder in tail to E. (the present tenant), and the husband and wife have aliened the

NOVEL DISSEISIN—*cont.*

manor to F., and E. has thereupon entered and ousted F. *Quere* does an Assise of Novel Disseisin lie for F. in respect of the parcel? Arguments thereon, 108-112.

Special verdict in Assise of, and arguments thereon, after adjournments into the Common Bench, 118-124.

When the Assise is brought in respect of common of pasture, and improvement is pleaded in bar, the issue will be on the question whether the plaintiff has sufficient pasture or not, 156-168; 169, note 9.

One A., having two sons, an elder B. and a younger C., gave certain tenements to C. in tail male. C. had a son D. who entered after C.'s death, and died without heir of his body. D.'s sisters E. and F. then entered upon the tenements as D.'s heirs. Thereupon G., son of B., entered upon their possession, and they ejected him. G. then brought an Assise of Novel Disseisin against them and their husbands, and others, and claimed the reversion as heir of A. the donor. The case for the defendants was that as D., the heir of the donee in tail male had been seised after the death of the donee, the gift had been completed in his person, and he had acquired a fee simple, while the plaintiff claimed that the tenements reverted to himself as heir of the donor, and could not descend to E. and F. as sisters of D. The case being adjourned into the Common Bench on account of difficulty, judgment was there given that the tenements did revert to the donor, that the plaintiff had lawfully entered upon the tenements as his heir, that the defendants had unlawfully ejected the plaintiff, and that the Assise should be taken against them in respect of damages,

NOVEL DISSEISIN—*cont.*

194-206; 197, note 4; 199, note 1; 201, note 1; 205, note 13.

Assise of, does not lie for a chattel interest, 410.

Where the Assise was brought as in respect of tenements in the County of Buckingham, before Justices of Assise for that county, and the defendants pleaded in bar that they had themselves recovered in an Assise of Novel Disseisin against the plaintiff the same tenements before Justices of Assise for the County of Oxford, and had then described the tenements as being in the County of Oxford, and the plaintiff had pleaded without denying that they were there, the Justices of Assise for the County of Buckingham adjourned the cause into the Common Bench *propter difficultatem*. It was there held that the Justices of Assise had no jurisdiction to enquire whether the tenements were in one county or in another, but that the Justices of the Bench had such jurisdiction, and that this fact was ground for the removal into their Court. They were of opinion that, after view, the plaintiff could not be admitted to say that the tenements were in any other county than that in which he had previously confessed them to be, and he consequently *non pros.*, 430-436.

Where an Assise was brought before Justices of Assise in respect of a rent seek, and the plaintiff could show no title but prescription, on which he prayed that the assise might be taken, the Justices adjourned the cause into the Common Bench, *propter difficultatem*, and that Court gave judgment that the assise should be taken, 436-438.

See ABATEMENT OF WRITS; BASTARD; ESTOPPEL.

## NUPER OBIT :

See ABATEMENT OF WRITS.

## O

## OUTLAWRY :

When one for whose outlawry an Exigent has issued surrenders and has a *Supersedeas*, and the outlawry is nevertheless completed, it will not be reversed on writ of Error, unless the Court is apprised that the *Supersedeas* was delivered to the Sheriff, nor on the ground that the felonious act for which the person was outlawed was committed in one county and the indictment taken in another, 100-102.

See APPEAL OF DEATH ; ESCHEAT.

## P

## PLEADING :

See ACCOUNT ; APPEAL OF ROBBERY ; COVENANT ; CUI IN VITA ; DEBT ; DOWER ; ENTRY ; ESCHEAT ; ESTOPPEL ; FORMEDON IN THE DESCENDER ; FORMEDON IN THE REMAINDER ; FORMEDON IN THE REVERTER ; MESNE ; NOVEL DISSEISIN ; PRÆCIPE QUOD REDDAT ; QUARE IMPEDIT ; QUARE NON ADMISIT ; RAVISHMENT OF WARD ; REPLEVIN ; SCIRE FACIAS ; TRESPASS ; VIEW ; WARANTIA CHARTÆ ; WARDSHIP ; WASTE.

## POSTULATION :

Translation of a Bishop by, 2.

## PRÆCIPE QUOD REDDAT :

Where the writ was brought against a man and his wife and a third person in common, and the third person pleaded several tenancy in abatement of the writ, and the man and wife vouched, this mode of pleading was not allowed, because

PRÆCIPE QUOD REDDAT—*cont.*

the several tenancy would have abated the whole writ, and the man and wife could not vouch in respect of that portion alone of which they were tenants without admitting the several tenancy of the third person, 428-430.

## PROCESS :

On *Præcipe quod reddat* against two persons, where the Sheriff has returned that one has been summoned, and that the other has no tenements in which he can be summoned, 282.

