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PONTIFICAL INSTITUTE OF MEDIAEVAL STUDIES

RERUM BRITANNICARUM MEDII ÆVI SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

Wt. 5322.

THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

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

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

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

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps ; and for this purpose the most correct text should be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

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

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

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

They expressed their approbation of the proposal that each chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no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

Rolls House,
December, 1857.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

Year XX. (Second Part.)

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEAR XX. (SECOND PART.)

EDITED AND TRANSLATED

BY

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INTRODUCTION.

INTRODUCTION.

I.

The Printed Year Books.

Completion of the Rolls Series of Year Books, 11–20 Edward III.

Except the Glossary or Dictionary of the French Language spoken in England before the year 1363, this is the last volume by the present Editor which will be published in the Rolls Series of Year Books. It completes the work of filling in the gaps in the old editions which existed between the tenth and seventeenth years, and between the eighteenth and twenty-first years of the reign of Edward III. The reports of the seventeenth and eighteenth years have also been re-edited and republished, so that the Rolls Series (in fifteen volumes) is now complete from the eleventh to the twentieth year of the reign inclusive.

Treatment of the Year Books in former times.

It may now, perhaps, be permissible to review briefly the treatment of the Year Books by successive editors. Firstly there were the old black-letter editions, which extended (though with several gaps) from the reign of Edward III. to that of Henry VIII. The reports of the reigns of Edward I. and Edward II. were untouched, and one of the gaps included the whole of the reign of Richard II. The abridgments of the reports of the reign of Richard II. which were scattered in Fitzherbert's Abridgment and in the Abridgments of Statham and Brooke were brought together by Richard Bellewe, of Lincoln's Inn, and published in one volume in the year 1585. Reports of the reign of Edward II. were printed, apparently from a single MS., under the auspices of Serjeant Maynard, in the year 1678.

No critical edition of any of them before the 19th century.

Down to that time, however, no attempt had been made to produce a really critical edition of any of the Year Books. Some one MS. seems in each case to have been carelessly transcribed, the transcript to have been carelessly printed, and the proofs never to have been properly revised. There was no collation of MSS., no comparison of the reports with the records, no translation, and not even any trustworthy extension of the abbreviations which occur in the original MSS.

The Rolls Series: Mr. Horwood and the Year Books of the reign of Edward I., &c.

Some time before the year 1863 Mr. A. J. Horwood was entrusted by the then Master of the Rolls (Sir John Romilly) with the task of editing the unpublished Year Books of the reign of Edward I., and afterwards of filling in, from original MSS., the gap existing in the old editions of Year Books between the tenth and seventeenth years of the reign of Edward III. Of the reign of Edward I. he published five volumes—one including the twentieth and part of the twenty-first, one the rest of the twenty-first and the twenty-second, one the thirtieth and thirty-first, one the thirty-second and part of the thirty-third, and one the remainder of the thirty-third, the thirty-fourth, and three terms of the thirty-fifth years. He left unfinished a volume including the reports of the whole of the eleventh and of the first three terms in the twelfth year of the reign of Edward III., which was brought out with a preface by the present Editor.

Though there are in existence MSS. of Year Books of the reign of Edward I. which were not consulted by Mr. Horwood, and though he gave various readings with a sparing hand, his work was far in advance of anything which had gone before. He produced a text in fully extended and no longer in abbreviated French, and he added a translation which was obviously a necessity. Even in the best French editions of old French works it is now not unusual to find a translation into modern French.

New plan of the present Editor: comparison of the reports with the records, and how effected.

When the present Editor succeeded Mr. Horwood as Editor of the Rolls Series of Year Books, in the year 1882, it occurred to him that the work could not be adequately carried on without reference to the records of

the respective cases. The possibility, however, of identifying the reports with the corresponding records on any comprehensive scale was rendered doubtful by the fact that many of the reported cases omit the names of parties and places, or give them wrongly, and that there is no index or calendar to the rolls which would have to be consulted. In the end, however, a way was found of surmounting the difficulty. This has been fully explained in the Introduction to the volume of Year Books (Rolls Series) containing the reports of Easter and Trinity Terms 18 Edward III.[1]

Use made of the record when found.

It was not at first easy to decide what was the best use to make of the record even when discovered. Several plans were tried with more or less success, but after long experience a way was found which appeared to make the record illustrate the report as fully as possible. The several parts of the roll were brought to bear upon the corresponding parts of the report, the count upon the count, the plea upon the plea, the replication upon the replication, and so on. In this manner the argumentative parts of the report, or the attempts of counsel to establish something among the pleadings which was not in the end admitted, are clearly marked off from the pleadings finally accepted in French, and entered upon the roll in Latin.

Discovery of the correct names of the Serjeants or Countors in the Plea Rolls of the Common Bench.

It was discovered, too, by the present Editor, in the year 1897, that if the Plea Rolls of the Common Bench were examined with sufficient care and minuteness, the names of the Serjeants or Countors practising in that Court could be accurately determined. They often appear in an abbreviated form in the MSS. of the Year Books, and, even so, not always quite correctly. The countors are mentioned in the rolls as receiving the chirographs of fines, and it thus becomes possible to compile a list of them for every term.[2] Such a list has

[1] pp. xxxi–xxxiii.

[2] As to this, *see* further Y.BB., 16 Edw. III. (Second Part), published in 1900, Introduction, pp. xi–xii.

been given in every subsequent volume of Year Books of the Rolls Series.

Light thrown by the reports on the records as well as by the records on the reports.

While, however, the reports derive assistance from the records, they repay the obligation by throwing unexpected light on the records themselves. In the Introduction to the volume of Year Books containing the reports of Easter and Trinity Terms, 18 Edward III., is told the curious history of the custody and care of the Plea Rolls of the Common Bench.[1] In the Introduction to the volume of Year Books 16 Edward III., Part 2, it was shown how the present Editor discovered that there had been a double series of Plea Rolls of the Court.[2]

The double series of Plea Rolls of the Common Bench.

In a case in the last mentioned year it was stated that there were two rolls—one the "Roule des Justices," the other the "Roule le Roi"[3]—and it became essential for the explanation of the report to ascertain what these two rolls were. The task was not easy, as nothing of the nature of a "Roule le Roi" of the reign of Edward III. appeared in any official list either printed or unprinted. It was known, indeed, that some of the rolls among the Common Bench Plea Rolls, like some of the Eyre Rolls,[4] had on them the word "Rex," and that they could be traced back through the whole of the reigns of Edward II. and Edward I. There was, however, nothing whatever to suggest that any such rolls were in existence, or had ever been in existence, at any time after the reign of Edward II.

By following out a fortunate conjecture it was discovered that King's Pleas Rolls for the first seventeen years of the reign of Edward III. were concealed under the name of "Extract Rolls" among the records of the Common Bench. The series, however, proved to be incomplete, and the required roll of the sixteenth year was not included in it. There was not the slightest indication in any list that any more such rolls were to be found anywhere among the records of the court, and all further search was apparently hopeless.

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[1] Introd., pp. xviii–xxx.
[2] Introd., pp. xxv–xxix.
[3] p. 121.
[4] *See* below, p. lxiii.

A conjecture still more fortunate than the first, however, led to the discovery of the missing roll. It was hidden away, with others of the same nature, among documents of the Plea Side of the Court of King's Bench under the curious title of "*Extracta de Banco.*" This series, it was found, brought the King's Rolls, the "Roules "le Roi" of the Common Bench down to the reign of Henry IV.

There is every reason to believe that the series was continued to a much later date. A duplicate plea roll is mentioned in a report of the "thirty-ninth" year of Henry VI.[1] An objection was then taken as to the omission from a roll of certain important words. Counsel replied :—"Sir, there are two rolls. One roll contains the "count and the plea, and a certain continuance. The "other roll, of which he (counsel on the other side) has "made *profert*, was made when the verdict had passed, "and in it the whole matter was entered *de novo* in another "term." It will be observed that the second roll could not have been what was in later times called the *Nisi prius* record, because that was copied from the Plea Roll of the Court before and not after verdict, and the subsequent verdict was endorsed upon it, the entry being preceded by the word "*Postea.*"

It can hardly be doubted, therefore, that, apart from any *Nisi prius* record, there were two sets of Plea Rolls in the Court of Common Pleas as late as the first deposition of Henry VI. It does not seem impossible that, if a search were conducted with sufficient technical knowledge and learning, many missing rolls might be found, and that a series of King's Rolls of the Common Bench from the beginning of the reign of Edward I., or earlier, to the end of the reign of Henry VI. might be constructed. Some useful light might then be thrown upon the manner in which plea rolls in general were prepared, and the corrections which they underwent.

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[1] Y.B., Mich., 39 Hen. VI., fo. 31.

Comparison of unpublished Year Books with Fitzherbert's Abridgment, and the *Liber Assisarum*, a part of the new plan.

Another feature which it seemed to the present Editor desirable to introduce was a reference, wherever possible, to Fitzherbert's Abridgment. A considerable number of reports which do not appear in the old editions of the Year Books were known to him, and used by him for his important work. They thus became a part of the lawyer's learning, and passed into the body of English law. His more or less concise summaries, however, were obviously made from a single manuscript, and were printed little, if at all, better than the Black Letter Year Books themselves. A table of references was therefore placed in each volume of the Roll Series published by the present Editor, so that any one acquainted with a case in the Abridgment might see the form which it took in a full report, of which all the manuscripts had been collated, and which had been compared with the record.

So also the cases which are in the *Liber Assisarum* of any particular term and year were identified with the corresponding reports in the Year Books, and a table of references was given.

Similar plan afterwards adopted by Professor Maitland in editing Year Books of the reign of Edward II.

In the year 1903 appeared the first volume of Year Books of the reign of Edward II., edited by the late Professor Maitland for the Selden Society. He could not give references to the *Liber Assisarum* for the sufficient reason that it does not include cases either earlier or later than the reign of Edward III. He did, however, follow the present Editor's plan in making references to Fitzherbert's Abridgment, in comparing the reports with the corresponding records, and in ascertaining the correct names of counsel from the Plea Rolls of the Common Bench.

The points of difference.

In some respects, however, his scheme shows points of difference from that of the present Editor. In the Year Books of the reign of Edward III., in the Rolls Series, an endeavour has been made to establish as accurate a French text as possible by collation of all the materials, and to give a translation in strict agreement with the text, so

that text and translation may be easily compared at a glance. Professor Maitland has worked on a different principle. His translation does not always agree with his text, and the materials for it have often to be sought in the notes. It is not for the present Editor to say which plan is the better; his own is certainly the more laborious.

Again, although Professor Maitland has consulted the records of the cases, he has made a different use of them. He has placed at the end of a case, when the record has been identified, a "note from the record" in English, and, after his first twenty-seven reports, in English alone. The present Editor, as already explained, has used each part of the record in aid of the corresponding part of the report, and has given the actual Latin words.

II.

Forms of Action as found respectively in the Records and in the Reports.

The various forms of writs employed for bringing an action: the Assises and the writ of *Utrum*.

The forms of writs employed for bringing an action are of considerable importance both in legal and in social history. It has been said, from the time of the earliest text-books, that there were four kinds of writs of Assise—that of Novel Disseisin, that of Mort d'Ancestor, that of Darrein Presentment, and that of *Utrum*. The form of action, however, which was at first called an Assise of *Utrum* is a good example of the pitfalls which are provided for the student of the law and of its development. The writ was known and described as an Assise down to the time at which the treatise of "Britton" first saw the light, but it went by another name very soon afterwards.

The Assise of *Utrum* loses that name in the reign of Edward I.

In the twentieth year of the reign of Edward I. the writ is called simply the writ of *Utrum*,[1] and so also in the

[1] Y.BB., 20–21 Edw. I., Hereford Eyre, 20 Edw. I., p. 43.

twenty-first year,[1] and twice in the twenty-second[2] year, though in the second of the last two cases the "assise" is mentioned by the judge. In the thirtieth year, however, we find that a plaintiff brings not an Assise, but a "Jure "de *Utrum*" against the defendant, and the "jure" or jury is charged.[3] In the thirty-first year another plaintiff brings another "Jure de *Utrum*" against another defendant,[4] and yet another in the thirty-third year.[5]

How the action came to be called Jure de *Utrum*.

From this time downwards, so long as French continued to be the language of the Courts the action was uniformly, called in French a "Jure de *Utrum*" or a "Jure Dutrum," and the word corresponding with Jure on the rolls was *Jurata*. How, it will be asked, if the Assise of *Utrum* was early recognized and described as an *Assisa* in Latin, an *Assise* in French, did it lose its name and become transformed into a *Jurata* or Jure? The truth seems to be that it always could be brought as a *jurata*, or, at any rate, as early as the time of Bracton. He speaks of it as differing from other assises because including in itself the possession and the right, while the other assises were only possessory actions.[6]

How it differed from an Assise of Novel Disseisin, of Mort d'Ancestor, and of Darrein Presentment.

In an assise, properly so called, twelve men were summoned to give a verdict on a simple issue mentioned in the original writ. In an Assise of Novel Disseisin it was whether A. had tortiously disseised B. In an Assise of Mort d'Ancestor it was whether A. had died seised, and B. was his next heir. In an Assise of Darrein Presentment it was what patron had last presented to a church. In any of these assises questions outside the points of the original writs might arise and have to be put to a jury, in which case it was said *assisa vertitur in juratam*.[7]

[1] Y.BB., 20-21 Edw. I., Stafford Eyre, 21 Edw. I., p. 449.

[2] Y.BB., 21–22 Edw. I., Middlesex Eyre, 22 Edw. I., p. 337, and p. 455.

[3] Y.BB., 30–31 Edw. I., Cornwall Eyre, 30 Edw. I., pp. 205–7.

[4] *Ib.*, Mich., 31 Edw. I., p. 483.

[5] Y.BB., Easter, 33 Edw. I., p. 451.

[6] Bracton, fo. 287.

[7] *See* Y.BB., Mich. 12—Trin. 13, Edw. III., Introd., pp. xxxviii-lxx.

The writ of *Utrum*, on the other hand, did not present so simple an issue, though the twelve men were summoned before there were any pleadings. They had to say whether land, &c., in a particular place was frankalmoign belonging to the church of A., or the lay fee of B. It is obvious that all sorts of difficulties might lie in the way of an answer to such a question as this. There are only two possible direct answers to the question whether A. disseised B. (Yes or No), but land might not be the frankalmoign of A. and yet not the lay fee of B.; it might not be the lay fee of B. and yet not the frankalmoign of A.; and the pleadings might generally be expected to run off on side issues which would have to be tried by a *jurata* and not by an *assisa*. For this reason apparently the twelve men summoned came to be regarded and treated as a *jurata* with power to try any issue of fact which might be raised.

The parson's writ of Right: how Juro de *Utrum* became corrupted into *Juris Utrum*.

As we have seen, however, on a writ of *Utrum* the question of right was involved, as well as the question of possession, and the action was described as the parson's writ of Right.[1] Out of this fact seems to have arisen what seems to be the most curious mistake in the history of the law.

At some time after the proceedings in Court ceased to be in French, some copier of Year Books, or possibly even some lawyer, who was not acquainted with the history of the action, met with the Jure de *Utrum* in some MS. in the not uncommonly abbreviated form Jur. (with a curl over the letter *r* to indicate a contraction) de *Utrum*, or Dutrum. Having a better acquaintance with Latin than with French, knowing that *jus* meant right, and that *juris* was the genitive case of it, and proud of his learning on the subject of the parson's writ of Right, he converted *Jur.* into *Juris.* There still remained the *de* or *d* before *Utrum* to be explained, but he adopted the simpler and shorter course of omitting it.

[1] *Britton* (Ed. Nichols), Vol. II., p. 207.

No such writ as "*Juris utrum*" ever did exist, or ever could have existed.

Thus there crept into the text-books a writ of "*Juris utrum*," which never existed, and which, in the nature of things, never could have existed. What reasonable translation into English could have been made of the words *Juris utrum* no one seems to have cared to enquire. There was the word *utrum*, and there was the word *juris*, and in some confused way it seems to have been thought that the words indicated a writ to settle whether a parson had a right or not. Apart even from the grammar, however, the word *jus* or *juris* was never used to express a writ of Right. In Latin that was invariably "*breve de Recto*," in French "brief" or "bref de Dreit."

How Fitzherbert, J., himself transformed writs of Jure de *Utrum* into writs of *Juris utrum*.

It will, perhaps, be said that it is mere conjecture to assume that anyone converted Jure de *utrum* or *dutrum* into *Juris utrum*. It is no conjecture at all; and no less a personage than Fitzherbert, J., the revered author of the *Grand Abridgment*, and of a book *De Natura Brevium*, may be detected in the very act. It is not only the fact that he describes the writ as *Juris utrum*, and that *Juris utrum* is one of the titles or heads in his Abridgment, but also that he has actually gone out of his way to alter the words of the MSS. As it happens, a good illustration may be given from a case in the present volume.[1]

The Abbot of Malmesbury, as parson of a church, brought a writ of Entry *ad terminum qui præteriit* in respect of a lease made by his predecessor, and counted that the land was his right, as of the church of which he was parson. Counsel for the defence objected that he had no remedy except by "Jure de *Utrum*," and the Court held that he had no remedy but by "Jure de *Utrum*." Fitzherbert has the report in his Grand Abridgment under the head of "*Juris utrum*," (No. 5) and in both passages he has in his text converted "Jure de *Utrum*" into *Juris utrum*. The case is of great importance, because it is not printed in any of the old editions of the Year Books, and the mistake cannot have been copied from any printed book.

[1] *Below*, p. 59.

It is Fitzherbert's own, the contemporary French report having the words "Jur. [with the mark of abbreviation "over the letter *r*] de *utrum*."[1]

How the mistake has been perpetuated by later writers down to the present day.

It is a curious fact that the Register of Writs published in the reign of Henry VIII. (1531) has escaped the blunder. The reason probably is that the entries relating to the writ were copied from one of the many previous registers extending back to a time when the mistake had not been made. Some previous possessor, however, of the copy owned by the present Editor was either unaware of the fact that the writ appears in the table prefixed to the volume under the head of "*Utrum*," or thought the description insufficient or incorrect. He has carefully added in manuscript the writ in another place, under the head of *Inquisitiones*, as "*Juris utrum*."

Elsewhere, however, the original author (whoever he may have been) of this impossible writ had a stupendous success. He practically drew into his net not only Fitzherbert, but all the sages of the law who lived in later times, not excepting Coke and Blackstone. Last of all the late Professor Maitland has devoted more than a page of his "Forms of Action" to a disquisition on "the "Assise *Utrum*, or Writ *Juris utrum*."[2]

Forms of action in the reports and in the rolls.

No one, however, was more deeply impressed with the importance of the forms of writs than Professor Maitland, who appears to have been under the impression that the use made of them by our forefathers could be ascertained from the reports in the Year Books alone. He grouped them in the first of his volumes of Year Books edited for the Selden Society,[3] and dealt further with the subject

[1] There are other cases in which Fitzherbert has been guilty of the same alteration. Compare, *e.g.*, his *Juris utrum*, No. 4, with Y.B., Mich., 14 Edw. III., No. 16, p. 43.

[2] *Equity : Also the Forms of Action at Common Law*, pp. 326–327.

[3] Year Books 1 and 2 Edw. II., S.S. Vol. I., p. 203, note 1.

in some Lectures which have been published since his death.[1] It was unfortunate that his health compelled him to be absent from England many months during every year, and that he was consequently unable to gain that personal familiarity with the rolls, which would certainly have modified his opinions.[2]

Importance and common use of the action of Account, as shown by the rolls, though not by the reports.

Professor Maitland was, for this reason, under a serious misapprehension with regard to actions of Account, which played a very important part in the legal and social history of England as early as the first half of the fourteenth century. It may be true, as he suggests, that the action was originally "used only against bailiffs of manors,"[3] but it is not true that "the common law action of Account "remains at a low level of development."[4]

Attention was called by the present Editor, as early as the year 1888, to the importance of the old common law action of Account, and to the fact that it showed what was the mode of investment or speculation at the time when it was used. It was then remarked that our forefathers "were familiar with the Court of Common "Pleas, whither they came as plaintiffs in Account when "their ventures had not succeeded according to their "expectations, just as their descendants are familiar with "the Chancery Division, where petitions are made for the "winding up of Companies."[5]

Account as against receiver entrusted with money "*ad mercandizandum.*"

The Actions of Account are, in the reign of Edward III., very numerous, and the majority of them are brought against defendants who are said in the declaration to have been receivers of the plaintiffs' moneys from a stated time to another stated time. In these cases the allegation always is that the defendant received the sum or sums mentioned "*ad mercandizandum et proficuum ipsius*

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[1] *Equity : Also the Forms of Action at Common Law.*

[2] *See* the Preface to Vol. I. and the Preface to Vol. III. of the S.S. Year Books.

[3] *Equity : Also the Forms of Action at Common Law*, p. 342.

[4] *Ib.*, p. 358.

[5] Y.BB., Easter and Trinity, 14 Edw. III., Introd., pp. lxviii–lxix.

"(*i.e.* of the plaintiff, or, where the action is brought by "executors, of the testator) *inde faciendum, et* "*rationabilem Compotum, cum inde requisitus fuerit,* "*reddendum.*" There are other, but less numerous, actions of account brought against bailiffs who had had the general administration of the goods of a manor or other land, including oxen, ploughs, beasts of the plough, carts, waggons, cows, sheep, swine, swans, geese, cocks and hens, wheat, barley, oats, rye, beans, peas and vetches, wool and hay, woods, rents of assise from tenants of the manor, rents and profits of markets, &c., and who had, as alleged, refused to render an account. In these cases, however, it is also commonly alleged that the defendant had been receiver as well as bailiff, and had received sums of the plaintiff's money to use for the plaintiff's profit.

Large sums involved.

The actions against receivers were brought in relation to sums of various amounts, and, if the difference in value between a pound in the fourteenth century and a pound in the twentieth be borne in mind, the sums were rarely inconsiderable. Even when it was not alleged that more than 10*l.* had been entrusted to the defendant, that was, perhaps, the equivalent of some 100*l.* of the present time,[1] and certainly not less. But the amount was frequently expressed in hundreds and even in thousands of pounds

[1] It must not be supposed that in this and subsequent calculations an exact estimate is attempted. As has been pointed out by the late Professor J. E. T. Rogers, in his *History of Agriculture and Prices*, the purchasing power of any sum of money varies not only with the period, but with the particular commodity to be purchased. If a pound will now purchase only one-twentieth part of one commodity, as compared with its power in the early part of the 14th century, it may, perhaps, purchase a tenth part of another or only a thirtieth part of a third. All that it is needful to bear in mind is that a pound was then worth greatly more than it is now, and that the sums mentioned in the rolls represent very much more than the same sums in modern reckoning.

of fourteenth century currency. The fact that there was so much spare cash for investment in feudal times has hitherto been unknown, and could not be ascertained from cases reported in the Year Books alone, or without careful examination of long neglected records.

Instances: executors of the will of an Archbishop of York against Italian merchants.

An action of Account was brought by Master William de la Mare, canon of St. Peter's, York, William de Wirkesworth, and William de Feriby, executors of the will of William de Melton, late Archbishop of York, against Giovanni Baroncelli, merchant, of the company of the Peruzzi of Florence. It was alleged, in the declaration, that the defendant had received 3,000*l.* of the Archbishop's money (equivalent to not less than 30,000*l.* of our time) wherewith to traffic for the Archbishop's profit, and had refused to render an account. The defendant pleaded the general issue "Not Receiver," upon which issue was joined, and he was then held to mainprise until verdict and judgment, having six mainpernors of the county of London."[1]

Concurrently with the action of Account was brought an action of Debt by two of the same executors (William de Wirkesworth and William de Feriby) against the same defendant. In this the declaration was that Baroncelli had bound himself by deed (*scriptum*) to pay the amount to the Archbishop at a stated time, had omitted to pay him, and had refused to pay the executors; and damages to the amount of 1,000*l.* were claimed.

The Prior of St. John of Jerusalem concerned with the merchants.

Profert was made of the deed which showed that the defendant, together with Philip de Tame, Prior and Brother of the Hospital of St. John of Jerusalem in England, and three others described as merchants of the company of the Peruzzi, for themselves and all others their fellows, Merchants of the Company of the Peruzzi, were jointly and severally bound to the Archbishop.

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[1] *Placita de Banco*, Trin., 16 Edw. III., R° 99, d.

Profert was also made of a "*scriptum testamentorium*" showing that the plaintiffs in this action were executors together with Master William de la Mare, Canon of St. Peter's, York, Master William de Aberwyke, and Master Adam de Heselbeche, and had administration. Reference was also made to the roll of *Placita de Banco*, Hilary, 15 Edward III., R° 13, to show that the other executors were summoned and severed.

The defendant Baroncelli confessed the deed, and judgment was given for the plaintiffs to recover the debt of 3,000*l.*, and damages to the amount of one hundred marks, as assessed by the Justices.

The plaintiffs were then asked by the Court whether they desired to sue against the Prior of St. John of Jerusalem, and the other merchants of the Company of the Peruzzi, and answered that they did. Execution was therefore stayed, and the deed was redelivered to the plaintiffs.[1]

The sum of 3,000*l.* mentioned in the action of Debt was probably the same sum of 3,000*l.* which it was alleged in the action of Account that Baroncelli had received for employment to the Archbishop's profit. The principal was secured by the deed to which the Prior of St. John, and the Company of the Peruzzi were parties, but Baroncelli alone was the receiver who was to traffic and to account to the Archbishop for the proceeds.

Revelation of the manners of the age.

It is nothing less than a revelation of the manners of the age when we find two of the principal Spiritual Lords mixed up with the affairs of the great mercantile house of the Peruzzi, and as eager as they to heap riches on riches. The broad lands of the see of York, and the possessions of the Head of the Knights Hospitallers were, it seems, insufficient for their needs, though the Hospitallers had but recently acquired the wealth of the dissolved Order of the Templars. It is for the knowledge of such facts as these that we are indebted to actions of Account recorded among the *Placita de Banco*.

[1] *Placita de Banco*, Trin., 16 Edw. III., R° 99.

Various other like actions against Florentine merchants.

There is a case of Account in which John Coupegorge, clerk, appears as plaintiff against John "Baroncel," who was probably the Giovanni Baroncelli sued by the executors of the Archbishop of York. It was alleged that the defendant had received divers sums of the plaintiff's money, from the hands of divers persons wherewith to traffic for the profit of the plaintiff, who claimed damages to the amount of 3,000*l.* Issue having been joined on the plea "Not Receiver," writs of *Venire* were awarded, to be directed to the Sheriffs of London, Lincoln, and York.[1]

Again we find one Roger de Forsham, of London, bringing his action of Account against another Florentine merchant, whose name appears on the roll as John de Portynare. In this case the plaintiff alleged that the defendant had received 314*l.* (or, perhaps, between 3,000*l.* and 4,000*l.* of our money) to make profit for the plaintiff.[2]

Thomas Corpe, of London, merchant, brought an action of Account against "Franciscus Lape," of Florence, merchant, and "Angelinus Johan," of Florence, merchant. He alleged that Lape had received 80*l.* of his money in the parish of St. Pancras, in "Soperslane" in the Ward of "Cordewanerestrete" in London, and that Johan had also received 80*l.* of his money, and he laid his damages at 100*l.* The Defendants severally pleaded the general issue, and the *Venire* was awarded thereon. The defendants were both committed to the Fleet Prison, but were subsequently released on mainprise, with the consent of the plaintiff, as well as of one Gerard Corpe, at whose suit, the defendant Lape was first detained in Newgate gaol for an account, as the Sheriffs of London returned.

When the day came for the appearance of the defendants, they both made default, as well as the whole of the mainpernors, and a writ of *Capias* issued against them all. Two of the mainpernors afterwards appeared

[1] *Placita de Banco*, Trin., 16 Edw. III., R° 415, d.

[2] *Placita de Banco*, Trin., 16 Edw. III., R° 415, d.

in custody, and were released on payment of a fine of one mark each to the King.[1] Nothing more is said of the Florentine merchants, who may possibly have made good their escape to Florence.

Transactions commonly revealed on death of a testator.

These transactions are frequently brought to light when the investor or speculator dies, and his executors have to administer his estate. Thus we have Robert de Ufford, Earl of Suffolk, Robert de Stykeford, parson of the church of Frankton, Thomas Chesny, John Mosse, and John de Derham, clerk, bringing an action of Account, as executors of the will of Roger de Huntyngfeld, against John Bole, of Dunham. They alleged that the testator had entrusted the defendant with 80*l.*, and claimed, in addition, damages to the amount of 40*l.*[2]

Parsons of churches frequently concerned: instances.

The Church again appears in an action of Account brought by the Prior of the Hospital of St. John of Jerusalem in England, and Brother John Larcher, the younger, executors of the will of Robert de Stoke, late parson of a church in Dorsetshire. Their declaration was to the effect that the defendant (Robert Page) received 219*l.* 17*s.* of the testator's money by the hands of the testator and of several other persons. Damages to the amount of 200*l.* were also claimed.

The defendant, as to the money alleged to have been received directly from the testator, traversed the receipt, and waged his law thereon. His wager of law was successful, and judgment was given in his favour. As to the residue, he pleaded the general issue, and the *Venire* was awarded, but the verdict is not shown.[3] The case, however, seems to indicate that the desire to speculate, or to obtain a high rate of interest had invaded the mediæval parsonage as it has been said to have invaded those of more recent times.

The same inference is to be drawn from the case of Hervey de Stanton, parson of the church of Elm (Suffolk),

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[1] *Placita de Banco*, Mich., 16 Edw. III., R° 122.

[2] *Placita de Banco*, Mich., 16 Edw. III., R° 64.

[3] *Placita de Banco*, Mich., 16 Edw. III., R° 168.

and in all probability a near kinsman of that Harvey de Stanton who was Chief Justice of the King's Bench in the previous reign. He brought an action of Account against John son of Roger le Smyth of Hepworth, and his declaration was to the effect that the defendant received by the hands of several persons from several sums of 23*s.* 6*d.*, 12*s.* 10*d.*, and 4*l.* of his money, or 13*l.* 6*s.* 4*d.* in all perhaps about 14*l.* of our money wherewith to traffic for his benefit. In this case the general issue was pleaded, upon which a verdict was given *Nisi prius* that the defendant was, as alleged by the plaintiff, receiver of the money by the hands of the several persons mentioned. Judgment was given that the defendant should account, and a writ of *Distringas ad computandum* issued against him.[1] In like manner Richard, vicar of the church of St. Mary, South Walsham, sues William son of Seelo Ogge for refusing to render an account. In this case the sums were small, the plaintiff alleging that the defendant had received sixty shillings from himself, and one hundred shillings of his money from another person wherewith to traffic. He claimed one hundred shillings as damages.[2] So also the executors of the will of John de Ayreston, parson of the church of Denton, brought a similar action against his receiver.[3]

An eminent lawyer and Serjeant Pulteney.

A lawyer of some eminence, whose name frequently appears in the Year Books of the period, also had similar dealings. Serjeant John de Pulteney, who is described as a knight, brought his action against five merchants of the Company of the Peruzzi touching one old friend Giovanni Bernardi. His declaration was that the defendants received 20*l.* (about 2,000*l.* of his money wherewith to traffic for his benefit, and that they refused to render an account, and he claimed 100*l.* (1,000*l.* damages. Issue was joined on the plea "Not Receivers," and the Plaint was awarded.[4]

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[1] *Placita de Banco*, Mich., 10 Edw. III., R° 102 *d*.

[2] *Placita de Banco*, Mich., 10 Edw. III., R° 49.

[3] *Placita de Banco*, Hil., 17 Edw. III., R° 8.

[4] *Placita de Banco*, Mich., 10 Edw. III., R° 181 *d*.

In one instance an action of Account was brought by a taverner of York (Hugh de Seleby) against another taverner (Andrew Belle). The plaintiff alleged, in his declaration, that the defendant had received 40 marks for the plaintiff's wines which had been sold to several persons named, with which money he was to have trafficked for the plaintiff's profit.[1]

A taverner v. a taverner.

It is unfortunately but rarely that we find any details of the trafficking—of the objects bought and sold. That information came before the auditors, but does not often appear on the rolls of the Court. In one reported case, however, the defendant pleaded disability in the person of the plaintiff, on the ground that he had been outlawed on an indictment in the King's Bench for manslaughter and burglary because he could not be found. The plaintiff replied there was no such record of outlawry in the King's Bench. The defendant was required to produce it on a certain day, and was held to mainprise until the termination of the plea. On the appointed day he appeared, and "*relicta exceptione sua*" said he was ready to account. Therefore judgment was given that he should account, and auditors were assigned to him, whose names are stated.

The traffic in relics.

Then we find that both parties appeared before the auditors, and the defendant rendered an account of the wares which he had bought. Among them were jewels, and two crystal phials full of precious relics. After issue had been joined as to the receipt of the goods the plaintiff failed to appear, and judgment was given for defendant. From this it may probably be inferred that the defendant's statement was correct and that he had made the purchases as he alleged.[2] As previously remarked, it seems to follow from this "that there was a recognised traffic in relics "and that if a purchaser displayed a pious wish to serve "God by cherishing the tears or the blood of a saint, he

[1] *Placita de Banco*, Mich., 16 Edw. III., R° 452, d.

[2] Y.B., Trin., 15 Edw. III., No. 41. pp. 260–262; *Placita de Banco*, Trin., 15 Edw. III., R° 334, d.

"could find a vendor equally ready to serve Mammon by "accepting a consideration for the merchandise."[1]

Partnership.

In some cases it appears that the plaintiff had entered into a sort of partnership with the defendant. Thus it seems that one John Ryvelyng had, according to his statement, entrusted money to John son of John Long, merchant, at Boston, to traffic for their common profit.[2]

Actions of Account against bailiffs not unimportant.

Even the actions of Account against bailiffs were not always of a trivial character. A good illustration is presented by that of a great land-owner, Thomas Wake, of Liddell, against John Toly, of Wymondham. The declaration was to the effect that the defendant had been the plaintiff's bailiff of his manors of Bourne and Deeping in Lincolnshire during a stated period, including that from Easter in the first year of the reign of Edward III. to Easter in the eighth year, had had the care and management of all the plaintiff's substance and goods therein to the value of 4,000*l.* (at least 40,000*l.* of our modern currency), had received 120 marks of the plaintiff's money (equivalent perhaps to about 800*l.* of modern currency) and had refused to render an account. Damages to the amount of 10,000*l.* (not less than 100,000*l.* of modern currency) were claimed.

The defendant pleaded, as to a part of the period (from Easter, 1 Edward III., to the Quinzaine of Michaelmas, 7 Edward III.) that he had been surveyor or overseer ("*supervisor*") of the manors, deputed by the plaintiff, and receiver of the plaintiff's money by the hands of the sub-bailiffs and reeves ("*præpositorum*") of the manors, that in respect of that period he had rendered his final account before auditors named and deputed by the plaintiff, and that the rolls, tallies and other remembrances of the account were in the possession of the auditors.

With regard to the part of the period from the Quinzaine of Michaelmas, 7 Edward III., to the following Easter,

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[1] Y.BB., Easter — Mich., 15 Edw. III., Introd., pp. xi–xii.

[2] *Placita de Banco*, Mich., 16 Edw. III., R° 62, d.

the defendant pleaded, "Ready to account," and with regard to the rest of the time, "Not bailiff or receiver."

The plaintiff made replication that the defendant was bailiff and receiver during the whole time, *absque hoc* that he had rendered any account before the auditors whom he had mentioned. On this issue was joined and the *Venire* awarded. The defendant was let out on mainprise. There were some subsequent adjournments, but the roll unfortunately tells us nothing beyond.[1] The pleadings, however, suffice to give us some insight into the manner in which the estates of the great land-owners were managed, and incidentally into the losses which they might sometimes have to suffer.

Actions of Account against guardians in socage.

In one case brought as against bailiff of a manor and receiver, the defendant pleaded, in abatement of the writ, that he had the wardship of the manor by reason of nurture, as the plaintiff's next friend, because the manor was held in socage, and received certain money from certain persons named for certain of the plaintiff's lands and tenements let to farm. Here the plaintiff confessed the plea, and judgment was given for the defendant.[2] Actions of account brought directly against guardians in socage are not by any means uncommon.

The writ of Entry and its varieties.

Of writs of Entry there were many varieties, and some of them were known by special technical names, which may be misleading to those who are not acquainted with the forms of the writs. Thus the *Cui in vita*, which in the reign of Edward III. included the writ subsequently called *Sur cui in vita*, is invariably called by that name in the reports, and never a writ of Entry. It was nevertheless in form a writ of Entry, as it alleged that the tenant had not entry but by the husband of the feme covert, whom she could

[1] *Placita de Banco*, Mich., 16 Edw. III., R° 126, d.

[2] *Placita de Banco*, Mich., 16 Edw. III., R° 442.

not gainsay during his life-time. In like manner also a writ of Intrusion is always so described, though it was in the form that the tenant had not entry but by some intrusion.

The writs of Entry "*dum fuit infra ætatem*," "*dum non fuit compos mentis*" and "*ad terminum qui præteriit*" are sometimes described as "*Dum fuit infra ætatem*," &c., simply, without the insertion of the word Entry. The distinction of degrees in writs of Entry is usually mentioned, and it is sometimes objected that the writ should have been brought in one degree where it has in fact been brought in another. These degrees were described as in the *per*, in the *per* and *cui*, and in the *post*. The writ was in the *per* when it set forth that the tenant had not entry but by some person named, in the *per* and *cui* when he had not entry but some person named, to whom another had conveyed, in the *post* when he had not entry but after the conveyance of some person to some other person.

The writ of Trespass and its varieties.

The writs of Trespass also differed in form according to circumstances. They might simply allege the particular trespass committed, or they might also allege assault and battery committed on the plaintiff or his servants, or they might also allege the technical imprisonment of the plaintiff by the defendant. Sometimes, too, we find the Trespass *quare clausum fregit*, which in later times became one of the commonest forms of commencing an action. The words "*clausum fregit*," however, do not very often occur in the reign of Edward III. Attention was directed chiefly to the trespass, whatever its accompaniments or varieties might be, and consequently in considering the kinds of actions all the writs of Trespass may be regarded as constituting one class.

Proportion of one class of writs to another as shown by the rolls.

In any attempt to ascertain the proportion which writs of Entry bear to other writs as the modes of commencing an action, it is also, perhaps, only fair to include in the class all the varieties in which it is alleged that the tenant has not entry but in some defined manner, and to neglect all

other descriptions. Treated in this way it appears that, in the roll, writs of Entry hold the first place in Trinity Term, 16 Edward III., with a total of 56,[1] writs of Account coming in a good second with a total of 54. In the following Michaelmas Term, writs of Entry come in third with a total of 91, certain pleas of land which are not precisely defined in the rolls (and of which more will be said below[2]) holding the first rank with 103, Dower the second rank, with 94, Account the fourth with 81, and Trespass the fifth with 70. In Hilary Term, 17 Edward III., the writs of Entry are again third with 37, Dower first with 56, undefined pleas of land second with 49, writs of Trespass fourth with 42, writs of Formedon in the descender fifth with 27, and writs of Account sixth with 24.

If we take the grand totals of the six classes of writs for the whole of the three terms we find that Dower leads, with 195, undefined pleas of land are second with 186, writs of Entry are third with 184, Account is fourth with 159, Trespass is fifth with 131 and Formedon in the Descender sixth with 130.

All the classes of action, other than the six already enumerated, which were brought by Original Writ, are far behind in each of the three terms. Those which approach most nearly are (but *longo interjecto intervallo*) Replevin, with a total of 61 for the three terms, Debt with a total of 46, *Cessavit* with a total of 42, Covenant with 31, *Quare impedit* with 30, and Waste with 29.

Again lagging behind we have Annuity with a total of 16, Aiel with 15, Formedon in the Reverter with 14, Detinue with 12, Mesne and Assise of Novel Disseisin each with 11. With regard to actions of Assise, however, it should be remembered that those which have found their way into the Common Bench do not afford any indication of the total number brought. Most of them

[1] In this and other statements of the numbers all cases occurring on the roll are included which reached final judgment or issue.

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

were arraigned before Justices of Assise in the counties in which the tenements lay, and a few of them only were carried into the Bench *propter difficultatem*.

Of actions of Ejectment from Wardship there are nine, of Formedon in the remainder, *Audita Querela* and Rescous 7 each, of Escheat, Cosinage, Right of Wardship and Jure de *Utrum* 5 each. Of actions of *Quod permittat* (relating to nuisance) and of Ravishment of Ward there are 4 each, of Besaiel, *Nuper obiit*, writ of Right, writ of Right of Advowson, and Assise of Darrein Presentment 3 each, of Customs and Services, Attachment on Prohibition, writ of Right (*Præcipe in capite*), and Deceit 2 each. There is but one instance of Assise of Mort d'Ancestor, *Quare* (or *Quod ei*) *deforciat*, *Recordari facias loquelam*, Admeasurement of Pasture, *Quod permittat* (relating to Common), *Rationabili Parte Bonorum*, and Little Writ of Right.

Writs not clearly defined: probably writs of Entry.

As already indicated,[1] there is a large class of pleas of land in which the precise nature of the action is not stated. There is reason to believe that they may have been founded on writs of Entry. In that case, of course, the writs of Entry will come in easily first, with a total of 370. Dower will come second with 195, Account third, Trespass fourth, and Formedon in the Descender fifth.

The characteristic words in a writ of Entry are "into "which A. (the tenant) has not entry but," or in Latin "*non habet ingressum nisi*," and these words are not found in the cases now under consideration. The words which are invariably found are "which he, or she (the "demandant) claims as his or her right," "*ut jus suum*." The words "*quod clamat esse jus et hereditatem suam*" are, however, an essential part of the writ of Entry, though not of the writ of Entry exclusively. They occur also in the *Præcipe in capite* or writ of Right in the King's Court, but that form of procedure is of comparatively rare occurrence, and the claim "*ut jus suum*" is one of the most numerous.

[1] *See above*, p. xxxix.

In the rare instances in which the record throws more light on the matter, the conjecture that the action was commenced by writ of Entry is confirmed. Thus we find[1] that Richard son of Elias de Duddeleye and Amice his wife brought their action against Hugh le Ken and William, his brother, in respect of two messuages in Dudley (Worcestershire). They had judgment to recover seisin on default after default of the tenants. Here in ordinary cases the matter on the roll would end. Exceptionally, however, the demandants further prayed damages, on the ground that they demanded the tenements as the right of Amice by writ of Entry, as being tenements into which the tenants had not entry but by John Somery, who demised them to the tenants and disseised Amice.

Entered briefly on the roll without count or subsequent pleadings.

Should it be asked how it came to pass that so many cases are entered on the roll without any precise indication of the nature of the action, the answer is not far to seek. It is found in every case without exception that there is no count and consequently no subsequent pleadings. There are two common endings of the cause. The demandant does not appear to prosecute his suit, and judgment is given for the tenant, or the tenant makes default after default, and judgment is given for the demandant.

Nature of the proceedings.

Occasionally something occurs which delays these very simple judgments, but it is never anything which affects the original claim. Sometimes the tenant has made only one default to which the demandant holds absolutely, and the tenant appears and pleads that he has never been summoned. That is a subject for the wager of law, and, if the tenant fails to perform his law successfully, judgment goes against him, but, if he performs it successfully, he has judgment in his favour. He may, however, cast an essoin, and, if he is sued with his wife, he may fail to appear on the appointed day, and his wife may then appear and pray to be admitted to defend her right, and

[1] *Placita de Banco*, Hil., 17 Edw. III., R° 107.

after all the husband may be again essoined *de malo veniendi*, and so the case may be left on the roll.[1]

Again, to escape the consequences of a default, the tenant may plead inability to appear by reason of imprisonment. One pleaded that his servant was indicted for homicide, and that he had himself been indicted for receiving the servant. For that reason he was attached by the under-bailiff of the liberty in which the homicide was alleged, and detained during four days, so that he was unable to be present. The demandant replied that the tenant had voluntarily caused himself to be taken and imprisoned as the means of delaying the demandant of his suit. To this the tenant rejoined that he was taken and imprisoned without his own consent or will, and not for the object of delaying the demandant. Issue was here joined, and a *Venire* awarded.[2] In this case it is probable that the earlier proceedings had appeared in a different form on an earlier roll, as the alleged default was at *Nisi prius* after issue joined.

In another instance in which the tenant pleaded non-summons to excuse a default, there was the usual wager of law followed by adjournments. The tenant then pleaded that the demandant could not further prosecute the suit or hold to the default because she had released to the tenant, with warranty, in fee, all her right and claim to the tenements. *Profert* was made of the deed of release, the plea was confessed by the demandant, and judgment was given for the tenant.[3]

In one case, that of Ralph de Vedone *v.* Walter de Blechemere, we find a recital of previous proceedings in which the tenant had waged his law as to non-summons in answer to an alleged default, and there had been subsequent essoins on both sides. Then John de Blechemere, as son and heir of Joan Dobelyn, late wife of

[1] *e.g.*, Russel *v.* le Formon and wife, *Placita de Banco*, Hil., 17 Edw. III., R° 112.

[2] Erel *v.* de Warenna, *Placita de Banco*, Hil., 17 Edw. III., R° 161.

[3] Hersand *v.* Scardeburgh, *Placita de Banco*, Hil., 17 Edw. III., R° 204, d.

Walter de Blechemere, prayed to be admitted to defend his right on the ground that Walter had nothing in the tenements except by the curtesy of England, after Joan's death, of John's inheritance. The prayer was counter-pleaded on the ground that Walter had a fee in the tenements, and issue was joined thereon. John had to find mainprise to answer as to the issues of the tenements in the meantime. On the day given John made default, judgment was given for the demandant to recover seisin, and a writ of enquiry as to the issues was awarded.[1]

Cases of this kind naturally do not often afford food for the reporter. Of the whole 186 cases, indeed, there is only one that can with anything like probability be identified among the reports, and even with regard to that there is no certainty.

Cases of this kind, though numerous on the rolls, rarely reported.

The invariable characteristic of these cases in which the demandant claims "*ut jus suum*," is, as already mentioned, that there is no count, and consequently no pleadings following the count, or, in other words no principal pleadings at all. There may be pleadings of a subsidiary character, as where the tenant vouches to warrant, and there is a counterplea of voucher, or where a person other than the tenant in the action prays to be admitted to defend his right, and there is a counterplea of the prayer. In each of these cases the desired effect would be to give the demandant a new adversary. If the vouchee warranted, for instance, he would become "tenant by his "warranty," and the demandant, when counting at all, would count against him, and not against the tenant mentioned in the writ.

They present subsidiary pleadings only, such as voucher, prayer to be admitted, &c.

Sometimes the tenant vouches to warrant, and the vouchee vouches another. The last vouchee makes default after default, and judgment is then given for the demandant to recover his seisin against the tenant, for the tenant to have to the value, of the land of the first

[1] *Placita de Banco*, Hil., 17 Edw. III., R° 237, d.

vouchee, and for the first vouchee to have to the value of the land of the second vouchee.[1]

Sometimes the tenant vouches, and omits to continue the process after the warning "*Sequatur suo periculo*," and in that case there is simply judgment for the demandant to recover against him.[2] Where the tenant vouches, and the vouchee makes default after default, the judgment is for the demandant to recover seisin against the tenant, and for the tenant to have to the value of the land of the vouchee.[3]

Explanation of the short entries on the roll.

In these facts probably lies the explanation of the shortness of the statement of claim without sufficient words for the absolute identification of the writ by which the action is brought. A count had to be in perfect accordance with the writ, and wherever a count appears upon the roll it is preceded by words sufficient to show the nature of the writ. In the established order of pleading an exception to the count preceded an exception to the writ, and one of the commonest exceptions was that it was not in accordance with the writ. Where, however, there was no count, there was no need to show more on the roll than the fact that one party demanded land against another, with the ordinary result either of the non-appearance of the demandant and judgment for the tenant, or judgment on default against the tenant, or his vouchee.

The words "*ut jus suum*," as before remarked, seem to point to the writ of Entry, which was the general remedy, especially after the sanction of the writ of Entry in the *post* by the Statute of Marlborough. It appears, therefore, that in order to arrive at the proportionate numbers of the various writs used in the Common Bench we should add these not strictly defined writs to other writs of Entry with regard to which there is no doubt.

The subject of demand in these cases usually small.

It should, however, be mentioned that in most instances (though not in all) the tenements in dispute are very

[1] Barry *v.* Somertone, *Placita de Banco*, Hil., 17 Edw. III., R° 280.

[2] Ansty *v.* Batesonegeryn, *Placita de Banco*, Hil., 17 Edw. III., R° 257, d.

[3] Hawe *v.* atte Birche, *Placita de Banco*, Hil., 17 Edw. III., R° 308, d.

small in quantity. Such demands as for one acre of land, for one messuage, one messuage and two acres of land, one messuage and one virgate of land, one messuage and twelve acres of land, one toft and one acre of land, two messuages, one messuage and four bovates of land, twelve acres of land, one messuage and six acres of land and a moiety of one rood of meadow, one messuage, ten acres of land, and two acres of meadow, or one messuage and one garden, constitute the bulk of the cases of this class. The interesting inference may, perhaps, be drawn that the number of small freeholders was large in proportion to the population.

Proportion of one class of writs to another in the reports wholly different from that in the rolls.

Let us now see how far the reports agree with the records in the proportions which they assign to the different kinds of action. Replevin, which on the rolls holds only the seventh place, and that with numbers far behind those in advance, has nothing in front of it in the reports. It has a total of 18, and Dower has the same number. Account comes third with 17. There are six cases of Formedon in the descender, and nine of Formedon undefined which are possibly and even probably of Formedon in the descender. These added together make 15, giving this class of action the fourth place. The undefined plea of land is fifth with 14, and *Quare impedit* sixth with 13. Assises of Novel Disseisin are seventh with 11, and Debt eighth with ten.

Defined writs of Entry, which hold the third place on the rolls, have only the ninth place in the reports, with 8. Trespass, which is fifth on the rolls, is tenth in the reports with 7. Annuity and Waste are equal for the eleventh place, with 6. Covenant has the thirteenth place with 3. Of the rest, Jure de *utrum*, Deceit, Ravishment of Ward, Ejectment from Wardship, Assise of Darrein Presentment, and Attachment on Prohibition each have 2. There is but one case each of *Quod permittat* (Common), of *Quod permittat* (Nuisance), Admeasurement of Pasture,

Nuper obiit, *Mesne*, Right of Advowson, Right of Wardship, *Quare* (or *Quod ei*) *deforciat*, *Recordari facias loquelam*, *Audita Querela*, Customs and Services, *De Rationabili parte bonorum*, and Detinue. The cases of *Cessavit* Aiel, Formedon in the remainder, Formedon in the reverter, Rescous, Escheat, Cosinage, Besaiel, ordinary Writ of Right, *Præcipe in Capite*, and Little Writ of Right, which occur on the rolls, are wholly unrepresented in the reports.

Percentages of recorded actions reported.

If we take percentages we find the results still more striking. Of the classes of action occurring on the rolls Assises of Novel Disseisin are represented in the reports by 100 per cent., that is to say there are eleven cases reported, and eleven cases on the rolls. There are also in the reports 100 per cent. of cases of Attachment on Prohibition, Deceit, *Quare* or *Quod ei deforciat*, *Recordari facias loquelam*, Admeasurement of Pasture, *Quod permittat* (relating to Common), and *Rationabili parte bonorum*. There are 66 per cent. of cases of Assise of Darrein Presentment.

The proportion of cases of Customs and Services, and of Ravishment of Ward is fifty per cent., of *Quare impedit* over 43 per cent., of Jure de *utrum* 40 per cent., of Annuity over 37 per cent., of *Nuper obiit* and of Right of Advowson 33 per cent., of Replevin nearly $29\frac{1}{2}$ per cent., of *Quod permittat* (Nuisance) 25 per cent., of Ejectment from Wardship over 22 per cent., of Debt, of Waste and of Right of Wardship 20 per cent., and of *Audita Querela* over 14 per cent.

The kinds of action which are represented by the greatest numbers on the rolls are represented by quite an insignificant percentage in the reports. Of Formedon in the descender there are under 12 per cent., and of Account under 11. Dower, which is at the head of the poll in the rolls, comes in only twenty-sixth in the reports with a percentage of less than 10. The undefined pleas of land which are probably writs of Entry, very conspicuous on the rolls, can only show less than $7\frac{1}{2}$ per cent. in the reports, and undoubted writs of Entry less than five.

The true proportions necessarily not found in the reports.

It needs only a little reflection to see that these discrepancies are precisely what might have been expected, and that it would be idle to look in the reports for the true proportions of the several classes of action. The writ of Entry was one of the commonest forms, and if the undefined pleas of land be included, as they almost certainly ought to be, under that head, the writs of Entry are by far the most numerous of all. The most usual kind of procedure was naturally that which would work most smoothly, and present fewest unexpected points. The reporter had an eye not to the every-day and the obvious, but to the unusual and the difficult. Hence it follows that anyone who attempted to show what was the ordinary course of the law from the reports alone would not only fail in his attempt, but would arrive at conclusions exactly the reverse of the truth.

True state of society not indicated by the reported cases alone.

In other respects also anyone who relied upon the Year Books alone as reflecting all the social aspects of the time would fall into grave error. The criminal matters which appear in them are few and far between—especially after the Eyres fell into disuse. Reported cases of the Court of Common Pleas, to which the Year Books most commonly refer, give an idea of an orderly and peaceful life throughout the land, interrupted only by litigation conducted on scientific principles, with perhaps an occasional contempt of court, and an occasional trick or fraud calling for a writ of Deceit.

Unreported brawl among clerks of the Court and attorneys.

The records as a whole reveal an entirely different state of affairs. Among the unreported cases even in the Common Bench is one which throws a curious light at once on the manners and customs of the time, and on the mode of life of some of the Clerks of the Court. It seems that they, having rolls and writs with them, as well as some attorneys, were in the habit of meeting after dinner (*prandium*) in the church of St. Peter the Little in London,

for the purpose apparently of settling certain minor details which were to be recorded. It was presented in Court by twelve jurors that on one of these occasions a dispute arose between Alan de Heppescotes, and Nicholas de Gresele, with regard to a default which Nicholas entered on the same day against one Robert de Lyndeby, who was, Heppescotes said, his own master or principal. Heppescotes was not only very angry with Gresele for entering the default, but also threatened him with corporal chastisement. Then Nicholas de Gresele's clerk (Roger de Gresele) remarked that Heppescotes would not do him any damage, whereupon Heppescotes answered that if Nicholas de Gresele would only go out of the church he would give Nicholas a blow. He himself went out, expecting Nicholas and Roger to follow, and waited in a house near at hand. In the meantime three other men, whose position is not stated (William de Poyntone, William de Berghe, and John de Braundestone) went to Heppescotes, and endeavoured to reconcile him and Nicholas de Gresele. They begged Heppescotes to do nothing in contempt of the King's Court, or against the peace. Heppescotes promised them that he would not do anything that was not good, and they reported this to Nicholas de Gresele, who, with peaceful intent, came out of the church, as well as his clerk Roger, in company with William de Poyntone.

No sooner were they out of the church than one John de Rodam, who was one of the friends or followers of Heppescotes, struck Roger de Gresele with his hand, and afterwards stabbed him in the breast with a knife. Roger, in self defence, struck back again at Rodam, and hit him on the arm. Thereupon Heppescotes himself came, with his own knife drawn, to follow up Nicholas and Roger. Then, however, one Adam de Rothele stopped him, and held him by the arms so that he could not do any further damage, or have his will.

Heppescotes, being present in Court, was asked by the Justices how he would acquit himself, and did not deny

that the trespass had been committed as alleged in the presentment, but put himself upon the King's grace. He was committed to the Fleet Prison, but afterwards made fine of one half-mark to the King and was delivered from gaol.[1]

It is worthy of notice the Herlastone, who was the King's or Chief Clerk of the Court, or Custos Brevium, is not mentioned as having been present, and the minor work of the Court, was no doubt, carried on by subordinates. They in turn, it is to be observed, had other clerks or subordinates of their own.

Reported case and unreported sequel.

In a reported case of the 18th year of the reign of Edward III.[2] it appears that the King recovered in the Court of Common Pleas, by *Quare impedit*, a presentation to the prebend of Howden, in the church of St. Peter, Howden. All seems to be peaceful and in good order, and no one would have the slightest suspicion, when reading the report, of the events which followed. The records of the Court of King's Bench, however, give the information.

Murderous attack on a King's presentee in presence of King, Chancellor, and members of Council.

The King, in the exercise of his legal right, collated to the prebend one William de Emeldene, who was duly admitted and instituted. This was, however, in the days of Papal provisions, and Emeldene found an opponent in the person of one Master James de Multon. A writ of Prohibition was directed to Multon forbidding him to do or cause to be done anything which could be to the prejudice of the King, or of his recovery of the presentation, or of his rights in general, or to that of Emeldene's possession of the prebend. Multon, however, with several others, one of whom was the parson of St. Austin's, London, lightly esteeming (*parvi pendentes*) the King's prohibition, in the presence of the King and his Chancellor, while the King's great seal was uncovered (*apertum*) and the Chancellor was causing writs to be sealed with it, and in the presence of others of the King's Council, attacked Emeldene, and with drawn swords and knives pursued him to a certain house with the design of killing him. In

[1] *Placita de Banco*, Hil., 17 Edw. III., R° 362.

[2] Y.B., Trin., 18 Edw. III., No. 7, pp. 238-247.

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[2] Y.B., Trin., 18 Edw. III., No. 7, pp. 238–247.

that house they besieged him in hostile fashion, and there they detained him until they had made various citations, monitions, and other processes for him to appear without the kingdom of England (*i.e.* at Rome) to answer there as to the King's right. They continued to make these citations day after day, and assaulted and wounded one of Emeldene's servants so that Emeldene lost his services for a long time.[1]

Chancellor in King's Bench exhibiting forged writ.

Hard by this case, on the same roll, is another which is hardly less illustrative of the manners of the times. The Chancellor, Robert de Sadington, took into the King's Bench at Westminster, in his own hand, a certain little box with a certain writ, which he said had not issued from the Chancery. He prayed that one William Cridille of London, "clerk," in whose hands the writ had been found, might be attached to answer to the King how he had become possessed of it. Cridille was brought into Westminster Hall in custody of the Marshal of the King's Bench, and asked how he had come by the writ. He said that it was delivered to him at London in the church of St. Thomas the Martyr by the hands of one Henry Pyjoun, a Clerk of the Chancery, in the presence of Alexander Turke, Roger Lapy, and Nicholas William, citizens of London. Cridille was then sworn and examined apart (*secrete*) by the Justices, but he would say nothing more than that he was prepared to verify what he had said above, as the Court should adjudge. He was let out on mainprise, and the case was several times adjourned.[2]

Lawlessness in the middle of the fourteenth century.

Cases such as these were by no means exceptional in the middle of the fourteenth century. Scenes of violence were common throughout the country, and the forgery of documents and seals was quite an ordinary event. Lawlessness was prevalent in a degree which would be incredible if it were not established beyond all doubt by the contemporary records. In the year 1348,

[1] *Placita coram Rege* (King's Bench), Mich., 19 Edw. III., R° 25, d.

[2] *Placita coram Rege* (King's Bench), Mich., 19 Edw. III., R° 13, d.

only two years later than the last of the Year Books published in the present volume, there was not that security for life and property which the elaborate structure of the Courts of Justice might seem to suggest. Murder was rife in all parts of the land, and robbery on the highways an every day occurrence. In many places there was organised brigandage. A town might be invaded and plundered in the midst of a fair. In the country a park or chace might be overrun by a band who would kill the cattle and the game, cut down the timber, and carry off the spoil. False coin was imported, and still more was manufactured. Prosecutors, suitors, and jurors were intimidated, and the collectors of taxes not infrequently met with armed resistance. There was much dishonesty among traders of all kinds, and they did not even scruple to assist the King's enemies with arms and provisions.[1]

III.

Beginning and Development of the Year Books.

Beginning of the Year Books.

Though the authorship of the Year Books has been a subject of controversy, it is possible to trace their beginning and development with a certain degree of precision. In the general acceptation of the term they are reports in French of cases which occurred either during the progress of an Eyre, or in some particular term of some particular year. In that sense they began in the reign of Edward I. and not before. They were, however, preceded by other notes of legal proceedings in another form, which did not wholly disappear when they came into existence.

In opposition to these statements it may, perhaps, be said that in Fitzherbert's *Abridgment of the Law* there are

[1] For the details *see* Pike's *History of Crime in England*, Vol. I., chapter 4, where a description is given of the general condition of England in the year 1348.

numerous entries in French which are assigned to the time of Henry III. There is even one purporting to be of the fifteenth year of that reign, which is in true Year Book form, and shows the names of the counsel engaged.[1] Upon close inspection, however, it is found that this report does not belong to the period stated, but to the reign of Edward III., the letter H. having been misprinted for the letter E. in the margin. The case is in fact that which has now been printed in the Rolls Series of Year Books, as of Michaelmas Term, 15 Edward III., No. 36.

Cases of the reign of Henry III. in Fitzherbert's Abridgment, though in French, not in the French of the period.

There are, however, more than a hundred other cases mentioned in the Abridgment, the notice of which appears there wholly in French, and which may really belong to the reign of Henry III. They occur under forty-one of the two hundred and sixty-three heads into which the work is divided. They are, for the most part, short notes, and it is obvious that they are in the words of the abridger, and do not, like the longer accounts of the reports of later reigns, contain extracts from the original reports in their original language.

Illustrations.

Some illustrations may, perhaps, be needed in support of the statement that the French of Fitzherbert's cases attributed to the time of Henry III. is in fact the Law French of the sixteenth century. Assigned to Trinity Term in the eleventh year of the reign we find the following :—"*Nota* si home soit appele de felone, et vient "et gage bataile, et puis devient *blind* . . . . il serra "discharge."[2] In a genuine French Year Book of the period, the reporter would have written "*avogle*" or "*aveogle*" or "*avoegle*" instead of "*blind*," and would not have eked out an imperfect knowledge of French with an English word. So also Fitzherbert says "*Nota* si le Yerledom de "Chester discende," &c., whereas the French of the period would have been "si le contee de Cestre descende," &c. The word "yerledom," for earldom, occurs a second time

[1] Fitzherbert's Abridgment, Edition of 1565, Tit. *Dures*, No. 15.

[2] Fitz. Abr., *Droit*, 57, Trin. Term, 11 Hen. III.

in the same note.[1] There is again a charming instance of sixteenth century Law language in "*Nota* que le Roy "aler toll fre,"[2] which is intended to be the French for "Note that the King goes [or shall go] toll-free."

Cases partly in French and partly in Latin.

In addition to these cases which are wholly in French, or what Fitzherbert passed off as French, there are others which are partly in French and partly in Latin. The greater part of these have only a few introductory words in French, the rest of the entry being made up of quotations from some book in Latin, which, no doubt, contained extracts from the records. Thus we have a beginning "en assise par W. vers R. de terre," where the following words are "*juratores dicunt quod*," &c., and so on to the end in Latin.[3] In a few instances French alternates with Latin in various parts of the entry, but not the French of the reign of Henry III. Thus "En *Consuetudinibus et Servitiis* le demandant count "coment son auncestre don les tenementz al auncestre le "defendant en frank mariag, *ita quod* le defendant ore est "*tercius heres, et hac racione petit homagium, et assignat* "*ei servitium suum*, et le defendant *hoc cognoscit*, et dit "qe il est deins age, et preia son age, *et habuit*."[4] Here and elsewhere the abridger evidently thought he could shorten matters by putting a part into French, while retaining in other places the Latin words of the book before him.

Cases wholly in Latin.

Last of all we have cases which are wholly in Latin. They include all the longest entries and are fifty-one in number. The total number of cases purporting to be of the reign of Henry III. is two hundred and thirteen, and they are of the years from the second to the forty-seventh, but not uninterruptedly. There are entries for

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[1] Fitz. Abr., *Particion*, 18, assigned to the year 23 Hen. III.

[2] Fitz. Abr., *Toll*, 5, assigned to the year 23 Hen. III.

[3] Fitz. Abr., *Assise*, 428, assigned to the Staffordshire Eyre of 12 Hen. III. There are many similar instances.

[4] Fitz. Abr., *Droit*, 55, Trin. Term., 6 Hen. III.

every year from the second to the twenty-fourth inclusive, but none between the twenty-fourth and the forty-seventh, and none for the remaining ten years.

Fitzherbert acquainted with some book or books of *Placita* in Latin.

It seems, therefore, that Fitzherbert was acquainted with some book of *Placita* in Latin which included the second, the twenty-fourth and all the intervening years, and probably with another book which contained *Placita* of the forty-seventh year, but not with any documents relating to other parts of the reign.

Their nature.

The word "book" is used advisedly, because it was employed by Fitzherbert himself. At the end of one of his notes he introduces the words "come semble par le "livre,"[1] "as appears by the book." It was not, however, either in language or in form, a Year Book such as appeared in the next reign. It was in Latin. It showed neither the names of the judges nor the names of counsel. It contained none of the arguments used in Court, and the materials from which it was compiled were the records only of cases decided in Eyres and in the Common Bench. Nevertheless in books of this kind we may discern the genesis of the later Year Books.

His book of *Placita* held to be of authority in the reign of Henry VII.

It would seem, too, that Fitzherbert's "book" was considered to be of some authority in the reign of Henry VII. Fitzherbert remarks in relation to one of his abridgments that the Chief Justice of England said that "it was clearly waste as supposed in that case," and in relation to another that the case was "good law."[2] He refers to the year 16 Henry VII. He does not seem to be referring to the printed Year Book of that year, as he does not give the number of the case or the page, but he may nevertheless have been acquainted with some manuscript report in which the statement appeared.

Bracton's use of the records in Latin.

It is necessary to turn from Fitzherbert's book or books in Latin of the reign of Henry III. to the text of Bracton and the cases of the same reign which Bracton used. He

[1] Fitz Abr., *Prohibicion*, 28, Trin. Term., 4 Hen. III.

[2] Fitz. Abr., *Wast*, 131, Hil. Term, 15 Hen. III., and Wast 135, Mich. Term, 16 Hen. III.

does not in his work on the Laws and Customs of England refer to any such book or collection of extracts from the rolls as that which Fitzherbert knew. He refers directly to the records themselves, mentioning the Judges and the Courts in which they sat. It is, in any case, quite certain that he relied entirely, for the illustration of his points, upon that which he had seen with his own eyes in the authoritative enrolments of the Courts.

He nowhere refers to reports in French.

Bracton nowhere refers to anything of the nature of a French Year Book, and we may be perfectly sure that had any been in existence he would have told us something about it. In his time, then, precedents were to be found only in the records of the Courts, or in compilations of which they were the source.

"Bracton's Note Book."

It is believed that, in addition to the cases cited in Bracton's treatise, a great collection of extracts was made by or for him from various Rolls in Latin of the reign of Henry III., ending with the 24th year. The manuscript was found by Professor Vinogradoff in the British Museum, and the contents were subsequently published in three volumes by Professor Maitland. Though not improbable, it is, of course, not absolutely certain that the collection edited by that title was Bracton's Note Book. Nor is it quite certain that the cases mentioned in Fitzherbert's Abridgment, and extending from the second to the twenty-fourth year of the reign of Henry III., are founded on that collection. A very good case for supposing this to be the fact has, indeed, been made out by Professor Maitland.[1] The point is, however, immaterial for the present purpose. It may be taken as established, beyond all reasonable doubt, that no true Year Books, certainly no Year Books in French, of the reign of Henry III. are in existence, or have ever been in existence.

Latin the language of charters, statutes, and official legal instruments before the reign of Edward I.

From the time of the Conquest, and even before it, royal charters were in Latin, and, when statutes took the place of charters, they too were in Latin until the beginning of the reign of Edward I. Even Domesday Book itself was

[1] Bracton's Note Book, Vol. I., pp. 117–121.

in Latin, which was the recognised language for all official legal instruments.[1] Although French was the language spoken at Court, and in the King's Courts, the enrolments of proceedings were from the first in Latin, and it was naturally to them that lawyers at first went when in search of precedents.

Great change in his reign.

With the accession of Edward I., however, a complete change was effected, and we find the famous Statute of Westminster the First (3 Edward I.) in French, as were most of the subsequent statutes for many generations. It is in this reign, therefore, that the first true Year Books must be sought, and it would not be surprising if some were found in its earliest years.

Turning once more to Fitzherbert's Abridgment, we find in Trinity Term, 1 Edward I., a short note in French relating to attorneys.[2] It is not, however, different in character from the French notes under the reign of Henry III. There is also a similar note for the year 3 Edward I.[3] There are many cases assigned in a general way to the time of Edward I. For the twelfth and thirteenth years of that reign we meet with something of far greater importance. We seem actually to see the transition from the old plan of making extracts from the records in Latin to the new plan of reporting cases in French. We have the two plans co-existing at one and the same time.

Reports in French in the twelfth year.

The first instance of a report in French is one of the Wiltshire Eyre of the year 12 Edward I. It is a case of

[1] There is an apparent exception in the French version of the so-called Laws of William I. The laws actually made by him, however, apart from confirmations, are in Latin. Stubbs, *Select Charters*, p. 80. There is also another apparent exception in the case of certain statutes in French which relate to the Exchequer, and which are assigned, in some of the printed editions, to the fifty-first year of the reign of Henry III. That date, however, was rightly abandoned by the editors of the *Statutes of the Realm*, who treat the documents as *incerti temporis*.

[2] Fitz. Abr., *Attourne*, 85, Trin., 1 Edw. I.

[3] Fitz. Abr., *Nuper obiit*, 5, *Anno* 3 Edw. I.

Attaint, which is described as having been brought before Saham and his fellows, Justices in Eyre. Saham does not say anything, but we have the speeches of other judges and counsel.[1] In the thirteenth year of the reign there is a French report, in which we find that a decision was given by Weyland, J., and other Justices.[2] In the same year there is a report of a case heard at Westminster, in which Saham, J., speaks in French.[3]

Extracts from records in the old form co-existing with them.

Next following this French report in the Abridgment is a case in Latin evidently extracted from a record, or taken from some compilation which contained such extracts. It is a reversion to the form with which we were made familiar in the reign of Henry III., and shows how the old method persisted and held its ground alongside the new.[4] It is the more remarkable because the proceedings were at Westminster. We have documents of the nature of reports of an Eyre in Latin considerably later, the reason for which will be explained below. The account of a Common Bench case in Latin shows plainly enough that the French report was only just taking the field.

Instances.

In the same year there is another short report in French of a case at Westminster.[5] The name of one of the counsel is mentioned, and Saham, J., again gives judgment. His name, however, has been misread, and misprinted in the Abridgment. He appears as Mayham, just as one has seen *sumpsimus* converted into *mumpsimus*.

In a longer case, also at Westminster, we find the Chief Justice of the Common Bench (Weyland), as well as two counsel, speaking in French in the later Year Book manner.[6] In another of still greater length[7] (thirty-eight lines of the Abridgment, equivalent perhaps to three

[1] Fitz. Abr., *Attaint*, 71, "It. Wilt., &c.," 12 Edw. I.

[2] Fitz. Abr., *Avowre*, 235, "It. North.," 13 Edw. I.

[3] Fitz. Abr., Bastardy, 27, A° 13 Edw. I., "apud Westm."

[4] Fitz. Abr., *Bastardy*, 28, A° 13 Edw. I., "apud Westm."

[5] Fitz. Abr., *Briefe*, 869, A° 13 Edw. I., "apud Westm."

[6] Fitz. Abr., *Counterple de Voucher*, 118, A° 13 Edw. I., "apud Westm."

[7] Fitz. Abr., *Enfant*, 16, A° 13 Edw. I., "apud Westm."

pages of the Rolls Series) two judges, Metingham and Loveday, speak in French, and Loveday gives judgment. Thornton, a King's serjeant, also makes speeches in the same language, as well as the counsel opposed to him.

In the twelfth year of the reign there is a case of some length which is assigned to a Wiltshire Eyre, is entirely in Latin, and shows the names neither of judges nor of counsel.[1] It is in the form which was in use in the time of Henry III. So also is a case of the thirteenth year of the reign which was heard not in the Court of the Eyre but at Westminster.[2] In the same year we find under the head "Garde" two notes in Latin,[3] followed by an abridgment in French in the twelfth year, in which the name of one of the counsel is mentioned.[4] Of the thirteenth year there are under the head of "Garrante" two successive cases in Latin, both of which were heard at Westminster.[5] They are merely extracts from records. Under the head of "Graunt," however, in the twelfth year, Metingham, J., delivers judgment in French in the Court of the Eyre,[6] as he does at Westminster (under the head "Lete et Hundrede") in the thirteenth year.[7]

In the thirteenth year again Metingham, J., on the Northamptonshire Eyre, hears the speeches of several counsel in French, and himself gives judgment in the same language.[8] On the same Eyre Saham, J. (again misprinted Maham in the Abridgment), speaks in French, and several counsel also, on a writ of Neifty.[9] In the same year, however, an abridgment of the proceedings on a similar writ is given in Latin, evidently taken either

[1] Fitz. Abr., *Feffements et Faits*, 114, 12 Edw. I., It. Wilt.

[2] Fitz. Abr., *Formedon*, 63, 13 Edw. I., "apud Westm."

[3] Fitz. Abr., *Garde*, 136 and 137, 13 Edw. I., It. North.

[4] Fitz. Abr., *Garde*, 138, 12 Edw. I., It. Wilt.

[5] Fitz. Abr., *Garrante*, 92 and 93, 13 Edw. I., "apud Westm."

[6] Fitz. Abr., *Graunt*, 87, 12 Edw. I., It. Wilt.

[7] Fitz. Abr., *Lete et Hundrede*, 12, A° 13 Edw. I., "apud Westm."

[8] Fitz. Abr., *Per que servicia*, 23, 13 Edw. I., It North.

[9] Fitz. Abr., *Villenage*, 36, 13 Edw. I., It. North.

directly or at second hand from the record, without any names of judges or counsel.[1]

Triumph of the French report in or before the 20th year of the reign.

Thus we see that as late as the thirteenth year of Edward I., though the French report had established itself in the land, the Latin extract was not yet expelled, and was even fighting a not altogether unequal fight for existence. Here the curtain falls for seven years, and when it rises again we find that the conflict is over, and that the French Year Books are in possession of the field so far as the Common Bench and the civil side of the Court of Eyre are concerned. We have nothing in the form either of abridgment or full report to show the stages by which the battles were won, but the result is, perhaps, all the more dramatic in its completeness.

For the twentieth year of the reign we have Year Books[2] which have been printed in the Rolls Series. Reports of the twentieth and twenty-first years have been printed in the first volume, and reports of the twenty-first and twenty-second years in the second. In the two hundred and thirty-eight pages of text in the first (including the plea side of the Eyres) there are not more than ten pages of Latin, or a little less than four per cent. In the three hundred and eighteen pages of text in the second volume (including the plea side of one Eyre) there are not more than six pages, or less than two per cent. On the whole the war had thus been almost one of extermination, in which little more than four per cent. of the enemy had survived.[3] That small survival, however, is a fact not to be left out of consideration, and

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[1] Fitz. Abr., *Villenage*, 38, 13 Edw. I., "apud Westm."

[2] It is doubtful whether the gap between the thirteenth and twentieth years of Edward I. will ever be filled, but it is known that there are some MSS. of the reign which were not seen by Mr. Horwood, whose editing begins with the twentieth year.

[3] Copies of records of course continued to be made, and there are many manuscripts of such *Placita*, but these were not regarded as reports, and were not intended to serve the purpose of reports.

may, perhaps, serve to throw a little light on the *provenance* of the reports.

A landmark in history: French substituted for Latin in statutes.

In order to understand the meaning of this change, its bearing upon history, and the value of these reports in French, which were to grow in bulk during many generations, and long after English had been substituted for French as the language of the Courts of Justice, we must look outside the Year Books themselves. The accession of King Edward I. is a great landmark in English history. He and his advisers were great reformers. They codified where they did not remodel the law in a series of statutes, and they ordinarily made their vernacular (that is to say, the French language) serve various official purposes, including the promulgation of statutes, for which Latin had previously been in use. Parliaments began to be summoned more frequently than in the preceding reign, and French was the language of those who attended. When an Act of Parliament came into existence, it was not unnatural that those who had made it should wish to be able to consult it in their native tongue.

The French of Britton succeeds the Latin of Bracton.

With the growth of statutes there naturally grew up a desire to have an authoritative treatise on the law in the French language. Bracton's work was not only voluminous, but was in Latin, and "Britton" became a substitute in accordance with the tendencies of the age, and that with the authority of "Edward, par la grace "Deu, Roi de Engleterre, Seignur de Hyrelaunde, et "Duk de Aquitayne."[1] The approximate date of the appearance of Britton is, on grounds which appear to be sufficient, assigned to the twentieth year of the reign[2]—the very year, as it happens, of which we first have collected reports in French. "Britton" was, of course, not the work of a day, and some years had probably been required for its composition. It had been growing up *pari passu* with the earliest Year Books, and came to maturity about the same time.

[1] Brit., Prologue, Vol. I., p. 1 (Nichols).

[2] Nichols, Introduction to Britton, xviii.

Exceptional Latin reports (as distinguished from records) of some cases in the Courts of Eyre.

Before considering the French Year Books further it is necessary to notice one exception to the use of French as the language spoken in the Courts. It is evident from more passages than one that some part of the proceedings in a Court of Eyre was in English,[1] as, for instance, the reading of the articles of the Eyre. Whenever this was the case, however, neither the record nor the report was in English, though an occasional word or two may be casually introduced into a report. On the Crown side of the Eyre the report was sometimes in French and sometimes in Latin.

Some curious instances of Latin reports (not records) occur in an Eyre in or about the thirtieth year of the reign of Edward I.[2] The twelve jurors of a hundred or wapentake make a presentment relating to a man who was thrown from a horse and killed :—"JUSTICIARIUS. In cujus "manu est ille equus deodandus ?—*Duodecim.* In manibus "dicti Johannis de Thornetone, cujus proprietas fuit.— "JUSTICIARIUS. Vocetur Johannes quod compareat." And so we have John and the twelve jurors and the Justice speaking Latin to the end of the report, when the Justice gives his judgment.[3]

A curious illustration.

Several other reports in Latin follow. In one of them,[4] a case of rape, we have Latin speeches from the Justice, the accused who claimed privilege of clergy, the Ordinary who came to demand him, a certain *dominus* N. de Leycestre, and the jury. The prisoner's claim of clergy was disallowed because he was "*bigamus*," as having married a widow. He prayed to be allowed to have counsel to plead for him, but it was explained to him that in such a case, where there was an indictment, the King was a party, and therefore his prayer could not be granted. It would have been otherwise in an appeal brought against him by the woman. He then desired to challenge the jurors, and

[1] *See* Britton (Ed. Nichols), Vol. I., p. 23, note h.

[2] Y.BB., 30 and 31 Edw. I., App. II., pp. 528–545.

[3] Y.BB., 30 and 31 Edw. I., App. II., pp. 528–529.

[4] *Ib.*, pp. 529–532.

appears to have had his challenges ready in writing. He again prayed to be allowed counsel, because he was unable to read them, and was required to deliver them orally. His illiteracy was of course a proof that his claim of privilege of clergy was without foundation. In the end "dominus N. de Leycestre" was asked to read the challenges to the prisoner apart, so that he might then be able to make them by word of mouth. This was done, and the challenged jurors were removed.

What language was used in Court when the report was in Latin?

Here arises the question: What language was actually employed in Court? Certainly not Latin, though that is the language of the report, because the accused was unable even to read. It must then have been either French or English. Had it been French there is no conceivable reason why the report should not have been, like other reports, in French also. We are thus forced to the conclusion that it must have been English. It is quite possible that ordinary jurors in a criminal case brought from a countryside far from Westminster did not know any other language. But what of the accused, who was a knight? He, too, being unable to read, was as uneducated as any boor. He, however, claimed the right to be tried by knights, and was so tried after his challenges had been successful. Whether the knights who tried him were better educated than he we cannot know.

French not spoken in Yorkshire by all the knights.

It may be of interest and even of importance to discover in what part of England this trial was held, and though the report of the proceedings of the Eyre is incomplete, the task is not an impossible one. A presentment was made by the jurors of "Yoncres,"[1] as the word was printed by Mr. Horwood. There does not appear to have been anywhere a hundred of that name. Elsewhere among the proceedings[2] we find that they were in the land not of hundreds but of wapentakes. The locality is therefore to be found in some northern county. We also find that certain prisoners were taken to York.[3] Among the

[1] Y.BB., 30 and 31 Edw. I., App. II., p. 528.

[2] *e.g.*, *ib.*, p. 534, &c.

[3] *Ib.*

wapentakes of the West Riding of Yorkshire is Ewcross, and this is beyond all reasonable doubt the "Yoncres," or, as it should have been printed, "Youcros" of the Year Book.

We may infer, then, that French was not very generally spoken among the rural population, or even among all the knights of Yorkshire, and when an Eyre was in that county some criminal cases, at any rate, had to be tried in English. Yorkshire, however, was very far away (some days' journey in those times) from Westminster, and it would be unsafe to conclude that what was true of Yorkshire was true of all counties. Except for an odd word or two here and there, the English tongue was left severely alone by the lawyers, or the persons who drew up the Latin reports of the criminal proceedings of an Eyre.

Some criminal cases probably heard in English and reported in Latin.

These Latin reports of cases on the Crown side of the Eyre form, as it were, a connecting link with the earlier extracts from Latin records, which were the earliest form of all reports. They are real reports, showing the speeches of Justices and prisoners, and not mere formal enrolments of writs, indictments, pleadings and judgments. In them, following, as they do, the earlier extracts from records is, perhaps, to be found the true genesis of the Year Books, and they, perhaps, afford us some clue to the authorship.

The Latin report a connecting link with the earlier extracts from Latin records.

The extract from the record obviously could not be made without the knowledge and consent of the clerk or officer who had the custody of the rolls. It is more than probable that he or one of his subordinates made the copy. No one else could be so capable, no one else could have the same opportunities. When a report was made in Latin few could have been so competent to make it as those who were every day making enrolments in Latin of the records.

Extracts could not have been made without the knowledge and consent of the clerks or custodians of the rolls.

The record of the Eyre commonly exists in more MSS. than one, *e.g.* one purporting to be made for the King, and one for the Justices, one of these being a more or less

The Latin reports also probably made by them.

exact copy of the other. Thus we find all the official work of the Crown side of the Eyre done in Latin; and as English was recognised, for certain purposes, in the Eyre, the clerks presumably had a knowledge of English also. They would have been the persons, above all others, able to draw up a report in Latin of proceedings conducted in English. They must, too, have been almost the only persons capable of performing such a task. Where, as we have seen, prisoners were not allowed to have counsel on a prosecution by the Crown, there could have been but few counsel practising on the Crown side. The probability of any of them having been Latin reporters is, therefore, very small.

But not officially.

It must, however, be remembered, in considering this subject, that reports are never included among records. The manuscript Year Books which have descended to us have all been found in circumstances which indicate that they were originally in private hands. Some have remained in that condition, others have found their way by degrees into public libraries, including the British Museum, the Bodleian Library, the Cambridge University Library, the libraries of various colleges, and of the Inns of Court. We thus know, for certain, that, whatever their authorship, they had no official recognition as part of the property of any Court.

Blackstone's statement that the reports were "taken by the prothonotaries, or chief scribes of the Court."

It does not therefore follow that they were not made by an officer of the Court for his own use or that of others, just as he might have made a copy of a record. Blackstone says of the Year Books in general that they were reports "taken by the prothonotaries, or chief scribes of the "Court, at the expense of the Crown, and published annually, "whence they are known under the denomination of the "Year Books."[1] As far as the word "Crown" this statement probably represents an early tradition which did not clearly distinguish between the report and the record. The Clerk was maintained at the expense of the Crown not for

[1] 1 Com., 71–22.

the purpose of compiling reports, but for the purpose of writing and preserving records. That, as time went on, he also prepared reports is extremely probable.

The Court of the Eyre the first to be mentioned in the records.

As the Court of the Eyre is the Court to which official reference is first made in the public records[1] (in the Great Roll of the Exchequer), it may well be that the practice of making reports in Latin first grew up there, and first grew up on the Crown side, which was the earliest, and, from the point of view of the Crown, the most important. A Clerk of the Court in all probability wrote them. But what shall we say when we find a French report of Crown cases? The answer is that the officer who could draw up a report in Latin was probably equally capable of drawing it up in French. He must have been a man of education, and, as French was the language of the cultured classes, it would have been at least as easy to him to write in that language as in Latin.

Both Latin and French reports, though not official, may have come from an official source.

We thus arrive at a strong probability that the Latin report was made by an officer of the Court, and a possibility at any rate that the French report was so made also. Though neither was an official report, both may have come from an official source. We have seen that the triumph of the French report in the main series of Year Books still left a few—though very few—passages in Latin. These take, for the most part, the form of writs, records, or parts of records introduced among the French pleadings.

[1] "As Charlemagne sent his "*Missi* to his Counts, as "William the Conqueror sent "his [Domesday] Commissioners "into the Shires, so William's "son, Henry I. (if indeed "William Rufus and the "Conqueror himself did not do "the like), sent his *Missi* or "Justices in Eyre throughout "the country."—Pike, *The Public Records and the Constitution*, p. 14, on the authority of the earliest of the *Great Rolls of the Exchequer*. Dean Bigelow, in his *Placita Anglo-Normannica*, (p. 69) has called attention to a passage in Dugdale's *Monasticon*, II., 497, in which William Rufus is said to have sent "optimates suos" into Devonshire and Cornwall "ad "investigandum regalia pla-"cita." This was to all intents and purposes a Devon and Cornwall Eyre for Pleas of the Crown.

They are often found to be very incorrect when they are compared with the original roll, but the mistakes which occur in them are obviously those of transcribers, each of whom had copied those of his predecessor and added more of his own. The document in the custody of the officers of the Court is, however, the ultimate source of those quotations, which could not have been made without access to the originals. We are thus again brought to the clerks of the Courts as being, if not the authors of the reports, at any rate persons who lend their assistance in the work.

Omission of and errors in names in the reports not an insuperable objection.

It may be objected that in the French reports, as we have them, great carelessness is shown with regard to the names of parties, which are often represented only by initials, and sometimes altogether omitted, and that they could not, therefore, be the work of persons who could ensure accuracy by merely looking at the rolls which were in their custody, and which they themselves, perhaps, had written. This is a plausible objection, and seems, at first sight, almost unanswerable. There is, however, an answer to be found in Bracton, who had some of the records in his possession, and continually made references to them. His application of them to his work shows very much the same principle, or want of principle, as we see in the Year Books. We may find the names of the parties in full, if more or less damaged in transcription, we may find the name of one party only, or we may find the purport of a decision stated without the names of any parties at all. The names were, in fact, immaterial for Bracton's purpose, which was to show by the cases the law on particular points.

Year Book of the reign of Edward II. known to have been written by a *Clericus*, or Clerk of the Court.

It is a curious fact that in the beginning of the reign of Edward II. we are supplied with the name of a "*consarcinator*" of Year Books, and that he is described as "*clericus*." Selden had seen a MS. which in his time was in the Inner Temple Library, and which contained Year Books of the reign of Edward II.[1] According to his

[1] *Ad Fletam Dissertatio*, pp. 528-9.

Latin, Richard de Winchedon wrote (*scripsit*)[1] the book in the first instance, and put the parts of it together,[2] and so there was made a *codex*, which was afterwards very beautifully copied. Professor Maitland was acquainted with the passage in Selden's *Dissertatio* and, indeed, wrote some four or five pages about it. He was, however, so engrossed by a theory of his own regarding the authorship of the Year Books that he quite left out of consideration the plain meaning of the word "*clericus*." "This," he says, "we "take it, implies that he was at least in minor orders, and "the same could not, we believe, be said of the ordinary "apprentice."[3] The remark is quite irrelevant, as the idea of an apprentice is not even suggested by Selden's words. The only kind of *clericus* who would have been capable of compiling a volume of Year Books was obviously a clerk of the Court. That, there cannot be a doubt, Winchedon was. He was one of several *clerici* mentioned in a report only three years before.

Three clerks at least in the Common Bench as early as the reign of Edward I.

If the learned Professor had any doubts whether the Latin *clericus*, the French *clerc*, was at this period used in the sense of a clerk, or one who writes or has charge of records, as well as in the sense of a clergyman, he might easily have set them at rest. He had but to turn to the volume of Year Books of the Rolls Series containing reports of the years 33–35, Edward I.—the years immediately preceding that in connexion with which Winchedon's name was mentioned. If there appears that Hengham, C. J., gave certain directions to all the clerks in the Common Bench ("*omnibus clericis in Banco*").[4]

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[1] *Ad Fletam Dissertatio*, p. 529.

[2] He was the "*consarcin-*"*ator*," *ib.*, p. 528.

[3] Year Books of Edward II. (Selden Society), Vol. III., p. xx. It might almost be imagined that Professor Maitland had consulted Kelham's translation of Selden's Dissertation, and had inadvertently accepted "the Ecclesiastic" as the true rendering of "*clericus*" (Kelham, p. 214).

[4] Mich., 33 Edw. I., p. 17. Professor Maitland has also himself translated "*clericus*" as "clerk" in the sense of clerk of the court (Y.BB., Selden Society, Vol. III., p. 197). His words, however, appear to have

This passage is of great importance in many ways. It teaches us not only that there were clerks of the Common Bench called in Latin *clerici*, but also that there must have been at least three of them in the Court at the same time. Hengham spoke not to the clerk, nor to both the clerks, but to all the clerks. We cannot know that there

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been hastily written. The report is taken from one MS. only, and that one which the Professor has found it necessary to "correct" in several places. The translation is also in need of correction, as where it is said (p. 194) that "Scrope *defended* tort and force "and all that is against the "form of the statute, and the "damages of William, etc." The proper rendering of the French "defendi" is not "defended" but "denied." Last of all Brabazon, C. J., "*dixit in concilio*" [certain opinions]. "Ridenal clericus "dixit quod hec fuit oppinio omnium iusticiarorum" [*sic*]. The words "*in concilio*" Professor Maitland translates "in counsel," with a note "that is "while the judges were con-"sulting out of court." To the words "Ridenal, clericus "dixit" he appends the note: "This seems to be information "privately received." Dr. Holdsworth has followed him, and in commenting on this passage (L.Q.R., Vol. XXII., p. 368), has remarked that "information seems to have been supplied to the reporter "by the clerk." The fact is that the words "in concilio" are wrongly translated. What Brabazon said was not "in "counsel," but "in the "Council," to which the Justices of both Benches belonged. It was not an uncommon event at this period for points of importance arising in either Bench to be settled by the King's Council. Thus Stonore, C. J., C.B., says, "we have spoken to the Council respecting this mischief" (Y.BB., Mich., 17 Edw. III., R.S., p. 13). The same judge, in giving judgment on another occasion, remarked, "it seems to us, and "to the whole of the Council of "England, that it is right to "give the cognisance of the "plea" (Trin., 20 Edw. III., *below*, p. 113). When an assise of Novel Disseisin had been adjourned into the King's Bench, "this matter was "abated in the Council before "all the Justices" (*below*, p. 126).

There is no reason to suppose that Ridenal, the clerk, did not mention, in the Common Bench, the opinion which the Justices had expressed in the Council. "The clerk" or "the clerks" of the court "said" is a common form in the Year Books. *See below*, p. lxxix, p. 513, &c.

were more than three, but it is certain that there could not have been less. This fact may assist us in the consideration of some difficulties which the reports present.

Former erroneous ideas that the Year Books were official reports.

Quite early in the history of the Year Books we find that there are more reports than one of the same case,— reports in different forms and evidently by different hands. This is one of the first surprises for an Editor of Year Books who has been brought up in the belief that they were a collection of official reports. It is manifest that, where there are even two different sets of reports, if one of them is official, the other is not. How then, it may be asked, did the idea become prevalent, and what is its origin?

Misleading words in Prologue to Plowden's Reports.

Except Blackstone, the writers who give any account of the Year Books after the time of Plowden, *e.g.* Coke,[1] Bacon,[2] and Grimston,[3] appear to have been influenced by some words in the Prologue to Plowden's Commentaries or Reports. "In former times (as I have "heard on good authority) there were four reporters of "our law cases, who were men selected for the purpose, "and who had an annual stipend, for their labours in the "matter, paid by the King of this Kingdom; and they "conferred together in drawing up and producing a report. "And their report by reason of the number of the "reporters, and their approved learning, carries great "authority, as it rightly deserves."[4] This description is

[1] 4 Inst., 4.

[2] Bacon's Works, Ed. Spedding, Vol. XII, p. 86.

[3] Croke's Reports "revised "and published in English by "Sir Harebotle Grimston" (1657), who adds in his Preface:—"Hence it is that "all our Year Books of Law "Reports, from the beginning "of the reign of King Edward "the Third until the latter "end of King Henry the "Eighth, received their being, "and continued their repute "with us, to this present."

[4] The original words are "En "auncient temps (sicome jay "sur credit oye) ils y avoient "quater reporters del nostre "cases del ley, queux fueront "homes eslieu, et avoynt un "annual stipend pur lour travail "en ceo pay per le Roy de cest "Realme, et ils conferront "ensemblo al fesance et produ-"ment de le report. Et lour "report, pur le number de les "reporters, et lour approbate "scavoire, port graund credit, "come il de droit merit." *Les Commentaries, ou Reports* de

not applicable to the reports in the Year Books as we know them, and it may, perhaps, be worth while to consider whether any other reasonable explanation of it can be found.

His "four reporters of law cases" probably four clerks who were responsible for the principal roll of the Court.

There is no reason to doubt that Plowden had heard something about the collaboration of four men in drawing up some sort of account of cases heard in the Court of Common Pleas. If the result of their labours is not to be found in the Year Books, where is it to be found? Not in any other set of reports, because none exists. Blackstone, as we have seen,[1] attributes the Year Books themselves to "the prothonotaries or chief scribes of the Court." In the Court of Common Pleas there were (when that term had come into common use) three prothonotaries.[2] There were (as has already been shown)[3] at least three clerks as early as the reign of Edward I., and there was one who was known as "le Clerk le Roi,"[5] "*Clericus Regis*," the King's Clerk. In the Common Bench there was, as already shown,[4] during a considerable period of time, a "roule "le roi," *rotulus regis*, or King's Roll, in addition to the Justices' roll of *Placita de Banco*. The King's Clerk, or Clerk of the Crown in the Bench was, there can be little doubt, responsible for the making up of the King's roll. Having regard, however, to the relations subsisting between the two rolls, it is only reasonable to suppose that he would be called in to assist in the preparation of the more complete roll of the Justices, the *Placita de Banco*, the principal plea roll of the Court.[6]

Edmund Plowden. Tottell, 1588. A copy in the British Museum has the name "Fra: Bacon" written on the title page. There is a contemporary translation of the Prologue in this edition, and another in the edition of 1761.

[1] *Above*, p. lxiv.

[2] *See* Y.B., 39 Hen. VI., No. 22, fo. 18, where the three, whose names are given, state their diverging opinions as to the proper practice with regard to making entries of record in Assises of Novel Disseisin.

[3] *Above*, pp. lxvii-lxix.

[4] *Above*, pp. xx-xxi.

[5] Y.BB., Trin. 34 Edw. I., p. 231.

[6] The *Clericus Regis*, in other words the *Custos Brevium*, had the custody of the deeds of parties which had been brought into court, when there was an adjournment (Y.BB., Mich., 17 Edw. III., R.S., p. 71, note 8).

If now we assume that there were, before the term "prothonotary" came into common use, three clerks, "*clerici*," who held the positions subsequently held by the three prothonotaries, and that the Clerk of the Crown was a fourth officer, we reconcile the words of Plowden with the words of Blackstone so far as the collaboration of four responsible persons is concerned. They are collaborating not to draw reports, but to enter records; but the persons who entered the records may well have been the persons who drew up the reports, though no longer acting in concert, and no longer acting officially. This supposition is in harmony with all the facts with which we are acquainted, and absolves Blackstone, on the one hand, and Plowden, on the other, from the charge of misleading their readers by pure inventions. In some generation previous to theirs some one had truly said that the rolls were prepared by four paid officials, three of whom were prothonotaries, and someone else had said, not untruly, that reports were the work of clerks or prothonotaries. When the two statements were rolled into one they came out in the words of Plowden or Blackstone.

The same persons may have made the reports, though not officially.

The first four officers of the Court of Common Pleas mentioned by Coke as existing in his time are the *Custos Brevium* and three prothonotaries.[1] He also shows by an extract from a roll of the twentieth year of Edward I. what was the position and what were the duties of the *Custos Brevium* at that early period—the period when the French reports of the Year Books had become fully established. Master (*Magister*) John Lovell had just retired from the post, and the King directed a writ to him as his *dilecto clerico*. He was to deliver up the rolls and writs which were in his custody to his successor, whom the King had appointed to hold office during pleasure, and who was described as "*dilecto Clerico nostro*, Johanni "Bacon," and who was to have "*custodiam rotulorum et "brevium nostrorum de Banco*."[2] Thus we see that the *Clericus Regis* was the "Custos Brevium," an officer

The *Custos Brevium*, or King's Clerk, and three Prothonotaries in Coke's time.

[1] 4 Inst., 101.

[2] 4 Inst., 102.

ranking above the three prothonotaries, and with them constituting the four learned men who officially had the care of the rolls, and who may unofficially have been the four who drew up reports.

Professor Maitland's theory that the reports were made by "apprentices": "the law-student's private note-book."

This explanation is, of course, completely at variance with that given by Professor Maitland, but much as it grieves me to differ from one who has so well-earned a reputation in other fields of learning, I regret that I cannot associate myself with opinions which appear to me to be founded on imperfect evidence. They are based solely on MSS. containing reports of three years of the reign of Edward II., and it is not made clear in the Professor's remarks that these are all contemporary MSS. In any case, like most MSS. of Year Books, they have suffered from the successive mistakes of successive transcribers.

The onslaught upon these MSS. and the conclusions drawn from them bear evident marks of haste. To use the language of a game from which Professor Maitland loved to illustrate his remarks, the attack was brilliant in the highest degree, but wanting in the soundness which will bear the test of close analysis. As shown above,[1] he has quite missed the meaning of the word "*clericus*," as applied to a compiler of Year Books, and he has made use of the word "apprentice" in a manner which is somewhat misleading, though the charm of his style and the art of his advocacy may persuade the reader who does not pause to consider. He tells us that the Year Books were the work of "apprentices," and then interprets "apprentices" as "law-students"— a term which now means young men eating their prescribed number of dinners in preparation for a call to the bar.

Few, if any, of the apprentices were students in that sense, because an apprentice had to remain an apprentice sixteen years at least before he could become a serjeant.[2] What we are asked to believe then is that all the Year

[1] *Above*, pp. lxvii-lxix.

[2] Fortescue, *De Laudibus Legum Angliæ*, chap. 50, p. 261 (Ed. Amos).

Books which were good enough for Fitzherbert and others to abridge, for practitioners to annotate, and for judges to quote, were the work of apprentices who had been apprentices for at most three years, and that nothing else has come down to us. It is a startling proposition, and one not to be accepted on mere conjecture, however admirably it may be put. There cannot, however, be the slightest doubt as to Professor Maitland's meaning. "These ancient Law Reports," he says, "have about them "a strong dash of the law student's private note-book."[1]

In the fourteenth century the Law itself was young, and the judges themselves comparable with modern law-students: instances.

If any of the reports look like the work of students it is because the law itself was young, and successive Year Books show how it grew to maturity. In the fourteenth century the law was not precisely what it is now, and in the thirteenth century it was not precisely what it was in the fourteenth. In those remote days the judges themselves were sometimes puzzled by matters with which a modern law-student of one or two years standing would be familiar. He would very early learn the effect of a gift in tail male. Yet as late as the year 1344 the point had not been settled, and the judges openly differed in Court. In a case which then arose it was practically admitted on both sides that one A. had had two sons, B. the elder, and C. the younger, and had given certain tenements to C. "*et heredibus masculis de corpore suo exeuntibus*," the reversion being to A. and his heirs. C. had a son D., and two daughters E. and F. D. entered after the death of C. and died seised without heir of his body. Thereupon E. and F., with their respective husbands, entered as his sisters and heirs, and maintained that the gift had been absolutely completed and the conditions fulfilled in D.'s person as heir in tail male, that there was consequently a fee simple to which they were entitled, and no reversion to the donor and his heirs. Stonore, C. J., was actually of this opinion for a time, while Hillary, J., and Willoughby, J., took the opposite view. In the end the Chief Justice appears to have yielded, and judgment was

[1] Selden Society, Year Book Series, Vol. III., p. xciii.

given for G., grandson and heir of the donor A., as being entitled to the reversion.[1] In this case it was the Chief Justice who was acting the part of Professor Maitland's law-student.

In the next year two judges of the Common Bench gave two different answers to the question, What is Law? One, Hillary, J., said, "It is the will or pleasure of the "Justices. Another, Stonore, C. J., said: "No; law is that which is right" ("*nanyl; ley est resoun*").[2]

Real position of the apprentices, as illustrated by the life of Paruinge.

From a modern point of view all this may savour of the law-student's private note book, but it does not afford the slightest indication that what we now call a law-student was the reporter. One who was an apprentice or student of law one day, might be a serjeant the next, might be a man of mature years, and wide experience. It is certain, for instance, that Paruinge or Perwynk (better known by the name of Parnyng, as Chancellor) was twenty-one years of age, or more, in the year 1315. There is no evidence that he became a serjeant earlier than 1329, when he must have been at least thirty-five years of age. He had in the mean time served in Parliament as Knight of the Shire for Cumberland.[3] If apprentices were reporters, he might well have been one of those who reported cases in the Court of Common Pleas, while an apprentice, but it is idle to compare such a man with a modern law-student of less than three years' standing at one of the Inns of Court.

Answers to objections touching clerks or prothonotaries as authors of the reports.

There are, no doubt, some apparent difficulties in the way of the theory that all the Year Books were in origin the work of the *Custos Brevium* and the other clerks, afterwards called the prothonotaries of the Court. Still these difficulties do not seem to be insuperable. One of

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[1] Y.B., Mich., 18 Edw. III., No. 52, pp. 194–207, and Introd., pp. xxi–xxiv.

[2] Y.B., Hil., 19 Edw. III., No. 3, p. 378.

[3] For some particulars of the life of Paruinge, Peruinke, or Perwynk, *see* Y.BB. (Rolls Series), Easter and Trinity, 18 Edw. III., Introd., pp. xxxv–lii.

them is that reports would not differ as widely as they do if made by clerks of the same court. Another to which reference has already been made is that, as the clerks had access to the records, they would, at any rate, give the names of the parties correctly, would not fall into the confusion which arises from the use of the same initial referring to different persons, and would always state correctly the pleadings and the judgment.

The first is really no difficulty at all, if we recognise the fact that the reporter was acting in a private and not in an official capacity. Any two persons making notes in court would make them differently, and we must recollect that a considerable portion of the notes taken for the purposes of a report would have no place upon the roll, and would not be collated by the different clerks for the purpose of accurate enrolment. Each would afterwards write his own account of a case according to his own idiosyncrasy. Some of the cases would be put into his reports by each of the clerks, some would be omitted by one, others by another, and some perhaps be reported only by one. Once give the clerks their individual liberty, and free them from the responsibilities of their office, and you see how different reports could, and indeed naturally would come into existence.

From the reporter's point of view, and from his customer's point of view, just as from Bracton's point of view, proper names were in many instances, immaterial for his purpose. One reporter might insert them, and take the trouble to verify them by the roll, when another would not. One would give the name of one party and not of another. One would suppress the names altogether, or represent them only by initials.

Difficulties with which they would have had to contend.

It has to be remembered, too, that the Year Books which have come down to our time must have passed through many processes before they assumed their present form. The clerks are sitting in court, and, as a part of their duty listening to all the cases which are heard, while the serjeants and apprentices need not be in Court at all unless

engaged in some particular cause. The clerks have to take notes as rapidly as they can of all the cases, because they do not know beforehand what turn any one of them will take. The closest attention, and great quickness are required. There are often two or three serjeants on each side, and the clerk has to jot down their names, probably only by initials, and those, perhaps, not very clearly written in his haste. He knows that he can have access to the original writ when he wants it; and it is possible that, when counsel for the demandant speaks his count, it is read from some writing which has been carefully prepared in advance. It has to be in exact accordance with the writ, for, if not, counsel on the other side at once says "judg- "ment of the count," and, if it is bad, the case for the time comes to an end. The countor would naturally not run any risks to be incurred by a slip of the tongue, and the count, if allowed, might be borrowed by the clerk. If the count and the writ are both held good, counsel for the tenant or defendant opens his case, and the clerk has to be all ears in order to follow him. The plea, as first stated by counsel in French, may be accepted by the Court as good, and in that case it will have to be enrolled in Latin by the clerks. More probably arguments, inchoate demurrers, or other matters, which will not form part of the record, will follow; but the clerk will have to take them down as well as he can, in order that he may not miss anything which would have to be put upon the roll, and also with a view to his future report. Sooner or later the plea assumes its final shape as it is to stand of record, and to be enrolled in Latin. Counsel for the demandant will then reply, and the course taken with regard to his replication will be the same as with regard to the plea. Eventually, not improbably after many adjournments, issue will be joined, and judgment will be given either on some point of law, or on a verdict found upon the facts.

Mode in which a clerk probably drew up his report.

The entries on the roll, and particularly on the roll of the Justices, would be very carefully made with the authority of the chief clerk, or *Custos Rotulorum et Brevium*, and, no

doubt, after comparison of the notes taken by the others. Let us now consider what is the position of the clerk who is also a reporter, after his official work is over. He has his own notes which are his only guide to the names of counsel, and arguments, and all the matters not entered of record. He takes them to his private dwelling-place, wherever that may be, and then proceeds to make the best he can of them. In places they are barely legible, or quite illegible. He has to expand the initials of the names of counsel, and if he has taken them down at all, those of the parties, as well as he can, from recollection. Even his notes for the purposes of the enrolment are his only, unchecked by those of his fellows. If he is industrious and conscientious he will refer to the roll in order to correct them. If he is not, he will take them as they are, and manufacture his report accordingly. Thus each of the clerks will have a different account of what occurred, a different statement as to the names of the parties, and perhaps of the counsel engaged, and in some cases, a different account of the pleadings, possibly even of the judgment.

So far as is known, the original notes taken in court no longer exist. They would naturally have been destroyed after the reports had been even roughly drawn up. The account given by Winchedon would lead us to believe that the reports of each case in a term were written out separately and then fastened together, and that a fair copy was afterwards made of the whole, one case following another on the same skin of parchment or vellum somewhat in the form in which we now find them.

Year Books not usually found in their original form: mistakes in copying.

We rarely, however (it may probably be said never), find them in the form in which they must have left the hands of the original reporter. They must generally be copies more or less imperfect, and many of them copies of copies, as indeed was inevitable in the days before the use of the printing-press. There are commonly omissions from one copy of a line or lines which may be made good by reference to another copy, itself defective and

in need of help from a third. Sometimes the copyist has written from dictation and misheard a word or two in such a manner as to destroy the sense, unless we can recover it from another MS. or from the record. Again, as copies have travelled from hand to hand, an owner has added remarks or queries of his own, which have passed into later copies as part of the text.

Professor Maitland's opinion contrasted with that of Lord Chancellor Bacon.

All these imperfections, however, do not reduce the old MSS. of Year Books to the condition of the "law-student's "private note-book." Nor is it probable that, if they had no higher merit, they would have been accepted by the sages of the profession as being, together with the statutes, the basis of the law of England. It may be of interest to compare Professor Maitland's way of dismissing the Year Books with the opinion of Lord Chancellor Bacon. "For the Common Law of England," he said, "it "appeareth it is no text law, but the substance of it "consisteth in the series and succession of Judicial Acts "from time to time which have been set down in the books "which we term *Year Books*, or *Reports*."[1]

Changed conditions after 1363, but reports still in French.

It would be imprudent to say that apprentices of mature age, and ripe learning, serjeants, and judges never tried their hands at reporting in or before the time of Henry VIII. It is a far cry from Winchedon, the clerk, to Dyer who lived in Henry's reign, became Chief Justice of the Court of Common Pleas in Elizabeth's, and left behind him a body of reports which are the immediate successors of the Year Books, are very like them in form, and, indeed, to some extent overlap them.

The conditions under which the clerks or prothonotaries worked were changed as soon as the pleadings in court were in English instead of French. After that time (1363) the reports, it is true, continued to be in French, but there was no longer a pretence that it could be the French actually spoken in court. They must have been made from notes taken, in the main, in English. They gradually took a new form—that of Dog-French or Law-

[1] Bacon's Works, Ed. Spedding, Vol. XII., p. 85.

French, instead of the French of the first half of the fourteenth century. They were written in a language peculiar to themselves, very much after the fashion of the Latin prescriptions of a physician, and probably for similar reasons, that is to say, in order that they might be unintelligible to laymen.

Value attached to the opinions of the clerks.

Even during the later period, however, it is quite as probable that they were written by the clerks of the court or prothonotaries as by apprentices or serjeants. The prothonotaries performed the same functions as the superior clerks of old, and their opinions were treated with the same respect throughout. In the twelfth year of the reign of Edward III. "it was said by the clerks that, if on "a writ of Ravishment of Ward the plaintiff is essoined "after appearance, it will be adjourned into the Eyre."[1] In the thirteenth year "Mallum, the clerk, said that if, "at the *Sequatur suo periculo*, no writ is returned, the "vouchee will not afterwards be admitted to warrant "(and this he affirmed on oath) except *in propria* "*persona*."[2] The same clerk "said that he had seen half "a score times in this Court (the Common Bench) that "where a writ was brought against two persons, and one "of them said that he was tenant of the entirety, he would "be admitted to vouch the other, and the voucher would "be accepted."[3] It was noted as something extraordinary in the fourteenth year that a writ of summons was granted by the court, "*et tamen contra opinionem clericorum*."[4]

And later of the prothonotaries.

In the reign of Henry VI. we find the justices asking the "prenotaries"[5] or prothonotaries what was the form "de les tales" in particular cases, the "tales" being of course the English for the French *countes*, the Latin *narrationes*.[6] William Rastell, who was in turn "prentice

[1] Y.BB., Easter, 12 Edw. III., p. 435.

[2] Y.BB., Easter, 13 Edw. III., pp. 259-61.

[3] Y.BB., Easter, 13 Edw. III., p. 311.

[4] Y.BB., Mich., 14 Edw. III., p. 75.

[5] "Clerici prænotarii," *Fleta*, p. 86.

[6] Y.B., 39 Hen. VI., No. 43, fo. 30, b.

"of the law, Serjeant, and Justice," completed his collection of "Entries" in the year 1564. He tells us of "a booke of presidents of matters of the common place "(Court of Common Pleas) diligently gathered together "and written by Master Edward Stubbis, that was one "of the prothonotaries of the common place" and "a boke "of good presidentes and matters gathered by Jhon Lucas "secundary to master William Roper Prothonotary of the "Kyngs bench."[1] The men who made books of precedents held in respect by the Judges were equally competent to produce reports.

It may, perhaps, be useful to remark that the prothonotaries were called "Masters," as in the passage above. For the year 21 Edward III. there are, in the printed Year Books, two sets of reports. At the end of Michaelmas Term, as given in one of them, there is the remark "Here "endeth Maister Horewode's report"; and before Hilary Term, as given in the other set, is the remark "Here follow "certaine cases taken out of another report, whiche were "not in Maister Horewode's report heretofore printed."[2] There can be but little doubt that "Maister Horewode" was either a clerk of the reign of Edward III. or a prothonotary of the time at which the Year Book was printed. In the one case we should have a companion name to that of Winchedon as an officer of the court who was an author of Year Books. In the other case we should have an officer of the court, the book in whose possession was the best of those known at the time. In either case we have a connecting link between the Year Books and the clerks or prothonotaries of the courts.

Notes on the MSS. used for the present volume.

It has been thought necessary to say so much concerning the Year Books in general that little space is left for

[1] Rastell's *Entries* (1574), Preface.

[2] These passages have been badly translated into French in the later edition of 1679. "Maister Horewode's report" there becomes "les Reportes du Mons' Horewode" in both places.

remarks upon the contents of this particular volume. Something must, however, be added to that which has been said in preceding volumes touching the MSS. which have been used to establish the text. They are the Lincoln's Inn MS., the Harleian MS., the Cambridge University Library MS. (Hh. 2, 3), and the Isham transcript, all of which have already been described. The Isham transcript, however, is defective at the end, and several cases appear in the Harleian MS. of Michaelmas Term which are not in any of the other MSS. As the Isham transcript breaks off in the middle of a report which is completed in the Harleian MS., there is reason to suppose that the Isham MS. may, at one time, have contained all the cases which are in the Harleian. It is possible, of course, that the cases placed at the end of Michaelmas Term, 20 Edward III., in the Harleian, may in fact belong to another term, but the appearance of the MS. does not lend itself to such a supposition. Moreover, the case commenced in both MSS., and concluded in the Harleian alone, is one of which the record has been found in Michaelmas term. The records of some other cases found in the Harleian alone have also been found, either in Michaelmas Term itself or in some earlier term in which it appears both by the reports and by the records that there were adjournments.

Fitzherbert does not seem to have been acquainted with this MS., as his Abridgment does not relate to any reports which are found in it alone. On the other hand, there are two instances in his Abridgment in which there appear in a different form cases now to be found in Harl., 741 alone. One is No. 59 (*p.* 391) of the reports in this volume, to which, however, Fitzherbert has devoted only two lines. The other is No. 72 (*p.* 449), the abridgment of which is clearly founded on some other MS., not now known to be in existence. The case also occurs in the *Liber Assisarum* in the form known to Fitzherbert.

Our MS., therefore, gives us a number of cases (many of considerable importance) which have never before been printed in their entirety, or in any form of abridgment.

It is, however, a curious fact, that, although the Harleian contains a considerably greater number of cases than any one other MS., it does not contain all the reports of the term. Moreover, it certainly never did contain them all. It is in excellent condition from the beginning of the term to the end. There are no folios wanting at the beginning or in any intermediate part; and we know that there cannot be any wanting at the end, because it concludes with the words "*Explicit annus vicesimus "Edwardi Tertii Regis nunc.*"

The reports which are found in other MSS., and not in the Harleian, are equally free from suspicion, though the MSS. are not as perfect as the Harleian. Both the Lincoln's Inn MS. and the Cambridge University Library MS. are defective in places, and must at some time have contained more reports than are now to be found in them. The cases, however, which appear in them, or either of them, and not in the Harleian, belong, without doubt, to the terms to which they are assigned, as is shown by the corresponding records, by Fitzherbert's Abridgment, and by the *Liber Assisarum.*

The Editor not responsible for its tardy appearance.

The delay in the production of the present volume has not been caused by any neglect on the part of the Editor. The manuscript of the text and translation was out of his hands on the 19th of May, 1908. New printers had at that time been selected by the Government for the continuation of the work, and they were necessarily unfamiliar with its nature. Soon after the preliminary difficulties had been surmounted the company went into liquidation, and all progress ceased.

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 manuscript, and for the indulgence allowed to me in the use of it during so many successive years.

I also take this opportunity of again expressing my gratitude to the Benchers of the Honourable Society of the Inner Temple for the loan of their not less valuable MS. extending from the eleventh to the sixteenth year of the reign of Edward III. Among other past favours, too, for which I feel that I ought to repeat my acknowledgments are the loan of two MSS. from the University Library at Cambridge, and the courtesy shown to me by the Librarian, Dr. F. J. H. Jenkinson.

L. Owen Pike.

Lincoln's Inn,
14th January, 1911.

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

Chancellor.

John de Offord.[1]

Justices of the Court of King's Bench.

Sir William Scot, Chief Justice.
Sir Roger de Baukwell.
Sir William Basset.
Sir William de Thorpe.[2]

Justices of the Court of Common Pleas.[3]

Sir John de Stonore, Chief Justice.
Sir William de Shareshulle, or Sharshulle.
Sir Roger Hillary.
Sir Richard de Kelleshulle, or Kelshulle.
Sir Richard de Wylughby, or Willoughby.
Sir John de Stouford.

Treasurer.

William de Edyngton, Bishop of Winchester

Barons of the Exchequer.

Sir Robert de Sadington, Chief Baron.
Sir William de Broclesby.
Sir Gervase de Wilford.
Sir Alan de Asshe.

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[1] The Great Seal appears to have been temporarily entrusted to John de Thoresby on the 2nd of July, when Offord joined the King beyond seas.—*Rot. Lit. Claus.*, 20 Edw. III., Part 2, m. 26, d.

[2] Thorpe became Chief Justice in succession to Scot on the 26th of November.

[3] As ascertained from the Feet of Fines of the two terms.

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

Richard de Birton.
Roger de Blaykestone.
Adam Bret.
Hamo Derworthy.
John de Gaynesford.
Henry Grene.
John de Haveryngton.
John de Moubray.
Henry de Mutlow.
William Notton.
Richard de la Pole.
Peter de Richemunde.
John de la Rokel, or Rokele.
Hugh de Sadelyngstanes.
Thomas de Seton.
William de Skipwith.
Robert de Thorpe.

[1] Mentioned in the Plea Rolls of the Common Bench as receiving chirographs of Fines. The fact that the counsel mentioned in the reports could be identified with the "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.BB., 16 Edw. III., Part 2 (published in 1900), p. xi.

CORRECTIONS.

Page 31, line 27, after the first "brief," insert a comma.

,, 231, line 13, *dele* the word "fuit."

,, 235, line 4, *for* "y celle" *read* "ycelle."

,, 254, line 7, *for* "*a*" read "*e*"

,, 264, line 19, before "be" insert "to."

TRINITY TERM

IN THE

TWENTIETH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

(SECOND PART.)

TRINITY TERM IN THE TWENTIETH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST

(*continued.*)

No. 38.

A.D. 1346. *Scire facias.*

(38.) § In the time of King Henry (the third) a fine was levied between one A.[1] and B.[1] his wife, of the one part, and C.,[1] of the other part, in respect of two carucates of land in D.,[1] by which fine C. rendered the land to A. and his wife, to hold to them and their heirs for ever (which was extraordinary), and for that render A. and his wife granted and rendered two messuages in another vill, which messuages were not included in the writ of Covenant, to C.[1] for his life, with remainder of a moiety (without expressing which moiety) to one R.[1] and the heirs of his body begotten. And R.'s heir[1] sued to cause the fine to be brought into the Chancery, and it was thence sent by *Mittimus* into this Court. And a *Scire facias* was sued for R.'s heir[1] to have execution in respect of the two messuages. And the words of the *Mittimus* were that the King sent to the Justices "*transcriptum cujusdam finis inter*" such an one and such an one in respect of tenements in such a vill. And it gave the name of the vill as it was given in the writ of Covenant, and not that of the vill in which the messuages were supposed to be.—*Thorpe.* You

[1] For the names see p. 3, note 4.

[ADHUC] DE TERMINO TRINITATIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU VICESIMO.[1]

No. 38.

A.D. 1346. *Scire facias.* [Fitz., *Briefe*, 686.]

(38.)[2] § En temps le Roi Henry une fyne fust leve entre un A. et B. sa femme, dune part, et C., dautre part, de ij carues[3] de terre en D., par quele fyne C. rendi la terre a A. et sa femme, a eux et a lour heirs a touz jours (*quod mirum fuit*), et pur cel rendre A. et sa femme graunterent et rendirent ij mesuages en une autre ville, et queux mesuages ne furent pas compris en le brief de Covenant, a C. a sa vie, le remeindre de la moite, saunz dire quel moite, a un R. et a ses heirs de soun corps engendrez. Et le heir R. suist de faire venir la fine en la Chauncellerie, et par le *Mittimus* maunde ceinz. Et le *Scire facias* fust say pur le heir R. daver execucion de les deux mesuages. Et le *Mittimus* voleit qe le Roi maunda les Justices *transcriptum cujusdam finis inter* un tiel et un tiel des tenementz en tiele ville. Et noma la ville qe fust nome en le brief de Covenant, et ne mye la ville en quele les mesuages furent supposez.[4]—*Thorpe.*

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[1] The reports of this term are from the Lincoln's Inn MS. (called L.), the Harleian MS. No. 741 (called H.), the MS. in the University Library at Cambridge Hh. 2, 3 (called C.), and the Isham transcript called I.

[2] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 314.

[3] H., acres.

[4] The entry on the roll is as follows :—"Præceptum fuit "Vicecomiti quod, cum quidam "finis levasset in Curia domini "Henrici quondam Regis Angliæ, "proavi domini Regis nunc, ". . . . inter Johannem "le Flemenge et Hawisiam "uxorem ejus, querentes, et "Thomam de Blakepenne, de-

No. 38.

A.D. 1346.

see plainly how he sues execution of tenements in a vill other than that which is supposed in the *Mittimus*, and in respect of which the fine was levied, and therefore this suit is not warranted by the record which is caused to come before you; therefore we do not understand that you will put us to answer to this suit.—*Birton.*

" forciantem, de uno mesuagio " et una carucata terræ, cum " pertinentiis, in Horyngeforde, " unde placitum Conventionis " summonitum fuit inter eos in " eadem Curia, scilicet, quod " prædictus Thomas recognovit " prædictum tenementum, cum " pertinentiis, esse jus ipsius " Johannis, et illud eis reddidit " in eadem Curia habendum et " tenendum eisdem Johanni et " Hawisiæ et heredibus eorum " de capitalibus dominis feodi " illius per servitia quæ ad illud " tenementum pertinent in per- " petuum, et pro illa recognitione, " redditione, fine, et concordia " iidem Johannes et Hawisia " concesserunt prædicto Thomæ " omnia tenementa, cum per- " tinentiis, quæ ipsi Johannes et " Hawisia tenuerunt in Blake- " penne, Suttone, Rocle, et Suth " Stendham die quo illa con- " cordia facta fuit, exceptis " decem solidatis terræ, cum " pertinentiis, in Rockle, quam " Willelmus Coke et Walterus " Godefrey aliquando tenuerunt, " habenda et tenenda eidem " Thomæ de prædictis Johanne " et Hawisia et heredibus eorum " tota vita ipsius Thomæ, faci- " endo inde ad scutagium ejus- " dem proavi Regis quando " evenerit quantum pertinet ad " illa tenementa pro omni ser- " vitio, consuetudine, et exac- " tione, Et prædicti Johannes et " Hawisia et heredes eorum " warrantizarent, acquietarent, " et defenderent eidem Thomæ " prædicta tenementa, cum per- " tinentiis, quæ eidem Thomæ " por finem illam remanebant, " sicut prædictum est, per præ- " dictum servitium contra omnes " homines tota vita ipsius " Thomæ, et post decessum " ipsius Thomæ prædicta tene- " menta, cum pertinentiis, quæ " eidem Thomæ per finem illum " remanebant, sicut prædictum " est, æqualiter dimidiarentur, " ita quod una medietas eorun- " dem tenementorum integre " remaneret eisdem Johanni et " Hawisiæ et heredibus eorum, " tenenda de capitalibus dominis " feodorum illorum per servitia " quæ ad illam medietatem " pertinent in perpetuum, et al- " tera medietas eorundem tene- " mentorum, cum pertinentiis, " integre remaneret Thomæ de " la Mare et Roesiæ uxori ejus " et heredibus ipsius Roesiæ, " tenenda de prædictiis Johanne " et Hawisia et heredibus eorum " per servitia quæ ad illam " medietatem pertinent in per- " petuum, Ac jam ex insinuatione " Johannis filii Willelmi Martre,

No. 38.

Vous veietz bien coment il suist execucion de tenementz en autre ville qe par le *Mittimus* nest suppose, et qe la fine fust leve, et par taunt ceste sute nent garranti del recorde qest fait venir devant vous; par quei nentendoms pas qe vous nous voilletz a ceste sute mettre a respoundre.—*Birtone.* A.D. 1346.

" consanguinei et heredis præ-
" dictæ Roesiæ, accepit dominus
" Rex quod prædicti Thomas
" de Blakepenne, et Thomas de
" la Mare et Roesia uxor ejus
" jam obierunt, et quod quidam
" Ricardus atte Sterto unum
" mesuagium et duodecim acras
" terræ, cum pertinentiis, in
" Rockle, quæ sunt parcella
" prædictæ modietatis præfatis
" Thomæ de la Mare et Roesiæ
" per finem prædictum secun-
" dum formam ejusdem con-
" cessæ de tenementis prædictis,
" modo ingressus est, et ea tenet
" contra formam finis prædicti,
" Et quia dominus Rex vult ea
" quæ in Curia prædicti proavi
" Regis acta sunt debitæ exo-
" cutioni demandari, quod per
" probos et legales homines de
" comitatu suo sciro faceret
" prædicto Ricardo atto Sterte
" quod esset hic . . . .
" ostensurus si quid pro se
" haberet vel dicere sciret quare
" prædicta mesuagium et duo-
" decim acræ terræ, cum per-
" tinentiis, prædicto Johanni filio
" Willelmi, post mortem præ-
" dictorum Thomæ, Thomæ, et
" Roesiæ, juxta formam finis
" prædicti, remanere non debeant
" si sibi vidisset expedire."

No. 38.

A.D. 1346. The Chancellor could have delivered the transcript to you without any writ, in which case our suit would be maintainable; and, although the *Mittimus* mentions only one vill, yet, since tenements in the other vill are mentioned in the fine which is sent before you, you have sufficient warrant to give us execution.—Willoughby. If there were less in the fine than in the *Mittimus*, we should not have warrant; but, since there is more in the fine, and that is now before us, we have sufficient warrant; therefore answer.—*Thorpe*. Again, although the fine may have come into this Court by warrant at the suit of a person other than the one who is suing execution, you ought not to grant execution without a writ from the Chancery which will give you a warrant to do so. And now we say that the writ of *Certiorari* by which the fine came into the Chancery says nothing of the tenements in respect of which he would have execution, but mentions other tenements, and that cannot be understood to be his suit; therefore without warrant from the Chancery you cannot adjudge execution for him.—And this exception was not allowed, for the reason above.—*Thorpe*. Again judgment of the writ, for by the fine a moiety of the land is limited by way of remainder, and now he demands an entirety which is not warranted by the fine; judgment.—*Huse*. We have supposed by our writ that this entirety is part of the moiety; therefore, &c.—*Thorpe*. This entirety could not be part of one moiety any more than of the other moiety, unless your father had been seised of it as of a moiety, and a severance had thereby been effected, and that matter ought to be pleaded; therefore you ought to have demanded only a moiety of this entirety.—Willoughby. Then this plea is to the action with regard to a moiety of this entirety; and with regard to the other moiety execution may be awarded.—*Thorpe*. No Sir; the plea is to the

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Le Chaunceller le poait aver livre a vous saunz brief, en quel cas nostre sute serreit meyntenable; et mesqe le *Mittimus* ne parle mes del une ville, puis qen la fine qest maunde devant vous tenementz en lautre ville sont motez, assetz avetz garrant de nous doner execucion.—Wilby. Sil y avoit meynz en la fyne qen le *Mittimus*, nous naveroms pas garrant; mes, puis qil yad plus en la fine, et ceo est ore devant nous, nous avoms garrant assetz; par quei responez.—*Thorpe.* Unqore mesqe la fine soit venu ceinz par garrant a la sute dautre persone qe ne le suyt, ne devetz granter execucion saunz brief de la Chauncellerie qe vous durra garrant a ceo faire. Et ore dioms qe le *Certis de causis* par quel ele vint en Chauncellerie ne parle rienz des tenementz des queux il voet aver execucion, mes des autres tenementz, quel ne put estre entendu sa sute; par quei saunz garrant de la Chauncellerie vous ne devetz execucion pur luy ajugger.—*Et non allocatur, ratione qua supra.*—*Thorpe.* Unqore jugement de brief, qar par la fine la moite de la terre est taille par remeindre, et ore il demande un entere, quel nest pas garranti par la fine; jugement.[1]—*Huse.* Nous avoms suppose par nostre brief qe ceste entere est parcelle de la moite; par quei &c.—*Thorpe.* Ceste entere ne put estre parcelle del une moite plus qe del autre moyte, si vostre pere nust este seisi de cele come de la moite, et par taunt la severaunce faite, quele matere covent estre plede; par quei vous deveretz aver demande mes la moite de ceste entere.—Wilby. Donqes est ceo al accion de la moite de ceste entere; et del autre moyte execucion agardable.—*Thorpe.* Sire, nanil; il est al brief, qar le brief covent estre A.D. 1346.

[1] jugement is omitted from I.

No. 38.

A.D. 1346. writ, for the writ must be warranted by the fine, and since by the fine his estate commences by a moiety, he ought not to limit that to something in particular in gross, unless he can show matter in fact by which that particular thing in gross was severed from the other moiety.—HILLARY. If I limit a remainder to you in respect of a moiety of twenty acres, and limit the other moiety to another, and, after the death of the tenant, that other enters upon ten acres, and you are in possession of a part of the other ten acres, and a stranger is in possession of the rest, you cannot have a writ against him by the description of a moiety, for whatever he has it belongs to you to have.—Therefore the writ was adjudged good.—*Thorpe.* Then we tell you that, whereas he supposes by his writ that L.[1] is a vill, it is a hamlet of R.[1]; judgment of the writ.—*Skipwith.* It is supposed by the fine that L. is a vill, and it is necessary that this writ should be in accordance with the fine; therefore we demand judgment whether the writ is not sufficiently good.—*Thorpe.* Just as much as this writ is in accordance with the fine, a Formedon in the remainder will be in accordance with the specialty; and though tenements in a hamlet be mentioned in the specialty, your writ will mention the vill, and otherwise the writ is abated. And, moreover, we have a seen *Scire facias* sued in a vill which was not mentioned in the fine, and exception taken to the variance; and in order to maintain his writ the plaintiff said that what was mentioned in the fine was a hamlet of the vill mentioned in his writ, and for that cause shown the writ was maintained; and for the same reason this writ is abatable.—And, notwithstanding this, because

[1] For the names see p. 9, note 2.

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garranti de la fine, et puis qe par la fine son estat comence par moite, il ne deit pas tailler[1] cele a un gros en certein, sil ne puisse moustrer matere en fait par quele cel gros fust severe del autre moite.—HILL. Si jeo taille un remeindre a vous de la moite de xx. acres, et lautre moite a un autre, et, apres la mort le tenant, lautre entre en les x. acres, et vous estes einz en parcelle de les autres x., et un estraunge einz en le remenant, vous ne poetz aver vers luy brief par noun de moite, qar quantqil ad appent a vous a aver.—Par quei le brief fust agarde bon.—*Thorpe.* Donqes vous dioms qe la ou il suppose par son brief qe L. est ville, nous dioms qe ceo est hamel de R.; jugement de brief.[2]—*Skip.* Par la fine est suppose qe ceo est ville, et acordaunt a la fine covient qe cest brief soit; par quei nous demandoms si le brief ne soit assetz bon.—*Thorpe.* Auxi avant come cest brief est acordaunt a la fine auxi serra une Forme de doun en remeindre acordaunt al especialte; et, mesqe tenementz en une hamel soient donez en lespecialte, vostre brief nomera la ville, et autrement le brief est abatu. Et auxi nous avoms vewe un *Scire facias* suy en une ville qe ne fust pas nome en la fine, et la variaunce chalange; et pur meyntener son brief il dit qe ceo qe fust nome en la fine fust hamel de la ville nome en son brief, et pur cause fust le brief meyntenu; et pur mesme la resoun cest brief abatable. Et, *non obstante* ceo, pur ceo qe A.D. 1346.

[1] I., toller.

[2] According to the record, "Et modo veniunt tam præ- "dictus Johannes filius Willelmi "Martre, in propria persona sua, "quam prædictus Ricardus atte "Sterte, per . . . attor- "natum suum."

"Et prædictus Ricardus atte "Sterte dicit quod Rockle, in "quo prædictus Johannes filius "Willelmi Martre supponit præ- "dicta mesuagium et duodecim "acras terræ esse, non est villa, "sed quoddam hamelettum de "parochia de Godeshulle, et hoc "paratus est verificare, unde "petit judicium de brevi, &c."

No. 38.

A.D. 1346. the writ was in accordance with the fine it was adjudged good.—*Thorpe.* We pray that our statement that it is a hamlet may be entered, in order that we may be able to maintain our writ of *Warantia Chartæ*.—And this was granted to him.—Thereupon he prayed aid, as tenant for term of life, of the reversioner.—And the aid was granted.

Scire facias. § A man sued a *Scire facias* to have execution of certain tenements in Easton.[1]—*Richemunde.* We tell you that Easton is a hamlet of Weston,[1] and we demand judgment of this writ which is brought in Easton.—*Huse.* We have taken our writ in accordance with the fine; and we could not have any other writ, because, if we were to bring our writ in Weston, that writ would immediately abate because it would be unwarranted by the fine.—*R. Thorpe.* And if you were to bring the writ in Weston, and the party took exception to your writ because it was not in accordance with the fine, you should be able to maintain your writ by saying that Easton is a hamlet of Weston, and because the writ is not maintainable in a hamlet you ought to be able to maintain it in a vill. And that was recently seen in this Court, and the writ was maintained on the matter, and I was myself a party to that, and therefore it is not right to maintain this writ, &c.—Willoughby. He has brought his writ in accordance with the fine, which is the foundation of this matter, and he cannot vary

[1] For the real names *see* p. 9, note 2.

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le brief fust acordaunt a la fine il fust agarde bon.[1]— *Thorpe.* Nous prioms qil soit entre ceo qe nous avoms dit qe cest hamel, pur meyntener nostre brief de Garrantie de Chartre.—Et ceo luy fust graunte.—Par quei il pria eide, come tenant a terme de vie, de celi en la reversion.—Et leide graunte.[2] A.D. 1346.

§ Un[3] homme suyt un *Scire facias* daver execucion des certeinz tenementz en Estone.—*Rich.* Nous vous dioms qe Estone est hamelle de Westone, et demandoms jugement de ceo brief qest porte en Estone.—*Huse.* Nous avoms pris nostre brief acordaunt a la fine; et autre brief ne poms aver, qar, si nous portassoms nostre[4] brief en W., ceo brief abatereit meintenant pur ceo qe ceo serreit desgarraunti[5] de la fine.—*R. Thorp'.* Et si vous portassetz brief en W., et la partie chalengea vostre brief pur ceo qe ceo fuit desacordaunt a la fine, vous duissetz meintener vostre brief a dire qe E. fuit hamelle de W., et pur ceo qe le brief nest pas meintenable en hamelle vous le duissetz meintener en ville. Et ceo fuit tarde view ceinz, et fuit meintenu sur la matere, et jeo fuisse mesme partie a cella, par quei il nest pas resoun de meintener ceo brief, &c.—Wilby. Il ad porte soun brief acordaunt a la fine, quele est foundement de cele matere, et de ceo ne poet il varier en nulle *Scire facias.*

[1] According to the record, "Johannes filius Willelmi dicit "quod in fine prædicto, unde "breve istud emanavit, con- "tinetur prædicta mesuagium "et duodecim acræ [*sic*] terræ "in Rockle existere, unde dicit "quod nullum breve nisi con- "cordans cum fine prædicto "ipsum competere potest in hoc "casu, propter quod dictum est "præfato Ricardo quod ulterius "respondeat si, &c."

[2] According to the roll, aid was prayed of Edith atte Hale, as roversioner, who had demised the messuage and twelve acres of land to Richard atte Sterte for his life. After some pleadings, issue was joined between John and Edith as to whether a partition had been made, and the *Venire* was awarded, but nothing further appears, except an adjournment.

[3] This report of the case is from L. and C.

[4] L., un.

[5] L., desclarre.

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A.D. 1346. from it in any manner; and, if he were to bring this writ in the form which you give him, it would not be warranted by the fine, because the fine would speak entirely in another vill; and therefore it is right to maintain this writ.—*R. Thorpe.* If a remainder is limited by fine, and the remainder-man wishes to bring a Formedon in the remainder, and the fine speaks of tenements in a hamlet, and he brings his writ in a hamlet, he will never maintain his writ; and, if he brings his writ in the vill, his writ will be sufficiently good, and will be accepted by reason of the fine, although the fine speaks of tenements in another vill; so also he could have done in this case.—HILLARY. In the case of a writ of Formedon in the remainder it is an original writ which must be brought in a vill, and in that case there is no matter which could be a reason why his writ should not be brought in a vill; but this is a judicial writ which has issued on a fine, and the fine is the foundation, so that, since it is warranted by the fine, it must be in accordance with the fine; and if it were not in accordance with the fine you would be able to abate his writ by the fine for the reason above; therefore, in our opinion, he could not in this case have purchased a better writ than he has done, and therefore say something else, for it seems to us that the writ is good, &c.

Cosinage. (39.) § A writ of Cosinage was brought on the seisin of one A.,[1] and the demandant made the resort to one R.[1] as to uncle[2] and heir on A's mother's side, and from R. he made the descent to himself.—*Skipwith.* We say that, whereas he has made the resort

[1] For the real names. &c., see p. 13, notes 1 and 2.

[2] Great-aunt according to the record.

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manere; et, sil portast ceo brief come vous le donetz, ceo ne serreit mye garraunti de la fine, qar la fine parlereit tut en autre ville; et pur ceo il est resoun de meintener ceo brief.—*R. Thorpe.* Si remeindre soit taille par fine, et celuy en le remeindre voille porter une Fourmedoun en remeindre, et la fine parle des tenementz en hamelle, et il porte soun brief en hamelle, jammes ne meintendra il soun brief; et sil porte soun brief en la ville, soun brief serra assetz bon, et serra resceu par la fine, tut parle ceo des tenementz en autre ville; auxint pout il aver fait en ceo cas.—Hill. En cas de brief de remeindre il est un original qe voet estre porte en ville, et il ny ad mye matere la pur quei soun brief ne serreit porte en ville; mes cest un judiciel qest issue hors dun fine qest foundement, issint, quant cest garraunti de la fine il covient qe ceo soit acordant a la fine; et, si ceo fuit desacordaunt a la fine vous purretz abatre soun brief par la fine *ratione ut supra*; par quei, a ceo qe nous est avys, il ne pout aver purchace meillour brief en ceo cas qil nad fait, par quei ditetz autre chose, qar il nous semble le brief bon, &c. A.D. 1346.

(39.)[1] § Brief de Cosinage fust porte de la seisine un A., et fist le resort a un R. come a unkle et heir de part sa mere, et de R. fist la descente al demandant.[2] —*Skip.* Nous dioms qe la ou il ad fait la resort de Cosinage.

[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 138. It there appears that the action was brought by Robert son of John Feykys against Richard Cullul in respect of 3 acres of land, two acres of meadow, and a moiety of one messuage in Surflete (Surflect, Lincolnshire) and against Robert Capun in respect of 4 acres of land in the same vill, "de quibus Willelmus "Bertilmewe, consanguineus "prædicti Roberti filii Johannis, "cujus heres ipse est, fuit seisitus "in dominico suo ut de feodo "die quo obiit, &c."

[2] The count was, according to the record, "quod prædictus "Willelmus consanguineus &c., "fuit seisitus . . . . . "et inde obiit seisitus. Et de "ipso Willelmo consanguineo, "&c., quia obiit sine herede de

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A.D. 1346. from A. on A.'s mother's side, with respect to parcel of the land, it descended to him on his father's side, and we demand judgment of this descent made in the blood of his mother. And, as to the rest, A. purchased it, and was seised as of his purchase, and we demand judgment as above.—*Seton.* We say that A. had the whole of the land by descent after the death of his mother, *absque hoc* that he had anything by his purchase: ready, &c.—*Skipwith.* That is not an issue without alleging possession in fact in some of the ancestors of his mother, or in his mother herself;

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A[1] de part sa mere, nous dioms qe quant a parcele de la terre, qe ceo[2] luy descent de part son pere, et demandoms jugement de ceste descente fait en le saung sa mere. Et, quant al remenant, A. purchacea cele, et fuist seisi come de son purchace, et demandoms jugement *ut supra* [3].—*Setone.* Nous dioms qe A. avoit tote la terre par descente apres la mort sa mere, saunz ceo qil avoit rienz de soun purchace; prest &c.—*Skip.* Ceo nest pas issue saunz allegger possessioun en fait en ascuns des auncestres sa mere ou en[4] sa mere mesme; qar a prendre issue le quel il A.D. 1346.

" se, resortiebatur feodum, &c. " cuidam Margeriæ ut con- " sanguineæ et heredi, &c., " sorori Nigelli patris Isabellæ " matris prædicti Willelmi. Et " de prædicta Margeria descen- " dit feodum, &c., cuidam Agneti " ut filiæ et heredi, &c. Et de " ipsa Agnete descendit feodum " &c., cuidam Johanni ut filio " et heredi, &c. Et de ipso " Johanne descendit feodum, " &c., isti Roberto qui nunc " petit, ut filio et heredi."

[1] I., a J., instead of de A.

[2] ceo is omitted from I.

[3] Richard's plea was, according to the record, " non cognos- " cendo quod prædictus Willel- "mus Bertilmewe,consanguineus, " &c., obiit seisitus de prædictis " tenementis, &c., idem Ricar- " dus, quo ad tenementa versus " eum petita, dicit quod tene- " menta illa non sunt nisi duæ " acræ prati et medietas unius " mesuagii tantum. Et quo ad " duas partes prædictæ medie- " tatis mesuagii prædicti dicit " quod quidam Bartholomæus, " pater prædicti Willelmi filii " Bartholomæi, de cujus seisina, " &c., fuit seisitus de eisdem in " dominico suo ut de feodo, et " inde obiit seisitus, post cujus " mortem intravit in eisdem " idem Willelmus ut filius ejus " et heres, et petit judicium si " prædictus Robertus filius " Johannis de prædictis duabus " partibus quæ ei in forma illa " descenderunt facere possit " resortum in sanguine prædictæ " Isabellæ matris, &c. Et quo " ad prædictum pratum, et ter- " tiam partem prædictæ medie- " tatis, dicit quod prædictus " Willelmus filius Bartholomæi " perquisivit pratum illud et " illam tertiam partem de " quodam Nigello, Tenenda " sibi et heredibus suis in per- " petuum, unde petit judicium " si de prato illo et illa tertia " parte, quæ sunt de perquisito " suo, facere possit resortum in " sanguine prædictæ Isabellæ " matris, &c."

There was a similar plea on behalf of Robert Capun in respect of the tenements demanded against him.

[4] en is omitted from I.

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A.D. 1346. for to take issue whether he had by descent as his mother's heir or not will be no issue at all.—To this the COURT agreed.—*Seton.* Then we tell you that the mother died seised of the whole, and so it descended to him on his mother's side, &c.

Cosinage. § A man brought a writ of Cosinage against another, and counted of the seisin of one William, his cousin, and made the resort to one Margery as cousin and heir, who was the sister of Nigel the father of Isabel the mother of William.[1]—*Seton.* We tell you, as to part of the tenements, that this same William purchased them to hold to him and his heirs, and, as to another part, that he had them by descent after the death of his father, and we demand judgment whether one who is heir on William's mother's side can maintain this action.—*Skipwith.* Whereas he says that the tenements, as to part, descended to William through his father, and, as to part, that William had them by his own purchase, we tell you that Isabel's father was seised of these tenements and died seised, and that after his death the tenements descended to two sisters as to daughters and heirs, and from Isabel to William as to son and heir, and so the estate which William had in those tenements was through Isabel his mother; ready, &c. And we demand judgment and pray seisin of the land.—*Seton.* We tell you that the estate which William had in those tenements was partly by purchase, and partly after the death of his father, *absque hoc* that he had anything by descent in those tenements after the death of Isabel his mother; ready, &c. And the other side said the contrary.—And so to the country.

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[1] In the translation the record has been followed, and not the French text, which is obviously corrupt.

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avoit par descente come heir sa mere ou nient ne serra issue.—A ceo assentist la COURT.—*Setone.* Donqes vous dioms qe la mere murust seisi de tut, et issi descendist ceo a luy de part sa mere, &c.[1] A.D. 1346.

§ Un[2] homme porta brief de Cosinage vers un autre, et counta de la seisine un J. soun cosyn, et fist le resort a luy come a cosyn et heire frere Margarete mere John.—*Setone.* Nous vous dioms qe, quant au parcelle des tenementz, mesme cestuy J. les purchacea a luy et a ses heires, et, quant a autre parcelle, il les avoit par descente apres la mort soun pere, et demandoms jugement si celuy qest heire de par sa mere puisse ceste accion meintener.—*Skip.* La ou il dit qe les tenementz, quant au parcelle luy descendirent de par soun pere, et partie il avoit de soun purchace, nous vous dioms qe le pere Margarete fuit seisi de ceux tenementz et muruist seisi, apres qi mort les tenementz descendirent a deux com as filles et heires, et de M. a J. come a fitz et heire, issint lestat qe J. avoit en ceux tenementz si fuit par M. sa mere; prest, &c. Et demandoms jugement, et prioms seisine de terre.—*Setone.* Nous vous dioms qe lestat qe J. avoit en ceux tenementz si fuit partie par purchace, et partie apres la mort soun pere, saunz ceo gil avoit rienz par descente en ceux tenementz apres la mort M. sa mere; prest, &c.—*Et alii e contra.*—*Et sic ad patriam.* Cosinage.

[1] The replication, upon which issue was joined, was, according to the record, "Robertus filius "Johannis dicit quod ipse ab "actione sua prædicta per aliqua "præallegata excludi non debet, "quia dicit quod prædicta tene- "menta ei descenderunt succes- "sione hereditaria de præfata "Margeria matre, &c., prout "ipse superius narravit, absque "hoc quod eadem tenementa "descenderunt prædicto Wil- "lelmo consanguineo, &c., de "præfato Bartholomæo ut heredi "&c., seu quod idem Willelmus "aliquid habuit in eisdem tene- "mentis de suo perquisito, "prout iidem Ricardus et "Robertus superius allegarunt."

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

[2] This report of the case is from L. and C.

No. 40.

A.D. 1346. Avowry.

(40.) § One avowed a taking on the ground that the plaintiff held of him certain land by homage, and fealty, and by the services of two[1] shillings *per annum*, of which services he was seised through the hand of the plaintiff's father,[2] &c. And he said the land was in the Hundred of L.,[3] within which Hundred each tenement holden in socage shall double its rent after the death of each tenant, and that for the homage and for the doubling of the rent after the death of the plaintiff's father[2] he avowed upon the plaintiff.—*Birton.* Judgment of the avowry, for every avowry must be founded on right and on possession, and he has not laid seisin of the relief for which he has avowed; judgment.—*Gaynesford.* We have laid seisin of the annual services to which this relief is annexed, and that is sufficient.—SHARSHULLE, *ad idem.* It is possible that feoffments have been made of the land time after time, so that no tenant ever died seised since time of memory, and so that he could not lay seisin, and yet the thing is due; therefore answer.—*Birton.* We say that one R.[4] held the land of one K.,[4] whose estate the avowant has, and that by lesser service, to wit, by fealty and rent, without homage, and this R. gave the land to our father, by this deed,

[1] three, according to the record. *See* p. 19, note 4.

[2] brother, according to the record. *See* p. 19, note 4.

[3] the vill of Mickleham (Surrey), according to the record. *See* p. 19, note 1.

[4] For the real names, &c., *see* p. 21, note 2.

No. 40.

A.D. 1346. Avowere [Fitz. *Avowre* 131.]

(40.)[1] § Un avowa une prise pur ceo qe le plentif tint de luy certeine terre par homage, fealte[2], et par les services de ij^{s}. par an, des queux services il fut seisi par my la meyn son pere, &c. Et dit qe la terre fust deinz Lundrede[3] de L., deinz quel hundrede chesqun tenement tenu en socage apres la mort de chesqun tenant doublera sa rente, et pur homage et le doublere de la rente apres la mort le pere le pleintif si avowe il sur luy.[4]—*Birtone.* Jugement del avowere, qar chesqun avowere si est en le dreit et en la possession, et del reliefe pur quele il ad avowe il nad pas lie seisine; jugement.—*Gayn.* Nous avoms lie seisine des services annuels as queux cest relief est annexe, et ceo suffit.—SCHARS., *ad idem.* Il est possible qe feffementz ount este faitz de tut temps de la terre, issi qe nul tenant unqes puis temps de memore murust seisi, issi qe seisine ne put il lier, et unquore la chose due; par quei responez.—*Birtone.* Nous dioms qun R. tint mesme la terre dune K., qi estat lavowant ad, et ceo par meyndre service, saver par fealte[2] et rente, saunz homage, le quel R. dona

[1] From H. and I., but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 160, d. It there appears that the action of Replevin was brought by William Cosyn against Roger de Apperdelo in respect of a taking, in the vill of Mickleham (Surrey), in a place called "le Brodelond," of four horses and four oxen.

[2] H., foialte.

[3] I., le hundrede.