## PROFERT :

A party having once abode judgment on an issue in law as to whether it is necessary for him to produce a deed or not, cannot afterwards produce it, or, if he do, it will be disregarded by the Court, 476-486 ; 487, note 5.

Where a deed was pleaded in justification of alleged waste, and was produced, but was not entered in full upon the roll, though its effect was there stated, and the party, being called upon to produce it on a subsequent day after adjournment, had it not in Court, *semble* that he was in the same plight as if no specialty had been shown at all, 540-544.

## Q

## QUARE IMPEDIT :

Where a presentation was claimed by the King on the ground that the temporalities of a Bishopric had come into his hand through the translation of a Bishop by postulation, 2.

When the action is brought by the King, and it is pleaded that he brought a like action against the



QUARE IMPEDIT—*cont.*

same defendant, in respect of a presentation to the same church, on the same voidance, and that judgment was given for the defendant, this is no bar, if the judgment included the words "*salvo jure Regis, cum alias inde loqui voluerit,*" 100.

Where the plaintiff's title was that he was seised of a garden and two acres of land, to which the advowson was appendant, and the defendant alleged that the plaintiff had been enfeoffed by one who had only an estate for life, and that the defendant had entered upon the land and advowson as heir in tail, and the plaintiff replied that he had been enfeoffed by one who was seised as of fee simple, and that he also was seised in virtue of the feoffment, and continued his estate until the church became void, issue was joined upon the question whether the defendant entered upon the land and advowson and ejected the plaintiff or not, and when the jury found that the defendant did not enter as alleged, judgment was given for the plaintiff, 168-178; 170, note 12; 171, note 3; 173, note 3; 177, note 11; 179, note 6.

Where the presentation was claimed on the ground that the advowson was appendant to an acre of land of which the plaintiff was seised in virtue of a title set out, and the defendant denied a feoffment which was part of the title, with a protestation only that he did not admit the advowson to be appendant or the plaintiff to be seised as alleged, it was held that this denial could not make an issue, unless the defendant expressly denied that the advowson was appendant to the acre, or that the plaintiff was seised, 276-282.

QUARE IMPEDIT—*cont.*

Where the King was plaintiff, and had presented as in right of an heir whose wardship belonged to him, but had subsequently, by writ under the Privy Seal, commanded the Justices to stay proceedings, because his presentee was unable to obtain evidence of his right and that of the heir, and to allow the defendants to enjoy the effect of their presentation *hac vice*, a writ to the Bishop in favour of the defendants was awarded, though the Court was at first of opinion that such a writ could not issue without judgment, 340-342; 341, note 6; 343, note 2.

Where the action was brought against a Bishop and another, and that other pleaded to judgment that he was parson imparsonnee, years before the writ was brought, by collation of the Bishop, who had collated by reason of the expiration of the period of six months, and that consequently the writ did not lie against him, judgment was given against him, and a "writ to the Bishop" was awarded. The Bishop co-defendant having disclaimed the patronage except as Ordinary, and pleaded to judgment that the writ did not lie on his collation by reason of lapse of time, a writ was awarded to the Metropolitan, and not to the Bishop, as he, being the Ordinary, was a party, 372-374.

Action of, where a grant had been made to the plaintiff to the effect that he might present to the church which first became vacant out of four churches named. The defendant (a widow) pleaded that the grantor had married her long before the grant, that a fine had subsequently been levied between the grantor and others of three manors and of the advowsons of three of the churches, including that of the

QUARE IMPEDIT—*cont.*

church to which the presentation was claimed, by which fine the grantor took back an estate for life to himself, with remainders to his son in tail, and then to his right heirs, that on his death the son entered, and assigned to the defendant as dower one of the manors and the advowson of the church of that manor to which the presentation was claimed, and that she was seised of the manor and of the advowson of the church by an earlier title than that of the grant, because the right to dower accrued to her immediately after marriage. The plaintiff replied that a wife's right to dower in relation to the advowsons of churches was, according to law, a right to present to each church on the third vacancy, and that the assignment of one entire advowson was by covin and collusion between the defendant and the heir, and could not prejudice the right to the presentation acquired by the grant. The parties then came to terms, the defendant admitting the plaintiff's right to present, and the Court expressed the opinion that, even had she not admitted it, he would have recovered, 390-406.

The King claimed a presentation as having the wardship of an heir whose father held of him *in capite* the manor (of A.) to which the advowson was appendant as well as a certain other manor (of B.). It was pleaded (with a protestation not admitting the manor of B. to be held of the King) that the father had held the manor of A. not of the King but of another person, by a certain service, and had conveyed it by lease for life and release in fee to the defendant, who had made a feoffment of it in fee and taken back an

QUARE IMPEDIT—*cont.*

estate for years which was not yet expired, and had presented on a vacancy, but that the manor had been subsequently seized into the King's hand as having been aliened without license. The defendant prayed judgment whether, inasmuch as the manor of A. was not held of the King *in capite*, and the father did not die seised of it, the King could have an action against him. It was replied on the King's behalf that it had not been denied that the father held the manor of B. of the King *in capite*, and that the heir was for that reason in the King's wardship, and it had been admitted that the father had been seised in fee of the manor of A., and no specialty had been produced to show the alleged release following the lease, and the feoffment made by the father in fee had been acknowledged and was in disherison of the heir, and the seisin of the King by reason of wardship in right of the heir was justified, and the alleged deed of release ought to be in the possession of the defendant, who had not produced it though asked for it continually on two successive days, and therefore judgment was prayed for the King. On the defendant's behalf *profert* was then made of the deed of release, but as he had previously abode judgment on the question whether he was bound to produce it, the Court held that it must now be disregarded, and gave judgment for the King, as if no such release had been produced, 470-486; 487, note 5.

A presentation was claimed on the ground that the common ancestor of two co-parceners had been seised of the manor to which the advowson was appendant, and had presented, that partition had been made, that

QUARE IMPEDIT—*cont.*

the co-parceners were to present and had presented by turn, and that it was now the turn of the plaintiff's ward. The defendant (an Abbot), not admitting that the advowson was ever appendant to the manor, denied that any presentee of the ancestor or of the co-parcener in whose right the claim was made was ever admitted on their presentation, and alleged that the church had been given to his Abbey (producing in support a charter, a confirmation, and a Papal Bull), and that he and his predecessors had been seised of the advowson from time immemorial, and had presented to the church, and that their presentees (named) including the last person presented had been admitted. It was objected that there was here duplicity in pleading—on the one hand the destruction of the plaintiff's title, and on the other hand the last presentation, which was in itself a sufficient answer to the *Quare impedit*; but the Court held that the defendant could, in addition to the destruction of the plaintiff's title, show such matter that he might himself have a writ to the Bishop. Issue was then joined on the question whether a presentee of the co-parcener in whose right the plaintiff claimed had been admitted and instituted, or not. The plaintiff afterwards failed to appear, and judgment was given for the defendant to have a writ to the Bishop, 554-558; 555, note 3; 557, note 5; 559, note 2.

A presentation was claimed on the ground that two tenants in common, A. and B., being seised of an advowson, and having presented, made a composition according to which they and their respective

QUARE IMPEDIT—*cont.*

heirs were to present by turn, that A. had presented, taking the first turn, and that C. the son of B. had presented taking the second turn, and that the plaintiff was entitled as feoffee of A.'s son to present on the third turn. The defendant traversed the main points of the plaintiff's declaration, and alleged that B. was sole seised of half an acre of land, to which the advowson was appendant, that his descendant and heir had enfeoffed the defendant's ancestor thereof, that the land had descended to the defendant, and that the defendant had presented the last presentee. On behalf of the plaintiff it was alleged that this was duplicity in pleading on the same ground as in the last case above, and with the same results. The plaintiff re-asserted the seisin of A. and B., the presentation made by them, the composition, and the subsequent presentation by A., and issue was joined thereon. The plaintiff afterwards failed to appear, and judgment was given for the defendant to have a writ to the Bishop, 558-564; 561, note 3; 563, note 6; 565, note 5.

*See SCIRE FACIAS.*

## QUARE NON ADMISIT :

Where the King brought the action against a Bishop after having recovered a presentation to a Hospital by a *Quare impedit* supposing a Prior to have been previously admitted on the presentation of a stranger through whom the King claimed, a plea was admitted on behalf of the Bishop to the effect that the Priors were elected by the Brethren of the Hospital, without license from any one, and thereupon presented to the Ordinary and installed, 150-152.

## QUID JURIS CLAMAT :

The facts supposed in the writ must be in exact accordance with the note of the fine upon which it is founded, and, if otherwise, the tenant will not be put to attorn, 194.

## QUOD PERMITTAT :

Aid granted in *Quod permittat villanos facere sectam ad molendinum*, 330-332.

How the esplees should be laid in, 346.

*Quære* whether the defendant should, in pleading, deny the right and the damages, or the damages only, 346.

## R

## RAVISHMENT OF WARD :

Where it was pleaded that the infant's ancestor had leased the land, by reason of which the wardship was claimed, to another person for life, to hold of the chief lord, to whom the lessee had attorned, and it was replied that the supposed lessee was enfeoffed to hold of the ancestor and his heirs, performing the services due to the chief lord, and so acted only as the ancestor's balliff in his payment to the chief lord, there was a rejoinder, upon which issue was joined, that he was enfeoffed to hold of the chief lord, 512-514.