[4] Roger's avowry was, according to the record, "Quo ad "captionem trium equorum et "quatuor boum in quodam loco "qui vocatur Roberdeslond atte "Toune in prædicta villa advocat captionem illam et juste, "&c., dicit enim quod idem Willelmus tenet de eo unum "toftum et triginta acras terræ, "cum pertinentiis, in eadem "villa, unde locus in quo, &c., "est parcella, per homagium "fidelitatem, et servitium trium "solidorum per annum, solvendorum ad quatuor terminos in "eadem villa usuales, &c., de "quibus quidem servitiis idem "Rogerus fuit seisitus per manus "Thomæ Cosyn fratris prædicti "Willelmi, cujus heres ipse est, "ut per manus veri tenentis sui, "ac, pro eo quod eadem tenementa tenentur in socagio, "heredes hujusmodi tenentium

No. 40.

A.D. 1346. in fee tail, to hold of the chief lord of the fee, by reason of which feoffment we attorned to K. (and *Birton* made profert of the deed), and we demand judgment, since we are now your tenant in fee tail, and he has made this avowry on us as on his tenant in fee simple; judgment of the avowry.—*Gaynesford.* And we demand judgment; since you have not denied that we purchased the seignory to hold to us and our heirs, and that your father attorned, it is not for us

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" post mortem antecessorum " suorum, secundum consuo- " tudinem ibidem usitatam, " dabunt relevium, videlicet, ad " valentiam redditus sui per " unum annum, et quia homa- " gium et fidelitas ipsius Wil- " lelmi et etiam relevium suum " post mortem prædicti Thomæ " fratris, &c., eidem Rogero " aretro fuerunt ante diem cap- " tionis, &c., capit ipse unum " equum et quatuor boves pro " homagio, &c., et alium equum " pro fidelitate, &c., et tertium " equum pro relevio, &c., vide- " licet, pro tribus solidis, &c., " eidem Rogero aretro existen- " tibus, in prædicto loco de " Roberdeslond, ut in feodo suo, " sicut ei bene licuit, &c. Et " quo ad quartum equum dicit " quod ipse non cepit equum " illum." Issue was joined as to the taking of the fourth horse.

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la terre a nostre pere[1], par ceo fait, en fee taille, a tenir de chef seignur de fee, par quel feffement nous attournames a K. (et mist avant le fait), et demandoms jugement, puisqe nous sumes a ore vostre tenant en fee taille, et il ad fait ceste avowere sur nous come sur son tenant en fee simple; jugement del avowere.[2]—*Gayn.* Et nous demandoms jugement; puis qe vous navetz pas dedit qe nous purchaceames la seignurie a nous et a noz heirs, et qe vostre pere attourna, a nous nest pas a conustre quel estat il A.D. 1346.

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[1] I., miere.

[2] The plea was, according to the record, "quod quidam "Robertus filius Petri atte "Toune fuit seisitus de prædictis "tenementis unde, &c., in "dominico suo ut de feodo et "jure, &c., et ea tenuit de quo-"dam Johanne de Mykelham "per fidelitatem et servitium "trium obolorum per annum "tantum, qui quidem Robertus "de eisdem tenementis feoffavit "quosdam Willelmum Cosyn, "Civem Londoniensem, patrem "ipsius Willelmi qui nunc "queritur, et Beatricem uxorem "ejus, habendis et tenendis "ipsis Willelmo Cosyn patri, "&c., et Beatrici, et heredibus "de corporibus eorundem Wil-"lelmi et Beatricis exeuntibus, "ita quod si, &c., rectis heredi-"bus ipsius Willelmi remanerent "&c., tenenda de capitalibus "dominis, &c., per servitia inde "debita, &c., de quibus quidem "Willelmo et Beatrice exierunt "prædictus Thomas, per manus "cujus, &c., et similiter præ-"dictus Willelmus qui nunc "queritur, &c., unde, ex quo "prædictus Robertus, cujus "statum idem Willelmus qui "nunc, &c., modo habet in "eisdem tenementis, tenuit tene-"menta illa de prædicto Johanne "per fidelitatem et servitium "trium solidorum tantum, "absque hoc quod idem Rogerus "seu aliquis antecessorum "suorum vel eorum quorum "statum idem Rogerus modo "habet in dominio seu servitiis "prædictis unquam seisitus fuit "per manus ipsius Roberti vel "alterius cujus statum idem "Willelmus in prædictis tene-"mentis de homagio et aliis "servitiis præterquam de præ-"dicta fidelitate et redditu præ-"dicto, petit judicium si per "aliquam seisinam de homagio "et aliis servitiis per manus "prædicti Thomæ, qui nihil "habuit in eisdem tenementis "nisi in feodo talliato [advocare "possit], et petit judicium si "liberum tenementum ipsius "Willelmi de aliquibus servitiis "onerare potuit, et petit damna "sibi adjudicari."

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A.D. 1346. to declare what estate he had, and therefore we demand judgment, and pray the return.—*Birton.* You ought to declare the matter of our tenancy as much as that of your seignory; for if I purchase land holden of you to hold for my life, with remainder to another in fee, and if you make a simple avowry on me, without making mention of my estate, the avowry is abatable; and so also in this case.—WILLOUGHBY. If the estate tail had commenced after you had purchased the seignory, that would be a reason why you should be put to declare the manner of his purchase; but now it is pleaded that the estate tail commenced in the time of another person, and when the tenant attorned to him simply it is not for him to declare what tenancy the tenant then had.—SHARSHULLE, *ad idem.* In his avowry it is not supposed by express words that he is his tenant in fee simple, but he has avowed on the tenant as on his very tenant, and I well know that tenant for term of life is as much very tenant to his lord as tenant in fee simple is to his lord; and since the very tenancy is not disproved by your plea, although you show that he has only a fee tail, you do not answer anything to the avowry.—Therefore the avowry was adjudged good.—And this was extraordinary.—*Birton.* Then we tell you that our donor held the land of R., whose estate in the seignory he has, by fealty and rent, without homage, *absque hoc* that the person whose estate you have in the seignory or anyone of his ancestors was ever seised of homage by the hand of his tenant of the land, save the seisin which you had by the hand of our father who was tenant in tail; and we demand judgment whether by any seisin of homage had by his hand, since it was not due by right, you can maintain this avowry. And as to the relief we

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avoit, par quei nous demandoms jugement et prioms retourn.—*Birtone.* Auxi bien devetz conustre la matere de nostre tenance come de vostre seignurie; qar si jeo purchace terre tenue de vous a ma vie, le remeindre a un autre en fee,[1] si vous facez un simple avowere sur moy, saunz faire mencion de mon estat, lavowere est abatable; et auxi en ceo cas.—WILBY. Si la taille ust comence puis qe vous avietz purchace la seignurye, il serra resoun qe vous fuissez mys a conustre la manere de son purchas; mes a ore est plede qe la taille comencea en autri temps, et quant il attourna a luy simplement il nest pas a luy a conustre quel tenance adonqes[2] il avoit.—SCHARS., *ad idem.* En savowere nest pas suppose par parole expresse qil serra soun tenant de fee simple, mes ad avowe sur luy com sur soun verroy tenant, et jeo say bien qe tenant a terme de vie est auxi verroy tenant a soun seignur come tenant de fee simple a soun seignur; et puis qe la verroye tenance nest pas desprove par vostre plee, coment qe vous moustrez[3] qil nad qe fee taille, vous ne responez rienz al avowere.—Par quei lavowere fuist agarde bon.—*Et hoc mirum.*—*Birtone.* Donqes vous dioms qe nostre donour tint la terre de R., qi estat en la seignurie il ad, par fealte[4] et rente, saunz homage, saunz ceo qe celuy qi estat vous avetz en la seignurie ou asqun de ses auncestres unqes furent seisiz domage[5] [par la mayn soun tenant de la terre, sauve la seisine qe vous avietz][6] par la mayn nostre pere qe fust tenant en la taille; et demandoms jugement si par nulle seisine de homage eu par sa meyn, puis qe ceo ne fust pas due[7] en dreit, si vous poetz cest avowere mayntener. Et quant al reliefe A.D. 1346.

[1] The words en fee are omitted from I.
[2] adonqes is omitted from I.
[3] I., ditez.
[4] I., foialte.
[5] I., de homage
[6] The words between brackets are omitted from H.
[7] I., diwe.

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A.D. 1346. were ready to pay it to you before the taking, and still are ready; judgment whether, &c.—*Thorpe.* Sir you see plainly how he has acknowledged the seisin of homage, and, as to his statement that it is not due by right, he cannot say that unless he has a specialty to discharge himself, and therefore we do not understand that such a plea against the seisin which has been acknowledged can lie in his mouth.—WILLOUGHBY. If he were tenant in fee simple, he would not discharge himself, contrary to the seisin acknowledged, without a specialty, because he would have his recovery in another way, that is to say, by a *Ne injuste vexes*, but such a recovery is not given for tenant in fee tail, and therefore, in the absence of power to discharge himself by action, the law allows him to plead to an avowry by way of rebutting; therefore answer. —*Thorpe.* Whereas he says that his donor held of the person whose estate we have by fealty, without homage, ready, &c., that his donor held of that person by homage.—*Birton.* You shall not be admitted to that since you have not laid seisin of homage except of one who held in tail, whose seisin does not charge the tenancy; and you do not show title or ground as to how this homage commenced; therefore, &c.— *Thorpe.* And since the whole force of your answer was that the seisin of the homage had by the tenant in tail does not charge you, because the tenancy was not holden by homage, and we have offered to aver the contrary of that, and you do not maintain it, judgment.—WILLOUGHBY. You will never be admitted to aver that R. held of you by homage, since you do not allege seisin by his hand, without showing a title by specialty as to the manner in which the homage commenced; therefore answer over.—*Gaynesford.* Sir, we say that one J., ancestor of the person whose estate we have, enfeoffed one A., ancestor of his donor, before the statute,[1] to hold of him by homage, &c.— *Grene.* Now judgment of the avowry: for you see

[1] 18 Ed. I. (*Quia emptores.*)

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avant la prise nous fumes prest del paier, et unqore sumes; jugement si &c.—*Thorpe.* Sire, vous veietz bien coment il ad conu la seisine domage,[1] et ceo qil ad parle qil nest pas due[2] en dreit ne poet il dire sil neit especialte de soi descharger, [par quei nentendoms pas][3] qe tiel plee countre la seisine conue en sa bouche gise.—Wilby. Sil fust tenant en fee simple il ne se deschargereit pas, countre la seisine conue,[4] saunz especialte, qar il averoit soun recoverir par autre voie, saver, par un *Ne injuste*[5] *vexes*, mes tiel recoverir nest pas done pur tenant en fee taille, par quei, en defaute de soi descharger par accion, ley luy doun a pleder en avowere par voie de reboter; par quei responez.—*Thorpe.* La ou il dit qe son donour tint de celuy qi estat nous avoms par fealte,[6] saunz homage, qil tint de luy par homage prest &c.—*Birtone.* A ceo ne serrez resceu puis qe vous navetz lie seisine domage[1] sauve dun qe tint en la taille, qi seisine ne charge pas la tenance; et vous ne moustrez pas title ne fundement coment cel homage comencea; par quei, &c.—*Thorpe.* Et puis qe la force de vostre respons fust qe la seisine del homage eu par le tenant en taille ne vous charge pas, pur ceo qe la tenance ne fust pas tenu par homage, et la countrare de ceo avoms tendu daverer, quel vous ne meyntenez pas, jugement.—Wilby. Vous ne serretz jammes resceu daverer qe R. tint de vous par homage, puis qe vous nalleggez pas seisine par sa meyn, saunz moustrer title en especial coment lomage[7] comencea; par quei ditez outre.—*Gayn.* Sire, nous dioms qun J., auncestre celuy qi estat nous avoms, enfeffa un A., auncestre soun donour, avant lestatut, a tenir de luy par homage, &c. —*Grene.* Ore jugement del avowere; qar vous veietz[8]

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[1] I., de homage.
[2] I., diwe.
[3] The words between brackets are omitted from I.
[4] conue is omitted from H.
[5] *injuste* is omitted from H.
[6] I., foialte.
[7] I., le homage.
[8] H. veiet.

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A.D. 1346. plainly that he has not affirmed any seisin of the homage save in himself, and that by the hand of a tenant in fee tail, upon which matter acknowledged to be before the seisin of the homage if your grantor had to make avowry for it, it would have been necessary for him to have commenced with the feoffment in virtue of which the homage commenced; and although you have been seised of homage, since that was not by the hand of one who had fee simple, that seisin does not give you any other avowry than there would be in case of non-seisin. And, moreover, since your grantor was not seised of the homage, you could not have distrained for it, nor would you have a writ of Customs and Services any more, and consequently after the purchase you were out of possession and without any action to deraign it: therefore the seisin had by one who had only a fee tail does not give you right, since you were previously put out of right and of possession.—HILLARY. Although he could not distrain before seisin, since you do not deny that homage was reserved by the first feoffment, and that the tenancy was thereby charged with it of right, and since the tenancy is charged with it of right, the seisin afterwards had of it by the person who is his tenant suffices to maintain the avowry.—Therefore he was put to answer over. Therefore he said that he was enfeoffed to hold without homage; ready, &c.—And the other said that he was enfeoffed to hold by homage.—And so to the country. —And as to the relief the defendant tendered the averment that the plaintiff was not ready to pay it before the taking.—And so to the country.

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bien coment il nad afferme nulle seisine del homage sauve en luy mesme, et ceo par la meyn un tenant en fee taille, sur quel matere conu avant la seisine del homage, si vostre grantour fust a faire avowere pur cele, il luy covensist daver comence al feffement par quel le homage comencea; et coment qe vous avetz este seisi domage,[1] puis qe ceo ne fust pas par la mayn celuy qavoit fee simple, cele seisine ne vous doune pas autre avowere qe vous naveretz si la noun seisine fust. Et, ovesqe ceo, quant vostre grantour ne fust seisi del homage, vous ne purrietz aver destreint pur cele, ne brief de custumes et des services naveretz nent le plus, et *per consequens* apres le purchas vous estoiez hors de possessioun et daccion a derener le; par quei la seisine eu par celuy qe navoit qe fee taille ne vous doune pas dreit, puis qe avant vous estoiez mys hors de dreit et de possessioun.—HILL. Coment qe il ne poait avant la seisine destreindre, puis qe vous ne dedites pas qe homage ne fust reserve par le primer feffement, et par taunt la tenance charge de ceo en dreit, [et puis qe la tenance de ceo est charge en dreit],[2] la seisine apres eu par celuy qest son tenant suffit de maintenir lavowere.—Par quei il fust mys outre. Par quei il dit qe il fust feffe a tenir saunz homage; prest &c.—Et lautre qil fust feffe a tenir par homage[3].—*Et sic ad patriam.*—[Et quant al reliefe][2] il tendi daverer qil ne fust pas prest avant la prise.—*Et sic ad patriam.*[4]

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[1] I., do homago.

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

[3] The words par homage are omitted from I.

[4] According to the record the pleadings following the plea were as follows :—" Et Rogerus, " non cognoscendo feoffamentum " prædicti Roberti filii Petri in " forma prædicta, dicit quod " quidam Robertus de Mikelham " fuit seisitus de manerio de " Mikelham, cum pertinentiis, " unde tenementa prædicta et " locus in quo, &c., sunt par- " cella, et de eisdem tenementis, " cum pertinentiis, tempore Regis " Henrici, et ante feoffamentum " per ipsum Willelmum alle- " gatum, feoffavit Rogerum,

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A.D. 1346. Formedon.

(41.) § A Formedon was brought against one J.— *Pole.* We tell you that one A., the father of J., was seised of the same land before the writ was purchased, and died seised, and that after his death we entered

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" filium suum, de eisdem, tenendis " ipso Roberto et heredibus suis, " ante statutum, per homagium, " fidelitatem, et alia servitia, &c. " Et de ipso Rogero filio Roberti " descenderunt prædicta tene- " menta cuidam Petro, ut filio, " &c., et de ipso Petro ipsi " Roberto filio Petri, quem idem " Willelmus supponit feoffasse " prædictos Willelmum patrem " &c., et Beatricem, &c., et de " ipso Roberto de Mikelham " descendit manerium prædictum " et servitia, &c., cuidam Johanni " ut filio, &c., qui de eisdem " manerio et servitiis, &c., feof- " favit ipsum Rogerum de Ap- " perdele, virtute cujus feoffa- " menti ipse Willelmus Cosyn, " pater &c., de homagio et aliis " servitiis eidem Rogero se at- " tornavit, et ex quo idem Wil- " lelmus non dedicit quin ipse " seisitus fuit de eisdem servitiis " post mortem prædicti Willelmi " patris, &c., per manus prædicti " Thomæ, cujus heres ipse est, " petit judicium et returnum " averiorum, &c.

" Et Willelmus dicit quod præ- " dictus Robertus de Mikelham " feoffavit prædictum Rogerum " filium suum de prædictis tene- " mentis, cum pertinentiis, " tenendis de eo et heredibus " suis per fidelitatem et ser- " vitium trium solidorum per " annum tantum, et non per " homagium [vel] alia servitia, " pro quibus idem Rogerus de " Apperdele superius advocavit." Issue was joined on this.

" Et quo ad hoc quod idem " Rogerus superius advocavit pro " fidelitate, &c., idem Willelmus " dicit quod ipse alias apud " Ledrede . . . . obtulit " eidem Rogero fidelitatem suam. " Et hoc paratus est verificare, " unde petit judicium.

" Et Rogerus dicit quod ipse " non obtulit ei ibidem fidelita- " tem suam prout ipse superius " allegavit." Issue was joined upon this also.

After adjournments, on the quinzaine of Easter in the 21st year of the reign, " venit prædic- " Rogerus per attornatum suum " et obtulit se quarto die versus " prædictum Willelmum de præ- " dicto placito. Et ipse non " venit. Et fuit querens. Ideo " consideratum est quod præ- " dictus Rogerus eat inde sine " die, et prædictus Willelmus et " plegii sui de prosequendo " in misericordia. Et prædictus " Rogerus habeat returnum præ- " dictorum averiorum. Postea " . . . Johannes Pukriche " venit hic in Curia ex parte " prædicti Willelmi, et petit " deliberationem prædictorum " averiorum, et ei conceditur. " Ideo habeat inde breve per " statutum returnabile hic in " Octabis Sancti Michaelis, &c."

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(41.)[1] § Forme de doun porte vers un J.—*Pole.* Nous vous dioms qun A., le pere J., fust seisi de mesme la terre avant le brief purchace[2], et murust seisi, apres qi mort nous entrames come fitz et heir. A.D. 1346. Forme de doun., [Fitz., *Briefe*, 687]

1 From H. and I. until otherwise stated.

2 I.., doun suppose, instead of brief purchase.

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A.D. 1346. as son and heir. And we tell you that K., the wife of A., brought, pending this writ, a writ of Dower against us, and that we rendered her dower to her; and therefore judgment was given that she should recover, and so by that recovery this writ is abated, and we demand judgment of the writ.—*Grene.* Since the recovery was had against you by reason of your render, and that on a writ of later date than ours, we demand judgment whether our writ is not sufficiently good.—WILLOUGHBY. As to two parts the writ is good enough, because the recovery was had on a writ of later date, and that by reason of your own render; but, with regard to the third part which was recovered, since he has shown that she had a right to recover, and that in virtue of a title preceding the purchase of your writ, your writ is abatable as to that quantity.—*Grene.* My writ is good with regard to the whole, because when the writ of Dower was brought against the tenant, and he rendered her dower to her, that render must be held to show an agreement between them, since the action had not then been tried, for, whether she had a right to recover or not, that question cannot be tried between you, who have lost the tenancy, and us, and particularly on a plea which falls under the head of a plea in abatement of the writ, but that action will fall under discussion between me and the woman on the execution of the judgment, and therefore it seems that my writ is good with regard to the whole.—WILLOUGHBY. It is not so: for if the writ of Dower had been of earlier date, even though she had recovered by default, pending your writ, your writ would have abated, and so also, if she recovered by action tried on a writ of later date, your writ is abated; and although the action has not been tried, yet since the tenant did at the time that which according to law he might have been compelled to do, no default can be adjudged in him since he is willing

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Et vous dioms qe K., la femme A., pendaunt cestuy brief, ad porte son brief de Dowere vers nous, et nous luy rendimes son dowere; par quei fust agarde qe ele le recoverast,[1] et issi par cele recoverir cest brief abatu, et demandoms jugement de brief.—*Grene.* Puis qe le recoverir se fist devers vous par vostre rendre, et ceo a un brief de puisne date qe nest le nostre, nous demandoms jugement si nostre brief ne soit assetz[2] bon.—WILBY. Quant a les ij. parties le brief est assetz bon, qar le recoverir se fist par un brief de puisne date, et ceo par vostre rendre demene; mes, de la tierce partie qe fust recovere, puis qil ad moustre qe ele avoit dreit de recoverir, et ceo dune title avant vostre brief purchace, de cele quantite vostre brief est abatable.—*Grene.* Mon brief est bon de tut, qar quant le brief de Dowere fust porte vers luy, et il la rendist son dowere, cel rendre serreit ajuge une consente entre eux, puisqe laccion adonqes ne fust pas trie, qar, le quel qe ele avoit dreit a recoverir ou nent, ceo ne poet estre trie entre vous, qavetz la tenance perdue, et nous, et nomement sur plee qe chiet en abatement de brief, mes cherra cele accion en debat sur lexecucion del jugement entre moy et la femme, par quei il semble qe de tut mon brief est bon.—WILBY. Il nest pas issi: qar si le brief de Dowere ust este de eigne date, mes qil ust recovere, pendaunt vostre brief par defaute, vostre brief ust abatu, et auxi a un brief de puisne date, sil recoveri par accion trie, vostre brief, est abatu; et mesqe laccion ne soit pas trie, puis qil fist adonqes ceo qe par lei il duist aver este arce daver fait, nulle defaute puist estre[3] ajugge en luy puis qe il voet averer qe ele A.D. 1346.

[1] H., recoveri.
[2] H., asset.
[3] estre is omitted from H.

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A.D. 1346. to aver that she had a right to recover; and, if you can maintain that she had not a right to recover, you will maintain your writ, but otherwise not with regard to this third part.—*Grene.* It used to be law that a writ of earlier date would not abate through a recovery by default on a writ of later date, even though the party would aver that he had a right to recover; for, if issue were now taken between us on the woman's title, and the finding were in our favour, still after execution the woman would again put the same title to be decided in an Assise of Novel Disseisin; therefore it would be altogether useless to take issue on her title now.—WILLOUGHBY. As to the two parts answer; and as to the third part we will consider.—Therefore, as to the two parts the tenant traversed the gift, and upon that they were at issue.—*Grene.* We demand judgment since the beginning of that recovery was by a writ brought, pending this one, and also because the tenant came on the first day and rendered dower, which could only be understood to be by agreement between them, and that while my writ was pending; and we demand judgment whether, by reason of that loss made by his own consent, he can abate my writ with regard to the third part.—*Pole.* I have shown that she was entitled to dower in virtue of a title preceding the purchase of your writ, in which case if we had taken delays, and she had recovered, she would have had her damages against us, and we should also have been amerced, and the law does not put us to suffer such mischief; therefore, since you do not deny that she was dowable, and therefore that we did that which the law required, therefore, &c.—*Grene.* If, pending my writ against you, another person recovers against you by default, on a writ of earlier date, my writ will abate even though I may be willing to aver that the person who recovered had not a right to recover;

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avoit dreit a recoverir ; et si vous poetz meyntener qe ele navoit pas dreit de recoverir, vous meyntendrez vostre brief, et autrement nent de cele terce partie.—*Grene.* Il soleit estre lei qe le brief deigne date nabatereit pas par recoverir sur un brief de puisne date par defaute, mesqe qil voleit averer qil avoit droit de recoverir ; qar si issue fust pris a ore entre nous sur le title la femme, et fust trove pur nous, unqore sur lexecucion la femme en[1] une Assise mettreit[2] mesme le title en discussioun areremeyn ; par quei a prendre issue sur soun title a ore serreit tut en veyn.—WILBY. Quant a les ij parties responez[3] ; et de la tierce partie nous aviseroms.—Par quei quant a les deux parties il traversa le doun, et sur ceo furent a issue.—*Grene.* Demandoms jugement puis qe cele recoverir comenceea par un brief[4] porte, pendaunt ceste, et auxi al primer jour il vint et rendi, quel ne pust estre entendu[5] mes un consent entre eux, et ceo pendant moun brief ; et demandoms jugement si par cele perde fait par soun consent il puisse mon brief de la terce partie abatre.—*Pole.* Jay moustre qe ele fust dowable dun title avant vostre brief purchace,[6] en quel cas si nous ussoms pris delaies et ele ust recovere, ele avereit ses damages vers nous, et nous auxi amercyez, et a tiel meschief lei ne nous mette pas a faire ; par quei, puisqe vous ne dedites pas qe ele ne fust dowable, et par taunt nous feymes ceo qe lei voleit, par quei, &c.—*Grene.* Si, pendant mon brief vers vous, un autre recovere vers vous par brief[7] deigne date par defaute, mon brief abatera, mesqe jeo vousisse averer qe celuy qe recoveri navoit pas dreit a recoverir ; A.D. 1346.

[1] I., avera.
[2] I., et mettreit.
[3] responez is omitted from I.
[4] The words par un brief are omitted from I.
[5] I., tendue.
[6] purchace is omitted from I.
[7] The words par brief are omitted from I.

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A.D. 1346. for the same reason, since you allege a recovery on a writ of later date, and that because of your render, you shall no more be admitted to aver the title of the person who recovered, with the object of abating my writ, than I shall be admitted in the other case to disprove his title in order to maintain my writ.—Willoughby. Let the plea be entered, and we will consider, since you wish to abide judgment on the point.—*Grene.* Again we tell you that this recovery was had by covin and consent between the parties in order to abate my writ; ready, &c.—Willoughby. Then you do not deny that she had a right to recover; therefore deliver yourself.—*Grene.* We say that she released to the tenant, before the judgment was given, all the right which she had in her dower.—Willoughby. Where is the deed of release?—*Grene.* It is not for me to have it.—Willoughby. Then will you not say anything else?—*Grene.* We will imparl.—And afterwards *Grene* returned into Court, and said that the gift on which his action was taken was of a time earlier than the seisin of her husband, and demanded judgment; since the woman's title was a later title, whether the tenant could abate his writ by reason of that recovery.—Willoughby. And, because you do not deny that she had a right to recover, the question whether your title on which your action is grounded is of earlier or of later date then hers will not be tried on this writ, but will be tried after execution in an Assise of Novel Disseisin when the woman will be made a party to you; therefore, as to that third part, tenant, farewell.—And after judgment *Grene* said that the woman's husband had nothing, but that he did not dare to make averment to that effect; but it was said that issue could have been taken thereon, if he had chosen to plead it before judgment, &c.

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par mesme la resoun, puis qe vous alleggez un recoverir par un brief de puisne date, et ceo par vostre rendre, vous ne serretz nent plus resceu daverer le title celi qe recoveri, al entente dabatre mon brief, qe jeo ne serra resceu en autre cas a desprover soun title pur meyntener mon brief.—Wilby. Soit le ple entre, et nous aviseroms, puisqe voletz demurer sur le point.—*Grene.* Unqore vous dioms qe cel recoverir fust fait par covyne et consente entre eux dabatre mon brief; prest &c.—Wilby. Donqes ne dedites pas qe ele avoit dreit de recoverir; par quei delivrez vous.—*Grene.* Nous dioms qe ele relessa al tenant, avant le jugement rendu, tut le dreit qe ele avoit en son dowere.—Wilby. Ou est ceo fait?—*Grene.* Ceo ne attient a moi a aver.—Wilby. Donqes ne voletz autre chose dire?—*Grene.* Nous enparleroms.—Et puis revynt, et dit qe le doun de quei saccion est pris fust deigne temps qe la seisine son baroun, et demanda jugement, puis qe le title la femme si est dune title puisne, si par cel recoverir il poet son brief abatre.—Wilby. Et, pur ceo qe vous ne dedites pas qe ele navoit droit de recoverir, et le quel vostre title de vostre accion soit eisne del scon[1] ou puisne ceo ne serra pas trie en ceste brief, mes serra sur lexecucion en une Assise quant la femme serra faite partie a vous; par quei quant a cele vous, tenant, alez a Dieu.—Et apres jugement *Grene* dit qe le baroun la femme navoit riens, mes il nel osa pas averer; mes fut dit qe sur ceo issue pout aver este pris, sil ust volu aver plede cel avant jugement, &c.

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[1] I., son baron.

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A.D. 1346. Formedon.

§ A man brought a writ of Formedon against another, and demanded certain tenements against him, whereupon the tenant said, as to a third part, that a woman had brought a writ of Dower against him, and that while this writ was pending, on the seisin of her husband. And (said Counsel) he died seised a long time before the writ of Formedon against us was purchased, and by that writ she recovered the third part against us, and we demand judgment of your writ.—*Grene.* Answer as to the rest.—*Pole.* There is no need, for we understand that, by reason of the recovery of part, the whole writ is abated.—*Grene.* We tell you that this recovery, which was adjudged on a writ of Dower, was on the non-denial of the tenant, so that it could be accounted only the tenant's deed as an alienation, and that could not abate our writ since it is not of earlier date than our writ is, and therefore, since he does not say anything else, we demand judgment, and pray seisin of the land.—WILLOUGHBY to *Pole.* Answer as to the rest.—*Pole.* As to the two parts the supposed donor did not give them.—*Grene.* Since he answers nothing as to the third part, we demand judgment, and pray seisin of the land.—WILLOUGHBY. He has answered sufficiently, because he has said that a woman recovered the third part against him by a writ of Dower and on very title, for he has said that the woman's husband died seised before the writ of Formedon was purchased, so that, before your writ was purchased, she had ground to recover against him, and so he shows that it was not by virtue of the tenant's deed that he lost the tenancy, but that he lost it by force of law, and, if she had recovered against him upon action tried, the writ would have been abated; for the same reason, since she had a right to recover, there was no ground

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A.D. 1346. Fourme-doun.

§ Un[1] homme porta un brief de Fourme de doun vers un autre, et demanda certeinz tenements devers luy, ou le tenant dit, quant a la terce partie, qune femme avoit porte un brief[2] de Dowere devers luy, et, pendant cest brief, de la seisine soun baroun, qe muruist seisi longe temps avant le brief de Fourme de doun purchace vers nous, et par cel brief ad recoveri la terce partie devers nous, et demandoms jugement de vostre brief.—*Grene.* Responez del remenant.—*Pole.* Il nest past meister[3], qar nous entendoms qe par le recoverir de parcelle qe tut le brief est abatu.—*Grene.* Nous vous dioms qe cel recoverir qe se tailla sur brief de Dowere cest fuit par nient dedire del tenant, issint qe ceo ne poet estre accompte forqe le fet le tenant comme une alienacion, quele chose ne poet pas abatre nostre brief la ou il nest pas deigne date qe nostre brief nest, par qai,[4] de puis qautre chose ne dist, nous demandoms jugement, et prioms seisine de terre.—Wilby a *Pole.* Responez del remenant.—*Pole.* Quant a les deux parties, il ne dona pas.—*Grene.* De puis qil ne respound rienz de la terce partie, nous demandoms jugement, et prioms seisine de terre.—Wilby. Il ad assetz respoundu, qar il ad dit qune femme si ad recoveri devers luy la terce partie par un brief de Dowere et sur verroy title, qar il ad dit qe le baroun la femme muruist seisi avant le brief de Fourme de doun purchace, issint qe, avant vostre brief purchace, ele avoit cause de recoverir vers luy, issint qil moustre qil ne fuit mye le fet le tenant qil perdi la tenance, mes par force de ley il le perdi, et si ele ust recoveri sur accion trie devers luy le brief ust este abatu ; par mesme la resoun, quant ele avoit dreit a recoverir, il nest

[1] This report of the case is from L. and C.

[2] The words un brief are omitted from L.

[3] L., mester.

[4] The words par qai are omitted from C.

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A.D. 1346. for the tenant to traverse her right, so that her recovery is as strong as it would have been if she had recovered on action tried.—*Grene.* When a tenant loses by action tried, be the writ of earlier or of later date than my writ is, when he has lost my writ is abated, because it has been decided by trial that the demandant had ground to recover; but in this case she recovered on the non-denial of the tenant where no right was tried, and she only recovered by the act of the tenant; there is then nothing to prove that it is not his act except only his statement that the woman had a right because her husband was seised before the writ of Formedon was purchased, so that she had a ground to recover against him in respect of such an estate; and it does not lie in his mouth to plead that, because he does not claim anything in respect of the woman's estate But, if we were willing to traverse the woman's estate. that would be nothing to the purpose; and, if we have not a right to recover, that will come into discussion by an Assise of Novel Disseisin between us and the woman after she has been ousted by execution, so that nothing will be lost to the woman, and her right cannot now be tried between us. And you have lost the tenancy by your own act—by a render which is of no higher value than an alienation, which cannot abate our writ, and therefore we demand judgment, &c.—*Thorpe.* If the writ of Dower had been of earlier date than this writ of Formedon, it would then have been right to abate this writ of Formedon, but in this case the writ of Dower is of later date, and, if you now abate this writ, no one will ever be able to maintain a writ in this Court, because, while my writ is pending, another, who never had any right to demand the land, will come and bring a writ against the tenant, and will recover by non-denial, and will abate my writ, for the tenant will feign, and will say that the demandant had a right to recover, and that

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pas resoun qe le tenant travers soun dreit, issint qe soun recoverir si est auxi fort comme si ele ust recoveri sur accion trie.—*Grene.* Quant le tenant perd par accion trie, soit le brief deigne date ou de puisne date qe moun brief nest, et perd, moun brief est abatu, qar il est trie qil ad cause de recoverir; mes en ceo cas ele recoveri sur nient dedire del tenant ou nulle dreit fuit trie forqe soulement ele recoveri par le fait le tenant; donqes il ny ad rienz de prover qe ceo ne est pas soun fet forqe soulement ceo qil dist qe la femme avoit dreit pur ceo qe soun baroun fuit seisi avant le brief de Fourme de doun purchace, issint qele avoit cause de recoverir devers luy de tel estat; et ceo ne git pas en sa bouche de pleder, qar il ne cleyme rienz del estat la femme. Mes si nous vodroms traverser lestat la femme, ceo ne serreit mye a purpos; et, si nous neioms mye dreit a recoverir, ceo vendra en debat par une Assise entre nous et la femme quant ele est ouste par execucion, issint qe rienz ne depert a la femme, ne soun dreit ne poet ore estre trie entre nous. Et vous avietz perdu la tenance de vostre fet demene par une rendre qe ne vaut forqune alienacion, quele chose ne poet abatre nostre brief, par qai nous demandoms jugement, &c.—*Thorpe.* Si le brief de Dowere ust estre deigne date qe cest brief de Fourme de doun, donqes ust il este resoun daver abatu cest brief de Fourme de doun, mest ore ceo brief de Dowere est de puisne date, et, si vous abatez ore cest brief, jammes meintendra homme brief ceinz, qar, pendant moun brief, vendra un autre et portera brief vers le tenant qe unqes navoit dreit a demander la terre, et recovera par nient dedire, et abatra moun brief, qar le tenant feindra, et dirra qil avoit dreit de recoverir, et par cause, a quele cause A.D. 1346.

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A.D. 1346. for a cause, to which cause I shall not be able to have an answer, because his right on his title, whether he has right to recover or not, cannot fall into discussion between the person who has lost and the demandant, for if the issue were taken as to whether he had right or not, and the finding were that he had not any right, still it would be necessary that the right should be tried between the person who recovered and me, in an Assise of Novel Disseisin, after execution; thus the first issue is of no effect; and therefore it is better that this writ should stand, and that it should be tried after execution whether the person who recovered had right or not; and this has been the practice in this Court heretofore.—HILLARY. If that which he has said is true, his tenancy was defeasible before your writ was purchased, for he has said that she had cause to be endowed, and so no law compels the tenant to counterplead her where she has right, so that, even though she recovered on the non-denial of the tenant, regard must be had to the cause of her recovery, and therefore will you say anything else?—*Grene.* Her husband was never seised (ready, &c.) so that the action was feigned, and was in a manner an alienation by the tenant, which ought not to abate our writ.—WILLOUGHBY. You cannot have that plea to traverse her title, for it would be of no effect. And, forasmuch as you do not say anything else, the COURT doth adjudge that you take nothing by your writ, but that you be in mercy as to that part.—And this was wrong, and contrary to law.

View demanded

(42.) § A writ was brought against husband and wife, and they demanded view.—*Skipwith.* You ought not to have view: for we tell you that heretofore we brought a like writ against the husband, upon which he had view, and he afterwards alleged joint tenancy

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jeo ne puisse pas aver respons, qar soun dreit de soun title, le quel qe il avoit dreit de recoverir ou noun, ne poet pas chere en debat entre celuy qad perdu et le demandant, qar si lissue fuit pris le quel il avoit dreit ou noun, et trove fuit qil navoit mye dreit, unqore en Assise sur lexecucion le dreit coviendreit estre trie entre celuy qe recoveri et moi; issint le primere issue de nulle effecte; et pur ceo vaut il plus qe cest brief estoise, et sur lexecucion trier sil avoit dreit qe recoveri ou noun; et ceo ad este use ceinz devant ore.—HILL. Sil soit verite ceo qil ad dit, sa tenance fuit defesable avant vostre brief purchace, qar il ad dit qele avoit cause destre dowe, issint nulle ley arce le tenant de luy countrepledre la ou ele avoit dreit, issint qe, tut recoveri ele sur nient dedire del tenant, homme deit aver regarde a la cause de soun recoverir, par qai voilletz autre chose dire?—*Grene.* Soun baroun ne fuit unqes seisi, prest, &c., issint qe laccion fuit feint, et alienacion del tenant par manere, qe ne deit abatre nostre brief.—WILBY. Vous naveretz mye ceo plee de traverser soun title, qar ceo serreit de nulle effecte. Et, pur ceo qautre chose ne ditetz, la COURT agarde qe vous ne preignetz reinz par vostre brief, einz soietz en la mercy quant a cele parcelle.—*Et male contra legem.* A.D. 1346.

(42.)[1] § Brief porte vers le baron et sa femme, qe demanderent la vewe.—*Skip.* La vewe[2] ne deivez aver: qar nous vous dioms qe autrefoitz nous portames autiel brief vers le baron, ou il avoit la vewe, et apres alleggea jointenance od ceste sa femme, par Vewe demande. [Fitz., *View*, 112.]

[1] From H. and I.

[2] The words la vewe are omitted from I.

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A.D. 1346. with this his wife, for which reason the writ abated; and we demand judgment whether, &c.—*Sadelyngstanes.* That which you allege does not affect the wife but the husband, and therefore view is grantable.—And in the end, notwithstanding the counterplea, view was granted, &c.

Process on a voucher. (43.) § *Mutlow* came to the bar, and showed how the tenant had vouched one J., and the voucher had been granted, and the *Summoneas ad warantizandum* had been returned, and that on the day of the return the tenant had been essoined, and a *Cape ad valentiam* had been awarded against the vouchee for his default at that time, and that now no writ was returned. And we say, for the demandant, (said Mutlow) that the vouchee is dead, and we pray that the tenant be put to revouch, or to answer in chief, or else that he take the averment that the vouchee is alive.—*Skipwith.* Since the voucher was allowed by you, at one time, of the vouchee as of one who was living, and his death has not been returned by the Sheriff, you shall therefore not be admitted to allege his death now.—*Mutlow.* You ought not to delay me on a process against one who is dead, for, if office was served against him on that day as against one who was living, that will be one reason why we shall not be allowed to allege his death; but since no office was served against him on that day, and we offer to aver his death, it seems that the law puts you to give another answer.—WILLOUGHBY. Since he has commenced to sue process against the vouchee at his own peril he will be able to continue it.—Therefore an *Alias Summoneas ad warantizandum* was awarded against the vouchee.

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quei le brief abatist ; et demandoms jugement si, &c.— *Sadel.* Ceo qe vous alleggez ne refiert pas a la femme mes al baron, par quei la vewe est grantable.—Et a darein, *non obstante* le countreplee, la vewe fust grante, &c. A.D. 1346.

(43.)[1] § *Mutlowe* vint a la barre, et moustra[2] coment le tenant avoit vouche un J., et le voucher grante, et le *Summoneas ad warantizandum* retourne, a quel jour le tenant fust essone, et *Cape ad valentiam* agarde vers le vouche par sa defaute adonqes, et ore nul brief retourne. Et dioms, pur le demandant, qe le vouche est mort, et prioms qe le tenant soit mys a revoucher, ou a respondre en chief, ou autrement qil preigne laverement qil est en vie [—*Skip.* Puisqe le voucher de vous, a un temps, fust grante de lui come de celi qe fust en vie][3] J., et la mort de lui nest pas retourne par Vicounte, par quei a ore dallegger sa mort ne serrez resceu.—*Mutl.* Vous ne moi devez pas delaier sur un proces vers celuy qest mort, qar, si office fust servy a ceo jour vers luy come celuy qe fust en vie, asqune chose serra par quei nous nel averoms pas dallegger sa mort ; mes puisqe nul office est servy vers luy a ceo jour, et nous tendoms daverer sa mort, il semble qe lei vous mette a doner autre respons.—Wilby. Puisqil ad comence a suir proces vers luy a son peril demene il le purra[4] continuer.—Par quei un *Sicut alias* fut agarde vers le vouche. Proces sur un voucher.

[1] From H. and I.

[2] The words et moustra are omitted from I.

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

[4] I., serra, instead of il le purra.

No. 44.

A.D. 1346. *Quare impedit.*

(44.) § The King brought a *Quare impedit* against Henry Fitz-Hugh[1] and one J.—Henry appeared and J. did not appear.[2]—*Seton* counted, for the King, that one R.[3] was seised of the manor of S.,[3] to which the advowson is appendant, and presented one L.,[3] his clerk, who on his presentation was admitted and instituted by the Archdeacon of Richmond, the Ordinary of the place. This R. held the same manor of the King by homage, fealty, and drengage, which carries with it wardship and marriage. This R. is dead, and his heir under age, and the King is seised of the manor by reason of wardship, and so it belongs to him to present.—*Richemund.* We do not admit the appendancy, but we say that L. was not admitted, &c.,

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[1] As to the surname Fitz-Hugh *see* Y. B. Mich. 13—Hil. 14 Edw. III., Introd. pp. lxxviii.–lxxxii.

[2] According to the record it was John de Jarum, and not Henry Fitz-Hugh, who appeared and pleaded.

[3] For the names *see* p. 45, note 4.

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A.D. 1346. *Quare impedit.* [Fitz., *Quare impedit*, 6.)

(44.)[1] § Le Roi porta *Quare impedit* vers Henry fitz Hugh et un J.—Henry vint et J. ne vint pas.—*Setone* counta, pur le Roi, qun R. fust seisi del maner de S., a quei lavoweson est appendaunt, et presenta un L., soun clerc, qe a son presentement fust resceu et institut del Erchedekne[2] de Richemonde, Ordiner del lieu, le quel R. tint mesme le maner del Roi par homage, fealte,[3] et dryngage, qe doune garde et mariage, le quel R. est mort, et son heir deins age, et le Roi seisi del maner par resoun de garde, et issi append a luy.[4]—*Richm.* Nous ne conissoms pas lappendance, mes nous dioms qe L. ne fust pas resceu, &c.

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[1] From H. and I., but corrected by the record. *Placita de Banco*, Trin., 20 Edw. III., R° 45. It there appears that the action was brought by the King against John de Jarum, "quod ipse simul cum Henrico "fitz Hugh, chivaler, permittat "ipsum dominum Regem præ-"sentare idoneam personam ad "ecclesiam de Bentham, quæ "vacat, et ad Regis spectat "donationem, ratione custodiæ "terræ et heredis Johannis filii "Henrici defuncti, qui de Rege "tenuit in capite, in manu "Regis existentis, &c."

[2] I., Ercedekene.

[3] H., foialte.

[4] The declaration was, according to the record, "quod "quidam Johannes filius Hugonis "de Raveneswath fuit seisitus "de manerio de Ingeltone, cum "pertinentiis, ad quod advocatio "ecclesiæ prædictæ pertinet, qui "ad eandem ecclesiam præsen-"tavit quendam Magistrum "Robertum de Metham, clericum "suum, qui ad præsentationem "suam fuit admissus et institu-"tus per Archidiaconum Riche-"mundiæ, loci illius Ordinarium, ". . . tempore Edwardi Regis "avi domini Regis nunc, &c. Et "de ipso Johanne filio Hugonis "descendit prædictum mane-"rium ad quod, &c., cuidam "Henrico ut filio et heredi, &c. "Et de ipso Henrico descendit "manerium prædictum ad quod, "&c., cuidam Johanni ut filio "et heredi, &c., qui quidem "Johannes filius Henrici, die "quo obiit, tenuit manerium "de Whytyngham, cum per-"tinentiis, in Comitatu North-"umbriæ, et alia terras et "tenementa, de domino Rege "in capite per drengagium, "quod custodiam terræ et "maritagium hujusmodi heredis "infra ætatem existentis sibi "attrahit, et per alia servitia, &c., "et obiit seisitus de eisdem "maneriis de Ingeltone et "Whytyngham, et aliis terris "et tenementis, &c., post cujus "mortem dominus Rex nunc "seisire fecit in manum suam

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A.D. 1346. on the presentation of R.; ready, &c.—*Thorpe.* Now we demand judgment since you have not claimed anything in the patronage, and you have not denied the appendancy, nor that the King is seised of the manor; therefore it does not lie in your mouth to counterplead our title, and we[1] demand judgment, and pray a writ to the Bishop.'—WILLOUGHBY. If you bring a *Quare impedit* against a parson, and he says that he is parson and does not claim anything in the patronage, and further traverses your title, he will be convicted as a disturber, inasmuch as by his disclaimer of the patronage he has made himself of such condition that it does not lie in his mouth to counterplead your title; but if he neither claims anything in the patronage by express words, nor disclaims, he may well enough be admitted to traverse the title. And now in our matter Henry has not disclaimed the patronage, wherefore, &c. — *Grene.* If a *Quare impedit* is brought against two persons, and one of them claims the patronage and pleads with me, the other will not be admitted to traverse my title; and the reason is no other than that I shall not put my title on trial against the two severally. And for the same reason in this case, since there is another

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" prædicta maneria et alia terras
" et tenementa de quibus præ-
" dictus Johannes filius Henrici
" obiit seisitus in dominico suo
" ut de feodo, ratione minoris
" ætatis cujusdam Henrici filii
" et heredis prædicti Johannis
" filii Henrici, quo tempore
" prædicta ecclesia vacavit per
" mortem præfati Magistri Ro-
" berti de Metham, et, ea ratione
" quod dominus Rex seisitus est
" de terris et tenementis præ-
" dicti Henrici filii Johannis
" infra ætatem existentis, ad
" ipsum dominum Regem per-
" tinet ad prædictam ecclesiam
" præsentare, prædictus Jo-
" hannes, simul, &c., ipsum
" injuste impedit, &c."

[1] The Ordinary (i.e. the Archdeacon of Richmond) according to the roll.

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al presentement R.; prest, &c.[1]—*Thorpe.* Ore demandoms jugement puis qe vous navetz rienz clame en lavowere, et vous navetz pas dedit lappendance, ne qe le Roi est[2] seisi del maner; par quei en vostre bouche ne gist il pas de contrepleder nostre title, et demandoms jugement, et prioms brief al Evesqe.[3]—Wilby. Si vous portez *Quare impedit* vers une persone, et il die qe il est persone, et ne clayme rienz en lavowere, et outre traverse vostre title, il serra atteint destourbour, par taunt qe par son desclamance en lavowere il sad fait tiel mesme qil ne gist pas en sa bouche de countrepleder vostre title; mes sil ne par parole cleyme en lavowere, ne descleyme, il serra assetz[4] bien reseeu del traverser. Et ore en nostre matere Henry nad pas desclame en lavowere, par quei, &c.—*Grene.* Si *Quare impedit* soit porte vers ij, et lun cleyme en lavowere et plede od moi, lautre ne serra pas reseeu de traverser mon title; et la cause nest nul autre mes pur ceo qe jeo ne mettray pas moun title en triement vers eux severalment. Et par mesme la resoun en A.D. 1346.

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[1] The plea, on behalf of John, was, according to the record, "non cognoscendo quod "advocatio ecclesiæ prædictæ "sit pertinens ad manerium de "Ingeltone, nec quod prædictus "Johannes filius Hugonis un-"quam aliquid habuit in ad-"vocatione prædicta, nec quod "prædictum manerium de "Whytyngham tenetur de "domino Rege in drengagio, "nec quod idem Johannes "filius Hugonis tenuit aliqua "terras seu tenementa de "domino Rege in capite, dicit "quod prædictus Robertus de "Metham non fuit admissus et "institutus in ecclesia præ-"dicta ad præsentationem præ-"dicti Johannis filii Hugonis, "sicut dominus Rex in demon-"stratione sua supponit. Et "hoc paratus est verificare, unde "petit judicium, &c."

[2] I., nest pas.

[3] The replication on behalf of the King was, according to the record, "quod prædictus "Johannes de Jarum superius "placitando nihil clamat in "advocatione ecclesiæ prædictæ. "per quod ad controplacitan-"dum titulum domini Regis in "hac parte admitti non debet, "unde petit judicium, et breve "Ordinario, &c."

[4] H., asset.

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A.D. 1346. person named who will be able to claim the patronage, and he claims nothing in the patronage himself, the plea does not lie in his mouth.—SHARSHULLE. It is not so: for each of those who are named in a *Quare impedit* will have the same answer (in order to excuse himself with regard to the disturbance which is surmised against him) as he would have if several writs of *Quare impedit* were brought against them. Since on one writ brought against one person alone he would have a traverse to your title without claiming the patronage, the naming of another will not take it away from him.—*Grene.* The contrary of that was adjudged this term against John Leeke: for he was not admitted to counterplead the plaintiff's title because the other who was named had claimed the patronage.—WILLOUGHBY. It was not so: for in that case he said absolutely that he did not claim anything in that presentation, saving to himself his turn on another occasion; and inasmuch as he had disclaimed the presentation that was the reason why he could not be admitted to counterplead the plaintiff's title.[1] But in the case in which we are he has not disclaimed the patronage; and as to your statement that you will not be in a position to put your title to trial against two or three persons severally, you will be so: for if each of the defendants claims the patronage severally, and one takes one issue to your title, and another takes another, you will be put to maintain it against them severally; therefore it seems that, since he has not disclaimed the patronage, he will have the plea.—*Thorpe.* We demand judgment, for the King, whether such a plea lies in his mouth without claiming the patronage; and, if you adjudge that it does lie, we are ready to answer for the King.—THE COURT.

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[1] See Y.B., Trin., 20 Edw. III. (First Part), No. 1, pp. 454-478

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ceo cas puis qil yad un autre nome qe purra clamer[1] en lavowere, et il ne clayme rienz mesme en lavowere, le ple ne gist pas en sa bouche.—SCHARS. Il nest pas issi : qar mesme le respons avera[2] chesqun de eux qest nome en un *Quare impedit*, pur luy escuser de la destourbaunce qe luy est surmys, come il averoit si severals *Quare impedit* furent porte vers eux. Puis qe a un brief vers un soul il avereit le travers a vostre title, saunz clamer en lavowere,[3] le nomer dun autre ne luy toudra pas,—*Grene*. Le contrare de ceo fust ajugge ceste terme vers Johan Lecke : qar il ne fust pas resceu a contrepleder le title le pleintif pur ceo qe lautre qe fust nome avoit clame en lavowere.—WILBY. Il ne fust pas issi : qar en ceo cas il dit precise qe il ne clayme rienz en cele presentement, sauve a luy soun tourn autrefoitz ; et par taunt qil avoit desclame en le presentement ceo fust la cause pur quei il ne poait estre resceu de contrepleder le title le pleintif. Mes en le cas ou nous sumes il nad pas desclame en lavowere ; et a ceo qe vous ditez qe vous ne serrez pas einz a mettre vostre title en triement vers ij ou iij severalement, si serrez : qar, si chesqun des defendants clayme en lavowere severalment, et lun prent un issue a vostre title, et lautre un autre, vous serrez mys del mayntener vers eux severalment ; par quei il semble qe puis qil nad pas desclame en lavowere qil avera le plee.—*Thorpe*. Nous demandoms jugement, pur le Roi, si saunz clamer en lavowere tiel plee en sa bouche gise ; et, si vous agardez qil gist, prest serroms a respoundre pur le Roi.—CURIA. Responez : qar il gist bien en sa bouche. A.D. 1346.

[1] I., desclamer.
[2] avera is omitted from I.
[3] The words en lavowere are omitted from I.

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A.D. 1346. Answer: for it well lies in his mouth.—*Thorpe.* Then we pray that our exception be entered, and we will aver that L. was admitted on R.'s presentation.—And the exception was entered, and the issue accepted, &c.

Per quæ servitia. (45.) § Nigel de Loreyn sued a *Per quæ servitia* against one J. And the note of the fine purported that one R. had granted to him five shillings of rent, together with the homage and the services of J., wherefore *Grene*, for Nigel, said that J. held of his conusor one messuage and land by homage, fealty, and scutage, that is to say, when the scutage runs at forty shillings for one knight's fee, ten shillings, and by the services of five shillings per annum.—*Pole.* You see plainly how he has declared the tenancy to be holden by the fourth part of one knight's fee, which services are not set out in the fine, and could not be unless the covenant relating thereto had been expressly demanded in the writ of Covenant; therefore we do not understand that you will now be admitted to surmise the land to be holden by such services, since those services ought to have been mentioned in the fine, and are not.—Hillary. In the words of the fine "homage and services," scutage is included as much as if it had been expressly mentioned; therefore answer.—*Pole.* We say that the conusor is dead, and we demand judgment of the writ.—Sharshulle.

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—*Thorpe.* Donqes prioms qe nostre chalaunge soit entre, et voloms averer qil fust receu a soun presentement.—Et le chalaunge entre, et lissue receu, &c.[1] A.D. 1346.

(45.)[2] § Neel de Loreyn suist un *Per quæ servitia* vers un J. Et la note voleit qun R. luy avoit grante v.*s.* de rente, ensemblement od lomage et les services J., par quei *Grene*, pur Neel, dit qe J. tint de son conussour un mies et terre par homage, fealte, et escuage, saver, quant lescu court a xl.*s.*, x.*s.*, et par les services de v.*s.* par an.—*Pole.* Vous veietz bien coment il ad desclare la tenance estre tenue par la qarte partie dun fee de chivaler, queux services ne sont pas desclarez en la fine, ne pount estre si le covenant de cel expressement en le brief de Covenant nust este demande; par quei nentendoms pas qe a surmettre la terre estre tenu par tielx services, puis qen la fine ceux services duissent aver este motes et ne sount pas, qe vous serrez a ceo ore resceu.—Hill. Dedeinz cele parole de la fine, homage et services, est compris escuage si bien come il fuist mote; par quei responez.—*Pole.* Nous dioms qe le conussour est mort, et demandoms jugement de brief.—Schars. Mesqil *Per quæ servitia.* [Fitz., Par que Service, 11.]

[1] There appears on the roll the rejoinder:—"Johannes de "Jarum dicit, ut prius, quod "ipse paratus est verificare quod "prædictus Robertus non fuit "admissus et institutus in ec-"clesia prædicta ad præsenta-"tionem prædicti Johannis filii "Hugonis, quam quidem veri-"ficationem dominus Rex non "admittit, unde petit judicium, "&c."

After the rejoinder, the roll continues, "Et dictum "est prædicto Johanni de Clone "qui sequitur, &c., quod respon-"deat ulterius pro domino "Rege, si, &c." Then "idem "Johannes qui sequitur, &c., "dicit quod prædictus Robertus "de Metham fuit admissus et "institutus in ecclesia prædicta "ad præsentationem prædicti "Johannis filii Hugonis, sicut "dominus Rex superius sup-"ponit." Upon this issue was joined, and the *Venire* was awarded, but nothing further appears on the roll.

[2] From H. and I.

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A.D. 1346. Even though he be dead, still the note of the fine is executory; therefore plead over.—*Pole.* We say that we held of the conusor by fealty, and the services of two shillings in lieu of all services; ready, &c.—*Grene.* Then we pray that he do attorn in respect of those services by which he has acknowledged the tenancy to be holden; and we will aver further that he held of our conusor by the services which we have mentioned before; ready, &c.—SHARSHULLE. No, indeed, he will not attorn by parcels unless you will agree with him that the quantity is such as he has said.—And he would not do so.—Therefore they were at issue on the quantity of the services.—*Quære:* for it used to be law that the quantity of services would not be tried on a *Per quæ servitia*, but that, were the quantity greater or were it less, he would attorn, and that the quantity would be tried afterwards in a Replevin.

Quare impedit (46.) § The Abbot of Our Lady of York brought a *Quare impedit* against Peter de Richemunde, who appeared, and could not deny that it belonged to the Abbot to present, nor that he had disturbed the Abbot.—The Abbot said that the six months had passed, and that the church was worth twenty marks a year, and prayed his damages.—And Peter confessed both points.—Therefore judgment was given that the Abbot should recover his presentation and his damages, but that execution should be stayed

Nos. 45, 46.

soit mort, unqore est la note executore ; par quei ditez outre.—*Pole.* Nous dioms qe nous tenymes del conussour par fealte,[1] et les services de ij *s.*, pur touz services ; prest, &c.—*Grene.* Dounqes prioms qil attourne de ceux services quex il ad conu la tenance ; et voloms averer outre qil tint de nostre conussour par les services qe nous avoms dit avant ; prest, &c.—Schars. Nanil, voirs, il nattournera pas par parcels si vous ne volez estre en un od luy qe la quantite est tiele come il ad parle.—Et il ne voleit pas.—Par quei ils furent a issue sur la quantite des services.—*Quære* : qar il soleit estre lei qe la quantite des services ne serreit pas trie en un *Per quæ servitia*, mes, fust ceo plus fuist ceo meyns, il attournereit, et en un avowere apres la quantite serra trie, &c. A.D. 1346.

(46.)[2] § Labbe de Nostre Dame Deverwyke porta *Quare impedit* vers Piers Richemonde, qe vient, et ne poait dedire qil nappent a luy a presenter ne qil navoit destourbe.[3]—Labbe dit qe les vj. moys sont passez, et qe leglise vaut par an xx. marez, et pria ses damages.—Et Piers conust lun point et lautre.—Par quei fust agarde qe Labbe recoverast son presentement et ses damages,[4] *Quare impedit.* [Fitz., *Collusion*, 34.]

[1] H., foialte.

[2] From H. and I., but corrected by the record, *Placita de Banco*, Trin., 20 Edw., III. R° 277, d. It there appears that the action was brought by the Abbot "beatæ Mariæ Eboraci" against Peter de Richemundo, in respect of a presentation to the vicarage of the church of Cateryke (Catterick, Yorks).

[3] According to the record, "Petrus venit, et non potest "dedicere quin ad prædictum "Abbatem pertinet ad præ-"dictam vicariam præsentare, "nec quin ipse impedivit eum "præsentare ad eandem."

[4] According to the record, "Super hoc prædictus Abbas "dicit quod tempus semestre "jam elapsum est &c., et "quod prædicta vicaria valet per "annum viginti marcas, &c. "Et Petrus non potest hoc "dedicere.
"Ideo consideratum est quod "prædictus Petrus recuperet "præsentationem suam ad "vicariam prædictam, et damna "sua per statutum, videlicet, "valorem vicariæ prædictæ de "duobus annis."

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A.D. 1346. until enquiry had been made as to collusion.—*Quære*, because the Abbot will not have execution of damages before the question of collusion has been tried, and, if collusion be found, the King will have execution of damages, since no time runs against him so as to prevent satisfaction to him in respect of the presentation for which damages are given; for the party who was plaintiff will never have execution of the damages, since collusion on the principal matter is found against him.

Trespass. (47.) § On a writ of Trespass the defendant said that the plaintiff was outlawed at the suit of the Abbot of R. on a writ of Trespass in the King's Bench, and he made *profert* of the record, and demanded judgment whether, &c.—*Huse* made *profert* of a charter of pardon of the same outlawry on condition in accordance with the words of the Statute.[1]—*Mutlow*. And since you have not alleged that you have sued your *Scire facias* against the Abbot in accordance with the words of your charter, we do not understand that in virtue of that charter you will be answered.—*Huse*. At common law the original writ lost its force by an outlawry, and then if we had a charter of pardon we should be entitled to an answer with regard to every one; and now, although the statute limits the condition of the charter, that is only with regard to the person who was plaintiff against you, and not with regard to a stranger; and therefore, since the condition of the charter is ordained solely for the advantage of the person who was privy to the outlawry, and not that of a stranger, we continued to be entitled to an answer with regard to a stranger just as much as at common law.—Willoughby. If you do not sue the *Scire facias* against the Abbot in accordance with your charter under the statute, your charter of pardon has lost its force, and therefore we cannot

[1] 5 Edw. III., c. 12.

Nos. 46 47.

mes qe execucion cessereit tanqe enquis fust de la collusion.[1]—*Quære*, puis qe il navera execucion des damages avant la collusion trie, si la collusion soit trove si le Roi avera execucion de damages, puis qe nul temps court vers luy qil ne serra servy del presentement pur quel les damages soumt donez ; qar la partie qe fust pleintif navera jammes execucion de damages, puis qe la collusion sur le principal countre lui est trove. A.D. 1346.

(47.)[2] § En un brief de Trespas le defendant dit qe le pleintif est utlage a la suyte Labbe de R. en un brief de Trespas en Baunk le Roi, et mist avant le recorde, et demanda jugement si, &c.—*Huse* myst avant une chartre de pardoun de mesme lutlagerie sur condicion come lestatut parle.—*Muttl.* Et de puis qe vous navetz pas allegge qe vous avetz suy vostre garnissement vers Labbe come vostre chartre voet, nentendoms pas qe par cele chartre serrez respondu.—*Huse.* A la comune lei par lutlagerie loriginal perdi sa force, et si nous ussoms adonqes chartre de pardoun nous serroms responable vers chesqun ; et a ore, mesqe lestatut taille la condicion de la chartre, ceo nest mes soulement vers celuy qe fust pleintif vers vous, et ne mye vers estrange persone ; par quei auxi avant come a la comune lei nous fumes responable vers estrange[3] puis qe la condicion de la chartre est ordine[4] soulement en avantage celuy qe fust prive[5] al utlagerie, et ne mye destrange.—Wilby. Si vous ne suetz le garnissement acordant a vostre chartre vers Labbe par lestatut, vostre chartre ad perdu sa force, par quei nous ne vous Trespas. [Fitz., *Nonhabilite*, 8.]

[1] The roll shows the award of the *Quale jus*, as in the report, and the finding of the jury that there had been no fraud or collusion. Execution was then awarded in favour of the Abbot.

[2] From H. and I.

[3] H., prive et estrange.

[4] I., ordeigne.

[5] I., partie.

Nos. 47, 48.

A.D. 1346. adjudge you to be entitled to an answer by reason of that charter unless you put yourself in such a condition that you have observed your charter; therefore, unless you say something more, the defendant will go without day.

Statute Merchant. (48.) § One against whom execution had been sued on a statute merchant made by himself came into the Chancery, and produced an indenture made on conditions for the defeasance of the statute, and had an *Audita Querela* directed to the Justices, and thereupon he made *profert* in this Court (the Common Bench) of the indenture and prayed a writ to cause the person to appear who had sued execution contrary to his deed.—*Notton.* You shall not have it, for on a previous occasion you sued a like suit, and were non-suited, and you then had a *Supersedeas* to stay execution; therefore you shall not now be admitted to delay us anew by the same suit.—*Birton.* He is a poor man, and certainly, Sir, non-suit was adjudged against him in the morning, but, Sir, it is not therefore contrary to what is right that you should grant him the *Venire facias* at this time.—HILLARY. If you have it now, you will have it for the same reason forty times, so that you will delay the obligee from having his execution for ever; therefore, &c.

Audita Querela. § Note that a man sued an *Audita Querela* on certain matter, and had a writ out of the Common Bench to warn the party who had sued execution, and a *Supersedeas*. And on the day that they had in Court by the *Venire facias* he was nonsuited, and he afterwards sued another *Audita Querela*, and desired to have another *Supersedeas*, and a *Venire facias* against the party. And, because he had been previously nonsuited on the *Audita Querela*, they would not grant him any *Supersedeas*; but a *Venire facias* was granted to him to cause the obligee to appear, because, if they had granted him a *Supersedeas*, he would in that way have delayed the obligee for ever by nonsuit and by non-purchase, &c.

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poms ajugger responable pur cause de celle chartre si vous ne vous facez tiel qe vous avetz servy vostre chartre ; par quei, si vous ne dietz plus, il irra saunz jour. A.D. 1346.

(48.)[1] § Celuy vers qi execucion sur un estatut marchant fait par lui mesme fust suy vint en la Chauncellerie, et moustra une endenture sur condicions en defesaunce del estatut, et avoit un *Audita Querela* as Justices, et sur ceo mist avant ceinz lendenture, et pria brief de faire venir luy qavoit suy execucion countre son fait.—*Nottone.* Vous nel averetz pas, qar autrefoitz vous suistes autiel sute, et fustes nounsuy, et avietz adonqes un *Supersedeas* del execucion ; par quei a ore de nous delaier de novele par mesme la sute ne serrez resceu.—*Birtone.* Il est un povre homme, et certeynement, Sire, la nounsute fust agarde sur lui en la matine, par quei, Sire, il nest pas encountre resoun qe vous le grauntez a ceste foitz.—Hill. Si vous leietz a ore, par mesme la resoun a xl. foitz, issi le delaierez de sa execucion a toux jours ; par quei, &c. Statut marchant,[2] [Fitz., *Audita Querela.* 29.]

§ *Nota*[3] qun homme suyt une *Audita Querela* sur la matere, et avoit brief hors de la Comune Place de garnir la partie qavoit suy execucion, et *Supersedeas.* Et al jour qils avoint en Court par le *Venire facias* il fust nounsuy, et puis suyt un autre *Audita Querela*, et voleit aver eu un autre *Supersedeas* et *Venire facias* devers la partie. Et, pur ceo qil fuit primes nounsuy al *Audita Querela*, ils ne luy volleint[4] graunter nulle *Supersedeas* ; mes *Venire facias* luy fuit graunte de luy faire vener, qar, sils luy ussent graunte *Supersedeas*, il luy ust delaie issint a touz jours par nounsuyte et par noun purchace, &c. *Audita Querela.*

[1] From H. and I., until otherwise stated.

[2] marchant is from H. alone.

[3] This report of the case is from L. and C.

[4] C., vodreint mye.

Nos. 49, 50.

A.D. 1346. Entry.

(49.) § The Abbot of Malmesbury, parson of the church of S., brought a writ of Entry *ad terminum qui præteriit* in respect of a lease made by his predecessor, and counted that the land was his right, as of his church of S., of which he was parson.—*Moubray.* You see plainly how he demands, as parson, in respect of a lease made by his predecessor, whereas there is no recovery given for a parson but *Jurata utrum;* judgment of this writ.—*Grene.* We must demand the land as parson, because the whole is annexed to our church of which we are Abbot, for whosoever may be Abbot will be parson; therefore this writ is maintained for us who are Abbot.—And, in the end, because he had claimed it as the right of his church, of which he had made himself parson, in which case he has by statute[1] no remedy, on the seisin of his predecessor, but *Jurata utrum*, judgment was therefore given that he should take nothing by his writ.

Contempt.

(50.) § The King sued a writ of Contempt against one J.,[2] and counted, by *Seton*, that, whereas he was seised

[1] 14 Edw. III., St.1, c. 17.

[2] For the name *see* p. 59, note 2.

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A.D. 1346. Entre. [Fitz., *Juris Utrum*, 5.]

(49.)[1] § Labbe de Malmesbury, persone del eglise de S., porta brief Dentre *ad terminum qui præteriit* dun lees fait par son predecessour, et counta qe ceo fust son dreit de sa eglise de S., dount il est persone.—*Moubray.* Vous veietz bien coment il demande, come persone, dun lees fait par soun predecessour, ou pur persone il ny ad nul recoverir done mes Jure de *Utrum;* jugement de ceo brief.—*Grene.* Covient qe nous le demandoms come persone, puis qe tut est annex a nostre eglise de quei nous sumes Abbe, qar qi qe soit Abbe serra persone; par quei pur nous qe sumes Abbe cest brief est meintenu. —Et a darrein pur ceo qil avoit elame eele come le dreit de sa eglise, de quei il se avoit fait persone, en quel cas par lestatut il ne ad nul remedie, de la seisine son predecessour, mes Jure de *utrum*, par quei fuist agarde qil ne prist rienz par son brief.

Contempte.

(50.)[2] § Le Roi suist un brief de Contempte vers un J., et counta, par *Setone*, qe come il soit seisi del

[1] From H. and I.

[2] From H. and I., but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 266. It there appears that Robert atte Cherche, of Gunthorpe, chaplain, was attached to answer the King, "de placito "quare cum Magister Adam "Murymouth ad ecclesiam beatæ "Mariæ Magdalenæ de Milkstrete "Londoniarum nuper vacantem, "et ad suam donationem spec-"tantem, Willelmum de Massyng-"ham, clericum suum, præsent-"avit jure suo, idemque Wil-"lelmus eandem ecclesiam, vir-"tute præsentationis et juris "ad ipsum Adam in hac parte "pertinentem, canonice fuit "adeptus, et eam diu pacifice "possidebat, idem Robertus, ut "ex relatu plurium accepit Rex, "machinans jus ipsius Adæ in "hac parte adnullare, prætextu "cujusdam provisionis sibi "aliunde factæ, se in ecclesiam "prædictam vi et armis intrusit, "et prædictum Willelmum a "possessione sua ecclesiæ præ-"dictæ expulsit, et insuper "varios processus Regi et Cor-"onæ suæ præjudiciales ad "deducendum jus patronatus "dictæ ecclesiæ, cujus cognitio "ad forum Regis et non aliter ius "pertinet, ad aliud examen ter-"minandum fecit, in Regis con-"temptum et præjudicium, et "jurium coronæ Regis læsionem, "et ipsius Adæ exheredationis "periculum manifestum, et con-"tra pacem Regis, et contra "prohibitionem Regis."

No. 50.

A.D. 1346. of the advowson of the church of St. Mary Magdalen in Milk Street in the Ward of Cheap in London, and had presented to the same church one Adam de Murimouth,[1] his clerk, who on his presentation was admitted and instituted by the Bishop, there came one J.,[2] and, on the ground of a provision made to him at the Court of Rome, devised and compassed divers citations to be made to the said Adam to oust him from possession of the said church; and thereupon our Lord the King sent to him the King's Prohibition forbidding him to meddle in any manner with that church, which Prohibition was delivered to him on a certain day, in a certain year, and at a certain place, in the presence of such persons, notwithstanding which prohibition he caused the said Adam to be summoned, and made divers other citations to him to appear at the Court of Rome to show wherefore he had intruded into the church contrary to the provision aforesaid. Process was sued against the said Adam until he expelled the said Adam from that church tortiously, and in contempt of our Lord the King, and in despite of his commands, &c.—*Huse* denied everything alleged to be in contempt

[1] As to this, *see* p. 59. note 2. Adam de Murimouth presented William de Massyngham, who was cited to Rome.

[2] *See* p. 59, note 2.

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avowesoun de leglise de Magdelene en Milkestrete en la Garde de Chepe[1] en Loundres, et ust presente a mesme leglise un soun clerk, Adam de Murimouth, qe a son presentement fust resceu et institut Devesqe, la vint J., et, par cause dune provisioun fait a luy a la Court de Rome machina et compassa divers citacions estre faites al dit Adam de luy ouster de la possessioun de la dite eglise; et sur ceo nostre seignur le Roi luy maunda sa prohibicion qil ne mellast rienz de cele eglise, quele prohibicion luy fust livre certeyn jour, an, et lieu, en presence de tielx, nient countreesteaunt quele prohibicion il fist somondre le dit Adam, et luy fist divers autres citacions destre a la Court de Rome a moustrer pur quei il savoit abatu en la eglise encountre la provisioun avant dit. Proces taunt suy vers le dit Adam qil le dit Adam de la possession de la dite eglise debota atort, et en contempte et despit des maundementz nostre seignur le Roi, &c., et encountre la pees, &c.[2]—*Huse* defendi quanqe A.D. 1346.

[1] H., Shepo.

[2] The declaration of John de Clone "qui sequitur pro domino Rege" commences nearly as at p. 59 note 2. as far as the word "expulsit." It then continues, according to the record, "per "quod dominus Rex prohibuit "omnibus et singulis ne quic- "quam quod in contemptum "Regis, seu præjudicium aut "derogationem legum et jurium "Coronæ suæ, seu exheredation- "em prædicti Adæ patronatus "prædicti cedere valeret attemp- "tarent. Quæ quidem prohibitio "lecta fuit et liberata prædicto "Roberto in Curia Cantuariensi "in parochia beatæ Mariæ de "Arcubus per quendam Willel- "mum de Lancastre . . . "in præsentia Magistri Johannis "de Belgrave, Commissarii, Magis- "tri Ricardi de Plasey, et Magis- "tri Michaelis de Northburgh. "Idem Robertus, spreta prohibi- "tione prædicta, insuper varios "processus Regi et Coronæ suæ "præjudiciales ad deducendum "jus patronatus, &c., cujus cog- "nitio ad forum Regis et non "alterius, &c., terminandum "fecit, videlicet, citando præ- "dictum Willelmum . . . "apud Londonias, in parochia "Sancti Michaelis de Wodestrete, "essendi in Curia Romana ad "respondendum eidem Roberto "de præsentatione prædictæ "ecclesiæ. Et postea, . . . "apud Southwerke, in Comitatu "Surreiæ, citare fecit ipsum Wil- "lelmum ad respondendum eidem "Roberto in præfata Curia

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A.D. 1346. of our Lord the King, and in despite of his commands, and everything alleged to be contrary to the peace, &c., and said Not Guilty.—And the other side said the contrary.

Admeasurement of pasture. (51.)[1] § Admeasurement of pasture was sued. The defendant had pleaded that both lands had been in one hand since time whereof there is no memory, by reason of which seisin the common was not appendant; judgment whether you can maintain this writ for common appendant.—The plaintiff said that the land to which the common was claimed to be appendant was hide land,[2] of old, and tilled, in respect of which he and his ancestors were used to have their pasture, and that from all time; and he said that, in the time of the present King, one who was seised of both lands gave the land to which the common was appendant to us, and so the common is now appendant, and we demand judgment whether, &c.—And the defendant demanded judgment, since the plaintiff had confessed the unity of seisin of both lands, at which time the common was extinct, whether in virtue of the feoffment of the land he could claim the common as

[1] This seems to be a continuation of a case which has appeared several times in the Year Books (Foxton v. Foxton). In Trinity Term 16 Edward III. (No. 52, p. 168) we find that view of the soil was prayed and granted. In Trinity Term 18 Edward III. (No. 43, p. 389) the pleadings commence, and they are continued in Easter Term 19 Edward III. (No. 18, p. 46). As will be seen, they are not concluded in the present report, which ends with another adjournment.

[2] i.e. arable land.

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est en contempte nostre seignur le Roi, et en despit de ses maundementz, et quanqe est encountre la pees, &c., et dit qe de rien coupable.[1]—*Et alii e contra.* A.D. 1346.

(51.)[2] § Amesurement de pasture fust suy. Le defendant avoit plede qe lune terre et lautre furent en un meyn puis temps dount ny ad[4] memore, par quel seisine la comune fust desappendant; jugement si de comune appendant cestuy brief poetz meyntener.—Lautre dit qe la terre a quei la comune est clame appendre fust auncienc terre hyde et gayne, en quel luy et ses auncestres soleint aver lour pasture, et eco de tut temps; et dit qen temps le Roi qore est celuy qe fust seisi del une terre et del autre dona la terre a quei la comune fust appendant a nous, et issi la comune a ore appendant, et demandoms jugement si, &c.—Et lautre demanda jugement, puis qil avoit conu la unite de seisine del une terre et del autre, a quel temps la comune fust estente, si par la feffement Amesurement de pasture.[3] [Fitz., *Admesurement*, 8.]

" Cantuariensi de spoliatione " ejusdem ecclesiæ. Et, . . " apud Thorpe juxta Claketone " in comitatu Essexiæ, citare " fecit ipsum Willelmum ad " respondendum eidem Roberto " in Curia Romana de præsen- " tatione et spoliatione dictæ " ecclesiæ. Et postea, . . . " apud villam Westmonasterii " in comitatu Middelsexiæ, citare " fecit eundem Willelmum ad " respondendum domino Papæ " et eidem Roberto de primis " fructibus ecclesiæ antedictæ, " in Regis contemptum, &c., " et jurium Coronæ suæ, &c., et " prædicti Adæ exheredationis " periculum, &c., et contra " pacem, &c., et contra pro- " hibitionem, &c., ad damnum " ipsius Regis ducentarum " librarum. Et hoc paratus est " verificare pro domino Rege, " &c."

[1] The plea, upon which issue was joined was, according to the record, " Robertus . . . " defendit vim et injuriam " quando, &c. Et dicit quod " ipse nihil fecit in contemptum " Regis, &c., nec prædicti Adæ " exheredationis periculum, &c., " nec contra pacem, &c., nec " contra prohibitionem, &c., " sicut dominus Rex per brevc " suum et narrationem suam " supponit." The *Venire* was awarded, but nothing further appears on the roll.

[2] From H. and I.

[3] The words de pasture are omitted from I.

[4] I., de, instead of dount ny ad.

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A.D. 1346. appendant.—And upon that they were adjourned until now.—*Seton* said: It seems to me that the common is appendant now, notwithstanding the unity of the tenancy; for if I have two acres of land in my manor beyond which I am used to carry the corn growing in my lands outside the two acres, and I enfeoff you of them, and you enclose them, depriving me of my way and the easement which I have been used to have, I shall have an action of Nuisance, notwithstanding the unity of the seisin; and the reason is no other than that, without having that easement beyond that land, I cannot have the profit of my other demesnes; and for the same reason land which is hide land and tilled cannot be maintained in cultivation without having common for the beasts which till it, or pasture. And inasmuch as, in the time of the unity of seisin, I had the pasture there, that which I then had under the name of pasture I shall now have under the name of common, for otherwise the land could not be tilled, and that for want of pasture.—*Moubray.* The two cases are not alike: for with regard to the way of which you speak it is right that you should have the action of Nuisance, because, if you do not have the way, you cannot reach your corn; but, even though you do not have common in my land, you can till part of your land, and let the rest lie fallow, and feed your beasts in that.—Hillary to *Moubray.* You concede to him that which is not law: for if I have two acres of land in a manor, beyond which I am used to carry my corn from my other demesnes to my manor, and I enfeoff you of the two acres, do you suppose that, contrary to my own feoffment, I shall claim a way in the same land? Certainly not. But, if I enfeoff you of the whole manor except the two acres of land, perhaps you will have that way because your feoffor had the same profit; and for the same reason in this case, since the feoffor had the profit under the name of pasture, he will have it under the name of common.—Willoughby. If I have land to

No. 51.

de la terre il poait la comune come appendant clamer.— Et sur ceo furent ajournez tanqa ore.—*Setone* dit qe il luy sembla qe la comune est appendant a ore, nent countreesteaunt la unite de la tenance; qar si jeo eye ij acres de terre en mon maner outre queux jeo soley carier les bledz cressaunz en mes terres par dela les deux acres, mesqe jeo vous enfeffe de les ij acres, si vous les encloez en destourbaunt moi de mon chymyn et eese qe jeo solei aver, jeo averay une anusaunce, nent countreesteaunt la unite de la seisine; et la cause nest nulle autre mes pur ceo qe saunz cele eesement aver outre cele terre, jeo ne puisse le profit de mes autres demenes aver; et par mesme la resoun terre hyde et gaine ne poet estre meyntenu ne meynere saunz comune aver a les bestes qe le gaynent, ou pestre. Et par taunt qen temps de la unite jeo avoy le pestre illeoqes, et ceo qe javoy adonqes par noun de pestre jeo laveroy a ore par noun de comune, et autrement la terre ne poet estre gayne, et ceo pur defaut de pestre.—*Moubray.* Ils ne sount pas semblables: qar en le chymyn qe vous parlez il est resoun qe vous eietz la nusaunce, qar si vous neietz le chymyn vous ne poetz avener a voz bledz; mes, mesqe vous neyetz pas comune en ma terre, vous poetz gayner parcele de vostre terre, et soeffrer le remenant giser freche, et en cele pestre voz bestes.—Hill. a *Moubray.* Vous luy grauntez ceo qe nest pas lei: qar si jeo eye ij. acres de terre en un maner, outre queux jeo soley carier mes bledz de mes autres demenes a mon maner, si jeo vous enfeffe de les ij acres, entendetz vous qe en countre mon feffement demene qe jeo clameray chymyn en mesme la terre? Nanil certes. Mes, si jeo vous enfeffe de tut le maner sauf de les ij acres de terre, par aventure vous averetz cele chymyn pur ceo qe vostre feffour avoit mesme le profit; et par mesme la resoun en ceo cas, puis qe le feffour avoit le profit par noun de pestre, il lavera par noun de comune.—Wilby. Si jeo eye terre a quei comune A.D. 1346.

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A.D. 1346. which common is appendant, and I purchase the land in which I used to have the common, and afterwards I give the land to which the common was appendant to you, you will have the common, notwithstanding the unity of seisin of both lands, but in this case it is not pleaded that the common was appendant to the land before the unity, but he would now claim it as appendant for the continuation of the pasture; and that would be hard, since there was not any appendance before.—*Seton.* Sir, the Statute of Merton[1] clearly proves the appendance in this case, even though there never was appendance before; for the Statute purports that, if lords of manors enfeoff their tenants, the tenants shall have common appendant in the lord's soil, and Assise if they are disturbed; and consequently unity of seisin does not take away appendance.—And they were adjourned, &c.

Wardship. (52.) § On a writ of Wardship *Skipwith* counted that the infant's ancestor held of one J.,[2] as of his manor of S.,[2] by knight service, which J. gave the manor with the services of the infant's ancestor to him in fee tail,[3] and in virtue of that the ancestor attorned, and died in homage to him.—*Grene.* Whereas you have counted that

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[1] 20 Hen. III. (Merton), c. 4.

[2] For the real names *see* p. 67 note 3.

[3] As to the gift, *see* p. 67 note 3.

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est appendant, et jeo purchace la terre en quele jeo soleye aver la comune, et puis jeo doune la terre a quei la comune fust appendant a vous, vous averetz la comune, nient countreesteaunt la unite, [de la une terre et de lautre, mes en ceo cas il nest pas plede qe la comune fust appendant a la terre avant la unite,][1] mes pur la continuance dun pestre il le voleit clamer a ore appendant; et ceo serreit fort, puis qe unqes ny avoit appendaunce avant.—*Setone.* Sire, lestatut de Mertone prove overtement lappendaunce en cel cas, mesqe unqes appendaunce nestoit avant; qar lestatut veot qe si les seignurs des maners enfeffent lour tenantz qe les tenantz averont comune appendant en le soil le seignur, et Assise sils soient destourbez; et *per consequens* la unite de seisine ne toude pas lappendance.—*Et adjornantur, &c.* A.D. 1346.

(52.)[2] § En brief de Garde *Skip.* counta qe launcestre lenfant tint dun J., come de son maner de S., par service de chivaler, le quel J. dona le maner od les services launcestre lenfant a luy en fee taille, pur quel grant launcestre attourna, et murust en son homage.[3]—*Grene.* La ou Garde.

[1] The words between brackets are omitted from I.

[2] From H. and I. The record is probably that found among the *Placita de Banco*, Trin., 20 Edw. III., R° 71. The action was brought by Hugh de Meygnylle, knight, and Alesia his wife, against Roger Bishop of Coventry and Lichfield, in respect of the wardship of William, son and heir of John Maureward.

[3] The declaration was, according to the record, "quod "prædictus Johannes pater præ- "dicti Willelmi, cujus heres "ipse est, tenuit de quodam "Radulpho Basset de Draytone "medietatem manerii de Goute- "by, ut de manerio ipsius "Radulphi de Rakedale [by "certain stated services], de "quibus quidem servitiis idem "Radulphus fuit seisitus per "manus prædicti Johannis, ut "per manus veri tenentis sui, ". . . . . qui quidem "Radulphus dedit et concessit "prædictum manerium de "Rakedale, cum pertinentiis, ad "quod servitia prædictæ medie- "tatis prædicti manerii de Goute- "by pertinent, Radulpho filio

Nos. 52, 53.

A.D. 1346 the ancestor held of you as of the manor of S., ready, &c., that he did not hold of you as of the manor of S.—*Skipwith.* My ground of action is that he held of me; and that which I have said of the manor of S. is not at all of the substance of my action, and therefore you shall not have an issue on that. And we will maintain that he held of us as above.—And the issue on the tenancy was accepted, without mentioning whether it was as of the manor or not.

Wardship. (53.) § On a writ of Wardship of the body the tenant by his warranty vouched, and his voucher was not admitted without the production of a specialty witnessing the conveyance in virtue of which he vouched.—Therefore *Rokele* said for him that the demandant ought not to have an action, because he said that the infant's ancestor held

Nos. 52, 53.

vous avetz counte qe launcestre tint de vous come del maner de S., prest, &c., qil ne tint pas de vous come del maner de S.—*Skip.* Maccion est qil tint de moy; et ceo qe jay parle del maner de S. nest rienz de la substaunce de maccion, par quei sur cele naveretz pas issue. Et voloms meyntener qe il tint de nous *ut supra*.—Et lissue sur la tenance resceu, saunz parler le quel ceo fust come del maner ou nent.[1] A.D. 1346.

(53.)[2] § En brief de Garde de corps le tenant par sa garrantie voucha, et nent resceu saunz moustrer especialte qe tesmoigna le lees par quel il voucha.—Par quei *Rokele* dit pur luy qe le demandant ne dust accion aver, qar il dit qe launcestre lenfaunt tint une acre de terre dun Garde. [*Fltz., Monstrans de faits, fins, et records*, 71.]

" suo et Alesiæ uxori ejus, " habendum et tenendum ipsis " Radulpho filio Radulphi, et " Alesiæ et heredibus de eor- " poribus ipsorum Radulphi filii " Radulphi et Alesiæ exeuntibus, quæ quidem Alesia modo est ' uxor prædieti Hugonis, ita " quod,si iidem Radulphus filius " Radulphi et Alesia obirent " sine herede de corporibus suis " exeunte, prædietum manerium " de Rakedale, cum pertinentiis, " rectis heredibus ipsius Radul- " phi filii Radulphi remaneret, " virtute quorum doni et con- " cessionis prædictus Johannes " de servitiis prædictis ipsis " Radulpho filio Radulphi et " Alesiæ se attornavit, et fecit " ipsis servitia supradicta. Et " post decessum ipsius Radulphi " filii Radulphi ipsi Hugo et " Alesia seisiti fuerunt de eisdem " servitiis per manus ipsius " Johannis. Et obiit in fidelitate " ipsorum Hugonis et Alesiæ, " et ita ad ipsos Hugonem et " Alesiam pertinet custodia " heredis prædicti, prædictus " Episcopus custodiam illam eis " deforciat."

[1] The plea, upon which issue was joined, was, according to the record " quod, cum iidem " Hugo et Alesia supponunt " prædictum Johannem patrem " prædieti heredis tenuisse medie- " tatem prædictam prædicti " manerii de Gouteby de præ- " dicto Radulpho Basset de " Draytone per servitium mili- " tare, dicunt quod prædictus " Johannes Maureward pater, " &c., non tenuit medietatem " illam de eodem Radulpho " Basset per servitium militare, " prout iidem Hugo et Alesia " superius versus eum narra- " verunt." Tho *Venire* was awarded, but nothing further appears on the roll, except some adjournments.

[2] From H. and I.

Nos. 53, 54.

A.D. 1346. one acre of land of one A. by a feoffment prior to that by which he held the land in respect of which he had counted of the plaintiff. That A. seized the wardship, and leased it to one B., who leased the same wardship to him (the defendant), and (said *Rokele*) we demand judgment whether you can have an action against one who has an estate in the wardship through one of whom the ancestor held by priority of feoffment.—*Thorpe.* You see plainly how he has confessed that the infant's ancestor held the land specified in our count of us by knight service, and his statement that the ancestor held other land of another by priority is pleading the right of another person, which does not lie in his mouth, and particularly since he does not produce any specialty by which he might claim to have his estate, and therefore we demand judgment whether such a plea lies in his mouth.—*Rokele.* And we demand judgment, since you do not deny the priority, nor that we have his estate, whether &c.

Cessavit. (54.) § In a *Cessavit* the demandant counted that the defendant held of him by several services.—The defendant said that he held of the demandant by less service, and said that the land was open to the demandant's distress.—And issue was taken on the question whether the land was open to distress, and a protestation was entered with regard to the quantity of the services.

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A. par priorite qe il ne tint cele terre qil ad counte del pleintif, le quel A. seisist la garde, et lessa a un B., qe luy lessa mesme la garde, et demandoms jugement si vers luy qad estat en la garde par luy de qi launcestre tint par priorite si vous poetz accion aver.—*Thorpe.* Vous veietz bien coment il ad conu qe launcestre lenfaunt tint la terre compris en nostre counte de nous par service de chivaler, et ceo qil parle qe launcestre tint dun autre autre terre par priorite, ceo est a pleder autri dreit, quel ne gist pas en sa bouche, et nomement puis qil ne moustre pas especialte par quel il dust soun estat aver, par quei nous demandoms jugement si tiel plee en sa bouche gise.—*Rokel.* Et nous demandoms jugement, puis qe vous ne dedites pas la priorite, ne qe nous avoms son estat, si &c. A.D. 1346.

(54.)[1] § En *Cessavit* il counta qil tint de luy par plusours services.—Le defendant dit qil tint de luy par meyndre service, et dit qe la terre fust overte a sa destresse.[2]—Et lissue pris sur la overture, et protestacion entre sur la quantite des services.[3] *Cessavit* [Fitz., *Cessavit*, 32.]

[1] From H. and L., but corrected by the record, *Placita de Banco*, Trin., 20 Edw., III., R° 121. It there appears that the action was brought by Thomas Dewy against Martin de Glascannon, in respect of one messuage and six acres of land in "Glascannon juxta Trewithenek," (Trewarthennick? Cornwall), held by the tenant of the demandant by certain services, including suit of court, and a rent of 2*s.* per annum.

[2] The plea was, according to the record, "Martinus, . . . "protestando quod ipse non "tenet eadem tenementa per "sectam prædictam, non dedicit "quin ipse tenet eadem tene- "menta de prædicto Thoma per "fidelitatem et prædictum red- "ditum tantum, sed dicit quod "non competit alicui domino "actio ad petendum aliqua "tenementa per hujusmodi "breve in casu quo tenementa "illa sint aperta districtioni, &c., "et dicit quod tenementa præ- "dicta sunt aperta districtioni "prædicti Thomæ, et fuerunt "prædicto die impetrationis "brevis sui. Et hoc paratus "est verificare, unde petit "judicium, &c."

[3] According to the record, Thomas's replication, upon which issue was joined, was "quod prædicta tenementa non "sunt aperta districtioni suæ "prædictæ, nec fuerunt præ- "dicto die impetrationis brevis "sui." The *Venire* was awarded, but nothing further appears on the roll.

No. 55.

A.D. 1346. *Cui ante divortium*

(55.) § A woman brought a *Cui ante divortium*, and claimed to hold tenements to her and to her husband and to the heirs of their two bodies begotten, with remainder, in default of issue, to the right heirs of the woman, into which tenements the tenant had not entry but by her husband, who demised them to him, and whom she could not oppose before divorce had been celebrated between them.—*Derworthy.* You ought not to have an action, for we tell you that a fine was levied between the woman who is demandant and the person who was her husband, on whose alienation she takes her title, of the one part, and us, of the other part, by which fine the husband acknowledged the tenements to be our right, and for that acknowledgment we rendered to them for their lives, the reversion after their death being to us and our heirs, and that fine was subsequent to the alienation on which this action is framed. And by that fine she received an estate for her life, and the reversion was saved to us, and thereby every action on the first alienation, on which the action is now taken, was extinguished; and we demand judgment whether you can, contrary to the fine, have an action in respect of any alienation made at a previous time.—*Grene.* And we

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A.D. 1346.

Cui ante divortium. [Fitz., *Cui in vita et ante devortium*, 10.]

(55.)[1] § Une femme porta un *Cui ante divortium*, et clama a luy et a son baron et a les heirs de lour deux corps engendrez, et en defaute dissue le remeindre as dreitz heirs la femme, et en le quel le tenant navoit entre si noun par le baron, qe ceo a luy lessa, a qi ele avant la divorce entre eux celebre countredire ne pout.—*Der.* Vous ne devetz accion aver, qar nous vous dioms qe fine se leva entre la femme demandant et celuy son baron, de qi alienacion ele prent son title, dune part, et nous, dautre part, par quele fine le baron conust les tenementz estre nostre dreit, et pur cele reconisance nous rendimes a eux a lour vies, la reversion apres lour decees a nous, et a noz heirs, et ceo puis lalienacion de quei cest accion est conceu ; par quele fine ele resceut estat a sa vie, et la reversion sauve a nous, et par taunt chescun accion de la primere alienacion, de quei laccion est ore pris, esteint ; et demandoms jugement si de nulle alienacion fait en temps avant encountre la fine poetz accion aver.[2]—*Grene.*

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[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 292. It there appears that the *Cui ante divortium* was brought by John son of John de Cranesle, the younger, and Fina his wife, against Simon le Forester, parson of the church of Cransley, and William de Sancto Mauro of Boughton, in respect of 4 messuages, 3 carucates of land, and 36*s.* of rent in Draughton and Thornby (Northants) "quæ "clamant tenere eidem Finæ et "heredibus de corpore suo et "corpore Roberti de Foxtone, "quondam viri sui, exeuntibus, "ex dimissione quam Elias le "White inde fecit eisdem "Roberto et Finæ et heredibus "de corporibus eorundem "Roberti et Finæ exeuntibus, "ita quod, si iidem Robertus et "Fina sine herede de cor-"poribus suis exeunte obirent, "prædicta mesuagia, terra, et "redditus rectis heredibus ip-"sius Finæ remanerent, et in "quæ iidem Simon et Willel-"mus non habent ingressum "nisi post dimissionem quam "prædictus Robertus, quondam "vir ipsius Finæ, cui ipsa ante "divortium inter eos cele-"bratum contradicere non "potuit, inde fecit Eliæ le "White de Draughtone, &c."

[2] The plea was, according to the record, "quod prædicti "Johannes et Fina nihil juris "ipsius Finæ clamare possunt in "tenementis prædictis, dicunt

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A.D. 1346. demand judgment, since you have confessed our husband's alienation, and you have not denied the title in our writ; and in the fine of which you speak you show yourself that the woman never divested herself of the right, but the acknowledgment of right was made entirely by the husband alone, in which case the woman would not have had to express her consent, and the render made back to them does not deprive the woman of the right to have her original action, unless she accepted it after her husband's death; and, since there is no possession alleged to have

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" enim quod alias post dimis-
" sionem in narratione prædic-
" torum Johannis et Finæ sup-
" positam, et seisinam ipsius
" Finæ per dimissionem illam
" de tenementis prædictis habi-
" tam, levavit quidam finis in
" Curia hic . . . . . inter
" prædictos Robertum et Finam,
" tunc uxorem ipsius Roberti,
" querentes, et Eliam le White
" de Draghtone, deforciantem, de
" tenementis prædictis, cum
" pertinentiis, et aliis tenementis
" in prædictis villis, et Skalde-
" welle, in prædicto comitatu,
" scilicet, quod prædictus Ro-
" bertus recognovit tenementa
" prædicta, cum pertinentiis,
" esse jus prædicti Eliæ, ut illa
" quæ idem Elias habuit de
" dono, &c., et pro illa recog-
" nitione, &c., idem Elias con-
" cessit prædictis Roberto et
" Finæ tenementa prædicta,
" cum pertinentiis, et ea eis
" reddidit hic in Curia, habenda
" et tenenda eisdem Roberto et
" Finæ et heredibus de corpori-
" bus ipsorum Roberti et Finæ
" exeuntibus de prædicto Elia
" et heredibus suis in perpetuum,
" reddendo inde per annum unam
" rosam ad Festum Nativitatis
" Sancti Johannis Baptistæ pro
" omni servitio, et faciendo
" inde capitalibus dominis, &c.,
" pro prædictis Elia et heredibus
" suis, alia servitia, &c. Et si
" contigerit quod iidem Robertus
" et Fina obirent sine, &c., tunc,
" post decessum ipsorum
" Roberti et Finæ, prædicta
" tenementa integre reverteren-
" tur ad prædictum Eliam et
" heredes suos, quieta de aliis
" heredibus prædictorum Roberti,
" et Finæ, tenenda de capitalibus
" dominis, &c. Et petunt judi-
" cium, ex quo prædicta Fina
" quæ fuit pars finis prædicti,
" simul cum prædicto Roberto,
" quondam viro suo, et statum
" suum per finem illum accep-
" tavit, et seisinam suam, vir-
" tute finis, &c., post dimis-
" sionem prædictam, et post
" mortem prædicti Roberti, con-
" tinuavit, per quod eadem Fina
" fuit in pristino statu suo, et
" actio de quacumque alia
" seisina vel statu præhabito in
" ipsa extincta, petunt judicium
" si prædicti Johannes et Fina
" de alio titulo juris præcedente
" actionem habere debeant, &c.

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Et nous demandoms jugement, pus qe vous avez conu lalienacion nostre baron, et le title en nostre brief navetz pas dedit ; et en la fine de quei vous parlez vous moustrez mesmes qe la femme ne se demyst unqes de dreit, mes la conisance de dreit fust tut par le baron soulement, en quel cas la femme ne serra pas confesse, et le rendre fait a eux arceremayn ne toude pas a la femme daver sa primere accion, si ele ne se ust agree apres la mort le baron[1] ; et de puis qe il ny ad nulle possessioun A.D. 1346.

[1] The words le baron are omitted from L.

No. 55.

A.D. 1346. been in us since the husband's death, which would oust us from our earlier action, we demand judgment whether you can oust us from our action by that fine.—*Derworthy.* Although no acknowledgment of right was made by you, and although you would not be examined for such a fine, nevertheless, by the render made to you, you were put into your original estate, and thereby any earlier action was extinguished.—WILLOUGHBY. Although the render is made to her by the fine, if she waives the tenancy after the divorce, she is restored to her action; but if she continues in possession when she is sole, that seisin takes away from her any earlier action: for a seisin in her while she was covert, unless that seisin is affirmed in her when she has become sole, does not deprive her of an action, because the whole of that seisin will be adjudged to be the act of the husband, and that will not deprive his wife of an action; therefore have you anything else to say for the tenant?—*Derworthy.* No, Sir, but we demand

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allegge apres la mort le baron en nous, quel nous oustereit de nostre accion damont, nous demandoms jugement si par cele fine nous puissetz de nostre accion ouster.[1]—*Der.* Coment qe nulle conissaunce de dreit fust fait par vous, ne qe vous ne serretz pas examine pur tiele fine, nequident par le rendre fait a vous vous fustes mys en vostre primer estat, et par taunt accion de plus haut esteint.—WILBY. Coment qe le rendre soit fait a luy par la fine, si ele weyve la tenance apres le divorce, ele est restitut a saccion ; mes si ele se tient einz quant ele est sole, cele seisine la toude daccion damount ; qar une seisine en luy quant ele fust coverte, si la seisine ne soit afferme en luy quant ele fust sole, ne lui toude pas daccion, pur ceo qe tote cele seisine serra ajugge le fait le baron, qe ne toudra pas a sa femme accion ; par quei avetz autre rienz a dire pur le tenant ?—*Der.* Sire, nanil, mes demandoms A.D. 1346.

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[1] The replication was, according to the record, "Johannes "et Fina dicunt quod ipsi ab "agendo per finem prædictum "excludi non debent, dicunt "enim quod prædicti Simon et "Willelmus expresso cognov- "erunt dimissionem prædicti "Eliæ prædictis Roberto et "Finæ et heredibus ipsius Finæ, "si obirent sine, &c., prout in "brevi supponitur, et seisinam "inde habitam, et etiam per "finem prædictum expresse pro- "batur alienatio prædicti "Roberti quondam viri, &c., "in hoc quod continetur in "eodem fine quod idem "Robertus cognovit tenementa "prædicta esse jus prædicti "Eliæ ut illa quæ idem Elias "habuit de dono, &c., et per "finem prædictum non pro- "batur aliqua dimissio per præ- "dictam Finam de statu suo "fore factam, eo quod ipsa in "levatione finis, &c., non fuit "examinata seu confessa, nec "de jure, &c., examinari posset, "per quod expresse liquere debet "Curiæ per finem, &c., quod "prædicta Fina non fuit in "pristino statu suo, eo quod "in fine illo minor status tal- "liatur, quæ quidem juris cog- "nitio et alienatio prædicta "tantum adjudicari debent "factum prædicti Roberti, quod "prædictæ Finæ præjudicare "non debet, nec aliqua seisina "postea inde habita, unde "petunt judicium, et seisinam "sibi adjudicari, &c."

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A.D. 1346. judgment as above.—HILLARY. And because you have not alleged any seisin in the woman after the divorce had been celebrated, and the fine of which you speak was on the acknowledgment of the husband, and for that reason the wife would not have had to express her consent, therefore the whole is adjudged to be the act of the husband just as if the wife had not been mentioned in the fine, and therefore the COURT gives judgment that the woman do recover, &c.

Cui ante divortium. § A woman brought a *Cui ante divortium* against a man, and took her title in her writ in the words *quam clamat tenere sibi*, and to one J.[1] heretofore her husband, and to the heirs issuing from their bodies, by the gift of one B.; [1] and she supposed that the tenant had not entry but by one J. heretofore her husband, who demised the tenements to him, and whom she could not oppose before the divorce between them had been celebrated.—*Derworthy.* We tell you that a fine was levied between her husband and her of the one part, and one T.[2] of the other part, in the nineteenth year of the reign of King Edward the father of the present King, by which fine the woman's husband acknowledged the tenements to be the right of T. as those which T. had of his gift, and for that acknowledgment T. granted and rendered the same tenements to the husband and to this woman who is now demandant, who was at that time his wife, to have and to hold for their two lives, by virtue of which render they were seised, and the remainder was limited over to another, and we demand judgment

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

[2] As to the name, *see* p. 73 note 2.

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jugement *ut supra*.[1]—Hill. Et pur ceo qe vous navetz allegge nulle seisine en la femme apres le divorce celebre, et la fine de quei vous parletz fust sur la conissaunce le baron, et par taunt la femme ne serra pas confesse, par quei [tut est ajugge le fait le baron come si la femme nust pas este nome en la fine,][2] par quei la Court agarde qe la femme recovere, &c.[3] A.D. 1346.

§[4] Une femme porta *Cui ante divortium*[6] vers un homme, et prist soun title en soun brief *quam clamat tenere sibi*, et a un J., jadis soun baroun, et a les heirs de lour corps issauntz, del doun un B.; et supposa qe le tenant navoit entre si noun par un J., jadis soun baroun, qe ceo luy lessa, a qi ele avant le divors[7] entre eux celebre countredire ne pout.—*Der.* Nous vous dioms qe fine se leva entre soun baroun et luy, et un T., lan xix[e] del Roi E. le pere, par quel fine le baroun la femme conissant les tenementz estre le dreit T. come ces qe T. avoit de soun doun, et pur cele reconissaunce T. graunta et rendi mesmes les tenementz al baroun et a ceste femme qore demande, qe a cel temps fuit sa femme, a aver et tener a lour deux vies, par quel rendre ils furent seisiz, et le remeindre outre a autre, et demandoms juggement[8] si de nulle estat de *Cui ante divortium*.[5]

[1] According to the record, after the replication, "prædicti "Simon et Willelmus non "dedicunt dimissionem prædic- "tam ante levationem finis "prædicti esse factum prædictis "Roberto et Finæ et heredibus "ipsius Finæ, si, &c., nec "seisinam ipsius Finæ per "dimissionem illam ante leva- "tionem finis, &c., et per finem "illum statui prædictæ Finæ "non debet præjudicare."

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

[3] The judgment as it appears on the roll is "Ideo consider- "atum est quod prædicti Jo- "hannes et Fina recuperent "inde seisinam suam versus "eos, et prædicta Simon et Wil- "lelmus in misericordia, &c."

[4] This report of the case is from L. and C.

[5] The words *ante divortium* are added in a later hand in both MSS.

[6] L., *in vita* instead of *ante divortium*. The words *ante divortium* are written on an erasure, and in a later hand in C.

[7] L., devors fait.

[8] juggement is omitted from I

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A.D. 1346. whether you can have an action in respect of any earlier estate. And *Derworthy* made *profert* of a part of the fine.—*Grene.* You see plainly that he has not denied that we were, at one time, seised of an estate of fee tail to hold to our husband and us, and the fine which you have alleged, by which the land is supposed to be rendered to us for term of our two lives, was the act of our husband, and not our act, and we were not examined with regard to that fine, and no acceptance of the second estate has been fixed upon us, and therefore we demand judgment, and pray seisin of the land.—*Derworthy.* We have alleged that, since the first seisin which you had, you took an estate by fine, and so by law you were in your first estate, and so any action on the first alienation is extinguished; therefore, since you have not denied that, we demand judgment whether you can have any action.—WILLOUGHBY. It cannot be true that she is in her first estate by the render, for in that case the estates of those who are in remainder would be defeated, which would not be right.—HILLARY. You have not alleged anything except only that the husband and wife took an estate by fine for the term of their two lives, and that was the act of the husband, and not at all the act of the woman; and she cannot have consented to that fine, and so you cannot by law cause any disherison to a feme covert by a fine unless she has expressed her consent; and, if she had not any action in respect of the earlier estate, it would then follow that by the fine, with regard to which she was not examined, she would suffer disherison, for the render was made so as to cause mischief to the estate of the others who were in remainder, and therefore she was only in such estate as was rendered by the fine, and with respect to that estate no acceptance has been affirmed in her, and therefore this COURT gives judgment that she do recover her seisin.

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plus haut poietz accion aver. Et mist avant partie de la fine.—*Grene.* Vous veietz bien coment il nad pas dedit qe nous fuimes[1] seisi, a un temps, de estat de fee taille a nostre baroun et nous, et la fine qe vous avietz allegge, par quele la terre duist estre rendu a nous a terme de nos deux vies si fuit le fait nostre baroun, et ne mye nostre fait, et par quele fine nous ne fumes examine, et nulle agrement del secounde estat ad attache sur nous, par qai nous demandoms juggement, et prioms seisine de terre.—*Der.* Nous avoms allegge qe puis la primere seisine qe vous avietz qe vous preistes estat par fine, issint par ley vous fuistes en vostre primer estat, issint accion de la primere alienacion esteint ; par qai, de puis qe vous navietz pas dedit cella, nous demandoms jugement si vous poietz accion aver.—Wilby. Ceo ne poet mye estre qele soit en soun primere estat par le rendre, qar donqes serreint[2] les estates de ces en le remeindre defetes, qe ne serreit mie resoun.—Hill. Vous navietz rien allegge forqe soulement qe le baroun et la femme pristrent estat par fine a terme de lour deux vies, quel fuit le fait le baroun, et rien le fait la femme ; et a cel fine ele ne poet mie estre confes, issint qe par ley vous ne poietz nient desheriter une femme covert par une fine si ele ne fuit confes ; et, si ele navoit mye accion del estat plus haut, donqes ensuereit qele par la fine, a quele ele ne fuit mye examine, qele serreit desherite, qar il est rendu pur le meschief destat des autres en le remeindre, par qai ele ne fuit forqen tiel estat qe fuit rendu par la fine, et de cel estat nulle agrement est afferme en luy, par qai ceste Court agarde qele recovere sa seisine. A.D. 1346.

[1] C., fuimes pas.

[2] I., serrount.

No. 56.

A.D. 1346. *Cessavit.*

(56.) § A *Cessavit* was brought in respect of an acre of land in Burgh "*juxta*" Wainfleet, and another *Præcipe* was brought against another person in respect of an acre of land "*in eadem villa*."—*Skipwith.* You see plainly how in the first *Præcipe* he has demanded land in Burgh *juxta* Wainflete, supposing by the word "*juxta*" that Wainfleet is a vill; and in the second *Præcipe* he demands land "*in eadem villa*," and does not determine whether in Burgh or in Wainfleet; judgment of the writ.—*Richemunde.* It cannot be understood that the demand in the second *Præcipe* is in any other vill but in the same vill in which the demand in the first *Præcipe* is supposed to be; and moreover there is no word in the writ which supposes Wainfleet to be a vill, for the word *juxta* may refer to something other than a vill; therefore it seems that my writ is good.—*Sharshulle.* It is not so: for I saw a writ brought in L. *juxta* R., and the tenant said that R. was not a vill, but was a wood, and demanded judgment of the writ, and for that cause the writ abated; for *juxta* always refers to a vill, and *sub* refers to a wood or a mountain, and *super* refers to water; therefore, since it is supposed by the word *juxta* that Wainfleet is a vill, the words "*in eadem villa*" might refer as well to Wainfleet as to Burgh, if the matter were not declared more distinctly.—Wilby, *ad idem.* In the first *Præcipe* you have demanded land in Burgh *juxta* Wainfleet, supposing, as has been said, that Wainfleet is a vill, and in your second *Præcipe* you demand land "*in eadem villa*," which words can only refer to the last vill previously named, and that is Wainfleet, and therefore it seems that the writ is abatable.—

No. 56.

A.D. 1346. *Cessavit.* [Fitz., *Briefe* 371.]

(56.)[1] § Un *Cessavit* fust porte dune acre de terre en "*Burgh juxta Waynflete*,[2] et un autre *Præcipe* porte vers un autre dune acre de terre "*in eadem villa*."—*Skip.* Vous veietz bien comment en le primer *Præcipe* il ad demande terre en "*B. juxta W.*," supposant par le "*juxta*"[3] W. estre ville; et en le seconde *Præcipe* il demande terre "*in eadem villa*," et ne determine pas le quel en B. ou en W.; jugement du brief.—*Richm.* Il ne poet estre entendu qe la demande en le secunde *Præcipe* soit en autre ville mes en mesme la ville en quele la demande en le primer *Præcipe* est suppose; et auxi il nad nulle parole de brief qe suppose W. estre ville, qar le "*juxta*" poet referer a autre qe a ville; par quei il semble qe mon brief est bon.[4]—SCHARS. Il nest pas issi: qar jeo vy un brief porte en "*L. juxta R.*," et le tenant dit qe R. ne fust pas ville, mes fust boys, et demanda jugement de brief, et par cele cause le brief abatist; qar "*juxta*" refiert touz jours a ville, et "*sub*" refiert au boys et a montaigne, et "*super*" refiert a ewe; par quei, puis qe par le "*juxta*" est suppose qe W. est ville, cele parole "*in eadem villa*" purra auxi bien referrer a W. come a B., sil ne fust desclarre plus proprement.—WILBY, *ad idem.* En le primer *Præcipe* vous avetz demande terre en "*B. juxta W.*" supposant, come est parle, W. estre ville, et en vostre secunde *Præcipe* vous demandez terre "*in eadem villa*," qe ne poet referer mes al darrein ville nome devant, et cest W., par quei &c. il semble qe le brief est abatable.—

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[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 295. It there appears that the action was brought by John de Cokryngton against Richard Betesone of Burgh, chaplain, in respect of one acre of land in "Burgh juxta Waynflete" (Lincolnshire) holden by fealty and the service of one halfpenny per annum. There is no mention of a second *Præcipe* against another tenant in respect of another acre.

[2] MSS. of Y.B. Waynfelde.

[3] I., par quei il suppose, instead of supposant par le "*juxta*."

[4] I., assetz bon.

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A.D. 1346. But HILLARY, STOUFORD, and KELSHULLE were of opinion that the writ was good, because the demand in the second *Præcipe* could only be understood to be in the same vill in which the demand in the first *Præcipe* was. — But nevertheless WILLOUGHBY and SHARSHULLE were minded to abate the writ.—Therefore *Richemunde* said that the tenant had taken a *Prece partium* with him, thus affirming the writ to be good, and therefore the tenant could not be admitted now to plead in abatement of the writ.—*Skipwith.* A *Prece partium* may well affirm a writ to be good, so that I shall not afterwards be able to allege non-tenure, but I cannot affirm his demand in any particular by a *Prece partium*, when his writ does not determine it.—SHARSHULLE. You can as much affirm the writ with regard to the one point as to the other; therefore answer.—*Skipwith.* We say that, pending this writ, the demandant has taken a distress in the same land for our fealty, of which he is seised this day; and we demand judgment of the writ.—*Richemunde.* That is tantamount to saying that the land is open to our distress.—WILLOUGHBY. No; if he were to allege that it is open to your distress, that would be to suppose that it is so open this day, and that he cannot say, but he alleges your own act in that you took a distress, pending your writ, which, without any question of the land being open to distress, he now alleges to abate your writ; therefore will you maintain your writ or not?—*Richemunde.* Ready, &c., that we did not take any distress while our writ was pending.—And upon that they were

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Mes Hill., Stouf. et Kels. furent en opinion qe le brief est bon, pur ceo qe la demande en le secunde *Præcipe* ne poet estre entendu mes en mesme la ville dount la demande en le primer *Præcipe* fust.—Mes nequident Wilby et Schars. furent en purpos daver abatu le brief.—Par quei *Rich.* dit qil avoit pris un *Prece partium* od luy, affermant le brief bon, par quei il navendra pas a ore de pleder en abatement de brief.—*Skip.* *Prece partium* poet bien affermer un brief qe jeo nalleggeray pas nountenure, mes jeo ne puisse affermer sa demande en nulle certeine par un *Prece partium* puis qe son brief ne le determine pas.—Schars. Si poetz auxi bien affermer le brief quant al un point come al autre; par quei responez.—*Skip.* Nous dioms qe, pendant cest brief, le demandant ad pris un destresse en mesme la terre pur nostre fealte,[1] de la quele il est seisi huy ceo jour; et demandoms jugement du brief.[2]—*Richm.* Taunt amounte qe overte a nostre destresse.—Wilby. Nanil; sil allegeast qe overt a vostre destresse, ceo serreit a supposer qe ele fust overte huy ceo jour, quel il ne pout dire, mes il allegge vostre fait demene qe vous preistes une destresse, pendant vostre brief, quel, saunz overture, a ore allegge abatre vostre brief; par quei voletz meyntener vostre brief ou nent?—*Richm.* Qe nous ne preismes nulle destresse pendant nostre brief prest, &c.[3]—Et sur ceo furent a issue.—Mes

A.D. 1346.

[Fitz., *Cessavit*, 33.]

[1] H., foialte.

[2] Richard's plea was, according to the record, "quod "prædicta terra versus eum "petita non est nisi medietas "unius acræ terræ tantum. Et, "non cognoscendo quod ipse "tenet terram illam de prædicto "Johanne per prædicta servitia, "immo per fidelitatem et ser-"vitium quartæ partis unius "denarii per annum tantum, "dicit quod prædictus Johannes, "post brevе suum prædictum "impetratum, cepit quandam "districtionem de prædicto "Ricardo pro servitiis prædictis, "de qua quidem districtione "idem Johannes adhuc seisitus "est, et hoc paratus est veri-"ficare, unde petit judicium de "brevi, &c."

[3] The replication, upon which issue was joined, was, according to the record, "Johannes dicit "quod ipse non cepit aliquam "districtionem de prædicto "Ricardo, pro servitiis prædictis, "post brevе suum impetratum, "sicut prædictus Ricardus "superius asserit."

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A.D 1346. at issue.—But *Skipwith* made a protestation with regard to the quantity of the services, and also with regard to the quantity of the tenancy, and both protestations were entered.

Præcipe. § A man brought a writ against another, and demanded against him two acres of land in Burgh "*juxta*" Wainfleet, and there was another *Præcipe* against another, and the demand in that was of two acres of land "*in eadem villa.*"—*Skipwith* demanded judgment of the writ, because he demanded against one man two acres of land in Burgh "*juxta*" Wainfleet, and in another *Præcipe* he demanded against another two acres of land "*in eadem villa,*" and did not specify particularly in which vill; judgment of his writ, because his writ should be in the words "*in eadem villa de Burgh.*"—*Huse.* The writ is good and definite enough, for when it demands against one person two acres in Burgh "*juxta*" Wainfleet, the last two words are only an addition to Burgh, so that the demand is in Burgh; and therefore, when the subsequent words of the writ are "command the other that he render to the demandant two acres of land *in eadem villa,*" they can only be understood to mean in the vill in which the other two acres are previously demanded against the other person, so that the writ is sufficiently definite; and, if the two acres had been in Wainfleet, then the words of the writ should have been "*duas acras terræ in Waynflete,*" and never "*in eadem villa,*" because the latter words suppose that the two acres are in the vill in which the first demand is made.—WILLOUGHBY. When you demand two acres of land in Burgh "*juxta*" Wainfleet against one person, it is then supposed that each of them is a vill by itself, and therefore when you demand against another person, by another *Præcipe*, two acres of land "*in eadem villa,*" having previously supposed Burgh and Wainfleet to be two vills, and named them as two vills, it cannot be known in which of those two vills the

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Skip. fist protestacion sur le quantite des services, et auxi sur la quantite de la tenance, et lune protestacion et lautre furent entrez.[1] A.D. 1346.

§ [2] Un homme porta un brief devers un autre, et demanda devers luy ij acres de terre en "*Burgh*[3] *juxta Waynflete*," et il y avoit un autre *Præcipe* vers un autre, et demanda ij acres de terre "*in eadem villa*."—*Skip.* demanda jugement du brief, qar il demande vers un homme ij acres de terre en "*Burgh*[3] *juxta Waynflete*," et en un autre *Præcipe* il demande vers un autre ij acres de terre "*in eadem villa*," et ne dit mie en quele ville en certein; jugement de soun brief, qar soun brief serreit "*in eadem villa de Burgh.*"[3]—*Huse.* Le brief est assetz bone en certein, qar quant il demande vers une persone ij acres en "*Burgh*[3] *juxta Waynflete*" ceo nest forqune adjeccion a Burgh,[3] issint qe la demande est en Burgh[3]; et donqes, quant le brief voet apres *Præcipe* a lautre qil rende a luy ij acres de terre "*in eadem villa*," ceo ne poet autre estre entendu forqen la ville ou les autres ij acres sount demandetz devant devers lautre persone, issint qe le brief est assetz en certein; et, si les ij acres fuissent en Waynflete, donqes dirreit le brief "*duas acras terræ in Waynflete*," et jammes "*in eadem villa*," qar ceo suppose qils sount en la ville ou la primere demande est fait.—Wilby. Quant vous demandetz les ij acres en "*Burgh*[3] *juxta Waynflete*" vers lune persone, donqes est il suppose qe lun et lautre est ville a per luy, et donqes quant vous demandetz vers autre persone, par un autre *Præcipe*, ij acres de terre "*in eadem villa*," ceo qils ount suppose deux villes adevant, et deux nomes, homme ne poet saver en quele de ceux *Præcipe.*

[1] As to this *see* p. 85 note 2. The *Venire* was awarded after issue joined, and there were two adjournments, but nothing further appears on the roll.

[2] This report of the case is from L. and C.

[3] MSS. of Y.B., Burtone.

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A.D. 1346. land is ; but, if it had not been previously supposed in the first *Præcipe* that each of them is a vill, your writ would then be good, for then the writ would be definite.—SHARSHULLE. There are three words *juxta*, *subtus*, and *super*. *Juxta* signifies that one vill is *juxta*, next or by such another vill, and *subtus* is applied to a hill or mountain, and *super* to water, so that by the word *juxta* both Burgh and Wainfleet are supposed to be vills ; and the words of the writ are "*in eadem villa*," and, as two vills are named, it cannot be known in which vill the land is, and therefore consider whether you will say anything else to maintain your writ.—*Huse*. We tell you that the tenant has taken a *Prece partium* with us, and so he has affirmed our writ to be good ; judgment whether he shall be admitted to abate our writ.—And afterwards they were ousted from their exeeption.

Statute Merchant. (57.) § One sued execution upon a statute merchant, and had a writ to extend the debtor's lands, and deliver them to the obligee. And now the Extent of the lands was returned, and it was returned also that the sheriff had delivered the lands to the plaintiff.—And the plaintiff said, by *Grene*, that the debtor was dwelling in another county, and prayed a *Capias* directed to the Sheriff of that county.—HILLARY. You shall not have it, for you have execution of his lands.—*Grene*. It is ordained by the Statute[1] that his body shall remain in prison until I have seen the money, even though I have execution of the land.—SHARSHULLE. That is to be understood to mean in cases in which his body has been taken before execution has been had of his lands ; for if you had come to the Sheriff when he desired to make livery of the lands to you, and had refused the livery until you had the body of the obligor in prison, you would have done well ; but, since you elected to have execution of his lands, I cannot see how you can now have a *Capias* to take his body.

[1] 13 Edw. I. (*De mercatoribus.*)

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deux villes la terre est ; mes, sil ne fuit mie suppose devant en lautre *Præcipe* qe lune et lautre serreit ville donqes vostre brief serreit bone, qar adonqes fuit le brief en certein.—SCHAR. Il y ad *juxta*, *subtus*, et *super*. *Juxta* signifie ville *juxta* tiele ville, et *subtus montem*, et *super aquam*, issint qe par le *juxta* est suppose lune et lautre ville ; et le brief voet "*in eadem villa*," et deux villes sount nomes, homme ne poet saver en quele ville la terre est, par qai veietz[1] si vous voilletz autre chose dire de meintener vostre brief.—*Huse*. Nous vous dioms qil ad pris un *Prece partium* ovesqe nous, issint ad il afferme nostre brief bone ; jugement sil avendra dabatre nostre brief.—Et puis fuit ouste del chalenge. A.D. 1346.

(57.)[2] § Un suist execucion hors dun estatut merchant, et avoit brief a estendre les terres, et de les luy livrer. Et a ore lestente des terres fust retourne, et auxi qe il avoit livre les terres al pleintif.—Et le pleintif, par *Grene*, dit qe le conissour fust demurant en autre counte, et pria le *Capias* al Vicounte de cele counte.—HILL. Vous nel averetz pas, qar vous avetz execucion de ses terres.—*Grene*. Par lestatut est ordine qe son corps demura tanqe jeo eye veu les deners, mesqe jeo ay execucion de la terre.—SCHARS. Ceo est a entendre la ou son corps est pris avant execucion faite de ses terres ; qar si vous ussetz venu al Vicounte quant il vous ust volu aver fait la livre des terres, et aver refuse la livre tanqe vous ussetz le corps le conussour en prisone, vous ussez bien fait ; mes, puis qe vous eslustes daver execucion de ses terres, jeo ne say pas veer coment vous averetz a ore un *Capias* a prendre son corps. Statut marchant,[3] [Fitz., *Execucion*, 84.]

[1] Veietz is omitted from C.
[2] From H. and I.
[3] The word marchant is from H. alone.

No. 58.

A.D. 1346. Annuity.

(58.) § The Prior of the Hospital of St. John of Jerusalem in England brought a writ of Annuity against the Abbot of St. Edmund, and counted, by *Grene*, that one Osbert, his predecessor, granted the annuity to the Master of the Templars and to the Brethren of the same House and to their successors for ever by a deed, of which he made *profert*, and that, after the dissolution of the Order of the Templars, it was ordained in the Parliament holden at Westminster on the Monday next after the Feast of St. Michael in the third year of the reign[1] that all the possessions which belonged to the Templars should be delivered to the Hospitallers, in virtue of which ordinance the Prior was seised of this annuity until ten years before the writ was purchased.—*Rokele*. Whereas they have said that the ordinance was made at the Feast of St. Michael,[2] we say that this ordinance was made in Lent next afterwords; judgment of the count.—*Grene*. What I have said respecting the time of the ordinance is not in any

[1] The statute is 17 Edw. II., St. 2 in the Statutes of the Realm, or St. 3 in Ruffhead.

[2] See below p. 96 note 1.

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(58.)[1] § Le Priour del Hospital[2] de Seynt Johan de Jerusalem Dengleterre porta brief Dannuyte vers Labbe de Seynt Esmound, et counta, par *Grene*, qun Otes,[3] son predecessour, granta cele annuyte al Mestre des Templers et a les freres de mesme la mesoun et a lour successours a touz jours par un fait, qil myst avant, et, apres la defesaunce del ordre des Templers, al parlement tenu a Westmestre le lundy proscheyn apres la feste de[4] Seynt Michel lan terce, ordine fust qe touz les possessiouns qe furent as Templers serront livres as Hospitelers, par quele ordinaunce le Priour fust seisi de ceste annuite tanqe x[5] auns devant le brief purchace.[6]—*Rokel.* La ou il ont dit qe lordinance fust fait a la feste de[4] Seynt Michel, nous dioms qe cele ordinance se fist al Quaresme proschein apres; jugement de counte.—*Grene.* Ceo qe jay parle del temps del ordinance nest rienz de la substance del

A.D. 1346. Annuyte. [Fitz., *Annuite* 33.]

[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 318, d. It there appears that the action was brought by the Prior of the Hospital of St. John of Jerusalem in England against "Willelmus Abbas de Sancto "Edmundo" in respect of arrears of an annuity of 13*s.* 4*d.*

[2] I., Ospital.

[3] I., Odes.

[4] The words feste de are omitted from H.

[5] MSS. of Y.B., xx.

[6] The count or declaration was, according to the record, "quod, cum quidam Osbertus, "quondam Abbas de Sancto "Edmundo, prædecessor istius "Abbatis, die Lunæ proxima "post Festum Paschæ anno "regni domini Henrici Regis "proavi domini Regis nunc "secundo, apud villam de "Sancto Edmundo, assensu et "consilio Conventus sui, con-"cessisset Fratribus de Templo "Jerusalem prædictum an-"nuum redditum tresdecim "solidorum et quatuor denari-"orum percipiendum annuatim "sibi et successoribus suis ad "Festum Sancti Michaelis "Archangeli, virtuto cujus "concessionis Magister Militiæ "Templi qui tunc fuit seisitus "fuit de prædicto annuo red-"ditu ut de jure Militiæ Templi "prædicti per manus prædicti "Osberti quondam Abbatis, "&c., prædecessoris, &c. Et "idem Magister Militiæ Templi "et successores sui, &c., seisiti "fuerunt de prædicto annuo red-"ditu per manus prædicti "Osberti quondam Abbatis et

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A.D. 1346. way of the substance of the plea; for if I allege a record of the 10th year, and we are at issue as to whether there is such a record or not, and I cause to be produced a record of the twelfth year, that is sufficient, because the record is of equal force whether it be of one year or of another; and for the same reason, since you are apprised that there is such an ordinance, the question whether it was ordained on one day or another is nothing

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" successorum suorum Abbatum " &c., usque cessationem et " adnullationem Ordinis Militiæ " Templi prædictæ, post quas " quidem cessationem et ad- " nullationem dominus Edwar- " dus nuper Rex Angliæ, pater " domini Regis nunc, in par- " liamento suo tento apud " Westmonasterium [*blank space* " *in roll*] anno regni sui " decimo septimo assensu pro- " cerum Comitum Baronum et " aliorum regni sui, concessit, " statuit, et ordinavit quod " omnia terræ, tenementa, " dominia, feoda, ecclesiæ, ad- " vocationes ecclesiariam, liber- " tates, redditus, et servitia quæ- " cumque, cum omnibus ad ea " qualitercumque spectantibus, " quæ fuerunt prædictorum " Templariorum tempore ces- " sationis et adnullationis præ- " dictarum in manum prædicti " domini Regis patris, &c., " seisirentur, et, post hujusmodi " seisinam, ut præmittitur, habi- " tam, Priori et Fratribus Hos- " pitalis Sancti Johannis Jeru- " salem in Anglia liberarentur, " sibi et successoribus suis in per- " petuum remansura, virtute " cujus statuti idem dominus " Rex pater, &c., seisivit præ- " dictum annuum redditum, " una cum aliis terris et tene- " mentis, &c., quæ fuerunt præ- " dictorum Templariorum tem- " pore cessationis et adnulla- " tionis prædictarum, et reddi- " tum illum cuidam Leonardo " de Tibertio quondam Priori " Hospitalis, &c., prædecessori " istius Prioris, liberavit ten- " endum secundum formam " statuti prædicti, &c., qui qui- " dem Leonardus, post libera- " tionem prædictam, seisitus " fuit de prædicto annuo red- " ditu per manus cujusdam " Ricardi nuper Abbatis, &c., " prædecessoris istius Abbatis, " &c., usque decem annos ante " diem impetrationis brevis, " &c., ... quod præ- " dictus Willelmus nunc Abbas " redditum illum subtraxit, et " illum reddere contradixit, et " adhuc contradicit, unde dicit " quod deterioratus est et " damnum habet ad valentiam " quadraginta librarum. Et " inde producit sectam, &c. Et " profert hic in Curia quod- " dam scriptum sub nomine " prædicti Osberti quondam Ab- " batis, &c., quod prædictum " annuum redditum testatur, " &c."

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plee ;[1] qar si jeo allegge un recorde del an x., et nous soioms a issue le quel il y ad tiel recorde ou nient, et jeo face venir un recorde del an xii., il suffit, pur ceo qil est de owel force soit il un an ou autre ; et par mesme la resoun, puis qe vous estes apris qil y ad tiele ordinance, soit ceo A.D. 1346.

[1] The words del plee are omitted from I.

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A.D. 1346. to the purpose.—Therefore the count was adjudged to be good.—*Rokele.* Again you see plainly how he has counted that one Osbert, our predecessor, is supposed to have granted the annuity by the deed of which he makes *profert*, and in the deed there is not any name mentioned except in the words "O. *permissione divina Abbas*," *&c.*, and so his count is not warranted by the specialty; judgment of the count.—*Grene.* That plea is to the action, for we cannot maintain any count by words in accordance with the specialty; but since we have surmised that the person who executed the deed had "Osbert" for his name, which you do not deny, judgment whether, &c.—*Pole.* Since your action is maintained by a specialty, you must follow the words of the specialty; now this specialty does not prove that Osbert granted the annuity any more than that Oliver did; therefore, since there is no definite name in the specialty, you cannot, by surmising what is outside the specialty, surmise that which is wanting in the specialty.—WILLOUGHBY. Then you can abide judgment on that point at the peril which follows, for if we give judgment on that point, you will not have any other answer, and therefore consider.—*Pole.* Then we say that, whereas he has supposed that he was seised of the annuity after the ordinance, we tell you that he was not seised after the ordinance; ready, &c. And so we tell you that he would have a *Scire facias* in accordance with the statute[1] as in respect of a matter not executed by the ordinance, and we demand judgment of this writ.—*Grene.* Ready, &c., that the

[1] 13 Edw. I. (Westm. 2), c. 45.

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ordine un jour ou autre, ceo nest rienz a purpos.—Par quei le counte fust agarde bon.—*Rokel.* Unquore vous veietz bien coment il ad counte qun Otes,[1] nostre predecessour, dust aver graunte lannuite[2] par le fait qil [mette avant, et en le fait il]³ny ad nul noun mes par ticles paroles 'O. *permissione divina Abbas, &c.,*' et issi son counte nient garranti del especialte; jugement de counte.—*Grene.* Ceo est al accion, qar nous ne poms nul counte meyntener par paroles acordant al especialte; mes puis qe nous avoms surmys qe celuy qe fist le fait avoit a noun Otes,[1] quel vous ne deditez pas, jugement si &c.—*Pole.* Quant vostre accion est meyntenu par especialte, il vous covent pursuir[4] lespecialte; ore lespecialte ne prove nient plus qe Otes[1] graunta qe Oliver; par quei, puis qil ny ad nul noun en certein en lespecialte, par surmise dehors ne poetz ceo qe faut en lespecialte surmettre.—Wilby. Donqes poetz vous demurer la a peril qappent, qar si nous juggeoms cele vous averetz nul autre respons, par quei avisetz vous.—*Pole.* Donqes dioms qe la ou il ad suppose qil fust seisi del annuite puis lordinance, la vous dioms qil ne fust pas seisi puis lordinance; prest &c. Et issi vous dioms qil avereit un *Scire facias* par lestatut come de chose nient execut par lordinance, et demandoms jugement de ceo brief.[5]—*Grene.* Qe le Priour fust seisi del annuite puis A.D. 1346.

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[1] I., Odes.

[2] lannuite is omitted from I.

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

[4] I., suyre.

[5] The plea was, according to the record: "Abbas, . . . non "cognoscendo quod prædictus "Osbertus fuit prædecessor suus, "nec quod prædictum scriptum "sit factum prædecessoris sui, "nec quod Fratres Militiæ Tem-"pli fuerunt seisiti de redditu "illo usque ad adnullationem "ordinis prædicti, dicit quod, "ubi prædictus Prior in nar-"rando supponit prædictum "dominum Edwardum Regem, "patrem, &c., seisisse prædictum "annuum redditum in manum "suam, et redditum illum "liberasse prædicto Leonardo "quondam Priori prædecessori, "&c., et quod idem Leonardus "fuit seisitus de redditu illo, "&c., dicit quod prædictus "dominus Edwardus Rex, pater, "&c., non seisivit prædictum "annuum redditum in manum "suam, et quod prædictus

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A.D. 1346. Prior was seised of the annuity after the ordinance.—And the other side said the contrary.

Annuity. § The Prior of St. John of Jerusalem in England brought a writ of Annuity against a parson, and counted that the defendant tortiously detained from him the arrears of an annuity of one hundred shillings. And he counted that one E., the defendant's predecessor, with the consent of the Ordinary of the place, and of his patron, granted the same annuity to the Master of the Templars, to hold to him and his successors for ever (and he made *profert* of the deed of grant) and that afterwards the Order of the Templars was dissolved. And he counted that, three weeks after the Purification of our Lady[1] in the seventeenth year of King Edward the father of the present King, it was ordained in Parliament that the Hospitallers were to have to them and to their successors for ever all the lands and tenements, fees, and advowsons, and possessions which had belonged to the Templars on the day of the dissolution of the Order of the Templars. And he counted that, by virtue of that ordinance, three of his predecessors, Masters of the Hospital, had been seised of the annuity until ten years before the purchase of the writ, when the parson had withdrawn it, &c.—*Huse.* Whereas they have said that their predecessors have been seised of this annuity since the dissolution of the Order of the Templars, we tell you that his predecessors were never seised after the dissolution; ready, &c.—

" Leonardus quondam Prior,&c., " prædecessor, &c., non fuit " seisitus de eodem annuo red- " ditu post adnullationem or- " dinis prædicti Fratrum Militiæ " Templi, &c. Et hoc paratus " est verificare, unde petit judi- " cium si ad istud breve, quod " est ad communem legem, " debeat respondere, &c."

[1] This is the date mentioned in the statute itself.

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lordinaunce, prest, &c.[1]—*Et alii e contra.* A.D. 1346.

§ [2]Le Priour de Seint Johan de Jerusalem en Engleterre si porta brief Dannuite vers une persone, et counta qa tort luy detient les arrerages dun annuite de c.*s.* Et counta qun E., soun predecessour, par assent del Ordeigner del lieu, et de soun patroun, si graunta mesme lannuite al Mestre de les Templers, a luy et a ses successours a touz jours,et mist avant fait del grant,et puis lordre des Templers fuit defait. Et counta qe, a iij symaignes de la Purificacion de notre Dame lan xvij le Roi E. pere le Roi qore est, ordeigne fuit en Parlement qe les Hospitalers si dussent aver a eux et a lour successours a touz jours touz les terres et tenementz, fees, et avoesoums, et possessions qe furent a les Templers jour de la defesaunce del ordre des Templers, et par quele ordinance il counta qe iij de ses predecessours Mestres del Hospital si avoint este seisiz tanqe a x.[3] aunz avant le brief purchace qe la persone lavoit sustret, &c.—*Huse.* La ou ils ount dit qe lour predecessours ount este seisiz de ceste annuite puis la defesaunce des Templers, nous sous dioms qe ses predecessours ne furent unqes seisiz puis la defesaunce ; prest, &c.— Annuite.

[1] The replication, upon which issue was joined, was, according to the record, "Prior dicit quod "prædictus Abbas non dedicit "quin prædictum scriptum sit "factum prædecessoris sui, nec "quod Fratres ordinis Militiæ "Templi fuerunt seisiti de præ-"dicto annuo redditu ante ad-"nullationem ordinis prædicti, et "per adnullationem illam in jure "intelligi debet seisina domini "Edwardi Regis patris, &c., de "prædicto annuo redditu sicut et "de aliis terris et tenementis quæ "fuerunt ipsorumTemplariorum, "&c. Et, ubi prædictus Abbas "superius in responsione dicit "quod prædictus Leonardus "quondam Prior Hospitalis, &c., "prædecessor, &c., non fuit "seisitus de prædicto annuo "redditu post adnullationem "prædicti ordinis prædictorum "fratrum Militiæ, dicit quod "idem Leonardus quondam "Prior Hospitalis, &c., præ-"decessor, &c., fuit seisitus de "eodem annuo redditu post "adnullationem prædictam "sicut ipse in narrando superius "asserit."

The award of the *Venire*, but nothing further, appears on the roll.

[2] This report of the case is from L. and C.

[3] L., ij ; C., deux.

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A.D 1346 And the other side said the contrary.—And so note that they could not claim this annuity, without seisin, by virtue of the ordinance, because without seisin they could not be assignee of the annuity any more than of a rent charge.—The case of the Prior of Boxgrave in Michaelmas[1] Term in the third year of the reign of the present King is in accordance with this.

Account. (59.) § A man of Coventry brought a writ of Account in respect of receipt of money had within the town, and he had counted thereon. And also land was demanded within the same town by other parties by another original writ. And after the demandant in the latter action had counted, and the tenant had defended, the Moyor and Bailiffs of Coventry came and demanded cognisance of the pleas, and showed how the King had granted to Queen Isabella that her tenants of her manor of Cheylesmore, within the precinct of which manor the town of Coventry is, should have a community among them, and also a Mayor and Bailiffs to be elected from among themselves, and also cognisance of all manner of pleas arising out of anything done within the precinct of the manor. And these franchises were granted to the Queen for term of her life, with remainder to the Prince of Wales and his heirs for ever. And they said that the Queen had granted the same franchises to them, and that the King himself had by his charter granted and confirmed the same grant. And they made *profert* of this charter of confirmation, and of a writ to allow the cognisance, without anything more, and they prayed cognisance of the said pleas.—*Pole.* You have here the Earl of Lancaster, and divers other lords of the county of Warwick, in which the tenements are, by attorney made by writ of the Chancery, and they

[1] If this reference is to a reported case, it appears to be incorrect.

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Et alii e contra.—Et sic nota qils ne purrount mye clamer ceste annuite, saunz [seisine], par lordinance, pur ceo qe sanz seisine ils ne purrount mie estre assigne del annuite nient plus qe dune rente charge.—*Cum hoc concordat* le Priour de Bosegrave, *Michaelis tertio Regis nunc.* A.D. 1346.

(59.)[1] § Un homme de Coventre porta un brief Dacompte de resceite fait deinz la ville, et avoit counte.[2] Et auxi terre fust demande deinz mesme la ville par autres parties par un autre original. Et apres qe le demandant avoit counte, et lautre avoit defendu, le Meire et les Baillifs de Coventre vindrent et demanderent la conisance [des plees, et moustrerent coment le Roi avoit graunte a la Roine Isabelle qe][3] ses tenantz de son manere de Cheylesmore avereint comunalte entre eux, et auxi Meire et Baillifs a eslire de eux mesmes, deinz la purceinte de quel maner la ville de Coventre en est, et auxi conissaunce de totez maners des plees surdauntz de queeunqe chose fait deinz la purceinte del maner. Et ces fraunchises furent grauntez a la Roine a terme de sa vie, le remeindre al Prince et a ses heirs a touz jours. Et disoient qe la Roine avoit graunte [mesmes les fraunchises a eux, et le Roi mesme le grant avoit par sa chartre][3] grante et conferme. Et mistrent avant cele chartre de conferment, et brief dallower, saunz plus, et prient conussaunce des ditz plees.—*Pole.* Vous avetz icy le Counte de Lancastre, et autres divers[4] seignurs del counte de Warrewike, ou les tenementz sont, par attourne par brief de la Chauncellerie, Acompte.

[1] From H. and I. until otherwise stated. The record of the case, *Placita de Banco*, Trin., 20 Edw. III., R° 325 is printed in the Appendix. There is no mention in it of the action of Account, but it appears that Henry son of Reginald Ballard, of Coventry, brought a writ of Entry *dum fuit infra etatem* against John Box, of Coventry, in respect of a messuage in Coventry. See also Y.B. Easter, 20 Edw. III., No. 9., *pp.* 150–158.

[2] The words et avoit counte are omitted from H.

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

[4] I., grauntes.

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A.D. 1346. claim their franchises. And the warrant of their attorneys was in each case in the form that they were admitted attorneys "*ad reclamandum*" the particular franchise; and they said that the Court ought not to allow the franchise to the Mayor and Bailiffs, because whosoever is supposed to have cognisance of pleas in the liberty of another person by grant from the King must produce the foundation thereof by which the franchise commenced, and now the town does not produce anything but a confirmation made by the King by which he confirmed the right of the other person. And moreover we tell you that the Prior of Coventry is tenant of our Lady the Queen of the whole of this town of Coventry, and that partly in demesne and partly in service. And we tell you that those who now say that they are Mayor and Bailiffs are tenants of the Prior, and not tenants of our Lady the Queen, and so those who now proffer themselves as Mayor and Bailiffs cannot be of such condition, because they are not tenants of our Lady the Queen to whom the charter relates; therefore we do not understand that you will allow or grant the franchise to them for the causes above said.—STONORE. Can you, the demandants and defendants, show any cause why the franchise should not be allowed.—*Derworthy*, for them. No, Sir.—*Thorpe*. You see plainly how those who are parties to the original writ do not counterplead the allowance of the franchise; therefore you have no warrant to admit those who are strangers to the plea to counterplead it, for even though we were at issue between us on the point, and the finding were in our favour, the Court would not have any warrant to amerce you, and no loss would fall upon you by reason of the delay; therefore, for the same reason for which you would be heard to claim the franchise on behalf of one you would be admitted to do so for twenty, and consequently there would be twenty different issues, and the demandants would be thereby delayed for ever, without recovering anything for the delay.—KELSHULLE. That

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et reclament lour fraunchises. Et lour garrant fust qils furent resceuz attournes "*ad reclamandum*" cel[1] fraunchise[2]; et disoient qils ne duissent la fraunchise a eux allower, qar qi qe deit conussaunce de plee en autri fraunchise aver del graunt le Roi il covent qil eit le fundement de yeele par quele la fraunchise comencea, et ore ne moustre il rienz mes un confermement de Roi par quele il conferme autri dreit. Et auxi vous dioms qe le Priour de Coventre est tenant ma Dame la Roine de cele ville de Coventre entier, et ceo partie en demene et partie en service. Et vous dioms qe ceux qe se dient a ore estre Meire et Baillifs sont les tenantz le Priour, et ne mye les tenantz ma Dame la Roine, et issi ne pount ceux qe ore se profrent come Meir et Baillifs estre de tiel condicion, pur ceo qils ne sount pas les tenantz ma Dame la Roine pur queux la chartre refiert; par quei nentendoms pas qe a eux par les causes susditez voilletz la fraunchise allower ou granter.—Ston. Vous, demandantz et defendantz, savetz vous rienz dire pur quei la fraunchise ne serra allowe?—*Der.*, pur eux. Sire, nanil.—*Thorpe.* Vous veietz bien coment qe ceux qe sont parties al original ne countrepledent pas lallowaunce la fraunchise; par quei a receivre ceux qe sont estraunges al plee del countrepleder navetz pas garrant, qar mesqe nous fusmes entre nous a issue sur le point, et fust trove pur nous, Court navereit pas garrant[3] de vous amercyer, ne nulle perde a vous avendra pur le delaye; par quei par mesme la resoun qe vous serretz eseote pur un a reclamer la fraunchise vous serrez resceu pur xx., et *per consequens* xx. divers issues, et par tant les demandauntz delaies a tous jours, saunz riens recoverir pur le delaier.—Kels. Ceo qils dient[4] ils le

A.D. 1346.

[1] L., lour.
[2] L., fraunchises.
[3] H., poair.
[4] dient is omitted from H.

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A.D. 1346. which they say they say for the King, because the franchise of the mayoralty is only granted to those who are the tenants of our Lady the Queen, and he has surmised against you that you are not such tenants, and therefore the franchise cannot relate to you; for, if the Mayor and Sheriffs of London were to demand cognisance of a plea, and you would surmise, on behalf of the King, that their franchise of their mayoralty was seized into the King's hand as being forfeited, and therefore he could not demand cognisance as Mayor, you would be admitted to do so, even though the demandant and the tenant agreed to the contrary; and so for the same reason in the case in which we now are, since no one can be Mayor unless he is the Queen's tenant, and he surmises the contrary against you, and therefore, &c.—*Grene.* That which he has said on behalf of the King cannot be admitted: for, in this case in which allowance of the franchise is demanded of you, the King records that there are Mayor and Bailiffs, and therefore you will not be admitted, in face of that which is recorded by the King, to say the contrary. And, even though you could do so, I say that you cannot take issue on such a point, that is to say, whether we are rightfully Mayor or Bailiffs or not, because, when we are elected as Mayor, our oath is administered to us as Mayor in the Exchequer, and the franchise of the mayoralty is not now a matter for pleading, but the franchise of cognisance of pleas, and therefore in pleading it has not to be tried whether we are rightfully Mayor or not. And, as to your statement that one will be admitted to allege that the mayoralty is seized into the King's hand in order to prevent them having cognisance of the plea, I will gladly allow that, because by that plea it is proved that the mayoralty is entirely in the King's hand, but in this case he confesses that the mayoralty abides in the townsmen, and is not seized by the King. And inasmuch as he has not denied that the Mayor has been elected, and sworn as Mayor in the Exchequer, there cannot be any pleading

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dient pur le Roi, qar la fraunchise de Meiralte nest graunte mes a ceux qe sont les tenantz ma Dame la Roine, et il vous ad surmys qe vous nestes pas tiels, par quei la fraunchise ne poet referer a vous; qar, si le Meire et Vicountes de Loundres demandent conussaunce dun plee, et vous vodrietz surmettre, pur le Roi, qe lour fraunchise de lour meiraltie fust seisi en la mayn le Roi come forfait, par quei il ne poait come Meire la conissaunce demander, vous serrez a ceo resceu, mesqe le demandaunt et tenaunt furent del assent al encountre; et par mesme la resoun en le cas on nous sumes, puis qe nul poet estre Meire sil ne soit le tenant la Roine, et il vous surmette le contrare, par quei &c.—*Grene.* Ceo qil ad dit ne poet estre resceu pur le Roi: qar, en cas qe vous est maunde dallowere la fraunchise, le Roi recorde qil y ad Meire et Baillifs, par quei encountre ceo qest recorde par le Roi ne serretz resceu a dire le contrare. Et, mesqe vous purrietz, jeo die qe vous ne poetz prendre issue sur cel point, saver, le quel nous serroms en dreit Meire ou Baillifs on nent, qar, quant nous sumes eslu come Meire, et nostre serement a nous fait en Lescheqer come Meire, et la fraunchise de la meiralte nest pas a ore a pleder, mes la fraunchise de conissaunce des plees, par quei a pleder le quel nous soioms Meire a dreit ou nent nest pas a ore a trier. Et quant a ceo qe vous parletz qe homme serra resceu dallegger qe la meiralte est seisi en la mayn le Roi a destourber qils naverount pas conissaunce de plee, jeo voille bien, qar par cel plee il prove qe tote la meiralte est en la mayn le Roi, mes en ceo cas il conust qe la meiralte demurt en ceux de la ville nient seisi par le Roi. Et de ceo qil nad pas dedit qil nest pas eslu, et serementc en Lescheqer come Meire, a prendre issue le quel il soit fait Meire a dreit ou

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A.D. 1346. in order to take issue whether he has been made Mayor rightfully or wrongfully, but suit on that question must be made in another manner; for, if a layman is made Abbot of a church by election, he will be held to be Abbot against every one until the election is reversed; and for the same reason in this case the mayor who has been elected will be held to be mayor. —HILLARY. If the King grants me cognisance of pleas within certain bounds, and afterwards he grants the same franchise to you, and each of us demands the cognisance of a plea, will not the dispute between us be determined, before the Court will take cognisance? It will be; and for the same reason, in this case, those who now counterplead show that the Mayor and Bailiffs are their tenants, and so these matters which are now in dispute will be pleaded in their court, which pleas they will lose if the franchise of the Mayor and Bailiffs is allowed to them. And, as to your statement that, if a layman is elected Abbot, he will answer as Abbot, perhaps if he were to commence an action as Abbot he would fail.—WILLOUGHBY, *ad idem*. If two different men demand cognisance of a plea in virtue of different charters granted to them severally, and a dispute fall between them as to which of them should have the franchise, the Court will not accept any issue between them unless the demandant or the tenant joins himself with them; for, if the contrary were law, there would not be any demandant who would not be delayed for ever without recovering anything; therefore, since the demandant and the defendants are agreed as to the cognisance of pleas being granted, we cannot accept from you, who have come in collaterally, such a plea, which falls to the delay of the demandant, and particularly matter which falls by way of disproving that the mayoralty is in them, and that with regard to the right, which cannot now be pleaded, but with respect to which suit must be made according to another course.—Therefore, after consideration

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a tort nest pas a pleder, mes covent qe ceo soit suy en autre manere ; qar, si un lays homme soit fait Abbe dune eglise par eleccion, il serra tenu pur Abbe vers chesqun homme tanqil soit reverse ; et par mesme la resoun en ceo cas.—Hill. Si le Roi moi grante conissaunce de plees [deinz certeins boundes, et apres il grante mesme la fraunchise a vous, et chesqun de nous demande la conissaunce del plee][1] ne serra le debat termine entre nous, avant qe la Court voet conustre ? Si serra ; et par mesme la resoun issi, ceux qe ore countrepledent moustrent qe les Meire et Baillifs sount lour tenantz, et issi ces choses qe sont a ore en debat serront pledez en lour Court, queux plees ils perdront si lour fraunchise lour soit allowe. Et a ceo qe vous parles qe, si un lays[2] homme soit eslu Abbe, il respoundra come Abbe, mes sil soit a user accion come Abbe pur aventure il faudra.—Wilby, *ad idem*.[3] Si ij diverses hommes demandent conissaunce dun plee par diverses chartres a eux grantez severalment, et debat chete entre eux qi deux avereit la fraunchise, Court ne resceivra nul issue entre eux si le demandant ou le tenant ne se joigne a eux ; qar, si ceo fust lei, il navereit nul demandaunt qe ne serra delaie pur touz jours saunz rienz recoverir ; par quei, puis qe le demandant et les defendantz sont en un del granter, nous ne poms receivre de vous, qestes venu de coste, tiel[4] plee, qe chiet en delaye del demandant, et nomement matere qe chiet a desprover la meiralte en eux, et ceo en le dreit, qe ne poet a ore estre plede, mes covent estre suy par autre cours.[5]—Par quei, A D. 1346.