See ABATEMENT OF WRITS.

## RECAPTION :

Where the plaintiff alleged that certain pigs had been taken, *pendente placito*, for the same cause for which certain sheep had previously been taken, which sheep had been replevied, the defendant pleaded that he had taken the sheep as those of his villein (named), *damage feasant* in his several soil, and the pigs for

RECAPTION—*cont.*

arrears of service due from the same villein to him for tenements held in villenage. The plaintiff replied that the villein was his villein, that both the sheep and the pigs were in the villein's possession as the plaintiff's beasts, and that the defendant had taken the pigs for the same cause as the sheep. The defendant rejoined that he had taken the sheep and the pigs of the villein for the two several reasons stated in his plea, and had not taken the plaintiff's beasts for one and the same reason as the plaintiff alleged, and upon this issue was joined, 506-508; 509, note 5.

## RECEIPT :

Of reversioner in *Scire facias* on Fine, 24-26.

When a writ of Mesne is brought against husband and wife, and the husband makes default, the wife may be admitted to defend her right, because she is in danger of losing her seignory, 98-100.

A reversioner (A.) prayed to be admitted to defend his right, alleging that the tenant (B.) had an estate for life by lease from him, and the demandant counterpleaded that A. had, subsequently to the purchase of the writ, entered upon the land, and ejected B., and leased the land to C. for life, and that C. had leased over to B., and that so A.'s reversion, expectant on the death of B., had been discontinued. A. replied that B. on the day of the purchase of the writ held for life by lease from him, *absque hoc* that B. ever had afterwards any other estate by lease from any other person. The demandant then prayed judgment against the aid-prayer on the ground that A.'s entry and lease to C. were not denied, and A. prayed judgment in its favour on the

RECEIPT—*cont.*

ground that it was not denied that B. held for his life on the day of the purchase of the writ, or that the reversion then belonged to A., and that A. was always ready to aver that B. never afterwards had any other estate by demise from any other person, and on the ground that the demandant would not accept the averment. *Stonore, C.J.*, was minded to grant the aid-prayer, but the Court adjourned, and no decision was given, 218-232; 233, note 3.

Where an Assise of Mort d'Ancestor was brought against two persons, both of whom made default, and the assise remained to be taken by default, one of the two prayed to be admitted to defend his right, on the ground that his father and his father's wife (the other defendant) purchased the tenements, to hold to his father, and his father's wife, and his father's heirs, and that he was the heir, and he was admitted, and vouched, 256-258.

Where, upon default after default of the tenant, one prayed to be admitted to defend his right on the ground that he had by deed *in pais* the remainder in fee simple expectant upon the determination of the tenant's estate for life, his prayer was granted, though at an earlier period such prayer used to be granted only when the remainder was limited by fine, 374-378.

Where the wife prays to be admitted to defend her right, on her husband's default, and it is alleged that, though husband and wife were tenants on the day on which the writ was purchased, the husband has aliened, pending the writ, she is nevertheless admitted, 422.

Where, on a writ of Entry in the *post*, the tenants, after praying leave to

RECEIPT—*cont.*

imparl, had departed in contempt of Court, and the demandant's essoiner had prayed seisin, it was alleged that the tenants held only in virtue of a lease for life, and the heirs of the lessor intervened and prayed to be admitted to defend their right. One appeared in person, others by attorney appointed in virtue of a writ framed specially on their case, as it was said that they were sick and unable to travel. Although it was argued that an essoiner could not plead to a prayer to be admitted, and that admission to defend could not be granted unless the parties appeared in person, the prayer to be admitted was entered on the roll, and judgment with respect to the prayer to have seisin was respited until the day which the demandant had by essoin, 458-460; 459, note 6; 461, note 1.

See AGE, PRAYER OF; ENTRY.

## RECORD :

By word of mouth of judge, where there is an omission in the written record, 298.

## RECORDARI :

Writ of, for removal of cause, in *Replevin*, 294.

## RENT :

See FORMEDON IN THE REVERTER; NOVEL DISSEISIN.

## REPLEVIN :

Where the defendant avows for *damage feasant* in his several soil, and the plaintiff alleges that he has common in that place appendant to his freehold, the issue is as to whether the plaintiff and the *ter-tenants* of his freehold have been seised of such common, 96-98.

Where the action was brought in respect of a sow and five pigs, and the defendant avowed the taking of

REPLEVIN—*cont.*

the sow *damage feasant*, and denied the taking of the pigs, and the jury found for the avowant with respect to the sow, but said that the pigs were her litter born after she was taken and while she was in the avowant's keeping, judgment was given for the avowant with respect to the sow, but for the plaintiff, with damages, with respect to the pigs, 232-234.