[1] The words between brackets are omitted from I.

[2] I., leis.

[3] The words *ad idem* are omitted from H.

[4] tiel is omitted from I.

[5] H., Court.

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A.D. 1346. by the whole Council, the franchise was granted to the Mayor and Bailiffs, and they gave a day before them at Coventry, and the Clerk of the Court of Common Pleas adjourned the parties before the Mayor and Bailiffs of Coventry to the same day.—*Pole* prayed that the exceptions which he took on behalf of the lords might be entered, or that the Justices would seal a bill of exceptions. —And, because the lords were not parties to the plea, he could have either the one prayer or the other granted.

Franchise. § The beginning of this plea is above in Easter Term last[1], and now a writ was brought against a man, and the demandant demanded tenements in Coventry against a tenant. Thereupon came the Mayor and the Bailiffs of the town of Coventry, and said that the King had granted to the Queen, his mother, cognisance of all pleas of land and tenements, contracts, covenants, trespass, and debt, within the precinct of the vill of her manor of Cheylesmore for her life, and afterwards the Queen granted her estate to the Mayor and Bailiffs of the town of Coventry, and afterwards the present King granted and confirmed the same grant which his mother had made, and granted that the tenants of the Lady the Queen in Coventry should have power to elect a Mayor and Bailiffs from among themselves, and that they were to have the franchises which the Lady the Queen had granted to them. And they made *profert* of the Queen's charter and of the King's confirmation, and prayed cognisance of this plea.— *Pole* said, for the Prior of Coventry, who appeared by attorney in virtue of a warrant of attorney made on the special matter, as before in the other Term (Easter), that the whole of the town of Coventry was holden of the Prior of Coventry, and that the Prior as mesne held it in its entirety of the Queen, and that what they called the manor of Cheylesmore was not a manor (and that *Pole*

[1] Y.B. Easter 20 Edw III. No. 9, *pp.* 150-158.

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par avisement de tut le counsail, la fraunchise lour fust graunte, et ils donerent jour devant eux a Coventre, et le Clerc de la place ajourna les parties devant le Meire et les Baillifs de Coventre a mesme le jour.—*Pole* pria qe les chalenges qil dona pur les seignurs furent entrez, ou qils ensealent bille de ceo.—Et, pur[1] ceo qils ne furent parties al plee, il ne poait aver ne lun[2] ne lautre, &c. A.D. 1346.

§[3]*Principium supra termino Paschæ ultimo*, et ore brief fuit porte vers un homme, et demanda tenementz en Coventre vers un tenant, ou vindrent le Meire et les Baillifs de la ville de Coventre, et disoint qe le Roi si avoit graunte a la Reigne, sa mere, conissaunce des toux plees de terre et tenementz, contractes, covenantz, trans, et dettes, deinz la purceinte de la ville de soun maner de Gleilesmore[4] pur sa vie, et puis la Reigne graunta soun estat as Meire et Baillifs de la ville de Coventre, et puis le Roi qore est graunta et conferma mesme le graunt qe sa mere fist, et graunta qe les tenantz la Dame en Coventre purrount eslire Meire et Baillifs de eux mesmes, et qils duissent aver les fraunchises queux la Dame les avoit graunte. Et mistrent avant la chartre la Reigne et le conferment du Roi, et prierent la conissaunce de ceo plee.—*Pole* dist, pur le Prior de Coventre, par garraunt dattourne *ut prius* en lautre terme fait sur la matere qe tote la ville de Coventre si fuit tenu del Prior de Coventre, et le Prior la tient enter de la Reigne com mene, et ceo qils appellent maner de G. ceo nest mye maner, et ceo moustra par chose Fraunchise.

[1] H., de, instead of Et pur.

[2] I., une, instead of ne lun.

[3] This report of the case is from L. and C.

[4] *Sic* in both MSS.

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A.D. 1346. showed by matter of record), and so those who were parties to the writ were the Prior's tenants, and those who say they are Mayor and Bailiffs are the Pior's tenants, and (said *Pole*) we do not understand that they ought to have any cognisance.—*R. Thorpe.* The King has granted to the Queen cognisance of all pleas of lands and tenements within the precinct of her manor and of her view of frankpledge of Cheylesmore, so that this grant extends as well to the tenants of another person as to her own tenants who are resiant within the precinct of the view of her manor, and so that as long as this charter stands in force it is right that they should have cognisance in respect of all those who are resiant within the view, and, if any wrong be done to the Prior by that grant, he must sue in another way to have the charter revoked, for in this Court he cannot have it revoked. And, as to what they say of those who call themselves Mayor and Bailiffs, to wit, that they are the Prior's tenants, and not the tenants of our Lady the Queen, so that the grant that the tenants of the Lady the Queen may have power to elect a Mayor and Bailiffs from among themselves is nothing to those who now pray cognisance of this plea, to that I say that the King records that such they are, and that they have a Mayor and Bailiffs, and he has confirmed the grant made by his mother to them so that they may enjoy it, and so, since the King has recorded that they have such franchises, it is not right that you should have a plea to say that they are the Prior's tenants, which would prove nothing more than that they have not a Mayor and Bailiffs.—*Pole.* When the King granted to his mother cognisance of pleas in respect of all those who were resiant within the precinct of his view of his manor of Cheylesmore, the intendment of law is no other, and must not be understood to be other than as relating to the tenants of our Lady the Queen, so that, as to that point we have answered that both the demandant and the tenant are the tenants of the Prior of Coventry. And, as to the

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de recorde, issint sount ils les tenantz le Prior qe[1] sount parties al brief, et le Meire et les Baillifs qils se dient estre si sount les tenantz le Prior, et nentendoms mye qils ne deivent nulle conissaunce aver.—*R. Thorpe.* Le Roi ad graunte a la Reigne conissaunce des totes plees des terres et tenementz deinz la purceinte de soun maner et de sa viewe de Gleilesmore, issint qe ceo graunt sestent auxi bien as autri tenantz com a ses tenantz demene qe sount reseauntz deinz la purceinte de la viewe de soun maner, issint qe tant[2] com cele chartre estet en sa force il est resoun qils eient la conissaunce de touz ceux qe sount reseauntz deinz la viewe, et, si nulle tort soit fait al Prior par cel grant, il covient qil siwe par autre voye a repeller la chartre, qar en ceste place il ne le poet mye repeller. Et de ceo qils parlount deux qe se dient Meire et Baillifs si sount les tenantz le Prior, et ne mie les tenantz la Dame, issint qe cele graunt qe les tenantz la Dame puissent eslire Meire et Baillifs deux mesmes, ceo nest rien a ceux qe prient ore conissaunce de ceo plee, a ceo jeo die qe le Roi recorde qe tieux y sount, et qils ount[3] Meire et Baillifs, et ad conferme le grant fait par sa mere a eux qils le puissent enjoyer, issint quant le Roi ad recorde qils ount tieux fraunchises, il nest mye resoun qe vous eietz plee a dire qils sount les tenantz le Prior, qe ne provereit autre mes qils nount mye Meire et Baillifs.—*Pole.* Quant le Roi graunta conissaunce des ples a sa mere de toux qe furent reseauntz deinz la purceinte de sa viewe de soun maner de C., lentent de ley nest nulle autre, ne deit estre entendu forqe a les tenantz la Dame, issint qe, quant a cel point nous avoms respondu qils sount les tenantz le Prior de Coventre le demandant

A D. 1346.

[1] L., et.
[2] C., quant.
[3] L., puissent eslire.

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A.D. 1346. other point, to wit, that the Queen has granted her estate in the franchise to the Mayor and Bailiffs of the town of Coventry, and that the King by his charter granted and confirmed to the tenants of our Lady the Queen that they should have power to elect a Mayor and Bailiffs from among themselves, we have likewise answered to that that they cannot have either a Mayor or Bailiffs, nor can there be such persons, because they are not the tenants of our Lady the Queen, and so we have fully answered as to the cause which would give you power to elect a Mayor and Bailiffs, and we show that the grant in no way extends to you.—*Seton.* If it is law that the King can grant cognisance of pleas to my tenants in respect of all the tenements holden of me, I should thereby lose the amercements in respect of pleas which ought to be pleaded in my court, and so there would be great mischief.—*Grene.* That is no mischief, for if a writ of Right is brought in the court of a lord, and the parol is removed by a *Pone*, then if the King has granted cognisance of pleas to others, they will have it, and not before, for the power which he has with respect to pleas in his Court he can grant to another, so that it is not to the prejudice of any one. And the King has recorded by his charter that there are Mayor and Bailiffs, for he has by his charter confirmed the franchises granted by his mother to the Mayor and Bailiffs of Coventry, and granted them power to elect as Mayor and Bailiffs from among themselves those who are tenants of our Lady the Queen, so that the King has granted that there are Mayor and Bailiffs, while the charter is standing in force, and you cannot reverse that grant in this Court, for you have no warrant to do that, but only to allow or disallow the franchise, that is to say to grant to us the cognisance of this plea or to oust us from it. And suppose a writ is brought against a man of Hertford, and the Mayor and Bailiffs of the town of Hertford come, and say that the King has granted cognisance of pleas touching the burgesses of Hertford, and say that the tenant is a burgess of the

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et le tenant. Et, quant a lautre point, la ou la Reigne ad graunte soun estat de la fraunchise au Meire et Baillifs de la ville de Coventre, et le Roi par sa chartre graunta et conferma a les tenantz la Dame qils puissent eslire Meire et Baillifs deux mesmes, issint a ceo avoms respondu qils ne pount aver Meire ne[1] Baillifs, ne estre tieux, pur ceo qils ne sount pas les tenantz la Dame, issint avoms proprement respondu a la cause qe vous durreit[2] deslire Meire et Baillifs, et moustroms qe le graunt sestent rienz a vous. —*Setone.* Sil soit ley qe le Roi poet graunter conissaunce des plees a mes tenantz de touz les tenementz tenuz de moi, par tant perdroi jeo les amerciamentz des plees qe duissent estre pledes en ma court, et issint serreit graunt meschief.—*Grene.* Ceo nest pas meschief, qar si brief de Dreit soit porte en la court dun seignur, et la parole soit remue par une *Pone*, donqes le Roi, sit eit graunte conissaunce de plee as autres, ils laverount, et ne mye devant, qar ceo qil poet mesme pleder en sa Court il le poet mesme graunter a un autre, issint qe cest en prejudice de nulle homme. Et le Roi ad recorde par sa chartre qils y ount Meire et Baillifs, qar il ad conferme par sa chartre les fraunchises grauntes par sa mere as Meire et Baillifs de Coventre, et qils puissent eslire Meire et Baillifs deux mesmes ces qe sount tenantz la Dame, issint qe, esteaunt la chartre en sa force, le Roi ad graunte qils y ount Meire et Baillifs, et vous nel poietz pas en ceste place reverser, qar a ceo vous navietz mie garraunt mes dallowere la fraunchise on desallowere, saver, de nous graunter la conissaunce de ceste plee[3] ou de nous ouster. Et jeo pose qun brief soit porte vers un homme de Hertforde,[4] et venent le Meire et les Baillifs de la ville de Hertforde, et dient qe le Roi ad graunte conissaunce des plees touchauntz les burgeys de Hertforde, et dient qil est burgeys de la

A.D. 1346.

[1] L., et.
[2] L., durretz.
[3] MSS., place.
[4] C., Hertforthe.

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A.D. 1346. town, then if the demandant says that the person against whom the writ is brought is not a burgess, that is no plea, since the King has recorded them to be such by his charter; so also in this case.—STONORE. The King by his charter records that there are a Mayor and Bailiffs of Coventry, and your statement that they are tenants of the Prior could serve no other purpose than to prove that there are not any Mayor and Bailiffs, the reverse of which is recorded by the King's charter, which charter we cannot reverse in this Court. And, on the other hand, cognisance is granted to the Queen in respect of all those who are resiant within the precinct of the view of her manor of Cheylesmore, of whomsoever they may be tenants, for her life, and she has granted that franchise over to the Mayor, &c., so that, if this grant should be to the prejudice of any one, the charter must be reversed at the suit of the person to whose damage it is made, and that we cannot now do. And in respect of that which the King himself can plead, and of which he can hold plea in his Court, he can grant cognisance of the plea to another, and that matter he has confirmed to the Mayor and Bailiffs of Coventry. Therefore it seems to us, and to the whole Council of England, that it is right to give the cognisance of the plea, and therefore we grant it to you. And do you, Bailiffs, give a day to the parties.—And he gave them as their day Monday next after the Feast of St. Laurence.—And it was previously asked of the demandant whether he could show any cause why they ought not to have the cognisance, and he said that he could not.—And there was previously another exception, as there was in the other plea, that the Prior could not be a party to them, because for the same reason for which he could make himself a party, there might come a second and a third person, and make a like exception.—And this exception was not allowed.

Scire facias. (60) § A. and K. his wife sued a *Scire facias* to have execution upon a fine by which ten shillings of rent

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ville, si le bemandant die qil nest pas burgeys celuy vers qi le brief est porte, ceo nest pas plee, de puis qe le Roi les ad recorde comme tieux par sa chartre ; auxi en ceo cas.—Ston. Le Roi par sa chartre si recorde qil y ad Meire et Baillifs de Coventre, et ceo qe vous parletz qils sount les tenantz le Priour ceo serreit a nulle autre purpos mes a prover qil ny ad pas Meire et Baillifs, de qai le revers si est recorde par la chartre le Roi, quele chartre nous ne poms mye ceinz reverser. Er, dautre part, la conissaunce si est graunte a la Reigne de touz ceux qe sount reseauntz deinz la purceinte de viewe de soun maner de C., de qi tenantz qils soient, pur sa vie, quele fraunchise ele ad graunte outre al Meire, &c., issint qe, [si] cel graunt soit en prejudice de nulle homme, il covient qe la chartre soit reverse a la suite celuy en qi damage ceo est, et ceo ne poms pas ore faire. Et de ceo qe le Roi mesme poet pleder et de ceo plee tener en sa Court de ceo poet il graunter conissaunce a autre de plee, la quele chose il ad afferme al Meire et les Baillifs de Coventre. Par qai il semble a nous, et a tut le Counseille Dengleterre, qil est resoun de les doner la conissaunce, par qai nous vous grantoms la conissaunce. Et vous, Baillifs, donetz jour a les parties.—Et il les dona jour le Lundy proschein apres la Fest de Seint Laurence.—Et devant fuit demande del demandant sil savoit rienz dire pur qai ils [ne] duissent la conissaunce aver, et disoit qe noun.—Et devant fuit chalenge, comme fuit en lautre plee, qe le Prior ne poet mie estre partie a eux, qar par cele resoun qil se freit partie vendra un autre, et le terce, et frount autiel chalenge.—Et ne fuit mie allowe. A.D. 1346.

(60) § [1]A. et K. sa femme suirent *Scire facias* daver execucion hors dune fyne par quele x.*s.* de rente *Scire facias.* [Fitz., *Briefe*, 372.]

[1] From H. and I.

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A.D. 1346. were limited by remainder to K. after the death of one C. And the writ was in the words "*Scire facias R., qui virgatam terræ, unde redditus ille provenit, tenet, et prædictum redditum præfatæ K. deforceat.*" And, because the rent could not be deforced from K. unless it was also deforced from A., who was her husband, which matter was not expressed in the writ, therefore he took nothing by the writ.

Errors assigned to stay a *Scire facias.*

(61.) § Six parceners, to whom certain tenements were devised in the City of York by a remainder limited after the death of one F.[1], sued in the same city after the death

[1] As to the names, *sec.* p. 115, note 2.

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furent taillez par remeindre a K., apres la mort un C. Et le brief voleit *Scire facias R., qui virgatam terræ, unde redditus ille*[1] *provenit, tenet, et prædictum redditum præfatæ K. deforceat.* Et pur ceo que la rente ne poait mye estre deforcie a K., si ele ne fust auxi deforcie a A., qe fuist soun baron, quele chose le brief ne voleit mye, *ideo nihil cepit per breve.* A.D. 1346.

(61.) [2]§ Vj. parceners, as queux certeinz tenementz furent devisez en la Cite Deverwyke par un remeindre apres le decees un F., en mesme la Cite suyrent apres la

Errours assignez darester un *Scire facias.* [Fitz., *Damage*, 100.]

[1] *ille* is omitted from I.

[2] From H. and I., until otherwise stated, but corrected by the record, *Placita coram Rege*, Trin. 20 Edw. III. R°. 32. The record begins with the enrolment of a writ of *certiorari* directed to the Mayor and Bailiffs of the City of York, and commanding them to send the record and process into the King's Bench. Then "Recordum et processus de quibus "in brevi prædicto fit mentio "sequuntur in hæc verba:— "Dominus Rex mandavit breve "suum Maiori et Ballivis "Eboraci in hæc verba:—Ed- "wardus Dei gratia Rex Angliæ "et Franciæ, et Dominus "Hiberniæ, Maiori et Ballivis "suis Eboraci salutem. Ex "graviquerelaWillelmi Sauvage, "Johannis Sauvage, Elenæ "Sauvage, Isabellæ Sauvage, "Mariotæ Sauvage, et Katerinæ "Sauvage accepimus quod, cum "secundum consuetudinem in "eadem Civitate hactenus ob- "tentam et approbatam liceat "unicuique civi ejusdem civi- "tatis tenementa sua quæ sibi "adquisierat in eadem Civitate, "tanquam catalla sua, in testa- "mento suo in ultima voluntate "sua legare cuicumque volu- "erit, ac Jordanus Sauvage "quondam cives [*sic*] Civitatis "prædictæ decem solidatas red- "ditus, cum pertinentiis, quas "sibi adquisivit in eadem Civi- "tate, in testamento suo in "ultima voluntate sua, tanquam "catalla sua, liberis suis de "corpore Katerinæ quondam "uxoris suæ procreatis legasset, "Radulphus Sauvage prædictas "decem solidatas redditus, "cum pertinentiis, post mortem "prædicti Jordani ingressus, "illas præfatis Willelmo, Johan- "ni, Elenæ, Isabellæ, Mariotæ, "et Katerinæ Sauvage, liberis "de corpore ipsius Katerinæ "quondam uxoris Jordani pro- "creatis, detinet minus juste, "in ipsorum Willelmi, Johannis, "Elenæ, Isabellæ, Mariotæ, et "Katerinæ Sauvage dispendium "non modicum et gravamen, et

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A.D. 1346. of this same F., by an *Ex gravi querela*, to have execution in accordance with the devise against one Ralph Savage. And they recovered the tenements by verdict, and the Mayor and Bailiffs awarded damages of ten pounds by their own assessment, without enquiring touching them by jury. And all this was in virtue of a letter from the Ordinary testifying the proof before him of such a devise by a nuncupative will. And it was confessed by the

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" contra voluntatem testatoris " prædicti, et contra consuetu- " dinem prædictam. Et quia " eisdem Willelmo, Johanni, " Elenæ, Isabellæ, Mariotæ, et " Katerinæ Sauvage injuriari " nolumus in hac parte, vobis " præcipimus quod, vocatis cor- " am vobis partibus prædictis, " et auditis hinc inde eorum " rationibus, inspectoque tenore " testamenti prædicti, eisdem " Willelmo, Johanni, Elenæ, " Isabellæ, Mariotæ, et Katerinæ " Sauvage plenam et celerem " justitiam inde fieri faciatis, " prout de jure et secundum " consuetudinem prædictam " fuerit faciendum, et hactenus " in casu consimili fieri con- " suevit. . . . . " Prætextu cujus brevis præ- " ceptum fuit subballivis curiæ " quod summonerent prædictum " Radulphum Sauvage quod sit " coram Maiore et Ballivis apud " Eboracum, in Gilda Aula, die " Lunæ proxima post Octabas " Purificationis beatæ Mariæ " proxime futuras, ad respond- " endum præfatis Willelmo, " Johanni, Elenæ, Isabella, " Mariotæ, et Katerinæ Sauvage " de prædicto placito, et quod " haberent ibi summonitores,&c.

" Placita coram Maiore et Bal- " livis Civitatis Eboraci apud " Eboracum, in Gilda Aula, die " Lunæ proxima post Octabas " Purificationis beatæ Mariæ " anno regni Edwardi Regis " Angliæ tertii a Conquestu " decimo nono.

" Willelmus Sauvage, Johan- " nes Sauvage, Elena Sauvage, " Isabella Sauvage, Mariota Sau- " vage, et Katerina Sauvage, in " propriis personis suis, obtu- " lerunt se versus Radulphum " Sauvage de placito [de] decem " solidatis redditus, cum pertin- " entiis, in Civitate Eboraci, " quas clamant versus eum ut " jus suum secundum consuetu- " dinem, &c., qui quidem Rad- " ulphus summonitus fuit es- " sendi hic ad hunc diem per " [names of summoners].

" Et ipse non venit. Ideo præ- " ceptum est subballivis quod " attachient eum quod sit hic " die Lunæ in secunda sep- " timana Quadragesimæ ad res- " pondendum præfatis Willelmo, " Johanni, Elenæ, Isabellæ, " Mariotæ, et Katerinæ de præ- " dicto placito. Concessum est " per Maiorem et Ballivos quod " Johannes de Kirkeby sequa- " tur pro prædictis Willelmo

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mort mesme celuy F., par un *Ex gravi querela*, daver execucion par le devise vers un R. Savage. Et recovererent les tenementz par verdit, et le Maire et baillifs agarderent damages de x.*li.* par lour taxacion demene, saunz enquere de ceo par enqueste. Et ceo par force dune lettre del Ordinare tesmoignant la prove devaunt luy un tiel devis par un testament nuncupatif. Et fust conu de

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" Johanne, Elena, Isabella, Mari-
" ota, et Katerina, quia infra
" ætatem sunt, versus prædictum
" Radulphum de placito præ-
" dicto."

Several adjournments follow. On Ralph's default, judgment was given for the plaintiffs to recover their seisin of the 10*s.* of rent. There was also a writ of Inquiry of Damages, and the jurors found the damages to be 100*s.* of which execution was awarded.

" Postmodum ad sectam præ-
" dictorum Willelmi Sauvage,
" Johannis Sauvage, Elenæ Sau-
" vage, Isabellæ Sauvage, et
" Mariotæ Sauvage, asserentium
" quod prædicta Katerina Sauv-
" age jam obiit, et quod prædicti
" centum solidi eis adhuc restant
" solvendi, &c., præceptum fuit
" Vicecomiti quod scire faceret
" præfato Radulpho Sauvage
" quod esset coram domino Rege
" ad hunc diem, scilicet, in Octa-
" bis Sanctæ Trinitatis, ubi-
" cumque, &c., ad ostendendum
" si quid, &c., quare prædicti
" centum solidi de terris et
" catallis suis in balliva sua fieri
" et præfatis Willelmo, Johanni,
" Elenæ, Isabellæ, et Mariotæ
" reddi non deberent, si, &c.
" Et ulterius, &c.

" Et modo veniunt coram
" domino Rege prædicti Willel-
" mus, Johannes, Elena, Isabella
" et Mariota, per Thomam de
" Waltone custodem suum, et
" Vicecomes modo returnavit
" quod scire fecit præfato
" Radulpho quod esset coram
" domino Rege ad præfatas
" Octabas Sanctæ Trinitatis
" secundum formam prædicti
" brevis. . . . . .

" Qui quidem Radulphus per
" præmunitionem prædictam . .
" venit, et dicit quod prædicti
" Maior et Ballivi erraverunt
" in redditione judicii loquelæ
" prædictæ, et profert quoddam
" breve domini Regis de Can-
" cellaria Justiciariis hic direc-
" tum ad errores illos assignan-
" dum, quod quidem breve ir-
" rotulatur isto eodem termino
" Sanctæ Trinitatis, rotulo lxxix,
" et remanet inter præcepta de
" anno regni Regis nunc Angliæ
" vicesimo."

The writ enrolled on R° 79 is preceded by most of the above in a different form, and by some other matters. There are also pleadings in answer to the assignments of error, which do not appear on R° 32, but still no definite result.

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A.D. 1346. demandants that there was not any other testament on which the demand was at first made, and judgment was prayed thereon.—And this exception was not allowed.—Then afterwards, forasmuch as the tenant had nothing within the liberty of York of which the damages could be levied, the six parceners sued a writ to the Mayor to have the record in Chancery.—And they afterwards sent it into the King's Bench.—And, because, while this suit was pending, the sixth parcener died, therefore the other five took their *Scire facias* against the said Ralph Savage to have execution of the damages, &c.—*Skipwith.* The record supposes the judgment to have been rendered for six, and in this writ, which is taken upon the record, the sixth is omitted; judgment of the writ.—*Thorpe.* This sixth was dead before the *Scire facias* was brought, and therefore we have no need to speak of her.—But, inasmuch as he did not mention her death in his writ, the writ was therefore quashed.—And now the five others immediately sued another *Scire facias.*—*Skipwith.* On the day on which the writ was purchased which was directed to the Mayor and Bailiffs the sixth was dead, and so the writ by virtue of which the record comes into this Court was bad, and so the record has come without warrant; judgment of this writ of *Scire facias* which has issued upon that.—*R. Thorpe.* You shall not be admitted to that plea, because heretofore, that is to say, in last Easter Term, you pleaded and abated a writ of *Scire facias* for the reason above, and you gaveusa good writ which we have now taken against yourselves, and therefore, &c.—*Sadelyngstanes.* The first writ was abated by office of the Court by reason of the variance from the record, and not through any plea which came from us, for we did not say anything as to the death of the sixth, so that that was not then the cause nor was it in any way by its effect that the first writ abated; but the exception which we now take is that the record is come to you on a bad writ, and so is without warrant.—W. Thorpe, J.

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les demandauntz qe autre testament ny avoit il de quei a comencement fust demande; jugement.—*Et non allocatur.* —Puis apres, pur taunt qe le tenant navoit rienz deinz la fraunchise Deverwyke de quei les damages purroient estre levez, les vj. parceners suyrent brief al Maire daver le record en Chauncellerie.—Et puis maunderent en Baunk le Roi.—Et pur ceo qe, pendaunte celle sute, le vi.me parcenere fust mort, *ideo* les v. pristrent lour *Scire facias* vers le dit R. Savage pur aver execucion des damages &c.—*Skip.* Le recorde suppose le jugement estre rendu pur vj., et en cestuy brief, qest pris hors del record, le sisme est entrelesse; jugement de brief.—*Thorpe.* Celuy sisme fut mort[1] avant le *Scire facias* porte, par quei navoms mestier de parler de luy.—Mes, pur taunt qil ne fist pas mencion en son brief de sa mort, *ideo cassatur breve.*—Et ore freschement les v. suyrent[2] un autre *Scire facias.* —*Skip.* Jour de brief purchace qe ala au Maire et Baillifs le sisme fust mort, issint le brief par quel le recorde vient ceinz fust malveys et issint venu saunz garraunt; jugement de cest brief qest issue de cel.—*R. Thorpe.* A ceo navendretz mye, qar autrefoitz, saver, le terme de Pasche darrein, vous pledastes, et abatistes un tiel brief par la cause *ut supra*, et vous donastes bon brief, quel nous avoms pris a ore vers vous mesmes, par quei, &c.—*Sadel.* Le primer brief fust abatu par office de Court par la variaunce del record, et noun pas par plee qe vint de nous, qar nous ne parlames rienz de la mort le sisme, qe ceo la ne fust pas adonqes cause ne rienz del effect par quei le primer brief sabatist; mes le chalange quel nous donoms a ore est qe le recorde vous est venu sur un malveis brief[3], et issint saunz garrant.—W. Thorpe.

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[1] The words sisme fut mort are omitted from I.

[2] H., suerent.

[3] brief is omitted from H.

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A.D. 1346. Every thing shall be saved to you. Have you anything else to say?—*Sadelyngstanes* produced a writ from the Chancery directed to the Justices to examine the errors, if any there were, in the same record, but in the clause in the writ "*ideo vobis mandamus*" there were wanting the words "*quod ad prosecutionem*" of the parceners, who, &c.—BAUKWELL. The writ gives us warrant to examine the errors if we should be able to find any, but no suit is given by the writ to you to be a party to assign errors.—*Sadelyngstanes*. And, if you can find error, you will not award execution afterwards on another day.—*Skipwith* assigned error in that on the *Ex gravi querela* the tenant demanded oyer of the testament, and nothing else was read or produced than the letter as above, as to which he demanded judgment whether the tenant ought to have been put to answer to that writ taken on a devise without a testament, &c. Again in that by the writ his action was taken on the form of a remainder, in which case by common law damages will not be recovered, therefore in that the Bailiffs awarded damages they erred. Again in that they awarded damages by their own assessment,[1] even supposing that the party ought to have recovered damages, they thereby erred, &c. And by reason of these errors, and others, &c.

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[1] This was not so according to the record. There was a writ of Inquiry of Damages, which the jury assessed at 100*s*; and the assessment of damages by the Mayor and Bailiffs does not appear among the assignments of error on the roll.

No. 61.

Tut vous serra sauve. Avetz aautre chose a dire? —*Sadel.* mist avant brief de la Chauncellerie directe a les Justices de examiner les errours, si nul y avoit, en mesme le recorde, mes celle clause en le brief *ideo vobis mandamus* celles paroules faillerent *quod ad prosecutionem* les parceners, qe, &c.—Bauk. Le brief nous doune garrant dexaminer les errours si nous purrioms trover, [mes nulle sute nest done par le brief a vous destre partie dassigner errours.—*Sad.* Et, si vous poetz trover][1] errour, vous ne agarderez pas execucion puis a un autre jour.—*Skip.* assigna errour de ceo qe en le *Ex gravi querela* le tenant demanda oy del testament, et autre ne luy fust leu ne moustre qe la lettre, *ut supra*, de quei il demanda jugement sil dust estre mys a respondre a cel brief pris del devis saunz testament, &c. *Item* de ceo qe par le brief saccion fust pris sur la forme dun remeindre, en quel cas par comune lei homme ne recovera mye damages, par quei de ceo qe les Baillifs agarderent damages ils errerent. *Item* de ceo qils agarderent damages par lour taxacion demene, tut dust le partie aver recoveri damages, en taunt ils errerent, &c. Et par ces, &c., et autres, &c.[2] A.D. 1346.

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[1] The words between brackets are omitted from I.

[2] The assignments of error, according to the record, were :—
" Prædicti Maior et Ballivi er-
" raverunt in hoc quod, cum
" in brevi directo præfatis Maiori
" et Ballivis ad faciendum exe-
" cutionem testamenti prædicti
" contentum fuit quod virtute
" tenoris testamenti prædicti
" ulterius justitiam partibus fac-
" erent, &c., prædicti Willel-
" mus Sauvage et alii potentes,
" &c., aliquod testamentum aut
" tenorem alicujus testamenti
" ibidem [non?] ostenderunt,
" quod quidem testamentum pes
" et fundamentum sectæ suæ et
" totius processus esse deberet,
" sed solummodo usi fuerunt
" quandam literam nunc Archie-
" piscopi Eboracensis patentem,
" quæ non potuit dici testa-
" mentum nec tenorem testa-
" menti, et in tantum quod præ-
" dicti Maior et Ballivi super hoc
" tenuerunt placitum, et posu-
" erunt ipsum Radulphum extra
" liberum tenementum suum, et
" in tantum erraverunt, quia
" secundum consuetudinem Civi-
" tatis prædictæ per testamen-
" tum nuncupativum liberum

No. 61.

A.D 1346. § A man came into the King's Bench, and alleged that he recovered certain tenements in the Guildhall against five persons, together with his damages to the amount of one hundred pounds, and said that the record was before them. And it was read. And he prayed execution.—And the defendants were warned by *Scire facias*, and they appeared and said, by *Skipwith* :—You will never award

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" tenementum non potest legari. " Item erraverunt in hoc quod, " licet litera præfati Archiepis- " copi teneri deberet pro tenore " testamenti, &c., præfati Wil- " lelmus et alii petentes fecerunt " sectam suam per viam de " remanere, &c., in quo casu " damna non debent petentibus " adjudicari, &c., et in tantum " quod prædicti Maior et Ballivi " adjudicaverunt damna præ- " fato Willelmo et aliis errav- " erunt, &c. Et petit judicium " prædictum, ob errores illos et " alios in eisdem recordo et pro- " cessu repertos, revocari et ad- " nullari, &c."

The roll continues, " Et, " quia juri consonum est quod " prædicti Willelmus et alii " præmuniantur ad audiendum " recordum et processum præ- " dicta antequam procedatur " ad adnullationem recordi et " processus illorum in hac parte, " ideo præceptum est Vicecomiti " quod per probos, &c., scire " faciat præfatis Willelmo, Jo- " hanni, Elenæ, Isabellæ, Mari- " otæ, et Katerinæ quod sint " coram domino Rege a die Sancti " Michaelis in xv dies ubicum- " que, &c., audituri recordum et " processum prædicta, &c, et " ulterius, &c

" Ad quem diem veniunt " coram domino Rege tam " prædicti Willelmus Sauvage " et alii per præmunitionem eis " inde factam . . . quam " prædictus Radulphus, . . . " et super hoc iidem Willelmus " Sauvage et alii petunt audi- " tum brevis de *Scire facias*, " &c., quo audito et lecto petunt " judicium de brevi, &c., eo " quod in eodem brevi inseritur " ' quia in recordo et processu, " ' loquelæ fuit coram Justi- " ' ciariis' &c., ubi inseri debuit " ' loquelæ quæ fuit,' &c."

" Ideo prædicti Willelmus et " alii quo ad hoc eant indo " sine die, &c. Et dictum est " eidem Radulpho quod sequa- " tur aliud breve, si, &c.

" Et super hoc prædicti " Willelmus et alii petunt exe- " cutionem, &c. Et super hoc " dies datus est eis coram " domino Rege usque. . . . ."

There were several further adjournments, further purchases of new writs, and after them further assignments of error, and again further adjournments, but no result appears on the roll.

On R°. 38 there is a similar case relating to different tenements.

No. 61.

§ Un[1] homme vint en Baunk le Roi, et alleggea coment il recoveri certeinz tenementz en la Gildhalle vers v. persones, et ses damages a c.*li.*, et dit qe le recorde fuit devant eux. Et fuit lieu. Et pria execucion.—Et es de endantz furent garnys, et vindrent, et disoint par *Skyp.* Vous A.D. 1346.

[1] This report of the case is from L. and C. It confuses the demandants with the tenant.

Nos. 61, 62.

A.D. 1346. execution upon a record which is before you, if the record is erroneous. And see here the King's writ which he has sent to you.—And the writ was read, and it purported that a certain person sued execution of damages before the Justices against certain persons on a judgment which he had in the Guildhall of York, and continued "We command you that you examine the record, and that, if you find error in the record, you do not award any execution thereupon."—Scot. We would have done that by office of Court, even though this writ had not come to us. —*Skipwith.* The writ purports that you are to examine the whole record, and that, in case there be error therein, you shall not award execution. And we tell you that you have not here in Court the original writ which is part of the record; and, in case there should be variance between the original and the record, there is error, and that you cannot know if you have not the original writ in this Court.—Scot. He only demands execution upon this record, and that which serves his purpose for having execution is in Court; so, if we see any error in this record, we shall never award him execution; but, in case the point should come in that there is variance between the original and the record, it must be the fact that the record has been made at your suit in order to reverse it, and the tenant has been warned to hear the errors; but the record has not come in that way, but the demandant's purpose is to have execution of the damages recovered, so that the record, without the original writ, is sufficient warrant to give him execution, and there is no necessity to have anything else now. And therefore, if there is error in this case, we will see to it before we grant execution. And therefore we will never cause the original to come. And therefore will you say anything else to prevent his having execution?

Assise of Novel Disseisin. (62.) § The Abbot of S. brought an Assise of Novel Disseisin against one A. and B. his wife. A., by attorney,

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nagarderetz jammes execucion hors dun recorde qest devant vous, si le recorde soit erroigne. Et veietz cy le brief le Roi qil vous ad maunde.—Et le brief fuit lieu, et voleit qune certein persone suyt execucion des damages devant les Justices vers certeinz persones dun jugement qil avoit en la Gildehalle de E. Nous vous maundoms que vous examinetz le recorde, et, si vous trovetz errour en le recorde, qe vous najugez nulle execucion hors de yeel.—Scot Ceo voudroms nous aver fait de nostre office, tut nust ceo brief nous[1] venu.—*Skip.* Le brief voet qe vous deivetz examiner[2] tut le recorde, et, en cas qe errour y soit, qe vous nagardretz[3] mie execucion. Et vous dioms qe vous navietz mie le brief original ceinz, quel est parcelle del recorde ; et, en cas qe variaunce serreit entre loriginal et le recorde, il y ad errour, et ceo ne poietz mie saver si vous neietz brief original ceinx.—Scot. Il ne demande fors execucion hors de eel recorde, et ceo qe luy seert daver execucion est einz ; issint, si nous veioms errour en eel recorde, nous agardroms jammes execucion a luy ; mes, en cas qe eeo vendra einz qil ad variaunee entre loriginal et le recorde, ceo covient estre qe le recorde ust este fait a vostre suite del[4] reverser, et le tenant garny doier les errours ; mes le recorde nest pas issint venuz, mes le demandant est daver execucion des damages recoveris, issint qe le recorde saunz brief est assetz garraunt de luy doner execucion, et autre chose ne bussoigne il daver ore. Et pur ceo, sil y eit errour en ceo cas, nous le voloms veer avant ceo qe nous grauntoms execucion. Et pur ceo nous ne voloms jammes faire venir loriginal. Et pur ceo voletz autre chose dire de luy destourber dexecucion ?

A.D. 1346.

(62.) [5]§ Labbe de S. porta Assise de novele disseisine vers un A. et B. sa femme. A., par attourne, et B., par

Assisa Novæ Disseisinæ. [Fitz., Verdit, 32 ; 20 Li. Ass., 14.]

[1] nous is omitted from L.
[2] L., examinetz, instead of deivetz examiner.
[3] L., najugez.
[4] C., et de.
[5] From H. and I.

No. 62.

A.D. 1346. and B., by bailiff, pleaded to the assise *Nul Tort*. The disseisin was found, and it was found that the Abbot had right, that is to say, that he and his predecessors had been seised from time whereof there is no memory until disseised, &c. But the jurors of the Assize said that, since the disseisin, because the said A. was one of the King's household, and a purveyor, and threatened to do great duress to the Abbot, the Abbot who is now plaintiff executed a release in favour of A. in respect of the same tenements for ever, without the consent of his Convent, by reason of the duress which the said A. put upon him; but they said this was not duress affecting the Abbot's person. But note that this release was not produced in Court by any one, nor was any enquiry made whether A. obtained from the plaintiff the said release by reason of collusion which there was between him and the Abbot. And judgment was given on the verdict, but not execution, and the parties were adjourned into the King's Bench.—*Derworthy* and *Thorpe*, for the King. We pray execution for the King, at least during the life of the present Abbot, because it is found that during his time he has no right to recover; and since the tenants have lost that which they had, and the plaintiff has no ground to have execution, it is right that the King should have it.—Baukwell. Since execution still has to be made, the tenants are in possession in such estate as they were in before, and consequently the land is not amortised; therefore the King cannot claim anything as yet. And moreover the wife can still have a certification on the same release after the death of her husband.—And afterwards this matter was abated in the Council before all the Justices, who said that it did not fall into the cognisance of the jurors to enquire or speak of such a release which was neither pleaded nor produced, and therefore that which was found amounted to nothing.—And moreover there was touched the point that, if a release were made to an Abbot who held for term of years, that would be tried.—And the King's Sergeants spoke of ordering a process to have the release, &c.

No. 62.

baillif, plederent al assise nul tort. Trove fust la disseisine, et qe Labbe avoit dreit, saver, qe luy et ses predecessours furent seisiz en temps dount, &c., tanqe disseisi, &c. Mes disoint qe, puis la disseisine, pur ceo qe le dit A. fust un de le mene[1] le Roi, et un purveyour, et manassa de faire grandes duresses al Abbe, issint lui[2] fist le dist Abbe qe ore se pleint un relees de mesmes les tenementz pur touz jours, saunz assent de son Covent, par duresses qe le dit A. luy fist; mes ils disoint qe ceo fust saunz duresse de corps. Mes *nota* qe cel relees ne fust moustre illeoqes par nul homme, ne il ne fust pas enquis le quel A. entrelessa le pleintif le dit relees par cause de collucion qil y avoit entre luy et Labbe,[3] sur quei jugement fust rendu, *sed executio non, sed adjornantur coram Rege.—Der.* et *Thorpe*, pur le Roi. Nous prioms execucion pur le Roi, a meyns pur la vie Labbe qore est, qar trove est qe[4] par son temps il nad pas dreit de recoverir; et, de puis qe les tenantz ount perdutz ceo qils avoient, le pleintif nad pas cause, il est reson qe le Roi leit.—Bauk. De puis qe unqore execucion est affaire, les tenantz sont einz en lestat come ils furent avant, et *per consequens* la terre nent amorti; par quei le Roi ne poet rienz[5] clamer unquore. Et auxi poet la femme unqore, *post mortem viri sui* sur mesme le relees aver certificacion.—Et puis apres en Counsail fust ceste chose abatu *coram Justiciariis omnibus*, et ils disoient qil ne chiet pas en lour conissance denquere ne de parler dun tiel relees qe ne fust pas plede ne moustre, par quei cella namounta a nent qe fust trove.—Et unqore fust touche qe si relees fust fait a un Abbe qe tint a terme dauns, qe cella serra trie.—Et fust parle par les serjauntz le Roi de ordiner[6] un proces pur aver le relees, &c.

A.D. 1346.

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[1] I., meyne.

[2] lui is omitted from I.

[3] The words et Labbe are omitted from I.

[4] The words qar trove est qe are omitted from I.

[5] rienz is omitted from I.

[6] I., doner.

No. 63.

A.D. 1346. Assise of Novel Disseisin.

(63.) § An Assise of Novel Disseisin was brought by T. de W. against three persons, who pleaded to the assise "*quod nihil habent*," and *Nul Tort*. And a fourth person took the tenancy of the whole upon himself, and pleaded in bar a feoffment made by the plaintiff's ancestor with warranty.—*Gaynesford*. As to a moiety, nothing passed.—And the other side said the contrary.—And as to the other moiety the plaintiff said that this fourth person who pleaded in bar had nothing, but that another was tenant who had pleaded to the assise; therefore as to that portion this fourth person ought not to be admitted to stay the assise.—And the other side said that he was tenant.—The assise was taken with respect to the whole. And it was found that the first mentioned moiety did not pass, and that the plaintiff was disseised, and that to his damages of one hundred shillings, and that also *vi et armis*. With regard to the other moiety it was found that the fourth person who had pleaded in bar was tenant. And they enquired over, and found the seisin and disseisin.—*Gaynesford*, for the plaintiff. We fully confess it, and we say, as to the second moiety, that nothing passed.—*Grene*. Since the point by which he purposed to oust us from aiding ourselves to bar him by the deed of his ancestor is found against him, and that by an inquest on which he put himself, we demand judgment, and we pray that he be barred of the assise in the manner in which our plea was used against him.—Willoughby *ad idem*. If a *Præcipe quod reddat* is brought against husband and wife, and the husband will disclaim for the wife, and take the tenancy upon himself, and himself answer, or if a writ is brought against a man of full age and another who is under age, and the one who is under age disclaims and the other who is of full age is willing to take the tenancy upon himself, and pleads in bar, the demandant will have an averment that they are tenants in common because the disclaimer neither of a feme covert nor of an infant under age will deprive them of an assise when their time comes.

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A.D. 1346. *Assisa Novæ Disseisinæ.*

(63.) [1]§ Assise de Novele Disseisine porte par T. de W. vers iij, qe plederent al assise *quod nihil habent*, et nul tort. Et le quarte enprist la tenaunce del enter, et pleda en barre par feffement dauncestre od garrantie.—*Gayn.* Quant a la moyte rienz ne passa.—*Et alii e contra.* —Et, quant al autre moyte[2] le pleintif dit qe celuy quarte qe pleda en barre[3] *nihil habet, sed* un autre fust tenant qavoit plede al assise; par quei quant a celle porcion il ne duist estre resceu darester lassise.—*Et alii* qil fust tenant.—Lassise fust pris del enter. Et trove fust qe la primere moyte ne passa, et qe le pleintif fust disseisi, et a ses damages de c.*s.*, et ceo *vi et armis.* En dreit del autre moyte fust trove[4] qe le quarte qe avoit plede en barre fust tenant. Et ils enquistrent outre, et troverent la seisine et disseisine.—*Gayn.* pur le pleintif. Nous le conissoms bien, et dioms, quant al secunde moyte[5], qe rienz ne passa.—*Grene.* Del houre qe le point par quel il nous voleit ouster de nous eider de luy barrer par le fait son auncestre est trove encountre luy, et ceo par enqueste en quele il se mist, nous demandoms jugement, et prioms qil soit barre dassise come nostre plee fust usee vers luy.—Wilby. *ad idem.* Si *Præcipe quod reddat* soit porte vers baron et sa femme, et le baron voille desclamer pur le femme, et enprendre la tenance a respondre mesmes, ou brief porte vers homme de pleine age et autre deinz age, et celuy deinz age desclayme, et lautre de pleyne age voille enprendre la tenance, et plede en barre, le demandant avera averement qils sont tenantz en comune pur taunt qe le desclamer de femme coverte ne denfaunt deinz age ne les toude lassise apres quant

[1] From H. and I., until otherwise stated.

[2] moyte is omitted from H.

[3] The words en barre are omitted from H.

[4] The words fust trove are omitted from I.

[5] The words quant al secunde moyte are from H. alone, and are there inserted by interlineation in a different hand.

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A.D. 1346. (No one denied this.) In such case, if the averment passes for the tenant, the bar which was pleaded will be held to be not denied in case the averment passes for him; so also in this case.—*Gaynesford.* We take your records to witness that in evidence of the assise the tenant produced a charter by which one of those named in our writ was supposed to have enfeoffed him, and so he was tenant, and therefore he pleaded to the assise, waiving the plea which he had offered in bar of the assise, and so the Court was discharged of that plea.—And this was not allowed, because it is not contained in a record, and has not been recorded by the Justices.—Therefore he passed over, and said that this averment was not taken in any way to defeat our right, but only in order have an answer, and to that answer we have given a traverse to the effect that nothing passed, and that averment he has refused; judgment. And as to the other moiety, with regard to which all is clear, judgment.—*Mutlow.* If a voucher or an aid-prayer is counterpleaded by averment, and the finding is for the tenant, the judgment will not be that the demandant is to be barred, but it will be "Let him have aid," or "Let the voucher stand"; and so it will be here that he is to have an answer as tenant, and not, &c.—*Grene.* Your example gives proof against yourself, as it appears. —*Birton.* If a verdict were now obtained at the suit of the plaintiff, what judgment would be given? It is certain that he would not recover by the judgment; and therefore, notwithstanding the verdict which has been given, the plaintiff ought not rightly to be barred by it.—*Quære* whether in this case enquiry would be had further against all with respect to the seisin and disseisin.—Afterwards Willoughby came into Court, and he was of opinion that the plaintiff should be barred.—And afterwards Scot and Notton[1] said to the plaintiff:—Recover your seisin of the moiety as to which the matter is clear, and

[1] Notton is here apparently acting as Justice of Assise.

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lour temps vynt[1]—*quod nullus negavit*—en tiel cas si laverement passe pur le tenant, le barre qe fust plede serra tenu a nent dedit en cas[2] qe laverement passe pur lui[3]; *sic hic.*—*Gayn.* Nous pernoms recorde qen evidence del assise le tenant moustra une chartre par quel un nome en nostre brief luy dust aver feffe, qe issi fust tenant, et par taunt pleda il al assise, en weyvaunt le plee qil avoit livre en barre dassise, et issi fust la Court de ceo discharge. —*Et non allocatur, quia non continetur in recordo, nec recordatur per Justiciarios.*—Par quei il passa outre, et dit qe cele averement ne fust pris rienz en defesaunce de nostre dreit, mes solement pur aver respons, a quel respons[4] nous avoms done travers qe nul passa, quel averement il refuse; jugement. Et del autre moyte, qest clere, jugement.—*Mutl.* Si un voucher ou eide prier soit countreplede par averement, et trove pur le tenant, le jugement ne serra pas qe le demandaunt soit barre, mes *quod habeat auxilium, et stet vocatio*; et issi serra yci qil eit respons come tenant, *et non*, &c.—*Grene.* Vostre ensample prove countre vous mesmes, *ut patet.*—*Birtone.* Si cel verdit fust ore atteint a le sute del pleintif, quel jugement freit homme? *Certum est* qe il ne recovera par lagarde; nient countre esteaunt le verdit, le pleintif par resoun ne deit par cel estre barre.—*Quære* en cele cas si homme enquerreit outre de la seisine et disseisine vers touz.—Puis Wilby. vint einz, et fust en oppinion de barrer le pleintif.—Et puis Scot, et Nottone al pleintif. Recoverez vostre seisine de la

A.D. 1346.

[1] The words quant lour temps vynt are omitted from H.

[2] cas is omitted from I.

[3] I., le Roi.

[4] The words a quel respons are omitted from I.

No. 63.

A.D 1346. your damages to the amount of one hundred shillings; and with regard to the other moiety you can abide judgment, or be nonsuited, whichever you prefer.

Assise of Novel Disseisin. § An Assise of Novel Disseisin was sued before Sir William Scot and his fellows in the County of Middlesex against two persons. And one of them pleaded to the assise by bailiff. And the other said that he was tenant of a moiety, and pleaded the deed of the plaintiff's ancestor in bar of the assise, and demanded judgment whether there ought to be an assise. To this the plaintiff said that the one who pleaded in bar with respect to a moiety should not be admitted to plead in bar, because he said that the one who so pleaded was not tenant, but that the other person who was named in the writ, and who had pleaded to the assise, was tenant. And it was found by the assise that he was tenant of the moiety. And they enquired further as to the truth touching the whole matter. And with regard to the other moiety, it was found that the plaintiff had been seised and disseised. And the one who pleaded as tenant demanded judgment of the writ, because the plaintiff said that he was not tenant whereas he said himself that he was tenant, and pleaded in bar as tenant, and that issue had been found against the plaintiff, and therefore (said counsel) we demand judgment, and pray that he be barred of the assise.—Scot. As to a moiety it is clearly found that he has been disseised, and therefore we give judgment that he do recover that moiety, and his damages which shall be assessed by the assise with regard to that moiety.—*Birton.* Sir, in an Assise, if I have a tenant and a disseisor that is quite sufficient for me. Now the plea which was pleaded that he was not tenant was for no other purpose than to oust him from a plea in bar; so, when it is found that he is tenant, he is then able to have the plea, and then came our time to plead against him; and this delay is not to the damage of any one except to the damage of us.—*Grene.* If I

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moyte qest clere, et voz damages a c.s. &c., et del autre moyte vous poetz demurer en jugement ou estre nounsuy, le quel qe vous voilletz, &c. A.D. 1346.

Assisa Novæ Disseisinæ. [Fitz., *Assise*, 214; 20 Li. Ass., 4.]

§ Une[1] Assise de Novele Disseisine fuit suy devant Sire William Scot et ses compaignouns en le Counte de Middelsexe vers deux. Et lun pleda al assise par baillif. Et lautre dist qil fut tenant de la moite, et pleda en barre dassise par le fait launcestre le pleintif, et demanda jugement si assise dust estre. A qai le pleintif dist qe celuy qe pleda en barre de la moite qil ne serreit pas resceu de pleder en barre, qar il dit qil ne fuit pas tenant, einz lautre fuit tenant qe fuit nome el brief et qavoit plede al assise. Et trove fuit par assise qil fuit tenant de la moite. Et ils enquistrent[2] outre tote la verite. Et de lautre moite fuit trove qil fuit seisi et disseisi. Et celuy qe pleda comme tenant demanda jugement du brief, qar le pleintif dist qil ne fuit pas tenant la ou il dist qil fuit tenant, et pleda en barre come tenant, quel issue si est trove countre le pleintif, par qai nous demandoms jugement et prioms qil soit barre dassise.—Scot. Quant a la moite il est clerement trove qil est disseisi, par qai nous agardoms qil recovere cel moite, et ses damages, qe par assise[3] serrount taxes pur cele moite.—*Birtone*. Sire, en Assise, si jeo ey tenant et disseisour assetz moi suffit il. Ore ceo qe fuit plede qil ne fuit pas tenant ne fuit a autre effecte forqe de ly ouster de ple en barre; issint, quant il est trove qil est tenant, donqes est il able daver le plee, et donqes vint nostre seisoun de pleder a luy; et cele delaye est en damage de nulle homme forqen damage de nous.—*Grene*. Si jeo plede le fait

[1] This report of the case is from L. and C. Words between brackets are from the printed *Liber Assisarum*, for which some other MS. appears to have been used.

[2] C., enquisterent.

[3] L., agarde.

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A.D. 1346. plead the deed of your ancestor in bar, as assign, and you say that I never had anything by assignment from the feoffee, and it is found by the assise that I had by assignment from the person whom your ancestor enfeoffed, I say that you are barred of assise for ever, because your issue which you tendered was of a peremptory nature both on the one side and on the other; so also in this case.—*R. Thorpe.* In that case the tenant pleaded his bar with regard to the right, and therefore it is right that by the finding of the issue against him he should be ousted from the assise; but in this case our plea was no other than that he could not plead as tenant, so that, since our plea was not with regard to the right, but to the effect that he could not plead, then, when it is found that he has ability to plead, it is time to plead against him, so that what is found by the assise cannot be in abatement of our writ, but only to give him ability to have the plea.—W. Thorpe. If a writ is brought against a man and his wife, and the husband and wife say that the wife has nothing, the demandant will have an averment, in that case, that they are tenants in common, and if he accepts the averment that they are tenants in common, he is barred in case the finding on the averment passes against him; and if it passes for him he will recover seisin of the land; so also, in this case in which we are, since you took issue with him that he was not tenant, and he the reverse, therefore since this issue has passed against you, it is right to bar you of the assise.—*Moubray.* When an issue which affects the right is taken between the tenant and the plaintiff, and the finding is against the plaintiff, it is right that he should be barred of the assise; but the plea was not one affecting the right, but only for the purpose of trying whether he ought to have an answer or not; so, when it is found that he is tenant, he is then in such a condition that he can plead in bar, and not before. And suppose that in an Assise a defendant had

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vostre auncestre en barre, comme assigne, et vous ditetz qe jeo navoy unqes rienz de soun assignement, et trove soit par assise qe javoy de soun assignement qe[1] vostre auncestre enfeffa jeo die qe vous estes barre dassise a touz jours, pur ceo qe vostre issue qe vous tendistes fuit une peremptore de lune part et de lautre; auxint en ceo cas.—R. Th. La pleda il soun barre en dreit, et pur ceo est il resoun qe par issue trove countre luy il soit ouste dassise; mes icy nostre plee ne fuit forqe il ne poet mie pleder come tenant, issint qe [quant] nostre plee ne fuit pas en dreit, mes qil pout mie pleder, quant il est trove qil est able de pleder, donqes est il seisoun de pleder a luy, issint qe ceo qest trove par assise ne poet nient estre en abatement de nostre brief, mes de luy faire able daver le plee.—W.[2] Thorpe. Si brief soit porte vers un homme et sa femme, et le baroun et la femme dient qe la femme nad rienz, le demandant avera averement, en ceo cas, qils sount tenantz en comune, et, si il preigne averement qe tenant en comune, il est barre en ceo cas qe laverement passe countre luy; et, si pur luy, il recovera seisine de terre; auxint en ceo cas qe nous sumes, quant vous preistes issue ovesqe luy qil ne fuit pas tenant, et il le revers, donqes, quant cele issue est passe countre vous, il est resoun de vous barrere dassise.—*Moubray*. Quant issue qe touche le dreit est pris entre le tenant et le pleintif, et il soit trove countre le pleintif, il est resoun qil soit barre dassise; mes le ple ne fuit pas en le dreit, mes soulement de trier sil duist aver respons ou noun; issint, quant il est trove qil est[3] tenant, donqes est il tiel qe poet pleder en barre [et ne mye devant]. Et jeo pose qen Assise un defendant ust empris[4] la tenance et

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[1] C., qi.

[2] MSS., R. But the person must have been W. Thorpe, a Justice of the King's Bench.

[3] L., soit.

[4] L., emprent, instead of ust empris.

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A.D. 1346. taken the tenancy upon himself, and pleaded in bar, and another had taken the tenancy upon himself, and pleaded in bar, I say that the demandant ought to have elected his tenant, and if it had been found by the assise that the one whom the plaintiff asserted to be tenant was not tenant, but that the other who pleaded was tenant, the demandant ought in such case to plead to his bar, and the writ ought not to abate, because this issue was only to try who ought to have the plea, and as there are tenant and disseisor in his writ it seems that the writ is sufficiently good: so also in this case, although it is found that the person whom the plaintiff asserted to be tenant had nothing, but the other who pleaded was tenant, his writ is sufficiently good. And it is not to the damage of any one but the plaintiff, because he has been delayed by this issue.—Notton. In the case of which you speak, where each of two persons takes upon himself the tenancy severally, and they plead, and the plaintiff elects his tenant, and the finding is against him, in that case it is not right that his writ should abate, because it is an inquest of office by reason of the dispute which there is between the tenants; but in this case it is an issue taken between the tenant and the demandant, which issue is clearly found against the plaintiff, and therefore it is right that his writ should abate. And in a *Præcipe quod reddat* it is clear enough that the writ ought to abate in case an issue which is dilatory is taken between the tenant and the demandant, such as misnomer of a vill, or non-tenure of a part of the tenements demanded; why then ought not this writ also to abate in this case?—*Birton.* The case of an Assise is not like other cases, for in other cases of *Præcipe* no other issue than a peremptory issue can be taken for one party or for the other, but in an Assise, if the tenant pleads a plea in bar, and the bar is traversed, and the finding is against the tenant, still there will be no proceeding to judgment on that until they have enquired whether the plaintiff was seised and

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plede en barre, et un autre ust empris[1] la tenance, et plede en barre, jeo die qe le demandant duist aver eslieu soun tenant, et si trove ust este par assise qe celuy qe[2] le pleintif dit estre tenant qil ne fuit pas tenant, einz lautre qe pleda, le demandant deit en tiel cas pleder a soun[3] barre, et le brief ne deit mie abatre, pur ceo qe ceste issue nest forqe a trier qi deit aver le plee, et il ad tenant et disseisour en soun brief, il semble qe le brief est assetz bone ; auxint en ceo cas, tut soit ceo trove qe celuy qe[2] le pleintif dit estre tenant navoit rienz, einz lautre fuit tenant qe pleda, soun brief est assetz bone. Et il est en damage de nulle homme forqe de luy, qar il est delaye, par cele issue.—Nottone. En le cas qe vous parletz qe deux enpernount la tenance severalment, et pledount, et le pleintif elise[4] soun tenant, et trove soit encountre luy, en ceo cas il nest pas resoun qe soun brief abate, qar cest une enqueste doffice pur le debat qil y ad entre les tenantz ; mes en ceo cas il est une issue pris entre le tenant et le demandant, quele issue est proprement [trove] encountre le pleintif, par qai il est resoun qe soun brief abate. Et en un *Præcipe quod reddat* il est assetz clere qe le brief deit abatre en cas qe issue soit pris entre le tenant et le demandant qest dilatore, comme malenomer de ville, ou nountenu de parcelle ; pur qai ne duist ceo abatre [auxi] icy ?—*Birtone.* Cas Dassise nest pas semblable as autres cas, qar en autres cas de *Præcipe* autre issue ne poet faire mes peremptore pur lune partie ou pur[5] lautre, mes en Assise, si le tenant plede un plee en barre, et le barre soit traverse, et trove soit countre le tenant, unqore homme nirra mye a jugement sur cella tanqils averount enquis si le pleintif fuit seisi et disseisi ; et donqes est il resoun

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[1] L., emprent, instead of ust empris.
[2] L., qi.
[3] C., asqun, instead of a soun.
[4] C., elisse.
[5] L. et, instead of ou pur

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A.D. 1346. disseised; and therefore it is right that the same law should hold good with regard to the plaintiff, although the issue is found against him, because that issue was not to try the right of any one, but to see whether the defendant could have the plea or not; for when it is found that he is tenant and able to have a plea, it is right that the plaintiff should be put to answer, or, at the most that could happen, only that his writ should be abated, and not that he should be barred of assise, because there was no issue taken with regard to the right.—And afterwards, because the opinion of the COURT was that he should be barred of assise, he was nonsuited.

Præcipe. (64.) § Note that a man brought a writ against three persons by several *Præcipes*, and one pleaded to the country, and a *Nisi prius* was granted. And on the day given the demandant was nonsuited. And on the day which they had in the Common Bench the two other tenants were essoined. And the essoiners claimed the nonsuit of the demandant on the ground that when he was nonsuited with the regard to one he was nonsuited with regard to all, because the tenants were essoined.—The COURT would not admit their claim, but adjudged the essoin. —But the reverse has been seen, and an essoiner has had the advantage of the nonsuit of the demandant in a Replevin before the return had been awarded.

Wardship. (65.) § The Earl of Warwick had seised certain lands and the heir of his tenant who held of him by knight service, and afterwards other lands descended to the infant on the side of another ancestor, which were holden of the King by knight service. And the King claimed, by reason of his prerogative, the wardship of the lands which were holden of the Earl and of the heir. And because the Earl was first seised of the body of the heir, and of the lands holden of him, before the lands which were holden of the King descended to the infant after the Earl was

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qe mesme la ley se tiegne vers le pleintif, qar, tut soit lissue trove countre luy, quele issue fuit a trier nully dreit, mes de veer sil avereit le plee ou noun; qar, quant il est trove qil est tenant et able daver plee, il est resoun[1] qe le pleintif soit mys de respoundre, ou, a plus qe pout estre, forqe dabatre le brief, et ne mie de luy barrer dassise, qar il y avoit nulle issue pris en le dreit.—Et puis, pur ceo qe la COURT fuit en oppinioun de ly aver barre dassise, il fuit nounsuy. A.D. 1346.

(64.) [2]§ *Nota* qun homme porta un brief vers iij par severals *Prœcipe*, et un pleda au pays, et *Nisi prius* graunte. Et al jour le demandant fuit nounsuy. Et al jour qils avoint en Bank les deux autres tenantz furent essones. Et essoignours chalengerent la nounsuite del demandant pur ceo qe quant il fuit nounsuy vers un il fuit nounsuy vers toux, pur ceo qe les tenantz furent essones.—La COURT ne les voleit mie resceiver, mes ajuggerent lessone.—Mes le revers ad este viewe, et lessoignour ad eu avantage de la nounsuite le demandant avant qen *Replegiari* retourne ad este agarde. *Prœcipe.*

(65.) [3]§ Le Count de Warwyke si avoit seisi certeinz terres et leire[4] soun tenant qe tient de luy en chivalrie, et puis autres terres descenderent al enfant de part un autre auncestre, qe furent tenuz du Roi par service de chivaler. Et le Roi, par resoun de sa prerogative, chalengea la garde des terres qe furent tenuz de Count et del heir. Et pur ceo qe le Count si fuit seisi primes de corps, et des terres tenuz de luy, avant qe les terres qe furent tenuz du Roi si descenderent al enfant apres qe le Count Garde.

[1] The words il est resoun are omitted from C.

[2] From L. and C. This may possibly be a second report of No. 21 in the same term.

[3] From L. and C.

[4] C., le heire.

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A.D. 1346. thus seised of the heir and of the lands, at which time no one had a right, except the Earl, to have the wardship, judgment was therefore given by the whole Council that the King should not have the wardship either of the body or of the land, &c.—*Quære* whether the law is the same between other lords in cases in which land which is holden by priority of another lord descends to the infant at a later time.

Quare impedit. (66.) § Our Lord the King brought a *Quare impedit* against the Bishop of Norwich, and counted that it belonged to him to present to the church of E.[1] And he counted that King John was seised of the advowson, and presented his clerk, one J.[2] by name, who, on his presentation was admitted and instituted by the Bishop. This King John gave the advowson to one Prior of St. Bartholomew,[3] predecessor of the present Prior, and to his successors. And he counted that one B.,[4] Prior of the same House, aliened the same advowson, without the King's license, to the Bishop of Norwich, predecessor of this Bishop, and so the advowson and the right to present accrued to the King. And he made the descent of the advowson to the present King; and so it belongs to the King to present.—*Moubray.* Whereas the King has counted that King John was seised of the advowson and presented, we tell you that his presentee was not admitted or instituted by the Bishop on his presentation; ready, &c. And, whereas he has counted that King John gave the advowson to the Prior of St. Bartholomew, we tell you that he did not give it. And whereas he has said that the Prior aliened the advowson, without the King's license, to the Bishop of Norwich,

[1] Belton-by-Yarmouth, according to the record.

[2] Peter Buk according to the record.

[3] In Smithfield, London, according to the record.

[4] The name is not given in the record.

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si fuit seisi del heire et des terres, a quel temps nulle navoit dreit, forqe le Count, daver garde, [par] quei fuit ajuge par tut le Counseille qe le Roi navereit mie la garde du corps ne de la terre, &c.—*Quære* si mesme la ley soit entre autres seignours en cas ou terre descent al enfant de puisne temps qest tenu par priorite dun autre seignour. A.D. 1346

(66.)[1] § Nostre seignour le Roi porta *Quare impedit* vers Levesqe de Northwike, et counta qa luy appent a presenter al eglise de E. Et counta qe le Roi Johan fuit seisi del avoesoun, et presenta un soun clerc, J. par noun, qe a soun presentement fuit reseeu et institut Devesqe, le quel Roi Johan si dona lavowesoun a un Prior de Seint Bertholmeu, et a ses successours, predecessour le Prior qore est. Et counta qun B., Prior de mesme la mesoun, mesme lavowesoun aliena, sanz conge du Roi, al Evesqe de N., predecessour cesti Evesqe, issint acrust lavowesoun au Roi et dreit a presenter. Et fist la descente de lavowesoun tanqa Roi qore est ; issint appent[2] au Roi a presenter. —*Moubray.* La ou le Roi ad counte qe le Roi Johan fuit seisi del avowesoun et presenta, nous vous dioms qe soun presente ne fuit pas reseeu ne institut Devesqe a soun presentement ; prest, &c. Et la ou il ad counte qil dona lavoesoun al Prior de Seint Bertholmeu nous vous dioms qil ne dona pas. Et la ou il ad dit qe le Prior aliena lavowesoun, sanz conge du Roi, al Evesqe de Northwike. *Quare impedit.*

[1] From L. and C. This is a third report of the case which appears as No. 31 of Hilary Term, and No. 37 of Easter Term, 20 Edward III. The record is among the *Placita de Banco*, Hil. 20 Edw. III. R°. 331d.

[2] C., attient.

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A.D. 1346. we tell you that he did not aliene it; ready, &c.—*R. Thorpe.* You see plainly how the King has counted against the Bishop that it belongs to him to present, and the Bishop has given three answers to impede the King's action, and therefore we do not understand that we ought to be put to reply, on the King's behalf, to such an answer which is threefold in itself.—*Moubray.* We must have all the answers, because if we were to give for our answer that the person presented by King John was not admitted or instituted by the Bishop, it would be held as not denied by us that the King gave the advowson to the Prior of St. Bartholomew, and that the Prior aliened to the Bishop, which would be a reason for giving the King the presentation, so that it is necessary that we should have all the answers, and the King can elect which point he will take and maintain; but we cannot do that without being put to mischief.—*R. Thorpe.* The King will not be in a worse condition than another man will be; and if you ought not to be admitted to that answer, which is threefold, against another man, *a multo fortiori* you ought not to be admitted to it against the King.—Willoughby. If the King wished to take issue on one point, he could elect and maintain whichever he would; but, if he will not do so, no one can compel him. But you can be saved well enough; you ought to give that which you wish to maintain for answer to the King, and to make protestation as to the other points, and so save them by way of protestation, so that they will not be held as not denied by you; and, in case the King will traverse them, you can maintain them.—*Moubray.* We tell you that, whereas the King has counted that King John presented his clerk, who was admitted &c., that same clerk was not admitted or instituted by the Bishop on his presentation, &c. And *Moubray* made his protestation with regard to the other points, and said that, if the King would deny them, he was ready to maintain them, &c.—*R. Thorpe.* You see plainly how he has not denied

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nous vous dioms qil naliena pas ; prest, &c.—*R. Thorpe.* A.D. 1346.
Vous veietz bien coment le Roi ad counte devers Levesqe qa luy appent a presenter, ou Levesqe ad done iij. respons a destourber laccion le Roi, par qai nous nentendons pas qe a tiel respons quel est treble en luy mesme qe nous devoms pur le Roi estre mys a respoundre.—*Moubray.* Il covient qe nous eioms touz, qar si nous donassoms pur respons qe le presente par le Roi Johan ne fuit pas resceu ne institut Devesqe, il serreit tenu a nient dedit de nous qe le Roi dona lavowesoun al Prior de Seint Bertholmeu, et le Prior aliena al Evesqe, quel serreit cause a doner le Roi le presentement, issint qil covient qe nous eioms touz les respons, et le Roi poet eslire quel il voet prendre et meintener ; mes nous ne poms mie si nous ne soioms mie mys[1] a meschief.—*R. Th.* Le Roi ne serra mie de pire condicion qe ne serra un autre homme ; et, si vers[2] un autre homme vous ne duissetz mie estre resceu a ceo respons, qest treble, *a multo fortiori* devers le Roi vous ne devetz estre resceu.—Wilby. Le Roi, sil vousit de prendre issue sur un point, il le poet eslire et meintener quel qil voudra ; mes, sil ne voet pas, nulle homme ne luy poet chacer a ceo faire. Mes homme vous sauvera assetz bien ; vous devetz doner ceo pur respons au Roi qe vous voilletz meintener, et de les autres pointz faire protestacion, et issint les sauver par voie de protestacion, issint qils ne sount mye tenuz a nient dedit de vous ; et, en cas qe le Roi les voille traverser, vous le poietz meintener.—*Moubray.* Nous vous dioms qe la ou le Roi ad counte qe le Roi Johan presenta un soun clerc, qe, &c., mesme celuy ne fuit pas resceu ne institut Devesqe a soun presentement, &c. Et fist sa protestacion des autres pointz, et, si le Roi les voilleit dedire, il fuit prest de les meintener, &c.—*R. Thorpe.* Vous veietz bien coment il nad

[1] mys is omitted from L. | [2] vers is omitted from C.

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A.D. 1346. that King John was seised of the advowson, and gave it to the Prior of St. Bartholomew to hold to him and his successors for ever, and that the Prior aliened, without the King's license, to the Bishop, so that for that reason it belongs to the King to present, and he has not denied that matter, and therefore we demand judgment, and pray a writ to the Bishop.—HILLARY. You cannot hold that as not denied by him, for when he traversed it, and you would not reply for the King because his answer was threefold, he was so compelled by the COURT to hold to one of the three, because the King will not be charged with different answers. And he made protestation as to the rest, and he has traversed to the effect that the presentee of King John was not admitted or instituted by the Bishop on his presentation, so that we understand that a *Quare impedit*, which is a possessory writ, cannot be maintained without possession of a presentation, and that possession he has traversed; and in case the King will maintain that possession he can do so; and in case he will maintain the other point—that the Prior aliened to the Bishop without the King's license—he can do so also.—*R. Thorpe.* Ready, &c., that the Prior of St. Bartholomew aliened the advowson, without the King's license, to the Bishop of Norwich.—*Moubray.* We have tendered issue that King John's presentee was not admitted or instituted by the Bishop on his presentation, and so we have answered to this possessory writ, and therefore, &c. And afterwards he said that the Prior of St. Bartholomew did not aliene the advowson to the Bishop of Norwich as *Thorpe* had said; ready, &c.—And so note that the plea was so ruled that, on his protestation, the King[1] took issue on which point of his own count the King would elect.

[1] For the proceedings and pleadings as they appear on the record *see* Y.B., Hil.—Trin. 20 Edw. III. pp. 103—107.

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pas dedit qe le Roi Johan fuit seisi de lavowesoun, et la dona al Prior de Seint Bertholmeu, a luy et a ses successours a touz jours, et qe le Prior aliena sanz conge du Roi al Evesqe, issint qe par ceste cause si appent au Roi a presenter, quele chose il nad pas dedit, par qui nous demandoms jugement, et prioms brief al Evesqe.—HILL. Ceo vous ne poietz mie[1] tener a nient dedit de luy, qar quant il le traversa, et vous ne vodrietz mie replier pur le Roi, pur ceo qe soun respons fuit treble,issint par la COURT il fuit chace de prendre a un de ceux, pur ceo qe le Roi ne serra mie charge de divers respons. Et il fist protestacion del remenant, et ad traverse qe le presente le Roi Johan ne fuit pas resceu ne institut Devesqe a soun presentement, issint qe nous entendoms qe *Quare impedit*, qest un brief de possession, ne poet pas estre meintenu sanz possession de presenter, et ceo ad il traverse ; et, en cas qe le Roi voet meintener cella, il poet ; et, en cas qil voet meintener lautre point qe le Prior aliena, sanz conge du Roi, al Evesqe, il poet auxint.—*R. Thorpe.* Qe le Prior de Seint Bertholmeu aliena lavowesoun, sanz conge du Roi, al Evesqe de Northwyke prest, &c.—*Moubray.* Nous avoms tendue[2] issue qe le presente le Roi Johan[3] ne fuit pas resceu ne institut Devesqe a soun presentement, issint avoms respondu a cest brief de possession, par qai, &c. Et puis dit qe le Prior de Seint Bertholmeu naliena pas lavowesoun al Evesqe de Northwike comme il ad dit ; prest, &c.—*Et sic nota* qe le plee fuit issint roulle qe le Roi prist issue, sur sa protestacion, sur quel[4] point de soun count[5] qe le Roi vodreit eslire, &c. A.D. 1346.

[1] mie is omitted from L.

[2] L., tendoms, instead of avoms tendue.

[3] Johan is omitted from L.

[4] C., soun. In L. the word quol is written in a later hand over an erasure.

[5] C., couent.

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A.D 1346. Statute merchant.

(67.) § Note that a man sued execution, upon a statute merchant, to take the body of the debtor, and the Sheriff returned that he had taken the body of the debtor, and that the debtor had payed the money to the plaintiff, and that he had an acquittance.—*Moubray* said that this matter did not fall under the head of a Sheriff's return, because, if the fact is as the Sheriff has returned, the party himself will have a suit to discharge himself. And (said *Moubray*) we pray that the Sheriff be amerced.—HILLARY. The Sheriff has not acted wrongly in any way, because, if the fact is as the Sheriff has returned, you have no ground for detaining the debtor in prison, and, if it is not as the Sheriff has returned, and the Sheriff has allowed the debtor to go at large, you will have your recovery against the Sheriff, for the Sheriff has testified by his answer that at one time he was seised of the debtor's body, and therefore we will not amerce the Sheriff.

Error.

(68.) § A man brought a writ of Error against another in respect of a judgment rendered in the Court of Chester, and assigned for error that the plaintiff counted on two plaints of Debt, and demanded by each plaint thirty-nine shillings and eleven pence farthing, and counted entirely of one same contract on both plaints, and of payment to be made on one and the same day, so that by his declaration it was proved that it was all one and the same debt, in respect of which an action is by law given only by writ, and not by plaint, for so large a sum. The party took exception to this, and demanded judgment of the count, and notwithstanding this exception they gave judgment that the plaintiff should recover his debt and his damages, and in that they erred.—W. THORPE. Forasmuch as he counted of one and the same contract and one and the same day, and it can only be understood to be one debt (unless he had made acquittance of part, and that was not alleged) therefore, inasmuch as they held the plea in that court when

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(67) [1]§ *Nota* qun homme suyt execucion, hors dun estatut marchaunt, de prendre le corps le dettour, et le Vicounte retourna qil avoit pris le corps, et qil avoit paye les deners al pleintif, et qil avoit acquitaunce.—*Moubray* dit qe ceo ne chiet pas en retourne de Vicounte, qar sil soit issint come le Vicounte ad retourne, la partie mesme avera suite de luy descharger. Et prioms qe le Vicounte soit amercy.—HILL. Le Vicounte nad rienz trespasse, qar, sil soit issint come le Vicounte ad retourne, vous navietz mie cause de luy detener en prisoun, et sil soit mie issint come il ad retourne, et luy eit suffert daler a large, vous averetz vostre recoverir vers Vicounte, qar le Vicounte par son respons ad tesmoigne qa un temps il fuit seisi de soun corps, par qui nous ne voloms mie amercier le Vicounte. A.D. 1346. Statut marchaunt.

(68)[1] § Un homme porta brief Derrour vers un autre dun jugement rendu en la Court de Cestre, et assigna pur errour de ceo qil counta en deux[2] pleintes de Dette, et demanda par chesqun pleint xxxix*s.* x*j*d. et $\frac{a}{q}$., et counta tut dun mesme contracte a touz les pleintes, et a un mesme jour a paier, issint qe par sa demoustraunce fuit prove qe ceo fuit tut un mesme dette, de qai accion par ley nest mie done forqe par brief, et ne mye par pleinte, de tant de summe. La quele chose la partie chalengea, et demanda jugement de count, et, *non obstante* cele chalenge, ils agarderent qe le pleintif recoverast sa dette et ses damages, et en tant ils errerent.—W. THORPE. Pur ceo qil counta dun mesme contracte et dun mesme jour, quel ne poet estre entendu forqe un dette, sil nust fait acquitaunce de parcelle, et ceo ne fuit mie allegge, issint de ceo Errour.

[1] From L. and C.

[2] C., eux, instead of en deux. | The word en has been inserted, in a later hand, in L.

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A.D. 1346. the claim amounts to so large a sum, in which case another court ought to have had jurisdiction of that plea, they thereby erred, and therefore we reverse that plea, and entirely annul it, and we give judgment that the plaintiff in this writ of Error do now have restitution of that which he lost, &c.

And also a judgment was reversed because the plaintiff counted of a covenant, and did not produce any specialty, and exception was taken because the court ruled that the plaintiff should be answered without producing any specialty, whereas covenant properly falls under the head of specialty, and so the judgment was reversed, &c.

Assise. (69.) § An assise comes to make known whether William Pevecy of Pulborough and Alice his wife tortiously, &c., obstructed a certain way in Pulborough to the nuisance of the frechold of Alan del Boys, parson of the church of Rudgwick, in the same vill, after the first, &c.; and whereof he complains that, whereas he has a certain meadow in the same vill of Pulborough, from which meadow he was used to have a certain way beyond the land of the aforesaid William and Alice directly to the highway in the same vill called Holstrete towards the south side, and from that street to his meadow aforesaid, to go and to return, to carry out and carry back, with carts and waggons, hay and dung, to drive out and drive back his beasts to feed in the meadow aforesaid, at all times of the year, at his pleasure, the aforesaid William and Alice have obstructed the way aforesaid, by a certain house built across the way aforesaid in their land aforesaid, by reason whereof the same Alan cannot have his way directly, as he was used, but has to go two leagues round, and so to his nuisance, &c.

And William and Alice come and answer as to the tenement put in view, where the aforesaid Alan supposes the nuisance aforesaid, and say that the aforesaid Alan in making his plaint above says that he has a certain

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qils tiendrent[1] plee en cel court qamount a tant de summe, ou autre court duist aver eu jurisdiccion de ceo plee, en tant ils errerunt, par qai nous reversoms cet plee, et anientissoms de tut, et agardoms[2] qe le pleintif ore a cest brief eit restitucion de ceo qil perdi, &c. A.D. 1346.

Et auxint un jugement fuit reverse de ceo qil counta dun covenant, et ne moustra mie especialte, et fuit chalenge de ceo qil agarderent qil fuit respondu sanz especialte, la ou covenant chiet proprement en especialte fuit le jugement reverse, &c.

Assisa. [Fitz., *Assise* 218; 20 Li. Ass. 18.]

(69.) [3]§ Assisa venit recognitura si Willelmus Pevecy de Pulkeberghe et Alicia uxor ejus injuste, &c., obstruxerunt quandam viam in P. ad nocumentum liberi tenementi Alani del Boys, personæ ecclesiæ de Riggewiche, in eadem villa, post primam, &c ; et unde queritur quod, ubi ipse habet quoddam pratum in eadem villa de Pulkeberghe, de quo quidem prato ipse solebat habere quoddam chiminum ultra[4] terram prædictorum Willelmi et Aliciæ directum usque ad regiam viam in eadem villa vocatam Holstrete versus partem australem, [et] de strata illa usque ad pratum suum prædictum, ad eundum et redeundum, cariandum et recariandum, cum carris et carrectis fœna et fima, chaceandum et rechaceandum averia sua ad pascendum in pratum prædictum quolibet tempore anni, pro voluntate sua, prædicti Willelmus et Alicia obstruxerunt chiminum prædictum per quamdam domum levatam ex traversa chimini prædicti in terra sua prædicta, per quod idem Alanus non potest habere chiminum suum directum, ut solebat, sed oportet ipsum ire per duas leucas in circuitu, et sic ad nocumentum, &c.

Et Willelmus et Alicia veniunt et respondent de tenemento in visu posito, ubi prædictus Alanus supponit nocumentum prædictum, et dicit [*sic*] quod prædictus Alanus superius in faciendo querelam dicit ipsum habere quoddam

[1] C., tiendreint.
[2] agardoms is omitted from C.
[3] From L. and C.
[4] C., vel.

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A.D. 1346. meadow in the same vill, from which he used to have a way directly to the aforesaid highway, and does not say that he has any messuage or other freehold in the same vill, from which or to which the aforesaid way could be supposed to extend to the meadow aforesaid, or from the meadow aforesaid, or to which he supposes the nuisance aforesaid to be done, and therefore they pray judgment of the plaint aforesaid.

And Alan says that in the plaint aforesaid it is declared that his way aforesaid is obstructed between the highway and his meadow aforesaid, which highway is common to him, Alan, and to all others, for carrying, and for the driving of animals to be had in the same, and for speeding other business; and, although the same Alan has not any freehold in the aforesaid vill of Pulborough, or elsewhere, other than the meadow aforesaid, this plaint is given to him by the law of the land, because if he should wish to carry his hay mown in the meadow aforesaid to market, or elsewhere, to sell, or to make any other profit for himself, he has not any other recovery in respect of the nuisance aforesaid by any plaint except in the form in which he has complained above, and therefore he prays judgment whether the aforesaid plaint be not sufficient &c.; and, inasmuch as the aforesaid William and Alice answer nothing to his action, he prays that the Court do proceed to take the assise, &c.

And thereupon a day is given to the parties aforesaid before the same Justices at Westminster on the Monday next after the Octaves of St. John the Baptist in the state in which they are now, saving to the parties their arguments, and it was ordered that the writ patent should remain in the possession of the plaintiff.

Scot. We see plainly that this way is to the plaintiff's profit, and if he were to say that he had a messuage, and that he had a way from his meadow to his messuage, that would be a good plaint because, by intendment of

No. 69.

pratum in eadem villa, a quo solebat habere chiminum directum usque ad prædictam regiam stratam, et non dicit se habere aliquod mesuagium seu aliud liberum tenementum in eadem[1] villa, a quo nec ad quod prædictum chiminum se extendere deberet usque ad pratum prædictum, nec de prato prædicto, nec ad quod nocumentum prædictum supponit esse factum, per quod petit [*sic*] judicium de querela prædicta. A.D. 1346.

Et Alanus dicit quod in querela prædicta declaratur chiminum suum prædictum obstructum esse inter regiam stratam et pratum suum prædictum, quæ quidem regia strata ipsi Alano et omnibus aliis communis est pro cariagio et fugatione animalium in eadem exercendis, et aliis negotiis expediendis; et, licet idem Alanus non habeat aliquod liberum tenementum in prædicta villa de Pulkeberghe, nec alibi, aliud quam pratum prædictum, ista querela ei datur per legem terræ. pro eo quod si[2] ipse fœna sua in prato prædicto messa ad forum, vel alibi, ad vendendum, vel aliud proficuum suum faciendum cariare voluerit, aliud recuperare non habet de nocumento prædicto per aliquam querelam nisi in forma qua ipse superius questus est, per quod petit judicium si prædicta querela sufficiens non sit, &c.; et, ex quo prædicti Willelmus et Alicia ad actionem suam nihil respondent, petit quod procedatur ad captionem assisæ, &c.

Et super hoc dies datus est partibus prædictis coram eisdem Justiciariis apud Westmonasterium die Lunæ proxima post Octobas Sancti Johannis Baptistæ in statu quo nunc, salvis partibus rationibus suis, et quod breve patens remaneat penes querentem, &c.

Scot. Nous veioms bien qe cest chimyn est en profit de luy, et sil deist qil ust un mies, et de[3] soun pree il avoit chimyn tanqa soun mies, ceo serreit bone pleinte, pur ceo

[1] C. prædicta.
[2] si is omitted from L.
[3] de is omitted from C.

Nos. 69, 70.

A.D. 1346. law, that way was to his profit; and also he shows now that, since he has a meadow, and he ought to have a way from his meadow to the highway, that is his profit, because he can thence carry to market, or elsewhere, to sell for his profit, so that, even though he has not a messuage to which he is supposed to carry, the plaint is sufficiently good.—And afterwards *Thorpe* said that the house was built in the time of his predecessor, and, if it be found, &c.

Account. (70.) [1]§ A man[2] brought a writ of Account against another[2], and counted that the defendant had been his receiver of his moneys from the sixteenth to the eighteenth year of the present King.—And the defendant said, by *Notton*, that the plaintiff ought not to be answered, because he was outlawed on a writ of Trespass in the King's Bench at the suit of another person, and demanded judgment whether he ought to be answered.—*Moubray*. See here a charter of pardon by which the King has pardoned him the outlawry, and so he is a man within the law.—And in the charter there was a condition "*ita quod stet recto*," in

[1] This may possibly be a second report of the case No. 47 in the same term (pp. 54-56), though the action is there described as one of Trespass, and this was one of Account, as shown by the record.

[2] For the names of the parties, *see* p. 153, note 1.

Nos. 69, 70.

qe, par entent de lei, cel chimyn si fuit a soun profit ; et auxint il moustre ore qe, quant il ad prec, et de soun prec il deit aver chimyn tanqe al haut estrete, cest soun profit, qar il poet de illoeqes carier al marche, ou aillours, a vendre a soun profit, issint qe, tut neit il mies a qai il deit carier, la pleinte est assetz bone.—Et puis *Thorpe* dit qe le mies fuit leve en temps soun predecessour, et si trove soit, &c. A.D. 1346.

(70.) [1]§ Un homme porta un brief Daccompte vers un autre, et counta qil fuit soun resceyvour de ses deners del an xvj. tanqal an xviij de cest Roi.—Et lautre dist par *Nottone*, qe le pleintif ne duist estre respondu, pur ceo qil fuit utlaie en un brief de Trans en Bank le Roi a la suite dune autre persone, et demanda jugement sil duist estre respondu.[2]—*Moubray*. Veietz cy chartre de pardoun par quele le Roi luy ad pardone lutlagerie, et issint est il homme a la ley.[3]—Et en la chartre fuit un condicion *ita quod stet recto*, Accompte.

[1] From L., and C., but corrected by the record *Placita de Banco*, Trin. 20 Edw. III. R°. 320.d. It there appears that the action was brought by Nicholas Sperlyngo, of West Ham, against "Jacobus Fraunceys de Florencia, Palmerus Fraunceys de Florencia, et Baraldus Valentre de Florencia" who were to answer "de placito quod quilibet eorum reddat ei rationabilem compotum suum de tempore quo fuit receptor denariorum ipsius Nicholai, &c."

There is no declaration on the roll, and consequently none of the particulars as to date, &c., given in the report.

[2] The plea was, according to the roll, "Jacobus et alii . . . proferunt hic quoddam Recordum quod dominus Rex misit coram Justiciariis hic, sub pedo sigilli, &c., quod quidem Recordum testatur quod prædictus Nicholaus, ad sectam Abbatis de Mira Valle, in quodam brevi de Transgressione coram ipso domino Rege, pro eo quod non venit, positus fuit in exigendo, et postea . . . . . ultagatus fuit, et sic dicunt quod ipso adhuc utlagatus est, unde petunt judicium si ipse qui est extra communem legem respondeat [*sic*] &c."

[3] The replication was, according to the record, "Nicholas dicit quod dominus Rex nunc postea de gratia sua speciali pordonavit ei utlagariam prædictam, et profert hic literas ipsius domini Regis patentes quæ hoc testantur, et petit quod respondeant, &c."

Nos. 70, 71.

A.D. 1346

accordance with the words of the statute,[1] and the charter was of earlier date, and so was the outlawry, than the receipt as to which the plaintiff had counted.—Willoughby. There is a condition in your charter that you must stand to right, that is to say, answer the party who made his suit against you in the writ of Trespass, and that you do not show that you have done, and therefore we cannot allow the charter.—*Moubray.* We have produced the King's charter by which he has pardoned us the outlawry so that with regard to the person who is a party we have sufficiently shown that we are a man within the law, and so entitled to an answer; and whether we have performed the condition of the charter or not, that is nothing to him, but only to the person at whose suit we were outlawed.—Hillary. If there were no charter, you could not be answered, because you were outlawed; and now, if a charter is granted to you which is on condition, unless the condition is observed the charter is of no avail, because then the outlawry has not been defeated or pardoned; and you do not show by record, or in any other manner, that the condition was performed, because you do not show that you stood to right, and therefore the charter is of no force, and therefore, defendant, fare you well.

Judgment.

Trespass.

(71.) § Note that a writ of Trespass was brought against the Bishop of Exeter and others on the ground that they were supposed to have beaten and hurt the plaintiff. And the writ was brought in the King's Bench, and *profert* was made of a letter of excommunication [of the plaintiff] from the same Bishop, on behalf of all except the Bishop,

[1] 5 Edw. III. c. 12.

Nos. 70, 71.

comme testatut voet, et la chartre fuit deigne date et lutlagerie qe la resceit de quel il avoit counte.—Wilby. Il ad une condicion en vostre chartre qe vous duissetz ester[1] a dreit, saver, de respoundre a la partie qe fist sa suite devers vous en le brief de Trans, et ceo vous ne moustretz mie, par qai nous ne poms mie allowere la chartre.—*Moubray.* Nous avoms moustre la chartre le Roi par quel il nous ad pardone lutlagerie, issint devers luy qest partie avoms nous assetz moustre qe nous sumes homme a la ley et issint responable ; et mesqe nous eioms parfourny la condicion de la chartre ou noun, ceo nest rienz a luy, einz a celuy[2] a qi suite nous fumes utlage.—Hill. Si la chartre ne fuit, vous ne duissetz pas estre respondu, pur ceo qe vous fuistes utlage ; et ore, si la chartre vous soit grante qest sur condicion, si la condicion ne soit tenuz la chartre est de nulle value,[3] qar lutlagerie adonqes ne fuit pas defait ne pardone ; et vous ne moustretz nye par recorde, ne en nulle autre manere, qe la condicion fuit parfourny, qar vous ne moustrez pas qe vous estoietz a dreit, par qai la chartre nest de nulle force, par qai vous, defendant, aletz a Dieu.[4] A.D. 1346. *Judicium.*

(71.) [5]§ *Nota* qun brief de Trans fuit porte vers Levesqe Dexeestre et autres de ceo qils duissent aver batu [et] naufre. Et le brief fuit porte en Bank le Roi, et la lettre de mesme Levesqe descomengement fuit mys avant pur Trans.

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[1] L., esteer.

[2] The words einz a celuy are omitted from L.

[3] C., force.

[4] According to the roll the judgment, which immediately follows the replication, was "Et "quia prædictæ literæ de per- "donatione sunt conditionales, "ita, videlicet, quod prædictus "Nicholaus staret recto si præ- "dictus Abbas versus eum inde "loqui voluerit, et non ostendit "Curiæ hic quod ipse, secundum "formam statuti inde provisi, "prosecutus fuit breve domini "Regis ad præmuniendum ip- "sum Abbatem ad sequendum "inde versus eum, si voluisset, "consideratum est quod præ- "dicti Jacobus et alii ad præsens "eant inde sine die, &c."

[5] From L. and C.

Nos. 71, 72.

A.D. 1346. who pleaded Not Guilty. And because the Bishop was named in the writ, in which case he was supposed to be a party to the trespass, the letter was disallowed, &c., with regard to all.

Note. (72.) § Note that a writ was brought against a tenant, whereupon the Sheriff returned to the Summons that the tenements were within a liberty, and that he had sent to the bailiff of the liberty, who returned that the party had been summoned. And afterwards the parol demurred without day by reason of a Protection. And the demandant sued a Resummons, and the Sheriff returned that he had sent to the bailiff of the liberty as above, who returned that the party had nothing by which he could be summoned.—Therefore *Seton* prayed that the bailiff might be amerced for his return contrariant to his first return, and prayed a *Non omittas propter libertatem* to be directed to the Sheriff.—Hillary. You may readily have a *Non omittas* directing the Sheriff to make the Summons, and to enter the liberty; but we cannot amerce the bailiff, because he is not an officer of this Court, and we cannot amerce any other than an officer of this court to whom we can send, &c.

Nos. 71, 72.

toux sauf pur Levesqe, qe pleda de rien coupable. Et pur ceo qe Levesqe fuit nome el brief, en quel cas il fuit suppose partie au trespas, la lettre fuit desallowe, &c., vers touz, &c. A.D 1346.

(72.) [1]§ *Nota* qe brief fuit porte vers un tenant, ou a la Somons le Vicounte retourna qe les tenementz furent deinz le fraunchise, et il avoit maunde al baillif de la fraunchise, qe retourna qil fuit somons. Et puis la parole demura sauz jour par proteccion. Et le demandant suyt Resomons, et le Vicounte retourna qil avoit mande al baillif de la fraunchise *ut supra*, et retourna qil navoit rienz ou estre somons.—Par qai *Setone* pria qe le baillif fuit amercie par son retourne contrariaunt al primere retourne, et *Non omittas propter libertatem* al Vicounte.—Hill. Vous averetz *Non omittas* al Vicounte qil face la Somons volunters, et qil entre la fraunchise ; mes amercier le baillif nous ne poms mie, qar il nest mie ministre de ceinz, et nous ne poms amercier autre forqe ministre de ceinz a qi nous devoms maunder, &c. Nota.

[1] From L. and C

MICHAELMAS TERM

IN THE

TWENTIETH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

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

Nos. 1, 2.

A.D. 1346. Entry *ad terminum qui præteriit.*

(1.) § On a writ of Entry *ad terminum qui præteriit* the tenant traversed the action, and now the jury was at the bar ready to pass its verdict, and the demandant was essoined.—*Grene.* An essoin does not lie, for the demandant has an attorney in the plea, to wit, one T. Tochewyke, whose presence you have this day recorded, and, besides, this is the third day after we came down to issue, and it is ordained by the statute[1] that he shall have only one essoin, and that on the first day after they are at issue. —And with regard to the last exception it was said that the statute does not restrain the demandant from delaying himself as long as he pleases, and therefore that exception was not allowed.—And as to other exception, because it is possible that Tochewyke may be removed, and the essoiner cannot be a party to try that question, therefore the essoin was adjudged, and a day was given.—And the exception on the essoin was entered.

Ejectment from Wardship.

(2.) § The Abbot of Selby brought a writ of Ejectment from Wardship against Thomas de Fencotes, and Nicholas Warde. Process was continued so far against them that

[1] 13 Edw. I. (Westm. 2), c. 27.

DE TERMINO MICHAELIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU VICESIMO.[1]

Nos. 1, 2.

A.D. 1346. Entre *ad terminum qui præteriit.*[3] [Fitz., Essone, 30.]

(1.) [2]§ En un brief Dentre *ad terminum qui præteriit* le tenant traversa laccion, et ore lenquest fust a la barre prest a passer, et le demandant fust essone.—*Grene.* Lessone ne gist mye, qar il ad attourne en le plee, saver, un T. Tochewyke,[4] la presence de qi avetz huy recorde, et, ovesqe ceo, est le terce jour apres qe nous descendimes en issue, et par lestatut est ordine[5] qil navera qune essone, et ceo al primer jour apres qils sont a issue.—Et quant al drein chalange fust dit qe lestatut ne restreint pas qe[6] le demandant ne se[7] purra delaier mesme si longe come lui plest, par quei cele chalange ne fust pas allowe.—Et quant al autre chalange, pur ceo qil est possible qe Tochewyke soit remue, et a cele trier lessonour ne poet estre partie, par quei lessone fust ajuge et ajourne.—Et le chalange sur lessone entre, &c.

Engettement de garde [Fitz., *Essone* 31].

(2.) [8]§ Labbe de Selby porta brief Dengettement de garde vers Thomas de Fencotes, et Nichole Warde. Proces

[1] The reports of this term are from the Lincoln's Inn MS. (called L.) the Harleian MS. No. 741 (called H.), the MS. in the University Library at Cambridge, Hh. 2, 3 (called C.), and the Isham transcript called I.

[2] From H. and I.

[3] The words *ad terminum qui præteriit* are omitted from H.

[4] I., Totewyke.

[5] I., ordeigne.

[6] qe is omitted from I.

[7] I., qe no, instead of ne se.

[8] From H. and I., but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 133.d. It there appears that the action was brought by the Abbot of Selby against Thomas de Fencotes, Walter Yole, and Nicholas Warde of Bubwith, in respect of the wardship of the manor of Kelkefeld (Kelfield, Yorks,) during the minority of Henry son and heir of Joan late wife of Connan de Kelkefeld.

No. 2.

A.D. 1346. the Grand Distress was awarded, and in the same writ Proclamation. The Sheriff returned to this writ that, as to Thomas, the Proclamation had been served against him; and, as to Nicholas, he returned that he had sent to the bailiffs of such a liberty, who had done nothing.—And on that day Thomas appeared and a *Non omittas* writ was awarded against Nicholas, and *Idem dies* was given to Thomas.—And now the *Non omittas* had been served against Nicholas, who appeared, and Thomas was essoined.—*Skipwith.* An essoin does not lie, because, at the return of the Proclamation, according to the statute[1], if he does not appear, he will lose the wardship, and if he had been essoined on that day, the essoin would not have lain; and, although he has a day now by *Idem dies*, he is only in the same course of law as he was at the return of the Proclamation. And, moreover, if the essoin be now adjudged, for the same reason Nicholas, who now appears, will have *Idem dies*, and on another day he will be essoined, and Thomas will appear, and so there will be process infinite; therefore, &c.—*Moubray.* It is true that on the return of the Proclamation an essoin would not have lain for him, because he had a day by the Proclamation; but now he has a day by appearance, and not by the Proclamation; therefore an essoin now lies for him.—*Thorpe.* The reason why an essoin does not lie for him at the return of the Proclamation is that there is no further process to be made, and after the process in a plea is finished an essoin does not lie; and although he may now have a day by appearance, if he had now made default, the issues returned upon him by the Proclamation would be forfeited, notwithstanding his appearance; so also for that default he would lose the wardship just as much as if he had made default on the same day on which the Proclamation was returned, and consequently, for the same reason that an essoin would not then have lain for him, it will no more do so now.—Sharshulle. When he appeared at the return of the

[1] 13 Edw. I. (Westm. 2), c. 35.

No. 2.

tant suy vers eux qe la graunde destresse fust agarde, et en mesme le brief la proclamacion. Le Vicounte retourna eel brief qe[1] quant a Thomas la proclamacion fust servy vers luy ; et quant a N. il retourna qil avoit maunde a les baillifs dune tiele fraunchise, qe rienz ne firent.—Et a eel jour T. vient, et *Non omittas* agarde vers N., et *Idem dies* done a T. Et ore le *Non omittas* fust servy vers N., et N. vint, et T. fust essone.—*Skip.*[2] Lessone ne gist, qar a la proclamacion retourne par lestatut, sil ne viegne, il perdra la garde, a quel jour sil ust este essone il nust pas geu ; et, mesqil ad jour a ore par *Idem dies*, il nest mes en mesme la cours de lei come il fust a la proclamacion retourne. Et, ovesqe ceo, si lessone soit ore ajugge, par mesme la resoun N., qore appiert, avera le *Idem dies*, et al autre jour il serra essone, et T. apera, et issi proces infinit ; par quei &c.—*Moubray.* Il est verite qe a la proclamacion retourne essone nust pas geu pur luy, pur ceo qil avoit jour par proclamacion ; mes ore il ad jour par apparaunce, et ne mye par la proclamacion ; par quei a ore lessone gist pur luy.—*Thorpe.* La cause pur quei a la proclamacion retourne essone ne gist pas pur luy ceo est pur ceo qil ny ad nent plus de proces affaire, et apres proces fini en plee essone ne gist mye ; et mesqil eit ore jour par apparaunce, sil ust ore fait defaute, les issues retournes sur luy par la proclamacion serront forfaitz nent countreesteiaunt sapparaunce ; auxi pur cele defaute il perdra la garde auxi avant come sil ust fait defaute a mesme le jour qe la proclamacion fust retourne, et *per consequens* pur mesme la resoun qe adonqes essone nust pas geu pur luy, nent plus fra il a ore.—Schars. Quant il apparust[3] a la

A.D. 1346.

[1] I., et.
[2] I., *Grene.*
[3] The words il apparust are omitted from I.

No. 2.

A.D. 1346. Proclamation the issues were saved, and, though he now makes default, that which was previously saved by his appearance will not afterwards be lost by his default; and by the law of the land, after a party has a day by appearance, he will have an essoin; therefore, &c. And, moreover, as to what he says that, if an essoin were to be adjudged, process infinite would follow, it is not so, because this is a writ of Trespass in its nature, in which case one who appears will answer in the absence of his companion; therefore count against Nicholas, who appears, if you will. And as to the essoin we will consider.—Therefore *Skipwith* counted against Nicholas, and against Thomas, who did not appear, but was essoined, that the wardship of the same land belongs to the Abbot because the infant's ancestor held of the Abbot, as in right of his church, by knight service, and died in his homage, and he was in full and peaceable seisin of the said wardship, from such a day to such a day when they ejected him tortiously and to his damage, &c.—And the writ did not include the words *contra pacem*.—*Richemunde* denied tort and force, and said:—We do not understand that, in the absence of Thomas, Nicholas ought to be put to answer, because on the last day Thomas appeared, and we made default, and on that day Thomas had *Idem dies* because he could not answer without us, and therefore to put us now to answer without him is a thing you cannot do, for that would

No. 2.

proclamacion retourne les issues furent sauves, et mes qil fait a ore defaute ceo qe fust salve par sapparaunce avant ne serra pas par sa defaute apres perdu ; et par lei de la terre apres qe partie[1] ad jour par apparaunce il avera une essone ; par quei, &c. Et auxi a ceo qe il parle qe si lessone soit ajugge qe proces infinit ensiewereit, il nest pas issi, qar ceo est un brief de Trespas en sa nature, en quel cas celuy qe appiert respondra en absence de son compaignoun ; par quei vers N. qe appiert countez si vous voilletz. Et quant al essone nous aviseroms.—Par quei *Skip*, counta vers N, et T. qe ne vint pas, mes est essone, qe come la garde de mesme la terre al Abbe appurtient pur ceo qe launcestre lenfaunt tint del Abbe, come de dreit de sa eglise, par service de chivaler, et murust en son homage, et il en pleine et pesible seisine de la dite garde de tiel jour tanqe a tiel jour qils luy engeiterent[2] a tort et a ses damages, &c.[3]—Et le brief ne fust pas *contra pacem.—Richem.* defendi tort et force, et nentendoms pas qe, en absence de T., [il dust estre mys a respondre, qar al darrein jour T.][4] apparust, et nous feismes defaute, a quel jour T. avoit *Idem dies* pur ceo qil ne purra respondre[5] saunz nous, par quei a ore de nous mettre a respondre saunz luy ne poetz faire, qar ceo serra affaire

A.D. 1346.

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[1] I., qil, instead of qe partie.

[2] I., ousterent.

[3] The declaration was, according to the record, "quod, "cum prædicta Johanna tenuit "de ipso Abbate prædictum "manerium de Kelkefeld [by "certain services] "de quibus "servitiis quidam Johannes de "Wystowe, prædecessor prædicti "Abbatis qui nunc est, fuit "seisitus per manus prædictæ "Johannæ ut per manus veri "tenentis sui, et obiit in homagio "ipsius Abbatis, per quod custodia manerii prædicti, cum "pertinentiis, usque ad legitimam ætatem heredis prædicti "ad ipsum Abbatem pertinet, "ac idem Abbas qui nunc est "in plena et pacifica seisina "ejusdem custodiæ jam diu "extiterit, ... prædicti "Thomas, Nicholaus, et Walterus, prædicto herede infra "ætatem existente, ipsum Abbatem a custodia illa violenter "ejecerunt."

[4] The words between brackets are omitted from I.

[5] I., respondi, instead of ne purra respondre.

No. 2.

A.D. 1346. be to give two contrary judgments in the King's Court, and that in one plea.—Willoughby. The *Idem dies* is not a judgment, but is a continuance taken between the parties, and although the party delayed himself at that time, since he could have counted, that will not now oust him from counting any more than if he had taken a *Prece partium* with the defendant.—*Moubray.* Sir, it seems to me that the process is discontinued, for by law he ought, on the last day, to have put Thomas to answer, and inasmuch as he took process against Thomas, without putting him to answer, he has discontinued his suit: for on a writ relating to land against two persons, if one of them appears, and the other does not, and the demandant allows an *Idem dies* to be given to the one who appears, without counting against him, his suit is discontinued.—Sharshulle. If you will abide judgment on that, we shall record that you will not say anything else, and we will consider, and will deliver you as soon as possible.—Therefore *Moubray* did not dare to abide judgment, because the opinion of the Court was against him. Therefore he denied the damage, &c., and went out to imparl, and afterwards said that he did not eject the Abbot; ready, &c.—And the other side said the contrary.—And, as to Thomas, exception was also taken to the essoin because he had an attorney in the plea; and, because that was the fact, he appeared by attorney, and said that he did not eject the Abbot, and for that reason the essoin was quashed, and the issue taken, &c.

No. 2.

deux agardes[1] contraries en la Court le Roi, et ceo en un plee.—Wilby. Le *Idem dies* nest pas un agarde, mes est un continuaunce pris entre parties, et mes qe la partie se delaia mesme adonqes, la ou il pout aver counte, ceo ne luy toudra pas a ore de counter nent plus qe sil nust pris un *Prece partium* od luy.—*Moubray.* Sire, il semble a moy qe le proces est discontinue, qar par lei il dust aver mys T., al drein jour, daver respondu, et par taunt qil prist[2] proces vers luy, saunz respons, il ad discontinue sa sute : qar en brief de terre vers ij., si lun vient et lautre nent, et il seoffre un *Idem dies* estre donc a celuy qe appiert saunz counter vers lui, sa sute est discontinue.—Schars. Si vous voletz la demurer, nous recorderoms qe vous ne voiletz autre rienz dire, et aviseroms, et vous delivroms tauntost.—Par quei *Moubray* nosa pas demurer pur ceo qe loppinioun de Court fust encountre luy. Par quei il defendi les damages, etc., et issit denparler, et puis dit qil ne lui engetta pas ; prest, &c.—*Et alii e contra.*[3]—Et quant a T. lessone fust auxi chalenge pur ceo qil avoit attourne en le plee ; et, pur ceo qe ceo fust la verite, il apparust par attourne, et dit qil ne luy engetta pas, et par cele cause lessone fust quasse, et lissue pris, &c. A.D. 1346.

[1] H. gardez.

[2] I., ad.

[3] According to the record, Nicholas Warde and Walter Yole pleaded "non ejecerunt," and issue was joined on their plea. There was a special plea on behalf of Thomas de Fencotes, concluding "absque hoc quod "idem Thomas præfatum Ab- "batum de custodia prædicta "violenter ejecit." Upon this also issue was joined.

The jury found "quod præ- "dicti Nicholaus Warde et "Walterus . . . . violenter "ejecerunt prædictum Abbatem "de custodia manerii de Kelke- "feld . . . . . ad damnum "ipsius Abbatis quatervigiuti "librarum." Judgment was accordingly given for the Abbot to recover the wardship and the damages.

Below there appear the words "Et sciendum quod prædictus "Thomas habuit eundem diem "per juratam positam inde in- "ter eos in respectum usque ad "præfatum quindenam Sancti "Hillarii, ut patet per rotulum "Michaelis ultimum."

No. 3.

A.D. 1346. *Jurata Utrum.*

(3.) § A *Jurata utrum* was sued. The tenant vouched two persons. On the return of the *Cape ad valentiam*, one of the vouchees, who made default, had been essoined as being on the King's service, and had a day now.—*Grene.* Since the tenant has not his warrant here, we pray seisin of a moiety through his default.—*Gaynesford.* You ought not to have seisin through his default, because he is dead.—*Grene.* That does not lie in your mouth, since you vouched him as being one who was living; therefore you shall not be admitted to say that he is dead, since his death is not returned by the Sheriff.—WILLOUGHBY. If he is dead, even though the tenant had judgment to have over to the value against him, that judgment would be reversed by his heir, and so the tenant would lose his land without having over to the value, unless he has the plea now to allege the vouchee's death; therefore, *Grene*, is it as he has said, or not?—*Grene.* Since the tenant has taken a day with us in Court, and he wishes to have the advantage of the vouchee's death, he must say that the vouchee died since the last continuance.—And so he did.—And *Grene* would have compelled the tenant to say where the vouchee died, and the tenant was not compelled to do so. Therefore *Grene* offered to aver by the jury that the vouchee was alive, and prayed that the jury might be taken.—*Gaynesford.* We say that the vouchee died at the castle of S. in Britanny, and that we are ready to prove by witnesses as the Court shall adjudge.—*Grene.* You shall not be admitted to that, because at the commencement you alleged the vouchee's death in general terms, and that falls to be enquired by the jury, and therefore you shall not now be admitted to allege his death in such a way that it cannot be tried by the jury; for if you plead to the assise by a plea which can be the subject of enquiry by them, you cannot afterwards plead a matter which cannot be the subject of enquiry by them.—SHARSHULLE. It appears to us that in every case in which enquiry is to be made as to the points of the writ by assise

No. 3.

A.D. 1346. Jure de *Utrum*. [Fitz., *Averement*, 34.]

(3.) [1]§ Un Jure de *Utrum* fust suy. Le tenant voucha deux. Al *Cape ad valentiam* vers lun retourne celuy vouche qe fist defaute fust essone de service le Roi, et ad jour a ore [*Grene*. Puis qil nad pas son garrant nous prioms seisine de la moite par sa defaute.][2]—*Gayn*. Par sa defaute ne devetz seisine[3] aver, qar il est mort.—*Grene*. Ceo ne gist pas en vostre bouche, puis qe vous luy vouchastes come celuy qest en vie ; par quei a dire qil est mort, puis qe la mort nest pas retourne par Vicounte, ne serrez resceu.—Wilby. Sil soit mort, mes qil avoit jugement daver a la value [vers lui, cel jugement serra reverse par son heir, et issi perdra le tenant sa terre saunz aver a la value],[4] sil neit plee a ore dallegger sa mort ; par quei, *Grene*, est il issi come il dit ou nent ?—*Grene*. Puis qil ad pris jour od nous en Court, et il voet aver avantage de sa mort, il covent qil die qil murust puis la darrein continuance.—Et issi fist il.—Et *Grene* luy voleit aver chace daver dit ou il murust, et nestoit pas chace a ceo faire. Par quei *Grene* tendi daverer par la jure qil fust en vie, et pria la jure.—*Gayn*. Nous dioms qil murust al chastel de S., en Bretaigne, et ceo sumes prest a prover come la Court agardera.—*Grene*. A ceo navendretz vous mye, qar a comencement vous alleggeastes sa mort [generalment, quel chiet a enquere par la jure, par quei a ore dallegger][1] sa mort par tiel chymyn qe ne put estre trie par la jure ne serrez resceu ; qar, si vous pledez al assise par plee qest enquerrable, vous ne pledrez pas apres par chose qe nest pas enquerrable.—Schars. Il nous semble qen chesqun cas ou les pointz du brief sont a enquerre par

[1] From H. and I. until otherwise stated.

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

[3] I., seisine de terre.

[4] The words between brackets are omitted from I.

Nos. 3, 4.

A.D. 1346. or by jury, no proof by witnesses can be made any more than in an Assise of Novel Disseisin, in which, if the death of any person in a foreign country were alleged, enquiry as to the death would be made by the assise and not by witnesses. But it is otherwise in the case of other writs which do not require that enquiry should be made as to the points of the writs.—Therefore judgment was given that the jury should be taken.

Jurata utrum. § A man brought a *Jurata utrum* against another, and the tenant vouched to warrant. A writ to summon the vouchee issued, and was returned. And on the day of the return the tenant said that the person whom he had vouched was dead, and prayed that he might revouch the vouchee's heir.—*Grene.* If he is dead that will appear by the Sheriff's return, and not by your statement, so that you will not be put to any mischief; and if the Sheriff served the writ as against one who is living, his heir will have a writ of Error to reverse the whole judgment, so that there is no mischief to you, even if you do not have such a plea.—WILLOUGHBY. If the vouchee is dead, it is not right that the tenant should continue process against him further, for if the process were now continued, and the jury were taken, and the Sheriff would not return his death, the judgment would be rendered in vain which would be given against the vouchee; and therefore it is right to give the tenant that answer now; and therefore is it the fact that the vouchee is dead, or not?—*Grene.* He is living; ready, &c., by the jury.—*Gaynesford.* We tell you that he is dead, and died in Britanny; ready to prove it by witnesses.—WILLOUGHBY. We will enquire by the jury whether he is dead or alive.—And WILLOUGHBY caused the jury to be called, and they appeared.—And the tenant waived his exception.—And the jury was taken, and they said that the land was holden in frank-almoign.

Trespass. (4.) § On a writ of Trespass, brought in respect of divers writings taken and carried off, the defendant pleaded

Nos. 3, 4.

assise ou par jure qe nulle prove en ceo cas serra fait, nent plus qe en Assise de Novele Disseisine si mort de persone fust allegge en estraunge terre la mort serra enquis par assise, et ne mye par proves. *Sed secus* en autres briefs qe ne demandent pas qe les pointz des briefs soient a enquere. —Par quei la jure fuist agarde. A.D. 1346.

§ [1]Un homme porta un Jure de *utrum* vers un autre, et le tenant voucha a garraunt. Un brief issit de somondre le vouche, et retourne. Et a cel jour le tenant dist qe celuy qil avoit vouche fust mort, et pria qil pout revoucher soun heire.—*Grene.* Sil soit mort, ceo vendra par retourne de Vicounte, et ne mye par vostre dit, issint qe vous ne serretz mye a meschief; et, si le Vicounte servy le brief comme vers celuy qest en vie, soun heire avera brief Derrour de reverser tut le jugement, issint qe ceo nest mye meschief a vous, tut neietz tiel ple.—Wilby. Sil soit mort, il nest mye resoun qil continue mes soun procees devers luy, qar si le procees fuit ore continue, et le jure pris, et le Vicounte ne volleit pas retourner sa mort, il serreit en veyne le jugement qe serreit done devers soun vouche; et pur ceo il est resoun de luy doner ceo respons a ore; et pur ceo est il issint ou noun?—*Grene.* Il est en vie; prest, &c., par la jure.—*Gayn.* Nous vous dioms qil est mort, et murust en Bretaigne; prest a prover.—Wilby. Nous voloms enquere par la jure sil soit mort ou en vie.—Et fist demander la jure, qe vindreint.—Et le tenant weyva soun chalenge.—Et la jure pris, qe disoint qe ceo fuit frank almoigne. Jure de *Utrum.*

(4.) [2]§ En brief de Trespas, porte de divers escripts pris et enportez, le defendant pleda de rienz coupable. Et ore Trespas.

[1] This report of the case is from L. and C.

[2] From H. and I.

Nos. 4, 5, 6.

A.D. 1346. Not Guilty. And now the jury came ready to pass their verdict, and the defendant said that the Court should not proceed to the taking of the inquest, because the plaintiff had not specified what writings they were.—*Skipwith.* That does not now lie in your mouth, because you could have taken the exception when we counted against you, and did not.—*Seton.* If issue is taken between the parties, and the Court afterwards sees that it is taken without warrant, the office of the Court is, even though the parties consent, to go back and cause the parties to plead again, and therefore, although we previously pleaded Not Guilty, yet, since you are not apprised in respect of what matter, that is to say of what writings, as if this were a writ of Detinue, therefore, &c.—[THE COURT]. Since you have pleaded to issue we shall enquire as to that.—And it was found by the jury that the defendant was guilty to the damage of the plaintiff of ten pounds.—Therefore the plaintiff recovered his damages, &c.

Nisi prius. (5.) § A verdict passed against the demandant at *Nisi prius*, and now in the Common Bench the demandant was non-suited. The tenant prayed judgment on the verdict.—*Grene.* Since the demandant is non-suited you can only have judgment on the nonsuit.—And in the end WILLOUGHBY gave judgment, on the verdict, that the demandant should take nothing.

Nisi prius. § Note that after the verdict had passed for the tenant by inquest taken at *Nisi prius*, the demandant, on the day which they had in the Common Bench, did not appear. And judgment was given that he should take nothing by his writ. And so judgment was given not on the nonsuit, but on the verdict, &c.

Protection: Statute Merchant. (6.) § One sued execution upon a statute merchant.—*Grene.* See here a Protection for the person against whom he sues execution, and we pray that the parol be put without day.—*Skipwith.* Protection does not lie for him,

Nos. 4, 5, 6.

lenqueste vint prest a passer, et le defendant dit qils ne irreint pas a la prise del enqueste, puis qil nad pas desclare queux escriptz ils furent.—*Skip.* Ceo ne gist pas a ore en vostre bouche, puis qe vous le purriez aver chalange quant nous countames vers vous, et ne feites pas.—*Setone.* Si issue soit pris entre parties, et Court veiet apres qe ceo est pris saunz garrant, tut assentent les parties, office de Court est a retourner a faire les parties repleder, par quei, coment qe nous eioms plede avant de rienz coupable, puis qe vous nestes pas apris sur quele chose, saver, de queux escriptz, come si ceo fust en un brief de Detenue, par quei.—Puis qe vous pledez a issue nous enquerroms de eele.—Et par lenqueste fust trove qe il fust coupable, a ses damages de x. *li.*—Par quei il recoverist ses damages, &c. A.D. 1346.

(5.) [1]§ Une enqueste passa countre le demandant a un *Nisi prius*, et ore en Baunk le demandant fust nounsuy. Le tenant pria jugement sur verdit.—*Grene.* Puis qil est nounsuy vous nel averetz pas mes sur la nounsute.—Et a dreyn Wilby dona jugement sur verdit qil ne prist rienz.[2] *Nisi prius.* [Fitz., *Jugement*, 180.]

§ *Nota*[3] qe, apres qe le verdit fuit passe pur le tenant par enqueste pris par le *Nisi prius*, al jour qils avoint en Bank le demandant ne vint pas. Et agarde fuit qil ne prist rienz par soun brief. Et issint le jugement nient rendu sur la nounsuite, einz sur verdit, &c. *Nisi prius.*

(6.) [1]§ Un suist execucion hors dun estatut marchant. —*Grene.* Veietz cy proteccion pur celuy contre qi il suist execucion, et prioms qe la parole soit mys saunz jour.—*Skip.* La proteccion ne gist mye pur luy, qar il Proteccion: Statut marchant.[4] [Fitz., *Proteccion*, 85.]

[1] From H. and I. until otherwise stated.

[2] The words qil ne prist rienz are omitted from I.

[3] This report of the case is from L. and C.

[4] The words Statut marchant are from H. alone.

No. 6.

A.D. 1346.

for he has not a day in Court in respect of this suit, nor can you have any answer to this suit; therefore, &c.—*Grene.* At any rate his land will be delivered. And the King has taken into his protection all his lands and his chattels. And, as to your statement that he will not have any answer, he will have one; for, if he had your release, he would stay your execution.—*Skipwith.* He would not do so; but it would be necessary for him to sue an *Audita querela* on the release.—*Grene.* If he is put to sue an *Audita querela* on such a release, the Protection will be of no avail for him, because he has an action in suing it, and therefore, if it is of no avail for him now, it never will be of any avail for him.—*Skipwith.* If I have recovered land against you, and within a year I have a writ of *Habere facias seisinam* to put me in seisin, even though there be a Protection for you, it is of no avail; no more is it in this case.—*Grene.* The cases are not alike, for in the case which you put, you can enter without any writ at all, but in this case you cannot do so.—But in the end the Protection was disallowed, for the reason above, and execution was awarded for the obligee.

Statute Merchant.

§ A man sued execution on a statute merchant against another, whereupon the defendant came and produced a Protection.—*Skipwith.* You see plainly now we are suing execution in respect of a matter adjudged, and so the defendant has not any day in Court by the writ, and therefore we do not understand that you will allow the Protection in this case.—*Grene.* Our Lord the King has taken the party into his protection, and under his defence, and his lands and chattels also until a certain time, so that within that time the King does not wish that he should be impleaded, or that he should be at any loss, and therefore we pray that the Protection be allowed, for we have seen that a Protection has been allowed on a *Fieri Facias.*—Willoughby. If you had a release, you ought not now to plead that deed as an answer to delay execution, but

No. 6.

nad pas jour en Court a ceste suyte,[1] ne nul respons a ceste suyte poietz aver; par quei, &c.—*Grene.*[2] Au meyns sa terre serra livere. Et le Roi ad pris en sa proteccion touz ses terres et ses chateux. Et a ceo qe vous parletz qe il navera nul respons, si avera; qar sil eit vostre relees il arrestereit vostre execucion.—*Skip.* Noun freit; mes luy covensist suyr le *Audita*[3] *querela* sur le relees.—*Grene.* Sil soit mys assuir le *Audita*[3] *querela* sur tiel relees, la proteccion ne luy vaudra [pas, pur ceo qe il ad accion en cele suyte, par [quei], sil ne luy vaille a ore, il ne luy vaudra][4] jammes.—*Skip.* Si jeo ai recoveri vers vous terre, et deinz lan jay brief de *Habere facias seisinam* de moi mettre en seisine, mesqe proteccion soit pur vous il ne vaut pas; nent pluis cy.—*Grene.* Nent semblable; qar, en le cas qe vous mettez, vous poetz entrer tut saunz brief, mes en ceo cas vous ne poetz issi faire.—Mes a darrein la proteccion fust desalowe, *causa qua supra*, et execucion pur luy agarde. A.D. 1346.

§ Un[5] homme suyt execucion sur un estatut merchaunt vers un autre, ou le defendant vint et mist avant proteccion.—*Skip.* Vous veietz bien coment nous sumes a suyr execucion dune chose ajuge, et auxint le defendant nad mie jour en Court par le brief, par qai nous nentendoms mye qe vous voilletz allowere la proteccion en ceo cas.—*Grene.* Nostre seignour le Roi si ad pris la partie en sa proteccion, et en sa defens, et terres et chateux, tanqe certein temps, issint[6] qe deinz cel temps il ne voet pas qil soit enplede, ne qil ne soit perdant, par qai nous prioms qe la proteccion soit allowe, qar nous avoms viewe qe proteccion ad este allowe en un *Fieri facias.*—Wilby. Si vous ussetz relees, vous ne duissetz ore aver respons par ceo fait a delaier execucion, mes le duissetz user par Statut marchaunt.

[1] The words a ceste suyte are omitted from H.

[2] *Grene* is omitted from I.

[3] H. *Ex gravi.*

[4] The words between brackets are omitted from H.

[5] This report of the case is from L. and C.

[6] issint is omitted from C.

Nos. 6, 7, 8.

A.D. 1346. you ought to use it by way of suing an *Audita querela*, for now he has not a day in Court, and therefore we will not allow the Protection in this case, and therefore sue execution, &c.

Cui in vita. (7.) § In a *Cui in vita* the tenant's entry was supposed to have been by the demandant's husband. The tenant demanded view, which was counterpleaded on the ground that the statute[1] ousts the tenant from view in cases in which he entered by the husband. And, because the statute is not to be understood to apply except on a writ of Dower, view was granted.

Assise of Darrein Presentment (8.) § One Ralph Fitz-William[2] brought an Assise of Darrein Presentment against Thomas de Holebroke and one A.[3] and made his title in that he was himself seised of the advowson, as of fee and of right, and presented one B.[4]; and before him one C.[4], his father, presented one D.[4]; and before him one R.,[4] his grandmother, that is to say the mother of C., presented one F.; and he prayed the assise.—And the writ was in the words *quod T. et A. advocationem illam ei deforciant.—Skipwith.*

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[1] 13 Edw. I. (Westm. 2), c. 48.

[2] It is doubtful whether the plaintiff should be called in English Ralph Fitz-William or Ralph son of William de Pebemersshe. His father was William son of Ralph, and consequently Fitz-William could not have been previously used in this family as a hereditary surname.

[3] As to the names *see* p. 177 note 2.

[4] As to the names, *see* p. 177 note 4.

Nos. 6, 7, 8.

voie de suite de *Audita Querela*, issint qore nad il mye jour en Court, et pur ceo nous ne voloms mye allowere la proteccion en ceo cas, et pur ceo suetz execucion, &c. A.D. 1346

(7.)[1] § En un *Cui in vita* lentre le tenant fust suppose par le baron la demandant. Il demanda la vewe, et countreplede pur ceo qe lestatut ouste le tenant de la vewe la ou il entra par le baron. Et pur ceo qe lestatut nest pas a entendre mes en brief de Dowere la vewe fust graunte. *Cui in vita.* [Fitz., *View*, 113.]

(8.) [2]§ Un Rauf fitz William porta une Assise de Drein Presentement vers Thomas Holebroke et un A., et fist son title qil mesme fust seisi del avoweson come de fee et de dreit et presenta un B. ; et devant luy, un C., son pere presenta un D. ; et devant lui un R. son aiel, saver la mere C., presenta un F. ; et pria lassise.[4]—Et le brief voleit *quod T. et A. advocationem illam ei deforciant.—Skip.* Assise de[3] Drein Presentement [Fitz., *Darren Presentment*, 13.]

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[1] From H. and I.

[2] From H. and I., but corrected by the record, *Placita de Banco*,, Mich. 20 Edw. III. R°. 34d. It there appears that the action was brought by Ralph, son of William de Pebemersshe, against Margery, late wife of William de Roos of Hamelake, and Thomas de Holebroke, in respect of a presentation to the church of Capeles (Capel, Suffolk).

[3] The words Assise de are omitted from H.

[4] The declaration was, according to the record, "Radulphus dicit quod "ipsemet fuit seisitus de "advocatione ecclesiæ prædictæ "ut de feodo et jure, et præsen- "tavit ad eandem ecclesiam "quendam Thomam de Storte- "ford, clericum suum, qui ad "præsentationem suam fuit ad- "missus et institutus, ... "per cujus mortem prædicta "ecclesia modo vacat. Et in "proxima vactione præcedenti "quidem Willelmus filius "Radulphi, pater ipsius "Radulphi, cujus heres ipse est, "præsentavit ad eandem quen- "dam Thomam de Bello Campo, "clericum suum, qui ad præsen- "tationem suam fuit admissus "et institutus, ... Et in "proxima vacatione præcedenti "quædam Agnes de Cherchested "[*sic*] proavia ipsius Radulphi, "cujus heres ipse est, præsen- "tavit ad eandem quendam "Saierum de Holebroke, cleri- "cum suum, qui ad præsenta- "tionem suam fuit admissus et "institutus, . . . et ea ratione "pertinet ad ipsum Radulphum "ad ecclesiam præsentare. Et "petit assisam, &c."

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A.D. 1346. You see plainly how he has supposed by his title that he is himself seised of the advowson ; and he has supposed by his writ that we deforce him of the advowson, and he thereby supposes that he is out of possession of the advowson ; so the title is not warranted by the writ ; judgment of the writ.—And the writ was adjudged to be good, because it is the form of the Chancery to suppose that the defendant deforces the plaintiff of the advowson.—Therefore *Skipwith* said that one Antigone[1] was seised of the advowson, and presented, and after her death the advowson descended to four sisters,[2] that is to say, to E.,[2] the plaintiff's grandmother, and to B.,[2] M.,[2] and K.,[2] which E. purchased the estate of B. and M. who were intermediate between the eldest and the youngest sister, so that she afterwards had three parts of the advowson. Thereupon the church afterwards became void by the death of the presentee of A., who was the common ancestor. Thereupon E., because she was the eldest sister, presented him of whom they have spoken as in commencing her turn. And after the death of E., the plaintiff's father presented, as he has said, as in the second turn which belonged to him of the estate of B., who was next sister to E. And afterwards the plaintiff himself assigned the advowson to his mother, to hold in dower, and she presented the same person whom they have said to have been presented on their own presentation, as in the turn of M. who was the third daughter. And he said that from K. a fourth part of the advowson descended to her son, who gave that fourth part to the ancestor of one J.[1] who is under age, and in the wardship of A.[1] because his ancestor held the same fourth part of A. by knight service ; so A. is seised of this fourth part of the advowson, as guardian, in the right of J., and A. is not described as J.'s guardian in the writ ; judgment of the writ. And as to T. *Skipwith* said that he did not claim anything in the advowson,

[1] As to the names, and alleged facts, *see* p. 183 note 1.

[2] daughters, according to the record. *See* p. 183, note 1.

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Vous veietz bien coment par son title il ad suppose qil est seisi mesme del avowesoun ; et par son brief il suppose qe nous luy deforcioms lavowesoun, et par taunt suppose qil est hors de possessioun del avoweson ; issint le title nest garranti de brief ; jugement de brief.—Et le brief agarde bon, pur ceo qe ceo est la fourme de la Chauncellerie a supposer qe le defendant lui deforce lavoweson.—Par quei *Skip.* dit qune Antigone[1] fuit seisi del avoweson, et presenta, et apres sa mort lavowesoun descendi a iiij. soers, saver a E., aiel le pleintif, et a B., M., et K., la quele E. purchacea lestat B. et M. qe furount mulvens, issi qele avoit apres les trois parties del avoweson ; par quei la eglise apres se voida par la mort de presente par A., qe fust comune auncestre ; par quei E., pur ceo qele fust leynesse seor,[2] presenta celuy de qi ils ount parle come [en comenceaunt son tourn. Et, apres la mort E., le pere le pleintif presenta come il ad parle],[3] come en le secunde tourn qe a lui afferreit del estat B. qe estoit plus prochein seor a E. Et apres le pleintif mesme assigna lavoweson a sa miere a tenir en dowere, la quele presenta mesme la persone qils ount dit estre presente a lour presentement demene, come en le tourne M. qe fuist la terce fille. Et dit qe de K. la quarte partie del avoweson descendi a son fitz, qe dona la quarte partie al auncestre un J. qest deinz age, et en la garde A. pur ceo qe son auncestre tint mesme la quarte partie de luy par service de chivaler ; issint est il seisi de ceste quarte partie del avoweson come gardein en le dreit J., et il nent nome gardein J. en le brief ; jugement du brief.[4] Et quant a T. il dit qil ne clama rienz en

[1] H., Antioke ; I., A.

[2] seor is omitted from I.

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

[4] The plea in abatement of the writ does not appear on the roll, but the same matter, with a different conclusion, in bar of the assise. *See* p. 183 note 1.

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A.D. 1346. but was ready to hear the verdict of the assise.—*Thorpe.* As to T., who disclaims the advowson, and who has not denied the disturbance, we demand judgment, and a writ to the Bishop, and our damages against T.—*Skipwith.* As to T., even though he would not answer, you would only have the assise; and although he has disclaimed the advowson, he is not thereby convicted of being a disturber; therefore, in order to convict him of that, you must have the assise.—*Seton.* As to A.'s plea, you see plainly how she has denied that the last presentation was made by us, and thereby she has pleaded to the assise; therefore she cannot be admitted to make her conclusion in abatement of the writ because she is not described as guardian and also because J. is not named.—SHARSHULLE. The plea which is given in abatement of the writ is not of such force as to abate it, for the plaintiff's writ does not suppose you to be tenant of the advowson, but the contrary is supposed by his title; therefore it is not for him to make known by what title you disturb him; therefore plead over.—*Skipwith.* Again judgment of the writ; for we say, as before, that the advowson descended to us and to the others, and he who is in my wardship has the estate of one of them, of which we are seised as guardian; and between them an Assise of Darrein Presentment does not lie, but a *Quare impedit* does; judgment of the writ.—*Thorpe.* That which he has said is only matter of which enquiry can be had by assise. And *Thorpe* prayed the assise.—*Grene.* So it is in an Assise of Mort d'Ancestor; if I say that I am a co-parcener with the plaintiff through the same ancestor, enquiry of that can be had by the assise, but nevertheless he will not have it without answering as to the co-parcenary; no more in this case.—WILLOUGHBY. But, if the Assise of Mort d'Ancestor is brought against one who has the estate of the parcener, he will not abate it; and this matter you have shown by your plea; therefore plead over.—*Skipwith.* We say as above,[1] and that it is now the

[1] *i.e.*, as at p. 178.

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lavoweson, mes fust prest doier la reconissance dassise.[1]— A.D. 1346.
Thorpe. Quant a T., qe desclayme en lavoweson, et nad pas dedit la destourbaunce, nous demandoms jugement, et brief al Evesqe, et noz damages vers luy.—*Skip.* Quant a T., mes qil ne vousist respondre, vous naveretz mes lassise ; et mesqil eit desclame en lavoweson, par taunt nest il pas atteint destourbour ; par quei de luy atteindre de cele covent qe vous eietz lassise.[2]—*Setone.* Quant al ple A. vous veietz bien coment il ad dedit le drein presentement estre fait par nous, et par taunt il ad plede a lassise ; par quei a faire sa conclusioun en abatement de brief par taunt qil nest pas nome gardein, et auxi qe lenfaunt nest pas nome, il ne serra pas reseeu.—Schars. Le plee qest done en abatement de brief nest pas de tiel force del abatre, qar son brief ne vous suppose pas tenant del avoweson, mes par soun title le contrare est suppose ; par quei il nest pas a luy a conustre par quel title vous luy destourbez. ; par quei ditez outre.—*Skip.* Unqore jugement du brief ; qar nous dioms, come avant, qe lavoweson descendi a nous et as autres, et celuy qest en ma garde ad lestat une de eux, de la quele nous sumes seisi come gardein ; entre queux Assise de drein presentement ne gist mye, mes *Quare impedit* ; jugement de brief. —*Thorpe.* Ceo qil ad parle nest mes chose enquerrable par assise. Et pria lassise.—*Grene.* Si est ceo en Assise de mordauncestre ; si jeo die qe jeo suy parcener al pleintif de mesme launcestre, il est enquerable par assise, mes nequident il nel avera pas saunz respoundre a la parcenerie ; nent plus en ceo cas.—Wilby. Mes si Lassise de mordauncestre soit porte vers celi qe ad estat le parcener il nel abatera pas ; et cele matere avetz par vostre plee moustre ; par quei dites outre.—*Skip.* Nous dioms *ut*

[1] The plea on behalf of Thomas de Holebroke, was, according to the record, "quod ipse "nihil clamat in præsentatione "ecclesiæ prædictæ. Et inde "paratus est audire recog- "nitionem assisæ prædictæ."

[2] Immediately following the plea on behalf of Thomas on the roll appears "Ideo, quo ad ipsum, capiatur assisa, &c."

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A.D. 1346. fourth turn, and so it belongs to us, as guardian, to present, and we demand judgment whether you ought to have an assise.—*Seton.* Sir, you see plainly how he has said

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supra, et qe a ore est le quarte tourn, et issi appent a nous, come a gardein, a presenter, et demandoms jugement si vous deivez assise aver.[1]—*Setone.* Sire, vous veietz bien A.D. 1346.

[1] The plea on behalf of Margery was, according to the record, "quod quædam Antigone de Mountchensy fuit "seisita de advocatione ecclesiæ "prædictæ ut de feodo et jure. "et præsentavit ad eandem "quendam Hugonem de Capeles, "clericum suum, qui ad præ-"sentationem suam fuit ad-"missus et institutus, ... "quæ quidem Antigone obiit "seisita de advocatione ecclesiæ "prædictæ. Et de ipsa Anti-"gone descendit advocatio præ-"dicta quibusdam Matilldi, "Margaretæ, Agneti, et Weynesiæ "ut filiabus et heredibus, quæ "quidem Matilldis propartes "prædictarum Margaratæ et "Agnetis ipsas contingentes de "advocatione prædicta de "eisdem Margareta et Agnete "perquisivit, tenendas sibi et "heredibus suis in perpetuum. "Et de ipsa Matilldi exivit "quædam Weynesia de Chirche-"ford [*sic*], quam ipse superius in "demonstratione sua nominat, "Agnetem de Chircheford. Et, "vacante ecclesia illa per mor-"tem prædicti Hugonis per præ-"fatam Antigonen præsentati, "eadem Weynesia de Chirche-"ford præsentavit ad eandem "præfatam Saierum de Hole-"brok, clericum suum, incipi-"endo turnum, &c., qui ad "præsentationem suam fuit ad-"missus et institutus. . . . . "Et de præfata Weynesia filia "prædictæ Matilldis exivit quid-"am Willelmus filius Radulphi "quo tempore prædicta ecclesia "vacavit per mortem prædicti "Saieri, per quod idem Willel-"mus, continuando turnum, &c. "præsentavit ad eandem præ-"fatum Thomam de Bello "Campo, clericum suum, qui "ad præsentationem suam fuit "admissus et institutus, . . . "qui quidem Willelmus cepit "in uxorem quandam Matilldem "nomine, de quibus exivit præ-"dictus Radulphus qui nunc "queritur ut filius et heres "eorundem Willelmi et Matilldis, "et postmodum [Willelmus] "obiit, post cujus mortem quæ-"dam terræ et tenementa, simul "cum tribus partibus advoca-"tionis prædictæ, assignata "fuerunt eidem Matilldi tenenda "nomine dotis, &c., in alloca-"tionem aliorum terrarum et "tenementorum, &c., quo tem-"pore prædicta ecclesia vacavit "per mortem præfati Thomæ de "Bello Campo, per quod eadem "Matilldis quæ fuit uxor Wil-"lelmi, tenens tres partes ad-"vocationis prædictæ nomine "dotis in forma prædicta, post "mortem prædicti viri sui, ut in "jure prædicti Radulphi filii "Willelmi, continuando turnum, "&c., præsentavit ad eandem "præfatum Thomam de Storte-"ford, clericum suum, quem "idem Radulphus superius sup-"ponit se ipsum præsentasse,

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A.D. 1346. that another person presented the last parson, and that plea is to the assise, and therefore he shall not be admitted to plead in bar.—*Skipwith.* Although we have said that the last parson was presented by your mother, and not by you, that is not to the assise, for we have shown how she at the same time held the advowson in dower of your inheritance, and so the presentation which she made gave you possession, since it was in your right, as much as if you had yourself presented.—*Thorpe.* That, it is true, puts me in possession for the purpose of having a *Quare impedit*, but not an Assise of Darrein Presentment; for if I am put to answer to your bar, that is to say, to show that your turn has passed, I shall confess that another person presented the last parson, and so I shall depart from my writ, and for that reason my writ would be abatable. And, besides, it has been seen in a *Quare impedit*

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coment il ad dit qe autre presenta le drein persone, quel plee est al assise, par quei a pleder en barre ne serra il resceu.—*Skip.* Coment qe nous avoms dit qe la drein persone fust presente par vostre mere, et ne mye par vous, ceo nest pas al assise, qar nous avoms monstre coment el tint a mesme le temps lavoweson en dowere de vostre heritage, et issi le presentement qele fist tant avant vous dona possessioun, puis qe ceo fust en vostre dreit, come vous ussetz mesmes presente.—*Thorpe.* Il est verite il moi mette en possessioun a aver un *Quare impedit*, mes ne mye Assise de drein presentement; qar si jeo soi mys a respondre a vostre barre, saver, a moustrer qe vostre tourn est passe, jeo conustray qe autre presenta la drein persone, et issi departisse de moun brief, et par taunt moun brief abatable. Et, ovesqe ceo, homme ad veu en *Quare impedit* A.D. 1346.

" qui ad præsentationem suam " fuit admissus et institutus, " . . . . . post cujus mortem " prædicta ecclesia modo vacat. " Et præfata Weynesia filia " Antigones desponsata fuit " cuidam Ricardo de Brahame, " de qua descendit jus quartæ " partis advocationis prædictæ " ipsam Weynesiam contingentis " &c., cuidam Rogero ut filio et " heredi, &c. Qui quidem " Rogerus de eadem quarta parte " advocationis, &c., feoffavit " quendam Magistrum Rogerum " de Holebroke. Et postmodum " idem Rogerus eandem " quartam partem, &c., dedit " et concessit Johanni fratri suo, " tenendam sibi et heredibus suis " in perpetuum. Et de ipso " Johanne descendit jus quartæ " partis suæ cuidam Edmundo " ut filio et heredi, &c. Et de " ipso Edmundo descendit jus " quartæ partis suæ advocationis " &c., cuidam Willelmo ut filio " et heredi, &c. Et de ipso " Willelmo descendit jus quartæ " partis advocationis, &c., cui- " dam Ricardo ut filio et heredi, " &c., qui quidem Ricardus est " infra ætatem et in custodia " ipsius Margeriæ versus quam, " &c., eo quod prædictus Willel- " mus pater prædicti heredis " tenuit de eadem Margeria " eandem quartam partem advo- " cationis prædictæ per servitium " militare et obiit in homagio ip- " sius Margeriæ, &c. Et, quia ista " est quarta vacatio post mortem " præfatæ Antigones prædictam " Margeriam contingens, ratione " prædicti Ricardi filii Willelmi " de Holbroke infra ætatem et " in custodia sua existentis, per- " tinet ad ipsam, et non ad præ- " dictum Radulphum, ad præ- " dictam ecclesiam præsentare, " unde petit judicium, &c."

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A.D. 1346. that by a plea the plaintiff has been put to his writ of Right, and also in an Assise of Darrein Presentment that by the manner of a plea he has been put to his *Quare impedit*; therefore, although the presentation made by her who was tenant in dower affirms my possession, it does not affirm it so that an Assise of Darrein Presentment lies, but only a *Quare impedit*, since a person other than myself presented.—STOUFORD. Although an Assise of Darrein Presentment might not lie in respect of the presentation of a tenant in dower, yet, since he does not take his exception with such intent as to abate the writ for that cause, but pleads over in bar of the action, he thereby shows that the presentation belongs to him, and that will deny it to the plaintiff.—*Grene, ad idem.* There is no doubt that, if my ancestor presents, and afterwards my mother who is tenant in dower presents, I shall have an Assise of Darrein Presentment; and as to your statement that, if you plead to the force of my bar, you will thereby depart from your writ of Assise on account of the last presentation being denied, all that can be saved to you by protestation.—*Thorpe.* If you will waive the denial of the last presentation, we will at once answer to your bar, and, if you will not do that, we will aver that we ourselves presented the last parson; ready, &c., by the assise.—*Grene.* And, since you do not deny the descent of the advowson to the four parceners, nor that we have the estate of the youngest of them, nor that the turn is now ours, therefore, &c.—WILLOUGHBY. In an Assise of Darrein Presentment, if it is found that none of the parties presented the last parson, but that a stranger did, the stranger will have a writ to the Bishop, because the words of the writ are *quis advocatus præsentavit*, &c.; and moreover if the assise had now passed its verdict, and had found that your mother had presented the last parson, as tenant in dower, in your right, we should award a writ to the Bishop; therefore you must answer to the force of his bar.—*Seton.* Sir, I know well that the statute[1] says

[1] 13 Edw. I. (Westm. 2) c. 5.

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qe par plee le pleintif ad este mys a son brief de Dreit, et auxi en une Assise de drein presentement qe par manere de plee ad este mys a son *Quare impedit* ; par quei, mes qe le presentement cele qe fust tenant en dowere afferme ma possessioun, il nel afferme pas issi qe Assise de drein presentement gist, mes *Quare impedit*, puis qe autre qe moy mesme presenta.—Stouf. Mes qe Assise de drein presentement ne geust pas del presentemet un tenant en dowere, puis qil ne doune pas son chalange au tiel entente dabatre le brief par cele cause, mes plede[1] outre en barre daccion, par quel il moustre qe le presentement append a luy, qil luy deveiera de cele.—*Grene, ad idem.* Il nest pas doute qe si moun ancestre presente, et apres ma mere qest tenante en dowere, qe jeo naveray Assise de drein presentement ; et a ceo qe vous parletz qe si vous pledetz a la force de mon barre qe vous departeres de vostre assise pur le drein presentement dedit, tut cella vous purra estre sauve pur protestacion.—*Thorpe.* Si vous voletz weyver le dedire del drein presentement, nous respoundroms tantost a vostre barre, et, si ceo noun, nous voloms averer qe nous mesmes presentames la drein persone ; prest, &c., par assise.—*Grene.* Et de puis qe vous ne dedites pas la descente del avoweson a les iiij. parceners, ne qe nous navoms lestat la punesse, ne qe le tourn nest a ore a nous, par quei &c.—Wilby. En Assise de drein presentement, sil soit trove qe nulle des parties presenta la drein persone, mes estrange, lestrange avera brief al Evesqe, pur ceo qe le brief voet *quis advocatus præsentavit, &c.* ; et auxi si lassise ust a ore passe, et ust este trove qe vostre mere ust presente la drein persone, come tenante en dowere, en vostre dreit, nous agarderoms brief al Evesqe ; par quei a la force de son barre covent il qe vous respoignez, —*Setone.* Sire, jeo say bien qe lestatut parle qe la ou

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[1] I., plesde.

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A.D. 1346. that where my ancestor has presented, and after him a tenant in dower, or the curtesy of England, in my right, presents, it is at my election to sue an Assise of Darrein Presentment or a *Quare impedit*; but if I sue a Darrein Presentment, I must take my title from the presentation of my ancestor, without mentioning the presentation of the tenant in dower, because I can never make a title in an Assise of Darrein Presentment from the presentation of one through whom the presentation could not descend to me, as I could do in a *Quare impedit;* therefore, since I have affirmed the last presentation in myself, and you have denied it, and have affirmed it to have been in another person, the assise on the last presentation denied can be awarded without having any regard to the question whether she was tenant in dower or not.—*Grene.* If in an Assise of Darrein Presentment you make a title to the effect that you yourself presented, and before you your father, and the assise is awarded on my default, and it is found that your father presented the last parson, still you will have a writ to the Bishop, because the patronage is found to be in you, and the question whether it was by your own presentation or your father's presentation is nothing to the purpose, since the words of the writ are found in your favour. And for the same reason since the presentation made by your tenant in dower, in your right, gives you possession of the patronage just as much as your own presentation, it seems that the denial of your presentation, where we have affirmed it in your tenant in dower, in your right, whose presentation affirms your possession of the patronage, is not a matter which disproves your title, and particularly since we do not rely upon the denial of your presentation, but affirm title in you now to present, to which you do not answer; judgment, and we pray a writ to the Bishop.—*Thorpe.* You see plainly how she claims to have a fourth part of the advowson in wardship by reason of a purchase which the ancestor of the person who is in her wardship

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mon auncestre ad presente, et apres luy une tenante en dowere, ou par la lei Dengleterre, en mon droit, presente,[1] qil est en ma eleccion a suir Assise de drein presentement ou *Quare impedit ;* mes, si jeo siwe Drein Presentement, il covent qe jeo prenk mon title del presentement mon auncestre, saunz parler del presentement la tenante en dowere, qar jeo ne puis jammes faire title del presentement celuy par qi la chose ne moy poet descendre, en Assise de drein presentement, come jeo purray faire en *Quare impedit ;* par quei, puis qe jai afferme le drein presentement en moi mesme, et eel avetz vous dedit, et lavetz afferme en autre, saunz aver regarde le quel ele fust tenante en dowere ou nent, lassise sur le drein presentement dedit[2] est agardable.—*Grene.* Si vous faites title en Assise de drein presentement qe vous mesmes presentastes, et devant vous vostre prere, et par ma defaute lassise est agarde, et soit trove qe vostre pere presenta la drein persone, unqore vous averetz brief al Evesqe, pur ceo qe lavowere est trove en vous, et le quel ceo soit par vostre presentement demene ou par le presentement vostre pere nest pas a purpos, puis qe la parole de brief est trove pur vous. Et par mesme la resoun, puis qe le presentement vostre tenante en dowere, en vostre droit, vous doun auxi avant possessioun davowere come vostre presentement demene, si semble il qe le dedire de vostre presentement, la ou nous avoms eele afferme en vostre tenante en dowere de vostre droit, qi presentement afferme vostre possessioun de avowere,[3] nest pas chose qe desprove vostre title, et nomement puis qe nous ne relioms pas sur le dedire de vostre presentement, einz affermoms title[4] en vous a ore de presenter, a quel vous ne responez pas ; jugement, et prioms brief al Evesqe.—*Thorpe.* Vous veietz bien coment li cleyme daver la quarte partie del avoweson en garde par resoun dun purchas qe launcestre celuy qest en sa[5]

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[1] The word presente is omitted from I.

[2] dedit is omitted from I.

[3] The words de avowere are omitted from I.

[4] title is omitted from I.

[5] The words qest en sa are omitted from I.

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A.D. 1346. is supposed to have made, which purchase falls under the head of specialty, and you produce nothing to show it; judgment.—*Grene.* The specialty does not lie with us, but ought properly to remain with the heir, and we will aver the gift of the advowson; judgment whether we shall not be admitted to aver that.—*Thorpe.* On the understanding that A. does not rely on the presentation which she has denied in us in abatement of our writ, we will answer willingly; and we tell you that we do not admit that the last presentation was by our mother, but we shall be ready to aver the contrary, if, &c. And we tell you that the son of K., who, he says, is supposed to have given a fourth part of the advowson to J.'s ancestor, gave the fourth part of the advowson, by this deed which is here, to our father, to hold to him and to his heirs, before which time J.'s ancestor had nothing by his gift; therefore afterwards, on the next vacancy, our father brought an Assise of Darrein Presentment against J.'s father, whereupon J.'s father appeared, and could not deny that it belonged to our ancestor to present; therefore our ancestor had a writ to the Bishop, and so we are sole patron. And whereas you say that the advowson is holden of you in knight service, it is holden of one P. and not of you, and we demand judgment, and pray the assise.—*Skipwith.* That plea is threefold; one is on the ground that he has shown that J.'s ancestor, through whom we claim, divested himself of the advowson by deed executed in favour of his ancestor; a second is that, even though there was not any such gift of the advowson, J.'s ancestor could not, on that account, deny that it belonged to his ancestor to present, in virtue of which non-denial his ancestor had a writ to the Bishop, and thereby his ancestor was in possession of the whole advowson, so that each of those two pleas is in point of assise, because both the one and the other go to affirm his possession of the patronage; and he has also as a third plea said that the advowson is holden of another person, and not of me,

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garde dust aver fait, quel chiet en especialte, et de ceo ne moustre rienz ; jugement.—*Grene.* Lespecialte ne gist pas en nous, mes fait proprement a demurer vers leir, et le doun del avoweson nous voloms averer ; jugement si a cel averer ne serroms resceu.—*Thorpe.* A tiel entente qe A. ne relie pas de presentement qil ad en nous dedit en abatement de nostre brief nous respondroms volunters ; et vous dioms qe nous ne conissoms pas le drein presentement estre par nostre mere, mes serroms prest daverer le contrare, si, &c. Et vous dioms qe le fitz K., qil dit qe dust[1] aver done la quarte partie del avowesoun al auncestre J, dona,[2] par ceo fait qe cy est, la quarte partie del avowesoun a nostre pere[3] a luy et a ses heirs, avant quel temps launcestre J. navoit rienz de son doun ; par quei apres nostre pere, a la procheyn voidaunce, porta une Assise de drein presentement vers le pere J., ou il vint et ne pout dedire qe a nostre auncestre nappendoit a presenter ; par quei il avoit brief al Evesqe, et issi sumes nous soul avowe. Et la ou vous ditez qe lavoweson est tenu de vous en chivalrie, il est tenu dun P., et ne mye de vous, et demandoms jugement, et prioms lassise.—*Skip.* Ceo plee est treble ; un de ceo qe il ad moustre qe launcestre J., par qi nous clamoms, se demist de lavowesoun par fait a son auncestre ; un autre, tut ny avoit il pas tiel doun del avoweson, par taunt qe launcestre J. ne pout dedire qil nappendoit a son auncestre a presenter, par force de quel il avoit brief a Evesqe, et par taunt son auncestre fust en possessioun de tut lavoweson, issint qe chesqun de ceux ij plees est en point dassise, pur ceo qe lun plee et lautre chiet daffermer sa possession del avowere ; et auxi il ad dit qe lavoweson est tenu dun autre, et ne mye de moy,

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[1] The words qe dust are omitted from I.

[2] dona is omitted from I.

[3] The words a nostre pere are omitted from I.

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A.D. 1346. which is an issue out of point of assise; therefore we do not understand that we have any need to answer to this answer which is threefold, and we pray a writ to the Bishop. —Therefore he was put to hold to one only of the three pleas.—Therefore *Seton* held to the plea that the son of K. who, they say, is supposed to have given a fourth part of the advowson to J.'s ancestor, gave the same fourth part, by this deed (and he made *profert* of it) to our father, before which time J.'s ancestor had nothing by his gift, and so we are sole patron, and we pray the assise.—*Skipwith.* As to that we tell you that the son of K. gave us the advowson, and we were seised of it through his gift; ready to verify by the assise.—*Seton.* That is not an issue without saying that he gave it to you before the time at which he gave it to us.—*Grene.* The plea came from us, that is to say, that the son of K. gave us the fourth part, &c., and that the turn is now ours, and to that you come and say that he gave it to you before he gave it to us, with the meaning that, after he had divested himself in your favour he could not give to us, and therefore your plea is taken in annulment of our bar; therefore it is sufficient for us to maintain our bar, without answering as to the deed made in your favour, since we are a stranger to that gift.—*Thorpe.* If the infant

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qest une issue hors[1] de point dassise ; par quei nentendoms pas qe a ceo respons qest treble eioms mester a respondre, et prioms brief al Evesqe.—Par quei il fust mys a tenir a un.—Par quei *Setone* se tint a ceo qe le fitz K., qils dient qe dust aver done la quarte partie del avoweson al auncestre J., dona mesme la quarte partie par ceo fait, et le myst avant, avant quel temps launcestre J. navoit rienz de son doun, et issi sumes soul avowe, et prioms lassise.[2]—*Skip.* A ceo vous dioms nous qe le fitz K. nous dona lavoweson, et nous seisi par son doun ; prest daverer par assise.—*Setone.* Ceo nest pas issue saunz dire qil vous dona avant le temps qil nous dona.—*Grene.* Le plee vint de nous, saver, qe le fitz K. nous dona la quarte partie, &c., et qe le tourn est a ore a nous, et a ceo venetz vous et dites qil le vous dona avant qil dona a nous, a tiel entente qe apres qil se avoit demys a vous il ne poait doner a nous, et par taunt vostre plee est pris en anientissement de nostre barre ; par quei il suffist a nous a meyntener nostre barre, saunz respondre al doun fait a vous, puis qe a cele doun nous sumes estrange—.*Thorpe.* Si lenfant en qi dreit vous A.D. 1346.

[1] hors is omitted from I.

[2] The replication was, according to the record, "Radulphus, non cognoscendo quod "prædicta Antigone fuit communis antecessor, &c., nec "quod ipsa seisita fuit de "advocatione ecclesiæ prædictæ, "nec quod prædicta Matilldis "præsentavit ultimam per-"sonam, &c., ad ecclesiam præ-"dictam, dicit quod prædicta "Weynesia fuit seisita de quarta "parte advocationis prædictæ, "&c. Et de eadem Weynesia "descendit jus quartæ partis "advocationis prædictæ cuidam "Rogero de Brahamo ut filio "et heredi, &c., qui quidem "Rogerus per chartam suam, "quam proferunt [*sic*] hic in curia, "eandem quartam partem, &c., "dedit et concessit prædictæ "Agneti de Chircheford proaviæ "ipsius Radulphi, cujus heres "ipse est, tenendam sibi et "heredibus suis in perpetuum, "virtute cujus chartæ eadem "Agnes seisita fuit de integro "advocationis prædictæ, et "præsentavit ad eandem præ-"fatum Saierum, ut supradictum "est, ante quod feoffamentum "prædictus Rogerus de Holbroke "nihil habuit in prædicta quarta "parte advocationis ecclesiæ "prædictæ ex feoffamento "prædicti Rogeri de Brahamo. "Et hoc paratus est verificare, "unde petit judicium, &c."

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A.D. 1346. in whose right you claim the presentation were now a party, I should put him to answer to the deed of K.'s son, so that he would not be able to maintain his own possession without answering to the deed, because when two persons claim through one and the same person, and one has a deed which proves his purchase, the other will not be allowed to aver his purchase without avoiding the deed. Now we have shown a deed by which K.'s son gave the advowson to us, by the execution of which deed, without livery beyond it, the advowson passed, because an advowson is a thing which is not tangible,[1] and therefore it is not an issue unless he will aver that K.'s son gave to J.'s ancestor before he gave to us.—*Skipwith.* If it is law that the advowson passed by the execution of the deed, then he could not afterwards give it to us, and you have denied the gift previously made to us, and so you are at a denial of a gift made to us at any time, and to that we will aver that he did give to us, and that we were seised of the advowson through his gift; ready, &c.; and that ought by right to be sufficient for us.—WILLOUGHBY. He has not denied the deed executed in favour of J.'s ancestor by averment in respect of all time, but only in respect of the time previous to the gift made to him; and by the deed executed in his favour he proves in law that after that K.'s son could not give to any other; therefore, if you will aver that he gave to J.'s ancestor before the time at which he gave to the other, you will be quickly at issue; but as to averring in general terms that he gave to you, that may refer to a gift made to J.'s ancestor after the gift made to H., and you cannot be admitted to aver that without showing how he came to this advowson afterwards; therefore consider in what manner you will abide judgment.—*Skipwith.* Then we say that the son of K. gave the fourth part of the advowson to the ancestor of J., before which time the plaintiff's ancestor had nothing

[1] *i.e.*, which is incorporeal.

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clametz le presentement fust a ore partie, jeo luy mettray a respondre al fait le[1] fitz K. qil naveroit pas de meyntener sa possessioun demene saunz respoundre al fait, pur ceo qe quant ij. clayment dune mesme persone, et lun eit fait qe prove son purchace, lautre navera mye daverer son purchace saunz voider le fait. Ore avoms moustre fait par quel il dona lavowesoun a nous, par fesaunce de quel fait, saunz livre dehors, lavoweson passa, pur ceo qe ceo est chose nient maynyable, par quei, saunz averer qil dona al auncestre J. avant qil dona a nous nest pas issue.—*Skip.* Sil soit lei qe par la fesaunce del fait lavowesoun passe, donqes ne pout il apres a nous doner, et le doun a nous fait avant vous avetz dedit, et issi estes a dedit del doun fait a nous a cheseun temps, a quei nous voloms averer qil nous dona, et nous seisi del avoweson par son doun; prest, &c.; quele chose par resoun nous deit suffire.—Wilby. Il nad pas dedit le doun fait al auncestre J. par averement de tut temps, mes soulement de temps[2] avant le doun a luy, fait; et par le doun fait a lui[3] il prove en lei qe apres cele il poet doner a nul autre; par quei, si vous voletz averer qil dona al auncestre J. avant le temps qil dona a luy, vous serretz tost a issue; mes daverer generalment qil vous dona, ceo poet referer a un doun fait al auncestre J. puis le doun fait a H., a quele chose daverer ne serretz reseeu saunz moustrer coment il avynt al avowesoun puis; par quei avisetz vous ou vous voletz demurer.—*Skip.* Donqes vous dioms qe le fitz K. dona la quarte partie del avoweson al auncestre J., avant quel temps launcestre le pleintif navoit rienz de son doun; A.D. 1346.

[1] The words fait le are omitted from I.

[2] The words mes soulement de temps are omitted from I.

[3] The words et par le doun fait a lui are omitted from I.

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A.D. 1346. by gift from him; ready, &c.—*Seton.* Ready, &c., that he gave to our ancestor before he gave to J.'s ancestor.—And the issue was received on that, without any denial of the gift either on one side or on the other.

Scire facias. (9.) § One John de Waghan and M. his wife sued to cause to come the transcript of a fine, by which a remainder was limited to the said M., into the Common Bench, and upon that a *Scire facias* was sued by J. de Uaghan, the name being spelled with a single U., whereas in the suit by which the fine was brought into this Court his name was spelled with a double U. in accordance with the roll; and now the tenant, by *Seton*, demanded judgment, since the *alias* writ was not in accordance with the original, which was the *Scire facias*, and the *Scire facias* was not in accordance with the roll, and therefore (said *Seton*) we ought not to be put to answer to this writ.—*Skipwith.* To plead a variance between the first *Scire facias* and the roll is not to plead at all, for that *Scire facias* was returned

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prest, &c.—[*Setone.* Qil dona a nostre auncestre avant qil dona al auncestre J., prest &c.][1]—Et sur ceo issue resceu saunz dedire le doun del une part ou del autre.[2] A.D. 1346.

(9.) [3]§ Un Johan de Waghan et M. sa femme suirent de faire venir le transescript dun fin, par quel un remeindre fust taille a la dit M., en comune Baunk, et hors de cele un *Scire facias* fust suy par J. de Uaghan par un sengle U., la ou en la sute par quele la fine vint ceinz il fust nome par double U.[4] acordaunt al roulle ; et ore le tenant, par *Setone*, demanda jugement, puis qe le *sicut alias* ne fust pas acordaunt al original, qest le *Scire facias*, ne le *Scire facias* nest pas acordaunt al roulle, par quei a ceste brief nous ne devoms estre mys a respoundre.—*Skip.* De parler de la variaunce entre le primer *Scire facias* et roulle nest pas a parler, qar cel *Scire facias* fust *Scire facias.*

[1] The words between brackets are omitted from I.

[2] The rejoinder, upon which issue was joined, was, according to the record, "Margeria dicit "quod ipsa non habet necesse "respondere ad prædictam char- "tam quam prædictus Radul- "phus hic profert sub nomine "prædicti Rogeri, nec illam cog- "noscere seu dedicere, ex quo "ipsa est omnino extranea ad "eandem, sed dicit quod, ubi "prædictus Radulphus superius "supponit præfatum Rogerum "de Brahame feoffasse præ- "fatam Agnetem de Cherche- "ford.proaviam,&c.,de prædicta "quarta parte advocationis, &c., "in forma supradicta, et sic "supponit eandem Agnetem "fuisse solam seisitam de eadem "quarta parte advocationis præ- "dictæ virtute feoffamenti præ- "dicti, &c., idem Rogerus de "Brahame feoffavit præfatum "Rogerum de Holbroke de præ- "dicta quarta parte advoca- "tionis, &c., sicut ipsa superius "dixit, ante quod feoffamentum "prædicta Agnes nihil habuit "in prædicta quarta parte "advocationis, &c.

"A jury subsequently found "quod prædictus Rogerus de "Brahame feoffavit prædictum "Rogerum de Holebroke de "prædicta quarta parte advo- "cationis ecclesiæ prædictæ, "ante quod feoffamentum præ- "dicta Agnes de Chercheford "nihil habuit in prædicta quarta "parte advocationis ecclesiæ, "sicut prædicta Margeria su- "perius supponit."

Judgment was accordingly given for Margery to recover her presentation and damages.

[3] From H. and I.

[4] H. W.

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A.D. 1346. *tarde*, so that by that first writ you have not a day in Court; and you have a day by the writ which is now returned, and not before, and that writ is in accordance with the roll, and therefore the variance between this writ and the other which was not served will not excuse you from answering.—WILLOUGHBY. Every *alias* writ must be warranted by some previous original, and that original was not in accordance with the roll, and this writ is not in accordance with that original; therefore, &c.—The statute[1] purports that for mistake of a syllable or of a letter process is not any more to be discontinued in future, and therefore, although there may less by one U. in one writ than in the other, you ought to amend it according to the statute.—SHARSHULLE. The statute says only that process shall be amended in respect of such mistakes, and does not say that mistakes in writs are to be amended in such manner, and therefore we cannot carry the statute farther than the words expressed in it.—*Skipwith.* Variance cannot be assigned between, Waghan with a double U. and Uaghan with a single U. for *ewangelium* and *euangelium* are all one, and yet one is spelled with a double U., and the other with a single U. and so also in our case.—WILLOUGHBY. You know well that Uilloughby and Willoughby are not one and the same name, because they may indicate different persons; therefore, by reason of the variance which there is, it seems to us that the writ is faulty; therefore farewell without day.

Detinue of writing. (10.) § A writ of Detinue of a writing was brought. The defendant (bailee) said that the writing was delivered to him by the plaintiff, and another, on condition, and he did not know whether the conditions had been fulfilled or not. And he had a *Scire facias* against the other, who appeared. And the plaintiff, by *Huse*, counted against the latter that the writing had been delivered on condition that if he should

[1] 14 Edw. III. St. I. c. 6.

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retourne *tarde*, issi qe par cel primer[1] brief vous navetz pas jour en Court; et par le brief qest a ore retourne si avetz jour, et ne mye avant, quel brief est accordaunt al roulle, par quei la variaunce entre ceste brief et lautre qe ne fust pas servi ne vous excusera pas qe vous ne respoignez.—Wilby. Chescun *sicut alias* covent estre garranti dascun original avant, quel original nestoit pas acordaunt al roulle, ne ceo brief acordaunt a ceste original; par quei &c.—*Thorpe*. Lestatut voet qe par defaute de silable ou de lettre qe proces ne soit plus avant discontinue, par quei, mesqil y eit meynz en lun brief dun U. qen lautre, vous le devetz par lestatut amendre.—Schars. Lestatut ne parle mes qe proces serra amende par tielx defautes, et ne parle mye qe defautes en briefs par tiele manere soient amendes, par quei nous ne poms prendre lestatut plus avant qe les paroules en ycele ne parlent.—*Skip*. Homme ne poet pas assigner variaunce entre Wagan par double U.[2] et Uagan par sengle U., qar *ewangelium* et *euangelium* est tut un, et si est lun par double U. et lautre par sengle, et auxi en nostre cas.—Wilby. Vous savetz bien qe Uilby et Wilby ne sont pas tut un noun, qar ils pount server as divers persones; par quei, pur la variaunce qil y ad, il semble a nous qe brief pesche[3]; par quei aletz a Dieu saunz jour. A.D. 1346.

(10.) [4]§ Un brief de Detenue descript fust porte. Le defendant dit qe lescript lui fust livere par le pleintif, et un autre, sur condicion, et ne savoit si les condicions furent tenuz ou nent. Et avoit le garnisement vers lautre qe vient. Et le pleintif, par *Huse*, counta vers lui qe lescript fust livre sur tiele condicion qe sil enfeffast le Detenue descript.

[1] primer is omitted from H.
[2] H. W.
[3] I., est malement purchace.
[4] From H. and I.

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A.D. 1346. enfeoff the defendant (co-bailor), within a certain time, of ten acres of land, and also if he should not, during the same time, commit any waste in lands which he held of the defendant's inheritance, then the writing should be delivered to the plaintiff. And he counted that he had performed the conditions on his part. —*Derworthy.* You see plainly how he supposes the delivery of the writing to have been made on divers conditions, which fall within a specialty, and he does not produce anything of the kind; judgment.—WILLOUGHBY. The condition upon delivery falls well enough within averment to the country; therefore see whether you will say anything else.—*Derworthy.* We say that we performed the covenant on our part, and that he failed on his part; ready, &c.—*Huse.* You shall not have issue on both, because, if you can aver that we have not fulfilled the conditions on our part, that is sufficient for you, without having regard to the question whether you have performed them on your part or not.—*Derworthy.* We are plaintiff now for the purpose of deraigning the writing, and our damages, against you, just as much as you are against us, and therefore, without affirming that we have performed the conditions on our part, we do not put ourselves in such a position that it belongs to us to have the writing; and therefore to annul your title and show that it does not belong to you to have the writing is not sufficient for me, without affirming my own title, any more than in a *Quare impedit*, if I traverse the plaintiff's title, and do not make a title for myself, in which case I shall not have a writ to the Bishop.—WILLOUGHBY. The cases are not alike: for in a *Quare impedit*, there are no parties except yourselves, and for that reason it is for you to make yourself a title, so that you may be able to have a writ to the Bishop, and that you cannot have unless you make yourself a title; but in this case a person who was party to the original writ, and who is owner of the writing, has confessed that it belongs to you to have it if the plaintiff cannot maintain that he has performed the

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defendant, deinz certein temps, de x. acres de terre, et auxi sil feist nul wast, deinz mesme le temps, en terres queux il tint del heritage le defendant qe adonqes lescript serra livere al pleintif.[1] Et counta qil avoit parfourni les condicions de sa parte.—*Der.* Vous veietz bien coment il suppose le livre del escript estre fait sur divers condicions queux chiessent en especialte, et de ceo ne moustre rienz ; jugement.—Wilby. La condicion sur la livre chiet en pays daverer assetz bien ; par quei veietz si vous voilletz autre chose dire.—*Der.* Nous dioms qe nous parfournimes la covenant de nostre parte, et il le faillist de sa parte ; prest &c.—*Huse.* Vous naveretz pas issue sur lun et lautre, qar, si vous poietz averer qe nous lavoms pas tenu de nostre parte[2] il vous suffit, sanz aver regarde le quel vous leietz parfourni de vostre parte ou nient.—*Der.* Nous sumes actour a ore a desrener lescript, et noz damages, vers vous, auxi bien come vous estes vers nous, par quei saunz affermer qe nous avoms parfourni les condicions de nostre part nous ne nous fesoms tiel qe escript attient a nous a aver ; par quei de anenter vostre title qil nattient pas a vous a aver ne moy suffit pas, saunz affermer moun title demene, nent pluis qen *Quare impedit*, si jeo traverse le title le pleintif, et ne moy face mesme title, jeo naverai pas brief al Evesqe.—Wilby. Il nest pas semblable : qar en *Quare impedit* il ny ad nule qest partie fors vous mesmes, par quei a vous attient de vous faire title mesme, qe vous puissetz brief al Evesqe aver, et ceo ne poetz aver si vous ne vous fetes title[3] ; mes en ceo cas celuy qe fust partie al original, et qest possessour del escript, ad conu qil attient a vous a aver si le pleintif ne puisse meyntenir qe il ad de

A.D. 1346.

[1] MSS, defendant. There is some confusion in the report, between the plaintiff, his co-bailor, and the defendant bailee.

[2] The words de nostre parte are omitted from I.

[3] H., tiele

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A.D. 1346. conditions on his part, and therefore you obtain your purpose by destroying that; therefore deliver yourself.—*Derworthy.* Then we say that the plaintiff has not fulfilled the covenants, because he did not enfeoff us, and moreover he has committed waste; ready, &c.—*Huse.* Elect on which of the two you will take issue, for you cannot have both; for it will be possible that the verdict on one issue will pass for me, and on the other against me, and then the Court would not know for whom to render judgment. —And he was compelled to do so by the COURT.—Therefore the issue was taken on one, &c.

Formedon. (11.) § A Formedon in the descender was brought on a gift made to the demandant's ancestor. And the demandant made the descent to his father, and from his father to himself.—*Skipwith.* You ought not to have an action, for we tell you that one J., your uncle, that is to say, your father's brother, released to us, while we were in possession, by this deed with warranty; judgment whether, &c.—*Grene.* You see plainly how he has confessed that J. was issue in tail, whose deed is as much restrained by statute[1] as the deed of the tenant in tail himself; and, inasmuch as you have not alleged that we have assets by descent through him, judgment whether we have need to answer to that deed.—*Skipwith.* Although he was issue in tail, if he was your father's younger brother, you will be barred by his warranty; now you have not, in your count, made the descent through him, and therefore it cannot be understood that he was the elder brother, unless that statement comes from you.—SHARSHULLE, *ad idem.* Warranty of those of whom mention is not made in the writ as being supposed to be in the entail remains at common law, and therefore, in order to destroy the warranty it is necessary for the demandant to show that the person who made it was supposed to be in the

[1] 13 Edw. I. (Westm. 2) c. 1.

Nos. 10, 11.

sa parte les condicions parfourni, par quei a destrure cele vous estes a vostre purpos ; par quei deliverez vous.—*Der.* Donqes dioms qe le pleintif nad pas tenu les covenantz, qar il nous enfeffa pas, et auxi il fist wast ; prest, &c.—*Huse.* Elisez sur quel de les deux vous voilletz prendre issue, qar vous naveretz pas ij. ; qar possible serra qe lun passera pur moy, et lautre countre moi, et donqes ne savereit la Court pur qi rendre jugement.—Et issi fust il chace par la Court.—Par quei lissue fust pris sur lun, &c. A.D. 1346.

(11.) [1]§ Fourme de doun en descendre porte de doun fait a son aiel. Et fist la descente a son pere, et de son pere a lui.—*Skip.* Vous ne devetz accion aver, qar nous vous dioms qun J., vostre uncle, saver, le frere vostre pere, en nostre possessioun, relessa par ceo fait od garrantie ; jugement si, &c.—*Grene.* Vous veietz bien coment il ad conu qe J. si fust issue en la taille, qi fait[2] est auxi avant restreint par lestatut come le fait le tenant en la taille mesme ; et de ceo qe navetz pas allegge qe nous navoms assetz par descente par lui, jugement si a ceo fait eioms mester a respoundre.—*Skip.* Coment qil fust issue en la taille, sil fust le puisne frere vostre pere, vous serretz par sa garrantie barre ; ore navetz pas en vostre counte fait descente par my luy, par quei homme ne poet entendre qil fust fitz eisne, sil ne viegne de vous.—Schars., *ad idem.* Garrantie de ceux qe ne sont pas fait mencion en le brief qe devereynt estre en la taille demurt a la comune lei, par quei a destrure la garrantie il covent al demandant de moustrer qe celuy qe le fist dust aver este enherite par

Fourme doun. [Fitz., *Garraunte*, 39.]

[1] From H. and I.

[2] fait is omitted from I.

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A.D. 1346. inheritance in tail if he had survived, and therefore that the demandant will not be barred by his warranty.—*Grene* passed over, and said that J. had issue two daughters who were still living, and (said he) we do not understand that he can bar the demandant as being J.'s heir. But *Grene* said previously that he certainly would not have passed over unless he had had other matter.—*Skipwith.* You shall not be admitted to that, for by reason of your long demurrer it was not denied by you that you were J.'s heir, and therefore you shall not now be admitted to say the contrary —And this objection was not allowed.—Therefore *Skipwith* asked where the daughters were living.—*Grene.* We have no need to say, until you have denied their existence. —Therefore, *Skipwith* said that there never were any such persons; ready, &c.—*Grene* said that there were, and that they were still living at J., and prayed a jury from that neighbourhood, and had it, &c.

Debt. (12.) § A writ of Debt was brought in the County of Middlesex, and *profert* was made of an acquittance which purported to be dated in London. And this acquittance was denied, and thereupon a *Nisi prius* was granted before KELSHULLE at St. Martin's le Grand in London. And the record of the plea which was sent was entitled at the commencement "Midd." (for Middlesex), and the writing which followed was *Præcipe Vic. quod venire faciat, &c., nisi prius, &c.* KELSHULLE took the inquest, and the finding was for the plaintiff. And now, in the Common Bench, *Thorpe* took the objection that there was no warrant by that record to take the inquest, because the title of the record was "Middlesex." And the words of the record were *quod præceptum est Vic.*, which could only refer to the Sheriff of Middlesex; therefore that record did not give KELSHULLE warrant to take an inquest returned by the Sheriffs of London.—*Seton.* That title "Middlesex" is only to give the title of the County in which the original writ was sued, because the whole

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la taille sil ust survesqui, et par taunt qil ne serra par sa garrantie barre.—*Grene* passa outre, et dit qe J. avoit issue ij filles qe sont en vie, et nentendoms pas qe li come heir a J. il poet barrer. Mes dit avant qe certeynement il nel ust passe sil nust eu[1] autre matere.—*Skip.* A ceo navendrez vous pas, qar par vostre[2] longe demure il fust a nient dedit de vous qe vous fustes son heir, par quei a ore a dire le contrare navendrez pas.—*Et hoc non allocatur.*—Par quei *Skip.* demanda ou il fust en vie.—*Grene.* Ceo navoms mester a dire, tanqe vous eietz dedit lour estre.—Par quei *Skip.* dit qils ny avoient unqes tielx ; prest, &c.—*Grene* dit qils avoient, et unqore sont a J., et pria pays de cel visne, et avoit, &c. A.D. 1346.

(12.) [3]§ Brief de Dette fust porte en le Counte de Middelsexe, et acquitance mys avant qe purporta date en Loundres, et fust dedit, sur quei un *Nisi prius* fust graunte devant KELS. a Seint Martyn le Grant en Loundres. Et le recorde del plee qe fust maunde fust title a comencement "Midd," et apres fust escript *Præcipe Vic. quod Venire faciat, &c., nisi prius, &c.* KELS. prist lenqueste, et trove pur le pleintif. Et ore en Baunk *Thorpe* chalengea qil navoit pas garrant par cele recorde a prendre lenqueste, qar le title del recorde fust "Midd." Et le recorde voleit *quod præceptum est Vic.*, qe ne put referrer mes al Vicounte de Middelsexe ; par quei cel recorde ne luy dona pas garrant a prendre une enqueste retourne par Vicountes de Loundres.—*Setone.* Cele title de "Midd." nest mes a titler le counte ou original fust suy, qar sur[4] loriginal Dette.

[1] eu is omitted from I.
[2] vostre is omitted from I.
[3] From H. and I. until otherwise stated.
[4] sur is omitted from H.

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A.D. 1346. plea will be holden on the original sued in Middlesex, and therefore the title of the roll will be of that county.—SHARSHULLE. The writ of *Nisi prius* was directed to the Sheriffs of London, and by that writ KELSHULLE had warrant to take the inquest. And by the record which was sent to him he was apprised at what issue the parties had arrived. Therefore nothing is now faulty, and certainly KELSHULLE did as I should have wished to have done had I been in his case.—Therefore judgment was given that the plaintiff should recover the debt, &c.

Debt. § A man brought a writ of Debt in Middlesex, and made *profert* of an obligation executed in London, and the date of it was in London, and therefore the *Venire facias* issued to the Sheriffs of London. And afterwards a *Nisi prius* was granted before SIR RICHARD DE KELSHULLE, at St. Martin's, on a certain day. And the writ which issued to the Sheriffs of London was in the words *Vicecomitibus Londoniarum*, and the roll which remained in Court agreed in the same form, and the [*Nisi prius*] record which was sent to KELSHULLE had the word "*Vic.*"[1] and did not say "of London," and the roll was entitled "Middlesex." And KELSHULLE took the inquest. And the finding was for the plaintiff. And on the day which they had in the Common Bench *R. Thorpe* said:—This inquest has been taken without warrant, because the record which was sent to KELSHULLE had only the words *Præceptum est Vic.*[1] *quod*, &c., whereas the original writ was brought in Middlesex, in which case the words *Præceptum est Vic.*[1] can only be understood to mean to the Sheriff of Middlesex, in which county the original writ was brought. And again the title on the record was "to the Sheriff of Middlesex," so that this inquest, which was taken by persons returned by the Sheriffs of London, was taken without warrant.—WILLOUGHBY. The roll in this Court

[1] This might stand either for *Vicecomiti*, "to the Sheriff," or for *Vicecomitibus* "to the Sheriffs."

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de Middelsexe tut le plee serra tenu, par quei de cel Counte le title de roulle serra.—SCHARS. Le brief de *Nisi prius* fust directe as Vicountes de Loundres, par quel brief il avoit garrant a prendre lenqueste. Et par le recorde qe lui fust maunde il fust apris sur quel issue ils furent descenduz. Par quei a ore rienz ne faut, et certeinement il fist auxi come jeo vousisse aver fait si jeo usse este en son cas.—Par quei fust agarde qe le pleintif recoverast la dette, &c. A.D. 1346.

§ Un[1] homme porta un brief de Dette en Middelsexe, et mist avant obligacion fait en Loundres, et la date fuit en Loundres, par qei *Venire facias* issit a[2] Vicountes de Loundres. Et puis *Nisi prius* graunte devant SIRE[3] RICHARD DE KELL., a Seint Martyn, a certein jour. Et le brief qe issit a[4] Vicountes de Loundres si parla *Vicecomitibus Londoniarum*, et le roulle qe demura en Court si acorda en mesme le manere, et le recorde qe fuit maunde a KELL. si parla *Vic.*, et ne dit mie *Londoniarum*, et fuit title Middelsexe. Et KELL. prist lenqueste. Trove fuit pur le pleintif. Et al jour qils avoint en Baunk *R. Thorpe*. Ceste enqueste est pris sanz garraunt, qar le recorde qe fuit maunde a KELL. ne voleit forqe *Præceptum est Vic. quod, &c.*, ou loriginal si fuit porte en Middelsexe, ou ceo *præceptum est, Vic.* ne poet estre entendu forqe au Vicounte de Middelsexe, ou loriginal fuit porte. Et dautre part le title sur le recorde fuit *Vicecomiti Middelsexiæ*, issint ceste enqueste, qe fuit pris par gentz retournetz par les[5] Vicountes de Loundres, fuit pris sanz garraunt.—WILBY. Le roulle ceinz si fait mencion qe le brief fuit maunde Dette.

[1] This report of the case is from L. and C.

[2] C., al.

[3] SIRE is omitted from C.

[4] C., au.

[5] MSS., le.

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A.D. 1346. mentions that the writ was sent to the Sheriffs of London, so that the roll is good, and the *Venire facias* is in accordance with the roll, so that on this inquest so taken we have warrant to give judgment on the verdict, because the writ by which the Sheriffs caused the jurors to come was in accordance with the roll, that is to say, " to the Sheriffs of London " so that on the verdict found we have sufficient warrant to give judgment.—Therefore judgment was given that the plaintiff should recover his debt, and his damages assessed, &c.

Attaint. (13.) § A woman heretofore brought a *Cui in vita* against one Thomas Abel, and demanded certain tenements, and supposed the tenant's entry to have been by her husband. And she made herself a title in her writ to the effect that the subject of the demand was her right which she claimed to hold to this same person her husband and to herself and to her heirs by the gift of one J. Thereupon the Mayor and Bailiffs [of Oxford] then had cognisance of the plea; and therefore, on the day given by them in their liberty, Thomas appeared and said that her husband and she were seised to hold to them and to the heirs of the husband, so that she had only a term for life; judgment of the writ. And she tendered an averment to the contrary. And it was found by the inquest in favour of the woman. Therefore she recovered. Thereupon Thomas sued to cause the record by which he lost to come into the Chancery, and out of the Chancery, by *Mittimus*, into the Common Bench. Thereupon Thomas sued an Attaint. And now the woman appeared, and Thomas assigned the false oath, and prayed the jury.—*Skipwith*, for the woman, prayed oyer of the writ of Attaint, and also of the record, and he had it.—Thereupon the attorney of the Mayor and Bailiffs of Oxford then prayed cognisance of the plea.—*Derworthy*. You have come too late, for the tenant has had oyer of the original writ and of the record, and thereby this Court is seised of the plea, and therefore you have come too late.—*Skipwith*.

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a les Vicountes de Loundres, issint qe le roulle est bone, et le *Venire facias* acordant au roulle, issint qe sur ceste enqueste issint pris nous avoms garraunt a doner jugement sur verdit, qar le brief par quel les Vicountes firent venir pays si fuit acordant au roulle, saver, *Vicecomitibus Londoniarium*, issint qe sur le verdit trove nous avoms assetz garraunt a doner jugement.—Par qai agarde fuit qe le pleintif recoverast sa dette, et ses damages taxes, &c. A.D. 1346.

Atteint. [*Fitz., Atteint*, 44; *Conusauns*, 47.]

(13.) [1]§ Une femme porta autrefoitz un *Cui in vita* vers un Thomas Abel, et demanda certeinz tenementz, et supposa son entre par son baron. Et se fist title en son brief qe ceo fust son droit[2] quel ele clama[3] a tenir a mesme celui[4] son baron et a lui et a ses heirs del doun un J. Sur quei le Maire et les baillifs adonqes avoient la conisance del plee; par quei al jour done par eux en lour fraunchise, Thomas vint, et dit qe son baron et luy furent seisiz a eux et a les heirs le baron, issi qe ele navoit qe terme de vie; jugement du brief. Et ele tendi daverer le contrare. Et trove par lenqueste pur la femme. Par quei ele recoverist. Sur quei T. suist de faire venir le recorde par quel il perdi en la Chauncellerie, et hors de la Chauncellerie, par le *Mittimus*, en Baunk. Par quei T. suyst une Atteinte. Et ore la femme vint, et assigna le faux seriement, et pria la juree.—*Skip.*, pur la femme, pria oy del Atteinte et auxi del recorde, et lavoit.—Par quei adonqes lattourne les Maire et baillifs de Oxonforde pria la conussance del plee.—*Der.* Vous estes venu trop tard, [qar le tenant ad eu oy del original et del recorde, et par taunt ceste Court seisi del plee, par quei vous estes venu trop tard.][5]—*Skip.*

[1] From H. and I. until otherwise stated.

[2] The words qe ceo fust son droit are omitted from H.

[3] I., cleyme.

[4] The words mesme celui are omitted from I.

[5] The words between brackets are omitted from I.

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A.D. 1346. It is the office of the Court to read the record, and the writ also; therefore even though the tenant has had oyer of these, it does not oust us, who are a third person, from having the cognisance.—And in the end, because the attorney did not make the claim at the commencement, he was ousted from the cognisance.—And the truth was that the attorney of the Mayor and Bailiffs did not know when their franchise was allowed but as he became apprised by the reading of this record, and for that reason he did not dare to demand cognisance at the beginning.—Therefore *Skipwith* said that the Court had not a full record, because the record purported that, when the inquest passed for the demandant, they were afterwards adjourned, to have their judgment, to another day, and that afterwards judgment had been rendered for the demandant, without any determination in the record whether it was rendered on the day to which the adjournment was or on the same day on which the inquest passed, and therefore we do not understand that, before you have a fuller record, you will put us to answer.—SHARSHULLE. The matter before us now is not the reversal of the record on the ground of error, but the attaint of the jury by which the tenant lost his land; and the King has sent us this as the record, and for such we must hold it. And what you say is against yourself, because, according to the reason which you give, there is good ground in the record for reversing it; for it can only be supposed by the record that the judgment was rendered after the parties had been adjourned, and that on the same day, which is manifest error.—*Skipwith.* Sir, suppose that, after the inquest had passed for us, Thomas had confessed, on the day to which we were adjourned to hear our judgment, that the jury had spoken the truth, he would not then have had the Attaint contrary to his own confession, and with regard to that matter you cannot be apprised without sending to cause a fuller record to come.—WILLOUGHBY. We do not understand any such matter, for the record recites the ground of the judgment,

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Il est office de Court a lire le recorde et brief auxi ; par quei, mesqe le tenant ad eu oy de cele, ceo ne nous ouste mye, qe sumes la terce persone, a aver la conussance.—Et a dreyn, pur ceo qil nel chalengea al comencement il fust ouste de la conissaunce.—Et la verite fust tiele[1] qe lattourne le Maire et baillifs ne savoit quant lour fraunchise fust allowe mes come il fust apris par le lire del record, et par cele resoun il nosa pas au comencement demander la conissaunce.—Par quei *Skip.* dit qils navoient pas plein recorde, qar le recorde voet qe quant lenqueste passa pur le demandaunt qe apres ils furent ajournez daver lour jugement tanqe a un autre jour, et apres le jugement fust rendu pur le demandaunt saunz determiner en le recorde le quel il fust rendu a jour qil fust ajourne ou a mesme le jour [qe lenqueste passa],[2] par quei nentendoms pas qe avant qe vous eietz plus plein recorde qe vous nous voilletz mettre a respoundre.—Schars. Nous ne sumes pas a ore a reverser le recorde par cause derrour, mes de atteindre lenqueste par quele il perdi sa terre ; et le Roi nous ad maunde ceo cy pur recorde, et pur tiel covent il qe nous tenoms. Et ceo qe vous parletz est encountre vous mesmes, qar par vostre resoun il y ad bone cause en le recorde del reverser ; qar par le recorde ne poet estre suppose mes qe le jugement fust rendu apres qe les parties furent ajournez, et ceo a mesme le jour, quel est appert errour.—*Skip.* Sire, jeo pose qe, apres qe lenqueste passa pur nous, T. ust conu, al jour a quel nous fumes ajourne doier nostre jugement, qe lenqueste ust dit verite, il naveroit ja Latteinte countre sa conussaunce, et de cele matere ne poetz estre apris saunz maunder de faire venir pluis plein recorde.—Wilby. Nous entendoms pas tiel matere, qar le recorde recite la

[1] tiele is omitted from I.

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

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A.D. 1346. that is to say, because the verdict passed for you; therefore plead over.—*Skipwith.* Then we pray oyer of the original writ of *Cui in vita.*—Willoughby. You have had oyer of the transcript of that original writ which was delivered to the bailiffs when the cognisance of the plea was granted to them, and that is sufficient.—But nevertheless, in the end, he had the oyer of the original writ itself.—*Skipwith* demanded judgment of this writ of Attaint because there were in the writ the words *prædicta mesuagia* where the word ought to be only *mesuagia.*—And this was found to be the fact, and the writ was abated, &c.

Attaint. § One Thomas Abel sued a writ of Attaint in respect of a false oath which passed in Oxford between this same Thomas and one B., and he assigned the false oath in relation to a certain point. And the demandant demanded oyer of the record and of the original writ, and had oyer of the original writ and of the record. And in the record it was found that the verdict passed against Thomas on a certain day, and that, after the verdict had passed, the Mayor and Bailiffs said that they wished to consider the verdict, and there was no particular day given over, and afterwards they found a judgment entered on the roll.—*Skipwith.* You have not a full record, for you will find there that, after the verdict had passed between the parties, the Mayor and Bailiffs said that they wished to consider the judgment, and that there was an adjournment over on that day, and with regard to that adjournment the record does not mention on what day a day was given to the parties, so that we understand, since you have not a full record, that you cannot do anything but send for the record, &c.—Stouford. In an Attaint one sues to have the original writ and the record as far as the point in which the false oath is assigned, for we have nothing else to do than to reverse and attaint the false oath; but if this were a writ of Error it would be otherwise, for in that case it is necessary to have the whole record

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cause del jugement, saver, pur ceo qe le verdit passa pur vous ; par quei dites outre.—*Skip.* Donqes prioms oy del original brief de *Cui in vita*.—WILBY. Vous avetz eu oy del transescript de cele original quel fust livere a les baillifs quant la conissaunce fust graunte a eux, et ceo suffist.—Mes nequident a dreyn il avoit loy[1] del original mesme.—*Skip.* demanda jugement de ceste brief Datteinte, qar le brief voet *prædicta mesuagia* ou il serreit *mesuagia*.—Et cel trove, et le brief abatu, &c. A.D. 1346.

§ Un [2]Thomas Abel[3] suyt un brief Datteint dun faux serement qe passa en Oxenforde entre mesme celuy Thomas et un B., et assigna le faux serement en certein point. Et le demandant demanda oy del recorde et del brief original, et avoit loy de loriginal et del recorde. Et en le recorde fuit trove qe lenqueste passa countre Thomas a certein jour, et, apres lenqueste passe, le Meire et les Baillifs disoint qils soi vodreint[4] aviser del verdit, et il y avoit nulle certein jour done outre, et puis troverunt un jugement entre en roulle.—*Skip.* Vous navietz mye plein recorde, qar vous troveretz la qapres verdit passe entre eux[5] le Meire et les Baillifs disoint qils soi voilleint aviser del jugement, et a quel jour il y avoit un ajournement[6] outre, et de cel ajournement[6] ne fait pas le recorde mencion a quel jour le jour fuit done, issint nous entendoms, de puis qe vous navietz mye plein recorde, qe vous ne poietz rienz faire mes maunder[7] pur le recorde, &c.—STOUF. En une Atteint il pursuyt daver loriginal et le recorde tanqe homme viegne[8] a cel point en quel le faux serement est assigne, qar nous navoms autre chose a faire forqe de reverser et atteindre le faux serement[9] ; mes si ceo fuit un brief Derrour autre serreit, qar la covient il daver tote le recorde, Atteinte

[1] H., le oy.
[2] This report of the case is from L. and C.
[3] C., Abelle.
[4] L., vodront.
[5] eux is omitted from C.
[6] C., adjournement
[7] C., maundre.
[8] L., veigne.
[9] C., serement faux, instead of faux serement.

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A.D. 1346. and the writ of False Judgment also, because in that case, before the judgment can be affirmed, it is necessary to see the whole record, for, if there be any error in the record the Court never ought to affirm that record.—And afterwards Moubray came and said that the King had granted cognisance of all pleas of tenements within the town, &c., to the Mayor and Bailiffs of Oxford, and prayed cognisance of this plea.—STONORE. The writ has been read, and the record has been read, and therefore you come too late to claim your franchise; and, on the other hand, even if you had come in time, you would not have had cognisance on this writ, for ,if the cognisance had been granted to you, you could not have awarded to the jurors their punishment, nor could you have carried out the judgment according to that which the law requires in this case, and therefore you will not have the cognisance.—And afterwards the writ was abated for false Latin which there was in it, &c.

Aid prayer. (14.) § A tenant showed, by *Skipwith*, how land was rendered to him by fine for term of life, with remainder to a man and his wife and their son and the heirs of the body of the son begotten, and he prayed aid of them in respect of such an estate.—*Grene.* You ought not to have aid, since their estate is in remainder, and that in fee tail. —SHARSHULLE. With regard to one in remainder in fee tail by charter we have seen that he has been ousted from aid; but where the limitation is by fine he will have aid. —*Thorpe.* The contrary of that was adjudged before yourself last term.

Revoucher. (15.) § A husband and his wife were vouched, and entered into warranty, and afterwards the husband died.—*Skipwith*, for the tenant, appeared and revouched the husband's heir alone, omitting the wife.—*Grene.* You shall not be admitted to that voucher, for heretofore you vouched the husband and his wife, and therefore you shall not be admitted to omit, in your voucher, the wife

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et le brief de Faux Jugement auxint, qar la, avant qe le jugement soit afferme, il covient veer tut le recorde, qar sil y eit nulle errour en le recorde jammes ne deit la Court affermer ceo recorde.—Et puis vint *Moubray* et dist qe le Roi avoit grante conissaunce des toux plees des tenementz deinz la ville, &c., as Meire et Baillifs de Oxenforde, et pria conissaunce de ceo ple.—STON. Le brief est lieu, et le recorde est lieu, par qai vous venetz trop tarde de chalenger vostre fraunchise; et, dautrepart, tut ussetz vous venutz par temps, vous nussetz pas eu la conissance en ceo brief, qar, si la conissance vous fuit graunte, vous ne poietz mye agarder a eux la penance,[1] ne parfourner le jugement solonc ceo qe la ley demande en ceo cas, et pur ceo vous naveretz mye la conissaunce.—Et puis le brief fuit abatu pur faux Latyn qil y avoit leinz, &c. A.D. 1346.

(14.) [2]§ Un tenant moustra, par *Skip.*, coment la terre lui fust rendue par fine a terme de vie, le remeindre a un homme et a sa femme et a lour fitz et as heirs de corps le fitz engendrez, et de tiel estat pria eide de eux.—*Grene.* Eide ne devetz aver, puis qe lour estat est en remeindre, et ceo en fee taille.[3]—SCHARS. De celuy en le remeindre en fee taille par chartre[4] nous avoms veu qil ad este ouste deide[5]; mes la ou cel est par fine il avera leyde.—*Thorpe.* Le contrare de cele fust ajugge le drein terme devant vous mesmes Eide prier.

(15.) [2]§ Le baron et sa femme furent vouchez, et entrerent en garrantie, et puis le baron murust.—*Skip.*, pur le tenant, vint et revoucha leir le baron soul, entrelessaunt la femme. —*Grene.* A ceo voucher ne serrez[7] reseeu, qar avant ces houres vous vouchastes le baron et sa femme, par quei dentrelesser la femme, en vostre voucher, qe fust primere- Revoucher.[6]

[1] L., fesaunce.
[2] From H. and I.
[3] taille is omitted from I.
[4] The words par chartre are omitted from I.
[5] H., del eide.
[6] I., voucher.
[7] I., deivez estre.

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A.D. 1346. who was vouched at first, and who is still living.—WILLOUGHBY. Although he previously vouched the husband and wife, even though he had bound them by deed *in pais*, still it might be that the husband would warrant the whole, and the wife would be discharged, so that he is not, according to law, compelled by the first voucher to vouch now the wife, against whom, on such a possibility, he has not any claim to warranty.—SHARSHULLE. Such matter cannot be understood according to law, for when he vouched the two it is to be supposed that he had ground to have warranty against the wife as well as against the husband; omission of the wife would be to admit him to waive the first voucher on the ground that he had no ground or matter to vouch the wife, and he cannot be heard to do that.—And in the end, because the opinion of the COURT was that he should be admitted to that revoucher, *Grene* said:—"Again he shall not be admitted to such a voucher against the husband's heir, because inasmuch as he has vouched the heir as being under age and has prayed that the parol might demur, &c., it is to be supposed that this warranty is to be deraigned against him as against heir. As to that we tell you that neither the husband nor any of his ancestors ever had anything in that tenancy except the husband, by reason of coverture, as in right of his wife who was vouched with him; and we do not understand that you will be admitted to such a voucher.—*Skipwith.* Since you do not counterplead this voucher by common law or by statute, judgment; and I pray my voucher.—*Grene.* My counterplea is by common law, for if the husband and his wife had entered into warranty by reason of the first voucher, and would have vouched the husband, and had shown cause for such a voucher on the ground of the sole possession having been in the husband before the estate which they had warranted, we should have had for answer to that the averment that he never had any other possession but a possession by reason of the coverture, and that

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ment vouche, et qest unqore en vie, ne serrez reseeu.— A.D. 1346.
Wilby. Coment qil voucha autrefoitz le baron et sa femme, mesqil les ust lie par fait en pays, unqore le baron garrantira tut,[1] et la femme serra descharge, [issi qe par le primer voucher il nest pas arce par lei de voucher a ore la femme, vers qi, sur ticle possiblete],[2] il nad pas garrantie. —Schars. Tiele matere ne poet estre entendue par lei, qar quant il voucha les ij il est a supposer qil avoit cause daver garrantie vers la femme auxi bien come vers le baron ; entrelessaunt la femme ceo serra a luy de receivre de weyver le primer voucher par cause de ceo qil navoit pas cause ne matere daver vouche la femme, a quele chose affaire il ne serra pas escote.—Et a dreyn, pur ceo qe lopinion de Court fust qil serra reseeu a ceo revoucher,[3] *Grene* dit qe unqore a tiel voucher vers leir[4] le baron il ne serra pas reseeu, qar par taunt qil ad vouche leir come deinz age et ad prie qe la parole demurast, &c., est a supposer qe ceste garrantie est a derener vers lui come vers heir. A ceo vous dioms nous qe le baron ne nul de ses auncestres avoit unqes rienz en cele tenance si noun le baron, par resoun de coverture, come de dreit sa femme qe fust vouche od luy ; et nentendoms pas qe a tiel voucher serrez reseeu.—*Skip.* Puis qe vous ne countrepledez pas ceste voucher par comune lei [ne par estatut jugement ; et prie mon voucher.—*Grene.* Mon countreplee est par comune lei], qar si par le primer voucher le baron et sa femme ussent entres en la garrantie, et vousissent aver vouche le baron, et ussent moustre cause par la soule possessioun en le baron avant lestat qils avoient garranti, nous averoms respons a cele daverer qil navoit unqes autre possessioun si noun une possessioun par

[1] tut is omitted from I.
[2] The words between brackets are omitted from I.
[3] H., voucher.
[4] I., le heir.

Nos. 15, 16.

A.D. 1346. would be maintained by common law; for the same reason in this case.—*Skipwith.* The two cases are not alike; for in the case which you put you ought to show cause for your voucher, and to that cause the law gives me an answer; but in our case, since the law does not put us to show cause, therefore this counterplea is of no more avail now that we are vouching the husband's heir than it would have been if we had vouched the husband at the beginning.—Therefore, in the end, WILLOUGHBY, because the demandant had confessed a possession in the husband on which he might have given warranty, gave judgment that the tenant should have the voucher.

Replevin. (16) § A Replevin was sued, and the plaintiff counted of the taking of ten oxen in the vill of S.—*Grene* avowed the taking of twenty oxen in another vill, and in another place, for a certain cause.—*Rokele.* He took the beasts in respect of which we have complained in the vill in which we have laid our plaint, and in the same place also; ready, &c.—*Grene.* Then, since you cannot deny that we took twenty, and you have complained only in respect of ten, we therefore pray the return as to the others.—*Rokele.* You cannot have that until the issue has been found in your favour, and then you will have the return, because in the point found in your favour it will be held as not denied that as many beasts were taken as you have avowed.—*Grene.* It cannot be that I shall have to wait until the issue has passed, for the issue relates only to the beasts in respect of which you have complained; therefore of the rest of which we have avowed the taking, and of which the taking is not denied by you, we shall have the return.—WILLOUGHBY, *ad idem.* Since he has avowed the taking of a greater number of beasts than that of which you have complained, it is right that he should have the return of the surplus immediately; unless you can maintain that he took no more than the number of which you have complained it is right that he should have the

resoun de coverture, et ceo serra meyntenu par comune ley; par mesme la resoun en ceo cas.—*Skip.*[1] Nient semblable; qar en le cas qe vous mettez vous devetz moustrer cause de vostre voucher, et a cele cause lei moi doun respons; mes en nostre cas, puis qe lei ne nous mette pas a moustrer, par quei nent plus qe si nous ussoms vouche a comencement le baron soul ceste countreplee nust pas valu, nent plus ne vaut il a ore ou nous vouchoms son heir.—Par quei WILBY., a drein,[2] pur ceo qil avoit conu une possessioun al baron de quele il pout aver fait garrantie, agarda qil ust le voucher. A.D. 1346.

(16.) § [3][Un *Replegiari* fust suy, et il counta de la prise de x. boefs en la ville de S.][4]—*Grene.* Avowa la prise de xx. boefs en autre ville, et en autre lieu, par certeyne cause. —*Rok.* Il prist les bestes dount nous sumes pleint en la ville ou nous avoms pleint, et en mesme le lieu auxi; prest &c.—*Grene.* Donqes, de puis qe vous ne poetz dedire qe nous ne preimes xx., et vous nestes pleint mes de x., par quei quant a les autres nous prioms retourn.—*Roke.* Ceo ne poetz aver tanqe lissue soit trove pur vous, et adonqes averetz retourn, pur ceo qen le point trove pur vous serra tenu a nent dedit qe ataunt des bestes furent pris come vous avetz avowe.—*Grene.* Ceo ne poet estre qe jeo attendra tanqe lissue soit passe, qar lissue ne refert mes as bestes dount vous estes pleint; par quei del remenant, dount nous avoms avowe la prise, des queux la prise nest pas dedit de vous, si averoms retourn.—WILBY. *ad idem.* Quant il ad avowe la prise de plusours avers qe vous nestes pleint, il est resoun qil eit retourn del surplus tauntost; si vous ne poetz meyntener qil ne prist nent plus qe vous *Replegiari.* [Fitz., *Retourne des avers* 22.]

[1] I., *Grene.*

[2] The words a drein are omitted from I.

[3] From H. and I.

[4] The words between brackets are omitted from I.

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A.D. 1346. return.—*Skipwith*. That issue would be taken in vain: for even though it were found that he did not take any more than the number in respect of which we have complained, we should gain nothing by the finding in our favour in respect of that matter; therefore it is not right to put us to take such an issue.—WILLOUGHBY. We shall not put you to take the issue unless you are willing; but, if you do not take it, we shall hold it as not denied by you that he took twenty oxen, and consequently your plaint in respect of a smaller number than were *de rei veritate* taken will not prevent him from having the return immediately.—Therefore *Rokele* said, as to the beasts in respect of which he complained, that he took them in the vill in which he laid his plaint, and in the same place, and as to the surplus (said he) we tell you that he did not take any more beasts than those in respect of which we have complained; ready, &c.—And the issue was taken on both averments, &c.

Protection (17.) § On a writ of Account the Exigent issued. The defendant surrendered in the Common Bench, and found mainprise, and had a *Supersedeas* directed to the Sheriff. And now in the Common Bench the defendant was called, and *profert* of a Protection was made for him.—*Grene*. Protection does not lie, because he found mainprise to be here now, in which case, if the Protection were allowed, the mainpernors would be discharged, and that cannot be.—And, notwithstanding this, the Protection was allowed.

Assise. (18.) § William de Wavere and M.[1] his wife brought an

[1] For the real names, *see* p. 221, note 6.

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nestes pleint il est resoun qil eit retourn.—*Skip.* Cel issue serra pris en veyn : qar mesqil fust trove qil ne prist nent plus qe nous ne sumes pleint, nous ne gayneroms rienz par cele chose trove pur nous ; par quei a nous mettre a prendre tiel issue nest pas resonable. WILBY. Nous ne vous mettroms pas a prendre lissue[1] si vous ne voletz ; mes si vous nel pernez nous tendroms nent dedit de vous qil prist xx. boefs, et *per consequens* vostre pleinte de meyndre nombre qe *de rei veritate* ne furent pris ne luy toudra pas qil navera retourn tauntost.—Par quei *Rok.* dit qe quant a les bestes dount il est pleint qil les prist en la ville ou il est pleint, et en mesme le lieu, et quant al surplus nous dioms qil prist nent plus [2]des avers qe nous ne sumes pleint ; prest &c.—Et lissue pris[3] sur lun et lautre, &c. A.D. 1346.

(17.) [4]§ En brief Dacompte Lexigende issit. Le defendant soi rendi en Baunk, et trova meinprise, et avoit le *Supersedeas* al Vicounte. Et ore en Baunk le defendant fust demande, et Proteccion mys avant pur lui.—*Grene.* Proteccion ne gist mye, pur ceo qil trova meinprise destre cy a ore, en quel cas, si la proteccion soit allowe, les meinpernours serront descharges, qe ne poet estre.—Et *non obstante* la Proteccion fust allowe. Proteccion[5] [Fitz., *Protection*, 87.]

(18.) [6]§ William de Wavere[7] et M. sa femme porterent *Assise* [Fitz., *Assise*, 122 ; 20 Li. Ass. 17].

[1] H., tiel issue.

[2] H., plusours.

[3] pris is omitted from I.

[4] From H. and I.

[5] The marginal note is from H. alone.

[6] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 106. It there appears that the Assise was brought before Justices of Assise for the counties of Kent, Surrey, Sussex, Hertford, and Essex by William de Wavere and Joan his wife against Walter atte Hurst and Juliana late wife of Simon de Haselholte in respect of two parts of five marks of rent in Seale and Suthwyk (Southwick, Sussex). Juliana made default, but Walter was admitted to defend his right as reversioner after the death of Juliana who held a third part in dower, the reversion having been granted to him by Simon.

[7] MSS. of Y. B., Wanny.

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A.D. 1346. Assise of Novel Disseisin against one J.,[1] and made their plaint in respect of [two parts of] five marks of rent, which Assise was adjourned into the Common Bench by reason of difficulty.—*Grene*, for the tenant, said that there ought not to be assise, because he said the tenements put in view, from which they supposed the rent to be issuing, are part of the barony of Bramber. And we tell you (said *Grene*) that William de Brewes was seised of the whole barony, and held it of our Lord the King in *capite*, and this William, in the time of King Edward, the grandfather of the present King, gave the land now put in view to one A.[2] our ancestor, at a rent payable to him of one penny *per annum*. And we tell you that, after the death of A., we entered and were seised as his heir until it was found by inquest of office taken before the Escheator that the land had been aliened by W. de Brewes, who was the King's tenant, the King's license not having been obtained, and therefore the King seized the land. And afterwards, in consideration of a fine which we made, we had restitution by this charter (and *Grene* made *profert* of it) which purports that, in consideration of the fine which he had made, the King had granted to him that he should have again the said land, to be holden of the King and of his heirs. And we demand judgment, since we are in such manner the King's tenant, and the King is seised of our services, whether you ought to have an assise against us. —*Skipwith*. We do not admit that the land is part of the

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[1] For the real names, &c., *see* p. 221, note 6.

[2] *See* p. 223, note 3.

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une Assise de novele disseisine vers un J., et furent pleinte de v. mares de rente, quele assise fust ajourne en Baunk pur difficulte.—*Grene*, pur le tenant, dit qe lassise ne deit estre, qar il dit qe les tenementz mys en vewe, dount il suppose la rente estre issaunt, sount parcelle de la baronie de Brembre.[1] Et vous dioms qe William de Brewes fust seisi de la baronie entere, et le tint de nostre seignur le Roi en chief, le quel W., en temps le Roi E. laiel, dona la terre ore mys en vewe a un A. nostre auncestre, rendant a luy un dener par an. Et vous dioms qe apres la mort A. nous entrames et fumes seisiz come heir a luy tanqe par enqueste doffice pris devant Leschetour fust trove qe la terre fuist aliene par W. de Brewes, qe fust tenant le Roi, conge del Roi nent eu, par quei le Roi seisist la terre. Et puis, pur fine qe nous feismes, nous avioms restitucion par ceste chartre,[2] quel il myst avant, qe voleit pur fine qil avoit fait le Roi luy avoit graunte *quod rehabeat dictam terram tenendam* del Roi et de ses heirs. Et demandoms jugement, depuis qe nous sumes en tiele manere le tenant le Roi, et le Roi seisi de noz services, si devers nous devetz assise aver.[3]—*Skip.* Nous ne conissoms pas A.D. 1346.

[1] MSS. of Y. B., Bremel.

[2] I., brief.

[3] The plea on behalf of Walter was, according to the record, "quod assisa de præ-
"dictis duabus partibus red-
"ditus, &c., inter eos fieri non
"debuit, dixit enim quod
"quidam Willelmus de Brewose,
"quondam dominus Baroniæ
"de Brembre, fuit seisitus de
"uno mesnagio et quadraginta
"acris terræ, que fuerunt tene-
"menta tunc in visu posita,
"unde, &c., ut de parcella
"Baroniæ prædictæ, qui quidem
"Willelmus tenementa illa tenuit
"de domino Rege in capite, et de
"eisdem tenementis et aliis
"tenementis, tempore Edwardi
"Regis avi domini Regis nunc,
"feoffavit quendam Simonem
"filium Walteri de Haselholte,
"tenendis ipsi Simoni et hered-
"ibus suis de ipso Willelmo et
"heredibus suis per fidelitatem
"et per servitium unius denarii
"per annum in perpetuum, qui
"quidem Simon postea obiit,
"post cujus mortem quidam
"Simon intravit tenementa
"prædicta ut filius ejus et heres,
"et fecit prædicto Willelmo de
"Brewose servitia antedicta,
"et obiit seisitus de tenementis
"illis, post cujus mortem quidam
"Simon eadem tenementa in-
"travit ut filius et heres, &c.,

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A.D. 1346. barony, but we tell you that in the time of King Henry [the Third] William de Brewes gave the same land to A.[1] your ancestor, to hold of himself by the services of

[1] For the real names, &c., *see* p. 227, note 1

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qe la terre est parcele de la baronie, mes vous dioms qen temps le Roi H. William de B. dona mesme le terre a A. vostre auncestre, a tenir de luy mesme par les services A.D. 1346.

" et fecit prædicto Willelmo de " Brewose fidelitatem pro tene- " mentis illis, et ei soluit præ- " dictum redditum unius denarii, " &c., sed dixit quod postea per " inquisitionem coram Escaetore " domini Regis nunc in comitatu " prædicto captam compertum " fuit quod prædictus Simon " de Haselholte, et prædictus " Simon filius ejusdem Simonis, " et prædictus Simon filius ejus- " dem Simonis filii Simonis tene- " menta prædicta, quæ de " domino Rege tenebantur in " capite, ingressi fuerunt ex " perquisito, &c., licentia domini " Regis seu progenitorum suorum " super hoc non obtenta, quæ " quidem inquisitio in Cancel- " laria domini Regis retornata " fuit, per quod dominus Rex " nunc seisiri fecit in manum " suam tenementa illa. Et post- " modum idem dominus Rex " per quasdam literas suas " patentes, per finem quem " prædictus Simon filius Simonis " filius Simonis cum ipso domino " Rege fecerat, perdonavit eidem " Simoni transgressiones præ- " dictas, et concessit quod idem " Simon tenementa illa, cum " pertinentiis, rehaberet, et de " ipso domino Rege et heredibus " suis ipsi Simoni et heredibus " suis teneret in perpetuum per " servitia inde debita et con- " sueta, sine occasione vel im " pedimento ipsius domini Regis, " vel heredum suorum, aut minis- " trorum suorum quorumcum- " que, quas literas idem Walterus " protulit ibidem in Curia præ- " missa testificantes, quarum " data fuit apud Westmonas- " terium octavo die Julii anno " regni domini Regis nunc decimo " octavo. Et dixit quod idem " dominus Rex nunc, per quas- " dam alias literas suas patentes, " quas idem Walterus protulit " ibi in Curia, et per finem quem " idem Walterus fecit cum ipso " domino Rege, concessit et " licentiam dedit, pro se et " heredibus suis, quantum in " ipso fuit, prædicto Simoni filio " Simonis filio Simonis, per " nomen Simonis de Haselholte, " quod ipse tenementa illa et " alia tenementa in Sele, quæ " est hamella prædictæ villæ de " Suthwyk, quæ de ipso domino " Rege tenebantur in capite ut " parcella Baroniæ de Brembre " feoffare posset ipsum Walterum " tenenda sibi et heredibus suis " de ipso Rege et heredibus suis " per servitia inde debita, et " eidem Waltero quod ipse " tenementa prædicta de ipso " Simone recipere posset, tenenda " de domino Rege in forma illa, " sibi et heredibus suis in " perpetuum, quarum quidem " literarum data fuit apud " Westmonasterium quarto die " Octobris anno regni domini " Regis nunc Angliæ decimo " octavo. Et dixit quod idem " Simon postea de tenementis

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A.D. 1346. five marks, and after his death the services descended to two daughters, and the services of A. were assigned as the purparty of one of them. And we tell you that M. the wife of William is heir of her to whose purparty the services were allotted, and so they were seised until disseised, *absque hoc* that William de Brewes enfeoffed A. in the time of King Edward; ready, &c.—*Grene.* Now we

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de v. mars, et apres sa mort les services descendirent a ij. filles, et a la purpartie lune les services A. furent assignez. Et vous dioms qe M. la femme W. si est heir a cele en qi purpartie les services furent allotes, et issi furent ils seisiz tanqe &c. saunz ceo qe W. de B. enfeffa A. en temps le Roi E.; prest &c.[1]—*Grene*. Ore demandoms jugement, A.D. 1346.

" illis feoffavit prædictum Wal-
" terum, per quod idem Walterus
" fecit domino Regi nunc homa-
" gium suum et alia servitia, &c.
" de tenementis illis debita. Dixit
" etiam quod prædictus Willelmus
" de Brewose prædictum reddi-
" tum unius denarii et servitium
" ejusdem Simonis de Haselholte,
" tunc tenentis tenementorum
" in visu positorum, concessit
" cuidam Ricardo de Gatewyke
" et heredibus ipsius Ricardi in
" perpetuum, per quod idem
" Simon tunc tenens, &c., se
" attornavit eidem Ricardo de
" fidelitate, &c., qui quidem
" Ricardus obiit, post cujus
" mortem quidam Johannes
" filius et heres ejusdem Ricardi
" seisitus fuit de servitiis illis
" per manus dunc tenentis, &c.,
" et obiit inde seisitus, post
" cujus mortem eadem servitia
" descenderunt quibusdam Mar-
" garetæ, Katerinæ, et Elizabeth
" ut filiabus et heredibus, &c.,
" de qua quidem Margareta
" exivit prædicta Johanna quæ
" tunc questa fuit, simul, &c.,
" et petiit judicium si prædicti
" Willelmus de Wavere et
" Johanna de prædicto redditu,
" seu de aliquo alio redditu de
" prædictis tenementis de
" domino Rege tentis in capite
" proveniente, assisam habere
" deberent, nisi ostenderent
" Curiæ aliquem titulum, &c.,
" per quem tenementa illa eis
" inde onerarentur, &c."

[1] The replication was, according to the record, " Willelmus
" de Wavere et Johanna, non
" cognoscendo quod tenementa
" tunc in visu posita, unde, &c.,
" fuerunt parcella Baroniæ de
" Brembre, nec aliquam aliena-
" tionem inde factam per Wil-
" lelmum de Brewose tempore
" Edwardi Regis avi domini
" Regis nunc, nec aliquem Wil-
" lelmum de Brewose tunc inde
" seisitum fuisse, dixerunt quod
" quidam Willelmus de Brewose
" senior fuit seisitus de tene-
" mentis illis, cum pertinentiis,
" in dominico suo ut de feodo
" et jure, qui quidem Willelmus,
" tempore domini Henrici Regis,
" proavi domini Regis nunc,
" videlicet ante annum regni
" ipsius Henrici Regis vice-
" simum, de tenementis illis
" feoffavit quendam Simonem
" de Haselholte, tenendis sibi
" et heredibus suis de ipso
" Willelmo de Brewose et
" heredibus suis per homagium,
" et fidelitatem, et per servitium
" quinque marcarum per annum,
" et postea idem Willelmus unte
" eundem annum vicesimum,
" &c., eadem servitia, cum

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A.D. 1346. demand judgment, since you do not deny that the land was part of the barony which was holden *in capite* of the King, and do not deny the feoffment without the King's license, by which feoffment he could not, either before the statute[1] or after it, make a seignory to himself, the King's license not having been obtained, since he was the King's

[1] *De Prærogativa Regis* (*incerti temporis*). It may, perhaps, be inferred from statements and arguments in this case that the Statute belongs to the beginning of the reign of Edward I., and is, at any rate earlier than the Statute *Quia emptores*.

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puis qe vous ne dedites pas qe la terre ne fust parcelle de la baronie quel fust tenu en chief de Roi, ne le feffement saunz son counge, par quel feffement il ne poait, ne avant le statut ne puis, faire seignurie a luy mesme, le counge le Roi nent ewe, puis qil fust le tenant le Roi, A.D. 1346.

" pertinentiis, concessit cuidam " Juello atte Garstone et heredi- " bus suis. Reddendo inde annu- " atim ipsi Willelmo et hered- " ibus suis unam denariatam " redditus, et faciendo alia ser- " vitia, &c., per quod prædictus " Simon se attornavit prædicto " Juello, &c., qui quidem Juellus "obiit, post cujus mortem quidam " Adam filius et heres ejusdem " Juelli fuit seisitus de prædictis " quinque marcatis redditus et " aliis servitiis prædicti Simonis, " et obiit inde seisitus, post " cujus mortem quidam Juellus, " filius et heres ipsius Adæ, de " eisdem servitiis seisitus fuit, "et servitia illa, cum pertinentiis, " concess-it cuidam Ricardo de " Gatewyk et heredibus ipsius " Ricardi in perpetuum. Et " postea prædictus Simon obiit, " post cujus mortem quidam " Johannes filius et heres ipsius " Simonis intravit tenementa " nunc in visu posita unde, &c., " et se attornavit prædicto " Ricardo de prædictis quinque " marcatis redditus et aliis " servitiis antedictis, qui quidem " Ricardus obiit seisitus de " servitiis illis, per quod servitia " illa descenderunt cuidam " Johanni ut filio et heredi, &c. " qui de eisdem servitiis obiit " seisitus, post cujus mortem " servitia illa descenderunt præ- " dictis Margaretæ, Katerinæ, " et Elizabeth ut filiabus et " heredibus, &c., inter quas pro- " partia facta fuit de omnibus " tenementis quæ eis descend- " erunt de eodem Johanne patre " suo, ita quod prædictus red- " ditus quinque marcarum unde " iidem Willelmus de Wavere et " Johanna questi fuerunt se dis- " seisiri de duabus partibus, &c., " assignatus fuit prædictæ Mar- " garetæ in propartem, &c., una " cum aliis terris et tenementis, " quæ quidem Margareta fuit " inde seisita, et de tertia parte " ejusdem redditus dotavit quan- " dam Johannam quæ fuit uxor " prædicti Johannis patris sui, " post cujus mortem prædicta " Johanna quæ tunc questa fuit " simul, &c., cum prædicto Wil- " lelmo viro suo fuit seisita de " duabus partibus ejusdem red- " ditus ut filia et heres ejusdem " Margaretæ quousque prædicti " Walterus et Juliana ipsos inde " injuste, &c., disseisiverunt, " absque hoc quod prædictus " Willelmus de Brewose aut " aliquis alius Willelmus de " Brewose de tenementis in " visu positis seisiti fuerunt ut " de parcella Baroniæ prædictæ " tempore prædicti Regis Ed- " wardi avi, &c. Et hoc parati " fuerunt verificare. Et peti- " erunt quod procederetur ad " captionem assisæ, &c."

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A.D. 1346. tenant, and you do not deny that we were restored to our possession to hold of the King, nor that the King is seised of our services; therefore we demand judgment whether against us, &c.—*Skipwith.* And we understand that, before the statute *De Prærogativa Regis*, one who was the King's tenant could enfeoff another to hold of himself, and so make a seignory in a mesne degree between the King and the feoffee; and although the King may have given livery of the land over to the feoffee to hold of him, that ought not to cause the loss of my seignory which I had before; for when the land was seized into the King's hand it was not for me but it was for the feoffee to sue that he should have restitution; therefore when he sued to have the land to hold of the King, since the truth was that the alienation had been made before the statute, which alienation made before the statute was permissible without the King's

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ne vous dedites pas qe nous reavymes nostre possessioun a tenir del Roi, ne qe le Roi est seisi de noz serviees; par quei nous demandoms jugement si devers nous, &c.[1] —*Skip.* Et nous entendoms qe avant lestatut de Prerogatif, celui qe fust tenant le Roi pout enfeffer a tenir de lui mesme, et soi faire en degree mene entre le Roi et lui; et coment qe le Roi luy eit livre la terre sus a tenir de luy, ceo ne deit perire ma seignurye quel jeo avoi avant; qar quant la terre fust seisi il ne fust pas a moi a suire qil ust restitucion, mes fust a lui; par quei quant il suist daver la terre a tenir de Roi, la ou la verite fust qe lalienacion fust fait avant lestatut, quele alienacion adonqes fuit fust soeffrable saunz A.D. 1346.

[1] The rejoinder was, according to the record, "Walterus dixit "quod prædicti Willelmus de "Wavere et Johanna non dedix- "erunt tenementa tunc in visu "posita, unde, &c., fuisse par- "cellam Baroniæ de Brembre, "quæ quidem Baronia de domino "Rege tenetur in capite, nec "tenementa illa seisita fuisse in "manum domini Regis nunc, eo "quod tenementa illa alienata "et ingressa fuerunt sine licentia "domini Regis et progenitorum "suorum. Et quo ad hoc quod "iidem Willelmus et Johanna "sibi assumpserunt pro titulo, "&c., videlicet prædictum Wil- "lelmum de Brewose seniorem "feoffasse prædictum Simonem "de Haselholte de tenementis "prædictis tenendis sibi et "heredibus suis de ipso Wil- "lelmo et heredibus suis per "certa servitia, et per præ- "dictum redditum quinque "marcarum, tempore Henrici "Regis, proavi domini Regis "nunc, dixit quod nec idem "Willelmus nec aliquis alius "qui aliqua tenementa de pro- "genitoribus domini Regis tenuit "in capite, tunc temporis, nec "aliquo alio tempore, aliquem de "tenementis sic de progenitori- "bus domini Regis tentis in capite "feoffare potuit tenendis de se "ipso et heredibus suis, quia sic "feoffatus de jure devenit tenens "Regis immediatus, et tene- "menta sic alienata de quibus- "cumque servitiis feoffatori vel "ejus heredibus reservatis om- "nino exonerata, per quod non "intendebat quod tempus feof- "famenti per prædictum Willel- "mum de Brewose de tenementis "in visu positis facti in melior- "ationem tituli prædictorum "Willelmi de Wavere et Johannæ "de jure cedere posset, seu ipse "ad tempus quo feoffamentum "illud factum fuit necesse "haberet respondere, unde petiit "judicium."

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A.D. 1346. license, and since he could on that state of facts have had restitution of the land together with the issues, because the King had no ground for seizing the land by reason of that alienation, therefore, although he may have charged himself to the King, when there was no necessity for him to do so, he ought not on that account to annul my seignory, and on that point we demand your judgments.—*Thorpe.* The case of a barony, which is holden of the King, is different from that of any other tenancy, for no one can hold by barony of any one but the King, nor consequently by a fifth part or a tenth part of a barony; therefore I say that by absolute necessity he must have been the King's tenant, since they have confessed that the tenements were part of the barony, and the King shall never be made a stranger to his tenant without his own license; therefore, by the reason of the license not having been obtained, the tenements were seized, and that as being forfeited, for before the statute was made by which the limitation was effected that the King should only take a fine, in respect of an alienation made before the statute the whole of the rest of the land was forfeited to the King; therefore when he received the land by gift from the King, to hold of the King, that seignory which the King had so reserved to himself could not be annulled without suing to the King by Petition.—Willoughby. Before the statute *De Prærogativa Regis* the King's tenant could divest himself without license, and could also save a seignory to himself without license. And, as to your statement that no one can hold by barony of any one but the King, that may be so, but one who held of the King by barony could divest himself so that another could hold of him by other services, and yet he continued to hold of the King by barony afterwards as he did before; for there are many baronies in England holden of the King, of which the greater part is in service, and that commenced by a reservation of seignory on the part of the feoffors; therefore it is not right that this seignory which is so reserved to him

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counge le Roi, la ou il poait sur ceste verite aver ew restitucion od les issues, pur ceo qe le Roi navoit pas cause a seisir par cele alienacion, par quei, mesqil soi eit charge al Roi la ou il ne lui covensist pas, il ne deit pas par taunt anentir ma seignurie, et de ceo demandoms voz jugements.—*Thorpe.* Il est autre de baronie qest tenu de Roi qe de autre tenance, qar nul homme purra tenir par baronie dautre qe le Roi, *nec per consequens* par quinte partie ou disme partie de baronie ; par quei jeo die qe il convensist de necessite estre le tenant le Roi, puis qil ount conu qe ceo fust parcelle de la baronie, et le Roi ne serra jammes estraunge de son tenant saunz conge de lui mesme ; par quei, pur le counge nent ew si fust la chose seisi et come forfait, qar avant lestatut fait par quel est limite qe le Roi prendra mes fine, dalienacion fait devant lestatut si fust la terre forfait al Roi al remenant ; par quei quant il resceut la terre de doun le Roi, a tenir de luy, cele seignurye quele le Roi ad issi a lui reserve ne serra pas anenti saunz suire al Roi par peticion.—Wilby. Avant lestatut de Prerogatife, le tenant le Roi soi poait demettre saunz conge, et auxi poait sauver seignurye a lui mesme saunz counge. Et, a ceo qe vous dites qe nul homme poet tenir par baronie dautre qe del Roi, il poet estre, mes celui qe tient par baronie de Roi soi purra demettre a tenir de luy par autres services, et unqore[1] tient il par baronie del Roi apres com il fit avant ; qar ils y sont plusours baronies en Engleterre tenuz de Roi qe la greindre partie est en service, et ceo comencea par reservacion de seignurie de lour feffours ; par quei ceste seignurie qest issi a lui

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[Fitz., *Assise*, 124.]

[1] H., si.

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A.D. 1346. should be extinguished by the act of another person.—*Grene.* It used to be law that the King's tenant could not, either before or after the statute, enfeoff any one to hold of anyone but the King without license, and particularly of a barony, or of part of a barony, but, be that as it may, there is the fact that the King seized the land, whether rightfully or wrongfully, and gave it to A., to hold of him, and thereby A. became immediate tenant of the King; therefore just as much as during the King's possession it was necessary for him to sue to the King to have the rent, if he wished to have it, it is necessary for him to do so now, for, if he now recovers this rent against us as rent service, he will make us a stranger to the King, and thereby the seignory reserved by the King's charter will be annulled, and that, being so to the King's loss, cannot be done without making suit to him; therefore, &c.—HILLARY. All this is to be imputed to your own folly: for, since he had at one time a seignory over you, and you charged yourself to be the King's tenant, where the necessity of law did not put you to do so, that ought not to turn to the disadvantage of another person; therefore on your matter, it would be well that you should discharge yourself by Petition to the King.—*Skipwith, ad idem.* Sir, if the King seizes a seignory which I have, it is necessary in that case that I sue it out of his hand by Petition, before I can deraign it against my tenant; but in this case the King has not a seignory which I claim; therefore it is not for me in this case to sue to the King, but it is for him to discharge himself with regard to the King, if he can.—*Seton.* If my tenant levies war against the King, and the King seizes his land, he is bound by common law to make a feoffment to hold of those of whom the land was holden before; but if the King makes a feoffment to hold of himself, it is necessary for me, if I wish to have the services, to sue by Petition to the King, and yet by right, if there had been no reservation of the seignory by the King, my seignory would have remained

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reserve nest pas resoun qe soit esteint par autri fait.— *Grene.* Il soleit estre lei qe le tenant le Roi, ne avant lestatut ne puis, poait feffer a tenir dautre qe del Roi saunz conge, et nomement de baronie, ou de parcele de y celle, mes nequident taunt y ad il qe le Roi le seisist, fust ceo a dreit fust ceo a tort, et dona la terre a A. a tenir le lui, par quel il fust le tenant le Roi immediate ; par quei auxi avant come duraunt la possessioun le Roi, si voleiet aver la rente il lui covensist a suir al Roi del aver, auxi covent il qil face unqore, qar, sil recovere ore ceste rente vers nous come rente service, il nous estraungera del Roi, et par taunt la seignurie reserve par la chartre le Roi anenti, quele chose issi en perde del Roi ne poet estre fait saunz sute faire vers luy ; par quei &c.—Hill. Tut est a retter a vostre folie demene : qar quant il avoit a un temps seignurie sur vous, et vous vous chargeastes destre tenant le Roi, la ou necessite de lei ne vous ust past mys a ceo faire, ceo ne deit pas tourner en desavauntage a autre persone ; par quei sur vostre matere bon est qe vous vous descharges par peticion vers le Roi.—*Skip, ad idem.* Sire, si le Roi seise une seignurie qe jay, il covent en cel cas qe jeo le siwe hors de sa mayn par peticion, avant qe le puisse derener vers mon tenant ; mes en ceo cas le Roi nad pas seignurie quele jeo cleyme ; par quei il nattient pas a moi en ceo cas a suir al Roi, mes est a lui a suir de soi descharger vers le Roi, sil purra.—*Setone.* Si mon tenant leve de guerre countre le Roi, et le Roi seise sa terre, il est tenu pur comune lei affaire feffement de tenir de ceux des queux la terre fust tenu avant ; mes si le Roi face feffement a tenir de lui mesme, si jeo voille aver les services, il covent qe jeo siwe par peticion al Roi, et unqore de dreit si la reservacion de la seignurie le Roi nust este, ma seignurie moy A.D. 1346.

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A.D. 1346. to me, and so also in this case.—Willoughby. The cases are not alike : for in the case which you put the King had a rightful possession in the tenancy, and, while he was in possession of that seignory, the mesne seignory was extinguished ; but in our present case the seignory in the plaintiffs was not extinguished by the King's possession ; for, to put it in the strongest possible form, even though the King had ground for seizing, it was only for the purpose of having a fine by way of distress ; therefore, &c.—*Grene.* You take much upon yourselves if you award this assise for them as in respect of rent service ; for that would be to make the King lose his seignory reserved by his charter, and we do not understand that that can be done without suing to the King. And I say, Sir, that, even though they had had a seignory before the seizure by the King, and the King held only that he might make restitution to us, so that we might hold of those of whom we previously held, still, I say, when the King made livery to us to hold of himself, his seignory so reserved to him will remain until the charter has been revoked in that point by due process.—And, notwithstanding this, the assise was awarded to be taken in point of assise.—*Moubray.* Sir, we understand that the assise can be awarded in respect of damages, for according to the manner of their plea it is admitted by them that the alienation was made in the time of King Henry, and the point put in judgment was no other than whether the alienation made at that time, without the King's license, was permissible or not, and thereupon you have given judgment on the point in our favour, and therefore on the counterplea he is adjudged to be a disseisor ; therefore we pray the assise in respect of damages.—Sharshulle. Your seisin has

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demureit, et auxi en ceo cas.—Wilby. Nent semblable : qar en vostre cas le Roi avoit dreiturele possessioun en la tenance, quel possessioun lui esteaunt en ycelle seignurie, la seignurie[1] mene fust esteinte ; mes en nostre cas a ore par la possessioun le Roi la seignurye en les pleintifs ne fust pas esteinte ; qar, a plus fort qe poet estre, mesqe le Roy avoit cause a seisire, ceo ne fust mes par fine a faire en noun de [destresse ; par quei, &c.—*Grene.* Vous empernez moult sur vous si vous agardez pur eux ceste assise come de][2] rente service ; qar ceo serra affaire le Roi perdre sa seignurie reserve par sa chartre, quele chose nous entendoms ne poait estre saunz suyr al Roi. Et jeo die, Sire, mesqils ussent eu seignurie avant la seisine, le Roi ust tenu a nous faire restitucion a tenir de ceux des queux nous tenymes avant, unqore jeo die quant il nous fist la livre a tenir de lui mesme qe sa seignurie issi reserve a luy demura tanqe la chartre en cel point par proces soit repelle. Et, *non obstante* ceo, lassise fust agarde a prendre en point dassise.—*Moubray.* Sire, nous entendoms qe lassise de damages est agardable, qar sur le manere de lour plee est graunte de eux lalienacion estre faite en temps le Roi Henri, et le point en jugement ne fust autre mes le quel lalienacion fait a cel temps, saunz counge le Roi, fust suffrable ou nent, et sur ceo avetz ajugge le point pur nous, pur quei par le countreplee il est ajugge disseisour ; par quei nous prioms lassise de damages.[3]—Schars. A.D. 1346.

[1] The words la seignurie are omitted from 1. They have been inserted by interlineation in H.

[2] The words between brackets are omitted from 1.

[3] According to the record, "Willelmus et Johanna dixerunt "quod ex quo prædictus Wal- "terus non dedixit quod præ- "dictus Willelmus de Brewose "senior, tempore prædicti Hen- "rici Regis, ut prædictum est, "feoffavit prædictum Simonem "filium Walteri de tenementis "prædictis tenendis de se et "heredibus suis per prædictum "redditum quinque marcarum "et per alia servitia, et non "manutenuit quod idem Wil- "lelmus de Brewose aut aliquis "alius Willelmus de Brewose de "tenementis prædictis seisitus "fuit, et ea alienavit tempore "prædicti Regis avi, &c., et "cujus contrarium ipsi parati

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A.D. 1346. not been confessed by him, and it would be necessary that your seisin should be confessed before the assise in respect of damages could be awarded; and I tell you further that, if the Justice of Assise does well, he will enquire whether the alienation was in the time of King Edward or in the time of King Henry.—Therefore the assise was sent back into the country to be taken in point of assise.—And before the assise had been awarded *Thorpe* tendered the averment that the alienation had been made in the time of King Edward, at which time it would not have been lawful for the King's tenant to enfeoff without license.—And the averment was not admitted, because he had pleaded to judgment without denying that the alienation had been made in the time of King Henry, &c.

" fuerunt verificare si idem Wal-
" terus illud manutenere vellet,
" videlicet quod nec idem Wil-
" lelmus de Brewose nec aliquis
" alius Willelmus de Brewose de
" tenementis illis seisitus fuit,
" nec ea alienavit tempore præ-
" dicti Regis avi, &c., nec idem
" Walterus nihil allegavit in
" destructionem tituli sui nisi
" solummodo asserendo quod
" nullus qui aliqua tenementa
" de progenitoribus Regis tenuit
" in capite de tenementis illis
" tunc temporis, videlicet ante
" annum vicesimum regni domini
" Henrici Regis proavi domini
" Regis nunc, aliquem feoffare
" potuit tenendis de se et hered-
" ibus suis quin sic feoffatus
" tenens Regis immediatus
" devenit, quod iidem Willelmus
" et Johanna intendebant lici-
" tum fuisse hujusmodi tenent-
" ibus de progenitoribus domini
" Regis in capite tenementa sic
" tenta alienare tenenda de
" ipsis et heredibus suis, et
" maxime cum illi qui sic tenu-
" erunt de progenitoribus Regis
" non magis per aliquam legem
" specialem restricti fuerunt
" quin ipsi tenementa sua alien-
" are potuissent tenenda de se et
" heredibus suis quam alii qui
" alia tenementa sua de aliis
" dominis tenuerunt. Et, ex
" quo prædictus Walterus non
" dedixit seisinam ipsorum Wil-
" lelmi de Wavere et Johannæ
" in forma qua ipsi superius alle-
" garunt, petierunt judicium et
" quod procederetur ad cap-
" tionem assisæ de damnis, &c."

After this there was an adjournment before the same Justices of Assise at Westminster, followed by another like adjournment, which in its turn was followed by an adjournment into the Common Bench.

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Vostre seisine nest pas conu par luy, et a ceo qe assise des damages serreit agarde, il covensist qe ceo fust conu; et jeo vous die plus qe, si le Justice face bien, il enquerra le quel lalienacion fust en temps le Roi E. ou en temps le Roi H.—Par quei lassise fust remaunde en pays a prendre en point dassise, &c.[1]—Et avant lassise agarde *Thorpe* tendi daverer lalienacion estre faite en temps le Roi E., a quel temps il ne lirreit pas a tenant de Roi de feffer saunz counge.—Et nent resceu, pur ceo qil avoit plede en jugement nent dedisaunt lalienacion estre fait en temps le Roi H., &c. A.D. 1346.

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[1] After the pleadings and adjournments mentioned above and the appearance in the Common Bench of the parties on the day given, all that appears on the roll is "Et audito recordo "supradicto, intellectisque "rationibus partium prædict-"arum in hac parte, visum est "Curiæ hic quod, non obstant-"ibus rationibus præfati Walteri "superius allegatis procedendum "est ad captionem assisæ præ-"dictæ. Ideo capiatur assisa. "Et remittitur præfatis Justic-"iariis in prædicto comitatu "capienda, &c., una cum recordo "inde, brevi originali, et panello, "&c. Et sciendum quod breve "patens remanet penes queren-"tes, &c."

It will be observed that in this report the assise is said to have been sent back to the Justices of Assise "to be taken in point of assise." In the *Liber Assisarum* also (fo. 73, b), it is said (in agreement with the roll) that the assise was awarded without any statement that it was to be "at large" or "in respect of damages." In the second report, however, printed below (p. 247), it is said that the Court "awarded the assise at large, to enquire of the whole truth." With regard to the use of these expressions see Y.B. Mich 12—Trin. 13 Edw. III., Introd. pp. xxxiii.—lxx.

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Assise of Novel Disseisin.

§ William de Wavere and his wife brought an Assise of Novel Disseisin against a tenant, at Maidstone, and complained that they had been disseised of a moiety of five marks of rent with the appurtenances. Thereupon the tenant said, by *R. Thorpe*, that they made their complaint as in respect of rent service, and he said that the tenements from which they supposed this rent to issue were part of the barony of Bramber, and that W.,[1] who held them as baron, and of the King, came and aliened the tenements which were part of the barony to one W.,[1] at a rent payable to him of five marks, to hold of him, in the time of King Edward the grandfather of the present King, and without his license, and afterwards W. who was baron of Bramber, and who had reserved the rent on the alienation, and without the King's license, granted the rent to one T.,[1] and that the rent descended from T. to the woman who was plaintiff with her husband and to her sister, and that afterwards W. aliened the land to E.,[1] and afterwards in the time of King Edward the father of the present King it was found by inquest of office that W., the baron, had aliened a part [of the barony], which was holden of King Edward the grandfather, and had reserved five marks of rent, without the King's license, and therefore the King seized the land into his hand. And afterwards W., who was ousted by reason of the inquest of office, sued to the King to have his land again, and the King gave him his land by a charter, which is here, at a certain yearly rent payable to the King. And afterwards, by license from the King, W. enfeoffed us, and we demand judgment whether in respect of that rent which was so extinguished by the King's seizure, you ought to have an assise against us, who are thus the King's tenant.—*Skipwith.* Whereas they say that the tenements were part of the barony of Bramber, and that one aliened them without the King's license, we tell you that the person whom they allege to have

[1] *See* p. 223, note 3.

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A.D. 1346. *Assisa Novæ Disseisinæ.*

§ William[1] Wafre et sa femme porterent une Assise de Novele Disseisine vers un tenant, a Maydenstone, et se pleindreint[2] estre disseisi de la moite de v mares de rente, ove les appurtinaunces, ou le tenant dist, par *R. Thorpe*, qe ceo dount il se pleint comme de rente service, et dit qe les tenementz dount il suppose ceste rente estre issaunt si furent parcelle de la baronie de Brembre, et vint W., qe les tient[3] comme baroun, et du Roi, et aliena les tenementz qe furent parcelle de la baronie a un W. rendaunt a luy les v. mares de rente, a tener de luy, en temps le Roi E. laiel, et sanz soun conge, et puis W. qe fuit baroun de Brembre, et qavoit reserve la rente par lalienacion, et sanz conge du Roi, si graunta la rente a un T., et de T. descendi la rente a ceste qe se pleint ov soun baroun et a sa soer, issint qapres W. aliena la terre a E., et puis, en temps le Roi E., pere le Roi qore est fuit trove par office qe W. le baroun si avoit aliene parcelle, qe fuit tenu du Roi E. laiel, et avoit reserve v. mares de rente, et saunz conge du Roi laiel, par qai le Roi seisist la terre en sa meyn pur ceo qele fut aliene saunz conge du Roi. Et puis W. qe fuit ouste par office si suyt au Roi de reaver la terre, et le Roi lui dona sa terre par sa chartre, qe ey est, rendaunt a luy un certeine rente par an. Et puis, par conge du Roi, W. nous enfeffa, et demandoms jugement si de cel rente, qe issint fuit esteint par le seisir du Roi, vous vers nous, qe issint sumes tenant le Roi, deivetz assise aver. — *Skip.* La ou ils dient qe ceo fuit parcelle de la baronie de Brembre, et aliena sanz conge du Roi, nous vous dioms qe celuy qils

[1] This report of the case is from L. and C.

[2] L., pleindrount.

[3] tient is omitted from L.

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A.D. 1346. made the feoffment by which the rent commenced enfeoffed W. of the same land before the twentieth year of King Henry [the Third], at which time it was lawful for everyone who held of the King to alienc land holden of the King without the King's license, to hold of himself; and afterwards the Earl granted the rent to T. the ancestor of our wife, and after T.'s death the rent descended to our wife and her sister, and they made partition between them, and so our wife and we were seised of the rent, and we pray the assise.—*R. Thorpe.* We understand that by law land which is holden by barony of the King could not at any time be aliened without the King's license, for a baron cannot enfeoff a man to hold of him by barony, because no one can hold by barony except of the King, so that we understand that a barony could not at any time be dismembered without the King's license, so that he could not reserve any rent on such alienation, and particularly where it was found by inquest of office that the land was aliened without the license of King Edward the grandfather, and was seized into the hand of King Edward the father of the present King, so that since the King was at one time seized, no matter whether with title or without title, since he was seised by virtue of an inquest of office, and gave the land to another to hold of him by a certain rent, it is not right that the land should be charged with more rent without making the King a party by Petition. —And thereupon they were adjourned into the Common Bench.—And on the day which they had in the Bench WILLOUGHBY said :—You have pleaded in bar of the assise because you say that the land which was holden by barony was aliened without the license of King Edward the grandfather, and in his time, and so you do not understand, since the alienation was found by inquest of office, and that without license, and for that reason the land was seized into King's hand, and given to another person to hold of him by his charter, that in respect of any rent commenced by reason of that gift he ought to have an assise, and that,

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diount qe fist le feffement par quel la rente comencea si enfeffa W. de mesme la terre devant lan vintisme, le Roi H., a quel temps si list il a chesqun qe tient du Roi daliener la terre tenu du Roi sanz soun conge, a tenir de luy ;[1] et puis le Count graunta la rente a T., auncestre nostre femme, et apres sa mort le rente descendi a nostre femme et a sa soer, et ils fesoint la purpartie entre eux, et issint fuit nostre femme et nous seisiz de la rente, et prioms lassise.—*R. Thorpe.* Nous entendoms[2] par ley qe terre qest tenu par baronie du Roi ele ne poet pas estre aliene saunz conge du Roi a nulle temps, qar un baroun ne poet pas enfeffer un homme a tenir de luy par baronie, qar nulle homme poet tenir par baronie forqe du Roi, issint qe nous entendoms qe baronie sanz conge du Roi a nulle temps ne poet estre demembre, issint qil ne pout nulle rente par tiele alienacion reserver, et nomement ou fuit trove par office qe ceo fuit aliene sanz conge du Roi E. laiel, et seisi en la mein le Roi E. le pere le Roi qore est, issint quant le Roi a un temps fuit seisi, fuit il par title ou sanz title, quant il fuit seisi par office, et le dona a un autre a tenir de luy par certein rente, il nest pas resoun qe la terre soit charge de plus de rente sanz faire le Roi partie par peticion.—Et sur ceo furent adjournes en Baunk.—Et, al jour qils avoint en Baunk, Wilby. Vous avietz plede en barre dassise pur ceo qe vous ditetz qe la terre qe fuit tenu par baronie fuit aliene sanz conge du Roi E. laiel, et en soun temps, issint vous nentendetz mie, de puis qe par office fuit trove lalienacion, et sanz soun conge, et par tiel cause la terre seisi en la meyn le Roy, et done a autre a tenir de luy par sa chartre, et de nulle rente comence par cause de [ceel doun][3] deit il assise aver, et sil

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[1] The words de luy are omitted from C.

[2] The words nous entendoms are omitted from C.

[3] The words between brackets are from C. alone. L. is defective at the bottom and on one side of the folio.

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A.D. 1346. if he ought to have it, it should be by Petition to the King. As to that he has answered you, and said that, whereas you say that the alienation was made by the baron in the time of King Edward the grandfather, he says that the alienation was made by the baron in the time of King Henry, and before his twentieth year, so that we understand that the alienation was good at that time, and that a feoffment of land which was holden of the King could be made just as much as of land holden of another man, and just as much of parts of baronies as of other lands, for in that manner we shall find the commencement of tenancy in service, and of tenancies which are held of barons of that land and holding in barony; and all that was originally by conveyance of barons and earls who had the possession in their hands at first, and divested themselves of part of their demesnes to be holden of them, so that at all times before the time of King Edward the grandfather they could alienc their demesnes to be holden of them.—*Skipwith.* And as to the statement that since it was found by inquest of office that the land was aliened in the time of King Edward the grandfather, and without his license, and the King seized it as his forfeit, because at that time land aliened without his license was forfeited, and the rent also, to be holden of himself, I say that if inquest of office passes against my tenant, and on a point which is not true, and if he takes the land by gift from the King, my seignory is not thereby divested, but, when he takes by gift from the King, he charges himself to the King and to his true lord also, because his true lord will never be ousted from seignory by that inquest of office, nor will he be put to sue by Petition to have his rent, because it was only the folly of the tenant, who could have opposed the inquest of office, and so have returned to his own first estate; and nothing is now lost to the King, so that, since we are ready to aver that the alienation was made in the time of King Henry, that alienation was good without license, and so an inquest of office found at a later

No. 18.

la duist aver il serreit par peticion devers le Roi. [A ceo][1] A.D. 1346.
vous ad respondu, et dit qe, la ou vous ditetz qe lalienacion se fist par le baroun [en temps][1] le Roi E. [lai][1] el, [il][1] dit qe lalienacion se fist par le baroun en temps le [Roi H., et devant soun an vintisme],[1] issint qe a cel temps nous entendoms qe lalienacion [fuit bone, et qomme pout fere][1] feffement de terre qe fuit tenu du Roi auxi b[ien comme dun autre homme, et][1] de parcelle des baronies auxi bien com dautres t[erres, qar en cele manere si comen][1] ceroms nous la tenance en service, et de tenances qe [sount tenuz de barouns][1] de ceste terre et de baronie ; et tut par demise primes [des barouns et des coun][1] tes qavoint le possessioun en meins a de primes et [soy demistrent de parcelle de][1] lour demeins a tenir de eux, issint a tut temps de[vant le temps le Roi E. laiel il][1] purrount aliener lour demeins a tener de eux.—[*Skip.* Et a ceo qest parle qe quant][1] par office fuit trove qe la terre fuit aliene en t[emps le Roi E. laiel, et sanz son][1] conge, et le Roi seisist comme soun forfait, pur ceo qe a cel temps terre aliene sanz soun conge fuit forfet, et la rente, a tenir de ly mesme, jeo die si office passe countre moun tenant, et sur point nient verroy, sil preigne la terre del doun le Roi, ma seignurie nest pas par tant devestu, mes, quant il prent del doun du Roi, il se charge au Roi et soun verroy seignour auxint, qar soun verroy seignur ne serra jammes ouste de seignurie par cele office, ne il mys de suyr par peticion daver sa rente, pur ceo qe ceo ne fuit forqe le folie le tenant qe pout aver contrarie loffice, et issint aver revenu a soun primer estat ; et rien depert ore au Roi, issint quant nous sumes prest daverer qe lalienacion se fist en temps le Roi H., cele alienacion fuit bone sanz conge, issint qe loffice de puisne temps trove ne poet mie mettre le seignour verroy hors de

[1] The words and parts of words between brackets are from C. alone. L. is defective at the bottom and on one side of the folio.

Nos. 18, 19, 20.

A.D. 1346. date cannot put the true lord out of possession of the rent, which was thus reserved on a gift permissible in law.—STONORE. We understand that his title is sufficient for anything that you have said, and therefore we award the assise at large, to enquire of the whole truth.—But *quære* why they did so. When the tenant had counterpleaded the assise, enquiry ought to have been made only as to the seisin, because a counterplea in a case of rent is a sufficient ground for maintaining disseisin.

Waste. (19.) § A husband and his wife brought a writ of Waste against one J., and assigned waste in apple-trees and fish-ponds, and the writ was in the words "*ad exheredationem*" of the husband and the wife.—*Birton.* We do not admit that fishponds fall under the head of waste, but we tell you that, whereas the writ supposes the disherison to be to the husband and the wife, the husband has nothing but by reason of coverture; judgment of the writ, &c.—And the other side said the contrary.

Scire facias. (20.) § A manor was rendered by fine. The person to whom the render was made sued a *Scire facias* in respect of ten acres of land which were part of the manor.—*Pole.* We say that the manor is in divers vills, and this writ does not specify in which of the vills the ten acres are, and so the writ is not in accordance with the fine; judgment whether, &c.—SHARSHULLE, *ad idem.* If the writ supposes the land to be in a vill which was not mentioned in the writ of Covenant, the writ will be abated by reason of the variance [but not otherwise]; therefore, if you have anything else to say, say it, for the writ is good enough.—Therefore he was put to answer over.

Scire facias. § A man sued a *Scire facias* against two persons to have execution of certain tenements by virtue of a fine which was levied of the manor of H., with the appurtenances, and caused to be warned one J. (who held two virgates of land which were part of the manor aforesaid at the time at which

possession de la rente, qe issint fuit reserve sur doun congeable en ley.—Ston. Nous entendoms soun title assetz suffisaunt pur rien qe vous avietz dit, par qai nous agardoms lassise a large denquere de tote la verite.—*Sed quære* pur qai ils fesoint issint. Quant le tenant avoit countreplede lassise, homme ne duist aver enquys forqe de la seisine, pur ceo qe countreplee en cas de rente est assetz cause de disseisine, &c. A.D. 1346.

(19.) [1]§ Le baron et sa femme porterent brief de Wast vers un J., et assigna wast en pomers [et] vyvers, et le brief voet *ad exheredationem* le baron et[2] la femme, —*Byrtone.* Nous ne conissoms pas qe vyvers chessent en wast, mes vous dioms qe la ou le brief suppose lenheritance al baron et a la femme, le baron nad rienz mes par resoun de coverture; jugement de brief, &c.—*Et alii e contra.* Wast.

(20.) [3]§ Un maner fust rendu par fine. Celuy a qi le rendre se fist suist un *Scire facias* de x. acres de terre parcelle del maner.—*Pole.* Nous dioms qe le maner est en divers villes, et cest brief ne determine pas en quele des villes les x. acres sont, et issi le brief desacordaunt[4] al fine; jugement si &c.—Schars, *ad idem.* Si le brief suppose la terre estre en une ville qe nestoit pas nome en le brief de Covenant, pur la variaunce le brief serra abatu; par quei si vous avetz autre rienz a dire, dites le, car le brief est assetz bon.—Par quei il fust mys a respondre outre, &c. *Scire facias.* [Fitz., *Briefe*, 376.]

§ Un[5] homme suyt un *Scire facias* vers deux daver execucion des certeins tenementz pur resoun dune fine pe se leva del maner de H., ove les appurtinances, et fist garnir un J., qe deux verges de terre tient qe furent parcelle del *Scire facias.*

[1] From H. and I.

[2] The words le baron et are omitted from I.

[3] From H. and I. until otherwise stated.

[4] H., acordaunt.

[5] This report of the case is from L. and C.

Nos. 20, 21.

A.D. 1346. the fine was levied) and one B. (who held a messuage in such a vill) to answer whether they could say anything wherefore he ought not to have execution.—*Birton.* Judgment of the writ, for with regard to the parcel in respect of which J. is warned as tenant it is not supposed that the tenements are in any particular vill, and so the writ brought against J. is bad; judgment of the writ.—*Grene.* There is no need to mention the vill in this case, for the fine does not speak of any vill but only of the manor of H., and he has made the tenements part of that manor, and so the writ is in accordance with the fine; and in the fine there is no vill mentioned.—*Birton.* In the *Scire facias* which has issued against the other there is a vill mentioned, and so the one proves the other to be bad. —STONORE. That is no proof, for, even though it mentions a vill where there is no necessity to mention it, that does not prove that the *Scire facias* made against J. is bad, because both are good, and that because this is not an original writ but a *Scire facias* which is warranted by a fine, and which must be in accordance with the fine. And, if he were to demand execution of the whole manor, he would not mention in what vill it was; no more ought he where he demands part of a manor, which was part of it at the time when the fine was levied, because he ought not (even if he would) to be otherwise than in accordance with the fine; and therefore answer over.—And afterwards a continuance was taken by consent of the parties, &c.

Formedon. (21.) § One J. brought a writ of Formedon against one R. And the writ was in the words "*quam*" such an one "*dedit Emmæ de A. et heredibus de corpore ipsius E. per Willelmum procreatis, et quæ, post mortem prædictorum W. et E., præfato J., filio et heredi ejusdem E. de corpore suo per præfatum W. procreato, descendere debet per formam donationis, &c.*"—*Moubray.* Judgment of the writ: for according to the writ it is not specified in the gift that the heirs of Emma are to be in the inheritance by the

maner avantdit al temps de la fine leve, et un B., qui mies tient en tiele ville, sils savoint rienz dire pur qai il ne duist execucion aver.—*Birtone.* Jugement du brief, qar de la parcelle de quele J. est garny comme tenant il nest pas suppose qe les tenementz sount en nulle certein ville, issint le bref malveys porte[1] devers J.; jugement du brief.—*Grene.* Il ne bosoigne mie de nomer ville en ceo cas, qar la fine ne parle nye de ville mes del maner de H., et de cel maner il ad fait les tenementz parcelle, et issint il accorde a la fine; et en la fine il ny ad nye ville nome.—*Birtone.* En le garnisement qest issue devers lautre il y ad ville nome, issint lun prove lautre malveys.—Ston. Ceo nest pas prove, qar, tut nome il ville la ou il ne bussoigne nye del nomer, ceo ne prove nye qe le garnisement fait vers J. est malveys, qar ambedeux sount bones, et pur ceo qe ceo[2] nest pas brief original, einz un *Scire facias* qest garraunti dune fine, qe covient acorder a la fine. Et, sil fuit a demander execucion de tut le maner, il ne ferreit nye mencion en quele ville ceo serreit; ne[3] nient plus ne deit il la ou il demande parcelle dun maner, qe fuit parcelle al temps de la fine leve, qar il ne deit nye sil volleit[4] desacorder a la fine; et pur ceo ditetz outre.—Et puis par assent des parties continuaunce fuit pris, &c. A.D. 1346.

(21.) [5]§ Un J. porta un brief de Fourme de doun vers un R. Et le brief fust tiel *quam* un tiel *dedit Emmæ de A. et heredibus de corpore ipsius E. per Willelmum procreatis, et quæ, post mortem prædictorum W. et E., prefato J., filio et heredi ejusdem E. de corpore suo per præfatum W. procreato, descendere debet per formam donationis, &c.*—*Moubray.* Jugement de brief: qar par le brief nest pas determine en le doun qe les heirs E. serrount enherites par la taille, Fourme de doun. [Fitz., *Briefe*, 377.]

[1] porte is omitted from L.

[2] The words qe ceo are omitted from L.

[3] ne is omitted from L.

[4] C., voille.

[5] From H. and I., until otherwise stated.

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A.D. 1346. limitation, but the heirs of the body of Emma, and in the writ and the descent the demandant has made himself heir to Emma, and that it not warranted by the gift as it would have been if the gift had been in the words "*et heredibus suis de corpore, &c.*; judgment of the writ.—WILLOUGHBY. It is just as good to give to a man and *the* heirs of his body begotten, as to give to him and *his* heirs of his body begotten.—*Seton.* No, Sir: for judgment was given in this Court that, where land was given to Roberge who was the wife of J. Mandeville and to the heirs whom the said J. had begotten of the body of Roberge, because the issue made himself heir to R. whereas there were not in the gift the words "to her heirs," the writ was abated, and so also should it be in this case.—And it was said this was not the fact.—This writ however was adjudged to be good.—*Moubray.* Again judgment of the writ: for it is supposed that by the gift no one was a party to the gift but Emma, and in the *quæ post mortem* clause mention is made of the death of William, supposing him to be privy to the limitation, and so the writ is contrariant in itself; judgment.—*Thorpe.* The writ is good nevertheless, for it is proved by the gift that no one can demand by reason of the limitation except one who is begotten of the body of Emma, and that by William, and it is thereby proved that if William were living he would have a reason for having the same tenancy by the curtesy of England; therefore, since the matter included in my writ proves that another has a reason for having it for his life, the writ is all the better for supposing his death.—WILLOUGHBY. Although you would not have an action against him, or against any one who had his estate, at any rate your action would be maintainable against a stranger who could not claim anything of his estate; and in case one desired to have the advantage of his being in existence, it would be necessary for him to allege it, but by your writ of Formedon you ought never to make mention of any except those who will be in the inheritance by the

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mes les heirs de corps E., et en le brief et en le descente il sad fait heir a E., qe nest pas garranti del doun come si le doun fust *et heredibus suis de corpore &c.*; jugement de brief.—Wilby. Taunt vaut il a doner a un homme et a les heirs de son corps engendrez come a ses heirs de son corps engendrez.—*Sctone.* Sire nanil : qar il fust ajugge ceinz qe la ou terre fust done a Roberge qe fust la femme J. Maundeville et a les heirs queux le dit J. avoit engendre de corps Roberge qe pur ceo qe lissue se fist heir a R., la ou par le doun rienz fust parle as heirs, le brief fust abatu, et auxi cy.—Et fust dit qil ne fust pas issi.—Et nepurquant ceste brief fust agarde bon.—*Moubray.* Unqore jugement de brief, qar par le doun est suppose qe nul fust partie al doun mes E., et en le *quæ post mortem* est fait mencion de la mort W., supposant lui estre prive a la taille, et issi le brief contrare en lui mesme; jugement.—*Thorpe.* Le brief ne vaut ja le meyns, qar par le doun est prove qe nul purra demander par la taille fors celuy qest engendre de corps E., et ceo par W., et par taunt est prove qe si W. fust en vie qil avereit cause daver mesme la tenance par la lei Dengleterre; par quei, puis qe la matere compris en mon brief prove qe autre persone ad resoun del aver pur sa vie, le brief vaut le plus qe suppose sa mort.—Wilby. Mesqe vous naveretz pas accion vers lui, ou vers asqun qe avoit son estat, a meyns vers estraunge, qe ne poet rienz clamer de son estat, vostre accion serra meyntenable; et, mesqil vousist aver avauntage de son estre, il luy covensist del allegger, par vostre brief ne devereiz jammes faire mencion forsqe de ceux qe par la taille serront enheritez; A.D. 1346.

Nos. 21, 22.

A.D. 1346. limitation; therefore it seems that the writ is abatable.—And that was the opinion of the Court.—For that reason the demandant was afterwards non-suited.

Formedon. § A man brought a writ of Formedon in the descender, and supposed the gift to have been made to a woman and to the heirs whom her husband should beget on her body. And he made the descent from the woman to himself as son and heir.—*Moubray.* Judgment of the writ: for he supposes by his writ at the commencement that his mother had only a term for life, and afterwards he made the descent from her, supposing that she had a fee tail; judgment of the writ.—*R. Thorpe.* At the commencement of the writ we suppose the gift to have been made to our mother and to the heirs whom her husband should beget of her body, so that the gift extends to no one except her and the heirs of her body begotten, and so she had a fee tail, &c., and therefore our writ is good enough.—*Moubray.* If her husband and she had had issue at the time of the gift, and her husband had been dead, I say that the heir would have taken a joint estate with the woman, and the woman only a term for life, &c.—WILLOUGHBY. If that is your case you can show it, and perhaps, the writ will be abated, but you do not show that at the time of the gift any one took an estate but the woman, and that to her and the heirs of her body by her husband begotten, and so she had properly a fee tail, and therefore the writ, as to that, might be good enough.—And the writ was afterwards abated for another defect, &c.

Nontenure. (22.) § *Skipwith* came to the bar, and said that of the land demanded one J. held so much, and did hold on the day of the purchase of the writ, and he is not named in the writ; judgment.—*Thorpe.* Fully tenant of the tenements put in view; ready, &c.—*Skipwith.* That is not a plea, for we have alleged the exception not in respect of the tenements put in view but of the tenements demanded; therefore you must reply in accordance with my exception, or otherwise you will make

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par quei il semble qe le brief est abatable.—Et ceo fuist loppinion de COURT.—Par quei apres le demandant fust nounsuy. A.D. 1346.

§ Un[1] homme porta un brief de Fourme de doun en descendre, et supposa le doun estre fait a une femme et a les heires qe soun baroun engendreit de soun corps. Et fit la descente de la femme tanqe a ly com a fitz et heire.—*Moubray.* Jugement du brief; qar par soun brief a comencement il suppose qe sa mere navoit forqe a terme de vie, et apres il fit la descente de ly, en supposant qele avoit fee taille; jugement du brief.—*R. Thorpe.* Par le comencement du brief nous supposoms le doun estre fait a nostre mere et a les heirs qe soun baroun engendreit de soun corps, issint le doun sestent a nully forqe a luy et a les heirs de soun corps engendres, issint avoit ele fee taille, &c., par qai nostre brief est assetz bon.—*Moubray.* Si soun baroun et luy ussent eu issue a mesme le temps, et soun baroun ust este mort, jeo die qe leire ust pris estat joint od la femme, et la femme forqe terme de vie, &c.—WILBY. Si vostre cas soit tel, vous le poietz moustrer, et par cas le brief serra abatu, mes vous ne moustretz mie qe al temps del doun qe nulle prist estat forqe la femme, et ceo a luy et a les [heires] de soun corps par soun baroun engendres, issint avoit ele proprement taille, par qai le brief, quant a ceo, pout estre assetz bone.—Et pur un autre defaut le brief est abatu, &c. Fourme-doun.

(22.) [2]§ *Skip.* vint a la barre, et dit qe de la terre demande un J. tint taunt, et tint jour de brief purchace, nent nome en le brief; jugement.—*Thorpe.* Pleinement tenant des tenementz mys en vewe; prest &c.—*Skip.* Ceo nest pas plee, qar nous navoms pas allegge lexcepcion des tenementz mys en vewe mes des tenementz demandez; par quei acordaunt a ma excepcion covient il qe vous Nountenure [Fitz., *Briefe* 373.]

[1] This report of the case is from L. alone.

[2] From H. and I. until otherwise stated.

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A.D. 1346. a bad writ good by view, and that would be unreasonable. —Willoughby. When view has been made, the demand will be understood to be only of that which has been put in view, and so the view ought to make clear the demand which was previously uncertain; for I can demand, by the description of one carucate of land, five carucates, and *a contra*; but, when no view has been made, the exception of non-tenure will relate to the demand.—*Skipwith.* It seems that the averment must of necessity be taken on the demand, without having regard to the view: for if you demand against me land which another holds, and I do not choose to demand view, I shall abate your writ by nontenure, and, even though I demand view, the writ is not affirmed to be good as to the tenancy; therefore I shall have the advantage of abating the writ as largely after view as before, since the view does not affirm the contrary.—*Grene, ad idem.* See here the proof that the plaintiff's averment must in this case relate to the tenements demanded, and not to the tenements put in view: for, if in an original writ I demand against you one acre of land, and the summons is made in one acre, and view is had in another, then, if afterwards I recover by your default, I shall not have both acres of land, but I shall have only the land demanded, in which the summons was made; and for the same reason the averment for the demandant will relate to the demand, and not to the tenements put in view, And, besides, after view, the *Petit Cape*, if it has to issue, will always issue in respect of the demand, and not in respect of the tenancy which is said by the tenant to have been put in view; therefore it is necessary for him to maintain his writ in accordance with that process by which he is to recover his demand. —Willoughby. As to your first point I say that, if I put in view land other than that in respect of which the

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replietz, ou autrement par la vewe vous fretz un malveis brief bon, qe serra inconvenient.—Wilby. En cas[1] qe vewe est fait, la demande ne serra entendu mes de cele qest mys en vewe, et issi deit la vewe clarifier la demande qe estoit a devant en noun certein ; qar jeo puis[2] demander, par noun dun carue de terre, v., et *e contra* ; mes en cas ou nulle vewe est fait lexcepcion de nountenure referra a la demande.—*Skip.* Il semble qe laverement de necessite serra pris sur la demande, saunz aver regarde a la vewe ; qar si vous demandes vers moy terre qe autre tint, et jeo ne voille pas demander la vewe, jeo abateray vostre brief par la nountenure, et, mes qe jeo demande la vewe, le brief nest pas afferme bon quant a la tenance ; *ergo* apres la vewe javeray auxi largement avantage dabatre le brief come avant, puis qe la vewe nel afferme pas le contrare.—*Grene, ad idem.* Veietz cy[3] la prove[4] qil covent qe laverement le pleintif en ceo cas referge a les tenementz demandez, et ne mye a les tenementz mys en vewe : qar si en un original jeo demande vers vous une acre de terre, et la somons soit fait [en une acre, et la vewe en autre][5], si apres par vostre defaute jeo recovere, jeo naveray pas lune terre et lautre, mes averay soulement la terre demande, en quele le somons fuist fait ; et par mesme la resoun laverement pur le demandant[6] referra a la demande, et ne mye as tenementz mys en vewe. Et, ovesqe ceo, apres la vewe, le petit *Cape*, sil soit a issir, issera tote foitz de la demande, et ne mye de la tenance qest dit par le tenant qest mys en vewe ; par quei acordaunt a cel procees par quel il deit sa demande recoverir covent il qil meinteigne son brief.—Wilby. Quant a vostre primer point jeo die qe si jeo mette en vewe autre terre qe cele de quei la somons

A.D. 1346.

[1] I. Au temps, instead of en cas.

[2] The words jeo puis are omitted from I.

[3] I., la.

[4] The words la prove are omitted from I.

[5] The words between brackets are omitted from H.

[6] The words pur le demandant are omitted from I.

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A.D. 1346. summons was made, I shall recover the land put in view; and if I enter, in virtue of that judgment, upon the land in respect of which the summons was made, the tenant will in respect of that have a good Assise. And as to the other point of which you speak I say that is the practice of this Court to continue process in respect of the quantity of the demand contained in the writ; therefore that will not put you to compel him to aver tenancy in you of anything other than that which it is his purpose to recover against you.—*Moubray.* Sir, if a manor is demanded against me, and I allege nontenure of part of it, he will not have the averment that I am fully tenant of the tenements put in view, for the having of view of part of the manor will not make the writ good with respect to the whole manor; therefore &c.—KELSHULLE, JUSTICE, *ad idem.* If the issue is taken on the tenements put in view, it is possible that the jury will say that no view was had, and therefore it is right to take issue on the demand rather than on the tenements put in view.—*Thorpe.* If no view has been had, it is at your own peril to take the issue on that point.—*Grene.* If you demand land against me, and I say "You have released all the right which you had in the tenements put in view; judgment whether you can have an action," then I say that, because I answer nothing as to the demand, you will recover your demand; and for the same reason your averment in maintenance of your writ must relate to the demand, and not to the tenements put in view.—WILLOUGHBY. It is not so: for if I have released my right in the tenements put in view, I cannot recover anything.—Therefore they were put by the COURT to take the issue that they were tenants of the tenements put in view.—And like judgment was given in another like case in this same term, &c.

Præcipe quod reddat. § Note that on a *Præcipe quod reddat* the tenant demanded view, and had it, and afterwards said that another man held two acres of land of the demesne, and

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se fist, qe jeo recoveray la terre mys en vewe ; et si jeo entre, par force de cel jugement, en la terre de quei la somons se fist, il avera de cele une bone Assise. Et la autre point qe vous parletz jeo die qil est usage de ceste place a continuer la procees de la quantite de la demande compris en le brief ; par quei cele ne vous mettra pas de luy chacer daverer tenance en vous dautre chose qe de cele de quei il deive vers vous recoverir.—*Moubray.* Sire, si un maner soit demande vers moy, et jeo allegge nountenure de parcele, il navera mye daverer qe jeo suy pleynement tenant de tenementz mys en vewe, qar le fesaunce de la vewe de parcele del maner ne fra pas le brief bon del maner entier ; par quei, &c.—KELS, JUSTICE, *ad idem.* Si lissue se preigne sur les tenementz mys en vewe, il est possible qe lenqueste dirra qe nulle vewe fust fait, et par taunt est ceo plus de resoun a prendre lissue sur la demande qe sur les tenementz mys en vewe.—*Thorpe.* Si nulle vewe soit fait, ceo est vostre peril demene a prendre lissue sur cel point.—*Grene.* Si vous demandez terre vers moy, et jeo dye qe vous avetz relesse tut le dreit qe vous avietz en les tenementz mys en vewe, jugement si accion poetz aver, jeo die, pur ceo qe jeo ne respond rienz a la demande, qe vous recoverez vostre demande ; et par mesme la resoun vostre averement a meyntener le brief referra a la demande, et ne mye a les tenementz mys en viewe.—WILBY. Il nest pas issi : qar si jeo eye relesse mon dreit des tenementz mys en vewe jeo ne puisse rienz recoverir.—Par quei ils furent mys par la COURT a prendre lissue qils furent tenantz des tenementz mys en viewe.—Et une autre tiele fust en mesme cest terme ajugge, &c. A.D. 1346.

§ *Nota*[1] qen *Præcipe quod reddat* le tenant demanda la vewe, et lavoit, et puis dit qe del demene un autre homme tient ij acres de terre, et demanda jugement du brief. *Præcipe quod reddat*

[1] This report of the case is from L. alone.

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A.D. 1346. demanded judgment of the writ. And the other said "fully tenant of the tenements put in view; ready, &c." And exception was taken that this was not a plea without saying "tenant of the demand."—And WILLOUGHBY compelled him to take the issue, as above, "tenant of the tenements put in view."—And he said that view can make a writ good or bad.—And the contrary has been the practice heretofore.

Aid-prayer. (23.) § A Formedon was brought against Elizabeth de Clare.—*Blaykeston.* We tell you that our Lord the King was seised of the manor of Sandal, of which these tenements are part, and gave the manor, with the appurtenances, to this Elizabeth and one J. her husband and to the heirs of J., and so she holds for term of life, the reversion being regardant to J.'s heir, and she prays aid of him.—*Richemunde.* Whereas you pray aid on the ground that these tenements were part of the manor of Sandal, ready, &c., that they are not parts of the manor. —*Thorpe.* And since you do not deny that our tenancy is that of a term for life, and that the reversion belongs to J.'s heir, to take issue whether the tenements are part of the manor or not would be to enquire whether they were included in the King's charter or not, and that is not permissible; therefore, &c.—*Moubray.* Included or not included could not, perhaps, be an issue, because that would go to the making of the charter void; but I am at one with him that the tenant will have aid with respect to the manor and all that is part of it, but it is not right that she should have aid in respect of that which is not parcel of the manor. And, moreover, it would be strong law that, in virtue of the King's charter made in your favour in respect of one land, she should have the aid of the King in respect of the land of another person, unless I have the averment that it is not included in the King's charter.—WILLOUGHBY. That has been the law as practised before we were born, and will be in

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Et lautre dit tenant pleinement des tenementz mys en vewe; prest &c. Et fuit chalenge qe ceo ne fuit pas ple sanz dire qe tenant del demande.—Et WILBY luy chacea de prendre lissue, *ut supra*, qe tenant des tenementz mys en vewe.—Et il dit qe la vewe poet faire le brief bon et malveis.—Et le contrarie ad este fait devant ces hures. A.D. 1346.

(23.) [1]§ Fourme doun porte vers Elizabeth de Clare.—*Blayk.* Nous vous dioms qe nostre seignur le Roi fust seisi del maner de Sendale, de quei ceux tenementz sont parcelle, et dona le maner, od les appurtenances, a ceste E. et un J.[2] son baron et a les heirs J., et issi tint ele a terme de vie, la reversion regardant al heir J., et pria eide de luy.—*Rich.* La ou vous prietz eide par taunt qe ceux tenementz sont parcele del maner de S., qils ne sont pas parcelez del maner, prest &c.—*Thorpe.* Et puis qe vous ne dedites pas qe nostre tenance nest a terme de vie, et la reversion a luy, a prendre issue le quel il soit parcele del maner on nent ceo serra a enquere le quel il fust compris en la chartre le Roi ou nent, quele chose nest pas suffrable; par quei &c.—*Moubray.* Compris on nent compris ne poet estre issue par aventure pur ceo qe ceo serra a voider la chartre; mes suy en un od luy qe del maner et quant qest parcele de ycelle qil avera eide, mes de ceo qe nest pas parcele del maner nest pas resoun qil eit leide. Et, ovesqe ceo, il serra fort ley qe par la chartre le Roi faite a vous dune terre qil avera eide de Roi dautri terre, si jeo nay laverement qe nent compris deinz la chartre le Roi.—WILBY. Ceo ad este usee ley avant qe nous fusmes Eide prier.

[1] From C. and I. until otherwise stated.

[2] Her (third) husband, to whom reference is here made, was Roger Damori, or de Amory, or de Aumary. *See* below, pp. 260-261.

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A.D. 1346. future; and the averment which you tender that the land is not part of the manor is to no other effect than that it is not included in the charter, and to that the law does not admit you; therefore have you anything else to say? —And in the end the aid was granted.—The tenant prayed that the heir might be summoned in a county other than that in which the original writ was brought.—*Richemunde.* And we pray that he may be summoned in the same county, and that in the land demanded, in respect of which the reversion is affirmed to be in him.—SHARSHULLE. Truly your prayer is against yourself, for, if the Sheriff returns that the heir has nothing in that county whereby to be summoned, a summons will afterwards be sent to the other Sheriff, and so that will be more delay to you; but nevertheless, since you pray it, you shall have it readily, &c.

Formedon. § A man brought a writ of Formedon in the descender against the Countess of Clare, and demanded against her a carucate of land, whereupon the Countess said, by *Grene*, that King Edward, father of the present King, gave the manor of T., whereof the tenements now demanded are part, to Roger Damori and to the Countess and to the heirs of Roger, and that by his charter which is here, and so the Countess holds for term of her life, the reversion being regardant to J. son and heir of Roger Damori, and she prays aid of him.—*Seton.* Whereas she prays aid on the ground that the King the father of the present King is supposed to have given the manor of T., whereof those tenements were part, and are part, we tell you that the tenements which are now in demand were not part, and are not part of the manor.—*R. Thorpe.* That plea which you now give would go to making void the King's charter, for, if you can have that plea, the charter might be made void by a jury in respect of each part by a false verdict of twelve men, and your issue amounts to no more than that the tenements are not included in the charter.—*Seton.*

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neddz, et unqore serra; et laverement qe vous donetz qe nent parcele del maner nest dautre effect mes qe nent compris, et a ceo ley ne vous receit; par quei avetz autre chose a dire ?—Et a drein leide fust graunte.—Le tenant pria qil fust somons en autre counte qe loriginal fust porte. —*Rich.* Et nous prioms qil soit somons en mesme le counte, et ceo en la terre demande, de quei la reversion est afferme en luy.—SCHARS. Verrement vous prietz countre vous mesmes, qar, si le Vicounte retourne qil nad rienz en cele counte dount estre somons, homme maundra apres a autre Vicounte, et issi serra ceo plus delaie a vous; mes nequident, puis qe vous le prietz, vous laveretz volunters, &c. A.D. 1346.

§ Un[1] homme porta un brief de Fourme de doun en descendre vers la Countesse de Clare, et demanda devers ly une carue de terre, ou la Countesse dist, par *Grene*, qe le Roi E., pere le Roi qe ore est, si dona le maner de T., dount les tenementz ore demandetz sount parcelle, a Roger Damori et a la Countesse et a les heirs R., et par sa chartre qe ci est, et issint tient la Countesse a terme de sa vie, la reversion gardaunt a J. fitz et heir R. Damori, et prie eide de luy.—*Setone.* La ou ele prie eide pur ceo qe le Roi pere le Roi qorest si duist aver done le maner de T., dount ceux tenementz furent parcelle, et sount parcelle, nous vous dioms qe les tenementz qe sount ore en demande ne furent pas parcelle, ne sount pas parcelle del maner.—*R. Thorpe.* Ceo ple qe vous donetz ore ceo serreit a voider la chartre le Roi, qar si vous poietz aver ceo ple, par enqueste homme voidreit la chartre de chesqune parcelle par faux verdit de xij., et vostre issue namount a nient plus mes qe les tenementz ne sount pas compris deinz la chartre.—*Setone.* Quant homme prie eide par cause, Fourme-doun

[1] This report of the case is from L. alone.

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A.D. 1346. When any one prays aid for a certain cause, it is right that one should have an answer as to that cause, for otherwise the demandant would be delayed by a false cause, which would be proved false, and contrary to what is right; and now she does not pray aid of the King, but of her husband's heir, but if she prayed aid of the King perhaps the law would be otherwise, because the land would not be put in danger of loss without making the King a party.—WILLOUGHBY. She has prayed aid of her husband's heir, and that in virtue of the King's charter, and, if any one alleges joint tenancy in virtue of the King's charter, the party will not have an answer so as to say that the land is not included, nor any more if any one prays aid of the King, for, if any one could have such a plea, he might make void the whole deed . . . . . of the heir; then it appears that the King can be made a party; therefore let her have the aid.

Discontinuance. (24.) § A writ was brought against Robert Wolf and J. his wife, and the demandants demanded a carucate of land. By reason of the default of the husband and of his wife a *Cape* was awarded in respect of a moiety, whereas it ought to have issued in respect of the whole. And now the *Cape* was returned, after having been served.—*Grene*, for the demandant, prayed seisin of the land.—*Pole*. You have here the wife, who tells you that you ought not to have seisin, because, inasmuch as the *Cape* was awarded in respect of only a moiety of the land, the plea is discontinued; therefore, &c.—*Grene*. And, since the wife does not pray to be admitted to make herself a party to us, we do not understand that you will regard the tenancy on the exception of her who cannot be a party to us until she has been admitted.—*Thorpe*. We show that we cannot be admitted in respect of the moiety; and, besides, it is of the office of the Court to see before they give judgment that process has been continued; therefore, &c.—*Grene*. It is not so: for, if they find the continuance on the last

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il est resoun qe homme eit respons a la cause, qar autrement serreit la demandante delaie par une faux cause, quele serreit fauxe, et countre resoun; et ore ele ne prie mie eide du Roi, mes del heir soun baroun, mes sil priast eide du Roi par cas la lei serreit autre, pur ceo qe la terre ne serreit mie mys en perde sanz fere le Roi partie.—WILBY. Ele ad prie eide del heir soun baroun, et par chartre du Roi, et, si homme allegge jointenance par chartre du Roi le[1] . . . . navera mie respons a dire qe nient compris, ne si homme prie eide du Roi nient le[1] . . . s, qar, si homme ust ceo ple, homme voidra tut le fet[1]. . . del heire; donqes pert il qe le Roi poet estre fet partie; par qai eit leide. A.D. 1346.

(24.) [2]§ Bref fust porte vers Robert Wolf et J. sa femme, et demanderent une carue[3] de terre. Par la defaute le baroun et sa femme le *Cape* agarde de la moite, la ou il dust aver issue de tut. Et ore le *Cape* retourne, et servy.—*Grene*, pur le demandant, pria seisine de terre.—*Pole.* Vous avetz cy la femme, qe vous dit qe seisine ne devetz aver, qar, par taunt qe le *Cape* fust agarde mes de la moyte, le plee est discontinue; par quei &c.—*Grene.* Et, depuis qe la femme ne prie pas destre resceu de soi faire partie a nous, nentendoms pas qe a son chalange qe ne poet estre partie a nous tanqe ele soit resceu qe vous voillietz la tenance surveer.—*Thorpe.* Nous moustroms qe nous ne poms de la moite estre resceu; et, ovesqe ceo, cest office de Court de veer, avant qils dounent jugement, qe le proces soit continue; par quei &c.—*Grene.* Il nest pas issi: qar, sils trovent la continuaunce al drein jour, Discontinuance. [Fitz., *Discontinuauns Divers*, 8.

[1] The MS. is defective at the side.

[2] From H. and I.

[3] I. acre.

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A.D. 1346. day, they will render judgment; and, if there be any previous discontinuance, it must be redressed by a writ of Error.—WILLOUGHBY. You say that which you would like to be the fact; we shall never render judgment until we know from the Clerk who has the file whether the plea has been continued. And if we can discover a discontinuance, even though the tenant makes default after default, we shall quash the whole proceedings; and now we are apprised of the discontinuance, and therefore we cannot render judgment for you to recover, since we have discovered that such a judgment would be reversible. —*Grene.* Then we pray that the process be now made which ought to have been made at first, that is to say, that a *Cape* be awarded in respect of the entirety, for that is only to our own delay, and the party has a day.—Therefore a *Cape* was awarded in respect of the entirety. —*Thorpe* said that, notwithstanding this award, the process would by reason of the first exception be adjudged be discontinued on the next day.—And *quære* as to this.

Formedon. (25.) § John Darcy, the son, brought his writ of Formedon against William Heroun and Isabel his wife, in respect of two parts of the manor of Forth, on a gift made to his grandfather in fee tail.—*Blaykestone.* We tell you that a fine was levied of the manor between one R. of the one part, and William and Isabel his wife of the other part, by which fine R. rendered to William three messuages and four carucates of land in the same manor to hold to him and to his heirs, and rendered the residue to William and Isabella his wife in fee tail; and so we tell you that their tenancy is several, and we demand judgment of the writ.—*Seton.* Since this writ is brought against the husband and his wife, between whom there cannot be said to be several tenancy, because his wife cannot have tenancy if her husband has it not, we therefore demand judgment whether our writ is not sufficiently good.—*Haveryngton.* If a writ is brought against

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ils voillent rendre jugement ; et, si discontinuance soit avant, il covent qil soit redresse par errour.—WILBY. Vous dites talent ; nous ne rendroms jammes jugement tanqe nous sachoms del clerc qe ad le filas si le plee soit continue. Et si nous puissoms aperceyver la discontinuance, tut face le tenant defaute apres defaute, nous quasseroms quanqil y ad ; et ore sumes apris de la discontinuaunce, par quei nous ne vous poms rendre jugement a recoverir, la ou nous sumes aperceu qe cel jugement est reversable.—*Grene.* Donqes prioms qe le proces soit fait a ore qe dust aver este fait adonqes, saver, le *Cape* del enter soit agarde, qar ceo nest pas qe nostre delay demene, et la partie ad jour.—Par quei le *Cape* del enter fust agarde.—*Thorpe* dit qe nent countreesteaunt cest agard qe par le primer chalange al proschein jour le proces serra ajugge discontinue.—*Et hoc quære.* A.D. 1346.

(25.) [1]§ Johan Darcy, le fitz, porta son brief de Forme de doun vers William Heroun et Isabelle sa femme, de les ij parties del maner de Forthe, dun doun fait a son aiel en fee taille.—*Blaik.* Nous vous dioms qe fine se leva del maner entre un R. et W. et Isabelle sa femme, par quele fine R. rendi a W. iij. messuages et iiij. carues de terre en mesme le maner a luy et a ses heirs, et le remenant rendi a W. et a Isabelle sa femme en fee taille ; et issi vous dioms qe lour tenance est several, et demandoms jugement de brief.—*Setone.* Puis qe ceo brief est porte vers le baron et sa femme, entre queux several tenance ne poet estre dit, qar sa femme ne poet aver tenance si le baron nel eit, par quei demandoms jugement si nostre brief ne soit assetz bon.—*Hav.* Si brief soit porte vers ij. estraunges, sils Formedoun [Fitz., *Several Tenauncy*, 10]

[1] From H. and I.

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two strangers, and if they can show that one of them holds a part in severalty, and the other holds the residue in severalty, the writ will abate; and the reason is no other than that, if the writ is maintained against them in common, they will lose their warranty, and their answer; and so it is as between husband and wife, because the husband cannot deraign warranty in common with his wife in respect of the tenancy which he alone has.—STOUFORD. The two cases are not alike: for as between strangers they can have several answers, and that they cannot do on a *Præcipe* [brought against them in common] when their tenancies are several; but husband and wife can never have several answers, because there cannot be said to be severance between them.—*Moubray.* Sir, as between strangers, if they will show their tenancy to be several, and plead severally in bar of the action, they will be heard; but, if they give the exception in abatement of the writ, the writ will abate. And, moreover, inconvenience would ensue if this writ were to stand: for, if two persons hold one land jointly, the Summons is good if made in the least part of it, but, if the tenancy is several, the Summons must be made in both tenancies; therefore, if we had made default, and the *Cape* were now returned, if he wished to hold to our def[illegible]—D in accordance with their tenancy now shown, it would [illegible]ecessary that there should be a wager of law and Isabel-summons in respect of one part on behalf of the h[illegible]demand, and in respect of the rest on behalf of him and hi[illegible]of [illegible]e, and that upon one original writ would be contrary to law; therefore, &c. —WILLOUGHBY. On the default you would not be heard to allege your tenancy to be several, and even though you were heard, you would have to perform your law in accordance with the summons on the original; and, moreover, the reason for which several tenancy, as between strangers, is mentioned as in abatement of the writ is that it is in the nature of non-tenure for each of them of the tenancy which the other holds. But that reason ceases

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puissent moustrer qe lun tient une parcelle en severalte, et lautre le remenant en severalte, le brief abatera ; et la cause nest nulle autre mes pur ceo qe, si le brief soit mayntenu vers eux en comune, ils perderont lour garrantie, et lour respons ; et auxi est ceo dentre le baron et sa femme, qar le baroun de la tenance qil ad soul il ne poet en comune od sa femme garrantie derener.—Stouf. Nent semblable : qar entre estraunges ils pount aver several respons, et ceo ne pount ils pas en un *Præcipe* la ou lour tenance est several ; mes le baron et sa femme naveront jammes several respons, qar severaunce ne poet estre dit entre eux.—*Moubray.* Sire, entre estraunges, sils voillent moustrer lour tenance several, et pledre severalment en barre daccion, ils serront escotes ; mes, sils dounent le chalange en abatement de brief, le brief abatera. Et ovesqe ceo inconveniens ensiwereit si cesti brief esterreit : qar, si ij. tiegnent une terre jointement, la somons est bone faite en le meindre parcele, mes, si la tenance soit several, il covent qe la somons soit fait en lune tenance et en lautre ; par quei si nous ussoms fait defaute, et le *Cape* fust a ore retourne, sil vousist prendre a nostre defaute solom lour tenance a ore moustre, il covensist de gager la leie de noun-somons dune parcele pur le baron, et del remenant pur luy et sa femme, et serra encountre ley sur un original ; par quei &c.—Wilby. Sur la defaute vous ne serretz pas escote dallegger vostre tenance several, et, mesqe vous serretz, vous fretz vostre lei acordaunt al somons en loriginal ; et, ovesqe ceo, la cause pur quei several tenance entre estraunges est parle en abatement de brief ceo est pur ceo qe ceo est en nature de nountenure pur chesqun de la tenance qe autre tient. Mes cele cause cesse entre

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to exist as between husband and wife, because there cannot be non-tenancy in the husband of any tenancy which his wife holds. And there is no mischief with regard to answering, because they can have separate answers as to their tenancy.—Therefore the writ was adjudged good. —*Blaykestone.* Then we tell you that by the fine the husband holds part alone for term of his life, the remainder being to one R. and the heirs male of his body begotten, and we pray aid of him. And for the husband and his wife *Blaykestone* showed how the rest of the demand was rendered to the husband and the wife for term of their lives, with remainder by the same fine to R., as above, and prayed aid of him.—*Seton.* You cannot have aid, because it is possible that R. will never have the remainder ; therefore, &c.—*Blaykestone.* It has often been adjudged in this Court that one in remainder in fee tail was to be admitted to defend his right ; for the same reason aid of him is grantable.—And in the end, because there was not a simple remainder in fee tail limited to R., but it was to the heirs male of his body begotten, in which case even though he had an heir female of his body who would be his heir, the limitation would be altogether annulled in that heir female, and because it was possible that he might never have an heir male, and so that he would never have a remainder, judgment was given that the tenants should be ousted from the aid.—And in this plea it was said by WILLOUGHBY that one in remainder in fee tail by fine will never have a writ of Waste, &c.—Therefore *Blaykeston* vouched to warrant, and the voucher was granted, &c.

Assise of Novel Desseisin.

(26.) § An Assise of Novel Disseisin was sued, in the County of Dorset, against Hildebrand of London and

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le baron et sa femme, qar noun tenance ne poet estre en le baron de nulle tenance qe sa femme tint. Et mischief de respondre y ad il pas, qar ils pount aver several respons de lour tenance.—Par quei le brief fust agarde bon.—*Blaik.* Donqes vous dioms qe le baron tient parcele par la fine soule a terme de sa vie, le remeindre a un R. et as les heirs madles de son corps engendrez, et prioms eide de luy. Et pur luy et sa femme il moustre coment la remenant de la demande fust rendu a luy et a sa femme a terme de lour vies, remeindre par mesme la fine a R., *ut supra*, et prierent eide de luy.—*Setone.* Eide ne devetz aver, qar possible est qe R. navera jammes remeindre ; par quei &c.—*Blaik.* Il ad este ajugge sovent ceinz qe celi en remeindre en fee taille ad este resceu a defendre son dreit ; par mesme la resoun leide de luy est grauntable.—Et a drein, pur ceo qil ny avoit pas un remeindre simple taille a R. en fee taille, mes fust a les heirs madles de soun corps engendrez, en quel cas, mes qil eit heir femaile de son corps qe soit son heir, la taille en celle heir femele serra de tut anenti, et pur ceo qil est possible qil navera jammes heir madle, et auxi qil avera jammes remeindre, fust agarde qil fust ouste del eide.—Et en ceo plee fust dit par Wilby. qe celi en le remeindre par fine en fee taille navera jammes brief de Wast, &c.—Par quei il voucha a garrant, et le voucher grante, &c. A.D. 1346.

(26.) [1]§ Une Assise de Novele disseisine fust suy, en counte de Dorsete,[2] devant Stouf. vers Hilebrond de *Assisa Novæ Disseisinæ.* [Fitz., *Assise*, 123.]

[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 198.d. It there appears that the Assise was brought before Justices of Assise for the county of Dorset by Bricius de Donytone and Joan his wife against Hildebrand of London, and Robert his son, and Hildebrand the same Robert's son, Henry de la Forde, parson of the church of Merriett, Thomas of London, and Robert Baroun, in respect of 2 messuages, 3 carucates of land, 20 acres of meadow, 60 acres of wood, 100 acres of pasture, and 20*s.* of rent in Hauekechirche (Hawkchurch, Dorset).

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

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A.D. 1346. one R.[1] before STOUFORD. R. pleaded to the assise by bailiff, and Hildebrand took the tenancy upon himself, and pleaded in bar a fine by which the plaintiff's ancestor rendered the tenements to R.[2] who was named in the writ, whose estate he has. The plaintiff said that Hildebrand had nothing in the tenancy, but that R. was tenant, against whom the assise was awarded on his plea, and prayed the assise.

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[1] As to the names, *see* p. 269 note 1.

[2] *See* p. 271 note 2.

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Loundres et un R. R. par bailif pleda al assise,[1] et Hilebrond emprist la tenance, et pleda en barre par une fyne par quele launcestre le pleintif rendi les tenementz a R. qe fust nome en le brief, qi estat il ad.[2] Le pleintif dit qe H. navoit rienz en la tenance, mes R. fust tenant vers qi par son plee lassise est agarde, [et pria lassise.[3] A.D. 1346.

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[1] "According to the record, "Hildebrandus de Londoniis, "venit, et alii non venerunt, "sed idem Hildebrandus re- "pondit pro eis tanquam eorum "ballivus. et pro eis dixit quod "ipsi nullam injuriam seu "disseisinam prædictis Bricio "et Johannæ inde fecerunt." Upon this issue was joined.

[2] According to the record, "Hildebrandus de Londoniis "respondit ut tenens tene- "mentorum in visu positorum, "cum pertinentiis, et dixit quod assisa inde inter eos fieri non "debuit, dixit enim quod alias ". . . . levavit quidam finis "inter Johannem de Pery [*sic*] "et Agnetem uxorem ejus, que- "rentes, et Gilbertum de Cas- "tello patrem prædictæ Johannæ, "cujus una heredum ipsa est, "deforciantem, de eisdem tene- "mentis, cum pertinentiis, unde "placitum Conventionis sum- "monitum fuit inter eos, . . . "per quem finem idem Gilber- "tus recognovit tenementa illa, "cum pertinentiis, esse jus "ipsius Johannis, et concessit "quod eadem tenementa, cum "pertinentiis, quæ Johannes "Peverel tenuit ad terminum "vitæ suæ de hereditate ipsius "Gilberti, et quæ post mortem "ipsius Johannis Peverel ad "præfatum Gilbertum et heredes "suos reverti deberent, roman- "erent prædictis Johanni de "Pery et Agneti, et heredibus "ipsius Johannis in perpetuum "et obligavit se et heredes "suos ad warantizandum, &c., "virtute cujus finis idem Jo- "hannes Peverel se attornavit, "&c Et dixit quod prædictus "Johannes de Percy [*sic*] et etiam "prædictus Johannes Peverel "obierunt, per quod prædicta "Agnes intravit tenementa illa "ut in reversionem suam virtute "finis prædicti, et obiit seisita, "post cujus mortem quidam "Walterus, filius et heres præ- "dicti Johannis de Percy in- "travit in tenementis illis ut filius "et heres prædicti Johannis de "Percy, et de eisdem tenementis "feoffavit ipsum Hildebrandum, "unde petiit judicium si præ- "dicti Bricius et Johanna con- "tra finem prædictum, ad quem "prædictus Gilbertus pater ip- "sius Johannæ, cujus una "heredum ipsa fuit, fuit pars, "assisam versus eum habere "debuit, &c."