Where the plaintiff alleges a taking in one place named, and the defendant avows the taking in another place named, and the plaintiff pleads that the two names are applied indifferently to one and the same place, and issue is joined on the avowant's replication that there are two different places, and that the taking was in the one mentioned in the avowry, and the jury finds that the place is the one mentioned in the declaration, which is known indifferently by either name, judgment is given for the plaintiff without reference to other matters pleaded, 248-254 ; 255, note 6.

Where three persons are made defendants, and one pleads the general issue *Non cepit*, the other two may nevertheless make cognisance and justification as his bailiffs, 292-296.

Where issue was joined on the question whether the plaintiff had a right of way at the place in which he made his plaint, and the jury found that he had such a right of way, but also that the place of taking was the avowant's several, the latter portion of the verdict was held to be impertinent, and judgment was given for the plaintiff, with damages, 298.

Where the plaintiff has pleaded, against the defendant's avowry, *hors de son fee*, and had a verdict in his favour, there is no fine or ransom due to

REPLEVIN—*cont.*

the Crown under the Statute of Marlborough, cc. 1 and 2, but the plaintiff recovers damages, and, if they are not mentioned in the verdict, new jury process issues, 320-322.

Where the defendant avowed on the heir of the first husband of the plaintiff's wife for arrears of services due for a manor, and the plaintiff alleged that he had nothing in the manor except as his wife's husband, and that they held it as her dower, the plaintiff prayed aid of his wife, which was granted, and, after her joinder with him, they both had aid of the first husband's heir, 438-442 ; 443, note 5.

The defendant (B.) avowed for arrears of the services of one holding of him in villenage (C.), the plaintiff (A.) alleged that C. was his own villein, as also was D., and that the beast taken was in D.'s possession and A.'s property, and that B. had therefore taken A.'s beast and not C.'s beast. The replication was that the beast was C.'s beast, and found in his keeping, and not A.'s beast, and issue was joined upon this question of property, 500-502 ; 503, note 5.

In another action between the same parties in which B. avowed on the ground that C.'s beasts (and not A.'s beasts) were *damage feasant* on his several soil, A. alleged that he was lord of the vill, that the place of taking was waste thereof, that C. was his villein holding of him in villenage, as also were E. and F., that the beasts were in the possession of E. and F. as his beasts, and that so B. took A.'s beasts and not C.'s. The replication, upon which issue was joined, was in the same form as in the previous case, 504-506 ; 507, note 1.

REPLEVIN—*cont.*

Where avowry was made for rent service, and the parties would by consent have joined issue as to whether a whole manor was out of the avowant's fee, the Court would not allow it, but restricted the issue to the question whether the place of taking was out of his fee, 512.

Avowry for cornage and repair of a mill-pool, 516-518.

Avowry for cornage and repair of a mill-pool, where the plaintiff pleaded that the avowant's ancestor had enfeoffed his ancestor in tail to hold of the avowant and the avowant's heirs by a less service, and the avowant replied that he never had any such ancestor since time of memory, and issue was joined on the question whether he ever had such an ancestor since time of memory or not, 534-538; 535, note 7; 539, note 1.

## RIGHT OF ADVOWSON:

Where judgment was given, on default after default of the defendants, for the plaintiff, an abbot, to recover the advowson, and it was found by the Inquest of Office which followed (*Quale jus*) that the abbot held *in proprios usus*, and his counsel prayed that the judgment might be enlarged to that effect, it was held that the judgment could not be altered or amended by the Court, and that the writ of execution could only be in accordance with the judgment, but a *Scire facias* was granted calling upon the parson of the church to show cause why the abbot should not have execution, 442-444.

## S

## SCIRE FACIAS:

In action of Detinue. *See* DETINUE.  
(On Fine.) Admission of reversioner to defend in, 24-26.

Execution had in the person of the plaintiff's grandfather (donee in tail) successfully pleaded in bar in, followed by writ of Error, 26-28.

Where issue was joined on the question whether the plaintiff had been seised after the fine, and by virtue of the fine, and the fine had thus been executed, 333.

Where issue was joined on the question whether the tenements in respect of which execution was demanded were included in the fine, 334.

(On Fine on writ of Annuity.) *See* ANNUITY.

(On Judgment in Annuity.)

Where it was pleaded that the judgment was on the confession of a Dean, who had no power to charge his successor without the consent of his Chapter, 344-346.

(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 voidance of the church occurred, 348-352.

(On statute merchant.) *See* STATUTE MERCHANT.

## SCIRE FACIAS IN CHANCERY:

Where the King's license had been granted to a tenant *in capite* to enfeoff certain chaplains upon con-

SCIRE FACIAS IN CHANCERY—*cont.*

dition that when in seisin they were to re-eneoff him in tail male with a remainder over, and they had become seised, and he had died without having been re-eneoffed, a *Scire facias* issued against them to show cause why the land should not be seized into the King's hand. After they had shown cause, it was held by the Chancellor, by advice of the King's Council, that the chaplains had had no estate except upon condition, and that, as they had had time to re-eneoff, the continuance of their tenancy after the death was in disherison of the heir who was the King's ward, and the Chancellor gave judgment that the tenements should be seized into the King's hand, 492-496.

## SEVERANCE:

See DETINUE.

## SHERIFF'S RETURN:

Where a Sheriff returned that a vouchee was dead, the demandant was nevertheless allowed to aver that he was living, and issue was joined on the question whether he was living or dead, 420.

But where the Sheriff returned that a writ had been served upon one among several tenants, the other tenants were not admitted to the averment that he was dead, 488-492.

## SHERIFFDOM:

Feoffment of the sheriffdom of Westmoreland upon condition to re-eneoff, 492-496.

## SOCAGE:

Heir, and guardian in. See ACCOUNT.

## STATUTES CITED:

20 Hen. III. (Merton), c. 4, 158.  
52 Hen. III. (Marlb.), cc. 1 and 2, 320.  
————— c. 17, 325, note 5; 327, note 4.

STATUTES CITED—*cont.*

3 Edw. I. (Westm. 1), c. 40, 134; 150; 258; 300.  
6 Edw. I. (Glouc.), c. 3, 264.  
————— c. 5, 313, note 6.  
————— c. 8, 14.  
————— c. 9, 51, note 1.  
————— c. 11, 410.  
13 Edw. I. (Westm. 2), c. 1 (*de donis conditionalibus*), 28; 202; 338; 340; 341, notes 1 and 2.  
————— c. 3, 24; 98; 258; 488.  
————— c. 6, 128.  
————— c. 23, 406.  
————— c. 34, 14.  
————— c. 40, 488.  
————— c. 45, 24; 28.  
————— c. 46, 158; 164.  
————— c. 48, 144; 324.  
13 Edw. I. St. 3 (*De mercatoribus*), 65, note 3; 66; 552.  
18 Edw. I. (*Quia emptores*), c. 1, 236; 292; 293, note 10; 415, note 8.  
————— c. 2, 244.  
28 Edw. I. (*Art. sup. car.*), c. 10, 568.  
33 Edw. I. (*Ordin. de Consp.*), 568.  
2 Edw. III., c. 8, 216.  
5 Edw. III., c. 12, 30.  
14 Edw. III. St. 1, c. 14, 216.

## STATUTES (CONSTRUCTION OF):

Though it is provided in Stat. Marl. (52 Hen. III.) cc. 1 and 2 that any one levying a distress out of his fee shall be punished by fine or ransom in addition to the damages sustained by the party, this provision is not applicable where an action of Replevin is brought and the plaintiff after pleading to issue, against the avowant, *hors de son fee*, has a verdict in his favour, 320-322.

The lessee of an obligee in a statute merchant is a termor within the meaning of the Statute of Gloucester (6 Edw. I.), c. 11, 408-412.

## STATUTE MERCHANT:

Where the obligor sued an *Audita Querela* on the ground that the



STATUTE MERCHANT—*cont.*

statute had been delivered to him in lieu of acquittance, and that the obligee had sued execution on another statute which was forged, and, when asked to produce the statute which had been delivered to him, alleged that it had been destroyed, execution was awarded of the statute produced by the obligee, 76-78.

If one of several obligors be discharged as being under age, the others are not discharged, but the statute continues to be effective against them, 360.

When the obligee in a statute merchant had had execution of the obligor's lands, and his executors had been in possession, and the obligee in another statute merchant made by the same obligor ousted them, before the amount of the debt had been levied, the Court would not grant a writ to put them again in possession without any answer being allowed to the second obligee, but they were to elect to have either an Assise of Novel Disseisin or a *Scire facias* for the second obligee to show cause why they should not have the land, 364.

And when they elected to have a *Scire facias*, and it was thereupon pleaded by the second obligee that a greater quantity of land, and in a greater number of vills, had, by extent, been delivered to the testator than to him, issue was joined on the question whether the executors had been ousted from the whole of the lands delivered to the testator or not, 442-453.

Where the obligee in a statute merchant leases his estate to another, the lessee is a termor within the meaning of Statute of Gloucester, c. 11, and execution will be stayed in his favour when a collusive action

STATUTE MERCHANT—*cont.*

has been brought against the tenant of the freehold and judgment has been given for the demandant, but no security will be given for the issues, 408-412.