[3] According to the record, "prædicti Bricius et Johanna "dixerunt quod prædictus Hil- "debrandus de Londoniis ad "allegandum finem prædictum "nec ad aliquid aliud placitan-

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A.D. 1346. And Hildebrand tendered the averment that he was tenant. Thereupon R. appeared, before the assise had been taken, and after the assise had been awarded, and said that the truth was that he was tenant, as the plaintiff had surmised against him, and said that there ought not to be an assise, and pleaded the same fine in bar. To this it was said that inasmuch as he had previously plead to the assise, and the assise had been awarded against him on his plea, he should not now be admitted to stay the assise. And because

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"dum in retardationem assisæ "admitti non debuit, quia dix- "erunt quod idem Hildebrandus "non fuit tenens tenement- "orum prædictorum, nec fuit "die impetrationis brevis, . . "immo prædictus Henricus, qui "superius per ballivum suum "placitavit ad assisam, fuit "tenens, et fuit prædicto die "impetrationis brevis, &c. Et "hoc parati fuerunt verificare "per assisam. &c."

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Et H. tendi daverer qil fust tenant.[1] Sur quei vint R., avant lassise pris, et apres lassise agarde],[2] et dit qe la verite fust qil fust tenant, come le pleintif lui avoit surmys, et dit qe assise ne dust estre, et pleda par mesme la fine en barre.[3] A quei fust dit qe par taunt qil avoit plede avant al assise, et vers luy par son plee lassise agarde qil navendra pas a ore de arester lassise.[4] Et pur ceo qe A.D. 1346.

[1] According to the record, "Hildebrandus dixit, ut prius, "quod ipse fuit tenens tene- "mentorum prædictorum, et "fuit prædicto die impetra- "tionis brevis, &c." Issue was joined upon this, "Ideo versus "eum assisa considerata fuit "capienda."

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

[3] According to the record, "Et postea, ante captionem "assisæ prædictæ prædictus "Henricus [de la Forde] venit "in propria persona sua, et "dixit quod ipse fuit tenens "tenementorum prædictorum, "sicut prædicti Bricius et Jo- "hanna asseruerunt, et fuit "prædicto die impetrationis "brevis, et hoc de dono et "feoffamento prædicti Hilde- "brandi, et dixit quod assisa "inter eos fieri non debuit, et "allegavit finem prædictum "prout superius allegatus fuit, "unde petiit judicium si contra "finem prædictum assisa inter "eos fieri debuit, &c."

[4] According to the record, "prædicti Bricius et Johanna "dixerunt quod prædictus Hen- "ricus ad placitandum ad præ- "cludendum ipsos ab assisa ad- "mitti non debuit, quia dixerunt "quod idem Henricus, quando "primo exactus fuit in Curia "non venit, sed prædictus bal- "livus pro eo respondit, et "placitavit ad assisam, prout "superius in recordo continetur, "per quod assisa illa tunc fuit "considerata versus eum [capi- "enda] et, ex quo prædictus "ballivus superius pro eo placi- "tavit ad assisam, idem Henri- "cus de jure, et per legem terræ, "non debuit illo eodem die "ulterius exigi in Curia, et "quamvis quidam se protulit "in Curia asserens se fuisse "Henricum de Fordo personam "ecclesiæ de Meryet et esse "tenentem tenementorum præ- "dictorum, tamen non potuit "liquere Curiæ an illo qui se "protulit fuit illa et eadem "persona in brevi nominata, "an alia, maxime cum Curia tunc "non habuit warantum ipsos "ulterius exigisse postquam "prædictus ballivus suus supe- "rius pro eo placitavit ad as- "sisam, &c., unde petierunt "judicium si prædictus Hen- "ricus ad hujusmodi placitum "tunc in hoc casu admitti "debuit, &c."

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A.D. 1346. Hildebrand had tendered the averment that he was tenant, STOUFORD took the assise to enquire which of them was tenant. It was found by the assise that Hildebrand was not tenant but that R. was. And STOUFORD further questioned the assise whether the plaintiff had been seised and disseised. And they said that he had, and with force and arms too.—And thereupon they were adjourned into the Common Bench.—*Grene*, for R., said that although STOUFORD had recorded that R. had appeared in his own person and pleaded after the assise had been awarded, he certainly appeared, and pleaded in bar, before the assise had been awarded against him. But (*Grene* added) nevertheless I know well that I cannot be heard to say that contrary to his record; but it seems to us that after the assise has been awarded, and before the assise has been taken, one who appears will be admitted to plead in bar, and particularly matter on which he would have restitution by Certificate of Assise after the matter in dispute has been lost; and since, on the matter now pleaded, a Certificate would be given to us, it seems that in order to save our tenancy we can put the plea forward now.—*Thorpe*. It seems not: for the Statute[1] which gives the Certificate of Assise gives it after the assise has been taken and judgment rendered; and by that statute by which a suit

[1] 13 Edw. I. (Westm., 2), c. 25.

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H. avoit tendu daverer qil fust tenant, STOUF. prist lassise denquere qi deux fust tenant.[1] Par quele fust trove qe H. ne fust pas tenant mes R. Et outre il opposa lassise si le pleintif fust seisi et disseisi. Et ils disoient qe oil, et ceo a force et armes.[2]—Et sur ceo ils furent ajournez en Baunk.[3]—*Grene*, pur R., dit qe, coment qe STOUF. avoit recorde qe apres lassise agarde il vint en propre persone et pleda, il dit qe certeinement il vint, et pleda en barre, avant lassise vers luy agarde. Mes nequident countre son recorde jeo say bien qe ne deye a ceo estre escote; mes il nous semble qe apres lassise agarde, et avant lassise pris, sil viegne il serra resceu a pleder en barre, et nomement chose sur quele il avereit restitucion par la certificacion apres la chose perdue; et, puis qe sur la matere a ore plede certificacion nous serra done, il semble qe pur sauver nostre tenance qe nous le mettroms a ore. —*Thorpe*. Il semble qe noun: qar lestatut qe doune la certificacion la doune apres lassise pris et jugement rendu; et par cel estatut par quel une suite est done apres qe la A.D. 1346.

[1] According to the record, after some further pleadings, "quia visum fuit Curiæ quod "assisa capienda fuit in illo "casu, ideo super præmissis "assisa considerata fuit capi-"enda."

[2] According to the roll, the finding of the assise was, "quod "prædictus Hildebrandus de "Londoniis non fuit tenens "tenementorum prædictorum, "nec fuit prædicto die impetra-"tionis brevis, sed prædictus "Henricus fuit tenens de eis-"dem, et fuit eodem die impe-"trationis brevis. Et dixerunt "quod prædictus Robertus filius "Hildebrandi, et Thomas de "Londoniis, et Robertus Baroun "vi et armis disseisiverunt præ-"dictos Bricium et Johannam "de prædictis tenementis, cum "pertinentiis, prout ipsi superius "questi fuerunt, ad damnum "ipsorum Bricii et Johannæ "quadraginta marcarum. Et "dixerunt quod alii in brevi "nominati non interfuerunt dis-"seisinæ prædictæ."

[3] According to the roll, "Et super hoc prædicti Bricius "et Johanna petierunt judicium "super veredicto prædicto, et "seisinam prædictorum tene-"mentorum, et damna sibi "adjudicari." There were some further pleadings and some adjournments, one at last into the Common Bench, where the parties appeared.

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A.D. 1346. is given after the tenancy has been lost there cannot be given to a party an answer contrary to that which he has previously given. Now this is certain that the answer of a bailiff is as much the answer of a party as his own answer; and, since the assise has been awarded on his answer, he cannot be heard to stay the assise, though before the assise has been awarded it would, perhaps, be otherwise; and moreover it is very unreasonable that he should be heard.—WILLOUGHBY. It will be a great mischief if he is not now admitted to plead in bar, for his presence when the assise was taken is recorded, and in that case he will never have a Certificate, and therefore if he does not have the advantage of pleading he is put to too great a mischief.—*Moubray.* If you now give judgment that he shall not be allowed to plead in bar, because the assise was awarded against him on the plea of his bailiff, it then becomes necessary to follow out the first award, that is to say, that on the plea of the bailiff the assise should be taken without having regard to his presence. —WILLOUGHBY. Although in your case the award which was made on the plea of his bailiff ought not to be followed out, still it is of record that, before the assise was taken, he was present in his own person, and for that reason he is ousted for ever from having a Certificate. And it seems to me that judgment ought to have been given on this point before the assise was taken in point of assise; for when it was found that R. was tenant, if he ought to have been admitted to plead in bar, then the plaintiff ought to have been put to answer to the bar, and therefore when STOUFORD enquired over as to the seisin and disseisin he thereby forjudged the plaintiff of his answer. Therefore it seems that we cannot now give judgment on that point on which judgment ought to have been given before; and since judgment is given in accordance with the manner in which the assise is taken against him, judgment must be given on the verdict, and it must be redressed by way of writ of Error.—STOUFORD.

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tenance soit perdue homme ne poet pas doner a partie respons a contrare de ceo qil ad done avant. Ore est ceo cy certein qe respons de baillif est auxi avant respons de partie come de lui mesme ; et, puis qe par respons de lui lassise est agarde, il ne serra pas escote de arester lassise, mes avant lassise agarde par aventure il serra autre ; et unqore est ceo moult encountre resoun qil serra.—Wilby. Il serra grand meschief sil ne serra resceu a ore de pleder en barre, qar sa presence est recorde quant lassise fust pris, en quel cas il navera jammes certificacion, par quei sil neit avantage par plee il est mys a trop grand meschief. —*Moubray.* Si vous ajuggez a ore qil navera pas de pleder en barre, par taunt qe lassise fust agarde vers luy par le plee son baillif, donqes covent il qe homme pursiwe le primer agarde, saver qe par le plee le baillif lassise fust pris saunz aver regarde a sa presence.—Wilby. Mesqe en vostre cas homme ne deit pursuyr lagarde qe fust fait par le plee le baillif, unqore est ceo de recorde qe, avant lassise pris, il fust en propre persone, et par taunt il ouste de la certificacion a touz jours. Et il moy semble qe, avant lassise ust est pris en point lassise, ceo point duist aver [este] ajugge ; qar quant trove fust qe R. fust tenant, sil dust avenir de pleder en barre, donqes dust le pleintif aver este mys daver respondu al barre, par quei de ceo qil enquist outre de la seisine et disseisine il luy forjuggea en taunt de soun respons. Par quei il semble qe nous ne poms a ore cel point ajugger quel dust aver este ajugge avant ; et puis qe par la manere de la prise de lassise vers lui est ajugge me covent qe jugement se face sur le verdit, et qe par voie derrour il soit redresse.—Stouf. A.D. 1346.

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A.D. 1346. Sir, when I found that R. was tenant, if by law he ought not to have been admitted to plead in bar, then there was nothing wrongly done; and if by law he ought to have been so admitted, then it was in excess of what was right for me to have enquired as to the seisin and disseisin, and therefore that excess will now be annulled; therefore he is now in the same condition with regard to the giving of judgment on the point as if the assise had not been taken at large; for, if it appears to you that I had no warrant to accept the plea which was then pleaded, you will hold it as nought, and, if I had been certain with regard to the law, that he should not have been admitted to plead in bar, I should have awarded seisin to the plaintiff.—SHARSHULLE. It seems that he ought to have the plea in bar: for when Hildebrand took the tenancy upon himself, and pleaded in bar, if you (the plaintiff) had denied his tenancy without affirming it to be in any one else who was named in your writ, the writ was abated, and therefore when you affirmed the tenancy to be in R., and he came in his own person, and allowed that which you had surmised with regard to him, and pleaded in bar, he ought to have had the advantage of that in accordance with your own surmise.—*Skipwith.* When I said that Hildebrand had nothing, but that R. was tenant, that statement was not delivered with the intention that R. should have a new answer, but was in order to save my writ; therefore the fact that I named him as tenant does not admit him to a new answer other than that of his bailiff was, and particularly where the assise was awarded on the same plea.—WILLOUGHBY. In truth, according to the manner in which this assise was taken we cannot now discuss the question whether he has now come in time to plead in bar or not, for, when it was found that he was tenant, the Justices ought to have stayed the taking of the assise in point of assise until they had given judgment whether he had come in time or not; and inasmuch as they

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Sire, quant jeo trovay qe R. fust tenant, si par lei il ne dust pas avenir de pleder en barre, donqes ny ad il rienz mesfait ; et si par lei il deit avenir, donqes est ceo trop qe jeo enqueisse de la seisine et disseisine, par quei cel trop serra adonqes ouste ; par quei il est en mesme le plit a ore destre ajugge sur le point come si lassise a large nust pas este pris ; qar, si vous veietz qe jeo navoi pas garrant de prendre le purplee qe adonqes fust plede, vous le tendrez come nent, et, si jeo usse este en certein de la lei qil nust pas este resceu de pleder en barre, jeo usse agarde seisine al pleintif.—Schars. Il semble qil avera le plee en barre : qar quant H. enprist la tenance, et pleda en barre, si vous ussetz dedit sa tenance saunz aver afferme[1] cele en autre qe fust nome en vostre brief, et le brief est abatu, donqes quant vous laffermastes en R., et il vint en propre persone, et graunta ceo qe vous surmeistes en lui, et pleda en barre, il avera avantage de cele par vostre surmys demene. —*Skip.* Quant jeo deisse qe H. navoit rienz, mes R. fuist tenant, ceo ne fust pas livre a tiel entente qe R. avereit novel respons, mes fust pur sauver moun brief ; par quei ma denominacion en luy ne luy resceit pas a novel respons autre qe par plee en son baillif ne fust, et nomement la ou sur mesme le plee lassise fust agarde.—Wilby. Verayment solonc la manere qe ceste assise est pris nous ne poms discusser le quel il soit venu a temps a ore de pleder en barre ou nent, qar, quant il fust trove qil fust tenant, adonqes dust le Justice aver sursis de la prise del assise en point dassise tanqils ussent ajugge le quel il fust venu par temps ou nent ; et de ceo qils enquistrent sur la A.D. 1346.

[1] MSS., cele afferme.

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A.D. 1346. enquired as to the seisin and disseisin they forjudged him of his plea; therefore we must render our judgment in accordance with that which has been found by the assise.—Therefore judgment was given that the plaintiff should recover his seisin, &c.—And it was said by WILLOUGHBY that the judgment is reversible, because in the country they ought to have admitted him to his plea in bar, whereas they awarded the assise in point of assise. —And *Grene* repeated that he said to STOUFORD, before the assise was taken, that STOUFORD had promised him that the taking of the assise on the seisin and disseisin should not prejudice him if according to law he had come in time to plead in bar, and now (said *Grene*) you cannot perform that promise, and therefore my client suffers disherison through your (STOUFORD'S) fault.

Assise. § A man brought an Assise against another in the County of Dorset, that is to say against Hildebrand of

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seisine et disseisine en taunt ils luy forjuggerent de son plee ; par quei solone ceo qest trove par assise covent qe nous rendoms nostre jugement.—Par quei fust agarde qe le pleintif recoverast sa seisine, &c.[1]—Et dit fust par WILBY. qil est reversable, pur ceo qen pays ils luy duissent aver resceu a son plee en barre, la ou ils agarderent lassise en point dassise.—Et *Grene* recita coment il dit a STOUF., devant qe lassise fust pris, qil luy premist qe la prise del assise sur la seisine et disseisine ne luy grevera pas si par lei il soit venu par temps de pleder en barre, et ore ne poietz cel premys parfournir, et par taunt moun client par vostre defaute disherite &c.[2] A.D. 1346.

§ Un[3] homme porta une Assise vers un autre en la Counte de Dorsete[4] vers Hilibrond de Loundres, et un autre, Assise. [Fitz., *Assise*, 215; 20 Li. Ass., 6.]

[1] No pleadings in the Common Bench appear upon the roll, but judgment was given :— " Quia compertum est per recog- " nitionem assisæ prædictæ quod " prædictus Hildebrandus non " fuit tenens tenementorum præ- " dictorum, et etiam quod præ- " dicti Robertus filius Hilde- " brandi, Thomas de Londoniis, " et Robertus Baroun vi et " armis disseisiverunt prædictos " Bricium et Johannam de " prædictis tenementis, cum per- " tenentis, ad damnum ipsorum " Bricii et Johannæ quadraginta " marcarum, consideratum est " quod iidem Bricius et Johanna " recuperent seisinam suam de " tenementis prædictis, cum per- " tinentiis, per visum recog- " nitorum assisæ prædictæ, et " damna sua prædicta, et præ- " dicti Robertus filius Hilde- " brandi, Thomas de Londoniis, " et Robertus Baroun capiantur. " Et prædicti Bricius et Johanna " in misericordia pro falso clam- " eo versus alios qui non [inter] " fuerunt disseisinæ prædictæ, " &c."

[2] According to the roll. " Postea in Crastino Purifica- " tionis beatæ Mariæ anno regni " domini Regis nunc Angliæ " vicesimo primo dominus " Rex mandavit brevo suum " clausum Johanni de Stonore " quod recordum et processum " assisæ prædictæ cum omnibus " ea tangentibus, domino Regi " in Cancellaria sua mitteret. " Et ea ei mittuntur per " Hugonem de Astone, &c., " virtute alterius brevis Wil- " lelmo de Herlestone clerico " directi. Idem Willelmus misit " eidem domino Regi brevo " originale patens, panellum, et " alia memoranda penes se " tunc."

[3] This report of the case is from L. alone.

[4] MS. Somersete.

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A.D. 1346. London, and against another, in which Hildebrand answered as tenant, and pleaded, in bar of the assise, a fine to which the plaintiff's ancestor was a party, and (said Counsel for the defendants) we demand judgment whether the plaintiff ought to have an assise. And the other who was named in the writ pleaded to the assise by bailiff.

Scire facias. (27.) § A woman sued a *Scire facias* against one J. in respect of one carucate of land, and against one R. in respect of one acre of land. J. answered by guardian.—*Thorpe.* When made guardian.—*Pole.* I will tell you willingly. Heretofore the woman sued a *Scire facias* against J., whereupon the parol was then put without day by reason of his non-age, and so this writ is in the nature of a Resummons, in which case the warrant on the earlier writ will suffice for the new writ. And *Pole* produced his warrant which he had at that time.—*Thorpe.* Every *Scire facias* is a judicial writ, and not one of them can serve to the other as to an original writ, as a Resummons, which is a judicial writ, can serve to an original writ; therefore, since you have not any warrant on this writ, judgment. And, moreover, if that earlier warrant would suffice for you, you could put the parol without day by reason of your non-age as you did before, whereas, *de rei veritate*, you are of full age.—And for that reason, because he had no other warrant, J. was called, and did not appear.—Therefore execution was awarded against him.—And R. answered by attorney made on the earlier *Scire facias*.—And to that the exception was taken that the warrant could remain in force only while that earlier plea was pending.—And the COURT said that the warrant of attorney was good enough, but not the warrant of guardian, by reason of the mischief that the ward would have allowance of his age whereas the plaintiff supposed him to be of full age.—*Therefore* R. said that he held for term of life by lease from J.'s father, the reversion being regardant

ou Hilibrond respoundi comme tenant, et pleda en barre dassise par une fine a quele launcestre le pleintif fuit partie, et demandoms jugement si le pleintif duist assise aver. Et lautre qe fuit nome el brief pleda par baillif al assise.[1] A.D. 1346.

(27.) [2]§ Une femme suist un *Scire facias* vers un J. dune carue de terre, [et vers R. dun acre de terre][3] J. respondi par gardein.—*Thorpe.* Ou fait gardein—*Pole.* Volunters. Autrefoitz la femme suist un *Scire facias* vers J., ou pur son nounage adonqes la parole fust mys saunz jour, et issi est cest brief en nature dun Resomons, en quel cas le garrant en launcien brief suffira pur le novel. Et moustra soun garrant qil avoit adonqes.—*Thorpe.* Chescun *Scire facias* si est judicial, et nul de eux poet estre original a autre come purra un Resomons, qest un judicial, a un original ; par quei, puis qe vous navetz nulle garrant a ceste brief, jugement. Et, ovesqe ceo, si cel aunciene garrant vous suffira, vous mettrez la parole saunz jour par vostre nounage come autrefoitz feistes, la ou, *de rei veritate*, vous estes en plein age.—Et par cele resoun, pur ceo qil navoit autre garrant, il fust demande, et ne vint pas.—Par quei vers luy execucion fust agarde.—Et R. respondi par attourne fait en launciene *Scire facias.*—Et ceo chalenge, qe le garrant ne poet durer mes tanqe come cel plee fust pendant.—Et la COURT dit qe la garrant dattourne est assetz bone, mes nent de gardein, pur le meschief qil avereit soun age la ou ele luy supposa de pleyn age.—Par quei R. dit qil tint a terme de vie de lees le pere J., la reversion regardant a J. qest dedeinz age, et pria eide *Scire facias.* [Fitz., *Attourne*, 78.]

[1] The words al assise are catchwords at the foot of the folio (19.b.). The reports of the term end here in L. On the next folio follows a portion of reports of Trinity Term in the twenty-first year of the reign.

[2] From H. and I.

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

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A.D. 1346. to J. who was under age, and R. prayed aid of J., and by reason of J.'s non-age prayed that the parol might demur.—*Grene* tendered the averment that J. was of full age, with the object that, if the finding should be in his favour, he might have execution.—But he could not have the point tried in that way, and it must be by inspection of the person.—But WILLOUGHBY said that, since there had been so much delay before by reason of his non-age, if J. should be adjudged to be of full age by inspection, he would be put to his penalty.—*Quære* whether in that case he would lose his land.—Afterwards *Pole* came to the bar, and prayed a writ of Deceit for J., who had lost his land by default.—WILLOUGHBY. One answered for him as his guardian made on the earlier *Scire facias*, and execution was awarded because that warrant was not sufficient; and therefore the land was lost by reason of the insufficiency of your warrant, and not by your default, and therefore you cannot have a writ of Deceit.

Quare impedit. (28.) The King brought a *Quare impedit* against Laurence St. Martin in last Trinity Term, and the King claimed to have the presentation as guardian of the heir of one parcener, who was in his wardship, and to whom the advowson descended, as in the turn of that parcener, as appears in Trinity Term, when the defendant showed that the ancestor of the person who was in the King's wardship gave and granted all her interest in the advowson to his ancestor, in virtue of which gift his ancestor presented twice, and so it belonged to him to present.—And *Thorpe*, for the King, demanded judgment, since the defendant had admitted the descent of the advowson to the person whom he supposed to have given, and to the person to whom he supposed the gift to have been made, as to one heir, in which case one could not give to another that which they held in common by making livery, but it would necessarily be in the nature of a quit-claim, which falls properly under the head of specialty, and of that the

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de lui, et pur son noun age pria qe le parole demurast.— *Grene* tendi daverer qe J. fust de plein age, a tiel entente qe sil fust trove pur lui qil avereit execucion.—Mes il nel poait aver trie, mes covendreit estre par inspeccion.—Mes WILBY. dit qe puis qil avoit eu tiel delai autrefoitz par son nounage qe si par inspeccion il soit ajugge de plein age, qil avera a sa penance.—*Quære* sil adonqes perdra terre. —Puis *Pole.* vint a la barre, et pria pur J., qe avoit perdu sa terre par defaute, un brief de Deceite.—WILBY. Un respondi pur luy come son gardein fait en launciene *Scire facias*, et pur ceo qe cele garrant ne fust pas suffissaunt, execucion fust agarde ; et par taunt pur la noun suffissaunce de vostre garrant fust la terre perdue, et ne mye par vostre defaute, par quel vous nel averetz pas. A.D. 1346.

(28.)[1] § Le Roi porta *Quare impedit* vers Laurence Seynt Martyn le terme de la Trinite drein, et le Roi clama daver le presentement come gardein leir del une parcener, a qi lavowesoun descendi, come en le tourn cele parcener qe fust en sa garde, *ut patet*, ou lautre moustra coment launcestre celuy qest en la garde le Roi dona et graunta ceo qe a luy attient del avowesoun a son auncestre, par quel doun son auncestre presenta ij. foith, et issi appent a luy a presenter.—Et *Thorpe*, pur le Roi, demanda jugement, puis qil avoit conu la descente del avowesoun a celuy qil supposa qe dona et a celuy qil supposa le doun estre fait, come a un heir, en quel cas lun ne pout doner al autre ceo qils tindrent en comune par livre affaire, nes covendra estre en nature de quiteclamance, quel chiet proprement en specialte, et de ceo moustre rienz, et par taunt les *Quare impedit.* [Fitz., *Monstrans de faits, fins, et records*, 72.]

[1] From L. and I. This is a continuation, or another report of Y.B. Trin. 20 Edw. III. No. 13, printed in Y.B. 20 Edw. III. Part I., pp. 504–521. The record (there cited) is *Placita de Banco*, Trin. 20 Edw. III., R°. 238.d.

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A.D. 1346. defendant shows nothing, and therefore the presentations of which he has spoken could only be usurpations on her co-parcener; therefore, &c.—*Skipwith.* If one parcener brings her *Quare impedit* against me, who am a stranger to the parcenary, and counts that her sister presented as in commencing a turn, and that this is the second voidance, the presentation on which belongs to her, I shall well be allowed to say that her sister gave to me all her interest in the advowson and that I presented afterwards, and to show that it is now my turn, and to aver that gift without producing a specialty. Then there is no difference except on the assumption that as one sister cannot divest herself in favour of another by reason of their possession in common; and I say that she can do so, because although the possession may be in common, each of them has a several right which she can make over to her coparcener by livery just as much as to a stranger.—WILLOUGHBY. As between strangers it is true that you ought to be admitted to aver the gift, but not as between parceners; for each one is seised of the whole, and for that reason one cannot give to the other, but the conveyance must be by release during her seisin, and that must be shown by specialty.—*Birton.* Sir, see here the proof that one parcener can give to another: for if land descends to two parceners, and one of them gives to another all her interest for term of the donee's life, saving the reversion to herself, there is no doubt that the reversion is saved by that lease, and that cannot be if livery between them cannot be supposed; therefore it seems that for the same reason for which she can make livery for term of life she can make livery in fee, and consequently the gift can be the subject of averment.—WILLOUGHBY. It is not so: for each of the parceners has a pure fee, and therefore the law does not permit her to receive a less estate than she had without making a conveyance of the whole of her estate.—And in the end the COURT said that they fully held that he could aver the gift of the advowson without showing a specialty.

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presentements des queux il ad parle ne pount estre mes purpris sur sa parcenere ; par quei &c.—*Skip.* Si lune parcener porte son *Quare impedit* vers moi, qe su estrange a la parcenerie, et counte coment qe sa soer presenta come en comenceaunt tourn, et qe ceo est la secunde voidaunce, qe attient a luy, jeo averay bien a dire qe sa seor moy dona ceo qe a luy affiert del avowesoun et qe jeo presentay puis, et a moustrer coment a ore est mon tourn, et ceo daverer le doun saunz especialte. Donqes ny ad il nulle difference mes pur taunt qe lune seor ne se poeit demettre al autre pur lour possessioun en comune ; et jeo die qe ele poeit, qar, coment qe la possessioun soit en comune, ils ount several dreit le quel par livre il purra faire a son parcener auxi bien com a estraunge persone.—Wilby. Entre estraunge il est verite qe vous devetz estre resceu daverer le doun, mes entre parceners nent ; qar chescun est seisi de tut, et par taunt lune ne poet doner al autre, mes covent estre par relees en sa seisine, et ceo covent estre moustre en especialte.—*Birtone.* Sire, veietz cy la prove qe lune parcenere poet doner al autre : qar si terre descend a ij. parceners, si lune doune al autre ceo qe a luy affiert a terme de sa vie, salvaunt la reversion a luy, il nest pas doute qe la reversion nest sauve par cel lees, et ceo ne poet estre si livre entre eux ne poet estre suppose ; par quei il semble qe par mesme la resoun qe ele purra faire livre a terme de vie il purra faire livre en fee, et, *per consequens*, le doun averable.—Wilby. Il nest pas issi : qar chesqun des parceners ad fee pure, par quei lei ne soeffre pas qe ele purra resceivre meyndre estat qe ele navoit saunz demise faire de tut son estat.—Et a drein la Court dit qils tindrent bien qil poeit averer le doun del avowesoun saunz A.D. 1346.

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A.D. 1346. —Therefore the King's Sergeants were commanded to accept the averment.—*Thorpe.* Then we pray that your decision on this point be entered on the roll, and we will imparl on the averment.—And afterwards *Thorpe* demanded judgment whether he should be admitted to that averment without producing a specialty ; for he said that he had no other matter.—And upon that they were adjourned, &c.

Nuper obiit. (29.) § A writ of *Nuper obiit* was brought against two persons in respect of land. They were essoined as being on the King's service, and afterwards made default, and on the return of the *Cape* the demandant held to their default, and they waged their law as to non-summons, and they had a day now. And one tenant made default, and the other was ready to perform her law.—*Thorpe.* Since they made wager of law in common, and do not pursue it, inasmuch as one makes default, we therefore pray seisin of the entirety.—WILLOUGHBY. It seems that you cannot have seisin of any parcel, for, if the one performs her law as to non-summons, the whole writ will abate ; therefore it seems that it would be contrary to law to award seisin to you of any parcel, when by her performance of her law the original writ will lose its force.—*Thorpe.* Sir, it cannot be so, for by the default of the one now made she is severed from the other ; therefore, since by her default I am in a condition to have seisin, the performance of law by another person, which has yet to be done, ought not to prevent me from having judgment any more than if that person were willing to render the land, or to confess my action.—WILLOUGHBY. We have often seen that where one tenant had waged his law, and the other had pleaded a different answer, the writ has been abated by the performance of his law, without having regard to the severance, and, for the same reason, although one makes default now, we shall not award seisin until law has been performed by the other, and then, perhaps, we shall abate the whole of your original writ.—*Grene.*

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moustrer especialte.—Par quei fust comaunde as serjauntz le Roi a prendre laverement.—*Thorpe.* Donqes prioms qe vostre avisement de cel point soit entre en roulle, et nous enparleroms sur laverement.—Et puis *Thorpe* demanda jugement si a cel averement saunz especialte il serra resceu ; qar il dit qil navoit nulle autre matere.—Et sur ceo cy ils furent ajournez, &c. A.D. 1346.

(29.)[1] § Brief de *Nuper obiit* fust porte vers ij de terre. Ils furent essones de service le Roi, et puis firent defaute, et al *Cape* retourne le demandant prist a lour defaute, et ils gagerent la ley de nounsomons, et avoient jour a ore. Et ore lun tenant fist defaute, et lautre fust prest a faire la ley.—*Thorpe.* Puisqil gagerent la ley en comune, et cele ne pursiewent ils pas, taunt qe lun fait defaute, par quei nous prioms seisine del enter.—Wilby. Il semble qe vous naveretz seisine de nulle parcelle, qar, si lun face la ley de nounsomons, tut le brief abatera ; par quei dagarder a vous seisine dasqune parcelle la ou par sa ley faire loriginal perdra sa force si semble il qil serra encountre ley.—*Thorpe.* Sire, il ne poet estre issi, qar par la defaute qe lun fait a ore il est severe del autre ; par quei puis qe par sa defaute jeo su en plit daver seisine, la fesaunce dautre ley, qest unqore a faire, ne moy deit destourber de mon jugement nent plus qe sil vousist a ore rendre ou conustre ma accion.—Wilby. Nous avoms sovent vew qe la ou lun tenant avoit gage la ley, et lautre avoit plede autre respons, qe par la fesaunce de sa lei le brief ad este abatu, saunz aver regarde a la severaunce ; et par mesme la resoun, mes qil face defaute a ore, nous nagarderoms pas seisine tanqe la lei par autre soit fait, et adonqes par aventure nous abateroms tut vostre original.—*Grene.* *Nuper obiit.*

[1] From H. and I. until otherwise stated.

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A.D. 1346. You cannot do that, for if we now recover by the default of one, she will have a writ of Deceit with regard to a moicty, and that proves fully that the other cannot perform her law with respect to her tenancy which is in danger of being lost by the default of the other, and consequently the performance of her law for her ought not to abate the writ, except with regard to her tenancy as to which by law she ought to perform her law.—WILLOUGHBY. At any rate we shall admit her wager of her law, and when she has performed her law we will consider whether you will recover a moiety or your writ will abate in its entirely.—And so he did.—In the end WILLOUGHBY said that a *Nuper obiit* lies against parceners even though their tenancy be several, and that one may be summoned and the other not; therefore the performance of her law by one does not prove the non-summons of the other. But if another writ were in question on which a summons made to one would not serve with regard either to him or to his companion perhaps the law would be different.—In the end therefore judgment was given that she should recover a moiety of the tenancy by the default of the one who had made default after default, and that the writ should abate as against the one who had performed her law.

Nuper obiit. § Two women brought a *Nuper obiit* against two others and demanded their proportionable part which fell to them of four messuages, and of lands which belonged to one W., their common ancestor. The tenants made default. On the day on which the Grand *Cape* was returnable they came and waged law as to non-summons, and had a day to perform their law. And on that day one of them did not appear, and the other was ready to perform her law. And one of the demandants did not appear, and therefore she was severed because she had previously appeared.—*R. Thorpe* prayed seisin of the land of the whole of the demand because the writ was brought against the two as against tenants in common, and they had waged their

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Ceo ne poetz faire, qar si nous recoveroms [a ore par la defaute][1] lun, il avera un brief de Deceite de la moite, et ceo prove bien qe lautre ne fra pas sa lei de sa tenance qest a perdre par autri defaute, et *per consequens* la fesaunce de la ley [pur lui][1] ne deit abatre le brief, mes pur sa tenance de quele il deit par lei faire la lei.—Wilby. A meyns nous resceyvroms sa lei, et quant il leit fait nous aviseroms le quel vous recoverez la moite ou qe vostre brief en tut abatra.—Et issi fist il.—A drein Wilby. dit qe *Nuper obiit* gist[2] vers parceners mes qe lour tenance soit several lun poet estre somons et lautre nent; par quei la fesaunce de la lei lun ne prove pas la nounsomons del autre. Mes si ceo fust en autre brief en quel somons fait al un ne servereit ne a lui ne a soun compaignoun par aventure la lei serra autre.—Par quei a drein fust agarde qele recoverast la moite de la tenance par la defaute celuy qe avoit fait defaute apres defaute, et vers celuy qe avoit fait sa ley le brief abatera, &c. A.D. 1346.

§ Deux[3] femmes porterent *Nuper obiit* vers ij. autres, et demanderent lour renable partie qe a eux afferreit de iiij. mies, et des terres qe furent a un W., lour comune auncestre. Les tenantz firent defaute. Al jour del grant *Cape* retournable ils vindrent et gagerent la lei de noun somones, et avoint jour de faire lour lei, a quel jour lun vint pas, et lautre fuit la prest de faire sa lei. Et lun des demandantes ne vint pas, par qai ele fuit severe pur ceo qele avoit apparu devant.—*R. Th.* pria seisine de terre de tote la demande pur ceo qe le brief est porte vers les deux com vers tenantz en comune, et ount gage lour lei en *Nuper obiit.*

[1] The words between brackets are omitted from I.

[2] gist is omitted from I.

[3] This report of the case is from L. alone.

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A.D. 1346. law in common, so that one could not perform her law without the other, and therefore (said *Thorpe*) we demand judgment. And, if one is by law admissible to perform her law, we pray seisin of the land against the other who has made default.—*Moubray.* The writ is brought against them both in common, and one has waged her law as to non-summons, and in case she performs her law the writ is abated in its entirety; for, if one was not summoned, therefore the other was not summoned, because the summons is one, and, if one of the two perform her law that she was not summoned, the whole writ is abated; therefore you cannot award seisin of the land in respect of any parcel.—*R. Thorpe.* If the one who now makes default had appeared, and would have rendered that which was demanded against her, I say that she might well have been admitted to do so, and we ought to have had judgment by her render, even though the other wished to perform her law as to non-summons.—WILLOUGHBY. That is a different case, but in our case, if she performs her law, the whole summons is falsified, and when the summons is falsified we cannot award seisin to you on the same summons; and we will first see whether the one who appears will perform her law, and, after she has performed her law, we will see whether you shall have seisin of part through the default of the other or not.—*Grene.* As to what ought she to perform her law? For, if she performs her law as to the entirety, then she has to perform her law in respect of more than she can lose, and in respect of more than that of which she is tenant, and that would be contrary to law. And, on the other hand, when a writ is brought against two in common, it is right that each should be liable to lose by her default that which belongs to herself, because each can aliene that which belongs to her, and for the same reason can lose it by default, and so, according to law, you ought first to award seisin of her portion of the land to us, and afterwards take the performance of the wager of law in respect of the

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comune, issint qe lun ne poet faire sa lei saunz lautre, par qai nous demandoms jugement. Et, si lun soit resceivable par lei de faire sa lei, nous prioms seisine de terre vers lautre qad fait defaute.—*Mowbray.* Le brief est porte vers eux deux en comune, et lun ad gage la lei de noun somons, et en cas qil face sa lei le brief est abatu en tut; qar si lun ne fuit pas somons *ergo* ne lautre ne fuit pas somons, qar la somons si est un, et si lun face sa lei qil ne fut pas somons tut le brief est abatu, par qai vous ne poietz mie agarder seisine de terre de nulle parcelle.—*R. Th.* Si lun ust venu qore fait defaute, et volleit aver rendu ceo qe fuit demande devers luy, jeo die qil serreit bien resceu, et nous duissoms aver jugement par soun rendre, tut volleit lautre faire sa lei de nounsomons.—Wilby. Cest un autre cas, mes en nostre cas, si ele face sa lei, tut la somons si est fauxe, qar quant la somons et faux nous ne poms agarder seisine a vous sur mesme la somons; et nous voloms primes veer si ele voille faire sa lei celuy qapert, et, apres ceo qele ad fait sa lei, nous verroms si vous averetz seisine de la parcelle par la defaute lautre on noun.—*Grene.* De qai duist il faire sa lei? Qar, sil face sa lei del enter, donqes duist il faire sa lei plus sauf qele ne poet perdre, et de plus qele nest tenant, qe serreit countre lei. Et, dautre part, quant brief est porte vers deux en comune, il est resoun qe chesqun poet perdre ceo qe a ly attient par sa defaute, qar chesqun pout aliener ceo qe a luy attient, et par mesme la resoun perdre par defaute, et issint par lei vous nous duissetz primes agarder seisine de terre de sa porcion, et puis prendre la lei de lautre porcion qe

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A.D. 1346. other portion which belongs to the other; for, if you first take the other's performance of law in respect of the entirety, for the same reason for which she performs her law you will abate our writ in respect of the entirety, whereas the one has lost her moiety by default.—WILLOUGHBY. Leave us to settle that when she has performed her law.—And afterwards she performed her law to the effect that she had not been summoned to be in Court to answer, as to the whole of the demand, to the demandant who sues, &c.—*R. Thorpe.* A writ of *Nuper obiit* is given for one parcener against the other parceners by one *Præcipe*, even though their tenancy may be in severalty, where they had at one time an estate by descent after the death of their common ancestor, as well as if they hold in common, so that, for anything that has yet been shown, it is possible that their tenancy is in severalty, in which case the summons may be divers; for, even though one was summoned in her portion, it is possible that the other was not summoned in her portion which she holds in severalty, so that, even though the one has performed her law, it is not therefore right that the writ should abate as a whole, but only in respect of the portion; and, if their tenancy is in common, it is right that the moiety should be lost by default for the reason above given.—*Moubray.* Even though they hold in severalty, the writ by one *Præcipe* is maintainable against both, and summons in the parcel of one is sufficiently good summons against both, so that whether the tenancy be one or different, that does not change the law.—WILLOUGHBY. You say only that which you wish to be the fact, for, if their tenancy is several, a summons made in the tenancy of one is not a summons made in the tenancy of the other, nor is a summons made in one tenancy sufficient summons with regard to the tenancy of the other, so that, when the writ is good as to that tenancy, it would not be right to abate the writ in its entirety for the performance of law by one of the two, because on such a writ the summons

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a luy attient ; qar, si vous pernetz primes la ley del autre del enter, par mesme la resoun qele face sa lei par mesme la resoun vous abateretz nostre brief del enter, la ou lun ad par defaute perdu la moite.—WILBY. Lessetz nous a convenere od cella quant il avera fait sa lei.—Et puis fist sa lei qele ne fuit pas somons destre ici a respoundre del enter de la demande al demandant qe suyt, &c.—*R. Th.* Brief de *Nuper obiit* est done par lune parceniere vers les autres parceniers par un *Præcipe*, tut soit lour tenance en severalte, la ou ils avoint estat a un temps par descente apres la mort lour comune auncestre, ou sils tenent en comune, issint, pur rien qest unqore moustre, poet estre qe lour tenance est en severalte, en quel cas le somons poet estre diverſ ; qar, tut fuit lun somons en sa porcion, poet estre qe lautre ne fuit pas somons en sa porcion qele tient en severalte, issint, tut eit lun fait sa lei, par ceo nest pas resoun qe tut le brief abat forqe de la porcion ; et, si lour tenance soit en comune, il est resoun qe la moite soit perdu par defaute *ratione ut supra.—Moubray.* Tut tenent ils en severalte, le brief est meintenable vers les deux par un *Præcipe*, et la somons en la parcelle de lun est somons assetz bone vers lun et lautre, issint qe, tut soit la tenance une ou divers, ceo ne chaunge mie la lei.—WILBY. Vous ditetz talent, qar, si lour tenance soit several, la somons fait en la tenance de lun nest pas la somons fait en la tenance de lautre, ne la somons fait en lun tenance nest pas suffisaunt somons a la tenance lautre, issint [qe] quant [a] cele tenance le brief est bon, il ne serreit mie resoun dabatre le brief en tut par fesaunce de la lei de lun, pur ceo qe sur tel brief la somons pout estre divers, et unqore

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A.D. 1346. might be diverse, and yet the writ might be good. And this writ is not like another *Præcipe* in which the tenancy must be supposed to be in common, so that on that tenancy the summons can never be other than one, and so that when the summons is one, if one of the two tenants performs his law, the whole summons is falsified. But in this case it is not so, and therefore the COURT awards that the demandant who prosecutes her suit do recover a moiety of a moiety against her who has made default and failed to perform her law, and that she be in mercy with regard to the one who has performed her law.—But *quære* whether the law is the same on another writ of *Præcipe* as on this writ of *Præcipe* where the tenancy is supposed to be in common.

Annuity. (30.) § A writ of Annuity was brought against an alien Prior in respect of an annuity granted to the plaintiff by the defendant himself.[1]—*Pole.* Sir, we tell you that our Lord the King, heretofore seized all the possessions of the Priory into his hand by reason of the war which had arisen between the French and him, and afterwards by

[1] By the Prior's predecessor according to the record. *See p.* 297 note 2.

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le brief bon. Et ceo brief nest pas semblable a un autre *Præcipe* ou la tenance covient estre suppose en comune, issint qe sur cele tenance jammes ne pount la somons estre forqe une, issint quant la somons est un, si lun face sa lei, tote la somons si est faux. Mes en ceo cas il nest pas issint, par qai la COURT agarde qele qe suyt recovere la moite de la moite vers celuy qad fait defaute et failli de sa lei, et qele soit en la merci vers cel qad fait sa lei.—*Sed quære* sil soit mesme la lei en un autre brief de *Præcipe* comme en ceo brief la ou la tenance est suppose en comune. A.D. 1346.

(30.) [1]§ Brief Dannuyte fust porte vers un Priour alien dune annuite grante a lui par le defendant mesme.[2]—*Pole.* Sire, nous vous dioms qe nostre seignur le Roi autrefoith seisi touz les possessiouns de la Priorie en sa mayn par cause de la guerre entre eux de Fraunce et luy meu, et Annuyte. [Fitz., *Aide*, 2; *Annuite*, 34.]

[1] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 271. It there appears that the action was brought by John de Shulton, clerk, against William Prior of Kirkeby Monachorum (Monks' Kirby) in respect of arrears of an annuity (*annuo redditu*) of two marks.

[2] The count or declaration was, according to the record, "quod cum quidam Johannes "quondam Prior de Kirkeby "Monachorum, per nomen Jo- "hannis ecclesiæ de Kirkeby "Monachorum Prioris, prædе- "cessor istius Prioris, et ejus- "dem loci Conventus, ... "concessisset prædicto Johanni "quandam annuam pensionem "duarum marcarum de domo "sua de Kirkeby . . . . . "percipiendam ad totam vitam "ipsius Johannis quousque per "ipsos de beneficio ecclesiastico "de eorum patronatu eidem "Johanni fuisset provisum, de "quo quidem annuo redditu "idem Johannes fuit seisitus "per manus ipsius Willelmi "Prioris et prædecessorum "suorum a tempore concessionis "prædictæ usque ad tresdecim "annos ante diem impetrationis "brevis prædicti . . . . . "quod prædictus Willelmus "nūnc Prior prædictum annu- "um redditum substraxit. . . "Et profert hic quoddam "scriptum sub nomine prædic- "torum Johannis quondam "Prioris de Kirkeby et ejusdem "loci Conventus, quod prædic- "tum annuum redditum testa- "tur in forma prædicta, &c."

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puis par sa comissioun, qe cy est, graunta touz les possessiouns de la Priorie a ceste Priour, sauve les [fees et avowesons, rendant au Roi un certein par an, et nentendoms pas qe, saunz counceiller au Roi,][1] serroms mys a respoundre; et prioms eide del Roi.[2]—Et la comissioun voleit A.D. 1346.

[1] The words between brackets are omitted from I.

[2] The plea and aid-prayer were, according to the record, "quod cum dominus Rex nuper "omnes Prioratus, terras, tenementa, possessisones, et catalla "Religiosorum alienigenarum de "potestate Franciæ, ratione "guerræ inter ipsum et gallicos "motæ, in manum suam capi "fecisset, et custodiam Prioratus "de Kirkeby Monachorum ac "omnium terrarum et tene-"mentorum ad eum spectantium, "quæ inter cætera Prioratus, "terras, et tenementa prædicta "in manum suam capta fuerunt, "dilecto sibi in Christo Priori "de Kirkeby Monachorum com-"miserit habendam quamdiu "sibi placuerit pro quatervigінti "marcis sibi inde ad Festa "Sancti Michaelis et Paschæ "annuatim reddendis, ac post-"modum idem dominus Rex, "credens guerram illam ulterius "durare non debuisse, eadem "terras et tenementa, loca, ac "bona et catalla præfato Priori "restituerit, tenenda prout ea "tenuit ante captionem supra-"dictam, et quia domino Regi "et Concilio suo in ultimo Par-"liamento suo apud West-"monasterium convocato vide-"batur quod in restitutione "prædicta deceptus erat eo "quod guerra prædicta ad hoc "durat, et per tempora "longiora durare timetur, "terras, tenementa, loca, "ac bona et catalla præ-"dicta, de avisamento ejusdem "Concilii, in manum suam, oc-"casione guerræ prædictæ duxit "resumenda, idem dominus "Rex postmodum . . . . . "dilecto sibi in Christo Fratri "Willelmo de Sancto Clemente, "nunc Priori de Kirkeby "Monachorum, ad instantem "requisitionem suam, ne per "occupationem alterius, dum sic "in manu sua extiterint, dete-"riorentur, seu bona eorundem "dissipentur, et pro eo quod "invenit eidem domino Regi "Ricardum de Waltone, per-"sonam ecclesiæ de Rokeby "Coventrensis et Lychefeldensis "diœcesis, et Thomam filium "Willelmi de Sheltone de Comi-"tatu Warrewikiæ, quorum "uterque manucepit pro præ-"fato Priore de dictis quater-"viginti marcis, sicut ante "restitutionem prædictam red-"dere consuevit, et quindecim "marcis de incremento eidem "domino Regi, ad Scaccarium "suum, vel alibi ad mandatum "ipsius domini Regis, singulis "annis, ad Festa Paschæ et "Sancti Michaelis per æquales "portiones solvendis, quamdiu

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A.D. 1346. condition that the said Prior do pay all the charges which are due from the House." And for that reason judgment was demanded whether the Prior ought to have aid.—*Pole.* Although we are bound to pay the charges which are due from the House, for that cause at least we cannot plead

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" custodiam habuerit antedictam " commisit habenda, cum omnibus ad Prioratum, terras, et " tenementa prædicta spectantibus, quamdiu Prioratum, " terras, et tenementa prædicta " sic in manu sua contigerit " remanere, salvis eidem domino " Regi feodis militum, et advocationibus ecclesiarum ad " Prioratum, terras, et tenementa prædicta spectantibus " sive pertinentibus, Reddendo " inde domino Regi per annum " . . . . quaterviginti et quindecim marcas . . . . . Voluit " etiam dominus Rex, et præfato " Priori de gratia sua speciali " concessit quod ipse de decimis " et quintis decimis, lanis, et " omnibus aliis quotis domino " Regi per clerum aut communitatem regni sui a tempore " primæ captionis Prioratus " prædicti in manum suam concessis, vel exnunc concedendis, " seu eidem clero par dominum " summum Pontificem impositis " vel imponendis, ac etiam de " custodia terræ maritimæ, et de " præstationibus lanarum, et " aliis oneribus quibuscumque " terras, tenementa, et loca præ- " dicta contingentibus erga ipsum dominum Regen quietus " sit, et exoneratus, quamdiu " terræ, tenementa, et loca " prædicta in manu sua et in " custodia usa extiterint ex " causa supradicta, Ita quod " idem Prior de Prioratu terris, " et tenementis, locis, ac bonis " et catallis prædictis disponere, " et commodum suum facere " posset, prout melius et ad " majorem utilitatem suam sibi " viderit expedire, et quod omnia alia onera eisdem terris et " tenementis incumbentia facere " et sustentare teneatur, durante " custodia supradicta, Nolens " quod idem Prior ratione terrarum et tenementorum aut " locorum prædictorum quicquam ultra dictas quaterviginti et quindecim marcas, " prætextu aliquorum onerum " clero aut communitati præ- " dictis incumbentium domino " Regi solvat, seu solvere " teneatur, sed de omnibus " hujusmodi oneribus omnibus " sit quietus et penitus " exoneratus. Et profert hic " in Curia literas domini " Regis nunc patentes, quæ hoc " testantur. Et sic dicit quod " ipse tenet Prioratum prædictum ex dimissione domini Regis " in forma prædicta, et non " intendit quod ipse debet præ- " fato Johanni, domino Rege " inconsulto, inde respondere. " Et petit auxilium de ipso " domino Rege."

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en la fine *ita quod dictus Prior solvat* touz les charges qe sount diwes de la mesoun. Et par cele cause fust demande jugement sil dust eide aver.—*Pole.* Coment qe nous sumes tenuz a paier les charges qe sont diwes de la mesoun, par cele cause a meinz nous ne pooms pleder le A.D. 1346.

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A.D. 1346. whether that charge is due of right, or not, by reason of the weakness of our estate, without the King. And it is possible that the annuity was released to the King when the Priory was in his hand, and that release might extinguish that annuity ; therefore it is necessary that we should have aid in respect of that annuity.—Therefore in the end he had aid.

Prayer to be admitted: *Jurata utrum.*

(31.) § A *Jurata utrum* was sued against a tenant for term of life, who appeared by attorney, and said that the subject of the demand was his lay fee, and not the plaintiff's frankalmoign ; ready, &c., by the jury.—*Skipwith.* You have here one J., who tells you that the tenant holds for term of life, the reversion being to J., and the plea which the tenant pleads to the jury is a feigned plea made with the object of causing us to suffer disherison with regard to the reversion. Therefore J. prayed to be admitted to defend his right.—*Grene.* You ought not to be admitted, for the tenant has traversed our action, and that cannot be adjudged to be collusion, and therefore, &c. —*Skipwith.* You could not vouch, or pray aid ; and it is possible that we have the plaintiff's release, by which, if we were made a party to him, we should bar him ; and all this arose through your fault, and therefore it is right that we should be admitted.—*Grene.* The law does not put us to vouch you, because it is possible that you have nothing, and, even if you had anything, the law does not put us to do so, since we have clear matter to traverse the action. And, moreover, if we were to vouch, you might be in agreement with the demandant, and might

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quel cele charge soit de dreit diwe, ou nient, pur la feblesse de nostre estat, saunz le Roi. Et il est possible qe lannuite fust relesse al Roi quant la Priorie fust en sa mayn, quele relees poet esteindre cele annuite; par quei pur cele annuite il covent qe nous eioms leide.—Par quei a drein il avoit leide.[1] A.D. 1346.

Prior destre resceu[3]: Jure *dutrum*.[4] [Fitz., *Resceit*, 18.]

(31.) [2]§ Un Jure de *utrum* fust suy vers un tenant a terme de vie, qe vint par attourne, et dit qe ceo fust son lay fee, et ne mye le fraunk almoigne le pleintif; prest par la jure.—*Skip.* Vous avetz cy un J., qe vous dit qe le tenant tient a terme de vie, la reversion a luy, et le plee qil plede a la jure est feint plee pur nous desheriter de la reversion. Par quei il pria destre resceu a defendre son dreit.—*Grene.* Resceu ne devez estre, qar il ad traverse nostre accion, quele ne poet estre ajugge collusion, par quei, &c.—*Skip.* Vous ne purrietz voucher ou prier en eide; et possible est qe nous eioms relees le pleintif, par quel, si nous fuissoms fait partie a lui, nous luy forclorroms; et tut ceo vint de vostre defaute, par quei il est resoun qe nous soioms resceu.—*Grene.* Lei ne nous mette pas a vous voucher, qar il est possible qe vous navetz rienz, et, mesqe vous ussetz, lei ne nous mette a ceo faire, puis qe nous avoms matere clere de traverser accion. Et, ovesqe ceo,

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[1] Following the aid-prayer on the roll are the words, "Ideo "dies datus est eis hic a die "Sancti Martini in xv. dies "per Justiciarios, &c. Et in- "terim loquendum est cum "domino Rege."

After further adjournments the King sends his writ to the Justices to proceed, "per "quod dictum est prædicto "Priori quod respondeat, &c." Then the Prior pleads, "quod "ipse virtute scripti prædicti de "prædicto annuo redditu onerari "non debet, quia dicit quod "scriptum illud non est factum "prædicti Fratris Johannis, "quondam Prioris ecclesiæ de "Kirkeby Monachorum, et "ejusdem Loci Conventus." Issue was joined upon this, and the *Venire* awarded, but nothing further appears on the roll.

[2] From H. and I.

[3] The words Prior destre resceu are from H. alone.

[4] The words Jure *dutrum* are from I. alone.

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A.D. 1346. render our land to him, and that would be a greater danger of loss to us than traversing his action.—Therefore WILLOUGHBY barred him of the admission, and awarded the jury.—And with regard to the same matter a like judgment was given, on the same day, in a Formedon in which the tenant for term of life traversed the gift, &c.

Replevin. (32.) § One brought a Replevin against the Prior of Okebourne.[1]—*Skipwith.* We say that the Prior is co-monk of the Abbey of Bec Hellouin in Normandy. And *Skipwith* said that the plaintiff was the Abbot's villein as being regardant to his manor of Okebourne, which manor the King seized by reason of his war, and leased the same manor to this Prior at a certain rent *per annum*, and so the Prior is the King's farmer of the same manor, and the plaintiff is his villein by reason of the same manor, and the Prior is seised of the plaintiff as of his villein; judgment whether the plaintiff can maintain this writ against him.—*Huse.* Your plea is double: one that you are co-monk of such an Abbey, the other that we are a villein; therefore hold to one.—And *Skipwith* held to the exception of villenage.—*Huse.* You see plainly how he has alleged that he is a co-monk, who cannot have property in a villein; and as to his statement that we were the Abbot's villein, since the Abbot is not a party to the plea, nor the King either, to whom, according to what you say, we ought for the time to be attendant, we therefore do not understand that it lies in your mouth to allege such an exception.—*Sharshulle.* It is alleged that you are a villein, as regardant to the manor of Okebourne, of which the Prior is farmer to the King, and therefore that you are the Prior's villein for the time during which he continues to be farmer, and therefore, &c. If you abide judgment there we shall hold it to be not denied, in point

[1] The site of the Priory of Okebourne was near the village now known as Ogbourne St. George (Wilts).

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si nous vouchassoms, vous serretz del assent del demandant, et luy rendrez nostre terre, qe serra plus en perde de nous qe de traverser saccion.—Par quei WILBY. luy forjuggea de la resceite, et agarda la jure.—Et mesme la matere fut ajugge, mesme le jour, en Fourme de doun, ou le tenant a terme de vie traversa le doun, &c. A.D. 1346.

(32.)[1] § Un homme porta *Replegiari* vers le Priour de Okebourne.—*Skip.* Nous dioms qe le Priour est commoigne del Abbeye de Bekherlewyne en Normaundye. Et dit qe le pleintif fust le vilein Labbe come regardant a son maner de Okebourne, quel maner le Roi seisist par cause de sa guerre, et lessa mesme le maner a cest Priour, rendant un certein par an, issi est il fermer le Roi de mesme le maner, et le pleintif villein a luy par cause de mesme le maner, et il seisi de luy come de son villein ; jugement sil puisse cest brief vers luy meintenir.—*Huse.* Vostre plee est double : un qe vous estes commoigne dune tiele Abbeie, un autre qe nous sumes villeyn ; par quei tenetz vous al un.—Et il se tint al excepcion de villenage.—*Huse.* Vous veietz bien coment il ad allegge qil est commoigne, qe ne poet aver proprete de villein ; et a ceo qil parle qe nous fumes le villein Labbe[2], puis qe Labbe nest pas partie al plee, ne le Roi nent le plus, a quei par vostre dit nous deveroms pur le temps estre entendant, par quei nentendoms qe en vostre bouche gise de tiel excepcion allegger.—SCHARS. Il est allegge qe vous estes villein, come regardant al maner de O., de quel il est fermer al Roi, et par taunt vous estes son villein pur le temps qil demurt fermer, par quei, &c., Si vous demuretz la nous tendroms nent dedit en point de *Replegiari.* [Fitz., *Villenage*, 10]

[1] From H. and I.

[2] Labbe is omitted from I.

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A.D. 1346. of judgment, that you are a villein of the manor of which he is farmer.—And *Huse* did not dare to abide judgment. Therefore he said that the Prior had made an attorney against him as against a free man, and therefore could not be admitted to allege an exception of villenage. —SHARSHULLE. And will you abide judgment on that. —And *Huse* did not dare. Therefore he tendered the averment that the plaintiff was free and of free estate.— *Grene.* We cannot be a party to try that issue without the King, who granted us the manor to which these villein services are regardant, we paying to him a certain rent. And *Grene* made *profert* of the commission which witnessed the fact, and prayed aid of the King. —*Huse.* You ought not to have aid, because you have yourself alleged an exception of villenage; and, inasmuch as that is alleged by you, you have put yourself in such a condition that you can maintain it; therefore you shall not be admitted to have aid in order to maintain it.—WILLOUGHBY to *Huse.* *Modicæ fidei, quare dubitasti?* For I never saw that a bailiff would be allowed to allege that the plaintiff was the villein of his principal; and since you have allowed him to allege this exception, whereas he is only the King's bailiff, you have embarrassed yourself, for you might safely have abode judgment on the point that he ought not to have had advantage of that exception.—*Grene.* In some cases a bailiff will put the plaintiff to answer whether the plaintiff is his principal's villein or not: for, if a villein brings a writ of Trespass against me, I can say that he is the villein of my principal, whose bailiff I am, and that I seized the goods to the use of my principal, and I shall put him to answer to that, and then the issue will be taken as to whether he is free or villein. But we are now in a better position, because we are the King's farmer of the manor to which the plaintiff is regardant, and therefore we are farmer, and not bailiff, and consequently he is our villein for the time during which we are farmer. And, Sir, you have not now

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jugement qe vous estes villein del maner de quei il est fermer.—Et *Huse* nosa pas. Par quei il dit qe le Priour avoit fait attourne vers luy come vers fraunk, par quei dallegger excepcion de villenage il ne serra resceu.—Schars. Et la voletz demurer ?—Et *Huse* nosa pas. Par quei il tendi daverer qil fust fraunk et de fraunk estat. —*Grene.* A cele issue trier ne poms estre partie saunz le Roi, qe nous graunta le maner a quei ces villeins services sont regardantz, rendant a luy un certein. Et mist avant la commission qe le tesmoigna, et pria eide del Roi.—*Huse.* Eide ne devetz aver, qar vous avetz allegge lexcepcion de villenage mesmes ; et, par taunt qe ceo est allegge par vous, vous avetz fait tiele qe le poietz mayntenir ; par quei a aver eide del meintener ne serretz resceu.—Wilby. *a Huse. Modicæ fidei, quare dubitasti ?* Qar jeo ne vy unqes qe baillif avereit dallegger qe le pleintif fust le villein son mestre ; et puis qe vous lui avetz suffert dallegger ceste excepcion, la ou il nest mes le baillif le Roi, si avetz encombre vous mesmes, qar vous purrietz aver sauvement demure qil ne dust pas aver eu avantage de cele excepcion.—*Grene.* En asqun cas baillif mettra le pleintif de respoundre le quel il soit le villein son mestre ou nent : qar, si un villein porte brief de Trespas vers moy, jeo dirra qil est le villein mon mestre qi baillif jeo su, et jeo seisi les biens al oeps mon mestre, et lui mettra a respoundre a cele, et illeoqes se prendra issue le quel il soit fraunk on villein. Mes nous sumes a ore en meillour cas, qar nous sumes fermer le Roi del maner a quel il est regardant, et par taunt sumes fermer, et nent baillif, et *per consequens* il est pur le temps qe nous sumes fermer nostre villeyn. Et, Sire, le quel il soit issi ou nent navetz

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A.D. 1346. to give judgment whether it is so or not, because he has tendered the averment that he is free, to which issue as against us, who have no interest in him except a term by lease from the King, we cannot be a party without the King; therefore on this issue tendered you have to give judgment whether we shall have aid of the King or not, and there is no other answer.—And afterwards they came to terms without any decision having been given with regard to that aid-prayer, &c.

Waste: Nisi prius. (33.) § A *Nisi prius* was sued on a writ of Waste brought by the Earl of Hereford against the Countess of Hereford, and waste was found, as appears in last Easter Term. And now *Grene* said that the Court had no warrant to render judgment on this verdict, because, he said, it was proved by the roll that, when the *Venire facias* was awarded, the jurors were to have view *de tenementis vastatis*, and that clause is wanting in the *Venire facias*, and for that reason the *Venire facias* is not warranted by the roll, and therefore on that verdict so taken without warrant you ought not to proceed to judgment.—*Notton.* At any rate you will find that the roll is good enough, and you will find there in the record of *Nisi prius* that the jurors were asked whether they had had view, and they said that they had, and thereby it is proved that everything was well done.—*Grene.* Although they said that they had had view, if they did not have it by the King's command it is worthless. Now you are apprised by the *Venire facias*, which is there before you, that the Sheriff had no warrant for them to have view, because that clause was wanting in the writ; therefore, &c.—*Moubray.* Those words in the *Venire facias* "*et interim tenementa vastata videant*" are not of the substance of the writ, for it is not for a party to take exception to the swearing of the jurors because they have not had view, but it is for themselves to take exception with regard to that matter, and, since they admitted that they had had view, no wrong is done to

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pas dajugger, qar il ad tendu daverer qil est fraunk, a quel issue vers nous, qe avoms en luy mes terme de lees le Roi, ne poms estre partie saunz le Roi ; par quei sur ceste issue tendu averoms eide del Roi ou nent vous avetz dajugger, et autre respons nent.—Et puis ils furent acordetz saunz fine faire de cele eide prier, &c. A.D. 1346.

(33.) [1]§ Un *Nisi prius* fust suy en un brief de Wast par le Counte de Herford vers la Countesse, et wast trove, *ut patet termino Paschæ* darrein. Et ore *Grene* dit qe sur ceste verdit ils navoient garrant a rendre jugement, qar il dit qe par roulle est prove quant le *Venire facias* fust agarde qe les jurours ferront la vewe *de tenementis vastatis*, et cele clause faille en le *Venire facias*[1], et par taunt le *Venire facias* nent garranti de roulle, par quei sur ceste verdit issi pris saunz garrant ne devez aler a jugement.—*Nottone.* Au meyns vous troverez la qe le roulle est assetz [bon, et vous troverez la en le recorde del *Nisi prius* qe oppose fut del enqueste sils avoient fait la][5] vewe, et ils disoient, qe oil, et par taunt est prove qe tut fust bien fait.—*Grene.* Mesqils disoient qils ount fait la vewe, sils nel ussent fait par comaundement del Roi il ne vaudra pas. Ore estes vous apris par le *Venire facias*, qest la devant vous, qe le Vicounte navoit pas garrant de les faire la vewe, pur ceo qe cele clause failli en le brief ; par quei, &c.—*Moubray.* Cele parole en le *Venire facias* "*et interim tenementa vastata videant*" nest pas de la substaunce, qar il naffiert pas a partie a chalenger qils ne deivent jurer pur ceo qils nount pas fait la vewe, [mes est a eux mesmes de cele chose chalenger, et, puis qils graunterent qils avoient fait la vewe][5], tort nest Wast :[2] *Nisi prius.*[3]

[1] From H. and I., until otherwise stated. The report is in continuation of Y.B., Easter 20 Edw. III. No. 65 (pp. 402-413.)

[2] Wast is from H. alone.

[3] The words *Nisi prius* are from I. alone.

[4] The words en le *Venire facias* are omitted from I.

[5] The words between brackets are omitted from I.

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A.D. 1346. the party, since he could not have been heard to say anything by way of such an exception.—*Blaykeston, ad idem.* If the *Venire facias* had mentioned that the jurors were to have view, and the Sheriff had not commanded them to do so, but had returned that writ, then if afterwards the party sued a *Habeas corpora*, or *Distringas juratores*, and then the Sheriff by virtue of that writ caused them to have view although he had not then a warrant by that writ to do so, it would be sufficient if the jurors would acknowledge before the Justices that they had had view; therefore it seems that, whether the Sheriff had warrant by the *Venire facias* or not, since he had warrant by the roll, and that was acknowledged by the jury, it is sufficient.—WILLOUGHBY. It is the fact that though a Sheriff does not take view upon the writ which gives him warrant to do so, but takes it after the writ has been returned, it is good enough, for he had warrant to do so, and there is no time limited in the writ within which he ought to do it; therefore at whatever time he does so it is good enough. But in this case he had no warrant to cause the jurors to have view; and since execution will be in accordance with their view, it is necessary that they should have view by the King's command of the tenements which will so be put in execution; therefore it seems necessary to begin with a new *Venire facias* where the defendant was at the beginning.—And a new *Venire facias* was awarded, &c.

Waste. § The Earl of Hereford brought a writ of Waste against the Countess of Hereford, as appears above, in which the Countess pleaded No Waste committed. And the Earl had assigned waste in houses, and in woods, and in land. And the inquest was taken by *Nisi prius* in the country before SIR RICHARD DE KELLESHULLE. And it was found by the inquest, with regard to the houses, that there was one house burnt through want of care on the part of the Countess's servants, and that the Countess had built anew a better house on the spot, but of timber from a wood in

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pas fait a partie, puisqe par celle chalenge il ne poait a ceo dire estre escote.—*Blaik, ad idem.*[1] Si le *Venire facias* ust fait mencion qe les jurours ussent fait la vewe, et le Vicounte ne les ust pas comaunde de cele faire, mes retourne cel brief, si apres la partie siwast le *Habeas corpora*, ou *Distringas juratores*, et adonqes par cel brief le Vicounte les face de faire la vewe, mes qil neit pas garrant a ore par cel brief del faire, il suffit sils voillent conustre devant Justices qils lount fait; par quei il semble qe le quel qil avoit garrant par le *Venire facias* on nent, puis qe par roulle il avoit garrant, et ceo fust conu del enqueste, qe ceo suffit.—WILBY. Il est issi qe mesqe Vicounte ne fait pas la vewe par le brief qe luy doune garrant a ceo faire, mes le fait apres le brief retourne qil est assetz bon, qar garrant avoit il a ceo faire, et par le brief temps nest pas limite dedeinz quel il le deit faire; par quei a quel temps qil face il est assetz bone. Mes en ceo cas il navoit pas garrant a faire les jurours aver la vewe; et, puis qe par lour vewe il serra mys en execucion, il covent qe de tenementz queux issi serrount faitz en execucion qils duissent par comaundement le Roi la vewe aver; par quei il semble qil covient qe homme comence a un novel *Venire facias* la ou le defendant fut a comencement.—Et novel *Venire facias* fust agarde, &c. A.D. 1346.

§ Le [2]Count de Hereforde porta brief de Wast vers la Countesse de Hereforde, *ut patet supra*, ou la Countesse pleda nulle wast fet. Et avoit assigne le wast en mesouns, et boys, et en terre. Et lenqueste fuit pris par le *Nisi prius* en pays devant SIRE RICHARD DE KELL. Et trove fuit par enqueste qen dreit des mesouns qil avoit une mesoun ars par defaut de garde par les servantes la Countesse, et qe la Countesse si avoit fet une meillour mesoun Wast.

[1] The words *ad idem* are omitted from I.

[2] This report of the case is from C. alone.

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A.D. 1346. which the Earl had assigned the waste as having been committed. And it was not enquired how many trees were taken for the building of the house, nor what was their value. And it was found that she had committed waste elsewhere in the wood in divers places. And the verdict was returned into the Common Bench, and on that day they inspected the record and the *Venire facias*, and they found that in the *Venire facias* there were not the words "*et interim tenementa vastata videant*," but that clause was omitted from the writ.—STONORE. We cannot give judgment on that verdict, for the jurors had no warrant to have view by the *Venire facias*.

Nisi prius: Prayer to be admitted.

(34.) § There was a *Nisi prius* in the country, where a husband and his wife put themselves upon a jury. When the jury came back to state their verdict the husband departed in contempt of the Court, and the wife prayed to be admitted. And the Justice took the verdict, and it was in favour of the demandant. And now in the Common Bench the wife prayed to be admitted to defend her right. And the prayer was counterpleaded on the ground that judgment had to be rendered on verdict and not on the default; and, moreover, the husband was not liable to be called when the jury returned; and therefore the Court had no power to record a default against him when he was not liable to be called. But it was said by the COURT that if the demandant would, for his own advantage, pray, in such a case, that the tenant should be called, then on the demandant's compulsion he will be called so that the demandant may have seisin if the tenant departs; but, if the demandant does not pray this, and the Court does it *ex officio*, it is without warrant; therefore on the verdict which had passed for the demandant, on which he prayed judgment, judgment was given that the demandant should recover, and the wife was ousted from admission, &c.

Nos. 33, 34.

de novelle la, mes de meryn de boys en quel le Count avoit assigne le wast estre fet. Et ne fuit mie enquis come bien des arbres furent pris pur la fesaunce de la mesoun, ne la prise. Et trove fuit qele avoit fet wast par aillours en le boys en divers lieux. Et le verdit fuit retourne en Baunc, a quel jour ils regarderunt le recorde et [le] *Venire facias*, et troverent qen le *Venire facias* il ne fuit mye *et interim tenementa vastata videant*, einz cele clause fuit entrelesse en le brief.—Ston. Nous ne poms mye doner jugement sur cel verdit, qar ceux del enquest navoint mye garraunt de faire la view par le *Venire facias*.[1] A.D. 1346.

(34.) [2]§ Un *Nisi prius* en pays, la ou le baron et sa femme se mistrent en enqueste. Quant lenqueste revynt a dyre lour verdit le baroun se departi en despit de la Court, et la femme pria destre resceu. [Et la Justice prist le verdit, et chaunta pur le demandant. Et ore en Baunk la femme pria destre resceu][5] a defendre son dreit. Et countreplede par taunt qe jugement est a rendre sur verdit et ne mye sur la defaute ; et, ovesqe ceo, le baron ne fust pas demandable quant lenqueste revynt ; par quei Court navoit pas poaire a recorder un defaute sur luy la ou il ne fust pas demandable. Mes fust dit par la Court qe si le demandant vousist prier, en avantage de lui mesme, qe le tenant en tiel cas fust demande qe a son chace il serra pur aver seisine sil soi departe, mes, si le demandant nel prie pas, mes la Court doffice le fait, cest sauńz garrant ; par quei sur le verdit qest passe pur le demandant, sur quel il prie jugement, fust agarde qe le demandant recoverast, et la femme ouste de la resceite, &c. *Nisi prius* :[3] Prier destre resceu.[4] [Fitz., *Resceit*, 19.]

[1] From this point the MS. is illegible on the whole of the right-hand side of the folio, and it has been thought that no good purpose would be served by printing the words which can be read, with spaces between them, as the other report of the case is complete in itself.

[2] From H. and I.

[3] The words *Nisi prius* are from I. alone.

[4] The words Prier destre resceu are from H. alone.

[5] The words between brackets are omitted from I.

Nos. 35, 36.

A.D. 1346. Attaint.

(35.) § An Attaint was sued against Cecilia de Pomfret, and after appearance the demandant was nonsuited; therefore judgment was given that he should be taken, &c.

Attaint.

§ Note that William atte Pole brought a writ of Attaint at Lincoln, and was afterwards nonsuited. And he had never appeared in Court, and was nonsuited. And judgment was given that he should be taken. And this was extraordinary. But it was said that if any one sues in the name of a person who is unaware of the fact, that person will have a writ of Deceit.

Attaint.

§ Note that a man brought a writ of Attaint against Cecilia de Pomfret and others. And he was nonsuited before appearance, and was only amerced. And at the Assises at Lincoln judgment was given that he should be taken, because, if any other person had sued in his name, he had his suit against that person by writ of Deceit.—Observe, and *quære*.

Capias directed to the Bishop of Durham.

(36.) § A man was outlawed on a writ of Trespass in the County of York, and afterwards the plaintiff showed that the defendant was dwelling in the Bishopric of Durham, and prayed a writ to the Bishop to take his body, and to answer to the King as to all his goods and chattels.—*Blaykeston*. You cannot have it, because the Bishop is King within his liberty, with the right to have all the chattels of felons, and he ought not by law to obey any commands from this Court.—*Willoughby*. You say what is contrary to law: for if a man is vouched in this Court and is to be summoned within the liberty, we shall send a writ to the Bishop directing him to make the summons; but, if he has the franchise of having the chattels of those who are outlawed outside his franchise, he must claim that in his answer to the writ, and then we shall allow him that which is right.—Therefore the writ was granted.

Nos. 35, 36.

(35.) [1]§ Une Atteinte fust suy vers Cecille de Pountfreit, et apres apparaunce le demandant fust nounsuy ; par quei fust agarde qil tust pris, &c. A.D. 1346. Atteinte. [Fitz., *Atteint*, 43 ?]

§ *Nota* [2]qe William atte Pole porta un brief Datteint a Nicholle, et puis fuite nounsuy. Et il navoit unqes apparu en Court, et fuit nounsuy. Et fuit agarde qil fut pris. *Quod mirum fuit.* Mes fuit dit qe si nulle suyt en soun noun, luy noun sachant, qil avereit brief de Desceit. Atteint.

§ *Nota* [3]qun homme porta brief Datteint vers Cecile de Poumfreit et autres. Et fuit nounsuy avant apparaunce, et ne fuit forqe amercie. Et a les Assises a Nicol fuit agarde qil serreit pris, pur ceo qe, si nulle autre suyt en soun noun, il avoit sa suite devers ly par brief de Desceite.—*Vide, et quære.* Atteint.

(36.) [4]§ Un homme fust utlage en un brief de Trespas en le counte Deverwyke, et apres le pleintif moustra coment le defendant fust demuraunt en Levesche de Durham, et pria brief al Evesqe a prendre son corps, et a respondre al Roy de ses biens et ses chateux.—*Blaik.* Vous nel averetz pas, qar Levesqe est Roi deinz sa fraunchise a aver touz les chateux des felouns, et ne deit pur ley soi obeiere as nulles maundementz de ceste place.—Wilby. Vous dites encountre lei : qar si un homme soit vouche en ceste Court qe serra somons deinz la fraunchise, nous maunderoms brief al Evesqe de faire la somons ; mes, sil eyt tiele fraunchise a aver les chateux deux qe sont utlages hors de sa fraunchise, il covent qil cleyme cele en son respons del brief, et adonqes nous luy alloweroms ceo qe resoun est.—Par quei le brief fust grante. *Capias* al Evesqe de Durham.[5] [Fitz., *Proces*, 1.]

[1] From H. and I. until otherwise stated.

[2] This second report of the case is from L. and C.

[3] This third report of the case is from L. alone.

[4] From H. and I.

[5] The words de Durham are from H. alone.

No. 37.

A.D. 1346. Wardship.

(37.) § The Prince of Wales brought a writ of Wardship against two persons, and demanded the wardship of the land and of the heir of one J.[1] One of the two disclaimed the wardship, and the other took the tenancy upon himself, and vouched the one who disclaimed.—*Thorpe.* You shall not be admitted to such a voucher, for we say that this same person whom you vouch held the same wardship in common with you, and so held it on the day on which the writ was purchased, and therefore you shall not be admitted to vouch him.—*Skipwith.* Then we tell you, on behalf of the two, that the infant's ancestor held the same land of the person who has previously disclaimed by knight service, *absque hoc* that he held the same land of the Prince.—*Thorpe.* You shall not be admitted to give that answer for the two, for when one of them, by reason of the disclaimer of the other, took the tenancy upon himself, and vouched, he made himself alone in a position to defend the right to the same wardship; therefore you shall not be admitted to join in the defence another who disclaimed.—*Skipwith.* You have given me that advantage by your own replication, because, when I wished to answer for the one alone, you tendered the averment that they held in common, with the object that I should not be able to answer for him alone, and therefore by your own compulsion the law gives me an answer for the two.—*Thorpe.* When one had disclaimed, and the other vouched him, we tendered the averment that they held in common, but that averment was not tendered with the object of giving you an answer in common, but with the object of ousting you from your voucher to him who had possession with you in common, on account of the delay which would arise from it; therefore an answer for him who has so

[1] For the names *see* p. 317 note 1.

No. 37.

A.D. 1346. Garde [Fitz., *Counterple de Vouch*: 76.]

(37.) [1]§ Le Prince de Gales porta un brief de Garde vers ij, et demanda la garde de la terre et del heir un J. Lun de les ij desclama en la garde, et lautre enprist la tenance, et voucha celuy qe desclama.—*Thorpe.* A tiel voucher ne serrez resceu, qar nous dioms qe mesme celuy qe vous vouchez tint mesme la garde en comune od vous, et tint jour de brief purchace, par quei a luy voucher ne serrez resceu.—*Skip.* Donqes vous dioms, pur les ij, qe launcestre lenfaunt tint mesme la terre de celuy qe avoit avant desclame par service de chivlaer, saunz ceo qil tint mesme la terre del Prince.—*Thorpe.* A doner cel respons pur les ij ne serretz resceu, qar quant lun par le desclamance lautre enprist la tenance, et voucha, il se fist soul tiel qe dust mesme la garde defendre ; par quei a joindre la defence en autre qe en cele qe desclama ne serrez resceu.—*Skip.* Cel avantage mavetz done par vostre replicacion demene, qar, quant jeo vodereie pur lun soul aver respondu, vous tendistes daverer qils tindrent en comune, al entente qe ne purroi pur lui soul respondre, par quei par vostre chacer demene lei doune respons pur les ij.—*Thorpe.* Quant lun avoit desclame, et lautre luy voucha, nous tendimes daverer qils tindrent en comune, quel averement ne fust pas livre a tiel entente de vous doner respons en comune, mes fust de vous ouster de vostre voucher vers lui qavoit la possessioun od vous en comune, pur la delay qe de ceo navendra ; par quei respons pur luy qad issi desclame et

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[1] From H. and I., but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 311. It there appears that the action was brought by Edward, Prince of Wales, Duke of Cornwall, and Earl of Chester, against Margaret, late wife of Peter de Dounedale, and William de Fororiis of Churston, "quod "reddant ei Johannem filium "Johannis le Jen, consanguin-"eum et heredem Rogeri le Jen "militis, cujus custodia ad "ipsum Principem pertinet eo "quod prædictus Rogerus ter-"ram suam de præfato Principe "tenuit per servitium militare, "&c."

The declaration is to the same effect in greater detail, and the wardship of the land is nowhere claimed, but only that of the heir.

No. 37.

A.D. 1346. disclaimed, and who did not then wish to answer, shall not be heard.—*Skipwith.* If you bar us from an answer in common by reason of the disclaimer, and from an answer for one alone in averring that we hold in common, we shall be concluded without answer, and that is contrary to law. —And in the end the issue was admitted that he held of the Prince, &c.

No. 37.

qe navoit pas volu a repondre adonqes ne serra pas escote. —*Skip.* Si vous nous forclorretz dun respons en comune pur la desclamance, et dun respons pur lun soul pur averer qe nous tenoms en comune, nous serroms conclus saunz respons, quele chose est encountre ley; par quei, &c.— Et a drein lissue fust resceu qil tint del Prince, &c.[1] A.D. 1346.

[1] According to the record the plea, which immediately follows the declaration, was "Margareta et Willelmus . . "dicunt quod quidam Rogerus "le Jen, avus prædicti heredis, "tenuit medietatem manerii "prædicti [Trevysquyt, Corn-"wall] de quodam Joceo de "Dynham, quondam viro ipsius "Margaretæ, et inde obiit "seisitus, post cujus mortem "Dominus Edwardus Rex, avus "domini Regis nunc, seisivit in "manum suam omnia terras "tenementa et advocationes "quæ fuerunt prædicti Jocei "tempore mortis suæ. Et post-"modum servitia præfati Rogeri, "inter alia tenementa, assignati "fuerunt ipsi Margaretæ in "Cancellaria ejusdem, Regis avi, "&c., tenenda nomine dotis, &c., "virtute cujus assignationis præ-"dictus Rogerus se inde attor-"navit eidem Margaretæ, &c., "et sic dicunt quod idem Rogerus "tenuit de ipsa Margareta media-"tatem illam manerii prædicti "die quo obiit, et non de præ-"fato Principe. Et hoc parati "sunt verificare, unde petunt "judicium, &c."

The replication on behalf of the Prince, on which issue was joined, was, according to the record, "quod prædictus Rogerus "tenuit de eo medietatem "manerii prædicti per servitium "militare die quo obiit, prout "ipse in narratione sua sup-"ponit."

At *Nisi prius*, when the jurors came, "eadem Margar-"eta calumniat arraiamentum "panelli, dicit enim quod Thomas "atte Fenne, Vicecomes Cor-"nubiæ, per quem panellum "arraiatum et Curiæ retorna-"tum fuit, est deputatus et "ordinatus ad officium Vice-"comitis per ipsum Principem, "et gerit robas ipsius Principis, "qui quidem Vicecomes ar-"raiavit panellum prædictum "ad denominationem Johannis "Monerou, Henrici de Tret-"hewy et Johannis Daberoun, "qui sunt de consilio prædicti "Principis, quæ quidem calum-"nia per triatores ad hoc electos "comperta est vera.

"Ideo prædictum panellum "omnino deleatur. Et man-"datum est Coronatoribus "Comitatus prædicti quod venire "faciant hic, in Octabis Sancti "Hillarii, xij, &c., per quos, "&c., et qui nec, &c., ad recog-"noscendum in forma prædicta, "quia tam, &c."

And so the entry on the roll ends.

No. 38.

A.D. 1346. Dower.

(38.) § A writ of Dower was brought in respect of tenements in P.—*Skipwith* said that all the tenements within the Hundred of S., except the fee of R., are Ancient Demesne, and said that the tenements in demand were within the same Hundred, and without that fee, and so the tenancy was ancient demesne, and, said he, we do not understand that you will hold that plea in this Court in respect of a tenancy of such a nature.—WILLOUGHBY. Every tenancy which is ancient demesne must be regardant to some manor, and it will be of record in Domesday that the manor is ancient demesne; therefore, unless you show how this is parcel of some manor, this is otherwise no plea.—*Skipwith.* Sir, if I would say that the land was ancient demesne, without anything more, it would be sufficient, therefore, &c.—WILLOUGHBY. It would not be sufficient; therefore see whether you will say anything else.—*Skipwith.* Then, Sir, we tell you that the whole vill of P., in which the writ is brought, is ancient demesne, except the fee of R., and we tell you that the land demanded is without that fee, and so, as before, that it is ancient demesne; therefore, &c.—*Richemunde.* Again, as before, since he does not allege that this tenancy is parcel of any manor, judgment whether, &c.—WILLOUGHBY. As to that he has said to you what is sufficient, for it avails as much to say that the tenements are in such a vill, which is ancient demesne, as to say that they are parcel of such a manor which is ancient demesne; therefore answer.—*Richemunde.* Then we tell you that the vill is not ancient demesne; ready, &c., by record.—*Skipwith.* We have tendered the averment that the land demanded is ancient demesne, and to that you do not answer; judgment.—WILLOUGHBY. Do you wish to have an averment in general terms on a matter which falls to be proved by record? No, certainly you will not have it.—*Skipwith.* Sir, we have said that the Hundred of S. is ancient demesne, except the fee of R., and that the vill in which the demand is made is within the Hundred

No. 38.

A.D. 1346. Dowere. [Fitz., *Auncien Demene*, 25.]

(38.) [1]§ Un brief de Dowere fust porte des tenementz en P.—*Skip.* dit qe touz les tenementz deinz Lundrede[2] de S., sauf le fee de R., est aunciene demene, et dit qe ceux tenementz sont deinz mesme[3] Lundrede,[2] et hors de cel fee, et issi la tenance est aunciene demene, et nentendoms pas qe de tiele nature de tenance ceinz voilletz ceo plee tenir.—Wilby. Chesqun tenance qe est aunciene demene covent estre regardant a asqun maner quel en Domesday serra de recorde qe est aunciene demene; par quei si vous ne moustrez coment ceo est parcele dasqun maner autrement ceo nest pas plee.—*Skip.* Sire, si jeo[4] vousisse dire qe la terre fust aunciene demene, saunz plus, il serra assetz; par quei, &c.—Wilby. Noun serra; par quei veietz si vous voletz autre chose dire.—*Skip.* Sire, donqes vous dioms qe tote la ville de P., en quele le brief est porte, est aunciene demene, [sauf le fee de R., et vous dioms qe la terre demande est hors de cel fee, et issi, come avant, est ceo aunciene demene]; [5] parquei, &c.—*Rich.* Unqore, come avant, puis qil nallegge pas qe cele tenance soit parcele dasqun maner, jugement si, &c.—Wilby. A ceo il vous ad dit assetz, qar a taunt vaut il a dire qe les tenementz sont en tiele ville, la quele est aunciene demene, come a dire qils sont de tiel maner qe est aunciene demene; par quei responez.—*Rich.* Donqes vous dioms qe la ville nest pas aunciene demene; prest &c. par recorde.—*Skip.* Nous avoms tendu daverer qe la terre demande est aunciene demene, et a cele vous ne responez pas; jugement. —Wilby. Voletz vous aver un averement sur chose qe chiet destre prove par recorde? Nay, certes noun averetz. —*Skip.* Sire,[6] nous avoms dit qe Lundrede de S. est aunciene demene, sauve le fee de R., et qe la ville ou la demande est fait est deinz Lundrede, et hors del fee, quel

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[1] From H. and I.
[2] I., le hundred.
[3] mesme is omitted from I.
[4] jeo is omitted from I.
[5] The words between brackets are omitted from I.
[6] Sire is omitted from I.

Nos. 38, 39.

A.D. 1346. and without the fee, and that we will aver as to the Hundred, if he will deny it; therefore you shall not be admitted to take issue that the vill is not ancient demesne since you do not deny that the Hundred is ancient demesne.—*Richemunde.* You shall not be admitted to say that the Hundred is ancient demesne, for heretofore you said so, and, because you could not allege that the tenancy was ancient demesne without representing it to be parcel of some manor in the vill, you were discharged as to that; you, therefore, then said that the whole vill was ancient demesne, the contrary of which we have offered to aver by record; therefore, &c.—WILLOUGHBY. He said at the beginning, and still does, that the Hundred is ancient demesne, and that the vill is within the Hundred, and therefore you shall not have an issue on the vill without replying as to the Hundred; therefore answer.—And so WILLOUGHBY acted contrary to the ruling which he previously gave to the party.—*Richemunde.* The Hundred is not ancient demesne; ready, &c., by record.—*Skipwith.* As to that we will imparl. And as to one tenant he said that she ought not to have dower because, he said, the demandant's husband assigned this third part to his mother to hold in the name of dower in respect of an earlier endowment completed; and we tell you (said *Skipwith*) that the mother survived your husband; judgment whether you ought to have dower of that third part.—*Richemunde.* We do not confess the assignment, but we say that our husband was seised in his demesne as of fee, and died seised of such an estate; ready, &c.—*Skipwith.* You shall not be admitted to that without showing how he became seised.—And the averment was taken by compulsion of the Court, without showing how the husband became seised.—And this was extraordinary, &c.

Contempt. (39.) § Richard Freiselle sued, for our Lord the King and for himself, a writ of Contempt against the Bishop of Norwich[1] for that the Bishop had made divers citations

[1] *See* p. 323, note 1.

Nos. 38, 39.

Hundrede, sil voudra dedire, nous voloms averer ; par quei a prendre issue qe la ville nest pas aunciene demene, puis qe vous ne dedites pas qe Lundrede nest aunciene demene, ne serrez resceu.—*Rich.* A dire qe Lundrede est aunciene demene ne serretz resceu, qar avant ces houres vous le deistes, et pur ceo qe vous ne purrietz allegger qe tenance fust aunciene demene saunz le doner parcele a asqun maner en ville si fustes descharge de cele ; par quei adonqes vous deistes qe tote la ville fust aunciene demene, le contrare de quel nous avoms tendu daverer par record ; par quei, &c.—WILBY. Il dit a comencement, et unquore fait, qe Lundrede est aunciene demene, et qe la ville est deinz Lundrede, par quei vous naveretz issue sur la ville saunz replier al Hundrede ; par quei responez.—Et issi fist WILBY. le contrare de ceo qil reula a la partie avant.—*Rich.* Lundrede nest pas aunciene demene ; prest, &c., par recorde.—*Skip.* Quant a ceo nous voloms enparler. Et quant a un tenant il dit qe ele ne dust dowere aver, qar il dit qe le baron le demandant assigna ceste terce partie a sa mere a tener en noun de dowere dun dowerie de plus haut deservy ; et vous dioms qe la mere survesqi vostre baron ; jugement si de cele terce partie devetz dowere aver.—*Rich.* Nous ne conissoms pas lassignement, mes nous dioms qe nostre baron fust seisi en son demene come de fee, et de tiel estat murust seisi ; prest, &c. —*Skip.* A ceo navendretz pas saunz moustrer coment il avynt.—Et par chace de COURT laverement pris saunz moustrer coment le baron avynt.—*Et hoc mirum*, &c. A.D. 1346.

(39.) § [1]Richard Frisel suist, pur nostre seignur le Roi et pur luy, un brief de Contempte vers Levesqe de Norwiz de ceo qe Levesqe avoit fait divers citacions et somons Contempte.

[1] From H. and I. In a record, *Placita de Banco*, Mich. 20 Edw. III. R°. 472, it appears that an action was brought on behalf as well of the King as of Richard Freisello against John, Prior of Kersey, Commissary of the Bishop of Norwich. Towards the end of the report, however (p. 332), the Prior's case is

No. 39.

A.D. 1346. and summonses to the Abbot of Bury St. Edmund's, who is exempt from every jurisdiction of the Ordinary by virtue of the charters of the King's progenitors, and of the deeds of the Pope, and who was before the King to show his charters and muniments by virtue of which he claimed to be exempt. Thereupon the King sent, by Richard Freiselle his Prohibition to the Bishop forbidding him to attempt anything further against the Abbot's right in the matter above-mentioned. The said Richard delivered that Prohibition to him on a certain day, in a certain year, and at a certain place, by reason of which delivery the Bishop made process against the said Richard until he had excommunicated him tortiously, and in despite of the King's commands, and in contempt of the King, and to the damage of the said Richard to the amount of 1,000*l.*, &c.— *Moubray.* Sir, we tell you that this Richard is excommunicated, and see here the letter of the Archbishop of Canterbury, which testifies the fact; judgment whether, &c.

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mentioned as being another *in pari materia.* The Prior's case seems nevertheless to be the only one of the kind among the Common Bench records of Michaelmas Term. In the similar case (No. 27) in Easter Term next preceding, judgment was given against two other Commissaries of the same Bishop for the same cause (*p.* 225, note 3), but execution was stayed until Michaelmas Term (note 4). Mention is also made in the roll of Easter Term (written up with later proceedings, as is common) of the judgment against the Prior of Kersey. Finally in a writ dated the 16th of April in the 21st year of the reign under the privy seal, which occurs in the records of both terms, and relates to both cases, there is a direction to the Justices of the Common Bench to cause to be executed immediately the judgment given against "William, Bishop of Norwich and his Commissaries." In both cases, therefore, the proceedings were regarded as being practically against the Bishop of Norwich. The report in this Michaelmas Term must then be either a second report of that which is found in Easter Term, or a report of the case of the Prior of Kersey. The point is of no great importance, as the pleadings are nearly the same in both cases, but the record of Michaelmas Term has been used for comparison with the report of the same term.

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al Abbe de Seynt Edmund, qest exempte de chesqun jurisdiccion Ordiner par les chartres des progenitours le Roi, et par faitz del Appostoille, quel fust devant luy a moustrer ses chartres et munimentz par queux il se clama estre exempte, od le Roi maunda par Richard Frisel sa prohibicion al Evesqe qil mesme mes ne temptat [contre] son dreit en la matere susdit, quele prohibicion le dit Richard luy livra certein jour, an, et lieu, par cause de quel livre il fist taunt de proces vers le dit Richard qil luy escomengea a tort et en despit des maundementz le Roi[1], et en contempte del Roi, et as damages de dit Richard de $\frac{L}{M.}$ livres, &c.[2]—*Moubray.* Sire, nous vous dioms qe cest Richard est escomenge, et veietz cy la lettre Lercevesqe de Canterbirs, qe le tesmoigne; jugement si &c. A.D. 1346.

[1] The words le Roi are omitted from H.

[2] The declaration is in the record (*mutatis mutandis, i.e.*, substituting the Prior of Kersey for the other Commissaries) the same as in the case No. 27 of the previous Easter Term.

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A.D. 1346. —And the latter purported that the Archbishop had found in the Acts of the Court of Arches that Richard was excommunicated for divers causes, and as such the Archbishop held him.—*Grene.* Sir, you see plainly how this suit is taken by reason of an excommunication pronounced upon Richard, and that by the Bishop, and the Archbishop's letter does not testify that the excommunication which he found in the Acts in the Court of Arches was for any other reason than that in respect of which our action is taken, and therefore it cannot be understood to be anything but the same excommunication in respect of which the action is taken. And, moreover, this suit is taken for the King and for Richard, and therefore in this case a letter of excommunication pronounced on Richard will not bar the suit which the King has taken.—*Skipwith.* It is not so: for, if Richard would be nonsuited, we

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—Et la lettre voleit qe Lercevesqe avoit trove en les actes de les Arches qe Richard fust escomenge pur divers enchesouns, et pur tiel il le tint.[1]—*Grene.* Sire, vous veietz bien coment ceste sute est pris par cause dun escomengement pronuncie en Richard, et ceo par Levesqe, et la lettre Lercevesqe ne tesmoigne pas qe lescomengement quel il trova en les actes en les Arches fust par autre cause qe cele de quei nostre accion est pris, par quei homme ne le poet entendre mes qe ceo soit mesme lescomengement de quei laccion est pris. Et, ovesqe ceo, ceste sute est pris pur le Roi et pur Richard, par quei en ceo cas lettre descomengement en Richard ne forclorra pas la sute qe le Roi ad pris.[2]—*Skip.* Il nest pas issi : qar, si Richard vousist A.D. 1346.

[1] The plea is in the record, *mutatis mutandis*, the same as in the case No. 27 of Easter Term, except that the letters patent of the Bishop of Norwich are omitted, and *profert* is made only of the letters patent of the Archbishop of Canterbury as to Freiselle's excommunication.

[2] The replication was, according to the record, "quod dominus "Rex et ipse Ricardus prose- "quuntur istam actionem causa "excommunicationis in ipsum "Ricardum pronunciatæ ratione "liberationis brevium domini "Regis prædictorum præfato "Episcopo Norwicensi, quo qui- "dem actio tangit jus coronæ et "dignitatis domini Regis, et "quam actionem idem dominus "Rex et præfatus Ricardus in "aliqua Curia nisi in Curia ip- "sius domini Regis de jure et "per legem terræ prosequi non "possunt nec debent, et in præ- "dictis literis excommunica- "tionis hic in Curia per præ- "fatum Johannem Priorem pro- "latis non inseritur aliqua causa "expressa per quam Curiæ hic "liquere possit ipsum Ricardum "excommunicatum esse aliqua "alia causa quam causa libera- "tionis brevium domini Regis "prædictorum præfato Epis- "copo Norwycensi, quæ causa "excommunicationis est origo "actionis domini Regis et præ- "dicti Ricardi. Et sic dicit quod "plus intelligibile est quod ista "excommunicatio nunc in Curia "hic versus præfatum Ricardum "allegata sit eadem excom- "municatio de qua dominus "Rex et prædictus Ricardus "nunc prosequuntur istam ac- "tionem quam alia excom- "municatio, desicut in præ- "dictis literis hic in Curia pro- "latis non inseritur quod idem "Ricardus excommunicatus fuit "aliqua alia causa quam causa "liberationis brevium prædic- "torum, unde petit judicium si "idem Ricardus virtute liter- "arum prædictarum ab actione "repelli debeat, et petit quod "prædictus Prior respondeat, "&c."

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A.D. 1346. should depart quit of the King with regard to this suit, until the King had been apprised by indictment, and consequently an excommunication pronounced on Richard tolls suit for the King as much as for himself. And, as to your statement that he will be understood to be excommunicated for the same cause as that for which your action is taken because no other cause is shown, it seems that it cannot be so understood, for the letter purports that it was found in the Court of Arches that it was for divers causes that he was excommunicated, and therefore it cannot be understood that it was for the cause mentioned in his action; and whether it was for the same cause or not, you cannot adjudge it to be so, since it is not mentioned in the letter.—*Thorpe.* You say that which you would like to be the fact; for since our action is taken on an excommunication, and you produce a letter of the Archbishop which testifies an excommunication pronounced upon us, as to which excommunication it is proved by the Archbishop's letter that he does not undertake to state it as of his own knowledge, but as he has found it among the Acts of the Court of Arches, and from those words it is to be supposed that it was pronounced by another person. In that case, since you do not show that the excommunication was for any other cause than that in respect of which our action is taken, it can only be understood to be for the same cause; therefore, &c.—And in the end the COURT said that they never understood the cause of excommunication to be other than that on which the action was taken, unless the contrary was shown; therefore, &c.—WILLOUGHBY asked counsel whether they wished to say anything else on behalf of the Bishop.—*Moubray.* Sir, if you adjudge that Richard ought to be answered, notwithstanding this letter, we are ready to answer.—WILLOUGHBY. Indeed you will have only one judgment from us, if you abide judgment there; for this action is taken by reason of an excommunication, and, in that case, when a letter of excommunication has been alleged, and disallowed because

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estre nounsuy, nous partiroms quite del Roi a ceste sute, tanqe le Roi fust apris par enditement, et *per consequens* escomengement en Richard pronuncie toude de sute al Roi auxi bien come a luy mesme. Et a ceo qe vous parletz qil serra entendu par mesme la cause escomenge come vostre accion est pris, pur ceo qe autre cause nest pas moustre, il semble qil ne poet estre entendu issi, qar la lettre voet qe pur divers causes fust trove en les Arches qil fust escomenge, et par taunt homme ne poet entendre qe ceo fust par la cause en saccion mote ; et, le quel ceo fust par mesme la cause on nent, puis qe ceo nest pas mote en la lettre, vous ne poetz ajugger.—*Thorpe.* Vous dites talent ; qar quant nostre accion est pris dun escomengement, et vous mettez avant lettre Lercevesqe, qe tesmoigne une escomengement en nous, quel escomengement est prove par la lettre qe Lercevesqe ne le prent pas de luy mesme, mes come il ad trove entre les actes des Arches, par queux paroles est a supposer qe ceo fust pronuncie par autre, en quel cas, puis qe vous ne moustrez pas qe ceo fust par autre cause qe par cele de quei nostre accion est pris, homme ne le poet entendre mes sur mesme la cause ; par quei, &c.—Et a drein la Court dit qils nentendirent jammes la cause del escomengement estre autre qe tiele come laccion est pris, si le contrare ne fust moustre ; par quei, &c.—Wilby les opposa sils vodreint autre chose dire pur Levesque.—*Moubray.* Sire, si vous agardez qil est responable, nent countreesteaunt ceste lettre, prest a respondre. —Wilby. Verayment vous naveretz qun agarde de nous, si vous y demuretz ; qar ceste accion est pris par cause dune escomengement, en quel cas lettre descomengement allegge et desalowe pur taunt qe Court entendist qe ceo est

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A.D. 1346. the Court understood that the excommunication is for the cause in respect of which the action is taken, the party must of necessity on judgment thereon be convicted (though it would be otherwise in respect of other writs relating to other kinds of actions); and therefore, if you abide judgment on that point, it is a peremptory demurrer.—But nevertheless the COURT said that, notwithstanding the letter, Richard should be answered, and therefore they were commanded to answer.—*Moubray.* Then we tell you that you see plainly how this action is taken by reason of an excommunication pronounced upon Richard for the delivery of a Prohibition, whereas a case of excommunication is of so spiritual a nature that this Court cannot try the cause of it; for no one can by law divine for what cause he was excommunicated except the Ordinary himself who excommunicated him; and therefore we do not understand that you will take cognisance of such a matter in this Court.—STONORE. This is the King's suit as well as Richard's suit, and the King will never be put to sue in any other Court than his own; therefore will you say anything else?—And they said that they would not.—Therefore WILLOUGHBY rehearsed the

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pur la cause dount laccion est pris covent en cel agarde de necessite qe la partie soit atteint, *secus* en autres briefs dautre manere daccion ; et pur ceo, si vous demuretz sur cel point il est un demeore peremptore.---Mes nequident la COURT lour dit qe nent countreesteaunt la lettre qil serra respondu, par quei les fust comaunde a respondre.[1]—*Moubray.* Donqes vous dioms qe vous veietz bien coment ceste accion est pris par cause descomengement pronuncie en Richard pur la livre dune prohibicion, ou cas descomengement est si espiritele qe ceste Court ne poet la cause trier ; qar nul homme par ley poet devyner par quele cause il fust escomenge forqe Lordiner mesme qe lui escomengea ; par quei nentendoms pas qe de tiele chose voillez ceinz conustre[2] —STON. Ceo est la sute le Roi auxi bien come la sute Richard, et le Roi ne serra jammes mys a suyr en autre Court qen sa Court demene ; par quei voletz autre chose dire ?—Et ils disoient qe noun.[3]—Par quei WILBY A.D. 1346.

[1] According to the roll, "quia visum est Curiæ hic quod, "non obstantibus literis præ- "dictis, prædictus Ricardus "responderi debet, dictum est "eidem Priori de Kerseye quod "respondeat, si, &c."

[2] This pleading on behalf of the Prior, was, according to the record, "quod actio tam pro "domino Rege quam pro præ- "dicto Ricardo in hac parte "assumpta de eo quod idem "Prior dictum Ricardum "excommunicasse debuisset eo "quod idem Ricardus dicta "brevia domini Regis præfato "Episcopo ex parte domini Regis "liberavit fundata existit, quæ "quidem causa excommunica- "tionis ita spiritualis, factum- "que Judicis ecclesiastici om- "nino censetur, quod in Curia "Regis de dicta causa excom- "municationis cognosci nec indo "discucio aliqualiter fieri deboat, "petit judicium si ista Curia in "ista actione super dicta causa "excommunicationis fundata "cognoscere velit aut debeat an "dominus Rex et prædictus "Ricardus in Curia responderi, "&c."

[3] According to the record, "Johannos qui sequitur, &c., ot "Ricardus dicunt quod actio "pro domino Rege et dicto "Ricardo in hac parte, tam de "contemptu domino Regi quam "de damno dicto Ricardo por "excommunicationem in præ- "dictum Ricardum ex causa "prædicta pronunciatam factis "fundatur, et secundum legem "et consuetudinem regni Angliæ "dominus Rex, vel progenitores

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A.D. 1346. whole plea, and said that the same case arose between the King and the Archbishop of Canterbury, and the Bishop of Durham, and the Archbishop of York, and the Archbishop of Dublin, and in those cases, by reason of the contempt, the temporalities were seized, and judgment was given that their persons should be taken. And, said WILLOUGHBY, because you have sworn to the King to maintain his laws and his crown, and inasmuch as you have not been willing to answer to the King in this Court in respect of an excommunication pronounced upon his messenger, but wished to put him to sue in your Court, whereas the King shall never be put to sue except in his own Court, and inasmuch as you have not been willing to answer to the King's action, this COURT doth give judgment that your temporalities be seized into the King's hand, there to remain until Richard be absolved, and further at the King's pleasure,[1] and that Richard do recover his damages; but because we are not advised whether he shall recover his damages in accordance with his count or by assessment, and also whether the defendant shall be taken or not, we shall put those matters in respite until we have further considered. —And a plea like to this was pleaded for the Prior of Kersey, who was the Bishop's Commissary, against the

[1] The first part of the judgment relating to the seizure of the temporalities does not appear in the record.

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rehercea tut le plee, et dit qe mesme la cas avynt entre le Roi et Lercevesqe de Canterbirs, et Levesqe de Durham, et Levesqe Deverwyke, et Lercevesqe de Dyvelin, en quel cas, pur le contempte, les temporaltes furent seisiz, et fust agarde qils furent pris. Et pur ceo qe vous estoiez jure al Roy de meyntenir ses leies et sa corone, et en taunt qe vous navetz pas volu a respondre ceinz al Roi del escomengement fait en soun messager, mes lui vodretz mettre a suyr en vostre Court, ou le Roi ne serra jammes mys a suyr fors en sa Court demene, et par taunt qe vous navetz pas volu respondre al accion le Roi, ceste Court agarde qe voz temporaltez soient seisiz en la mayn le Roi a demurer tanqe Richard soit assoutz, et outre a la volunte la Roi, et qe Richard recovere ses damages ; [mes pur ceo qe nous ne sumes pas avise le quel il recovera ses damages][1] qil ad counte on par taxacion, et auxi le quel qil serra pris on nent, si mettroms cele en respit tanqe nous soioms mutz avisetz.—Et autiel plee come ceo cy est fust plede pur le Priour de Kerseie, qe fust Commissare Levesqe, vers le Roi A.D. 1346.

" sui, seu aliquis alius de " contemptu domino Regi " infra regnum suum Angliæ " facto in alia Curia quam " Curia ipsius Regis aliquam " actionem prosequi non de- " bent nec consueverunt, max- " ime cum dominus Rex de " aliquo contemptu sibi illato " alium judicem in regno suo " quam in Curia sua habere non " debeat, petit judicium ut " prius, &c.

" Et quia videtur Curiæ quod " Curia ista in placito isto, non " obstante exceptione per præ- " dictum Priorem allegata, cog- " noscere debet, dictum est " eidem Priori quod ulterius " respondeat si, &c.

" Et licet dictus Prior de Ker- " seye post dictam considera- " tionem Curiæ sæpius requisitus " si aliud dicere velit dicit ex- " presse quod nihil aliud dicere " vult, &c., sed super præmissis " petit judicium, &c.

" Et Johannes qui sequitur, " &c., et Ricardus, ex quo sæpius " per Curiam consideratum est " quod idem Prior de Kerseye " ulterius respondeat, &c., et " nihil aliud respondet ad ac- " tionem domini Regis, et præ- " dicti Ricardi, &c., petunt " judicium versus ipsum Priorem " tanquam indefensum, &c., et " dictus Ricardus damna sua, " prout superius narravit, sibi " abjudicari, &c."

[1] The words between brackets are omitted from I.

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A.D. 1346. King and this same Richard ;[1] and, because he would not say anything else, judgment was given that he should be taken, and that Richard should recover damages against him to the amount of a thousand marks in accordance with the count, because the Court held him to be undefended, inasmuch as he pleaded to the jurisdiction of the Court, and the Court said to his counsel that it would take cognisance, and that they must answer over, and they would not say anything further, &c.

Joint tenancy. (40.) § *Grene* came to the bar, and alleged joint tenancy [of the tenant] with one J.—*Thorpe*. You shall not be admitted to that : for heretofore we brought a like writ against you, upon which you said that, whereas we demanded land in A., A. was a hamlet of R., and that was so found, and for that reason our writ abated, and this writ has been newly purchased ; therefore you shall not be admitted to allege joint tenancy.—WILLOUGHBY. He could not

[1] *See* p. 323, note 1.

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et mesme celi Richard ; et, pur ceo qil ne voleit autre chose dire, fust agarde qil fust pris, et qe Richard recoverast ses damages devers lui de $\frac{L}{M.}$ marcs come il avoit counte, pur ceo qils lui tindrent noun defendu en taunt qil pleda a la jurisdiccion de Court, et la Court lour dit qil vodront conustre, et qils respondissent outre, et ils ne vodreient autre rienz dire, &c.[1] A.D. 1346.

(40.) [2]§ *Grene* vint a la barre, et alleggea jointenance ov un J.—*Thorpe*. A ceo navendretz pas : qar autrefoitz nous portames autiel brief vers vous ou vous deistes qe la ou nous demandames la terre en A., vous deistes qe A. fust hamel de R., et cele chose trove, par quei nostre brief abatist, et cest brief purchace freschement ; par quei dallegger jointenance [ne serretz resceu.—Wilby. Il ne Jointenance.

[1] According to the roll the judgment was "Ideo considera-"tum est quod prædictus Prior "pro contemptu domino Regi in "hac parte facto capiatur, &c., "et quod prædictus Ricardus "recuperet versus eum damna "sua prædicta mille librarum "prout ipse superius versus "eum narravit.

"Et sciendum quod prædicti "Simon filius Nigelli et Jacobus "alias, scilicet termino Paschæ "proxime præterito, Rotulo "lxxiij, convicti fuerunt tam "de contemptu domino Regi "in hac parte facto quam "de damno prædicto Ricardo, "et, licet idem Ricardus versus "eos in placito illo narravit "ad damna sua mille librarum, "tamen taxatio de damnis "pro prædicto versus eosdem "Simonem filium Nigelli et "Jacobum [respect]uabatur "huousque, et quia prædic-"tus Ricardus modo in Curia "hic protestatur quod ipse "non vult ulterius versus "prædictos Hamonem, Simo-"nem Priorem et Fratrem "Petrum (*See* Y.B. Easter 20 "Edw. III. p. 215, note 1). "prosequi, ideo idem Ricardus "executionem habeat de damnis "suis prædictis mille librarum "versus prædictas Simonem "filium Nigelli [et Jacobum] "qui alias convicti fuerunt, &c., "ut prædictum est, et etiam "versus prædictum Priorem de "Kersoye [qui] superius in isto "placito convictus est, &c." (The roll is illegible in the places in which words have been placed between brackets.)

On the back of the roll there is the passage beginning with the King's letters to the Justices in French as at the end of the case in Easter Term.

[2] From H. and I.

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A.D. 1346. then have alleged joint tenancy, because the tenements were in R., whereas the demandant supposed that they were in A., and therefore before the writ limits the tenements as being in the vill in which they are he has still time to allege joint tenancy ; for in respect of tenements demanded in one vill I cannot allege joint tenancy in another vill.—*Thorpe.* If I have to allege joint tenancy and non-tenure also, I shall never have advantage of both, because the pleading of the one deprives me of the advantage of the other ; and for the same reason in this case, although he could not then have alleged both, yet the allegation of the one deprives him of the advantage of the other.—WILLOUGHBY. In the case of which you speak he might elect to allege either joint tenancy or non-tenure on the first original writ; but in this case he could not, on the first original touching tenements demanded in A., have alleged joint tenancy of tenements in R. ; therefore will you say anything else ?—*Thorpe.* You have here the demandant who is under age, and says that he cannot deny the joint tenancy.—Therefore the writ was abated.—And the amercement was pardoned because he was under age.

Waste. (41.) § A writ of Waste was brought against a tenant in dower in respect of tenements in Newcastle-on-Tyne, on which she said, by *Moubray*, that her first husband and she had surrendered the same land to the plaintiff, by reason of which surrender he was seised. And (said *Moubray*) we demand judgment whether he can maintain this writ against us as against tenant in

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poeit adonqes aver allegge jointenance], [1]pur ceo qe les tenementz furent en R., la ou il les supposa en A., par quei avant le brief limite les tenementz en la ville ou il sont adonqes ad il temps dallegger jointenance ; qar des tenementz demandez en une ville jeo ne puisse allegger jointenance en autre ville.—*Thorpe.* Si jeo eye a allegger jointenance et nountenure auxi, jeo naveray jammes avantage del un et del autre, qar le pleder del un moy toude avantage del autre ; et par mesme la resoun en ceo cas, tut ne poait il adonqes aver allegge lun et lautre, le alleggeaunce de lun lui toude lavauntage del autre.—Wilby. En le cas qe vous parletz il purra eslire ou dallegger jointenance ou nountenure al primer original ; mes en ceo cas il ne poet, en le primer original des tenementz demandez en A., aver allegge jointenance des tenementz en R ; par quei voletz autre chose dire ?—*Thorpe.* Vous avetz cy le demandant qest deinz age, et dit qel ne poet dedire la jointenance.—Par quei le brief fust abatu. Et lamercement perdone pur ceo qil fust deinz age. A.D. 1346.

(41.) [2]Brief de Wast fust porte vers tenant en dowere des tenementz en Novele Chastel sur Tyne, ou ele dit par *Moubray* qe son primer [3] baron et lui avoient rendu sus mesme la terre al pleintif, par quel rendre il fust seisi. Et demandoms jugement si vers nous come vers tenant en dowere il puisse cel brief Wast.

[1] The words between brackets are omitted from I.

[2] From H. and I., but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III., R°. 286. It there appears that the action was brought by Richard Scot, of Newcastle-on-Tyne, against William de Plumpton and Christiana, his wife, in respect of waste "de domibus, "gardinis, et hominibus quos "tenent in dotem ipsius "Christianæ de hereditate præ-"dicti Ricardi in villa de "Novo Castro super Tynam et "Brynklowe." The particulars of the waste, including the "oxilium" of persons holding in villenage, are assigned in the Court.

[3] MSS. of Y.B., secunde.

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A.D. 1346. dower.—*Sadelyngstanes.* As to that we tell you that you held in dower on the day on which the writ was purchased, and do so hold this day; ready, &c.—*Moubray.* You shall not be admitted to that averment, since you do not deny that you were seised by reason of the surrender. You shall not now be admitted to aver tenancy in dower in us.—And, notwithstanding, the averment was admitted.

Protection. (42.) § On a writ of Trespass a verdict passed against the defendant at *Nisi prius* in the country; and now in the Common Bench a protection was produced for him.—*Thorpe.* He has not a day in Court, nor can he now be called; therefore a Protection does not lie for him.—*Grene.* Although he cannot be called, at any rate he has now a day in Court, for a day was given to him for this day unless in the meantime the Justice of *Nisi Prius* should come, and so he has a day in Court, and is a party to the plea; therefore a Protection lies for him.—And afterwards

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meyntener.[1]—*Sadl.* A ceo vous dioms nous qe vous tenistes en dowere jour de brief purchace, et huy ceo jour tenetz ; prest, &c.—*Moubray.* A eel averement navendretz pas, puis qe vous ne dedites pas qe vous ne fustes seisi par le sus rendre, daverer tenance en dowere en nous a ore ne serretz resceu.—Et, *non obstante*, laverement fust resceu.[2] A.D. 1346.

Proteccion. [Fitz., *Proteccion*, 88.]

(42.) [3]§ En un brief de Trespas une enqueste passa encountre le defendant par un *Nisi prius* en pays ; et ore en Baunk le defendant fust par proteccion.—*Thorpe.* Il nad pas jour en Court, ne il nest pas a ore demandable ; par quei proteccion ne gist pas pur luy.—*Grene.* Coment qil nest pas demandable, au meyns jour ad il a ore en Court, qar jour lui fust done a cest jour si en le mene temps la Justice de *Nisi prius* ne venist, et issi ad il jour en Court, et est partie al plee ; [par quei pur lui la proteccion gist.

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[1] This plea, according to the record, had relation only to a portion of the tenements in which waste was assigned (other matters being pleaded in relation to other tenements) and was in the form following :— "Quo ad duo mesuagia in West- "gate in prædicta villa, &c., "dicit quod ipsa Christiana, et ". . . . Ricardus de Emel- "done, quondam vir suus, sur- "sum reddiderunt ipsi Ricardo "[Scot] mesuagia illa, quam "quidem reddditionem idem "Ricardus gratis acceptavit, "et inde seisitus fuit, et adhuc "est, pro voluntate sua. Et "petit judicium, &c."

[2] The replication with regard to the two messuages was, according to the record, "Quo ad "prædicta duo mesuagia in West- "gate, quæ prædicti Willelmus "et Christiana assorunt ipsam "Christianam et prædictum "Ricardum de Emeldone quon- "dam virum suum sursum red- "didisse, et ipsum Ricardum "Scot redditionem illam accep- "tasse, et inde adhuc seisitum "existere, ... cum in "tali responsione nihil aliud "supponitur nisi quod ipsi Wil- "lelmus et Christiana non sunt "tenentes de tenementis illis, "nec fuerunt die impetrationis "brevis, &c., dicit quod die "impetrationis brevis . . . . "prædicti Willelmus et Chris- "tiana [tenuerunt] mesuagia ". . . . illa, prout ipse in nar- "ratione sua supponit."

Issue was joined upon this, and the *Venire* awarded, but nothing further appears on the roll, except an adjournment.

[3] From H. and I.

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A.D. 1346. the COURT said they found the date of the Protection to be rased.—And therefore KELSHULLE, the Justice, was sent into the Chancery with the Protection to ascertain there with certainty whether the date in the rolls of the Chancery was in accordance with the Protection.—And it was found to be in accordance.—Therefore the Court desired to consider whether the Protection lay or not.—WILLOUGHBY. It seems that the Protection does not lie, because the defendant has not a day in Court; for, as to the statement that he now has a day by roll, it seems that it cannot be so; for when *Nisi prius* is granted, a day will be given to the parties in the Common Bench unless the Justice comes into the country; therefore, if the Justice does come into the country, the defendant has not a day in Court. And, moreover, if the defendant makes default in the country, the default there will be adjudged to be a default here, for all is adjudged to be one day; therefore it seems that the Protection does not lie.—*Grene.* It cannot be as you say: for when a day is given to the parties in the Common Bench unless the Justice previously comes into the country, then, even though the Justice does come into the country the defendant still has a day in the Common Bench; for, suppose the jury does not come in the country, the coming of the Justice there will not put the party without day, and therefore he now has a day, and for that reason the Protection is allowable. —STOUFORD. Suppose a verdict had passed in this Court, and a verdict afterwards passed in the country, and you would allege a Protection for the defendant, we should not allow it; and for the same reason since the day in the country and this day are adjudged to be all one day we could not allow it in this case.—*Grene.* That case is not like this; for, when the inquest is taken in this Court, there is no mean time between the taking of the inquest and the judgment; but between the verdict taken in the country and the day in Court there is a time of such length that during it the defendant might die, and thereby abate the

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—Et puis la Court dit qils troverent la date de la proteccion rase.—Et sur ceo KELS. Justice fut maunde en la Chauncellerie od la proteccion a veer mon illeoqes si la date][1] en les roulles de la Chauncellerie fust acordaunt al proteccion.—Et lacordaunce fust trove.—Par quei la Court, se voleit aviser si la proteccion geust ou nent.—WILBY. Il semble qil ne gist pas, qar il nad pas jour en Court; qar, de ceo qest parle qil ad jour a ore par roulle, il semble qil ne poet estre issi; qar, quant *Nisi prius* est graunte, jour serra done as parties en Baunk si la Justice ne viegne en pays; [*ergo*, si la Justice viegne en pays][2] il nad pas jour en Court. Et, ovesqe ceo, si le defendant face defaute en paiis, la defaute la serra ajugge la defaute cy, qar tut est ajugge un jour; par quei il semble qe la proteccion ne gist mye.—*Grene.* Il ne poet estre issi come vous parletz; qar quant jour est done as parties en Baunk *nisi prius* la Justice viegne en paiis, mesqe la Justice viegne en paiis, uncore ad il jour en Bank; qar, jeo pose qe lenqueste ne viegne pas en pays, la venue de la Justice illoeqes ne mettra pas la partie saunz jour, par quei jour ad il ore, et par taunt la proteccion allowable.—STOUF. Jeo pose qe lenqueste ust passe ceinz, et apres en pays lenqueste passe vous vodrietz allegger proteccion pur le defendant, nous nel alloweroms pas; et par mesme la resoun puis qe jour en pays et cest jour est ajugge tut un jour nous ne le purrioms en ceo cas allowere.—[*Grene.* Il nest pas semblable; qar ou lenqueste est pris ceinz, il ny ad nul mene temps dentre la prise del][1] enqueste et le jugement; mes entre lenqueste pris en paiis et le jour en Court il iad un tiel temps dedeinz quel le defendant purra

A.D. 1346.

[1] The words between brackets are omitted from I.

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

Nos. 42, 43.

A.D. 1346. whole matter.—And, moreover, in the case which you put we could have had the advantage of this Protection before the inquest was taken, but at *Nisi prius* in the country we could not have alleged it, because the Justices of *Nisi prius* have no power to allow it or to disallow it; and, inasmuch as before this time we could not have had advantage of this Protection, that is a reason why we should have it now.—WILLOUGHBY. Suppose we were to allow the Protection, and to put the parol without day, what process would you have against the party afterwards in order to have your judgment?—*Grene.* Sir, by Resummons; and then, whether the defendant appears or not, the plaintiff will have judgment on the verdict, unless the defendant has new matter to preclude him.—And in the end the Protection was disallowed, and the plaintiff recovered his damages in accordance with the manner in which the verdict passed.

Quare impedit. (43.) § In a *Quare impedit* which the King brought against the Bishop of Norwich they were at issue, and the Bishop sued one *Venire facias*, and the King's Attorney sued another, and one *Venire facias* was returned by the Sheriff.—And now *Thorpe*, for the King, came and said that the writ which they had sued for the King was in Court, and the Sheriff would not receive that writ, but that the writ which was returned was the writ which was sued at the suit of the Bishop, and that they disavowed it on behalf of the King, and prayed an *Alias Venire facias* for the King.—*Moubray.* Since the writ has been served, and is returned, you shall not be admitted to disavow it: for in this suit we are as much plaintiff as you are, and therefore, in default of your willingness to sue on behalf of the King, it is for us to do it in order to attain our purpose; therefore, &c.—And in the end, notwithstanding this, they were admitted to disavow the writ on behalf of the King, and an *Alias Venire facias* was awarded.

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morir, et par taunt tut abatre. Et, ovesqe ceo, en le [cas qe vous mettez nous purroms aver eu avantage de yeelle avant lenqueste pris, mes][1] al *Nisi prius* en pays nous nel purroms aver allegge, qar ils nount pas power del allower ne desallower ; et, par taunt qe avant ore nous ne purrioms aver eu avantage de yeelle, est ceo resoun qe nous leioms a ore.—[Wilby. Jeo pose qe nous allowassoms la proteccion, et meismes la parole saunz jour, quel proces][1] averet vous vers la partie apres daver vostre jugement ? —*Grene.* Sire, par resomons ; et, le quel qil viegne ou ne viegne pas, il avera jugement sur le verdit, sil neit novele matere de luy forbarrer.—Et a derreyn la proteccion fust desallowe, et le pleintif recoverist ses damages solone ceo qe le verdit passa, &c. A.D. 1346.

(43.) [2]§ En un *Quare impedit* qe le Roi porta vers Levesqe de Norwiz ils furent a issue, et Levesqe suist un *Venire facias*, et lattourne le Roi suist un autre, et un *Venire facias* fust retourne par Vicounte.—Et ore *Thorpe*, pur le Roi, vint et dit qe le brief qils avoient suy pur le Roi fust icy, et le Vicounte ne voleit cel brief resceivre, mes le brief qe est retourne est le brief qe fust suy a la sute Levesqe, quel ils desavowerent pur le Roi, et prierent un *sicut alias* pur le Roi.—*Moubray.* Puis qe le brief est servy et retourne, a desavower a cel ne serretz resceu : qar en ceste sute nous sumes auxi avant actour come vous estes, par quei, en defaute qe vous ne voletz pur le Roi suir, attint a nous pur aver nostre purpos del faire ; par quei, &c.—Et a dreyn, *non obstante* ceo, ils furent resceuz pur le Roi del desavower, et un *sicut alias* agarde. *Quare impedit.* [Fitz., *Nisi prius*, 17.]

[1] The words between brackets are omitted from I.

[2] From H. and I. This is probably a report of one particular stage in the case which first makes its appearance in Hilary Term of the same year (No. 31), and of which there is also a report in the following Easter Term (No. 37), and in the following Trinity Term (No. 66). The record is among the *Placita de Banco*, Hil. 20 Edw. III. R°. 331, d. For the conclusion of the case in the record *see* Y.B. Hil. 20 Edw. III. p. 105, note 5.

No. 44.

A.D. 1346. *Quare impedit.*

(44.) § The Prior of Westminster brought a *Quare impedit* against the Abbot of Westminster, and counted, by *Sadelyngstanes*, that he was seised of the manor of S., to which the advowson is appendant, and that he had presented.—*Notton.* Sir, we tell you that the Prior who is plaintiff is our monk, and one who owes obedience to us, and we do not understand that with regard to us he ought to be answered.—*Sadelyngstanes.* As to that, Sir, we tell you that the Priors of Westminster have to be made by election, and are perpetual, without being subject to removal by the Abbot, and that as long as the Abbey of Westminster has been of the foundation of the King's progenitors. And we tell you that King Edward the grandfather of the present King, by this deed indented which is here, made between him and the Abbot who then was and the Prior also, gave the said manor of S., to which the advowson is appendant, and several other manors, to the Prior and Convent of Westminster and to their successors for ever, to hold to them severally of the Abbot, as their portion, with a provision that neither the Abbot nor his successors should meddle in any way with their possessions so given to them, they rendering to the King for the said manors divers alms, and having to sustain divers lights in the church of the same Abbey, by force of which gift the Priors have presented as sole patron; and so we tell you that we are sole patron, and entitled to an answer, and we demand judgment whether, in this case, we shall not be answered with regard to you.—*Thorpe.* To that which that you have said touching the King's charter we have no need to answer, but, since you have not denied that you owe obedience to us, judgment whether you shall be answered with regard to us who are your sovereign head.—*Grene.* We have alleged that the Priors have been made by election, and are perpetual, and that they have possessions which are severed from the Abbey, so that, though we owe obedience to you, that is only according to the rule of the Order, and we

No. 44.

A.D. 1346. *Quare impedit.* [Fitz., *Nonhabilite.* 9.]

(44.) [1]§ Le Priour de Westmestre porta *Quare impedit* vers Labbe de Westmestre, et counta par *Sadl.* coment il fust seisi del maner de S., a quei lavowesoun est appendant, et coment il avoit presente.—*Nottone.* Sire, nous vous dioms qe le Priour pleintif est nostre moigne, et nostre obedienser, et nentendoms pas qil deyve devers nous estre respondu.—*Sad.* Sire, a ceo vous dioms nous qe les Priours de Westmestre serront par elleccion, et sunt perpetuels, saunz estre remue par Labbe, et quanqe Labbeye de Westmestre ad este de la foundacion[2] des progenitours le Roi. Et vous dioms qe le Roi E. laiel, par ceo fait endente qe cy est, fait entre lui et Labbe qe adonqes fust et le Priour auxi, dona le dit maner de S., a quel lavowesoun est appendant, et plusours autres maners, al Priour de Westmestre et al Covent et a lour successours as touz jours, a tenir a eux severalement del Abbe come lour porcion, issi qe Labbe ne ses successours ne se mellast rienz de lour possessions issi a eux donez, fesaunt al Roi pur les ditez maners divers almoignes et a sustener divers lumers en leglise de mesme Labbeye, par force de quel doun les Priours ount presente come soul avowe; et issi vous dioms qe nous sumes soul patroun et responable, et demandoms jugement si, en ceo cas, devers vous nous ne serroms respondu.—[*Thorpe.* A ceo qe vous avetz dit de la chartre le Roi nous navoms mester a respondre, mes puisqe navetz pas dedit qe vous nestes nostre obedienser, jugement si vers nous qe sumes vostre sovereyn serretz respondu][3]—*Grene.* Nous avoms allegge qe les Priours ount este par eleccion perpetuels et coment ils ount possessiouns severetz del Abbe, issi qe vostre obedienser nous sumes mes de reulle del Ordre,

[1] From H. and I.

[2] I. fundacion.

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

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A.D. 1346. do not owe obedience to you in respect of our possessions. —Willoughby. Queen Philippa will be answered in an action brought by herself without her husband, that is to say the King, in respect of the several possessions which she has, and so also it seems in this case.—And it was said by *Moubray*, who was not acting with the Abbot, that, if a stranger had entered into the manors which were so given, it would be the Abbot who would recover them by Assise, and not the Prior.—And this was allowed by Willoughby, but he said that although the freehold may be the Abbot's, the profit might be the Prior's.—But *Thorpe* would only plead, on behalf of the Abbot that the Prior should not be answered because the Prior owed obedience to the Abbot, without pleading to his title. And the object was to oust the provisor, because there was a provisor over the Abbot and not over the Prior.—Stonore. We have seen that the Chapter of Lincoln maintained a *Quare impedit* against the Dean,[1] because the advowson was the several right of the Chapter, and so also it seems that the Prior should be answered in this case.—*Notton.* Then we tell you, for the Abbot, that we cannot deny that it belongs to the Prior to present, as he has counted, but we say that we have not made any hindrance.—*Grene.* Now we pray a writ to the Bishop for the Prior.—Willoughby. We will consider whether we can do so by law.—And in the end Stonore said :— Because the Priors at Westminster are perpetual, and that by election, without being subject to removal by the Abbot, and their possessions are severed from the Abbot by the charters of Kings, and in particular the manor to which the advowson which is now the subject of dispute is appurtenant, and that fact is not denied by you, we therefore give judgment that the Prior do have a writ to the Bishop.

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[1] See Y.B., Mich. 17 Edw. III. No. 68 *bis* (pp. 326–331).

No. 44.

et ne mye vostre obedienser de noz possessiouns.—Wilby. La Roigne Philippe serra respondu a un accion a per luy, saunz son baroun, cest a dire le Roi, pur les severals possessiouns quele ad, et auxi semble il an ceo cas.—Et fust parle par *Moubray*, qe ne fust pas od Labbe, qe si un estraunge ust entre en les maners qe furent issi dones qe Labbe les recovera par Assise, et ne mye le Priour.—Et ceo fust graunte de Wilby, mes il dit qe, coment qe le franctenement soit al Abbe, le profit purra estre al Priour.—Mes *Thorpe* ne voleit pas pleder pur Labbe mes soulement qil ne serra pas respondu pur ceo qil fust soun obedienser, saunz pleder a son title. Et la cause fust, pur ceo qil y avoit un provisour sur Labbe et ne my sur le Priour, pur ouster le provisour.—Ston. Nous avoms veu qe le Chapitre de Nichole meytent un *Quare impedit* vers le Dean pur ceo qe lavowesoun fust lour several dreit, et auxi semble il en ceo cas qe le Priour serra respondu.—*Nottone*. Donqes vous dioms, pur Labbe, qe nous ne poms dedire qe a lui nappent a presenter, come il ad counte, mes dioms qe nous navoms fait nulle destourbaunce.—*Grene*. Ore prioms brief al Evesqe pur le Priour.—Wilby. Nous aviseroms si nous le puissoms faire par lei.—Et a dreyn Ston. pur ceo qe les Priours illeoqes sont perpetuels, et ceo par eleccion, saunz estre remue par Labbe, et lour possessiouns sont severes del Abbe par chartres des Rois, et nomement del maner de quei lavowesoun qest a ore en debat est appurtenant, quel chose nest pas dedit de vous, par quei nous agardoms qe le Priour eit brief al Evesqe.

A.D. 1346.

No. 45.

A.D. 1346. Dower.

(45.) § A writ of Dower was brought in respect of tenements in Dunster.—*Moubray.* Sir, we tell you that the custom of the same town in which the demand is made is such that, if a husband sells his land, and, if the money for which he sells it is expended for their common benefit, the wife will never have dower of those tenements. And we tell you that your husband sold the same land to me for so much money, which was expended for your common benefit; and we demand judgment whether in that case you ought to have dower of those tenements.—*Richemunde.* Sir, you see plainly that they have confessed our husbands' seisin, and wish to preclude us from having our dower by a custom which is contrary to common right, that is to say, that alienation by the husband would oust the wife from her dower. And as to his statement that, if the money comes to the profit of the wife, she will never have dower, that cannot be called a custom, because a wife must always live with her husband, and will be

No. 45.

A.D. 1346. Dowere. [Fitz., *Prescripcion*, 30.]

(45.) [1]§ Brief de Dowere fust porte des tenementz en Dunsterre.—*Moubray.* Sire, nous vous dioms qe lusage de mesme la ville ou la demande est faite sont tiels qe si le baron vende sa terre si les deners pur queux il la vende soient despenduz en lour comune profit, qe la femme de ceux tenementz navera mye dowere. Et vous dioms qe vostre baron vendi mesme la terre a moy pur taunt des deners, queux furent despenduz en comune profit de vous ; et demandoms jugement si en ceo cas de ceux tenementz devetz dowere aver.[2]—*Rich.* Sire, vous veietz bien coment ils ount conu la seisine nostre baron, et nous voillent forclore de nostre dowere par un usage quel est encontre comune dreit, saver, qe lalienacion le baron oustereit la femme de son dowere. Et a ceo qil parle qe si les deners viegnent en profit la femme qe ele navera mye dowere, ceo ne poet estre dit usage, qar la femme covent tutdis vivre od son

[1] From H. and I., but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III., R°. 320. It there appears that the action was brought by Joan late wife of Robert de Lucy against Robert Hamound and Nicholaa his wife, in respect of a third part of one messuage and one acre of land in Dunster (Somerset) and against others in respect of a third part of other tenements in the same vill.

[2] The plea was, according to the record, "quod consuetudines "villæ de Dunsterre hactenus "usitatæ in eadem villa tales "sunt quod, ubi vir obierit "seisitus de aliquibus tenemen- "tis in eadem villa ut de feodo, "uxor ejusdem viri habebit "capitale messuagium unde vir "obierit seisitus in forma præ- "dicta, et illud tenebit ut "liberum bancum quamdiu se "non maritatam tenuerit, &c., "et etiam si vir in vita sua "aliquod tenementum vendi- "derit, et denarii inde in usus "viri et mulieris conversi fuerint, "mulier non habebit dotem de "eodem tenemento post mortem "prædicti viri sui, &c. Et iidem "Robertus et Nicholaa quo ad "prædictam demandam versus "eos factam dicunt quod prædic- "tus Robertus de Lucy, quondam "vir, &c., de cujus dotatione, "&c., vendidit messuagium præ- "dictum, unde, &c., cuidam "Godefrido Reghe, cujus statum "ipsi • Robertus et Nicholaa "habent in eodem, et denarios "inde in usus eorundem Roberti "de Lucy et Johannæ converte- "bat, et expendidit, &c., . . . "Et hoc parati sunt verificare. "Et . . . . petunt judicium "si prædicta Johanna dotem inde "versus eos habere debeat, &c."

Nos. 45, 46.

A.D. 1346. supported by him, and therefore the law does not put us to answer to that custom.—*Moubray.* By the custom of Nottingham the younger son will have the inheritance, and yet that is contrary to the common course of law, and there would be no necessity to allege a custom if the common course of law permitted it.—Therefore the demandant was put by the COURT to answer whether there were such customs or not.—*Richemunde.* We tell you that the money did not come to our profit ; ready, &c.—WILLOUGHBY. If the money did not come to your common profit, it did not come to your profit, and therefore, according to the customs which he has alleged in his answer, that is to say, that the money came to your common profit, the issue must be taken, and not whether it came to the profit of the wife or not.—Therefore the issue was taken in the form that the money did not come to the common profit of the husband and wife.—And the other side said the contrary.

Mesne. (46.) § A writ of Mesne was brought against Thomas de Neville. And the plaintiff counted, by *Skipwith*, that the ancestor of Thomas, before the statute,[1] enfeoffed one J.[2], to hold to him and his heirs for ever, and afterwards a fine was levied between them[2] by which he confirmed J.'s[2] estate to J.[2] and his heirs, to be holden of him and of his heirs by the service of one penny *per annum* in lieu of all services. And by the same fine he bound himself and his heirs to warranty, and to acquit the other and his heirs. This J.[2] gave the land to the plaintiff in fee

[1] 18 Edw. I. (*Quia emptores*).

[2] For the real names and further details, see p. 353 note 1.

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baron, et serra par lui sustenu, par quei a cel usage lei ne nous mette pas a respoundre.—*Moubray.* Par usage de Notingeham le fitz puisne avera leritage, et si est ceo countre comune cours de ley, qar il ne covendra pas dallegger usage si comune cours de lei le suffereit.—Par quei le demandant fust mys par la COURT a respoundre sils y avoyent tiels usages on noun.—*Rich.* Nous vous dioms qe les deners ne devyndrent pas en profit de nous; prest, &c.—[WILBY. Si les deners ne vindrent pas en vostre comune profit, ils ne vindrent pas en profit de vous],[1] par quei, acordaunt a les usages qil ad allegge en son respouns, saver, qe les deners vindrent en vostre comune profit, covent qe lissue soit pris, et ne mye le quel ils devyndrent en [le profit la femme on nent.—Par quei lissue fust pris en tiele manere qe les deners ne devyndrent pas en comune profit del baron et la femme.—*Et alii e contra*, &c.[2] A.D. 1346.

(46.) [3]§ Brief de Mene fust porte vers Thomas de Neville. Et counta, par *Skip.*, coment launcestre Thomas, avant lestatut, enfeffa un J. a luy et a ses heirs a touz jours, et puis fine se leva entre eux, par quel il conferma son estat a lui et a ses heirs, a tenir de luy et de ses heirs par les services dun dener par an pur touz services. Et par mesme la fine obligea lui et ses heirs a la garrantie, et acquiter lautre et ses heirs, le quel J. dona la terre al Mene.[4]

[1] The words between brackets are omitted from I.

[2] The roplication, upon which issue was joined, was, according to the record, "quod prædicti "denarii nunquam devenerunt "ad communem utilitatem ip- "sorum Roberti et Johannæ, "sicut prædicti Robertus "Hamound et Nicholaa . . . "superius supponunt."

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

[3] From H. and I., but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 277,d. It there appears that the action was brought by Thomas de Bernardeston aganist Thomas de Novillo "quod acquietet "ipsum de servitio quod Jo- "hannes de Noville de Essexia "ab eo exigit de libero tenemento "suo quod de præfato Thoma de "Noville tenet in Magna Cotes" (Great Coates, Lincs.).

[4] I., *Breve de Medio.*

No. 46.

A.D. 1346. tail, with remainder to one R.[1] in fee simple, and in virtue of that feoffment he attorned to the defendant who was chief lord, and the defendant was seised by his hand of the services reserved by the fine. And since that reservation of the seignory by the fine Thomas and his ancestors have acquitted us and our ancestors and those whose estate we have. And for such reason the plaintiff bound the defendant to the acquittal of services.—*Seton.* You see

[1] For the real name and further details, see p. 353 note 1.

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pleintif en fee taille, le remeindre a un R. en fee simple, par force de quel feffement il attourna al defendant qe fust chief seignur, et le defendant seisi par sa mayn des services reservez par la fine, puis quele reservacion de seignurie par la fine Thomas et ses auncestres ount acquite nous, et noz auncestres, et ceux qi estat nous avoms. Et par tiele resoun il luy lia al acquitaunce.[1]—*Setone.* Vous veietz A.D. 1346.

[1] The count was, according to the record, "quod quidam "Johannes de Neville dedit et "concessit cuidam Willelmo de "Apelderfend manerium de "Magna Cotes, cum pertinentiis, "habendum et tenendum sibi "et heredibus suis de eodem "Johanne et heredibus suis, per "fidelitatem et servitium unius "denarii per annum in per-"petuum. Et postea, ... "anno regni Regis Edwardi avi "domini Regis nunc nono, . . . "levavit quidam finis inter præ-"dictum Willelmum de Apel-"derfend, querentem, et quen-"dam Andream de Neville, fra-"trem et heredem prædicti Jo-"hannis, et avum prædicti "Thomæ de Neville, cujus heres "ipse est, impedientem, de præ-"dicto manerio, cum pertinentiis, "excepta advocatione ecclesiæ "ejusdem manerii, per quem "finem idem Andreas recognovit "prædictum manerium, cum "pertinentiis, excepta advoca-"tione prædicta, esse jus ipsius "Willelmi, ut illud quod idem "Willelmus habuit ex conces-"sione prædicti Johannis de "Neville fratris prædicti Andreæ, "habendum et tenendum eidem "Willelmo et heredibus suis de "prædicto Andrea et heredibus "suis in perpetuum, reddendo "inde per annum unum denari-"um ad Pascha pro omni ser-"vitio, consuetudine, et exac-"tione, &c., Et de ipso Willel-"mo descendit manerium præ-"dictum, cum pertinentiis, cui-"dam Gilberto, ut filio et heredi, "&c., qui manerium illud, cum "pertinentiis, dedit cuidam "Willelmo de Luda tunc Epis-"copo Eliensi, tenendum sibi et "heredibus suis de capitalibus "dominis feodi, &c., in per-"petuum. Et de ipso Willelmo "de Luda descendit manerium "illud, cum pertinentiis, cuidam "Willelmo filio Nicholai Tochet, "ut consanguineo et heredi præ-"dicti Willelmi de Luda, qui "quidem Willelmus filius Nicho-"lai manerium illud dedit cui-"dam Johanni Sandale, tenen-"dum sibi et heredibus suis de "capitalibus dominis, &c., in "perpetuum. Et postmodum "in Curia domini Regis Edwardi "patris domini Regis nunc, anno "regni sui octavo, ... "levavit quidam finis inter præ-"dictum Johannem de Sandale, "Johannem de Kedyngtone, et "prædictum Thomam de Ber-"nardestone, querentes, et Jo-"hannem de Cokermuthe, defor-"ciantem, de manerio prædicto,

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A.D. 1346. plainly that he does not bind us by the fine by which, according to his statement, our ancestor bound himself to acquit the other and his heirs, inasmuch as he is not, as we understand, heir to the person to whom the obligation was made. Thus the force of that by which he attempts to charge us with the acquittal of services is that he held of us by the service of one penny, and that we were seised of that; and by his count he has supposed that he is distrained for our homage, and he has not affirmed that he held of us by that kind of service, and he has not bound us to that acquittal by title of prescription, that is to say, from time whereof there is no memory; therefore we do not understand that we have any need to

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" cum pertinentiis, per quem " finem idem Johannes de San- " dale recognovit manerium illud, " cum pertinentiis, esse jus ipsius " Johannis de Cokermuthe, ut " illud quod idem Johannes de " Cokermuthe habuit de dono præ- " dicti Johannis de Sandale. Et " pro illa recognitione, &c., idem " Johannes de Cokermuthe con- " cessit et reddidit prædictum " manerium, cum pertinentiis, " prædicto Johanni de Sandale, " tenendum ad totam vitam " ipsius Johannis de Sandale de " capitalibus dominis, &c. Ita " quod post mortem ejusdem " Johannis de Sandale prædictum " manerium, cum pertinentiis, " remaneret prædicto Johanni " de Kedyngtone, tenendum sibi " et heredibus de corpore suo " exeuntibus de capitalibus " dominis, &c., in perpetuum. " Etsi idem Johannes de Kedyng- " tone obiret sine herede de cor- " pore suo exeunte, tunc præ- " dictum manerium, cum per- " tinentiis, integre remaneret " ipsi Thomæ de Bernardestone " et heredibus de corpore suo " exeuntibus, tenendum de " capitalibus dominis, &c. Ita " quod si, &c., manerium præ- " dictum, cum pertinentiis, " remaneret Katerinæ sorori " ejusdem Thomæ de Bernarde- " stone, tenendum sibi et heredi- " bus de corpore suo exeuntibus " de capitalibus dominis, &c. " Et si contingeret quod præ- " dicta Katerina obiret sine " herede de corpore suo exeunte " &c., idem manerium, cum per- " tinentiis, remaneret rectis " heredibus prædicti Johannis " de Sandale, qui quidem Jo- " hannes de Sandale jam obiit. " Et prædictus Johannes de " Kedyngtone obiit sine herede " de corpore suo exeunte. Et " ita ipse Thomas de Bernarde- " stone tenet manerium præ- " dictum, cum pertinentiis, de " præfato Thoma de Neville, con- " sanguineo et herede prædicti

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bien coment il ne nous lie pas par la fine par quele, a ceo qil dit, nostre auncestre se obligea dacquiter lautre et ses heirs, pur taunt, a ceo qe nous entendoms, qil nest pas leir celi a qi lobligacion se fist, issi qe la force de ceo qil est a nous charger del acquitaunce est par taunt qil tint de nous par les services dun dener, et nous seisi de cele; et par son counte ad il suppose qil est destreint pur nostre homage, de quele manere des services il nad pas afferme qil tint de nous, ne il nad pas lie cele acquitaunce par title de prescripcion, saver, de temps dount y ny ad memore; par quei nentendoms pas qe a ceo qil ad dit eioms mester A.D. 1346.

"Andreæ, per prædicta ser-
"vitia, in forma supradicta, pro
"quibus servitiis idem Thomas
"de Neville ipsum acquietare
"debet versus quoscumque, qui-
"dam Johannes de Neville de
"Essexia exigit ab eo homagium,
"fidelitatem, et servitia duorum
"feodorum militum, et scuta-
"gium, ... et ad servitia
"illa facienda ipsum distringit
"per averia carucarum suarum,
"ita quod non, &c., præfatus
"Thomas de Neville, licet sæpius
"requisitus, ipsum de servitiis
"prædictis versus præfatum
"Johannem acquietare hucusque
"contradixit, et adhuc contra-
"dicit, unde dicit quod deteri-
"oratus est, et damnum habet
"ad valentiam trescentarum
"librarum."

Neville then prays that Bernardeston may show what he has to bind Neville to the acquittal of services, and Bernardeston mentions the fine "inter "Andream de Neville, avum præ-
"dicti Thomæ, cujus heres ipse
"est, et Willelmum de Apelder-
"fend in forma supradicta, in quo
"etiam fine continetur quod præ-
"dictus Andreas et heredes sui
"acquietarent præfato Willelmo
"et heredibus suis, pro servitio
"unius denarii prædicto, præ-
"dictum manerium, cum per-
"tinentiis, ... contra
"omnes homines in perpetuum.
"Et dicit quod prædictus
"Thomas de Neville et ante-
"cessores sui, a tempore
"reservationis dominii prædicti,
"semper acquietarunt ipsum
"Thomam de Bernardestone et
"illos qui manerium prædictum
"tenuerunt a tempore supra-
"dicto, &c., et quod idem
"Thomas de Neville seisitus est
"de servitiis ipsius Thomæ de
"Bernardestone, et quod ipse
"est tenens manerii prædicti in
"forma prædicta, &c. Et petit
"quod ipsum acquietet, &c."

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A.D. 1346. answer to that which he has said.—*Skipwith.* And we demand judgment since you do not deny that we hold of you, nor that you are seised of our services, nor that since the seignory commenced you and your ancestors have acquitted me, &c., which proof of the obligation to acquit we understand to be sufficient, and to that you make no answer; judgment.—STONORE. Acquittal of

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a respoundre.[1]—*Skip.* Et nous demandoms jugement puis qe vous ne dedites pas qe nous ne tenoms de vous, ne qe vous nestes seisi de noz services, ne qe puis la seignurie comence vous et voz auncestres navetz acquite moy, &c., quel lien en ceo entendoms qe soit suffisant, a quei vous ne responez riens ; jugement.[2]—STON. Acquitaunce est A.D. 1346.

[1] The plea on behalf of Thomas de Neville was, according to the record, "quod, cum "prædictus Thomas de Bernardo-"stone nititur ipsum ligare ad "aquietanciam prædictam per "finem prædictum, quæ est una "responsio in se, ad quam respon-"sionem compellit ipsum res-"pondere, &c., petit quod ipse "de alia responsione exoneretur, "&c. Et, non cognoscendo quod "ipse seisitus est de servitiis "prædicti Thomæ de Bernardo-"stone, nec quod ipse et ante-"cessores sui acquietarunt eun-"dem Thomam de Bernardo-"stone post prædictum domi-"nium reservatum tempore præ-"dicti Regis Edwardi avi, &c., "dicit quod ipse virtute finis "prædicti eundem Thomam de "Bernardestone acquietare non "debet, &c., quia dicit quod, cum "prædictus Thomas de Bernardo-"stone supponit finem præ-"dictum levatum fuisse inter "prædictos Andream de Neville "antecessorem ipsius Thomæ de "Neville, cujus heres ipse est, "et præfatum Willelmum de "Apelderfend tempore prædicti "Edwardi Regis avi, &c., et "asserit eundem Andream obli-"gasse se et heredes suos ad "acquietandum præfatum Wil-"lelmum et heredes suos contra "omnes homines in perpetuum "in forma supradicta, idem "Thomas de Bernardestone in "demonstratione sua non sup-"ponit ipsum Thomam de Ber-"nardestone esse heredem ip-"sius Willelmi de Apelderfend, "sed omnino extraneum per-"quisitorem de manerio præ-"dicto postquam prædictus finis "levavit in forma supradicta, "per quod ipse Thomas de "Neville per verba in fine præ-"dicto contenta non tenetur "eundem Thomam de Bernardo-"stone acquietare in hac parte, "unde petit judicium, &c."

[2] The replication on behalf of Thomas de Bernardestone was, according to the record, "quod, "ex quo prædictus Thomas de "Neville cognovit finem præ-"dictum per quem antecessor "suus concessit pro se et hero-"dibus suis ad acquietandum "prædictum Willelmum et hero-"des suos in forma prædicta, et "non dedicit quin ipse tenet "manerium prædictum de præ-"dicto Thoma de Neville per "prædicta servitia, nec quin "ipse seisitus est de servitiis "prædicti Thomæ de Bernardo-"stone, nec quin ipse et ante-"cessores sui a tempore reser-"vationis dominii prædicti, prout "superius allegavit, prædictum

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services is matter which falls under the head of right, and therefore to affirm that you hold of me, without affirming a title of prescription for the acquittal, or else producing a specialty by which I bound myself to the acquittal, is not sufficient; for, if it were so, it would be sufficient to deraign every acquittal of services without saying anything more than that he held of me, and that consequence is false.—*Thorpe.* If I hold of you by homage, and I am distrained by the lord paramount for the homage which you owe to him, I shall deraign the acquittal by the title that I hold of you by homage, and that you are seised of my homage. I shall deraign the acquittal of that homage to the lord paramount against you; for it would be impossible that I could deraign the acquittal of part of the services and not of the rest; therefore the privity which I have affirmed between us, together with the seisin of the services, sufficiently affirms the title to the acquittal.—WILLOUGHBY. It used to be law that acquittal of services could be deraigned only by specialty, or by prescription, or on the principle that service acquits service and that I shall acquit you in respect of services such as those which you render to me. Now you do not bind him by title of prescription nor by specialty, and by the seisin of a penny as your services you cannot bind him except for that quantity; and since homage is demanded of the plaintiff, and you do not render that kind of service to him, it seems that you have said nothing to bind him.—*Thorpe.* There are such causes as those you mention to bind a party to acquittal, and several others also: for a tenant in frankmarriage will deraign acquittal without any of the causes such as those you have mentioned, and tenant in tail also, and judgment to that effect was given before HERLE in the

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" Thomam de Bernardestone, et " omnes illos qui fuerunt tenentes " manerii prædicti acquietarunt, " petit judicium si idem Thomas " de Neville ipsum acquietare " non debeat."

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une chose qe chiet en le dreit, par quei daffermer qe vous tenetz de moi saunz affermer title de prescripcion del acquitaunce, ou autrement especialte par quele jeo moi obligeay al acquitaunce, nest pas suffisant; qar, sil serra, il suffira a derener chescune acquitaunce saunz plus dire mes qil tint de moy : *consequens falsum.—Thorpe.* Si jeo tink de vous par homage, et jeo siwe destreint par le seignur paramount pur vostre homage, jeo dereneray lacquitaunce par tiele title qe jeo tink de vous par homage, et vous seisi de mon homage. Jeo dereneray lacquitaunce de cel vers vous ; qar il serra impossible qe jeo purray derener lacquitaunce de parcele des services, et del remenant nent ; par quei la privete qe jay afferme entre nous, ovesqe la seisine des services, afferme suffisant title dacquitaunce.—Wilby. Il soleit estre lei qe homme ne purreit derener acquitaunce forsqe par especialte, ou par prescripcion, ou qe service acquite service, et qe jeo vous acquiteray pur autielx services come vous moy faites. Ore ne li lies par title de prescripcion ne par especialte, et par la seisine dun dener de voz services ne li poetz lier fors de tiele quantite ; et puis qe homage est demande de lui, quele manere de service vous ne lui fetes pas, si semble il qe vous navetz rienz dit de lui lier.—*Thorpe.* Ils y sont tiels causes de lier partie al acquitaunce, et plusours autres : qar tenant en fraunc mariage derenera lacquitaunce saunz nulle de ces causes come vous avetz parle, et tenant en taille auxi, et ceo fust ajuge devant Herle anno viij.—Wilby. A.D. 1346.

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A.D. 1346. eighth year of the reign.[1]—WILLOUGHBY. With regard to a tenant in frankmarriage what you say is true, because he will hold quit, without service, and cannot hold of any other person than the donor; but regard to a tenant in tail it is not so, because he will never deraign acquittal of services without having another title, and, even if he could so, it would be by reason of the reversion.—*Thorpe.* Not so, Sir, since we have seen that tenant in tail bound the heir of his donor to acquittal, and the heir would have disclaimed the reversion and the seignory, but could not be admitted to do so because the tenant could not be the tenant of any one else.—WILLOUGHBY. It is true that he will not be admitted to disclaim, and nevertheless the reversion is the reason for which the tenant in tail will deraign the acquittal; for tenant in dower will deraign warranty for no other reason than by reason of the reversion, and the reversioner will not be admitted to disclaim; but in the case in which you are you do not bind him by reason of a reversion, but by reason of the seisin of one penny, by reason of which, as it seems, you cannot deraign acquittal except in respect of the portion of the services of which he is seised.—*Grene.* It seems that you can: for if I enfeoff a man, before the statute[2], to hold of me by a certain rent, and bind myself to acquit him, in that case the words relating to the acquittal will be taken to be as general as possible for all the services which are demanded against him. Now you yourself fully allow that we shall deraign acquittal of such quantity as he is seised of; acquittal then is due to us of right, and therefore since it is due, it will be taken to be due in the most general sense in which it can be taken.—*Seton.* I answer you: I say it is true that, in a case in which any one has charged himself by his deed to acquit his tenant, he will acquit him of all the services

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[1] The case to which reference is made is possibly Y.B., Easter 8 Edw. III. fo. 26, No. 23. (Raddeford v. Flembly.)

[2] 18 Edw. I. (*Quia emptores*).

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Del tenant en fraunc mariage vous ditez verite, qar il tendra quite, saunz service, et ne poet tenir dautre qe del donour ; mes de tenant en la taille il nest pas issi, qar il nes derenera jammes saunz autre title aver, et mesqil poait ceo serra pur la reversion.—*Thorpe.* Nanil, Sire, quant nous avoms veu qe tenant en taille lia leir son donour al acquitaunce, et il vousist aver desclame en la reversion et en la seignurie, et ne pout estre resceu pur ceo qil ne poait par taunt estre autri tenant.—Wilby. Il est verite qil ne serra pas resceu a desclamer, et nequident la reversion est cause par quei il derenera lacquitaunce ; qar tenant en dowere derenera garrantie par nulle autre resoun mes par cause de reversion, et si ne serra il pas resceu a desclamer ; mes en le cas on vous estes vous ne li lietz pas par cause de reversion, mes par cause de la seisine dun dener,[1] par cause de quele, com il semble, ne poietz derener lacquitaunce mes pur la porcion des services dount il est seisi.—*Grene.* Il semble qe si : qar si jeo enfeffe un homme, devant lestatut, a tenir de moy pur certein rente, et moi oblige de lui acquiter, en ceo cas la parole del acquitaunce serra pris auxi generalment pur touz services qe sont demandez vers lui, come poet estre. Ore grantez vous bien mesmes qe de autiel quantite come il est seisi nous dereneroms lacquitaunce ; donqes est lacquitaunce diwe a nous de dreit, par quei, puis qe ceo est diwe, auxi generalment come il poet estre pris il serra pris.—*Setone.* Jeo vous respond ; jeo dye qil est verite qe la ou homme sad charge mesme par son fait dacquiter son tenant qil li

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[1] H., donour.

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A.D. 1346. demanded, for that is the nature of the expression "acquittal of services"; but I say that when a party is not so bound to do this, but is holden to acquit by seisin of services, he will not acquit beyond the portion of which he is seised; for it is seen every day that one will not be put to attorn in a *Per quæ servitia* unless the conusee acknowledges liability to acquit him of services, and by that law it is plainly proved that he will not deraign acquittal solely on the ground that he holds of the conusee unless he has some other matter in right by which he can deraign acquittal.—*Skipwith.* I say that liability to acquit is properly nothing else but that the mesne has to perform to his lord the services which he ought to perform to him. Suppose then I hold of a man by the service of one penny, and he holds over of his lord by homage, and suppose that he has done one homage to his lord, and his lord distrains me for the same homage, and avows upon his tenant for his homage, and his tenant appears and joins himself with me (for without him I cannot plead to the avowry) and after he has so joined himself he alleges that the lord is seised of his homage, then, if that fact be so found, I who am his tenant shall recover my damages by that plea; therefore the doing of the homage is an acquittal to me; therefore as to compelling him to perform to his lord the services which he is bound to perform to him, it seems to us that we can do so; and the performance of those services by him to his lord is an acquittal for us; therefore it seems to us that in this case we shall deraign the acquittal.—Willoughby. We all know well that the mesne is bound to pay to his lord the services which he owes to him, and that if the mesne joins himself with you, and then shows that he has performed to the lord the services for which the lord avows, you will recover your damages; but prove to me this:—if the mesne will not join himself with you, how and by what law are you to compel him to acquit you? —*Thorpe.* We are proceeding by way of disputation quite

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acquitera de totes services[1] demandes, qar, ceo est la nature de la parole dacquitaunce ; mes jeo dy qe quant partie nest pas oblige a ceo faire, mes est tenu al faire par seisine des services qe outre la porcion qil est seisi il ne lui acquitera pas ; qar homme veit tote le jour qe homme ne serra pas mys dattourner en un *Per quæ servitia* si le conise ne lui conust lacquitaunce, et par cele lei est bien prove qil ne derenera pas par taunt qil tint de luy, sil neit autre matere en le dreit par quele il puisse derener lacquitaunce.—*Skip.* Jeo die qe acquitaunce proprement nest nul autre mes qe le mene face a son seignur les services queux il lui deit faire. Donqes jeo pose qe jeo tink dun homme par les services dun dener, et il outre de son seignur par homage, jeo pose qil eit fait un homage a son seignur, et pur mesme homage son seignur moi destreigne, et avowe sur son tenant pur son homage, il vint et se joint od moi, qar saunz luy jeo ne puisse pleder al avowere, et apres qil est joint il allegge coment qil est seisi de son homage, si cele chose soit trove, jeo qe suy son tenant par cel plee recovera mes damages ; *ergo* la fesaunce del homage est acquitaunce a moy ; par quei a lui chacer affaire a son seignour les services queux il est tenu de lui faire si semble il a nous qe nous le ferroms ; et la fesaunce de ceux services a son seignur si est acquitaunce par nous ; par quei il nous semble qe en ceo cas nous le dereneroms.—Wilby. Nous savoms bien trestouz qe le mene est tenu a paier a son seignur les services queux il lui deit, et qe si le mene se joint a vous et puis moustre qil ad fait a son seignour les services pur queux il avowe qe vous recovrerez voz damages ; me provetz moi ceo cy qe si le mene ne soi vodra pas joindre, coment et par quele lei vous lui devetz chacer de vous acquiter.—*Thorpe.* Nous aloms pur desputissoun tut

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[1] services is omitted from H.

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A.D. 1346. outside our matter; for we have alleged that the defendant's ancestor bound himself and his heirs by a fine to acquit J. and his heirs, and, although we are not J.'s heir, yet since this obligation to acquit was made to J. in perpetuity as being annexed to the tenancy of which we are enfeoffed by him, and they have not denied that fine, we therefore demand judgment.—*Seton.* You shall not be admitted to that, for we take your records to witness that he bound us to acquittal solely on the ground that he was our tenant, and that we were seised of the services by his hand, and therefore he shall not now be admitted to reply on another point.—*Skipwith.* And we take your records to witness that in our count we spoke of the fine, and we bound him to acquittal on the whole of the matter included in our count, and that matter is, so to say, the fine, and, moreover, it is not denied by him that he is seised of our services, and we demand judgment whether on that matter not denied we ought not to deraign the acquittal.—*Seton.* Then you see plainly how he makes himself a purchaser as a stranger, and does not produce the fine in which the liability to acquit is supposed to be acknowledged to be in us; we understand that we shall no more be put to answer to this action without the fine than he would deraign warranty against us without producing the deed in which the warranty is included, since this falls properly under the head of specialty.—Willoughby. If you abide judgment there, it is a peremptory demurrer, and therefore consider.—*Seton.* No, Sir; but you see plainly that in binding to the acquittal of services he relies upon two distinct matters; one is that he holds of us and we are seised of his services by his hands; the other is the fine; therefore let him hold to one only.—Willoughby. Certainly if you could destroy the fine that would suffice for you, for we do not hold the other point to be worth a needle to bind you to the acquittal.—*Seton.* Then we demand judgment, since the liability to acquit is by the fine made in favour of the person who

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hors de nostre matere; qar nous avoms allegge coment launcestre le defendant par une fine obligea lui et ses heirs dacquiter J. et ses heirs, et coment qe nous sumes pas heir a J., puis qe cele obligacion dacquiter fust faite a J. en perpetuelte come annexe a la tenance de la quele nous sumes feffe par lui, quele fine ils nount pas dedit, par quei nous demandoms jugement.—*Setone.* A ceo navendretz mye, qar nous pernoms voz recordes coment il nous lia soulement par taunt qil fust nostre tenant, et nous seisi des services par sa mayn, par quei ore a replier sur autre point il ne serra resceu.—*Skip.* Et nous pernoms voz recordz coment en nostre counte nous parlames de la fine, et sur tote la matere compris en nostre counte nous lui liames a lacquitaunce, quele matere est a dire la fine, et auxi qil est seisi de noz services nest pas dedit de lui, et demandoms jugement si sur ceste matere nent dedit nous ne devoms lacquitaunce derener.—*Setone.* Donqes vous veietz bien coment il se fait estraunge purchaceour, et ne moustre pas la fine en quele lacquitaunce dust estre conu en nous; nous entendoms qe nent plus qil derenereit garrantie vers nous saunz mettre avant le fait en quele le garrantie est compris, qe nent plus nous serroms mys a respondre a ceste accion saunz la fine, puis qe ceo chiet proprement en especialte.—WILBY. Si vous voletz la demurer il est un demeor peremptore, et pur ceo avisetz vous.—*Setone.* Sire, nanil; mes vous veietz bien coment en le lien dacquitaunce il relie sur ij; un est de ceo qil tint de nous et nous seisi de ses services[1] par ses meyns[2]; un altre la fine; par quei se tigne al un.—WILBY. Certeynement si vous puisses destrure la fine il vous suffireit, qar nous ne tenoms pas lautre point a la value dun agoille pur vous lier al acquitaunce.—*Setone.* Donqes demandoms jugement, puis qe lacquitaunce par la fine est fait a celi qe

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[1] The words de ses services are omitted from I.

[2] The words par ses meyns are omitted from H.

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A.D. 1346. was a party to the fine and his heirs, whereby we understand that any person other than his heir cannot, in virtue of that fine, deraign the acquittal, and in respect of that we demand judgment whether he can by that fine bind us to the acquittal.—*Skipwith.* And we demand judgment since you have admitted the fine by which the liability to acquit was acknowledged in perpetuity, and have admitted that you and your ancestors have acquitted us since the fine, and that you are seised of our services, and that acquittal subsequent to the fine can only be in virtue of the same fine; therefore we demand judgment, and pray acquittal and our damages.—And they were adjourned, &c.

Entry *sine assensu Capituli.*

(47.) § The Abbot of Merevale brought his writ of Entry

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fust partie a la fine et a ses heirs, ou nous entendoms qe autre qe heir de lui ne poet, par cele fine, lacquitaunce derener, et de ceo nous demandoms jugement sil par cele fine nous puisse al acquitaunce lier.[1]—*Skip.* Et nous demandoms jugement puis qe vous avetz conu la fine par quele lacquitaunce fust conu en perpetuelte, et qe vous et voz auncestres puis la fine [nous avetz acquite, et qe vous estes seisi de noz services, qele acquitaunce puis la fine][2] ne poet estre mes par force de mesme la fine; par quei nous demandoms jugement, et prioms lacquitaunce, et noz damages.—*Et adjornantur*, &c.[3] A.D. 1346.

(47.) [4]§ Labbe de Mirivale porta son brief Dentre *sine* Entre *sine assensu Capituli.*[5]

[1] In the record a rejoinder on behalf of Thomas de Neville immediately follows the replication, and is in these words:—"Thomas de Neville, quo ad hoc "quod prædictus Thomas de "Bernardestone supponit ipsum "Thomam de Neville et ante-"cessores suos acquietasse præ-"fatum Thomam de Bernade-"stone et tenentes manerii præ-"dicti, dicit quod ipse intendit "quod ipse de hoc exoneratus "est, et, quo ad prædictum "finem, &c., dicit ut prius, quod "ipse, rationibus superius alle-"gatis, non tenetur eum acquie-"tare, &c., unde petit judicium "&c."

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

[3] After the rejoinder there were, according to the roll, several adjournments. At length "in crastino Sancti Martini," [in the 25th year of the reign] "prædictus Thomas de "Neville non potest dedicere "quin ipse tenetur prædictum "Thomam de Bernardestone "acquietare in forma qua ipse "superius versus eum narravit. "Ideo consideratum est quod "acquietet, &c., et quod præ-"dictus Thomas de Bernarde-"stone recuperet versus eum "damna sua trescentarum "librarum, prout superius ver-"sus eum narravit. Et idem "Thomas de Neville in miseri-"cordia, &c.

"Et super hoc prædictus "Thomas de Bernardestone "remittit ei damna, &c."

[4] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Mich. 20 Edw. III. R°. 324, d. It there appears that the action was brought by William "Abbas de "Mira Valle" against Margery late wife of Thurstan de Northloo, and John de Crofte and Emma his wife, in respect of, "manerium de Magna Hole, "et in quod . . . . . non "habent ingressum nisi post "dimissionem quam Robertus "de Okthorpe, quondam Abbas "de Mira Valle, prædecessor "prædicti Abbatis, inde fecit "Magistro Adæ de Waltone sine "assensu et voluntate capituli "sui, &c."

[5] The words *sine assensu capituli* are from H. alone.

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A.D. 1346. *sine assensu Capituli* against a man[1] and a woman,[1] and demanded the manor of H.,[1] into which they had not entry but after the lease which his predecessor made thereof, without the assent of the Convent, to one J.—*Haveryngton.* Sir, the man tells you that he holds two parts of the manor in severalty, and and so held them on the day on which the writ was purchased; and the woman holds a third part of the manor in dower in severalty, and so held it on the day on which the writ was purchased; and so their tenancy is several, and we demand judgment of this writ, which supposes their tenancy to be one.—*Pole.* Since you have confessed that you two are tenants of the entire manor, whether the tenancy is several, or there is one tenant of the whole, the law does not put me to answer as to that; therefore we demand judgment whether, &c. —Willoughby, *ad idem.* What mischief would happen to you even though the writ should be adjudged to be good? —as meaning to say no mischief at all—for you will have an answer in accordance with your tenancy.—*Haveryngton.* Sir, inconsistency would follow, for a summons made in one tenancy could not serve for the other, but it would be necessary that a summons should be made in the other tenancy, and those two summonses could not be warranted

[1] For the names of the persons and of the manor, *see* p.367 note 4.

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assensu Capituli vers un homme et une femme, et demanda le maner de H., en le quel ils navoient entre si noun puis le lees qe son predecessour de ceo en fist, saunz assent du Covent, a un J.—*Haveryngtone.* Sire, le homme vous dit[1] qil tint les ij parties del maner en severalte, et tint jour de brief purchase ; et la femme tient la terce partie del maner en dowere en severalte, et tint jour de brief purchace ; et issi lour tenance severale, et demandoms jugement de ceo brief qe suppose lour tenance une.[2]—*Pole.* Puis qe vous avetz conu qe vous ij. estes tenantz del maner enter, le quel qe la tenance soit several, ou lun tenant de tut, la ley ne moy mette pas a ceo de respondre ; par quei nous demandoms jugement si, &c.[3]—WILBY., *ad idem.* Quel meschief a vous avendra mesqe le brief fust agarde bon ? *quasi diceret* nulle, qar solone vostre tenance vous averetz respons.—*Hav.* Sire, inconveniens ensiwereit, qar somons fait en lun tenance ne poet server al autre, mes covendreit qe en lautre tenance un somons fut fait, queux ij somons ne purront estre garrauntis par

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[1] The reports of this term here end abruptly in I. The remainder of the case is from H. alone.

[2] The pleas were, according to the record :—" Margeria dicit " quod ipsa tenet duas partes " prædicti manerii separatim et " per se, et tenuit die impe- " trationis brevis, &c.

" Et prædicti Johannes et " Emma dicunt quod ipsi tenent " tertiam partem manerii præ- " dicti in dotem ipsius Emmæ " ex dotatione cujusdam [*blank in roll*] separatim et per se, et " tenuerunt prædicto die impe- " trationis brevis. Et hoc parati " sunt verificære, &c., unde " petunt judicium de brevi, &c."

[3] The replication was, according to the record :—" Et Abbas, " non cognoscendo tenenciam " illorum in forma illa, dicit quod " per hoc breve suum in hac " parte cassare non debent, " et ex quo prædicti Margeria, " Johannes, et Emma superius " cognoscunt se tenere manerium " prædictum, nihil allegando ad " breve illud cassandum nisi " tenenciam illorum separatim, " in quo casu nullum præjudicium " eis de jure adjudicari potest, " eo quod warantiam et auxilium, " si quæ eis de lege competunt, " videlicet, prædicta Margeria, " et similiter prædicti Johannes " et Emma, juxta formam tenen- " ciæ suæ, habere possunt, petit " judicium, et quod prædicti " Margeria et alii respondeant."

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A.D. 1346. by an original writ for one summons. And, moreover, if the woman makes default, you will award the *Cape*, in accordance with the tenancy alleged in her, in respect only of a third part, whereas, according to the nature of the original writ, it should issue in respect of a moiety; therefore, by reason of those inconsistencies, the writ must be abated.—STOUFORD. If this were a writ within the degrees perhaps your exception would be good, but it is otherwise with regard to a writ in the *post*.—STONORE. Whether it be one or the other, if this writ stands, the woman will lose her voucher, for she has shown that the reversion of the dower which she holds belongs to the man who is named in the writ, by whom she will rightly be warranted, and she cannot, on this original writ taken against them in common, be admitted to vouch him who is named in the writ with her; therefore, since you do not deny the several tenancy, as he has alleged it, take nothing by your writ.

Trespass. (48.) § A writ of Trespass in respect of goods carried off was brought in the Common Bench.—*Sadelyngstanes*. We tell you that there is a writ of Trespass in respect of the same trespass pending in the King's Bench, and this writ has been purchased while the other was pending; judgment of this writ.—WILLOUGHBY. This is a personal action, in which case that is no plea, unless you say that he has recovered damages against you for the same trespass.—Therefore *Sadelyngstanes* said that the defendant was Not Guilty.

Mort d' Ancestor. (49.) § An Assise of Mort d'Ancestor was brought against two persons in the country. They vouched in a foreign county. And the parties were adjourned into the Common Bench. And suit was made against the vouchee so far that the *Sequatur suo periculo* was awarded. And now it was returned that the vouchee had nothing. One of the tenants had a Protection.—

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un original dun somons. Et, ovesqe ceo, si la femme fait defaute, vous agarderez le *Cape*, solom le tenance allegge en lui, mes de la terce partie, la ou, solom la nature del original, il issereit de la moyte; par quei, par ceux inconveniens, il covent qe le brief soit abatu.—Stouf. Si ceo fut un brief deinz lez degrees par aventure vostre chalange serra bon, mes autre est en un brief en le *post*.—Ston. Quel qil soit un ou autre, si cesti brief estois, la femme perdra son voucher, qar ele ad moustre qe la reversion del dowere qele tint est al homme qest nome en le brief, de qi el serra par resoun garraunti, et ceo ne poet ele, en cest original pris vers eux en comune, estre resceu de voucher celi qe est nome en le brief od li; par quei, puis qe vous ne dedites pas la severale tenance, come il ad allegge, ne preignetz rienz par vostre brief.[1] A.D. 1346.

(48.) [2]§ Brief de Trespas de biens enportes fust porte en comune Baunke.—*Sadl.* Nous vous dioms qe de mesme le trespas il y ad un brief de Trespas pendaunt en Baunke le Roi, et cest brief est purchace pendaunt lautre; jugement de ceo brief.—Wilby. Cest une accion personele, en quel cas cel nest pas plee, si vous ne ditz qil ad recoveri damages vers vous pur mesme le trespas.—Par quei il dit qe de rienz coupable. Trespas.

(49.) [2]§ Mort dauncestre porte vers ij en paiis. Il voucherent en foreine Counte. Et ajourne en Baunke. Et taunt suy vers le vouche qe le *Sequatur suo periculo* fust agarde. Et ore retourne qe le vouche ne avoit rienz. Lun des tenants fust par proteccion.—Le pleintif par Mort dauncestre. [Fitz., *Proteccion*, 86 ?]

[1] The judgment was, according to the record:—"Et "quia prædictus Abbas non "dedicit quin prædicta Margeria "teneat duas partes prædicti "manerii, et prædicti Johannes "et Emma teneant tertiam "partem ejusdem in dotem, &c,. "separatim, et per se, prout ipsi "superius allegarunt, Considera-"tum est quod prædicti Mar-"geria et alii eant inde sine die, "et prædictus Abbas nihil "capiat per brevo suum, sed sit "in misericordia pro falso "clameo, &c."

[2] From H. alone.

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A.D. 1346. The plaintiff, by *Grene*, made *profert* of a writ of later date than that of the Protection, by which writ the King recorded that the tenant was not in his service, and *Grene* prayed that the Protection might be disallowed.—*Skipwith.* Since you have it by record that the tenant is in the King's service, and for that reason the King has granted him his protection, you ought not to quash the Protection by reason of any writ which comes to you contrary to that which is here of record.—And, notwithstanding that, the Protection was disallowed.—Therefore the tenants were called. —One appeared, and the other did not.—*Grene.* Sir, since they have failed of their voucher, inasmuch as the *Sequatur suo periculo* is not served, we pray seisin of the land, and the assise in respect of damages.—KELSHULLE. I think you will not have seisin of the land, but the assise at large.—And in the end the assise at large was awarded, &c.

Dower. (50.) § A writ of Dower was brought against one who vouched to warrant. And the tenant by his warranty vouched the husband's heir as being under age and out of wardship. The heir now appeared by guardian, and entered into warranty as one who had nothing by descent, and rendered dower to the woman.—*Skipwith.* Now we pray judgment against the heir, if he has anything, and, if not, against the tenant.—And he could not have that judgment by reason of the mesne voucher, but judgment was given that the woman should recover against the tenant, and he over, to the value, against the first vouchee, and he over against the husband's heir, &c.

Dower. § A woman brought a writ of Dower against John de Kyrkton, whereupon John vouched to warrant one W., and W. vouched the husband's heir, who was under age, and who appeared and asked of the tenant by his warranty what he had to bind him to warranty. And the tenant by his warranty made *profert* of the deed of the heir's

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Grene, mist avant brief de puisne date qe la proteccion ne fust, par quel le Roi recorda qil ne fust pas en son service, et pria qe la proteccion fust desallowe.—*Skip.* Puis qe vous avetz par recorde qil est en service le Roi, et par cause de cele le Roi li ad graunte sa proteccion, par nul brief qe vous vint a contrare de ceo qe est issi de recorde ne devetz la proteccion quasser.—Et, *non obstante* ceo, la proteccion fust desallowe.—Par quei les tenantz furent demandez.—Lun vint, et lautre nent.—*Grene.* Sire, puis qils ount failli de lour voucher, par taunt qe le *Sequatur suo periculo* nest pas servy, nous prioms seisine de terre, et lassise de damages.—KELS. Jeo ne croi pas qe vous averetz seisine de terre, mes lassise a large.—Et a drein lassise a large fust agarde, &c. A.D. 1346.

(50.) [1]§ Brief de Dowere fut porte vers un qe voucha a garraunt. Et le tenant par sa garrauntie voucha leir le baron deinz age et hors de garde, qe vint a ore par gardein, et entra en garrauntie come celui qe avoit rienz par descente, et rendi dowere a la femme.—*Skip.* Ore prioms jugement vers leir sil eit, et, si ceo noun, vers le tenant.—Et ne poait aver pur le mene voucher, mes fust agarde qe ele recoverast vers le tenant, et il a la value vers le vouche, et il outre vers leir le baron, &c. Dowere. [Fitz., *Jugement*, 181.]

§ Une[2] femme porta un brief de Dowere vers Johan de Kyrktone, ou Johan voucha a garraunt un W., et W. voucha leire la baroun, qe fuit deinz age, qe vint et demanda le tenant per sa garrauntie ceo qil avoit de ly liere a la garrauntie. Et il mist avant le fait soun pere, &c. Et il Dowere.

[1] From H. alone until otherwise stated.

[2] This report of the case is from L. alone.

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A.D. 1346. father, &c. And the heir said that he entered into warranty as one who had nothing by descent, and rendered dower to the woman.—*Skipwith*, for the woman, prayed her dower against the heir conditionally, because he had been vouched in the same county in which the demand had been made.—WILLOUGHBY. You cannot have it, because the heir is not vouched by the tenant, but by one who has warranted the tenant, so that you are not in the common case in which the tenant has vouched the heir. Therefore we give judgment that the demandant do recover against the tenant, and the tenant over, to the value, against his warrant, and the warrant over against the heir, &c.

Right. (51.) § A mise was joined on a writ of Right, and now four knights were returned to elect the Grand Assise, and each of them was returned with the addition to his name of "knight," and they answered to their names as persons who were knights.—And *Grene* said, for the King, that they were not knights, and that inasmuch as they had proffered themselves as knights, whereas they were not, in deceit of the King, he prayed that they might be sentenced to perpetual imprisonment, and that their lands and chattels might be seised.—And they were questioned by the COURT, and they confessed that they were not knights. —*Richemunde*. Sir, even though they are not knights, yet if there is no knight in that county, and the election is not made by those who are not knights, our suit will be delayed for ever.—WILLOUGHBY. In such a case the Sheriff ought to return that there is not any knight. And I have seen in like case, on such a return, that the Sheriff of the next county was commanded to cause four knights to come.—And in the end STONORE said:—Because you are returned by the Sheriff as knights to elect the Grand Assise to consist of yourselves and others, and you have answered to your names as knights, and you have now collectively confessed that you are not knights, and so your

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dit qil entra en la garrauntie comme celuy qe rienz navoit par descente, et rendi dowere a la femme.—*Skyp.*, pur la femme, pria soun dowere vers leire sur condicion, pur ceo qil est vouche en mesme le counte ou la demande est fait. —Wilby. Vous naveretz pas, qar leire nest pas vouche par la tenant, einz par un qad garraunti al tenant, issint nestes vous pas en comune cas qe si le tenant ust vouche leire. Par qai nous agardoms qe la demandante recovere vers le tenant, et le tenant a la value outre vers soun garraunt, et le garraunt outre vers leire, &c. A.D. 1346.

(51.)[1] § Un mise fut joint en brief de Droit, et ore iiij chivalers furent retournes de eslire le grand assise, et chesqun deux fust retourne par surnoun de chivaler, et ils respondirent pur lour nouns come ceaux qe furent chivalers.—Et *Grene* dit, pur le Roi, qils ne furent pas chivalers, et de ceo qils se avoint profert come chivalers, la ou ils ne furent pas, en desceite de Roi, il pria qils furent agardes a perpetuel prisoun, et qe lour terres et chateux furent seisiz.—Et ils furent opposes par la Court, et ils conissoient qils ne furent pas chivalers.—*Rich.* Sire, mesqils ne soient pas chivalers, sil neit nul chivaler en cel counte, si la eleccion ne soit fait par ceux qe ne sont pas chivalers, nostre sute serra delaye pur touz jours.—Wilby. En tiel cas le Vicounte deit retourner qil nad nul chivaler. Et jay veu la ou, en tiel cas, sur tiel retourne, qe maundo fut al Vicounte del procheyn counte de faire venir iiij. chivalers.—Et a drein Ston. Pur ceo qe vous estes retourne par Vicounte come chivalers de eslire le grande assise de vous mesmes et des autres, et vous avetz respoundu a voz nouns come chivalers, et ore avetz entre vous conu qe vous ne estes pas chivalers, et issi fust Droit.

[1] From H. alone.

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A.D. 1346. proffer was in deceit of this Court, therefore we do adjudge that you do go to prison on that false statement, there to remain during the King's pleasure, &c.

Nonsuit. (52.) § A writ was brought against two persons by different *Præcipes*. One of them vouched Robert de Neville of Hornby, and the other traversed the action, and in respect of that traverse a *Nisi prius* was sued. And in the country the demandant was nonsuited. And on the day given in the Common Bench the nonsuit was adjudged with regard to the one only ; and the other who had vouched was essoined on that day, and had a day now by the essoin. —*Blaykestone* demanded judgment since the demandant had been nonsuited on this original writ, and the pledges to prosecute had been amerced for that reason, and that amercement would relate to the whole of the original writ, because a pledge could not be twice amerced, and therefore the nonsuit on one *Præcipe* must be a nonsuit on all.— WILLOUGHBY. It is not so, because there are two *Præcipes* which are in the nature of two original writs, and when the nonsuit was recorded there was not any party but one, and therefore the nonsuit will be adjudged to be with regard to him who was then party, and to no other.—*Skipwith.* Sir, although in the country, when the nonsuit was recorded, there was no party but one, yet at any rate we and he had a day here in the Common Bench, on which day the nonsuit was adjudged, and that nonsuit then adjudged will be as much a nonsuit with regard to all as if the nonsuit had been made on the day given in the Bench ; and, moreover, Sir, the Abbot of Combe was in the same case, and in that case nonsuit was adjudged with regard to all the *Præcipes*.—WILLOUGHBY. Since the nonsuit was adjudged with regard to the other, you have been essoined, and you now have a day by essoin, and therefore deliver yourself.—Therefore they made *profert* of a Protection for Robert Neville who had been vouched.—And exception was taken to this on the ground that he was described as knight in

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vostre profre en deceite de ceste Court, par quei nous vous agardoms a la prisoune sur cele fauxine, a demurer la a la volunte le Roi, &c. A.D. 1346.

(52.) [1] § Brief fut porte vers ij par divers *Præcipe*. Lun voucha Robert de Neville de Horneby, et lautre traversa laccion, et de ceo un *Nisi prius* suy. Et en pays le demandant fut nounsuy. Et al jour en Baunke la nounsute agarde vers lun soule ; et lautre qe avoit vouche a cel jour fut essone, et ad jour par essone tanqa ore.—*Blaik.* demanda jugement puis qil fust nounsuy en ceste original, par quele ses plegges sont amercyes, quel amercyement serra pur tut loriginal, qar il ne serra pas ij foitz amercye, et par taunt la nounsute en le un *Præcipe* covent estre nounsute en touz.—Wilby. Il nest pas issi, qar ils y sont ij *Præcipe* en nature de ij originals, et quant la nounsute fust recorde il ne avoit nulle partie mes lun, par quei vers luy qe adonqes fust partie, et a nule autre, serra la nounsute ajugge.—*Skip.* Sire, coment qe y ne avoit en pays, quant la nounsute fust recorde, nule partie mes une, a meyns nous et lui avoms un jour cy en Baunke, a quel jour la nounsute fust ajugge, quel nounsute a donqes ajugge serra auxi avant un nounsue vers tous come si la nounsute ust este fait al jour en Baunke ; et, ovesqe ceo, Sire, Labbe de Combe fust en mesme le cas, et la nounsute illeoqes fut ajugge a touz les *Præcipe*.[2]—Wilby. Puis la nounsute ajugge vers lautre, vous avetz este essone, et avetz jour a ore par essone, par quei delivrez vous.—Par quei ils mistrent avant proteccion pur Robert Neville qe fust vouche.—Et chalange pur taunt qe en la proteccion il est Nounsute.

[1] From H. alone. The report may be in continuation of Y.B. Trin. 20 Edw. III. No. 21 (pp. 536–538).

[2] The case of the Abbot of Combe occurs in Y.B., Hil., 19 Edw. III. No. 25 (pp. 468–470).

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A.D. 1346. the Protection, and not in the voucher.—And it was said, as to the surplusage in the Protection, that it was good nevertheless, but that if there had been less in the Protection than in the voucher it would have been bad.—Therefore the parol was put without day, &c.

Voucher. (53.) § One Grimbald was admitted to defend his right on the default of a tenant for term of life, and vouched himself to warrant, and showed cause for having the voucher such that his own father enfeoffed one J. of the same land to hold to J. and his heirs, with warranty to J. and his heirs and assigns, which J. gave the land (said Grimbald) to my father and to the person on whose default I am admitted to defend my right, to hold to them and the heirs of my father, and so I vouch myself as J.'s assign.—*Grene.* Since you are admitted to defend your right as in respect of an estate of fee simple, you shall not be admitted to vouch yourself in respect of so high an estate.—*Skipwith.* It seems that I shall, for if the writ had been brought against my father, and the tenant for term of life, the two would in virtue of that matter have had voucher of my father, in order to save the estate of the tenant for life, and for the same reason in this case, since the law is such that tenant for term of life will have to the value by a warranty deraigned by one in reversion who is admitted, &c., and so I shall have this voucher in order to save his estate.—*Grene.* Two persons will have a voucher against one of them in order to save the estate of the other, but [not] when one of them alone is party to the voucher, and is admitted to defend his right in respect of an estate of fee simple, in which case there is no lesser estate in him to be saved than there will be after he has warranted himself; for, if he had an estate tail or for term of life he would have the voucher against himself because he would be tenant by his warranty of a higher estate than he had warranted, but in respect of an estate of fee simple he will not have it against himself.—*Pole.* It seems that he will, for if he is ousted of

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nome chivaler, et nent en le voucher.—Et dit qe pur le surplus en la proteccion qil ne vaut ja le meyns, mes sil y avoit meyns en la proteccion il vaudra le piz.—Par quei la parole fust myse saunz jour, &c. A.D. 1346.

(53.) [1]§ Un Grymbaud fust resceu a defendre son dreit par le defaute un tenant a terme de vie, et voucha lui mesme a garraunt, et moustra tiel cause pur aver le voucher qe son pere demene enfeffa un J. de mesme la terre a li et a ses heirs od garrauntie a lui et ses heirs et a ses assignes, le quel J. dona la terre a mon pere, et a celi par qi defaute jeo suy resceu a defendre dreit, a eux et a les heirs mon pere, et issi come assigne J. jeo moi vouche mesme.—*Grene.* Puis qe vous estes resceu a defendre vostre dreit come dun estat de fee simple, a voucher vous mesmes de si haut estat ne serretz resceu.—*Skip.* Il semble qe si, qar si le brief ust este porte vers mon pere, et le tenant a terme de vie, les deux par cele matere ussent eu le voucher de mon pere, pur sauver lestat le tenant a terme de vie, et par mesme la resoun en ceo cas, puis qe la lei est tiele qe tenant a terme de vie avera a la value par une garrauntie derene par celi en la reversioun qest resceu, &c., si avera jeo ceste voucher pur son estat sauver.—*Grene.* Deux averount une voucher vers lun de eux pur sauver lestat lautre, mes quant lun soul est partie al voucher, et est resceu a defendre son dreit de estat simple, en quel cas meyndre estat en lui nest pas a sauver qil ne serra apres qil avoit garraunti a lui mesme; qar, sil avoit lestat de fee taille ou a terme de vie, il avereit le voucher vers lui mesme pur ceo qil serra tenant par sa garrauntie de plus haut estat qil ne li avoit garraunti, mes destat de fee simple vers lui mesme il nel avera pas.—*Pole.* Il semble qe si, qar, sil soit ouste de ceo Voucher.

[1] From H. alone.

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A.D. 1346. this voucher against himself, so as to make himself in such degree as that in which he could deraign warranty against his ancestor the feoffor, he will lose his warranty higher up; for in the estate in which he now is by the feoffment of another person it will be necessary for him to deraign warranty in respect of another previous estate, and by reason of that mischief it is right that we should have this voucher.—WILLOUGHBY. You say that which you would like to be the fact, for, inasmuch as you are heir to your ancestor to whom the earlier warranty was made, you will deraign that warranty because in no other manner can deraignment be made; therefore we oust you from this voucher.—*Skipwith.* The demandant ought not to have an action, because his ancestor, through whom he has made the descent, released all the right which he had in the same land while it was in our possession; judgment whether, &c.—*Grene.* At the time at which the release was executed he had nothing in those tenements; ready, &c.—*Skipwith.* You shall not be admitted to that, because in the same deed which you have acknowledged it is said that the ancestor released all his right in respect of the same tenements which we hold by the lease of one R., by which deed our seisin at that time was proved; therefore you shall not be admitted to deny the seisin, the contrary of which denial is proved in the deed which you have acknowledged.—*Grene.* Then you refuse the averment.—And *Skipwith* did not dare to do so.—Therefore the averment on the seisin at that time was admitted, &c.

Annuity. (54.) § A writ of Annuity was brought, and the plaintiff counted that the annuity was granted to him by the defendant until the plaintiff had been advanced to a suitable benefice of Holy Church.—*Pole.* We tell you that we tendered him the vicarage of S., at Lincoln, on such a day, in presence of such a person, which vicarage he refused, and so the annuity is extinguished; judgment whether, &c.—

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voucher vers lui mesme, de li faire mesme en tiel degree qil poait derener garrauntie vers le feffour son auncestre il, perdra la garrauntie par amont; qar en lestat qil est aore dautri feffement il faudra a derener garrauntie dun autre estat avant, et pur cel meschief si est ceo resoun qe nous eioms ceo voucher.—Wilby. Vous dites talent, qar, par taunt qe vous estes heir a vostre auncestre, a qi leisne garrauntie fut fait, vous dereneres cel garrauntie pur ce qe en autre manere ne poet estre fait del deresner; par quei nous vous oustoms de ceste voucher.—*Skip.* Il ne deit accion aver, qar son auncestre, par qi il ad fait la descente, relessa en nostre possessioun tut le dreit qil avoit en mesme la terre; jugement si, &c.—*Grene.* A temps de la confeccion il navoit rienz en ceux tenementz; prest, &c.—*Skip.* A ceo ne serrez resceu, qar en mesme le fait quel vous avetz conu est parle qil relessa tut son dreit en mesmes les tenementz quel nous tenoms de lees un R., par quel fait nostre seisine adonqes fut prove; par quei a dedire la seisine, le contrare de quel est prove en le fait quel vous avetz conu ne serrez resceu.—*Grene.* Donqes vous refusez laverement.—Et *Skip.* nosa pas.—Par quei le averement sur la seisine adonqes fust resceu, &c. A.D. 1346.

(54.)[1] § Un brief Dannuite fut porte, et counta qe lannuite lui fust graunte par le defendant tanqil fust avance a covenable benefice de Seint Eglise.—*Pole.* Nous vous dioms qe nous li tendoms la vicare de S. a Nichol, tiel jour, en la presence de tiel, la quel il refusa, et issi lannuite Annuite.

[1] From H. alone.

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A.D. 1346. *Sadelyngstanes.* Ready, &c., that you did not tender us the vicarage at Lincoln, as you have said.—And he could not have the averment as to whether the defendant tendered to him at Lincoln or not, but only that the defendant had not tendered him the vicarage as he had said.—And in such manner the issue was admitted; and the Sheriff was commanded to cause a jury to come from Lincoln.—But WILLOUGHBY said that, even though the jury should say that the defendant tendered the benefice to the plaintiff, they would be further questioned as to where he tendered it, and if the jury should say that it was ten leagues outside Lincoln, in a place which is within the county of Lincoln, that would suffice for the defendant, but, if they should say that the benefice was tendered in another county, we should have no regard to that tender because it does not fall within their cognisance.—*Skipwith.* It seems that it cannot be so, for if I plead in bar a release which does not bear any date, and you deny it, and I say that the deed was executed at Lincoln, that allegation is made with no other intention than to make it certain from what neighbourhood the jury shall come; for on that affirmative statement will arise the question of the place from which the jury will come, and not on any statement in the negative; and the allegation relating to that place is not made with any intention that it should be part of our issue; for if, in the case which I have put, it is found that the deed is his, they will not enquire further where the deed was executed, whether within the county or without, and so for the same reason in this case.—STONORE. We now have nothing to do with what matters will be enquired of, but when the truth is found we shall give our judgment in accordance with that which is right.

Quare impedit. (55.) § The King brought a *Quare impedit* against Henry FitzHugh and one L., and counted that one John FitzHugh was seised of the manor of S. to which the advowson was appendant, and presented his clerk, Master

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esteint ; jugement si, &c.—*Sadl.* Qe vous ne nous tendistes pas la vicare a Nichol. come vous avetz dit, prest, &c.—Et ne poait avoir laverement lequel il le lui tendi a Nichol ou nent, mes soulement qil ne lui avoit tendu la vicare come il avoit dit.—Et en tiele manere lissue resceu ; et comaunda affaire venir pays de N.—Mes WILBY dit qe mesqe lenqueste die qil lui tendi le benefice qil serront opposes outre ou il tendi, et si lenqueste die qe ceo fut x. lieus hors de Nichole, quel lieu soit deinz le counte, il suffit pur le defendant, mes sil dient qil fut tendu en autre counte nous averoms de cele tendre nul regarde, pur ceo qil ne chiet pas en lour conissance.—*Skip.* Il semble qil ne poet estre issi, qar si jeo plede en barre par un relees qe ne porte nul date, et vous le dedietz, et jeo die qe le fait se fist a Nichole, cele alleggeaunce nest a nul autre entente mes a mettre en certein de quel pays lenqueste vendra ; qar de cele qest en laffirmatif vendra le lieu de quel pays vendra, et ne mye de celi qe est en le negatif, ne mye al entente qe lalleggeaunce de cel lieu soit parcele de nostre issue ; qar si, en le cas qe jay mys, soit trove qe ceo est son fait, ils nenquerront pas outre ou le fait se fist, le quel deinz le counte ou dehors, et par mesme la resoun en ceo cas.—STON. Nous navoms quei faire aore quele chose serra enquis, mes quant la verite serra trove nous lajuggeroms solonc ceo qe resoun voet, &c. A.D. 1346.

(55.)[1] § Le Roi porta *Quare impedit* vers Henri fitz Hughe et un L., et counta qun Johan fitz Hughe fust seisi del maner de S. a quei lavowesoun, &c., et presenta son *Quare impedit.*

[1] From H. alone. This appears to be a second report of the case Y.B. Trin. 20 Edw. III., No. 44.—The King v. John de Jarum and Henry Fitz-Hugh. (Above pp. 44-51.) The record, which is among the *Placita de Banco* (Trin. 20 Edw. III., R°. 45) is there cited.

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A.D. 1346. Robert de Metham, by reason of whose death the church was now void. This John held the same manor of the King *in capite* by drengage, which gives wardship and marriage, and therefore, after his death, the King seized the same manor by reason of the non-age of A., John's son and heir, and so the King is seised of the manor to which, &c., and so it belongs to him to present.—*Richemunde.* Henry tells you that he makes protestation that he does not admit that the manor is holden of the King *in capite*, nor that the advowson is appendant to the manor; but we tell you that Robert was not admitted on John's presentation; ready, &c. And in order to have a writ to the Bishop we say that one Hugh Fitz Henry was seised of the advowson and presented this same Master Robert whom they have alleged to have been presented by John, and after the death of Hugh the advowson descended to this same Henry as to son and heir, and so it belongs to him to present, and we pray a writ to the Bishop for him.—And for L. *Richemunde* said that he had not disturbed; ready, &c.—*Thorpe.* Whereas you have made a title, in order to have a writ to the Bishop, in that Hugh was seised of the advowson, it is quite true that he was seised of the advowson, and that as appendant to the manor of S., and presented as you have said; and that Hugh rendered by fine the same manor, with the appurtenances, to John Fitz Hugh and his heirs, in virtue of which render John was seised. And afterwards Robert resigned, by reason of which resignation the church became void, and therefore John presented this same Robert, who was admitted on his presentation, and so the King is seised of the manor to which, &c., and we pray a writ to the Bishop for the King.—*Richemunde* came and said in answer to that, without the consent of his companions, that, whereas they had said, on behalf of the King, that Robert resigned and that John afterwards presented him, Robert was not admitted on John's presentation; ready, &c.—*Thorpe.*

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clerc, Mestre Robert de Metham, par qi mort leglise est ore voide, le quel J. tint mesme le maner del Roi en chiefe par dryngage, qe doune garde et mariage, par quei, apres sa mort, le Roi seisist mesme le maner, par resoun del nounage A. fitz et heir J., et issi est il seisi del maner a quei, &c., et issi appent a lui a presenter.—*Rich.* Henri vous dit qil fait protestacion qil ne conust pas qe le maner est tenu del Roi en chief, ne qe lavowesoun soit appendant al maner; mes nous vous dioms qe Robert ne fut pas resceu al presentement J.; prest, &c. Et pur brief aver al Evesqe nous dioms qun Hughe le fitz Henre fust seisi del avowesoun, et presenta mesme ceste Mestre Robert, qils ount dit qe fut presente par J., et apres la mort Hughe lavowesoun descendi a mesme ceste Henri come a fitz et heir, et issi appent a lui a presenter, et prioms pur lui brief al Evesqe.—Et pur L. il dit qil ne lui avoit pas destourbe; prest.—*Thorpe.* La ou vous avetz fait title, daver brief al Evesqe, par taunt qe Hughe fust seisi del avowesoun, et bien est verite qil fust seisi del avowesoun, et ce come appendant al maner de S., et presenta come vous avetz dit, le quel Hughe mesme le maner od les appurtinaunces rendi par fine a J. le fitz Hughe et a ses heirs, par quel rendre J. fust seisi. Et apres R. resigna, par quel resignement leglise se voida, par quei J. presenta mesme ceste R., qe a son presentement fust resceu, et issi est le Roi seisi del maner a quei, &c.; et prioms pur le Roi brief al Evesqe.—A quei vint *Rich.* saunz assent de ses compaignouns, et dit qe la ou ils ount dit pur le Roi qe R. resigna, et qe apres J. li presenta, qe R. ne fust resceu al presentement J.; prest, &c.—*Thorpe.* Ore demandoms jugement,

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A.D. 1346. Now we demand judgment, since you have not denied that the advowson is appendant to the manor, nor the render of the manor, with the appurtenances, by Hugh, nor the King's seisin of the manor, which is a sufficient title for the King to have the presentation, and we demand judgment for the King on that matter, and pray a writ to the Bishop. —*Moubray* afterwards came to the bar as if nothing had been pleaded with regard to the new title which the King made, and said :—At the commencement we traversed the presentation from which the King had taken his title, which matter is still maintained by his new plea inasmuch as he said that Robert resigned and was afterwards admitted on John's presentation, in which case, if he will maintain such matter, we are then at issue on our first traverse. And beyond that he has said that Hugh presented as appendant, and gave the manor to John, which matter, if the King waives his first title, is, perhaps, a sufficient title to have a writ to the Bishop, and we cannot know whether they aid themselves in one way or in the other. And, in case they will put the matter definitely on behalf of the King, we shall be ready to answer.—*Thorpe.* We take the record of the Court to witness that against our replication you tendered the averment that Robert was not admitted on John's presentation, not denying that the advowson is appendant, nor the alienation of the manor, to which plea we replied by demanding judgment for the King, and we prayed a writ to the Bishop ; and on that plea pleaded we again demand the judgment of the Court, for we certainly shall not lose thereby.—WILLOUGHBY. Then it remains only to see between ourselves whether we can record that which you have said, and as to that we will confer together.—And afterwards the COURT said that they would not record that he tendered that averment for a plea. And even though such words were spoken we should not (said the COURT), *ex abundanti cautela*, record them as a plea, and therefore we understand that he may well

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puisqe vous navetz pas dedit lappendance del avowesoun al maner, ne le rendre del maner, od les appurtenances, par Hughe, ne le seisine le Roi del maner, quele chose est suffisaunte title al Roi a aver le presentement, et demandoms jugement sur ceste matere pur le Roi, et prioms brief al Evesqe.—*Moubray* vint a la barre apres come si rienz ust este plede al novel title qe le Roi fist, et dit qe a comencement nous traversames le presentement de quei le Roi avoit pris son title, quele chose unqore par son novel plee est meintenu en taunt come il dit qe R. resigna, et puis le resceut del presentement J., en quel cas, sil voille tiel chose mayntener, donqes sumes a issue sur nostre primer traverse. Et outre cele il ad dit qe Hughe presenta come appendant, et dona le maner a J., quele chose, si le Roy weyve son primer title, par aventure est suffisaunte title a aver brief al Evesqe, et nous ne poms sauver le quel qils soi eident par lun chymyn on par lautre. Et, en cas qils voillent pur le Roi mettre en certein, prest serroms a respondre.—*Thorpe*. Nous pernoms recorde de Court coment encountre nostre replicacion vous tendistes daverer qe R. ne fust pas resceu al presentement J., nent dedisant lappendaunce et lalienacion del maner, sur quel plee nous repliames en jugement pur le Roi, et priames brief al Evesqe; et sur cel plc plede nous demandoms voz jugements unqore, qar nous nel perderroms pas certeinement.—Wilby. Donqes ny ad il mes a veer entre nous si nous puissoms recorder ceo qe vous parletz, et de ceo nous parleroms ensemble.—Et puis ils disoient qil ne vodreint pas recorder qil tendi cel averement pur plee. Et mesqe tiels paroles furent ditz *ex abundanti* [*cautela*] nous le voloms pas recorder pur plee, par quei nous entendoms qil avendra assetz bien

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A.D. 1346. enough be admitted to say that which he pleases.—Therefore *Moubray* waived the exception of duplicity in pleading which he had previously raised, and said that Hugh did not present as appendant, and that Robert was not admitted on John's presentation; ready, &c.—*Thorpe.* Ready, &c., that Robert was admitted on John's presentation.—And the other side said the contrary.

Entry. (56.) § On a writ of Entry in respect of a disseisin effected on the demandant's ancestor *Gaynesford* said:—You ought not to maintain this action as heir, because you are a bastard, &c.—*Seton.* You shall not be admitted to plead that, because you have had view, and thereby affirmed the descent, and therefore you cannot be admitted to disaffirm the descent.—And that was the opinion of Willoughby.—And afterwards, because there had never been a demand of view, the demandant said that he was a *mulier*.—And the other side said the contrary.

Account. (57.) § A writ of Account was brought in respect of a time at which the defendant was alleged to have been receiver of the plaintiff's money.—The defendant denied receipt, and upon that they were at issue.—And now the plaintiff prayed a *Nisi prius*.—And *Huse* came to the bar, and said, for the defendant, that our Lord the King had taken him and his goods and chattels, lands and tenements into the King's protection, so that he should not be troubled or molested at the suit of any one until the King had been satisfied in respect of 100*l.* which the defendant owed him. And *Huse* made *profert* of the Protection, and said that he did not understand that they would further continue this plea.—Willoughby. We desire that the inquest be taken on the issue which you have joined, because it is equally possible that the finding will be for you or against you; and, even though the verdict pass against you, we shall then see whether the

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a dire ceo qe lui plest.—Par quei *Moubray* weyva le chalenge de la doublesse de plee qil dona avant, et dit qe Hughe ne presenta pas come appendant, ne R. ne fust pas resceu al presentement J.; prest, &c.—*Thorpe.* Qe R. fust resceu al presentement J., prest, &c.—*Et alii e contra.* A.D. 1346.

(56.)[1] § En brief Dentre de disseisine fait a son auncestre *Gayn.* Vous ne devetz come heir ceste accion meyntener, qar vous estes bastard, &c.—*Seton.* A ceo navendretz pas, qar vous avetz eu la vewe, et par taunt la descente afferme, par quei a desaffermer la descente ne serrez resceu.—Et ceo fust loppinion WILBY.—Et puis, pur ceo qil ny avoit unqes vewe demande, le demandant dit qe mulure.—*Et alii e contra.* Entre.

(57.)[1] § Un brief Dacompte fust porte de temps qil fut son resceivour de deners le pleintif.—Il dedit la resceit, et sur ceo furent a issue.—Et ore le pleintif pria un *Nisi prius.*—Et *Huse* vint a la barre et dit, pur le defendant, qe nostre seignur le Roi lui avoit pris en sa proteccion, et ses biens et chateux, terres et tenementz, issi qil ne fust greve ne moleste a asquny sute tanqe le Roi fust servy de C. *li.* queux le defendant lui devoit. Et mist avaunt la proteccion, et nentendi pas qils vodreint plus avant cel plee continuer.—WILBY. Nous voloms qe lenqueste soit pris sur lissue qe vous avetz joint, qar il est auxi possible qil serra trove pur vous come countre vous; et, mesqil Acompte.

[1] From H. alone.

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A.D. 1346. plaintiff will have judgment until satisfaction has been made to the King. And I think it would be a strong measure to adjudge that a party's action should be brought to nought by such a Protection.—Therefore, in the end, the Protection was disallowed, and the *Nisi prius* granted.

Replevin. (58.) § A Replevin was sued in respect of beasts taken in A.—*Skipwith.* We tell you that A. is not a vill; judgment of the writ.—*Derworthy.* Since you do not deny that it is a hamlet, judgment whether my writ is not sufficiently good.—*Skipwith.* If we make avowry for service in arrear, and you disclaim, then, if I have to bring my writ of Right, it must be in accordance with the vill named in the original writ on which the disclaimer was admitted; and therefore, for the same reason for which the writ of Right must be brought in a vill so also must the Replevin on which the disclaimer is made.—STOUFORD. I have seen in a like case, on a writ of Replevin, that a writ brought in a hamlet was abated, because it is possible that the writ may end in a question affecting realty.—And, in the end, *Skipwith*, in order to have the return, avowed the taking in another place, and the issue was taken on the place.—But it appeared to some that, if *Skipwith* had abode judgment on the first challenge, the writ must have abated.—*Quære* as to this, &c.

Quod permittat. (59.) § A *Quod permittat* was brought by one J., and he counted, by *Moubray*, that the defendant did not permit him to have his common of pasture in one hundred acres of pasture, with the appurtenances, in L., of which his father was seised.—*Seton.* Sir, you see plainly how he claims the common in pasture, and we tell you that what he has put in view is arable land; judgment of the count.—*Moubray.* That is not a plea, for it is possible that in the time of my ancestor it was pasture, and that he has since made it arable land, and I shall make it to be in accordance with that

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passe countre vous, adonqes verroms le quel il avera jugement tanqe le gree le Roi soit fait. Et jeo croi qe eeo serroit fort dajugger qe accion de partie serra anenti par un tiel proteccion.—Par quei, a derrein, la protection fut desallowe, et le *Nisi prius* graunte. A.D. 1346.

(58.)[1] § Un *Replegiari* fut suy des avers pris en A.—*Skip.* Nous vous dioms qe A. nest pas ville; jugement de brief.—*Der.* Puisqe vous ne dedites pas qe eeo nest hamel, jugement si mon brief ne soit asset bon.—*Skip.* Si nous faceoms avowere pur service arrere, et vous desclametz, si jeo soi a porter mon brief de dreit, il covent qe eeo soit acordaunt a la ville nome en loriginal sur quel le desclamer fut resceu; par quei, par mesme la resoun qe le brief de Dreit covent estre porte en ville par mesme la resoun le *Replegiari* sur quel le desclamer est fait.—Stouf. Jay veu en tiel cas, en un brief de *Replegiari*, le brief estre abatu porte en hamele pur eeo qe brief purra terminer en la rialte.—A a derrein *Skip.*, pur aver retourn, avowa la prise en autre lieu, et sur le lieu issue fust pris.—Mes sembloit a aseuns, sil ust demure sur le primer chalenge, qe le brief dust aver abatu.—*Et hoc quære*, &c. *Replegiari.*

(59.)[1] § Un *Quod permittat* fust porte par un J., et counta, par *Moubray*, qil ne lui soeffre aver sa comune de pasture en c. aeres de pasture, od les appurtenances, en L., de la quele son pere fust seisi.—*Setone.* Sire, vous veietz bien coment il cleyme la comune en pasture, et vous dioms qe eeo qil ad mys en vewe est terre arable; jugement de counte.—*Moubray.* Ceo nest pas plee, qar il est possible qe en temps mon auncestre eeo fust pasture, et qil la eit fait terre arable puis, et acordaunt a eeo qil fust en la *Quod permittat.* [Fitz., *Quod permittat*, 6.]

[1] From H. alone.

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A.D. 1346. which it was when in the seisin of my ancestor; therefore, &c.—*Seton.* Such matter shall not be understood, unless you show it.—Therefore *Moubray* said that in the time of his ancestor the land was pasture.—*Seton.* Again judgment of the writ, for we tell you that since the death of your ancestor, and after the corn had been cut and made into sheaves, you were yourself seised of the common in the same land, and so you will have a writ on your own possession; judgment of this writ which is framed on the ancestor's seisin.—*Moubray.* Now we demand judgment since we claim this common in the land as in pasture, and that at all seasons of the year, and, as to that which he says that we were seised of the common after the corn had been reaped and made into sheaves in the same land, the law does not put us to answer to it, because it cannot be understood to be the same common in respect of which our action is taken, and therefore we demand judgment, &c.—*Seton.* Then we are agreed that you were seised of the common at the time which we have mentioned, which common is only the feeding of your beasts, and that you do not deny that you have done, and that since the death of your ancestor, and therefore we demand judgment of the writ.—*Skipwith.* To allege seisin in us of something different from that which we demand is nothing to the purpose. Now the fact is that we demand a common to have at all seasons of the year, and the seisin which you allege, but which we do not admit, is after the corn has been cut and carried; and by the manner of your plea you seek to restrict us as to the kind of common which we demand, and therefore that seisin cannot relate to common such as we demand of you.—WILLOUGHBY. Even though it be such common as you demand, yet in virtue of a seisin after the corn has been cut and carried you can have an Assise just as well as in virtue of a seisin at another time, and therefore, since you can have an Assise in respect of that seisin, it seems that this *Quod permittat* cannot be maintained.—*Skipwith.* But, Sir, if I now answer as to the

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seisine mon auncestre jeo le fray ; par quei, &c.—*Setone.* A.D. 1346.
Tiel matere ne serra pas entendu, si vous ne le moustrez.—Per quei *Moubray* dit qe en temps son auncestre ceo fust pasture.—*Setone.* Unqore jugement de brief, qar nous vous dioms qe puis la mort vostre auncestre, et apres les bledz seyes et unys, vous mesmes fustes seisi de la comune en mesme la terre, et issi averetz brief de vostre possessioun demene ; jugement de ceo brief qest conceu de la seisine launcestre.—*Moubray.* Ore demandoms jugement puis qe nous clamoms ceste comune en la terre come en pasture, et ceo a chesqun seisoun del an, et ceo qil parle qe nous fumes seisi de la comune apres les bledz fauches et unys en mesme la terre a ceo lei nous mette [pas] a respondre, qar ceo ne poet estre entendu mesme la comune de qi nostre accion est pris, par quei nous demandoms jugement, &c.—*Setone.* Donqes sumes en un qe vous fustes seisi de la comune a cel temps qe nous avoms parle, ou comune nest autre riens mes pestre voz bestes, quel chose vous ne dedites pas qe vous navetz fait, et ceo puis la mort vostre auncestre, par quei nous demandoms jugement de brief.—*Skip.* Dallegger seisine en nous dautre chose qe nous demandoms nest riens a purpos. Ore est il issi qe nous demandoms une comune a aver chesqun sesoun del an, et la seisine qe vous alleggez, quel nous ne conissoms pas, est apres les bledz sciez et enportes ; et par la manere de cel plee vous estes a nous restreindre de la manere de la comune quel nous demandoms, et par taunt ne poet cele seisine referer a tiel comune come nous vous demandoms.—Wilby. Mesqe ceo soit tiel comune come vous demandez, par une seisine apres les bledz sciez et enportes, vous averetz bien une Assise come par une seisine en autre temps, par quei, puisqe de cele seisine vous poetz aver une Assise, si semble il qe ceo *Quod permittat* nest pas meyntenable.—*Skip.* Mes, Sire, si jeo respoigne a ore a la seisine en tiel manere come

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A.D. 1346. seisin had in such manner as he has now alleged, I shall be at one with him that I claimed the common only in accordance with the manner of seisin which he has alleged, and for that reason he would rebut me from claiming the seisin more largely; therefore, if he now wishes to allege seisin in me, he must allege it in accordance with the manner in which I have claimed it, or else plead, as to my title, that I cannot claim common to so large an extent.—WILLOUGHBY. That would be to put him to answer to your action, whereas he has matter to abate your writ; therefore is it as he has said, or not?—*Moubray.* Sir, we tell you that our beasts never, while in our keeping, or with our knowledge, or at our desire, fed on the land, and although they came on to that land by way of escape, that fact ought not to oust us from this writ; therefore we demand judgment, and we pray seisin of the common.—*Seton.* You see plainly that we have alleged seisin of the common in him since the death of his ancestor, which seisin he does not deny by way of averment, and in case he would confess and avoid it, inasmuch as the beasts came there by way of escape, we should be at once abiding judgment with him on the point; therefore, since they do not plead definitely to our exception, we demand judgment of his writ.—*Moubray.* We understand that seisin cannot be supposed in us unless the beasts have fed with our consent, or while in our keeping, and since we have denied that cause, we understand that, by reason of their making escape, and so being out of our keeping, seisin cannot be supposed in us.—HILLARY. Then you can say definitely that you were not seised, or else confess that you had a seisin, and that by reason of the escape of the beasts from your keeping, notwithstanding which seisin your writ can be maintained; therefore deliver yourself, and say where you wish to stand, or else we shall soon deliver you.—Therefore *Moubray* said as before, and demanded judgment whether the defendant could abate his writ by reason of any seisin had through the escape of the beasts, without his knowledge.—*Seton.*

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il ad a ore allegge, jeo serra en un od lui qe jeo nel clamasse mes acordaunt a la manere[1] de la seisine qil avoit allegge, et par taunt il moy rebotereit en la seisine de clamer plus large ; par quei il covent a ore qe sil voet seisine en moy allegger qil lallegge acordaunt a la manere qe jeo lay clame, on autrement qil plede a mon title qe jeo ne puisse comune si large clamer.—Wilby. Ceo serra de lui mettre a respoundre a vostre accion, la ou il ad matere de abatre vostre brief ; par quei est il issi come il ad parle, ou nent ?—*Moubray*. Sire, nous vous dioms qe noz bestes unqes, par garde faire, ne de nostre sewe, ne de nostre volunte pustrent la terre, et, coment qils vindrent illeoqes par eschaper, ceo ne nous deit pas ouster de ceste brief ; par quei nous demandoms jugement, et prioms seisine de la comune.—*Setone*. Vous veietz bien coment nous avoms allegge seisine en lui de la comune puis la mort son auncestre, quel seisine par voy daverement il ne le dedit pas, et en cas qil vodra conustre et le voider, par taunt qil vindrent illeoqes par eschaper, nous serroms tost en jugement od li sur le point ; par quei, puis qils ne pledent pas en certein a nostre excepcion, nous demandoms jugement de son brief.—*Moubray*. Nous entendoms qe seisine ne poet estre suppose en nous si les avers nussent peu de nostre assent, ou par garde faire, et, puis qe nous avoms dedit cele cause, nous entendoms qe par eschape faire, et hors de garde, seisine en nous ne poet estre suppose.—Hill. Donqes poetz vous dire certeinement qe nent seisi, ou autrement conustre qe vous avetz une seisine, et ceo par eschape, nent countreesteaunt quel seisine vostre brief est meintenable ; par quei delivretz vous ou vous voletz estre, ou nous vous delivroms tost.—Par quei *Moubray* dit *ut prius*, et demanda jugement si par nulle seisine ou par eschaper, saunz seu de lui, il pout son brief abatre.—*Setone*. Nous ne conissoms pas qe vous

[1] MS., matore.

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A.D. 1346. We do not admit that you did not have any seisin except through the escape of the beasts, but we say that you have confessed that you were yourself seised of the common; judgment of your writ.—WILLOUGHBY. No one, except God, can know whether that seisin was with your knowledge or not, for the will of man cannot be the subject of an averment; and you have confessed that you were seised, though you have said that it was by reason of the escape of the beasts. In respect of that seisin you can have an Assise, and therefore take nothing by this writ, &c.

Quare impedit. (60.) § In a *Quare impedit* which the King had sued against the Bishop of Winchester, as appears in Trinity Term last, they were abiding judgment. And now *Grene*, for the King, demanded judgment because the King had taken a title in that Bishop Adam,[1] predecessor of the present Bishop, had given the same precentorship to this same person who is now Bishop,[2] and by reason of the death of Adam the temporalities had come into the King's hand. And, continued *Grene*, we have said how the defendant was confirmed in the same bishopric by provision of the Court of Rome, by reason of which acceptance and confirmation the benefices which he had became void. And as to his statement that no voidance of them could be adjudged until the time at which he was consecrated, before which time he has said that the King by commission made restitution to him of his temporalities, no mention is made in that restitution of fees or of advowsons. And we understand that, in case the King, of his grace, makes livery, where by law he is not bound so to do, advowsons do not pass without express mention. Now the fact is that, although the King might be bound to make restitution to one who had been elected Bishop according to the law of

[1] Adam de Orleton, as appears in the record.

[2] William de Edyngton, as appears in the record.

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navietz nulle seisine mes pas eschaper, mes qe vous avetz conu qe vous fustes mesmes seisi de la comune ; jugement de vostre brief.—WILBY. Le quel qe cele seisine fust par vostre seu ou nent nulle homme le purra saver fors Dieu, qar volunte de homme ne poet estre avere, ; et vous avetz conu qe vous fustes seisi, mes qe ceo fust par eschaper. De cele seisine vous poetz aver un Assise, par quei ne preignetz rienz par cest brief, &c. A.D. 1346.

(60.)[1] § En un *Quare impedit* qe le Roi avoit suy vers Levesqe de Wyncestre, *prout patet Trinitatis ultimo*, qils furent en jugement. Et ore *Grene*, pur le Roi, demanda jugement puis qe le Roi avoit pris un title de ceo qe Levesqe Adam, predecessour ceste Evesqe, aveit done mesme la chaunterye a mesme cesti qe est ore Evesqe, et par la mort A. les temporaltes devyndrent en la mayn le Roi. Et avoms dit coment le defendant par purveaunce de la Court de Rome fut conferme a mesme levesche, par quel acceptacion et conferment les benefices queux il avoit furent voides Et a ceo qil parle qe nulle voydaunce de yceux poet estre ajugge tanqe en cel temps qil fust sacre, avant quel temps il ad dit qe le Roi par sa commissioun luy fist restitucion de ses temporaltes, par quel restitucion nest pas mencion fait des fees ne de avowesons. Et nous entendoms qe en cas qe le Roi, de sa grace, face livre, la ou par lei il ne fust pas tenu a ceo faire, qe avowesons ne passent pas saunz expresse mencion. Ore est il issi qe, coment qe le Roi fust tenu a faire restitucion a une qe soit eslu en Evesqe *Quare impedit.*

[1] From H. alone. This is a continuation or another report of Y.B., Trin. 20 Edw. III. No. 17 (pp. 526–529). The action was in respect of a presentation to the precentorship of the church of St. Mary, Southampton. The record is among the *Placita de Banco*, Trin. 20 Edw. III., R°. 85, d.

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A.D. 1346. the land, after he had been elected and confirmed, nevertheless in the case of one who has a provision, which is contrary to the law of this land, the King is not bound to make restitution to him, particularly before he has been consecrated; and if, of his grace, he does make it, and no mention is made of the advowson, the advowson by law remains in the King's hand at the time of the voidance. —*Derworthy.* As by the general expression "temporalities," fees and advowsons are seized into the King's hand, so equally by the restitution of the temporalities advowsons pass. And further we understand that no one can adjudge that we were Bishop before we had been consecrated, but before that time we had restitution of our temporalities; therefore, &c.—*Thorpe.* There is another matter which will aid us on behalf of the King, in addition to that which *Grene* has touched—that is to say that, whenever any one is provided by the Pope to a bishopric, by law of Holy Church he must be consecrated within three months next after the making of the provision, but the time of this Bishop's consecration was deferred by another papal bull until one month after the first three months had passed, and restitution was then made of the temporalities; and we understand that at that time the precentorship was clearly void, because by that time he ought by law to have been consecrated, and the extension of time ought not to oust the King from the presentation which he ought by right to have had if the time had not been extended; therefore it seems that, since the voidance was before the restitution, the King will still have the presentation upon that voidance.—*Derworthy.* As to the first point we understand that there could not by law be adjudged to be any voidance until we were consecrated. Before that time we had restitution of our temporalities, and by that restitution, made in general terms, fees and advowsons passed, as we understand; and therefore it seems to us that the King cannot claim anything in respect of that voidance. And, as to that new matter which you

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solonc la lei de la terre, apres qil soit elit conferme, nepurquant a celi quel ad provisioun, qest encountre la lei de ceste terre, a lui nest il pas tenu affaire restitucion, nomement avant qil soit sacre ; et si, de sa grace, il le face, et nul mencion est fait del avowesoun, lavowesoun par lei demurt en la mayn le Roi a temps de la voidaunce.—*Der.* Auxi avant come par ceo parole generale de temporaltes, fees, et avowesouns sont seisiz, auxi avant par restitucion de temporaltes les avowesons passent. Et outre nous entendoms qe nul homme purra ajugger qe nous fumes Evesqe avant qe nous fumes sacre, avant quel temps nous avioms restitucion se noz temporaltes ; par quei, &c.—*Thorpe.* Il y ad autre chose qe nous eidra pur le Roi, od ceo qe *Grene* ad toche, cest assaver qe, la ou un homme est purveu par Lappostoille a une Evesche, par lei de Seint Eglise il serra sacre deinz les iij. moys prochein apres la purveaunce fait, quel temps de son sacre fut proloigne par un autre bulle taunqe un moys apres les primers iij moys passes restitucion fust fait des temporaltes, a quel temps nous entendoms qe la chaunterye de clere se voida, qar adonqes il dust par lei aver este sacre, et le proloigner de cel temps ne deit pas ouster le Roi del presentement quel il dust par resoun aver si le temps nust pas este proloigne ; donqes semble il qe puis qe la voidaunce y fust avant la restitucion qe unqore de cele voydaunce le Roi avera le presentement.—*Der.* Quant al primer poynte nous entendoms qe nulle voidaunce par lei poet estre ajugge tanqe nous fumes sacre, avant quel temps nous avioms restitucion de noz temporaltes, par quel restitucion fait en generalte fees et avowesouns, a ceo qe nous entendoms, passent ; et par taunt semble il a nous qe le Roi de cele voidance ne poet rienz clamer. Et quant a cele novele matere qe vous

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A.D. 1346. now allege, we understand that you will not be admitted to say that on this original writ, because by your declaration you supposed that by the acceptance of the provision, and by the confirmation, the precentorship became vacant, and by your present statement you imply that it became vacant after the acceptance and confirmation, inasmuch as he ought to be consecrated within three months after his acceptance, and that, inasmuch as this consecration was deferred, the voidance commenced at that time at which he ought by right to have been consecrated; but that voidance is now taken as having been at a time different from that which was made, at the commencement, as the time of voidance for the King; therefore we do not understand that on this original writ our Lord the King will vary the time of voidance. And, in case it seems to you that he should be answered as to that, we shall be ready to answer. But *Derworthy* pleaded over *gratis* that what had been said to the effect that the church became void because Edyngton was not created Bishop within the three months after the provision, and that for that reason a church will become void, was a matter which did not fall within the cognisance of this Court. And even though it could do so, said *Derworthy*, you will find clearly that between the date of the bull of provision made of the bishopric to us by the Pope, which is of record, and the date of the commission by which restitution of our temporalities was made to us there were not quite two months, so that, although the voidance ought to commence at the time at which you have said that it ought, yet, since it is of record that we had restitution before that time, it seems that that the King cannot claim anything in this presentation.—*Thorpe.* But we say that, since the temporalities were delivered to you of the King's grace, fees and advowsons could not pass without express word.—But the COURT would have given judgment to the contrary.—Therefore *Thorpe* said that the church became void by the acceptance and confirmation; ready, &c.—WILLOUGHBY. How ought the

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alleggez a ore, nous entendoms qe en ceste original vous ne serrez resceu a ceo dire, qar par vostre demoustraunce vous avetz suppose qe par lacceptacion de la purveaunce, et par le conferment, la chaunterye se voida, et par ceo qe vous dites a ore vous entendes qil se voida apres par lacceptacion et conferment, par taunt qe deinz les iij moys apres qil laccepte il covent qil soit sacre, et par taunt qe cele consecracioun fut proloigne qe de cel temps qe de resoun il dust aver este sacre si comencea la voidaunce, quel voidaunce a ore est pris a autre temps qe nest par la voidaunce le Roi a comencement fait ; par quei nentendoms pas qe en ceste original del temps de la voidaunce nostre seignur le Roi vodra varier. Et, en cas qe vous semble qil serra a ceo respondu, prest serroms a respoundre. Mes de gree il dit outre qe ceo qil ad parle, saver, qe leglise se voida par taunt qil ne fut pas eree en Evesqe deinz les iij mois apres la provisioun qe par taunt qe leglise se voidra, cest une chose qe ne chiet pas en conissaunce de ceste Court, et, mesqil poait, vous troveretz bien qe entre la date de la bulle de la provisioun del Evesche fait a nous par Lappostoille, qest de recorde, et la date de la commissioun par quel restitucion de noz temporaltes a nous fust fait ne furent pas enterement ij mois, issi qe, mesqe la voidaunce dust comencer a cel temps qe vous avetz parle, puis qil est de recorde et qe avant cel temps nous avioms restitucion si semble il qe Roi ne poet en cel presentement rienz clamer.—*Thorpe.* Mes nous dioms qe puis qe de la grace le Roi les temporaltes furent a vous liveres qe saunz expresse parole fees ne avowesouns ne pount passer. —Mes le contrare la Court vodreit aver ajugge.—Par quei *Thorpe* dit qe leglise se voida pas lacceptacion et conferment ; prest, &c.—Wilby. Coment deit la Court enquere

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A.D. 1346. Court to enquire by jury whether it became void by the acceptance or not? For it is a point of law whether that is so or not, and it cannot be tried by averment; and it cannot be tried in any other way unless we were to send to a Court Christian; but that would be an extraordinary thing to do in this case, because plenarty will be tried by Court Christian, but the question void or not void will always be tried in this Court, and therefore we can not see how this issue can be tried by way of averment.—And so they were adjourned, &c.

Nuper obiit. (61.) § A *Nuper obiit* was brought against John St. Clare in respect of the demandant's proportionable part in A., B., and C. And the demandant counted, by *Haveryngton*, that John St. Clare tortiously deforced him of a moiety of the manor of A. and of a moiety of one carucate of land in B. and C., and counted further of the seisin of his ancestor.—*Blaykeston.* Judgment of the count: for the writ is in respect of his proportionable part in three vills, and by his count he supposes his demand to be in two vills only, and so the count is not warranted by the writ; judgment of the count.—*Haveryngton.* It is not so, for I have made my demand of a moiety of the manor of A., and of a moiety of a carucate in all the three vills.—Willoughby. If I bring an Assise *de libero tenemento* in A., B. and C., and I make my plaint in respect of the manor of A., that is sufficiently warranted by the writ, and so *a fortiori* in this case. And, inasmuch as the manor bears the name of the vill, it is sufficiently understood thereby that his demand in respect of it is made in A.; therefore answer.—*Richemunde.* We tell you that, after the death of your ancestor, the King seized this land, by reason of our non-age, because it is holden of him by knight service, and leased the wardship, by his commission, to Philippa Queen of England; and we tell you that we are still under age, and we pray aid of the King.—*Skipwith.* Sir, you see plainly how this is a *Nuper obiit*, on which

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le quel il se voida par lacceptacion on nent ? Qar cest un point de lei le quel il soit issi on nent, quel ne poet estre trie par averement ; et autrement ne poet ceo estre trie si nous ne maundassoms a Court Christiene, quel chose serra merveillous en ceo cas affaire, qar plenerto serra trie par Court Christiene, mes voide on nent voide serra tote foitz trie en ceste Court, par quei nous ne savoms veer coment par voye daverement ceste issue serra trie.—*Et sic adjornantur, &c.* A.D. 1346.

(61.)[1] § *Nuper obiit* fust porte vers Johan Seint Clere de sa renable partie en A., B., et C. Et counta par *Hav.* qe a tort lui deforce la moyte del maner de A. et la moyte dun carue de terre en B. et C., et counta outre de la seisine son auncestre.—*Blayk.* Jugement de counte : qar le brief est de son renable partie en[2] iij villes, et par son counte il suppose soulement sa demande en ij villes, issi le counte nent garraunti de brief ; jugement de counte.—*Hav.* Il nest pas issi, qar jay fait ma demande de la moite del maner de A., et la moite dun carue de terre en touz les iij villes.—Wilby. Si jeo porte un Assiso *de libero tenemento* et A. B. et C., et jeo face ma pleinte del maner A., cest assetz garraunti de brief, et a plus fort en ceo cas. Et, par taunt qe le maner porte noun de ville, il est asset entendu par taunt qe sa demande de cele est fait en A. ; par quei responez.—*Rich.* Nous vous dioms qe, apres la mort vostre auncestre, le Roi seisit ceste terre, par resoun de nostre nounage, pur ceo qil est tenu de lui en chivalrie, et lessa la garde par sa comissioun a Philippe Roigne Dengleterre ; et vous dioms qe nous sumes unqore deinz age, et prioms eide del Roi.—*Skip.* Sire vous veietz bien coment ceo est un *Nuper obiit*, en quel partie ne avera pas vewe, ne *Nuper obiit.*

[1] From H. alone.

[2] MS., de.

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A.D. 1346. writ a party will not have view, or voucher, or allowance of age, or any other delays, by reason of the descent which is affirmed to be in the coparceners equally; therefore, since you have answered as tenant of the freehold, and do not show that you have any estate from the King, and do not assert that there is any reversion in the King, in respect of which you ought to have aid, judgment whether, &c.—*Blaykeston.* Although in this suit age-prayer and voucher are taken away by common law, nevertheless since we show that the King seised the land by reason of our non-age, and leased the wardship to the Queen, the King must not lose that which he has seized without suit being made to him; therefore we must have aid in order to save his estate.—*Skipwith.* Perhaps it would be right, in case the King were seised, that you should have aid by reason of the loss which would then befall the King; but in this case you have shown that the King has completely divested himself of the wardship in favour of the Queen, and therefore, even though this were a writ upon which delays were permissible, it would not be right to grant aid of the King in order to save the estate of another person. —WILLOUGHBY. This cannot be called an aid-prayer, but it is a plea that he ought not to be put to answer without the King having been consulted. And, as to your statement that on this writ delays are taken away, it is so in an Assise of Novel Disseisin, and, if the defendant alleges such matter in an Assise, the Court will stay the taking of the Assise, because if judgment is rendered against the infant, the King will lose the wardship. And, as to your statement that damage will not befall the King because he has divested himself in favour of the Queen, that is immaterial, because the Queen's possession is wholly in right of the King, and is adjudged to be his possession in law; therefore sue to the King.

Voucher. (62.) § *Grene*, for a tenant, vouched to warrant one J.— *Pole.* You ought not to be admitted to that voucher,

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voucher, ne age, ne nuls autres delaies, pur la descente qest en eux afferme ouelment; par quei, puis qe vous avetz respondu come tenant de franctenement, et ne moustrez pas qe vous avetz estat del Roi, ne nule reversion en le Roi affermes, de quei vous duisses aide aver, jugement si, &c.—*Blaik.* Coment qe en ceste sute age prier et voucher par comune lei sont tolletz, nepurquant quant nous moustroms qe le Roi seisist la terre par resoun de nostre nounage, et le lessa a la Roine, le Roi ne perdra pas ceo qil ad seisi saunz sute faire a lui; par quei pur sauver son estat il covent qe nous eioms leide.—*Skip.* Par aventure il serreit resoun qe en cas qe le Roi fust seisi qe vous ussetz eide pur la perde qe avendra al Roi; mes en ceo cas vous avetz moustre qe le Roi sad demys tut denette de la garde a la Roine, et par taunt, mesqe ceo fust un[1] brief en quel ces delaies fuissent suffrables, ne serra il pas resoun, pur autri estat sauver, de graunter eide de Roi.—Wilby. Ceo cy ne poet estre dit une eide prier, mes est qil ne serra pas mys a respondre saunz counseiller al Roi. Et, a ceo qe vous parletz qe delaies en ceste brief sont tolletz, cy est ceo en Assise de novel disseisine, et, sil allegge ceste matere en Assise, la Court surserra a prendre lassise, qar si le jugement se rende vers lenfant le Roi perdra la garde. Et, a ceo qe vous dites qe damage navendra pas al Roi pur ceo qil sad demys a la Roine, ceo ne toude ne doune, qar la possessioun la Roine est tut en la dreit le Roi, et sa possessioun en lei ajugge; par quei siwes al Roi. A.D. 1346.

(62.)[2] § *Grene*, pur un tenant, voucha a garraunt un J.— *Pole.*—A ceo voucher ne devetz pas estre resceu, qar Voucher.

[1] MS., on.

[2] From H. alone.

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A.D. 1346. because heretofore you prayed J. in aid, and aid was granted. And J. was summoned, and did not appear, and therefore you shall not be admitted to vouch him.—*Grene.* The truth is that we cannot vouch him for the same cause for which we prayed him in aid; but we say that we prayed him in aid as tenant for term of life, and we tell you that since the aid was granted he released his estate to us, by reason of which release we have a fee, and so we vouch him in respect of another estate.—And, notwithstanding this, because the tenant had previously prayed him in aid, and the cause of voucher which he mentioned must have commenced while the writ was pending, and that by matter which falls under the head of specialty, of which the tenant produced nothing, judgment was given that he should be ousted from the voucher, &c.

Annuity. (63.) § A writ of Annuity was brought by John Syndon against the Abbot of Malmesbury. And he counted that the Abbot's predecessor granted him the annuity, with the consent of the Convent, until he should be advanced to a suitable benefice, &c.—*Thorpe.* We tell you that we tendered to you the vicarage of L., which vicarage you refused, and so the annuity is extinguished; judgment.—*Moubray.* Sir, you see plainly that he has not stated in his answer of what value the vicarage was, so as to show that it was a suitable tender for the purpose of extinguishing the annuity; therefore we do not understand that we have any need to answer to that which they have said.—Willoughby. That matter ought to come from you, so as to show that the tender of such a vicarage, which was of so small a value, would not extinguish the annuity; therefore answer.—And, because the plaintiff did not know of what value the vicarage was, he was non suited, &c.

Mesne. (64.) § One Oliver de Wynbury, tenant by the curtesy of England, brought a writ of Mesne against John de Claville, and counted, by *Blaykeston*, in accordance with

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autrefoitz vous lui priastes en eide, et leide graunte. Et fust somons, et ne vint pas, par quei de lui voucher ne serrez resceu.—*Grene.* Il est verite qe nous ne lui voucheroms pas par mesme la resoun qe nous lui priames en eide; mes nous dioms qe nous lui priames en eide come tenant a terme de vie, et vous dioms qe puis leide graunte il nous relessa, par quel nous avoms fee, et issi dautre estat nous lui vouchoms.—Et, *non obstante* ceo, pur ceo qil lui avoit prie en eide avant, et la cause quel il parle dust comencer pendant le brief, et ceo par chose qe chiet en especialte, de quei il ne moustre rienz, fut agarde qil fut ouste del voucher, &c. A.D. 1346.

(63.)[1] § Brief Dannuite fust porte par Johan Syndon vers Labbe de Malmesbury. Et counta qe son predecessour lui graunta lannuite par assent le Covent tanqil fust avaunce a covenable benefice, &c.—*Thorpe.* Nous vous dioms qe nous vous tendymes la vicare de L. quele vicare vous refusez, et issi lannuite esteint; jugement.—*Moubray.* Sire, vous veietz bien coment qil nad pas done en son respouns de quel value la vicare fut, issi qe ceo fust covenable tendre desteindre lannuite; par quei nentendoms pas qe a ceo qils ount dit eioms mester a respoundre.—Wilby. Cel matere vendra de vous a moustrer qe le tendre de tiel vicare, qe fust de si petit value, ne esteindra pas lannuite; par quei responez.—Et pur ceo qe le pleintif ne savoit de quel value la vicare fut si fust il nounsiwy, &c. Annuyte.

(64.)[1] § Un Oliver de Wynbury, tenant par la lei Dengleterre, porta brief de Mene vers Johan de Clavillo et counta, par *Blayk.*, acordaunt a sa tenance.—*Grene.* Mene.

[1] From H. alone.

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A.D. 1346. his tenancy.—*Grene.* You see plainly how the person who sues this writ makes himself tenant by the curtesy of England, whereas we have now appeared in Court in virtue of a proclamation, and by the statute[1] such suit is not given for those who have so weak an estate; therefore we do not understand that he ought to be answered on this original writ continued by process which is not warranted by the statute in the case of persons in such a condition as he is.—*Moubray.* The truth is that the statute gives proclamation, and that in cases in which the tenant can attorn to the lord paramount without prejudicing any other person than the one who might be forjudged; but in cases in which others would be prejudiced as well as he, as in the case of tenants in dower or by the curtesy of England, proclamation will not be made; but that statute relates only to cases in which tenants of that kind are those against whom the proclamation would be sued, and therefore the statute does not relate to us who are suing to deraign acquittal of services.—*Grene.* There will never be forjudger except where the relation is perpetual on both sides, and it cannot be so in this case, for the tenant by the curtesy of England can never be attendant to the lord paramount in perpetuity, because that would be prejudicial to the person in reversion; therefore, &c.—*Derworthy.* The statute is made for the advantage of the tenant, and to the disadvantage of the mesne; therefore tenants in dower, and tenants with like estate are excepted from that law by the same statute; therefore, since the statute was made for our advantage, the estate of any kind which we may have will not deprive us of the suit which is ordained for our advantage.—*Huse.* Suppose the tenant in demesne holds of the mesne by the service of one penny, and the mesne holds over by ten shillings of rent, if the forjudger takes place the tenant in demesne will be attendant to the lord in respect of the ten shillings, whereas he used to pay

[1] 13 Edw I. (West. 2), c. 9.

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Vous veyetz bien coment cest qe suist ceo brief se fait tenant par la lei Dengleterre, ou nous sumes venu en Court aore par la proclamacion, ou par lestatut tiel sute nest pas done pur ceux quunt si feble estat ; par quei nous entendoms pas qe a ceste original continue par proces qe nest pas pur tielx come il est par lestatut garraunti qil serra respondu.—*Moubray.* Il est verite qe lestatut doune la proclamacion, et ceo en cas qe le tenant se purra attourner al seignur paramount saunz prejudice faire a autre qe a celi qe fust forjugge ; mes en cas qe prejudice serra fait a autre qe a celi, come en cas des tenantz en dowere, ou par lei Dengleterre, la proclamacion ne se fra pas, quel estatut ne refiert rienz mes la ou tielx manere de tenantz sount ceux vers queux la proclamacion est suy, par quei pur nous qe suoms a derener lacquitance ne refiert pas lestatut.—*Grene.* Le forjugger ne se fra jammes fors la ou ils serront perpetuel dune part et dautre, et ceo ne poet il estre en ceo cas, qar le tenant par la lei Dengleterre ne serra pas entendaunt al seignur par amount en perpetuelte, qar ceo serreit prejudiciel a celi en le reversion ; par quei, &c.—*Der.* Lestatut est fait en avantage del tenant, et en desavantage le mene ; par quei les tenantz en dowere et tielx tenantz sont horpris de cele lei par mesme lestatut ; par quei, puisqe lestatut fust fait en nostre avantage, quel estat qe nous eioms ne nous toudra pas la sute quel est ordine en nostre avantage.—*Huse.* Jeo pose qe le tenant en demene tigne del mene par les services dun dener, et le mene tint outre par x.*s.* de rente, si le forjugger se fra, le tenant en demene serra entendant al seignur de les x.*s.*, A.D. 1346.

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A.D. 1346. only one penny, and that fact, in the case in which we are, would be prejudicial to the person in reversion; therefore it seems that this suit in the manner in which the process has been continued cannot be permitted.—STOUFORD. At any rate you have appeared in virtue of the proclamation, and judgment is not to be given on the proclamation, and therefore it seems that, in this case, since no damage will befall any one even though the tenant deraign the acquittal of services against you, he ought to be answered.—HILLARY, *ad idem*. We may be apprised by your plea that we cannot forjudge you hereafter, and your exception cannot relate to the original writ, but can only be with the object of abating the process which he has made against you; therefore answer.—*Grene*. What have you to bind us to the acquittal of services? —*Moubray*. We hold of you in such manner as we have counted, and you and your ancestors have acquitted my wife and my wife's ancestors from time whereof there is no memory.—*Grene*. You see plainly how this is a writ affecting the right, and he shows himself that he is only tenant by the curtesy of England, who has no greater estate that one for term of his life; therefore a writ of so high a nature as this does not lie for him, and, if it could lie for him, it would be necessary that it should be in common with the person who has the reversion, who is tenant to us in right; therefore we demand judgment whether this writ lies for him.—WILLOUGHBY. The two can never join in one writ, because during the life of the tenant by the curtesy of England, the person in reversion cannot be said to be tenant to the lord; and, although this may be a writ affecting the right, that fact does not prove that he will not have it, because he will have a writ of Wardship, of *Cessavit*, and of Eschcat, which are writs affecting the right, and therefore that is no proof in the matter.—*Grene*. A tenant for term of life will also have all the writs which you have mentioned, and tenant in dower also, and yet they will not have a writ of Mesne.—WILLOUGHBY.

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la ou il soleit paier mes un dener, quel chose, en le cas ou nous sumes, serreit prejudiciel a celi en le reversion ; par quei il semble qe ceste sute en la manere qe le proces est continue ne poet estre suffert.—Stouf. A meyns vous estes venu par la proclamacion, et jugement sur la proclamacion nest pas aore affaire, par quei il semble qen ceo cas, puis qe nulle damage acrestra a nulle persone mesqil deresne lacquitaunce vers vous, qil serra respoundu.—Hill., *ad idem*. Par vostre plee nous poms estre apris qe nous ne vous poms forjugger en apres, et vostre chalange ne poet pas referer al brief, mes dabatre le proces qil ad fait vers vous ; par quei responez.—*Grene*. Quei avetz de nous lier al acquitaunce ?—*Moubray*. Nous tenoms de vous par la manere come nous avoms counte, et vous et voz auncestres avetz acquite ma femme et les auncestres ma femme de temps dount ynyad memore.—*Grene*. Vous veietz bien coment cest un brief de dreit, et il moustre mesme qil nest tenant mes par la lei Dengleterre, qe nad plus haut estat qe a terme de sa vie ; pur quei brief de si haut nature ne gist pas, et, sil girreit pur lui, il covensist qe ceo fust en comune od celui qad la reversion, qest tenant en dreit a nous ; par quei nous demandoms jugement si ceste brief pur lui gise.—Wilby. Les ij ne pont jammes joindre en un brief, qar pur la vie le tenant par la lei Dengleterre celi en la reversion ne poet estre dit tenant al seignur ; et, mesqe ceo soit un brief de dreit, ceo ne prove mye qil nel avera, qar il avera brief de Garde, *Cessavit*, et Eschete, qe sont briefs de dreit, par quei ceo nest pas prove a la matere.—*Grene*. Auxi avera tenant a terme de vie touz les briefs qe vous avetz nome, et tenant en dowere auxi, et si naverount ils pas brief de Mene.—Wilby. A.D. 1346.

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A.D. 1346. You say that which you wish to be the fact. Tenant in dower will have the writ against the person who has the reversion; but tenant for term of life perhaps will not have it against a lessor, because, if he has acted wisely, he will deraign the matter by an action of Covenant, and that in accordance with the deed of lease, and, in case he has purchased his estate without deed, that is his own fault; but if my tenant leases the land which he holds of me to another for term of life, with remainder over to another in fee simple, so that by law he has become tenant to the chief lord, perhaps in that case he will deraign the acquittal against the chief lord. But it is quite clear that tenant in dower or by the curtesy of England will have a writ of Mesne, because they come to their tenancy by title of right and not by their own act; and therefore, although tenant for term of life will not have the writ against his lessor, it would not thereby follow that tenant by the curtesy of England would not have it; therefore answer.—*Husc.* Then we tell you that Oliver holds two carucates of land of us by the service of ten shillings, and he holds the rest of the same tenancy of us by other service, and the writ supposes the tenancy to be one; judgment of the writ.—*Moubray.* Ready, &c., that we hold the entirety of him by one entire service.—And the other side said the contrary.—And it seems that inasmuch as the mesne asked what the tenant had to bind him to acquittal of services, the writ was affirmed in all points, and therefore by law he ought not to have been admitted to plead the two pleas in abatement of the writ; but that exception was not taken.

Prayer to be admitted. (65.) § A writ was brought against William Serdere and J. his wife. They disclaimed for the wife. The husband took the tenancy upon himself, and vouched, and afterwards the husband made default. The wife then came and prayed to be admitted.—*Grene.* Admitted you ought not to be, for, inasmuch as the wife's disclaimer has been

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Vous dites talent. Tenant en dowere lavera vers celi qe ad la reversioun ; mes tenant a terme de vie par aventure nel avera pas vers un lessour pur ceo qe, sil eit fait sagement, il le derenera par accion de Covenant, et ceo par le fait de lees, et, en cas qil lad purchace saunz fait, ceo est sa defaute demene ; mes si mon tenant lest la terre qe il tint de moy a un a terme de vie, le remeindre outre a un autre en fee simple, issi qe par lei il est devenu le tenant al chiefe seignur, par aventure en cel cas il derenera lacquitaunce vers le chiefe seignur. Mes il est tut cler qe tenant en dowere ou par lei Dengleterre averount brief de Mene, pur ceo qils avenent a lour tenance par title de dreit, et ne mye par lour fait ; par quei, mesqe tenant a terme de vie nel avera pas vers son lessour, il nensiwereit pas par taunt qe tenant par la lei Dengleterre nel avera pas ; par quei responez.—*Huse.* Donqes vous dioms nous qe Oliver tint ij charues de terre de nous par service de x.*s.*, et le remenant de mesme la tenance si tint il de nous par autre service, et le brief suppose la tenance une ; jugement de brief.—*Moubray.* Qe nous tenoms de lui lenterte par une enter service prest, &c.—*Et alii e contra.*—Et il semble qe par taunt qil lui demanda ceo qil avoit de lui lier al acquitaunce qe le brief fust afferme en touz pointz, par quei par lei il ne dust pas aver este resceu daver plede les ij plees en abatement de brief ; mes ceo ne fust pas chalange, &c.

Prior destre resceu.

(65.)[1] § Brief fust porte vers William Serdere et J. sa femme. Ils desclamerent pur la femme. Le baron enprist la tenance, et voucha, et puis le baron fist defaut. Survynt la femme, et pria destre resceu.—*Grene.* Resceu ne devetz estre, qar, par taunt qe le desclamer de lui est

[1] From H. alone.

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A.D. 1346. admitted, and the husband thereupon took the tenancy upon himself, it can only be adjudged that she is not tenant, and therefore she cannot be admitted to defend in respect of that of which she has confessed that she is not tenant. And, moreover, she is out of Court by the disclaimer, and not a party to the plea, and therefore admission cannot be given to one who has not a day in Court, and is not party to the plea.—*Pole.* That disclaimer of which you speak was entirely the plea of my husband, which will not oust me from saying the contrary; and if I am not admitted I shall lose my land without having any recovery afterwards, for I shall not have an Assise inasmuch as I am named in the original writ, on which the tenancy was lost, nor shall I have a *Cui in vita*, because the same law[1] which gives me admission to defend gives me that action, and therefore it is right that I should be admitted on account of the mischief.—*Grene.* I say that she cannot be admitted if she has not a day in Court, and that she has not; and, moreover, she is not a party to us now, for even though she died after the disclaimer, my writ would not abate by reason of her death, and therefore admission cannot be given for her.—WILLOUGHBY. You say that which you would like to be the fact. Her death would abate the writ, notwithstanding the disclaimer, for that was entirely the plea of the husband, which ought not to prejudice his wife; therefore we admit her—Thereupon she vouched, &c.

Dower. (66.) § The Countess of Salisbury brought her writ of Dower, and made her demand of a third part of the bailiwick of W. in A., B., and C.—*Huse.* Judgment of this demand, for her demand does not specify what kind of bailiwick it is, whether the bailiwick of a Wapentake, or the bailiwick of a Hundred, and so her demand is indefinite; judgment.—WILLOUGHBY. If her husband was seised of that bailiwick,

[1] Stat. 13 Edw. I. (Westm. 2), c. 3.

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resceu, et sur ceo le baron ad enpris la tenance, homme ne poet ajugger autre mes qe el nest pas tenant, par quei ele nest pas resceivable a defendre ceo qe ele ad conu qe ele nest pas tenant. Et, ovesqe ceo, par le desclamer ele est hors de Court, et nent partie al plee, par quei, pur cele qe nad pas jour en Court, ne nest partie al plee, resceite nest pas done.—*Pole.* Cel desclamer de quei vous parles fust tut le plee mon baron, quel ne moi oustra pas a dire le contrare ; et si jeo ne soi resceu jeo perdray ma terre saunz aver recoverir apres, qar Assise naverai jeo pas par taunt qe jeo su nome en loriginal, en quel la tenance fust perdu, ne *Cui in vita* naveray jeo mye, qar mesme la lei qe moi doune la resceite moi doun le accion, par quei pur le meschief il est resoun qe ele soit resceu.—*Grene.* Jeo dye qe ele ne serra resceu si ele neit jour en Court, et ceo nad ele pas, ne, ovesqe ceo, ele nest pas partie a nous aore, qar, mesqe ele murust puis le desclamer, par sa mort mon brief nabatereit pas, par quei resceite pur lui nest pas done.—Wilby. Vous dites talent. La mort de lui abatereit le brief, ne mye countreesteaunt le desclamer, qar ceo fust tut le plee le baron, quel ne deit pas prejudicier a sa femme ; par quei nous la resceivoms.—Par quei ele voucha, &c. A.D. 1346.

(66.) § La Countesse de Salesbirs porta son brief de Dowere, et fist sa demande de la terce partie de la baillie de W. en A., B., et C.—*Huse.* Jugement de ceste demande, qar sa demande ne determine pas quele manere de baillie ceo est, le quel baillie de Wappentake, ou baillie de Hundred, et issi sa demande en noun certein ; jugement.—Wilby. Si son baron fust seisi de cele baillie, Dowere.

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A.D. 1346. she must demand it according to the name by which her husband held it; therefore answer.—*Derworthy.* Again judgment of the demand, for in the demand she ought to declare what profit there was to be taken by reason of that bailiwick, and that she has not done; judgment.—WILLOUGHBY. The demand will be of the bailiwick of which her husband was seised, and not of the profits of the bailiwick, for the recovery of the bailiwick gives it to her to have the profits which appertain to the bailiwick, and therefore she has no need to show to you what profits appertain to the bailiwick, for that will fall into discussion after she has recovered the bailiwick, and not before; therefore answer.—*Huse.* Then we tell you that, whereas her writ is brought in A., B., and C., supposing them to be vills or hamlets, we tell you that B. and C. are hamlets of A., and so this writ ought to have been brought in A., and not in A. and its hamlets also, and therefore we demand judgment of the writ.—*Mutlow.* Ready, &c., that they are not hamlets of A.—*Grene.* That is not a plea without maintaining your writ as by saying that they are vills, or else that they are hamlets of another vill.—STOUFORD. He need not do that, for, if your answer was a plea in abatement, the contrary of that maintains his writ.—Therefore the averment as to whether they are hamlets of A. or not was accepted.—*Mutlow.* Now we pray that, since this is a writ of Dower, he do answer as to that which is in A., for even though what he has alleged be true, still this writ is sufficiently good with respect to what is in A., because there is no demand set forth in the writ.—STOUFORD. If your demand were of land, or of anything which could be severed, your reasoning would be binding, but a bailiwick is a thing of such a nature that, if it were recovered, nothing could remain afterwards; and, moreover, a bailiwick cannot be recovered by any writ, unless all the vills in which it is are named in the writ; therefore it seems that he shall not be put to answer as to the bailiwick which is in A. until this issue is tried.—*Mutlow.*

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acordaunt al noun qe son baron le tint covent il qe ele le demande ; par quei responez.—*Der.* Unqore jugement de la demande, qar en la demande il dust desclarer quel profit fust a prendre par resoun de cele baillie, et cel nad il pas fait ; jugement.—Wilby. La demande serra de la baillie de quei son baron fust seisi, et ne mye des profitz de la baillie, qar le recoverir de baillie doune a lui a aver les profitz queux appurtenent a la baillie, par quei a vous nad ele pas mester a moustrer queux profitz appurtenent a la baillie, qar ceo cherra en debat apres qele eit la baillie recoveri, et ne mye avant ; par quei responez.—*Huse.* Donqes vous dioms qe la ou son brief est porte en A., B., et C., supposant eux estre villes ou hameles la vous dioms qe B. et C. si sont hameles de A., et issi dust ceo brief aver este porte en A., et ne mye en A. et ses hameles auxi, par quei nous demandoms jugement de brief.—*Mutl.* Qe ils ne sont pas hamels de A. prest, &c.—*Grene.* Ceo nest pas plee saunz meyntener vostre brief come a dire qe ils sont villes, ou autrement qils sont hamels dautre ville.—Stouf. Ceo ne fra il pas, qar, si vostre respouns fust plee en abatement, le contrare de cele meintent son brief.—Par quei laverement fust pris sils sont hameles de A. ou nent.—*Mutl.* Ore prioms qe puis qe ceo est un brief de Dowere qil respoigne a ceo qest en A., qar, mesqil soit verite ceo qil ad allegge, unqore de ceo qest en A. ceo brief est assetz bon, pur ceo qil nyad nulle demande compris en le brief.—Stouf. Si vostre demande fust de terre, on de chose qe put estre severe vostre resoun liereit, mes baillie est une chose qe sil soit recoveri rien purreit apres demurer ; et, ovesqe ceo, baillie ne poet estre recoveri par nul brief si touz les villes en queux ceo est ne soient nomes en brief ; par quei il semble qil ne serra mys a respoundre a la baillie qe est en A. tanqe ceste issue soit [trie].—*Mutl.* Si jeo eye une baillie qe sestent en x. A.D. 1346.

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A.D. 1346. If I have a bailiwick which extends into ten vills, and I am disturbed in one vill, I shall have an Assise in that vill alone, and consequently, even though the bailiwick does extend into divers vills, he will answer as to that which is in the vill to which his exception does not relate, since there is no demand set forth in this writ.—WILLOUGHBY. You say only that which you would like to be the fact with regard to a bailiwick which extends into divers vills. You can never be disseised in one vill and seised in another; therefore you cannot recover by parts, and therefore we hold the issue which has been taken between you to be as to the whole. Therefore he will not answer only as to the rest of which you speak, and therefore say nothing more of this matter, &c.

Debt. (67.) § A man brought a writ of Debt against the Bishop of Hereford, executor of the will of Adam heretofore Bishop of Hereford, and one J. his co-executor, and made *profert* of the deed of this same Adam by which Adam bound himself in this debt to the plaintiff.—*Mutlow.* We tell you that this same Adam was translated from Hereford to Winchester, and was there created Bishop of Winchester, and so you ought to describe us as executor of Adam heretofore Bishop of Winchester; judgment of this writ.—WILLOUGHBY. Every word of his writ is true, because you confess that Adam was Bishop of Hereford, and, even though he was created Bishop of Winchester, still the words of the writ—that he was heretofore Bishop of Hereford—are true; therefore answer.—*Mutlow.* Then we tell you that this same Adam, at the time of his death, was Bishop of Winchester, and we tell you that, after his death, the Metropolitan caused all the goods which belonged to the said Adam to be seized [and retained] until all the castles and manors of the same bishopric had been repaired and stocked, by means of the said goods, to as good condition as they were in during the life of the said Adam; therefore the goods belonging to the said Adam which

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villes, et jeo soi destourbe en une ville, jeo averay une Assise en cele ville soulement, et, *per consequens*, mesqe la baillie sestent en en divers villes, il respoundra a cel qe est en cele ville a quel son chalange ne refiert pas, puisqe nulle demande en cel brief est compris.—WILBY. Vous dites talent dun baillie qe sestent en divers villes. Vous ne poetz jammes estre disseisi en une ville et seisi en lautre; par quei [par] parcelex vous ne le poetz recoverir, par quei nous tenoms lissue qest prise entre vous a tut. Par quei il ne respoundra al remenant qe vous parlez, par quei parles nent plus de cele matere, &c. A.D. 1346.

(67.) § Un homme porta un brief de Dette vers Levesque de Herforde, executour del testament Adam nadgairs Evesqe de Herforde et un J. son coexecutour, et mist avant le fait mesme celi Adam par quel il se obligea en cel dette al pleintif.—*Mutl.* Nous vous dioms qe mesme celi Adam fust translate de Herforde a Wyncestre, et illeoqes fust cree en Evesqe de Wyncestre, et issi nous deveretz faire executour Adam nadgairs Evesqe de Wyncestre; jugement de ceo brief.—WILBY. Chesqun parole de son brief est veritable, qar vous conussez qe Adam fust Evesqe de Herforde, et. mesqil fust cree en Evesqe de Wyncestre, unqore est la parole del brief veritable qil fust nadgairs Evesqe de Herforde; par quei responez.—*Mutl.* Donqes vous dioms qe mesme cesti Adam, a temps de sa moriaunt fut Evesqe de Wyncestre, et vous dioms qe, apres sa mort, le Metropolitan fist seisir touz les biens qe furent a dit Adam, tanqe touz les chasteles et maners de mesme leveseche fuissent par les ditz biens reparailles, et estores en auxi bon estat come ils furent en la vie le dit Adam; par quei les biens qe nous avioms del dit Adam Dette.

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entre meyns furent livres al Evesqe qe ore est pur la dit chose parfourner, et ceo avant ce brief purchace, sauve *ceeli.* queux furent recoveris vers nous,[1] pendant ceste brief, a la sute un J., par un brief de Dette foundu sur lobigacioun mesme celi Adam, quel fait nous conissames ; et demandoms jugement, puisqe tut est issi deresne hors de nostre persone, si vous puissez ceste brief vers nous meyntener.—*Grene.* Quant a ceo qil ad parle qe fust livre al Evesqe de Wyncestre qore est pur reparailler, *ut supra*, et ceo avant cest brief purchace, soit de ceo come estre poet ; mes puis qil ad conu qe jour de ceo brief purchase il avoit *ceeli.* entre mayns, et ceo qil parle qils furent recoveris par un brief de Dette vers lui, pendant cest brief, a ceo dioms nous qe mesme celi qe vous avetz dit qe recoveri fust vostre coexecutour, qe est ore nome en nostre brief, et ceo par concent et collusioun entre vous, la ou vostre testatour ne lui devoit riens, quele chose nous voloms averer ; et nentendoms pas qe par nulle recoverir taille entre vous par collusioun, et ceo pendant cest original, la ou riens fut diwe par le testatour a celi qe recoveri, et lexecucion de quel jugement nest pas unqore fait, qe vous puisses par taunt de ceste dette estourter ; et demandoms jugement, et prioms nos damages.—*Mutl.* Si la lei poet soeffrer, nous voloms averer qe nostre testatour fut tenu a lui en la dette susdite ; et demandoms jugement, puis qe nous venimes par la graunde destresse pur sauver noz issues ; et par lei nous ne serroms pas aree a dedire un fait quel est veritable *in esse*, par quei collusioun ne poet estre ajugge.—Wilby. Si deit, qar il vous ad surmis qe celi qe usa le brief de Dette fust vostre [co]executour, en quel cas, si vous ussetz plede qe puis qil fust vostre [co]executour et avoit administracioun des biens le mort, vous lui usses barre.—*Pole.* Il

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[1] MS. lui.

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A.D. 1346. even though I be one of the executors of a person who is my debtor, and have administration of his goods, that administration is not of such force that I ought not to have my debt against the co-executors, because the administration which I have is not for my debt, but is for the soul of the deceased; and you will fully allow yourself that, although my debtor makes me one of his executors, and I refuse administration, my action in respect of my debt is not thereby taken away from me as against those who administer; and, even though I do administer, that is adjudged by law to be only acting on behalf of the soul of the deceased, and therefore it seems that the action for him is maintainable.—WILLOUGHBY. You say only that which you would like to be the fact, for suppose your debtor makes you his sole executor, and you have administration of his goods, in that case you cannot recover anything, but you will take it yourself *de la plus belle*, and that will be allowed to you before the Ordinary on your account; and the law is the same even though you have a co-executor, when you administer yourself. And I tell you that, in a stronger case than there is here, the executor will not have an action; for suppose he brings his writ of Debt against the debtor's heir, who has assets by descent, when the executors have fully administered, then if the heir says that the same person that sues is one of the executors of his ancestor, by whose deed the executor binds him, and that the executor has administered the goods of the deceased after the death of the testator, the heir will bar him, and that you have seen; *a multo fortiori* the co-executor himself ought to bar him; therefore is it the fact that he was your co-executor and had administration, or not?—*Huse*. Ready, &c., that he never administered as executor.—WILLOUGHBY. Then you do not deny that he administered, and that administration charges him as executor; therefore if you will take issue on the administration simply, good and well,

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semble qe noun, qar, mesqe jeo soi un des executours de celui qest mon dettour, et ay administracioun de ses biens, cele administracioun nest pas si fort qe jeo ne deyve aver ma dette vers les coexecutours, qar ladministracioun qe jay nest pas pur ma dette, mes est par lalme le mort ; et vous graunterez bien mesmes qe mesqe mon dettour moi face un de ses executours, et jeo refuse ladministracioun, qe par taunt maccion de ma dette ne moi est pas tollet vers ceux qe administrent ; et, mesqe jeo administre, ceo nest pas ajugge par lei, mes del faire pur lalme le mort, par quei il semble qe laccion pur lui est meintenable.—Wilby. Vous dites talent, qar jeo pose qe vostre dettour vous face soul son executour, et vous avetz admininistracioun de ses biens, en cel cas vous ne poetz rienz recoverir, mes vous le prendrez mesmes de plus beal, et ceo serra allowe a vous devant les ordiners sur vostre acompte ; et mesme la lei y ad il mesqe vous eietz [ce]executour la ou vous administres mesmes. Et jeo vous dye qe, en plus fort cas qe en ceo ci nest, lexecutour navera pas accion ; qar jeo pose qil porte son brief de Dette vers leir le dettour, qe ad pas descente, la ou les executours ount pleinement administre, sil dye qe mesme celi qe suist est un des executours son auncestre, par qi fait il lui lie, et qil avoit ministre, apres la mort le testatour, des biens le mort, il lui barra, et ceo avetz vous veu ; a moult plus fort lexecutour mesme lui dust barrer ; par quei est il issi qil fust vostre executour et avoit administracioun, ou nent ?—*Huse.* Qil nadministra unqes come executour prest, &c. —Wilby. Donqes vous ne dedites pas qil administra, quel administracioun luy charge come executour ; par quei, si vous voiletz prendre issue sur ladministracioun

A.D. 1346.

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A.D. 1346. and, if not, you do not answer.—Therefore *Huse* said that he did not administer; ready, &c.—And upon that they were at issue, &c.

Statute Merchant. (68.) § One John Hauteyn, who had been taken by process on a statute merchant at the suit of one Edmund Wiliot, sued an *Audita Querela* out of the Chancery, directed to the Justices, which was grounded on an indenture that had been made in defeasance of the statute. And this indenture purported that if the recognisor did not enfeoff the person to whom the recognisance was made of certain land for a term of ten years, to be without disturbance during his term, and if any debt was levied of him, in respect of which the recognisor had become debtor, or if any Green Wax was levied of him, then the statute should stand in force, and, if not, that the statute should lose its force. And the writ mentioned only that, if he held the land peaceably without being disturbed, then the statute should lose its force. And the same matter only was included in the writ which issued out of the Common Bench to cause the person to come in whose favour the statute was made, to make known with certainty why he had sued contrary to his own deed.—Thereupon *Huse* demanded judgment on the ground that in the indenture there were certain conditions limited, the infringement of which made the statute executory, and the writ recited only one, that is to say (said *Huse*) that if we hold our term peaceably then the statute shall lose its force, whereas according to the indenture even though we should hold without disturbance, if the Green Wax should be levied of us the statute should remain in force, and so this writ is not warranted by the indenture; judgment of the writ.—*Thorpe*. The writ recites that if you hold your term peaceably without disturbance, &c., and disturbance is nothing else than that you cannot have the profit of the land; therefore if the Green Wax

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simplement, bien, et si ceo noun, vous ne reponez pas.— Par quei *Huse* dit qil nadministra pas; prest, &c.— Et sur ceo furent a issue, &c. A.D. 1346.

(68.) [1]§ Un Johan Hauteyn,[2] qe fut pris par proces sur un estatut marchaunt a la sute un Edmond Wiliot,[3] suyst un *Audita Querela*, hors de la Chauncellerie, a les Justices, quel fust foundu sur endenture qe fust fait en defesaunce del estatut, quel endenture voleit qe sil nenfeffe celi a qi la reconissaunce fust fait de certein terre a terme de x aunz saunz estre destourbe de son terme, et si nulle dette soit leve de lui, de quei lautre devynt dettour, ou asqun verte cire soit leve de luy, qe adonqes lestatut estoise en sa force, et, si ceo noun, qe lestatut perde sa force. Et le brief ne fist mencion mes sil tensist la terre pessiblement saunz estre destourbe qe adonqes lestatut perde sa force. Et auxi mesme la matere compris en le brief qe issit hors de comune Baunke a faire venir celi a qi lestatut [se] fist a savoir mon pur quei il avoit suy encontre son fait demene. —Sur quei *Huse* demanda jugement de ceo qen lendenture sont divers condicions limites, lenfreindre des queux fait lestatut executore, et le brief reherce mes un, saver, qe si nous tenoms pesiblement nostre terme qe adonqes lestatut perdra sa force, ou par lendenture, mesqe nous tenissoms nostre terme saunz destourbaunce, si la verte cire fut leve de nous lestatut demureit en sa force, et issi cest brief nent garraunti del endenture; jugement de brief. —*Thorpe*. Le brief recite qe si vous tignes pessiblement vostre terme saunz destourbaunce nest autre mes qe vous ne puisses aver le profit de la terre; par quei, si la Statut Marchaunt.

[1] From H. alone.

[2] MS. Edmond Wiliot, instead of Johan Hauteyn. See note [3].

[3] MS., Johan Hauteyn, instead of Edmond Wiliot. The names must have been transposed in the MS. It will be seen below, p. 427, that the defeasance of the statute merchant was conditioned for Edmund's peaceable enjoyment of a term of years, and that it was he who had sued execution on the statute.

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A.D. 1346. has been levied of you, for which reason the statute ought still to remain in force, it will come from you to show that, and inasmuch as you do not allege it, nor mention any other reason, we demand judgment, and pray that this execution be suspended.—*Husc.* We understand that disturbance of a term is only where one is completely ousted from his term, for, even though we should pay the Green Wax, still we enjoy our term, and consequently that is not a disturbance of our term; therefore the general expression cannot by law include in itself the other conditions mentioned in the indenture; therefore, &c.—WILLOUGHBY. If the Green Wax or other charges are levied of you, so that you cannot have the profit of your term, then you do not hold your term peaceably, and therefore that word relates to all the conditions mentioned in the indenture; therefore since the writ makes mention of that within which the other conditions are included, the writ is sufficiently good without making mention of the others; therefore answer.—*Skipwith.* Again judgment of the writ, for the writ recites the statute and further the words of the indenture in this manner—that, if Edmund held his term *absque impedimento* from John or his heirs, then the statute should lose its force, and then the writ is afterwards in the words *licet idem Edmundus pacifice absque impedimento terminum suum tenuisset*, yet the aforesaid Edmund, notwithstanding that, has sued execution on the statute, so that the word which, as you charge, is to include all the conditions, that is to say, the word *pacifice*, is not expressed in the suggestion of the writ but comes in afterwards. Now, even though the word might be supposed to include in itself all the other conditions mentioned in the indenture, still that ought to have been recited in the declaratory part of the writ, in which the force of the indenture ought to have been shown, and inasmuch as it is only recited after the word "*licet*," and not before, we demand judgment of the writ.—WILLOUGHBY. He could not hold without disturbance unless he held

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verte cire soit leve de vous, par quei qe lestatut deit unqore demurer en sa force, ceo vendra de vous a moustrer, et de ceo qe vous nel alleggez pas, ne autre rienz ne ditez, nous demandoms jugement, et prioms qe ceste execucion soit suspendu.—*Huse.* Nous entendoms qe destourbaunce de terme nest mes la ou homme est nettement ouste de son terme, qar, mesqe nous paiassoms la verte cire, unqore nous enjoioms nostre terme, et *per consequens* ceo nest pas destourbaunce de vostre terme ; par quei la parole general ne poet par lei conclure en lui mesme les autres condicions motes en lendenture ; par quei, &c.—Wilby. Si la verte cire soit leve de vous, ou autres charges, par quei qe vous ne poetz aver le profit de vostre terme, donqes vous ne tenez mye vostre terme pesiblement, par quei cel parole refiert a touz les condicions motes en lendenture ; par quei, puisqe le brief fait mencion de cele dedeinz quel les autres condicions sont compris, saunz faire mencion de les autres le brief est assetz bon ; par quei responez.—*Skip.* Unqore jugement de brief, qar le brief rescite lestatut, et outre les paroles del endenture en tiele manere qe si Edmond teinsist son terme *absque impedimento* de J. ou ses heirs qe adonqes lestatut perdra sa force, et donqes voet le brief apres qe, *licet idem Edmundus pacifice absque impedimento terminum suum tenuisset*, lavant dit Edmond, nient countresteaunt cele, ad suy lexecucion sur lestatut, issi qe la parole quel vous charges qe dust comprendre touz les condicions, saver, le *pacifice* nest pas mote en la suggestion del brief, mes est apres. Or, mesqe la parole dust comprendre en ly mesme touz les les autres condicions motes en lendenture, unqore dust ceo aver este rescite en la demoustraunce del brief, en quel la force del endenture dust estre moustre, et de ceo qil nest recite mes apres le *licet*, et ne mye avant, jugement de brief.—Wilby. Il ne put tenir saunz

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A.D. 1346. peaceably, &c., therefore the force of the two expressions operates wholly to one effect; therefore answer.—*Skipwith.* Then, Sir, we say that John ousted us within the term, and made a feoffment of the same land to one R., and so the conditions were broken by him, and we do not understand that he can suspend execution by virtue of that indenture.—*Haveryngton.* Ready, &c., that he continued the whole term, without being ousted by us.—And on that they were at issue.—Therefore they prayed mainprise for John, and they could not have it because he came out of Newgate Prison to prosecute this suit [of *Audita querela*] in virtue of a writ [of *Habeas corpus*]. Therefore he was delivered to the Sheriffs of London for them to take him back to Newgate, &c.

Debt. (69.) § The executors of one William Peverel, "de Estham," knight, brought a writ of Debt, and made *profert* of the defendant's obligation made in favour of their testator, which obligation was in accordance with the name by which he was named in the writ, but in the will the testator was described as W. Peveril, knight, the words "de Estham" being omitted.—*Skipwith.* When executors make a demand, they must keep in agreement with the will, and inasmuch as there is more in the writ than in the will, judgment of the writ.—STOUFORD. The writ is in accordance with the will in part, and that which is in the writ over and above what is in the will is in accordance with the specialty, with which his suit must be in accordance; therefore answer.—*Skipwith.* Again judgment of the writ, for in the will there are named one R. and one J. by the testator to be coadjutors with the others in putting the will into execution, and they are by law as much executors as the executors themselves, and they are not named in the writ; judgment of the writ.—*Moubray.* Although they are made assistants to the others, they are not for that reason executors.—*Skipwith.* Yes, they are, for executors are nothing more than persons

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inpedimente sil nel tensist pesiblement, par quei la force de les ij paroles vount tut a un effecte; par quei responez. —*Skip.* Sire, donqes vous dioms qe J. nous ousta deinz le terme, et fist feffement de mesme la terre a un R., et issi furent les condicions par lui enfreintz, et nentendoms pas quil puisse par cele endenture ceste execucion suspendre.—*Hav.* Qil continua tut le terme saunz estre ouste par nous prest &c.—Et sur ceo furent a issue.—Par quei ils prierent mainprise pur Johan,[1] et nel purreint aver, pur ceo qil vint par brief hors de la prisoun de Newegate a pursuyr ceste sute. Par quei il fust delivers a les Vicountes le Loundres a luy remener a Newegate, &c. A.D. 1346.

(69.)[2] § Les executours un William Peverel, de Estham, chivaler, porterent un brief de Dette, et mistrent avant lobligacion le defendant fait a lour testatour, quel obligacion fust acordaunt a son noun qil estoit nome en le brief, et en le testament le testatour fust nome W. Peveril, chivaler, entrelessaunt de Estham.—*Skip.* Quant executours demandent, il covent qils acordent al testament, et, de ceo qil y ad plus en le brief qe en le testament, jugement de brief.—Stouf. Le brief est acordaunt al testament en partie, et ceo qest plus outre en le brief qest en le testament cest acordaunt al especialte, a quel il covent qe sa sute soit acordaunt; par quei responez.—*Skip.* Unqore jugement de brief, qar en le testament il yad un R. et J. nome par le testatour destre coadjutours a les autres de mettre le testament en execucion, les queux par lei sont auxi avant executours come eux nent nome en brief; jugement de brief.—*Moubray.* Mesqils seient faitz eidours a les autres, par taunt ne sount ils pas executours. —*Skip.* Si sont, qar executours est nulle autre mes a faire Dette.

[1] MS. Edmond. See above, p. 425, note 3.

[2] From H. alone.

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A.D. 1346. who have to effect execution of the will, and since they are appointed only to do that in the will, the law adjudges them to be executors.—WILLOUGHBY. If they have administration with the others, they ought to be charged as executors, but in bringing an action they will not be named, because they are not named by the testator except as being assistants to the executors, and therefore they are made only as accessories to the others; therefore answer.—*Skipwith.* At the time of the execution of the deed we were under age; ready, &c.—And the other side said the contrary.

Avowry. (70.) § The Abbot of Louth Park was plaintiff in respect of forty pigs tortiously taken. The defendant, by *Moubray*, avowed the taking as good and rightful, on the ground that he was lord of the vill of K., and that the beasts in respect of which the plaintiff complained belonged to the vill of S., and that those two vills do not intercommon. And, said *Moubray*, because we found the same beasts in the same place, which is our several, *damage feasant*, we did take them.—*Skipwith.* Judgment of this avowry, for he has supposed that the two vills do not intercommon in that field, not denying that in the rest of the vill they do intercommon; and that is a thing that cannot be understood—that vills intercommon in one part and not in another part; and so in his avowry he does not assign any matter as a reason why the two vills should intercommon in some part, and not in the fields; therefore we demand judgment of the avowry.—STOUFORD. It is not necessary that he should say in his avowry that as a whole the two vills do not intercommon, but only that in the place in which the taking was they do not intercommon, for the whole dispute falls on the place; therefore, if he can maintain that they do not intercommon in that place, the taking is avowable, and otherwise not so; therefore the avowry is sufficiently good.—*Skipwith.* But, Sir, by his avowry it must be understood that the

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execucion del testament, et, puis qils sont limites a cele chose faire en le testament, lei les ajugge executours.—WILBY. Sils eient administracion od les autres, ils deyvent estre charges come les executours, mes en accion a user ils ne serrount pas nome, pur ceo qils ne sont pas nomes par le testatour forsqe destre en eyde od les executours, et par tant eux ne sont pas faitz mes come accessores a les autres; par quei responez.—*Skip.* A temps de la confeccion de fait nous fumes deinz age; prest, &c.—*Et alii e contra.* A.D. 1346.

(70.)[1] § Labbe de Loutheparke fust pleintif de xl. pores a tort pris. Lautre, par *Moubray*, avowa la prise bone et droiturele, par la resoun qil fust seignur de la ville de K., et les bestes dount il est pleint sont de la ville de S. queux villes nentrecomunent pas. Et pur ceo qe nous trovames mesmes les bestes en mesme le lieu qest nostre severale, damage fesaunt, si les primes.—*Skip.* Jugement de ceste avowere, qar il ad suppose qe les ij. villes nentrecomunent pas en cel champ, nent dedisaunt qe en le remenant de la ville ils entrecomunent, quele chose ne poet estre entendu, qe les villes entrecomunent en partie, et en partie nent; et issi ne doune pas matere en savowere pur quei les ij. villes duissent entrecomuner en partie, et en les chaumps nent; par quei nous demandoms jugement del avowere.—STOUF. Il ne covent pas qil parle en savowere qe en tut les ij villes nentrecomunent pas, mes soulement a meyntener qe en cel lieu ou, &c., qils nentrecomunent pas, qar sur le lieu tut le debat chiet; par quei, sil puisse mayntener qil nentrecomunent pas en cel lieu, la prise est avowable, et autrement nent; par quei lavowere est assetz bone.—*Skip.* Mes, Sire, par savowere homme deit entendre qe les villes Avowere.

[1] From H. alone.

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A.D. 1346. vills intercommon wholly except in the field in which the taking was effected ; and I say that by law it is impossible, unless it were in virtue of some special matter, which matter ought to be produced, or else the avowry cannot be maintained.—And, notwithstanding this, the avowry was adjudged good.—*Skipwith.* Then we tell you that the Abbot is lord of a third part of the vill of K., and has his barns, and also has arable land in the vill of K., to which common in the same place in which the taking was effected is appendant ; and we tell you that we have had and used, from all time, a right to drive all our beasts which are *levant* and *couchant* in S. to K. through the same place in which the taking was, to till and manure our land in K., and in the same place, &c., the same beasts commoned, &c., and of that right the Abbot and his predecessors were seised from time whereof there is no memory and we demand judgment whether the defendant can avow the taking of this distress in that place.—*Moubray.* As to that we tell you that at one time you have had that profit there on our sufferance, and for your advantage, and at another time, when your beasts came there without our consent, we impounded them, *absque hoc* that the Abbot and his predecessors have been peaceably seised in any other manner than as we have said ; ready, &c.—*Skipwith.* As to the question whether we have been peaceably seised or not, issue cannot be taken on that, for, if we have rightful title in that, even though you may have sometimes disturbed us, which it was not right to do, issue will not be taken on that, but we will aver that we and our predecessors have been seised of that right to drive in and to drive back, from time whereof there is no memory ; ready, &c.—And the other side said the contrary.

A Writ of False Judgment.

(71.) § A Writ of False Judgment was sued by Robert son of William le Reve against Cecilia late wife of Henry Balle in respect of a judgment rendered on a writ

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entrecomunent en tut sauve en le chaump on la prise se fist ; et jeo dye qe eeo serra impossible de lei, sil ne fust par asqun matere especial, quele matere covendreit estre moustre, on autrement lavowere nest pas maintenable.—Et, *hoc non obstante*, lavowere fut agarde bone.—*Skip.* Donqes vous dioms qe Labbe est seignur de la teree [partie de la] ville de K., et ad ses granges, et aussi il ad terre arable en la ville de K., a quei comune en mesme le lieu ou la prise de fist est appendaunte ; et vous dioms qe touz noz bestes eochauntz et levantz en S. avoms eu et usee de tut temps a chaeer a K. par my mesme le lieu ou, &c., pur gayner et composter nostre terre en K., et en mesme le lieu, &c., mesmes les bestes comunerent, &c., et de eeo Labbe et ses predecessours seisiz de temps dount ynyad memore ; et demandoms jugement si il purra la prise de ceste destresse en eel lieu avower.—*Moubray.* A eeo vous dioms nous qe a la foitz vous avietz eu eel profit illeoqes par nostre soeffraunee, et pur le vostre devantage,[1] et a la foitz, quant voz bestes vindrent illeoqes saunz nostre volunte, nous les emparkames, saunz eeo qe Labbe et ses predecessours ount este seisiz pesiblement en autre manere qe nous avoms dit ; prest, &c.—*Skip.* Le quel qe nous avoms este pesiblement seisiz on nent issue ne se prendra mye sur eel, qar, si nous eioms title de dreit en eeo, mesqe vous nous eietz a la foitz destourbe, qe nestoit par resonable, sur eel issue ne se prendra pas, mes nous voloms averer qe nous et noz predecessours avoms este seisiz de eel chaeer et reehaeer de temps dount il ny ad memore ; prest, &c.—*Et alii e contra.*

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(71.)[2] § Un brief de Faux Jugement fust suy par Robert le fitz William le Reve vers Cecille qe fut la femme Henre Balle dun jugement rendu en un brief de Dreit quel

Un Brief de Faux Jugement.

[1] The reading is doubtful. In the MS. the beginning of the word is at the end of one line and the end of it at the beginning of another.

[2] From H. alone.

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A.D. 1346. of Right which he himself brought against this same Cecilia in a Court of Ancient Demesne, where he sued this writ as in the nature of a writ of Right. And the record was read, and it purported that on the first day the demandant counted against the tenant to the effect that the tenant deforced him of tenements whereof his ancestor was seised, with saying anything more. On that day the tenant demanded view, and had it. And after view the demandant counted a good count against the tenant, alleging the seisin of his ancestor, and tendered suit and good deraignment. Thereupon the tenant said that heretofore she brought against the present demandant a writ of Right in the same Court, and made protestation that her suit was in the nature of a writ of Formedon in the remainder. Thereupon he traversed the gift, and the gift was found, for which reason the present tenant recovered. And she demanded judgment whether contrary to that recovery he ought to have an action. And the other demanded judgment, since this was his writ of Right, and the recovery which the tenant alleged was only for the purpose of destroying the possession, and not the right, and therefore he demanded judgment, and prayed seisin of the land, and, notwithstanding this, judgment was given that the demandant should take nothing by his writ, and this was now assigned as error.—*Grene.* Sir, you have it there, by the record which is sent before you, that on the first day there was no count counted, and so the record which is sent is not full; therefore until you know whether there is a fuller record you will not proceed to examine the error.—*Thorpe.* The Court ought never to send to have a fuller record unless it be by reason of a plea of a party, and your statement that there is not one is bad, for if you demand view, without any count having been counted, and have it, then it has the same effect as if a count had been counted; and by the writ, which is a writ of Right, without making any protestation at all. I can prosecute the suit as being of such a nature as the

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il mesme porta vers mesme cesti C. en auncienc demene, ou il suyst cel brief en nature dun brief de Dreit. Et le recorde fust lieu, qe voleit qe al primer jour le demandant counta vers le tenant en tiel manere qe le tenant luy deforce et dount un son auncestre fust seisi, saunz plus, a quel jour le tenant demanda la vewe, et lavoit. Et apres la vewe il counta vers lui une bone counte de la seisine son auncestre, et tendi sute et derene bone, ou le tenant dit qe autrefoith il porta vers lui un brief de Dreit en mesme la Court, et fist protestacion a suire en nature de brief de Forme de doun en remeindre, ou il traversa le doun, et le doun trove, par quel le tenant recoveri. Et demanda jugement si encountre cel recoverir il dust accion aver. Et lautre demanda jugement, puisqe ceo fust son brief de Dreit, et le recoverir qil allegge nest mes a destrure la possessioun, et ne mye le dreit, par quei il demanda jugement, et pria seisine de terre, et *non obstante*, fust agarde qe le demandant ne prist rienz par son brief, et ceo fust assigne ore pur errour.—*Grene.* Sire, vous avetz la par le recorde, qest demande devant vous, qe al primer jour il ny avoit pas counte counte, et issi le recorde qest maunde nest pas plein ; par quei tanqe vous saches sil yeit plus plein recorde vous nirrez pas al examynement del errour.—*Thorpe.* La Court ne deit jammes maunder pur aver plus plein recorde sil ne soit par plee de partie, et a ceo qe vous parletz qil ny ad pas male, qar si saunz counter counte vous demandez la vewe, et leiez, a taunt vaut il come si counte fut counte ; et par le brief, qest un brief de Dreit, tut saunz protestacion faire, jeo le puisse pursuir en tiele nature[1] come le brief en luy mesme est ; A.D. 1346.

[1] MS., matere.

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A.D. 1346. writ is in itself; therefore, even though no count had been counted after view, since no protestation was made as to suing the writ in any nature other than its own nature, it cannot be supposed to be sued otherwise than in its own nature and in that case a judgment rendered on a writ of an inferior nature does not bar.—*Grene.* But suppose you had counted in your first count, before view, of the seisin of your ancestor in fee tail, the judgment which I should have alleged would have been sufficient to disprove that action. Now you cannot know whether that count was so counted or not, unless you send for a fuller record.—And, notwithstanding that, he was put by the COURT to answer as to the error.—Therefore he said that the customs of the same manor are such that when any person recovers against another, by whatsoever writ it may be, by action tried within the same manor, although the person who lost brings his writ of Right in the same Court, that judgment bars him, unless he can show a title of right in himself of a later time, and those customs we are ready to aver, and therefore they did not err.—*Sadelyngstanes.* Sir, you see plainly that in his answer, which he gave in bar, he said nothing about the custom, but only aided himself by the recovery according to common law; and, moreover, there is nothing said in the judgment to the effect that the Court gave such judgment by reason of their custom; therefore they shall not now be admitted to allege that any one will be barred by the custom of the manor in such a case, since they did not plead it then, and the customs were not taken as the reason of the judgment. And, further, this cannot be called a custom, for the manner of a plea cannot fall under the head of custom, and, even if it could, since they have not made any allegation as to the persons among whom it is in use, the law does not put us to answer to it; therefore we pray that you do proceed to the annulment of the error.—*Skipwith.* Then you refuse the averment which we have tendered, and we demand judgment, since

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par quei mesqe nulle counte ust este counte apres la vewe, puis qe nulle protestacion fust fait a suyr le brief en autre nature qe en sa nature demene, il ne poet autre supposer mes en sa nature propre suy, en quel cas jugement rendu en un brief de meyndre nature ne barre pas.—*Grene.* Mes jeo pose qe vous usses counte en vostre primer counte, avant la vewe, de la seisine vostre auncestre en fee taille, le jugement qe jeo usse allegge suffireit a desprover cele accion. Ore le quel qe cel counte fut issi counte on nent vous ne poez saver, si vous ne maundes pur plus plein recorde. Et, *non obstante* ceo, il fust mys par la Court a respoundre al errour.—Par quei il dit qe les usages de mesme le maner sont tielx qe quant un homme recovere vers un autre, par quel brief qe ceo soit, par accion trie dedeinz mesme le maner qe mesqe cely qe perdi porte son brief de Dreit en mesme la Court qe cel jugement lui barre, sil ne puisse moustrer title de dreit en ly de plus tardife temps, queux usages nous sumes prest daverer, et par taunt nerrerent ils pas.—*Sadel.* Sire, vous veietz bien coment en son respons, quel il dona en barre, il ne parla rienz del usage, mes soul seyda par le recoverir par comune lei; et auxi en le jugement il ny ad nul rienz parle qe par cause de lour usage qils donerent tiel jugement; par quei a ore dallegger qe par usage del maner ils serront barres en tiel cas, puis qe a donqes nel pledastes pas, ne les usages pris par cause de jugement, ne serront reseeu. Et, ovesque ceo, ceo cy ne poet estre dit usage, qar manere de plee ne poet pas chere en usage, et, mesqil poeit, puis qe vous navetz allegge entre queux usee, la lei ne nous mette pas a ceo respoundre; par quei nous prioms qe vous aletz al nyentissement del errour.—*Skip.* Donqes refuses laverement quel nous avoms tendu, et demandoms jugement, A.D. 1346.

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A.D. 1346. their law within the manor will be governed in accordance with the customs of the manor, which customs, if that of which we have tendered averment is true, prove that the judgment was good, and that averment you refuse; judgment, and we pray that you do affirm the judgment. —*Thorpe.* I say that you ought not now to be heard to speak of customs in order to strengthen the judgment, for when you plead the recovery in bar, where we have tendered suit and deraignment, you plead it according to common law, whereas by common law it cannot be a bar because it does not disprove the right of the party; but if you had then relied on the customs in your conclusion, you would now have had to maintain them because that would have been quite in pursuance of your plea in bar; but since that was not alleged by you at that time, and the customs were not taken as the reason for the judgment, it seems that you cannot now have the advantage of alleging them.—*Grene.* I say that one could not then be permitted to allege them, because that Court is as much governed by its custom, and it is their law there, as this Court is governed by common law; and, if I plead a plea in bar in this Court, I ought not at the same time to allege that it is common law, because those who have to give judgment on it ought by law to know whether it is the law of the land or not; and in like manner their customs are as well defined between them for the purpose of giving judgment as the common law is for a Justice to know it; therefore there was no necessity for me to allege that the customs were such in my bar there.—*Birton.* It seems that there was, for, if you had there maintained your bar by custom, it would then have been a good answer for me to have said that there were no such customs; and that which it would then have availed me to deny, if you had alleged it, shall not now be taken in maintenance of your writ, since it was not then alleged.—*Skipwith.* Although it was not alleged, yet if the suitors took the customs as the reason of their judgment, we can maintain it now, for

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puis qe lour lei deinz le maner serra reulle solone les usages de icelle, queux usages, sil soit verite ceo qe nous avoms tendu daverer, provent qe le jugement fust bon, quel averement vous refuses ; jugement, et prioms qe vous affermes le jugement.—*Thorpe.* Jeo dic qe a ore vous ne devetz estre escote de parler de les usages daforcer le jugement, qar, quant vous pledes le recoverir en barre, la ou nous avoms tendu sute et derene, vous le pledez par comune lei, ou par comune lei il ne poet estre barre, pur ceo qil ne desprove pas dreit de partie ; mes, si vous usses adonqes relie vostre conclusioun sur les usages, vous le deverietz a ore meintenir, pur ceo qe ceo fust tut pursuaunt vostre plee en barre ; mes, quant ceo nestoit pas par vous a donqes allegge, ne les usages pris par cause de jugement, si semble il qe vous naverez nye avantage a ore del allegger.—*Grene.* Jeo dye qil navendreit pas adonqes del alleger, qar la Court la est auxi avant reulle par lour usage [et] illeoqes est lour lei come ceste Court est reulle par comune lei ; et, mesqe jeo plede un plee en barre en ceste Court, jeo ne dye pas od ceo allegger qe ceo est comune lei, pur ceo qe ceux [qe] le deyvent ajugger deyvent par lei saver le quel ceo soyt lei de la terre ou nent ; et auxi est ceo la lour usages sont auxi avant en certeine entre eux dajugger come est a Justice a savir comune lei ; par quei daver allegge qe les usages furent tielx en mon barre illeoqes ne covendreit pas.—*Birtone.* Il semble qe si, qar, si vous usses illeoqes meintenu vostre barre par usage, il serreit adonqes bon respons pur moi daver dit qils ne yavoient nulles tielx usages ; et ceo qe moi adonqes dust aver valu a dedire le, si vous le usses allegge, ne serra pas a ore pris en meyntenance de vostre brief, puis qil nestoit pas adonqes allegge.—*Skip.* Mesqil nestoit pas allegge, si les suters pristrent les usages pur cause de lour jugement, nous le meyntendroms a ore, A.D. 1346.

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A.D. 1346. their judgment will not be reversed if the reason which they had was founded on truth. Now we say that inasmuch as the reason of the judgment was that they saw that, if they rendered judgment that the demandant should recover the land, that would defeat the judgment by which the other recovered against him, by action tried on a writ sued by custom of the same manor, and, because it seemed to them that this would not be right, they gave judgment that he should take nothing by his writ; and therefore it must be understood that the customs were the reason of the judgment; and, although no reason for the judgment was mentioned by the suitors of the Court, that fact ought not to turn to our damage, so that, if we cannot aver the customs in virtue of which the judgment was good, we shall not be able to maintain it.—*Seton.* If I bring a writ of Right, and make protestation of suing in the nature of a Formedon in the descender, then if you plead in bar my ancestor's deed with warranty, without saying that I have assets by descent, and if upon that defect you sue a writ of False Judgment on that point, ought you to be admitted to aver that the customs are such that he will be barred even without such descent of assets? You will not do so, because that ought to have been a part and to have constituted the force of your bar.—*Grene.* *Idem casus*, and I say that the contrary of that which you have said is law, for, if by the custom of a manor anyone will have three essoins and three defaults without damage, and if the suitors of the Court award seisin on the second default, then on a writ of False Judgment I shall have the averment that the customs are different, and so also on a writ of Right I shall plead your own release in bar in accordance with the customs, without joining the mise, and, if they award seisin because I have not joined the mise, I shall reverse it by averring that the customs are such.—*Seton.* It is not so, for there was an avowry made in London for a rent charge granted by one J. to the avowant, and the Abbot of Waltham said

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qar lour jugement ne serra pas reverse si lour cause soit veritable. Ore dioms [par] taunt qe la cause del jugement est pur ceo qils virent qe sils rendissent jugement qe le demandant recoverast la terre qe ceo differeit le jugement par quel lautre recoveri vers lui mesme par accion tric sur un brief suy par usage de mesme le maner, et pur ceo qil lour sembloit qe ceo nestoit pas resoun, si agarderent ils qil ne prist rienz par son brief ; et par taunt covent estre entendu qe les usages furent cause del jugement ; et, mesqe nulle cause de jugement fust mote par les suters, ceo ne deit pas tourner a nous en damage qe si nous ne puissoms les usages averer par quel le jugement fut bon qe nous ne le meyntendroms.—*Setone.* Si jeo porte un brief de Dreit, et face protestacion a suyr en nature de Forme de doun en descendre, si vous pledes en barre par le fait mon auncestre od garrauntie, saunz dire qe jay assetz par descente, et pur defaut de cele si vous suetz un brief de faux jugement de cele point, deivetz estre reseeu daverer qe les ussages sont tielx qe tut saunz descente qil serra barre ? Noun fretz, pur ceo qe ceo dust aver este parcele et la force de vostre barre.—*Grene. Idem casus*, et jeo dye qe le contrare de ceo qe vous avetz dit est lei, qar, si par usage del maner homme avera iij essones et iij defautes saunz damage, si les suters agardent seisine a la seconde defaut, en le faux jugement jeo averay averement qe les usages sont autres, et auxi par les usages jeo pledrai vostre reles demene, en un brief de Dreit, en barre, saunz joindre la mise, et, sils agardent seisine pur ceo qe jeo nay pas joint la mise, jeo le reverseray daverer qes les usages sont tielx.—*Setone.* Il nest pas issi, qar il yavoit une avowere fait en Loundres pur une rente charge graunte par un J. al avowaunt, et Labbe de Waltham dit qe, selonc les usages

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A.D. 1346. that he had recovered, according to the customs of the City, the same land against that same J. by a writ of Gavelet by reason of his cesser, and demanded judgment whether J. could charge the land by his deed; and, because he had not alleged that he recovered by reason of a cesser made before the charge commenced, the return was awarded. Thereupon the Abbot sued to cause the record to come before PARUYNKE[1] and HILLARY at St. Martin's, and there he would have averred that the customs were such that, when any one recovers by writ of Gavelet, he shall hold quit and discharged of every charge made by the tenant, at whatsoever time it may have been made, and he was there forjudged of the averment because the customs had not been pleaded in the City.—*Grene.* It was not so, for there was never any averment tendered on the customs, for I was of counsel with the party.—WILLOUGHBY. I cannot see, when judgment has been rendered according to common law, and not grounded on custom, how any one can be admitted to maintain the judgment by matter which falls under the head of fact, for, if that were law, there would never be any judgment reversed by means of a writ of False Judgment.—SHARSHULLE. If the customs had to be tried, they would be tried by persons of the manor and by others who will never counterplead the customs, by reason of the amercement which will befal them if the judgment is reversed; therefore it seems that it is not right to maintain the judgment by averment where it was rendered according to common law.—*Grene.* It must be so, for if the judgment is good according to their customs, even though they do not recite their customs in their judgment, the non-recital of the customs ought not to oust me from affirming the same judgment as being good for the reason which they might have taken for rendering the judgment.—HILLARY. That cannot be, for when you plead in bar as

[1] As to this name *see* Y.B., Easter-Trin., 18 Edw. III., Introd., pp. xxxv-xxxvii.