Where the obligor had been taken in execution, and lodged in prison, and had sued an *Audita Querela* on the ground of a defeasance of the statute merchant executed by the obligee, and the obligee did not appear when the *Capias* was returned, a non-suit was prayed against the obligee, but not allowed because the quarter of a year given by the Statute *De Mercatoribus* (13 Edw. I. St. 3) had not elapsed. The obligor was, however, allowed to sue a *Venire facias* on his *Audita Querela*, but was not permitted to be out on mainprise. A *Habeas corpus* to produce him was directed to the Sheriff, 552; 553, notes 1 and 4.

See DEBT.

## T

## TAIL, ESTATE :

See NOVEL DISSEISIN.

## TENDER :

How and when to be made upon writ of *Cessavit*, 240.

## TRESPASS :

Appointment of attorney by defendant in, though not by appellee in Appeal, 14.

If the action be brought against one whose name and surname are mentioned, and who is also described in the writ as parson of the church of A., and the defendant allege that A. is only a chapel annexed to the church of B., of which

TRESPASS—*cont.*

he is parson, the question whether A. is chapel or church will not be tried on the writ of Trespass, but issue will be joined on a replication by the plaintiff that the defendant is parson of A. as supposed in the writ and declaration, 178-182; 181, note 2; 183, note 12.

Where the action was brought in respect of growing trees cut and carried off, and the defendant justified on the ground that he had estovers of dead wood for fuel, and *housebote* of growing wood, and timber for house-building to be taken by view of the Forester, and had so taken them, and the plaintiff replied that the statement as to dead wood was no answer to the plaint, the plaintiff had nevertheless to maintain that the defendant took the trees *de son tort demesne*, and not by view of the Forester, 314-316; 315, note 2.

Where the action was brought in respect of corn cut and carried off, and it was pleaded in bar that the defendant held the land by lease for the life of one who held in dower, the reversion being to the plaintiff after her death, and that he had sown the land during her lifetime, and had reaped the crop which was his, the plaintiff was compelled to deny that the land was sown during her lifetime, and issue was joined on the question whether it was sown before or after her death, 464-468.

Where the trespass was alleged to have been committed at a certain place named, in a certain county, and it was pleaded in abatement of the writ, that there was no vill or hamlet of the name in the county, and the replication was that it was a place in the county which was neither a vill nor a hamlet, issue

TRESPASS—*cont.*

was joined on the rejoinder that there was no such place in the county out of vill or hamlet, 520-522.

See ABATEMENT OF WRITS.

## V

## VARIANCE :

Where, in an action of Account, the defendant had been outlawed, but had obtained a charter of pardon of outlawry, and had warned the plaintiff by *Scire facias* to appear against him, and the plaintiff's name as given both in the warrant of attorney and in the *Scire facias* varied from that given in the original writ, there was alleged to be a discontinuance, but the defendant pleaded *gratis*, 510-512.

## VENUE :

When, in an action of Formedon, it was alleged, in tracing the descent, that a certain person had died without issue, and it was pleaded that he had a son living in a county other than that in which the land was, and issue was joined on a replication denying that he had such issue, the *Venire* was for a jury from the county in which the land was, and not from that in which the son was said to be living, 356-358.

## VERDICT :

See ASSISE ; CESSAVIT ; ESTOPPEL ; REPLEVIN.

## VIEW :

If the tenant has had view, and afterwards aid of the King, he can still require the demandant to show a specialty in support of his claim in a Formedon in the remainder, 42.

VIEW—*cont.*

But *quere* whether he can also plead that an alleged descent is false, 44-46.

When a writ has, after view, been abated, on the ground of non-tenure of a particular part of a manor, and a new writ is brought demanding the manor with the exception of the same part, view will not be granted again, 142-144.

But when a writ has, after view, been abated, on the ground that the demand was for a whole manor, and that the tenants held only two parts, and a new writ is brought demanding two parts of the manor, view will again be granted because it cannot otherwise be known which are the two parts, 212.

Where view was counterpleaded on the ground that view had already been had on the same original writ, and that the parol had afterwards demurred by reason of the demandant's non-age, it was not granted, though it was alleged that the exception of non-age should be taken before view, 428.

Grant of, where rent was demanded by writ of Dower, 492; 493, note 5.

## VILLEIN :

Cannot be a party to any continuance, 320.

If one confesses himself, in Court, to be the villein of an Archbishop, even though the Archbishop be dead at the time, he is the villein of the church, 320.

May sell his horse, or his cow, and his lord has no action in consequence, but if a distress is levied of his beasts, his lord may replevy them as being the lord's property, 502.

*See* APPEAL OF ROBBERY ; RECAPTION ; REPLEVIN.

## VOUCHER :

If, after the vouchee has been summoned, the tenant alleges that he is dead, and there is no return of the Sheriff to that effect, judgment will be given, on the vouchee's default, for the demandant to recover his seisin, and for the tenant to recover over to the value against the vouchee, though he may have died after the summons was served, 102-104.