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de la Citee, il avoit recoveri mesme la terre vers mesme celi J. par brief de Gavelette de son cesser, et demanda jugement si par son fait il poait la terre charger ; et pur ceo qil navoit pas allegge qil recoveri dun cesser fait avant la charge comence si fust retourn agarde. Sur quei Labbe suist de faire venir le recorde devant PARUYNKE et HILL. a Seynt Martyns, et la voleit il aver avere qe les usages furent tielx qe quant un homme recovere par brief de Gavelette qil tendra quite et descharge de chesqun charge fait par le tenant, a quel temps qe ceo soit fait, et la fust il forjugge del averement par taunt qe les usages ne furent pas pledes en la Cite.—*Grene.* Il ne fust pas issi, qar il ne avoit unqes averement sur les usages tenduz, qar jeo estoye od la partie. —WILBY. Jeo ne say pas veer, quant jugement est rendu par comune lei, et nent foundu par usage, coment homme serra reseeu a meyntener le jugement par chose qe chiet en fait, qar, si ceo serreit lei, il nyavereit nul jugement par brief de Faux Jugement reverse.—SCHARS. Si les usages serront tries, il serront tries par ceux del maner et par autres queux ne countrepledront jammes mes les usages pur lamercyement qe a eux avendra si le jugement fut reverse ; par quei a meintener le jugement par averement la ou ceo fust rendu par comune lei si semble il qil nest pas resoun.—*Grene.* Il covent qil soit issi, qar si le jugement soit bon par lour usages, mesqils ne rehercent pas lour usages en lour jugement, le nounrehercer de eux ne moy deit pas ouster dafferner mesme le jugement par la cause quel ils purroient aver pris pur le jugement rendre. —HILL. Ceo ne poet estre, qar quant vous pledes en

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A.D. 1346. by a plea at common law, and judgment has been rendered in confirmation of that bar, and that judgment is erroneous according to common law, you cannot therefore affirm it in virtue of a custom which was never alleged until now. —*Grene.* Sir, very great care ought to be taken with regard to this judgment, for, if you reverse our judgment, then you will render judgment that the demandant do recover against us on his original writ, quit of us and of our heirs; for, if you give judgment that what we pleaded as our answer in bar was not an answer, the demandant will have final judgment against us, and that would be to our disherison for ever, whereas our action was taken on a gift earlier than his possession on which he demands; therefore, since that would be to our disherison, so that an action could not afterwards be given against him contrary to the final judgment, it seems that the law will rather favour us so that we may have an averment on the customs and maintain the judgment, for, as it is said, their customs are of record in their court; therefore, even though we had alleged the customs in our answer, and he would have denied them, enquiry could not have been had of that matter by the country, but only by their own record; and therefore that which is their law ought not to have been alleged in our answer, nor in their judgment, and though they were not so alleged, yet since we will now aver the customs which customs prove the judgment to be good, it seems that the averment is admissible.—HILLARY. As to the mischief which you assign, be it with regard to the final judgment as it may; but all that mischief came from yourselves, because you did not in your bar rely upon such a custom; therefore we have now to see whether we shall redress the error, and afterwards send the plea back for them to proceed with it, or on their default determine the whole business here.—*Thorpe.* Nay, Sir, if you adjudge this to be error, you will never send the plea back, for they have thereby lost the cognisance of pleas touching this land for ever.

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barre come par plee a la comune lei, et le jugement rendu en afforceaunt mesme le barre, quel jugement de comune lei est erroigne, par quei vous nel poetz affermer par usage qe nestoit unqes avant ore allegge.—*Grene.* Sire, il covent qe homme preigne garde a ceste jugement, qar, si vous reverses nostre jugement, donqes rendres vous jugement qe le demandant recovere vers nous sur son original, quite de nous et de noz heirs ; qar, si vous ajuggez qe ceo qe nous pledames pur respons en bare ne fust pas respons, le demandant avera vers nous jugement final, quele choso serra en desheritaunce de nous pur touz jours, la ou nostre accion fust pris dun doun eisne qe sa possessioun de la quele il demanda ; par quei, puisqe en desheritaunce de nous, issi qe accion ne pust estre done apres vers lui countre le jugement final, si semble il qe lei nous favora le plus daver averement sur les usages et mayntener le jugement, qar, come est parle, en lour court lour usages sont de recorde ; par quei, mesqe nous lussoms allegge en nostre respons, et il les vousist aver dedit, ceo ne dust pas aver este enquis par pays, mes par lour recorde demene ; et par quei ceo qest lour lei ne covendreit pas aver este allegge en nostre respons, ne en lour jugement, [et] mesqil ne seit pas, puis qe nous voloms aore averer les usages, queux usages provent le jugement, si semble il qe ceo est resceivable.—Hill. Quant al meschief qe vous assignetz soit del jugement final come estre poet ; mes tut cel meschief vint de vous mesmes, qe vous nusses en vostre barre relie sur tiel usage ; par quei il est a veer a ore le quel nous redresseroms lerrour, et puys le remaundoms[1] a tener avant le plee, ou qe en defaut de eux nous termineroms tut le bosoigne cy.—*Thorpe.* Nay, Sire, [si] vous ajuggerez ceo pur errour, vous ne le remaundres jammes, qar par taunt ils ount perdu la conissaunce de plees de ceste terre a touz jours. Et, Sire,

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[1] MS., remaundrez.

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A.D. 1346. And, Sir, since the plea which he pleaded was taken in bar of our action, and you give judgment that they erred inasmuch as they barred us, because it was not a good plea, you ought now to render for us the same judgment which they ought to have given, and that we pray, because, if the plea be sent back, he will have a new plea on which we may be barred, and so there would be process infinite.—WILLOUGHBY, *ad idem.* If we now give judgment that their judgment was erroneous, we must award the reverse of that which they awarded, and the reverse of their award is that the demandant do recover, and that we must do if we annul this judgment.—Therefore, in the end, because the judgment was rendered on a point of law which was not law, and the customs were not then pleaded, and no mention was made of the customs in the judgment, it appears to the COURT that you cannot be admitted to this—to aver the customs—in order to maintain the judgment.—Therefore judgment was given that the judgment of the Court of Ancient Demesne should be reversed, and holden as null, and that the suitors of that Court should be amerced. But because the COURT was not advised whether the demandant ought to recover his land now or not, the COURT would consider thereof.—*Grene.* Sir, if you now give judgment that he recover the land, he will then have final judgment, and we shall thereby suffer disherison so that we can never have our action on a title, which we had, earlier than was the seisin on which seisin he brings his writ.—HILLARY It is not so, for no one will ever have final judgment before the mise has been joined, and that was said by the whole COURT.—And in the end judgment was given that he should recover, but not by final judgment.—*Thorpe.* We pray also the issues of the mesne time.—WILLOUGHBY. You will not have that, for, if judgment for the demandant had been delayed in the Court of Ancient Demesne until now, you would not have recovered any damages; therefore the judgment which you have here is the same

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puisqe le plee quel il pleda fust pris en barre de nostre accion, et vous ajuggez qils errerent en taunt qils nous barrerent, pur ceo qe ceo ne fut pas plee, vous devetz rendre aore pur nous mesme le jugement quel ils duissent aver fait, et ceo prioms nous, qar, sil soit remaunde, il avera un novel plee, sur quel nous serroms barre, et issi proces infinite.—Wilby., *ad idem*. Si nous ajuggeroms ore qe lour jugement fust erroigne, donqes covent il qe nous agardoms le contrare de ceo qils agarderent, et le contrare de lour agarde est qe le demandant recovere, quele chose covent il qe nous fesoms si nous anentoms ceste jugement.—Par quei, a drein, pur ceo qe le jugement fust rendu sur un point de lei quel nest pas lei, ne les usages adonqes ne furent pas pledes, ne en le jugement mencion fait de les usages, si semble il a la Court qe vous ne serretz a ceo resceu daverer les usages pur meintener le jugement.—Par quei fust agarde qe cele jugement fust reverse et pur nulle tenu, et qe les suters fuissent amercies, mes, pur ceo qe la Court ne fust pas avys le quel le demandant dust recoverir a ore sa terre ou nent, si vodra la Court de ceo aviser.—*Grene*. Sire, si vous agardez aore qil recovere la terre, donqes avera il jugement final, et par taunt serroms disherite de aver nostre accion dun title quel nous avioms eisne qe la seisine ne fust de quel seisine il porte son brief.—Hill. Il nest pas issi, qar homme navera jammes jugement final avant qe la mise soit jointe, et ceo fust dit par tut la Court.—Et a drein fust agarde qil recoverast ne mye par jugement finale.—*Thorpe*. Nous prioms auxi les issues en le mene temps.—Wilby. Vous nel averetz pas, qar, si le jugement pur le demandant ust este delaie en launciene demene tanqe aore, vous nusses recoveri nulles damages ; par quei le jugement qe vous avetz cy est mesme le jugement quel

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A.D. 1346. judgment which they ought to have rendered, and therefore you will not have the mesne issues. But it would be otherwise if a tenant had lost his land, and that judgment had been reversed, and he had had restitution; in that case he would have the issues of the mesne time, because during that time he ought to have had the profit of the land if the judgment which is now rendered had been then rendered, &c.

Assise of Novel Disseisin.

(72.) § William Tullous brought an Assise of Novel Disseisin against a man and his wife before KELSHULLE and his fellows, in which *Moubray*, for the tenant, said that there ought not to be an assise, because he said that heretofore the husband executed a recognisance on a statute merchant to William for 20*l.*, upon which William had execution of these same lands by force of the statute, and afterwards this William by indenture, of which *Moubray* made *profert*, granted his estate which he had by the statute to the defendants on condition that, if they should pay him thirteen marks before the Feast of Christmas next following, then the statute, and the execution thereof, and every other kind of debt which the husband owed to him, in virtue of his letter obligatory thereof made to William, should be annulled. And *Moubray* said that the husband paid the thirteen marks, and demanded judgment whether, contrary to the indenture by which his estate was annulled on fulfilment of the conditions included in the same indenture, he ought to have an assise. —*Grene.* As to that we tell you that the thirteen marks which were mentioned in the indenture were not paid; ready, &c., by the assise.—*Moubray.* Now we demand judgment since you have confessed the payment of thirteen marks, and therefore you shall not be admitted to aver that the money was paid for a debt other than that which is mentioned in the indenture.—*Grene.* The acquittances prove in themselves that the payment was made in part payment of 20*l.* in which the husband was bound to

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ils duissent aver rendu, par quei vous nel averetz pas. Mes autre serra si le tenant ust perdu sa terre, et ceo fust reverse, et il ust restitucion ; en cel cas il avera les issues en le mene temps, pur ceo qe de cel temps il dust aver eu le profit de la terre si le jugement qest aore rendu ust este adonqes rendu, &c. A.D. 1346.

(72.)[1] § William Tullous porta un Assise de Novele disseisine vers un homme et sa femme devant KELS. et ses compaignouns, ou *Moubray*, pur le tenant, dit qe assise ne dust estre, qar il dit qe autrefoith le baron fist une reconissaunce sur un estatut marchaunt a W. en xx*li.* sur quei W. avoit execucion de mesmes ceux terres par force del estatut, et puis par endenture, quele il mist avaunt, mesme celi W. graunta son estat qil avoit par lestatut a eux sur tiele condicion qe sils luy payassent xiij marcs avant la fest de Nowel prochein ensuaunt qe adonqes lestatut, et lexecucion de cele, et chesqun autre manere de dette qil luy devoit par sa lettre obligatore de ceo a luy fait [fussent anenti. Et dit qil paia les xiij marcs][2], et demanda jugement si encountre lendenture par quel son estat fust anenti par lencompler de les condicions en mesme lendenture contenuz qil deyve assise aver.—*Grene.* A ceo vous dioms nous qes les xiij marcs qux furent compris en lendenture [ne furent pas paiez][2] ; prest, &c., par assise.—*Moubray.* Ore demandoms jugement puisqe vous avetz conu le payement de xiij marcs, par quei daverer qe ceo fust pur autre dette paie qe pur cel qest compris en Lendenture ne serrez reseeu.—*Grene.* Les acquitances en eux mesmes provent le paiement estre fait come en partie de payment de xx*li.* *Assisa Novæ Disseisinæ.* [Fitz., *Assise*, 216; 20 Li. Ass., 7.]

[1] From H. alone.

[2] The words between brackets have been marked for the insertion here, in a different hand, in the margin of the MS.

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A.D. 1346. William by his letter obligatory, and that obligation for 20*l.* could not relate to the statute merchant which he executed in our favour, because the debt to which the statute relates was annulled by the execution of this deed, and therefore the debt of 20*l.* cannot relate to the statute; therefore it must rightly be held to relate to another debt which he owed to us, so that the same matter of which we tender averment, that is to say, that the payment was made in respect of another debt, and not in respect of that which is mentioned in the indenture, is proved by the acquittances which he has produced, therefore, &c.—STONORE. If he is bound to you in other 20*l.* by an obligation other than the statute, produce it, or else you will not have advantage of it.—*Grene.* Sir, I cannot produce it, because he has paid the rest of the 20*l.*, and I have delivered the obligation to him in lieu of acquittance.—*Moubray.* Even though it were as you say, it would still be necessary to show that the obligation commenced after the indenture, because the indenture purports that on payment of thirteen marks all the debts in which he was previously bound to William should come to an end.—WILLOUGHBY, *ad idem.* I have seen that a statute merchant was executed by one person in favour of another for 100*l.*, and an indenture was executed with the condition that if the person who executed the statute should pay to the other, on a certain day, 10*l.*, the statute should lose its force, and he produced an acquittance for the payment of 10*l.*, and the other wished to aver that the payment had been made in respect of another debt, and he could not be admitted to make the averment without producing the obligation or something else in accordance with which he would by necessity of law have been put to pay it; therefore, since you do not produce an obligation, nor anything else to which that payment could relate more naturally that to that which is mentioned in the indenture, take nothing by your writ. &c.

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en qux il li fust tenu par sa lettre obligatore, quel obligacion de xx*li.* ne put referer al estatut qil nous fist, pur ceo qe la duete de ceo fust anenti par lexecucion de cel fait, par quei a cele estatut ne poet la dute de les xx*li.* referer; donqes covent il qe ceo soit par resoun dun autre duete quel il nous devoit, issi qe mesme la chose quele nous tendoms daverer, cest a dire qe le payement se fist pur autre dette, et ne mye pur cel qest compris en Lendenture, est prove par les acquitances qux il ad moustre; par quei, &c.—Ston. Sil vous soit tenu en autres xx*li.* par autre obligacion qe par lestatut, moustrez le avant, ou autrement vous naveretz mye avantage de ceo.—*Grene.* Sire, jeo le ne puisse moustrer, qar il ad paye le remenant des xx*li.* et luy ay livre lobligacion en lieu dacquitaunce.—*Moubray.* Mesqil fust issi come vous parles, unqore covendreit il moustrer qe cel obligacion comencea puis lendenture, qar lendenture voet qe par le payement de xiij marcs qe touz les dettes en queux il li fut tenu avant fuissent periz.—Wilby, *ad idem.* Jeo vy qun estatut marchaunt fust fait a un autre de c*li.*, et une endenture fut fait de ceo si celui qe fist lestatut lui payast a certein jour x*li.* qe lestatut perdreit sa force, et il mist avant lacquitaunce de la paye de x*li.*, et lautre vodreit aver avere qe cel payement fust fait pur autre dette, et ne poait estre resceu saunz moustrer obligacion, ou autre chose par quele il serreit de necessite de lei mys del aver paye; par quei, puisqe vous ne moustrez pas obligacion, ne autre rienz a quei cel paiement poit plus naturelement referer qe a cele qest compris en lendenture par quei ne preignes rienz par vostre brief, &c. A.D. 1346.

Nos. 73, 74.

A.D. 1346. Dower.

(73.) § A writ of Dower was brought by a husband and his wife on the seisin of her first husband. The tenant's wife said that the wife who was demandant, while she was sole, released to her all the right which she had in the same land, and made *profert* of the deed, and demanded judgment whether, &c., And the date of the deed was rased, and the husband in his own person and his wife confessed the deed.—*Grene.* This is done *ad cautelam*, in order to oust the wife in case she should survive her present husband, from this action of Dower; but it is not worth a half-penny, because she will deny the deed after her husband's death, notwithstanding this confession.—The COURT. Certainly what you say is true; but we must see whether we can permit this confession between you, since the deed is suspicious.—Therefore, in the end, the deed was delivered back to the party, without any judgment having been rendered on the confession.—And this was extraordinary, since there was no party who took exception to the deed, &c.

Quare impedit.

(74.) § The King brought his *Quare impedit* against the Abbot of Abingdon, and counted that one John de Ellesfelde was seised of the advowson, and presented one Robert de Brightwell.[1] This John aliened the advowson to the Abbot's predecessor, without licence,[2] to hold to him and his successors, and John held the same advowson of the King, and therefore the King seized the advowson, and so it belongs to him to present.—*Derworthy.* We do not admit that John was seised of the advowson, nor that he held of the King, nor the alienation, but we tell you that Robert was not admitted on John's presentation; ready, &c.—And on the day given the King's serjeants demanded judgment for the King on the ground that it is his writ of Right in this case, because he cannot have any

[1] The full name is from the record.

[2] The words "without licence" are inserted on the authority of the record.

Nos. 73, 74.

A.D. 1346. Dowere.

(73.)[1] § Un brief de Dowere fut porte par le baron et sa femme de la seisine son primer baron.—La femme le tenant dit qe la femme, tanqome ele fust soule, relessa a lui tut le dreit qele avoit en mesme la terre, et mist avant le fait; jugement si, &c. Et la date del fait fust rase, et le baron en propre persone et sa femme conissoient le fait.—*Grene.* Ceo est fait *ad cautelam*, douster la femme, si ele survive ceste baron qore est, de ceste accion de Dowere; mes il ne vaut pas un maille, qar ele dedirra le fait apres la mort son baron, nent countresteaunt ceste conissaunce.—CURIA. Certes vous dites verite; mes il est a veer a nous si nous puissoms suffrer ceste conissaunce entre vous, la ou le fait est suspeccionous.—Par quei, a drein, le fait fust rebaille a la partie saunz rendre jugement sur la conissaunce.—*Et hoc mirum*, puisqe ynyavoit nye partie qe le challengea, &c.

Quare impedit.

(74.)[2] § Le Roi porta son *Quare impedit* vers Labbe de Abyndone, et counta qun Johan de Ellesfelde[3] fust seisi del avowesoun, et presenta un R., le quel J. aliena lavowesoun al predecessour Labbe, a luy et a ses successours, le quel J. tint mesme lavowesoun del Roi, par quei le Roi seisist lavowesoun, et issi a lui a presenter.—*Der.* Nous ne conissoms pas qe J. fust seisi del avowesoun, ne qil le tint del Roi, ne lalienacion, mes nous vous dioms qe R. ne fust pas reseeu al presentement J.; prest, &c.—A quel jour les serjeauntz le Roi demanderent jugement pur le Roi puisqe ceo est son brief de dreit en ceo cas, qar autre brief

[1] From H. alone.

[2] From H. alone. This report is in continuation of Y.B., Mich., 19 Edw. III., No. 77 (pp. 464-467); of Y.B., Hil., 20 Edw. III., No. 33 (pp. 108-115); and of Y.B., Easter, 20 Edw. III., No. 50 (pp. 338-345). The record (already cited) is *Placita de Banco*, Mich., 19 Edw. III., R° 539. The presentation in dispute was to the church of Farnborough (Berks).

[3] MS., Enefelde. The name has been corrected in accordance with the record.

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A.D. 1346. other writ of Right, and the alienation of the advowson is not denied, by reason of which alienation the King had cause for seizing; and, even though John did not present, he might nevertheless have been seised of the advowson, and therefore by that traverse the possession of the advowson in him is not denied; therefore, &c.—And *Derworthy* replied to this that, inasmuch as the *Quare impedit* was a possessory writ, which could not be maintained without showing a presentation, therefore, since the King had affirmed John's possession of the advowson by presentation, the denial of that presentation sufficed to disprove his possession.—Thereupon they were adjourned.—On the day given *Derworthy* repeated the traverse of the presentation which he had previously tendered, and said, in addition, that this same Robert was admitted on the presentation of the Abbot's predecessor, and that the Abbot and his predecessors had been seised of the advowson from time whereof there is no memory, *absque hoc* that John was seised of the advowson; ready, &c.— Thereupon *Grene* demanded judgment since *Derworthy* had previously given another answer, that is to say, that Robert was not admitted, &c., on John's presentation, which answer he had waived, inasmuch as he had now tendered the averment that John had nothing in the advowson, which is a new answer to which by law he ought not to be admitted. Therefore (said *Grene*) we demand judgment for the King, and we pray a writ to the Bishop. —*Derworthy*. That is all in pursuance of our first answer, for at the commencement we denied the presentation by which you have attached possession of the patronage in him, and we still pursue that matter inasmuch as we affirm possession of the advowson in us and our predecessors; and we have also denied John's seisin of the advowson in general terms, and so this is quite pursuant to our first issue on which we had a day now.—And now *Grene* demanded judgment because *Derworthy* had waived his first answer, and inasmuch as he had given another, to do which he could

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de dreit ne poet il aver, et lalienacion del avowesoun nest pas dedit, par quel alienacion le Roi ad cause a seisir ; et mesqil ne presenta pas, unqore poet il estre seisi del avowesoun, et par taunt par cel travers la possessioun del avowesoun nest pas dedit en li ; par quei, &c.—Et *Der.* replia arrere en taunt qe ceo fust un brief de possessioun, quel ne poet estre meyntenu saunz presentement, par quei, puis qil ad afferme sa possessioun del avowesoun par presentement, le dedire de cel presentement suffit a desprover sa possessioun.—Sur quei ils furent ajournes.—A quel jour *Der.* rehercea le traverse del presentement qil avoit tendu autrefoitz, et dit qe, ovesqe ceo, mesme celi R. fust resceu al presentement son predecessour, et lui et ses predecessours ount este seisiz del avowesoun de temps dount il ne yad memore, saunz ceo qe J. fust seisi del avowesoun ; prest, &c.—Sur quei *Grene* demanda jugement puisqil avoit done autre respons autrefoitz, saver, qe R. ne fust pas resceu, &c., al presentement J., quel respons il ad weyve par taunt qil ad aore tendu daverer qe J. navoit rienz en lavowesoun, qe est un novel respons, a quel par lei il ne deit avenir. Par quei nous demandoms jugement pur le Roi, et prioms brief al Evesqe.[1]—*Der.* Ceo est tut pursuaunt nostre primer respons, qar a comencement nous dedismes le presentement par quel avetz atache possessioun del avowere en luy, et cele chose pursuoms unqore en taunt come nous affermoms possessioun del avowesoun en nous et noz predecessours ; et auxi avoms dedit lasseisine J. en generale del avowesoun, et issi est ceo tut pursuaunt nostre primer issue sur quei ils avoint jour aore.—Et ore *Grene* demanda jugement puis qil avoit weyve son primer repons, et par taunt qil avoit

A.D. 1346.

[1] For the pleadings as they appear in the record, *see* Y.B., Mich., 19 Edw. III., p. 465, notes 3, 5 and 6, and p. 467, notes 1 and 2.

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A.D. 1346. not by law be admitted, and thereby he had lost the advantage both of the one answer and of the other. Therefore (said *Grene*) we pray a writ to the Bishop for the King.—*Derworthy.* On compulsion by yourself we have discharged you as to the last answer; and, as you may find by the record, we never waived our first answer, but always relied on it, and, although we spoke of other matter in addition, which was in pursuance of our first plea, it cannot for that reason be adjudged that our first answer was waived; but to put the point at its strongest, that is to say, that because this new matter was not pleaded by us at the beginning we shall not have advantage of it, still our first plea, which was never waived by us, but always maintained, must of necessity remain.—*Thorpe.* It would be impossible that the first plea could remain, because, when you tendered the averment that John had nothing in the advowson, that was quite a different answer from denying the presentation; and I say that by law when anyone gives a new answer, and particularly on another day, as he did here, he will lose the advantage both of one answer and of the other, for the allegation in the last answer causes him to lose the advantage of the first, and therefore you shall not now be heard to rely on your first answer.—And they were adjourned.

Debt. (75.) § A writ of Debt was brought. And the plaintiff made *profert* of the defendant's obligation.—*Birton.* We tell you that by this deed which is here the plaintiff granted that, if we should enfeoff him of a messuage and forty acres of land in such a vill within the half-year next after the execution of the deed, then the obligation should lose its force; and we tell you that within the half-year we were ready to enfeoff him, and still are, and we do not understand that he ought to have an action contrary to his own deed.—*Skipwith.* You see plainly how he has confessed that the feoffment is still to be made, and he now appears by attorney, who cannot by law give surety to us in respect

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donc un autre, a quel par lei il ne poet avener, et par taunt ad il perdu lavantage del un respons et del autre. Par quei nous prioms brief al Evesqe pur le Roi.—*Der.* A vostre chace demene nous vous avoms descharge del drein respons; et, come vous poetz trover la par recorde qe nous ne weyvames unqes nostre primer respons, mes totefoitz reliames sur cele, et, coment qe nous parlames dautre matere ovesqe, quel fust pursuaunt a nostre primer plee, par taunt ne poet estre ajugge qe nostre primer respons fust weyve; mes a plus fort qe poet estre, pur ceo qe cele novele matere nestoit pas a comencement de nous plede qe de cele nous naveroms pas avantage, mes nostre primer plee quel nestoit unqes weyve par nous, mes totefoitz meintenu, de necessite covent demurer.—*Thorpe.* Il serreit impossible qe le primer respons pout demurer, qar, quant vous tendistes daverer qe J. navoit rienz en lavowesoun, ceo fut tut autre respons qe a dedire le presentement; et jeo dye qe par lei quant homme doune un novel respons, et nomement a autre jour, come il fist yci, il perdra lavantage del un respons et del autre, qar lallegeaunce del drein respons li fait perdre lavantage del primer, par quei a relier aore sur vostre primer respons ne serretz escote.—*Et adjournantur.*[1] A.D. 1346.

(75.)[2] § Un brief de Dette fust porte. Et mist avant obligacion le defendant.—*Birtone.* Nous vous dioms qe par ceo fait qe cy est le pleintif graunta qe si nous luy enfeffames dun mesuage et xl. acres de terre en tiel ville de deinz le demy an prochein apres le fesaunce del fait qe adonqes lobligacion perdreit sa force; et vous dioms qe deinz le demi an nous fumes prest de li aver feffe, et unqore sumes, et nentendoms pas qencountre son fait demene il deive accion aver.—*Skip.* Vous veietz bien coment il ad conu qe le feffement est unqore affaire, ou il est par attourne, le quel ne poet par lei faire seurete a nous de cele feffement; Dette.

[1] According to the roll there were adjournments after adjournments until the Abbot died "Ideo quo ad hoc breve nihil fiat ulterius, salvo jure Regis alias, &c."

[2] From H. alone.

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A.D. 1346. of that feoffment; therefore we do not understand that we have any need to answer to that which he has said.—*Birton.* Then you do not deny that we were ready to enfeoff you within the half-year.—*Skipwith* did not dare to abide judgment. Therefore he tendered the averment that the defendant was not ready within the term.—And the other side said the contrary.

Trespass. (76.) § A writ of Trespass was brought on the ground that the defendant was supposed to have broken the plaintiff's house, and to have taken and carried off divers goods which were there.—*Birton.* As to goods carried off, and as to coming with force and arms, Not Guilty. And, as to breaking the house, we tell you that one S. was indicted of divers felonies before the Guardians of the Peace, for which reason a precept issued to the Sheriff to take him; the Sheriff sent an order to his bailiffs, who came, and the defendant came also to assist them, and they found the door of the same house open, and entered by the door, and took the said S., and conducted him to the gaol of the town, *absque hoc* that they broke his house as he complains; ready, &c.—*Skipwith.* If you mean to justify the breaking for the reason of which you have spoken, that is one way of pleading; but, if you mean to deny it, then all the rest of your plea will come to nought.—STOUFORD. He has confessed that he entered your house, and that for a certain cause; but as to the breaking of the house he is at a denial, and therefore you cannot do anything else but maintain the breaking.—Therefore *Skipwith* said that the defendant came with force and arms, and broke the plaintiff's house; ready, &c.—And the other side said the contrary.

Cessavit. (77.) § A *Cessavit* was brought against one Thomas Luke, prebendary of the prebend of Salisbury, and the plaintiff counted that Thomas held of him by divine services, that is to say, of finding, during the whole of Lent, a chaplain to sing, in his manor of L., every day

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par quei nentendoms pas qe a ceo qil ad dit eioms mester a respoundre.—*Birtone.* Donqes vous ne dedites pas qe nous fumes prest deinz le demi an.—*Skip.* nosa pas demurer. Par quei il tendi daverer qil nestoit pas prest deinz le terme.—*Et alii e contra.* A.D. 1346.

(76.)[1] § Un brief de Trespas fut porte de ceo qe le defendant dust aver debruse sa mesoun, et divers bienz illeoqes pris et enportes.—*Birtone.* Quant as biens enportes, et al venir a force et armes, de rienz coupable. Et, quant a debruser de la mesoun, nous vous dioms qun S. fust endite de divers felonies devant les gardeyns de la pees, par quei preecepte issit a Vicounte de ly prendre, qi fit comaundement a ses bailliffs, les queux vindrent, et le defendant en eide deux, et troverent le hus de mesme la mesoun overt, et entrerent par les hus, et pristrent le dit S., et li menerent a la Gaole de la ville, saunz ceo qil debrusa sa mesoun come il se pleint ; prest, &c.—*Skip.* Si vous voletz justifier le debruser par la cause qe vous avetz parle, ceo est une voie y a pleder ; mes, si vous le voletz dedire, donqes serra tut le remenant de vostre plee a nent.—Stouf. Il ad conu qil entra vostre mesoun, et ceo par certein enchesoun ; mes de la debruser il est a dedit, par quei vous ne poetz autre rienz faire mes meintenir la debruser.—Par quei *Skip.* dit qil vint a force et armes, et debrusa sa mesoun ; prest, &c.—*Et alii e contra.* Trespas.

(77.)[1] § Un *Cessavit* fut porte vers un Thomas Luke provendrer provendre de Salesbirs, et counta qil tint de lui par dyvynes services, saver, pur tut le qaresme, a trover un chapellein chauntaunt, en son maner de L., chesqun *Cessavit.*

[1] From H. alone.

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A.D. 1346. of the week, masses, and matins, and other divine services, and during the Lenten hours, and on the eve and the day of every double feast, of which services the plaintiff was seised by the hand of the prebendary's predecessor. And the writ supposed that the prebendary who was now tenant held of the plaintiff, and that he had ceased to render the services.—*Thorpe.* Judgment of the writ, for you see plainly how he has supposed that he was seised of the services by the hand of our predecessor, in which case he ought to suppose by his writ that the person by whose hand he was seised of the services held of him, and that he has not done by his writ; judgment.—*Grene.* We shall never be able to maintain an action in respect of your cesser unless we affirm by our writ that you held of us, and therefore it is not necessary for us to affirm that another held of us when we have not to make use of an action in respect of his cesser.—*Thorpe.* Yes, it is necessary, for we have seen that the Abbot of Swineshead[1] brought a *Cessavit*, and supposed that a stranger held of him, by whose hand he laid seisin of the services, and supposed that the tenements ought to revert to the Abbot because the tenant had ceased to render the services, and then exception was taken to the writ because there was no privity supposed between the demandant and the person by reason of whose cesser he took his action; and in that case the writ was adjudged good inasmuch as the Abbot had laid the seisin of the services by the hand of another person, which seisin is necessary. And it ought to suffice to suppose that the prebendary's predecessor held of him, for I will put you in the case that it is necessary that you have such a writ; for if I hold of you, and you are seised of the services by my hand, then if I aliene the land to another, or am disseised, and the other ceases to render the services, in that

[1] The case of the Abbot of Swineshead appears in Y.B., Mich., 11 Edw. III., p. 196.

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jour de la symainge, messes, et matynes, et autres dyvynes services, et houres de la qaresme, et chesqun double feste la veille et le jour, des queux services il fut seisi par la mayn son predecessour. Et le brief supposa qe le provendrer qe est ore tenant tint de lui, et qil avoit cesse.—*Thorpe.* Jugement de brief, qar vous veietz biem (*sic*) coment il ad suppose qe il fut seisi des services par la mayn nostre predecessour, en quel cas il dust par son brief supposer qe celi par qi mayn il fut seisi des services tint de ly, et ceo nad il pas fait par son brief; jugement.—*Grene.* Nous ne purroms jammes meyntener accion de vostre cesser si nous naffermoms par nostre brief qe vous tenistes de nous, par quei daffermer qe autre tint de nous, la ou ne sumes pas a user accion de son cesser, ne covent pas.—*Thorpe.* Si covent, qar nous avoms veu qe Labbe de Swynesheved porta un *Cessavit*, et supposa qun estraunge tint de ly, par qi mayn il lia seisine des services, et qe a lui reverter deit pur ceo qe le tenant avoit cesse, et la fust il chalange en taunt qe nulle privete fut suppose entre le demandant et celi par qi cesser il prist saccion; et la fut le brief agarde bon par taunt qil avoit lie seisine des services par autri mayn, quele seisine est bosoignable. Et a supposer qil tint de lui dust suffire, qar jeo vous metrray en cas qil covent qe vous eietz tiel brief; qar si jeo tinke de vous, et vous seisi des services par ma mayn, si jeo aliene la terre a un autre, ou su disseisi, et il cesse, en ceo cas il covent qe

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A.D. 1346. case you must have such a writ as I have given you; and although there may be more privity between successor and predecessor than between strangers, for which reason seisin by the hand of the predecessor will maintain this writ, nevertheless, since a degree cannot be made between them, it seems that it will be necessary to suppose that the predecessor held of you as much as between strangers.—And nevertheless the writ was adjudged to be good.—Therefore the defendant demanded view.—And this was counterpleaded on the ground that he had taken a *Prece partium*.—And, because the plaintiff had not counted before the *Prece partium*, view was now granted.—And this was extraordinary. And therefore *quære*.

Dower. (78.) § A writ of Dower was brought. The tenant vouched one who appeared on the same day, and entered into warranty, and rendered dower to the woman. The tenant said that, although he had warranted, it was not the same person that he had vouched, for he said that the person whom he had vouched was the son of one A., and the person who proffered himself was the son of one R., and so another person, &c. And upon that they were at issue. And they had a day now, without any process having been awarded against the person that the tenant said was vouched. And now the tenant was essoined, and the person who proffered himself as vouchee made default.—*Richemunde*, for the demandant, prayed seisin of the land by reason of the default of the person who previously proffered himself, because, said *Richemunde*, by reason of his default we cannot have any process against him, for we cannot have a *Petit Cape ad valentiam* by reason of his default because the tenant has confessed that this is not the person whom he vouched, and therefore it seems that it is not possible to make process against him as one upon whom the tenant could recover to the value; and if we do not have seisin we shall thus be delayed for ever by agreement between the tenant and the vouchee.

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vous eietz tiel brief come jeo vous ay done; et mesqil yeit entre successour et predecessour plus de privete qe entre estraunges, par quei qe la seisine par la mayn le predecessour meyntendra ceste brief, nepurquant, puisqe dentre eux degree ne poet estre fait, si semble il qil covendra a supposer qe le predecessour tint de vous auxi bien come entre estraunges.—Et nepurquant le brief fut agarde bon.—Par quei il demanda la vewe.—Et countreplede pur taunt qil avoit pris une *Prece partium*.—Et pur ceo qil navoit pas counte avant le *Prece partium* si fust la vewe aore graunta.—*Et hoc mirum. Et ideo quære.* A.D. 1346.

(78.)[1] § Un brief de Dowere fust porte. Le tenant voucha un qe vint a mesme le jour, et entra en garrauntie, et rendi dowere a la femme. Le tenant dit qe coment qil avoit garraunti il dit qil ne fust pas mesme la persone qil avoit vouche, qar il dit qe celi qil avoit vouche fust le fitz un A., et celi qe se profri est le fitz un R., et issi autre persone, &c. Et sur ceo furent a issue. Et avoient jour a ore saunz asqun proces agarde vers celi qe le tenant dit qe fust vouche. Et ore le tenant fust essone, et celi qe se profri come vouche fist defaute.—*Rich.*, pur le demandant, pria seisine de terre par la defaute celi qe se profri autrefoith, qar par sa defaute nous ne poms nul proces vers lui aver, qar Petit *Cape ad valentiam* nous ne poms par sa defaute aver pur ceo qe le tenant ad conu qil ne fust celi qil voucha, et par taunt a faire proces vers lui sur quel le tenant dust recoverir a la value si semble il qil ne poet estre; et si nous neyoms seisine nous serroms issi delaye pur touz jours par assent entre le tenant et le Dowere.

[1] From H. alone. This report is a continuation of Y.B., Trin., 20 Edw. III., No. 22 (pp. 538-540).

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A.D. 1346. —HILLARY. It was extraordinary that the averment was taken solely between the tenant and the other without putting you to maintain either the one side or the other. —*Richemunde.* Sir, I could not know what person he vouched, and therefore no fault can be supposed in me. —*Skipwith.* Yes there was a fault, for when the tenant said that the person who proffered himself was not the person whom he vouched, and they were at issue upon that, you ought then to have sued a Summons *ad warantizandum* against the person whom the tenant had said that he vouched, and, inasmuch as you have not done so, you have discontinued your process.—*Richemunde.* That process of Summons *ad warantizandum* would be in vain, for, if it was found that the other was the person whom he vouched, then that process would serve no purpose, and therefore, until that issue had been tried between them, the Summons *ad warantizandum* could not be sued; and, even though it ought to have been sued, it ought to have been sued by the tenant, and therefore, &c.—HILLARY. That issue which was taken,—that is to say whether he was the person who was vouched or not—was wrongly taken, for, when he appeared on the first day, when at that time no loss would have fallen upon him, even though he had not appeared, to take issue then as to whether he was the same person that was vouched or not was to take the issue wrongly; but, on the return of the *Cape ad valentiam*, if he had then appeared to save himself from loss, then perhaps it would be right to take that issue between them, but not before, so that a Summons *ad warantizandum* ought then to have been awarded against the person whom the tenant said that he had vouched, and the person who proffered himself ought to have gone quit without day, so that the tenant would never have had to the value against him; therefore that which ought then to have been done will be done now; and therefore, as a Summons *ad warantizandum* ought to have been awarded against the person whom the tenant said

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vouche.—Hill. Il fut mervail qe laverement fust pris seulement entre le tenant et lautre saunz vous mettre a meyntener lun partie ou lautre.—*Rich.* Sire, jeo ne poai saver quel persone il voucha, par quei defaute en moy ne poet estre suppose.—*Skip.* Si est, qar quant le tenant dit qe celui qe se profra ne fust pas la persone qil voucha, et sur ceo furent a issue, adonqes duisses vous aver suy un Somons *ad warantizandum* vers cely qe le tenant avoit dit qil voucha, et de ceo qe vous navetz pas issi fait si avetz discontinue vostre proces.—*Rich.* Cel proces de Somons *ad warantizandum* serra en veyn, qar, sil fut trove qe lautre fut la persone qil voucha, donqes servir[a] cel proces de rienz, par quei tanqe cele issue entre eux fut trie ne poeit homme siwere le Somons *ad warantizandum ;* et, mesqil il dust aver este suy, il dust aver este suy par le tenant, par quei, &c.—Hill. Cel issue qe fust pris le quel il fut la persone qe fut vouche ou nent ceo fut malement pris, qar quant il vint al primer jour, la ou adonqes nulle perde cherreit sur luy mesqil nust pas venu, a prendre issue adonqes le quel il fust mesme la persone qe fut vouche ou nent ceo fut malement pris ; mes al *Cape ad valentiam* retourne, si adonqes il vigne pur luy sauver de perde, par aventure donqes serra ceo resoun a prendre lissue entre eux, mes ne mye avant, issi qe adonqes dust un Somons *ad warantizandum* aver este agarde vers celi qil dit qil avoit vouche, et cele qe se profri dust aver ale quites saunz jour, issi qe le tenant nust jammes eu a la value vers lui ; par quei ceo qe adonqes dust aver este fait serra fait aore par quei un Somons *ad warantizandum* dust aver este agarde

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Scire facias. (79.) § Roger Smythe, of Wycombe, sued a *Scire facias*, in respect of rent, upon a fine levied between this same Roger and Margaret his wife of the one part and one Robert of the other part, by which fined Robert acknowledged the rent to be the right of Roger as that which Roger and Margaret had by his gift, to have and to hold to them and to the heirs of Roger. And the writ purported that Robert and Margaret also were dead, and that execution was not had during their lives. Therefore the person who was warned appeared, by *Seton*, and demanded judgment of the writ because the fine supposed in itself that Robert acknowledged the right to Roger as that which Roger and his wife had by Robert's gift, and by that fine it was proved that they then had possession, and therefore that the fine was executed, and therefore, said *Seton*, you shall not be admitted to put the matter in execution anew. —*Skipwith.* In answer to that we say in this wise—that at the time at which the fine was levied Margaret held the same land of Robert, so that the acknowledgment which Robert made to Roger and to Margaret was for the life of Margaret, and this fine could not be put in execution, and now she is dead, and therefore it now commences to be put in execution.—*Grene.* You who are a party to the fine cannot say that neither Roger nor Margaret had anything in the rent at the time at which the fine was levied, for the contrary is proved by the same fine, but according to the nature of your matter you ought to have had a different fine.—*Thorpe.* Even though I could have had a different fine, that does not prove that this fine is not

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vers celuy qe le tenant dit qil avoit vouche.—Et lessone qe fut gettu par le tenant ajugge et ajourne.—Et tut lissue qe fust pris entre le tenant et lautre le quel il fut mesme la persone qe fut vouche on nent fust quasse *quia error*, et ceo fut entre en roulle. A.D. 1346.

(79.)[1] § Roger Smythe, de Wycombe, suyst un *Scire facias* de rente, hors dun fine leve entre mesme cesti Roger et Margarete sa femme dun parte et un Robert dautre parte, par quele fine Robert conust la rente estre le dreit a Roger come ceo qe Roger et Margarete avoint de son doun, a aver et tenir a eux et a les heirs Roger. Et le brief voleit qe Robert et auxi Margarete furent mortes, et qen lour vies execucion nestoit pas fait. Par quei celi qe fut garny vint, par *Setone*, et demanda jugement de brief, qar la fine en ly mesme supposa qe Robert conust le dreit a Roger come ceo qe luy est sa femme avoient de son doun, par quel fine est prove qils avoient la possession adonqes, et par taunt la fine execut, par quei a mettre la chose de novel en execucion ne serrez resceu.—*Skip.* A ceo ci nous dioms en tiel manere qe a temps de la fine leve Margarete tint mesme la terre de Robert, issi qe la conissaunce qil fit a Roger et a Margarete pur la vie Margarete ceste fine ne put estre mys en execucion, et ore ele est morte, par quei aore comence il destre mys en execucion.—*Grene.* Ceo ne poetz dire qe estes partie a la fine qe Roger ne Margarete navoyent rienz en la rente a temps de la fine leve, qar le contrare est prove par mesme la fine, mes solom vostre matere vous deveretz aver eu autre fine.—*Thorpe.* Ceo ne prove pas, mesqe jeo poay aver eu autre fine, qe *Scire facias.*

[1] From H. alone.

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A.D. 1346. executory; and this suit must be capable of being maintained, because we have shown matter of fact according to which this fine could not be executory before the death of Margaret; and I say that I cannot have any other suit to deraign it, for I shall never have a *Per quæ servitia* in this case, nor yet a *Quem redditum reddat*, because it is rent service; nor shall I have an avowry because attornment is wanting in my case; therefore, if this suit be not maintained, I shall be without recovery.—WILLOUGHBY. It may well be so, for any one would say that, in the case in which you are, because the husband had an estate in the land by reason of coverture, no estate in the rent could accrue to him by the fine, but the whole would operate by way of extinction and not as a purchase adjudged to the husband; and, even though the law did give you an estate by the fine, I say that you cannot be aided in that way inasmuch as the fine proves the contrary; and even if you ought to have the rent that would have to be by way of distress as in the case of one who has the seignory by acknowledgment of right from the person of whom the land was previously held.—And afterwards, in the end, because it was supposed by the fine that Roger and his wife were seised by gift from Robert at the time at which the fine was levied, the fine was adjudged to be not executory for those who are thus supposed to be seised.—Therefore judgment was given that the tenant should go without day.

Naifty. (80.) § The Prior of St. Dionysius near Southamptone brought his writ of Naifty against John, and, after appearance, he was nonsuited. Therefore, because this was a writ of right, judgment was given, *in favorem libertatis*, that the defendant was a free man with regard to the Prior and his successors for ever. And this is a case in which, by reason of the nonsuit of the demandant before the mise has been joined, final judgment will be rendered against him. And the reason is the favour shown to freedom, &c.

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ceste fine nest pas executore; et il covent qe ceste sute soit meytnenable, qar nous avoms moustre matere en fait par quel, avant la mort M., cest fine ne put estre executore; et jeo dye qe autre sute jeo ne puisse aver de le deresner, qar *Per quæ servitia* navera jeo jammes en ceo cas, ne *Quem redditum reddat* nent le plus, pur ceo qe cest rente service; ne avowere navera jeo pas pur ceo qe attournement moi faut; par quei, si ceste sute ne soit meyntenu, jeo serra saunz recoverir.—Wilby. Il poet bien estre, qar asqun homme voet dire qe en ceo cas ou vous estes, pur ceo qe le baron avoit en la terre estat par resoun de coverture qe par la fine nul estat de la rente put acrestre a lui, mes tut serra par voie desteindre et ne my come purchace ajugge al baron; et, mesqe lei vous donast estat de la rente par la fin, jeo dye qe par ceste voie vous ne poetz estre eide par taunt qe la fine prove le contrare; et mes si vous le deveretz, ceo covendra estre par destresse come celi qe ad la seignurie par la conissaunce de dreit de celi de qi la terre fut tenu avant.—Et puis aderrein, pur ceo qe par la fine fust suppose qe Roger et sa femme furent seisiz de doun Robert al temps de la fine leve, pur eux qe sont issi supposes seisiz nest pas la fine executore.—Par quei fut agarde qe le tenant alast saunz jour. A.D. 1346.

(80.)[1] § Le Priour de Seynt Denys juxte Southamptone porta son brief de Neifte vers Johan, et, apres apparaunce, il fut nounsuy. Par quei, pur ceo qe ceo fust un brief de dreit, *in favorem libertatis*, fut agarde qe le defendant fut fraunk vers le Priour et ses successours a touz jours. Et ceo est le cas ou par nounsute del demandant avant la mise joint jugement final serra rendu countre li. *Et ratio est propter favorem libertatis, &c.* Neifte.

[1] From H. alone.

Nos. 81, 82.

A.D. 1346. Account.

(81.) § A writ of Account was brought. The defendant acknowledged the receipt of moneys, and therefore judgment was given that he must account, and therefore auditors were appointed. And before the auditors the defendant produced acquittances, and also tallies showing payment which were sealed with the plaintiff's seal. Therefore, as to the acquittances the plaintiff denied them, and on that matter they joined issue to a jury; and, as to the tallies, the plaintiff offered to verify by his law that they were not his tallies.—Thereupon *Skipwith*, for the defendant, came to the bar, and prayed that he might be held to mainprise. —*Gaynesford.* He cannot be held to mainprise, because he has confessed our action, and the issue which is taken between us is upon the execution which has to be made respecting it, and therefore, until that issue is tried, he cannot be held to mainprise.—And, notwithstanding this, he was let out on mainprise by the COURT.

Annuity.

(82.) § A writ of Annuity was brought against the Prior of Bisham as parson of the church of R. And the plaintiff showed how the annuity commenced with the consent of the patron and the Ordinary.—*Huse.* We tell you that we are parson imparsonee of the same church, and cannot be a party either to charge or to discharge the church in perpetuity without the Ordinary and the patron, and therefore we pray aid of the Bishop of Salisbury and the Dean and Chapter, as Ordinaries, and of the Prior of Bisham, as patron.—*Haveryngton.* You ought not to have aid, for you are the same person whom you suppose to be patron, because you hold the church *in proprios usus*, and therefore you can yourself be a party to charge or to discharge the church, and therefore you ought not to have aid of yourself.—And, notwithstanding this, because it is necessary that he should have aid of the Ordinary, without whom he cannot charge the church, and he can never have aid of the Ordinary unless the

Nos. 81, 82.

A.D. 1346. Accompte.

(81.)[1] § Un brief Dacompte fut porte. Le defendant conust la receite, par quei il fut ajugge dacompter, par quei auditours furent assignes. Et devant les auditours le defendant mist avant acquitaunces, et auxi tailles de la paie enscalles de son seal. Par quei quant a les acquitaunces il les dedit, sur quei ils furent al enqueste; et quant a les tailles il tendi daverer par sa lei qils ne furent pas ses tailles.—Sur quei *Skip.*, pur le defendant, vint a la barre, et pria qil poait estre a meinpris.—*Gayn.* Il ne poait estre a meinpris, qar il ad conu nostre accion, et lissue qest pris entre nous si est sur lexecucion a faire de ycele, par quei tanqe ele soit trie il nest pas meinpernable. —Et *non obstante* cele il fut par la COURT lesse a meinprise, &c.

Annuyte.

(82.)[2] § Un brief Dannuite fut porte vers le Priour de Burstlusham come persone del eglise de R. Et moustra coment lannuite comencea par assent del patron et del Ordiner.—*Huse.* Nous vous dioms qe nous sumes persone enpersone de mesme leglise, et ne poms estre partie a charger ne a descharger leglise en perpetuelte saunz Lordiner et patroun, par quei nous prioms eide del Evesqe del Salesbirs et le Dean et le Chapitre come Dordiners, et del Priour de Burstlusham come de patroun.—*Hav.* Vous ne devetz eide aver, qar vous estes mesme la persone qe vous supposetz qe est patroun, qar vous tenetz la leglise en propre oeps, par quei vous poetz mesmes estre partie a charger ou a descharger leglise, par quei de vous mesmes ne devetz eide aver.—Et, *non obstante*, pur ceo qil covent qil eit eide del Ordiner, saunz qil il ne poet charger leglise, et de li

[1] From H. alone. The case may be in continuation of Y.B., Easter, 20 Edward III., No. 79 (p. 448).

[2] From H. alone.

Nos. 82, 83.

A.D. 1346. patron be joined in the same aid-prayer, the aid was therefore granted.—And judgment to the same effect was given in last Easter Term, &c.

Quare impedit. (83.) § A *Quare impedit* was brought by the King against the Prior of Bath. And he took for his title that one R., who was seised of the advowson, aliened the advowson to one J., predecessor of the present Abbot, to hold to him and to his successors, in the time of King Edward, the grandfather of the present King, without the King's license.—To this *Huse*, for the Prior, said that he and his predecessors had held the church *in proprios usus* from time whereof there is no memory, *absque hoc* that R. gave the advowson to our predecessor, as they have said for the King; ready, &c.—*Thorpe.* You shall not be admitted to say that your predecessor had not anything in the advowson by gift from R., for, by a fine levied between this same predecessor of yours and this same R., R. acknowledged the advowson to be the right of your predecessor as that which your predecessor had by his gift, and to that fine your predecessor was a party, and therefore you, who are his successor, shall not be admitted to say the contrary of that which was acknowledged by the fine to which your predecessor was a party.—*Huse.* Those words are only the formal words of a fine, and they were the words of R. and not the words of our predecessor; and even if they had been the words of our predecessor, we, who are his successor, shall not be precluded from saying the contrary of that which was affirmed by our predecessor,

navera il jammes eide si le patroun ne soit joint en mesme leide prier, par quei leide fust grante.—Et mesme la chose fust ajugge le terme de Pasche drein,[1] &c. A.D. 1346.

(83.)[2] § Un *Quare impedit* fut porte par le Roi vers le Priour de Bathe. Et prist son title de ceo qun R.[3], qe fust seisi del avowesoun, aliena lavowesoun a un J.[4], predecessour cesti Abbe, a luy et a ses successours, en temps le Roi E. laiel, saunz conge del Roi.—A quei *Huse*, pur le Priour, dit qe li et des predecessours avoient tenu leglise en propre oeps de temps dount il nyad memore, saunz ceo qe R. dona lavowesoun a nostre predecessour come ils ount dit pur le Roi ; prest, &c.[5]—*Thorpe*. A dire qe vostre predecessour navoit rienz en lavowesoun del doun R. vous navendres mye, qar par fine leve entre mesme celi vostre predecessour et mesme celi R., ou R. conust lavowesoun estre le dreit vostre predecessour come ceo qe vostre predecessour avoit de son doun, a quel fine vostre predecessour fut partie, par quei vous qe estes successour a lui ne serretz reseeu a dire le contrare de ceo qe fut conu par la fine, a quei vostre predecessour fust partie.—*Huse*. Ces sount mes paroules formels en la fin, les queux furent les paroles R., et ne my les paroles nostre predecessour ; et, mesqils furent ses paroles, nous qe sumes son successour ne serroms pas forclos a dire le contrare de ceo qest afferme par nostre *Quare impedit.*

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[1] The reference appears to be to the case Y.B., Easter 20 Edward III., No. 65, which is a continuation of Y.B., Hil., 20 Edward III., No. 16 (the Prior of Coventry *v.* Holand). It is in the report of Hilary Term that the question of aid is decided.

[2] From H. alone. This is another report or continuation of Y.B. Easter, 19 Edward III., No. 42, and Y.B., Easter, 20 Edward III., No. 63. The record is cited under the first mentioned report. It is *Placita de Banco*, Easter, 19 Edward III., R° 282, d.

[3] Matilda Chaumflour, according to the record.

[4] Walter de Aune, according to the record.

[5] For the plea in full, as it appears in the record, *see* Y.B., Easter, 19 Edward III., p. 117, note 3.

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A.D. 1346. and therefore we demand judgment.—And upon that they were adjourned from Easter Term until now, &c.—*Thorpe* said that a successor will be charged by a recognisance executed by his predecessor, and for the same reason he will be in such a condition that he will not be able to deny that which has been affirmed by record with regard to his predecessor.—And, notwithstanding this, WILLOUGHBY said:—Because the acknowledgment of the predecessor is not of such force as to oust the successor from saying the contrary, it seems to us that he will be allowed to aver that his predecessor had nothing by gift from R., notwithstanding the fine; therefore consider whether you will accept the averment which they have tendered.—Therefore he accepted the averment, &c.

Account. (84.) § The Prior of Bisham, executor of William, Earl of Salisbury, brought a writ of Account against the Abbot of Sherborne. And the writ was in the words "*de tempore quo fuit ballivus et receptor denariorum prædicti Willelmi.*" And the Prior counted, by *Huse*, that during the time when the defendant was co-monk of the same Abbey, and by command of the then Abbot, he was bailiff of the Priory of Montagu, and receiver of the moneys of William his testator.—*Derworthy.* Sir, you see plainly

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predecessour, par quei nous demandoms jugement.—Et sur ceo ils furent ajournes del terme de Pasche tanqe aore, &c. —*Thorpe.* dit qe le successour serra charge dune reconisaunce fait par le predecessour, et par mesme la resoun il serra qil ne dedirra pas ceo qest afferme par recorde vers son predecessour.—*Et, non obstante* ceo., WILBY dit qe pur ceo qe la conissaunce le predecessour nest pas si fort qil oustra le successour a dire le contrare si semble il a nous qil avera daverer qe son predecessour navoit rienz del doun R., nent countre esteaunt la fine ; par quei avisetz vous si vous voletz aver laverement qils ount tendu.—Par quei il resceut laverement, &c.[1] A.D. 1346.

(84.)[2] § Le Priour de Burstlesham, executour William Counte de Salesbirs, porta un brief Dacompte vers Labbe de Shirbourne. Et le brief fut *de tempore quo fuit ballivus et receptor denariorum prædicti Willelmi.* Et counta, par *Huse*, qe en temps qe le defendant fut commoigne de mesme Labbeye, et par comaundement Labbe qe adonqes fut, il fust le baillif de la Priorie de Mountagu, et resceivour des deners W. son testatour.—*Der.* Sire, vous veietz Acompte.

[1] According to the roll there were successive adjournments of which the last was to Michaelmas Term in the 37th year of the reign, and with that the case ends.

[2] From H. alone. A previous writ of Account brought by the executors of the Earl of Salisbury abated by reason of the death of one of them. *See* Y.B., Hil., 20 Edward III., No. 20. The record relating to this second writ has been found among the *Placita de Banco*, Mich., 20 Edward III., R° 419. According to it the Prior of "Bustlesham Mountagu" (*i.e.* Bisham) executor of the will of William de Monte acuto, late Earl of Salisbury, brought the action against John, Abbot of Sherborne "quod reddat ei" and to his co-executors (Elizabeth de Monte acuto, mother of William de Monte acuto, late Earl of Salisbury, William son and heir of William de Monte acuto, late Earl of Salisbury, John de Wynkefelde, John de Miere, William de Langele, Robert de Burton, and James de Beauford), which co-executors did not sue, an account "de tempore quo fuit ballivus ipsius Comitis in villa de Monte acuto.

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A.D. 1346. how it is supposed by the writ that the Abbot was his testator's bailiff, and that must be understood to be during the time when he was Abbot, and by his count he has supposed that he was his bailiff during the time when he was co-monk, and so the count is not warranted by the writ; judgment of the writ.—*Huse.* I have counted on my matter, and on my matter I cannot have any other count, and therefore, &c.—*Thorpe.* Yes, you could have counted a simple count, without specifying whether it was at one time or at another.—HILLARY. If any one is my bailiff, and he is afterwards created Abbot of a House, and I count that while he was secular he was my bailiff, the count is good; so also in this case.—*Thorpe.* That is true, and so it is if a writ of Account is brought against a man and his wife, and the count is that the wife, while she was sole, was your bailiff, but if you count that the wife, while she was covert of another husband, was your bailiff, it is worthless; and so also in this case, since he makes us at that time in obedience to another person, that, it seems, is not in accordance with his writ which supposes that at that time we were Abbot.—HILLARY. If an action is given to him on his matter, this count is better than a simple count would be; therefore answer.—*Grene.* Again, you see plainly how he supposes that we were his bailiff by command of our then Abbot, in which case our then Abbot was charged with this account inasmuch as he was our Head, and we do not understand that he can maintain his writ against us by this declaration.—WILLOUGHBY. I certainly think it is law that a successor will not be charged to account in respect of the time of his predecessor; but I say that it would be a very strong measure, in this case, to maintain a writ of Account against your predecessor, omitting yourself, if the goods which you had received had not come to the profit of the House, but that he will not now charge you with a receipt had by your predecessor but only with a receipt had by yourself; therefore answer.—*Derworthy.*

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bien coment par le brief est suppose qe Labbe fut baillif son testatour, quele chose serra entendu en temps qil fut Abbe, et par son counte il ad suppose qen temps qil fut commoigne il fut son baillif, et issi le counte nent garraunti de brief: jugement de brief.—*Huse.* Sur ma matere jay counte, et autre counte sur ma matere ne puisse aver, par quei, &c.—*Thorpe.* Si purretz daver counte une simple counte, saunz aver determine le quel ce fut en un temps ou en autre.—Hill. Si un homme soit mon baillif, et puis soit cree en Abbe dun mesoun, et jeo counte qe taunt come il estoit seculer il fut mon baillif, le counte est bon; auxi icy.—*Thorpe.* Ceo est verite, et auxi est ceo si brief Dacompte soit porte vers un homme et sa femme, et counte qe la femme, tanqome ele fut sole, fut vostre baillif, mes si vous countes qe la femme, tanqome ele fust coverte dun autre baron, fut vostre baillif, il ne vaut rienz; et auxi est ceo en ceo cas, puisqil nous fait a cel temps autri obediens, si semble il qil nacorde pas a son brief qe suppose qe a cel temps nous fumes Abbe.—Hill. Si sur sa matere accion lui soit done, ceste counte vaut plus qe ne ferreit un simple counte; par quei responez.—*Grene.* Unqore vous veietz bien coment il suppose qe par comaundement nostre Abbe adonqes nous fumes son baillif, en quel cas nostre Abbe adonqes fust charge de cel acompte par taunt qil fut nostre sovereyn, et nentendoms pas qe devers nous il puisse par ceste demoustrance son brief meyntener.—Wilby. Jeo croy bien qil soit lei qe le successour ne serra pas charge dacompter del temps son predecessour; mes jeo die qil serra molt fort en ceo cas de meyntener un brief Dacompte vers vostre predecessour, entrelessaunt vous, si les biens queux vous ussetz resceu nussent venuz en profit de la mesoun, mes qil ne vous chargera pas aore de resceite fait pas vostre predecessour mes de resceite fait pas vous mesmes; par quei responez.—*Der.* A.D. 1346.

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A.D. 1346. As to the receipt of money, Never his receiver; and as to having been bailiff we tell you that the King seized the Priory of Montagu because the Prior was an alien, and leased the same Priory to this same Abbot, while he was a monk of the House, at a rent payable to the King of 100*l.* a year; and we tell you that the King afterwards granted the same farm of 100*l.* to William, Earl of Salisbury, and we demand judgment whether in respect of that time during which the Abbot was the Earl's farmer he ought to maintain this action against the Abbot.—*Huse.* You see plainly how we have supposed that he was himself bailiff in the twelfth year of the reign, and the commission in virtue of which he supposes that he was the King's farmer purports to be dated in the eleventh year, and so it is not proved that at the time at which we charge him he was farmer in such a manner as he has said, and therefore he answers us not at all.—*Grene.* Since we have shown how we were farmers of the same manor by virtue of the King's commission, and how the king granted the same farm to your testator, therefore, without showing how we were his bailiff in some other manner than we have said, at a later time, he shall not be admitted to maintain this action.—HILLARY. By his count there is declared a definite time in respect of which he desires to charge you; and therefore you shall not be admitted to say that you were farmer by virtue of the King's commission at an earlier time or at a later time, without coming to a traverse with him to the effect that, at the time in respect of which he charges you, you were not in any other way his bailiff.—Therefore *Grene* said as above, adding:—and so he was at the same time the testator's farmer in virtue of the King's grant, *absque hoc* that he was the testator's bailiff liable to render an account as the Prior has counted; ready, &c.—And on that [no] issue was taken.

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A.D. 1346.

Quant a resceite de deners, unqes son resceivour; et quant al baillif nous vous dioms qe le Roi seisist la Priorie de Mountagu pur ceo qe le Priour fut alien, et lessa mesme la Priorie a mesme cest Abbe, tanqome il fut moygne de la mesoun, rendaunt al Roi c.*li.* par an; et vous dioms qe apres le Roi graunta mesme la ferme de c.*li.* a W. Counte de Salesbirs, et demandoms jugement si de cel temps de quel il fut son fermer il dust ceste accion vers lui mayntener.—*Huse.* Vous veietz bien coment nous avoms suppose qil fust mesme baillif lan xij, et la commissioun par quel il suppose qil fut fermer le Roi purporte date del an xj., et issi nest il pas prove qe a cel temps qe nous lui chargeoms qil fut fermer par la manere come il ad parle, par quei il ne respound rienz a nous.—*Grene.* Puisqe nous avoms moustre coment par commission le Roi nous fumes fermer de mesme le maner, et coment le Roi graunta mesme le ferme a vostre testatour, par quei saunz moustrer coment nous fumes son baillif en autre manere qe nous navoms parle de temps plus tarde il ne serra [reseeu] a ceste accion meyntener.—HILL. Par son counte est deselare un certein temps de quel il vous voet charger; par quei a parler qe deigne temps ou de puisne temps vous futes fermer par commissioun le Roi, saunz estre a dedit de lui qe a cel temps qil vous charge vous nestoies pas son baillif autrement vous ne serrez pas [reseeu].—Par quei *Grene* dit *ut supra*, et issi fut il a mesme le temps le fermer le testatour par grant le Roi, saunz ceo qil fut son baillif dacompte rendre, come il ad counte; prest, &c.—Et sur ceo lissu pris.[1]

[1] According to the record issue was joined on the question whether the Abbot was "ballivus ipsius Comitis ad compotum ei reddendum." Nothing further appears on the roll beyond the award of the *Venire*.

Nos. 85, 86.

A.D. 1346. Entry.

(85.) § A writ of Entry was brought, and it supposed that the tenant dissesed the demandant's father.—*Skipwith.* You ought not to have an action, because we tell you that one J. was seised of the same land in his demesne as of fee, which J. took to wife one A., of whom he begot the demandant's father. A. died, and thereupon he took one K. to wife, by whom he had issue one R., and that J. gave the same land to the same R., to hold to him and to his heirs for ever. And, after J.'s death, R. died seised without heir of his body; and the demandant's father, who was of the half-blood, claiming to have the land by descent, as heir to J., abated on our possession, and we ousted him; and we demand judgment whether in respect of that ouster he ought to have an action against us.—*Moubray.* We say that J. gave the land to R. in fee tail, and, inasmuch as you have confessed that he died without heir of his body, and that you ousted us, we demand judgment, and pray seisin of the land.—*Skipwith.* Ready, &c., that he gave the land to R. in fee simple.—And the other side said the contrary.

Scire facias.

(86.) § John Tachewel and Maud his wife sued a *Scire facias*, in respect of a third part of a manor, upon a fine, by which Maud's first husband acknowledged the whole manor to be right of one R. as that which R. had by gift from him, and for that acknowledgment R. granted and rendered the manor back to him and to this Maud, then his wife, to hold to them and to the heirs of their two bodies begotten.—*Grene.* You ought not to have execution upon that fine, because we tell you that at the time at which the fine was levied, and before, and afterwards, one E. was seised of the same third part in name of dower of our inheritance, so that the person who is supposed to have rendered had nothing; and E. is dead, and we are in possession as in our reversion, and we demand judgment whether he ought to have execution against us.—*Mutlow.* As to that we tell you that the person who made

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A.D. 1346. Entre.

(85.)[1] § Un brief Dentre fut porte, et supposa qe le tenant disseisi son pere.—*Skip.* Vous ne devetz accion aver, qar nous vous dioms qun J. fut seisi de mesme la terre en son demene come de fee, le quel J. prist a femme une A., de quele ile engendra le pere le demandant. A. murust, par quei il prist une K. a femme, de qi il avoit issue un R., le quel J. mesme la terre dona a mesme R., a luy et a ses heirs a touz jours. Et, apres la mort J., R. murust seisi saunz heir de son corps ; et le pere del demandant, qe fust del demi saunk, clamant daver la terre par descente come heir a J., abaty sur nostre possessioun, et nous luy oustames ; et demandoms jugement si de cele ouster il deyve vers nous accion aver.—*Moubray.* Qe J. dona la terre a R. en fee taille, et de ceo qe vous avetz conu qil est mort saunz heir de son corps, et qe vous nous oustates, nous demandoms jugement, et prioms seisine de terre.—*Skip.* Qil dona la terre a luy en fee simple prest, &c.—*Et alii e contra.*

Scire facias.

(86.)[1] § Johan Tachewel et Maude sa femme suyrent un *Scire facias* de la terce partie dun maner hors dun fine, par quel le primer baron Maude conust le maner enter estre le dreit un R. come ceo qil avoit de son doun, et pur cele reconisaunce R. graunta et rendi le maner arrere a luy et a ceste Maude, donqes sa femme, a eux et a les heirs de lour ij corps engendres.—*Grene.* Vous ne devez hors de cele fine execucion aver, qar nous vous dioms qe al temps de la fine leve, et avant, et puis, un E. fut seisi de mesme la terce partie en noun de dowere de nostre heritage, issi qe celi qe dust aver rendu navoit rienz ; et E. est mort, et nous sumes einz come en nostre reversion, et demandoms jugement si devers nous il deyve execucion aver.—*Mutl.* A ceo cy vous dioms qe mesme cely qe conust fut vostre

[1] From H. alone.

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A.D. 1346. the acknowledgment was your father, whose heir you are; and we tell you that your grandfather died seised of the same land in his demesne as of fee, and that after his death your father, who was a party to the fine, entered as son and heir, and acknowledged the right to the other as that which the other had by gift from him, and at that time you were not *in rerum natura*, and therefore it does not lie in your mouth to avoid the fine, you being thus privy to it, and particularly since you do not show that you have the reversion by descent from any ancestor other than the person who was a party to the fine.—*Grene.* We demand judgment since we have alleged the tenancy to have been in another person, who held at the time at which the fine was levied, and that time is not denied by you; and if that tenancy which E. had was in right of the person who rendered, and you understand that that matter can avail you, you can plead it in order to maintain the fine; and, since that matter cannot be understood to be the fact unless it is pleaded, we demand judgment whether you ought to have an action against us who are thus in possession in our reversion.—*Thorpe.* That matter cannot come from us, for that would be to confess expressly that the person who rendered was not seised at the time at which the fine was levied, and if that were confessed by us it would perhaps avoid the fine; but I say that, if E. then held in right of the person who rendered, the fine is executory against every one except those to whose damage execution of the fine would be made, and that would be only to the damage of E. and therefore the fine is executory as against every one else; therefore, since you do not allege that you have the reversion by descent from any ancestor other than the person who rendered, it seems that you shall not be admitted to avoid the fine by your mouth who are his heir.—Willoughby. Suppose that the person who acknowledged had the reversion at the time at which the fine was levied, and had afterwards granted the

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pere, qi heir vous estes; et vous dioms qe vostre aiel murust seisi de mesme la terre en son demene come de fee, apres qi mort vostre pere, qe fut partie a la fine, entra come fitz et heir, et conust le dreit al autre come ceo qil avoit de son doun, a quel temps vous nestoies pas *in rerum natura*, par quei en vostre bouche, qe estes issi prive a la fine, ne gist il pas voider, et nomement puisqe vous ne moustrez pas qe vous avetz la reversion par descente dautre auncestre qe de celuy qe fust partie a la fine.—*Grene.* Nous demandoms jugement puisqe nous avoms allegge la tenance en autri persone, qe le tint al temps de la fine leve, quel temps nest pas dedit de vous; et si cele tenance qe E. avoit fuit en le dreit celi qe rendi, et vous entendez qe cele matere vous purra vailler, vous le poetz pleder pur meyntener la fine; et, puisqe cele matere ne poet estre entendu sil ne soit plede, nous demandoms jugement si devers nous, qe sumes issi einz en nostre reversion, devetz accion aver.—*Thorpe.* Cele matere ne poet vener de nous, qar ceo serreit a conustre expressement qe celi qe rendi ne fut pas seisi al temps de la fine leve, quel chose par aventure conu de nous voidra la fine; mes jeo die qe si E. tint adonqes en le dreit celuy qe rendi qe la fine est executore vers chesqun sauve devers eux a qi damage execucion de cele se freit, et ceo ne serreit mes al damage E., par quei devers chesqun autre la fine est executore; par quei puisqe vous nalleggez qe vous avetz la reversion par descente dautre auncestre qe de celi qe rendi, si semble il qen vostre bouche, qestes heir a lui, ne serrez reseeu de la fine voider.—Wilby. Jeo pose qe celi qe conust avoit la reversion a temps de la fine leve, et puis

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A.D. 1346. reversion to me, and had attorned, then, if I allege the same matter that is now alleged, will you have execution against me? Certainly not. And so also it seems in this case.—*Thorpe.* That case is not our matter; but in our matter I say that one who is heir of a party will never avoid the fine to which his ancestor was party, unless he himself, or some one whose estate he has, was seised. Now he does not allege that this reversion of dower has descended to him from any other ancestor than the person who acknowledged, and therefore it will be held all the more strongly against him, and consequently he will not avoid the fine by reason of that tenancy.—*Grene.* Then we are agreed that E. was seised at such a time, and that the reversion is ours, and you do not produce any matter to show how the fine in respect of that tenancy will be executory; therefore you ought not to have execution against us, for, even though I be privy to the fine, if I can allege that at the same time I was seised of the same land, or that I had at the same time a right of reversion, I shall avoid it. Now you have not denied that the reversion was then to me, and even though it was not to me, if it was to another whose estate I have, I shall avoid the fine well enough. Therefore, &c.—*Thorpe.* We have said that you were not *in rerum natura* at the time at which the fine was levied, so that no right of reversion could at that time abide in you; and, since you do not claim from any other person than the person who was party to the fine, it seems that you shall not be admitted to avoid that fine.—Stouford, *ad idem.* You will never avoid a fine to which your ancestor was a party, if your ancestor who was a party had the same interest in his person by reason of which you attempt to avoid the fine. Now the reversion which you claim to have is all the reason for which the fine is to be avoided, and not the estate of E., because her estate is determined by her death, and, since you do not show how you have the reversion through any other person than the person who was party to the fine, it seems that it does

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il moy ust graunte la reversion, et ust attourne, si jeo allegge mesme la matere qest aore allegge, averetz vous execucion vers moy ?—Nay certes. Et auxi semble il en ceo cas.—*Thorpe.* Cel cas nest pas nostre matere ; mes en nostre matere jeo dye qe cely qest heir de partie ne voidra jammes la fine a quel son auncestre fut partie sil mesme, ou asqun qi estat il ad, ne fut seisi. Ore nallegge il mye qe ceste reversion de dowere lui soit descendu dautre auncestre qe par my celi qe conust, par quei il serra tenu a plus fort encountre lui, et *per consequens* par cause de cele tenance il ne voidra la fine.—*Grene.* Donqes sumes en un qele fut seisi a tiel temps, et qe la reversion est a nous, et vous ne moustrez pas matere coment la fine de cele tenance serra executore ; par quei vers nous ne averetz execucion, qar, mesqe jeo soi prive a la fine, si jeo puisse allegger qe a mesme le temps jeo fu seisi de mesme la terre, ou qe avoi a mesme le temps dreit de reversion, jeo le voidray. Ore navetz pas dedit qe la reversion adonqes fut a moi, et, mesqil ne fut pas a moi, sil fut a autre qi estat jay, jeo le voidray assetz bien. Par quei, &c.—*Thorpe.* Nous avoms dit qe vous nestoies pas *in rerum natura* al temps de la fine leve, issi qen vous nul dreit de reversion adonqes poait demurer ; et, puis qe vous ne clametz dautre qe de celi qe fut partie a la fine, si semble il qe a voider cele fine ne serrez reseeu. —Stouf., *ad idem.* Vous ne voidrez jammes une fine a quei vostre auncestre fut partie, si vostre auncestre qe fut partie avoit mesme la chose en sa persone par cause de quel vous estes a voider la fine. Ore est la reversion quel vous clametz a aver tut la cause pur quei la fine serra voide, et nemy lestat E., qar son estat par sa mort est termine, et, puis qe vous ne moustrez pas coment vous avetz la reversion par autre qe par luy qe fut partie a la

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A.D. 1346. not lie in your mouth to counterplead the same fine.—WILLOUGHBY.—Suppose that E. had granted her estate, before the fine was levied, to the person who is now in tenancy, will he not prevent execution if he can allege such matter?—meaning to say that he could. And for the same reason, since he shows that the person who was then tenant is dead, and he is in possession in his reversion, it seems that he will prevent execution.—Thereupon they were adjourned, &c.

Avowry. (87.) § The Abbot of Our Lady of York avowed a taking on the ground that the plaintiff held of him ten carucates of land in A., and three carucates in B., by homage, fealty, and the services of ten shillings, and by suit to his court of S. &c., of which services he was seised through the hand of the plaintiff, and he avowed for the suit.—*Seton.* We tell you, as to one carucate of land in A., that he tells you that he has nothing and claims nothing in it. And as to six carucates of land in A. we tell you that we enfeoffed one Geoffrey le Scrope, to hold to him and to his heirs for ever, by reason of which feoffment he attorned to you in respect of his services. And we enfeoffed one J. of the rest of the lands in A., and he also attorned to you in respect of his services. Geoffrey le Scrope leased to us the same land for term of our life, and J. also leased to us that which he had, for term of our life, so that in respect of that tenancy we are their tenant, and they are your tenants. And we hold of you the rest of the land in B. And by the avowry the tenancy is supposed to be one, whereas by reason of the matter which we show it is several: judgment of this avowry.—*Skipwith.* Several tenancy cannot be alleged in an avowry except in respect of the tenancy of one and the same person, as, for instance, by saying that he holds part by one service, and part by another service; but now you say that you hold nothing of me but the land in B., and that you hold the land in A. of others, and not of

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fine, si semble il qil ne gist pas en vostre bouche a mesme la fine countrepleder.—WILBY. Jeo pose qe E. ust grante son estat a cely qore est en tenance, avant la fine leve, sil poet tiel matere allegger, ne destourbera il execucion?—*quasi diceret sic.* Et par mesme la resoun[1] puisqil moustre qe cele qe adonqes fut tenante fut morte, et il est einz en sa reversion[2] si semble il qil destourbera execucion.—Par quei ils furent ajournes, &c. A.D. 1346.

(87.)[3] § Labbe de nostre Dame Deverwyke avowa une prise pur ceo qe le pleintif tint de li x. charues de terre en A. et iij. carues en B. par homage, foialte, et par les services de x.*s.* et par sute a sa court de S., &c., de queux services il fut seisi par mye la mayn le pleintif, et pur la sute il avowa. —*Setone.*[4] Nous vous dioms qe quant a un carue de terre en A. il vous dit qil nad rienz en cele ne rienz ne cleime. Et quant as vj. carues de terre en A. vous dioms qe nous enfeffames un Geffre le Scrope, a lui et a ses heirs a touz jours, par quel feffement il attourna a vous de ses services. Et de remenant des terres en A. nous enfeffames un J., le quel auxi attourna a vous de ses services, le quel G. nous lessa mesme la terre a terme de nostre vie, et J. auxi nous lessa ceo qil avoit a terme de nostre vie, issi qe [de] cele tenance nous sumes lour tenant, et eux vostre tenant. Et le remenant de la terre en B. le tenoms de vous. Et par lavowere est la tenance suppose une, la ou par la matere quel nous moustroms cest several; jugement de ceste avowere.—*Skip.* Severale tenance en avowere ne poet estre allegge mes de la tenance de une mesme persone, auxi come a dire qil tint parcelle par un service et parcelle par autre service; mes ore vous dites qe vous tenez rienz de moi mes la terre en B., et qe la terre en A. tenez des Avowere.

[1] MS., reversion.
[2] MS., resoun.
[3] From H. alone.
[4] MS., STONORE.

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A.D. 1346. me, which can only be taken in the nature of a disclaimer, and therefore it cannot be alleged as in the nature of several tenancy.—*Grene.* It is not so, for I am your tenant as to part through a mesne, and as to part without any mesne, and your avowry supposes that I am your tenant as in respect of one entire tenancy; therefore your avowry is abatable, since that matter is not denied by you.—WILLOUGHBY. When you say as to part that you do not hold it of him, the plea will be ended, so that, since you are at a denial to the effect that you do not hold that part of him, that denial ought to be pleaded as in the nature of a disclaimer, and therefore it seems that it cannot be pleaded as in the nature of several tenancy; therefore answer.—*Seton.* Whereas he has avowed for suit, we say that the Abbot himself is seised of 100 acres of land in B., part of the same land which he has supposed by his avowry that we hold of him, and we demand judgment whether he can avow for suit.—*Skipwith.*—You shall not be admitted to that, for by your other answer you affirmed the tenancy to be partly in you, partly in Geoffrey and in J., and therefore you shall not be admitted to allege part of the same tenancy to be in us.—Therefore *Seton* waived that seisin that he had attached in the Abbot as in the way of plea, and took it by way of protestation in order to save himself on another occasion, so that he may be able to discharge himself of the amount of the portion of the rent which relates to that tenancy. And he said that the Abbot could not maintain that avowry for suit, because he said that the predecessor of this Abbot and the Convent of the same place acknowledged by fine, in the time of the King, the same tenements to be the right of our ancestor, as that which he had by their gift, to have and to hold to him and to his heirs by fealty, and by the services of 10 shillings *per annum* in lieu of all services, and he demanded judgment whether, contrary to the fine, the Abbot could make an avowry for suit. And he made *profert* of the fine which was levied, before the

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autres, et nemye de moi, quel ne poet estre pris forsqe en nature dun desclamer, par quei en nature de several tenance ne poet ceo estre allegge.—*Grene.* Il nest pas issi, qar jeo su vostre tenant come [de] partie par mene, et de partie saunz mene, et vostre avowere suppose qe jeo su vostre tenant come dune entere tenance; par quei vostre avowere est abatable puis qe cele matere nest pas dedit de vous.—WILBY. Quant vous dites qe parcele vous ne tenez pas de ly, le plee serra termine, issi qe puisqe vous estes a dedit qe vous ne tenez pas la parcele de lui, le dedire de quel covent estre plede en nature de desclamer, par quei il semble qen nature de severale tenance ne poet ceo estre plede; par quei responez.—*Setone.* La ou il ad avowe pur sute, nous dioms qe Labbe mesme est seisi de c. acres de terre en B., parcele de mesme la terre qil ad suppose par savowere qe vous tenoms de ly, et demandoms jugement si pur sute il parra avower.—*Skip.* A ceo navendrez pas, qar par vostre autre respons vous affermates la tenance estre quei en vous, quei en Geffrey et en J., par quei dallegger ore parcele de mesme la tenance en nous ne serrez pas resceu.—Par quei *Setone* weyva cele seisine qil avoit attache en Labbe come par plee, et le prist come par protestacion de lui sauver autrefoith qil se puisse descharger de la porcion de la rente qe amounte a cele tenance. Et dit qe Labbe ne poet ceste avowere pur sute meyntener, qar il dit qe le predecessour cesti Abbe et le Covent de mesme le lieu par fine en temps le Roi[1] coniserent mesmes les tenementz estre le dreit nostre auncestre, come ceo qil avoit de lour doun, a aver et a tenir a lui et a ses heirs par foialte, et par les services de x.*s.* par an pur touz services, et demanda jugement si encountre la fine pur sute il purreit avowere faire. Et mist avant la fine qe fut leve, devant Lercevesqe de

[1] *Sic* in MS., the name of the King not being mentioned.

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A.D. 1346. Archbishop of Canterbury and the Barons of the Exchequer, between the Abbot and the Convent of the one part and the plaintiff's ancestor of the other part.—*Richemunde.* As to that we tell you that, since the time of the passing of King John into Britanny, we and our predecessors have been seised of suit by his hand and the hands of his ancestors, and since the fine was not levied in the nature of a feoffment, but it is proved that it was made during seisin, to which fine so made during seisin, and against a seisin so remote the law does not put us to answer; therefore we demand judgment, and pray the return.—*Grene.* We demand judgment since you have confessed the fine by which your predecessor, with the consent of the Convent, granted that we should hold by less service, in which case it is nothing to the purpose whether it was made during seisin or not, so that we shall discharge the service in that way, and we demand judgment on that, and pray our damages.—*Skipwith.* The statute[1] says that, if any one be enfeoffed by charter to hold by certain service, he shall not be distrained for suit, or for any other service, if he has not performed it since the passing of King John[2] into Britanny, and in the same manner where he is enfeoffed without charter, by reason of such seisin for so long a time he shall be charged with the suit. Now we are in the same case, since we have offered to aver the seisin of suit from all time since that passing; therefore, &c.—WILLOUGHBY. But there is a third clause in the same statute to the effect that, if any one be enfeoffed by charter to hold by one penny or the like, *pro omni servitio*, he shall not be distrained for suit or for any other service, even though he may have performed it from all time since the passing. And now you are in the same case, for the fine purports that you shall pay ten shillings *per annum* in lieu of all services; therefore,

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[1] 52 Hen. III. (Marlb.) c. 9.

[2] King Henry III. in the statute.

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Canterbirs et les Barons del Escheqer, entre Labbe et le Covent dune part et launcestre le pleintif de lautre part. —*Rich.* A ceo vous dioms qe, del temps del passage le Roi J. en Bretaigne, nous et noz predecessours avoms este seisiz de sute par sa mayn et les mayns de ses auncestres, et puisqe la fine ne se leva pas en nature de feffement, mes est prove qe ceo fut fait en seisine, a quel fine issi fait en seisine, countre la seisine de si long lei ne nous mette a respoundre ; par quei nous demandoms jugement et prioms retourn.—*Grene.* Nous demandoms jugement puisqe vous avetz conu la fine par quel vostre predecessour, par lassent le Covent, granta qe nous tendroms par meyndre service, ou, lequel qe ceo fut fait en lasseisine ou nent ceo nest rienz a purpos qe nous le deschargeroms par cele voie, et demandoms jugement sur cele, et prioms noz damages.—*Skip.* Lestatut parle qe si homme soit feffe a tenir par certein service par chartre qil ne soit destreint pur sute, ne pur autre service, sil nel eit fait puis le passage le Roi J. en Bretaigne, et en mesme le manere la ou il est feffe saunz chartre par tiel seisine de si longtemps il serra charge de la sute. Ore sumes en mesme le cas puisqe nous avoms tendu daverer la seisine de sute de tut temps puis le passage ; par quei, &c.—Wilby. Mes il y ad la terce clause en mesme lestatut qe si homme soit feffe par chartre a tener par un dener ou issi, *pro omni servitio*, qil ne soit destreint pur sute ne pur autre service, mesqil leit fait de fut temps puis le passage. Et ore estes en mesme le cas, qar la fine voet qe vous paieres x.*s.* par an pur touz services ; par quei, &c. A.D. 1346.

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A.D. 1346. &c.—*Skipwith.* That clause of the statute, Sir, which you mention is only to the effect that, if any one be enfeoffed to hold by one penny in lieu of all services, he shall not be distrained beyond that amount; but this fine proves in itself that it was made during seisin, and therefore he cannot be aided by that clause of the statute. —HILLARY. If my lord grants to me to-day that I can hold of him by less service than I held of him before, shall I not discharge myself by that deed made during my seisin just as much as by a deed of feoffment? I shall do so. Therefore, since you have confessed that fine by which he is discharged of suit, the COURT doth give judgment that he do recover against you his damages assessed at 40 shillings, and that you be in mercy, &c.

Scire facias on a Recognisance.

(88.) § A recognisance was executed in favour of a man for a certain sum of money to be paid on a certain day, with a clause to the effect that, if the recognisor should fail to pay, the Sheriff of Southampton might levy the money of his lands and tenements. Upon that recognisance the person in whose favour the recognisance had been executed sued a *Scire facias* to warn the ter-tenants. They appeared, and alleged, by *Thorpe*, that since the execution of the recognisance the recognisor purchased certain lands in the county of L., which lands are in the King's hand by reason of the lunacy of L. son and heir of the recognisor. And moreover, said *Thorpe*, we tell you that one J. holds ten acres of land which belonged to the recognisor in the county of Southampton, and we do not understand that without suit to the King, and also against J., we shall be put to answer.—*Huse.* By the recognisance no lands were charged other than those which he had in the county of Southampton, and therefore those who hold lands in the county of L. hold lands other than those which were charged, and lands purchased since the recognisance was executed, and we demand judgment whether we shall be put to answer without those who are ter-tenants of those lands.—

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—*Skip.* Cele clause del estatut, Sire, qe vous parles nest mes sil soit feffe a tenir par j. dener pur touz services qe outre cele il ne serra destreint ; mes cele fine prove en luy mesme qe ceo fut fait en seisine, par quei il ne poet pas cele clause del estatut estre eide.—HILL. Si huy ceo jour mon seignur grante a moi qe jeo puisse tenir de luy par meyndre service qe jeo ne tenisse de li avant, ne moy deschargera jeo pas par cel fait en ma seisine auxi bien come par fait de feffement ? Si fray. Par quei, puisqe vous avetz conu cele fine par quele il est descharge de sute, agarde la COURT qil recovere vers vous ses damages taxes a xl.*s.*, et vous en la mercye, &c. A.D. 1346.

(88.)[1] § Une reconissaunce fut faite a un homme en une certeine summe des deners a paier a certein jour, et sil falsast de la paie qe le Vicounte de Suthamptone les poet lever de ses terres et tenementz. Hors de quele reconissaunce celi a qi la reconissaunce se fist suist un *Scire facias* a garnir les terres tenantz, qe vindrent et alleggerent, par *Thorpe*, qe puis la reconissaunce faite le reconissour purchacea certeinz terres en le counte de L., queux terres sont en la mayn le Roi par resoun de la sotye L. fitz et heir le reconissour. Et auxi vous dioms qun J. tint x. acres de terre qe furent al conissour en le counte de S., et nentendoms pas qe saunz suir al Roi et auxi vers J. qe nous serroms mys a respondre.—*Huse.* Par la conissaunce nulles terres furent charges [autres qe ceux[2]] qil avoit en le counte de S., par quei autres qe ceux qe tenent les terres en le counte de L., puis la reconissaunce fait, et demandoms jugement si saunz ceux qe sont terres tenantz de ceux terres serroms mys a respondre.—*Grene.* *Scire facias* hors dune reconissaunce.

[1] From H. alone.

[2] The words between brackets are not in the MS., but appear to be required by the context. The whole of Huse's speech seems to be corrupt.

No. 88.

A.D. 1346. *Grene.* As to that which you have alleged that one J. holds land in the same county we will imparl; and we pray that you answer in respect of that which you hold yourselves. And, as to your allegation that the recognisor purchased, after the execution of the recognisance, lands in another county, we do not wish to have execution of those lands, nor shall we be able to have it by law, because other lands, which are not in the county mentioned in the recognisance, will not be charged by the recognisance, for we shall never have a writ of *Scire facias* out of this Court to any other Sheriff than the Sheriff mentioned in that recognisance.—*Thorpe.* That is true so far as it relates to the first day, but if the Sheriff of that county which is mentioned in the recognisance returns that the recognisor has nothing, then, if I say that he has lands in another county, I shall then have a writ to the Sheriff of the other county.—HILLARY, *ad idem.* If the recognisor, at the time of the execution of the recognisance, has nothing anywhere in England, and he afterwards purchases lands in a county other than that which is mentioned in the recognisance, will not those lands be charged?—as meaning to say that they would.—*Grene.* That may well be, but, if I do not desire to have advantage of that, I inflict damage only on myself. Now we do not desire to have execution in a county other than that which is principally charged in the recognisance; therefore we will answer as to the tenancy which he has alleged in that county in the person of J., and we say that he is fully tenant of the tenements in that county which belonged to the recognisor; ready, &c. And in that county I pray execution at my peril.—And in the end he was by judgment discharged of the tenancy which *Thorpe* had surmised in the person of the King in another county inasmuch as the letter of the law does not put him to have those lands in another county if he does not wish.—Therefore the averment was taken between them that J. was fully tenant of all the lands which belonged to the recognisor in the same county.—

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Quant a ceo qe vous avetz allegge qun J. tint en mesme le counte nous voloms enparler; et prioms qe de ceo qe vous tenez mesmes qe vous respoignez. Et, quant a ceo qe vous alleggez qe le reconissour purchacea puis la reconissaunce en autre counte, nous ne voloms de ceux terres aver execucion, ne purroms pur lei aver, qar autres terres, qe ne sont en le counte compris en la reconissaunce, ne serront charges par le reconissaunce, qar nous naveroms jammes brief de *Scire facias* hors de ceinz a autre Vicounte qe a Vicounte compris en cele reconissaunce.—*Thorpe.* Il est verite al primer jour, mes si le Vicounte de cel counte compris en la reconissaunce retourne qil nad rienz, si jeo dye adonqes qil ad terres en autre counte, adonqes averay jeo brief al Vicounte dautre counte.—Hill. *ad idem.* Si le reconissour au temps de reconissaunce nad rienz nulle part Dengleterre, et puis il purchace terres en autre counte qen cele qest compris en la reconissaunce, ne serront ceux terres charges?—*quasi diceret sic.*—*Grene.* Il poet bien estre, mes si jeo ne voille pas aver avantage de ceo, je ne face mes damages a moi mesme. Ore nous ne voloms pas aver execucion en autre counte qen cele qest charge principalement en la reconissaunce; par quei a la tenance qil ad en cel counte allegge en la persone J. nous voloms respoundre, et dioms qil est pleinement tenant des tenementz en cel counte queux furent al reconissour; prest, &c. Et en cel counte a mon peril jeo prie execucion.—Et a drein par jugement il fust descharge de la tenance qil avoit surmys en la persone le Roi en autre counte pur quant qe mote de lei ne ly mette pas a aver ceux terres en autre counte sil ne vodra.—Par quei laverement fut pris entre eux qil fut tenant de touz les terres qe furent al conissour en mesme le counte.—

Nos. 88, 89.

A.D. 1346. And the other side said the contrary.—And he was not put to answer as to the tenancy which belonged to the recognisor which he had confessed that he himself held, because he will not be put to answer as to the recognisance until the tenants of all the lands which belonged to the recognisor in that county have been warned, &c.

Scire facias. (89.) § A manor was rendered by fine to a man and his wife in fee tail, the reversion being saved to the donor, and the donor sued a *Scire facias* because the fee tail was at an end. And the writ purported that the husband and his wife were dead and that one J., who was issue in tail between them, had died without heir of his body begotten, and that the person against whom the writ was sued had entered contrary to the form of the fine. And the tenant was warned, and did not appear, and therefore *Grene*, for the demandant, prayed execution. —Willoughby. Your writ is defective in its matter, because it is supposed that the land was given to the husband and wife, and their heirs of their two bodies begotten, and it is not supposed by the writ that they have died without heir of their bodies, but that their issue has died without heir of his body, and it is consistent with that statement that the husband and his wife have further issue which will be in the inheritance by the entail; therefore there is wanting in your writ matter which should prove that the fine ought yet to be executed in your favour.—*Grene.* It is the common practice in this Court with regard to all writs of Formedon in reverter by which it is supposed that the donee had issue in tail, that the writ always supposes that, after the death of the tenant in tail, the issue died without heir of his body, because, if the fact be that the tenant in tail had issue which is still living, that will come by way of answer (and the contrary is not to be supposed in precise terms by the writ) for the writ cannot suppose that the land ought to revert, because if the tenant in tail had issue at the time of his death which survived him, I say that the words

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—*Et alia e contra.*—Et il ne fut mys a respoundre de la tenance qil avoit conu qil tint mesme qe fut al conissour, pur ceo qil ne serra pas mys a respoundre a la reconissaunce tanqe touz les terres tenantz qe furent a luy en cel counte soient garniz, &c. A.D. 1346.

(89.)[1] § Un maner fut rendu par fine a un homme et a sa femme en fee taille, sauve la reversion al donour, et le donour suist un *Scire facias* pur ceo qe la taille fut termine. Et le brief voleit qe le baron et sa femme sont mortz, et un J., qe fut issue en taille entre eux, fut mort saunz heir de son corps engendre, et qe cely countre qi le brief fut suy fut entre encountre la forme de la fine. Et le tenant fut garny, et ne vint pas, par quei *Grene*, pur le demandant, pria execucion.—Wilby. Vostre brief est defectif en matere, qar il est suppose qe la terre fut done al baron et a la femme et a lour heirs de lour ij. corps engendres, et par le brief nest pas suppose qils sont mortz saunz heir de lour corps, mes est qe lour issue est morte saunz heir de son corps, et ovesqe estet qe le baron et sa femme ount unqore issue qe serra enherite par la taille; par quei matere faut en vostre brief qe dust prover qe la fine pur vous unqore serra execut.—*Grene.* Il est oliver coraunt ceinz qe tous les briefs de Forme de doun en *reverti* par queux [est] suppose qil avoit issue en taille apres la mort le tenant en taille qe le brief suppose totefoitz qe lissue murust saunz heir de son corps, qar, si la matere soit tiele qe le tenant en taille eit issue qest en vie, ceo vendra par voie de respons, et ne mye a supposer le *præcise* par le brief, qar le brief ne poet pas supposer qe la terre deit retourner, pur ceo qe, [si] le tenant en taille avoit issue a temps de sa mort qe li survesqi, jeo die qe parole de brief serra faux a *Scire facias.*

[1] From H. alone.

Nos. 89, 90, 91.

A.D. 1346. of a writ which supposed that he died without heir of his body would be false.—Therefore, in the end, HILLARY, with the unanimous consent of the COURT, awarded execution.—And there was a woman who was supposed to be tenant of another parcel in the same writ; and with regard to her the Sheriff returned that, whereas she was named Alice de R. in the writ, Alice late wife of J. de S. was warned.—And because there was no warning of Alice de R. testified, an *alias Scire facias* was awarded, &c.

Account. (90.) § The Prior of the Hospital of St. John of Jerusalem in England brought a writ of Account against one J., who appeared, and said that on a previous occasion auditors had been appointed for him by the plaintiff himself, and he had accounted before them.—And the Prior tendered the averment that he had not done so.—And upon that they were at issue.—And they had a day now.—And now the defendant made default, and, because on his first plea he had confessed the receipt of moneys, inasmuch as he said that he had fully accounted, and he did not pursue that issue, therefore a *Capias ad computandum* was awarded, &c.

Avowry. (91.) § A man avowed on the plaintiff on the ground that the plaintiff held of him by fealty and by the services of ten shillings *per annum*, and by the services of three shillings *per annum* for castle-ward of the castle of S., and he avowed for the three shillings of castle-ward in arrear.—*Thorpe.* We tell you that one J. held the same land of you by such services as you have mentioned in your avowry, and that J. enfeoffed one R., our ancestor, to hold of him and of his heirs, before the statute,[1] by fealty, and by the services of ten shillings *per annum* in lieu of all services; and we tell you that you have yourself purchased from J. the same seignory that he had, and we demand judgment

[1] 18 Edw. I. (*Quia emptores*).

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supposer qil murust saunz heir de son corps.—Par quei a derrein HILL., de lour comune assent, agarda execucion.—Et il y avoit une femme qe fut suppose tenante dune autre parcelle en mesme le brief ; et vers li le Vicounte retourna qe la ou ele fut nome en le brief Alice de R. qe Alice qe fut la femme J. de S. fut garny.—Et pur ceo qil ny avoit nulle garnissement tesmoigne sur Alice de R. si fut un *Sicut alias* agarde, &c. A.D. 1346.

(90.) § Le Priour del Hospital de Seint Johan de Jerusalem en Engleterre porta un brief Dacompte vers un J., qe vint, et dit qe autrefoith auditours lui furent assignes par le pleintif mesme, et devant eux il avoit acompte.—Et le Priour tendi daverer qe noun.—Et sur ceo furent a issue.—Et avoient jour aore.—Et ore le defendant fist defaut, et pur ceo qe a son primer plee il avoit conu la resceite, par tant qil dit qil avoit pleinement acompte, quel issue il ne pursuist pas, par quei un *Capias ad computandum* fut agarde, &c. Acompte.

(91.)[1] § Un homme avowa sur le pleintif pur ceo qil tint de lui par foialte et par les services de x.*s.* par an, et par les services de iij.*s.* par an pur la garde de chastel de S., et pur les iij.*s.* de la garde du chastel arrere il avowa. —*Thorpe.* Nous vous dioms qun J. tint mesme la terre de vous par tielx services come vous avetz parle en avowant, le quel J. enfeffa un R., nostre auncestre, a tener de lui et de ses heirs, avant lestatut, par foialte, et par les services de x.*s.* par an pur touz services ; et vous dioms qe vous mesmes si avetz purchace de J. mesme la seignurie qil avoit, et demandoms jugement si encontre le fait de celi Avowere.

[1] From H. alone.

Nos. 91, 92.

A.D. 1346. whether, contrary to the deed of the person whose estate you have in that seignory, you can make avowry for more services than are mentioned in it. And he made *profert* of the deed which purported as above and included the words *salvo forinseco servitio.—Grene.* Since he has confessed that J. held of us by such services, even though we did purchase from him the seignory which he had, which, according to his statement, was only fealty and rent, still there remain to us the other kinds of service which we have purchased on condition that the rest should remain with us.—WILLOUGHBY. It is not so: for by your purchase of the seignory below all your previous seignory is extinguished, for otherwise it would follow that you would, as in a degree of the mesne seignory, be yourself tenant to yourself by reason of the seignory above, and that would be inconsistent; therefore will you abide judgment there?—*Notton.* No, Sir, but you see plainly how we have avowed for castle-ward, which, as we understand, is foreign service, and by the deed of which he makes *profert* foreign services are saved; therefore we demand judgment, and pray the return.—*Thorpe.* And we demand judgment, since you have confessed the deed of the person whose estate you have in the seignory, by which he enfeoffed us to hold by fealty, and ten shillings of rent *per annum* in lieu of all services, whether, contrary to that deed, you can maintain an avowry for castle-ward.—And they were adjourned, &c.

Mesne. (92.) § Nicholas de Wanford[1] brought his writ of Mesne against one J.[1] and counted by *Blaykestone* that J.[1] held

[1] *See* p. 501, note 1.

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qi estat vous avetz en cele seignurie si vous puisses sur plus de services qe en cele nest compris avowere faire. Et mist avant le fait qe voleit, *ut supra, salvo forinseco servitio.* —*Grene.* Puisqil ad conu qe J. tint de nous par tielx services, mesqe nous purchaceames de lui la seignurie qil avoit, qele ne fut, a ceo qil dit, mes foialte et rente, unqore nous demurent les autres maneres de service queux nous avoms issi purchace issi qe le remenant nous demurreit. —Wilby. Il nest pas issi; qar [par] vostre purchace de la seignurie paravale tut vostre auncene seignurie est esteint, qar autrement ensiewereit qe vous mesmes, come en degree de la seignurie mene, serrez tenant a vous mesmes par resoun de la seignurie damont, et serreit *inconveniens*; par quei voletz la demurer?—*Nottone.* Sire, nanil, mes vous veietz bien coment nous avoms avowe pur garde de chastel, quele, a ceo qe nous entendoms est forein service, et par le fait qil mette avant foreins services sont sauves; par quei nous demandoms jugement, et prioms retourn.— *Thorpe.* Et nous demandoms jugement, puisqe vous avetz conu le fait celi qi estat vous avetz en la seignurie, par quel il nous enfeffa a tenir par foialte et *x.s.* de rente par an pur touz services, si encountre cel fait pur garde al chastel purrietz avowere maintenir.—*Et adjournantur,* &c. A.D. 1346.

(92.)[1] § Nichol de Waunflour porta son brief de Mene vers un J., et counta par *Blaik.* coment il tint de lui par Mene.

[1] From H. alone. The report appears to be in continuation of Y.B., Easter, 20 Edw. III., No. 43. The parties appear to be the same as in Y.B., Trin., 17 Edw. III., No. 39 (pp. 584–591), but the names of the plaintiff and defendant have here been transposed. In that case (according to the record *Placita de Banco*, Trin., 17 Edw. III., R°. 130) a writ of Mesne was brought by John Denoys against Nicholas de Wanford in respect of services demanded by the superior lord, Walter Fitz-William. Judgment was given that Nicholas should acquit John of the services in future, Nicholas not having denied the liability to acquit, but only that John had been distrained through his default, upon which question issue was joined.

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A.D. 1346. of him by certain service, and that one David Cofine held the same land of J.[1] by like services. The same David was distrained by one Richard,[1] the defendant's lord, for the defendant's relief and homage, by the beasts of his plough, so that he was unable to till his land. Thereupon (said plaintiff's counsel) David sued a writ of Mesne against us, and then we appeared and said that he had not been distrained by reason of our default, and it was found that he had, and therefore he recovered against us the acquittal of services and his damages to the amount of twenty marks. And, whereas we have many times come to you and prayed you that you would acquit us, you would not acquit us and still will not, but you suffer David our tenant to be distrained by reason of your default, tortiously and to our damage, &c.—*Grene.* You see plainly how his object is to deraign acquittal of services against us inasmuch as his tenant was distrained through our default, by reason of which distress his tenant recovered damages against him; and his object is to maintain this writ by reason of that loss so incurred; and he has himself shown that, in the suit which his tenant made against him, he tendered the averment that the tenant was not distrained by reason of his default, whereas by this suit he is supposing the contrary; judgment whether he ought to be answered in respect of this suit.—WILLOUGHBY. The contrary of that averment was found, and for that reason his tenant recovered damages against him; therefore by reason of the loss incurred after that averment was tendered this present action is maintained; therefore answer, &c.—*Grene.* Again you see plainly how by reason of that recovery of damages had against him by his tenant he is attempting to deraign acquittal of services, and he has confessed that he prayed us to acquit

[1] *See* p. 501, note 1.

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certein service, et coment un Davy Cofine tint mesme la terre de lui par autielx services, le quel Davy fut destreint par un Richard, seignur le defendant, pur lomage et le relief le defendant, par les bestes de sa charue, si qil ne poait sa terre gayner. Sur quei Davy suist un brief de Mene vers nous, ou nous venimes et deimes qe nent destreint par nostre defaut, et fust trove qe si, par quei il recoveri vers nous la acquitance et ses damages de xx. marez, ou nous avoms sovent venu a vous et vous avoms prie qe vous nous acquitassez, vous nous acquiter ne voderetz, ne unqore ne voillez, mes suffrez Davy nostre tenant estre destreint par vostre defaut, a tort et a noz damages, &c.—*Grene.* Vous veietz bien coment il [est] a deresner lacquitance vers nous par taunt qe son tenant fut destreint par nostre defaut, par cause de quel destresse il recoveri ses damages vers lui ; et par cause de cel perde fait si est il a meyntener ceste brief ; et il mesme ad moustre qen la sute qe son tenant fist vers lui il tendi daverer qil ne fut pas destreint par sa defaut, ou par ceste sute il est a supposer le contrare ; jugement si de ceste sute il deit estre respondu.—Wylby. Le contrare de cel averement fut trove, par cause de quel il recoveri ses damages vers luy ; par quei par cause de le perde fait apres cel averement tendu si est ceste accion meintenu ; par quei responez, &c.—*Grene.* Unqore vous veietz bien coment par cause de cel recoverir de damages fait vers lui par son tenant il est a deresner lacquitance, et il ad conu qil nous pria de lui acquiter, et il ne assigne

A.D 1316.

According to the finding of a jury at *Nisi prius* one David Coffin held of John, and John held of Nicholas, and Nicholas ought to acquit John of services. Nicholas held of Walter Fitz-William, who took a distress in the manor of which David was tenant, for homage, fealty and relief due from Nicholas. David then brought a writ of Mesne against John, and it was found by a jury that David had been distrained through default of acquittal by John. It was also found that John never had any cattle or other goods or chattels in the manor by which he could be distrained.

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A.D. 1346. him, and he does not in his count assign any matter to show how we could acquit him in this case, as for instance that he offered to David to put his beasts in the place of David's, or that he requested us to do the like towards him, or else that he joined himself with David, and prayed that we would join ourselves with him, and that we would not do so, and so he does not assign any matter in fact by which we could have acquitted him; therefore we demand judgment of his declaration.—*Thorpe.* Perhaps our matter is not such as you say, and on our facts we could not have any count different from this; therefore we demand judgment, &c.—*Grene.* Even though the matter were not such, still you ought to make some allegation in order to make your declaration clear, for still no issue can be taken on that.—WILLOUGHBY. You say what you would like to be the fact; if he took any special cause by reason of which he would assign default in you in non-acquittal, then, if you could traverse that cause it would be sufficient for you; and there is no necessity for him to declare in what manner you could have acquitted him, any more in this case than if he were tenant in demesne and had to deraign the acquittal without any intervening mesne, in which case it would not be necessary for him to assign the manner in which you could have acquitted him, for that falls more properly for the lord to know than it does for the tenant; therefore answer, &c. —*Grene.* Then we ask what he has to bind us to acquittal of services.—*Blaykestone.* We hold of you, and you are seised of our services, and you and your ancestors have acquitted us and our ancestors from time whereof there is no memory.—*Grene.* As to that we tell you that—whereas he has counted that David, his tenant, was distrained for our homage and our relief by R., our lord—after the death of our father, because we were under age, R. seized the wardship of us, and had the wardship until we were of full age, and so the distress was made for relief which could not have been due to him; and we tell you that we have offered, in case you will put your beasts

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pas matere en son counte coment nous lui purroms acquiter en ceo cas, cest a dire qil profri a Davy de mettre ses avers pur les senes, et qil nous requist a faire icele a lui, ou autrement qil se joinast a Davy, et nous pria qe joinassoms a lui, et qe nous ne le vodrioms faire, et issi nassigne il pas matere en fait par quel nous lui purroms aver aquite; par quei nous demandoms jugement de sa demoustrance. —*Thorpe.* Nostre matere nest pas tiele par aventure come vous parletz, et sur nostre verite autre counte qe ceo cy nest, ne purroms aver; par quei nous demandoms jugement, &c.—*Grene.* Mesqe la matere ne fut pas tiele, unqore vous devetz allegger pur desclarer vostre demoustraunce, et unqore nul issue se prendra sur cele.—WILBY. Vous dites talent; sil prist une cause especiale par cause de quel il vodreit assigner defaut de noun acquitance en vous, si vous purretz cele cause traverser suffira assetz a vous: et il ne covent pas qil desclarifie en quele manere vous lui purret avoir acquite, nent plus en ceo cas qe sil ne fut tenant en demene et fut immediate a deresner lacquitance, en quel cas il ne covendra pas dassigner la manere coment vous ly purreit aver acquite, qar ceo plus proprement chiet al seignur a conustre qe ne fait al tenant; par quei responez, &c.—*Grene.* Donqes nous demandoms de ce ceo qil ad de nous lier al acquitance.—*Blaik.* Nous tenoms de vous, et vous seisi de noz services, et vous et voz auncestres avetz acquite nous et noz auncestres de temps dount il ny ad memore.—*Grene.* A ceo vous dioms qe, la ou il ad counte qe Davy, son tenant, fut destreint pur nostre homage et nostre relief par R., nostre seignur, a ceo vous dioms qe apres la mort nostre pere, pur ceo qe nous fumes deinz age, R. sesist la garde de nous, et avoit la garde [tanqe a nostre pleyn age, issint la destresse fait pur relief qe][1] ne poet estre a lui diwe; et vous dioms qe nous avoms

A.D. 1346.

[1] The words between brackets have been inserted in the MS. in a later hand.

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A.D. 1346. for David's beasts, to be ready to put our beasts for yours, and also in case David will make plaint in respect of the same taking and you will join with David, to be ready to join with you; and we demand judgment whether, in that case, you can recover damages against us for default in non-acquittal.—*Thorpe.* To begin with, Sir, since he has confessed that he ought to acquit us, we pray acquittal of services; and as to that which he has said over in order to escape from damages we tell you that he was not ready to do the things of which he has spoken; ready, &c.—*Grene.* That is not a plea without alleging that you requested us to do those things; and if you will say that you did, ready, &c., that you did not.—STOUFORD. He has traversed your statement, and therefore if that which you have said is a plea to escape from damages, he answers you sufficiently without alleging an affirmative on his part since that which he says is the negative of your plea.—Therefore, in the end, the issue on the averment which Thorpe tendered was accepted.

Cui in vita. (93.) § One Alice brought a *Cui in vita*[1] against a person, and supposed his entry to have been by her mother's husband whom her mother could not gainsay during her life-time.—*Birton.* We hold the same land for term of our life by lease from one J., and we pray aid of him.—*Gaynesford.* You see plainly how we have supposed his entry to have been by the husband of our mother, and therefore you shall not be admitted to pray aid of another, supposing the tenant's estate to be through a person other than the husband.—HILLARY. Although perhaps you cannot consent to aid on account of the contradiction thereby of your writ, nevertheless, because it may be consistent with the writ, the COURT will allow it by office. —*Gaynesford.* Still, Sir, he ought not to have aid, for we tell you that he had nothing by lease from J. before

[1] This would have been called a *Sur cui in vita* in later times.

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profri qen cas qe vous mettrez voz bestes pur les bestes Davy qe nous serroms prest de mettre noz bestes pur les voz, et auxi en ceo cas qe Davy se vodra de mesme la prise pleindre et vous joindrez od Davy qe nous serroms prest de joindre od vous ; et demandoms jugement si, en ceo cas, pur defaut de nounacquitance purrez devers nous damages recoverir.—*Thorpe.* A comencement, Sire, puis qil ad conu qil nous deit acquiter, nous prioms lacquitance ; et quant a ceo qil ad dit outre par estourtre de damages nous vous dioms qil ne fut pas prest a faire les choses queux il ad parle ; prest, &c.—*Grene.* Ceo nest pas plee saunz allegger qe vous nous requistes a cele chose faire ; et si vous volietz ceo dire, prest, &c., qe noun.—STOUF. Il ad traverse vostre dit, par quei, si ceo qe vous avetz dit soit ple pur estourtre de damages, il vous respond assetz saunz allegger un affirmatif de sa part puisqil est en le negatif de vostre plee.—Par quei a derrein lissue sur ceo qe Thorpe tendi fust resceu, &c. A.D. 1346.

(93.)[1] § Une Alice porta un *Cui in vita* vers un, et supposa son entre par le baron sa mere a qi ele en sa vie countredire ne pout.—*Birtone.* Nous tenoms mesme la terre a terme de nostre vie de lees un J., et prioms eide de luy.—*Gayn.* Vous veietz bien coment nous avoms suppose[2] son entre par le baron nostre mere, par quei a prier eide dautre, supposant son estat par autre qe par li ne serrez resceu.—HILL. Coment qe par aventure vous ne poetz graunter leide pur la countrarcouste de vostre brief, nepurquant pur ceo qil poet estere od le brief la COURT doffice grantera.—*Gayn.* Unqore, Sire, il ne deit eide aver, qar nous vous dioms qil navoit rienz de lees J. avant *Cui in vita.*

[1] From H. alone.

[2] "Suppose" is inserted in the MS. in a later hand.

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A.D. 1346. the day on which the demandant's writ was purchased, and therefore we demand judgment whether he ought to have aid in this case.—Therefore *Birton* waived the aid-prayer, because his matter was that, while the writ was pending, the tenant had divested himself and taken back an estate for term of his life.—But if he had had nothing on the day on which the writ was purchased, and, after the writ had been purchased, J. had leased to him for term of life, then because that purchase makes the writ good, although it was effected while the writ was pending, still it seems that he would have aid.—Therefore *Birton* said that the demandant ought not to have an action, because, he said, one K. was seised of the same land, and died seised, and, after his death, the demandant's mother and one K., her sister, entered as being two daughters and one heir, and made partition between them while she was sole, so that this land which is now demanded was allotted as K.'s purparty, which K. afterwards enfeoffed us; and after that partition had been made your mother had nothing; and we demand judgment whether, contrary to that partition, she who was heir to her mother can have an action against one who has that estate, without showing how her mother came to it.—*Gaynesford.* You see plainly how our action is taken on the alienation of our mother's husband, as to which alienation you make no answer; therefore we demand judgment whether we have any need to answer to that which you have said, and we pray seisin of the land.—*Birton.* If your mother's husband had aliened, and your mother afterwards became entitled, and made partition, as has been said, I say that it is clear in law that the partition would preclude her from any action accruing at an earlier time; in that case there is nothing, but in respect of an alienation made after the partition your mother had nothing, and so we have answered as to every time; therefore, &c.—STOUFORD. But, when an action is taken in respect of an alienation, you must in pleading confess and avoid it, or else you

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le jour de son brief purchace, par quei nous demandoms jugement si en ceo cas il deive eide aver.—Par quei *Birtone* le weyva, pur ceo que sa matere fust qe, pendant le brief, le tenant savoit demys et repris estat a terme de sa vie.—Mes sil nust eu rienz jour de brief purchace, et puis le brief purchace J. lui ust lesse a terme de vie, pur ceo qe cel purchace fait le brief bon, mesqe ceo fut pendant le brief, unqore semble' qil avera leide.—Par quei *Birtone* dit qil ne dust accion aver, qar il dit qun K. fut seisi de mesme la terre, et murust seisi, apres qi mort entrerent la mere le demandant et une K., sa seor, come ij. filles et une heir, et fesoient la purpartie entre eux tanqome ele fut soule, issi qe celle terre ore demande fut alote a la purpartie K., la quele K. apres nous enfeffa, apres quele purpartie faite vostre mere navoit rienz ; et demandoms jugement si, encontre cele purpartie, ele qe fut heir a sa mere, saunz moustrer coment sa mere avint, vers lui qad estat puisse accion aver.—*Gayn.* Vous veiet bien coment nostre accion est pris del alienacion le baron nostre mere, a quele alienacion nous ne responez rienz ; par quei nous demandoms jugement si a ceo qe vous avetz dit eioms mester a respoundre, et prioms seisine de terre.—*Birtone.* Si le baron vostre mere ust aliene, et apres vostre mere avynt, et fit purpartie, come est parle, jeo die qil est clere en ley qe la purpartie la forsclorreit de chesqune accion eisne ; donqes ny ad il rienz, mes, pur alienacion faite puis la purpartie, vostre mere navoit rienz, et issi avoms respondu de chesqun temps ; par quei, &c.—STOUF. Mes, quant accion est pris dune alienacion, il covent qen pledaunt vous le conisses et le voides, ou autrement qe vous le

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A.D. 1346. must deny it; now if you will confess that the husband aliened at one time, but will say that, inasmuch as the partition was effected afterwards, she will not have an action upon that alienation, that is one way of pleading; and, if the husband did not aliene, there is then no necessity to speak of the partition; therefore, according to the manner of that plea, you do not plead either to the one effect or to the other; therefore it seems that you must answer as to the alienation of the husband.—And so the matter is pending, &c.

Sequatur suo periculo. (94.) § Two persons were vouched. The *Sequatur suo periculo* was returned now. And the Sheriff returned that one was summoned (and that one appeared and proffered himself) and that the other had nothing whereby he could be summoned. And the tenant was essoined on this day. —*Thorpe.* Now, since the tenant has not sued against his vouchee, as he ought to have done by law, in that case his land is lost, and therefore it seems that no essoin lies for him.—WILLOUGHBY. He was not essoined after the voucher, and therefore the essoin is allowable now.—*Thorpe.* Then, Sir, on the essoin we pray that mention be made that judgment in our favour against him is respited, and that no process is to be made further against the vouchees, because, if process be made further against them, they will then have an essoin on the next day, and so I shall be on that day in the same position as if the voucher had to commence, and that would be contrary to what is right.—WILLOUGHBY. If one only had been vouched, and the *Sequatur suo periculo* had not been served, and the tenant had been essoined, I say that because, if the tenant appeared, his tenancy would be lost without his having over to the value, and because although he had been essoined that was only to save him from loss for the day, no process would be made further in that case.—*Grene.* We have often seen the contrary adjudged in this Court, that is to say that an *alias Sequatur*

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dediez; ore si vous volez conustre qe le baron aliena a un temps, mes pur taunt qe la purpartie se fist puis, qele navera de cele alienacion accion, cest une manere a pleder; et, si le baron naliena pas, il ne covent pas adonqes de parler de la purpartie; par quei solom la manere de cele plee vous ne pledez ne al un entente ne al autre; par quei il semble qe al alienacion le baron qe vous responez.—*Et sic pendet*, &c. A.D. 1346.

(94.)[1] § Deux furent vouches. Le *Sequatur suo periculo* retourne a ore. Et le Vicounte retourna qe lun fust somons, qe vint et se profri, et qe lautre navoit rienz dount estre somons. Et le tenant fut essone a ceo jour. —*Thorpe*. A ore puisqe le tenant nad pas suy vers son vouche, come il dust aver fait par lei, en quel cas sa terre est perdue, par quei il semble qe pur lui nul essone gist.—Wylby. If nestoit pas essone puis le voucher, par quei il est allowable aore.—*Thorpe*. Donqes, Sire, prioms sur lessone qe mencion soit fait qe nostre jugement vers lui soit respite, et qe nul proces plus avant soit fait vers les vouches, qar, si proces soit fait plus avant vers eux, donqes averont ils un essone al prochein jour, et issi serrai jeo a cel jour come si le voucher fust a comencer, quele chose serra encontre resoun.—Wilby. Si un fut soul vouche et le *Sequatur suo periculo* ne fut pas servy, et le tenant fut essone, jeo dye qe pur ceo qe, si le tenant apparust sa tenance fut perdu saunz aver a la value, et, mesqil soit essone, ceo nest mes pur lui sauver saunz perde pur la journe qe nul proces en cel cas plus avant serra fait.—*Grene*. Nous avoms sovent veu le contrare ceinz ajugge *Sequatur suo periculo.*

[1] From H. alone. The report is, according to the MS., in continuation of Y.B., Trin., 20 Edw. III., No. 21. As to the process of *Sequatur suo periculo* see *Co. Litt.*, 101-102.

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A.D. 1346. *suo periculo* has been awarded in that case, and, in case that writ should be well served, all is well.—And all the Clerks of the Court agreed to that.—WILLOUGHBY and HILLARY also agreed that he would never have in that case further process against the vouchee, because he is without day by reason of the non-serving of the *Sequatur suo periculo*. But, they added, it remains to be seen, since the voucher against the two was all one, and in the *Sequatur suo periculo* summons is testified with regard to one, but not with regard to the other, whether, inasmuch as the writ is served with regard to one, it is served with regard to all, or judgment as to a moiety is to be respited inasmuch as the writ has not been served against one, and process is to be made against the other with regard to whom summons is testified. And it seems that, since the writ is one, it cannot be partly served and partly not. —And the Clerks of the Court said that it was their practice in the same Court that, in case one person only was vouched, and on the non-serving of the *Sequatur suo periculo* the tenant was essoined, and the essoin was adjudged and a day given, an *alias Sequatur suo periculo* was awarded.—And, in the end, notwithstanding the fact that the Justices were of one mind that no process should be made further against the person against whom the writ had not been served, the Clerks would not act in that way, but caused it to be entered on the roll that an *alias Sequatur suo periculo* had been awarded as to a moiety.—But the Justices were agreed that no *Sequatur suo periculo* should be awarded against the other against whom the writ had been served, but because he had appeared *Idem dies* was given to him.

Dower. (95.) § A writ of Dower was brought against a Prior, and he demanded view.—*Grene.* You ought not to have view, because you entered by my husband.—*Birton.* Ready, &c., that we did not.—*Grene.* Then we tell you that your predecessor entered by our husband, and

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qe le *Sequatur suo periculo sicut alias* en ceo cas ad este agarde, et, en cas qe cel brief soit bien servy, tut est bien. —Et a ceo acorderent touz les clerks de la place.—Wilby et Hil. auxi acorderent qil navereit jammes en cel cas plus avant proces vers le vouche, pur ceo qil est saunz jour par le *Sequatur suo periculo* nent servy. Mes il fait a vere, puisqe le voucher vers les ij. fut tut un, et en le *Sequatur suo periculo* vers lun somons est tesmoigne, et vers lautre nent, si par taunt qe le brief est deservy vers lun sil est deservy vers touz, ou qe le jugement de la moyte soit respite par tant qe le brief nest pas servy vers lun, et qe proces se face vers lautre vers qi la somons est tesmoigne. Et il semble qe puis qe le brief est un qil [ne] poet estre servy en partie, et en partie nent.—Et les clers de la place disoient qe ceo fut lour usage de mesme la place qe en cas qun fut soul vouche, et al *Sequatur suo periculo* nent servy le tenant est essone, quel essone est ajugge et ajourne, et qun *Sequatur suo periculo sicut alias* fut agarde.—Et a derrein, *non obstante* qe les Justices furent dun assent qe nul proces se ferreit plus avant vers celi vers qi le brief ne fut pas servy, les cleres ne vodreint cele chose faire, mes fesoient entrer en roulle qun *Sequatur suo periculo sicut alias* fut agarde de la moite.—Mes les Justices furent dun assent qe vers lautre vers qi le brief fut servy qe nul *Sequatur suo periculo* vers li serra agarde, mes pur ceo qil apparust *Idem dies* fust done a lui, &c. A.D. 1346.

(95.)[1] § Brief de Dowere fust porte vers un Priour, qe demanda la vewe.—*Grene.* La vewe ne devez aver, qar vous entrates par mon baron.—*Birtone.* Prest, &c., qe noun.—*Grene.* Donqes vous dioms qe vostre predecessour Dowere.

[1] From H. alone.

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A.D. 1346. therefore you still ought not to have view.—*Birton.* Now we demand judgment, and pray view, since he has said that a person other than ourselves entered by her husband, and that is a matter which it is not for us to know, and therefore we pray view.—*Grene.* The statute[1] says that, if the tenant or his ancestor entered by the husband, he shall not have view; and I shall be aided by the same statute to oust you from view by alleging that your predecessor entered by the husband.—HILLARY. There is a degree between ancestor and heir, by reason of which degree the heir ought to be acquainted with the fact, but between predecessor and successor there is not any degree; and besides you are not in the case of the statute. —Therefore view was granted to him.

Cui in vita. (96.) § A *Cui in vita* was brought, and it supposed the entry of the tenant to have been by the husband.—*Skipwith.* We tell you that we entered by such a person and not by the husband; ready, &c.—*Grene.* You see plainly how this entry which he has traversed is our husband's lease, on which lease our action is now taken, and therefore it seems that he shall not be admitted to take issue on that which is the ground of our action, without denying it in accordance with the manner in which we take it in our action, and by like words.—Therefore *Skipwith* said that the tenant entered by such a person, *absque hoc* that the husband leased to him as the demandant had said; ready, &c.—*Grene.* To say that you entered by a person other than the husband would be a plea in abatement of the writ; therefore, inasmuch as you have denied the lease, you have answered to our action, and therefore we will aver that our husband leased to you; and as to the rest, which would properly fall in abatement of the writ, you ought not to be heard as to that because you have pleaded higher.—Therefore, in the end, the issue was taken solely on the husband's lease, &c.

[1] 13 Edw. I. (Westm. 2), c. 48.

entra par nostre baron, par quei unqore ne devez la vewe aver.—*Birtone.* Ore demandoms jugement, et prioms la vewe, puisqil ad parle qe autre qe nous entra par son baron, quele chose nest pas a nous a conustre, par quei nous prioms la vewe.—*Grene.* Lestatut parle qe si le tenant ou son auncestre entra par le baron qil navera pas la vewe ; et par mesme cel estatut serrai jeo eide dallegger qe vostre predecessour entra par le baron de vous ouster de la vewe.—HILL. Il y ad degree entre launcestre et heir, par cause de quel degree leir le deit conustre, mes entre predecessour et successour il ny ad mye degree ; et ovesqe ceo vous nestes pas en cas destatut. —Par quei la vewe lui fust graunte. A.D. 1346.

(96.)[1] § Un *Cui in vita* fut porte, et supposa lentre le tenant par le baron.—*Skip.* Nous vous dioms qe nous entrames par un tiel, et ne mye par le baron ; prest, &c.—*Grene.* Vous veietz bien coment cel entre quel il ad traverse si est le lees nostre baron, de quel lees nostre accion est ore pris, par quei a prendre issue sur cel qest nostre accion, saunz dedire le en la manere come nous la pernoms en nostre accion, et par tielx paroles, si semble il qe ne serra resceu.—Par quei *Skip.* dit qil entra par un tiel, saunz ceo qe le baron lui lessa come il ad dit ; prest, &c.—*Grene.* A parler qe vous entrastes par autre qe J. ceo serreit plee en abatement de brief ; par quei, en taunt qe vous avetz dedit le lees, vous avetz respondu a nostre accion, par quei nous voloms averer qe nostre baron vous lessa ; et al remenant, quel proprement cherreit auxi come en abatement de brief, puisqe vous avetz plede plus haut, ne devetz a ceo estre escote.—Par quei a drein lissue fut soul pris sur le lees le baron, &c. *Cui in vita.*

[1] From H. alone.

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A.D. 1346. Aid-prayer.

(97.) § *Birton* came to the bar and said, for a tenant, that one J. gave the land to him for term of his life, and limited the remainder over, by the same deed, to one R. son of E. de S.; and *Birton* made *profert* of the deed, and prayed aid of R.—*Sadelyngstanes*. You see clearly how he shows that R. has nothing now, but that R.'s estate begins after his death, so that no right can repose in him while the tenant for term of life is living. And moreover, whereas the remainder is limited to Robert son of E. de S., we say that R. cannot be the son of E., because he is a bastard, and for that reason the remainder cannot be executed in him, for, if he were to sue a Formedon in the remainder on that specialty, I could aver that he is a bastard, and I should bar him, and for the same reason I shall oust him now from aid.—*Birton*. I say that in that case it would not be a plea to allege that he was a bastard, for, were he bastard, or were he mulier, if he purchased by such a name, and if he was the person that purchased by such name, the purchase is good enough, and therefore issue cannot be taken on that. And besides, he is described in the deed as the [illegible] of his mother, in which case, even though he be a bastard, still by law he has a mother.—Therefore, although he could not have a father, in the end, notwithstanding all these exceptions, the aid was granted.

Entry *sine assensu Capituli*.

(98.) § The Bishop of Coventry and Lichfield brought his writ of Entry against William de Baddeby, chanter of the church of St. Chad, Lichfield, prebendary of S., and parson of the church of S., and demanded two acres of land, into which the tenant had not entry but after the lease which one J., the Bishop's predecessor, made thereof, without the consent of the Chapter, to one T., chanter of the church aforesaid, the tenant's predecessor.—*Mutlow*. Judgment of the writ, for he describes us as chanter of the church of St. Chad, whereas we ought to be described as chanter in the church; judgment.—STONORE. There are

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(97.)[1] § *Birtone* vint a la barre et dit, pur un tenant, qun J. dona la terre a luy a terme de sa vie, et tailla outre le remeindre, par mesme le fait, a un R. le fitz E. de S. ; et mist avant le fait et pria eide de R.—*Sadl.* Vous veietz bien coment il moustre qil nad rienz aore, mes qe son estat comence apres sa mort, issi qe nul dreit en luy, vivant le tenant a terme de vie, purra reposer. Et, ovesqe ceo, la ou le remeindre est taille *Roberto filio* E. de S. nous dioms qe R. ne poet le fitz E. estre, qar il est bastarde, et par taunt cest remeindre ne poet estre execut en lui, qar, sil fut a suyr un Forme de doun en remeindre par cele especialte, jeo poay averer qil [est] bastarde, jeo luy forclorrai, et par mesme la resoun jeo luy ousteray aore del eide.—*Birtone.* Jeo die qil ne serreit pas plee dallegger qil fust bastarde, qar, fust il bastarde, fust il mulire, sil purchace par tiel noun, et soit mesme la persone [qe] par tiel noun purchace, le purchace est assetz bone, par quei homme ne poet sur ceo issue prendre. Et, ovesqe ceo, il est nome en le fait le fitz sa mere, ou, mesqil soit bastarde, unqore par lei il ad mere.—Par quei, coment qil ne pust pere aver, a derreyn *non obstante* touz ces chalenges, leide fut grante. A.D. 1346. Eide-prior.

(98.)[1] § Levesqe de Coventre et de Lichefelde porta son brief Dentre vers William de Baddeby, chantour del eglise de Seint Cedde de Lichefelde, provendrer de S., et persone del eglise de S., et demanda ij. acres de terre, en les queux il navoit entre si noun puys le lees qun J., son predecessour, saunz assent del Chapitre, de ces enfist a un T., chauntour del eglise avant dit, predecessour le tenant.—*Mutl.* Jugement de brief, qar il nous nome chauntour del eglise de Seynt Cedde, la ou nous serroms nome chauntour en leglise ; jugement.—Ston. Il y ad chauntour Entre *sine assensu Capituli.*

[1] From H. alone.

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A.D. 1346. chanters in a church and chanters of a church, but there are more chanters in the church than of the church ; therefore answer over.—*Mutlow.* Again you see plainly how he makes us parson of the church of S., and the writ purports afterwards that one predecessor of the Bishop leased to one T., chanter "*ejusdem ecclesiæ*," which words would refer to the church of S., which is the church named next before, and that is the church of which he makes us parson ; therefore we demand judgment of the writ.—*Grene.* We have made him chanter of the church of St. Chad, and we have supposed that the lease was made to one T., your predecessor, chanter of the same church, and that can only refer to the church of St. Chad. And besides, you have had view, and have since taken a *Prece partium*, and therefore, even though that were a good exception, you ought not to have advantage of it.—*Skipwith.* Again judgment of the writ, for it causes us to be described as chanter, prebendary, and parson, and in the writ he supposes that the lease was made to T., chanter, our predecessor, and thereby it is proved that the writ would be good against us by the description of chanter alone, for in accordance with the description by which our predecessor purchased the writ ought to be brought against us ; and since you describe our predecessor only as chanter, so it seems that by that description alone could the writ have maintained against us ; therefore since there is no matter to justify the description of us by the other titles of dignity, it seems that the writ is abated.—*Grene.* Surplusage of titles of dignity will never abate my writ if, *de rei veritate*, you bear the same names ; and even though exception could be taken thereon you have passed the point because you have had view, as above.—Therefore the exception was ousted.—*Mutlow.* Then we tell you that we hold the same land as in right of our prebend, which is of the patronage of the Bishop of Coventry and Lichfield, and we pray aid of him as of patron, and of him and of the Dean and Chapter as Ordinary.—HILLARY. The

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en leglise et chauntour del eglise, mes ils y sont plusours des chauntours en leglise qe del eglise; par quei responez outre.—*Mutl.* Unqore vous veietz bien coment il nous fait persone del eglise de S., et le brief voet apres qun son predecessour lessa a un T., chauntour *ejusdem ecclesiæ*, quel referreit al eglise de S. prochein nome a devant, et ceo est leglise dount il nous fait persone; par quei nous demandoms jugement de brief.—*Grene.* Nous avoms fait chauntour del eglise de Seint Cedde, et avoms suppose qe le lees se fist a un T., vostre predecessour, chauntour de mesme leglise, quel ne poet referer mes al eglise de Seynt Cedde. Et, ovesqe ceo, vous avetz eu la vewe, et avetz pris puis un *Prece partium*, par quei mesqil fut chalenge, vous ne devetz avauntage aver.—*Skip.* Unqore jugement de brief, qar il nous fait nomer chauntour, provendrer, et persone, et en lentre de brief il suppose qe le lees se fist a T., chauntour, nostre predecessour, et par tant est prove qe soul par noun de chauntour le brief serra bon vers nous, qar acordant al degree qe nostre predecessour le purchacea acordant a cel degree deit le brief estre porte vers nous; et puisque vous li faites soul come chauntour, nostre predecessour, si semble il qe soul par cel noun poet le brief aver este mayntenu vers nous; par quei, puis qil ny ad pas matere par quei nous serroms nome par les autres nouns de dignite si semble il qe le brief est abatu.—*Grene.* Le surplus des nouns de dignite nabatra jammes nom brief si, *de rei veritate*, vous portez mesme les nouns; et, mesqe ceo poait estre chalenge, vous estes passe le paas, pur tant qe vous avetz eu la vewe, *ut supra*.—Par quei il fut ouste.—*Mutl.* Donqes vous dioms qe nous tenoms mesme la terre come de dreit de nostre provendre, quel est del patronage Levesqe de C. et de L., et prioms eide de lui come de patroun, et de ly et del Dean et Chapitre come Ordiner.—Hill. A.D. 1346.

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A.D. 1346. same Bishop of whom you pray aid is demandant, and has counted that the land is the right of his church, and therefore you shall not be admitted to have aid of him, nor of the Dean and Chapter either, since without having aid of the patron you cannot have aid of the Ordinary.—Therefore he was ousted from having aid.—And this was extraordinary, because in this same term, on a writ of Annuity brought against a Prior as parson of a church, he had aid of himself as patron,[1] and for the same reason this tenant should have aid of the demandant, &c.

Execution of damages. (99.) § Herbert St. Quintin heretofore recovered damages on a writ of False Judgment, and had an *Elegit* directed to the Sheriff, who returned that the party had no lands except lands which were in Ancient Demesne.—*Moubray*. We pray execution of those lands, because it would be hard law if one should have lands within the King's power, and execution of a judgment in the King's Court in respect of those lands should not be had.—WILLOUGHBY. Certainly you shall not have execution, because in this case you will never have execution except of frank fee, for if you were to have it the nature of the tenancy would thereby be changed.—*Moubray*. Then, Sir, we say that the party has lands which were rendered to him by fine in this Court, by which fine the tenancy being changed has become frank fee. And he alleged a certain quantity of the tenancy to be so affected, and prayed execution of that.—And that was granted to him, &c.

Right of Advowson. (100.) § Our Lord the King brought a writ of Right of Advowson in respect of tithes against the Prior of the Hospital of St. John of Jerusalem in England, and he joined the mise on the greater right.—And the Court would not award a writ to cause four knights to come to

[1] Above, No. 82 (pp. 470-472).

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Mesme Levesqe de qi vous prietz eide est demandant, et ad counte qe cest le dreit de seglise, par quei a aver eide de lui ne serrez resceu, ne del Dean et Chapitre nent le plus, puisqe saunz patroun ne poetz eide del Ordiner aver. —Par quei il fust ouste del eide.—*Et hoc mirum*, qar en mesme ceste terme en brief Dannuite porte vers un Priour come persone dune eglise il avoit eide de luy mesme come patroun, et par mesme la resoun del demandant, &c.

Execucion de damages.

(99.)[1] § Herbert Seynt Quyntyn autrefoith recoveri damages en un brief de faux jugement, et avoit le *Elegit* al Vicounte, qe retourna qe la partie navoit nulles terres mes terres qe furent en auncene demene.—*Moubray*. Nous prioms execucion de ceux terres, qar il serreit forte lei qil avereit terres deinz le poer le Roi, et qe execucion de jugement en la Court le Roi de ceux terres ne fuissent faitz.—Wylby. Certeinement ceo naveretz pas, qar vous naveretz jammes, en ceo cas, execucion fors de fraunke fee, qar, si vous averetz, par cele serra la nature de la tenance chaunge.—*Moubray*. Sire, donqes nous dioms qil ad terres queux furent renduz a luy par fine ceinz, par quel fine la tenance chaunge est devenu fraunke fee. Et alleggea come bien de tenance ceo fut, et pria execucion de ceo. Et ceo a ly fut grante, &c.

Droit davoesoun.

(100.)[2] § Nostre seignour le Roi porta brief de Droit davoesoun des dismes vers le Prior del Hospital de Seint Johan, et il joint la mise sur le meuthere dreit.—Et la Court ne voleit agarder brief de faire vener iiij. chivalers

[1] From H. alone. The report may be in continuation of Y.B., Easter, 20 Edw. III., No. 25 (pp. 204–210).

[2] From L. alone until otherwise stated. The report appears to be in continuation of Y.B., Trin., 19 Edw. III., No. 12, and Y.B., Easter, 20 Edw. III., No. 66. The record is *Placita de Banco*, Easter, 20 Edw. III., R°. 373, and is cited Y.B., 20 Edw. III., First Part, pp. 413–417.

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A.D. 1346. elect the Grand Assise, but only a *Venire facias* to cause twelve jurors to come, because judgment ought not to be final against the King, but in case they give a verdict for the King the judgment will be final.—And so also on a writ of Right, by reason of the smallness of the quantity of the land which had been demanded, a *Venire facias* has been seen to be awarded to cause twelve jurors to come, without, &c., in lieu of the Grand Assise.

Right. § The King brought his writ of Right of Advowson against the Prior of the Hospital [of St. John of Jerusalem in England], who put himself upon a jury in lieu of the Grand Assise, and had a day over. On that day a *Venire facias* was returned, as to which the King's attorney said that the writ which was returned was sued at the suit of the Prior, and that the writ which was sued at the suit of the King had not been returned, and therefore he disavowed the suing of that writ which had been returned, and prayed an *alias Venire facias*. Therefore he had it, and the other writ was quashed.—And they had a day now, and now the Prior was essoined "*unde Magna Assisa*," and exception was taken to that on the ground that an essoin lies only on the next day after the mise has been joined. And it was said that, in this case, an essoin lies after each appearance.—Therefore the essoin was adjudged and a day was given, &c.

Trespass. (101.) § John de Stonore brought his writ of Trespass against the Abbot of Buckfastleigh, as appears in last Easter Term, and his writ purported that, whereas he had the Hundred of Ermington, which extends throughout the whole of his manor of Ermington, by reason of holding which Hundred he was entitled to have execution of all

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de eslire la graunt assise, mes une *Venire facias* de fere vener xij., pur ceo qe le jugement ne deit mie estre final encountre le Roi, mes en cas qils passent pur le Roi le jugement serra final.—Et auxint en brief de Dreit, pur petitesce de la terre qad este demande, homme ad vewe *Venire facias* estre agarde de faire vener xij., saunz, &c., en lieu de graund assise. A.D. 1346.

§ Le[1] Roi porta son brief de Droit davowesoun vers le Priour del Hospital, qe se mist en Jûre en lieu de grande Assise, et avoit jour outre, a quel jour un *Venire facias* fut retourne, ou lattourne le Roi dit qe cel brief qe fust retourne fust suy a la sute le Priour, et le brief qe fust suy a la sute le Roi ne fust pas retourne, par quei il desavowa la sute de cel brief qe fust retourne, et pria un *Sicut alias*, par quei il avoit, et lautre brief fust quasse.[2]—Et avoint jour aore, et ore le Priour fust essone *unde Magna Assisa*, et chalenge de ceo qe lessone ne gist mye mes al prochein jour apres la mise jointe. Et fust dit qe apres chequne apparaunce lessone, en ceo cas, gist.—Par quei il fust ajugge, et ajourne. &c. Droit.

(101.)[3] § Johan de Stonore porta son brief de Trespas vers Labbe de Burkfastre, *prout patet Termino Paschæ ultimo præterito*, et son brief voleit qe, come il avoit Lundrede de Ermyntone, qe sestent par tut son maner de E., par cause de quel hundrede il avera execucion de Trespas.

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[1] This report of the case is from H. alone.

[2] The passage on the roll which relates to the *Venire* is as follows :—Præceptum est Vicecomiti quod venire faciat hic in Octabis Sancti Johannis Baptistæ, tam prece prædicti Johannis [de Clone, the King's attorney,] qui sequitur, &c., quam preco prædicti Prioris, xij., &c.

[3] From H. alone. This report is in continuation of Y.B., Easter, 20 Edw. III., No. 32 (pp. 236-257). The record, *Placita de Banco*, Easter, 20 Edw. III., R°. 84d., is there cited.

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A.D. 1346. the King's commands made to the Sheriff, so as to execute them by his own bailiffs on the Sheriff's precept made to them to do so, that is to say, to make summons, attachment, and distress, and whereas there came a command to the Sheriff to levy of one J.[1] fifteen[2] shillings of Green Wax, and, because the said J. was resiant within the said Hundred, the Sheriff sent his precept to the bailiffs of the said John de Stonore to make the levy, and the Abbot prevented them so that they were unable to levy the Green Wax. And by his count John de Stonore said that his bailiffs would have taken a distress for the Green Wax, and that the Abbot would not permit them to distrain, and took away the wand of his bailiff, tortiously, &c.—As to that *Mutlow* then said, for the Abbot, that this same person on whom the distress was taken was his tenant of his manor of R.[3], within which manor he has franchises and customs such that at whatsoever time a distress may be taken of him, or of any of his tenants, for Green Wax, the distress shall be taken to the said Abbot's pound within the same manor, to remain there during three days and three nights, so that, if the person to whom the beasts belong comes in the meantime, and makes payment, he shall have his beasts, and, if not, it is then lawful for the bailiff to drive them wheresover he pleases. Of this franchise and custom the Abbot and his predecessors have been seised from time immemorial. And we tell you, said *Mutlow*, that we allowed his bailiff to distrain peaceably, but afterwards the bailiff would have driven the beasts whither it seemed good to him, and we did not permit him, *absque hoc* that we hindered him in any other manner; ready, &c. And we do not understand that in respect of such hindrance he can maintain this action against the Abbot.—And then they demanded judgment

[1] John de Mouthecombe, according to the record.

[2] Fifty, according to the record.

[3] Battekesburghe, according to the record.

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tous les mandementz le Roi fait a Vicounte, a faire par ses baillifs demene par precepte de Vicounte de ceo a eux fait, cest a dire, a faire somons, attachement, et destresse, ou mandement vint al Vicounte a lever dun J. xv.*s.* de verte eire,[1] et pur ceo qe le dit J. [fut] reseaunt deinz le dit hundrede si maunda le Vicounte son precepte a les baillifs le dit J. Stonore a faire le leve, et Labbe les destourba *quo minus* il ne poient la verte eyre lever. Et par son counte il dit qe ses baillifs vodreint aver pris un destresse pur icele, et qe Labbe ne les vodreit pas suffrer a destreindre, et tolli son bailliff sa verge a tort, &c.— A quei adonqes *Mutl.* pur Labbe dit qe mesme celi sur qi la destresse fust pris fust son tenant de son maner de R., deinz quel maner il ad tielx fraunchises et custumes qe a quele houre qe destresse soit pris de luy ou dasqun de ses tenantz pur la verte eire qe la destresse serra amene al parke le dit Abbe deinz mesme le maner, a demurer illeoqes par iij. jours et iij. nuytz, issi qe en le mene [temps] si celi qi bestes [sont] vigne et face le paye qil avera ses bestes, et si ceo noun qe adonqes lise al baillif de les chacer par la ou il luy plest, de quel fraunchise et custume lui et ses predecessours ount este seisiz de temps dount il nad memore. Et vous dioms qe nous suffrimes son baillif peisiblement a destreindre, mes apres il les voleit aver chace la ou beal li fust, et nous ne luy suffrimes pas, saunz ceo qe en autre manere nous luy destourbames; prest, &c. Et nentendoms pas qe de tiele detourbaunce il poet vers luy ceste accion meyntener.—Et adonqes ils

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[1] de extractis Scaccarii in the record.

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demanderent jugement pur Stonore, puisqil avoit conu qil fust Lundrede le Roi. et par taunt son ministre, a qi attient affaire le leve de la dette le Roi, et cel usage quel il ad parle ne poet pas encountre le Roi cheire en fraunchise ne en custume, pur ceo qe vous ne claymes pas par cele fraunchise a faire le leve mesme par cause de cel despite, ne vous ne clemes a aver nul profit par enchesoun de cel enparker en vostre soil, par quei nel poetz vers le Roi clamer.—Sur quei ils furent ajournes tanqore.—Et ore WILBY. dit qen tant come en la demoustraunce fust pris pur cause del accion qe son baillif fust destourbe qil ne poait destreindre a faire le leve de la dette le Roi, ou en son respons, come est prove par roulle, est prove qil dit qil suffri pesiblement a destreindre, quele chose, a ceo qe nous entendoms, fut suffisaunt respons a vostre demoustraunce, issi qe vostre demure en jugement sur lautre point, cest a savoir, de ses usages, nest rienz a purpos, par quei il semble qil covent qe vous soietz mys a repleder.—*Thorpe.* Ceo ne poet estre, qar quant il conust qil nous destourba a amener la destresse la ou nous plust, sil nust done cause pur quei il poit cele chose aver fait, il dust aver este atteint, qar, sil moi denei a faire leffecte de la destresse, il moi destourbe par lei a faire la destresse; par quei il covendreit qe cel point soit ajugge, et certeinement il ny avoit nul de nous qe nentendi qe quant le respons fut done qil ne nous covensist a respondre a les usages queux il avoit clame.—WILBY. Jeo croi bien; mes jeo pose qil ust dit nent plus a vostre usage mes qe la ou vous supposastes qil vous destourba a faire la destresse qil vous suffri del faire, nust ceo este bon respons?—*quasi diceret sic.* Par quei, mesqil

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A.D. 1346. has said further in his answer what is immaterial, no regard will be paid to that. And as to your statement that, if you are prevented from driving away the distress after you have taken it, you are in law prevented from making the distress, you only say that which you would like to be the fact, because, if you are prevented from driving away the distress after you have taken it, you will have a writ of *Rescous*, but not by reason of a hindering which is made so that you cannot distrain.—*Grene.* Very well, Sir. Then, in accordance with the manner of the commencement of your ruling in this plea, we take your records to witness that his answer could then be only that he had peaceably permitted us to distrain, and that plea, according to your contention, was a traverse of our action, and in that case, according to law, when there is a traverse by a party, he must tender averment of his traverse, and, inasmuch as there was then no tender of an averment, we now demand judgment against him as against one who has made no defence.—*Mutlow.* And we take your records to witness that we said that we permitted him to distrain, and said that we prevented him from driving the beasts away, *absque hoc* that we hindered him in any other manner, and of that we tendered averment, and that averment would relate to our plea which we had taken as a traverse of your declaration, and you then pleaded to a matter which had been pleaded collaterally to your action, not maintaining your declaration, which had been traversed by my plea, and, inasmuch as you have not maintained your declaration, we demand judgment.—Then W. Thorpe (J., K.B.) came into the Court and said that the plaintiff's writ was in general terms, that is to say, that he was prevented in such a way that he could not make the levy of the Green Wax, and though he had specified the nature of the prevention in particular, that is to say, that he could not make the distress, yet since you have confessed that you prevented him from driving the beasts whither he pleased,

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eit parle plus outre en son respons, qe nest pas a la matere, homme navera a cele nul regarde. Et a ceo qe vous dytes qe si vous soietz destourbe denchacer la destresse apres qe vous leiez pris qe vous estes par lei destourbe a faire la destresse, vous dites talent, qar, en cas qe vous soietz destourbe a chacer la destresse apres qe vous leietz pris, vous averetz brief de Rescous, mes ne mye par cause dune destourbaunce qest faite qe ne poetz destreindre.—*Grene.* Bien, Sire. Donqes solom la manere qe vous comencez a reuller ceo plee nous pernoms vos recordes qe son respons ne poait adonqes estre mesqil nous avoit suffri pesiblement a destreindre, quel plee a vostre entente si fut le traverse de nostre accion, ou par lei, quant de partie serra traverse, il covent qil tende daverer son traverse, et de ceo qe adonqes il nestoit pas tendu daverer si demandoms jugement a ore de lui come de noun defendu.—*Mutl.* Et nous pernoms voz recordes coment nous deismes qe nous lui suffrimes a destreindre, et deismes qe nous lui destourbames de les enchacer, saunz ceo qe lui en autre manere lui destourbames, et ceo tendimes daverer, quel averement referreit a nostre plee qe avioms pris en traverse de vostre demoustraunce, ou vous adonqes pledastes a chose qe fust plede en costeant vostre accion, nent meyntenant vostre demoustraunce, quele par mon plee fut traverse, et, par taunt qe vous navetz vostre demoustraunce meyntenu, jugement.—Adonqes vint W. Thorpe en la place, et dit qe son brief fut general, saver, qil fut issi destourbe *quo minus* il ne poait le leve de la verte cire faire, et coment qil eit desclare en especiale la destourbaunce, cest a dire, qil ne poait faire la destresse, puisqe vous avetz conu qe vous ly destourbastes del enchacer

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ou lui plust, quele destourbaunce sur cest original, qest general, il avera tant davantage del prendre de vostre conissaunce come sil fut desclare en sa demoustraunce.—Wilby. Mesqe le brief soit general, qe poet comprendre divers materes, et il desclare en sa demoustraunce quel en especial cest, jeo dye qe a cele qe en sa demoustraunce est pris pur cause suffit a respondre, saunz aver regarde as autres materes queux ils purroint aver desclare, par quei dautre manere de destourbaunce qe de cele qest compris en sa demoustraunce ne poet il avantage prendre.—W. Thorpe. Au meyns, quant ils demurerent en jugement qe les usages queux il avoit allegge ne purreint chere en fraunchise nen custume, et par tant fust il de luy attendre de cele demoustraunce, et adonqes tiele matere qe vous aore movetz nestoit pas plede, mes fut en jugement sur mesme le point ovesqe luy, jeo dye qe par taunt qe se ad mys en jugement sur cel point ovesqe luy qil ad accepte qe le pleintif lui deit charger de la destourbaunce fait apres la destresse pris ; et par le brief qest general nous avoms garrant a lui resceiver de assigner autre matere de destourbaunce qil ne fut avant, et cest accepte par lui par la manere de sa demure. Par quei il semble qe sur cel point covent il unqore qil soit jugge ; et, mesqe ceo fust a pleder unqore, jeo croy qe qi qe moi destourbe a enchacer la destresse qe jai pris qil moi destourbe par lei a destreindre.—Wilby. Donqes y niad nient plus ; mes nous entendoms daver este descharge de cel point de lei qe vous avetz mys en jugement, par la resoun susdite ; mes puis qe vous ne voillez departer de cel demure en jugement si covent il qe nous aviseroms.—*Grene.* Jeo

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A.D. 1346. has claimed cannot be called a custom such that he could claim it of right against us who are the King's officer; for if I have within my manor a court leet of all my tenants, and have always held my court leet in the house of one of my tenants, observe now that it is an easement for him so that he will not have to travel far; nevertheless, if I wish to hold my leet elsewhere, it is permissible, notwithstanding that custom; and the reason is no other than that in performing such offices I am the King's officer, in which case, even though those who have been the King's officers are those who have committed a contempt against us, that cannot be drawn into a custom as against the King or his officers, and for the same reason in this case. —*Mutlow.* I can claim a franchise against the King by title of prescription just as well as if it had been granted by the King's charter, so that customs which give us profit and easement can be claimed against the King's officers just as much as against any one else. Now we say that a profit accrues to us by this custom, inasmuch as our tenants will be for that reason saved from damage in that matter; therefore, &c.—W. THORPE. You cannot claim the usage as a franchise, for it would be an extraordinary claim in an Eyre to claim such a franchise; nor can it be claimed as a custom, because, when the King's officer takes a distress for the King's debt, I say that he will be able to sell it immediately in order to make a levy of the money; and if you would allege an usage to the contrary, that is to say, that he ought not to sell, that could not fall under the head of usage, because it is a negative, and to restrain the King from making a levy of his debt by a negative usage, that is to say, that he ought not to sell the distress, is not permissible. And for the same reason he cannot any more restrain the King by such usage from taking the distress whithersoever he pleases, unless he would charge himself with making the levy, and that he does not do; therefore, &c.—*R. Thorpe.* As to that, Sir, we cannot say anything more,

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vous essoignera qe ceo qil ad clame ne poet estre dit usage tiel qil le dut clamer vers nous qe sumes ministre le Roi en droit ; qar si jeo ay lete deinz mon maner de tous mes tenantz, et tut temps ay tenu ma lete en le mesoun un de mes tenantz, veietz cy qe ceo est un eese pur lui qil ne travelera pas loyns ; nequident, si jeo voil tener par ailour ma lete, il est suffrable, nent countre esteaunt cel usage ; et la cause nest nul autre mes pur ceo qen fesaunt tielx offices su mynistre le Roi, ou, mesque ceux qount este ministres le Roi qount fait a nous un despit, ceo ne poet estre mene vers le Roi ne ces ministres en usage et par mesme la resoun en ceo cas.—*Mutl.* Par title de prescripcion jeo clameray auxi bien fraunchise vers le Roi come si ceo fust par la chartre le Roi, issi qe usages qe dounent a nous profit et eese auxi bien vers les ministres le Roi serra ceo clame come vers autre. Ore dioms qe profit vers nous par cel usage acrest par taunt qe noz tenantz serront par cel enchesoun de cel sauves de damage ; par quei, &c.—W. Thorpe. Come fraunchise ne poetz usage clamer, qar il serreit un merveillous cleyme en Eire de clamer un tiel fraunchise ; ne custume ne poet ceo estre clame, qar, quant ministre le Roi prent destresse pur la dette le Roi, jeo die qe tantost il le purra vendre a faire le leve de deners ; et, si vous vodrietz allegger un usage al encontre, cest a dire qil ne dust vendre, cella ne poet chere en usage, qar cest un negatif, et a restreindre[1] le Roi de faire la leve de sa dette par un usage negatif, cest a dire qil ne les deit vendre, nest pas suffrable. Et par mesme la resoun ne poet il nent plus restreindre le Roi damener la destresse la ou il lui plest par tiel usage, sil ne se voleit mesme charger de faire la leve, et ceo ne fait il pas ; par quei, &c.—[*R.*] *Thorpe.* Sire, quant a ceo cy nous ne

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[1] MS., destreindre.

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savoms nent plus dire, mes prioms nostre jugement. Mes, Sire, pur la destourbaunce qe fut faite a nostre baillif qil ne poait faire lattachement pur hue et cric leve, qe fut un autre membre de nostre demoustraunce, si sumes en jugement sur autre point de lei,[1] *prout patet Paschæ ultimo.* A.D. 1346.

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[1] The passage in the declaration is in the record as follows:—"Cum prædicti Abbas et alii "... in separali piscaria ipsius "Johannis de Stonore et "Johannis filii ejus, apud "Ermyntone, vi et armis, &c., "piscati fuissent, et piscem "cepissent, et quidam Walterus "de Screchesle, senescallus ipsius "Johannis, et Robertus de "Cundicote, ballivus manerii sui "de Ermyntone, super ipsos "Abbatem et alios hutesium "levassent ut pro re contra "pacem facta, super quo venit "quidam Ricardus Giffard, "ballivus ipsius Johannis de "Stonore, ad hundredum præ-"dictum, cum alba virga sua, et "ipsos Abbatem et alios attachi-"asse voluisset, prout decet, "prædicti Abbas et alii vi et "armis, scilicet gladiis, &c., "ipsum Ricardum, &c., balli-"vum, &c., impediverunt."

The portion of the plea relating to this same matter is as follows:—"Quo ad hoc quod "prædictus Johannes de Stonore "queritur quod ipse Abbas et "alii impediverunt prædictum "Ricardum, ballivum, quo "minus ipsos attachiare potuit "pro hutesio super ipsos levato, "dicit quod ipse est dominus "manerii de Battekesburghe, "quod est infra hundredum de "Ermyntone, infra quod maner-"ium ipse habet visum franci "plegii, et omnia alia quæ ad "visum pertinent, de omnibus "tenentibus et residentibus in-"fra manerium illud, et quod "ipse et omnes prædecessores "sui Abbates tenentes ejusdem "manerii usi sunt visu illo, et "ibidem visum habuerunt a "tempore quo non extat mem-"oria, absque hoc quod prædictus "Johannes de Stonore aut ali-"quis alius tenens hundredi de "Ermyntone prædicti de aliqua "re infra manerium suum præ-"dictum facta tangente arti-"culum visus franci plegii "cognitionem vel punitionem "habuerunt, seu emendas ce-"perunt, quod quidem mane-"rium situm est super ripam "de Erme, et quæ ripa est "solum ejusdem subtus ripam "illam tam large quam prædic-"tum manerium se extendit "super ripam illam, usque "filum aquæ ejusdem ripæ ex "parte illa ubi prædictum "manerium situm est. Et est "parcella ejusdem manerii, in "qua riparia in loco illo idem "Abbas et prædecessores sui "piscati sunt a tempore quo "non extat memoria, ut in "solo suo proprio. Et dicit "quod ipse et alii prædictis "die et anno ibidem piscati

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A D. 1346. that we pray judgment in our favour.—HILLARY. How can we do any such thing, since you are at issue to the country on one point, and the damages will be assessed entirely by the jury? Therefore as to giving judgment that you are to recover your damages by assessment, whereas they will be assessed by the inquest which is to be taken, it seems that, before that verdict has passed, it cannot be done.—*R. Thorpe.* If issue had been joined on any point of the action, it would be right that we should wait; but, Sir, the issue which is taken relates only to an accessory matter, that is to say, *alia enormia*, and enquiry will never be had respecting that issue if the judgment with regard to the principal matter should pass against us; therefore for the sake of that issue yet to be taken, which is only accessory to the action, you ought not to stay giving us

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A.D. 1346.

Sequitur qe nous prioms nostre jugement.—Hill. Coment poms tiel chose faire, puisqe dun point vous estes a issue de pays, par quel enqueste les damages serront entierment taxes? Par quei de faire un agarde qe recoverez voz damages par taxacion, la ou par enqueste qest a prendre ils serront taxes, avant qe cel soit passe, si semble il qil ne poet estre fait.—[*R.*] *Thorpe.* Si lissue fust joint sur asqun point del accion, il serreit resoun qe nous attendissoms; mes, Sire, lissue qest pris nest mes del accessore, cest a dire, *alia enormia*, quel issue ne serra jammes enquis si le jugement del principal passe countre nous; par quei par cause de cel issue a prendre, qe nest mes laccessore del accion, ne devetz sursere de nous doner jugement.—

"fuerunt. Et super hoc veneruntprædicti Walterus de Screcchesle, et Robertus de Cundycote, et hutesium infra manerium illud super ipsum Abbatem et alios levaverunt, per quod prædictus Ricardus, ballivus prædicti Johannis de Stonore de hundredo suo prædicto, venit infra manerium prædicti Abbatis prædictum, et eos attachiare voluit occasione prædicta, ipse Abbas et alii qui venerunt in auxilium cum ipso Abbate ipsum ballivum impediverunt, absque hoc quod ipsi alibi infra hundredum de Ermyntone prædictum piscati fuerunt, vel alibi hutesium super eos levatum, vel ipsum ballivum aliquod attachiamentum facere alibi impediverunt, et non intendit quod de tali impedimento injuriam in personis suis assignare possit, &c."

The portion of the Abbot's plea which relates to this matter is recited in Stonore's replication, which continues as follows:—"Dicit quod ipse non cognoscit quod idem Abbas haboat visum franci plegii in manerio prædicto, et, ex quo prædictus Abbas non dedicit quin hutesium super ipsum et alios, &c., extitit levatum eo quod in riparia prædicta piscati fuerunt, in quo casu idem Abbas judex suus proprius in sua querela propria de juro esse non debet, et, ex quo idem Abbas expresse cognovit ipsum impedivisse prædictum ballivum hundredi, &c., ipsos Abbatem et alios attachiare pro hutesio, &c., cui nemini de lege licuit impedire, maxime cum idem ballivus minister Regis sit in hoc casu, et, ex quo idem Abbas et alii actionem versus eum habuisse potuerunt ad communem legem et habuisse debuerunt, petit judicium, et damna sibi adjudicari."

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A.D. 1346. judgment.—HILLARY. Certainly what you say is true.—*Mutlow.* But, Sir, it is not as he says, because he counted that we took away the wand from his bailiff, and broke it, in respect of which matter we are at issue,[1] and at that time when the issue was taken between us it was said by the whole Court that whoever takes his wand from a bailiff, because it is an emblem of the peace and of his office, commits an offence against all the articles of his office, and consequently that is one of the principal points of his action, and therefore until the verdict of the jury has passed by which the damages can be assessed, you cannot give judgment with regard to any part.—W. THORPE. All that was only included in the writ by the words "*alia enormia,*" and so it is only accessory to his action; therefore it is not necessary to wait for the verdict.—But, in the end, a *Prece partium* was taken between the parties, without essoin, and a day was given over, &c.

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[1] The point upon which issue was joined to the country was, according to the record:—"quo "ad hoc quod prædictus Johan- "nes de Stonore supponit ipsos "Abbatem et alios venisse vi et "armis, et virgam a præfato "Ricardo, ballivo, &c., cepisse, "dicunt quod non sunt inde "culpabiles."

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A.D. 1346.

Hill. Certes vous dites verite.—*Mutl.* Mes, Sire, il nest pas issi come il parle, qar il counta qe nous lui tollimes la verge de son baillif, et la debrusames, de quel chose nous sumes a issue ; et adonqes, quant lissue entre nous fust pris, fut dit par tut la Court qe qi qe tut baillif sa verge, pur ceo qe cest signe de pees et doffice, qil fait offens a touz les articles de son office,[1] et par tant est ceo un des principals pointz de saccion, par quei tanqe lenqueste soit passe par quel les damages pount estre taxes si ne poetz de nulle parcelle rendre jugement.—W. Thorpe. Tut cel ne fut mes compris en le *alia enormia*, et issi accessore al a saccion ; par quei il ne covent pas dattendre.—Mes a derrein un *Prece partium* fust pris entre eux, *sine essonio*, et jour done outre, &c.[2]

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[1] The reference is to a statement made by Sharshulle, J. :—"La verge qe baillif porte est signe de pees et doffice ; par quei qi qe luy tout cele il fait offens a touz les articles de la fraunchise queux il ad a mettre en execucion." Y. B., Easter, 20 Edw. III., p. 241.

[2] *See* further the old editions of the Year Books, Hil., 21 Edw. III., Nos. 10 and 11 (fo. 3 and fo. 3b.). The judgment, as it appears on the roll, was :—"Quia prædicti Abbas et alii superius expresse cognoverunt quod prædictus Johannes de Stonore est dominus hundredi prædicti, et quod prædictus Ricardus Giffard tunc fuit ballivus illius hundredi, non dedicendo quin idem ballivus districtionem cepisse voluit pro debito Regis per præceptum ei per Vicecomitem missum, videlicet pro prædictis quinquaginta solidis, et id quod iidem Abbas et alii allegant pro usu et consuetudine per præscriptionem temporis eis valere non potest nec debet in hoc casu, maxime cum iidem Abbas et alii virtute illius consuetudinis nullam ad se clamant profic uum, sed citius onus et damnum quam proficuum. Consideratum est quod idem Johannes de Stonore, quo ad hoc, recuperet versus ipsos Abbatem et alios damna sua, quæ taxantur per Justiciarios hic ad viginti libras. Et iidem Abbas et alii capiantur. Et quo ad alium articulum, videlicet, quo ad hoc quod idem Johannes do Stonore supponit ipsos Abbatem et alios impedivisse prædictum Ricardum ballivum hundredi, &c., attachiare eos pro lutesio super ipsos levato, recitatis rationibus prædictis et intellectis quo ad hoc, ob rationes superius allegatas consideratum

Nos. 102, 103, 104.

A.D. 1346. Entry.

(102.) § Note that a man brought a writ of Entry against another, and supposed that the latter had disseised his father of certain tenements, whereupon it was found by the verdict of a jury that he had disseised the father to the demandant's damage amounting to one hundred shillings since the death of the father. And judgment was given that the demandant should recover seisin of the land and his damages to the amount of one hundred shillings.—But it was extraordinary that he recovered damages in respect of a disseisin effected on his father, &c.

Assise of Novel Disseisin.

(103.) § An infant under age brought an Assise of Novel Disseisin against a man in the county of Kent, whereupon the tenant made *profert* of a release from the plaintiff's father with warranty, the date of which was in another county. And, because the plaintiff was under age, they took the assise, and enquired whether the release was the father's deed or not. And it was found that it was not his ancestor's deed, and judgment was given that the plaintiff should recover seisin of the land.—And some said that this was wrong, because persons of that county could not know whether it was the father's deed or not. But, it was said, the record ought to have been sent into the Common Bench, and there it ought to have been tried whether it was the deed of the plaintiff's ancestor or not, and then the record ought to have been sent back to the Justices of Assise to enquire there touching the other circumstances of the deed, that is to say, whether the person who released was of full age, and whether the defendant was seised at the time, &c., and other circumstances, &c.

Note.

(104.) § A man acknowledged certain tenements to be the right of one B., and granted that the same tenements,

Nos. 102, 103, 104.

A.D. 1346. Entre [Fitz., *Damage*. 101.]

(102.)[1]§ *Nota* qun homme porta un brief Dentre vers[2] un autre, et supposa qil avoit disseisi soun pere de certeinz tenementz, ou trove fuit par verdit denqueste qil luy avoit disseisi as damages de *c.s.* puis la mort le[3] pere. Et agarde fuit qe le demandant recoverast seisine de terre et ses damages de *c.s.*, &c.—*Quod mirum fuit* qil recoveri damages de disseisine fait a soun pere, &c.

Assise de Novele Disseisine.

(103.)[4]§ Un enfaunt deinz age porta une[5] Assise de Novele Disseisine vers un homme el counte de Kent, ou le tenant mist avant relees del pere le pleintif ou garrauntie, dount la date fuit en autre counte. Et, pur ceo qe le pleintif fuit deinz age, ils pristrent lassise, et enquistrent si ceo fuit soun fait ou noun. Et trove fuit qe ceo ne fuit pas le fait soun auncestre, et agarde qe le pleintif recoverast seisine de terre.—*Et quidam dixerunt quod male*, qar gentz de cel counte ne purrount mye conustre si ceo fuit soun fait ou noun. Mes dit fuit qe le recorde duist aver este maunde en Bank, et illoqes duist aver este trie si ceo fuit le fait[6] soun auncestre ou noun, et donqes aver remaunde le recorde devant Justices Dassise[7] daver la les autres circumstaunces de fait, saver,[8] sil[9] fuit de pleine age celuy qe relessa, et si le defendant fuit seisi al temps, &c., et autres circumstaunces, &c.

Nota.[11]

(104.)[10]§ Un homme conissat certeinz tenementz estre le dreit un B., et granta qe mesmes les tenementz, qun T.

"est quod iidem Abbas et "alii eant inde sine die, et "prædictus Johannes de Stonore "quo ad hoc nihil capiat per "breve suum."

[1] From L. and C.

[2] C., devers.

[3] L., soun.

[4] From L. and C.

[5] une is from C. alone.

[6] C., fet, here and elsewhere in the report.

[7] C., des Assises.

[8] saver is omitted from C.

[9] Both MSS., qil.

[10] From L. and C.

[11] The marginal note is from L. alone.

Nos. 104, 105, 106, 107.

A.D. 1346. which one T. held for term of his life, at a rent of five shillings for the first three years, and of forty shillings after the end of the three years, and which were to revert to the conusor after the death of the tenant, should remain to B., to hold to B. and the heirs of his body begotten, at a rent, during the life of the tenant, of the aforesaid five shillings payable to the conusor during the first three years, and of forty shillings, after the expiration of the three years, during the whole life of the tenant, and that, after the death of the tenant, B. and the heirs of his body begotten should pay a rent of one hundred shillings, and that, if B. should die without heir of his body begotten, the tenements should return to the donor and his heirs, &c.

Fine. (105.) § A man and his wife granted and released to one B. all that they had of the estate in certain tenements of the wife as executrix of the will of T., to have and to hold to B. and his heirs for ever, and granted that certain tenements which one T. held for his life by lease from the wife, and which were to revert to the wife, as executrix of the will of one T., and to her heirs, should remain to B. and his heirs for ever.

Trespass. (106.) § Note that after the defendant had pleaded Not Guilty on a writ of Trespass, he appeared and said that the plaintiff had been outlawed in an Appeal of felony, and made *profert* of the record thereof *sub pede sigilli*, and did not say that this was since the last continuance. And he was admitted to do this, and the plaintiff was put to answer, &c.

Replevin. (107.) § A man made plaint against another[1] in respect of a cloak[2] tortiously taken in the town of Lancaster, in

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[1] As to the parties see p. 543 note 6.

[2] Two cloaks, according to the record.

Nos. 104, 105, 106, 107.

tient a terme de sa vie, rendant les primers iij. aunz v.*s.*, et apres les iij. aunz xl.*s.*, et les queux, apres la mort le tenant, a luy deivent revertir, remeindreint a B., a luy et a les heires de soun corps engendres, rendant en la vie le tenant les avanditz v.*s.* a luy les primers iij. aunz, et apres les iij. aunz a tote la vie le tenant xl.*s.*, et, apres la mort le tenant, il et les heires de soun corps engendretz c.*s.*, et, sil devye sanz heire de soun corps engendre, qe les tenementz retournent al donour et a ses heires, &c. A.D. 1346.

(105.)[1] § Un homme et sa femme graunterunt et relesserunt a un B. quant qils avoint del estat la femme en certeinz tenementz comme executrix du testament un T., a aver et tener a B. et a ses heires a touz jours, et graunterunt qe certeinz tenementz queux un T. tient a sa vie du lees la femme, et les queux a la femme et a ses heires duissent revertir comme executrix du testament un T. remeindreint[3] a B. et a ses heires a touz jours. *Finis.*[2]

(106.)[4] § *Nota* qapres ceo qe le defendant avoit plede en un brief de Trans de rien coupable, il vint et dist qe le pleintif fuit utlaie en une Appelle de felonie, et de ceo mist avant recorde *sub pede sigilli*, et ne dit mye puis la darreyne continuance. Et fut resceu a ceo, et le pleintif fuit[5] mys a respoundre, &c. Trans.

(107.)[6] § Un homme se pleint vers un autre dune cloche a tort pris en la ville de Lancastre, en certein lieu qest *Replegiari.*

[1] From L. and C.

[2] The side-note is omitted from C.

[3] C., qils remeindreint.

[4] From L. and C.

[5] fuit is from C. alone.

[6] From L. and C. This is the conclusion of the case in Y.B., Easter, 20 Edw. III., No. 62 (pp. 390 - 399). The record (which is there cited) is *Placita de Banco*, Easter, 20 Edw. III., R°. 331. The action was brought by William son of William Mirresone, burgess "villæ de Prestone" against William son of Adam son of Simon de Lancastre and John de Catherton.

No. 107.

A.D. 1346. a certain place called "Marketstede," whereupon the defendant avowed the taking as good and rightful for the reason that the Burgesses and people of the town of Lancaster have a market every week on Saturday, and everything that appertains to a market, so that every one who brings merchandise to the town and exposes it for sale shall give toll for the things that he exposes for sale and also "thurghtolle"[1] of all the merchandises which shall not be exposed for sale which pass through the town every day of the week. They have also a fair every year on St. Michael's Day, to be held during that day and for fifteen days afterwards. And because the person who makes plaint came on the day in respect of which he makes plaint, which was Market day at Lancaster, with a bale[2] of cloth, and exposed it for sale in a place which is called Marketstede, the defendant demanded toll of him, and he would not pay it, therefore the defendant, for the toll which amounted to one halfpenny, did take the cloak as to which the plaintiff makes plaint, as bailiff of the town who was deputed so to do, and so he avowed the taking as good.—*Blaykeston.* You see plainly how they have avowed, as being good, the taking of this cloak, on the ground that the Burgesses and men of the town have a market, &c., and so have had from all time, &c. We tell you that in the Lancaster Eyre held in the time of the King the grandfather of the present King, before Hugh de Cressingham and his companions, the people of the town of Lancaster claimed market and fair in virtue of the charter of King John. And the charter purported that the King had granted them market and fair to be holden as the people of the town of Northampton hold them; and because it was not definitely expressed in the charter what franchise or what thing they were to have

[1] The word so appears in the record.

[2] Two bales, according to the record.

No. 107.

A.D. 1346.

appelle Marketstede, ou le defendant avowa la prise bone et dreiturelle par la resoun qe les Burgeys et les gentz de la ville de Lancastre ount marche chesqun symaigne[1] par jour de Samady, et ceo qe a marche appent, issint qe chesqun qe amene marchandise a la ville et les mette a vent il durra toun pur les choses qil mette a vent, et auxint Thoreutolle de touz les marchaundises qe ne serrount pas[2] mys a vent qe venent par my la ville chesqun jour de la symaigne,[3] et feire chesqun an[4] le jour de Seint Michel,[5] a tener par cel jour et xv. jours apres. Et pur ceo qe celuy qe se pleint vint le jour qil se pleint, qe fuit jour de marche a Lancastre, ov un summage de drape, et le mist a vent en un lieu qest appelle Marketstede si demanda il toun de luy, et il la paier ne voleit, par qai pur la toun qe amounta a un maille si prist il la cloche[6] dount il se pleint, com baillif de la ville qe a ceo fuit depute, issint avowa il la prise bone, &c.—*Blaik.* Vous veietz bien coment ils ount avowe la prise bone de ceste cloche pur ceo qe les Burgeys de la ville et les hommes ount marche, &c., et ount eu de tut temps, &c. Nous vous dioms qen le Eyre de Lancastre tenutz en le temps du Roi laiel[7] le Roi qore est, devant H.[8] de Cressingham, &c., les gentz de la ville de Lancastre si clamerent marche et feyre [par la chartre du Roy Johan[9]. Et la chartre voleit qe le Roy les avoit graunte marche et feire][10] a tener com les gentz de la ville de Norhamton tenent ; et pur ceo qil ne fuit mie en certein mote en la chartre quele fraunchise ne

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[1] C., symain.

[2] The MSS. of Y.B., serrount instead of ne serrount pas. The words of the record are "de "rebus venalibus venientibus per "medium villam predictam, licet "non ponantur venditioni."

[3] C., symeigne.

[4] C., jour del an.

[5] MSS. of Y.B., Margareto.

[6] L., chose.

[7] MSS., lan x. du Roi pere, instead of en le temps du Roi laiel. The correction has been made on the authority of the record.

[8] MSS. of Y.B., W.

[9] C., E. laiel.

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

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A.D. 1346. by reason of that fair or of that market, the franchise was seized into the King's hand, and given back by the King to them on condition of rendering to the King and to his heirs a yearly farm; and we demand judgment whether they can maintain this avowry on the ground of prescription, since we have proved that at one time the franchise was interrupted, and seized into the King's hand.—*Moubray.* You see plainly how he makes plaint as to his cloak taken and tortiously detained, whereas we have not to claim a franchise on this writ, nor does the nature of the writ require that we should do so; but it is sufficient for us to excuse ourselves with regard to the tortious taking which is surmised against us, and we have said that the Burgesses of the town of Lancaster have a market and a fair, and that we took the distress, for toll in arrear, of goods which were exposed for sale, as the bailiff of the Burgesses, so that, if we have a market, we are excused with regard to the tortious taking; and we have said that we have a market, and that you do not deny; therefore we demand judgment, and we pray the return.—And on that they were adjourned.—And afterwards *Grene* said: He has avowed for toll, to wit, because the plaintiff's goods were exposed for sale, and he has said that the Burgesses have also "thurghtolle" of all bales which pass through the town which are not exposed for sale, and so, since he has not said that we sold the goods for which he took the toll, but that we exposed them for sale, that cannot be called toll, but is "thurghtolle," in respect of which he cannot avow except on the ground of prescription; and we have disproved prescription because we have shown that your franchises were seized into the hand of the King the grandfather of the present King, and so we have completely destroyed your avowry;

No. 107.

quele chose ils duissent aver par cause de cele feyre,[1] ne de la marche, si fuit la fraunchise seisi en la mein le Roi, et redone par le Roi a eux a rendre au Roi et a ses heires une ferme par an; et demandoms jugement sils poient ceste avowere par cause de prescripcion meintener, la ou nous avoms prove qe a un temps la fraunchise si[2] fuit enterrupte[3] et seisi en la mein le Roi.—*Moubray.* Vous veietz bien coment il se[4] pleint se sa cloche pris et a tort detenutz, ou nous ne sumes mye a clamer fraunchise[5] en cest[6] brief, ne la nature del brief nel demande pas; mes suffit a nous de nous excuser de la torcenouse prise qe nous est surmys, et avoms dit qe les Burgeys de la ville de Lancastre ount marche et feire, et nous preimes[7] la destresse, pur la toun arere, des biens qe furent mys a vent, comme lour baillif, issint si nous cioms marche nous sumes excuse de la torcenouse prise; et nous avoms dit qe nous avoms marche, et ceo vous ne deditetz pas; par qai nous demandoms jugement, et prioms retourne.—Et sur ceo furent adjournes.—Et puis *Grene* dist qil ad avowe pur toun, saver, pur ceo qe les biens le pleintif furent mys a vent, et il ad dit qils ount auxint Thoreutolle de touz les summages qe venent par mye la ville, qe ne serrount pas[8] mys a vent, issint quant il nad pas dist qe nous vendimes les biens pur queux il prist la toun, mes les meismes a vent, ceo ne poet estre dit[9] toun mes Thoreutolle, de quele chose il ne poet avowere forqe par prescripcion; et ceo avoms desprove pur ceo qe nous avoms moustre qe vos fraunchises si furent[10] seisiz en la mein le Roi laiel[11] le Roi qore est, issint avoms proprement

A.D. 1346.

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[1] C., faire.
[2] Si is from C. alone.
[3] C., interrupte.
[4] C., soy.
[5] L., ceste fraunchise.
[6] C., ceo.
[7] L., feimes.
[8] MSS. of Y.B., serrount, instead of ne serrount pas. See above, p. 545, note 2.
[9] dit is omitted from C.
[10] The words si furent are omitted from L.
[11] MSS. of Y.B., pere. See above, p. 545, note 7.

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A.D. 1346. therefore, &c.—Willoughby. He has not avowed for "thurghtolle," but for toll which he ought to take of merchandises which were exposed for sale within the town, and for that he can take toll well enough, even though the goods were not sold. (But *quære.*)—And that exception would properly be made to the form of the avowry, if it were law, as you say, that it cannot be toll but "thurghtolle."—*Grene.* He alleges that they have "thurghtolle," every day of the week, of bales which are saleable and which pass through the town, and so "thurghtolle" extends as well to Saturday as to any other day of the week, so that it ought to be called "thurghtolle" and not toll; for he has not said that any part of that which was exposed for sale was sold, and therefore, though they have a market, they have "thurghtolle" just as much on market day as on any other, and, even though the bale was put in the market place, the exaction for it can only be called "thurghtolle," which they cannot have except by prescription, and we have shown the claim by prescription to be false.—But some said that it can be claimed in virtue of a grant from the King as well as by prescription, &c., and so I think it can.—Willoughby. He has admitted that when any one treats his merchandises in such a way as to expose them for sale, in such case, if he exposes them for sale, even though he does not sell them, he will give toll just as much as if he had sold them; and so also he will pay terrage when he puts his merchandises on the ground in order to sell them, and by custom he will pay when he fixes props in the ground upon which he exposes his merchandises for sale; and he will pay stallage when he exposes his merchandises for sale on stalls; so that, since he has said that he exposed his merchandises for sale in the market, even though he sold nothing, he will immediately have to give toll. But you have abode judgment altogether on another point, for you are abiding judgment as to whether he can claim profit of a market, or a market by prescription, because the market has been seized into the King's hand

No. 107.

destruit vostre avowere; par qai, &c.—Wilby. Il nad pas avowe pur Thoreutolle, mes pur toun, quele il deit prendre des[1] marchandises qe furent mys a vent deinz la ville, et pur ceo poet il prendre toun assetz bien, tut ne soient ils vendutz.—*Sed quære*—Et cel chalenge si serreit proprement done a la fourme de lavowere si ceo fuit ley qe vous parletz qe ceo ne poet estre tolle mes Thoreutolle.—*Grene.* Il allegge qils ount Thoreutolle chesqun jour de la symaigne des summages qe serrount vendables qe passent par my la ville, et issint le Thoreutolle sestent auxi bien[2] le jour de Samady com a un autre jour de la symaigne, issint qe ceo covient estre dit Thoreutolle[3] et ne mye tolle[4]; qar il nad pas dit qe rien ne fuit vendu de ceo qe fuit mys a vent, par qai [auxi] avant mesme le jour, tut eient ils marche, ils ount Thoreutolle, tut fuit ceo mys en lieu de marche ceo ne poet estre dit forqe Thoreutolle, et ceo ne pount ils aver forqe par prescripcion, et ceo avoms fauxe.—*Sed quidam dixerunt* qe par grant du Roi auxi come par prescripcion, &c., *et sic credo.*—Wilby. Il ad conu quant un homme oevre ses marchandises de les mettre a vent, en tiel cas, sil les mette a vent, tut ne les vende il, il durra toun auxi bien comme il les ust vendu; et auxint terrage il paiera quant il mette ses marchandises sur la terre a vendre, et par usage il paiera quant il fiche puces en la terre sur queux il mette ses marchandises a vendre; et estallage il paiera quant il mette les marchandises sur les estalles a vendre, issint quant il ad dit qil myst ses marchandises en le marche a vendre, qe tut ne vend il rienz, qe meintenant il durra toun. Mes vous estes tut demure en autre point, qar vous estes demure sil poet clamer profit de marche, ou marche par prescripcion, de puis qe puis temps de memore le marche fuit seisi en la mein le Roi; et vous navietz pas

A.D. 1346.

[1] L., pur.
[2] bien is omitted from L.
[3] MSS. of Y.B., tolle.
[4] MSS. of Y.B., Thoreutolle.

Nos. 107, 108.

A.D. 1346. since time of memory ; and you have not denied that which they say, and alleged that they have not a market and that which appertains to a market, and in this case they are not here to claim a franchise as in an Eyre, but to prove that the taking was rightful and for good cause ; and after the manner in which they have a market they can avow this taking ; and you have not denied that they have a market, and therefore the COURT doth give judgment that the bailiff do have the return, &c.

Quid juris clamat. (108.) § One William de Lynforde sued a *Quid juris clamat* against Adam de Courtenalle to show what right he claimed in certain tenements of which one J. Paynelle had granted the reversion to William to have after the death of J.—Adam said, by *Thorpe*, that J. Paynelle had leased to him the same tenements for term of his life by a deed of which he made *profert*, and granted that, if he should die within the twenty years next following after the date of the deed, his executors were to hold the land for the term aforesaid. And he said further that he so held in that manner, and did not understand that he ought to attorn in respect of such a tenancy in virtue of that note of fine.—*Grene.* We cannot have any other note, because you have not any higher estate than that of a term for your life, and so, since you have no other estate, it is not right that you should escape from attornment.—*R. Thorpe.* You could have had a note making mention of our estate, and so our

Nos. 107, 108.

dedit ceo qils dient qils nount marche et ceo qe a marche appent, ou ils ne sount mye cy de clamer fraunchise come en Eyre, mes de prover la prise dreiturelle et par cause ; et coment qils eient marche ils pount avowere ceste prise ; et qils ount marche vous navietz pas dedit, par qai la COURT agarde qe le baillif eit retourne, &c.[1] A.D. 1346.

(108.)[2] § Un William[3] de Lynforde suyt un *Quid juris clamat* vers Adam de Courtenalle a saver quel dreit il clama en certeinz tenementz des queux un J. Paynelle luy avoit graunte la reversion apres sa mort.—Adam dist, par *Thorpe*, qe J. Paynelle ly avoit lesse mesmes les tenementz a terme de sa vie par un fait quel il mist avant, et luy graunta qe sil deviast deinz les xx. aunz proscheins ensuauntz apres la date del fait qe ses executours si duissent tenir la terre a terme avant dit. Et dit outre qe issint tient il par la manere, et nentent[4] mye[5] qe de[6] tiel tenance par cele note deit il attourner.—*Grene.* Nous ne poms nulle autre note aver, qar vous navietz nulle plus haut estat qa terme de vostre vie, issint, quant vous navietz nulle autre estat, nest mye resoun de vous estourtre del attournement.—*R.*[7] *Thorpe.* Vous poietz aver eu une note fesaunt mencion de nostre estat, et issint poait nostre *Quid juris clamat.*

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[1] According to the roll, the judgment was as follows :— "Quia prædictus Willelmus "filius Willelmi superius non "dedicit quin prædicti Bur- "genses, et ballivi nunc habent "mercatum in prædicta villa, "et quicquid ad mercatum "pertinet, nec quin prædicta "captio facta fuit pro tolneto "prædicto, quod proprie ad "idem mercatum pertinet "rationibus superius allegatis, "nec iidem ballivi ad aliquas "libertates quales prædictus "Willelmus filius Willelmi "superius allegavit clamandas "seu triandas habent modo diem "in curia ista, consideratum "est quod iidem Willelmus "filius Adæ et Johannes habeant "retornum prædictarum cloc- "arum. Et prædictus Willelmus "filius Willelmi in misericordia, "&c."

[2] From L. and C.

[3] C., Vilem.

[4] L., nentendoms.

[5] L., pas.

[6] L., par.

[7] MSS., W., but W. Thorpe was a judge at this time.

Nos. 108, 109.

A.D. 1346. estate could have been saved.—But *quære* whether one could have such a note.—STONORE. If he now attorned to you, he would now lose the advantage of the condition, and that would not be right; but in case you are willing to confess that which he has said, and agree here in Court to save him his estate, then it would be right that he should attorn to you.—*Grene.* We will do so willingly, if he will attorn.—*R. Thorpe.* And we are willing to attorn on condition that you can save our estate by law, and can receive our attornment on this note which does not make mention of the condition.—SHARSHULLE. If you are agreed, we will accept the attornment willingly enough.—*R. Thorpe.* How, and by what words will you save our estate?—SHARSHULLE. In this manner:—by making mention of the estate which you have claimed and on what condition, and by saying that you are ready to attorn if the other party will acknowledge the condition, and save you in that respect. And thereupon the other party comes and acknowledges your estate to be such as you have said, and the conditions, and agrees to save to you your estate in that manner, and that you and your executors shall have the term, in case you die within the twenty years, until the twenty years have passed. And in that manner it will be entered on the roll, and your estate will be saved.—And Adam de Courtenalle attorned to William de Lynforde, and the enrolment was made, as WILLIAM DE SHARSHULLE had said, on the prayer of both parties.

Debt. (109.) § A man[1] brought a writ of Debt against the Prior of Norwich, and counted that the Prior owed him 20*l.*[2] in money, because the Prior's predecessor, heretofore Prior of Norwich, borrowed of him 20*l.* in money, which went to the profit of the House, because it expended the money in maintaining their election because

[1] For the name *see* p. 553, note 4.

[2] 10*l.*, according to the record.

Nos. 108, 109.

estat estre sauve.—*Sed quære* si homme avera une tiel note. —Ston. Sil attournast ore a vous, il perdreit ore lavantage de la condicion, et ceo ne serreit mye resoun ; mes en cas qe vous voilletz conustre ceo qil ad dit, et graunter ey en Court de luy sauver soun estat, donqes serreit il resoun qil attournast a vous.—*Grene.* Sil voet attourner, nous le voloms bien.—*R. Thorpe.* Et nous voloms attourner a celes qe vous poetz[1] sauver nostre estat par ley, et sur cest note nient fesaunt mencion de la condicion resceyver attournement.—Schar. Si vous soietz a un, nous voloms assetz volunters resceyver lattournement.—*R. Thorpe.* Coment et par queles paroles volletz[2] sauver nostre estat ? —Schar. En cele manere fesaunt mencion de quel estat vous avietz clame et sur quele condicion, et prest estes dattourner si lautre voille la condicion conustre, et de ceo vous sauver. Et sur ceo vynt lautre et conust vostre estat tiel comme vous avietz dit, et les condicions, et grant de vous sauver vostre estat par la manere, et qe vous et vos executours eient le terme en cas qe vous devietz deinz les xx. aunz tanqe les xx. aunz soient passetz, et en ceste manere[3] serra entre en roulle, et vostre estat sauve.— Et il attourna a W. Lynforde, et lenroullement fuit fait com W. de Schar. dit, a la prier de lun et de lautre. A.D. 1346.

(109.)[4] § Un homme porta un brief de Dette vers le Prior de Northwye,[5] et counta qil luy devoit xx. li. dargent pur ceo qe soun predecessour jadys Prior de Northwye approuppta de luy xx.*li.* dargent, les queux devyndreint en profit de la Mesoun, pur ceo qil despendi les deners de meintener lour eleccion pur ceo qils eslurrent[6] un des[7] Dette.

[1] C., poiet.
[2] C., voilletz.
[3] manere is omitted from C.
[4] From L. and C., but corrected by the record, *Placita de Banco*, Mich., 20 Edw. III., R°. 114d. It there appears that the action was brought by Robert Coleman against the Prior of the Church of the Holy Trinity, Norwich, in respect of a debt of 10*l.*
[5] C., Nortwyk.
[6] C., elurrent.
[7] C., de les.

Nos. 109, 110.

A.D. 1346. they elected one of the monks of the House to be Bishop, and in order to maintain that election they borrowed the money. And the plaintiff did not produce any deed in proof of this. And the plaintiff was answered, and the Prior said that his predecessor did not borrow any money of the plaintiff, and that he did not owe the plaintiff any money; ready, &c.—And the other side said the contrary.

Assise. (110.) § Note that an Assise was brought at Northampton, in which eleven recognitors agreed, and the twelfth

Nos. 109, 110.

moignes de la Mesoun en Evesqe, et de ceo meintener il appromterent les deners.[1] Et ne nist mye avant fait de ceo. Et fuit respondu, et dit qe soun predecessour nulle dener de luy apprompta, ne nulle dener ne luy deit; prest, &c.—*Et alii e contra.*[2] A.D. 1346.

(110)[3] § *Nota* qune Assise fuit porte a Norham, ou les unes[4] acorderunt, et le dusyme[5] ne voleit mie acorder, et Assise.

[1] The declaration was, according to the record, "quod, cum "quidam Willelmus quondam "Prior Norwycensis, prædecessor, "&c., die Lunæ proxima post "Festum Sanctæ Margaretæ "Virginis anno regni domini "Regis nunc Angliæ octavo, "apud Tutyngam, mutuasset a "præfato Roberto prædictas "decem libras pro quibusdam "arduis negotiis domum suam "prædictam tangentibus, vide-"licet, pro quadam electione "cujusdam Thomæ de Hemen-"hale, commonachi ipsius Wil-"lelmi quondam Prioris, &c., "prædecessoris, &c., per ipsum "Willelmum quondam Priorem, "&c., prædecessorem, &c., et "capitulum suum Norwycense "adtunc electi in Episcopum "Norwycensem manutenenda, "qui quidem Robertus easdem "decem libras, prædictis die et "anno, eidem Willelmo quon-"dam Priori, &c., prædecessori, "&c., liberavit, solvendas eidem "Roberto ad Festum Pente-"costes tunc proxime sequens, "quæ quidem decem libræ ad "commodum domus Norwyc-"ensis prædictæ pro electione "prædicta manutenenda ex-"pensæ fuerunt, prædictus Wil-"lelmus quondam Prior, &c., "prædecessor, &c., prædictas "decem libras eidem Roberto "in vita ipsius Willelmi quon-"dam Prioris, &c., prædeces-"soris, &c., non reddidit, sed "prædictus Prior nunc post "mortem ipsius Willelmi quon-"dam Prioris, &c., prædeces-"soris, &c., licet sæpius requi-"situs, easdem decem libras "eidem Roberto nondum "reddidit, sed ei hucusque "reddere contradixit et adhuc "contradicit. Unde dicit quod "deterioratus est et damnum "habet ad valentiam quinqua-"ginta librarum. Et inde pro-"ducit sectam, &c."

[2] The plea upon which issue was joined was, according to the record, "quod prædictus "Robertus Coleman nunquam "accommodavit prædicto Wil-"lelmo quondam Priori, &c., "prædecessori, &c., prædictas "decem libras, nec prædictus "Prior nunc aliquem denarium "ei debet prout idem Robertus "superius versus eum narravit."

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

[3] From L. and C.

[4] L., xj.

[5] L., xij^{e}

Nos. 110, 111.

A.D. 1346. would not agree, and said that he never would agree with his fellows. And the verdict of the eleven was accepted, and it was awarded that the twelfth should go to prison. And it was said that he could have an Attaint against the eleven.

Assise. (111.) § A woman[1] brought an Assise in respect of twenty marks of rent-charge against Philip de Somerville.—Thereupon Philip said that the woman who was plaintiff, reciting that Sir Philip had released to her all the right which he had in a moiety[2] of the manor of W.[3], in consideration of that release, granted and released all kinds of actions and demands which there ever were, whether real or personal, between the woman and this same Philip, from the beginning of the world until the execution of this

[1] For the name *see* p. 557, note 2.

[2] Two parts, according to the record. *See* p. 559, note 1.

[3] For the name *see* p. 559, note 1.

dist qil nacordreit jammes a ses compaignouns. Et le verdit des[1] xj. fuit reseeu, et le xij^e^ fuit agarde a la prisoun. Et dit fuit qil pout aver Atteint devers xj. A.D. 1346

(111.)[2] § Un femme[3] porta Lassise de xx. mares de rente charge vers Philippe[4] de Somerville,[5] ou Philippe dist qe la femme, reeitaunt coment Sire Philippe avoit relesse tut le dreit qil avoit en la moite del maner de W., et pur eel relees la femme qe fuit pleintif si granta et relessa totes maneres daccions et demandes qunqes[6] qils furent, reals ou personels, ov la femme [et] mesme eely Philippe[4] de comencement de mounde tanqe a lee fesaunce de Assise. [20 *Li. Ass.*, 5.]

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[1] C., de les.

[2] From L. and C., but corrected by the record, *Placita de Banco*, Mich., 20 Edw. III., R° 197. It there appears that the Assise was brought before Justices of Assise for the county of Warwick by Isabel late wife of Thomas Corbet against Philip de Somerville, knight, and John Kebbe, in respect of 20 marks of rent in Stockton.

[3] C., homme.

[4] C., Phelipe.

[5] According to the record, "et " pro titulo liberi tenementi, et " assisa in hac parte habenda, " dicit quod quidam Rogerus de " Somerville, miles, aliquando " fuit seisitus de manerio de " Stocktone in Comitatu Warre- " wikiæ in dominico suo ut de " feodo, qui quidem Rogerus " per scriptum suum dedit [et] " concessit prædictam redditum " præfato Thomæ Corbet quon- " dam viro ipsius Isabellæ et " ipsi Isabellæ percipiendum " annuatim de manerio præ- " dicto . . . . . ad totam vitam " ipsorum Thomæ et Isabellæ et " alterius eorum diutius viventis, " ita quod, si prædictus annualis " redditus in parte vel in toto ad " aliquem terminum aretro " fuerit, bene liceret prædictis " Thomæ et Isabellæ uxori ejus " vel alteri eorum diutius viventi " in prædicto manerio dis- " tringere, ... et prædicti " Thomas et Isabella fuerunt " seisiti de redditu prædicto ad " totam vitam ipsius Thomæ, et " post mortem ipsius Thomæ " prædicta Isabella similiter inde " fuit seisita ut de libero tene- " mento suo, et quia redditus " prædictus aretro fuit ipsa in " manerio prædicto distrinxit, " et prædicti Philippus et " Johannes districtionem illam " rescusserunt, et sic ipsam inde " injuste et sine judicio vi et " armis disseisiverunt, et hoc " petiit quod inquireretur per " assisam, &c."

[6] C., qe unqes.

No. 111.

A.D. 1346. deed. And, said Philip's counsel, we demand judgment whether she ought to have an assise.—And the woman who was plaintiff said that at the time of the execution of this deed she was seised of the rent, so that there was no term of the rent in arrear, and that she was seised after the execution of the deed, and she demanded judgment,

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A.D. 1346.

cest fait. Et demandoms jugement si ele duist assise aver.[1]— Et la femme pleintif dist qe al temps de la fesaunce de cest fait[2] quele fuit seisi de la rente, issint qil ny avoit nulle terme a derere de la rente, et puis la confeccion du fait[2] ele fuit seisi, et demanda jugement, et pria lassise.[3] Et

[1] According to the roll, John Kebbe made default, "et prædictus Philippus pro se ipso, ut tenente tenementorum in visu positorum, unde prædicta Isabella asserebat prædictum redditum provenire, dixit quod assisa inde inter eos fieri non debuit, quia dixit quod quædam concordia facta fuit inter ipsum Philippum et prædictam Isabellam, ob quandam discordiam quæ fuit inter eos, de duabus partibus manerii de Stantone, quas idem Philippus tenuit nomine custodiæ, ratione minoris ætatis cujusdam Rogeri filii et heredis Thomæ Corbet quondam viri ipsius Isabellæ in hunc modum, videlicet, quod idem Philippus concessit et relaxavit præfatæ Isabellæ prædictas duas partes manerii prædicti tenendas ad terminum vitæ suæ, juxta quoddam donum quod Magister Johannes de Somerville inde fecit præfatæ Isabellæ et Thomæ quondam viro suo, et pro illa concordia et concessione prædicta Isabella concessit et relaxavit ipsi Philippo et heredibus suis omnimodas actiones et demandas tam reales quam personales, ab initio mundi usque diem confectionis cujusdam scripti inter ipsos Philippum et Isabellam indentati, salvis eidem Isabellæ sexaginta solidis argenti percipiendis de terris et tenementis ipsius Philippi in Northumberlonde ad totam vitam ipsius Isabellæ, prout plenius continetur in quadam indentura inde inter ipsum Philippum et prædictos Isabellam et Thomam quondam virum suum apud Eboracum facta per scriptum ipsius Isabellæ indentatum, quod quidem scriptum prædictus Philippus profert hic in Curia, sub nomine prædictæ Isabellæ hoc idem testificans . . . . . unde petiit judicium si prædicta Isabella contra factum suum proprium assisam versus eum in hac parte habere debuit, &c."

[2] C., fet.

[3] The replication on behalf of Isabel was, according to the record, "quod scriptum prædictum ei nocere non debuit quia dixit quod ipsa pacifice, diu ante confectionem scripti prædicti, et tempore confectionis ejusdem, et post confectionem illius scripti, continue et sine aliquo impedimento, et absque hoc quod redditus ille ei aretro fuit ad aliquem terminum, ante confectionem scripti prædicti fuit seisita de redditu prædicto per manus tenentium

Nos. 111, 112.

A.D. 1346. and prayed the assise.—And Philip demanded judgment since she had released all actions and demands as above, so that, even though there was not any term in arrear, the rent was properly in "demand," because, although she was in possession of the last term, she could not herself take the rent at the next term, but would have to demand it of another person, and so it was always properly in "demand," and so by this deed the rent is extinguished. Therefore he demanded judgment whether there ought to be an assise contrary to that deed.—And upon that plea they were adjourned unto the Common Bench.—And on the day which they had in the Bench the woman was nonsuited.—But the common opinion was that she ought to have been barred of the assise by that word "*demandas*" in the deed.

Annuity. (112.) § Note that a man brought a writ of Annuity against the Prior of Watton, and made *profert* of a deed by which the Prior of Watton and the Convent of the

Nos. 111, 112.

Philippe[1] demanda jugement del houre qele avoit relesse totes accions et demandes *ut supra*, issint qe, tut ne fuit[2] nulle terme aderere, la rente fuit proprement en demande, qar, tut fuit il en possession de drein terme, il ne poet mie a prochein terme prendre la rente mesme, mes la demandereit dautre, issint qe ceo fuit tut temps proprement en demande, issint par ceo fait la rente esteint. Par qai il demande jugement si assise duist estre countre ceo fait.[3]—Et sur ceo ple ils furent adjournes en Baunk.—Et al jour qils avoint en Baunk la femme fuit nounsuy.[4]—Mes comune opinioun fuit qele duist aver este barre dassise par eele parole *demandas*. A.D. 1346.

(112.)[5] § *Nota* qun homme porta un brief Dannuite vers le Prior de Wattone, et mist avant un fet par quel le Prior de Wattone et le Covent de mesme le lieu avoint grante Annuite.

"tenementorum in visu posit-
"orum, unde, &c., ut de
"libero tenemento suo, quous-
"que prædicti Philippus et
"Johannes ipsam inde injuste
"et sine judicio dissesiverunt,
"unde petiit judicium, et quod
"præfati Justiciarii procederent
"ad captionem assisæ prædictæ,
"&c."

[1] C., Phelipe.

[2] The report ends here, with the end of a folio, in C.

[3] Philip's rejoinder was, according to the record, "Philip-
"pus, ut prius, petiit judicium,
"ex quo prædicta Isabella non
"dedixit quin prædictum script-
"um fuit factum suum, nec
"quin redditus prædictus, vir-
"tute scripti prædicti, extin-
"gueretur, si ipsa contra factum
"suum prædictum assisam
"versus eum habere debuit, &c."

On this there was an adjournment into the Common Bench.

[4] According to the roll, "Modo
"venit prædictus Philippus, per
"attornatum suum, et obtulit se
"iiij^to die versus prædictam
"Isabellam de prædicto placito.
"Et ipsa non venit. Et fuit
"querens. Ideo consideratum
"est quod idem Philippus eat
"inde sine die, et prædicta
"Isabella et plegii sui de
"prosequendo in misericordia,
"&c."

[5] From L. alone. There is a short case between this and No. 111 in that MS., which is, however, defective at the side and at the bottom of the folio, and the report has been omitted as not being sufficiently intelligible.

Nos. 112, 113.

A.D. 1346. same place had granted an annual rent of twenty marks *per annum*. And, in making use of the deed, he said that the Prior of Watton granted him the annuity by the description of the Prior of Watton. And exception was taken to the variance, and it was not allowed.

Debt. (113.) § A man brought a writ of Debt against another, and counted that the defendant owed him 20*l*., by an obligation of which he made *profert*.—*Skipwith* denied tort and force, and said that the present King Edward had granted to his moneyers who made his coin in England, that if they were impleaded, or themselves impleaded others, they should not be impleaded anywhere except before the Warden and the Master of the Mint, and in proof thereof he made *profert* of the King's charter. And he said that the defendant was one of the moneyers, and demanded judgment whether he ought to be put to answer in this Court (the Common Bench). And he made *profert* of the King's charter, and the charter purported that the King had granted to his moneyers that if they were impleaded, or themselves impleaded others, they should stand to right before the Warden of the Mint.—SHARSHULLE. Your charter purports that if the moneyers be impleaded, or themselves implead others, they shall stand to right before the Warden of the Mint, but the charter does not say "not anywhere else," so that the charter does not take away the jurisdiction of this Court, because they can stand to right there, and here also. And the men of Dunham claimed a like franchise, and, because the charter did not say "not anywhere else," their charter was not allowed, and so also in this case. And he has made *profert* of an obligation executed in a place other than that in which the Mint is, so that, even if you had the plea there before the Warden, you could not try the deed there; and therefore you will not have your franchise, but you will answer in this Court.—And he pleaded Not his deed.

Nos. 112, 113.

un annuel rente de xx. marcs par an. Et en usaunt le fait il dist qe le Priour de Wattone, par noun del Prior de Wattone, luy graunta lannuite. Et la variaunce fuit chalenge, et ne mie allowe. A.D. 1346.

(113.)[1] § Un homme porta un brief de Dette vers un autre, et counta qil luy devoit xx.*li.* par un obligacion qil mist avant.—*Skyp.* defendi tort et force, et dit qe le Roi E. qore est si avoit grante a ses moneours qe firent sa mone en Engleterre qe sils fuissent enplede ou enpledassent qils ne duissent aillours estre enplede forqe devant le Gardein de la Coyne, et le Mestre, et de ceo mist avant la chartre le Roi, et dit qil fuit un des moneours, et demanda jugement sil duist en ceo Court estre mys a respoundre. Et mist avant la chartre le Roi, et la chartre volleit qe le Roi si avoit grante a ses moneours qe sils fuissent enpledetz, ou enpledassent, qils esterrount a dreit devant le Gardein de la Coyne.—Schar. Vostre chartre voet qe si les moneours soient enpledetz, ou enpledount qils esterrount a dreit devant le Gardein de la Mone, et la chartre ne parle mie ne mie par aillours, issint qe la chartre ne toude mie jurisdiccion de ceste Court, qar ils pount esteer a dreit illoqes, et ici auxint. Et ceux de Donam si clamerunt autel fraunchise, et, pur ceo qe la chartre ne parla ne mie par aillours, lour chartre ne fuit pas allowe, et auxint en ceo cas. Et il ad mys avant obligacion fait en autre lieu qe la Coyne nest, issint qe, tut ussetz le ple la devant le Gardein, vous ne purretz mie trier le fait la, et pur ceo vous naveretz mie vostre fraunchise, mes vous respoundretz en ceste Court.—Et dit nient soun fait. Dotto.

[1] From L. alone.

No. 114.

A.D. 1346. Assise.

(114.) § John Gentil and his wife brought an Assise of Novel Disseisin, in the county of Buckingham, against John Deirel and his wife. And they complained that they had been disseised of their freehold in E. And they made their plaint in respect of a profit of twenty cartloads of wood to be taken in one hundred acres of wood, whereof ten loads were to be of great billets, and the other ten for enclosing, to be cut and carried at the Feast of Christmas, from year to year, by view of the woodward. And they made *profert* of a specialty, which purported that one Henry Dayrelle had given and granted twenty cartloads of wood to James Drosset, to him and his heirs for ever, "*quarum prædictus Jacobus habuit sexdecim ex dono et concessione Ricardi patris mei, pro housebote et haybote tanquam pertinentes ad liberum tenementum suum in Lyllyngestone Darelle, et quarum decem sunt de grosso bosco, et decem de clausura.*" And John made *profert* of the deed, and of another deed showing how the profit was granted to him and to his wife.—*Grene* demanded judgment of the plaint, because there is no meaning in the words "ten cartloads for enclosing," or suitable for enclosing, unless there are old hedges which are in the wood; and in that case his plaint is contrariant, because, when he makes the plaint in respect of twenty cartloads of wood to be taken in one hundred acres of wood, he then supposes that he is to take them throughout the whole wood, and, when he speaks afterwards of ten cartloads of great billets and ten for enclosing, that cannot be understood otherwise than that they are to be taken from the old hedges of the woods, and so he restricts the general words "to be taken in one hundred acres of wood."—*R. Thorpe.* He has made his plaint in accordance with the specialty in virtue of which he claims this profit, and we understand that, when it says ten cartloads for enclosing, that must be understood to be of underwood, so that in the whole he has sufficient in his plaint; and, if he had made his plaint in respect of ten cartloads of underwood, that would not

No. 114.

A.D. 1346. Assise. [Fitz., *Assise*, 217; 20 *Li. Ass.*, 8.]

(114.)[1] § [Johan Gentil et sa femme porterent une Assise de Novele Disseisine, en le counte de] Bukinghame, vers Johan Deirel et sa femme. Et se pleint estre disseisi de lour fraunctenement en E. Et fist lour pleinte de profit de xx. charrettes de buche a prendre en c. acres de boys, et dount les x. serrount de grosses buches, et les autres x. serrount denclore, a couper et carier a la Fest de Noel, dan en an, par viewe de wodwarde. Et mist avant une especialte, qe voleit qun Henre Dayrelle si avoit done et graunte xx. charettes de buche a James Drosset a luy et a ses heires a touz jours, *quarum prædictus Jacobus habuit sexdecim ex dono et concessione Ricardi patris mei, pro housebote et haybote, tanquam pertinentes ad liberum tenementum suum in Lyllyngestone Darelle, et quarum x. sunt de grosso bosco, et decem de clausura.* Et mist avant le fait, et autre fait coment le profit si fuit graunte a luy et a sa femme.—*Grene* demanda jugement de la pleinte pur ceo qil y avoit nulle entendement en cele parole les x. charrettes del enclosure covenable pur enclore, sil ne soit des aunciens hayes qe sount en le boys ; et donqes est sa pleinte contrariaunt, qar, quant il fet la pleinte de xx. charrettes de buche a prendre en c., &c., de boys, donqes il suppose qil les deit prendre par tote le boys, et quant il dit apres x. de grosses buches et x. denclosture, ceo ne poet estre entenduc autre forqe a prendre de les aunciens hayes des boys, issint restreint il la general parole a prendre en c. acres de boys.—*R. Thorpe.* Il ad fet sa pleinte acordaunt al especialte par quel il cleyme ceo profit, et nous entendoms, quant il dist x. charrettes del enclosture, qe ceo deit estre de south boys, issint qen tut il y ad assetz en sa pleinte ; et, sil ust fet sa pleinte de x. charrettes de south boys, ceo nust pas este garraunti al

[1] From C. alone except the commencing words in brackets, which have been added from the *Liber Assisarum*, and are wanting in the MS.

Nos. 114, 115.

A.D. 1346. have been warranted by the specialty; therefore the plaint is good enough.—And afterwards exception was taken that it was supposed by the deed that James had sixteen cartloads by gift and grant from Richard his father, so that it is supposed that the sixteen cartloads did not begin by that deed, but by another deed, and nothing to show that has been produced; therefore, &c.—And because he was tenant of the soil who had given and granted the twenty cartloads of wood to James and to his heirs, James acquired the inheritance by those words, so that, although it says in the deed "whereof sixteen were of the gift and grant of R. his father," that was not of the substance, and the commencement of the profit was shown by Henry's deed. Therefore he was asked whether he would say anything else, because the deed was fully sufficient.—And afterwards he traversed the gift which one J. had made of the profit to John Gentil and his wife, by whose gift he made himself a title.—And so to the assise.

Assise. (115.) § And at the same Assizes that same John Gentil and his wife brought an Assise of Common of Pasture against John Darelle and his wife. And they made their plaint in respect of common for sixteen oxen in ten acres of pasture throughout the whole year. And they made *profert* of a specialty by which one Henry Darelle had granted pasture for six oxen to James Drosset and his heirs for ever in Rounherthalle. And then they made *profert* of a deed which purported that James had granted to John and his wife, the present plaintiffs, twenty cartloads of wood in Lillingston Dayrell, *insimul cum terris et tenementis, pascuis et pasturis.* And they made *profert* of the deeds and prayed the assise.—In answer to that the defendants said that the plaintiffs had complained of being disseised of their common of pasture, and claimed common for six oxen, whereas the specialty by which they would make themselves the assigns of James in respect of that profit does not mention

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especialte ; par quei la pleinte est assetz bone.—Et puis fuit chalenge qe par le fet fuit suppose qe xvj. charettes si avoit James del doun et graunt Richard soun pere, issint est ceo suppose qe les xvj. charrettes ne comencerent mie par ceo fet, einz par un autre fet, et de ceo nest rienz mys avant ; par quei, &c.—Et, pur ceo qil fuit tenant de soille si avoit done et graunte les xx. charettes de buche a James et a ses heires, par eel parole James fuit enherite, issint qe, coment qil parle en le fet dount les xvj. furent de doun et de graunt R. soun pere, ceo ne fuit mye de la substance, et comencement de profit fuit moustre par le fet Henry. Par quei fuit demande sil voleit autre chose dire, qar le fet fuit assetz suffisaunt.—Et puis traversa au doun qun J. avoit fet de profit a luy et a sa femme, par qi doun il se fist title.—Et *sic* a lassise, &c. A.D. 1346.

(115.)[1] § Et a mesmes les Assises mesme celuy Johan et sa femme porterent une Assise de comune de pasture vers Johan Darelle et sa femme. Et firent lour pleinte a comune ove xvj. boefs en x. acres de pasture par tote lan. Et mistrent avant especialte par quel une Henry Darelle si avoit graunte pasture a vj. boefs a James Drosset et a ses heires a touz jours en Rounherthalle. Et puis mist avant fet qe James avoit graunte a Johan et a sa femme, qore sount pleintifs, xx. charettes de buche en Lillyngestone Dairelle, *insimul cum terris et tenementis, pascuis et pasturis.* Et mistrent avant les fetes, et prierunt lassise.—A quei les defendantz disoint qils furent pleint estre disseisi de lour comune de pasture, et cleyment comune a vj. boefs, ou[2] lespecialte par quel ils se voleint faire assigne James de ceste profit ne parle de nulle comune, mes de *terris et* [Fitz., Graunte. 71 ; 20 *Li. Ass.*, 9.]

[1] From C. alone.

[2] MS., en.

No. 115.

A.D. 1346. any common, but speaks only of *terris et tenementis, pascuis et pasturis*, and therefore in respect of this common they do not make themselves the assigns of James. Therefore (said counsel for the defendants) we demand judgment whether they ought to have an assise.—To this the plaintiffs replied that the person who had the common had given them twenty cartloads of wood, "*insimul cum terris et tenementis, pascuis et pasturis*," which he had in the vill before named, and so, they said, this common passed by the description of "*tenementis*" because it is a tenement. Therefore they prayed the assise.—And, because the Justices understood that this profit of common could not pass by the words "*de tenementis et de pastura*," nor by such a description, but that, if it had to pass, it would pass by the description of "common," and that word was not in their deed, they were afterwards non-suited.—Observe and *quære*.

No. 115.

A.D. 1346.

tenementis, pascuis et pasturis, par quei de cest comune ils ne se fount mye assigne James. Par quei nous demandoms jugement sils deivent assise aver.—A quei les pleintifs disoient qe celuy qe avoit la comune si avoit done a eux xx.[1] charrettes de buche, *insimul cum terris et tenementis pascuis et pasturis*, qil avoit en la ville avant nome, issint disoint ils qe cele comune passa par noun *de tenementis*, qar cest tenement. Par quei ils prierunt lassise.—Et pur ceo qe les Justices entenderent qe ceo profit de comune ne pout mye passer par paroles *de tenementis et de pastura*, ne par tiel noun, einz, sil passereit, il passereit par noun de comune, et ceo ne voleit mie lour fet, et puis ils furent nounsuitz.—*Vide et quære*, &c.

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[1] MS., x.

APPENDIX.

APPENDIX.

RECORD OF THE CASE, TRINITY, 20 EDWARD III, No. 59.

(*Placita de Banco*, Trin., 20 Edw. III., R°. 325.)

Warr. Henricus filius Reginaldi Ballard de Coventre petit versus Johannem Box de Coventre unum mesuagium, cum pertinentiis, in Coventre, ut jus et hereditatem suam, et in quod idem Johannes non habet ingressum nisi per Reginaldum Ballard patrem prædicti Henrici, cujus heres ipse est, qui illud ei dimisit dum idem Reginaldus infra ætatem fuit, &c. Et unde dicit quod prædictus Reginaldus pater, &c., fuit inde seisitus tempore pacis, tempore domini Edwardi Regis patris domini Regis nunc, capiendo inde espletia ad valentiam, &c. Et de ipso Reginaldo descendit jus, &c., isti Henrico qui nunc petit, &c. Et inde producit sectam, &c.

Et Johannes, per attornatum suum, venit. Et super hoc veniunt Maior et ballivi villæ de Coventre, et petunt cognitionem istius placiti coram eisdem Maiore et ballivis apud Coventre, dicunt enim quod dominus Rex nunc ad instantiam et rogatum dominæ Isabellæ Reginæ Angliæ, Dominæ Hiberniæ, et Comitissæ de Pountyfia, per chartam suam concessit, pro se et heredibus suis, hominibus de Coventre tenentibus manerii de Cheylesmore, cum pertinentiis, in prædicto Comitatu Warrewikiæ, quod idem dominus Rex eidem Reginæ ad totam vitam ejusdem Reginæ dederat et concesserat, post mortem ejusdem Reginæ, Edwardo filio ipsius domini Regis primogenito, Principi Walliæ, remansurum, quod ipsi homines tenentes, et eorum heredes et successores communitatem inter se haberent, et Maiorem et ballivos idoneos de se ipsis eligere et creare possent annuatim, qui, præstitis sacramentis,

prout moris est, extunc ea facerent et conservarent quæ ad officia Maioris et ballivorum pertinerent in eadem villa facienda et exercenda. Concessit insuper idem dominus Rex, pro se et heredibus suis, præfatis hominibus tenentibus suis ibidem, quod ipsi, heredes, et successores sui in perpetuum habeant cognitionem omnium placitorum tam de transgressionibus, contractibus, et conventionibus, quam de aliis negotiis quibuscumque inter se infra villam prædictam emergentibus. Concessit etiam idem dominus Rex per aliam chartam suam, pro se et heredibus suis, quod eadem Regina, quam diu viveret, haberet, et postmodum prædictus Princeps et heredes sui haberent [cognitionem, placitorum tam de terris, &c.] infra libertatem et visum franci plegii prædictos existentibus quam de transgressionibus, conventionibus, contractibus et querelis infra libertatem et visum franci plegii prædictos ac procinctum manerii prædicti emergentibus sive factis de quibuscumque tenentibus et residentibus infra feodum manerii ejusdem, ac etiam placitorum assisarum de tenuris infra eandem libertatem quas coram Justiciariis ipsius domini Regis vel heredum suorum ad assisas in eodem comitatu capiendas assignatis arramiari contingeret, et quod Justiciarii ipsi, cum cognitiones eorundem placitorum assisarum ex parte Regis et dicti Principis modo debito petitæ forent, hoc eis absque difficultate allocarent, et brevia originalia ac processus qui inde habiti forent prædictis senescallis seu Maiori et ballivis aut aliis ad dicta placita tenenda, ut præmittitur, deputatis facerent liberari, quæ quidem Regina, recitans chartam domini Regis præmissa testificantem, ad instantem requisitionem hominum et tenentium prædictorum, de licentia domini Regis, concessit et ad firmam dimisit Maiori et ballivis et dictis hominibus villæ de Coventre tenentibus manerii prædicti omnes et singulas dictas libertates, et alia supradicta, eodem modo et eisdem conditionibus quibus ea eidem Reginæ, ut præmittitur, sunt concessa, habenda ad totam vitam ejusdem Reginæ. Et quod habeant cognitiones placitorum super præmissis per prædictum Maiorem et

ballivos ibidem tenendorum, ipsique Maior et ballivi placita illa teneant et justiciam super his faciant, executionesque retornorum et summonitionum, ac attachiamenta prædicta juxta officii sui debita et tenores chartarum prædictarum, et omnia alia quæ ad dictum officium suum pertinere noverint debite et prout de jure debeant, faceant [*sic*], exerceant, et exequantur, reddendo inde eidem Reginæ ad totam vitam suam quinquaginta marcas annuatim ad Festa Sancti Michaelis et Paschæ per æquales portiones. Et postea prædictus Princeps, recitans chartas dictorum Regis et Reginæ, concessionem et dimissionem prædictas ratas habens pariter et acceptas, ipsas, quantum in ipso est, concessit, et in omnibus, prout rationabiliter testantur supradictæ literæ, confirmavit, volens et concedens pro se et heredibus suis, quod omnes dictæ libertates dictæ dominæ Reginæ in villa prædicta sic concessæ, quæ post mortem dictæ Reginæ ad ipsum Principem et heredes suos remanere deberent, ut præmittitur, Maiori et ballivis et dictis hominibus villæ de Coventre tenentibus manerii de Cheilesmore heredibus et successoribus suis, post mortem dictæ Reginæ, remanerent in perpetuum, sine occasione vel impedimento ipsius Principis vel heredum suorum, seu ministrorum suorum quorumcumque, reddendo inde eidem Principi et heredibus suis singulis annis post mortem dictæ Reginæ, ad terminos prædictos, firmam supradictam. Et postmodum dominus Rex, recitans prædictas chartas Reginæ et Principis præmissa testificantes, tam concessionem et dimissionem ipsius Reginæ quam concessionem et confirmationem præfati Principis de supradictis libertatibus, prædictis Maiori et ballivis ac ipsis hominibus villæ de Coventre tenentibus dicti manerii de Cheilesmore concessis et habendis in eadem villa de Coventre ratas habens et gratas, eas, pro se et heredibus suis, eisdem Maiori, ballivis, et hominibus, ac heredibus et successoribus suis concessit et confirmavit, sicut prædictæ chartæ dicti Principis ac literæ ipsius Reginæ rationabiliter testantur, eo non obstante quod dicta Regina libertatibus prædictis per ipsum sic concessis ante concessionem et dimissionem

hujusmodi nequaquam usa fuit, nec eædem libertates ipsi Reginæ aliquatenus allocatæ, seu quod dictus Princeps libertates prædictas præfatis Maiori, ballivis, et hominibus post mortem prædictæ Reginæ remanendas concessit, Regis super hoc prius licentia non obtenta. Et proferunt hic chartam domini Regis nunc, quæ concessionem, confirmationem prædictorum Reginæ et Principis, ac confirmationem ejusdem Regis nunc de præmissis testatur in forma prædicta, cujus data est undecimo die Aprilis anno regni domini Regis nunc vicesimo. Proferunt etiam breve domini Regis clausum Justiciariis hic in hæc verba :— Edwardus Dei Gratia Rex Angliæ et Franciæ, et Dominus Hiberniæ, Justiciariis suis de Banco salutem. Cum nuper per chartam nostram concesserimus, pro nobis et heredibus nostris, Isabellæ Reginæ Angliæ, matri nostræ, tenenti ad vitam suam manerium de Cheylesmore, cum pertinentiis, in Comitatu Warrewikiæ, quod ipsa quam diu viveret, et postmodum Edwardus Princeps Walliæ, Dux Cornubiæ, et Comes Cestriæ, filius noster primogenitus, cui manerium prædictum, post mortem præfatæ matris nostræ, erat remansurum, et heredes sui haberent infra libertatem et visum franci plegii manerii prædicti ac villam de Coventre, quæ infra visum franciplegii, ut dicitur, situatur, cognitiones omnium placitorum per senescallos suos ibidem, aut Maiorem et ballivos ejusdem villæ de Coventre pro tempore existentes, seu alios quos ad hoc deputarent tenendorum, tam videlicet de terris, tenementis, et redditibus infra libertatem et visum franciplegii prædictos existentibus quam de transgressionibus, conventionibus, contractibus, et querelis infra libertatem et visum franciplegii prædictos ac procinctum manerii supradicti emergentibus sive factis, de quibuscumque tenentibus et residentibus infra feodum manerii ejusdem, et postmodum eadem mater nostra per literas suas patentes, de licentia nostra, concesserit et ad firmam dimiserit Maiori ballivis et hominibus dictæ villæ de Coventre tenentibus manerii illius libertates prædictas infra eandem villam de Coventre, habendas ad totam vitam ejusdem matris nostræ, subsequenterque

præfatus Princeps voluerit, et per literas suas patentes, quas per literas nostras confirmavimus, et concesserit, pro se et heredibus suis, quod omnes dictæ libertates eidem matri nostræ in villa prædicta sic concessæ, quæ post mortem ejusdem matris nostræ ad ipsum Principem et heredes suos sic remanere deberent, post mortem ejusdem matris nostræ, præfatis Maiori, ballivis, et hominibus villæ de Coventre prædictæ, tenentibus dicti manerii, et heredibus suis remaneant in perpetuum, prout in charta nostra et literis prædictis plenius continetur, vobis mandamus quod ipsos Maiorem, ballivos, et homines libertatibus prædictis infra villam prædictam coram vobis uti et gaudere permittatis juxta tenorem chartæ et literarum prædictarum, eo non obstante quod dicta mater nostra libertatibus illis usa non fuerat ante concessionem et dimissionem supradictas. Teste Leonello filio nostro carissimo, custode Angliæ, apud Wyndesore, viij. die Julii anno regni nostri Angliæ vicesimo, regni vero nostri Franciæ septimo. Et petunt quod libertas illa eis allocetur, &c.

Ideo habeant libertatem suam in placito isto. Et Maior et ballivi prædicti præfixerunt partibus prædictis diem apud Coventre die Lunæ proxima post Festum Sancti Laurencii, &c. Et dictum eisdem Maiori et ballivis quod partibus celerem justitiam exhibeant alioquin, &c.

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INDEX OF MATTERS.

A

Abatement of Writs :

(Attaint.) The writ will abate for "false Latin," as *e.g.* for the use of the words *prædicta mesuagia* where the word *mesuagia* ought to be used alone, 212 ; 214.

(*Audita Querela.*) A writ was brought on the ground of an indenture made in defeasance of a statute merchant, and conditioned for the grant of a term of years to the obligee, his peaceable possession during the term, and his immunity from the levying of any debt owing by the obligor, or of any "Green Wax." In the writ of *Audita querela*, as well as in the following *Venire facias*, mention was made only of peaceable possession and not of the other conditions, and this omission was pleaded as a cause for the abatement of the writ, but the Court held that they were included in the peaceable possession, and adjudged the writ to be good, 424–428.

(*Cessavit.*) If in one *Præcipe* against one tenant land be described as being in "A. *juxta* B." and in another *Præcipe* against another tenant land be described as being "*in eadem villa*," the writ is bad for want of certainty whether the last mentioned land is in A. or B. If, however, the tenant takes a *Prece partium* with the demandant he thereby affirms the writ to be good, 82–88.

If the demandant takes a distress for any service, pending the writ, the writ abates, 84.

Where it was supposed in the writ that a prebendary held of the plaintiff, and had ceased to render the services, and that the plaintiff had been seised of the services by the hand of the prebendary's predecessor, but not that the predecessor held of the plaintiff, the writ was held good, 458–462.

(Darrein Presentment.) If the plaintiff alleges in his declaration that he is seised of the advowson, while the words of the writ are that the defendant "*advocationem illam ei deforciat*," the writ does not on that account abate, because the words are the ordinary form in which the writ issues from the Chancery, 178.

If the defendant claims as guardian of an infant, and is not described as guardian in the writ, and the infant is not mentioned therein,

ABATEMENT OF WRITS—*cont.*

that is no ground for the abatement of the writ, where the plaintiff has not supposed the defendant to be tenant of the advowson, 178–180.

(Debt.) Executors described themselves in their writ as executors of A.B. "of Eastham," whereas the testator was described in his will as A.B. only, the words "of Eastham" being omitted. In the obligation, however, on which the action was grounded he was described as in the writ. The Court held, on a plea in abatement of the writ, that, as the words in excess of those in the will were in accordance with the specialty, the writ was good, 428.

(Entry *sine assensu Capituli.*) Where one writ was brought in the *post* against two persons in respect of a manor, one pleaded that she held two-thirds of it in severalty, and the other that she held the other third in severalty in dower. The facts not being denied, the writ abated, 368–370; 371, note 1.

(Formedon.) If, while the writ of Formedon is pending, a writ of Dower is brought against the tenant, and he confesses the action, and the demandant in Dower recovers, the writ of Formedon abates in respect of the third part of the tenements recovered as dower, though not in respect of the two other parts, per WILLOUGHBY, J. One of the reporters, however, adds, as to the abatement in respect of a third part, that the judgment was wrong, and contrary to law, 28–40.

(Formedon in the descender.) Where the land is claimed by the son and heir of a woman (A.) to whom the gift has, according to the writ, been made in the form "*A. et heredibus de corpore ipsius A. per B. procreatis*," the writ is as good as if the word "*suis*" had been introduced after "*heredibus*," 248–252.

In the writ no one ought to be mentioned except those who are in the inheritance by the limitation, 252–254.

Where the writ was brought against husband and wife, and they pleaded several tenancy in abatement of the writ, on the ground that they held in virtue of a fine, by which part of the tenements was rendered to the husband in fee simple, and the rest to the husband and wife in fee tail, the writ was held to be good, 264–268.

(*Per quæ servitia.*) The writ does not abate through the death of the conusor, as the note of the fine is executory, 50–52.

(Plea of land in general.) Where a writ has been abated on the ground that the land demanded has been described as being in A., when it should have been described as being in B., and a second writ is brought which correctly describes the land as being in B., the tenant may plead joint tenancy with another person, though he has not so done in the case of the first writ, and if there be joint tenancy, the writ will abate, 334–336.

(*Præcipe quod reddat.*) *See* NON-TENURE.

(*Quod permittat.*) The writ was brought by one who alleged that

ABATEMENT OF WRITS—*cont.*

his father had been seised of certain common of pasture. It was pleaded in abatement that the plaintiff had himself been seised of the common, that he could have a writ in virtue of his own possession, and that the *Quod permittat* which he had brought was therefore bad. It was admitted that the plaintiff's beasts had fed on the land on which the common was claimed, which feeding was held to be seisin of the plaintiff, but he alleged that the feeding was not with his knowledge or consent, and could only have been through the escape of the beasts from those who had charge of them. The Court held that God alone could know whether the seisin was with the plaintiff's knowledge and intention, or not, but as the seisin was confessed, and a writ of Novel Disseisin lay in respect of it, the writ abated, 390–396.

(*Scire facias* on Fine.) The writ must be in accordance with the fine, and when so in accordance will not abate by reason of a variance between it and a *Mittimus* by which it has been sent into the Common Bench from the Chancery, or between it and a *Certiorari* by which it has been removed into the Chancery, when there is less in the *Mittimus* or *Certiorari* than in the fine. Nor will it abate because a hamlet is described in it as a vill, when the description is the same in the fine, 2–12.

Where a remainder was limited to A. and B. his wife, who brought the writ of *Scire facias* in respect of rent, and the words of the

ABATEMENT OF WRITS—*cont.*

Scire facias were "*predictum redditum prælatæ B. deforciat*," the writ abated because the husband was not mentioned in that clause, 114.

If the *Scire facias* supposes land claimed as part of a manor to be in a vill not mentioned in the writ of covenant, it will abate, but not because the manor is in divers vills and the *Scire facias* omits to mention in which vill the land is which is claimed. What is necessary is that the *Scire facias* should agree with the fine, 246–248.

Where the form of the fine has been that A. acknowledged rent to be the right of B., as that which B. and his wife C., being seised, had by A.'s gift, for B. and C. to hold to them and the heirs of B., the fine is not executory after the death of A. and C. and a *Scire facias* brought by B. will abate, 466–468.

See VARIANCE.

(*Scire facias* to have execution of judgment.) If several demandants have had judgment, and one of them dies, and the rest sue a *Scire facias* to have execution, without mentioning the death in the writ, it abates, 118.

(Trespass.) A writ brought in the Common Bench while a writ in respect of the same trespass is pending in the King's Bench will not abate on that ground, because the action is personal, though it would be otherwise if damages had been recovered in respect of the same trespass, 370.

ABBOT:

Relation of to Prior of same House. *See* QUARE IMPEDIT.

Account :
Where the defendant produced certain acquittances and certain tallies showing payments, and the plaintiff denied that the acquittances and the tallies were his, issue was joined to a jury with regard to the acquittances, and the plaintiff was allowed his wager of law as to the tallies. The defendant was let out on mainprise, 470.
If the writ is brought by executors against an Abbot as Abbot, in respect of the time during which he was the testator's bailiff and receiver, and the declaration is that, when he was co-monk with his predecessor, the predecessor made him bailiff and receiver of the testator's moneys, the declaration is good, though the defendant was not Abbot during the time, 474–476.
Where the defendant pleaded that he had already accounted before auditors appointed by the plaintiff, and issue was joined on that point, and the defendant made default on the day given, a writ of *Capias ad computandum* was awarded against him, because his plea was a confession of the receipt of the money, 498.
See Outlawry ; Protection.

Admeasurement of Pasture :
Continuation of pleadings in, from previous years, 62–66.

Admission to Defend :
See Receipt.

Age :
If aid is prayed in a *Scire facias*, and it is also prayed that the parol may demur on the ground of the non-age of the prayee in aid, and an averment is tendered that he is of full age, the point cannot be tried by jury, but must be decided by inspection of the prayee's person by the Court, 284.

Age—*cont*,

Aid :
Aid of reversioner granted to defendant in *Scire facias* on Fine, 10 ; 11, note 2.
Tenant for life may have aid of those who are in remainder in fee tail, when the limitation is by fine, but not when it is by deed *in pais*, 214, nor when the remainder is in fee tail male, 268.
Where a writ of Formedon was brought against a woman who alleged that the King had by charter granted a manor, of which the tenements demanded were part, to her and her late husband and her husband's heirs, she prayed aid, as tenant for life, of the husband's heir as reversioner. The demandant tendered the averment that the tenements were not part of the manor. It was held, however, that issue could not be taken on that point, as that would be to enquire whether they were included in the King's charter, which was not permissible, because it would tend to make the King's charter void. The aid was therefore granted, 258–262.
In Annuity the plaintiff claimed against a Prior as parson of a particular church, showing that the annuity commenced with the consent of the patron and the Ordinary. The Prior prayed aid of himself as patron, and of

AID—*cont.*

the Ordinary. It was granted, although the Prior held the church *in proprios usus* (and so could be a party to charge or discharge it), because he was entitled to have aid of the Ordinary, and could not have that without aid of the patron, 470–472.

Where a Bishop brought a writ of Entry *sine assensu Capituli* against a prebendary, the latter pleaded that he held the land in right of his prebend, which was of the patronage of the same Bishop, and prayed aid of him as patron, and of him and the Dean and Chapter as Ordinary. It was held that the tenant could not have aid of the Bishop because the Bishop was demandant, and that, as he could not have aid of the Ordinary without having aid of the patron, he could not have aid at all, 518–520.

AID OF THE KING:

The Prior and Convent of an alien Priory had granted an annuity to a certain person until he should be provided with an ecclesiastical benefice. Upon the outbreak of war with the French the King seized the possessions of the Priory into his hand. He afterwards, however, committed the possessions of the Priory (except knights' fees and advowsons), to the Prior, who had succeeded the grantor, at a certain rent *per annum*, and on condition that he should pay all the charges which were due from the House. The annuitant subsequently brought a writ of Annuity

AID OF THE KING—*cont.*

against the Prior on the ground that the annuity had been withdrawn. The Prior stated the circumstances in his plea, and prayed aid of the King, which was granted, 296–302; 303, note 1.

Though, as a general rule, delays are not allowed in cases of *Nuper obiit* or Novel Disseisin, yet aid of the King is allowed when he might otherwise lose his wardship, and that even when he has leased the wardship to another, 404.

ANCIENT DEMESNE:

When it is pleaded that tenements are Ancient Demesne, it must be stated that they are parcel of some particular manor, or that they are in some particular vill. If, however, it is stated that the whole of a Hundred is Ancient Demesne, and that the vill in which the tenements are is within that Hundred, the demandant must answer, and issue will be taken on the question whether the Hundred is Ancient Demesne, or not, 320–322.

As Domesday Book is the only evidence that tenements are Ancient Demesne, no averment in general terms will be admitted, 320.

Where damages had been recovered in the Common Bench on a writ of False Judgment, the Sheriff returned to a writ of *Elegit* that the party had no lands except lands in Ancient Demesne. The Court held that no execution of them could be had, but it was otherwise where the lands had been rendered in that Court by fine, because the nature of the

Ancient Demesne—*cont.*

tenancy was thereby changed, and had become frank fee, 520.

See False Judgment.

Annuity :

Where arrears of an annuity are claimed, it is necessary that seisin of the annuity in the person of the claimant, or (in the case of an ecclesiastical person) of his predecessors, should be shown, even though the annuity may appear to have been included in a grant by statute, 90–98.

Where the annuity was to continue only until the plaintiff should be advanced to a suitable benefice, and the defendant pleaded that a vicarage had been tendered to him at a certain place, that he had refused it, and that so the annuity was extinguished, the plaintiff denied that the vicarage had been offered to him at the place mentioned. The averment touching the place was not admitted, and the plaintiff had to deny the tender of the vicarage, as alleged, but, upon issue joined, the *Venire* was for a jury from the neighbourhood of the place mentioned, 380–382.

Where the annuity was to continue only until the plaintiff should be advanced to a suitable benefice, and the defendant pleaded that a certain vicarage had been tendered to him and that he had refused it, he objected that the value of the vicarage had not been stated so as to show that there had been a suitable tender for the purpose of extinguishing the annuity. It was held, however, that it was for the plaintiff to show that

Annuity—*cont.*

the vicarage was of too small value to extinguish the annuity, and, as he could not say what the value was, he was non-suited, 406.

See Aid ; Aid of the King ; Variance.

Assise :

See Darrein Presentment ; Mort d'Ancestor ; Novel Disseisin ; Nuisance.

Assise, Justices of :

Their record sent into the Common Bench cannot there be contradicted by Counsel, 274.

Assise, Recognitors of :

Where one disagreed with the rest, and declared that he never would agree with them, he was sent to prison, and the verdict of the other eleven was taken, but it was said that he could have an Attaint against them, 554–556.

Attaint :

Writ of following verdict in *Cui in vita*, 208–214.

Difference between procedure on a writ of Attaint and procedure on a writ of Error or False Judgment, 312–314.

Where the demandant was non-suited, a writ of *Capias* against him was awarded, but it was said that if another person, without his knowledge, had sued the writ of Attaint in his name, he would have a writ of Deceit, 310.

See Abatement of Writs ; Assise, Recognitors of ; Cognisance of Pleas.

ATTORNEY :
If an attorney is appointed on a *Scire facias* to have execution of a judgment in a plea of land, and the parol is put without day by reason of the non-age of the defendant, and a new *Scire facias* is afterwards brought, the old warrant of attorney remains in force, 282.
See ESSOIN.

AUDITA QUERELA :
Where the obligor in a statute merchant has had execution sued against him, and has sued an *Audita querela* and had a *Supersedeas* of execution awarded, and has been non-suited on the day given in Court by a *Venire facias*, and afterwards sues a second *Audita querela* and prays a second *Supersedeas* and a second *Venire facias*, he cannot again have a *Supersedeas*, though, according to one report, he may have a *Venire facias*, 56.
See ABATEMENT OF WRITS.

B

BARON AND FEME :
See CUI ANTE DIVORTIUM ; ABATEMENT OF WRITS (*Scire facias* on Fine).

BARONY :
Tenure by. *See* NOVEL DISSEISIN.

BASTARD :
If, in a deed, a bastard is described as A. son of B., B. being his mother, he takes a remainder limited to him in the deed under which he purchases, and he can give aid to a tenant for life, because he is correctly named, and although the law denies him a father, it allows him a mother, 517.

BILL OF EXCEPTIONS :
Refused by the Justices of the Common Bench, 106.

BISHOP :
Rules as to consecration of, when provided to bishopric by papal bull, 308–400.

C

CAPE :
See DISCONTINUANCE.

CASES CITED :
Leeke *v.* Leeke (Y.B., Trin., 20 Edw. III., No. 1), 48.
The Chapter of Lincoln *v.* the Dean of Lincoln (Y.B., Mich., 17 Edw. III., No. 68 [*bis*]), 346.
Raddeford *v.* Flembly (Y.B., Easter, 8 Edw. III., fo. 26, No. 23.)
The case of the Abbot of Combe (Y.B., Hil., 19 Edw. III., No. 25), 377.
The case of the Abbot of Swineshead (Y.B., Mich., 11 Edw. III., *p.* 196), 460.

CASTLE-WARD :
Avowry for, 498–500.

CERTIFICATE OF ASSISE :
Given only after the assise has been taken, and judgment rendered, 274.
Not given when the party claiming it was present in Court when the assise was taken, 276.

CESSAVIT :

Where the tenant said that he held of the demandant by services less than those alleged, and that the land was open to distress, the issue taken was upon the question whether the land was so open or not, a protestation only being entered as to the quantity of the services, 70.

See ABATEMENT OF WRITS.

CHALLENGE :

Where an action of Wardship was brought by the Prince of Wales, and issue was joined in respect of land in Cornwall, the array of jurors was challenged on the ground that the Sheriff was appointed by the Prince, whose robes he bore, and that the panel had been returned by him on the nomination of persons who were of the Prince's counsel. The challenge was found to be true by triers. Judgment was given that the panel should be destroyed, and a new *Venire* was then sent to the Coroners of the County, 319, note 1.

CHANCELLOR, the :

Can personally deliver a document in the Common Bench, and need not send it by writ of *Mittimus*, 6.

CLERKS OF THE COMMON BENCH :

Authority and practice of, 512.

COGNISANCE OF PLEAS :

A writ of Entry *dum fuit infra ætatem* having been brought in the Court of Common Pleas, the Mayor and Bailiffs of a town intervened, and claimed cognisance of the plea. They alleged that the King had granted to his mother, Queen Isabella, cognisance of pleas within the precinct of a manor within which the town was, that she had granted the same franchise to them, and that her grant had been confirmed by the King. A Prior then intervened, alleging that he was mesne lord holding of the Queen, and the so-called Mayor and Bailiffs were his tenants and not the Queen's, and that therefore they could not be in possession of the franchise. The grant to the Queen, however, related to all those who were resiant within the precinct of the manor, and not exclusively to her tenants, and it was held that if wrong had been done to any one by the King's grant it could not be redressed in the Common Bench, and that the Prior had no *locus standi*. The parties in the action were asked whether they could show any cause why the cognisance should not be allowed, and said they could not. Judgment was given with the assent of the whole Council that the Mayor and Bailiffs should have the cognisance, 98–112.

COGNISANCE OF PLEAS—*cont.*

Where cognisance of a plea of *Cui in vita* had been allowed to the Mayor and Bailiffs of a city in whose court judgment was afterwards given, one of the parties sued a writ of Attaint. Cognisance was again claimed on behalf of the same Mayor and Bailiffs, but not until after oyer had been had by the other party of the original writ of Attaint and of the record. It was held, on that ground, that the claim had been made too late, and further,

COGNISANCE OF PLEAS—*cont.*
that, even had it been made in time, it could not have been granted, because the Mayor and Bailiffs had not power to award the proper punishment to the jurors, or to carry out the judgment proper on a writ of Attaint, 206-214.
If the King's charter purports that certain persons shall plead and be impleaded in a certain place, and before a certain judge, but does not contain the words "not anywhere else," no exclusive jurisdiction is granted, and the Common Bench will have concurrent jurisdiction, 562.

COMMON OF PASTURE:
Will not pass, by deed, under the general term "tenement," nor by the words "*de tenementis et de pastura*," without express mention of common, 568.

CONTEMPT:
A writ of Contempt was brought by the King against a provisor, alleging that he had intruded into a church on pretence of a provision made to him, and had caused the rightful incumbent to be several times cited to the Court of Rome in contempt of the King's Prohibition duly read and delivered to him. The provisor traversed the whole of the facts alleged on behalf of the King, and pleaded Not Guilty, 58-62.
See EXCOMMUNICATION.

COSINAGE:
Where the resort was made by the demandant through the mother of A., the *consanguineus*, to

COSINAGE—*cont.*
A.'s great-aunt, B., and the descent from B. to the demandant, it was pleaded by the tenant that the tenements had, in part, descended to A. from his father and had, in part, been purchased by A. Issue was joined on the replication that the tenements had descended to the demandant from B., *absque hoc* that they had descended to A. from A.'s father, or that A. had any of them by purchase, 12–16; 17, note 1.

COUNCIL, the:
113; 127; 140.

COUNTY PALATINE:
If one is outlawed on a writ of Trespass in a county outside the Palatinate, but is known to be dwelling within the Palatinate, a *Capias utlagatum* can be directed to the holder of the Palatinate, commanding him also to answer as to the outlaw's goods and chattels, 314.

COVENANT:
Where a plaintiff had, in his declaration, alleged a covenant, and produced no specialty, and though exception was taken, the court below had decided that the plaintiff must be answered without producing any specialty, the judgment was reversed in the Court of King's Bench, 148.

CUI ANTE DIVORTIUM:
A. conveys tenements to B. and C. his wife in special tail, with remainder to C.'s right heirs. After her divorce C. brings her action of *Cui ante divortium* against D., the tenant, alleging that he had not entry but after

Cui ante divortium—*cont.*
a demise which B. made to A. Thereupon D. pleads in bar that, after the conveyance by A. to B. and C., a fine was levied between B. and C., plaintiffs and A. deforciant, in which B. acknowledged the tenements to be the right of A., and A. granted and rendered them in special tail to B. and C., with reversion to himself quit of other heirs of B. and C.; and D. says that C. was thus restored to her original estate, and prays judgment whether she ought to have the action on any previous title of right. C. replies that the fine itself proves the alienation by B. to A., that there was no divesting of her estate by C., that she was not examined, that she was not restored to her first estate by the fine, as a lesser estate was limited therein, and that the acknowledgment of right and the alienation ought to be adjudged to be the act of B. alone, which could not prejudice C. The Court held that, as there was no seisin alleged to be in C. after the divorce, or agreement on her part, and the fine was on the acknowledgment of B., and C. was not examined, the whole must be adjudged to be the act of B. alone, just as much as if C. had not been mentioned in the fine, and judgment was given for C. to recover seisin, 72–80.

Cui in vita:
It was pleaded that the wife had made partition with a sister, who enfeoffed the tenant of her share, which was the land in demand, and that the wife had thereafter no interest in it, but the alienation by the husband was not denied in the plea. It was held that the tenant must either confess and avoid the alienation or else deny it, 506–510.
Pleadings in, where it was alleged that the tenant had entered by lease from the husband, and the tenant alleged that he had entered through another person, 514.
See Attaint; Cognisance of Pleas; View.

Cui in vita—*cont.*

Custom:
See Dower.

D

Damages:
Recovery of, on a writ of Entry, by the son and heir of the disseisee, 540.
See Ex gravi querela.
Execution of. *See* Ancient Demesne.

Darrein Presentment:
Pleadings in Assise of, 176–196.
In what cases an Assise of Darrein Presentment lies, and in what cases a *Quare impedit*, 180–186.
Where the defendant shows a title to a fourth part of the advowson, originating in a certain feoffment made to his ancestor, and the plaintiff alleges an earlier feoffment made by the same feoffor to his own ancestor, and makes *profert* of the deed, the defendant, being a stranger to it, is not compelled to answer as

DARREIN PRESENTMENT—*cont.*
to the deed, but his allegation that the feoffment was made to his ancestor, and that the plaintiff's ancestor had nothing before that feoffment, will be tried by the assise, without any denial of the feoffments either on one side or on the other, 180–196; 197, note 2.
See ABATEMENT OF WRITS.

DEATH, PROOF OF:
See JURATA UTRUM.

DEBT:
A plaintiff proceeded by two plaints of Debt in an inferior court, which had not jurisdiction above forty shillings, and each plaint was in respect of 39*s.* 11½*d.*, and it appeared from the declaration that the two plaints were in respect of one and the same contract and debt, and though exception was taken, judgment was given for the plaintiff to recover. A writ of Error was brought in the King's Bench, where the judgment was reversed, and the plaintiff in Error had restitution, 146–148.
The action was brought as being in one county, and issue was joined in the Common Bench on a deed or writing purporting to be dated in another county, which had been produced on the one side and denied on the other. The issue was sent to be tried at *Nisi prius*, and the *Nisi prius* record was entitled as of the first county, but the *Venire* was directed to the Sheriff of the second county. The finding was for the plaintiff, for whom judgment was prayed in the Common

DEBT—*cont.*
Bench. It was objected that the verdict of the jurors of the second county had been taken without warrant, but the Court held that it had been properly taken, and judgment was given for the plaintiff, 204–208.
Where the action was brought on an obligation conditioned for the enfeoffment of the plaintiff by the defendant of a certain messuage and land within a certain time, the plaintiff pleaded that he had been ready to enfeoff the plaintiff within the time limited, and still was. This was held to be a good plea, though the feoffment was still unmade, 456–458.
An action was brought against a Prior on the ground that his predecessor borrowed money of the plaintiff for the purpose of maintaining the election as bishop of a monk of the Prior's House, which money was then spent for the profit of the House. The Prior pleaded that there had been no such loan, and that the Prior did not owe any money to the plaintiff, 552–554; 555, note 1.
Where the action was brought against one of the King's moneyers, he pleaded the King's charter giving jurisdiction to the Warden and Master of the Mint, but as the charter did not contain the words "not anywhere else" the cognisance of the plea by the Warden and Master was not allowed, 562.
See ABATEMENT OF WRITS; EXECUTORS; NOVEL DISSEISIN.

DECEIT:
See ATTAINT.

DETINUE :

A writing or deed had been delivered by A. and B. to C. on condition for redelivery to A. if A. should enfeoff B., within a certain time, of certain land, and should not during the same time commit waste in lands of B.'s inheritance held by A. A. brought his action against C. for redelivery. C. alleged that he did not know whether the conditions had been fulfilled, or not, and had a *Scire facias* to bring B. into court. B. then appeared, and, in answer to A.'s declaration that A. had performed the conditions, said that B. had performed the covenants on his side, but that A. had failed to perform them on his side. He was not allowed to take issue on both points, because it was sufficient for him to aver that A. had not performed the conditions. B. then tendered the averment that A. had not fulfilled the conditions, (1) because he had not enfeoffed, and (2) because he had committed waste. He was, however, put to elect on which of the two points he would take issue, as he could not have both, 198–202.

DISABILITY :

See QUARE IMPEDIT.

DISCONTINUANCE :

In a plea of land brought against husband and wife both made default, and a *Cape* was awarded in respect of a moiety only of the land, instead of the whole. The demandant prayed seisin of the land. The Court held that there had been a discontinuance,

DISCONTINUANCE—*cont.*

and refused to give a judgment which would be reversible, but, on the prayer of the demandant, awarded a new *Cape* in respect of the entirety, 262–264.

DOWER :

Where the tenant pleaded that the demandant's husband had previously assigned the tenements in demand as dower to his own mother, who survived him, the demandant, not acknowledging the alleged assignment, replied that her husband was seised of the tenements in his demesne as of fee, and died so seised. It was objected that such an averment could not be accepted unless it was shown how the husband became seised, but the Court held that the averment should be accepted, 322.

It was pleaded in bar that the custom of the town in which the dower was claimed was that, if the husband died seised as of fee of tenements therein, his wife should have his capital messuage as free-bench so long as she remained unmarried, but that, if the husband sold any tenement, and the money was converted to the use of the husband and wife, she should not have dower of that tenement, and that the demandant's husband had so sold the tenements of which dower was demanded. It was replied that, as the alleged custom was out of the course of common law, no answer need be made to it, but the Court held that the demandant must answer as to whether there was such a custom, or not, and issue

DOWER—*cont.*
was joined on the question whether the money had come to the common benefit of the husband and wife, 348–350; 351, note 2.

The writ was brought against one who vouched to warrant. The vouchee vouched the husband's heir, who entered into warranty, as one who had nothing by descent. Judgment was prayed against the heir, but as the heir had not been vouched directly by the tenant, judgment was given that the demandant should recover against the tenant, that the tenant should recover to the value against the first vouchee, and he in turn against the heir, 372–374.

Where dower was demanded of a third part of a bailiwick (A.) which was alleged to be in B., C. and D., it was pleaded in abatement of the writ that C. and D. were only hamlets of B., and issue was joined on that plea. The demandant then prayed an answer as to that which was in B., but this could not be allowed before the issue had been tried, and there could not be any recovery by parts, 414–418.

Where the action was brought by husband and wife on the seisin of the wife's first husband, a release executed by the wife while she was sole was pleaded in bar by the tenant. The husband and wife confessed the deed, but the confession was held to be worthless because, after the husband's death, the wife would be able to deny the deed, 452.

DOWER—*cont.*
The tenant having vouched the late husband's son and heir and, on the appearance of the supposed vouchee, tendered the averment in the previous Trinity Term that it was not the same person, assigning diversity of father and mother, issue was joined on the replication that it was the same person. On further argument the Court held that the issue was wrongly taken, and that a *Summoneas ad warantizandum* ought to have been awarded against the person whom the tenant alleged to be the real vouchee. The issue was therefore quashed, and the *Summoneas*, &c., awarded, 462–466.
See VIEW.

DRENGAGE:
Tenure by, 44; 45, note 4; 384.

E

EJECTMENT FROM WARDSHIP:
Process and essoin in, 160–166.
The writ is of the nature of a writ of Trespass, and if there are two defendants, one of whom appears and the other does not, the one who appears will answer in the absence of the other, and the plaintiff must count against him, 162–164.

ENTRY:
Where it was pleaded that the demandant (in respect of a disseisin effected on whose ancestor the action was brought) was a bastard, it was held that

ENTRY—*cont.*
the plea could not be admitted if the tenant had already demanded and had view, 388.
Y., the demandant, claimed land, alleging that Z., the tenant, disseised X., who was Y.'s father; Z. pleaded in bar that X.'s father, J., after having had issue X., by his first wife, had, by a second wife, issue R., to whom he gave the land in fee simple, that, after the death of J., R. died seised without heir of his body, that X., being of the half-blood, then abated on the land as heir to J., and that Z. ousted him. Y. replied that J. gave the land to R. in fee tail, and, as Z. had admitted that R. had died without heir of his body, prayed seisin of the land (as heir to the reversioner). Issue was joined on the question whether J. gave in fee simple, or not, 480.
See DAMAGES.

ENTRY, *ad terminum qui præteriit*:
The writ does not lie for an Abbot, who claims as parson of his church, in right of his church, on the seisin of his predecessor, and he has no remedy except by *Jurata utrum*, 58.
See ESSOIN.

ENTRY, *dum fuit infra ætatem*:
See COGNISANCE OF PLEAS.

ENTRY, *sine assensu Capituli*:
See ABATEMENT OF WRITS; AID.

ERROR:
See COVENANT; DEBT; EX GRAVI QUERELA.

ESSOIN:
Three days after issue joined on a writ of Entry *ad terminum qui præteriit* the demandant cast an essoin, to which it was objected, firstly that he had an attorney, and secondly that he could have an essoin only on the first day after issue joined according to the statute, Westm. 2, c. 27. Both objections were overruled—the first because the attorney might have been removed, and the essoiner could not be a party to try that question, and the second because the statute did not restrain a demandant from delaying himself as long as he pleased, 160.
Where exception is taken to an essoin on the ground that the party has an attorney in the plea, and he then appears by attorney and pleads, the essoin is quashed, 166.
See NONSUIT.

EXCUMMUNICATION:
A writ of Trespass having been brought against a Bishop and others, those others produced a letter from the Bishop testifying the excommunication of the plaintiff, and the Bishop himself pleaded Not Guilty. As the Bishop, being named in the writ, was supposed to be a party to the trespass, his letter of excommunication was disallowed with regard to all, 154–156.
A writ of Prohibition, having been directed to a Bishop, was delivered to him by the King's messenger, whom the Bishop's Commissary excommunicated for having delivered it. A writ of Contempt was thereupon

EXCOMMUNICATION—*cont.*

brought, in the names of the King and of the messenger, against the Commissary, to punish him for contempt of the King, and to obtain damages for the messenger. The Commissary pleaded first a disability in the person of the messenger in that he was an excommunicate, and therefore not in a position to be answered, and produced a letter from the Archbishop of Canterbury to the effect that the Archbishop had found in the Acts of the Court of Arches in London that the messenger was under various sentences of greater excommunication. The Court of Common Bench held that, as the letter did not specifically assign any other cause, the excommunication must be for the cause for which the action was brought, and that the defendant must answer. There was then a plea to the jurisdiction, on behalf of the Commissary, to the effect that the Common Bench could not have cognisance in respect of the cause of any excommunication, which must be tried and decided in Court Christian. The Court of Common Bench held that the excommunication was the ground of the action, and that (the King being a party) it could not be prosecuted in any court but the King's. The Commissary, being asked, declined to answer further, and judgment was given that his person should be taken, and that the messenger should recover damages as claimed in his declaration, 322–334; 335, note 1.

EXECUTION:

See ANCIENT DEMESNE; STATUTE MERCHANT.

EXECUTORS:

A writ of Debt was brought by A. against B. and C., as executors of D., on a deed by which D. bound himself to A. The executor B. pleaded *Plene administravit*, but alleged, as to a portion of the estate, that it had been recovered against him in another action of Debt grounded on D.'s obligation, which he confessed. A. replied that the plaintiff in the last mentioned action of Debt was C. (B.'s co-executor), and that B.'s confession of the obligation was by collusion. It was argued for B. that he was not legally compelled to deny a deed which was true *in esse*, but the Court held that he should have pleaded that, as C. was his co-executor, C. had had administration of the goods of the deceased, which plea would have barred C. The Court then required B. to answer whether C. had had administration, or not. B. tendered the averment that C. never administered as executor, but it was held that this was no denial of administration, and that administration charged C. as executor. In the end issue was joined on the simple averment that C. did not administer, 418–424.

Where a testator mentions in his will certain persons as his executors, and certain others to be their "co-adjutors," the latter will, if they administer, be charged as executors, but they need not be mentioned in any action which is brought, 428–430.

Ex gravi querela :
A citizen having, according to the custom of his city, devised certain rent "*tanquam catalla*" to his children begotten of the body of his late wife (named), the children brought an *Ex gravi querela* against one who had entered into possession of the rent. He made default in the city court, and judgment was there given for the demandants to recover the rent and damages. The tenant, however, had nothing within the liberty of the city of which the damages could be levied. The cause was then removed into the King's Bench by *Certiorari*, and a *Scire facias* issued to warn the tenant to appear in that Court to show cause why the damages should not be levied of his goods and chattels within the bailiwick of the Sheriff of the county. The tenant appeared and alleged that there was error in the judgment of the city court, and produced a writ from the Chancery to the Justices of the King's Bench "*ad errores illos assignandum.*" The errors assigned were as follows : Whereas in the writ of *Ex gravi querela* the city court was directed to do justice to the parties "*virtute tenoris testamenti prædicti*," no will or tenour of a will had been there produced, but only a letter from the Ordinary testifying the proof before him of the devise by a nuncupative will, while, according to the custom of the city, freehold could not be bequeathed by nuncupative will. Again, the demandants had sued by way of remainder, in which case damages ought not

Ex gravi querela—*cont.*
to be adjudged to them. A writ of *Scire facias* then issued to warn the demandants to hear the record and process before the Court proceeded to annul it. They appeared and prayed and had judgment of the writ on the ground of a grammatical error. They then prayed execution, but several adjournments followed without result, 114–124.

F

False Judgment :
A. brought a writ of Right against B. in a Court of Ancient Demesne. B. pleaded in bar that he had previously brought against A., in the same Court, a writ of Right, but making protestation that his suit was in the nature of a Formedon in the remainder, that A. traversed the gift, and that B. recovered. The Court of Ancient Demesne gave judgment for B., notwithstanding the fact that the Formedon was for the purpose of destroying the possession and not the right. This was assigned as error in the Common Bench by A. After a dilatory plea that the Court should send for a fuller record, which was over-ruled, B. pleaded that, according to the custom of the manor, where any one had recovered, on any writ, by action tried in its Court, the judgment barred the party who lost, even though he might bring a writ of Right, unless he could show a subsequent title, and B.

FALSE JUDGMENT—*cont.*
tendered an averment to that effect. The Common Bench, however, held that, as the custom was not pleaded in the Court of Ancient Demesne, and no mention of it was made in the judgment, B. could not be admitted to aver the custom in order to maintain this judgment. The Common Bench, therefore, gave judgment that the judgment of the Court of Ancient Demesne should be reversed, and that A. should recover, but not as by final judgment on a writ of Right, because the mise had not been joined, 432–448.

FINES OF LANDS, &C. :
Forms of, 540–542 ; 542.
See CUI ANTE DIVORTIUM.

FORMEDON :
See ABATEMENT OF WRITS ; AID ; RECEIPT.

FORMEDON IN THE DESCENDER :
See ABATEMENT OF WRITS ; WARRANTY.

FRANK-MARRIAGE :
Nature of tenure in, 358–360.

G

GRAND ASSISE :
When not awarded on writ of Right, 520–522.
See RIGHT, WRIT OF.

GUARDIAN :
If, on a *Scire facias* to have execution of a judgment in a plea of land, the defendant appears by

GUARDIAN—*cont.*
guardian, and the parol is put without day by reason of the non-age of the defendant, and the plaintiff afterwards brings a new *Scire facias*, the old warrant of guardian is of no avail, and, if the defendant is called, and does not appear, judgment is given against him, 282–284.

H

HALF-BLOOD :
See ENTRY.

J

JUDGMENT :
See NONSUIT.

JURATA UTRUM :
Where the tenant vouched to warrant, and the vouchee made default, the tenant alleged that the vouchee was dead, though the Sheriff had not so returned. The demandant tendered the averment that the vouchee was alive, and the tenant offered to prove by witnesses that he had died in Brittany. It was held that where an action was brought by way of *assisa*, or of *jurata*, an alleged death in a foreign country could be tried by the assise or the jury and not by witnesses, but otherwise where actions were brought by other writs, 168–170.
See ENTRY *ad terminum qui præteriit* ; RECEIPT.

JURY-PROCESS :
Where the King and a Bishop were at issue in a *Quare impedit* brought by the King, the Bishop sued out one *Venire facias juratores*, and the King's attorney another. The Sheriff returned the *Venire* sued out by the Bishop, and refused to receive that which had been sued on behalf of the King. The Court allowed the writ returned to be disavowed on behalf of the King, and awarded an *Alias Venire*, 342.

K

KING, THE :
Charters of the. *See* AID.
No final judgment against, on writ of Right of advowson, 520–522.
See QUARE IMPEDIT ; WARDSHIP.

L

LIBERTY :
A Sheriff returned a Summons to the effect that the tenements in respect of which an action had been brought were within a liberty, and that he had sent to the bailiff of the liberty, who had returned that the tenant had been summoned. The cause was afterwards put without day by a Protection. The demandant sued a Re-summons, and the Sheriff again returned that he had sent to the bailiff, who returned that the tenant had nothing whereby he could be summoned. The demandant prayed that the bailiff might be

LIBERTY—*cont.*
amerced for his contrariant return, but the Court of Common Bench held that it had no power to amerce the bailiff, because he was not an officer of that Court, but they granted a *Non omittas propter libertatem* to be directed to the Sheriff, 156.
Where the lord of a liberty (A.) has the franchise of having the execution of writs by his bailiff, and the bailiff, in accordance with the precept from the Sheriff, proceeds to distrain, within the liberty, one of the resiants, for the King's debt, but is interrupted by another person (B.), the latter commits a trespass, *vi et armis*, and A. will recover damages against B. It is no justification for B. to allege that he has, within the liberty, a manor in which there is a custom that, whenever the bailiff of the liberty effects any distress for the Green Wax, or other money owing to the King, upon any tenant of the manor, the bailiff ought to take the distress to B.'s pound within the manor to remain there for three days and nights, so that, if the tenant pays the money within the time, he can have his beasts quit, because such a custom could not be any profit to B., but rather the reverse, 522–538 ; 539, note 1.

M

MAINPRISE :
One who sued out a writ of *Audita querela*, for the purpose of staying execution on a statute

MAINPRISE—*cont.*
merchant, could not be let out on mainprise after issue had been joined, but was delivered to the Sheriffs of London to be taken back to Newgate by them, because he had come out of the prison to prosecute his suit only in virtue of a writ of *Habeas corpus*, 428.
See ACCOUNT.

MESNE :
The liability to acquit of services was alleged by the plaintiff to be in virtue of a fine by which the defendant's ancestor undertook that he and his heirs should acquit a feoffee and his heirs of all services in consideration of an annual rent of one penny. The plaintiff, though holding the estate of the feoffee by subsequent conveyances, was not his heir, and it was objected that the defendant was therefore not bound to acquit him. It was, however, argued that the liability to acquit was acknowledged in the fine as being perpetual, and in the end the defendant confessed it, 350–366 ; 367, note 3.
The writ lies for tenant by the curtesy of England, and process thereon, as in the case of other tenants, 406–412.
Proceedings in, where in a previous action of like nature judgment had been given that the defendant was bound to acquit the plaintiff of services, but the defendant had not acquitted, though many times requested by the plaintiff, 500–506.

MINT, THE :
See DEBT.

MITTIMUS :
The writ of is not essential for the delivery of a document in the Court of Common Pleas, as the Chancellor may deliver it in person, without any writ, 6.

MONEYERS, THE KING'S :
See MINT.

MORT D'ANCESTOR
Where the assise was brought against two persons who vouched, and the Sheriff returned that the vouchee had nothing, the tenants were called in Court, and one of them appeared, but the other did not. The plaintiff prayed seisin of the land, and the assise in respect of damages, but the Court awarded the assise at large, 370–372.

N

NAIFTY :
When the demandant in a writ of Naifty has been non-suited, after appearance, final judgment will be given in favour of the *nativus* as between him and the demandant ; and the *nativus* will be a free man for ever with regard to the demandant, and his heirs, or successors, 468.

NISI PRIUS :
See DEBT ; PROTECTION.

NONSUIT :
Where a writ has been brought against several persons by several *Præcipes*, and the demandant has been nonsuited at *Nisi prius* with regard to one of the

Nonsuit—*cont.*

Præcipes, and the other tenants, having a day in the Common Bench, are essoined, and the essoiners claim that the demandant is nonsuited because a nonsuit with regard to one is a nonsuit with regard to all, the Court holds otherwise, 138.

Where a verdict had passed against a tenant, at *Nisi prius*, and the demandant did not appear on the day which the parties had in the Common Bench, judgment was given not on the nonsuit, but on the verdict, 172.

A writ was brought against two persons by different *Præcipes*, and one of them vouched to warrant, and the other traversed the action. The demandant was non-suited with regard to the latter, and the one who vouched was subsequently essoined, and had a day by the essoin. It was held that the nonsuit applied only to the one who had traversed, and not to the one who had vouched and been essoined, 376–378.

Non-tenure :

In a *Præcipe quod reddat* the tenant pleaded, in abatement of the writ, that another and not he held a portion of the land demanded. The demandant replied that the tenant was tenant of the entirety of the tenements put in view, and tendered an averment to that effect. It was argued on behalf of the tenant, that the replication was not good, as it should relate to the tenements demanded, and not to those put in view. It was held by the Court that the replication was good because, after view had been had, the demand could be understood to be only of that which had been put in view, and issue was taken on the averment, 252–258.

Non-tenure—*cont.*

Novel Disseisin :

An assise was brought by an Abbot and it was found by verdict that he had been seised and disseised, but that since the disseisin he had, under threats, and duress (which duress, however, did not affect his person) executed a release of the tenements to the defendant. After adjournment into the King's Bench, the matter was brought before the Council, in the presence of all the Justices, who quashed the whole proceedings, because the release had not been produced in Court or pleaded, and it therefore did not fall within the cognisance of the jurors of the assise to enquire of it, or to mention it, 125–127.

Where there are several defendants, and one of them (A.) pleads, as to a moiety, a deed of the plaintiff's ancestor in bar, and the plaintiff replies as to that moiety that A. is not tenant, but that B. is tenant, and issue is joined on that question, and the assise finds that A. is tenant, the plaintiff is barred as to that moiety, 128–138.

An assise was brought by husband and wife (A. and B.) against C. and D. in respect of two thirds of 5 marks of rent. On D.'s default, C. was admitted to defend his right, as being in reversion after the death of D., who held a third part in dower, the reversion having been granted to him by D.'s previous

NOVEL DISSEISIN—*cont.*
husband E. The plea of C. in bar was that F. formerly lord of the barony of G., was seised of the tenements out of which the rent issued, as of parcel of the barony, and held of the King *in capite*. F., as alleged, in the reign of Edward I. enfeoffed H., in fee, of the tenements, to hold of F. by fealty and the service of one penny *per annum*. On H.'s death his son I. entered and rendered the services to F., as afterwards did I.'s son K., on I.'s death. After K.'s entry it was found by inquisition before the Escheator, in the reign of Edward III., that H., I., and K. had entered by purchase, without having obtained the King's license, and Edward III. caused the tenements to be seised into his hand. K. then, after paying a fine, had a grant from the King to the effect that he should have restitution of the tenements, and should hold them of the King in fee by the accustomed services. Afterwards K., with the King's license, enfeoffed C., the defendant, of the tenements in fee, to hold of the King and his heirs, and C. did homage, and rendered the other services to the King. C. further alleged that F. granted the rent of one penny and the service of H. to L. in fee, that H. attorned to L., that, after L.'s death, his son and heir M. was seised of the services, which after his death descended to his three daughters, N., O., and P., and that N. had issue B., who was plaintiff, with her husband A. On these alleged facts C. prayed judgment

NOVEL DISSEISIN—*cont.*
whether A. and B. ought to have an assise in respect of rent issuing from tenements held of the King *in capite*.
The plaintiffs (without admitting that the tenements were part of the barony or the other allegations) replied that a certain F., the elder, in the time of Henry III., and before the 20th year of his reign, enfeoffed one H. of the tenements in fee, to hold of F. and his heirs by homage, fealty, and the service of 5 marks *per annum*, and afterwards, but still before the year 20 Henry III., granted the services to one Q. at an annual rent of one penny, to be paid to F. and his heirs, and that H. attorned to Q. The services, including the 5 marks of rent, then descended successively to Q.'s son R. and to R.'s son S. Afterwards S. granted the services of H. to L. in fee, and H. attorned to L. On the death of H. his son T. entered the tenements, and attorned to L. in respect of the 5 marks and other services. After L.'s death the services descended to his son M., and after M.'s death to M.'s daughters N., O., and P., who made partition of the tenements which came to them from M. The rent of 5 marks was assigned to the purparty of N. She, being seised, endowed M.'s widow U., of a third part of the rent of 5 marks. After N.'s death, B. was seised, together with A., her husband, of two thirds of the rent, as daughter and heir of N., until C. and D. tortiously disseised them. The replication concludes

Novel Disseisin—*cont.*

with a traverse of the statement that F., mentioned in the plea, or any other person of that name, was seised of the tenements as parcel of the barony of C. in the time of Edward III., and with a prayer that the assise might be taken.

C. rejoined that A. and B. had not denied that the tenements were part of the barony of G., held of the King *in capite*, nor that they had been seized into the King's hand because they had been aliened without the King's license. As to the allegation of A. and B. that F. the elder had enfeoffed H. of the tenements to hold of F. by certain services, including the rent of five marks, in the time of Henry III., C. alleged that neither F. nor any other person could at that or any other time enfeoff any one, to hold of himself, of any tenements holden of the King's progenitors *in capite*, because in such case the feoffee became the immediate tenant of the King, and the tenements so aliened became entirely discharged of all services reserved by the feoffor. Therefore C. said, the time of feoffment made by F. could not rightly better the title of the plaintiffs, and he had no need to answer to it, and prayed judgment.

To this the plaintiffs pleaded that, inasmuch as C. did not deny that F. the elder enfeoffed H. in the time of Henry III. to hold of F. by the rent of 5 marks, &c., and did not maintain that F. the elder, or any other F., was seised of the tenements and aliened them in the time of

Novel Disseisin—*cont.*

Edward I., and inasmuch as C. alleged nothing in destruction of their title except by asserting that no one who held any tenements of the King *in capite* before the 20th year of the reign of Henry III. could enfeoff another to hold tenements of himself without the feoffee becoming the immediate tenant of the King, the plaintiffs understood that it was permissible for persons holding tenements of the King's progenitors *in capite* to alien them to be held of themselves. And, inasmuch as C. did not deny the seisin of the plaintiffs, they prayed judgment, and the taking of the assise in respect of damages.

At this stage the assise was adjourned into the Common Bench, *propter difficultatem*, and there the pleadings were repeated. It was remarked by Willoughby, J., that before the statute *De Prærogativa Regis*, any one holding of the King by barony could enfeoff another to hold of himself by other services, and would yet continue to hold of the King by barony as before, and that in this case the alienation, if made in the time of Henry III., was good. An averment was tendered on behalf of C. that the alienation was in the time of Edward I. and not of Henry III., but the tender came too late, as C. had already pleaded to judgment.

The judgment was as follows:—

"After hearing the record aforesaid and considering the statements of the parties, it has appeared to the Court, notwithstanding the statements of the

NOVEL DISSEISIN—*cont.*
aforementioned C. above alleged, that proceeding must be had to the taking of the assise. Therefore let the assise be taken. And it is sent back to the aforesaid Justices of Assise to be taken in the county aforesaid, &c., together with the record thereof, and the original writ, and the panel, &c.," 220–246; 239, note 1.

An assise having been brought before Justices of Assise, against several persons, one of them, A., pleaded, in the absence of the others, as their bailiff, that they had committed no wrong and no disseisin, and issue was joined to the assise on that plea.

A. then, as tenant of the tenements put in view, pleaded, in bar of the assise, a fine to which the plaintiff's ancestor was a party, and alleged that he (A.) had the ancestor's estate. The plaintiff replied that A. was not tenant, but that B. (one of those on whose behalf A. had pleaded as bailiff) was tenant. A. rejoined that he was tenant, as before stated, and issue was thereupon joined, and the Justices gave judgment that the assise should be taken on that point.

Before the assise had been taken, but after the judgment of "*Assisa capiatur*," and on the same day, B. appeared in person and asserted that he was, as the plaintiff had asserted, tenant in virtue of the gift and feoffment of A. and pleaded the same fine in bar of the assise. The plaintiff prayed judgment whether B. ought to be admitted to this plea, as the assise had already been awarded

NOVEL DISSEISIN—*cont.*
with respect to him, on his previous plea by bailiff, and said that B. could not be called a second time in Court on the same day, after having failed to appear the first time.

The Justices of Assise nevertheless gave judgment that the assise should be taken "*super præmissis*." The assise found that A. was not tenant and that B. was tenant. The Justices of Assise then asked the jurors whether the plaintiff had been seised and disseised, and they said that certain others of the defendants had disseised him "*vi et armis*," and assessed his damages. The plaintiff then prayed judgment on the verdict and there was an adjournment into the Common Bench.

That Court held that, when it was found that B. was tenant, the Justices of Assise ought to have stayed the taking of the assise in point of assise until they had given judgment whether he had appeared in time to have his plea in bar admitted, and that by enquiring as to the seisin and disseisin they had forjudged him of his plea, but that judgment must be given on the verdict as found. Judgment was accordingly given for the plaintiff to recover seisin and damages, but it was regarded as subject to reversal by writ of Error, 268–282.

The assise being brought against husband and wife, they pleaded that the plaintiff had had execution of the lands on a statute merchant executed by the husband, and had subsequently granted back to them the estate

Novel Disseisin—*cont.*
which he had in virtue of the statute by an indenture with the condition that if they should pay him a certain sum before a certain date, the statute and the execution of it should be annulled, and that the husband had duly paid the money. For the plaintiff if was pleaded that the money paid was for a debt other than that mentioned in the indenture, but he was unable to produce any other obligation, and alleged that he had delivered it over by way of acquittance. The Court held that as he could not produce the obligation or anything to show that the payment related to anything not mentioned in the indenture, he should take nothing by his writ, 448–450.

The plaintiff being an infant, his father's release, dated in a county other than that in which the assise was brought, was pleaded in bar. The jurors found that it was not the ancestor's deed, and judgment was given for the plaintiff to recover seisin. It was said, however, that the decision was wrong, because the jurors could not know whether the deed was that of the plaintiff's ancestor or not, 540.

Where an assise was brought before Justices of Assise in respect of rent, the defendant pleaded in bar the plaintiff's release of all actions and demands both real and personal. The plaintiff alleged that at the time of the execution of the release, and before, and after, she was seised of the rent. The cause was adjourned into the

Novel Disseisin—*cont.*
Common Bench, *propter difficultatem*, and the plaintiff did not appear, but it was thought that she was barred by the word "*demandas*" in the deed, 556–560; 561, note 4.

In respect of twenty cart-loads of wood, to be taken in one hundred acres of wood, and pleadings thereon, 564–566.

In respect of common of pasture, and pleadings thereon, 566–568.

Nuisance:
An Assise of Nuisance lies for the obstruction of a way *in alieno solo* from the plaintiff's meadow to the highway, (although he has not in the same vill any messuage or other freehold from or to which the way extends) because he can carry from the meadow to the highway, to make his profit at a market or elsewhere, 148–152.

Nuper obiit:
Two women (coparceners) brought *Nuper obiit* against two others who made default, but who afterwards proffered wager of law as to non-summons, and had a day to perform their law. On that day one of the tenants failed to appear, but the other was ready to perform her law. One of the two demandants also failed to appear, and was severed. Seisin was prayed for the other demandant of the whole of the tenements demanded. The tenant who appeared was allowed to perform her law as to non-summons in respect only of the portion which belonged to her. With regard to the rest, judgment was given

NUPER OBIIT—*cont.*
that the demandant who appeared should recover a moiety of a moiety against the tenant who made default, but should be in mercy with regard to the tenant who performed her law, 288–296.
The writ lies against parceners even though their tenancy may have become several, if they had, at any time, an estate by descent after the death of their common ancestor, 290, 294.
View, voucher, allowance of age, or other delays (except, in certain cases, aid of the King), are not permitted on a writ of *Nuper obiit*, 402–404.
See AID OF THE KING.

O

OUTLAWRY:
The defendant, B., in a writ of Trespass, in the Common Bench, pleaded that the plaintiff, A., had been outlawed at the suit of a third person, C., on another writ of Trespass in the King's Bench. A. produced a charter of pardon of outlawry. B. alleged that the pardon was according to the Statute 5 Edw. III., c. 12, conditional on the suing out of a *Scire facias* to warn C., which was not alleged to have been done. Though the interpretation of the statute was disputed, it was held that if A. did not sue a *Scire facias* to warn C. the charter of pardon lost its force, and that B. would go without day, 54–56.
OUTLAWRY—*cont.*
The like, where the plaintiff, who brought a writ of Account, had been outlawed, 152–154.

P

PER QUÆ SERVITIA:
Pleadings on writ of, 50–52.
The earlier law was that the quantity of services could not be tried on this writ, 52.
See ABATEMENT OF WRITS.

PLEADING:
See ABATEMENT OF WRITS (plea of land in general); ACCOUNT; ADMEASUREMENT OF PASTURE; AID; ANCIENT DEMESNE; CESSAVIT; CONTEMPT; COSINAGE; CUI ANTE DIVORTIUM; CUI IN VITA; DARREIN PRESENTMENT; DEBT; DETINUE; DOWER; ENTRY; EXECUTORS; JURATA UTRUM; MESNE; NON-TENURE; NOVEL DISSEISIN; PER QUÆ SERVITIA; QUARE IMPEDIT; RECEIPT; RELIEF; REPLEVIN; TRESPASS; VILLEIN; WARDSHIP; WASTE.

PRÆROGATIVA REGIS:
Probable date of the Statute de, 228, note 1.

PRECE PARTIUM:
See ABATEMENT OF WRITS (*Cessavit*).

PREROGATIVE:
See WARDSHIP.

PRIOR:
Relation of to Abbot of same House. *See* QUARE IMPEDIT.

PROCESS :
See COUNTY PALATINE ; DISCONTINUANCE ; VOUCHER.

PROHIBITION :
See CONTEMPT.

PROTECTION :
Where process of outlawry had been commenced against a defendant in Account, and he surrendered before the outlawry was complete, and was held to mainprise, a Protection was produced for him on the day which he had in Court. It was objected that if the Protection were allowed the mainpernors would be discharged, but it was allowed nevertheless, 220.
After a verdict had passed, at *Nisi prius*, against a defendant in Trespass, a Protection for him was produced in the Common Bench before judgment, but was not allowed, 338–342.
Justices of *Nisi prius* have no power to allow or disallow a Protection, 342.
Where a defendant had a Protection, and the plaintiff produced a writ of later date in which the King recorded that the defendant was not in his service, the Protection was disallowed, 370–372.
Where a tenant had vouched to warrant, and the vouchee was described in his Protection as "knight," but was not so described in the voucher, it was held that the Protection was good, and not vitiated by the surplusage, 376–378.
Where, in an action of Account, issue had been joined by the plaintiff and defendant, and a Protection was subsequently

PROTECTION—*cont.*
produced for the defendant, it was disallowed, 388–390.
See STATUTE MERCHANT.

PROVISION, PAPAL :
Of Bishop to bishopric, 396–402.
See CONTEMPT.

Q

QUALE JUS :
See QUARE IMPEDIT.

QUARE IMPEDIT :
Where two persons are named as defendants, and one of them, in pleading, disclaims all interest in the patronage of the church, he cannot traverse the plaintiff's title, but in the absence of any such express disclaimer, each of them may traverse the title just as much as if a separate writ of *Quare impedit* had been brought against each of them severally, 44–50. Further pleadings in the same case, 382–388.
Where the defendant confessed the action the plaintiff had judgment to recover his presentation and his damages, but as he was an Abbot, execution was stayed until the return of the *Quale jus* as to collusion, 52–54 ; 55, note 1.
The King claimed, against a Bishop, a presentation, on the ground that King John, having been seised of the advowson, had presented to the church, that King John had given the advowson to a Prior in frank almoign to hold of him and his heirs, and that the Prior's successor had

QUARE IMPEDIT—*cont.*
afterwards aliened to the Bishop's predecessor in mortmain without license. The Bishop in his plea traversed the seisin of King John, the admission of John's presentee, the gift to the Prior, and the alienation without license. It was objected, and the Court held that averments to the jury on the four points could not be allowed, and that the Bishop could have an averment on one only of the four, at his election. He elected to plead that the presentee was not admitted on King John's presentation, but made protestation on the other points. In the end, however, the King availed himself of his right to take issue on which point of his declaration he pleased, and issue was taken on his replication that the Prior did alien the advowson without license, 140–144, and Y.B., Hil.-Trin., 20 Edw. III., pp. 102–107, and pp. 290–292.

Where the action was brought by the Prior of an Abbey against the Abbot of the same Abbey, disability in the person of the Prior was pleaded on behalf of the Abbot, on the ground that the Prior was the Abbot's subordinate, and owed obedience to him. As, however, it appeared that the manor to which the advowson was appendant had (with other possessions) been granted by royal charters to the Prior and Convent and their successors to hold of the Abbot severally, and that previous Priors had presented, as sole patron, and that the Priors were elective, and perpetual, and not subject to removal by the Abbot, it was held that the Prior was entitled to an answer. The right of the Prior to present being then not denied, he had, by judgment, a writ to the Bishop, 344–346.

Pleadings in, where the presentation to a precentorship was claimed by the King on the ground that it formed part of the temporalities of a bishopric which became vacant through the death of a Bishop after he had given the precentorship to one who became his successor as Bishop by a papal provision, 396–402.

Pleadings in, in continuation of preceding reports of an unfinished case, 452–456.

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See JURY-PROCESS.

QUEEN CONSORT:
May maintain an action brought by herself, without her husband, the King, in respect of her several possessions, 346.

QUID JURIS CLAMAT :
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QUOD PERMITTAT :
See ABATEMENT OF WRITS.

R

RECEIPT :
If tenant for life traverses the action when a *Jurata utrum* is brought against him, or traverses the gift when a Formedon is brought against him, an alleged reversioner will not be admitted to defend his right, 302–304.
Husband and wife (tenants) having put themselves upon a jury, the husband departed in contempt of Court when the jury came to give their verdict at *Nisi prius*. The wife prayed to be admitted to defend her right, but the verdict was taken and was for the demandant. When judgment for the demandant was prayed in the Common Bench the wife again prayed to be admitted, but her prayer was refused because judgment was to be given on the verdict and not by reason of the husband's default, 312.
Where a real action was brought against husband and wife there was a disclaimer on behalf of the wife. The husband, after vouching, made default, and the wife then prayed to be admitted to defend her right. The prayer was counterpleaded on the ground that the disclaimer put her out of Court, and made her no longer a party to the plea. The Court, however, held that her disclaimer must be held to be the husband's plea, and she was admitted, 412–414.

RELIEF :
Where the relief consists of double rent payable after the death of a tenant, it is not necessary, in making an avowry, to allege seisin of the relief itself, if seisin of the rent itself is alleged, because it is possible that by reason of successive feoffments of the land no tenant died seised since time of memory, 18.

REPLEVIN :
Where the avowry was for (*inter alia*) homage in arrear, seisin of it was alleged by the hands of the plaintiff's brother, whose heir the plaintiff was. The plaintiff pleaded that his estate in the land was only a fee tail, as his brother's had also been, and denied that the avowant or any of his ancestors, or of those whose estate he had in the seignory or the services, had been seised of the homage by the hands of the donor or any one whose estate the plaintiff had, and prayed judgment whether the avowant could charge his freehold by any seisin of homage by the hands of his brother who had no estate in the tenements but a fee

REPLEVIN—*cont.*

tail. It was, however, held that as the tenant was not supposed in the avowry, by express words, to be tenant in fee simple, and the defendant had avowed on his very tenant, the avowry was, so far, good. The plaintiff, however, also alleged that the donor held of one whose estate the avowant had by fealty and rent, without homage. The avowant thereupon tendered the simple averment that the donor held by homage, but it was ruled that this was insufficient, as seisin by the donor's hand was not alleged. The avowant then alleged that A., the ancestor of the person whose estate he had, enfeoffed the donor's ancestor, B., (before the statute of *Quia emptores*) to hold of A. by homage. The plaintiff had to answer to this, and alleged that B. was enfeoffed to hold without homage. Issue was joined on this question. The plaintiff subsequently made default, and the avowant had the return, 18–26; 27, note 4.

Where the plaintiff complained of the taking of ten oxen in a certain place in a certain vill, and the defendant avowed the taking of twenty oxen in another place in another vill, the plaintiff tendered the averment that the defendant had taken the beasts mentioned in the plaint in the place and vill in which he had laid his plaint, without denying the taking of the rest. The defendant thereupon prayed the return of the rest immediately, and it was held that he was entitled to it unless the

REPLEVIN—*cont.*

plaintiff denied the taking of them. In the end the plaintiff did deny the taking, and issue was taken on that point as well as on the question of place and vill, 218–220.

Question whether the taking must be alleged to have been in a vill, and whether it is sufficient to mention a hamlet, 390.

The defendant avowed on the ground that he was lord of a vill, in a field of which vill he found the beasts which belonged to another vill *damage feasant*, and that the two vills did not intercommon in that field. The plaintiff prayed judgment of the avowry on the ground that the intercommoning of the vills was not denied except in one particular place, and that in the absence of any evidence respecting that particular place, the avowry could not be maintained. It was, however, held to be good, and in the end issue was joined on the plaintiff's alleged prescriptive right to have common in the place of taking, 430–432.

A. (an Abbot) distrained B. for suit of court, and avowed. B. pleaded, in abatement of the avowry, that he enfeoffed C. of one portion of his land, and D. of another portion, and that they in turn leased to him (B.) for his life, so that B. was tenant of C. and D. and they were tenants of A., and that B. held the rest of the land of A. and that so the tenancy was not one, but several. It was held that the plea was not good, because the matter should have been pleaded by way of disclaimer. B. then pleaded that

REPLEVIN—*cont.*
A.'s predecessor had by fine acknowledged the tenements to be the right of B.'s ancestor to hold by fealty, and 10*s. per annum*, in lieu of all services, and that A. could not therefore avow for suit of court. This plea was held good after arguments as to the effect of the Stat. of Marlb., c. 9, 486–492.
To an avowry for castle-ward the plaintiff pleaded that one J. held the land of the avowant by services including castle-ward, and enfeoffed the plaintiff's ancestor, before the statute of *Quia emptores*, to hold by services not including castle-ward, that the avowant had purchased the seignory of J. and could not therefore avow for more services than were mentioned in the deed of feoffment. It was held that by the avowant's purchase of the seignory below his previous seignory was extinguished, 498–500.
The avowry was of a taking of chattels, by bailiffs of a town, for toll due for goods exposed for sale at the market of the town. It was pleaded that whatever franchise the burgesses might have had in respect of the toll, it had been interrupted, and seised into the King's hand in a previous reign. The Court held that as the plaintiff had not denied that the bailiffs had a market, and all things appertaining to a market, in the town, nor that the taking had been for the toll which properly appertained to the market, and as the bailiffs had not a day in Court to claim or try their franchises, the bailiffs should

REPLEVIN—*cont.*
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See VILLEIN.

REVOUCHER:
See VOUCHER.

RIGHT, WRIT OF:
The mise having been joined, four persons were returned as knights to elect the Grand Assise. It was alleged, on behalf of the King, that they were not knights; and being questioned by the Court, they confessed that they were not. The Court sent them to prison, there to remain during the King's pleasure. It was held further that if there were no knights in the county the sheriff should have so returned, and that the Sheriff of the next county should have been commanded to cause four knights to come, 374–376.
See FALSE JUDGMENT.

RIGHT OF ADVOWSON:
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S

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See ABATEMENT OF WRITS.

SCIRE FACIAS—*cont.*

(On Recognisance.) Where there is a clause to the recognisance to the effect that if the money is not paid on the appointed day, the Sheriff of one particular county may levy it of the obligor's lands and tenements, and the obligor subsequently purchases lands in another county, the obligee is not compelled to pray execution in the latter county as well as in the former, 492–496.

SCUTAGE :

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SEQUATUR SUO PERICULO :

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SHERIFF :

See STATUTE MERCHANT.

STATUTES CITED :

52 Hen. III. (Marlb.), c. 9, 490.
13 Edw. I. (Westm. 2), c. 1, 202.
——————— c. 3, 414.
——————— c. 5, 3 ; 53, note 1 ; 186.
——————— c. 9, 408.
——————— c. 25, 274.
——————— c. 27, 160.
——————— c. 35, 162.
——————— c. 45, 94.
——————— c. 48, 176 ; 514.
13 Edw. I. (*De mercatoribus*), 88.
18 Edw. I. (*Quia emptores*), 24 ; 27, note 4 ; 350 ; 360 ; 498.
17 Edw. II., St. 2, 90 ; 96.

STATUTES CITED—*cont.*

5 Edw. III., c. 12, 54 ; 154.
14 Edw. III., St. 1, c. 6, 198.
——————— c. 17, 58.
De Prærogativa Regis (*incerti temporis*), 228 ; 230 ; 232.

STATUTE MERCHANT :

When the obligee has sued execution, and has had the debtor's lands delivered to him, he cannot afterwards have a *Capias* to take the debtor's body, 88.

Where the obligee sued a *Capias* to take the debtor's body, and the Sheriff returned that he had taken the body but that the debtor had paid the obligee and received an acquittance, the obligee took exception that this matter did not fall under the head of a Sheriff's return, and prayed that the Sheriff might be amerced. The Court, however held that the Sheriff had not acted wrongly, if the facts were as stated, and that, if he had taken the debtor and allowed him to be at large before the money had been paid, the obligee could recover against the Sheriff, 146.

When the obligee was suing execution, a Protection was produced on behalf of the debtor in the Court of Common Pleas, but it was not allowed because execution was prayed in respect of a matter adjudged, and the debtor had no day in Court. Execution was awarded, 172–176.

See AUDITA QUERELA ; NOVEL DISSEISIN.

SUIT OF COURT :

Arguments as to the effect of the Statute of Marlborough, c. 9, in relation to, 190–192.

T

Tail :

By a gift to a woman and the heirs of her body begotten by her husband she takes a fee tail, 252.

Tenement :

See Common of pasture.

Trespass :

Where the action was brought in respect of writings taken and carried off, and the defendant pleaded Not Guilty, and issue was joined thereon, and the jury was ready to pass its verdict, the defendant objected that the verdict could not be taken because the plaintiff had not specified what writings they were. It was held that the exception ought to have been taken when the declaration was made, and that, as issue had been joined, the verdict must be taken. The plaintiff recovered damages, 170–172.

Where the defendant was supposed to have broken the plaintiff's house, and carried off goods, he pleaded Not Guilty as to carrying off the goods. With regard to breaking the house he pleaded that he was assisting Sheriff's officers in the taking of one who had been indicted of felony, that they found the door of the house open, by which they entered, and took the accused. The plaintiff had to maintain that the defendant came with force and arms, and broke the house, 458.

Trespass—*cont.*

After the defendant had pleaded Not Guilty, he alleged on a subsequent day, that the plaintiff had been outlawed, but omitted to say since the last continuance. The plaintiff was, nevertheless, put to answer, 542.

See Abatement of Writs ; Excommunication ; Liberty ; Outlawry.

V

Variance :

Where an *alias* writ of *Scire facias*, on fine, varies from its predecessor, or either of them from the roll, in the initial letter U or V or W of a surname, the writ is bad, notwithstanding the statute 14 Edw. III., St. 1, c. 6, which relates to mistakes in process, 196–198.

Where a plaintiff brought his action against a Prior, and made *profert* of a deed purporting that an annuity was granted to him by the Prior and Convent, and exception was taken to the variance, it was not allowed, 560–562.

Venue :

See Annuity.

Verdict :

See Novel Disseisin.

View :

When a writ has been brought against a man and he has had view, and the writ has subsequently abated on the ground

VIEW—*cont.*

that he held jointly with his wife, and a new writ is brought against the husband and wife, and they pray view, they may have it, though it be counterpleaded on the ground of the husband's previous view, 40–42.

Where view was prayed on a *Cui in vita*, and counterpleaded on the ground that the tenant's entry had been by the demandant's husband, and that view was not allowed under the Statute of Westminster the Second, c. 48, it was held that the words of of the Act applied to writs of Dower and not to writs of *Cui in vita*, and view was granted, 176.

Although, under the Statute of Westminster the Second, c. 48, view is not granted in Dower to a tenant whose ancestor entered through the husband's alienation, yet it is granted to a tenant whose predecessor so entered, because there is a degree between ancestor and heir, but not between predecessor and successor, 512–514.

See ENTRY ; NON-TENURE ; WASTE.

VILLEIN :

If a manor has been seised into the King's hand, and he leases it to A. for a term of years, and B. brings an action of Replevin against A., and A. alleges that B. is his villein regardant to the same manor, it is a good exception, because, if B. is regardant to the manor, he is A.'s villein during the time of the lease, 304–306.

VOUCHER :

A tenant having vouched one A., and the *Summoneas ad warantizandum* having been returned, and a *Cape ad valentiam* having been awarded on A.'s default, the demandant alleged that A. was dead, and tendered an averment to that effect. As, however, the Sheriff had not returned that A. was dead, and the tenant had sued process against A. at his own peril, that process was continued by the award of an *alias Summoneas ad warantizandum*, 42.

Where, on a writ of Wardship, a tenant by his warranty vouched over, his voucher was not allowed without the production of a specialty witnessing the conveyance in virtue of which he vouched, 68–70.

Where a tenant had vouched husband and wife, who had entered into warranty, and the husband died, the tenant revouched the husband's heir alone, omitting the wife who was still living. Though exception was taken, and was supported by one of the judges, it was nevertheless held by the Court that the revoucher should be allowed, 214–218.

A. had enfeoffed B. in fee, and B. had given the land to A. and C. and the heirs of A. A writ was brought against C., who made default. D., son and heir of A., was then admitted to defend his right, and would have vouched himself as being B.'s assign, but the voucher was not allowed, 378–380.

A tenant cannot, in respect of the same estate, vouch one of whom he has already prayed aid, nor in respect of a different estate, when the prayee in aid has

Voucher—*cont.*
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See Dower; Wardship.

W

Wager of Law:
See Nuper obiit.

Wardship:
Where it is alleged that the infant's ancestor held of the plaintiff as of a certain manor, and the defendant tenders the averment that the ancestor did not hold as of that manor, issue cannot be taken on that point because it is not of the substance of the action, but will be joined on a plea that the ancestor did not hold of the plaintiff, 66–68; 67, note 3; 69, note 1.
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See Voucher.

Warranty:
Where lands had been given in tail, and one brought a writ of Formedon in the descender, and made the descent from his grandfather to his father, and from his father to himself, the tenant pleaded a release with warranty made to himself by the father's brother. Although it was argued that such a deed by one who was issue in tail was restrained by the Statute *de donis conditionalibus*, it was held that the warranty of any one not mentioned in the writ as being in the entail remained at common law, and that, in order to

WARRANTY—*cont.*
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