If a tenant vouches, alleging that the vouchee has a reversion expectant on his own estate for life, and shows nothing in proof of his own estate, and the vouchee disclaims the reversion, judgment is given for the demandant to recover against the tenant, and for the vouchee to go without day, 152-154.

By defendant in Assise of Mort d'Ancestor, after having been admitted to defend his right, after default both of himself and of another defendant, 256-260.

Where aid of a particular person has been prayed by and granted to the tenant, he cannot afterwards have voucher of the same person, even though a different cause be assigned, unless that different cause has arisen since the aid was granted, 266-270.

He may, however, vouch another person even though, in so doing, he supposes his estate to come through a person other than he supposed when he prayed aid, 270-272.

Where, on a writ of Besaial, the tenant, being tenant in special tail, vouched himself as the donor's heir of the fee simple, the voucher was held good because the estate tail could be saved only by voucher, 272-276.

Where the tenant, on a writ of Formedon, vouched husband and wife, and the voucher was counterpleaded

VOUCHER—*cont.*

on the ground that neither the wife nor her ancestors ever had anything, the voucher stood by allowance of the Court, but not by allowance of the demandant, 298-302.

Where the tenant has vouched husband and wife, who have warranted, and vouched over, and the husband dies before the last vouchee has appeared, and the demandant sues a Resummons against the tenant, *quere* can the tenant vouch the husband's heir alone without again vouching the wife? 550.

See DOWER; ENTRY.

## W

## WAGER OF LAW:

A person who is dumb may wage his law by signs, and perform his law by signs, without speaking, after the words have been recited to him, 290.

## WARANTIA CHARTÆ:

Where the defendant did not deny the warranty, but pleaded that the plaintiff had not been impleaded as he alleged, judgment was given for the plaintiff to recover *pro loco et tempore*, and issue was joined on the question whether the plaintiff had been impleaded or not, 154-156.

## WARD:

The right of the King's ward saved by the King, 496.

## WARDSHIP:

Where the defendant pleads that the infant's ancestor enfeoffed him in fee of the tenements in respect of which wardship is claimed, and that he was seised of them during

WARDSHIP—*cont.*

that ancestor's life, the plaintiff must answer, and must say that the ancestor held the tenements of him, and died seised of them and in his homage, 78-84; 85, note 2.

Pleadings in, where the wardship of the lands and of the heir's person were claimed, and the defendant pleaded joint tenancy in abatement of the writ, and also alleged that the plaintiff was himself seised of one acre of the land of which he claimed wardship, and (with regard to the wardship of the person) that the infant's ancestor held of the defendant by priority of feoffment, 84-96.

Where the jury found for the plaintiff on an issue as to the tenancy, but did not know whether the heir was married or not, and assessed the damages at 100 shillings if he was unmarried, but the marriage and damages together at £100, if he was married, the Court gave judgment for the recovery of the wardship and the 100 shillings damages, with leave to the plaintiff to apply for the value of the marriage if it should afterwards be found that the heir was married, 370-372.

## WASTE:

If, in an action brought against husband and wife, the count or declaration is to the effect that waste has been committed in a manor held by the wife in dower, and it is pleaded that she holds a moiety of it by gift in frank-marriage to herself and a former husband, the plaintiff must aver that the defendants held the whole manor in dower on the day of the purchase of the writ, or else the count will abate, 22; 23, note 9.

When to a writ of execution of damages the Sheriff returned that he could not effect execution be-

WASTE—*cont.*

cause immediately after the inquest had been taken the defendant had divested himself of his land, execution was awarded in the lands which he had on the day on which the inquest was taken, 106-108.

Where the tenant justified alleged waste in a manor on the ground that certain trees which had been cut down had been used for the purpose of re-building an ox-house, of making folds, of re-erecting bondmen's houses, and for firewood in bondmen's tenements, the plaintiff prayed judgment whether such a justification could be good without a special warrant shown. He further alleged as a matter of fact that the number of trees used for the above-mentioned purposes was greater than that mentioned by the

WASTE—*cont.*

tenant, and generally that the tenant had committed waste to the extent stated by the plaintiff in his declaration. Issue having been joined upon the question of fact, the Court delayed judgment upon the question of law until a verdict had been found. The jury having found that the tenant had committed waste in excess of that which he had confessed, judgment was given for the plaintiff to recover seisin of the tenements wasted, and treble damages according to the Statute of Gloucester, c. 5, 302-312; 313, note 6.

Continuation of pleadings in the case commencing Y.B., Hil., 17 Edw. III., No. 21, pp. 100-108 (Rolls edition), 540-544.



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